



STATUTORY INSTRUMENTS.

S.I. No. 4 of 2010



SCHEME

ENTITLED

PENSIONS INSOLVENCY PAYMENT SCHEME 2010

(Prn. A10/0080)

PENSIONS INSOLVENCY PAYMENT SCHEME 2010

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 22 of the Social Welfare and Pensions Act 2009 (No. 10 of 2009) and having consulted with the Minister for Social and Family Affairs, hereby make the following Scheme:

Citation

1. This Scheme may be cited as the Pensions Insolvency Payment Scheme 2010.

Commencement

2. This Scheme comes into operation on 1 February 2010.

Interpretation

3. In this Scheme:

“actuary” has the meaning assigned to it by the Pensions Act 1990 (No. 25 of 1990);

“Board” means the Pensions Board;

“defined benefit scheme” has the meaning assigned to it by the Pensions Act 1990;

“payment administrator” means the person making payments to the relevant pensioners of a participating pension scheme on the Minister’s behalf under this Scheme.

Application to Board for certificate

4. (1) The trustees of a defined benefit scheme may apply to the Board for a certificate that the scheme is an eligible pension scheme by sending to the Board—

- (a) a completed application in such form as shall be determined and made available by the Board,
- (b) written confirmation by the trustees that the winding up of the pension scheme has commenced, specifying the date of the commencement of the winding up,
- (c) a statement by the defined benefit scheme actuary that, at the date of the commencement of the winding up, that scheme did not satisfy the funding standard, as provided for by section 44 of the Pensions Act 1990,

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- (d) a statement of affairs of the insolvent employer,
- (e) the notice of the appointment of a liquidator or receiver to the insolvent employer, and
- (f) a statutory declaration—
 - (i) by the employer concerned that that employer is insolvent for the purposes of the Protection of Employees (Employers' Insolvency) Act 1984 (No. 21 of 1984), and
 - (ii) by the trustees that all reasonable efforts have been made by the trustees to ensure that, in so far as possible, the information provided is in all material respects complete and accurate,

together with such other information as may assist the Board in determining whether the scheme is an eligible pension scheme.

(2) The Board may request such further information from the trustees of the defined benefit scheme concerned as will, in the Board's opinion, assist it in its determination of the application. Any such request may require that the information—

- (a) be furnished to the Board, within a specified time period or by a specified date, and
- (b) be accompanied by a statutory declaration to the extent provided for by paragraph (1)(f)(ii).

(3) The Board shall refuse to consider, or to continue to consider, any application under this Article that does not comply with paragraph (1) or where the Board does not receive the information (including any statutory declaration) requested under paragraph (2).

Certification by Board

5. (1) If the Board is satisfied that a defined benefit scheme that has applied to it under Article 4 is an eligible pension scheme, then the Board may certify in writing, at its sole discretion and for the purposes of this Scheme, that the defined benefit scheme is an eligible pension scheme and it shall inform the trustees accordingly.

(2) If the Board is not satisfied that a defined benefit scheme that has applied to it under Article 4 is an eligible pension scheme, then the Board shall not certify the scheme as an eligible pension scheme and it shall inform the trustees accordingly.

Application to Minister

6. (1) The trustees of an eligible pension scheme may apply to the Minister to become a participating pension scheme by sending all of the following to the Minister:

- (a) a completed application in such form as shall be determined and made available by the Minister;
- (b) the certification by the Board under Article 5 that the defined benefit scheme concerned is an eligible pension scheme;
- (c) a statement, in writing, that the trustees agree to comply with and be bound by the terms of this Scheme, should the eligible pension scheme be certified as a participating pension scheme by the Minister in accordance with this Scheme;
- (d) a statement from the eligible pension scheme's actuary of the value of the scheme's assets, on the basis of the assets' realisable market value on the date the assets were valued;
- (e) a completed payment administrator nomination form in such form as shall be determined, having regard to paragraph (4), and made available by the Minister;
- (f) such information as will enable the Minister to assess the cost of making payments under this Scheme in respect of the eligible pension scheme should it become a participating pension scheme;
- (g) such other information as may assist the Minister in deciding whether the eligible pension scheme should become a participating pension scheme;
- (h) a statutory declaration by the trustees that all reasonable efforts have been made by them to ensure that in so far as possible the information provided for the purposes of the application is in all material respects complete and accurate.

(2) The Minister may request such further information from the trustees of the eligible pension scheme concerned as will, in the Minister's opinion, assist him or her in determining the application. Any such request may require that the information—

- (a) be furnished to the Minister, within a specified time period or by a specified date, and
- (b) be accompanied by a statutory declaration to the extent provided for by paragraph (1)(h).

(3) The Minister shall refuse to consider, or to continue to consider, any application under this Article that does not comply with paragraph (1) or where the Minister does not receive the information (including any statutory declaration) requested under paragraph (2).

(4) The completed payment administrator nomination form referred to in subparagraph (1)(e) shall include all of the following:

- (a) the name and registered address of the payment administrator nominated by the trustees for the purposes of making payments under this Scheme to relevant pensioners of the eligible pension scheme concerned should that scheme become a participating pension scheme;
- (b) the cost of administration as quoted by the payment administrator for the purposes of its making payments under this Scheme;
- (c) confirmation of that payment administrator's willingness to act in that capacity in return for payment of the cost of administration quoted under subparagraph (b);
- (d) if applicable, details of the eligible pension scheme's relevant administration costs, fees, commissions or other charges paid to the payment administrator by the trustees for the 2 year period prior to the submission of the application under paragraph (1).

(5) An application under this Article by the trustees of an eligible pension scheme for certification as a participating pension scheme may be made in respect of some or all relevant pensioners of the eligible pension scheme concerned.

Calculation of sum

7. (1) Where the trustees of an eligible pension scheme have made an application under Article 6, the Minister shall request the National Treasury Management Agency to calculate a sum (in this Article and Article 8 referred to as the "Agency quote") which, subject to section 22(7) of the Social Welfare and Pensions Act 2009 (No. 10 of 2009), represents the actuarially assessed cost of providing pension payments to the relevant pensioners of the eligible pension scheme included in that application together with the other costs referred to in paragraph (2), should it become a participating pension scheme.

(2) The other costs referred to in paragraph (1) are—

- (a) the costs referred to in Article 6(4)(b), and
- (b) €950 per year per scheme to cover the fixed costs of the Minister.

(3) For the purposes of calculating the Agency quote, the appropriate interest rate shall be the current yield-to-maturity on the benchmark Irish bond closest to a ten-year remaining term on the date the application is received by the Minister under Article 6.

(4) The mortality tables specified in the applicable professional guidance issued by the Society of Actuaries in Ireland in relation to retirement benefit scheme transfer values shall be used for the purposes of calculating the Agency quote subject to such actuarial assumptions as the National Treasury Management Agency considers reasonable for the purposes of calculating the Agency quote.

(5) Subject to paragraphs (1) to (4), the National Treasury Management Agency shall endeavour to ensure that the Agency quote or the amended Agency quote, as the case may be, if agreed to by the trustees concerned and accepted by the Minister, will result in the amount advanced out of the Central Fund and the growing produce of that Fund being not greater than the sum to be paid by the trustees of that participating pension scheme to the Minister under this Scheme.

(6) Upon receipt of the Agency quote the Minister shall as soon as practicable send it to the trustees in writing for their consideration.

(7) Any quote sent by the Minister to the trustees and any agreement by them under paragraph (8) to the quote shall be subject to the Minister not receiving from the National Treasury Management Agency, within the 14 days referred to in that paragraph, an amended quote (in this Article and Article 8 referred to as an “amended Agency quote”). Upon receipt of an amended Agency quote the Minister shall without delay send it to the trustees in writing for their consideration.

(8) Within the period of 14 days of the Agency quote or an amended Agency quote being sent by the Minister to the trustees, the trustees may—

- (a) agree to the Agency quote or the amended Agency quote, as the case may be, and request the Minister, at his or her discretion, to certify the eligible pension scheme as a participating pension scheme in accordance with Article 8,
- (b) revise the application for certification as a participating pension scheme and submit it to the Minister, or
- (c) reject the Agency quote or the amended Agency quote, as the case may be, and advise the Minister accordingly,

and, in every other case, the Agency quote or the amended Agency quote shall be treated as rejected upon the expiration of the period of 14 days concerned.

(9) A revised application submitted under paragraph (8)(b) may provide for a higher level of payments under this Scheme so as to distribute any residual assets that would, in the considered opinion of the actuary of the eligible pension scheme, remain if that scheme were to become a participating pension scheme based on the Agency quote referred to in paragraphs (3) to (6) or the amended Agency quote referred to in paragraph (7).

(10) Upon receipt of a revised application submitted under paragraph (8)(b), the Minister shall request the National Treasury Management Agency to prepare a revised quote (in this Article and Article 8 referred to as a “revised Agency quote”) in accordance with this Article as if it were a request by the Minister under paragraph (1) and paragraphs (2) to (8) shall apply to the revised Agency quote.

Certification by Minister

8. (1) Where, within the time period specified in Article 7, the trustees of an eligible pension scheme agree as trustees to pay the sum quoted in the Agency quote, amended Agency quote or revised Agency quote (as the case may be) subject to the Minister certifying the eligible pension scheme under paragraph (2) as a participating pension scheme, then the trustees shall accordingly communicate that agreement in writing to the Minister.

(2) Where the Minister receives the communication referred to in paragraph (1) from the trustees, then the Minister may, in his or her sole discretion, certify in writing and subject to the receipt of payment under Article 9(1) and in accordance with the contract agreed under paragraph (3) and on the basis of the information provided by the trustees to him or her in accordance with Article 6(1), that the eligible pension scheme concerned is a participating pension scheme.

(3) The certification of an eligible pension scheme as a participating pension scheme shall be subject to such terms and conditions as shall be agreed in writing between the Minister and the payment administrator and shall include terms and conditions for the purposes of paragraph (4).

(4) The contract referred to in paragraph (3) shall include a provision to the effect that the payment administrator shall provide such information as the Minister may request to facilitate the orderly establishment of the alternative payment arrangements following the termination of any contract under paragraph (3).

Participation and payments

9. (1) Upon receipt of the certification by the Minister and agreement of a contract under Article 8, the trustees of the participating pension scheme shall pay the sum calculated for it under Article 7 to the Minister by electronic funds transfer. Where the trustees have so paid the Minister, they shall be discharged from any obligation to provide benefits to the relevant pensioners concerned.

(2) Upon receipt of the sum referred to in paragraph (1) the Minister shall make arrangements, through the payment administrator, for the payment of sums to the relevant pensioners of the participating pension scheme under this Scheme.

(3) Payments made to or in respect of relevant pensioners under this Article shall be made in accordance with this Scheme and the terms and conditions of the contract agreed under Article 8(3) and the trustees of the participating pension scheme shall provide to the payment administrator such information and make such arrangements as are necessary to facilitate the correct, efficient and orderly making of such payments.

(4) The payment administrator acting on the Minister's behalf shall cause payments to be duly made only to the relevant pensioners on the basis of the information provided by the trustees to him or her in accordance with paragraph (3) of this Article and paragraphs (1) and (2) of Article 6.

(5) No payment under this Scheme shall be made in respect of any claim which does not come within the Scheme and payments shall only be made to a relevant pensioner to the extent provided for by or under this Scheme, including the contract agreed to under Article 8(3).

Decision of the Minister is final

10. The decision of the Minister in relation to any matter arising under this Scheme shall be final.

Timescale

11. (1) The Board and the Minister shall ensure that applications for certification under this Scheme are disposed of as expeditiously as may be and, for that purpose, shall take all such steps as are possible to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the determination of such applications.

(2) Without prejudice to the generality of paragraph (1) it shall be the objective of the Board that every application for certification as an eligible pension scheme is determined within a period of 4 weeks beginning on the date of receipt of a complete application.

(3) Where it appears to the Board that it would not be possible to determine an application for certification within the period referred to in paragraph (2) the Board shall, by notice in writing, inform the trustees of the reasons why and shall specify the date before which the application shall be determined.

Public interest and interest of Exchequer

12. The Minister may exclude a pension scheme, employer or business from this Scheme where, in the Minister's view, there is an overriding public interest and it is in the interests of the Exchequer to so exclude.

Classes of defined benefit schemes excluded, etc.

13. The Minister shall exclude a pension scheme where, in the opinion of the Minister, it is a defined benefit scheme in respect of which—

- (a) the trustees of that scheme and the employer and the business concerned, or any of them, had contrived a pension deficit or employer insolvency solely or substantially for the purpose of gaining access to the Scheme, or
- (b) any actions by the trustees of that scheme and the employer and the business concerned, or any of them had—
 - (i) wilfully contributed, whether by act of commission or omission, to that scheme's deficit, or
 - (ii) wilfully contributed to the employer's insolvency.

Audit

14. Payments made under this Scheme shall be subject to the ordinary audit practices of the Department of Finance and to audit under the Comptroller and Auditor General Acts 1923 and 1993.

Collection of information

15. The Minister may require either or both the trustees and the payment administrator of a participating pension scheme to make a return of such information as the Minister may from time to time request to assist the Minister in the performance of his or her functions under section 22 of the Social Welfare and Pensions Act 2009 including the review of the Scheme under subsection (12) of that section.

Saver for participating pension schemes.

16. Except where section 22(6) of the Social Welfare and Pensions Act 2009 applies a participating pension scheme shall remain a participating pension scheme until such time as all agreed payments to or in respect of relevant pensioners have been made.



GIVEN under my Official Seal,
15 January 2010.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE.

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

This statutory instrument should be read together with section 22 of the Social Welfare and Pensions Act 2009 under which it is enacted.

Article 1: Citation

This article states that the scheme is called the Pensions Insolvency Payment Scheme 2010, referred to as PIPS throughout this explanatory note.

Article 2: Commencement

This article provides that PIPS will commence on 1 February 2010.

Article 3: Interpretation

This article defines certain key terms used in the statutory instrument and should be read together with other relevant provisions including the interpretation sections of the Social Welfare and Pensions Act 2009.

Article 4: Application to Board for certification

This article states that the trustees of a defined benefit pension scheme may apply to the Pensions Board for certification as an “eligible pension scheme” and lists the documentation that must be submitted. This is a screening step with the main focus on whether the applicant pension scheme meets the double insolvency criteria, namely that the employer is insolvent and that the defined benefit pension scheme is being wound up in deficit.

Article 5: Certification by Board

This article provides that the Board may certify a scheme as an “eligible pension scheme” if it meets the required criteria.

Article 6: Application to Minister

This article states that the trustees of a defined benefit scheme that has been certified by the Pensions Board as an “eligible pension scheme” may apply to the Minister for Finance for certification as a “participating pension scheme”.

The applicant pension scheme must supply the information required by the Article — including full details of the payments to be covered under PIPS — and must nominate a payment administrator who will handle the making of payments to pensioners in the event that the pension scheme becomes part of PIPS. The payment administrator’s costs must also be agreed and specified at this stage as these will be factored into the quote calculated by the NTMA.

Article 7: Calculation of sum

Under the Social Welfare and Pensions Act 2009 PIPS must be operated on a cost neutral basis for the Exchequer. This article explains how the NTMA will calculate the actuarial cost of the scheme’s participation in PIPS on the Minister’s behalf, including the administration costs and the Minister’s fixed costs.

The actuarial cost will be based on mortality assumptions recommended in guidance from the Society of Actuaries in Ireland and using as the interest rate the yield-to-maturity on ten-year Irish Government bonds.

The trustees may accept or reject the Minister’s quote within 14 days or may submit an application for a revised quote in the event that the original quote would result in surplus residual funds. The application for a revised quote is considered as a new quote and a fresh 14 day period applies. The NTMA may also revise the quote within that 14 day period and submit it to the Minister to communicate to the trustees, in which case a new 14 day period begins from that date of that quote.

Article 8: Certification by the Minister

This article states that where trustees of the pension scheme have accepted the PIPS quote the Minister may certify a pension scheme as a “participating pension scheme” subject to a contractual agreement with the payment administrator.

Article 9: Participation and payments

Once the pension scheme has been certified as a participating pension scheme, this article provides for the payment of the required sum — that is the amount quoted by NTMA earlier in the process — by the trustees to the Minister by electronic funds transfer. At this point the trustees will be deemed to have discharged their responsibilities towards the relevant pensioners. The Minister will then make arrangements through the payment administrator to pay the pensioners covered by PIPS. The Minister will only make the payments agreed and paid for in advance by the trustees.

Article 10: Decision of the Minister is final

This article states that the decision of the Minister on any matter arising under PIPS is final.

Article 11: Timescale

This article provides for the expeditious handling of PIPS applications by the Minister and the Pensions Board. The Pensions Board has the objective of deciding PIPS applications within four weeks, which may be exceeded for stated reasons. The Minister is bound by the requirement to expedite PIPS applications for certification as a “participating pension scheme” but is not time-bound in the same way as there may be more than one round of NTMA quotes, each of which causes a new 14 day window to apply (see article 7). This also allows flexibility for the transfer of payments from participating pension schemes and for the finalisation of the contract with the payment administrator.

Article 12: Public interest and interest of the Exchequer

This article provides that the Minister may exclude a scheme in the overriding public interest or in the interests of the Exchequer.

Article 13: Classes of defined benefit schemes excluded etc.

This article excludes schemes, businesses and employers that, in the Minister’s opinion, have contrived the qualifying conditions for PIPS or have wilfully contributed to the pension scheme deficit or employer insolvency.

Article 14: Audit

This article provides that payments under PIPS are subject to the audit requirements of the Department of Finance and the Office of the Comptroller and Auditor General.

Article 15: Collection of information

This article provides for the collection of information by the Minister in connection with his functions under the Act including for the purposes of conducting the required review of PIPS within three years of its introduction.

Article 16: Saver for participating pension schemes

This article provides that participating pension schemes shall continue to receive payments even if PIPS were modified or revoked at some later time.

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