

WILLIAM FRY



Legal Implications of recent updates to the Revenue Pensions Manual

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Pre-retirement transfer payments

Deferred members

- Traditionally transfer payments were paid to deferred members who left service with entitlement to preserved benefit
- Pensions Act
 - statutory right to transfer within 2 years after leaving service (or longer period determined by Trustees) unless payment of benefit **has commenced**
- Transfers possible to:
 - another exempt approved scheme
 - an approved buy-out bond (BOB)
 - PRSA (subject to restrictions – s772(3D)(a) TCA and 2003 PRSA (Transfer) Regulations)
 - Changing employment/scheme wind-up
 - No transfers after benefits **become payable**

Actives and “Active Deferreds”

- Actives accruing v “Active Deferreds” not accruing
- No statutory right unless termination of “relevant employment”
 - PA guidance on preservation of benefits – member’s rights in respect of non-preserved benefits will depend on rules
- Transfers to other schemes/BOBs do not appear to be prohibited
- Transfer to PRSA does not appear possible unless changing employment/scheme being wound up – s772(3D)(a) TCA

Updates to Chapter 13

Chapter 13 – March 2025

- Deals with the process of transferring a **deferred pension**, where the scheme permits, and the employee **has left service**. The Pensions Act 1990 provides the employee with a statutory right to a transfer for a period of up to 2 years after leaving service.

Chapter 13 – August 2025

- Addresses transfer of pension benefits from an occupational pension scheme when an employee **leaves service** with an employer. The Pensions Act 1990 gives employees a statutory right to transfer....within 2 years of leaving service, provided scheme rules allow such a transfer.
 - Note - “deferred” has been deleted
 - Note – “has left service” updated to “leaves service”
 - Is Revenue attempting to include leaving service at retirement? Reference to statutory right doesn’t align with this.

Updates to Chapter 13

New text has been introduced into the introductory section which outlines as follows:

“ Section 772(3D)(a) of the Taxes Consolidation Act provides that a transfer from an occupational pension scheme to a PRSA is only permitted if benefits **have not yet become payable** to the scheme member. The rules of the specific scheme will determine when a benefit becomes payable. In most cases benefits will become payable at Normal Retirement Age (NRA). This means that a transfer of benefits is not permitted after the scheme member's NRA.

”

Updates to Chapter 13

Chapter 13 – March 2025

- Transfer may be made from an exempt approved scheme to:
 - another exempt approved scheme
 - PRSA
 - BOB
- Transfer to PEPP not permitted
- Transfers not permitted **once benefits come into payment**

Chapter 13 – August 2025

- **Under section 772 of the TCA**, a scheme member's benefits may be transferred from an exempt approved scheme **provided the benefits have not yet become payable** to:
 - another exempt approved scheme
 - PRSA
 - BOB
- **Transfers from an exempt approved scheme which are not permitted:**
 - transfers to a PEPP
 - transfers **after pension benefits become payable**
 - partial/split transfers

Key legal issues with revised wording

- ▶ Revenue Pensions Manual is guidance and is not binding in law (Chapter 1)
- ▶ Inaccuracies:
 - › Statutory right to transfer is not subject to scheme rules
 - › Section 772 of the TCA references transfers to PRSA and ARFs only - it does not cover transfers to BOBs or other exempt approved schemes
- ▶ No apparent legislative basis for a blanket statement that transfers from an exempt approved scheme are not permitted after pension benefits become payable
- ▶ Seems reasonable to assume something different is intended to be understood by “becomes payable” instead of “comes into payment” – but exactly what is unclear and differing interpretations exist
- ▶ Potential conflict between Pensions Manual and Pensions Act re transfers of preserved benefits to arrangements other than PRSAs – depending on interpretation of Chapter 13 and “payable”

Pointers to Revenue intention

E-brief

Chapter 13, which provides guidance on the **transfer of deferred pension benefits**, has been updated. Material change to Section 1 is that it has been updated to provide **clarity around transfer of deferred benefits from occupational pension schemes to PRSAs**.

Dáil query

Why was the option at retirement for defined benefit members to transfer to ARF removed by Revenue?

- › Update related to transfers **from occupational pension schemes to PRSAs**
- › Transfers from occupational pension schemes to PRSAs always prohibited once benefits become payable
- › Rules of relevant scheme determine when benefits become payable - mostly NRA - This means that transfers are not permitted after NRA
- › Practitioners sought clarity on transfers on occupational pension schemes to PRSAs where member was retiring

Potential effect of updates

Deferred members

- ▶ Chapter 13 could be interpreted as prohibiting all transfers after benefits become payable. If “payable” means “first payable”:
 - › Deferred members required to take transfer out before NRA (or earlier date to which they become entitled to benefits)
 - › If decision made but transfer not processed prior to benefits first becoming payable – potentially could not go ahead
- ▶ **BUT** if deferred members can defer drawdown of benefits to after NRA – are they then not “payable” until date of later retirement?
- ▶ Keep in mind **Chapter 12** of the Pensions Manual provides that benefits may be paid to deferred members at any of the following times:
 - › NRA in the scheme in which benefits are secured
 - › NRA in the last employer’s scheme
 - › a later age if the deferred member remains in employment (not later than 70)

Active/Active Deferred members

- ▶ Chapter 13 addresses transfers of benefits where a member “leaves service”
 - › Arguably not applicable, therefore, to actives or active deferreds while they remain in service
 - › Reference in Chapter 13 to the Pensions Act statutory right to transfer preserved benefits aligns with this reading of Chapter 13
- ▶ Rules may allow actives/active deferreds to remain in service post NRA and transfers to other schemes/BOBs don’t appear to be prohibited where permitted under rules – PRSA restrictions apply
- ▶ **IF** Chapter 13 is interpreted as applicable to actives/active deferreds - could effectively close off transfer of main scheme DB benefits through DC to ARFs unless transfer to DC processed prior to NRA (or earlier date where applicable)

ARF Position

s772(3A)(a) TCA - a member **elects** on or before the date on which that pension **would otherwise become payable** for transfer, **on or after that date** to an ARF

- › **Election** required prior to pension otherwise becoming payable – arguably could extend beyond NRA
- › **Transfer** to an ARF is a retirement option – transfer necessarily envisaged as happening after NRA as benefits potentially being built up until that point
- › No cut-off point specified for transfer

ARF transfers are covered under **Chapter 23** as a retirement option - currently **under review**

Revenue's position - transfers to ARFs are not permissible for main scheme DB benefits

- › 2016 – Revenue confirmed transfers from BOBs that originated in DB permissible
- › Practice arose of going through DC at or near retirement to access ARF option for main scheme DB benefits
- › Chapter 13 could make transfer to DC significantly more difficult, depending on interpretation of updates

Where does this leave us?

- Lack of clarity regarding Revenue's intentions / issue being addressed - possible overcorrection?
- Lack of clear legal basis for prohibition on transfers to arrangements other than PRSAs after benefits are "payable"
- Continued lack of clarity regarding meaning of "payable" – numerous interpretations circulating
- Potential clashes between Manual and Pensions Act
- Very difficult to formulate appropriate approach particularly where rules are flexible

Where does this leave us?

- Difficulties for Trustees illustrated by various potential approaches possible, for example:
 - Treat Chapter 13 as applicable to all transfers by all member categories with “payable” meaning “first payable”
 - No clear legislative basis
 - Not clear that this is Revenue’s intention therefore possibly overly conservative
 - Where approach conflicts with rules and/or Pensions Act, possible member challenges
 - Treat Chapter 13 as applicable to pre-retirement transfers by all member categories but interpret “payable” as fluid and dependant on rules
 - Possible member challenges from actives/active deferreds – they have not “left service”
 - Revenue’s interpretation regarding “payable” may differ
 - Treat Chapter 13 applicable to pre-retirement transfers for deferreds only and treat “payable” as fluid and dependant on rules
 - Revenue’s interpretation may differ

Final thoughts

- Beware knee-jerk reactions
 - Potentially too early to create policies or engage in rules changes
 - Keep in mind Chapter 23 under review / potentially further updates to follow
 - Submissions being made by various bodies
- Consider/determine what Trustee position is regarding transfer payments, eg
 - Facilitate transfer payments where possible?
 - Pay benefits provided under Rules?
 - Informs next steps
- Scheme specific
 - Rules are very different from scheme to scheme regarding deferral of pension benefits
 - An apparently valid approach for one scheme may not be appropriate for another
 - Take advice
- Seek clarity from Revenue?
 - Ensuring approval maintained is a reasonable focus
 - Could close off what appear to be valid approaches

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THANK YOU

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