



STATUTORY INSTRUMENTS.

S.I. No. 188 of 2012



OCCUPATIONAL PENSION SCHEMES (FUNDING STANDARD)
(AMENDMENT) REGULATIONS, 2012

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I, JOAN BURTON, Minister for Social Protection, in exercise of the powers conferred on me by section 5, and by sections 42, 47, 49 and 50 (as amended by the Social Welfare and Pensions Act, 2012 (No. 12 of 2012)) of the Pensions Act 1990 (No. 25 of 1990) hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Occupational Pension Schemes (Funding Standard) (Amendment) Regulations, 2012.

(2) These Regulations and the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2009 together may be cited as the Occupational Pension Schemes (Funding Standard and Funding Standard Reserve) Regulations 1993 to 2012 and shall be construed together as one.

(3) These Regulations shall come into operation on 1 June 2012.

Amendment to Regulations

2. The Occupational Pension Schemes (Funding Standard) Regulations, 1993 (S.I. No. 419 of 1993) are amended—

(a) in article 3, by substituting “section 44(1)” for “section 44” in the definition of “relevant period”,

(b) in article 4(1), by substituting the following for paragraph (e):

“(e) an actuarial funding certificate in respect of a relevant scheme other than a certificate referred to in paragraphs (a), (b), (c), or (d) above or (f) below shall be in the form set out in Schedule BC to these Regulations (but, for the avoidance of doubt, where the certificate is completed on or after 1 June 2012, as if references therein to section 44 of the Act were construed as references to the provisions of section 44 of the Act in force at the effective date of the certificate) or in a form substantially to the like effect,

(f) an actuarial funding certificate in respect of a relevant scheme having an effective date on or after the 1 June 2012 shall be in the form set out in Schedule BD to these Regulations or in a form substantially to the like effect,

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 12th June, 2012.*

- (g) a funding standard reserve certificate in respect of a relevant scheme shall be in the form set out in Schedule BE to these Regulations or in a form substantially to the like effect.”,
- (c) in article 5, by substituting “shall, except to the extent (if any) otherwise permitted under the guidance referred to in article 5A(2), exclude” for “shall exclude”,
- (d) by substituting the following for article 5A:

“5A. (1) In completing an actuarial funding certificate or funding standard reserve certificate under section 42 of the Act, the actuary must comply with—

- (a) the professional guidance issued by the Society of Actuaries in Ireland, and
- (b) the guidance issued by the Board,

in relation to the preparation of actuarial funding certificates or funding standard reserve certificates in accordance with section 42 of the Act. In the event of any conflict between the professional guidance issued by the Society of Actuaries in Ireland and the guidance issued by the Board, the guidance issued by the Board shall prevail.

(2) In determining whether or not resources or investments shall be included for the purposes of any calculation made for the purposes of Part IV of the Act, the trustees shall comply with the guidance issued by the Board in relation to including certain resources or investments in accordance with section 47 of the Act.

(3) In certifying a funding proposal under section 49(2) of the Act or the failure of a scheme to satisfy the funding standard in accordance with section 49(3) of the Act, the actuary must comply with—

- (a) the professional guidance issued by the Society of Actuaries in Ireland, and
- (b) the guidance issued by the Board,

in relation to the preparation of funding proposals in accordance with section 49 of the Act. In the event of any conflict between the professional guidance issued by the Society of Actuaries in Ireland and the guidance issued by the Board, the guidance issued by the Board shall prevail.

(4) The trustees of a scheme shall comply with the guidance issued by the Board setting out the requirements with which a funding proposal shall comply and with which the trustees must ensure compliance.

(5) The terms on and circumstances in which the Board, on application to it in that behalf by the trustees of a scheme, may specify a date later than—

(a) for the purposes of subsection (2)(a)(i) of section 49 of the Act, the effective date of the next actuarial funding certificate, and

(b) for the purposes of subsection (2)(a)(ii) of section 49 of the Act, the effective date of the next actuarial funding certificate or funding standard reserve certificate,

shall be set out in the guidance issued by the Board in relation to funding proposals in accordance with section 49 of the Act.

(6) The terms on and circumstances in which the trustees of a scheme are not required to submit a funding proposal shall be set out in the guidance issued by the Board in relation to funding proposals in accordance with section 49 of the Act.

(7) The trustees of a scheme shall comply with the guidance issued by the Board setting out the terms on and the circumstances in which the trustees are required to notify the Board of a failure by any person to comply with a term of a funding proposal submitted under section 49 of the Act.

(8) The terms on and circumstances in which the Board may declare that a funding proposal is no longer a valid funding proposal shall be set out in the guidance issued by the Board in relation to funding proposals in accordance with section 49 of the Act.

(9) The form by which trustees of a scheme may apply to the Board for a direction under section 50 of the Act and the requirements to be met by the trustees in relation to any such application shall be set out in the guidance issued by the Board in accordance with section 50 of the Act.”, and

(e) by inserting the following after Schedule BC:

“Schedule BD — Actuarial Funding Certificate

Article 4

THIS CERTIFICATE HAS BEEN PREPARED UNDER THE PROVISIONS OF SECTION 42(1) OF THE PENSIONS ACT 1990 (the ACT) FOR SUBMISSION TO THE PENSIONS BOARD BY THE TRUSTEES OF THE SCHEME

SCHEME NAME:

SCHEME COMMENCEMENT DATE:

PENSIONS BOARD REFERENCE NO.:

EFFECTIVE DATE OF THIS CERTIFICATE:

EFFECTIVE DATE OF PREVIOUS CERTIFICATE (IF ANY):

On the basis of information supplied to me, having complied with any guidance prescribed under section 42(4)(b) of the Act and, subject thereto, having regard to such financial and other assumptions as I consider to be appropriate, I am of the opinion that at the effective date of this certificate:—

(1) the resources of the scheme, which are calculated for the purposes of section 44(1) of the Act to be [], ***would/*would not** have been sufficient if the scheme had been wound up at that date to provide for the liabilities of the scheme determined in accordance with section 44(1) of the Act which, including the estimated expenses of administering the winding up of the scheme, amount to [], and

(2) [] of the resources of the scheme referred to in paragraph (1) comprise contingent assets, in accordance with and within the meaning of the guidance issued by the Board and prescribed under section 47 of the Act.

I, therefore, certify that as at the effective date of this certificate the scheme ***satisfies/*does not satisfy** the funding standard provided for in section 44(1) of the Act.

I further certify that I am qualified for appointment as actuary to the scheme for the purposes of section 51 of the Act.

Signature:

Date:

Name: Qualification:

Name of Actuary's Employer/Firm:

Scheme Actuary Certificate No.:

* Please delete whichever is not applicable.

Schedule BE — Funding Standard Reserve Certificate

Article 4

THIS CERTIFICATE HAS BEEN PREPARED PURSUANT TO SECTION 42(1A) OF THE PENSIONS ACT, 1990 (the **ACT**) FOR SUBMISSION TO THE PENSIONS BOARD BY THE TRUSTEES OF THE SCHEME

SCHEME NAME:

SCHEME COMMENCEMENT DATE:

PENSIONS BOARD REFERENCE NO.:

EFFECTIVE DATE OF THIS CERTIFICATE:

EFFECTIVE DATE OF PREVIOUS CERTIFICATE (IF ANY):

On the basis of information supplied to me, having complied with any guidance prescribed under section 42(4)(b) of the Act and, subject thereto, having regard to such financial and other assumptions as I consider to be appropriate, I am of the opinion that at the effective date of this certificate:

(1) the funding standard liabilities (as defined in the Act) of the scheme amount to [],

(2) the resources of the scheme (other than resources which relate to contributions or a transfer of rights to the extent that the benefits provided are directly related to the value of those contributions or amount transferred (**DC resources**)), calculated for the purposes of section 44(1) of the Act amount to [],

(3) [] of the amount referred to in paragraph (2) (subject to a maximum of an amount equal to the funding standard liabilities) is invested in securities issued under section 54(1) of the Finance Act 1970 (and known as bonds), securities issued under the laws of a Member State (other than the State) that correspond to securities issued under section 54(1) of the Finance Act 1970, cash deposits with one or more credit institutions and such other assets (if any) as are prescribed under section 44(2)(a)(iv) of the Act,

(4) the amount provided for in section 44(2)(a) of the Act (15% x ((1) minus (3)) is [],

(5) the amount provided for in section 44(2)(b) of the Act, being the amount by which the funding standard liabilities of the scheme would increase if the interest rate or interest rates assumed for the purposes

of determining the funding standard liabilities were one half of one per cent less than the interest rate or interest rates (as appropriate) assumed for the purposes of determining the funding standard liabilities less the amount by which the resources of the scheme (other than DC resources) would increase as a result of the same change in interest rate or interest rates is [],

(6) the aggregate of (4) and (5) above amounts to [], and

(7) the additional resources (as defined in the Act) of the scheme amount to [] of which, in accordance with and within the meaning of the guidance issued by the Board and prescribed under section 47 of the Act, [] comprises contingent assets and [] of such contingent assets comprise an unsecured undertaking.

I therefore certify that as at the effective date of the funding standard reserve certificate the scheme-

***does/*does not** hold sufficient additional resources to satisfy the funding standard reserve as provided in section 44(2) of the Act.

I further certify that I am qualified for appointment as actuary to the scheme for the purposes of section 51 of the Act.

Signature:

Date:

Name: Qualification:

Name of Actuary's Employer/Firm:

Scheme Actuary Certificate No.:

* Please delete whichever is not applicable.”.



GIVEN under my Official Seal
31 May 2012.

JOAN BURTON,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Part 3 of the Social Welfare and Pensions Act 2012 provides for a number of amendments to the Pensions Act 1990. These amendments include the introduction of a risk reserve and provisions permitting the Minister to prescribe guidance issued in relation to various matters provided for in Part IV of the Act.

These Regulations prescribe guidance issued by the Pensions Board and/or the Society of Actuaries in Ireland. Separate guidance has issued in respect of the following matters:

1. Completion of an actuarial funding certificate or funding standard reserve certificate in accordance with section 42 of the Act taking into account and giving credit to schemes who hold sovereign annuities and/or sovereign bonds. (Section 42 Guidance)
2. What resources or investments shall be included for the purposes of calculating the Funding standard or the funding standard reserve requirements; (Section 47 Guidance)
3. Certification of a funding proposal by the scheme actuary under section 49(2) of the Act (Section 49 Guidance), in relation to the requirements which a funding proposal must comply with and with which the trustees must ensure compliance and setting out the terms on and circumstances in which
 - The Pensions Board may specify a later date by which a scheme must satisfy the funding requirements.
 - the trustees of a scheme are not required to submit a funding proposal under section 49 of the Act;
 - the trustees of a scheme are required to notify the Pensions Board of a failure to comply with a term of a funding proposal submitted under section 49 of the Act;
 - the Pensions Board may declare that a funding proposal is no longer a valid funding proposal for the purposes of section 49 of the Act; and
4. the form by which trustees of a scheme may apply to the Pensions Board for a direction under section 50 of the Act (Section 50 Guidance) and the requirements to be met by trustees in relation to any such application which will require the trustees to:
 - carry out a comprehensive review of the scheme with a view to the long term stability and sustainability of the scheme;

- Confirm that a request was made to the employer for contributions sufficient to ensure the long term stability and sustainability of the scheme without the reduction sought in the application;
- seek legal and actuarial advice on the proposal;
- notify members of the scheme and any person receiving benefits under the scheme of the proposals to reduce scheme benefits.

In addition, these Regulations also prescribe the form of actuarial funding certificate and funding standard reserve certificate to be used where the certificate has an effective date on or after 1 June 2012.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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