

GN51: Retirement Benefit Schemes – Modification of Subsisting Rights Without Consent

Classification

Practice Standard

MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE PROFESSIONAL CONDUCT STANDARDS (PCS), AND THAT GUIDANCE NOTES IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES

Definitions

For the purposes of this Guidance Note:

Reference

Act

Definition

The Pensions Act 1995

actuarial equivalence statement

As defined in Section 67C(7) of the Pensions Act 1995

actuarial equivalence statement requirement

As defined in Section 67C(6) of the Pensions Act 1995

actuarial value of subsisting rights

The value of a member's *subsisting rights* calculated in accordance with regulation 5 of the *Subsisting Rights Regulations*

actuarial value requirement

As defined in Section 67C(5) of the Pensions Act 1995

detrimental modification

As defined in Section 67 A(4) of the Pensions Act 1995

protected modification

As defined in Section 67A(3) of the Pensions Act 1995

regulated modification

As defined in section 67A (2) of the Pensions Act 1995

subsisting rights

As defined in Section 67A(6) of the Pensions Act 1995

Subsisting Rights Regulations

The Occupational Pension Schemes (Modification of Schemes) Regulations 2006. SI 2006/759

trustees

The trustees or, for schemes not established under trust, the managers as defined in Section 318(1) of the Pensions Act 2004

Purpose and Application

The purpose of this guidance is to advise actuaries of the information that they must give to *trustees* in order to alert the *trustees* to the need to consider wider issues in relation to a detrimental modification which is to be effected without member consent.

The circumstances when this information will be required are:-

- when providing advice to trustees regarding the satisfaction of the *actuarial value requirement*; or
- when responsible for issuing an *actuarial equivalence statement*.

Legislation or Authority

Pensions Act 1995. (c26).

The Occupational Pension Schemes (Modification of Schemes) Regulations 2006. SI 2006/759.

Northern Ireland has its own body of law relating to pensions and, in relation to Northern Ireland, references to Great Britain legislation contained in this Guidance Note should be read as including references to the corresponding Northern Ireland legislation. The Northern Ireland regulations corresponding to the Great Britain regulations are : The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006. SR 2006 149.

Author

Pensions Board

Status

Approved under Due Process

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1.0

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1.1

06.11.06

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1.2

01.12.08

1 Introduction

- 1.1 The rules of a pension scheme may provide for members' *subsisting rights* to be modified without their consent. Where a *regulated modification* is taking place it must comply with Section 67 to Section 67I of the *Act* and its accompanying regulations. The actuary must also have regard to any relevant Guidance issued by the Regulator.
- 1.2 Section 67C of the *Act* requires that *trustees* wishing to approve a *detrimental modification*, which is not a *protected modification*, without member consent fulfil both the *actuarial value requirement* and the *actuarial equivalence statement requirement*.
- 1.3 The *actuarial value requirement* requires *trustees*, before the modification is made, to take such steps as are necessary to ensure that the *actuarial value of subsisting rights* will be maintained.
- 1.4 The *actuarial equivalence statement requirement* requires that an *actuarial equivalence statement*, certifying that the *actuarial value of subsisting rights* has been maintained, must be obtained from an actuary
- 1.5 There may be matters connected with the *detrimental modification* which do not prevent the *actuarial value requirement* being satisfied but which the *trustees* should consider before deciding whether or not to approve the modification. This guidance advises actuaries of the information that must be given when providing advice to the *trustees* in relation to the *actuarial value requirement* in order to alert them to the need to consider these wider issues. Where the *trustees* have not taken actuarial advice in relation to the *actuarial value requirement*, this requirement applies to the actuary issuing the *actuarial equivalence statement*.

2 Information that must be given to the *trustees* by an actuary providing advice in relation to the *actuarial value requirement*

- 2.1 There is no requirement for *trustees* to seek actuarial advice when fulfilling the *actuarial value requirement*. Where *trustees* do seek advice from an actuary, that actuary will need to consider whether the *actuarial value of subsisting rights* will be maintained.
- 2.2 There may be some matters connected with the *detrimental modification* which do not prevent the *actuarial value requirement* from being satisfied but which, in the actuary's opinion, might be relevant to the *trustees'* decision to approve the modification. Such matters could include:
- the adverse modification of a benefit or option which is not included in the definition of *subsisting rights*,
 - the adverse modification of an element of *subsisting rights* which is not included within the *actuarial value of subsisting rights*,

- changes which, in the opinion of the actuary, alter *subsisting rights* in a way or ways which could be material for any members with particular characteristics, or
- funding or solvency issues such as the effect on an individual's asset coverage of benefits on a scheme wind up.

- 2.3 The actuary must draw to the attention of the *trustees* any matters which fall under paragraph 2.2 above. In providing this information, the actuary is not expected to carry out any investigations into the potential effect on individual members (or their survivors) of the matters referred to. However, when providing the information, the actuary must advise the *trustees* whether any such investigations should, in his or her opinion, be carried out before they approve the *detrimental modification*.
- 2.4 The information referred to in paragraph 2.3 above must be provided as soon as is practicable but no later than when the actuary gives the *trustees* his or her advice as to whether the *actuarial value of subsisting rights* will be maintained.
- 2.5 The actuary must ensure that the *trustees* are aware of the need to take legal advice before approving the *detrimental modification*.
- 2.6 If the actuary believes that the *trustees* are wrongfully refusing to consider properly the matters advised to them in accordance with paragraphs 2.3 and 2.5 above, the actuary must consider what actions it would be appropriate to take. Depending on the circumstances, appropriate actions might include making a report to the Pensions Regulator under Section 70 of the Pensions Act 2004 and/or resigning his or her appointment.

3 Requirement for the actuary providing the *actuarial equivalence statement*

- 3.1 An actuary asked to provide an *actuarial equivalence statement* must, before he or she issues the statement, seek to satisfy himself or herself whether or not the *trustees* received advice from an actuary in relation to the *actuarial value requirement*.
- 3.2 If the actuary is unable to satisfy himself or herself that the advice referred to in paragraph 3.1 has been given, then the actuary must comply with paragraphs 2.3 and 2.5 above.
- 3.3 The information referred to in paragraphs 2.3 and 2.5 must be provided to the *trustees* in sufficient time for the *trustees* to be able to consider it before they receive the *actuarial equivalence statement*.
- 3.4 If the actuary believes that the *trustees* are wrongfully refusing to consider properly the matters advised to them in accordance with paragraphs 2.3 and 2.5 above, the actuary must consider whether or not he or she should refuse to

provide an *actuarial equivalence statement* and/or what other actions it would be appropriate to take. Depending on the circumstances, appropriate actions might include making a report to the Pensions Regulator under Section 70 of the Pensions Act 2004 and/or resigning his or her appointment.