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Pension Adjustment Orders

A presentation to members of A.P.L.I and I.I.P.M

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Introduction and Content

The Legislation

- Two Family Law Acts
- The 1995 Act- Judicial Separation / Foreign Divorce
- The 1996 Act – Divorce
- Both Acts allow for Benefits under a pension scheme to be adjusted by way of a pension Adjustment Order (PAO)
- An order can be made by the Court on the application of either spouse or a person on behalf of a dependent member of the family.



Pension Adjustment Orders

- **Two types of Order**

- An Order in relation to Retirement Benefits

- Covers the members pension, the lump sum payable in commutation and any spouses death in retirement pension
- Section 12(2) of the 1995 Act and Section 17(2) of the 1996 Act deal with Retirement Benefits

- An Order in relation to Contingent Benefits

- Covers death in service benefits i.e. any lump sum and any spouses / children's death in service pensions
- Section 12(3) of the 1995 Act and Section 17(3) of the 1996 Act deal with Contingent Benefits

Drafting a PAO

- **A PAO should state**
 - the name of the scheme
 - the members name
 - the benefits to which the order relates
 - the relevant period (Retirement Benefits only)
 - the Relevant Percentage
 - the name and address of the beneficiary

Drafting a PAO

- **The Relevant Period is the period of service to be taken into account in determining the benefit**
 - a start and end date should be quoted
 - Cannot extend beyond the date of the decree of judicial separation or divorce
- **The Relevant Percentage is the percentage of the benefit to be taken into account**
 - can vary from 0.001% to 100%
- **Any Order should be served on the Trustees (not named) of the (named) pension scheme- each scheme requires a separate order**
- **AVCs & Transfers In taken into account**

Designated Benefit (Example)

Member joins scheme 1/1/1991 aged 25, Divorce granted, 1/1/03,
Relevant period 1/1/91 – 1/ 1/ 03 i.e. 12 years, Relevant Percentage
50%, Member retires at age 65 on 1/1/2031 on final salary of €120,000

$$A \times \frac{B}{C} \times P$$

where A = pension e.g. 40/80ths of €120,000 = €60,000

B = relevant period i.e. 12 years

C = relevant percentage i.e. 50%

$$= €60,000 \times 12/40 \times 50\% = €18,000 \text{ p.a.}$$

Independent Benefit /Clean Break /Transfer

- Default position is retention of designated benefit within scheme
- Alternatively dependent spouse may request that an independent benefit be established (Trustees can decide in DC Scheme or when Member elects transfer on leaving service)
- Option only available if member spouse has not commenced receiving retirement benefits
- Transfer amount is calculated and applied to provide independent benefits
 1. within same scheme
 2. in other occupational scheme
 3. in approved insurance policy

Difference between the two types of Order

- **An Order for Retirement Benefits**
 - can be obtained at anytime after the decree
 - can be granted to a spouse OR person on behalf of dependent child
 - variation is possible
 - continues to have effect on remarriage
 - goes to the estate of the spouse on his/her death
 - a ‘ clean break’ is possible
 - a transfer amount is payable on the member leaving service



Difference between the two types of Order

- **An Order for Contingent Benefits**
 - must be obtained within 1 year of the decree
 - can be granted to a spouse AND/OR person on behalf of dependent child
 - variation is not possible
 - order in favour of spouse ceases on remarriage
 - a ‘clean break’ is not possible
 - ceases on the member leaving service



Similarities

- If spouse has already remarried no application can be made
- Both types of Order cease on death of dependent child or on cessation of dependency.

Some Issues not yet referred to

- Only available in Court e.g. PAO not possible in Separation Agreement
- Accuracy essential – some not amended
- Rules of scheme / Residual Benefit
- Example “ spouse at retirement” – old spouse/ new spouse issues.

Split Orders

- Pension is “mine”, spouses pension would have been “yours”
- Desire to treat as maintenance – different percentages
- Additional liability on schemes if non-member spouse dies prior to members retirement
- Public Sector schemes

Disclosure & Costs (Mercer perspective)

- Mercer usually acts for trustees & charges usually paid by Employer
- Mercer usually provides information & precedents, confirms accuracy, administers orders, communicates with solicitors & complies with immediate (2 months) and ongoing (every event) disclosure requirements
- Legislation
 - **No** provision for initial costs i.e. pre granting of Order
 - Inadequate provision for implementing Order and ongoing administration
 - States cost of implementation and Trustee representation to be borne by parties – How?
 - Application to Court required to deduct from benefits

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