

THE SOCIETY OF ACTUARIES IN IRELAND

ASP PEN-7 v. 1.3

ACTUARIAL STANDARD OF PRACTICE PEN-7

CALCULATIONS REQUIRED UNDER THE FAMILY LAW ACT, 1995, THE FAMILY LAW (DIVORCE) ACT, 1996 OR THE CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT, 2010

Classification

Mandatory

MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE CODE OF PROFESSIONAL CONDUCT AND THAT ACTUARIAL STANDARDS OF PRACTICE IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES.

Legislation or Authority

The Family Law Act, 1995, the Family Law (Divorce) Act, 1996, the Pension Schemes (Family Law) Regulations 1997 (Statutory Instrument 107 of 1997), the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 and the Guidance Notes issued by the Pensions Authority in accordance with these Acts.

Application

Any actuary responsible for the calculation of actuarial values of retirement benefits under all types of pension schemes in connection with the provisions of the 1995 Act, the 1996 Act or the 2010 Act.

Version Effective from

1.0 02.07.1997

1.1 30.12.2006

1.2 01.11.2010

1.3 09.05.2019

Definitions

“the 1990 Act” means the Pensions Act, 1990

“the 1995 Act” means the Family Law Act, 1995

“the 1996 Act” means the Family Law (Divorce) Act, 1996

“the 2010 Act” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010

“the Family Law Acts” means the 1995 Act, the 1996 Act and the 2010 Act

“ASP” means Actuarial Standard of Practice

“the Guidance Notes” mean the relevant Guidance Notes issued by the Pensions Authority

“the Regulations” mean the Pension Schemes (Family Law) Regulations 1997(Statutory Instrument 107 of 1997)

“should” (where the context requires) indicates that members of the Society to whom this ASP applies must comply with a particular requirement or prohibition, unless the circumstances are such that the requirement or prohibition is inappropriate and noncompliance is consistent with the standards of behaviour, integrity, competence and professional judgement which other members or the public might reasonably expect of a member

“the Society” means the Society of Actuaries in Ireland

The terms "actuarial value", "contingent benefit", "dependent member of the family", "designated benefit", "retirement benefit" and "transfer amount" in this ASP have the meanings ascribed to them in the Family Law Acts and the Regulations.

In this ASP the term "member party" includes the meaning ascribed to "member spouse" in the 1995 Act and the 1996 Act and the Regulations, and includes the meanings ascribed to "member qualified cohabitant" and "member civil partner" in the 2010 Act.

In this ASP the term "non-member party" includes the meaning ascribed to "non-member spouse" in the 1995 Act and the 1996 Act and the Regulations, and includes the references to "other qualified cohabitant", "qualified cohabitant who is not a member", "other civil partner" and "civil partner who is not a member" in the 2010 Act.

1 Introduction

1.1 This ASP applies to all actuarial values calculated on or after 1st August 1996 in accordance with the provisions of section 12 of the 1995 Act, section 17 of the 1996 Act or Sections 121 to 126 and Sections 187 to 192 of the 2010 Act.

1.2 An actuary advising either of the parties in a judicial separation or divorce or in relation to potential applications for Pension Adjustment Orders under the Family Law Acts may adopt alternative assumptions which he or she considers appropriate for the determination of the value of pension and death benefits where such values are required for purposes other than in accordance with the provisions of section 12 of the 1995 Act, section 17 of the 1996 Act and sections 121 to 126 and Sections 187 to 192 of the 2010 Act. If, however, the assumptions adopted are not consistent with the requirements of this ASP, the actuary must make this clear to his or her client.

1.3 This ASP relates to Republic of Ireland requirements and conditions.

2 Background

2.1 Under the Family Law Acts, the court may make an order providing for the payment to the non-member party, or to a person for the benefit of a dependent member of the family, of part or all of the benefit to which the member party is entitled as a consequence of membership of a pension scheme. The court may make orders relating to retirement benefit and contingent benefit. In respect of retirement benefits, the order will specify the period of reckonable service of the member party to be taken into account and the percentage of the retirement benefit accrued during that period for the purpose of calculation of the designated benefit payable to the person named in the order.

2.2 Under the Family Law Acts, the court may request information from the Trustees of the pension scheme prior to making the order. The information required in respect of a defined benefit scheme includes the amount of each element of accrued retirement benefit payable under the rules of the scheme, and the actuarial value of such benefits.

2.3 When a retirement benefit order has been made in favour of the non-member party, or in favour of a dependent member of the family, calculation of the actuarial value of the designated benefit is required in the following circumstances:

i) where the designated benefit has not commenced, where the Family Law Acts provide for the application of the non-member party to have a transfer amount equal to the actuarial value of the designated benefit applied to provide an independent benefit for the non-member party under the scheme, or transferred to another occupational pension scheme or other approved arrangement.

ii) in circumstances where the Trustees are permitted to pay a transfer amount to another occupational pension scheme or approved arrangement without requiring the consent of the non-member party, or other person named in the order.

iii) in the event of the death of the member party before commencement of payment of the designated benefit, where the Family Law Acts provide for a payment of a lump sum to the non-member party, or other person named in the order, equal in value to the actuarial value of the designated benefit. In this event, the amount of contingent benefit payable may be restricted to reflect this payment.

iv) on the death of the non-member party, before or after payment of the designated benefit has commenced, where the Family Law Acts provide for a payment of a lump sum equal in value to the actuarial value of the designated benefit.

2.4 Articles 28, 31, 34, 38, 40 and 48 of the Regulations specify that actuarial values should be calculated on a basis which is consistent with guidelines issued by the Society of Actuaries in Ireland. This ASP sets out the guidelines referred to in those Articles.

3. Purpose of the ASP

3.1 The purpose of this ASP is to ensure that the actuarial value fairly reflects the value of the benefit calculated as set out in the Family Law Acts, the Regulations and the Pensions Authority Guidance Notes and has regard to the interests of the other beneficiaries of the scheme.

4. Defined Benefit Schemes - Calculation of actuarial values for the purpose of section 12(25) of the 1995 Act, section 17(25) of the 1996 Act or sections 126 and 192 of the 2010 Act

4.1 Where the court directs the trustees of a defined benefit scheme to provide specified information, Article 48 of the Regulations stipulates that each element of the accrued retirement benefit of the member party and the actuarial value of such benefits are to be calculated as at a date specified by the Trustees assuming, where the member party is an active member, that the member party's reckonable service terminates on that date. The approach to be taken follows many of the principles set out in ASP PEN-2 for the calculation of transfer values from retirement benefit schemes. The attention of the actuary is drawn to paragraph 4.8 below which deals with the position where the scheme would not satisfy the funding standard, which differs from the approach adopted in ASP PEN-2.

4.2 An actuarial value should be assessed having regard to market rates of interest. One of the ways in which a market value assessment may be made is on the basis of market redemption yields on Irish Government Stocks of appropriate duration and type at the effective date of calculation with allowance for investment of future interest/redemption receipts at such rates as the actuary considers reasonable.

4.3 (a) Guaranteed or statutory increases, both in deferment and after retirement, should be valued as part of the accrued benefit.

(b) The actuary should follow the approach agreed with his client for the calculation of transfer values with regard to any addition for future discretionary increases to the accrued benefit or for any other benefits granted on a discretionary basis, for example a discretionary scale of

enhancement to benefits on early retirement granted to members who have left service, when calculating its actuarial value.

4.4 As explained in paragraph 4.1 above, the actuarial value is to be calculated on the assumption that the reckonable service of the member party terminated on the effective date. In such circumstances, under Section 29 of the 1990 Act a benefit is required to be paid on the death of a member who is entitled to a preserved benefit, even if such a benefit is not specified in the scheme rules. This, and any other death benefits payable following termination of reckonable service, should be taken into account in the calculation of an actuarial value.

4.5 Allowance for expenses may be made where appropriate, e.g. to reflect administration costs, the saving in cost of paying pensions and any relevant costs of sale or purchase of investments in accordance with the approach adopted for the calculation of transfer values.

4.6 (a) In cases where an actuarial value is calculated in respect of a member for whom a transfer value has previously been received, special care may be needed in the choice of basis of calculation in order to ensure that the actuarial value is equitable in relation to, and consistent with, the transfer value received. The general principle for calculating actuarial values in such circumstances is that they should be of equal actuarial value to the amount required by the scheme to provide equivalent benefits in respect of a transfer value received at the same date.

(b) If added years have been credited in respect of an incoming transfer value, then the actuarial value subsequently calculated should represent the then actuarial value of the added years. This value would be determined based on the then pensionable salary and other assumptions (including an allowance for future salary increases) as considered appropriate at the effective date of calculation.

4.7 (a) Special considerations apply in cases where the circumstances of a previous transfer had been such that the assets transferred bore no direct relationship to the leaving service benefits under the previous scheme. These may result from a "bulk" exercise - for example, on a rationalisation of the schemes in a group or a sale of all or part of a business or even a transfer of the whole scheme. Alternatively, there may be a transfer of one or more employees from one scheme of a group to another.

(b) The actuarial value in respect of the amount transferred from the previous scheme should be at least equal to the actuarial value of the rights granted on leaving service under the new scheme in respect of the period of service under the previous scheme (including preserved benefit, if any).

(c) In cases where the former accrued/deferred benefit and/or the transfer value were augmented in connection with a full or partial dissolution of the former scheme (either in circumstances where the trustees were obliged to augment benefits in terms of the documents governing the scheme or alternatively at the discretion of the trustees or employer with the objective of enhancing the transfer values which would otherwise have been available for the purpose of buying out individual annuity contracts), then, for the purpose of paragraph 4.6(a), comparison should be made with such higher values.

4.8 If at the effective date of calculation for the purpose of section 12(25) of the 1995 Act, section 17(25) of the 1996 Act or sections 126 and 192 of the 2010 Act of the actuarial value of the member party's accrued retirement benefit, the scheme, in the actuary's opinion, would not have satisfied the funding standard, the funded status of the scheme at the effective date of calculation should not be reflected in the determination of the actuarial value.

In such circumstances the actuary should advise the Trustees as to the extent of the reduction in the actuarial value which would be appropriate having regard to the scheme's funding position and the winding up priorities contained in section 48 of the 1990 Act, if the member party were to take a transfer value at the specified date.

5 Defined Benefit Schemes - Calculation of the actuarial value of the designated benefit after a retirement benefit order has been made.

5.1 When a retirement benefit order has been made in favour of the non-member party or other person named in the order, the calculation of the actuarial value of the designated benefit is required in the any of the circumstances listed in 2.3 above.

5.2 The actuarial value of the designated benefit should be calculated in accordance with the approach set out in paragraphs 4.2 to 4.8 above. The additional points discussed in paragraphs 5.3 to 5.6 below need to be borne in mind.

5.3 Where the calculation of an actuarial value of a designated benefit is required respect of payments under the Family Law Acts in the circumstances listed in 2.3 above, in respect of a scheme which in the actuary's opinion would not have satisfied the funding standard, it would be appropriate for the actuarial value of the designated benefit to be reduced to reflect the funded status of the scheme at the relevant date of death or transfer. This is permitted under Article 31(3) of the Regulations.

5.4 Where the non-member party applies to have a transfer amount be paid from such a scheme, it may be appropriate for the actuary to advise the trustees that the non-member party's interests may be better served by deferring the taking of a transfer amount until a later date.

5.5 An exception to 5.3 applies in circumstances where the member party ceases to be a member of the scheme following termination of reckonable service, when trustees may (subject to certain conditions) apply a transfer amount to another occupational pension scheme or another approved arrangement in lieu of designated benefit without requiring the consent of the person in whose favour the retirement benefit order is made.

Article 34 of the Regulations provides that a transfer payment initiated by the Trustees may not be reduced to reflect the funded status of the Scheme at the date of payment.

5.6 Article 36 of the Regulations requires that discretionary cost of living increases which are granted to all, or a particular category of, members of the Scheme must also be granted to designated benefits.

5.7 Where the trustees agree with the non-member party or the person in whose favour an order has been made for a dependent member of the family that an independent benefit be established within the scheme in respect of the designated benefit, the trustees are required under Article 33(2) of the Regulations to ensure that the actuarial value of this independent benefit is equal to the transfer amount payable in lieu of the designated benefit.

Where the transfer amount is reduced to reflect the funded status of the scheme in accordance with paragraph 5.3 above the actuary should apply the inverse of this reduction in the calculation of the independent benefit to ensure that this benefit is equal to the value of the alternative designated benefit.

In calculating the independent benefit, the actuary should use methods and assumptions which are consistent with the method and assumptions (including any allowance for discretionary benefits) used in determining the actuarial value of the designated benefit. The actuary should also ensure that the independent benefit so calculated complies with the requirements of the Revenue Commissioners as set out in Paragraphs 328 and 329 of the Guidance Notes.

5.8 The Family Law Acts and Article 28 of the Regulations provide that where a retirement benefit order has been made, and a lump sum payment is made on the member party's death prior to commencement of a designated benefit under the retirement benefit order, the amount of any contingent benefit payable under the rules of the same scheme shall be reduced by the amount of such payment.

Where the contingent benefit takes the form of a pension to a dependent of the member party, the reduction in this benefit should be of an actuarial value equal to the amount of the payment made in respect of the designated benefit under the retirement benefit order, both actuarial values to be calculated in accordance with the approach set out in paragraphs 5.2 to 5.6 above.

6 Defined contribution schemes

6.1 In the case of a defined contribution scheme, the value of the member party's retirement benefits for the purpose of the Family Law Acts is the accumulated value of the contributions paid during the relevant period, assuming termination of the member party's reckonable service on the specified date. The value of the designated benefit is equal to the accumulated value of the relevant percentage of the contributions.

6.2 The transfer amount payable in respect of a designated benefit under a defined contribution scheme is the accumulated value of the relevant percentage of the contributions. No actuarial issues arise in connection with the calculation of such transfer amounts.

7 Presentation

7.1 It is not necessary for each actuarial value to be authorised separately by the actuary. The actuary may supply tables, for use by the trustees and administrators, for calculating the amount of actuarial values in accordance with the provisions of the Acts. The actuary should specify the circumstances (e.g. changes in investment conditions or cases involving previous receipt of transfer value) in which adjustments to the tables or revised rates would apply.

7.2 The actuary should ensure that it is made clear to the court and to the parties that the actuarial value provided pursuant to section 12(25) of the 1995 Act, section 17(25) of the 1996 Act or sections 126 or 192 of the 2010 Act has been calculated on the assumption that the member party's reckonable service terminated at the effective date of the calculation as prescribed under Article 48 of the Regulations, and that no allowance has been made for service after that date or for future increases in the member party's pensionable salary.

EXPLANATORY NOTE

ACTUARIAL STANDARD OF PRACTICE PEN-7, VERSION 1.3

This Explanatory Note does not form part of the ASP.

Version 1.3 was introduced in order to include references to the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 and in order to remove some repetition of the Family Law legislation within the previous version of the ASP.