

A brief guide to the pension provisions of the Family Law Acts



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1. Introduction

The Pensions Authority is a statutory body set up under the Pensions Act, 1990. The Authority regulates occupational pension schemes, trust RACs and **Personal Retirement Savings Accounts (PRSAs)** in Ireland.

Until the mid-1990s there was no way to split pensions on a marital breakdown. Separation agreements which tried to agree a simple split of the benefits were not, and are still not, enforceable against pension scheme **trustees**. The Family Law Act, 1995 and the Family Law (Divorce) Act, 1996 were introduced and enabled the Courts to share out pension rights between separating or divorcing couples. The pension rights still cannot be shared out without a Court order. The laws contain a complicated system for dividing up the benefits and it is not always possible to match how the couple wants to share out the benefits with what the law requires. In such cases one solution is to leave pensions alone but to change the way other assets are shared out.

Broadly, there are two approaches which may be taken by the Court in recognising the value of pension benefits. These are:

1. the Court may serve an order, known as a 'pension adjustment order' (PAO) on the **trustees** of the pension scheme of which either spouse is a member, requiring the **trustees** of that scheme to pay a proportion of the pension benefits to the other spouse or for the benefit of a dependent member of the family.
2. the Court may take account of pension benefits by means of any other type of order under the Act (e.g. by making an adjustment to the allocation of non-pension matrimonial assets i.e. property, savings, shares etc.).

A pension adjustment order may be made in addition to, or in substitution for, any other type of order under The Family Law Act, 1995 or The Family Law (Divorce) Act, 1996 (such as maintenance orders, property adjustment orders, financial compensation orders etc.). This booklet sets out the process involved in making a pension adjustment order and the criteria governing the calculation and payment of benefits which are payable under such an order.

Important Notice

Pension adjustment orders may be made in respect of benefits in the following pension arrangements:

- Company pension schemes
 - PAO on **retirement benefits**
 - PAO on **contingent benefits**
- **Additional Voluntary Contributions (AVCs)**
- **Personal Retirement Savings Accounts (PRSAs)**
- Retirement Annuity Contracts (RACs)
- Trust RACs
- Buy-out bonds

It is very important to note that separate PAOs must be made for **retirement benefits** and **contingent benefits** in a company pension scheme. Separate PAOs are also required for each separate private pension arrangement that exists (for example if you or your spouse contributes to a separate **AVC** arrangement).

The primary aim of the booklet is to provide information to a person who is seeking, or has obtained, a pension adjustment order. It will also be of interest to those involved with the operation of pension schemes, such as scheme **trustees**. The booklet also contains a glossary for definitions of the terms in bold print.

The Pensions Authority monitors and regulates the Pensions Act. The Pensions Authority does not monitor or regulate the Family Law Acts. However, the Pensions Act advises on what information the **trustees** should provide to people affected by Pension Adjustment Orders. Appendix A to this booklet sets out the information that you may be entitled to where you are applying for or have obtained a Pension Adjustment Order.

Under Section 50 of the Pensions Act, **trustees** of pension schemes can reduce member benefits where certain specified conditions are met. A **designated benefit** under a pension adjustment order can be reduced as a result of a Section 50 direction made on or after 1 June 2012. This is the case even if the Section 50 direction is made after the date of the decree.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 – pension adjustment order provisions

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (“the Act”) entered into force on 1 January 2011. It extends marriage-like benefits to same sex couples in registered civil partnerships in the areas of property, social welfare, succession, maintenance, pensions and tax. It also establishes a financial redress scheme for opposite sex and same-sex cohabiting couples who meet certain conditions.

General pension provisions of the Act regarding civil partnerships

Section 99 of the Act overrides current pension scheme rules by deeming that a benefit under a pension scheme that is provided for the spouse of a person is deemed to be provided equally for the civil partner of a person. The extension by section 99 of spouses’ entitlements to non-member civil partners only extends as far as the non-member civil partner and not to any **dependants**.

Pension adjustment orders regarding civil partnerships

Where a decree of dissolution of a civil partnership is granted, either civil partner may apply for a pension adjustment order in respect of **retirement benefits** and a pension adjustment order in respect of **contingent benefits** (i.e. death in service benefits) under the pension scheme of which one civil partner is a member, in a manner broadly similar to that applying under the Family Law Acts to spouses.

The main difference is that a pension adjustment order can only be made in favour of a civil partner; there is no provision for the making of an order in respect of a dependent member of the family.

Qualified Cohabitant provisions of the Act

A qualified cohabitant is an adult who was in an intimate and committed relationship with another (whether of the same or opposite sex), and who immediately before the time that the relationship ended, was living with the other adult as a couple for a period of two years or more where they are the parents of one or more dependent children and for a period of five years or more in any other case.

Sections 187 and 188 of the Act contain provisions whereby either qualified cohabitant can apply for a pension adjustment order in respect of **retirement benefits** and **contingent benefits** at the end of the relationship whether this occurs by way of break up or death. There is no provision for the making of an order in favour of a dependent member of the family. It is possible for qualified cohabitants to contract out of the right to apply for a pension adjustment order or **contingent benefit** order.

2. Background

The Family Law Act, 1995 (which applies to judicial separations and foreign divorces) and The Family Law (Divorce) Act, 1996 oblige the Court to take the value of pension benefits into account in arriving at a financial settlement following the granting of a decree of judicial separation or divorce. The legislation only applies where the decree is granted, or the marriage dissolved, after the relevant Act was brought into operation i.e. 1 August 1996 (judicial separations and foreign divorces) or 27 February 1997 (Irish divorces). The legislation does not apply to separation agreements not involving the Court. (N.B. Separation agreements which are not made by Court order cannot split pension benefits)

For the purposes of the legislation, ‘pension benefits’ refers to rights earned under any type of scheme or arrangement. This would include benefits arising from membership of a company pension scheme (including additional benefits acquired due to payment of **AVCs**), **Personal Retirement Savings Accounts (PRSAs)**, Retirement Annuity Contracts (RACs), Trust RACs and buy-out bonds. In this guide where the term “pension” is used, it includes a **PRSA**.

Benefits payable under the Social Welfare Acts and disability benefits arising under an insured income continuance policy are not pension benefits in the context of the legislation.

The legislation divides pension benefits into two types of benefit:

Retirement benefits

Retirement benefits include benefits payable to the member of the pension scheme, or to others, at, or following, retirement or earlier withdrawal from service except death in service benefits. **Retirement benefits** include retirement pensions; retirement lump sums or gratuities; benefits (such as **dependants’** pensions) payable following the member’s death in retirement and periodic increases on all pensions whilst in payment. The definition of **retirement benefits** includes benefits arising from a previous employment which have not yet commenced, retirement pensions which are in course of payment and benefits arising from a current employment which will commence from a future date.

Contingent benefits

Contingent benefits are the benefits payable if a scheme member dies during employment (or self-employment) to which the scheme relates. In a company pension scheme, **contingent benefits** are generally referred to as ‘death in service’ benefits. The definition includes lump sum benefits and pensions payable to **dependants**.

Adjustment to non-pension assets

Although the Court must take pension benefits into account, it does not follow that a pension adjustment order is mandatory. The Court may decide to take **retirement benefits** into account by means of a different type of order (e.g. it may decide to adjust the split of non-pension assets). Similarly, the Court may decide that adequate financial protection can be made for the **non-member spouse** and children by requiring the other spouse to effect a suitable life assurance policy rather than making a pension adjustment order in relation to **contingent benefits** payable under a pension scheme.

Also, the Court may not make a pension adjustment order on its own initiative (i.e. one or other of the spouses or a person representing the dependent children must first apply). In deciding whether to make the order, the Court is required to consider whether adequate provision exists, or can be made, by making any of the other types of order that are available under the legislation.

Pension adjustment order

Where the Court decides to make a pension adjustment order, it can make either or both of the following two types of order:

Pension adjustment order - retirement benefits

An order in relation to **retirement benefits** may be made in favour of either the **non-member spouse** or a person (e.g. a grandparent) representing a dependent child. The order is served on the **trustees** of the pension scheme and requires that they pay a specified part of the **retirement benefits** earned by the member in question to the person named in the order.

Pension adjustment order - contingent benefits

An order in relation to **contingent benefits** may be made in favour of the **non-member spouse** and/or a person representing a dependent child. The order is served on the **trustees** of the pension scheme and requires that a specified part of the **contingent benefits** must be paid by them to the person(s) named in the order.

3. How do I obtain information on pension benefits?

Disclosure of property and income

If proceedings have started for any of the orders specified in the legislation, each spouse is required to give particulars of his/her property and income to the other spouse (or to a person representing dependent children). Property and income includes rights acquired under a pension scheme.

Court directives

The Court may direct pension scheme **trustees** to provide more specific information in relation to pension benefits. The **trustees** must provide the information within the period specified by the Court. With the consent of the **member spouse**, the **trustees** should, if possible, provide the information voluntarily to avoid putting the parties to the expense of obtaining a Court order.

The information which must be provided by the **trustees**, if so directed by the Court, is as follows:

General

Name of scheme or policy number.

Name of member concerned.

Date on which member first qualified for **retirement benefits**.

Current **pensionable salary**.

Details of additional benefits arising from payment of any **AVCs**.

Details of additional benefits arising from a transfer of accrued rights from another scheme.

Contact name and address for further enquiries.

Retirement benefits

The information required will depend on whether the spouse is a member of a defined benefit or a **defined contribution scheme** (see glossary for an explanation of the different types of pension scheme) as follows:

Defined Benefit

Amount of each element of **retirement benefits** accrued (or earned) to a specified date*.

Method of calculation of **retirement benefits**.

Date on which **retirement benefits** become payable.

Provision for increases in **retirement benefits**.

Actuarial value of accrued **retirement benefits**.

Defined Contribution

Accumulated value of the contributions paid by, or in respect of, the member for the purposes of **retirement benefits** up to a specified date*.

The date on which the **retirement benefits** become payable together with a brief explanation as to how these will be calculated.

Contingent benefits

The following information must be provided in relation to **contingent benefits** payable under the scheme:

Amount of each element of **contingent benefits**.

Method of calculation of **contingent benefits**.

* When providing information in respect of **retirement benefits**, the **trustees** will have regard to **retirement benefits** accrued to the date of the decree. If the decree has not yet been granted, the information may relate to any date within the preceding 12 months as may be specified by the **trustees**.

Following pension adjustment order

Following the making of a pension adjustment order(s), the pension scheme **trustees** should notify the person(s) in whose favour the order is made of the amount and nature of **retirement benefits** and/or **contingent benefits** which have been designated under the order(s). The **trustees** should also advise the person of the options available regarding any transfer amount that may be available in lieu of keeping the **designated benefit** in the pension scheme.

4. How do I apply for a pension adjustment order?

Either spouse (or a person representing a dependent child) may apply (usually through a solicitor or barrister) to the Court for an order in relation to **retirement benefits** and/or **contingent benefits**. The Court will not make either type of order if the spouse who applies for it has remarried. Pension adjustment orders are only applicable where the decree for the judicial separation (or foreign divorce) was granted after 1 August 1996 or where an Irish divorce is obtained following the operation of the legislation with effect from 27 February 1997.

- **Retirement benefits**
- **Contingent benefits**
- Notice

Retirement benefits

An order in relation to **retirement benefits** may be made at the same time as the granting of the decree of judicial separation or divorce or at any time thereafter during the lifetime of the **member spouse** (including after payment of pension has begun).

A separate order will be required in respect of each pension scheme. As a result, several orders may be required if the **member spouse** is a member of more than one scheme (including insurance policies and separate arrangements for voluntary contributions).

Contingent benefits

An order in relation to **contingent benefits** must be made within 12 months of the granting of the decree of judicial separation or divorce.

As **contingent benefits** represent death benefits payable under a scheme which relates to the current employment, it is unlikely that more than one order will be required. The order may, however, relate to several beneficiaries (i.e. a proportion of the benefits is payable to each of the **non-member spouse** and a person representing dependent children).

Notice

The person applying for the order(s) must give notice to the pension scheme **trustees**. In deciding whether to make an order, and in determining the provisions of the order, the Court will have regard to any representations made by the **trustees**. The **trustees** should, where reasonably possible, co-operate with the parties in endeavouring to facilitate the making of a pension adjustment order on a consensual basis in order to minimise the costs of court appearances. The Court must also decide whether adequate and reasonable financial provision already exists for the dependent family (or can be made by any of the other orders that are available under the legislation).

5. How is the non-member person's share of the retirement benefits calculated?

- **Designated benefits**
- Role of **Court**
- Role of **trustees**
- Defined benefit
- Defined contribution
- **Hybrid schemes**
- **Additional voluntary contributions (AVCs)**
- Transfer of accrued rights from another scheme

Designated benefits

Where the Court decides to make a pension adjustment order in relation to **retirement benefits**, part of the **member spouse's** benefits is designated for payment to the non-member (or to a person representing a dependent child). This part is called the **designated benefit**.

Role of Court

The Court will rule on the two key factors which will determine the amount of the designated **retirement benefits**. These are:

1. the **relevant period** (i.e. the period over which **retirement benefits** were earned which is to be taken into account);
2. the **relevant percentage** (i.e. the proportion of the **retirement benefits** earned during the **relevant period** which is to be allocated to the person specified in the order).

The **relevant period** may be the period of the marriage but it need not necessarily be so. It must, however, end no later than the date of the granting of the decree of judicial separation or divorce (i.e. the Court may not specify a period which ends after that date). This means future benefits cannot be shared. Details of the **relevant period** and the **relevant percentage** will be contained in the order which is served on the **trustees** of the pension scheme.

Role of trustees

The **trustees** will then calculate the **designated benefit** following the procedure set out in legislation. The calculation depends on whether the **retirement benefits** are determined on a defined benefit or a defined contribution basis.

Defined benefit

If **retirement benefits** are determined on a defined benefit basis, the retirement pension and other benefits payable to the member and his/her **dependants** are calculated in accordance with the rules of the scheme.

The designated retirement benefit is the proportion of the member's retirement benefit set out in the Court order. (If the member retires early receiving a reduced pension the proportion in the Court order applies to the reduced pension at the time of payment).

Example – PAO in a defined benefit pension scheme

A defined benefit pension scheme provides a retirement pension of 1/60th of final salary for each year of **pensionable service** (the period of service which is taken into account in calculating the pension benefit) completed at age 65.

A married member, whose date of birth is 1 January 1971, joins a pension scheme on 1 January 1996 (i.e. at age 25). In this example the member ultimately retires at age 65 on a final salary of €50,000.

The member is subsequently granted a decree of judicial separation on 1 January 2011.

At the time of the granting of the decree a pension adjustment order is made in relation to **retirement benefits** in favour of the **non-member spouse** which specifies:

- The **relevant period** is from 1 January 1996 to 1 January 2011 = 15 years
- The **relevant percentage** is = 50%

Before the Court order the member's pension would have been (40 years of earning pension) x 1/60th x €50,000 = €33,333 p.a. [40/60 x €50,000 = €33,333]

The Court order gives the non-member 50% of (15 years of marriage / 40 years earning pension) x €33,333 = €6,250 p.a. [$15/40 \times €33,333/2 = €6,250$]

So the residual pension benefit payable to the member is: €33,333 - €6,250 = €27,083 p.a.

So following the PAO:

- The **non-member spouse** receives €6,250 p.a.
- The member receives €27,083 p.a.

Where there is an AVC element to a pension scheme you need to calculate those benefits on a defined contribution basis (see example on page 16)

Changes in benefits

The general principle is that changes in pension benefit design (whether an improvement or a reduction in benefit terms) which take effect prior to the date of the decree of judicial separation or divorce must be taken into account when calculating the **designated benefit**. “Changes” does not mean losses as a result of investment performance. It means for example, a change to normal retirement age in the pension scheme.

Changes which occur after the date of the decree are not taken into account when calculating the **designated benefit**. In other words, the **designated benefit** is calculated in accordance with the rules of the scheme in force as at the date of the decree.

Defined contribution

If you are a member of a **defined contribution scheme** the **relevant percentage** of the contributions paid into the **member spouse’s** fund during the **relevant period** are worked out. The value of these contributions at the payment date is calculated after taking account of the investment returns in the meantime. That amount is then multiplied by the **relevant percentage** to work out the **non-member spouse’s** total of the member’s fund.

Example – PAO in a defined contribution pension scheme
(The same basis of calculation applies to PRSAs)

On 1 January 2010 a decree of divorce (after ten years of marriage) is granted and a pension adjustment order is made in favour of the **non-member spouse** which specifies:

- The **relevant period** is from 1 January 2000 to 1 January 2010 = 10 years
- The **relevant percentage** is = 50%

For the purposes of this example the **trustees** or insurance company calculates the value of the contributions paid into the defined contribution pension during the **relevant period** as €50,000.

When the member ultimately retires on 1 January 2030 (20 years later) the value of these contributions has increased, due to investment returns to €140,000.

Therefore the **non-member spouse's** share of the member's fund is:

- $€140,000 \times 50\% = €70,000$

So following the PAO:

- The **non-member spouse** will receive €70,000 when the member retires (at 65 years in this example).

Hybrid schemes

Where a spouse is a member of a **hybrid scheme** the **designated benefits** for the defined benefit and defined contribution parts are calculated separately.

Additional voluntary contributions (AVCs) and Notional service

Additional voluntary contributions (AVCs)

A member of a company pension scheme may make **additional voluntary contributions (AVCs)** to try and enhance their **retirement benefits** or their tax free lump sum when they retire. Members of defined benefit and **defined contribution schemes** may make **AVCs** by:

- joining a nominated **AVC** arrangement which provides defined contribution benefits by investment through a financial institution or
- taking out a **PRSA** (acting as an **AVC**) which works by providing defined contribution benefits by investment through a financial institution.

Where **AVCs** have been made by a member during the **relevant period** these must be taken into account in calculating the **designated benefit**. The corresponding **designated benefit** associated with the **AVCs** listed above are calculated using the general approach for **defined contribution schemes**.

Notional service also known as “buying back years”

If a member of a **defined benefit scheme** purchases notional service it will increase the years service they have in the pension scheme which in turn increases their **retirement benefits**. The dependent person’s share of the **retirement benefits** and any corresponding **designated benefit** is calculated by using the defined benefit approach.

Transfer of accrued rights from another scheme

Where a member is provided with additional **retirement benefits** in respect of pension rights transferred from another scheme prior to the date of the pension adjustment order and within the **relevant period** these must be taken into account in calculating the **designated benefit**.

Where a member’s rights have been transferred after the date of the pension adjustment order or where the rights relate to benefits accrued before the **relevant period**, no **designated benefit** arises in relation to the rights transferred.

6. How is the non-member person's share of the retirement benefits paid?

Payment of the **designated benefit** will generally commence when the retirement benefit starts to be paid to the **member spouse**. Alternatively, if the pension adjustment order is made in favour of the **non-member spouse** (rather than for the benefit of a dependent child) he/she may elect to establish an independent benefit in lieu of retaining the **designated benefit** in its original form. The various options are discussed below.

- Establishment of independent benefit
- How can the **non-member spouse** establish an independent benefit?
- May a transfer amount be made without consent?
- Payment of **designated benefit**

Establishment of independent benefit

If the pension adjustment order is made in favour of the **non-member spouse** then, subject to the criteria set out below, he/she may request that an independent benefit be established instead of retaining the **designated benefit**. In this way, the benefit payable to the **non-member spouse** is no longer affected by decisions taken by the **member spouse**. This option is only available if the **member spouse** has not commenced receiving **retirement benefits**. No such option is available if the order is made for the benefit of a dependent child.

To facilitate the establishment of independent benefits, a 'transfer amount' is calculated which represents the value of the **designated benefit** which might otherwise be payable. The transfer amount is then applied (in either the same scheme or another pension arrangement) to provide independent benefits for the **non-member spouse**. The independent benefits must be of the same value as the transfer amount.

Important Notice:

Where the **member spouse** is a continuing member of a **defined benefit scheme**, it is important to appreciate:

- (a) if the **non-member spouse** establishes an independent benefit that the transfer amount is calculated by reference to the **designated benefit** calculated based on the **member spouse's** salary at the date the transfer is calculated. The **non-member spouse** does not get the benefit of any salary increases (and equally does not suffer any salary decreases) the **member spouse** receives between the date of the transfer amount and the date the **member spouse** retires, dies or leaves service (whichever is the earlier).
- (b) if the **non-member spouse** does not establish an independent benefit, the **non-member spouse**, depending on the rules of the scheme may get the benefit of any salary increases (and may suffer the impact of any salary decreases) the **member spouse** received between the date of the PAO and the date the **member spouse** retires, dies or leaves service (whichever is the earlier).

The alternative methods of establishing an independent benefit are as follows:

Independent benefit in same scheme

With the agreement of the **trustees** of the pension scheme of which the **member spouse** is a member, an independent benefit may be established in that scheme.

In order to comply with the requirements of Revenue, the alternative benefit must be a pension payable for life and commencing not earlier than the earliest date on which the **member spouse's retirement benefits** could have commenced. When the pension is due to commence, part of it may be exchanged for cash, within Revenue limitations. Ancillary benefits (such as **dependants'** pensions) may also be incorporated. The **trustees** of the scheme must ensure that the actuarial value of the alternative benefits is equivalent to the actuarial value of the transfer amount and must inform the **non-member spouse** of the nature and amount of the alternative benefit as soon as practical after the transfer has taken place.

Independent benefit in other occupational pension scheme

If the **non-member spouse** is a member of a company pension scheme then, subject to the agreement of the **trustees** of that scheme, he/she may request that the transfer amount be paid to it from the scheme of which the **member spouse** is a member. This option is only available if the **designated benefit** arises due to the **member spouse's** participation in a company pension scheme.

The independent benefit established in the receiving scheme must comply with Revenue requirements. The **trustees** of the receiving scheme must ensure that the alternative benefits are of the same actuarial value as the transfer amount and must inform the **non-member spouse** of the nature and amount of the alternative benefits as soon as practical after the transfer has taken place.

Independent benefit in approved insurance policy or Personal Retirement Savings Account (PRSA)

The **non-member spouse** may request the **trustees** of the pension scheme of which the **member spouse** is a member to pay the transfer amount to an approved insurance policy or a **PRSA** and the **trustees** must comply with that request. Separate insurance policies have been approved by Revenue which are authorised to receive transfers from company pension schemes and pension policies for the self-employed.

The **trustees** of the scheme from which the **designated benefit** arises must pay the transfer amount directly to the insurance company in question. The nature of the independent benefit must comply with Revenue requirements.

How can the non-member spouse establish an independent benefit?

The **non-member spouse** in whose favour the pension adjustment order is made may establish an independent benefit by making an application in writing to the **trustees** of the scheme from which the **designated benefit** arises. The application must relate to the full **designated benefit** from the scheme (i.e. it is not possible to elect a transfer amount in respect of part of the **designated benefit**). The application may be made at any time after the making of the pension adjustment order providing payment of the **designated benefit** has not started. The application must be accompanied by whatever information is reasonably required by the **trustees**.

This may include:

- **non-member spouse's** date of birth (if relevant),
- name of occupational pension scheme to which the transfer amount is to be applied, (if relevant) and the written agreement of the **trustees** thereof to accept such payment,
- name of life assurance company to which the transfer amount should be applied (if relevant).

Following the receipt of a valid application, the **trustees** must apply the transfer amount in the manner directed within 3 months of receiving the application.

May a transfer amount be made without consent?

There are two circumstances under which the **trustees** of the pension scheme from which the **designated benefit** arises may choose to transfer the rights to another scheme* without obtaining the consent of the person in whose favour the pension adjustment order has been made. These are:

- Where the **designated benefit** arises from the **member spouse's** participation in a **defined contribution scheme**;
- Where the **member spouse** has left the employment to which the pension scheme relates and has elected to transfer, the **trustees** can choose to transfer without obtaining **non-member spouse** consent, the following conditions apply:
 - (a) If the **member spouse** is a continuing member of a defined contribution company pension scheme, the transfer amount must include the value of contributions made by the sponsoring employer prior to 1991 (even if, in the event of the **member spouse's** withdrawal from service, the value of these contributions would be excluded).
 - (b) Written notice must be given to the person in whose favour the order is made at least 30 days before the proposed transfer. This would enable the person to consider making an application for a transfer to another pension scheme.

- (c) There must be no outstanding valid request from the **non-member spouse** for a transfer to be made to another occupational pension scheme, **Personal Retirement Savings Account (PRSA)** or to an approved insurance policy.
- (d) The **trustees** must be satisfied that, allowing for reasonable charges, fees and costs of the receiving scheme, the value of alternative benefits provided under that scheme is equivalent to the actuarial value of the **designated benefit**.
- (e) The **trustees** must notify the person in whose favour the order is made, and the registrar or clerk of the Court, of the amount transferred, and provide details of the insurance policy or pension scheme to which the transfer amount has been applied.

* The **designated benefit** may be transferred to an approved insurance policy. Alternatively, where the **designated benefit** arises from the **member spouse's** participation in an occupational pension scheme, the **trustees** of that scheme may choose to transfer the **designated benefit** to another occupational pension scheme of which the **non-member spouse** is a member (subject to the consent of the **trustees** of the receiving scheme).

Payment of designated benefit

If the spouse in whose favour the pension adjustment order is made takes no action, the **designated benefit** will generally commence at the same time as **retirement benefits** start to be paid to the **member spouse** (see also 'May a transfer amount be made without consent' below). As a result, any decision taken by the **member spouse** to retire earlier or later than his/her normal retirement age will affect the payment of the **designated benefit** to the **non-member spouse**.

Options at retirement

The rules of many pension schemes permit members to take a cash lump sum at the time of retirement. If the rules applying at the date of the decree contain such a provision, an equivalent option must be made available to the person named in the pension adjustment order. This option may be exercised regardless of whether the **member spouse** chooses to exercise his/her option to exchange pension for cash.

Any option exercised by the **member spouse** in relation to a third party (i.e. surrender of pension for a **dependant**) must be ignored for the purposes of calculating the corresponding **designated benefit**.

Order in favour of non-member spouse

If the pension adjustment order is made in favour of the **non-member spouse**, the pension element of the **designated benefit** will be payable for so long as both he/she and the **member spouse** are alive.

If a **member spouse** dies before the **designated benefit** becomes payable, a payment must be made to the **non-member spouse**, being the actuarial value of what otherwise would have been payable.

If the **member spouse** dies after the benefits have come into payment, then it depends on the rules of the scheme whether there is any further payment due to the **non-member spouse**.

Order in favour of dependent child

If the pension adjustment order is made for the benefit of a dependent child, the pension element of the **designated benefit** will be payable for so long as the child remains a **dependant** (this is set out as a child under the age of 18 (or 23 if in full-time education) or any age if suffering from a mental or physical disability).

7. What happens to the non-member person's share of the retirement benefits if he/she dies?

- Death prior to the commencement of **designated benefit**
- Death following commencement of **designated benefit**
- Order made in favour of a dependent child

Death prior to the commencement of designated benefit

If a pension adjustment order has been made in favour of the **non-member spouse** and he/she dies prior to the commencement of the **designated benefit** (and prior to any decision to transfer the **designated benefit** to another scheme or policy) an amount must be paid to his/her estate within 3 months of the death.

It is important that the **non-member spouse** maintains contact with the **trustees** of the scheme during his/her lifetime (i.e. by notifying of changes in address etc.) and that arrangements are made for the **trustees** to be notified in the event of his/her death.

The amount paid on death is calculated as the transfer amount that would otherwise have been available to the **non-member spouse**, for the purposes of establishing an independent benefit, immediately prior to his/her death (see Section 6).

If, prior to his/her death, the **non-member spouse** had chosen to, or the **trustees** had decided to, apply a transfer amount in lieu of receiving the **designated benefit**, death benefits will be paid in accordance with the benefit terms granted in the receiving scheme or insurance policy.

Death following commencement of designated benefit

If a pension adjustment order has been made in favour of the **non-member spouse** and he/she dies before the **member spouse** following the commencement of the **designated benefit**, an amount must be paid to his/her estate within 3 months of death.

The amount is calculated as the actuarial value of the **designated benefit** which would otherwise have been payable for as long as both the **non-member spouse** and the **member spouse** were alive. In other words, the value of the **designated benefit**

which may otherwise have been payable following the death of the **member spouse** is not taken into account.

Order made in favour of a dependent child

Where a pension adjustment order has been made in favour of a dependent child and he/she dies either before or after the commencement of the **designated benefit**, no payment is made and the order ceases to have effect.

8. What happens to the non-member person's share of the retirement benefits if the member spouse dies?

Death prior to the commencement of designated benefit

If a pension adjustment order has been made and the **member spouse** dies prior to the commencement of the **designated benefit** (and prior to any decision to transfer the **designated benefit** to another scheme or policy) an amount is paid to the person in whose favour the order is made.

The amount is calculated as the actuarial value of the **designated benefit** that would otherwise have been payable. If the pension adjustment order is made in favour of the **non-member spouse**, such amount will be equivalent to the transfer amount which would otherwise have been available immediately prior to the death of the **member spouse** for the purposes of establishing an independent benefit (see **designated benefit**).

Death following commencement of designated benefit

If **designated benefit** has commenced and the **member spouse** dies before the person in whose favour the pension adjustment order has been made, the death benefit (if any) will depend on the rules of the scheme in question.

9. What happens to death in service benefits (contingent benefits) payable under the pension scheme?

Contingent benefits refer to lump sums and/or **dependants'** pensions which are payable under the rules of a pension scheme following the death of the member during employment (or self-employment). If the **non-member spouse** (or a person representing a dependent child) wishes to seek a pension adjustment order in relation to **contingent benefits**, this must be made separately from any application in relation to **retirement benefits**.

The procedure of applying for a pension adjustment order is outlined in Section 4. Most importantly, in the context of an order in relation to **contingent benefits**, the application must be made at the time of the granting of the decree or within 12 months after the granting of the decree of judicial separation or divorce.

The Court will determine whether a pension adjustment order should be made and the provisions of the order. Specifically, the order will detail the person or persons in whose favour it is made (this may be the **non-member spouse** and/or a person representing the children) and the percentage of each element of the **contingent benefits** that is to be payable to such person(s).

On the death of the **member spouse** during employment (or self-employment), the percentage of **contingent benefits** as specified in the order must be paid to the appropriate person(s). The **contingent benefits** in question are those applying based on the rules of the scheme at the date of the judicial separation or divorce (i.e. subsequent improvements or reductions in **contingent benefits** are ignored) and, if relevant, the **member spouse's** salary (or **pensionable salary**) at date of death.

Example – death in service benefit (contingent benefit)

The rules of a pension scheme provide for a lump sum death benefit of 4 times salary at date of death to be paid in the event of the death of the member during employment.

A pension adjustment order is made in relation to the **member spouse's contingent benefits**, in favor of the **non-member spouse**, which specifies:

- **Contingent Benefit** = Lump sum of 4 times salary at date of death
- Percentage of **contingent benefit** to be paid to **non-member spouse** = 50%

So where the **member spouse** dies while in employment - salary at date of death is €50,000

Therefore the amount of benefit paid in accordance with the order is calculated as:

- $4 \times €50,000 = €200,000 \times 50\% = €100,000$

Thus, an amount of €100,000 is paid to the **non-member spouse**.

Duration of the pension adjustment order

An order in relation to **contingent benefits** ceases to have effect if the **member spouse** no longer qualifies for **contingent benefits** due to the termination of his/her employment (or self-employment) to which the scheme applies. In this eventuality, the **trustees** of the scheme in question are required to notify the dependent family, and the registrar or clerk of the Court, of such cessation.

Furthermore, the pension adjustment order will cease to have effect for that person in the event of:

- the death of the dependent person named in the order,
- the remarriage of the **non-member spouse**,
- the ending of dependency in the case of a dependent child.

If the order ceases to have effect in relation to one person it may continue to apply to others. For example, once a dependent child has attained age 18 (assuming he/she is not in full-time education) the order will cease to have effect for that person. However, the same order may continue to apply to the **non-member spouse** (based on the percentage of **contingent benefits** specified in the order).

Important Notice:

In many ways an order in relation to **contingent benefits** may be a limited form of protection for the dependent family because:

- it must be made within 12 months of the decree; and
- it ceases to have effect if the **member spouse** changes employment.

The Court is required to consider the question of whether adequate and reasonable financial provision exists or can be made for the **dependants** by means of any of the other orders that are available under the Acts prior to making a pension adjustment order. Depending on individual circumstances, consideration might be given by the **dependants** to apply for another form of protection (e.g. a financial compensation order which would require the **member spouse** to effect and continue paying premiums to a life assurance policy for the benefit of his/her **dependants**).

10. What if the non-member spouse remarries?

The Court will not make a pension adjustment order if the spouse who applies for it has remarried.

If a pension adjustment order in relation to **retirement benefits** is made, this will be unaffected by a subsequent change in marital status of either spouse.

On the other hand, a pension adjustment order in relation to **contingent benefits** ceases to have effect in relation to the **non-member spouse** in the event of his/her remarriage. In this eventuality the order may, however, continue to apply to others (see duration of a pension adjustment order).

11. Who pays for the costs incurred by the trustees?

The legislation provides that costs incurred by the **trustees** in complying with a pension adjustment order, or a direction of the Court, shall be borne by the **member spouse** and the other person concerned, in such proportions as the Court may determine. Similarly, costs incurred by the **trustees** where they choose to make representations to the Court, following notice of an application for an order, shall be borne by the parties to the proceedings, as the Court may determine.

If the Court does not determine the basis of apportionment of such costs, these shall be borne equally between the **member spouse** and the other person concerned.

If a person fails to reimburse the **trustees** for such costs, the **trustees** may, on application to the Court, seek an order that the costs may be recovered by deduction from any benefits due to that person under the scheme or pursuant to the pension adjustment order, as appropriate.

12. Can the terms of a pension adjustment order be varied?

Unless, in making the order, the Court rules that it may not be varied, a pension adjustment order made in relation to either spouse's **retirement benefits** may, on application to the Court, be varied or discharged by a subsequent order.

There is no power to vary an order made in relation to **contingent benefits**.

13. How are the remaining pension benefits calculated following the making of a pension adjustment order?

Retirement benefits

Following the making of a pension adjustment order in relation to **retirement benefits**, the residual benefits payable to the **member spouse** are calculated by reducing the **retirement benefits**, payable under the rules of the pension scheme by the amount of the **designated benefit**.

Example – calculating the remaining retirement benefits

In the earlier defined benefit example (see page 14) the residual retirement pension payable to the **member spouse** is calculated as:

€33,333 (**pensionable service**) - €6,250 p.a. (allocated to **non-member spouse** under PAO) = €27,083 p.a. (residual benefit payable to the **member spouse**)

The approach described above applies regardless of any decision to transfer the **designated benefit** to another scheme or policy and is also unaffected by the payment of an amount following the death of the **non-member spouse**.

In other words, in such cases, residual **retirement benefits** payable to the **member spouse** are calculated by reducing the benefits payable in accordance with the scheme rules by the amount of **designated benefit** which would have been payable had the transfer or death not taken place.

Cessation of order

Following the cessation of the pension adjustment order, **retirement benefits** are payable to the **member spouse** under the rules of the pension scheme without any reduction in respect of the **designated benefit**.

The circumstances under which the pension adjustment order may cease are:

- if the order is made in favour of a dependent child, the death or ending of dependency of that child;
- if the order is made in favour of the **non-member spouse** and **designated benefit** has commenced, following both his/her death and the death of the **member spouse**.

Contingent benefits

Following the making of a pension adjustment order in relation to **contingent benefits**, the residual benefits payable to the **member spouse's** estate are calculated by reducing the death benefits payable under the scheme in accordance with the rules of the scheme by the amount of death benefit allocated under this order. If a benefit has been allocated to the **non-member spouse** under a **retirement benefits** order the residual **contingent benefit** is further reduced by the amount of the lump sum payable in respect of the **retirement benefits** order.

Example – calculating the residual contingent benefit

On the death of a member in service an amount equal to the designated **contingent benefit** is payable to the **non-member spouse** as follows:

Death in Service lump sum payable under the scheme rules = 4 x salary

Member's salary at date of death = €45,000

Contingent benefit under PAO = 50%

On the member's death a lump sum equal to €90,000 (4 x €45,000 x 50%) is payable to the **non-member spouse**.

If a PAO has been made in relation to **retirement benefits** an additional amount is also payable to the **non-member spouse** on the death of the member in service. This amount is equal to the actuarial value of the retirement benefit that would have been payable to the **non-member spouse**.

For example the member above dies in service with 35 years' service in a pension scheme and the **non-member spouse** has been granted a PAO in respect of 50% of the benefit earned by the member during the 15 years of marriage, an additional sum is payable to the **non-member spouse** calculated as follows:

At the date of death the member's pension would have been (35 years of earning pension) x 1/60th x €45,000 = €26,250.

Separately the Court order (PAO) gives the **non-member spouse** 50% of (15 years of marriage/35 years of earning pension) X €26,250 = €5,625 p.a.

The residual **contingent benefits** payable under the rules of the scheme (usually paid to the estate of the member) are calculated as:

- €180,000
- less €90,000 (paid to the **non-member spouse**)
- less €88,000 (the actuarial value of €5,625 p.a.)

Therefore the residual **contingent benefits** = €2,000 (usually paid to the estate of the member)

Cessation of order

Following the cessation of an order in relation to **contingent benefits** (see Section 9) death benefits are payable in accordance with the rules of the pension scheme (except that a reduction may continue to apply in relation to death benefits payable under a separate order relating to **retirement benefits**).

14. How are benefits taxed?

Pension payments made under a pension adjustment order are treated as income and, subject to any tax free allowance, are chargeable to income tax under the PAYE system in the same way as the member's pension. Separated spouses will be assessed to income tax as single persons unless they elect for joint assessment. Where a divorce has been obtained, each spouse will automatically be assessed to income tax as a single person unless he/she remarries.

Under current Revenue practice, lump sum payments on retirement, which are part of either a **designated benefit** or an independent benefit established following transfer, are paid free of tax up to certain Revenue limits.

Where part, or all, of the **designated benefit** consists of a refund of part of the contributions made by the **member spouse**, such refunds are currently chargeable to tax at the rate of 25%.

Payments made under a pension adjustment order in relation to **retirement benefits** following the death of either the **non-member spouse** or the **member spouse** are not subject to income tax. They may, however, attract a liability for capital acquisitions tax. Similar criteria apply to payments made under an order in relation to **contingent benefits**.

Where a divorce has been obtained, any payment on the death of the **member spouse** to the **non-member spouse** in relation to a pension adjustment order is exempt from capital acquisitions tax.

15. Glossary of terms

Additional voluntary contributions (AVCs): Additional contributions paid by a member of an occupational pension scheme in order to secure benefits over and above those set out in the rules of the scheme. Where an occupational pension scheme does not provide access to an AVC facility, a standard PRSA must be offered for this purpose.

Contingent benefits: Represent benefits payable from a pension scheme in the event of the death of the member during the period of employment (or self-employment) to which the scheme relates.

Defined benefit scheme (also known as “final salary” scheme): Defined benefit schemes provide members with retirement and death benefits based on formulae set out in the rules of the scheme. Benefits are often based on a members’ salary close to retirement and on his or her pensionable service. For this reason these schemes are sometimes known as “final salary” schemes.

Defined contribution scheme (also known as “money purchase” plan): Provides a pension based on the accumulated value of contributions paid to a pension scheme and the investment returns earned on those contributions.

Dependant: A person who depends financially on a scheme member or pensioner. Children are regarded as dependants until they reach the age of 18 or leave full-time education or vocational training. A spouse is always regarded as a dependant.

Designated benefit: The part of a members retirement benefit which is allocated for payment to his/her dependent spouse or children under a pension adjustment order.

Earmarked contributions: In the context of the Family Law Acts, contributions paid by or for a person under a defined contribution scheme during a period specified by the Court.

Hybrid scheme: A scheme which combines features of two or more types of pension design e.g. a defined benefit scheme with a defined contribution element.

Member spouse: In the context of a pensions adjustment order given under the Family Law Acts, the spouse who is the member of the pension scheme in question.

Non-member spouse: In the context of a pensions adjustment order given under the Family Law Acts, the spouse who is not a member of the scheme in which an order is being sought.

Pensionable earnings/Pensionable salary: The earnings on which benefits and/or contributions are calculated.

Pensionable service: The period of service which is taken into account in calculating the pension benefit.

Personal Retirement Savings Account (PRSA): A PRSA is a personal pension plan that you take out with an authorised PRSA provider. It is like an investment account that you use to save for your retirement. PRSAs are a type of defined contribution scheme. You make regular contributions to your pension, and a proportion of these are tax deductible. A register of authorised PRSA providers and their approved PRSA products is available on the Pensions Authority's website.

Relevant Percentage: The proportion of the member spouses retirement benefits earned during the relevant period, as specified by the Court, which must be paid to the dependent spouse or children under a pension adjustment order.

Relevant Period: The period during which the member spouses retirement benefits were earned, as specified by the Court, which must be taken into account in determining the designated benefit.

Retirement Benefits: This means any payment arising under a pension scheme, payable to the member spouse or to others, at and following retirement.

Trustees: An individual or a company which alone or jointly becomes the legal owner of assets to be administered for the benefit of someone else (the beneficiaries), in accordance with the provisions of the document creating the trust and the provisions of trust law generally and the Pensions Act.

16. Appendix A – Disclosure of Information

The Pensions Act advises on what information has to be disclosed by **trustees** of company pension schemes when dealing with Pension Adjustment Orders.

The following table sets out the information that you may be entitled to where you are applying for or have obtained a Pension Adjustment Order.

Pension adjustment order disclosure requirements		
Documents	Contents	Disclosure
Once trustees are notified of Pension Adjustment Order	<ul style="list-style-type: none"> ■ Details of amount and nature of the benefit under the PAO. ■ Statement that the non-member spouse is advised to notify trustees of any change of address. ■ The name and address of the person to whom enquiries should be sent. ■ A note that further information may be obtained from the Pensions Authority. 	Automatically to persons specified in the PAO within 2 months of notification of the PAO.
Member's relevant employment terminates	<ul style="list-style-type: none"> ■ Statement that any contingent benefit awarded ceases. ■ Statement of options available to the non-member spouse. ■ The name and address of the person to whom enquiries should be sent. ■ A note that further information may be obtained from the Pensions Authority. 	Automatically to non-member spouse within 2 months of notice to trustees that the member's relevant employment has terminated.
Member leaves the scheme otherwise than on death.	<ul style="list-style-type: none"> ■ A statement that the member has ceased to be a member of the scheme. ■ A statement of options available to the non-member spouse. ■ The name and address of the person to whom enquiries should be sent. ■ A note that further information may be obtained from the Pensions Authority. 	Automatically to non-member spouse within 2 months of notice to trustees that the member is no longer in the pension scheme.

<p>Member ceases to be in reckonable service and no transfer of the non-member spouse's benefit has been made.</p>	<ul style="list-style-type: none"> ■ Statement of options available to the non-member spouse. ■ The name and address of the person to whom enquiries should be sent. ■ A note that further information may be obtained from the Pensions Authority. 	<p>Automatically to non-member spouse within 2 months of notice to trustees that the member is no longer in the pension scheme.</p>
<p>Trustees exercise their options to provide alternative arrangements.</p>	<ul style="list-style-type: none"> ■ The date of application of transfer amount. ■ Details as to who will be responsible for the non-member spouse benefits. ■ A note that further information may be obtained from the Pensions Authority. 	<p>Automatically to non-member spouse within 2 months of notice to trustees.</p>
<p>Request for information about designated benefit.</p>	<ul style="list-style-type: none"> ■ Estimate of transfer amount including, in a defined benefit scheme, whether any reduction has been made in calculating the transfer amount due to the scheme being in deficit. ■ A statement of options available. ■ A note that further information may be obtained from the Pensions Authority. 	<p>To non-member spouse within 2 months of request to trustees.</p>
<p>Request for information about contingent benefits.</p>	<ul style="list-style-type: none"> ■ Estimate of contingent benefits. ■ A note that further information may be obtained from the Pensions Authority. 	<p>To non-member spouse or person specified in a pension adjustment order within 2 months of request.</p>

17. Useful addresses

For further information about pension related issues here are a list of useful contacts and addresses.

The Pensions Authority

Verschoyle House

28/30 Lower Mount Street

Dublin 2

Tel: (01) 613 1900

LoCall: 1890 65 65 65

Fax: (01) 631 8602

Email: info@pensionsauthority.ie

Web: www.pensionsauthority.ie

Department of Social Protection

Social Welfare Services

College Road

Sligo

Tel: (071) 915 7100

LoCall: 1890 50 00 00

Email: info@welfare.ie

Web: www.welfare.ie

The Equality Authority

Jervis House

Jervis Street

Dublin 1

Tel: (01) 417 3336

Fax: (01) 417 3331

Email: info@equality.ie

Web: www.equality.ie

Legal Aid Board

47 Upper Mount Street

Dublin 2

Tel: (01) 644 1900

LoCall: 1890 61 52 00

Fax: (01) 662 3661

Email: info@legalaidboard.ie

Web: www.legalaidboard.ie

The Pensions Ombudsman

36 Upper Mount Street

Dublin 2

Tel: (01) 647 1650

Fax: (01) 676 9577

Email: info@pensionsombudsman.ie

Web: www.pensionsombudsman.ie

Family Law Office

(Dublin Circuit Court)

Phoenix House

15/24 Phoenix Street North

Smithfield

Dublin 7

Tel: (01) 888 6806/6810/6811/6812

Fax: (01) 888 6823

Email: dublincircuitfamilylaw@courts.ie

Web: www.courts.ie



An tÚdarás Pinsean
The Pensions Authority

www.pensionsauthority.ie