

Pensions on separation and divorce checklist



An tÚdarás Pinsean
The Pensions Authority

Introduction

The Pensions Authority (the Authority) recognises the importance of informing people about how pensions can be affected by separation and divorce. As a result the Authority has published this checklist which simply highlights the main aspects involved in allocating pensions in separation and divorce through pension adjustment orders (PAOs).

What is a pension adjustment order (PAO)?

A PAO is an order made by the courts, in the case of relationship breakdown, designating part of an individual's pension plan benefits to the individual's former spouse, civil or cohabiting partner or dependent child.

PAO - First step

A PAO can only be made by a judge through the courts therefore you should talk to a solicitor about the options and how the PAO process actually works. This checklist should help you understand some of the basic issues to do with PAOs.

A PAO can apply to benefits from an occupational pension scheme, a buy-out bond, retirement annuity contract (RAC), trust RAC or a personal retirement savings account (PRSA).

Did you know...?

1. After the family home, a pension is usually one of the most valuable family assets.

The law

2. The division of pension assets is governed by the Family Law Act, 1995 (for court separations), the Family Law (Divorce) Act, 1996 and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 (for dissolution of civil partnerships and cohabiting relationships).
3. The family law acts do not recognise a simple 'agreement' between two parties to divide the pension assets.
4. In the eyes of the law, the legally binding division of a pension can only be made by a PAO and a court separation or divorce is necessary to obtain a PAO.
5. A PAO will not be made if the applying spouse/civil partner has remarried.

Pension scheme information

6. A 'non-member' spouse/civil partner is entitled to basic information about their spouse/civil partner's pension scheme, i.e., the trust deed and rules for the scheme and the explanatory booklet. The non-member spouse/non-member civil partner is not entitled to personal information about the member, such as a benefit statement. However, this personal information can be accessed from the trustees on agreement from the member spouse or through a court order. Court orders can be costly and in the interest of reducing expenses the most straight forward route is for the member spouse to allow the information to be shared.
7. Following a PAO the trustees are legally obliged to disclose a certain amount of information to a non-member spouse or dependant and contact should be made with the trustees/administrators of the spouse's pension scheme to access this information.

Pensions, family and civil partnership law

The Authority monitors and regulates the Pensions Act, 1990, as amended, which sets out what information has to be disclosed by trustees of company pension schemes in relation to PAOs. The Authority does not monitor or regulate the Family Law Acts.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 (the Act) provides legal recognition for same-sex couples in Ireland for the first time. It extends marriage-like benefits to same sex couples, registered civil partners, and qualified cohabitants in the areas of property, social welfare, succession, maintenance, pensions and tax. Same-sex marriage was legalised with the enactment of Marriage Act in 2015.

Where the court is satisfied that no alternative provision has been made or can be made, a qualified cohabitant can seek a PAO over their former cohabitant's pension benefits.

Important notice

Pension adjustment orders may be made for benefits in the following pension arrangements:

- Company pension schemes
 - PAO on retirement benefits
 - PAO on contingent benefits
- Additional voluntary contributions (AVCs)
- Personal retirement savings accounts (PRSAs)
- Retirement annuity contracts (RACs)
- Trust RACs
- Buy-out bonds

It is very important to note that separate PAOs must be made for retirement benefits and contingent benefits in a company pension scheme. Separate PAOs are also required for each separate private pension arrangement that exists (for example if you or your spouse/civil partner contributes to a separate AVC arrangement).

Types of PAOs

8. A pension scheme can cover different types of benefits, for the purposes of PAOs these benefits are broken into two types - contingent benefits and retirement benefits.
 - **Contingent benefits** - death in service benefits under a pension scheme.
 - **Retirement benefits** - all other benefits payable under a pension scheme.
9. A pension scheme member may be eligible for one or both types of benefits. Each type of benefit must be applied for separately under different PAOs. A PAO on contingent benefits can only be made up to a year after a divorce or legal separation has been granted and the PAO will cease if the member spouse leaves the relevant employment. A PAO on retirement benefits can be made at any time.

Different types of pensions

Occupational pensions

- A **defined benefit pension scheme** provides a defined level of pension benefit at retirement usually based on the member's years of service and their earnings at retirement. Benefits can be affected if the pension scheme is not fully funded.
- In a **defined contribution pension scheme** the level of pension benefit at retirement is determined by a number of elements including the level of contributions paid, the investment return achieved and the fees and charges where applied.
- A **hybrid pension scheme** is one which has characteristics of both a defined benefit and a defined contribution pension scheme.
- **Public sector pension schemes** are pension schemes available to civil servants and public sector workers.

Personal pensions

- **Personal retirement savings accounts (PRSAs)** and **retirement annuity contracts (RACs)** are private pension plans set up between the individual and an authorised PRSA or RAC provider. They are a type of defined contribution scheme.


Benefits

10. The PAO directs the pension scheme trustees/administrator to pay the portion of pension benefits to the non-member spouse or dependant.
11. The Court decides the level of benefit to be made to the non-member spouse and this is worked out by calculating a 'relevant period' and the 'relevant percentage'.
 - **Relevant period** - is the period during which the benefits were earned i.e., start date to end date and it cannot extend beyond the date of the decree of divorce or separation.
 - **Relevant percentage** - the percentage of the benefit to be taken into account that is earned during the relevant period.
12. After a PAO is granted, the benefits of the member and non-member spouse may still be linked.
13. However, it is possible to establish an independent benefit i.e., the non-member spouse can transfer their portion to a pension arrangement in their own name. The trustees/administrators of the scheme can split the benefits on request (or transfer them out) so that the non-member has benefits that are completely separate.

Trustees/those who look after pension scheme benefits

Depending on the type of pension scheme the title of 'trustee' or equivalent may differ, this list indicates the type of pension and corresponding 'trustee' for the purposes of PAOs.

- Occupational pension schemes → trustees
- PRSAs → PRSA provider
- RAC/personal pension → life insurance office
- Buy-out bond/retirement bond → life insurance office
- Civil and public service pension schemes → Government department or State agency pension administrators



For further information you can visit the Authority's website and download the guide 'A brief guide to the pension provisions of the Family Law Acts'.

PAOs for civil and public servants

For further information about public sector pensions you can visit **The Irish Civil Service Pensions Information Centre** website at www.cspensions.gov.ie which has FAQs including information on PAOs. This website has copies of superannuation handbooks, circulars and a **Pensions Modeller** which will give the member an estimate of their:

- pension benefits at retirement for a selected retirement age,
 - spouses' and children's benefits,
 - death in service benefits,
 - preserved benefits if you resign before minimum retirement age, and
 - actuarially reduced benefits before minimum retirement age.
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