Pension Adjustment Orders

Chapter 22

This document should be read in conjunction with section 787O of the Taxes Consolidation Act 1997 (TCA)

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Table of Contents

Introduction 3

1 Options for beneficiaries in respect of designated benefits 3

1.1 Occupational pension scheme 3

1.2 Buy-out bond 3

1.3 Personal Retirement Savings Account (PRSA) 3

1.4 Retirement Annuity Contract (RAC) 3

2 Impact on member 4

3 Impact on beneficiary 4

4 Examples of benefit calculation 4

5 Approved Retirement Fund and Approved Minimum Retirement Fund 5

6 Interaction with limit on tax relieved pension funds 6

7 Trivial pensions 6

8 Taxation of retirement lump sums 6

Introduction

The provisions of the Family Law (Divorce) Acts and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 can have significant implications for pensions. Practitioners are advised to consult the Pensions Authority Guidance Notes (note – Revenue is not responsible for the content of external websites). The courts have powers to make a pensions adjustment order (PAO) which entitles a former spouse, civil or cohabiting partner and/or dependants to a specific proportion of an individual's benefits under various pension arrangements. A PAO can apply to benefits held by an occupational pension scheme, buy-out bond (BOB), retirement annuity contract (RAC), RAC trust or personal retirement savings account (PRSA). A PAO may include death in service benefits and dependants' benefits. The purpose of this chapter is to set out how a PAO affects the calculation of benefits.

1 Options for beneficiaries in respect of designated benefits

A beneficiary under a PAO (that is, a former spouse or former civil or cohabiting partner) has, in respect of their designated benefits from the retirement arrangement in question, the option of retaining the benefits in the member's arrangement until the member retires or draws them down.

Where benefits have not commenced the PAO beneficiary has further options depending on the type of pension arrangement involved.

1.1 Occupational pension scheme

The PAO beneficiary may create, at the discretion of the trustees, an independent benefit in the same scheme or take a transfer value to an occupational pension scheme (of which the PAO beneficiary is a member), a buy-out bond or a PRSA.

1.2 Buy-out bond

The PAO beneficiary may transfer the benefits to an occupational pension scheme (of which the PAO beneficiary is a member) or to a buy-out bond.

1.3 Personal Retirement Savings Account (PRSA)

The PAO beneficiary may transfer the benefits to an occupational pension scheme (of which the beneficiary is a member) or to a PRSA.

1.4 Retirement Annuity Contract (RAC)

The PAO beneficiary may transfer the benefits to a PRSA or to an RAC. In this scenario, the PAO beneficiary may opt to take a transfer value of the designated benefits to an RAC notwithstanding that he or she may not have a source of relevant earnings and, as such, may not, strictly speaking have that option under Part 30 of the Taxes Consolidation Act 1997 (TCA).

Examples of calculations are in paragraph 5.

2 Impact on member

In the case of occupational pension schemes, the maximum benefit which a member may take from a scheme is exactly the same whether or not part of the benefit is the subject of a PAO. The existence of a PAO does not affect maximum contribution limits for either employers or employees.

Any benefit which is the subject of a PAO is regarded as part of the member's benefit for the purposes of calculating maximum benefits for the member. It follows that the maximum benefit payable to the member is the amount calculated using the normal rules, **less** any amount which is the subject of a PAO. This applies whether the PAO results in the benefits being retained in the member's scheme or transferred to another scheme. This principle applies equally to pension and lump sum benefits. If a transfer payment is made, the value at the date the member spouse or civil partner (that is, the PAO beneficiary) takes benefits is the amount which is treated as a retained benefit. If the exact value is not known, the original transfer payment should be revalued in line with Pensions Act revaluation requirements.

3 Impact on beneficiary

In the case of occupational pension schemes, the benefit arising from a PAO is not regarded as a retained benefit for the purposes of calculating maximum benefits for the PAO beneficiary. Any pension is, however, liable to taxation in the hands of the recipient.

4 Examples of benefit calculation

Example 1: Designated benefit retained in pension scheme
An occupational pension scheme provides a pension at normal retirement age (NRA) of 1/60th per year of service. John joined the scheme on 1 January 1991 at age 35. He married on 1 January 1988 and divorced on 1 January 2006. He retired on 1 January 2021 at age 65.

The PAO specified that 50% of the pension relating to the period John was married **and** a scheme member be allocated to his non-member spouse, which is a total of 15 years (1/1/91 to 1/1/06). His final remuneration was €90,000 at NRA (age 65).

How are John's benefits at NRA calculated?

John was a scheme member for 30 years and married for 15 of those years.

John's pension is €90,000 x 30/60 = €45,000

His non-member spouse's pension is €45,000 x 15/30 x 50% = €11,250

The pension of €11,250 paid to the non-member spouse reduces John's pension.

The pension paid to John is €33,750 (€45,000 - €11,250).

Example 2: Benefit transferred to another product
June joined an occupational pension scheme on 1 January 2005. She married on 1 January 2010 and divorced on 1 January 2020. The PAO specified that 50% of the pension relating to the period June was married **and** a scheme member be allocated to her non-member spouse.

June was a scheme member for 15 years (2005 to 2020) and married for ten of those years (2010 to 2020).

June's pension scheme is a defined contribution scheme and the value of June's fund at the date of divorce was €40,000. Her non-member spouse opts for a transfer to a PRSA.

The transfer payment to June's former spouse is: €40,000 x 50% x 10/15 = €13,333.

5 Approved Retirement Fund and Approved Minimum Retirement Fund

A transfer from an Approved Retirement Fund (ARF) into another ARF in the name of a spouse or civil partner in exercise of rights under a PAO will not be regarded by Revenue as a distribution from the transferring ARF.

Similar treatment will also apply where a transfer occurs in exercise of rights under a Property Adjustment Order.

In both scenarios the recipient spouse or civil partner may open an ARF to facilitate the transfer notwithstanding that he or she may not, strictly speaking, have that option under Part 30 of the Taxes Consolidation Act 1997.

Previously, individuals could also transfer to an Approved Minimum Retirement Fund (AMRF). However, AMRFs were abolished by Finance Bill Act 2021. All monies in AMRF products were automatically transferred to ARFs from 1 January 2022. Previous transfers from an ARF/AMRF into another AMRF in the name of a spouse or civil partner in exercise of rights under a pension or property adjustment order were not regarded by Revenue as a distribution from the transferring AMRF.

6 Interaction with limit on tax relieved pension funds

Please refer to Pensions Manual Chapter 25.

7 Trivial pensions

Please refer to Pensions Manual Chapter 7.

8 Taxation of retirement lump sums

Please refer to Pensions Manual Chapter 27.