

**Pension provisions of
Family Law Act 1995
Family Law (Divorce) Act 1996
and
Civil Partnership and Certain Rights and
Obligations of Cohabitants Act 2010**

Guidance notes

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Abbreviations

References to provisions of the Family Law Act 1995, the Family Law (Divorce) Act 1996, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and Pension Schemes (Family Law) Regulations, 1997 (S.I. No. 107 of 1997) to which the guidance notes relate, are given in abbreviated form above paragraphs. The following is the key to the abbreviations:

's' means **'section'** and is used to refer to sections of the Family Law Act 1995, the Family Law (Divorce) Act 1996 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Thus 's12(1)-95' means section 12, subsection (1) of the Family Law Act 1995 and 's17(1)-96' means section 17, subsection (1) of the Family Law (Divorce) Act 1996, and s121(3) means section 121, subsection (3) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

'r' This means **'regulation'** and is used to refer to the sections of the Pension Schemes (Family Law) Regulations, 1997. Thus 'r33(3)' means regulation 33, subsection 3 of S.I. No. 107 of 1997, titled Pension Schemes (Family Law) Regulations, 1997.

Introduction

s6-95 to s15-95, s23-95, s16(2)-95, s11-96 to s19-96, s20(2)-96, s115-10 to s128-10, s129(2)-10, s173(3)-10, s174-10 to s190-10

1. Part II of the Family Law Act 1995, and Part III of the Family Law (Divorce) Act 1996 empowers a *court* to make various types of order on or following the granting of a *decree* of judicial separation or of divorce within the State. Similar orders may be made by the *court* where a foreign separation or divorce is recognised as valid in the State. Sections 121 to 128 and 174 to 190 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provide that the *court* can make certain types of order on or following the granting of a *decree* of dissolution of a civil partnership and on application to it by a *qualified cohabitant* upon the ending of the relationship.

Upon separation, divorce or dissolution of a civil partnership, the *court* has the power to split the assets of the couple between them through the making of certain orders, such as property adjustment orders, maintenance orders and pension adjustment orders. As the latter can be complicated, the *court* will try to avoid making a pension adjustment order and instead take account of pension benefits by means of one of the other types of order. Often, however, this is not possible.

In deciding whether or not to make an order, and in determining the provisions of the order, the *court* must take account of the value of *scheme* benefits which either *spouse*, *civil partner* or *qualified cohabitant* will lose the opportunity of acquiring, as a result of the end of the cohabiting relationship, the judicial separation, the divorce or the dissolution of the civil partnership. The *court* must also be mindful of other factors, such as the earning capacity and level of dependency of the non-member on the member.

s121(1)-10, s187(1)-10, s195-10, s202(4)-10

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 came into force on 1 January 2011 and put civil partnerships between same-gender couples on a statutory footing in the areas of property, social welfare, succession, maintenance, pensions and tax.

It also created a redress system for both opposite gender and same gender cohabiting couples, whereby couples who satisfy certain criteria, known as *qualified cohabitants*, can apply to *court* upon the ending of the relationship for certain financial orders. A *qualified cohabitant* is one of two adults who live together, are in an intimate and committed relationship and are not related to each other. A *qualified cohabitant* must have been

living with their partner for a period of at least five years if there are no dependent children, and two years if there are dependent children.

The *court* may grant pension adjustment orders to civil partners upon the dissolution of the civil partnership, and to *qualified cohabitants* upon application to the *court*. Generally speaking, the provisions governing pension adjustment orders for *civil partners* and *qualified cohabitants* are largely similar to those available to married couples who are separating or divorcing under the Family Law Act 1995 and the Family Law (Divorce) Act 1996. However, there are a number of important differences that should be borne in mind:

- there are no provisions in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to permit pension adjustment orders for dependent children of *civil partners* or *qualified cohabitants*;
- while in general the *court* has the power to order the *trustees* not to comply with the *rules* of the *scheme* in making a pension adjustment order, it cannot order the *trustees* to pay a *contingent benefit* to a *non-member qualified cohabitant* unless such payments are expressly permitted by the *rules* of the *scheme*;
- *qualified cohabitants* must apply for retirement and *contingent benefit* pension adjustment orders within two years of the relationship ending, and during the lifetime of the *member qualified cohabitant*;
- in the case of *spouses* and *civil partners*, *retirement benefit* pension adjustment orders can be applied for at the time of, or at any time after the *decree* during the *member spouse* or *member civil partner's* lifetime. *Contingent benefit* pension adjustment orders must be applied for by a *spouse* or *civil partner* within one year of the granting of a *decree*;
- the *court* has the power on application to it to vary both *retirement benefit* and *contingent benefit* orders made for the benefit of a *qualified cohabitant*;
- *qualified cohabitants* can contract out of their right to apply for a pension adjustment order through a document known as a cohabitant's agreement. The *court* has the power, however, to vary or set aside such agreements where enforcing it would result in serious injustice.

s12(23)-95, s12(2)-95, s12(3)-95, s17(23)-96, s17(2)-96, s17(3)-96, s121(7)-10, s121(2)-10, s121(5)-10, s188(6)-10, s187(2)-10, s187(5)-10

2. The *court* may decide to take account of the value of any *retirement benefit* by making an order other than a pension adjustment order (e.g., an appropriate adjustment to the allocation of non-pension assets under a property adjustment order). Similarly, provision may be made for the financial security of a *spouse, civil partner, qualified cohabitant* or, in the case of a *spouse, dependent member of the family*, in the event of the death of either *spouse, civil partner* or *qualified cohabitant* by means of, for example, a financial compensation order. Alternatively, following an application by either *spouse, civil partner* or *qualified cohabitant* (or in the case of a *member spouse* by a person acting on behalf of a *dependent member of the family*) the *court* may make a pension adjustment order. A separate order must be sought in respect of each *scheme* of which the *member spouse, member civil partner* and *member qualified cohabitant* is a *member*.

s12(18)-95, s17(18)-96, s122(1)-10, s188(1)-10, s12(23)(a)-95, s17(23)(a)-96, s121(6)-10

Before a person can apply to *court* for a pension adjustment order, certain conditions must be met. A person who makes an application under the *legislation* for a pension adjustment order must be either the *scheme member*, or a *non-member spouse, non-member civil partner, non-member qualified cohabitant* or person applying on behalf of a *dependent member of the family* (in the case of spouses). The applicant must give notice to the *trustees* of the *scheme* concerned and provide the *trustees* with such information as they require. The *court* must have regard to any representations made by any person to whom notice of the application has been given and may not make an *order* if the person who has applied for it has remarried.

A pension adjustment order must be made during the lifetime of the *member spouse* or *member civil partner*, and in the case of a *contingent benefit* pension adjustment order, within one year of the granting of the *decree*. If an application for a *retirement benefit* or *contingent benefit* pension adjustment order is made by a *qualified cohabitant*, the application must be made during the lifetime of the *member qualified cohabitant*, and within two years of the relationship ending.

s16(2)-95, s20(2)-96, s129(2)-10, s173(3)-10

In making a pension adjustment order, the *court* must have regard to the financial situation of both parties and ensure that proper provision is made for both of them and any dependants. Section 16(2) of the Family Law Act 1995, section 20(2) of the Family Law (Divorce) Act 1996, and sections 129(2) and 173(3) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 list specific factors that the *court* must take into account, such as the income, earning capacity, financial needs and

resources of each party. The *court* will look at whether any of the other orders available under the *legislation*, such as property adjustment orders, can provide adequate financial protection for the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* or the *dependent member of the family*.

When the *court* decides to make a pension adjustment order, part of the *member's retirement benefits* will be designated for payment to the non-member. In determining the amount of the *designated benefit*, the *court* will rule on the *relevant period* to be taken into account and the proportion of benefits earned during the *relevant period*. For example, the *court* could rule that 50% of the benefits earned during the marriage/partnership up until the *decree* be designated for the *non-member spouse/civil partner*. It is not possible for the *court* to order that none of a *member's* pension benefits be given to a *non-member spouse*, so in practice if such an *order* is sought, the *court* will rule that a very small percentage of benefits (e.g., 0.001%) earned over a short period (usually 24 hours) be designated for the *non-member spouse/civil partner*. This results in a 'nil-order', with *designated benefits* so small that in practice the *trustees* do not comply with the *order*.

s12(1)-95, s17(1)-96, s121(1)-10, s187(1)-10

3. These notes are a guide to the requirements of:

- section 12 of the Family Law Act 1995,
- section 17 of the Family Law (Divorce) Act 1996,
- section 5(4) of the Pensions Act, 1990, as amended (the Act) as inserted by Pensions (Amendment) Act 1996,
- sections 121 to 126 and sections 187 to 192 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, and
- Pension Schemes (Family Law) Regulations, 1997.

The Acts and the regulations as amended are collectively referred to as '*the legislation*' throughout these notes.

s38-95, s12(1)-95, s38-96, s17(1)-96, s140-10, s121(1)-10, s196-10, s187(1)-10

4. In the interests of brevity, several expressions appear in shortened form throughout the notes. Unless otherwise specified, these expressions and other key definitions set out below, should be taken to have the following meaning:

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| <i>'active member'</i> | <i>a member who is in reckonable service relating to that scheme.</i> |
| <i>'actuarial value'</i> | the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) under a <i>scheme</i> calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to <i>NPA</i> and thereafter in accordance with normal life expectancy on the assumption that the <i>member spouse, member civil partner or member qualified cohabitant</i> is in a normal state of health having regard to their age. |
| <i>'approved retirement fund'</i> | an approved retirement fund as approved under section 784A, Chapter 2, Part 30 of the Taxes Consolidation Act 1997. |
| <i>'approved minimum retirement fund'</i> | an approved minimum retirement fund as approved under section 784C, Chapter 2, Part 30 of the Taxes Consolidation Act 1997. |
| <i>'AVCs'</i> | <i>Additional Voluntary Contributions.</i> |
| <i>'civil partner'</i> | the person who is a civil partner under the Civil Partnership and Certain Rights and Obligations Act 2010 and includes a person who is party to a civil partnership that has been dissolved. |
| <i>'contingent benefit'</i> | a benefit payable under a <i>scheme</i> in the event of the death of the <i>member spouse, member civil partner or member qualified cohabitant</i> , while in <i>relevant employment</i> prior to the <i>NPA</i> , if any, specified in the <i>rules</i> of the <i>scheme</i> . |
| <i>'court'</i> | the Circuit Family Court or High Court, as appropriate. |
| <i>'current pensioner'</i> | a person being paid from a <i>scheme</i> . |
| <i>'decree'</i> | of judicial separation or foreign divorce to which section 12 of the Family Law Act 1995 applies or <i>decree</i> of divorce to which section 17 of the Family Law (Divorce) Act 1996 applies or of |

dissolution to which sections 121 to 126 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 apply.

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| <i>'deferred pensioner'</i> | a person entitled to a pension payment at a future date. |
| <i>'dependent member of the family'</i> | any child of both <i>spouses</i> or of either <i>spouse</i> , who is under the age of 18 years or is under the age of 23 years and receiving full-time education or has a mental or physical disability regardless of age. |
| <i>'designated benefit'</i> | the part of a <i>member's retirement benefit</i> which is allocated for payment under an <i>order</i> . |
| <i>'member'</i> | in relation to a <i>scheme</i> , any person who, having been admitted to membership of the <i>scheme</i> under its <i>rules</i> , remains entitled to any benefit under the <i>rules</i> . |
| <i>'member civil partner'</i> | in relation to a <i>scheme</i> , a <i>civil partner</i> who is a <i>member</i> of the <i>scheme</i> concerned. |
| <i>'member spouse'</i> | in relation to a <i>scheme</i> , a <i>spouse</i> who is a <i>member</i> of the <i>scheme</i> . |
| <i>'member qualified cohabitant'</i> | in relation to a <i>scheme</i> , a <i>qualified cohabitant</i> who is a <i>member</i> of the <i>scheme</i> . |
| <i>'non-member civil partner'</i> | in relation to a <i>scheme</i> , the <i>civil partner</i> who is not the <i>member civil partner</i> . |
| <i>'non-member spouse'</i> | in relation to a <i>scheme</i> , the <i>spouse</i> who is not the <i>member spouse</i> . |
| <i>'non-member qualified cohabitant'</i> | in relation to a <i>scheme</i> , the <i>qualified cohabitant</i> who is not the <i>member qualified cohabitant</i> . |
| <i>'NPA'</i> | <i>normal pensionable age</i> is the earliest age at which a <i>member</i> of a <i>scheme</i> is entitled to receive benefits under the <i>rules</i> of the <i>scheme</i> on retirement from <i>relevant employment</i> , disregarding |

any such *rules* providing for early retirement on grounds of ill-health or otherwise.

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| ‘ <i>order</i> ’ | pension adjustment order. |
| ‘ <i>qualified cohabitant</i> ’ | has the meaning in paragraph 1. |
| ‘ <i>reckonable service</i> ’ | service in relevant employment during membership of any <i>scheme</i> . |
| ‘ <i>rules</i> ’ | in relation to a <i>scheme</i> , the provisions of the <i>scheme</i> by whatever name called. |
| ‘ <i>scheme</i> ’ | has the meaning in paragraph 11. |
| ‘ <i>relevant percentage</i> ’ | the percentage of the <i>retirement benefit</i> accrued during the <i>relevant period</i> that is to be paid to the person specified in the <i>order</i> . |
| ‘ <i>relevant period</i> ’ | the period of <i>reckonable service</i> of the <i>member spouse</i> , or <i>member civil partner</i> prior to the granting of the <i>decree</i> or the period of <i>reckonable service</i> of the <i>member qualified cohabitant</i> prior to the ending of the relationship which is to be taken into account. |
| ‘ <i>retirement benefit</i> ’ | all benefits provided under a <i>scheme</i> other than <i>contingent benefits</i> . |
| ‘ <i>spouse</i> ’ | includes a person who is a party to a marriage that has been dissolved under the Family Law (Divorce) Act 1996 or under the law of a country or jurisdiction other than the State where the dissolution is entitled to be recognised as valid in the State. |
| ‘ <i>trustees</i> ’ | for the purposes of the <i>legislation</i> , the <i>trustees</i> of <i>schemes</i> which are established under a legal trust. For other <i>schemes</i> (i.e., including <i>buy-out bonds</i> , annuity contracts, <i>section 784 retirement annuity contracts</i> or <i>section 785 policies</i> , <i>personal retirement savings account</i> and <i>schemes</i> established under statute) <i>trustees</i> means the persons who administer the <i>scheme</i> . |

s1(2)-95, s5-95, s1(2)-96, s1(2)-10, s1(3)-10

5. The Family Law Act 1995 came into operation on 1 August 1996 following the making of a commencement order by the Minister for Equality and Law Reform, now called the Minister for Justice and Equality. Divorce legislation, under the Family Law (Divorce) Act 1996 became effective on 27 February 1997. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 came into operation on 1 January 2011 following the making of a commencement order by the Minister for Justice and Law Reform, with the exception of section 5, which came into operation on 23 December 2010.

s12(20)-95, s17(20)-96, s122(3)-10, s188(3)-10

6. Where there is any conflict between the *legislation* and:

- the *rules* of the *scheme*,
- the provisions of the Act,
- the limitations on, or provisions relating to, the payment of *scheme* benefits as set down by Revenue,

the *legislation* is overriding. A *trustee* of a *scheme* is not liable for any loss or damage caused by their non-compliance with the *rules* of the *scheme* or with the Act as amended if the non-compliance was occasioned by their compliance with a direction of the *court* under the *legislation*.

(paragraphs 7 to 10 spare)

Part I – General content of the pension provisions of the legislation

This part of the notes provides a general overview of the content of the pension provisions of the legislation and explains the key terms used.

Scope of legislation

s16(2)-95, s2(1)-95, s20(2)-96, s2(1)-96, r3, s121(1)-10, s129(2)-10, s171-10, s173(3)-10

11. In deciding whether to make an *order* under the *legislation*, the *court* is obliged to have regard to such matters as both *spouses*, *civil partners* or *qualified cohabitants*' financial resources, needs and responsibilities. In particular, the *court* must take account of the value to each *spouse*, *civil partner* or *qualified cohabitant* of any benefit payable under a *scheme* which that *spouse*, *civil partner* or *qualified cohabitant* will lose the opportunity of acquiring as a result of the *decree* in the case of a *spouse* or *civil partner* or the ending of the relationship in the case of a *qualified cohabitant*.

For the purposes of these guidelines *scheme* means:

- an occupational pension *scheme* as defined under the Act (referred to herein as an '*occupational pension scheme*');
- a self-employed retirement annuity contract (or policy) as approved under section 784 (or section 785) of the Taxes Consolidation Act 1997 (referred to herein as a '*section 784 retirement annuity contract*' or '*a section 785 policy*');
- a trust *scheme*, or part of a trust *scheme*, approved under section 784(4) (or section 785(5)) of the Taxes Consolidation Act 1997 (referred to herein as a '*trust scheme*');
- a buy-out policy or other annuity contract approved by Revenue under Chapter I of Part 30 of the Taxes Consolidation Act 1997 (referred to herein as a '*buy-out bond*');
- a *personal retirement savings account* as approved under Part X of the Act and Chapter 2A, Part 30 of the Taxes Consolidation Act 1997 (referred to herein as a '*personal retirement savings account (PRSA)*');

- any other *scheme* or arrangement (including a *PRSA* and a *scheme* or arrangement established by or pursuant to statute or instrument made under statute other than under the Social Welfare Acts, and a cross-border *scheme* established in an EU Member State other than the Republic of Ireland, but the enforceability of the *order* will be subject to the national law governing that institution for occupational retirement provision) that provides or is intended to provide:
 - (1) benefits for a person who is a *member* of the scheme or arrangement (the '*member*') upon retirement at normal pensionable age or upon earlier or later retirement or upon leaving, or upon the ceasing of, the relevant employment;
 - (2) benefits for the widow, widower, surviving civil partner, surviving qualified cohabitant, or dependants of the *member*, or for any other persons, on the death of the *member*.

12. In particular, benefits arising from membership of an overseas pension *scheme* fall within the scope of the *legislation*. An income continuance policy or scheme providing an income or other benefit in the event of disability is not a *scheme* for the purposes of the *legislation*. Pensions and other benefits provided under the Social Welfare Acts are also outside the scope of the *legislation*.

The Pensions Authority does not consider *approved retirement funds* or *approved minimum retirement funds* to be pension arrangements for the purposes of obtaining a pension adjustment order.

Separate pension adjustment orders must be made for each *scheme* and for each benefit within each *scheme*.

Contingent benefit

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

13. *Contingent benefit* means a benefit payable under a *scheme* in the event of the death of the *member spouse*, *member civil partner* or *member qualified cohabitant*, while in *relevant employment* prior to the *NPA*, if any, specified in the *rules* of the *scheme*.

14. The definition of *contingent benefit* includes lump sum payments and pensions payable to a *spouse*, *civil partner*, *qualified cohabitant*, dependant.

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

15. *Relevant employment* means any employment any period treated as employment, or any period of self-employment to which a *scheme* applies (see paragraphs 298 to 301).

16. Hence, the amount of any lump sum death benefit or survivor's pension for which a self-employed person, or an employee in non-pensionable employment, is insured under a *section 785(5) policy or trust scheme* is a *contingent benefit*.

17. Any benefit payable on death, under a *scheme*, in respect of a former employment (e.g., a preserved death benefit) would not rank as a *contingent benefit* for the purposes of the *legislation*.

Retirement benefit

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

18. *Retirement benefit* means all benefits provided under a *scheme* other than *contingent benefits*.

19. This means that any benefit which the *scheme* would be under an obligation to pay to, or in respect of, the *member spouse, member civil partner or member qualified cohabitant*, upon or following retirement at *NPA*, earlier or later retirement, or termination of *reckonable service*, is a *retirement benefit*.

Retirement benefit includes personal benefits (whether in the form of a pension payable for life or for a temporary period; a lump sum payable in addition to, or in substitution for, all or part of the pension; and periodic pension increases). The definition also includes benefits payable on death following retirement (i.e., any guaranteed payment of the pension of the *member spouse, member civil partner or member qualified cohabitant*, after a period following their death), and in the case of a *member spouse*, pensions payable to dependants and preserved death benefits.

Member

s2(1)-95, s2(1)-96, r3, s121(1)-10, s187(1)-10

20. A *member* of a *scheme* means any person who, having been admitted to membership of the *scheme* under its *rules*, remains entitled to any benefit under the *rules*.

21. The definition of *member*, therefore, includes a person to, or in respect of, whom any of the following is provided:

- a deferred *retirement benefit* from an *occupational pension scheme* or a *buy-out bond* related to a previous period of *reckonable service*;
- a *retirement benefit* arising from a previous period of *reckonable service* which is in course of payment;
- a prospective *retirement benefit* or *contingent benefit* related to any current employment or *active membership* of a *scheme*;
- a prospective *retirement benefit* or *contingent benefit* under a *section 784 retirement annuity contract*, a *section 785 policy*, or a *trust scheme* as a result of contributions made or being made to such contract, policy or *scheme*;
- a prospective *retirement benefit* or *contingent benefit* from a *personal retirement savings account* and a *scheme* or arrangement established by or pursuant to statute or instrument made under statute, other than under the Social Welfare Acts.

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

22. *Reckonable service* means service in *relevant employment* during membership of any *scheme*.

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

23. An *active member* of a *scheme* means a *member* who is in *reckonable service* relating to that *scheme*.

Recognition of scheme benefits by adjustment to non-pension assets

s12(23)-95, s17(23)-96, s121(7)-10, s187(6)-10

24. The *court* may decide to take account of the value of either *spouse, civil partner or qualified cohabitant's retirement benefit*, by means of an order other than a pension adjustment order (e.g., by making an adjustment to the allocation of the non-pension marital assets, such as the family home, under a property adjustment order). Similarly, the *court* may decide that adequate financial protection can be made for the *non-member spouse, non-member civil partner or non-member qualified cohabitant* and/or in the case of a *member spouse* any other *dependent member of the family*, in the event of the death of the *member spouse, member civil partner or member qualified cohabitant*, by, for example, making a financial compensation order (i.e. an order requiring the *member spouse, member civil partner or member qualified cohabitant* to effect a new, or to assign an existing, life assurance policy for the benefit of the dependants and to pay premiums to such a policy). The *legislation* requires the *court* to consider the question of whether adequate and reasonable financial provision exists or can be made for the *spouse, civil partner or qualified cohabitant* or in the case of a *member spouse* the *dependent member of the family* by means of any of the other orders that are available under the Acts prior to making a pension adjustment order.

Recognition of scheme benefits by pension adjustment order

s12(2)-95, s12(3)-95, s17(2)-96, s17(3)-96, s121(2)-10, s121(5)-10, s187(2)-10, s187(5)-10

25. Either of the *spouses, civil partners or qualified cohabitants* (or in the case of a *member spouse*, a person for the benefit of a *dependent member of the family*) may apply to the *court* for a pension adjustment order in addition to, or in substitution for, any other type of order under the *legislation*.

Declaration of scheme benefits

s38(7)-95, s12(25)-95, s38(6)-96, s17(25)-96, s142(1)-10, s126(2), s197(1)-10, s192-10

26. Whether they are to be recognised by the making of a pension adjustment order or any other type of order, it will be necessary to establish the amount and value of either *spouse, civil partner or qualified cohabitant's accrued retirement benefit* and the amount of the *contingent benefit* that is payable (or which, but for the granting of the *decree* in the case of a *member spouse or member civil partner* or but for the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable) under a *scheme* of which either *spouse, civil partner or qualified cohabitant* is a *member*. The information which must be provided by the *trustees*, if directed by the *court*, in order to comply with the *legislation*, is set out in paragraphs 54 to 61. With the consent of the *member spouse, member civil partner or member qualified cohabitant*, the *trustees* should, if possible, provide the information voluntarily to avoid putting the parties to the expense of obtaining a *court order*.

Accrued retirement benefit

s12(2)-95, s17(2)-96, s121(2)-10, s187(2)-10

27. *Accrued retirement benefit* means *retirement benefit* accrued to the date of the granting of the *decree* in the case of a *member spouse or member civil partner* or but for the ending of the relationship in the case of a *member qualified cohabitant*, or to such other date as may be specified by the *court*.

Making of pension adjustment order

28. Part 3 of these notes sets out the sequence of events leading to the making of an *order*. Separate *orders* will be required if the *court* decides, on application, to make an *order* in relation to both *retirement benefit* and *contingent benefit*. Furthermore, multiple *orders* may be required if *retirement benefit* relates to membership of several different *schemes*. This might arise if the *member spouse, member civil partner or member qualified cohabitant*, has been a *member* of several *schemes* relating to different employments or if they are a *member* of more than one *scheme* relating to the current employment (e.g., where voluntary contributions are held under a separate trust from that relating to other *scheme* benefits).

Pension adjustment order - retirement benefit

s12(2)-95, s12(21)-95, s17(2)-96, s17(21)-96, s121(2)-10, s121(3)-10, s122(4)-10, s187(2)-10, s187(3)-10, s188(5)-10

29. If an *order* is made in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit*, this will require that part, or all, of the *member spouse*, *member civil partner* or *member qualified cohabitant's* accrued *retirement benefit* be payable to EITHER the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, OR in the case of a *member spouse* to a person for the benefit of a *dependent member of the family*, as specified in the *order*.

Part 3 of these notes sets out the detail that will be contained in the *order*. Most importantly this will include:

- the period of *reckonable service* of the *member spouse*, or *member civil partner* prior to the granting of the *decree* or the period of *reckonable service* of the *member qualified cohabitant* prior to the ending of the relationship which is to be taken into account (the '*relevant period*'); and
- the percentage of the *retirement benefit* accrued during the *relevant period* that is to be paid to the person specified in the *order* (the '*relevant percentage*').

The *order* will then be served on the *trustees* of each *scheme* of which the *member spouse*, *member civil partner* or *member qualified cohabitant* was a *member* during the *relevant period*.

Calculation of designated benefit

s12(1)-95, s17(1)-96, r5, s121(1)-10, s187(1)-10

30. The *order* will not specify the amount of *retirement benefit* to be paid on foot of the *order*. Instead, on the basis of the *relevant period* and *relevant percentage* specified in the *order*, the *trustees* of each *scheme* will calculate the *designated benefit* payable from that *scheme* in relation to the *order* using the methodology set out in part 4 of these notes.

Payment of designated benefit

s12(7)-95, s12(9)-95, s12(10)-95, s17(7)-96, s17(9)-96, s17(10)-96, r35, s123(4)-10, s123(6)-10, s123(7)-10, s189(4)-10, s189(6)-10, s189(7)-10

31. Part 5 of these notes covers the conditions governing the payment of the *designated benefit* and the circumstances under which the value of the *designated benefit* may crystallise and become payable as a *transfer amount*.

These include:

- death of the *member spouse, member civil partner or member qualified cohabitant*; and
- death of the *non-member spouse, non-member civil partner or non-member qualified cohabitant*.

s12(15)-95, s17(15)-96, r25, s124(2)-10, s190(2)-10

32. Part 6 of these notes deals with the procedure for reducing the *member spouse, member civil partner or member qualified cohabitant's retirement benefit or contingent benefit* under the *scheme* following the making of an *order* in relation to their *retirement benefit*.

Transfer amounts

s12(4)-95, s12(5)-95, s12(6)-95, s12(8)-95, s17(4)-96, s17(5)-96, s17(6)-96, s17(8)-96, r29, s121(4)-10, s123(1)-10, s123(3)-10, s123(5)-10, s187(4)-10, s189(1)-10, s189(3)-10, s189(5)-10

33. As an alternative to receiving the *designated benefit*, the *non-member spouse, non-member civil partner or non-member qualified cohabitant* (or in certain circumstances the *trustees*) may initiate a transfer. *Transfer amounts* are described in part 7 of these notes.

Pension adjustment order – contingent benefit

s12(3)-95, s17(3)-96, r42, s121(5)-10, s187(5)-10

34. The *court* may make an *order* which requires that part, or all, of the *contingent benefit* that is payable (or which, but for the granting of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable) on the death of the *member spouse*, *member civil partner* or *member qualified cohabitant*, be paid to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* AND/OR in the case of a *member spouse* to a person for the benefit of a *dependent member(s) of the family*, as specified in the *order*. Part 8 of these notes sets out the conditions governing the calculation and payment of *contingent benefit* under such an *order* and the procedure for reducing the *member spouse*, *member civil partner* or *member qualified cohabitant's* *contingent benefit* under the *scheme*.

Trustees

s2(1)-95, s12(20)-95, s12(25)-95, s2(1)-96, s17(20)-96, s17(25)-96, s109(1)-10, s122(3)-10, s126(2)-10, s187(1)-10, s188(3)-10, s192-10

35. The *legislation* empowers the *court* to direct *trustees*, both in terms of requiring them to provide information in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's* benefits under the *scheme* and in requiring them to give effect to *orders*. For the purposes of the *legislation*, *trustee* means the *trustees* of *schemes* which are established under a legal trust. For other *schemes* (i.e., including *buy-out bonds*, annuity contracts, *section 784 retirement annuity contracts* or *section 785 policies*, *personal retirement savings account* and *schemes* established under statute) *trustees* means the persons who administer the *scheme*. Other than in the case of *schemes* established under statute, the administrator of a *scheme* which is not a trust is likely to be a life assurance company.

Expenses

s12(22)-95, s17(22)-96, s125-10, s191-10

36. The *legislation* provides that any costs incurred by the *trustees* in complying with an *order*, or a direction of the *court*, shall be borne by the *member spouse*, *member civil partner* or *member qualified cohabitant* and the other person concerned in such proportions as the *court* may determine. Such costs could include, but are not confined

to, professional and other expenses involved in providing information in respect of a *member's* entitlement under a *scheme* and additional administration expenses for the *scheme* arising from the *order*. Similarly, costs incurred by the *trustees* where they choose to make representations to the *court*, following notice of an application for an *order*, (including, for example, legal fees and out-of-pocket expenses) shall be borne by the parties to the proceedings, as the *court* may determine. The costs likely to be incurred by the *trustees* will vary depending on the circumstances and nature of the *scheme*. The *trustees* should, however, endeavour to provide an estimate of the likely level of expense when providing information prior to the making of an *order*.

s12(22)-95, s17(22)-96, s125(1)-10, s191(1)-10

37. If the *court* does not determine the basis of apportionment of such costs, these shall be borne equally between the *member spouse*, *member civil partner* or *member qualified cohabitant* and the other person concerned.

s12(22)-95, s17(22)-96, s125(2)-10, s191(2)-10

38. 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 *order*, as appropriate.

Variation of order

s12(26)-95, s18(2)-95, s18(1)-95, s17(26)-96, s22(2)-96, s22(1)-96, s121(8)-10, s131(2)-10, s131(1)-10, s173(6)-10

39. Unless, in making the *order*, the *court rules* that it may not be varied, an *order* made in relation to either *spouse* or *civil partner's retirement benefit* may, on application to the *court*, be varied or discharged by a subsequent *order*. In relation to *qualified cohabitants*, the *court* may on application to it vary or discharge both *retirement benefit* and *contingent benefit orders*.

s18(1)-95, s22(1)-96, s131(1)-10

40. There is no power to vary an *order* made in favour of a *spouse* or *civil partner* in relation to *contingent benefit*.

Revenue issues

41. As a general principle, following the making of an *order* in relation to *retirement benefit*, the *designated benefit* continues to form part of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* for the purpose of compliance with the limitations set down by Revenue regarding maximum approvable benefits. This applies regardless of whether a *transfer amount* has been paid from the *scheme* in lieu of the *designated benefit*.

Similarly, benefits payable on the death of the *member spouse*, *member civil partner* or *member qualified cohabitant* (either under an *order* in relation to *retirement benefit* or under an *order* in relation to *contingent benefit*) form part of the *member spouse*, *member civil partner* or *member qualified cohabitant's* 'death-in-service' benefits for the purposes of Revenue limits.

Part 9 of these notes describes the issues relating to Revenue maximum benefits and taxation - both in the context of the residual benefits that may be provided for the *member spouse*, *member civil partner* or *member qualified cohabitant* following the making of an order(s) and the format of the *designated benefit* (or other benefit following payment of a *transfer amount*) that may be provided for the person named in the *order*.

(Paragraphs 42 - 49 spare)

Part 2 – Information

This part of the notes sets out the various items of information which must be provided in order to satisfy the requirements of the legislation.

General

s38(7)-95, s12(25)-95, s12(13)-95, s38(6)-96, s17(25)-96, s17(13)-96, s142(1)-10, s126(2)-10, s123(9)-10, s197(1)-10, s192-10, s189(9)-10

50. In deciding whether or not to make an *order*, the *legislation* enables the *court* to obtain various items of information in respect of the *member spouse*, *member civil partner* or *member qualified cohabitant's scheme* benefits. Furthermore, after an *order* is made, the *trustees* of the *scheme* in question are obliged, under certain circumstances, to provide information to the person named in the *order* and to the *court*. The *trustees* may also require information from the person concerned to enable them to give effect to the *order*. This part of the notes sets out the various items of information which must be provided in order to satisfy the requirements of the *legislation*. Where appropriate, the notes also specify the information which may be provided, and the procedures which may be applied by the *trustees* (although not required by the *legislation*) in order to satisfy best practice and facilitate the efficient operation of a pension adjustment order.

Assessment of value and amount of scheme benefits

s38(7)-95, s38(6)-96, s142(1)-10, s197(1)-10

51. If proceedings have been instituted for any of the orders specified in the *legislation*, each *spouse*, *civil partner* or *qualified cohabitant* is required to give particulars of their property and income to the other *spouse*, *civil partner* or *qualified cohabitant* (or in the case of a *member spouse* to a person for the benefit of a *dependent member of the family*). In this context, property would be deemed to include rights under a *scheme*.

s12(24)-95, s17(24)-96, s126(1)-10

52. Under section 54 of the Act and disclosure of information regulations made under that section, the *spouse* or *civil partner* of a *member* of an *occupational pension scheme* is entitled on request to receive basic information in relation to that *scheme* (including: *scheme* documentation, annual reports, and copies of audited accounts and actuarial valuation reports, where these are produced). The provisions of the disclosure of

information *legislation* will apply if proceedings for the granting of a *decree* have been instituted and will continue to apply following the granting of a *decree*.

s12(25)-95, s17(25)-96, r47, s126(2)-10, s192-10

53. The *court* may direct the *trustees* to provide more specific information (as set out in paragraphs 54 to 61) in respect of the *member spouse*, *member civil partner* or *member qualified cohabitant's scheme* benefits. The *court* may issue such a direction on its own initiative but must do so following a request by either of the *spouses*, *civil partners* or *qualified cohabitants* (or any other person concerned). Such information must be provided by the *trustees* within the period specified by the *court*.

General membership information

54. In order to satisfy the requirements of the *legislation* following a *court* direction under paragraph 53, the following general membership information must be provided:

1. name of the *scheme* (or other appropriate identification);
2. name of *member spouse*, *member civil partner* or *member qualified cohabitant*;
3. date on which *member spouse*, *member civil partner* or *member qualified cohabitant* first began to accrue *retirement benefit* and/or was first provided with *contingent benefit* under the *scheme*;
4. current pensionable salary and the method of its calculation (if relevant);
5. details of the amount of any *AVCs*, the period during which these were paid, and the additional *retirement benefit* or *contingent benefit* which will be provided in respect of the *AVCs*;
6. details of the benefits provided following a transfer of accrued rights from another *scheme* (if any) and the period of service in that *scheme* to which this relates.

55. Paragraphs 56 to 60 set out the information which must be provided in relation to *retirement benefit* that is payable (or which, but for the granting of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable) under the *scheme*. The information must relate to a date specified by the *trustees*, not being earlier than 12 months before the date on which the *trustees* were directed to provide the information.

When provided, the information must be accompanied by the name and address of the person to be contacted if there is any further enquiry. With the consent of the *member spouse, member civil partner or member qualified cohabitant*, the *trustees* should, if possible, provide the information voluntarily to avoid putting the parties to the expense of obtaining a *court order*.

Retirement benefit - defined benefit

r48

56. If part, or all, of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* under the *scheme* is calculated on a *defined benefit basis*, in order to satisfy the requirements of the *legislation* the following information must be provided:

1. calculation of the amount of each element of accrued *retirement benefit* payable under the *rules* of the *scheme* at the time of the date of the *decree* in the case of a *member spouse or member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* assuming termination of the *member spouse, member civil partner or member qualified cohabitant's reckonable service* on the date specified by the *trustees* (see paragraph 55);
2. the method by which the amounts in (1) have been calculated (*where additional retirement benefit has been secured or granted by way of AVCs or a transfer of accrued rights from a previous scheme, the amount of such benefits should be either included in the main calculation - with a statement to this effect - or shown separately*);
3. the date or dates on which such benefit becomes payable;
4. the provision for increases in such benefits and if there is no provision for increases this must be stated; and
5. the *actuarial value* of such benefits, as at the date specified by the *trustees*.

Where the *scheme* concerned is an *occupational pension scheme* which is a funded *scheme* within the meaning of that term under section 2(1) of the Act, the *trustees* should include a general statement to the effect that the ability to make any payment from the *scheme* is subject to the availability of sufficient resources.

In particular, the *legislation* provides that, where, in the opinion of the *actuary*, the *scheme* is not adequately funded, the magnitude of any *transfer amount* (or other amount payable following the death of the *member spouse*, *member civil partner* or *member qualified cohabitant* or the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*) made in lieu of the *designated benefit* may be adjusted to take account of the inadequacy of the funding of the *scheme*.

If, at the time the information is being provided, the *actuary* to the *scheme* is of the opinion that such adjustment would be necessary, were a *transfer amount* payable in lieu of *designated benefit* arising under an *order*, this opinion should be conveyed by the *trustees* when providing information in respect of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefits*.

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

57. *Actuarial value* means the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) under a *scheme* calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to *NPA* and thereafter in accordance with normal life expectancy on the assumption that the *member spouse*, *member civil partner* or *member qualified cohabitant* is in a normal state of health having regard to their age.

58. The *actuarial value* should be calculated on a basis which an *actuary* has approved as being consistent with the appropriate guidelines issued by the Society of Actuaries in Ireland.

Retirement benefit - defined contribution

r49

59. If part, or all, of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* under the *scheme* is calculated on a *defined contribution basis*, the following information must be provided:

1. the *accumulated value* at a specified date (see paragraph 55) of the contributions paid by, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* for the purpose of *retirement benefit* to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the end of the relationship in the case of a *member qualified cohabitant* assuming termination of the *member spouse*, *member civil partner* or *member qualified cohabitant's reckonable service* on the specified date; and

2. the date or dates on which *retirement benefit* falls due together with a brief explanation as to how the *accumulated value* would be applied to provide *retirement benefit*.

Information required prior to the decree/order

r47

60. Where the *court* directs the *trustees* to provide information prior to the granting of the *decree* in the case of a *member spouse* or *member civil partner* or the end of the relationship in the case of a *member qualified cohabitant*, the information in paragraphs 56 and 59 should be provided upon the assumption that the *decree* in the case of a *member spouse* or *member civil partner* or the end of the relationship in the case of a *member qualified cohabitant* is granted at the specified date (see paragraph 55).

Contingent benefit

r50

61. The following information must be provided in relation to *contingent benefit* that is payable (or which, but for the granting of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable) under the *scheme*:

1. calculation of the amount of each element of *contingent benefit* payable under the *rules* of the *scheme* assuming the *member spouse*, *member civil partner* or *member qualified cohabitant* died on the specified date, together with a reference to the specific rule or policy number under which each such element is provided; and
2. the method by which the amounts in (1) have been calculated.

Making of a pension adjustment order

s12(18)-95, s12(20)-95, s17(18)-96, s17(20)-96, s122(1)-10, s122(3)-10, s124(5)-10, s188(1)-10, s188(3)-10, s190(5)-10

62. A person who applies for an *order* under the *legislation* must give notice thereof to the *trustees* of the *scheme* in question. In deciding whether or not to make an *order*, and

in determining the provisions of the *order*, the *court* shall have regard to any representations made by the *trustees*.

Where the *order* will involve non-compliance with the *rules* of the *scheme* or with the Act, the *trustees* should request that the *order* would include a direction to the *trustees* so that they will have the protection of whichever is relevant of section 12(20) of the Family Law Act 1995, section 17(20) of the Family Law (Divorce) Act 1996, sections 122(3) and 124(5) or sections 188(3) and 190(5) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, which provide that *trustees* are not liable for any loss or damage caused by non-compliance with the *rules* of the *scheme* or with the Act if the non-compliance is occasioned by compliance with a direction of the *court* under the *legislation*.

s12(21)-95, s17(21)-96, s122(4)-10, s188(5)-10

63. If an *order* is made, the registrar or clerk of the *court* concerned will serve a copy of the *order* on the *trustees* of each *scheme* in question.

Following the making of an order

64. Following the making of an *order(s)* the *trustees* should notify the person specified in the *order* of the amount and nature of the *designated benefit* and/or the amount of *contingent benefit* that is payable under the *order(s)*. (The methodology for calculating the *designated benefit* and/or the *contingent benefit* that may be payable under an *order* is set out in part 4 and part 8 of these guidance notes, respectively.)

They should also notify the specified person of the options available regarding any *transfer amount* that may be payable in lieu of the *designated benefit* (*transfer amounts* are covered in part 7 of these guidance notes.) The *trustees* should request the specified person to maintain contact with the *scheme* (e.g., by suggesting that the person notifies the *trustees* of any changes in their address) and to ensure that arrangements are made for their personal representatives to notify the *trustees* in the event of their death. The *trustees* will not be liable for any loss where the specified person has not maintained contact with the *scheme* or made the necessary arrangements in relation to the notification of their death.

The *trustees* should provide the name or title and the address of the person to whom enquiries should be sent.

Transfer amount at request of non-member spouse, non-member civil partner or non-member qualified cohabitant

s12(4)-95, s12(5)-95, s17(4)-96, s17(5)-96, r30, s121(4)-10, s123(1)-10, s187(4)-10, s189(1)-10

65. If an *order* in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* has been made in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, they may apply to the *trustees* for a *transfer amount* in lieu of receiving the *designated benefit* (see paragraph 262). Such an application should be made in writing and should be accompanied by the following information:

- evidence of date of birth of *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (if relevant);
- the name of the *occupational pension scheme* to which the *transfer amount* should be applied (if relevant) and the written agreement of the *trustees* thereof to accept such payment; and
- the name of the life assurance company to which the *transfer amount* should be applied (if relevant).

Transfer amount initiated by trustees

s12(6)-95, s12(8)-95, s12(13)-95, s17(6)-96, s17(8)-96, s17(13)-96, r34, s123(3)-10, s123(5)-10, s123(9)-10, s189(3)-10, s189(5)-10, s189(9)-10

66. If the *order* relates to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit*, the *trustees* may, in certain circumstances, give effect to the *order* by applying a *transfer amount* without obtaining the consent of the person in whose favour it has been made. Paragraphs 277 and 278 set out the criteria governing the application of *transfer amounts* without consent. Following such a transfer, the *trustees* must notify both the person named in the *order* and the registrar or clerk of the *court* concerned. They must also provide details of the *transfer amount* and particulars of the *scheme* or life assurance company to which it has been applied.

Member spouse, member civil partner or member qualified cohabitant ceases to be active member

s12(12)-95, s17(12)-96, s123(8)-10, s189(8)-10

67. If, following the making of an *order* in relation to an *occupational pension scheme* (and prior to the payment of a *transfer amount*), the *member spouse*, *member civil partner* or *member qualified cohabitant* ceases to be an *active member* of the *scheme*, the *trustees* must notify both the registrar or clerk of the *court* concerned and the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* of such cessation.

Death of non-member spouse, non-member civil partner or non-member qualified cohabitant

s12(9)-95, s12(10)95, s17(9)-96, s17(10)-96, r38, r41, s123(6)-10, s123(7)-10, s189(6)-10, s189(7)-10

68. If the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* predeceases the *member spouse*, *member civil partner* or *member qualified cohabitant*, either before or after commencement of the *designated benefit* (and prior to the payment of a *transfer amount*) a benefit becomes payable to the personal representatives of the deceased *non-member spouse*, *non-member civil partnership*, or *non-member qualified cohabitant* as outlined in paragraphs 215 and 241. The *trustees* should require evidence of death prior to making any payment to the personal representatives.

Commencement of designated benefit

69. When, following the making of an *order* in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (and prior to the payment of a *transfer amount*), the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* is about to commence, the *trustees* should notify the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* of the amount and nature of the *designated benefit*. The *trustees* may also choose (but are not obliged) to notify the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*:

- whether they would be prepared to provide an alternative benefit to, or in respect of, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* under the *scheme* and, if so, the amount of such alternative benefit; and

- the amount of the *transfer amount* which could be provided in lieu of the *designated benefit*.

Payments under an order remain valid

70. Prior to making any payment in connection with an *order(s)* the *trustees* should satisfy themselves that the person in whose favour the *order(s)* is made remains eligible to receive such payment (e.g., that the person in whose favour the *order* is made is alive and has not remarried, entered into a civil partnership or in the case of a *member spouse* ceased to be a *dependent member of the family*). The *trustees* may, in the absence of evidence to the contrary, rely on the statement of such person.

(paragraphs 71 - 74 spare)

Part 3 - Pension adjustment orders

This part of the notes sets out the sequence of events leading to the making of a pension adjustment order and the details that will be contained in the order.

Application

s12(2)-95, s12(3)-95, s12(23)-95, s17(2)-96, s17(3)-96, s17(23)-96, s121(2)-10, s121(5)-10, s121(6)-10, s187(2)-10, s187(5)-10

75. Either *spouse, civil partner or qualified cohabitant* (or in the case of a *member spouse* a person on behalf of a *dependent member of the family*) may apply for an order in relation to *retirement benefit and/or contingent benefit* under a *scheme* of which one of the *spouses, civil partners or qualified cohabitants* is a *member*. The *court* will not make an order if the *spouse or civil partner* who applies for it has remarried or entered into a civil partnership.

s12(2)-95, s17(2)-96, s121(2)-10, s187(2)-10, s195-10

76. An order in relation to either *spouse, civil partner's or qualified cohabitant's retirement benefit* may be made at the time of the granting of the *decree* in the case of a *member spouse or member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* or at any time thereafter during the *member spouse or member civil partner's* lifetime (including following commencement of their *retirement benefit*). However, in relation to *qualified cohabitants*, while proceedings must be instituted within the lifetime of the *member*, there is also a statutory limitation in place requiring that applications for pension adjustment orders be commenced within two years of the time that the relationship has ended.

s12(3)-95, s17(3)-96, s121(5)-10, s187(5)-10, s195-10

77. An order in relation to either *spouse or civil partner's contingent benefit* under a *scheme* must be made within one year following the granting of the *decree*. In relation to *qualified cohabitants*, an application for a contingent benefit order can be made within two years of the ending of the relationship.

Considerations

s12(18)-95, s12(23)-95, s17(18)96, s17(23)-96, s122(1)-19, s121(7)-10, s188(1)-10, s187(6)-10

78. The person applying for the *order* must give notice to the *trustees* of the *scheme* concerned. In deciding whether or not to make an *order*, and in determining the provisions of the *order*, the *court* must 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 an *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 consider whether adequate and reasonable financial provision already exists for the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* and in the case of a *member spouse* any other *dependent member of the family* (or can be made by any of the other *order(s)* that are available under Part II of the Family Law Act 1995, Part III of the Family Law (Divorce) Act 1996, or sections 115 to 128 and 174 to 190 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Information contained in pension adjustment order(s)

s12(2)-95, s12(20)-95, s12(21)-95, s17(2)-96, s17(20)-96, s17(21)-96, s121(2)-10, s122(3)-10, s122(4)-10, s187(2)-10, s188(3)-10, s188(5)-10

79. The *court* may make an *order* in relation to either *spouse*, *civil partner* or *qualified cohabitant's retirement benefit*. Such an *order* will provide for the payment of a benefit to either the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (and their personal representatives on death) or in the case of a *member spouse* a specified person for the benefit of a person who is (and for so long only as they remain) a *dependent member of the family*. The *order* will be served on the *trustees* of each *scheme* of which the *member spouse*, *member civil partner* or *member qualified cohabitant* was a *member* during the *relevant period* and will contain the following information:

- (a) the name of the *scheme* (or other appropriate identification);
- (b) the name of the *member spouse*, *member civil partner* or *member qualified cohabitant*;
- (c) the name and address of the person in whose favour the *order* is made;
- (d) in the case of a *member spouse* the name of the *dependent member of the family* (if relevant);

- (e) type of *order* (i.e. pension adjustment order in relation to *retirement benefit* made under section 12(2) of the Family Law Act 1995, section 17(2) of the Family Law (Divorce) Act 1996, or under sections 121(2) or 187(2) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010);
- (f) date of commencement of period of *reckonable service* of *member spouse*, *member civil partner* or *member qualified cohabitant* to be taken into account;
- (g) date of ending of period of *reckonable service* of *member spouse*, *member civil partner* or *member qualified cohabitant* to be taken into account (but not later than date of granting of *decree*) in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*;
- (h) percentage of the *retirement benefit* accrued during the period between (vi) and (vii) above, to be paid to the person specified in (iii) above; and
- (i) such directions (if any) to the *trustees* of the *scheme* as the *court* considers appropriate for the purposes of the *order* including directions compliance with which occasions non-compliance with the *rules* of the *scheme* or the Act.

s12(3)-95, s12(20)-95, s12(21)-95, s17(3)-96, s17(20)-96, s17(21)-96, s121(5)-10, s122(3)-10, s122(4)-10, s187(5)-10, s188(3)-10, s188(5)-10

80. The *court* may make an *order* in relation to the *contingent benefit* that is payable (or which, but for the making of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable) under the *scheme* of which either *spouse*, *civil partner* or *qualified cohabitant* is a *member*. Such an *order* will provide for the payment of a benefit on the death of the *member spouse*, *member civil partner* or *member qualified cohabitant* to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* and/or in the case of a *member spouse* a specified person for the benefit of a person who is (and for so long only as they remain) a *dependent member of the family*. This means that a single *order* (in relation to *contingent benefit*) may be made for the benefit of more than one person. The *order* will be served on the *trustees* of the *scheme* and will contain the following information:

- (a) the name of the *scheme* (or other appropriate identification);

- (b) the name of the *member spouse*, *member civil partner* or *member qualified cohabitant*;
- (c) the name and address of the person(s) in whose favour the *order* is made;
- (d) in the case of a *member spouse* the name of the *dependent member(s) of the family* (if relevant);
- (e) type of *order* (i.e., pension adjustment order in relation to *contingent benefit* made under section 12(3) of the Family Law Act 1995, section 17(3) of the Family Law (Divorce) Act 1996 or sections 121(5) or 187(5) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010);
- (f) identification of the *contingent benefit* to which the *order* applies (i.e., identified by reference to appropriate *scheme rules* or policy or contract number);
- (g) percentage of *contingent benefit* in (vi) to be paid to each of the person(s) specified under (iii), above; and
- (h) such directions (if any) to the *trustees* of the *scheme* as the *court* considers appropriate for the purposes of the *order* including directions compliance with which occasions non-compliance with the *rules* of the *scheme* or the Act.

Calculations

s12(1)-95, s17(1)-96, r5, s121(1)-10, s187(1)-10

81. An *order* will not specify the amount of the *designated benefit* or the amount of *contingent benefit* to be paid under the *order(s)*. The *trustees* will give effect to the *order(s)* by calculating the amounts using the procedures laid down in the *legislation* and in these notes.

Variation of orders

s18(1)-95, s18(2)-95, s22(1)-96, s22(2)-96, s131(3)-10, s173(6)-10

82. Subject to paragraph 83, the *court* may vary or discharge an *order* made in relation to either *spouse* or *civil partner's retirement benefit*. The variation may be made on application to the *court* by either of the *spouses* or *civil partners* or, in the case of the death of either of the *spouses* or *civil partners*, by any other person who, in the opinion of

the *court*, has a sufficient interest in the matter, or in the case of a *member spouse* by a person for the benefit of a *dependent member of the family*

In relation to *qualified cohabitants*, the *court* may on application to it by either *qualified cohabitant* vary or discharge both *retirement benefit* and *contingent benefit orders*.

s12(26)-95, s17(26)-96, s121(8)-10

83. When making an *order* in relation to either *spouse* or *civil partner's retirement benefit*, the *court* may restrict the circumstances under which the *order* may be varied or it may remove the power to vary the *order*.

s18(1)-95, s22(1)-96, s131(1)-10, s173(6)-10

84. There is no power to vary an *order* made in favour of a *spouse* or *civil partner* in relation to *contingent benefit*. The *court* does have the power to vary a *contingent benefit order* made in favour of a *qualified cohabitant*.

(paragraphs 85 - 89 spare)

Part 4 - Calculation of designated benefit

This part of the notes sets out the procedure to be used by the *trustees* of each scheme in calculating the *designated benefit* payable from the *scheme* following a pension adjustment order in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* under that *scheme*.

General

s12(1)-95, s17(1)-96, r4, s121(1)-10, s187(1)-10

90. The *legislation* defines the element of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* which is paid to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or in the case of a *member spouse* to a specified person for the benefit of a *dependent member of the family*) from each *scheme* under an *order* as the '*designated benefit*'. This Part of the notes sets out the procedure to be used by the *trustees* of each *scheme* in calculating the *designated benefit* payable from that *scheme*.

Retirement benefit service

r3

91. *Retirement benefit service* in relation to a *scheme* means the period of *reckonable service* within that *scheme* but excluding any period of *reckonable service* where:

- the only benefit in respect of such service is in respect of death before *NPA*; or
- the *member* has been notified in writing by the *trustees*, or the *rules* of the *scheme* so provide, that a period of service does not entitle him/her to *retirement benefit*; or
- in the case of *AVCs*, a *scheme* year (as defined in the Occupational Pension Schemes (Disclosure of Information) Regulations 2006, S.I. No. 301 of 2006) in which no *AVC* was made; or
- in the case of a *section 784 retirement annuity contract* or a *trust scheme*, a tax year in which no contribution was made.

Rules in force

r3

92. The calculation of the *designated benefit* will depend on the *rules* of the scheme in force at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* as they apply to the *member spouse, member civil partner or member qualified cohabitant's retirement benefit*. 'Rules in force' where used in these notes should be taken to mean the *rules* of the *scheme* in force at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* (subject to any overriding provisions of the Act).

Information in pension adjustment order

s12(1)-95, s12(2)-95, s17(1)-96, s17(2)-96, r3, r5, s121(1)-10, s121(2)-10, s121(3)-10, s187(1)-10, s187(2)-10, s187(3)-10

93. In calculating the *designated benefit*, the *trustees* of each *scheme* must give effect to the provisions of the *order*. This will contain specified information (see paragraph 79) including the following:

- the period of *reckonable service* of the *member spouse, or member civil partner* prior to the granting of the *decree* or the period of *reckonable service* of the *member qualified cohabitant* prior to the ending of the relationship which is to be taken into account (the '*relevant period*'); and
- the percentage of the *retirement benefit* accrued during the *relevant period* to be paid to the person specified in the *order* (the '*relevant percentage*').

s12(2)-95, s17(2)-96, s121(2)-10, s121(3)-10, s187(2)-10, s187(3)-10

94. The *court* is not empowered to specify a *relevant period* which ends after the date of the granting of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, but it may specify a *relevant period* which ends at an earlier date.

Determination of type of scheme

r6

95. The procedure for calculating the *designated benefit* payable from a *scheme* will depend on whether the *retirement benefit* in question arises from a *defined benefit* or a *defined contribution scheme*. Where under the *rules in force* the *retirement benefit* is calculated partly on a *defined benefit basis* and partly on a *defined contribution basis*, the *defined benefit* element of the *designated benefit* is calculated using the procedures set out for *defined benefit schemes* and the remaining part is calculated using the procedures set out for *defined contribution schemes* (see paragraphs 161 and 162 for hybrid schemes).

96. Any part of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* which is not directly determined by the amount of the contributions paid by, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* is deemed to be calculated on a *defined benefit basis*.

97. Any part of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* which is directly determined by the amount of the contributions paid by, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* is deemed to be calculated on a *defined contribution basis*.

98. Where certain specified benefits are being targeted but, under the *rules* of the *scheme*, the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* will ultimately be determined by the amount of contributions paid, such a *scheme* is a *defined contribution scheme* and not a *defined benefit scheme*.

99. A *section 784 retirement annuity contract* or a *trust scheme* approved under section 784(A) or section 785(5) of the Taxes Consolidation Act 1997 is a *defined contribution scheme* and the *designated benefit* should be calculated accordingly.

100. A *buy-out bond* is a *defined contribution scheme* and the *designated benefit* should be calculated as for a transfer of accrued rights from another *scheme* (see paragraph 171).

PRSAs are *defined contribution schemes* and the *designated benefit* should be calculated accordingly.

Defined benefit schemes

101. If *retirement benefit* is calculated on a *defined benefit basis* the calculation of the *designated benefit* will depend on the status of the *member spouse, member civil partner* or *member qualified cohabitant* at the date of the making of the *order* (i.e., whether the *member spouse, member civil partner* or *member qualified cohabitant* is then an *active member, a deferred pensioner* or a *current pensioner* of the *scheme* in question). Furthermore, if the *member spouse, member civil partner* or *member qualified cohabitant* is an *active member* of the *scheme*, the calculation of the *designated benefit* depends on whether the *member spouse, member civil partner* or *member qualified cohabitant*:

- commences to receive *retirement benefit* from the *scheme* on retirement at *NPA*,
- commences to receive *retirement benefit* from the *scheme* on retirement earlier or later than *NPA*, or
- withdraws from *reckonable service* and, on a later date, commences to receive *retirement benefit* from the *scheme*.

102. Paragraphs 104 to 120 describe the methodology for calculating the *designated benefit* (excluding benefits secured by *AVCs* or a transfer of accrued rights from another *scheme*) as follows:

| Status of <i>member spouse, member civil partner</i> or <i>member qualified cohabitant</i> at date of <i>order</i> | <i>Retirement benefit</i> commences | Paragraph |
|--|---|-----------|
| <i>Active member</i> | on retirement at <i>NPA</i> | 104 – 108 |
| <i>Active member</i> | on retirement before <i>NPA</i> | 109 – 110 |
| <i>Active member</i> | on retirement after <i>NPA</i> | 111 – 112 |
| <i>Active member</i> | on retirement following withdrawal from <i>reckonable service</i> | 113 – 118 |
| <i>Deferred pensioner</i> | on retirement | 119 |
| <i>Current pensioner</i> | already in payment | 120 |

103. Paragraphs 121 to 130 deal with the calculation of *designated benefit* following an alteration in benefit terms. Paragraphs 163 to 173 deal with benefits secured by *AVCs* and/or a transfer of accrued rights from another *scheme*. The total *designated benefit* payable under an *order(s)* is obtained by summing the relevant constituent parts.

Active member - designated benefit on retirement at NPA

r7

104. If the *member spouse, member civil partner or member qualified cohabitant* is an *active member* of the *scheme* in question at the date of the *order*, the *designated benefit* on their subsequent retirement at *NPA* will be calculated using the principle of uniform accrual (i.e., *retirement benefit* will be assumed to have accrued uniformly over the *member spouse, member civil partner or member qualified cohabitant's* entire period of *retirement benefit service*). The *designated benefit* will be calculated using the formula:

$$A \times B/C \times P$$

A = the amount of *retirement benefit* at *NPA*, payable in accordance with the *rules in force* (excluding benefits secured by *AVCs* or a transfer of accrued rights from another *scheme*).

B = the period of *retirement benefit service* which the *member spouse, member civil partner or member qualified cohabitant* has completed within the *relevant period*.

C = the period of *retirement benefit service* which the *member spouse, member civil partner or member qualified cohabitant* has completed at *NPA* as defined under the *rules in force*.

P = the *relevant percentage*.

105. In determining B and C above, *retirement benefit service* is calculated disregarding any rule of the *scheme* under which the number of years taken into account in calculating *retirement benefit* is subject to an upper limit (e.g. if the *member spouse, member civil partner or member qualified cohabitant* has completed 45 years' *retirement benefit service*, C equals 45 years, even if a maximum of 40 years' *scheme* service is taken into account in calculating *retirement benefit*).

106. *Retirement benefit service* is calculated, as the *trustees* decide, to either the next highest or next lowest month, or any period within that range, provided that the same basis is used to determine B and C.

107. The amount of the *designated benefit* is calculated, as the *trustees* decide, either to the next highest or next lowest whole euro, or any amount within that range.

Example

A *scheme* provides a retirement pension of 1/60th of final pensionable salary for each year of pensionable salary at *NPA* (65). Final pensionable salary is defined as the average salary earned in the three years preceding *NPA*. Pensionable service is defined as complete *years* of service with the company, after attaining age 25. *Members* qualify for *contingent benefit* on joining the company but must be over age 25 to be eligible for *retirement benefit*.

An employee, whose date of birth is 1 January 1961 joined the company on 1 January 1981 (i.e., at age 20).

The employee married on 1 January 1983 however the employee later separated and was subsequently granted a *decree* of divorce on 1 January 2001.

At the time of the granting of the *decree* of divorce the *court* made an *order* which specified:

Relevant period: 1 January 1983 to 1 January 2001
Relevant percentage: 50%

At *NPA* on 1 January 2026, the member spouse retires and final pensionable salary is calculated as follows:

| Calendar year | Earned salary |
|---------------|---------------|
| 2023 | €87,500 |
| 2024 | €90,000 |
| 2025 | €92,500 |

The period of the *retirement benefit service* within the *relevant period* is 1986 to 2001 (15 years).

The *designated benefit* to be paid to the person specified in the order is calculated as follows:

$$A = (87,500 + 90,000 + 92,500) \div 3 \times \frac{40}{60} = \text{€}60,000$$

$$B = 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2001 = 15 \text{ years}^*$$

$$C = 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2026 = 40 \text{ years}^*$$

$$P = 50\%$$

$$\text{Designated benefit (i.e., retirement pension)} = \text{€}60,000 \times \frac{15}{40} \times 50\% = \text{€}11,250$$

* B and C count from the commencement of service for retirement benefit purposes within the *relevant period* (1986) rather than from the commencement of *reckonable service* within the *relevant period* (1983).

108. The procedure described in paragraph 107 applies equally to the calculation of any lump sum payable on retirement at *NPA* (whether in commutation of part of the *member spouse*, *member civil partner* or *member qualified cohabitant's* pension or as a separate gratuity) and to any other element of *retirement benefit*. Where, under the *rules in force*, the *scheme* from which the *retirement benefit* is payable provides an independent lump sum or gratuity or has a rule allowing the *member spouse*, *member civil partner* or *member qualified cohabitant*, as of right, or subject to the consent of the employer/*trustees*, to receive part of their retirement pension as a lump sum, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or other beneficiary) must be given an equivalent right/option in relation to the *designated benefit*. The *member spouse*, *member civil partner* or *member qualified cohabitant* and the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or other beneficiary) may exercise their rights/options independently of one another.

Active member - designated benefit on retirement earlier than *NPA*

r8

109. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is an *active member* of the *scheme* in question at the date of the *order* and subsequently retires before *NPA* (as defined under the *rules in force*), *retirement benefit* (i.e. 'A' in paragraph 104) refers to the benefits which are payable at such early retirement on the basis of the *rules in force* (excluding any benefits secured by *AVCs* or which represent a transfer of accrued rights from another *scheme*). When calculating the corresponding *designated benefit*, 'C' in the formula in paragraph 104, represents *retirement benefit service* completed to the date of such early retirement.

Example

Details are as in the example in paragraph 107 but, in addition, the *scheme* provides for early retirement at age 60. In this *scheme* under the *rules in force* benefits are calculated using the normal formula but are reduced by 20% to allow for early payment.

The *member spouse* chooses to retire at age 60 on 1 January 2021. Final pensionable salary is €78,000.

The *designated benefit* is calculated as follows:

A = Early retirement pension under *rules in force* $(78,000 \times 35/60) \times 4/5 = €36,400$
 B = 1 January 1986 to 1 January 2001 = 15 years
 C = 1 January 1986 to 1 January 2021 = 35 years
 P = 50%

Designated benefit (i.e., retirement pension) = € 36,400 × $\frac{15}{35}$ × 50% = €7,800

110. The procedure described in paragraph 109 applies equally to any lump sum or other element of *retirement benefit* payable on early retirement in the same manner as described in paragraph 108.

Active member - designated benefit on retirement later than NPA

r10

111. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is an *active member* of the *scheme* in question at the date of the *order* and subsequently retires later than *NPA* (as defined under the *rules in force*), *retirement benefit* (i.e., 'A' in paragraph 104) refers to the benefits which are payable at such late retirement on the basis of the *rules in force*. When calculating the corresponding *designated benefit*, the period over which the *retirement benefit* was earned (i.e., 'C' in the formula in paragraph 104) represents *retirement benefit service* completed to the date of such late retirement. If *retirement benefit* is calculated on the basis of service completed at *NPA* (with the only increase thereafter being an adjustment in respect of late payment), service completed subsequent to *NPA* will not rank as *retirement benefit service*. On the other hand, if there is no distinction between service completed before and after *NPA* such service will rank as *retirement benefit service*.

Example

Details are as in the example in paragraph 107 except that the *member spouse* retires at age 68 (1 January 2029). Possible scenarios are:

Scenario A

Rules in force provide for late retirement pension based on pension payable at *NPA*, uprated by 0.75% for each month later than *NPA*. *NPA* = 1 January 2026. The *member spouse* retires on 1 January 2029, i.e., 36 months later.

The *designated benefit* is calculated as follows: -

$$\begin{aligned}
 A &= \text{Late retirement pension under } \textit{rules in force} = \text{€}60,000 \times .75 \times 36 &= \text{€}76,200 \\
 B &= 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2001 &= 15 \text{ years} \\
 C &= 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2026 &= 40 \text{ years} \\
 P &= 50\%
 \end{aligned}$$

$$\textit{Designated benefit} \text{ (i.e., retirement pension)} = \text{€}76,200 \times \frac{15}{40} \times 50\% = \text{€}14,288$$

Scenario B

Rules in force provide for late retirement pension based on pensionable service completed up to retirement (43 years) and final pensionable salary on retirement (€115,000).

The *designated benefit* is calculated as follows: -

$$\begin{aligned}
 A &= \text{Late retirement pension under } \textit{rules in force} = 115,000 \times 43/60 &= \text{€}82,417 \\
 B &= 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2001 &= 15 \text{ years} \\
 C &= 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2029 &= 43 \text{ years} \\
 P &= 50\%
 \end{aligned}$$

$$\textit{Designated benefit} \text{ (i.e., retirement pension)} = \text{€}82,417 \times \frac{15}{43} \times 50\% = \text{€}14,375$$

112. The procedure described in paragraph 111 applies equally to any lump sum or other element of *retirement benefit* payable on late retirement in the same manner as described in paragraph 108.

Active member - designated benefit on retirement having previously withdrawn from reckonable service

r11

113. If the *member spouse, member civil partner or member qualified cohabitant* is an *active member* of the *scheme* in question at the date of the *order* and subsequently leaves *reckonable service* before *NPA* (as defined under the *rules in force*) otherwise than on death or incapacity, in circumstances where an immediate benefit is not payable, principles similar to those described in paragraph 109 apply. *Retirement benefit* (i.e., 'A' in paragraph 104) refers to the deferred benefit which ultimately becomes payable on retirement based on the *rules in force* (excluding any benefit secured by *AVCs* or which represents a transfer of accrued rights from another *scheme*). This will, therefore, include any provision for increases in deferred benefits between the date of leaving and the ultimate commencement of payment of benefits. When calculating the corresponding *designated benefit*, 'C' in the formula in paragraph 104 represents *retirement benefit service* completed to the termination of *reckonable service*.

Example

Details are as in the example in paragraph 107 except that the *scheme* provides a deferred pension to early leavers based on the normal retirement formula. Deferred pensions are revalued in full between leaving service and attainment of *NPA* at the rate of 4% per year.

The *member spouse* leaves service on 1 January 2006. Final pensionable salary is €50,000. He eventually opts to draw his *retirement benefit* at *NPA*.

The *designated benefit* is calculated as follows:

$$\begin{aligned}
 A &= \text{Deferred pension at } NPA = €50,000 \times 20/60 \times (1.04)^{20*} &= €36,519 \\
 B &= 1 \text{ January 1986 to 1 January 2001} &= 15 \text{ years} \\
 C &= 1 \text{ January 1986 to 1 January 2006} &= 20 \text{ years} \\
 P &= 50\%
 \end{aligned}$$

NPA revalued at rate of 4% per year, therefore the benefit is increased by 1.04 every year for 20 years. $(1.04)^{20} = 2.19112314$

$$\text{Designated benefit (i.e., retirement pension)} = €36,519 \times \frac{15}{20} \times 50\% = €13,695$$

114. The procedure described in paragraph 113 applies equally to any lump sum or other element of *retirement benefit* payable on subsequent retirement in the same manner as described in paragraph 108.

115. An *occupational pension scheme* may provide different benefits on leaving service on or before 1 June 2002 in respect of *reckonable service* completed before and after 1 January 1991 (i.e., the effective date of preservation under the Act). If the benefit on leaving service provided to a *member spouse, member civil partner or member qualified cohabitant* in respect of *retirement benefit service* completed prior to 1991 is a refund of contributions, it will be necessary to make separate calculations in order to determine the corresponding *designated benefit*. The total *designated benefit* is then calculated as follows:

| |
|--|
| $A_1 \times \frac{B}{C} \times P \text{ (refund of contributions)}$ <p style="text-align: center;">plus</p> $A_2 \times \frac{B}{C} \times P \text{ (deferred pension)}$ |
|--|

A_1 = amount of *retirement benefit* (i.e., refund of contributions) payable on the basis of the *rules in force* (excluding benefits secured by *AVCs* or a transfer of accrued rights from another *scheme*) relating to *retirement benefit service* completed prior to 1 January 1991.

B = the period of the *retirement benefit service* which the *member spouse, member civil partner or member qualified cohabitant* has completed within the *relevant period*.

C = the period of the *retirement benefit service* which the *member spouse, member civil partner or member qualified cohabitant* has completed on termination of *reckonable service*.

A_2 = amount of *retirement benefit* payable on retirement on the basis of the *rules in force* (excluding benefits secured by *AVCs* or a transfer of accrued rights from another *scheme*) relating to *retirement benefit service* completed on or after 1 January 1991.

P = the *relevant percentage*.

116. If on leaving service no benefit is provided in respect of *reckonable service* completed prior to 1 January 1991, that period is not regarded as a period of *retirement benefit service*.

117. If the *member spouse, member civil partner or member qualified cohabitant* is a *member* of a contributory *occupational pension scheme* and withdrew from *reckonable*

service on or before 1 June 2002 having completed less than five years of *retirement benefit service* or withdraws from *reckonable service* after 1 June 2002 having completed less than two years of *retirement benefit service*, their *retirement benefit* may be a refund of contributions. In the circumstances, the *designated benefit* is calculated as a proportion of the refund of contributions (i.e., the *designated benefit* is calculated using the following formula (as set out in paragraph 104):

$$A \times B/C \times P$$

‘A’ represents the amount of the contribution refund, and ‘C’ the period of *retirement benefit service* completed to the termination of *reckonable service*).

118. If the *member spouse*, *member civil partner* or *member qualified cohabitant’s reckonable service* terminates on or before 1 June 2002 before they had completed five years of *retirement benefit service* or terminates after 1 June 2002 before they had completed two years of *retirement benefit service* they may have no entitlement to *retirement benefit*. In the circumstances, the *designated benefit* is also zero.

Deferred pensioner - calculation of designated benefit

r12

119. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is a *deferred pensioner* of the *scheme* in question at the date of the *order*, the *designated benefit* on their subsequent retirement is calculated using the formula set out in paragraph 104:

$$A \times B/C \times P$$

Retirement benefit, i.e. ‘A’ in the formula, represents the amount of deferred benefit payable on retirement under the *rules in force* (ignoring any benefit secured by AVCs or a transfer of accrued rights from another *scheme*) and including any increases in deferred benefit payable under the *rules in force*. The period ‘C’ represents the period of the *member spouse*, *member civil partner* or *member qualified cohabitant’s retirement benefit service* to the date of termination of *reckonable service*. This may correspond with the *member spouse*, *member civil partner* or *member qualified cohabitant’s total retirement benefit service* under the *scheme* or, if none of the *retirement benefit* relates to pre 1991 *retirement benefit service*, it will be restricted to such service completed after 1 January 1991. The period ‘B’ is that part of the period in ‘C’ which falls within the *relevant period*.

The procedure applies equally to any lump sum or other element of *retirement benefit* payable under the *rules in force*.

Current pensioner – calculation of designated benefit

r13

120. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is a *current pensioner* of the *scheme* in question at the date of the *order*, the *designated benefit* is calculated using the formula set out in paragraph 104:

$$A \times B/C \times P$$

Retirement benefit, i.e. 'A' in the formula, represents the amount of pension payable under the *rules in force* (ignoring any benefit secured by AVCs or a transfer of accrued rights from another *scheme*) together with any other periodic cost of living increases on such pension awarded subsequent to the commencement of the retirement pension.

Any rule changes or benefit augmentations awarded prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* are also included for the purposes of calculating the *designated benefit*. Benefit augmentations (other than periodic cost of living increases awarded to all *members*, or to a certain category of *members*, of the *scheme*) awarded after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* are not taken into account in calculating the *designated benefit*. The period in 'C' represents the period of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit service* to the date of retirement. Payments of *retirement benefit* already made prior to the date of the *order* will not form part of the *designated benefit*.

Improvement in retirement benefit

r14

121. The general principle is that improvements in *retirement benefit* (whether in the form of an increase in the accrual rate or the addition of a benefit not previously granted) which take effect prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* must be taken into account in calculating the *designated benefit*. Any improvement effective subsequent to this date is not reflected in the calculation of the *designated benefit*.

Example

A *scheme* provides a retirement pension of 1/80th of final pensionable salary for each year of pensionable service at *NPA* (65). Pensionable service is defined as complete years of service with the company.

An employee who is in a civil partnership, and whose date of birth is 1 January 1981 joined the company and the *scheme* on 1 January 2011 (age 30).

With effect from 1 January 2016 the *scheme rules* are amended to allow for an accrual rate of 1/60th of final pensionable salary for each year of service completed after the date of the alteration.

The *court* grants a *decree* of dissolution on 1 January 2021. On 1 January 2026 an *order* is made which specifies

Relevant period: 1 January 2011 to 1 January 2021

Relevant percentage: 50%

If the *member civil partner* retires on 1 January 2046 (age 65) on a final pensionable salary of €100,000, the *designated benefit* is calculated as follows:

$$A = \left(\frac{5}{80} + \frac{30}{60} \right) \times \text{€}100,000 = \text{€}56,250$$

$$B = 1 \text{ January } 2011 \text{ to } 1 \text{ January } 2021 = 10 \text{ years}$$

$$C = 1 \text{ January } 2011 \text{ to } 1 \text{ January } 2046 = 35 \text{ years}$$

$$P = 50\%$$

Designated benefit to the non-member civil partnership (i.e., retirement pension) =

$$€56,250 \times \frac{10}{35} \times 50\% = €8,036$$

122. If, in the example referred to in paragraph 121, the benefit improvement was made at any time after 1 January 2021, the *designated benefit* is calculated on the basis of the *rules in force*.

Example

Details are as in example in paragraph 121 except that the improvement was made as at 1 January 2024 and was retrospective to all pensionable service.

The *designated benefit* on the *member civil partner's* retirement at age 65 is calculated as follows:

$$A = \frac{35}{80} \times €100,000 = €43,750$$

$$B = 1 \text{ January } 2011 \text{ to } 1 \text{ January } 2021 = 10 \text{ years}$$

$$C = 1 \text{ January } 2011 \text{ to } 1 \text{ January } 2046 = 35 \text{ years}$$

$$P = 50\%$$

$$\textit{Designated benefit (i.e., retirement pension)} = €43,750 \times \frac{10}{35} \times 50\% = €6,250$$

Reduction in retirement benefit

r14

123. The same principles as outlined in paragraphs 121 and 122 apply if a *scheme* reduces the amount of *retirement benefit* applying to the *member spouse*, *member civil partner* or *member qualified cohabitant*. This is unless the reduction is as a result of measures put in place pursuant to a direction under section 50 of the Act and the direction is made on or after 1 June 2012. In this case the reduction may be taken into account in calculating the *designated benefit* even if the reduction is effective subsequent to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*.

Additional retirement benefit provided for an individual member

r14

124. Where *rules* of the *scheme* include a discretionary power to grant additional *retirement benefit* to an individual *scheme member*, any such additional benefit granted to an individual at the commencement of their *reckonable service*, or at any time prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* must be included in the calculation of *retirement benefit* for the purpose of calculating the corresponding *designated benefit*.

125. Any such additional benefit granted to a *member* after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* is ignored for the purposes of calculating the *designated benefit*.

Enhanced retirement benefit payable prior to NPA

r14

126. The *rules* of the *scheme* may include a discretionary power enabling the *trustees* to provide enhanced *retirement benefit* on retirement prior to *NPA* (or in other circumstances).

127. If the *member spouse*, *member civil partner* or *member qualified cohabitant* retires after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* the general principle is that any enhancement of *retirement benefit* granted at the date of retirement is not taken into account in calculating the corresponding *designated benefit* (unless the enhancement was granted prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*).

Enhanced retirement benefit payable prior to NPA due to ill-health

r9

128. The *rules* of the *scheme* may distinguish between *retirement benefit* payable under normal circumstances on retirement prior to *NPA* and *retirement benefit* payable in the event of retirement as a result of serious and permanent disablement. Specifically, the *rules* may state that, in the event of early retirement due to ill-health:

- the reduction in *retirement benefit*, which would normally apply on early payment of benefits, is waived,
- *retirement benefit* is calculated taking account of actual service plus an additional service credit, and/or
- payment of *retirement benefit* commences from the date of retirement due to ill-health, regardless of age.

129. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is an *active member* of the *scheme* at the date of the *order* and subsequently retires in the circumstances outlined in paragraph 128, the *designated benefit* is calculated using the formula set out in paragraph 104, except that:

A = the amount of *retirement benefit*, payable in accordance with the *rules in force* in relation to ill-health retirement (excluding benefits secured by *AVCs*; any transfer of accrued rights from another *scheme*; and any additional period of service or other enhancement granted under the *rules* of the *scheme* specifically on account of ill-health retirement other than any additional benefit resulting from the waiving of the reduction in *retirement benefit* which would normally apply on early payment of benefit).

B = the period of *retirement benefit service* which the *member spouse*, *member civil partner* or *member qualified cohabitant* has completed within the *relevant period*.

C = the period of *retirement benefit service* which the *member spouse*, *member civil partner* or *member qualified cohabitant* has completed on early retirement due to ill-health (disregarding any additional period of notional service granted under the *rules* of the *scheme* in relation to ill-health retirement).

P = the *relevant percentage*.

| |
|----------------|
| Example |
|----------------|

A married *member* (aged 30) joins a *scheme* on 1 January 2000. The *scheme* provides a retirement pension, of 1/60th of final pensionable salary per year of service, on normal retirement at age 65. In the event of early retirement due to ill-health an equivalent pension is provided based on potential service to age 65 and final pensionable salary on such early retirement.

The *member* is granted a *decree* of divorce on 1 January 2010. An *order* is made in favour of the *non-member spouse* at the same time which specifies:

Relevant period: 1 January 2000 to 1 January 2010

Relevant percentage: 50%

The *member* subsequently retires in circumstances of ill-health on 1 January 2015 (her 45th birthday). Her final pensionable salary is €50,000. The *designated benefit* is calculated as:

$$A = \frac{15}{60} \times €50,000 = €12,500$$

$$B = 1 \text{ January } 2000 \text{ to } 1 \text{ January } 2010 = 10 \text{ years}$$

$$C = 1 \text{ January } 2000 \text{ to } 1 \text{ January } 2015 = 15 \text{ years}$$

$$P = 50\%$$

$$\text{Designated benefit (i.e., retirement pension)} = €12,500 \times \frac{10}{35} \times 50\% = €4,167$$

Prior to commencement of the *member spouse's retirement benefit* the *trustees* should notify the *non-member spouse* of the amount and the nature of the *designated benefit* and of the alternative *transfer amount* which is available to him.

130. If the *member spouse*, *member civil partner* or *member qualified cohabitant* retires due to ill-health prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, and they had been provided with enhanced *retirement benefit*, such enhancement must be taken into account in calculating the *designated benefit*.

Defined benefits which are not salary related

131. If a *scheme* provides *retirement benefit* which is a fixed amount, or the rate or amount of which is calculated by reference solely to the *member's* length of service, the *designated benefit* is calculated on the basis set out for *defined benefit schemes* generally. For such *schemes* (other than those to which paragraph 132 applies), an alteration in the fixed amount or rate of benefit constitutes an alteration in the basis of calculating *retirement benefit*. In such circumstances the principle outlined in paragraph 121 applies to the calculation of *designated benefit*.

Example

At 1 January 2022, a *scheme* provides a retirement pension at *NPA* (65) of €700 per year for each year of service as a *member* of the *scheme*. On 1 January 2025, *members'* pension entitlements are increased to €720 per year for each year of *scheme* service. On 1 January 2030, *members'* pension entitlements are further increased to €750 per year for each year of *scheme* service.

A *member civil partner* joined the *scheme* on his 25th birthday, 1 January 2011. The *court* subsequently grants a *decree* of dissolution on 1 January 2029. The *court* makes an order at the time of the granting of the *decree* of dissolution which specifies:

Relevant period: 1 January 2011 to 1 January 2029

Relevant percentage: 50%

The *designated benefit** on the *member civil partner's* retirement at age 65 is calculated as follows:

$$€720 \times 40 \times \frac{18}{40} \times 50\% = €6,480$$

(* i.e., retirement pension)

132. If, however, a *scheme* provides for the rate or amount on which a *member spouse*, *member civil partner* or *member qualified cohabitant's* retirement benefit is based to be altered from time to time in line with a recognised measure of the base or average earnings of *members* of the *scheme* or employees in a certain category or industry, the *retirement benefit* is essentially salary-related and the *designated benefit* should be calculated by reference to the rate or amount of *retirement benefit* applicable at the date

of the *member spouse, member civil partner or member qualified cohabitant's* retirement (i.e. as for a final salary scheme).

Part-time employment

133. If a *member spouse, member civil partner or member qualified cohabitant's* entire period of *reckonable service* has been on a part-time basis, the *designated benefit* is calculated as set out in paragraphs 104 to 120.

134. If a *member spouse, member civil partner or member qualified cohabitant* who was previously a full-time employee becomes a part-time employee (or vice versa) and this gives rise to an alteration in the *member spouse, member civil partner or member qualified cohabitant's retirement benefit*, the calculation of the *designated benefit* will depend on the date of the change in status (and, hence, the alteration in benefit terms). If the change in status occurs prior to the date of the *decree* in the case of a *member spouse or member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, the *designated benefit* is calculated using the procedure set out in paragraphs 104 to 120. If the change in status occurs after the date of the *decree* in the case of a *member spouse or member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, the consequent alteration in the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* will be treated as an alteration in benefit terms and the procedure outlined in paragraphs 121 to 123 is applied when calculating the corresponding *designated benefit*.

Example

A *scheme* provides a retirement pension of $1/60^{\text{th}}$ of final pensionable salary at *NPA* (65) for each year of service as a *member* of the *scheme*. A full-time employee who is in a civil partnership joins the *scheme* on 1 January 2012 (her 25th birthday). She is granted a *decree* of dissolution on 1 January 2017 and an *order* is made at the same time which specifies:

Relevant period: 1 January 2012 to 1 January 2017

Relevant percentage: 50%

The *member* commences part-time work on 1 January 2022. Under the *rules* of the *scheme* her potential pension at *NPA* is calculated as $10/60^{\text{ths}}$ of the full-time equivalent of her actual salary plus $30/60^{\text{ths}}$ of her actual salary.

She subsequently retires at *NPA*. Her actual salary is €40,000 p.a. (i.e., the full-time equivalent is €80,000 p.a.).

The *designated benefit* is calculated as:

$$A = \frac{10}{60} + \frac{30}{60} \times €80,000 = €53,333^*$$

$$B = 1 \text{ January } 2012 \text{ to } 1 \text{ January } 2017 = 5 \text{ years}$$

$$C = 1 \text{ January } 2012 \text{ to } 1 \text{ January } 2052 = 40 \text{ years}$$

$$P = 50\%$$

*based on *rules* in force and status of *member* at date of *decree*

$$\text{Designated benefit (i.e., retirement pension)} = €53,333 \times \frac{5}{40} \times 50\% = €3,333$$

135. If, in the example in paragraph 134, the change in status occurred prior to the date of *decree* of dissolution, the *designated benefit* would be calculated as a proportion of the actual *retirement benefit*.

Example

Details are as in the example in paragraph 134 except that the *member civil partner* commenced part-time work on 31 December 2016.

The *designated benefit* is calculated as:

$$A = \left[\frac{5}{60} \times \text{€}80,000 \right] + \left[\frac{35}{60} \times \text{€}40,000 \right] = \text{€}30,000$$

$$B = 1 \text{ January } 2012 \text{ to } 1 \text{ January } 2017 = 5 \text{ years}$$

$$C = 1 \text{ January } 2012 \text{ to } 1 \text{ January } 2040 = 40 \text{ years}$$

$$P = 50\%$$

$$\text{Designated benefit (i.e., retirement pension)} = \text{€}30,000 \times \frac{5}{40} \times 50\% = \text{€}1,875$$

Temporary supplements

136. If the *rules in force* provide a temporary supplement as part of a *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* (e.g., a supplement during the period between retirement and the age at which the State pension under the Social Welfare Acts becomes payable) this must be taken into account in the calculation of a *designated benefit*. The element of the *designated benefit* which represents the temporary supplement is payable in accordance with the *rules in force* i.e., in the above instance, it would be payable until the State pension commences.

Defined contribution schemes

137. If the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* is calculated on a *defined contribution basis*, the value of the *designated benefit* on the date on which it becomes payable must be equal to the then *accumulated value* of the *relevant percentage* of the *earmarked contributions*.

Earmarked contributions

r3

138. *Earmarked contributions* mean the contributions paid by, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* for the purpose of *retirement benefit* during the *relevant period* (provided that contributions representing a

transfer of accrued rights from another *scheme* shall only be treated as *earmarked contributions* to the extent that the transfer payment relates to contributions paid, or rights accrued, during the *relevant period*, under the *scheme* from which payment was received - see paragraphs 168 to 173).

139. The calculation of the *designated benefit* also depends on the status of the *member spouse, member civil partner or member qualified cohabitant* at the date of the making of the *order* (i.e., whether the *member spouse, member civil partner or member qualified cohabitant* is an *active member, a deferred pensioner or a current pensioner* of the *scheme* in question). Furthermore, if the *member spouse, member civil partner or member qualified cohabitant* is an *active member* of the *scheme* at the date of the *order*, the calculation of the *designated benefit* will depend on whether the *member spouse, member civil partner or member qualified cohabitant*:

- commences to receive *retirement benefit* from the *scheme* on retirement; or
- withdraws from *reckonable service* and, on a later date, commences to receive *retirement benefit* from the *scheme*.

140. Paragraphs 143 to 157 describe the methodology for calculating the *designated benefit* as follows:

| Status of <i>member spouse, member civil partner or member qualified cohabitant</i> at date of <i>order</i> | <i>Retirement benefit</i> commences | Paragraph |
|--|---|------------------|
| <i>Active member</i> | on retirement | 143 – 150 |
| <i>Active member</i> | on retirement following withdrawal from <i>reckonable service</i> | 151 – 155 |
| <i>Deferred pensioner</i> | on retirement | 156 |
| <i>Current pensioner</i> | already in payment | 157 |

141. The calculation of the *designated benefit* is likely to be required at a date later than the date of the *order*. It will, therefore, be necessary for the *trustees* to implement administrative procedures which enable them to take account of changes in the *accumulated value* of the *earmarked contributions* after the date of the *order*.

r19

142. There may, however, be a number of practical difficulties in identifying the *earmarked contributions* and in calculating the *accumulated value* of these contributions at the date of the *order*, particularly where the *relevant period* is many years prior to the date of the *order* and the *earmarked contributions* have lost their original identity during the intervening period through changes in investment manager/investment fund etc. Where the *trustees* have insufficient information to accurately calculate the *accumulated value* of the *earmarked contributions*, they may calculate the *designated benefit* on an alternative basis which they consider to be reasonable and equitable. Paragraphs 158 to 160 describe suitable methods which might be used in such circumstances to calculate the *accumulated value* of the *earmarked contributions*, and, hence, the *designated benefit*. Such alternative methods of calculating the *designated benefit* may only be used where either:

- the information required to calculate an accurate value is not obtainable; or
- in the opinion of the *trustees*, the additional administration required to obtain the data may be disproportionate to the significance of carrying out an accurate calculation rather than using an alternative method.

Active member - value of designated benefit at retirement

r15

143. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is an *active member* of the *scheme* in question at the date of the *order*, the value of the *designated benefit* on their subsequent retirement, is calculated by first applying the *relevant percentage* to the *accumulated value*, as at the date of retirement, of the *earmarked contributions*. The *designated benefit* is then calculated using the procedure set out in paragraphs 148 to 150.

Accumulated value

r3

144. The *accumulated value* of *earmarked contributions* means the amount which the *trustees* determine to be equal to:

- the realisable value of the resources of the *scheme*, determined in accordance with the *rules* of the *scheme*, which represent these contributions,

less

- the amount of any of the expenses of the *scheme* which, under its *rules* are to be discharged from these resources.

145. If, under the *scheme*, *earmarked contributions* are used to purchase units in a unit-linked fund or unit trust, shares, or other securities and the *member's retirement benefit* is based on the realisable value of those units, shares or securities at *NPA*, or averaged over a period before *NPA*, the realisable value of the resources of the *scheme* which represent such *earmarked contributions* as at the date on which the *designated benefit* becomes payable is the value at, or averaged over a period before, such date of those units which have been purchased by, or are attributable to, the *earmarked contributions*.

146. If the *member's retirement benefit* is based on the contributions paid by or in respect of him/her, together with a prescribed form of smoothed investment return or notional rate of interest, the *designated benefit* should be determined on an equivalent basis.

147. If, under the *rules* of the *scheme*, any *earmarked contributions* are invested in an insurance policy or policies, the realisable value of the resources of the *scheme* which represents such *earmarked contributions* at the date on which the *designated benefit* becomes payable is the amount of the proceeds of such insurance policy or policies at that date.

Example

A *defined contribution scheme* operates on the basis that 10% of each *member's* salary is invested each year in a separate account within a unit-linked fund. On retirement, the realisable value of each *member's* account is available to provide *retirement benefit*.

A *member* who is in a civil partnership joins a *scheme* on 1 January 2011 at age 30. He subsequently obtains a *decree* of dissolution on 1 January 2031. An *order*, in favour of the *non-member civil partner*, is made on 1 January 2036 which specifies:

Relevant period: 1 January 2011 to 1 January 2031

Relevant percentage: 50%

On the making of the *order*, the *trustees* established that *earmarked contributions* (i.e., the total contributions paid by, or in respect of, the *member civil partner* for the purposes of *retirement benefit* during the *relevant period*) amounted to €70,000 and that these contributions had purchased 8,000 units in the unit-linked fund.

The *member civil partner* subsequently retires on his 65th birthday, 1 January 2046. At this time the realisable value of the units is €50 per unit.

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

$$8,000 \times €50 \times 50\% = €200,000$$

This amount is available to provide designated benefit for the non-member civil partner.

Application of accumulated value

r15

148. If the *rules in force* include a rule which allows the *member spouse*, *member civil partner* or *member qualified cohabitant* to receive part of their *retirement benefit* in lump sum form, an equivalent option must be provided to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or in the case of a *member spouse*, a *dependent member of the family*). The amount of lump sum available to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or in

the case of a *member spouse*, a *dependent member of the family*) is calculated as the amount of lump sum available to the *member spouse*, *member civil partner* or *member qualified cohabitant* under the *rules in force* multiplied by:

$$\frac{N}{M} \times P$$

N = the period of *retirement benefit service* which the *member spouse*, *member civil partner* or *member qualified cohabitant* has completed within the *relevant period*.

M = the period of *retirement benefit service* which the *member spouse*, *member civil partner* or *member qualified cohabitant* has completed at retirement.

P = the *relevant percentage*.

r15

149. The element of the *designated benefit* which corresponds to the *member spouse*, *member civil partner* or *member qualified cohabitant's* retirement pension, is calculated by applying a fraction to the amount of the *member spouse*, *member civil partner* or *member qualified cohabitant's* retirement pension (having had regard to the amount of lump sum, if any, paid to the *member spouse*, *member civil partner* or *member qualified cohabitant* and the person specified in the *order*).

The fraction is calculated as R/S, where:

R = the *accumulated value*, as at the date the *member spouse*, *member civil partner* or *member qualified cohabitant* begins to receive *retirement benefit*, of the *relevant percentage* of the *earmarked contributions* less the amount of any lump sum benefit paid to the person specified in the *order* (as described in paragraph 148);

S = the *accumulated value*, as at the date the *member spouse*, *member civil partner* or *member qualified cohabitant* begins to receive *retirement benefit*, of all contributions paid by, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* for the purposes of *retirement benefit* less the total of any lump sum benefits paid to the *member spouse*, *member civil partner* or *member qualified cohabitant* and to the person specified in the *order*.

r15

150. For the purpose of determining the *member spouse*, *member civil partner* or *member qualified cohabitant's* retirement pension in paragraph 149, any option exercised by the *member spouse*, *member civil partner* or *member qualified cohabitant* in favour of a third party must be ignored (i.e., the retirement pension is that which would otherwise have been payable had such option not been exercised). Other options (e.g., guaranteed rate of pension increases) would be taken into account and would, therefore, be reflected in the *designated benefit*.

Example

Details are as in the example in paragraph 147. A *member civil partner* joins a *scheme* on 1 January 2011 at age 30. He obtains a *decree* of dissolution on 1 January 2031 which specifies:

Relevant period: 1 January 2011 – 1 January 2031

Relevant percentage: 50%

The *member* retires on 1 January 2046 at *NPA*. The *accumulated value*, as at the date of retirement, of all contributions paid for the purpose of *retirement benefit* is €1,000,000.

Under the *rules in force* the *member civil partner* opts to receive a lump sum benefit equal to 25% of his retirement account and to use the balance to provide for a pension payable throughout his lifetime. The cost of the pension is €10 per €1 per year of pension.

The *designated benefit* payable in the lump sum form is calculated as follows:

$$\text{Lump sum} \times \frac{N}{M} \times P$$

$$\text{Lump sum} = 25\% \text{ of } \text{€}1,000,000 = \text{€}250,000$$

$$N = 1 \text{ January } 2011 - 1 \text{ January } 2031 = 20 \text{ Years}$$

$$M = 1 \text{ January } 2011 - 1 \text{ January } 2046 = 35 \text{ Years}$$

$$P = 50\%$$

$$\text{€}250,000^* \times \frac{20}{35} \times 50\% = \text{€}71,429$$

$$^*25\% \text{ of } \text{€}1,000,000$$

The *designated benefit* payable in pension form is calculated as follows:

$$\text{Pension of } \text{€}75,000^{**} \times \frac{\text{€}200,000 - \text{€}71,249}{\text{€}1,000,000 - \text{€}250,000} = \text{€}12,857 \text{ p.a.}$$

** $(\text{€}1,000,000 - \text{€}250,000) \div 10$ *** $\text{€}200,000$ as per the example in paragraph 147

Active member - value of designated benefit on retirement having previously withdrawn from reckonable service

r16

151. If the *member spouse, member civil partner or member qualified cohabitant* is an *active member* of the *scheme* in question at the date of the *order* and subsequently leaves *reckonable service* before *NPA* (as defined under the *rules in force*) otherwise than on death, in circumstances where an immediate benefit is not payable, principles similar to those described in paragraphs 143 to 150 apply. If the *rules in force* provide for the *member spouse, member civil partner or member qualified cohabitant* to receive part of their *retirement benefit* in lump sum form, the lump sum available to the person in whose favour the *order* is made, on the *member spouse, member civil partner or member qualified cohabitant's* eventual retirement, is calculated using the formula in paragraph 148, where 'M' represents the period of *retirement benefit service* which the *member spouse, member civil partner or member qualified cohabitant* has completed prior to cessation of *reckonable service*. The element of the *designated benefit* which corresponds to the *member spouse, member civil partner or member qualified cohabitant's* retirement pension is calculated using the procedure set out in paragraphs 149 and 150.

152. An *occupational pension scheme* may provide different benefits on leaving service on or before 1 June 2002 in respect of *reckonable service* completed before and after 1 January 1991 (i.e., the effective date of preservation under the Act). If the benefit on leaving service on or before 1 June 2002 provided to a *member spouse* in respect of *retirement benefit service* completed prior to 1991 is of a different value (e.g., based on *member* contributions only) than the preserved benefit attributable to post 1991 service, the *designated benefit* is calculated on an equivalent basis.

Example

A married *member* joined a *defined contribution scheme* on 1 January 1985.

Under the *rules* of the *scheme* a total of 10% of salary (5% *member* and 5% sponsoring employer) is applied each year to a retirement account which is invested in a unit-linked fund.

The *member* obtains a *decree* of divorce on 1 January 2000. An *order*, in favour of the *non-member spouse*, is made at the same time which specifies:

Relevant period: 1 January 1985 to 1 January 2000

Relevant percentage: 50%

On the making of the *order*, the *trustees* established that *earmarked contributions* (i.e., total contributions paid by, or in respect of, the *member spouse* during the *relevant period*) amounted to €22,500 and that these contributions purchased 1,800 units in the unit-linked fund as follows.

| Period | Retirement contributions | Units purchased |
|-------------------------------|--------------------------|-----------------|
| <i>Member contributions</i> | | |
| 1.1.85 - 31.12.90 | €3,800 | 300 |
| 1.1.91 - 31.12.99 | €8,250 | 600 |
| <i>Employer contributions</i> | | |
| 1.1.85 - 31.12.90 | €3,000 | 300 |
| 1.1.90 – 31.12.99 | <u>€8,250</u> | <u>600</u> |
| TOTAL: | €22,500 | 1,800 |

The *member spouse* subsequently leaves service on 1 January 2001 and is provided with a benefit on leaving service based on total contributions (post 1991) and *member contributions* (pre-1991). The realisable value of the units when the *member spouse* eventually opts to draw her *retirement benefit* at NPA is €60 per unit therefore:

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

$$1,800 \times €60 \times 50\% = €54,000$$

The amount is available to provide designated benefit for the non-member spouse.

153. If there is no benefit on leaving service on or before 1 June 2002 in respect of contributions paid to an *occupational pension scheme* prior to 1 January 1991, the calculation of the *designated benefit* is restricted to the *accumulated value* of the *relevant percentage* of *earmarked contributions* paid during the *relevant period* post 1 January 1991.

154. If the *member spouse, member civil partner or member qualified cohabitant* is a *member* of a contributory *occupational pension scheme* and withdrew from *reckonable service* on or before 1 June 2002 having completed less than five years of *retirement benefit service* or withdraws from *reckonable service* after 1 June 2002 having completed less than two years of *retirement benefit service* their *retirement benefit* may be a refund of contributions. In such circumstances the *designated benefit* is calculated as the *relevant percentage* of the refund of contributions paid during the *relevant period*.

155. If the *member spouse, member civil partner or member qualified cohabitant* withdraws from an *occupational pension scheme* on or before 1 June 2002 having completed less than five years of *retirement benefit service* or withdraws after 1 June 2002 having completed less than two years of *retirement benefit service*, they may have no entitlement to *retirement benefit*. In the circumstances the *designated benefit* is also zero.

Deferred pensioner - calculation of value of designated benefit

r17

156. If the *member spouse, member civil partner or member qualified cohabitant* is a *deferred pensioner* of the *scheme* in question at the date of the *order*, the *designated benefit* on their subsequent retirement, at *NPA* or otherwise, is calculated as described in paragraph 143. In arriving at the *accumulated value* of the *earmarked contributions*, any such contributions which are disregarded for the purposes of calculating the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* (e.g., contribution paid to an *occupational pension scheme* prior to 1 January 1991) will, similarly, be disregarded in calculating the value of the *designated benefit*.

Current pensioner - calculation of designated benefit

r18

157. If the *member spouse, member civil partner or member qualified cohabitant* is a *current pensioner* of the *scheme* in question at the date of the *order*, the *designated benefit* is calculated by applying a fraction to the amount of the *retirement benefit*. The fraction represents the *accumulated value* of the *relevant percentage* of the *earmarked contributions* divided by the *accumulated value* of all contributions paid by, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* for the purposes of *retirement benefit* (both amounts calculated as at the date of retirement and excluding any transfer of accrued rights from another *scheme*). The fraction will be applied to the amount of the *member spouse, member civil partner or member qualified cohabitant's* personal *retirement benefit* (for as long as it is payable) and any dependant's pension which may arise following the death of the *member spouse, member civil partner or member qualified cohabitant*.

Alternative methods of calculating designated benefit

Information on earmarked contributions but not accumulated values

158. At any date the *accumulated value* of the *earmarked contributions* is:

(A)

- (i) the *accumulated value* on that date of all contributions paid by, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* towards *retirement benefit* (excluding any transfer of accrued rights from another *scheme*)

less

- (ii) the *accumulated value* on the same date of such contributions paid both **before** and **after**, but **not during**, the *relevant period*,

or, alternatively

(B)

- (i) the *accumulated value* on that date of contributions paid by, or in respect of the *member spouse, member civil partner or member qualified cohabitant, towards retirement benefit* (excluding any transfer of accrued rights from another *scheme*) up to the end of the *relevant period*,

less

- (ii) the *accumulated value* on the same date of such contributions paid **before** the start of the *relevant period*.

159. The value in A (i) of the previous paragraph should always be known. The *trustees* will, however, be unable to make an accurate calculation of the *accumulated value* of the *earmarked contributions* if the amount in A(ii) is not obtainable. In these circumstances, if the value in B(i) is known (for example, the *accumulated value* as at the end of the *relevant period* may be available) it would be acceptable for the *trustees* to estimate the *accumulated value* of the *earmarked contributions* using approach B in the previous paragraph. If this approach is not possible, the approach in A may be used, with the *trustees* estimating the value at A(ii). A(ii) and B(ii) may be estimated by either:

- (a) applying to the actual contributions paid, the investment return earned on the total fund (or that part invested in a similar way) for the required period, or
- (b) taking the known value at a particular date of contributions paid to such date* and applying to such value, and any future contributions paid, the investment return earned on the fund.

(*for example, to a date when due to investment switching it was not possible to separately identify these contributions at a subsequent date).

Example

Prior to his marriage on 1 January 1985, a total of €15,000 in retirement contributions had been paid to a *defined contribution scheme* by, or in respect of, a *member*. The retirement contributions were invested in a range of equity unit funds and had a realisable value of €25,000 as at 1 January 1985.

Over the next 15 years, retirement contributions totalling €20,000 were paid in respect of the *member*. The *member* had carried out several investment switches over the 1985 - 1999 period. As at 1 January 2000 all of his retirement contributions were invested in managed fund units and had a realisable value of €105,000. The *member spouse* obtained a *decree* of divorce as at 1 January 2000.

Prior to his retirement on 1 January 2010 a further €40,000 in retirement contributions had been paid in respect of the *member*. Once more, he had carried out several investment switches over the 2000 – 2009 period. As at 1 January 2010 all of his retirement contributions were invested in cash fund units and had a realisable value of €260,000.

At the time of retirement, the *order* was made (in favour of the *non-member spouse*), specifying:

Relevant period: 1 January 1985 to 1 January 2000

Relevant percentage: 50%

As it was not possible to accurately calculate the *accumulated value* of the *earmarked contributions*, an estimate was made.

Investment return on total retirement contributions as estimated by *trustees*:

1.1.1985 - 31.12.1999 170%

1.1.2000 - 31.12.2009 90%

Accumulated value of earmarked contributions as at 1 January 2000

Accumulated value of all retirement contributions: €105,000

Less

Estimate of accumulated value of retirement contributions paid before *relevant period*:

(i.e., €25,000 × 170%) (€67,500)

Estimated accumulated value (at 1.1.2000) of earmarked contributions: €37,500

Estimated accumulated value (at 1.1.2010) of earmarked contributions: €71,250

(i.e., €37,500 × 90%)

Estimated accumulated value (at 1.1.2010) of relevant percentage of earmarked contributions:

€35,625

(i.e., €71,250 × 50%)

This amount is available to provide designated benefit for the non-member spouse.

Information on earmarked contributions not available

160. In the extreme, there may be no information available regarding the apportionment of contributions paid by, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* for the purposes of *retirement benefit* amongst those paid before, during and after the *relevant period*.

In such circumstances, the *trustees* may estimate the *accumulated value*, at the date of the *order*, of the *earmarked contributions* by applying a fraction to the *accumulated value*, at the date of the *order*, of all contributions paid towards *retirement benefit* (ignoring any contributions in respect of a transfer of accrued rights from another *scheme*). The fraction represents the period of *retirement benefit service* completed during the *relevant period* divided by the total period of *retirement benefit service* to the date of the *order*.

If there is information available regarding the rate at which contributions towards *retirement benefit* were paid, it would be appropriate to modify the fraction to take account of the known pattern of contributions.

Where the circumstances in relation to the availability of data do not precisely match any of the circumstances envisaged in either this paragraph or paragraph 159, the *trustees* may devise and implement an alternative method of calculating the *accumulated value* of the *earmarked contributions* which they consider to be reasonable and equitable. Having

estimated the *accumulated value*, at the date of the *order*, of the *earmarked contributions*, and applied the *relevant percentage* thereto, this value should then be isolated so that the *accumulated value* at retirement can be calculated based on the actual investment return in the intervening period.

Example

The *rules* of a *defined contribution scheme* provide that contributions towards *retirement benefit* are paid, in respect of each *member*, at the following rates:

| Attained age of member | Total contribution rate (1% of salaries) |
|-------------------------------|---|
| 20-34 | 10% |
| 35-49 | 14% |
| 50-64 | 18% |

A married *member* joins the *scheme* at age 25. She is granted a *decree* of divorce at age 35. An *order* is made at age 50 (in favour of the *non-member spouse*) specifying:

Relevant period: 10 years between *member's* aged 25 and 35
Relevant percentage: 50%

At the date the *order* is served on the *trustees* (i.e., the *member spouse's* attainment of age 50) her total retirement account has an *accumulated value* of €200,000. The *trustees* do not have any information in respect of the amount or value of contributions paid during the *relevant period*.

In this case the pattern of retirement contributions is known so that the fraction is calculated as follows:

| | Period | | Contribution rate | | |
|--|---------------|---|--------------------------|---|------------|
| Contribution rate X <i>relevant period</i> | 10 | X | 10% | = | 1.0 |
| Contribution rate X <i>retirement benefit</i> service | 10 | X | 10% | = | 1.0 |
| plus | 15 | X | 14% | = | <u>2.1</u> |
| | | | | | 3.1 |
| Fraction | | | | | <u>1.0</u> |
| | | | | | 3.1 |

The *accumulated value*, at the date of the *order*, or *earmarked contributions* is estimated as follows:

$$€200,000 \times \frac{1.0}{3.1} = €64,516$$

Relevant percentage of (estimated) accumulated value at date of order, of *earmarked contributions*

$$50\% \times €64,516 = €32,258$$

Investment return during period from date of order to retirement : 90%

Accumulated value (at date of retirement) of relevant percentage of earmarked contributions : €61,290

This amount is available to provide retirement benefit for the non-member spouse.

Hybrid schemes

r6

161. Where an element of a *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* 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.

162. There may, however, be circumstances in which the two elements cannot be considered entirely separately (e.g., if the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* is determined on a *defined contribution basis* but is subject to a minimum *defined benefit*). In this instance, the basis of calculation of the *designated benefit* will follow the corresponding basis of calculation of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit*.

Additional voluntary contributions (AVCs)

r20

163. The additional *retirement benefit* payable in respect of AVCs made by a *member* may be determined on a *defined benefit basis* (e.g., in the form of notional added years of service) or on a *defined contribution basis*, and the *designated benefit* relating to such AVCs is determined accordingly.

164. Where the *member spouse*, *member civil partner* or *member qualified cohabitant* has paid AVCs during the *relevant period* in order to obtain an additional *retirement benefit* on a *defined benefit basis*, the *designated benefit* in respect of such AVCs is calculated by applying a fraction to the additional *retirement benefit* to which the *member spouse*, *member civil partner* or *member qualified cohabitant* is entitled, on retirement, in respect of the AVCs.

This fraction is calculated by dividing the period of *retirement benefit service* which falls within the *relevant period* during which payment of AVCs was made, by the total period of *retirement benefit service* during which payment of AVCs was made. The *designated benefit* in respect of the AVCs is calculated by the following formula:

$$\frac{Y}{X \times Z \times P}$$

X = the amount of additional *retirement benefit*, at retirement, to which the *member spouse*, *member civil partner* or *member qualified cohabitant* is entitled by virtue of making AVCs.

Y = the period of *retirement benefit service* during which the *member spouse*, *member civil partner* or *member qualified cohabitant* has paid AVCs which falls within the *relevant period*.

Z = the total period of *retirement benefit service* during which the *member spouse*, *member civil partner* or *member qualified cohabitant* has paid AVCs.

P = the *relevant percentage*.

Example

A *member* of a *scheme* whose date of birth is 1 January 1950 commenced AVCs (at the rate of 5% of salary) on 1 January 1990 to provide for an additional pension of 5/60ths of salary on retirement at age 65.

He is granted a *decree* of divorce on 1 January 2000 and an *order* is made on the same date which specifies:

Relevant period: 1 January 1980 to 1 January 2000

Relevant percentage: 50%

The *member* subsequently retires at *NPA* (age 65) at which stage his salary is €90,000.

The *designated benefit* in respect of the additional retirement pension secured by AVCs is calculated as follows:

$$\begin{aligned}
 X &= 5/60 \times \text{€}90,000 &&= \text{€}7,500 \\
 Y &= 1 \text{ January } 1990 \text{ to } 1 \text{ January } 2000 &&= 10 \text{ years} \\
 Z &= 1 \text{ January } 1990 \text{ to } 1 \text{ January } 2015 &&= 25 \text{ years} \\
 P &= 50\%
 \end{aligned}$$

Designated benefit (in respect of AVCs)

$$= \text{€}7,500 \times \frac{10}{25} \times 50\% = \text{€}1,500$$

(i.e., retirement pension)

165. If the rate at which the *member spouse*, *member civil partner* or *member qualified cohabitant* has made AVCs has altered at any time after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, for the purposes of calculating the *designated benefit*, the value 'X' in paragraph 164 is based on the amount of additional *retirement benefit* purchased at the rate of contribution in force at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*.

Example

Details are as in the example in paragraph 164, except that the *member spouse*, increases his AVCs to 15% of salary with effect from 1 January 2005, in order to provide for a total additional retirement pension of 10/60ths of salary.

As the change in the rate of AVCs occurred after the date of the *decree*, the calculation of the corresponding *designated benefit* is not affected (i.e., the amount as set out in the previous example applies).

166. Where the *member spouse*, *member civil partner* or *member qualified cohabitant* has paid AVCs during the *relevant period* on a *defined contribution basis* such AVCs will rank as *earmarked contributions*. The *designated benefit* in respect of their AVCs will, therefore, be based on the *accumulated value*, as at the date of retirement, of the *relevant percentage* of such AVCs paid during the *relevant period* (see paragraphs 137 to 157).

167. The alternative methods of calculating the *designated benefit* (as described in paragraphs 158 to 160) may only be used to calculate the *designated benefit* in respect of AVCs made during the *relevant period* where the information required to calculate an accurate value is not obtainable.

Retirement benefit provided in respect of a transfer of accrued rights from another scheme

r21

168. A *scheme* may provide additional *retirement benefit* to a *member spouse*, *member civil partner* or *member qualified cohabitant* in respect of accrued rights transferred from another *scheme*. The additional *retirement benefit* may be determined on a *defined benefit basis* (e.g., in the form of notional added years of service) or on a *defined contribution basis*.

169. Where the transfer has taken place prior to the date of the *order* the principle applying to the calculation of the amount of *designated benefit* corresponding to the additional *retirement benefit* is that this should reflect the proportion of the *retirement benefit service* completed in the previous *scheme* which falls within the *relevant period*.

170. Specifically, where the additional *retirement benefit* is determined on a *defined benefit basis* the formula for calculating the *designated benefit* is:

$$\frac{L}{K \times M \times P}$$

K = the amount of additional *retirement benefit* which the *member spouse, member civil partner* or *member qualified cohabitant* receives on retirement under the receiving *scheme* by virtue of the transfer of accrued rights from another *scheme*.

L = the period of *retirement benefit service* which the *member spouse, member civil partner* or *member qualified cohabitant* has completed in the previous *scheme* which falls within the *relevant period*.

M = the period of *retirement benefit service* which the *member spouse, member civil partner* or *member qualified cohabitant* has completed in the previous *scheme* which gave rise to the rights transferred.

P = the *relevant percentage*.

171. Where the *retirement benefit* in respect of the transferred rights is calculated on a *defined contribution basis* in the receiving *scheme* any contributions paid, or rights accrued, during the *relevant period*, in the previous *scheme* will rank as *earmarked contributions*. The *designated benefit* in respect of such transferred rights is based on the *accumulated value*, as at the date of retirement, of the *relevant percentage* of such transferred rights (see paragraphs 137 to 157). If the rights transferred include contributions paid to, or rights accrued in, the previous *scheme* prior to or after the *relevant period*, the portion of the payment received by the *trustees* from the previous *scheme* which represented contributions paid to, or rights accrued in, the previous *scheme* prior to or after the *relevant period* is excluded in calculating the *accumulated value* of the *relevant percentage* of the transferred rights.

172. The alternative methods of calculating the *designated benefit* (i.e., as described in paragraphs 158 to 160) may only be used to calculate the *designated benefit* in respect of transferred rights in respect of the *relevant period* where the information required to calculate an accurate value is not obtainable.

173. Where a *member spouse, member civil partner or member qualified cohabitant's* rights have been transferred after the date of the *order no designated benefit* arises in relation to the rights transferred.

Membership of more than one scheme relating to the same employment

174. If the *member spouse, member civil partner or member qualified cohabitant* has periods of *retirement benefit service* within the *relevant period* in more than one *scheme* relating to the same employment the *designated benefit* payable from each *scheme* will be separately calculated.

175. If, at the date of the making of the *order*, the *member spouse, member civil partner or member qualified cohabitant* is a *deferred pensioner* of the first *scheme* in question, the *designated benefit* on their subsequent retirement is recalculated in accordance with the principles outlined in paragraph 119 or 156. If prior to the date of the *order* there had been a transfer of accrued rights from the first *scheme* to the second *scheme* relating to the same employment, the *designated benefit* from the second *scheme* on their subsequent retirement in respect of the transfer of accrued rights is calculated in accordance with the principles outlined in paragraphs 168 to 173. If, at the date of the making of the *order* the *member spouse, member civil partner or member qualified cohabitant* is continuing to accrue *retirement benefit* in the first *scheme* the *designated benefit* on their subsequent retirement is calculated in accordance with the principles outlined in paragraphs 101 to 136 or 137 to 157.

176. The *designated benefit* in respect of the *member spouse, member civil partner or member qualified cohabitant's* membership of a second (or subsequent) *scheme* is calculated in accordance with the principles outlined in paragraphs 101 to 136 or 137 to 157.

177. If the *member spouse, member civil partner or member qualified cohabitant* becomes a *member* of the second (or subsequent) *scheme* after the end of the *relevant period* there is no *designated benefit* payable from that *scheme*, other than in respect of any transfer of accrued rights from the first *scheme* which took place between the end of the *relevant period* and the date of the *order*.

Defined benefit scheme switches to defined contribution basis

r22

178. If the basis of calculation of *retirement benefit* provided by a *scheme* is altered from a *defined benefit basis* to a *defined contribution basis* after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* the calculation of the *designated benefit* will depend on whether the *member spouse*, *member civil partner* or *member qualified cohabitant's* entitlement in respect of the first period of *retirement benefit service* remains in *defined benefit* form, or is converted to a *defined contribution basis*.

179. If the *member spouse*, *member civil partner* or *member qualified cohabitant's* *retirement benefit* entitlement in respect of the first period of *retirement benefit service* remains in *defined benefit* form, while their *retirement benefit* in respect of the subsequent period is determined on a *defined contribution basis*, the *designated benefit* is calculated separately in respect of the *defined benefit* part and the *defined contribution* part. The *designated benefit* in respect of the *defined benefit* part is calculated in accordance with the principles outlined in paragraphs 101 to 136 and the *designated benefit* in respect of the *defined contribution* part is calculated in accordance with the principles outlined in paragraphs 137 to 157. If the alteration took place after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* there is no *designated benefit* in respect of the *defined contribution* part.

180. Alternatively, a portion of the *scheme's* resources may have been allocated on behalf of the *member spouse*, *member civil partner* or *member qualified cohabitant* in lieu of the *retirement benefit* to which they would otherwise have been entitled on a *defined benefit basis* in respect of *retirement benefit service* prior to the date of alteration. In this case, provided the amount so allocated is not less than the *actuarial value* of the deferred benefit to which the *member spouse*, *member civil partner* or *member qualified cohabitant* would have been entitled if they had terminated *reckonable service* on the date of alteration the *designated benefit* in respect of the amount allocated is calculated as if it had been a transfer of accrued rights from another *scheme* (see paragraph 171). The *designated benefit* in respect of any contributions paid subsequent to the alteration but prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* is calculated in accordance with the principles outlined in paragraphs 137 to 157.

Defined contribution scheme switches to defined benefit basis

r23

181. If the basis of calculation of *retirement benefit* provided by a *scheme* is altered from a *defined contribution basis* to a *defined benefit basis* after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, the *designated benefit* is calculated on a *defined contribution basis* and its value as at the date of the *member spouse*, *member civil partner* or *member qualified cohabitant's* retirement is equal to the then *accumulated value* of the *relevant percentage* of *earmarked contributions* paid during the *relevant period* (see paragraphs 137 to 157).

182. If the basis of calculation of *retirement benefit* alters prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* the calculation of the *designated benefit* will depend on whether the *member spouse*, *member civil partner* or *member qualified cohabitant's* entitlement in respect of the first period of *retirement benefit service* remains in *defined contribution* form or is converted to a *defined benefit basis*.

183. If the *member spouse*, *member civil partner* or *member qualified cohabitant's* *retirement benefit* entitlement in respect of the first period of *retirement benefit service* remains in *defined contribution* form, while their *retirement benefit* in respect of the subsequent period is determined on a *defined benefit basis*, the *designated benefit* is calculated separately in respect of the *defined contribution* part and the *defined benefit* part. The *designated benefit* in respect of the *defined contribution* part is calculated in accordance with the principles outlined in paragraphs 137 to 157; the *designated benefit* in respect of the *defined benefit* part is calculated in accordance with the principles outlined in paragraphs 101 to 136.

184. Alternatively, the *retirement benefit* to which the *member spouse*, *member civil partner* or *member qualified cohabitant* would otherwise have been entitled on a *defined contribution basis* may have been converted to a *defined benefit basis* (e.g., to secure a number of added years of *pensionable service*). In this case, provided the conversion took place prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* the full *designated benefit* is calculated on a *defined benefit basis* in accordance with the principles outlined in paragraphs 101 to 136.

Calculation of designated benefit following previous order

r24

185. Part of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* may already have been designated for payment to a former spouse (or other beneficiary), under a previous *order*, when a subsequent *order* is made. The procedure for calculating the *designated benefit* appropriate to the subsequent *order* is set out in paragraphs 186 and 187.

Defined benefits

186. If the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* is calculated on a *defined benefit basis* the methodology as set out in paragraphs 101 to 136 will apply when calculating the *designated benefit* under the subsequent *order*. *Retirement benefit* (i.e., 'A' in the formula in paragraph 104) refers to *retirement benefit* payable under the *rules in force* before deducting any amount designated under a previous *order(s)*. 'B' refers to the period of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit service* falling within the *relevant period* specified under the subsequent *order*. 'C' refers to the period of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit service* at retirement.

Defined contributions

187. If the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* is calculated on a *defined contribution basis*, the methodology as set out in paragraphs 137 to 157 will apply when calculating the *designated benefit* under the subsequent *order*. The value of the *designated benefit*, on the date on which it becomes payable, will be equal to the then *accumulated value* of the contributions paid by, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* for the purpose of *retirement benefit* during the *relevant period* multiplied by the *relevant percentage* (i.e., the *relevant period* and *relevant percentage* as specified under the subsequent *order*).

(paragraphs 188 - 199 spare)

Part 5 - Payment of designated benefit

This part of the notes sets out the conditions governing the payment of the *designated benefit* and the circumstances under which the value of the *designated benefit* may crystallise and become payable as a *transfer amount*.

General

s12(2)-95, s17(2)-96, s121(2)-10, s187(2)-10

200. The *legislation* empowers the *court* to make an *order*, in relation to *retirement benefit* under a *scheme* of which either *spouse* or *civil partner* or *qualified cohabitant* is a *member*, providing for the payment of part, or all, of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* which had accrued to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, or in the case of a *member spouse* to a specified person for the benefit of a *dependent member of the family*. The amount of the *retirement benefit* to be paid is called the *designated benefit*.

201. The methodology for calculating the *designated benefit* is described in part 4 of these notes.

202. The circumstances under which a *transfer amount* may, or must, be paid from the *scheme* as an alternative to paying the *designated benefit* are set out in part 7 of these notes.

203. This part sets out the conditions under which the *designated benefit* is payable. Paragraphs 204 to 232 deal with *designated benefit* which is calculated on a *defined benefit basis*. Paragraphs 233 to 243 deal with *designated benefit* which is calculated on a *defined contribution basis*.

Defined benefit schemes

s12(14)-95, s17(14)-96, r35, s124(1)-10, s190-10

204. Other than in the circumstances described in part 7 of these notes (i.e. where a transfer of *designated benefit* is either requested by the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, or is initiated by the *trustees*)

the *designated benefit* arising from the *member spouse member civil partner* or *member qualified cohabitant's* membership of a *defined benefit scheme* will generally be paid from the *scheme* at the same time, and in the same format, as the residual *retirement benefit* payable to the *member spouse, member civil partner* or *member qualified cohabitant*. In other words, any *retirement benefit* payable to, or in respect of, the *member spouse, member civil partner* or *member qualified cohabitant* under the *rules in force* will result in a corresponding payment of *designated benefit* to the person specified in the *order*. The various types of payment are discussed in the following paragraphs.

Retirement of member spouse, member civil partner or member qualified cohabitant

205. The procedures set out in part 4 of these notes will be applied to the *retirement benefit* payable to the *member spouse, member civil partner* or *member qualified cohabitant* in order to calculate the amount of the corresponding *designated benefit*. In some circumstances in order to calculate the *designated benefit* it may be necessary to make separate calculations in respect of the various elements of *retirement benefit* payable from the *scheme* (e.g., if part is calculated on a *defined benefit basis* and part is calculated on a *defined contribution basis*).

s12(14)-95, s17(14)-96, r35, s124(1)-10, s190-10

206. The *designated benefit* is payable in accordance with the *rules in force* governing the payment of *retirement benefit*.

s12(14)-95, s17(14)-96, r35, s124(1)-10, s190-10

207. Where the *order* is made in favour of the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant*, the *designated benefit* which is in the form of a pension payable during the lifetime of the *member spouse, member civil partner* or *member qualified cohabitant* will commence on their retirement and will be paid for as long as both the *member spouse, member civil partner* or *member qualified cohabitant* and the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* are alive. In the case of a *member spouse* where the *order* is made in favour of a person, for the benefit of a *dependent member of the family*, it will be paid for as long as both (i) the *member spouse* is alive and (ii) the *dependent member of the family* is alive and remains a *dependent member of the family*. If, however, the *rules in force* provide for the guaranteed payment of the *member spouse, member civil partner* or *member qualified cohabitant's* pension in respect of a period after their death, the *designated benefit* would continue to be paid during this period to the *non-member*

spouse, non-member civil partner or non-member qualified cohabitant (if living) in the case of a member spouse or for the benefit of the dependent member of the family (if living, and still a dependent member of the family).

Dependent member of the family

s2(1)-95, s2(1)-96, r3, s124(1)-10, s187(1)-10, s190-10

208. The Family Law Act, 1995 and the Family Law (Divorce) Act 1996 define a *dependent member of the family* and it is this definition, rather than any definition contained in the *rules* of the *scheme* that applies. These two Acts define a *dependent member of the family* as any child of both *spouses*, or of either *spouse*, who is under the age of 18 years, or is under the age of 23 years and receiving full-time education or has a mental or physical disability regardless of age.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 does not have a similar definition to cover a dependant of a *civil partner* or *qualified cohabitant*, nor does it provide for pension adjustment orders to be made for persons other than the applicant *civil partner* or *qualified cohabitant*.

Benefits on death of member spouse, member civil partner or member qualified cohabitant following commencement of designated benefit

s12(14)-95, s17(14)-96, r35, s124(1)-10, s190-10

209. Where an *order* is made in relation to *retirement benefit* and the *rules in force* provide for the payment of a *spouse/civil partner/qualified cohabitant's* or in the case of a *member spouse* dependant's pension, a similar benefit must be paid to the person in receipt of the *designated benefit* for their lifetime or *dependency*, as appropriate. Where on the *member spouse, member civil partner or member qualified cohabitant's* death, the person in whose favour the *order* is made has already died, or in the case of a *member spouse* the *dependent member of the family* has ceased to be dependent as the case may be, the *order* ceases to have any effect (see part 6 of these notes in relation to the calculation of *member spouse, member civil partner or member qualified cohabitant's retirement benefit* under the *scheme*).

Options

210. The *rules in force* may permit certain options. These may relate exclusively to the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* (e.g., exchange of part of the *member spouse, member civil partner or member qualified cohabitant's* pension into a lump sum) or may involve the provision of benefits to a third party (e.g. allocation of part of the *member spouse, member civil partner or member qualified cohabitant's* pension to provide for a dependant's pension).

s12(14)-95, s17(14)-96, r37, s124(1)-10, s190-10

211. Where the *rules in force* allow the *member spouse, member civil partner or member qualified cohabitant* the option of exchanging part of their pension for a lump sum and the *member spouse, member civil partner or member qualified cohabitant* has not retired at the date of the *order*, an equivalent option must be provided to the person in whose favour the *order* is made in respect of the part of the *designated benefit* which relates to the *member spouse, member civil partner or member qualified cohabitant's* pension (i.e. the *non-member spouse, non-member civil partner or non-member qualified cohabitant* must be given an equivalent option, but they may exercise that option independently). Where the *non-member spouse, non-member civil partner or non-member qualified cohabitant* chooses to exercise the option, the rate of exchange of *designated benefit* for lump sum will be the same as the rate of exchange applying to the *member spouse, member civil partner or member qualified cohabitant's* benefit.

Example

A *member* joined a scheme on 1 January 1980 and retires (at *NPA*) on 1 January 2020. Their *retirement benefits* are calculated as follows:

Option A

Scheme pension of €60,000 p.a.

Option B

Lump sum of €135,000 p.a.

plus

Reduced pension of €46,224 p.a.



An order was made in favour of the *non-member spouse* shortly before the *member spouse* retired which specified:

Relevant period: 1 January 1980 to 1 January 2000

Relevant percentage: 50%

The *designated benefit* is calculated as follows:

Option A

Pension of €15,000 20
(i.e., €60,000 x 40 x 50%)

Option B

Lump sum of €33,750 20
(i.e., €135,000 x 40 x 50%)

plus

Reduced pension of €11,556 20
(i.e., €46,224 x 40 x 50%)

Option B is available to the *non-member spouse* regardless of whether the *member spouse* opts for a lump sum and reduced pension under the *scheme*.

212. If the *member spouse*, *member civil partner* or *member qualified cohabitant* elects to exchange part of their pension to provide benefits on their death or after retirement to a third party, this option must not affect the calculation or payment of the *designated benefit*. In these circumstances, the *designated benefit* must be calculated and paid ignoring any such option exercised by the *member spouse*, *member civil partner* or *member qualified cohabitant*.

Pension increases

s12(14)-95, s17(14)-96, s124(1)-10, s190-10

213. If:

1. the *rules in force* provide for guaranteed increases in the *retirement benefit* payable in pension form; or
2. the *rules in force* permit, and the appropriate person or persons exercise, a discretion to grant a cost-of-living increase in the *retirement benefit* payable to all, or a certain category of, pensioners,

and the *member spouse, member civil partner* or *member qualified cohabitant's retirement benefit* is increased as a result, the same increase must be applied to the *designated benefit*.

r14

214. The principle in paragraph 213 does not, however, extend to rule changes or benefit augmentations awarded to *current pensioners*. As described in paragraph 120, such rule changes or augmentations will only be taken into account for the purposes of calculating the *designated benefit* where the augmentation took place prior to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*.

Benefits on death of person specified in the order following commencement of designated benefit

s12(10)-95, s17(10)-96, r38, s123(7)-10, s189(7)-10

215. If the *order* is made in favour of the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant*, and they predecease the *member spouse, member civil partner* or *member qualified cohabitant* following commencement of the *designated benefit*, the *legislation* requires the *trustees* to provide for the payment of an amount to the personal representatives of the deceased *spouse civil partner* or *qualified cohabitant* within three months of the death of the *spouse civil partner* or *qualified cohabitant*. The amount is calculated as the *actuarial value*, at the date of death, of the *designated benefit* which would otherwise have been payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* during the lifetime of the *member spouse*,

member civil partner or member qualified cohabitant. It will exclude the value of benefits which would have been payable to the *non-member spouse, non-member civil partner or non-member qualified cohabitant* following the *member spouse, member civil partner or member qualified cohabitant's* death.

216. Such an *actuarial value* should be calculated on a basis which an *actuary* has approved as being consistent with the appropriate guidelines issued by the Society of Actuaries in Ireland. Where the *scheme* is an *occupational pension scheme* which is a funded *scheme* within the meaning of that term under section 2(1) of the Act and its funded status is such that in the opinion of the *actuary*, its resources are inadequate to provide for the liabilities of the *scheme* in respect of the benefits payable as a first priority on wind-up under subparagraph (a)(I) of section 48(1) of the Act, the *actuary* may take account of the funded status of the *scheme* in arriving at the *actuarial value*.

s12(17)-95, s17(17)-96, s124(4)-10, s190(4)-10

217. Following the payment of the amount described in paragraph 215, the *trustees* will be discharged from any obligation to make any further payments in connection with the *order*.

s12(2)-95, s17(2)-96

218. In the case of a *member spouse* if the *order* is made in favour of a specified person, for the benefit of a *dependent member of the family*, and they predecease the *member spouse*, no further benefit is payable following the death of the *dependent member of the family*. The *order*, therefore, ceases to have any effect (see part 6 of these notes in relation to calculation of *member spouse's retirement benefit* under the *scheme*).

Withdrawal from reckonable service of member spouse, member civil partner or member qualified cohabitant

219. If the *member spouse, member civil partner or member qualified cohabitant* is an *active member* of the *scheme* at the date of the *order* and subsequently withdraws from *reckonable service* prior to commencement of their *retirement benefit*, the *designated benefit* is calculated based on the *rules in force* (see paragraphs 113 to 118).

220. In most cases, the *designated benefit* will, therefore, represent a proportion of the *member spouse, member civil partner or member qualified cohabitant's* deferred *retirement benefit* entitlements under the *scheme*, including such periodic increases during deferment (if any) as are provided under the *rules in force*. In these circumstances, the principles governing the payment of the *designated benefit*, when it ultimately becomes payable at the time of commencement of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit*, are the same as those applying where the *member spouse, member civil partner or member qualified cohabitant* retires from *reckonable service* (as set out in paragraphs 205 to 218).

r39

221. If part, or all, of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit* on termination of *reckonable service* is represented by a refund of their contributions, the corresponding *designated benefit* will be a proportion of such refund (see paragraphs 115 to 118). In these circumstances the part of the *designated benefit* which relates to the refund of contributions will be paid to the person specified in the *order* at the same time as the remaining part of the refund of contributions is paid to the *member spouse, member civil partner or member qualified cohabitant*.

s12(8)-95, s12(15)-95, s17(8)-96, s17(15)-96, s123(5)-10, s124(2)-10, s189(5)-10, s190(2)-10

222. The *member spouse, member civil partner or member qualified cohabitant* may on, or following, termination of *reckonable service* choose to have a transfer payment applied on their behalf under another *scheme* or approved insurance policy or contract in lieu of retaining any residual deferred *retirement benefit* in the *scheme*. The transfer payment will exclude the value of the *designated benefit* which will remain in the transferring *scheme*. In such circumstances, the *member spouse, member civil partner or member qualified cohabitant* will cease to be a *member* of the *scheme* and the *trustees* may choose to transfer the then value of the *designated benefit* in accordance with the provisions of paragraphs 277 and 278. Where the *trustees* elect not to effect such a transfer, the calculation of the *designated benefit* is as set out in paragraphs 113 to 118 and the principles governing its payment are the same as those applying where the *member spouse, member civil partner or member qualified cohabitant* retires from *reckonable service*.'

s12(12)-95, s17(12)-96, s123(8), s189(8)

223. If, after the making of an *order*, the *member spouse*, *member civil partner* or *member qualified cohabitant* ceases to be an *active member* of the *scheme*, the *trustees* must notify the registrar or clerk of the *court*, and the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* of the cessation within a period of 12 months following the cessation (see paragraph 67).

Death of member spouse, member civil partner or member qualified cohabitant prior to commencement of designated benefit

s12(7)-95, s17(7)-96, s123(4)-10, s189(4)-10

224. Where an *order* is made in relation to *retirement benefit* and the *member spouse*, *member civil partner* or *member qualified cohabitant* dies prior to commencement of the *designated benefit* and prior to a *transfer amount* being applied (i.e., while either an *active member* of the *scheme* in question or prior to the commencement of their deferred *retirement benefit* if *reckonable service* has terminated), an amount is payable to the person in whose favour the *order* is made.

s12(7)-95, s17(7)-96, r40(1)(a), s123(4)-10, s189(1)-10

225. If the *order* in relation to the *retirement benefit* is made in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, the amount is calculated as the *transfer amount* which would otherwise have been available to that *spouse* immediately prior to the *member spouse*, *member civil partner* or *member qualified cohabitant's* death. Such *transfer amount* is calculated using the procedures set out in paragraphs 266 to 269 (assuming that the *member spouse*, *member civil partner* or *member qualified cohabitant* had a normal life expectancy).

s12(7)-95, s17(7)-96, r40(1)(b), s123(4)-10, s189(1)-10

226. In the case of a *member spouse* if the *order* is made in favour of a specified person, for the benefit of a *dependent member of the family*, the amount is calculated as the *actuarial value*, as at the date of the *member spouse's* death, of the *designated benefit* which the specified person would otherwise have expected to receive, for so long only as the person for whose benefit the *order* is made would have remained a *dependent member of the family*.

r40(2)

227. The amount in paragraph 225 or 226 should be calculated on a basis which an *actuary* has approved as being consistent with the appropriate guidelines issued by the Society of Actuaries in Ireland. Where the *scheme* is an *occupational pension scheme* which is a funded *scheme* within the meaning of that term under section 2(1) of the Act and its funded status is such that the *actuary* would have considered it necessary to reduce the transfer value which would have been paid in respect of the *member spouse*, *member civil partner* or *member qualified cohabitant* (to reflect the inadequacy of the funding) had they applied for a transfer value immediately prior to their death, the funded status may similarly be reflected in the calculation of the amount arising under the *order*.

s12(7)-95, s17(7)-96, s123(4)-10, s189(4)-10

228. The *legislation* requires the *trustees* to provide for the payment of the amount referred to in paragraphs 225 and 226 within three months of the death of the *member spouse*, *member civil partner* or *member qualified cohabitant*.

s12(17)-95, s17(17)-96, s124(4)-10, s190(4)-10

229. Following the payment of the amount in paragraph 225 or 226, the *trustees* will be discharged from any obligation to make any further payments in connection with the *order*.

Death of non-member spouse, non-member civil partner or non-member qualified cohabitant prior to commencement of designated benefit

s12(9)-95, s17(9)-96, s123(6)-10, s189(6)-10, r41

230. Where an *order* is made in relation to *retirement benefit* in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* and he/ she dies prior to a *transfer amount* being applied, and prior to the commencement of the *designated benefit*, an amount must be paid to the personal representatives of the deceased *spouse*, *civil partner* or *qualified cohabitant*. The *legislation* requires the *trustees* to provide for the payment of such amount within three months of their death. The amount is calculated as the *transfer amount* which would otherwise have been available to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, immediately prior to their death, using the procedures set out in paragraphs 266 to 269 (assuming that the *member spouse*, *member civil partner* or *member qualified cohabitant* had a normal life expectancy).

s12(17)-95, s17(17)-96, s124(4)-10, s190(4)-10

231. Following the payment of the amount described in the preceding paragraph, the *trustees* will be discharged from any obligation to make any further payments in connection with the *order*.

Death of dependent member of the family prior to commencement of designated benefit

s12(11)-95, s17(11)-96

232. In the case of a *member spouse* where an *order* is made in relation to *retirement benefit* for the benefit of a *dependent member of the family*, and that person dies prior to the commencement of payment of the *designated benefit*, the *order* ceases to have effect. (See part 6 of these notes in relation to calculation of *member spouse's retirement benefit* under the *scheme*).

Defined contribution schemes

s12(6)-95, s17(6)-96, r3, s123(3)-10, s189(3)-10

233. *Trustees* of a *defined contribution scheme* may generally give effect to an *order* in relation to *retirement benefit* by transferring an amount representing the then value of the *designated benefit* to another *scheme* without seeking the consent of the person in whose favour the *order* is made. The circumstances under which such a transfer may be made are described in paragraphs 277 and 278.

234. The *transfer amount* referred to in paragraph 233 must be applied to establish an independent benefit for the person in whose favour the *order* is made. The form of the independent benefit must be in accordance with the conditions set down by Revenue (see paragraphs 328 to 335).

235. If the *designated benefit* arising from the *member spouse*, *member civil partner* or *member qualified cohabitant's* membership of a *defined contribution scheme* is retained in that *scheme* it will be necessary to establish administrative procedures so that the *accumulated value*, at any subsequent date, of the *relevant percentage* of the *earmarked contributions* may be identified. The *trustees* may also wish to allow the person specified in the *order* (rather than the *member spouse*, *member civil partner* or *member qualified cohabitant*) to exercise choice over the investment medium in which the *relevant percentage* of the *earmarked contributions* is invested. When the *member spouse*,

member civil partner or member qualified cohabitant's retirement benefit ultimately becomes payable, the value of the *designated benefit* must be equal to the then *accumulated value* of the *relevant percentage* of the *earmarked contributions*.

s12(14)-95, s17(14)-96, r37, s124(1)-10, s190(1)-10

236. Where the *rules in force* include a rule which allows the *member spouse, member civil partner or member qualified cohabitant* to receive part of their *retirement benefit* in lump sum form, an equivalent option must be provided to the *non-member spouse, non-member civil partner or non-member qualified cohabitant* (or other beneficiary). If the *member spouse* elects to exchange part of their pension to provide benefits on their death after retirement to a third party, this option must not affect the calculation or payment of the *designated benefit*.

s12(10)-95, s12(14)-95, s17(10)-96, s17(14)-96, r35, r38, s123(7)-10, s189(7)-10, s124(1)-10, s190(2)-10

237. Thus, where a *transfer amount* has not been applied, the *designated benefit* which corresponds to the *member spouse, member civil partner or member qualified cohabitant's* retirement pension is calculated as set out in paragraph 149 and is payable for the lifetime of the *member spouse, member civil partner or member qualified cohabitant* subject to any minimum payment period or pension increases attaching to the *member spouse, member civil partner or member qualified cohabitant's* retirement pension. If the *order* is made in favour of the *non-member spouse non-member civil partner or non-member qualified cohabitant* and they predecease the *member spouse, member civil partner or member qualified cohabitant* following commencement of the *designated benefit*, an amount is payable to the personal representatives of the deceased *spouse civil partner or qualified cohabitant* as explained in paragraph 215.

Death of member spouse, member civil partner or member qualified cohabitant prior to commencement of designated benefit

s12(7)-95, s17(7)-96, r40(1)(c), s123(4)-10, s189(4)-10

238. Where an *order* is made in relation to *retirement benefit* and the *member spouse, member civil partner or member qualified cohabitant* dies prior to commencement of the *designated benefit* and prior to a *transfer amount* being applied (i.e., while either an *active member* of the *scheme* in question or prior to the commencement of their deferred *retirement benefit* if *reckonable service* has terminated), an amount is payable to the person in whose favour the *order* is made. The amount is calculated as the *accumulated*

value, as at the date of death, of the *relevant percentage* of the *earmarked contributions* assuming the *member spouse, member civil partner or member qualified cohabitant* had withdrawn from *reckonable service* immediately prior to their death.

s12(7)-95, s17(7)-96, s123(4)-10, s189(4)-10

239. The amount in paragraph 238 must be paid within three months of the death of the *member spouse, member civil partner or member qualified cohabitant* to the person named in the *order*.

s12(17)-95, s17(17)-96, s124(4)-10, s190(4)-10

240. Following the payment of the amount described in the preceding paragraph, the *trustees* will be discharged from any obligation to make any further payments in connection with the *order*.

Death of non-member spouse, non-member civil partner or non-member qualified cohabitant prior to commencement of designated benefit

s12(9)-95, s17(9)-96, r41, s123(6)-10, s189(6)-10

241. Where an *order* is made in relation to *retirement benefit* in favour of the *non-member spouse, non-member civil partner or non-member qualified cohabitant* and they die prior to a *transfer amount* being applied, and prior to the commencement of the *designated benefit*, a payment must be made to the personal representatives of the deceased *spouse or civil partner or qualified cohabitant* within three months of their death. The payment is calculated as the *transfer amount* which would otherwise have been available to the *non-member spouse, non-member civil partner or non-member qualified cohabitant* immediately prior to their death using the procedures set out in paragraphs 270 to 272.

s12(17)-95, s17(17)-96, s124(4)-10, s190(4)-10

242. Following the payment of the amount described in the preceding paragraph, the *trustees* will be discharged from any obligation to make any further payments in connection with the *order*.

Death of dependent member of the family prior to commencement of designated benefit

s12(11)-95, s17(11)-96

243. In the case of a *member spouse* where an *order* is made in relation to *retirement benefit* for the benefit of a *dependent member of the family*, and that person dies prior to the commencement of payment of the *designated benefit*, the *order* ceases to have effect. (See part 6 of these notes in relation to calculation of *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* under the *scheme*).

(paragraphs 244 - 249 spare)

Part 6 - Calculation of residual benefits following order in relation to retirement benefit

This part of the notes sets out the procedure for reducing the *member spouse, member civil partner or member qualified cohabitant's retirement benefit or contingent benefit* under the *scheme* following the making of a pension adjustment order in relation to their *retirement benefit*.

General

s12(15)-95, s12(16)-95, s17(15)-96, s17(16)-96, s124(2)-10, s190(2)-10, s124-10, s190-10

250. Where an *order* is made in relation to *retirement benefit*, the *legislation* provides that benefits payable to, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* in accordance with the *rules* of the *scheme* concerned are reduced. Paragraphs 251 to 254 deal with the procedure for determining the *member spouse, member civil partner or member qualified cohabitant's residual retirement benefit* (i.e., *retirement benefit* payable in accordance with the *rules* less the appropriate adjustment to take account of the *order*). Paragraph 255 deals with the procedure for reducing the amount of *contingent benefit* payable in respect of a *member spouse, member civil partner or member qualified cohabitant* to take account of benefit obligations under an *order* in relation to *retirement benefit* in the event of their death.

Retirement benefits – defined benefit

s12(15)-95, s17(15)-96, r26, s124(2)-10, s190(2)-10

251. Where an *order* is made in relation to the *member spouse, member civil partner or member qualified cohabitant's retirement benefit*, and *retirement benefit* is calculated on a *defined benefit basis*, the residual *retirement benefit* payable to, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* is calculated as the *retirement benefit* payable in accordance with the *rules* of the *scheme* less the corresponding amount of the *designated benefit*.

Example

A *member* joined a *scheme* on 1 January 1990, at age 25. The *rules* provide for a retirement pension of 2/3rds of pensionable salary on retirement at *NPA* (65), together with a dependant's pension, payable on death following retirement, of 1/3rd of pensionable salary.

Following the granting of a *decree* of divorce on 1 January 2010 an *order* is made in relation to the *member spouse's retirement benefit*, in favour of the *non-member spouse*, which specifies:

Relevant period: 1 January 1990 to 1 January 2010

Relevant percentage: 50%

On the *member spouse's* retirement at *NPA* his pensionable salary is €100,000. The *designated benefit* which corresponds with the *member spouse's* retirement pension, is calculated as follows:

A = 2/3rds of €100,000 = €66,667
 B = 1 January 1990 to 1 January 2010 = 20 years
 C = 1 January 1990 to 1 January 2030 = 40 years
 P = 50%

Designated benefit (retirement pension)

= $\frac{20}{66,667 \times 40 \times 50\%}$ = €1,667

Residual retirement pension, payable to *member spouse*

= €66,667 - €16,667 = €50,000

Using the same procedure, the *designated benefit* payable to the *non-member spouse* following the *member spouse's* death in retirement amounts to €8,333 p.a. (i.e., €16,667 x 50%) and the residual dependant's pension, payable in accordance with the *rules*, amounts to €25,000 p.a. (€50,000 x 50%).

252. In terms of calculating the residual *retirement benefit* payable to the *member spouse, member civil partner or member qualified cohabitant* during their lifetime, the principle in paragraph 251 applies regardless of whether the *designated benefit* is paid from the *scheme*, has been transferred to another *scheme* or (if the *order* is made in favour of the *non-member spouse, non-member civil partner or non-member qualified cohabitant*) has been paid as a lump sum following the death of the *non-member spouse, non-member civil partner or non-member qualified cohabitant*. The residual *retirement benefit*, if any, payable following the death of the *member spouse, member civil partner or member qualified cohabitant* may, however, be affected by the nature of payment made under the *order* (see paragraph 253 and attaching example).

Example

Details are in the example in paragraph 251 except that the *trustees* applied a *transfer amount* of €75,000 to another *scheme* following a request from the *non-member spouse* shortly after the *order* was made on 1 January 2010.

In these circumstances, the *member spouse's* residual retirement pension is calculated as:

| | |
|--|--|
| Retirement pension under <i>scheme rules</i> : | $2/3\text{rds of } \text{€}100,000 = \text{€}66,667$ |
| less | |
| <i>Designated benefit</i> that would have been payable, ignoring transfer: | $\text{€}66,667 \times 20/40 \times 50\% = \text{€}16.667$ |
| Residual retirement pension: | $\text{€}66,667 - \text{€}16,667 = \text{€}50,000$ |

(i.e., same as example in paragraph 251)

253. If the *order* has ceased to have effect, the *retirement benefit* payable to, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* is calculated as the *retirement benefit* payable in accordance with the *rules* of the *scheme*. The circumstances under which the *order* could cease to have effect are:

s12(11)-95, s17(11)-96

- in the case of a *member spouse* if the *order* is made in favour of a specified person, for the benefit of a *dependent member of the family*, on the death or cessation of *dependency* of that *dependent member of the family*;
- if the *order* is made in favour of the *non-member spouse, non-member civil partner or non-member qualified cohabitant* (and they did not elect for a *transfer amount* in lieu of receiving the *designated benefit*) following the death of both the *member spouse, member civil partner or member qualified cohabitant*, and the *non-member spouse, non-member civil partner or non-member qualified cohabitant* after the commencement of the *designated benefit*.

Example

Details are as in the example in paragraph 251.

Following the *member spouse's* death, the *non-member spouse* receives the *designated benefit* which corresponds with the dependant's pension (i.e., €16,667 x 50% = €8,333 per year) and the balance (i.e., €50,000 x 50% = €25,000 per year) is payable in accordance with the *scheme rules*.

Following the subsequent death of the *non-member spouse*, the full amount of the dependant's pension (i.e., €25,000 + €8,333 = €33,333 per year) is payable in accordance with the *scheme rules*.

If, however, the *non-member spouse* had elected to apply a *transfer amount* in lieu of receiving *designated benefit* (e.g., as in the example in paragraph 252) the *actuarial value* of the designated portion of the dependant's pension would have been included in such *transfer amount*, and the payment of residual benefits in respect of the *member spouse* would be unaffected by the death of the *non-member spouse*.

Retirement benefit - defined contribution

s12(15)-95, s17(15)-96, r27, s124(2)-10, s190(2)-10

254. Where an *order* is made in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit*, and *retirement benefit* is calculated on a *defined contribution basis*, the residual *retirement benefit* payable to, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* is calculated by applying the *accumulated value* of contributions made for the purposes of *retirement benefit*, less the *accumulated value* of the *relevant percentage* of *earmarked contributions*, in accordance with the *rules* of the *scheme*. If the *order* has ceased to have effect, the *retirement benefit* payable to, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* is calculated as the *retirement benefit* payable in accordance with the *rules* of the *scheme*.

Contingent benefit

s12(16)-95, s17(16)-96, r28, s124(3)-10, s190(3)-10

255. Where an order is made in relation to *retirement benefit* and *the member spouse*, *member civil partner* or *member qualified cohabitant* dies prior to commencement of the *designated benefit*, the amount of any *contingent benefit* payable in accordance with the *rules* of the same *scheme* is reduced by the amount described in paragraphs 225, 226, or 238 as appropriate. For this purpose, a *retirement benefit* arising under a *section 784 retirement annuity contract (or trust scheme)* and a *contingent benefit* arising under a *section 785 policy (or trust scheme)* for the same *member* are not regarded as benefits arising under the *rules* of the same *scheme*.

256. The reduction in *contingent benefit* referred to in paragraph 255 should be calculated on a basis which an *actuary* has approved as being consistent with the appropriate guidelines issued by the Society of Actuaries in Ireland.

(paragraphs 257- 259 spare)

Part 7 – Transfer amounts

This part of the notes sets out the circumstances in which the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* or the *trustees* may initiate a *transfer amount*, and the basis for calculating and the procedure which must be followed in relation to *transfer amounts*.

General

s12(4)-95, s17(4)-96, s121(4)-10, s187(4)-10

260. If an *order* has been made in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, the *legislation* enables the *non-member spouse* to opt for an independent benefit instead of receiving the *designated benefit* from the *scheme* (i.e. a proportion of each instalment of the *retirement benefit* payable to, or in respect of, the *member spouse*, *member civil partner* or *member qualified cohabitant* as it falls due). Paragraphs 262 to 276 deal with the procedures and methodology involved where the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* chooses to exercise this option. The Family Law Act 1995 and the Family Law (Divorce) Act 1996 provide no such option where in the case of a *member spouse* the *order* is made in favour of a specified person for the benefit of a *dependent member of the family*.

s12(6)-95, s12(8)-95, s17(6)-96, s17(8)-96, s123(3)-10, s123(5)-10, s189(3)-10, s189(5)-10

261. Regardless of whether the *order* is made in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* or in the case of a *member spouse* a specified person for the benefit of a *dependent member of the family*, the *legislation* enables the *trustees*, in certain circumstances, to establish a separate arrangement for the person in whose favour the *order* is made without obtaining the consent of that person. Paragraphs 277 to 283 describe the procedures which must be followed in implementing such a transfer.

Transfer following request from non-member spouse, non-member civil partner or non-member qualified cohabitant

Application

s12(4)-95, s17(4)-96, s121(4)-10, s187(4)-10

262. At the time of the making of the *order*, or at any time prior to the commencement of the *designated benefit*, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* may make an application to the *trustees* requesting that a *transfer amount* be applied for their benefit in lieu of receiving payment of the *designated benefit* from the *scheme*.

s12(5)-95, s17(5)-96, r30, r34(4)(a), s123(1)-10, s189(1)-10

263. The application must be made in writing, must relate to the full *designated benefit* payable from the *scheme*, and must be accompanied by whatever information is reasonably required by the *trustees* (see paragraph 65). Where the *trustees* had initiated a transfer (see paragraphs 277 and 278) within 30 days prior to the receipt of a valid application from the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, they must make the transfer on the basis of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant's* application.

s12(5)-95, s17(5)-96, r30, s123(1)-10, s189(1)-10

264. Where the *trustees* of a *scheme* receive a valid application for a *transfer amount* from the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, they must apply the *transfer amount* concerned as directed in the application within three months of the date of receipt of the application.

265. If no such application has been received by the *trustees* when payment of the *designated benefit* is due to commence (i.e., when the *trustees* become aware that the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* is due to commence) they may choose (but are not obliged) to offer the transfer option to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*.

Calculation of transfer amount - defined benefit

s12(4)-95, s17(4)-96, r31(1), s121(4)-10, s187(4)-10

266. The *transfer amount* in respect of the *designated benefit*, or part of the *designated benefit* which has been determined on a *defined benefit basis*, is the *actuarial value*, as at the date of the application for a *transfer amount*, of the *designated benefit* (or part thereof).

r31(2)

267. If the *member spouse*, *member civil partner* or *member qualified cohabitant* is an *active member* of the *scheme* in question at the date of receipt of the application for a *transfer amount*, the calculation in paragraph 266 should be determined by reference to the *designated benefit* which would have arisen had the *member spouse*, *member civil partner* or *member qualified cohabitant's reckonable service* terminated of their own free will on the date of receipt of the application. In particular, if under the *rules in force*, a *member* whose *reckonable service* terminated had no entitlement to a benefit in respect of a specified period of *reckonable service* (e.g., pre 1991 *reckonable service*) the *designated benefit* for the purposes of calculating the *transfer amount* would similarly exclude any such period of *reckonable service* (see paragraph 116).

r31(3)

268. The *transfer amount* should be calculated on a basis which an *actuary* has approved as being consistent with the appropriate guidelines issued by the Society of Actuaries in Ireland.

r31(3)

269. Where the *scheme* is an *occupational pension scheme*, which is a funded *scheme* within the meaning of that term under section 2(1) of the Act and its funded status is such that the *actuary* would have considered it necessary to reduce the transfer value which would have been paid in respect of a *member* who had applied for a transfer value at the date of receipt of the application for a *transfer amount*, the funded status may similarly be reflected in arriving at the *transfer amount* arising under the *order*.

Calculation of transfer amount - defined contribution

s12(4)-95, s17(4)-96, r32(1), s121(4)-10, s187(4)-10

270. The *transfer amount* in respect of a *designated benefit*, or part of a *designated benefit*, which has been determined on a *defined contribution basis* is the *accumulated value* of the *relevant percentage* of the *earmarked contributions*.

r32(2)

271. If the *member spouse, member civil partner or member qualified cohabitant* is an *active member* of the *scheme* in question at the date of receipt of the application for a *transfer amount*, the calculation in paragraph 270 should be determined by reference to the *accumulated value* which would have arisen if the *member spouse, member civil partner or member qualified cohabitant's reckonable service* had terminated of their own free will on the date of receipt of the application and their entitlement had been calculated under the *rules in force*. Thus, for example, if the *member spouse, member civil partner or member qualified cohabitant* was a *member* of an *occupational pension scheme* and the *rules in force* specified that, on termination of *reckonable service*, they would not be entitled to the benefit of contributions made by the sponsoring employer prior to 1991 for the purposes of *retirement benefit*, the *transfer amount* is calculated on an equivalent basis.

r32(3)

272. The *accumulated value* must be determined on a date not later than three months following the date on which the *trustees* receive an application for a *transfer amount*.

Establishment of independent benefit

s12(5)-95, s17(5)-96, s123(1)-10, s189(1)-10

273. There are three different methods provided for in the *legislation* whereby an independent benefit may be established for the *non-member spouse, non-member civil partner or non-member qualified cohabitant* by the application of the *transfer amount*.

s12(5)-95, s17(5)-96, r33(2), s123(1)-10, s189(1)-10

274. If the *trustees* of the *scheme* and the *non-member spouse, non-member civil partner or non-member qualified cohabitant* so agree, the *transfer amount* may be applied to provide a separate benefit for, or in respect of, the *non-member spouse, non-member civil partner or non-member qualified cohabitant* in that *scheme*. The *trustees* must ensure that the benefit or benefits to be provided for, or in respect of, the *non-member spouse, non-member civil partner or non-member qualified cohabitant* are of an *actuarial value* equivalent to the *transfer amount* but the benefits may be in such form as the *trustees* and *non-member spouse, non-member civil partner or non-member qualified cohabitant* agree provided only that they conform to Revenue requirements (see paragraphs 328

and 329). The *trustees* must also inform the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* in writing of the benefits to be provided as soon as practicable after the *transfer amount* has been applied.

s12(5)-95, s17(5)-96, r33(3), s123(1)-10, s189(1)-10

275. Subject to the agreement of the *trustees* of any other *occupational pension scheme* of which they are a *member*, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* in whose favour the *order* is made may alternatively elect to have the *transfer amount* paid to that other *scheme*. The *trustees* of the receiving *scheme* must ensure that the benefit or benefits to be provided for, or in respect of, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* are of an *actuarial value* equivalent to the *transfer amount* received but the benefits may be in such form as the *trustees* and the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* agree provided only that they conform to Revenue requirements (see paragraph 330). The *trustees* of the receiving *scheme* must also inform the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* in writing of the benefits to be provided as soon as practicable after the *transfer amount* has been applied. This option is not available where the *member spouse*, *member civil partner* or *member qualified cohabitant* is a *member* of a *section 784 retirement annuity contract* or a *trust scheme*.

s12(5)-95, s17(5)-96, s123(1)-10, s189(1)-10

276. As an alternative to the options described in paragraphs 274 and 275, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* may elect to have the *transfer amount* applied to an insurance policy or contract provided that this is approved by Revenue and that the insurance company which offers the policy or contract is willing to accept the *transfer amount*. The *trustees* of the paying *scheme* must ensure that the *transfer amount* is paid directly to the insurance company and must inform the insurance company of the maximum amount which may be received in lump sum form on retirement (see paragraph 332).

Transfer initiated by trustees

s12(6)-95, s12(8)-95, s17(6)-96, s17(8)-96, r34(1), s123(3)-10, s189(3)-10, s123(5)-10, s189(5)-10

277. In certain circumstances the *trustees* of the *scheme* of which the *member spouse*, *member civil partner* or *member qualified cohabitant* is a *member*, may choose to give effect to the *order* by applying a *transfer amount* (representing the value of the *designated*

benefit which would otherwise be paid) to another *scheme* or approved insurance policy without requiring the consent of the person in whose favour the *order* is made. The circumstances under which such a transfer may be made are:

- where the *designated benefit* arises from the *member spouse, member civil partner* or *member qualified cohabitant's* membership of a *defined contribution scheme* and the *transfer amount* represents the *accumulated value* of the *relevant percentage* of all of the *earmarked contributions* (*i.e.* none of the contributions made by the sponsoring employer in respect of the *member spouse, member civil partner* or *member qualified cohabitant* for the purposes of *retirement benefit* are excluded as provided for in paragraph 271);
- where the *member spouse, member civil partner* or *member qualified cohabitant* ceases to be a *member* of the *scheme* following their termination of *reckonable service* (*i.e.*, they decide to transfer the value of the residual *retirement benefit* to another *scheme* or approved insurance policy or contract).

278. Where the *trustees* initiate a transfer in the circumstances described in paragraph 277, the following conditions must be observed:

r34(4)

- written notice must be given to the person in whose favour the *order* is made at least 30 days before the proposed transfer;
- there must be no outstanding application from the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* to have the *designated benefit* transferred to another *scheme* or approved insurance policy or contract that is willing and capable of receiving the *transfer amount*;
- the *trustees* must be satisfied that the benefits that will be provided in the receiving *scheme* are of an *actuarial value* equivalent to the *transfer amount* (after allowing for reasonable charges, fees and costs);

r34(3)

- where the *scheme* is an *occupational pension scheme* which is a funded *scheme* within the meaning of that term under section 2(1) of the Act, the *actuarial value* of the *transfer amount* shall not be reduced to reflect an inadequate funded status (*i.e.*, as provided for in paragraph 269);

r34(5)

- where the *transfer amount* is applied to provide an independent benefit in the same *scheme*, the *trustees* of that *scheme* must ensure that the benefits are in such form as they and the person in whose favour the *order* is made agree, provided that the benefits conform with Revenue requirements;

r34(6)

- where the *transfer amount* is applied to provide an independent benefit in a separate *occupational pension scheme*, the *trustees* of the receiving *scheme* must ensure that the benefits are in such form as they and the person in whose favour the *order* is made agree, provided that the benefits conform with Revenue requirements;

r34(7)

- where the *transfer amount* is applied to an insurance policy or contract the *trustees* of the paying *scheme* must ensure that the *transfer amount* is paid directly to the insurance company and must inform the insurance company of the maximum amount which may be received in lump sum form on retirement (see paragraph 332);

s12(13)-95, s17(13)-96, s123(9)-10, s189(9)-10

- the person in whose favour the *order* is made, and the registrar or clerk of the *court*, must subsequently be notified of the *transfer amount* and of the *occupational pension scheme* or insurance policy or contract to which the *transfer amount* has been applied;
- for the benefits to be established under another *occupational pension scheme*, unless the transfer is being made from a previous *occupational pension scheme* relating to the same *relevant employment*, the person in whose favour the *order* is made must be a *member* of that *scheme* and the *scheme* from which the transfer is made must be an *occupational pension scheme* or a buy-out *bond*.

Order made for benefit of a dependent member of the family

s12(6)-95, s12(8)-95, s17(6)-96

279. In the case of a *member spouse* if the *order* is in favour of a person for the benefit of a *dependent member of the family*, a transfer may not be made unless initiated by the *trustees* in the circumstances and subject to the conditions specified in paragraphs 277 and 278.

r34(3)

280. In the case of a *member spouse* if the *order* is made in favour of a person for the benefit of a *dependent member of the family*, the *transfer amount* in respect of the *designated benefit*, or part of the *designated benefit*, which has been determined on a *defined benefit basis* is the *actuarial value* of the *designated benefit* which the specified person would otherwise have expected to receive, for so long only as the person for whose benefit the *order* is made would have remained a *dependent member of the family*.

281. The *transfer amount* should be calculated on a basis which an *actuary* has approved as being consistent with the appropriate guidelines issued by the Society of Actuaries in Ireland.

r34(2)

282. In the case of a *member spouse* if the *order* is made in favour of a person for the benefit of a *dependent member of the family*, the *transfer amount* in respect of the *designated benefit*, or part of the *designated benefit*, which is calculated on a *defined contribution basis* will be the *accumulated value*, as at the date the benefit is transferred, of the *relevant percentage* of the *earmarked contributions*. Where the *member spouse* is an *active member* of the *scheme* when calculating the *transfer amount*, it is not permissible to exclude the contributions made by the sponsoring employer in respect of the *member spouse* for the purposes of *retirement benefit* as provided for in paragraph 271.

283. In the case of a *member spouse* there are three different methods provided for in the Family Law Act 1995 and the Family Law (Divorce) Act 1996 whereby an independent benefit may be established for the *dependent member of the family* by the application of the *transfer amount*. These are as described in paragraphs 274 to 276.

Discharge of trustees' responsibilities

s12(17)-95, s17(17)-96, s124(4)-10, s190(4)-10

284. Where the *trustees* apply a *transfer amount* in accordance with the *legislation* (either at the request of the *non-member spouse, non-member civil partner or non-member qualified cohabitant* if the *order* is made in their favour or on their own initiative) they are discharged from any further obligation to make payments in connection with the *order*.

(paragraphs 285 - 289 spare)

Part 8 - Contingent benefits

This part of the notes sets out the conditions governing the calculation and payment of *contingent benefit* from a *scheme* following a pension adjustment order in relation to the *member spouse*, *member civil partner* or *member qualified cohabitant's contingent benefit* and the procedure for reducing the *member spouse*, *member civil partner* or *member qualified cohabitant's contingent benefit* under the *scheme*.

General

s12(3)-95, s17(3)-96, s121(5)-10, s187(5)-10, s188(4)-10

290. Following the granting of a *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* the *court* may, on application by either *spouse*, *civil partner*, *qualified cohabitant* or in the case of a *member spouse* by a person for the benefit of a *dependent member of the family*, make an *order* in relation to *contingent benefit* that:

- (a) is payable under a *scheme* of which either *spouse*, *civil partner* or *qualified cohabitant* is a *member*; or
- (b) which, but for the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable.

This type of *order* may be made in addition to any *order* in relation to *retirement benefit*.

For an *order* to be made over the *contingent benefits* of a *member qualified cohabitant* in favour of a *non-member qualified cohabitant*, the *rules of the scheme* must expressly allow for payments of *contingent benefits* to *qualified cohabitants*.

s12(3)-95, s17(3)-96, s121(5)-10, s187(5)-10

291. Paragraphs 75 to 77 deal with the criteria governing the application for an *order*. Most importantly, an application for an *order* in relation to *contingent benefit* must be made within one year following the granting of the *decree*, except in the case of *qualified cohabitants* whereby an order must be sought within two years of the ending of the relationship.

r50

292. Paragraph 61 sets out the information that the *trustees* must provide in relation to *contingent benefit*, if directed by the *court*. As the *order* may apply to part but not all of the *contingent benefit* (e.g., it may relate to the lump sum death benefit but not to the dependant's pension) it will be necessary for the *trustees* to separately identify each element of the *contingent benefit* by reference to the corresponding *scheme* rule or policy or contract number.

293. Paragraph 80 sets out the information that will be set out in the *order*. In particular, this will inform the *trustees* of the percentage of either the total or a specified element of the *contingent benefit* that must be payable to the person(s) named in the *order*.

s12(20)-95, s17(20)-96, s122(3)-10, s188(3)-10, s188(4)-10

294. The *order*, provided that the *court* so directs the *trustees*, will override any discretionary powers regarding payment of death benefits which the *trustees* are empowered to exercise under the *rules* of the *scheme*. For an *order* to be made over the *contingent benefits* of a *member qualified cohabitant* in favour of a *non-member qualified cohabitant*, the *rules* must expressly allow for payment of *contingent benefits* to *qualified cohabitants*. The *legislation* does not allow the *court* to override the *rules* in this regard. Subject to paragraph 255 any residual *contingent benefit* will be paid in accordance with the *rules*.

Duration of order

s12(19)-95, s17(19)-96, s122(2)-10, s188(2)-10

295. An *order* made in relation to *contingent benefit* will cease to have effect:

- on the death of the person in whose favour the *order* was made;
- if the *order* was made in favour of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, the remarriage or registration in a civil partnership of that *spouse*, *civil partner* or *qualified cohabitant*;
- in the case of a *member spouse* if the *order* was made for the benefit of a *dependent member of the family*, the cessation of the beneficiary's *dependency*.

296. In any of the circumstances outlined in paragraph 295, an *order* may continue to apply to other persons. For example, if the *order* is made in favour of the *non-member spouse* and also for the benefit of a *dependent member of the family*, and the *non-member spouse* remarries, it would continue to have effect insofar as it related to the *dependent member of the family* for so long as they remain dependent.

s12(1)-95, s12(12)-95, s17(1)-96, s17(12)-96, s121(1)-10, s123(8)-10, s187(1)-10, s189(8)-10

297. The *legislation* defines a *contingent benefit* as a benefit payable under a *scheme* if the *member spouse*, *member civil partner* or *member qualified cohabitant* dies while in *relevant employment* and before attaining any *normal pensionable age* provided for under the *rules* of the *scheme*. Hence, an *order* in relation to *contingent benefit* ceases to have effect when the *member spouse*, *member civil partner* or *member qualified cohabitant's relevant employment* terminates. In these circumstances, the *trustees* must notify the registrar or clerk of the *court*, and the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (within a period of 12 months following such termination).

Relevant employment

s12(1)-95, s17(1)-96, r3, s121(1)-10, s187(1)-10

298. A *member* is regarded as being in *relevant employment* if they are in any employment (or any period treated as employment) or any period of self-employment to which a *scheme* applies. Where under the *rules* of a *scheme* a 'death-in-service benefit' is provided on the death of the *member* following termination of employment (e.g., in the case of a *member* who retires prior to *NPA*, death benefits continue to be provided until *NPA* such a period shall be treated as a period of *relevant employment*).

299. A *scheme* is regarded as applying to an employment where an employee is, or is capable of becoming, a *member* of that *scheme*. A *scheme* is regarded as no longer applying to an employment where:

- the *scheme* is wound up and not replaced by another *scheme*;
- the *scheme* is 'frozen' (i.e., benefits for existing *members* are no longer accruing, and no new *members* are being included) and not replaced;

- an employee has declined to join, or has opted to terminate their membership of, the *scheme*;
- in the case of a self-employed person, he is no longer contributing to either a *section 784 retirement annuity contract* or *trust scheme*, or a *personal retirement savings account* or a *section 785 policy*.

r44

300. If a *member's* employment is interrupted due to a period of temporary absence, the *member's relevant employment* is not treated as terminated and, hence, an *order* in relation to *contingent benefit* continues to have effect. For this purpose, temporary absence means a period of absence:

- on account of the *member's* pregnancy or childbirth,
- in furtherance of a trade dispute,
- where under the *scheme's* temporary absence rule, the *member's* employment is not treated as terminated, and
- of less than one month.

Termination of relevant employment

r43

301. If:

- in the case of a *scheme* with more than one participating employer (including an industry-wide *scheme*) a *member's* employment ceases and within a period of one month (or such longer period as the *trustees* decide) following such cessation they become employed by another employer participating in the same *scheme*,

or

- in the case of a change in ownership of the employer, or of the employer's business, a *member's* employment ceases and within a period of one month (or

such longer period as the *trustees* decide) following such cessation they become employed by the new employer and resumes membership of the same *scheme*,

their *relevant employment* is not treated as terminated and, hence, an *order* in relation to *contingent benefit* continues to have effect.

Death of member spouse, member civil partner or member qualified cohabitant

s12(3)-95, s17(3)-96, r46, s121(5)-10, s187(5)-10

302. Where, on the death of the *member spouse*, *member civil partner* or *member qualified cohabitant*, a *contingent benefit* is payable under the *rules* of the *scheme*, the percentage of the *contingent benefit* specified in the *order* must be paid to the person named in the *order*.

303. The *contingent benefit* must be calculated as at the date of the *member spouse*, *member civil partner* or *member qualified cohabitant's* death (e.g., if *contingent benefit* under the *rules* of the *scheme* is based on the *member's* salary at death, it must be similarly calculated for the purposes of determining the percentage specified in the *order*). It must also be based on the *rules* of the *scheme* as at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*. In particular, the *legislation* specifies that an *order* relates to any *contingent benefit* that is payable or which, but for the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, would have been payable.

304. A *scheme* may, therefore, have to continue to provide (and, if appropriate, insure) part, or all, of a *contingent benefit* which, had it not been for the *order*, would have lapsed. For example, if the *rules* of the *scheme* include a cohabitation requirement in the case of a *spouse* or *civil partner's* benefit, the *trustees* must nonetheless pay a percentage of that benefit to a separated *spouse* or *civil partner* if so specified in the *order*. Similarly, if the *rules* of the *scheme* provide that a *spouse* or *civil partner's* benefit will not be payable if the *non-member spouse* or *non-member civil partner* cohabits with any other person, the *trustees* must nonetheless pay a percentage of the benefit to a cohabiting *spouse* if so specified in the *order*.

Example

The *rules* of a *member spouse's scheme* provide for a lump sum death benefit of four times salary at date of death to be paid in the event of death during *relevant employment*.

An order is made in relation to the *member spouse's contingent benefit*, in favour 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%

The *member spouse* dies during *relevant employment*. Her salary at date of death is €50,000. The amount of benefit paid in accordance with the order is calculated as:

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

305. Any alteration in *contingent benefit* which takes effect after the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*, (whether such alteration represents an increase or reduction in the benefit scale, or the addition or deletion of a specified element of *contingent benefit*) is not taken into account for the purposes of determining the percentage of the *contingent benefit* specified in the *order*. This is unless the alteration is as a result of measures pursuant to a direction under section 50 of the Act and the direction is made on or after 1 June 2012. In this case the alteration may be taken into account even if the alteration is effective subsequent to the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*.

306. Where a *member spouse*, *member civil partner* or *member qualified cohabitant* is allowed, under the *rules* of the *scheme*, to exercise a choice in the rate or scale of *contingent benefit* to be provided in respect of him/her, the percentage of the *contingent benefit* specified in the *order* is calculated based on the rate or scale in force as at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant*.

s12(7)-95, s17(7)-96, s123(4)-10, s189(4)-10

307. If a separate *order* (in relation to the *member spouse, member civil partner or member qualified cohabitant's retirement benefit*) has been served on the *trustees*, in the event of the *member spouse, member civil partner or member qualified cohabitant's death* before payment of the *designated benefit* has commenced, a *transfer amount* (as outlined in paragraphs 225, 226 or 238) must also be paid to the person in whose favour this separate *order* has been made.

s12(16)-95, s17(16)-96, s124(2)-10, s190(2)-10

308. Any residual *contingent benefit* (having deducted any lump sum or in the case of a *member spouse* dependant's pension payments arising under paragraphs 302 or any payment arising under paragraph 307) is payable in accordance with the *rules* of the *scheme*. Where, prior to the death of the *member spouse, member civil partner or member qualified cohabitant*, a *transfer amount* had already been paid by the *trustees* in accordance with the provisions of paragraphs 230, 241, 262 or 277, such amount is not deducted when determining any residual *contingent benefit* payable on the subsequent death of the *member spouse, member civil partner or member qualified cohabitant*.

Example

Details are as in the example in paragraph 304, except that a separate *order* has been made, in favour of the *non-member spouse*, in relation to the *member spouse's retirement benefit*. The amount payable on the *member spouse's* death under the *order* in relation to *retirement benefit* is calculated as €75,000.

The residual *contingent benefit* is calculated as follows:

| | |
|---|------------------------------|
| Death benefits payable under <i>scheme rules</i> : | €200,000 (i.e., 4 x €50,000) |
| Amount payable under order in relation to <i>contingent benefit</i> : | €50,000 x 4 x 50% = €100,000 |
| Amount payable under order in relation to <i>retirement benefit</i> : | €75,000 |
| Residual <i>contingent benefit</i> : | €25,000 |

(payable in accordance with *rules* of the *scheme*).

309. If an *order* in relation to *contingent benefit* ceases to have effect (e.g., because of the remarriage or entry into a civil partnership of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* or in the case of a *member spouse* due to the ending of *dependency* if the *order* is made for the benefit of a *dependent member of the family*) the *contingent benefit* will be payable in accordance with the *rules* of the *scheme*. The *order* may, however, continue to apply to any other person specified in the *order* and the provisions of paragraph 307 may also apply.

Example

Details are as in the example in paragraph 308, except that the *non-member spouse* had remarried at the date of the *member spouse's* death.

The residual *contingent benefit* is calculated as follows:

| | |
|---|------------------------------|
| Death benefits payable under <i>scheme rules</i> | €200,000 (i.e., 4 x €50,000) |
| Amount payable under order in relation to <i>retirement benefit</i> : | €78,000 |
| Residual <i>contingent benefit</i> : (payable in accordance with <i>rules</i> of the <i>scheme</i>) | €125,000 |

Payment of contingent benefit

s12(14)-95, s17(14)-96, s124(1)-10, s190-10

310. If, following the *member spouse*, *member civil partner* or *member qualified cohabitant's* death, a dependant's pension becomes payable under the *order*, this will be payable in accordance with the *rules* of the *scheme* (other than as indicated in paragraph 304). Thus if:

- the *rules* of the *scheme* at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* provide for guaranteed increases in the *contingent benefit* payable in pension form; or
- the *rules* of the *scheme* at the date of the *decree* in the case of a *member spouse* or *member civil partner* or the ending of the relationship in the case of a *member qualified cohabitant* permit, and the appropriate person or persons exercise a discretion to grant a cost-of-living increase in the *contingent benefit* payable in pension form to all, or a certain category of, pensioners,

and the *contingent benefit* payable in respect of the *member spouse, member civil partner* or *member qualified cohabitant* is increased as a result, the same increase must be applied to the dependant's pension payable under the *order*.

311. The *legislation* does not specify the period within which a lump sum *contingent benefit* payable under an *order* in relation to *contingent benefit* must be paid. Hence, any period specified in the *rules* of the *scheme* would apply. Where no such period is specified, the *trustees* should endeavour to make the payment to the person specified in the *order* within three months of the death of the *member spouse, member civil partner* or *member qualified cohabitant*.

(paragraphs 312 - 319 spare)

Part 9 – Issues relating to Revenue maximum benefits and taxation

This part of the notes sets out the issues relating to Revenue maximum benefits and taxation, both in the context of the residual benefits that may be provided for the *member spouse*, *member civil partner* or *member qualified cohabitant* following a pension adjustment order and the amount and format of the *designated benefit* (or other benefit following payment of a *transfer amount*) that may be provided for the person specified in the order.

General

320. As a general principle the *designated benefit* (i.e. that part of a *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* which is paid to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* or in the case of a *member spouse* for the benefit of a *dependent member of the family*) under an *order* is still regarded as part of the *member spouse*, *member civil partner* or *member qualified cohabitant's retirement benefit* for the purposes of determining the maximum benefits on retirement that may be provided for, or in respect of, him/her under a *scheme* or *schemes* approved by Revenue. This applies regardless of whether the benefit is paid as a *designated benefit* from the *member spouse*, *member civil partner* or *member qualified cohabitant's scheme*, or in some other form following payment of a *transfer amount* in accordance with the provisions of paragraphs 230, 241, 262 or 277.

321. Likewise, any benefit which is paid to the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*, or in the case of a *member spouse* for the benefit of a *dependent member of the family*, upon the death of the *member spouse*, *member civil partner* or *member qualified cohabitant* under an *order* in relation to *contingent benefit*, or prior to the commencement of the *designated benefit* following an *order* in relation to *retirement benefit*, is regarded as part of the *member spouse*, *member civil partner* or *member qualified cohabitant's* 'death-in-service' benefits for the purposes of Revenue limits.

Maximum retirement benefit payable to member spouse, member civil partner or member qualified cohabitant

322. Paragraphs 101 to 136 (*defined benefit*) and 137 to 157 (*defined contribution*) describe the methodology for calculating the *designated benefit* under various circumstances. The maximum *retirement benefit* that an *occupational pension scheme* may provide for, or in respect of, the *member spouse, member civil partner or member qualified cohabitant* under any of these eventualities is the maximum amount as set out in the Revenue Pensions Manual less the amount of the *designated benefit* payable (or if a transfer or death benefit had not been paid or would have been payable) from the same, or another *scheme*, in that eventuality.

Example

A *scheme* provides a retirement pension of $1/60^{\text{th}}$ of final pensionable *salary* for each year of pensionable service at *NPA* (65). Final pensionable salary is defined as the average *basic* annual salary earned in the three years preceding *NPA*. Pensionable service is defined as years of service as a *member of the scheme*.

An employee, whose date of birth is 1 January 1951 joined the *scheme* on 1 January 1986 (i.e., at age 35).

An employee married on 1 January 1983 and was subsequently granted a *decree* on 1 January 2001.

At the time of the granting of the *decree* the *court* made an *order* which specified:

Relevant period: 1 January 1986 to 1 January 2001

Relevant percentage: 50%

At *NPA* the *member spouse* retires and final pensionable salary is calculated as follows:

| Calendar year | Earned salary |
|---------------|---------------|
| 2013 | €87,500 |
| 2014 | €90,000 |
| 2015 | €92,500 |

The *designated benefit* to be paid to the person specified in the *order* is calculated as follows:

$$\begin{aligned}
 A &= (87,500 + 90,000 + 92,500) \div 3 \times 30/60 = \text{€}45,000 \\
 B &= 1 \text{ January } 1996 \text{ to } 1 \text{ January } 2001 = 15 \text{ years} \\
 C &= 1 \text{ January } 1986 \text{ to } 1 \text{ January } 2016 = 30 \text{ years} \\
 P &= 50\%
 \end{aligned}$$

$$\text{Designated benefit} = \text{€}45,000 \times 15/30 \times 50\% = \text{€}11,250$$

(i.e., retirement pension)

Over the final 3 years prior to retirement the *member spouse* had other earnings which averaged €12,500 resulting in a best definition of final remuneration of €105,000 (i.e., €92,500 + €12,500). He had no retained benefits from a previous employment. The employer decided, at his *NPA*, to augment his retirement pension to the maximum allowable by Revenue.

The maximum pension which may be paid to the *member spouse* is calculated as follows:

| | |
|---|----------------|
| Final remuneration | €105,000 |
| 2/3rds of final remuneration | €70,000 |
| <i>Designated benefit</i> (i.e., retirement pension) | <u>€11,250</u> |
| Maximum <i>member spouse</i> pension | €58,750 |

As the augmentation of the *member spouses* pension occurred after the date of the *decree*, it is not taken into account in the calculation of the *designated benefit*.

Maximum lump sum payable to member spouse, member civil partner or member qualified cohabitant

323. The procedure described in paragraph 322 applies equally to the calculation of any lump sum payable on retirement, whether in commutation of part of the *member spouse*, *member civil partner* or *member qualified cohabitant's* pension or as a separate gratuity. Where, under the *rules in force*, the *scheme* from which the *retirement benefit* is payable

provides an independent lump sum or gratuity or has a rule allowing the *member spouse*, *member civil partner* or *member qualified cohabitant*, as of right, or subject to the consent of the employer/*trustees*, to receive part of their retirement pension as a lump sum, the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or other beneficiary) must be given an equivalent right/option in relation to the *designated benefit*.

The *member spouse*, *member civil partner* or *member qualified cohabitant* and *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or other beneficiary) may exercise their rights/options independently. This means that the maximum lump sum that may be provided to the *member spouse*, *member civil partner* or *member qualified cohabitant* under a *scheme* is the maximum amount as set out in Revenue Pensions Manual less the amount which could have been received in lump sum form by the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* (or other beneficiary) regardless of whether they choose to exercise this option.

The only circumstance in which the *member spouse*, *member civil partner* or *member qualified cohabitant's* maximum lump sum is not reduced is where the *rules in force* did not provide for lump sum payments under any circumstances.

324. The maximum *retirement benefit* that a *scheme* may provide for the *member spouse*, *member civil partner* or *member qualified cohabitant* is not affected by the establishment of an independent benefit (or the payment of an amount following the death of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*) and is as described in paragraphs 322 and 323. In other words, the *member spouse*, *member civil partner* or *member qualified cohabitant's* maximum approvable benefits are the maximum amounts which would have been payable in such circumstances had the transfer (or death of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant*) not taken place. In particular, in calculating the *designated benefit* for this purpose under a final salary *scheme*, account would be taken of salary/pensionable salary increases following the calculation and payment of the *transfer amount* or death benefit.

325. The principles set out in paragraph 323 apply equally to a *section 784 retirement annuity contract* (or *trust scheme*) except that the maximum lump sum is determined in accordance with the Taxes Consolidation Act 1997.

Maximum retirement benefit payable to non-member spouse, non-member civil partner or non-member qualified cohabitant/ beneficiary

326. The *designated benefit* payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant*, or other beneficiary, (or any alternative benefit following a transfer) is not regarded as a retained benefit for the purposes of calculating the Revenue maximum benefits that may be provided for the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* or other beneficiary under any other *scheme*. Hence, they may receive normal Revenue maximum benefits in addition to the *designated benefit*.

Independent benefit established following transfer

327. Paragraphs 273 to 276 describe the procedures whereby, in lieu of the *designated benefit*, an independent benefit may be established for, or on behalf of, the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* either within the *scheme* of which the *member spouse, member civil partner* or *member qualified cohabitant* is a *member*, within any other *occupational pension scheme* or under an approved insurance policy or contract.

Independent benefit established in scheme

328. The form of an independent benefit established for, or on behalf of the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant*, within the *scheme* of which the *member spouse, member civil partner* or *member qualified cohabitant* is a *member* must meet the normal criteria for *scheme* approval set down in the Revenue Pensions Manual (determined as if the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* was a *member*) except that:

- it is not a requirement that the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* is, or was, an employee;
- the pension (and any lump sum) payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* may commence, or be payable, at any time after the *member spouse, member civil partner* or *member qualified cohabitant's* 50th birthday;

- no additional benefits may be provided on behalf of the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* unless they are also an employee;
- the lump sum payable must not exceed the limits specified in paragraph 332;
- the benefits are not regarded as retained benefits and may be payable in addition to any other benefits to which the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* is entitled arising from their membership of the same, or any other, *scheme*.

329. In particular, the pension payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* must be a pension payable for their lifetime but it may incorporate a guaranteed period (not exceeding 10 years). The pension payable to any dependant following the death of the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* after their pension has commenced must not exceed the pension payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant*. Pension increases may be provided on the pension payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant*/dependant.

Independent benefit established in another occupational pension scheme

330. Where, subject to the agreement of the *trustees* of that *scheme*, the independent benefit is established in another *occupational pension scheme*, conditions similar to those in paragraph 328 apply. The *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* must, generally, be a *member* of the *scheme* concerned and the *scheme* from which the transfer is made must be an *occupational pension scheme* or a *buy-out bond*. Where the independent benefit is established in another *occupational pension scheme* following application of a *transfer amount* received from a previous *occupational pension scheme* relating to the same *relevant employment*, it is not a requirement that the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* be a *member* of the receiving *scheme*.

Independent benefit established under approved policy or contract

331. Where the independent benefit is established under an insurance policy or contract approved by Revenue, the conditions set down by Revenue for the approval of such policies or contracts apply, except that:

- the pension (and any lump sum) payable to the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* may commence, or be payable, at any time after the *member spouse, member civil partner* or *member qualified cohabitant's* 50th birthday (where the *member spouse, member civil partner* or *member qualified cohabitant* was a member of an *occupational pension scheme, or buy-out bond*), at any time after the *member spouse, member civil partner* or *member qualified cohabitant's* 60th birthday (where the *member spouse, member civil partner* or *member qualified cohabitant* was a member of a *section 784 retirement annuity contract or trust scheme*);
- the lump sum payable must not exceed the limits specified in paragraph 332.

Lump sum benefits

332. Where an independent benefit is established (within the *scheme* concerned, within another *occupational pension scheme* or under an approved insurance policy or contract) the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* may elect to receive part of the benefit in the form of a lump sum provided that the *scheme* from which the transfer was made had a rule which allowed the *trustees* to pay such lump sums on retirement with or without the consent of the employer. The maximum amount of the independent benefit which the *non-member spouse, non-member civil partner* or *non-member qualified cohabitant* may receive in lump sum form is obtained by:

- (a) calculating the lump sum which would have attached to the *member spouse, member civil partner* or *member qualified cohabitant's retirement benefit* had their *reckonable service* terminated at the date of transfer (or attaching to the *member spouse, member civil partner* or *member qualified cohabitant's deferred retirement benefit* if they were a *deferred pensioner* at that date),

and

- (b) calculating the lump sum attaching to the *designated benefit* by multiplying the amount in (a) by: -

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

B = the period of the *member spouse, member civil partner or member qualified cohabitant's retirement benefit service* completed within the *relevant period*,

C = the period of *retirement benefit service* which the *member spouse, member civil partner or member qualified cohabitant* has completed to the date of transfer (or earlier termination of *reckonable service*),

P = the *relevant percentage*,

and

(c) increasing the amount calculated under (b) by either:

the increase in the Consumer Price Index between the date of transfer and the date of payment, where the transfer has been applied on a *defined benefit basis*,

or

the growth in the fund/policy or contract in which the *transfer amount* had been invested, where the transfer had been applied on a *defined contribution basis*.

Death benefits

333. The *scheme/insurance policy or contract* may use part of the *transfer amount* received to provide a benefit payable on the death of the *non-member spouse, non-member civil partner or non-member qualified cohabitant* following payment of the *transfer amount* and prior to the payment of any pension/lump sum to him/her. This death benefit may be in the form of a lump sum or dependants pension as decided by the receiving *scheme/insurance company* at the time of receiving the *transfer amount* except that:

- any lump sum death benefit must not exceed the then value of the *transfer amount* (allowing for increases between the date of transfer and the date of death as described in sub-paragraph (c) of paragraph 332);

- any dependants pension must not exceed the pension payable to the *non-member spouse, non-member civil partner or non-member qualified cohabitant* on their retirement.

Transfer amounts

334. A *transfer amount* may only be applied and an independent benefit established subject to the following:

- the *non-member spouse, non-member civil partner or non-member qualified cohabitant* or, as the case may be, the *trustees*, must elect to apply a *transfer amount* in respect of the full *designated benefit* remaining under the *scheme* even where the *designated benefit* is calculated partly on a *defined benefit basis* and partly on a *defined contribution basis*, where following an *order* in relation to *retirement benefit* a *designated benefit* is payable under a number of *schemes* a different election may be made in respect of each such *scheme*;
- an independent benefit may only be established for, or on behalf of, the *non-member spouse, non-member civil partner or non-member qualified cohabitant* within the *scheme* of which the *member spouse, member civil partner or member qualified cohabitant* is a *member* where that *scheme* is an *occupational pension scheme or buy-out bond*;
- an independent benefit may only be established for, or on behalf of, the *non-member spouse, non-member civil partner or non-member qualified cohabitant* in another *occupational pension scheme* where either the *non-member spouse, non-member civil partner or non-member qualified cohabitant* is already a *member* of that *scheme*, or the *transfer amount* has been received from a previous *occupational pension scheme* relating to the same *relevant employment*;
- where the *designated benefit* is payable under a *section 784 retirement annuity contract* or *trust scheme*, a transfer may only be made to an insurance policy or contract approved by Revenue for this purpose.

Dependent member of the family

335. Where in the case of a *member spouse* the *order* is made for the benefit of a *dependent member of the family*, under the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996, an independent benefit may, following payment of a *transfer amount*,

be established for the benefit of that person under another *occupational pension scheme* or approved insurance policy or contract subject to the following:

- for the benefit to be established under another *occupational pension scheme* the person must be a *member* of that *scheme* and the *scheme* from which the transfer is made must be an *occupational pension scheme*;
- the pension (and any lump sum) payable to the *dependent member of the family* must commence, or be payable, not earlier than the *member spouse's* 50th birthday (where the *member spouse* was a *member of an occupational pension scheme, or buy-out bond*), not earlier than the *member spouse's* 60th birthday (where the *member spouse* was a *member of a section 784 retirement annuity contract or trust scheme*);
- the pension must cease when the person ceases to be a *dependent member of the family*;
- the maximum lump sum payable should be calculated as set out in paragraph 332.

Contingent benefit

336. Paragraphs 302 to 306 describe the methodology for calculating the *contingent benefit* payable under an *order* following the death of the *member spouse, member civil partner* or *member qualified cohabitant*. The *order* may relate to any lump sum and/or *spouse civil partner* or *qualified cohabitant's* or dependant's pension payable under the *scheme*. As explained in paragraph 307, a payment must also be made where, following an *order* in relation to *retirement benefit*, the *member spouse, member civil partner* or *member qualified cohabitant* dies before payment of the *designated benefit* has commenced or prior to the payment of a *transfer amount* to another *scheme* etc.

337. The maximum lump sum and dependant's pension that an *occupational pension scheme* may provide on the death in service of the *member spouse, member civil partner* or *member qualified cohabitant* (over and above that paid under an *order(s)*) are as set out in the Revenue Pensions Manual less any amounts also payable on their death under the *order(s)*. The maximum lump sum and dependant's pension are independently calculated and are then reduced by any lump sum/dependant's pension paid under an *order(s)*. For this purpose, any payment made on the death of the *member spouse, member civil partner* or *member qualified cohabitant* under an *order* in relation to *retirement benefit* is treated as a lump sum payment.

338. Where a *transfer amount* has been applied to establish an independent benefit for, or on behalf of, the *non-member spouse or non-member civil partner* and the *member spouse or member civil partner* subsequently dies whilst in *relevant employment*, the amount transferred is not taken into account for the purposes of calculating the maximum benefits which may be paid on their death.

Example

Details are as in the example in paragraph 322 except that the *scheme* provides a lump sum of three times salary and a *spouse or civil partner's* pension of 50% of the *member's* expected pension on death during service. Both benefits are related to basic salary at date of death.

In addition to the *order* in relation to *retirement benefit*, a separate *order* is made (in favour of the *non-member spouse or non-member civil partner*) in relation to *contingent benefits*. This latter *order* specifies:

| | |
|---|---|
| <i>Contingent benefits:</i> | Lump sum and <i>spouse or civil partner's</i> pension payable on death in service |
| Percentage of <i>contingent benefits</i> payable under <i>order</i> : | 50% |

Over the final three years prior to her death, the *member spouse or member civil partner*, had other earnings which averaged €10,000. When combined with her basic salary of €60,000 this resulted in a best definition of final remuneration of €70,000.

The maximum death benefits which may be paid in respect of the *member spouse or member civil partner* are calculated as follows:

Lump sum death benefit

| | |
|---|----------------------------------|
| Maximum benefit in accordance with Revenue Pensions Manual: | €280,000 (i.e., 4 times €70,000) |
|---|----------------------------------|

Death benefit payable under *order*



| | |
|---|---|
| in relation to <i>contingent benefits</i> : | €90,000 (i.e., 3 times €60,000 x 50%) |
| Death benefit payable under <i>order</i> In relation to <i>retirement benefit</i> : | €50,000 (i.e., as calculated using the principles in paragraph 225) |
| Maximum residual lump sum death benefit payable in respect of <i>member spouse/member civil partner</i> | €140,000 |
| <i>Spouse/civil partner/dependant's pension</i> | |
| Maximum benefit in accordance with Revenue Pensions Manual: | €31,111 (i.e., 2/3 ^{rds} of 2/3 ^{rds} of €70,000) |
| Pension payable under <i>order</i> | |
| in relation to <i>contingent benefits</i> : | €7,500 (i.e., 50% of 60 x $\frac{30}{60}$ x 50%) |
| Maximum residual dependant's pension payable in respect of <i>member spouse/member civil partner</i> | €23,611 |

339. Where an *order* is made in relation to a *contingent benefit* and prior to the death of the *member spouse, member civil partner or member qualified cohabitant*, the *order* ceases to have effect (e.g. on the death, remarriage or registration in a civil partnership of the *non-member spouse, non-member civil partner or non-member qualified cohabitant* as may be relevant), a *scheme* need not take account of the benefits specified in that *order* in determining the maximum benefits that it may provide on the subsequent death of the *member spouse, member civil partner or member qualified cohabitant*.

An *order* in relation to *retirement benefit* does not cease on the remarriage or registration in a civil partnership of the person in whose favour the *order* is made and any payment under such an *order* on the death of the *member spouse, member civil partner or member qualified cohabitant* must be taken into account as a lump sum payable on death.

340. Where an *order* is made in relation to a *contingent benefit* and, following the death of the *member spouse, member civil partner or member qualified cohabitant*, a

dependant's pension becomes payable under the *order*, that pension would cease if the *order* subsequently ceases to have effect (e.g., on the death or remarriage or registration in a civil partnership of the *non-member spouse*, *non-member civil partner* or *non-member qualified cohabitant* as may be relevant). In such circumstances, in relation to a *member spouse*, a *scheme* may increase any pension then in payment to any other dependant up to the maximum allowed by Revenue.

Taxation

341. Pension payments made by *trustees* under an *order* are treated as income of the recipient and, subject to any tax-free allowance, are chargeable to income tax in the normal way. Separated *wives* or *civil partners* will be assessed to income tax as single persons unless they elect for joint assessment. As joint assessment can only be claimed if a couple are married or in a civil partnership, *qualified cohabitants* are assessed as single individuals, and continue to be assessed as single individuals in the event that the relationship comes to an end and the *court* makes an *order*. Where a divorce or dissolution of civil partnership has been obtained, each *wife* or *civil partner* will automatically be assessed to income tax as a single person unless they remarry or enters a civil partnership.

342. Lump sum payments on retirement which are part of a *designated benefit* or an independent benefit established following transfer (within the limits specified in paragraph 332) may be paid free of tax to a *wife* or *civil partner*.

343. Where the *designated benefit* (or part thereof) consists of a refund of part of the *member wife*, *member civil partner* or *member qualified cohabitant's* contributions payable at the time of their withdrawal from *reckonable service* to the person in whose favour the *order* is made, it is chargeable to tax under Case IV of Schedule D at the (current) rate of 25%.

344. Lump sum payments made under an *order* in relation to *retirement benefit*, on the death of a *member wife* or *member civil partner*, before payment of a *designated benefit* has commenced and lump sum payments made under an *order* in relation to *contingent benefit*, are treated as lump sum death-in-service benefits and are, therefore, not subject to income tax; they may, however, be liable to capital acquisitions tax.

345. Lump sum payments made under an *order* in relation to *retirement benefit*, on the death of the *non-member wife* or *non-member civil partner*, whether before or after

payment of the *designated benefit* has commenced or following the establishment of an independent benefit, are not subject to income tax; they may, however, be liable to capital acquisitions tax.

s51-95, s34-96

346. Where a *decree* has been obtained, any payment on the death of the *member spouse or member civil partner* to the *non-member spouse or non-member civil partner* by virtue, or in consequence, of an *order* is exempt from capital acquisitions tax.

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