

Tech Talk - IORP II and Pension Adjustment Orders

The Pensions Authority's activity in relation to its enforcement of IORP II (Institutions for occupational retirement provision) has consequences for legacy issues effecting schemes, including Pension Adjustment Orders. As many schemes cannot sustain the costs associated with the level of governance now required under IORP II, they will be forced to wind up and transition to an alternative arrangement this year with the most likely destination being a Master Trust. Most effected schemes will have already made a formal commitment to do so. To avoid full IORP II compliance the Pensions Authority require that group schemes must finalise their wind ups by 31 December this year with one member schemes set up on or after 22 April 2021 having an earlier deadline of 30 June this year.

Where members of those schemes have gone through divorce or judicial separation proceedings, then Pension Adjustment Orders may be attached to those schemes. They may be made on the Retirement Benefits and/or Contingent (Death in Service) Benefits for the member under the scheme. Those orders are legally binding and will direct the trustees on how the benefits under the scheme should be designated to the former spouse of a member and in some cases the dependents of the member. There are a number of different scenarios which may need to be considered depending on what the Pension Adjustment Order itself states and which benefits it applies to. We have looked at three different scenarios below.

Nominal or Nil Pension Adjustment Orders

Most of the Pension Adjustment Orders we see are nominal or nil orders. These are orders which are made with the intention of capturing no benefits under the scheme for the nominated beneficiary. Where there is an agreement between the former spouses that pension assets are not going to be split following their divorce or judicial separation, this will normally be outlined in the terms of settlement on divorce or judicial separation and the Pension Adjustment Orders are made on the scheme to copper fasten that agreement and ensure the trustees are given a clear direction from the courts in that regard.

In cases where the orders are nil or nominal orders on Retirement Benefits or Contingent (Death in Service) Benefits, then no benefit has been designated and therefore the situation is more straightforward as there is no potential for a loss of benefits when the scheme is wound up.

However in cases where a Retirement or Contingent Benefit has been designated to a former spouse or dependent the situation is different.

Retirement Benefits designated to former spouse or dependent

Where an order on Retirement Benefits has been made on the effected scheme in favour of a member's former spouse or a dependent, then the designated benefits must be ringfenced on wind up and transferred to an alternative arrangement in the name of that former spouse or dependent. Where the funds are transferred into a Master Trust, the former spouse or dependent will have an independent benefit created in the new scheme. In most cases it is more likely that the trustees will arrange for the purchase of a Personal Retirement Bond (PRB) or Personal Retirement Savings Account (PRSA) in the name of the former spouse or dependent. Those benefits could also be transferred into another occupational pension scheme of which the former spouse was a member.

In these cases, the former spouse will still be entitled to the Retirement Benefits designated by the Pension Adjustment Order, but they are likely to have questions particularly around the type of arrangement their benefits have been transferred to, how those funds are now invested and what this means in terms of their overall retirement plan. We would recommend that all effected clients speak to a Financial Broker in this regard.



Contingent Benefits designated to former spouse or dependent

Where an order on Contingent Benefits has been made on the effected scheme in favour of a member's former spouse or a dependent, then the designated benefits are not ringfenced in the same manner as previously discussed for retirement benefits as a contingent benefit only becomes payable on the members death in service.

The issue that will now arise for many potential beneficiaries under a contingent benefit order is that the schemes on which those orders are being made are likely to wind up sometime this year.

Currently where such a wind up occurs the order on contingent benefits will not automatically transfer to any new scheme so the potential beneficiaries would need to seek legal advice as to whether they could now seek a new order on the contingent benefits under the new scheme. This may be problematic as the Family Law legislation states that an order on contingent benefits can only be made or varied within one year of the decree of divorce or judicial separation (as applicable).

The issue has been raised with the Pensions Authority by various industry bodies and in particular the Law Society who been quite active in this regard. They have proposed new emergency legislation to remove the restriction on making or varying a contingent benefit order within one year of the relevant decree of divorce/judicial separation and also to allow for the transition of an order on contingent benefits from one scheme to another scheme. They are requesting that this emergency legislation be enacted as soon as possible but at this time we have no certainty or timeline as to when or even if this will happen.

We would recommend that all effected clients seek legal advice in this regard. Where there are further developments on this matter we will endeavour to communicate any changes to our Financial Broker network.

If you have further questions on any aspect of this briefing, please contact your Broker Consultant or the TechTalk Team on 01 209 2020 or techsupport@zurich.com

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