



EUGENE F. COLLINS

Pension Adjustment Orders

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Introduction – Demystifying PAOs

- Relevant Legislation?
- What is a Pension Adjustment Order?
- Who are the “Trustees”?
- Pitfalls in drafting PAOs?
- Division of pension assets on marital breakdown
- 2nd most valuable asset behind family home
- Pension assets - last resort
- Current economic climate –pension benefits important



Governing Law

- **Family Law Act 1995** – judicial separation/foreign divorce
- **Family Law (Divorce) Act 1996** – divorce
- **Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010** – registered civil partners/qualified cohabitants
- Each Act allows for benefits under a pension scheme to be adjusted by way of a PAO



What is a PAO ?

- Court order on pension scheme trustees/administrator to pay portion of pension benefits to the non-member spouse
- No PAO if spouse applying for order has remarried.



What is a Pension Scheme ?

- **Distinguish Defined Benefit v Defined Contribution**
- Hybrid Pension Scheme
- Statutory Pension Scheme
- Target Benefit Scheme
- Small Self-Administered Pension Scheme
- Executive Pension Scheme established by Letter of Exchange
- AVC Scheme



What is a Pension Scheme ?

- Single Member Scheme
- Life Assurance Only Scheme
- Personal Pension Arrangements
- PRSA
- RAC/Personal Pension
- Buy Out Bond/Retirement Bond



Outside Scope of PAO

- Income Protection/Permanent Health Insurance Plans
- Pension benefits under Social Welfare Acts
- ARFs/AMRFs ?



Who are the Trustees ?

- PAO served on trustees/administrator of the Pension Scheme
- Occupational Pension Schemes – trustees
- PRSAs – PRSA provider
- RAC/Personal Pension – life office
- Buy Out Bond/Retirement Bond – life office



TWO TYPES OF PAO

PAO in relation to “Retirement Benefits”

- member’s retirement pension and gratuities,
- retirement lump sum payable in commutation,
- AVCs and transfer payments taken into account,
- dependant’s pensions payable following member’s death in retirement,
- guaranteed increases to pensions whilst in payment.



PAO – Retirement Benefits

- Section 12(2) of 1995 Act & Section 17(2) of 1996 Act
- Can obtain PAO at any time after the decree
- Grant to a non-member spouse OR person on behalf of dependent member of the family



PAO – Retirement Benefits

Relevant Period

- Period over which retirement benefits was earned, i.e. a start date and end date
- Must end no later than granting of decree

Relevant Percentage

- % of retirement benefits earned during the relevant period

Nil Pension Adjustment Orders

- nominal amount specified e.g. 0.001% over 24 hour period

Designated Benefit

- amount of retirement benefit earmarked for payment to non-member spouse



Defined Contribution Example

- Member spouse contributes 10% of salary to a personal pension between 1 January 1990 and 31 December 1999
- Divorce granted on 1 January 2000
- Relevant Period: 1 January 1990 – 1 January 2000
- Relevant Percentage: 50%
- Insurance Company – “Trustee” – calculates earmarked contributions at €100,000
- Member retires on 1 January 2020
- Earmarked contributions valued @ €250,000
- $€250,000 \times 50\% = €125,000$ for former spouse



Defined Benefit Example

- Member spouse joined a defined benefit scheme on 1 January 1995 aged 30
- Divorce granted on 1 January 2005
- Relevant Period – 1 January 1995 to 1 January 2005 (10 years)
- Relevant Percentage - 50%
- Member retires at age 65 on 1 January 2030 on final salary of €150,000
- Formula for calculating designated benefit - $A \times (B/C) \times P$

- A = pension e.g. 35/80ths of €150,000 = €65,625
- B = relevant period of 10 years
- C = total Potential Service that will be completed by Member when they retire/leave Scheme
- P = relevant percentage i.e. 50%

- Designated Benefit = €65,625 x $\frac{10}{35}$ x 50% = €9,375 p.a.

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PAO – Contingent Benefits

- Lump sum death in service benefits,
- Spouse's/children's death in service benefits

- Section 12(3) of 1995 Act & Section 17(3) of 1996 Act
- Relevant Percentage only required – can range from 0.001% to 100%



PAO – Contingent Benefits

- PAO must be made within 12 months of granting of decree
- Grant to a non-member spouse AND/OR person on behalf of dependent member of the family
- PAO ceases if member spouse leaves relevant employment



Drafting of a PAO

Accuracy essential, include:-

- Full name of the Scheme
- Member's Name
- Name of Trustees
- The Benefits to which the PAO relates
- The Relevant Period (only re Retirement Benefits)
- The Relevant Percentage
- The Name & Address of the Beneficiary



When PAO is made ...

- Retain designated benefit in Pension Scheme (default position)
- Non-member spouse may request independent benefit to be:
 - established within the Pension Scheme;
 - transferred to another occupational pension scheme of which non-member spouse is a member;
 - transferred to a buy out bond or a PRSA



Can PAO be varied later ?

- A PAO in relation to Retirement Benefits can be varied.
- No power to vary a PAO in relation to contingent benefits.



Other Types of Order

- Property Adjustment Order
- Pension Preservation Order – Judicial Separations only
- Financial Compensation Order – Life assurance for spouses and dependent children



New – Civil Partnership Act

- **CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT 2010**
- Act signed into law on 19 July 2010; effective from 1 January 2011
- Up until 2010 Act, unmarried couples, of the same or opposite sex, had no legal rights/entitlements to partner's pension entitlements on ending of relationship
- 2010 Act provides for PAOs to be made in favour of registered civil partners and qualified cohabitants



Registered Civil Partners

- Civil registration of same-sex partnerships
- Couples have rights, obligations and protections comparable to those enjoyed by married couples
- Registered civil partnerships can only end on death of a civil partner or dissolution of civil partnership by the court
- PAO broadly comparable to those currently available on judicial separation/divorce
- PAO in favour of the civil partner/qualified cohabitant only, not in favour of a dependent member of the family



Qualified Cohabitants

- Act does not give same rights as married couples or registered civil partners
- Act imposes certain rights and obligations on opposite-sex and same-sex couples who are either unmarried/not registered civil partners
- PAO in favour of a qualified cohabitant who must have been living with another cohabitant as a couple for 5 years or for 2 years where there is a child of the relationship
- Watch this space ...



Conclusion

- PAOs in respect of retirement and/or contingent benefits
- Relevant Legislation
- What is a Pension Scheme?
- Who are the Trustees?
- Pitfalls in drafting PAOs



Any Further Queries:

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