

GN11A(ROI): CALCULATIONS REQUIRED UNDER THE FAMILY LAW ACT, 1995 OR THE FAMILY LAW (DIVORCE) ACT, 1996

Classification

Practice Standard

Legislation or Authority

This Guidance Note must be read in conjunction with the Family Law Act, 1995, the Family Law (Divorce) Act, 1996, the Pension Schemes (Family Law) Regulations 1997 (the "Regulations") and the Guidance Notes issued by the Pensions Board ("The Pensions Board Guidance Notes") in accordance with the Act. In this Guidance Note, "Sections" should be taken to mean Sections of the relevant Act, "Articles" should be taken to mean Articles of the Regulations and "Paragraphs" should be taken to mean Paragraphs of the Pensions Board Guidance Notes, except where the context requires otherwise. For ease of reference, the year of enactment of the relevant Act will be shown in square brackets after the Section number e.g. Section 12(25)[1995] means Section 12(25) of the Family Law Act, 1995. The terms "actuarial value", "contingent benefit", "dependent member of the family", "designated benefit", "retirement benefit", "transfer amount", "member spouse" and "non-member spouse" in this Guidance Note have the meanings ascribed to them in the Acts and the Regulations.

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 Family Law Act, 1995 or the Family Law (Divorce) Act, 1996.

Version	Effective from
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1.0	02.07.97
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1. INTRODUCTION:

1.1 These guidelines apply to all actuarial values calculated on or after 1st August 1996 in accordance with the provisions of Section 12 of the Family Law Act, 1995 or Section 17 of the Family Law (Divorce) Act, 1996.

1.2 An actuary advising either of the parties in a judicial separation or divorce may adopt 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 Family Law Act, 1995 or Section 17 of the Family Law (Divorce) Act, 1996. If, however, the assumptions adopted are not consistent with the requirements of this Guidance Note, the actuary must make this clear to his or her client.

1.3 The guidelines relate to Republic of Ireland requirements and conditions.

2. BACKGROUND:

2.1 Under the Family Law Act, 1995 or the Family Law (Divorce) Act, 1996, the court may make an order providing for the payment to the non-member spouse, 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 spouse 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 benefit, the order

will specify the period of reckonable service of the member spouse 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 Section 12(25)[1995] or 17(25)[1996], 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 spouse and the designated benefit has not commenced, the non-member spouse is entitled under Sections 12(4)[1995] or 17(4)[1996] and 12(5)[1995] or 17(5)[1996] to have a transfer amount equal to the actuarial value of the designated benefit applied to provide an independent benefit for the non-member spouse under the scheme, or transferred to another occupational pension scheme or other approved arrangement. In certain circumstances, set out in Sections 12(6)[1995] or 17(6)[1996] and 12(8)[1995] or 17(8)[1996], 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 spouse, or other person named in the order.
- 2.4 The Acts also provides for the payment of a lump sum in the event of the death of the member spouse before commencement of payment of the designated benefit (Section 12(7)[1995] or 17(7)[1996]). In this event, the amount of contingent benefit payable may be restricted to reflect this payment (Section 12(16)[1995] or 17(16)[1996]). A lump sum is also payable on the death of the non-member spouse before or after payment of the designated benefit has commenced (Sections 12(9)[1995] or 17(9)[1996] and 12(10)[1995] or 17(10)[1996]).
- 2.5 Articles 28, 31, 34, 38, 40 and 48 specify that actuarial values should be calculated on a basis which is consistent with guidelines issued by the Society of Actuaries in Ireland. This Guidance Note sets out the guidelines referred to in those paragraphs.

3. PURPOSE OF THE GUIDANCE NOTE:

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

4. CALCULATION OF ACTUARIAL VALUES FOR THE PURPOSE OF SECTION 12(25)[1995] OR 17(25)[1996]:

- 4.1 Where the court directs the trustees of a defined benefit scheme to provide specified information, Article 48 stipulates that each element of the accrued retirement benefit of the member spouse and the actuarial value of such benefits are to be calculated as at a date specified by the Trustees assuming, where the member spouse is an active member, that the member spouse's reckonable service terminates on that date. The approach to be taken follows many of the principles set out in GN11(ROI) 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 GN11(ROI).
- 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 spouse terminated on the effective date. In such circumstances, under Section 29 of the Pensions Act, 1990 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)[1995] or 17(25)[1996] of the actuarial value of the member spouse's accrued retirement benefit, the scheme, in the actuary's opinion, would not have satisfied the funding standard based on a specified percentage (as defined in the Pensions Act, 1990) of 100%, 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 (subject to the requirement to have a minimum payment equal to the actuarial value of the preserved benefit, as defined in the Pensions Act, 1990), if the member spouse were to take a transfer value at the specified date.

5. CALCULATION OF TRANSFER AMOUNTS AND INDEPENDENT BENEFITS WITHIN THE SCHEME:

- 5.1 When a retirement benefit order has been made in favour of a non-member spouse and the designated benefit has not commenced, the non-member spouse is entitled under Sections 12(4)[1995] or 17(4)[1996] and 12(5)[1995] or 17(5)[1996] to have a transfer amount applied to provide an independent benefit within the scheme or to another occupational pension scheme or approved arrangement. Article 31 provides that this transfer amount is the actuarial value, as at the date of receipt by the trustees of an application for a payment of a transfer amount, of the designated benefit.
- 5.2 The transfer amount 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 5.5 below need to be borne in mind.
- 5.3 Article 36 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. Therefore, if in calculating the actuarial value of the accrued retirement benefit of the member spouse for the purpose of Section 12(25)[1995] or 17(25)[1996] allowance has been made for future discretionary increases, a similar allowance must be made in calculating the transfer amount payable in lieu of the designated benefit.
- 5.4 Article 21 sets out the basis for calculation of the part of the additional retirement benefit granted in respect of a transfer value brought into the scheme which is to be taken into account for the purpose of the calculation of the designated benefit. The calculation of the transfer amount in respect of that part of the designated benefit which relates to the additional retirement benefit should follow the principles set out in paragraphs 4.6 and 4.7 above.
- 5.5 Where the non-member spouse requests that a transfer amount be paid from a scheme which in the actuary's opinion would not have satisfied the funding standard based on a specified percentage of 100%, it would be appropriate for this transfer amount to be calculated as the actuarial value of the designated benefit, reduced to reflect the funded status of the scheme at the date of transfer. This is permitted under Article 31(3). Alternatively, it may be appropriate for the actuary to advise the trustees that the non-member spouse's interests would be better served by deferring the taking of a transfer amount until a later date.
- 5.6 Where the member spouse ceases to be a member of the scheme following termination of reckonable service, Section 12(8)[1995] or 17(8)[1996] and Article 34 provide that the 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. Where the retirement benefit order is made in favour of the non-member spouse, the transfer amount should be calculated in accordance with paragraphs 5.2 to 5.4 above. Where the order is made in favour of a

dependent member of the family, the actuary should also take into account in the calculation of the transfer payment the period of time during which the dependent member of the family is expected to remain a dependent member of the family (as defined in the Acts). It is, therefore, possible that the actuarial value will be zero if the dependent member is expected to cease being dependent before the designated benefit comes into payment. It should be noted that Article 34 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.

- 5.7 Where a retirement benefit order is made and the trustees agree with the non-member spouse 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) 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 5.5 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.

6. CALCULATION OF AMOUNTS PAYABLE ON DEATH:

- 6.1 Section 12(7)[1995] or 17(7)[1996] provides that where the member spouse dies before payment of the designated benefit has commenced, the trustees shall provide for the payment to the person in whose favour the retirement benefit order is made of an amount equal to the transfer amount calculated in accordance with this Guidance Note. Where the retirement benefit order has been made in favour of the non-member spouse, Article 40(1)(a) states that this amount is calculated as the transfer amount which would otherwise have been available immediately prior to the member spouse's death. The calculation should therefore follow the principles set out in paragraphs 5.2 to 5.5 above. If the retirement benefit order has been made in favour of a person for the benefit of a dependent member of the family, Article 40(1)(b) states that the amount is 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 as the person for whose benefit the order is made would have remained a dependent member of the family. This should be calculated as in paragraph 5.6 above but allowance should be made for the funded status of the scheme, as expressly permitted under Article 40(2).
- 6.2 Section 12(16)[1995] or 17(16)[1996] and Article 28 provide that where a retirement benefit order has been made, and a lump sum payment is made on the member spouse's death prior to commencement of the designated benefit under Section 12(7)[1995] or 17(7)[1996], 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 spouse, the reduction in this benefit should be of an actuarial value equal to the amount of the payment made under Section 12(7)[1995] or 17(7)[1996]. In determining the reduction in pension payable, the assumptions used should be the same as those used in determining the lump sum payment under the retirement benefit order and hence should follow the principles of paragraph 6.1 above.
- 6.3 If a retirement benefit order is made in favour of a non-member spouse who predeceases the member spouse before commencement of the designated benefit, Section 12(9)[1995] or 17(9)[1996] and Article 41 provide for the payment to the personal representative of the non-member spouse of an amount equal to the transfer amount calculated in accordance with this Guidance Note. This amount should be calculated in accordance with paragraph 5.2 to 5.5 above.

Where the order is made in favour of a dependent member of the family who dies before commencement of the designated benefit, the order ceases to have effect and accordingly no payment falls to be made.

- 6.4 If a retirement benefit order is made in favour of a non-member spouse who predeceases the member spouse following commencement of the designated benefit, Section 12(10)[1995] or 17(10)[1996] and Article 38 provide for the payment of an amount to the personal representatives of the deceased spouse. This is calculated as the actuarial value at the date of death of the non-member spouse of the designated benefit which would otherwise have been payable to the non-member spouse during the lifetime of the member spouse. Paragraph 215 confirms that this should exclude the value of benefits which would have been payable to the non-member spouse following the member spouse's death. The actuary should therefore make no allowance for spouse's contingent pension or for any minimum guaranteed period of payment of the pension. For the purpose of this calculation, the actuary should use a rate of interest assessed in accordance with paragraph 4.2 above and should allow for future guaranteed increases to the pension. The allowance, if any, to be made for discretionary increases should be consistent with the approach adopted in 5.3 above. Allowance for expenses may be made where appropriate in accordance with paragraph 4.5 above. If at the date of calculation the scheme, in the actuary's opinion, did not have sufficient assets to provide for its liabilities in respect of pensions in payment (allowing for the order of priority on winding up set out in the Pensions Act), the value should be adjusted to reflect this shortfall.

7. DEFINED CONTRIBUTION SCHEMES:

- 7.1 In the case of a defined contribution scheme, the value of the member spouse's retirement benefits for the purpose of Section 12(25)[1995] or 17(25)[1996] is the accumulated value of the contributions paid during the relevant period, assuming termination of the member spouse'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.
- 7.2 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.

8. PRESENTATION:

- 8.1 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.
- 8.2 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)[1995] or 17(25)[1996] has been calculated on the assumption that the member spouse's reckonable service terminated at the effective date of the calculation as prescribed under Article 48, and that no allowance has been made for service after that date or for future increases in the member spouse's pensionable salary.