



STATUTORY INSTRUMENTS

**S.I. No. 177 of 2009**

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OCCUPATIONAL PENSION SCHEMES (DUTIES OF TRUSTEES IN  
CONNECTION WITH BULK TRANSFER) REGULATIONS 2009

**(Prn. A9/0637)**

## OCCUPATIONAL PENSION SCHEMES (DUTIES OF TRUSTEES IN CONNECTION WITH BULK TRANSFER) REGULATIONS 2009

I, MARY HANAFIN TD, Minister for Social and Family Affairs, in exercise of the powers conferred on me by sections 5 (as amended by section 37 of the Social Welfare and Pensions Act 2007 (No. 8 of 2007), 59D and 59E (inserted by section 43 of the Pensions (Amendment) Act 2002 (No. 18 of 2002)) of the Pensions Act 1990 (No. 25 of 1990) (as adapted by the Social, Community and Family Affairs (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 310 of 2002)) hereby make the following regulations:

1. (1) These Regulations may be cited as the Occupational Pension Schemes (Duties of Trustees in Connection with Bulk Transfer) Regulations 2009,

(2) These Regulations come into operation on 1st August 2009.

2. In these Regulations—

“Act” means the Pensions Act 1990;

“actuarial funding certificate” has the meaning assigned to it in section 42 (as amended by the Pensions (Amendment) Act 2002 (No. 18 of 2002)) of the Act;

“authorised trade union” means a body of persons which is the holder of a negotiation licence issued under Part II of the Trade Union Act 1941 (No. 22 of 1941);

“benefit structure”, in relation to a scheme, means the method of calculating benefits under the scheme;

“discretionary benefit practice”, in relation to a scheme, means any custom or practice of granting additional benefits or increases in benefits under the scheme at the discretion of any person to the members generally or to any category of members—

(a) since the commencement of the scheme, or

(b) within the period of 5 years immediately preceding the date of the notification under Regulation 4,

whichever is the shorter period;

“funding standard” has the meaning assigned to it by section 40 (as amended by the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006)) of the Act;

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 12th May, 2009.*

“minimum transfer value”, in relation to benefits, means the value which would be placed on the benefit for the purpose of preparing an actuarial funding certificate;

“receiving scheme”, means the scheme under which the bulk transfer is to be received;

“receiving trustees” means the trustees of the receiving scheme;

“transferring members” means the members of the transferring scheme in respect of whom the bulk transfer is to be effected;

“transferring scheme” means the scheme, including a scheme that is being wound up, under which the bulk transfer is to be made;

“transferring trustees” means the trustees of the transferring scheme.

3. These Regulations apply to a bulk transfer from a scheme for which the consent of the members of the scheme, in respect of whom the transfer is to be effected, is not to be obtained, including a bulk transfer from such scheme which is being wound up.

4. (1) Before a bulk transfer to which these Regulations apply is effected, the transferring trustees shall, not less than 2 months before the day on which it is proposed to make that bulk transfer, notify, in writing, the transferring members and an authorised trade union, if any, representing the transferring members of the matters specified in paragraph (2),

(2) The transferring trustees, in the written notification referred to in paragraph (1), shall—

- (a) specify the circumstances giving rise to the proposed bulk transfer,
- (b) specify the benefit structures of the transferring scheme and the receiving scheme which are applicable to the transferring members including—
  - (i) the discretionary benefit practice, if any, and
  - (ii) the rules of the transferring scheme and the receiving scheme in relation to the treatment of surplus funds,
- (c) where the bulk transfer is to receiving trustees, specify the benefits that are proposed to be granted to the transferring members in the receiving scheme,
- (d) where the bulk transfer is to a Personal Retirement Savings Account, provide information relating to the class of, and specify the contributions that are proposed to be paid to, the proposed Personal Retirement Savings Account,
- (e) provide information in respect of—

- (i) any loss to, or other adverse effect on, the interests of the transferring members, and
- (ii) charges and recurring charges to be paid by the transferring members,

arising from the bulk transfer,

- (f) where the transferring scheme is a defined benefit scheme, provide a statement, signed by the actuary to the transferring scheme specifying the information referred to in paragraph (3),
- (g) state that a transferring member or an authorised trade union, if any, representing the transferring members, may make written observations not later than 1 month after the date of the notification referred to in paragraph (1), on the proposed bulk transfer for the due consideration of the transferring trustees or to any employer to whose employment the transferring scheme applies and the name and address of the person to whom the written observations shall be sent,
- (h) describe the procedures under Regulation 5 for the consideration of written observations made pursuant to paragraph (g).

(3) For the purposes of paragraph (2)(f), the following information shall be provided in the statement referred to in that paragraph—

(a) the manner in which—

(i) where the bulk transfer is to receiving trustees—

(I) the payments from the transferring scheme, and

(II) the benefits for the transferring members in the receiving scheme, or

(ii) where the bulk transfer is to Personal Retirement Savings Accounts, the contributions to be paid to Personal Retirement Savings Accounts for the transferring members,

are calculated and the manner in which discretionary benefit practices are provided for in those calculations;

(b) whether—

(i) the minimum transfer value of each transferring member in the receiving scheme, or

(ii) the value of the contributions that are proposed to be paid for each member to the Personal Retirement Savings Account,

will, immediately following the bulk transfer, be at least equal to the minimum transfer value of the benefits for the transferring member in the transferring scheme immediately before that bulk transfer;

- (c) whether, if the receiving scheme were to be wound up immediately after the bulk transfer, the payment from the receiving scheme, which would be reasonably likely to be made for each transferring member in respect of the service covered by the bulk transfer would be at least equal to the payment from the transferring scheme which would be reasonably likely to be made for each transferring member in respect of the service covered by the bulk transfer on the assumption that the transferring scheme, if it is not already wound up or is not in the process of being wound up, is to be wound up immediately before the bulk transfer, having regard to—
    - (i) whether the transferring scheme satisfies the funding standard, if applicable, and
    - (ii) whether the receiving scheme satisfies the funding standard, if applicable;
  - (d) whether the ratio, immediately following the bulk transfer, of the resources of the receiving scheme, referred to in paragraph (4), to the liabilities of the receiving scheme, referred to in paragraph (4), is reasonably likely to be at least equal to the ratio, immediately before the bulk transfer, of the resources of the transferring scheme, referred to in paragraph (4), to the liabilities of the transferring scheme, referred to in paragraph (4);
  - (e) the calculations and assumptions used by the actuary of the transferring scheme for the purposes of these Regulations.
- (4) For the purposes of the ratio referred to in paragraph (3)(d)—
- (a) the resources of—
    - (i) the receiving scheme, and
    - (ii) the transferring scheme,

shall be the resources calculated for the purposes of section 44 (as amended by the Social Welfare and Pensions Act 2008 (No. 2 of 2008)) of the Act,

and
  - (b) the liabilities of—
    - (i) the receiving scheme, and
    - (ii) the transferring scheme,

shall be the liabilities referred to in section 44 (as amended by the Social Welfare and Pensions Act 2008) of the Act.

(5) The receiving trustees shall provide information to the transferring trustees in relation to the receiving scheme as the transferring trustees require for the purposes of the provision of information under paragraph (1) and, as the case may be, paragraph (7).

(6) Where the transferring trustees have notified the persons referred to in paragraph (1), the transferring trustees shall take all steps reasonably open to them to satisfy themselves that there are not material alterations in the proposal for the bulk transfer between the date of the notification under paragraph (1) and the proposed date for the bulk transfer.

(7) Where, pursuant to paragraph (6), the transferring trustees are satisfied that there has been a material alteration relating to the proposed bulk transfer, the transferring trustees shall-

- (a) revise, or cause to be revised, as soon as possible, the information provided pursuant to paragraph (1) having regard to such material alteration, and
- (b) notify, in writing, the persons referred to in paragraph (1), as soon as possible, of the following:
  - (i) the material alterations to the proposed bulk transfer;
  - (ii) the information referred to in paragraphs (2), (3) and (4) as it has been revised in accordance with subparagraph (a) and, where applicable, revised actuarial statements;
- (c) state that a transferring member or authorised trade union, if any, representing the transferring members, may make written observations, not later than 1 month after the date of the notification made pursuant to this paragraph on the proposed bulk transfer for the due consideration of the transferring trustees or to any employer to whose employment the transferring scheme applies and the name and address of the person to whom the written observations shall be sent.

5. (1) Before a bulk transfer to which these Regulations apply is effected, the transferring trustees, or an employer to whose employment the transferring scheme applies, shall for the purposes of giving due consideration to the observations made pursuant to Regulation 4, consider the observations—

- (a) which have been made by the latest date on which, in accordance with—
  - (i) Regulation 4(2)(g), or
  - (ii) Regulation 4(7)(c),

such observations are to be made;

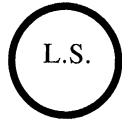
- (b) for a period of not less than 1 month from the latest date, referred to in paragraph (a), on which such observations are to be made.
- (2) Having considered the observations in accordance with paragraph (1)—
- (a) where due consideration of those observations is to be given by the transferring trustees, the transferring trustees shall state, in writing, that they have considered the observations in accordance with paragraph (1), or
  - (b) where due consideration of those observations is to be given by the employer, the employer shall notify the transferring trustees in writing that the employer has considered the observations in accordance with paragraph (1),

before the bulk transfer to which these Regulations apply is effected.

6. (1) For the purposes of notifying a transferring member under Regulation 4, the transferring trustees shall address the notification to a transferring member and send it to him or her by post to the address which has been furnished to the transferring trustees by, or on behalf of, the transferring member to whom it is addressed,

(2) For the purposes of these Regulations, a notification which is sent to a transferring member in accordance with paragraph (1) shall be treated as complying with the notification of a transferring member under Regulation 4,

(3) Where the transferring trustees have, and an employer has, taken all steps reasonably open to them, or to him or her, to comply with Regulation 5 and the transferring trustees do not, or an employer does not, receive a written observation made pursuant to Regulation 4(2)(g) or, where appropriate, Regulation 4(7)(c) within the period, referred to in Regulation 5(1)(a), for making those observations, the failure to consider such written observation shall not be treated as a failure to comply with Regulation 5.



GIVEN under my Official Seal,  
7 May 2009

MARY HANAFIN.  
Minister for Social and Family Affairs.



## EXPLANATORY NOTE

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

These regulations prescribe the duties of trustees effecting a bulk transfer from a pension scheme (including on the wind-up of a scheme) for which the consent of members is not required.

The regulations outline the notice that must be given, in writing, advising scheme members that the bulk transfer is to take place, and prescribe what information must be contained in this advice.

These regulations also prescribe how observations may be made by, or on behalf of scheme members, and that such observations, received within a specified timeframe must be considered by the trustees of the scheme and/or the employer as appropriate.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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