

A Brief Guide to the Pension Provisions of the Family Law Acts

1. Introduction

Historically, there has been no mechanism whereby pension rights could be adjusted as part of a financial settlement following marital breakdown. While some separation agreements did seek to adjust pension rights, such clauses were neither legally binding nor enforceable against the trustees of the pension scheme.

The Family Law Act, 1995 addresses the issue of pension benefits in the context of judicial separations (and foreign divorces which are recognised in this country). Similar legislation relating to Irish divorces is laid down in the Family Law (Divorce) Act, 1996. In effect, these two pieces of legislation require that pension rights must be taken into account by the Court where, following a judicial separation or divorce, the parties to the marriage apply to the Court for one or more of the various types of order prescribed under the Acts for the purposes of financial settlement. Also, the Acts have given the Court powers to direct the trustees of a pension scheme to pay benefits in accordance with a Court order which would then override the rules of the scheme.

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

- The Court may serve an order (known as a 'pension adjustment order') 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.
- 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 properties).

- 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 procedures underlying the making of a pension adjustment order and the criteria governing the calculation and payment of benefits which are designated as payable to the dependent spouse and for children under such an order.

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.

2. Background

The Family Law Act, 1995 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. 1st August, 1996 (judicial separations and foreign divorces) or 27th February, 1997 (Irish divorces). The legislation does not apply to separation agreements not involving the Court.

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) or payment of contributions to a pension policy for the self employed. Pension benefits arising from participation in an overseas pension arrangement fall within the scope of the legislation.

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.

For the purposes of the legislation, pension benefits must fall under one or other of the following two headings:

Retirement Benefits

This refers to all benefits payable to the member of the pension scheme, or to others, at, or following, retirement or earlier withdrawal from service. The 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

This refers to benefits which are payable under the rules of the pension scheme in the event of the death of the member during the period of 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 dependent 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.

Furthermore, 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, the legislation empowers it to 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 dependent spouse **or** a person (e.g. a grandparent) for the benefit of 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 dependent spouse **and/or** a person for the benefit of 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 been instituted 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). In this context, property and income would be deemed to include rights acquired under a pension scheme.

Court Directives

The Court may direct the trustees of a pension scheme of which either spouse is a member to provide more specific information in relation to pension benefits. The Court may initiate this process itself but must do so at the request of either spouse (or a person representing a dependent child). The trustees of the scheme concerned are obliged to 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 nature of the information will depend on whether retirement benefits are determined on a defined benefit or on a defined contribution basis 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.

** If an order is made in relation to retirement benefits, this will specify that a proportion of the retirement benefits accrued at the time of the granting of the decree of judicial separation or divorce (or at such earlier date as may be specified by the Court) must be designated for payment to the other spouse or for the benefit of a dependent child. 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 trustees of the pension scheme in question 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 retaining the designated benefit.

4. How Do I Apply For A Pension Adjustment Order?

Either spouse (or a person representing a dependent child) may apply 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 1st August, 1996 or where an Irish divorce is obtained following the operation of the legislation with effect from 27th February, 1997.

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 following the commencement of his/her retirement benefits).

A separate order will be required in respect of each scheme in which retirement benefits have been acquired. Therefore, several orders may be required if the member spouse retains retirement benefits in schemes (including insurance policies) relating to previous employments or if he/she is a member of more than one scheme relating to the same employment (e.g. if AVCs are paid under a separate trust from that relating to the main pension scheme).

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. it could specify that a prescribed proportion of the benefits is payable to each of the dependent spouse and a person representing dependent children).

Notice

The person applying for the order(s) must give notice to the trustees of the pension scheme concerned. 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 necessity of court appearances on behalf of the trustees, with the resultant costs to the parties. 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 Dependent Person's Share of the Retirement Benefits Calculated?

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 other

spouse (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 benefit. These are:

- The relevant period(i.e. the period over which retirement benefits were earned which is to be taken into account);
- 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). 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 and in detailed guidance notes which have been issued by the Pensions Board. The calculation depends on whether the retirement benefits are determined on a defined benefit or a defined contribution basis.

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 a formula specified in the rules of the scheme. For example, the retirement pension could be defined as $\frac{1}{60}$ th of the member's retiring salary multiplied by his/her pensionable service.

If retirement benefits are determined on a defined contribution basis, the amount of retirement pension will depend on the level of contributions paid by, or in respect of, the member and on the investment return earned on these contributions. In other words, it is the amount of contributions (e.g. 10% of salary) rather than the ultimate level of retirement benefits which is defined in the rules of the scheme.

Defined Benefits

If retirement benefits are determined on a defined benefit basis, the designated benefit is calculated on the basis of the rules of the scheme applying at the date of the decree of judicial separation or divorce.

The calculation of the designated benefit involves the application of a fraction to the member's retirement benefits which is represented by the following formula:

$$A \times \left(\frac{B}{C} \right) \times p$$

A = the amount of the member's retirement benefits payable from the scheme (excluding benefits secured by AVCs or a transfer of accrued rights from another scheme).

B = the period of the member's service in the pension scheme which falls within the relevant period.

C = the total period of service completed by the member when he/she eventually retires or withdraws from service.

p = the relevant percentage specified by the Court.

The following is an example of how designated benefit is calculated for a defined benefit scheme.

Example

A scheme provides a retirement pension of $\frac{1}{60}$ th of final salary for each year of pensionable service completed at age 65.

A married employee, whose date of birth is 1st January, 1961, joins a pension scheme on 1st January, 1986 (i.e. at age 25). The employee is subsequently granted a decree of judicial separation on 1st January, 2001. At the time of the granting of the decree a pension adjustment order is made in relation to retirement benefits in favour of the dependent spouse. This specifies:

Relevant period	1st January, 1986 to 1st January, 2001
Relevant Percentage	50%

The member ultimately retires at age 65 on a final salary of £120,000. The designated benefit is calculated as follows:

$$\begin{aligned} \mathbf{A} &= \frac{40}{60} \times \text{£}120,000 \\ &= \text{£}80,000 \text{ p.a.} \end{aligned}$$

$$\begin{aligned} \mathbf{B} &= \text{1st January, 1986 to 1st January, 2001} \\ &= 15 \text{ years} \end{aligned}$$

$$\begin{aligned} \mathbf{C} &= \text{1st January, 1986 to 1st January, 2026} \\ &= 40 \text{ years} \end{aligned}$$

$$\mathbf{p} = 50\%$$

$$\begin{aligned} \text{Designated benefit} &= \text{£}80,000 \times \frac{15}{40} \times 50\% \\ &= \text{£}15,000 \text{ p.a.} \end{aligned}$$

Thus, of the member's total retirement pension of £80,000, £15,000 is designated for payment to his/her spouse, leaving the balance of £65,000 to be paid to the member spouse.

The procedure for calculating the designated benefit(as outlined above) applies regardless of whether the member spouse retires at his/her normal retirement age (or such earlier or later date) or withdraws from the scheme.

Changes in Benefits

The general principle is that changes in pension benefits (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 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 retirement benefits are determined on a defined contribution basis, the value of the designated benefit on the date on which it becomes payable must be equal to the accumulated value of the relevant percentage of what are called the earmarked contributions(i.e. the contributions paid by, or in respect of, the member spouse for the purposes of retirement benefits during the relevant period).

Example

A self-employed person contributes 10% of earnings to a pension policy between 1st January, 1990 and 31st December, 1999.

On 1st January, 2000 a decree of divorce is granted and a pension adjustment order is made in favour of the dependent spouse which specifies:

Relevant period:	1st January, 1990 to 1st January, 2000
Relevant Percentage:	50%

The trustees (in this case the insurance company with which the policy is effected) calculate that earmarked contributions amounted to £20,000. When the member ultimately retires on 1st January, 2020 the earmarked contributions have increased, due to investment returns, to £140,000.

The accumulated value of the relevant percentage of the earmarked contributions is therefore:

$$£140,000 \times 50\% = £70,000$$

This amount is available to provide designated benefit to the dependent spouse (see page 21).

Hybrid Schemes

Where an element of retirement benefits is calculated on a defined benefit basis and another element is calculated on a defined contribution basis, the designated benefit in relation to each element is calculated separately on the appropriate basis.

Additional Voluntary Contributions (AVCs)

Where AVCs have been made by a member during the relevant period these must be taken into account in calculating the designated benefit.

If the additional retirement benefit is calculated on a defined benefit basis (e.g. in the form of notional added years of service) the corresponding designated benefit is calculated by using a similar approach to that described above. The amount of the

designated benefit will, however, depend on the proportion of AVCs which were made during the relevant period specified by the Court

If the amount of additional benefits depends on the accumulated value of the AVCs (i.e. calculated on a defined contribution basis) the corresponding designated benefit is calculated using the general approach for defined contribution schemes.

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 these must be taken into account in calculating the designated benefit.

The principle applying to the calculation of the amount of the corresponding designated benefit is that this should reflect the period of service completed (or the accumulated value of earmarked contributions made) in the previous scheme which falls within the relevant period.

Where a member's rights have been transferred after the date of the pension adjustment order, no designated benefit arises in relation to the rights transferred.

6. How Is The Dependent Person's Share of the Retirement Benefits Paid?

Payment of the designated benefit will generally commence when the remainder of the retirement benefits starts to be paid to the member spouse. Alternatively, if the pension adjustment order is made in favour of the dependent 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.

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 fall due to the member spouse (see also 'May a transfer amount be made without consent')

below). Thus, 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.

Defined Benefit

If retirement benefits are determined on a defined benefit basis, the designated benefit will be calculated by applying the formula in Section 5 to each element of the member spouse's retirement benefits(i.e. retirement lump sums, retirement pensions etc.). The calculation depends on the rules of the pension scheme applying at the date of the decree of judicial separation or divorce (i.e. any subsequent changes in benefit terms are ignored). The same salary amount as is used for calculating retirement benefits for the member spouse(i.e. usually pensionable salary at, or close to, retirement) must be used when calculating designated benefit.

If the rules applying at the date of the decree provide for pension increases on the member spouse's retirement pension (i.e. either at a guaranteed level or awarded on a discretionary basis), equivalent pension increases must be applied to the corresponding designated benefit.

Defined Contribution

If retirement benefits are determined on a defined contribution basis, the value of the designated benefit on the date on which it becomes payable must be equal to the accumulated value of the relevant percentage of the earmarked contributions(see Defined Contribution). Thus, the pension designated for payment to the person named in the pension adjustment order is calculated by applying a fraction to the amount of retirement pension arising from the pension scheme. The fraction is calculated by dividing the accumulated value of the relevant percentage of the earmarked contributions by the accumulated value of all contributions paid by, or in respect of, the member spouse for the purpose of retirement benefits.

Options at Retirement

The rules of many pension schemes permit members to exchange pension for cash 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.

Payment of Pensions

Order in Favour of Dependent Spouse

If the pension adjustment order is made in favour of the dependent spouse, the pension element of the designated benefit will be payable for so long as both he/she and the member spouse are alive. A designated benefit may continue to be paid following the death of the member spouse but this will depend on the rules of the scheme. For example, if the rules applying at the date of the decree provide for death-in-retirement benefits (e.g. a guaranteed minimum payment period of, say, 5 years or a proportionate dependant's pension) then an equivalent benefit will be paid to the spouse named in the order. A later Section sets out the procedure that applies if the dependent spouse predeceases the 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 both he/she and the are alive and for so long as he/she remains a dependant*. Following the death of the **member spouse**, the designated benefit is calculated in accordance with the rules of the scheme (i.e. as for a dependent spouse). Following the death or cessation of

dependency of the child, designated benefit discontinues and the pension adjustment order ceases to have effect.

**The Legislation defines dependency. Broadly, this is a child aged less than 18 years (or less than 23 years if in full-time education) or of any age if suffering from a mental or physical disability.*

Establishment of Independent Benefit

If the pension adjustment order is made in favour of the dependent spouse then, subject to the criteria set out below, he/she may request that an independent benefit be established in lieu of retaining the designated benefit. In this way, the benefit payable to the dependent 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 dependent 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 crucial to appreciate that the transfer amount is calculated by reference to the designated benefit which would otherwise be payable in the event that the member spouse left service at the date of calculation of the transfer amount. In other words, the designated benefit is calculated as a proportion of the leaving service benefits which are payable under the rules of the pension scheme. In most cases, leaving service benefits will represent deferred benefits based on salary (or pensionable salary) at the date of withdrawal, with increases between the date of leaving and the date benefits commence often being set at a maximum of price inflation and sometimes restricted to benefits earned after 1991. The alternative designated benefit payable on the member spouse's

ultimate retirement, if he/she remains in that employment, will usually be based on salary (or pensionable salary) at, or close to, retirement. Therefore, the actuarial value of the independent benefit may fall considerably short of the value of the designated benefit which would otherwise arise on the member spouse's ultimate retirement, particularly if the independent benefit is established many years before the member spouse's retirement.

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 the Revenue Commissioners, 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 dependent 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 dependent 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 (*see preceding page*). 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 dependent 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

The dependent 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 and the trustees must comply with that request. Separate insurance policies have been approved by the Revenue Commissioners 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 (see above).

How Can The Dependent Spouse Establish An Independent Benefit?

The dependent 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:

dependent 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 his/her trustees choose to transfer without obtaining consent, the following conditions apply:

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).

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.

There must be no outstanding valid request from the dependent spouse for a transfer to be made to another occupational pension scheme or to an approved insurance policy.

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.

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 dependent spouse is a member (subject to the consent of the trustees of the receiving scheme).

7. What Happens To The Dependent Person's Share of the Retirement Benefits If He/ She dies?

Death Prior To The Commencement of Designated Benefit

If a pension adjustment order has been made in favour of the dependent 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.

Note:

It is important that the dependent 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 dependent 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 dependent 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 dependent spouse and he/she predeceases 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 dependent 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 Dependent 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 dependent 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 predeceases 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.

In particular, the designated benefit will be calculated as a proportion.

9. What Happens To Death Benefits Payable Under The Pension Scheme?

Contingent benefits refer to lump sums and/or dependants' pensions which are payable (or which, but for the separation or divorce, would have been payable) under the rules of a pension scheme following the death of the member during the period of employment (or self-employment) to which the scheme relates. If the dependent 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 within 12 months of 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 dependent 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 the period of employment (or self employment) to which the pension scheme relates, 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

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 favour of the dependent spouse, which specifies:

Contingent Benefit:	Lump sum of 4 times salary at date of death
Percentage of contingent benefit to be paid to dependent spouse:	50%
The member spouse dies while in employment. Salary at date of death is £50,000. The amount of benefit paid in accordance with the order is calculated as:-	
$4 \times £50,000 \times 50\%$	= £100,000
Thus, an amount of £100,000 is paid to the dependent 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 dependent 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 dependent 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 Dependent 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.

On the other hand, a pension adjustment order in relation to contingent benefits ceases to have effect in relation to the dependent 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

Thus, based on the scenario outlined in this previous example, the residual retirement pension payable to the member spouse is calculated as £65,000 p.a. (i.e. £80,000 p.a. less £15,000 p.a.).

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 dependent 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 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 dependent 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 are calculated by firstly reducing the death benefits payable in accordance with the rules of the scheme by the amount of death benefit allocated under this order. The residual benefits may then be further reduced by any death payment

made under a separate pension adjustment order made in relation to retirement benefits.

Example

Details are as in this previous example. In addition, a separate pension adjustment order has been made in relation to retirement benefits. On the death of the member spouse a payment of £35,000 is made to the dependent spouse in relation to this separate order (see Section 8). The residual lump sum death benefit payable in accordance with the rules of the scheme is calculated as £65,000 (i.e. £200,000 - £100,000 - £35,000).

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. 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.

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 dependent 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 dependent spouse in relation to a pension adjustment order is exempt from capital acquisitions tax.

15. The Pensions Board

The Pensions Board was established by the Minister for Social Welfare under the terms of the Pensions Act, 1990.

Its main functions are:

- to monitor and supervise the operation of the Pensions Act and pension developments generally,
- to issue guidelines on the duties and responsibilities of the trustees of schemes and codes of practice on specific aspects of their responsibilities,
- to encourage the provision of appropriate training for trustees of schemes and to advise the Minister on standards for trustees,
- to advise the Minister on the operation of the Pensions Act and on pension matters generally.

Pension schemes must register with the Board and most schemes must pay an annual fee to meet the Board's administrative costs. The Board can act on behalf of pension scheme members who are concerned about their scheme; it can investigate the operation of pension schemes; it has the power to prosecute for breaches of the Pensions Act.

The Pensions Board includes representatives of trade unions, employers, Government, member trustees, the pensions industry and the various professional groups involved with occupational pension schemes.

16. Glossary of Terms

Additional Voluntary Contributions (AVCs): means voluntary pension contributions made by a member of a pension scheme over and above the amount of contributions (if any) that are required under the rules of the scheme.

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: means where the amount of a pension benefit is specified by a formula in the rules of the pension scheme.

Defined Contribution: means where the amount of a pension benefit depends on the accumulated value of contributions paid to a pension scheme.

Designated Benefit: means the part of a member's retirement benefits which is allocated for payment to his/her dependent spouse or children under a pension adjustment order.

Earmarked Contributions: means contributions paid by, or in respect of, a member of a defined contribution pension scheme for the purposes of retirement benefits during the relevant period specified by the Court.

Member Spouse: means the spouse who is the member of the pension scheme in question.

Relevant Percentage: is the proportion of the member spouse's 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: is the period during which the member spouse's retirement benefits were earned, as specified by the Court, which must be taken into account in determining the designated benefit.

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

Trustees: means the trustees of a pension scheme which is established under a legal trust or, for other pension schemes, (such as pension policies for the self employed or public sector pension schemes established under statute) the person(s) who administers the pension scheme.

Useful addresses

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

Department of Social and Family Affairs

Oisín House,

Pearse Street,

Dublin 2

Tel: (01) 704 3000

LoCall Leaflet Line: 1890 202 325

Web: www.welfare.ie

For Information Service and information on PRSI.

Department of Social and Family Affairs

Aras Mac Dhiarmada,

Store Street,

Dublin 1.

Tel: (01) 704 3000

For the Self-Employment and Voluntary Contributions Section:

Department of Social and Family Affairs, Government Offices, Cork Road, Waterford.

Tel: (051) 356000

Department of Social and Family Affairs

Pension Services Office,

College Road,

Sligo

Tel: (071) 916 9800

LoCall: 1890 500 000

Web: www.welfare.ie

The Equality Authority

2 Clonmel Street,

Dublin 2.

Tel: (01) 417 3333

Fax: (01) 417 3331

Email: info@equality.ie

Office of the Revenue Commissioners

Financial Services Pensions

Large Cases Division

2nd Floor

Setanta Centre

Nassau Street

Dublin 2

Tel: (01) 647-0710

Fax: (01) 647 0899

Web: www.revenue.ie

Legal Aid Board

47 Upper Mount Street

Dublin 2.

Tel: (01) 644 1900

Locall: 1890 615200

The Ombudsman's Office

18 Lower Leeson Street,

Dublin 2.

Tel: (01) 639 5600

Email:

ombudsman@ombudsman.gov.ie

Family Law Office (District Court)

Dolphin House,

East Essex Street,

Dublin 2.

Tel: (01) 888 6000

Office of the Pensions Ombudsman

36 Upper Mount Street,

Dublin 2.

Tel: (01) 647 1650

Web: www.pensionsombudsman.ie

Family Law Office

(Dublin Circuit Court)

Phoenix House,

15/24 Phoenix Street North

Smithfield,
Dublin 7
Tel: (01) 888 6000

Financial Regulator

PO Box 9138,
College Green,
Dublin 2.
Tel: (01) 410 4000
LoCall: 1890 777 777
Web: www.itsyourmoney.ie
Email: consumerinfo@financialregulator.ie

The Pensions Board

Verschoyle House,
28/30 Lower Mount Street,
Dublin 2.
Tel: (01) 613 1900
Web: www.pensionsboard.ie
Email: pb@pensionsboard.ie

Irish Brokers' Association

87 Merrion Square
Dublin 2
Tel: (01) 661 3067
Fax: (01) 6619955
Website: www.irishbrokers.com
Email: info@irishbrokers.com

Irish Insurance Federation

Insurance House

39 Molesworth Street

Dublin 2

Tel: (01) 676 1820

Fax: (01) 676 1943

Website: www.iif.ie

Email: fed@iif.ie

Retirement Planning Council of Ireland

27/29 Lower Pembroke Street

Dublin 2

Tel: (01) 661 3139

Fax: (01) 661 1368

Website: www.rpc.ie

Email: information@rpc.ie

The Equality Tribunal

3 Clonmel Street

Dublin 2

Tel: (01) 477 4100

LoCall: 1890 344 424

Fax: (01) 477 4141

Website: www.equalitytribunal.ie

Email: info@equalitytribunal.ie

Consumers' Association of Ireland

44 Chelmsford Road

Ranelagh

Dublin 6

Tel: (01) 497 8600

Fax: (01) 497 8601

Website: www.consumerassociation.ie

Email: cai@consumerassociation.ie

National Employment Rights Authority

Information Services

O'Brien Road

Carlow

Tel: (059) 917 8800

Lo-call: 1890 808090

Website: www.employmentrights.ie

Email: info@employmentrights.ie