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Pension Adjustment Orders

What are they?

A Pension Adjustment Order directs the trustees (or administrators) of a pension scheme of which one spouse is a member (the member spouse), to pay to the other spouse (the non-member spouse) part of the pension benefits accrued to the member spouse. The Order can be made over any benefits accrued from the date the member spouse joined the scheme (even if this predates the marriage of the spouses) up to the date of the making of the Order by the Court, but not beyond that date.

What benefits can be affected by the Order?

Some pension schemes have a number of pension benefits. Others only provide a pension for the member in the event of his/her retirement. The benefits that can be affected by an Order are as follows:

1. Contingent Benefits –these are benefits payable to the widow or widower, dependants or estate of the member spouse upon the death **before retirement** of the member spouse and if that member spouse is in **the same** employment. These benefits are sometimes referred to as “death-in-service benefits”.
2. Retirement Benefits –these are all other benefits provided for under the pension scheme, (except contingent benefits). This includes the pension payable to the member spouse when s/he reaches retirement age. Depending upon the particular pension scheme, it also may include a spouse’s pension payable on the death **after retirement** of the member spouse and/or a children’s pension and/or a death gratuity (lump sum).

When can such Orders be made?

Since 1995, the Courts, when granting a Judicial Separation of a marriage, can make a Pension Adjustment Order. The Court is also permitted to make a Pension Adjustment Order when granting a Decree of Divorce.

In the case of Retirement Benefits under a pension scheme, the Court can make an Order at the time of the granting of a Decree of Judicial Separation or Divorce or any time thereafter, so long as the member spouse is still alive.

In the case of Contingent Benefits (death-in-service benefits), the Court can make an Order at the time of the granting of a Decree of Judicial Separation or Divorce or up to, but not more than, one year after the granting of a Decree of Judicial Separation or Divorce.

In Judicial Separation proceedings, any Order made can only affect those benefits which have accrued to the member spouse as at the date of the granting of the Decree of Judicial Separation and not those that accrue after that date.

In Divorce proceedings, any Order made can only affect those benefits which have accrued to the member spouse as at the date of the granting of the Decree of Divorce and not those that accrue after that date.

However, it is possible to obtain a Pension Adjustment Order at the time of the granting of a Decree of Judicial Separation and a further Order again at the time of the granting of a Decree of Divorce.

Before it makes a Pension Adjustment Order, the Court must first consider whether proper provision can be made for the spouses and dependent children by making certain other ancillary Orders without the necessity of making a Pension Adjustment Order.

Who can apply for such an Order?

Either spouse involved in Judicial Separation or Divorce proceedings can apply for a Pension Adjustment Order for their own benefit or for the benefit of a dependant child or children. A third party can also make an application to the Court in the proceedings seeking a Pension Adjustment Order for the benefit of a dependant child or children.

Why are they needed?

Pension benefits are determined by the terms of the pension scheme and the agreement between the trustees/administrators of that scheme and the scheme member. The terms of the pension scheme cannot be varied by the scheme member even if the administrators/trustees agree. The administrators/trustees are bound by the agreement or trust (if applicable), irrespective of what the member spouse wants.

When spouses separate, one spouse may have no pension benefits in their name whilst the other spouse does. The spouse without any pension benefits may therefore wish to have a share of their spouse's pension to equalise their respective financial positions post-separation or divorce and to ensure that when the spouses retire, each has a source of independent guaranteed income to support them in their retirement years.

Where the non-member spouse is maintenance dependant on the member spouse, the non-member spouse might seek an Order in respect of the contingent (death-in-service) benefits payable and/or the death-in-retirement benefits payable under the member spouse's scheme so as to partly or fully protect the maintenance income in the event of the death of the member spouse. It is important to note that on the member spouse's death, maintenance ceases to be paid.

Can a Pension Adjustment Order be varied in the future?

Yes, unless a specific Order was made at the time of the making of the Pension Adjustment Order prohibiting the Court from varying that Order in the future. However, as stated above, any Order made in Divorce proceedings can only affect

those benefits which have accrued to the member spouse as at the date of the granting of the Decree of Divorce and not those that accrue after that date.

What information should I give to my solicitors to advise me on the issue of pensions in my family law matter?

1. The name of each pension scheme of which you or your spouse is a member,
2. The Rules of each pension scheme (available from the Trustees of the scheme),
3. The Trust Deed (if applicable) (available from the Trustees of the scheme),
4. Any explanatory booklet issued by the pension scheme,
5. Details of the benefits payable on death-in-service,
6. Details of the benefits payable upon retirement,
7. Details of the benefits payable upon your death in retirement,
8. An up-to-date benefit statement,
9. Any documentation held in relation to the pension,
10. Copies of any letters of wishes furnished to the trustees/administrators of the pension scheme(s).

If you do not have access to such information in relation to your spouse's pension scheme(s), there are legal obligations imposed under the relevant legislation to require that such information and documentation be furnished.

The above article is for general information purposes only and does not comprise legal advice on individual family circumstances. Every person's family circumstances and personal background differs. Therefore, you should not rely on the material in this article without seeking appropriate legal advice on your individual family circumstances.

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