THE FINANCIAL EXPERT

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FINANCIAL BROKER

PRE-RETIREMENT GUIDE TO INDIVIDUAL PENSION ARRANGEMENTS

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PART II

A word or phrase that is written in italics is explained in the Jargon Buster appendix (i).

ABOUT THE AUTHOR

The original Guide was written in 2015 by Jim Connolly who at the time was Head of Pensions at Standard Life. The Guide has been updated by James Skehan in September 2021 to reflect changes in pension legislation and practice in the intervening years.

James Skehan FIIPM, QPT, PTP has over 40 years experience in the pensions industry and has worked in both insurance companies and brokerages. He was Head of Pensions in New Ireland from 2000 to 2020 and was CEO of General Investment Trust, New Ireland's corporate trustee company for from 2008 to 2020. James currently acts as a professional trustee and advises trustees and employers on pension issues.

INTRODUCTION

Pensions have a well-deserved reputation of being complicated. And to exacerbate the problem there has been an unprecedented level of changes to our pensions legislation and Revenue practice.

For example, a client asks a simple question, "how much can I contribute?"

It doesn't matter if they have a personal pension, PRSA or AVC, as individual contribution levels were always the same for each product; however the answer has changed dramatically over the years:

When	How much could you contribute
Up to 1999	15% of your *relevant earnings*
1999	A new regime was introduced where your contribution was linked to your age; AND an earnings limit of €254,000 was also introduced where contributions were restricted to a percentage of that figure. Under 30 15% 30-39 20% 40-49 25% 50 or over 30%
2006	The age related limits were changed to introduce a new 40% limit as follows: Under 30 15% 30-39 20% 40-49 25% 50 or over 30% 55 or over 35% 60 or over 40%
2007	Earnings limit increased to €262,382
2008	Earnings limit increased to €275,239
2009	Earnings limit reduced to €150,000
2010 to date	Earnings limit reduced to €115,000

Given this type of complexity and the recent transposition of IORPII into Irish law, the role of a Financial Broker has never been more important. The purpose of this guide is to assist you in advising your clients by:

1. Making sure you understand each of the product structures and their basic rules.
2. Explaining the key issues involved in giving advice on them.
3. Alerting you to the sales opportunities for each product.

A second guide covering all of the post retirement products is also available.

PART I
GENERAL COMMENTARY ON THE MARKET

2.1 Rules, glorious rules

Our pensions landscape is notoriously complicated, which is hardly surprising given the considerable changes that have occurred in our industry since the introduction of the Pensions Act in 1990.

Whilst it is not necessary to be familiar with the legislation itself, it is always useful to understand where our current rules come from.

The following table represents a summary of some of the more relevant Acts and regulations.

Legislation	What did it do
Pensions Act 1990	Significant piece of legislation that created the Pensions Authority, which now regulates Occupational Pension Schemes and PRSAs. Most would consider the introduction of 'Preservation' as the key benefit of the Act. Preservation gives an employee a statutory right to take their pension with them should they leave an employer. The statutory vesting period is now two years, i.e. if an individual has been a member of a scheme for more than two years they are legally entitled to the value of any contributions that the employer has made to that scheme.[1]
Family Law and Divorce Acts 1995/6	Introduced Pension Adjustment Orders to give individuals access to their ex-spouses' pension benefits in divorce settlements.
Finance Act 1999	Introduced the Approved Retirement Fund. However the original net roll-up taxation regime for the ARF was considered largely unworkable and therefore they amended it to a gross roll-up regime the following year.

Finance Act 2000	Amended the taxation regime for the ARF.
Pensions Act 2002	1. Introduced the PRSA. 2. Created the Office of the Pensions Ombudsman. 3. Reduced the statutory vesting period to two years.
Finance Act 2002	Introduced a salary cap of €254,000 and a new age related regime for contributions.
Pensions Act 2004	Removed the prohibition on certain schemes borrowing.
Finance Act 2005	Introduced the concept of the fund threshold and set the original *Standard Fund Threshold* (SFT) at €5m. This Act also introduced the concept of Benefit Crystallisation Events and Chargeable Excess Tax to cater for individuals who breached the new fund threshold. Also introduced the concept of imputed distributions for ARFs, where imputed tax of 1% would be levied in 2007, 2% in 2008 and 3% in 2009 and future years.
Ministerial Order 2006	Increased the SFT to €5,135,000.
Ministerial Order 2007	Increased the SFT to €5,418,085.
Social Welfare Act 2008	Introduced Trustee Training.
Finance Act 2009	Reduced the earnings cap to €150,000.
Finance Act 2010	Reduced the SFT to €2.3m. Increased the AMRF to €119,800 and the specified income test to €18,000
Finance Act 2011	Introduced conditional ARF access for Defined Contribution scheme. Increased the imputed distribution to 5%. Introduced the Pensions Levy of 0.6%.
Finance Act 2012	Extended the imputed distribution regime to vested PRSAs. Increased the imputed distribution to 6% for anyone with over €2m in ARFs and vested PRSAs.
Finance Act 2013	Introduced AVC access. Reduced the AMRF back to €63,500 and the specified income test to €12,700.
Finance (No 2) Act 2013	Reduced the SFT to €2m Introduced a new schedule of age-related capitalisation factors for valuing defined benefits Introduced a new electronic system for applying for PFTs.
Finance Act 2014	Reduced the pensions levy to 0.15% for 2015 Changed the imputed distribution tax rate to 4% for individuals aged 61-70 Amended the rules regarding access to AMRF – the option to take the growth was replaced with the ability to take 4% of the value.
Finance Act 2016	A holder of a PPP or PRSA must take their benefits before age 75, if benefits are not taken the individual loses the right to draw down benefits. The fund will only become payable on death and at that stage will be treated as an ARF. Imputed distributions will be applied to any PRSA. Also in June 2016, the Minister for Finance relaxed the restrictions on individuals who had taken transfers from DB schemes into PRBs and allowed them to avail of the ARF option

EU (Occupational Pension Schemes) Regulations 2021	This transposed IORPII into Irish law and introduced a new regime of governance for all trust-based pension schemes, including one-member arrangements
Pan European Pensions	With effect from March 2022 providers will be able to offer voluntary pension products to individuals in other EU countries.

Finance Bill 2021

The Finance Bill which was published in October 2021 introduces a number of significant changes to pension products and regulations including the removal of the AMRF and the 15 year restriction on transfers to PRSAs. Existing AMRFs will be "converted" to ARFs. It also allows for any spouses or dependents pensions payable on death in service to be either paid as a pension or the value invested in an ARF.

2.2 IORPII

IORPII, was transposed into Irish law in April 2021.The regulations provided a derogation from most of the new requirements for existing one member arrangements for a 5 year term until 2026, although there is no derogation in respect of the new investment rules and borrowing restrictions. Any new one-member arrangement must comply with all the new regulations. The only "concession" that has been made is that schemes – including one member arrangements can take account of the size, nature and complexity of the scheme when meeting the requirements. As the new regulations only apply to trust-based arrangements, PRSAs could become the new "vehicle" for this type of business -particularly if the proposals from the IDPRTG are implemented. The proposals recommend that PRSAs are brought in line with the features applicable to trust- based arrangements.

Issues such as the need to appoint Key Function Holders for risk management and internal audit, the requirement to have a minimum of two trustees and to appoint a secretary will be major challenges for one member arrangements as will the need to have written policies covering remuneration, administration and conflicts of interest. The Pensions Authority have flagged that for new policies their supervisory focus will be on compliance with the investment requirements relating to borrowing and the need to be predominantly invested in regulated markets. This focus will also apply to existing policies re post April activity. Further information re one member arrangements is to be published in mid-October.

2.3 Pension Simplification

In November 2020, the Interdepartmental Pensions Reform and Taxation Group (IDPRTG) published its findings from their 2018 consultation with the aim of simplifying the current private pension system. The recommendations, when / if implemented will have far reaching changes for the pension landscape and a summary of the recommendations is set out below.

A) The removal of both Buy out Bonds and Personal Pensions for new business with existing business being allowed to "run off" over time
B) A new "whole of life" PRSA which will allow policyholders to retain funds in the same product post retirement and the restrictions that apply to a PRSA at 75 removed.
C) Life cover would be allowed to be included in the PRSA
D) PRSA contribution limits would be aligned more closely with occupational pension schemes, further details to follow
E) 55 would be the new earliest draw down date and would apply to all pension types (other than ill health) and 75 would be the latest date
F) The retirement lump sum to be considered further with a view to standardizing it although it was acknowledged that this was a challenge to achieve
G) The replacement of the current ARF product and the removal of the need for an AMRF*
H) In addition to the whole of life PRSA, consideration to be given to in-scheme drawdown for retirees or perhaps a trust based "Group ARF"
I) The removal of the compulsory purchase of an annuity
J) Direct transfers from PPPs to Occupational Pension Schemes would be allowed
K) Dependents would be allowed to avail of the ARF option for any excess death benefit over and above the 4 times salary limit*

* These changes are included in the Finance Bill 2021.

When choosing a system, it is important to consider all of the features that are offered by each system.

Tax Relief

The report outlines the arguments for and against the current tax relief system but does not put forward any proposals for changing the current system.
This issue is likely to be revisited when the details of Auto Enrolment is considered further.

Effects of simplification

Overall, the recommendations put forward by the IDPRTG are to be welcomed as they will make pensions easier for the consumer to understand and for Financial Brokers to provide advice. Conversely it could be argued that the more complicated the pension system is the greater the need for professional advice to be provided.

The proposed new whole of life PRSA and the in-scheme drawdown for retirees will reduce some of the sales opportunities for Financial Brokers.

On balance a more simplified system should lead to an increase in pension coverage benefiting both consumers and Financial Brokers.

2.4 Revenue Pensions Manual

Many of our day-to-day pension rules come from the diverse discretionary powers that Revenue have. Revenue do publish the rules that they operate to and the most recent version of the manual represents a valuable reference tool and is available to view on their website.

2.5 Self-Administered and Self Directed

A lot of confusion is generated when consultants attempt to differentiate between 'self-administered' and 'self- directed' pensions.

The generic reference to self-administered pensions typically refers to Small Self-Administered Pension Schemes
– SSAS's.
And the term self-directed has been adopted to describe the insured equivalent – a self-directed Executive Pension Plan.

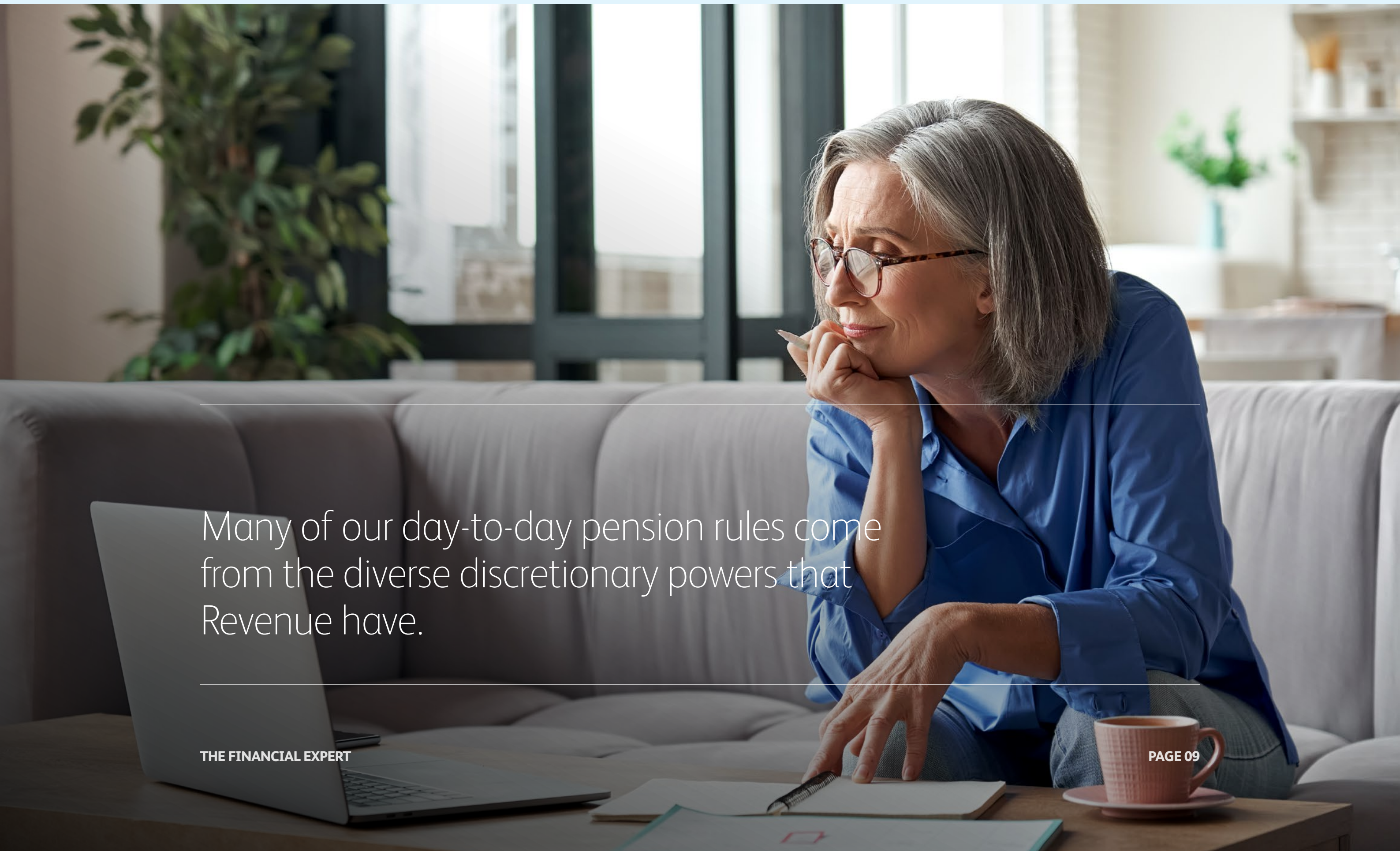
As both the SSAS and the EPP are occupational pension schemes, they are governed by exactly the same rules, i.e. the same funding rules apply to both and the same drawdown rules apply to both.

SSAS's have always been associated with owner managers and proprietary directors and Revenue have singled them out for special attention to ensure that Revenue rules are not breached
This is why a pensioneer trustee must always be appointed to these schemes. It is their role to police the scheme, i.e. they ensure that contributions are within limits, that investments are permitted and that benefits do not exceed Revenue maximum levels.

The insurance company performs this policing function for the self-directed contract.

The investment functionality offered by insurers has dramatically improved over the last number of years and this has somewhat eroded the investment advantage that the SSAS had. The new requirements imposed by IORPII in relation to borrowing and the need to invest predominantly in regulated markets removes many of the attractions that SSASs offered.

	Small Self Administered Schemes	Executive Pension Plans
Who provides them?	Pensioneer Trustees	Insurance Companies
Who regulates them?	Pensioneer Trustees themselves are not regulated by the Central Bank; however they are recognised by the Dept. of Justice for the purpose of money laundering requirements	Central Bank
What can they invest in?	IORPII regulations require investments to be predominantly in regulated markets and prohibits borrowing.This applies to all new schemes established after the 22nd of April 2021 Existing one-member arrangements have a derogation from many of the regulations until 2026 but the regulations apply to borrowing / investment made after the 22nd of April	IORPII regulations require investments to be predominantly in regulated markets and prohibits borrowing.This applies to all new schemes established after the 22nd of April 2021 Existing one-member arrangements have a derogation from many of the regulations until 2026 but the regulations apply to borrowing / investment made after the 22nd of April
How do they differ?	Typically Pensioneer Trustees (PT's) will hold assets in the joint names of the member and themselves, which creates a transparent and secure structure. Some PT's use Unit trusts (an unregulated investment vehicle) to acquire assets, which can diminish control and transparency.	Investors in self directed structures essentially hold a policy of insurance which represents a debt that the insurance company honours by ring-fencing assets on their balance sheet.



Many of our day-to-day pension rules come from the diverse discretionary powers that Revenue have.

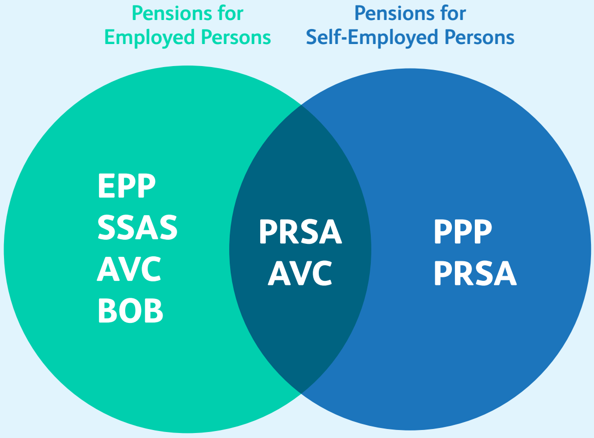
QUICK REFERENCE GUIDE

3.1 Product Structures and their acronyms

We operate in a complex market and the role of a Financial Broker is made considerably more difficult by our tendency to attach different names to what are essentially the same products.

Acronym	Product	Also known as…
AVC	Additional Voluntary Contribution	
BOB	Buy Out Bond	PRB – Personal Retirement Bond
EPP	Executive Pension Plan	Top Hat arrangement
PPP	Personal Pension Plan	RAC – Retirement Annuity Contract
PRSA	Personal Retirement Savings Account	Standard PRSA, Non-Standard PRSA, Vested PRSA
SSAS	Small Self-Administered Scheme	SAPS – Self Administered Pension Scheme SART – Self Administered Retire-ment Trust

But the universe of products becomes somewhat easier to navigate when you group them according to their target audience, as follows:



3.2 Matching clients to products

Matching the correct product to your client is the first step in the consulting process; and the key driver in this regard is your client's tax status.

From a pensions perspective the Revenue Commissioners recognise two broad populations of taxpayer

- Those assessed for tax under Schedule E
  These include all PAYE employees

- Those assessed for tax under Schedule D Case (i) and (ii)
  These include all self-employed individuals whose profits arise from carrying out a trade (e.g. a plumber) or profession (e.g. a dentist or solicitor).

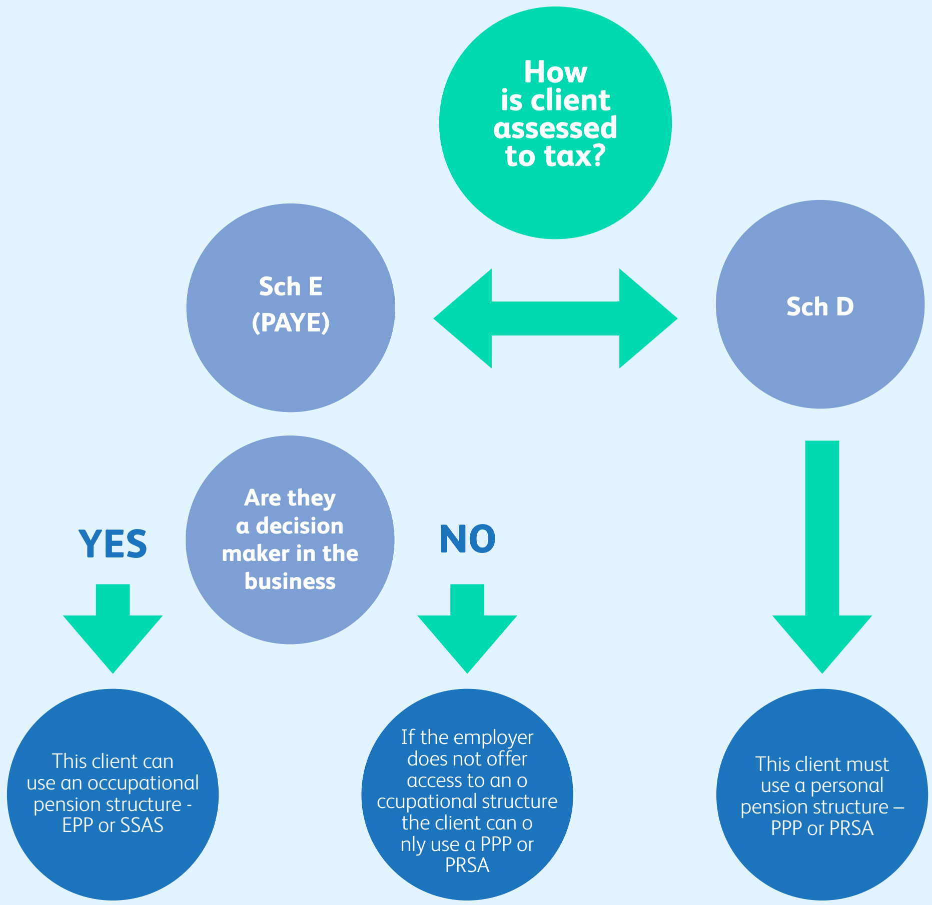
It is essential to appreciate that it is the tax status of the individual that dictates the type of pension that they can contribute to.

Self-employed individuals can only contribute to personal pension and PRSA contracts.

Employees can contribute to an EPP but only if the employer sets one up in the first place and pays a minimum contribution to it. If the employer does not set up an EPP (or other occupational structure) then employees are deemed to be in 'non-pensionable employment' and they are effectively treated as self-employed individuals, i.e. they can only use PPP and PRSA contracts.

Therefore, in order to match your client up with the correct product the following questions and decisions need to be followed:

Decision Tree



IMPORTANT REVENUE CONCEPTS AND COMPLEMENTARY SALES OPPORTUNITIES

4.1. Important Revenue concepts

There are a number of fundamental Revenue concepts that you need to be familiar with and the main ones are dealt with below.

4.1.1 Relevant Earnings

This is a very important but simple concept.

There are numerous ways that someone can earn money; however, you can only fund a pension for those income sources that actually 'stop' when you stop working. The most common question a client will ask is "can I base my pension contribution on the rent I receive?" – and given that rental income doesn't stop just because you stop working, the answer is 'NO'.

Here is a quick guide to the main sources of income and their 'relevance' for pension purposes.

Source	How is it taxed?	Does the source of income cease when the individual stops working?	Is it Relevant?
Income from a trade	Sch. D Case (i)	Yes	Yes
Income from a profession	Sch. D Case (ii)	Yes	Yes
Income from an employment	Sch. E	Yes	Yes
Rental Income	Sch. D Case (v)	No	No
Deposit Interest	Sch. D Case (iii)	No	No
Patent Income	Sch. D Case (iiii)	No	No
Royalties	Sch. D Case (iiii)	No	No
Social Welfare Income	Sch. E	No	No
Annuity Income	Sch. E	No	No
Irish Dividends	Sch. F	No	No

4.1.2 Earnings Cap

Successive Budgets have sought to restrict the earnings on which an individual can base their pension contribution and they achieved this by introducing the earnings cap.

This is currently set at €115,000.

For tax purposes an individual can only base their contribution on this figure, e.g. a 38-year-old earning €200,000 can only get tax relief based on a contribution of €23,000 (20% x €115,000).

4.1.3 Pensions Cap

The earnings cap also represents the maximum *Defined Benefit* pension that an individual can have at retirement.

Up to 31/12/2013 Revenue used a factor of 20 to convert defined pension benefits into a cash equivalent and therefore the maximum pension was €115,000 as this equated to €2,300,000 when converted to a fund using the 20 *Capitalisation Factor*. Whilst this wasn't very equitable (for example a pension available at age 50 was valued on exactly the same basis as a pension available at 70), it was very easy to value a defined benefit.

Finance (No 2) Act 2014 reduced the pensions cap to €60,000 and introduced a new formula for calculating the value of Defined Benefits. The new system came into operation on January 1st 2014.

With effect from that date all DB entitlements must be converted to a fund value based on a new age related system as follows:

Age	Capitalisation Factor
50	37
51	36
52	36
53	35
54	34
55	33
56	33
57	32
58	31
59	30
60	30
61	29
62	28
63	27
64	27
65	26
66	25
67	24
68	24
69	23
70	22

The new system creates a considerable amount of complexity and confusion; especially in light of the fact that all Defined Benefits accrued up to Dec 31st 2013 will be valued at the original 20 times factor and all benefits accrued after will be valued on the basis of the table above.

For example, imagine you have the following 40 year old client...

Scheme	DB with 1/60th accrual rate
NRA	60
Years of service to 31/12/13	20
Potential years of service post 1/1/14 to NRA	20
Earnings	€120,000

The question is, should they be investing AVCs?

First, we have to establish where they are vis a vis the €2m threshold

We know that they have accrued 20/60ths x €120,000 up to the 31/12/13, so this eats €800,000 of their threshold i.e. €40,000 pension capitalised at a factor of 20

Now we need to look at how much the future benefits will impact on the threshold. And this is calculated by capitalising their post 1/1/14 service by the new capitalisation factor of 30 – i.e. 20/60ths x €120,000 x 30 = €1,200,000.

So although this client is currently well within the threshold, we can predict that he is going to reach the threshold just from the future accrual of his benefits.

Therefore, the use of AVCs needs to be considered very carefully – if he continues to NRA then the AVCs will push him over the threshold and will become taxable as a Chargeable Excess.

And this ignores the fact that his earnings are likely to increase and therefore he is likely to reach the threshold more quickly so there may be no point is recommending AVC to fund an early retirement.[2]

4.1.4 Standard Fund Threshold

In 2005 Revenue introduced a limit on the amount an individual could hold in their pension fund.

The SFT now stands at €2m and is a function of the maximum pension (€60,000), the new capitalisation factor at age 60 (30) and the maximum tax free pension lump sum (€200,000): (€60,000 x 30) + €200,000 = €2,000,000.

,

4.2. Sales strategies for clients affected by the funding restrictions

There is a considerable disparity between self-employed individuals and their proprietary director counterparts when you consider the effect of the earnings and fund restrictions outlined above.

Take an example of 65-year-old twin plumbers – one operates as a self-employed individual and the other as a director of his own plumbing company. Assume they have no pensions and both have been working in their capacities for 10 years.

The maximum contribution that the self-employed twin can make is €46,000 (40% x €115,000) and a similar backdated contribution for the previous year, whereas the other twin can enjoy a maximum company contribution equal to whatever figure is necessary to produce a pension of 2/3rds of his earnings.

There are two strategies that can be considered for self-employed clients in a similar position –

- Spousal employment
- Incorporation

4.2.1 Spousal Employment [3]

A lot of advisers think that an executive pension can only be set up by a company. This is incorrect. An executive pension can be established by any employer, even if that employer is self-employed themselves.

Take for example a solicitor's practice – the employer (the solicitor) is assessed for tax as a self-employed individual. However, his employees are all assessed for tax under PAYE. In this case the solicitor can establish an occupational pension scheme (EPP) for his employees even though there is no company as part of the arrangement.

There is no Revenue issue in having a self-employed individual employing and paying their spouse under the PAYE system (providing of course the employment itself is bona fide). This allows the self-employed spouse to make contributions to an executive pension on behalf of their employee / spouse.

This type of arrangement facilitates some valuable tax planning opportunities.

[2] SALES CONSIDERATION – the solution in such cases may simply be to encourage non-pension savings eg a regular savings plan. If it transpires that circumstances change and AVC investment becomes justifiable, then you can redirect the accumulated funds at that stage.
[3] SALES CONSIDERATION – pension benefits for spouses are based on a combination of salary and service: the longer the service period, the better the planning opportunities. So to enhance future planning opportunities, employers should create service for their spouses as early as possible by creating a small bona fide role and paying a nominal salary in respect of the employment.

In the example below the self-employed spouse would be limited to a pension contribution for the tax year of €23,000; however, by employing their spouse they can divert substantial amounts of their own income into a pension for their spouse.

Self-employed Spouse			Employed Spouse	
Sch. D Income		€200,000	Sch. E Income	€45,000
Expenses				
Staff wages	€45,000			
Staff pensions	€40,000	€85,000		
Relevant Income		€115,000		
Pension Contribution self (20%)		€23,000	Occupational Pension	€40,000
Taxable Income		€92,000		

4.2.2 Incorporation

There are many reasons why a self-employed individual might consider incorporation.

Limited Liability	In a limited company structure, the exposure of the directors is limited to the value of their shareholding in the company.
Perpetual Succession	This means that a company survives longer than the directors themselves – the entity lives on, unlike a self-employed business that dies with the individual.
Borrowing	Lenders often favour lending to corporate structures, where it is easier to take a lien over assets.
Public Perception	Limited companies may be perceived as having a more professional image by some clients.

You can identify the most relevant set of potential activities for each of the objectives that you've defined for your marketing plan.

In addition to these reasons, many self-employed individuals are now looking to incorporate solely for the pension benefits that can be funded under the corporate structure.

	Self-Employed	Employed
Pension wrapper	PPP / PRSA	Executive Pension
Earliest retirement age	60	50
Maximum lump sum	25 % x Fund	Two options 1.5 x Salary or 25 % x Fund
Maximum contribution	40 % x €115,000	Technically unlimited
Death Benefits	100 % of the fund	4 x Salary + the value of any personal contributions as a lump sum with the balance of the fund available to buy dependents' pensions or to invest in an ARF.

One of the main counterarguments against incorporation surrounds the issue of cost, particularly the cost of satisfying all of the corporate governance requirements (audited accounts, annual returns, trusteeship issues for pensions, etc.) Despite this there is a growing trend towards incorporation.

4.2.3 Incorporation for certain professions

Some professions are prohibited from incorporating by their representative bodies. This often relates to restrictions on operating under a limited liability, i.e. that some professions cannot limit their liability – it would be very unfair if your surgeon removed the wrong organ and was only liable for a nominal amount of liability thanks to the corporate structure!

The professions most likely to be curtailed in this regard are:

- Medical – GPs, surgeons, consultants
- Legal – solicitors, barristers
- Accounting
- Veterinary
- Dentistry

Whilst these professionals cannot incorporate their 'professional' services, they can incorporate the 'non- professional' aspects of their business.

For example, an accountant doesn't spend 100 % of their time on accountancy matters. A reasonable proportion will be spent on routine administration: sending out bills, collecting fees, completing VAT returns, operating payroll for staff, ordering stationery etc.

Therefore, it is a relatively straightforward exercise to separate the business activities between professional and administrative. Typically, you will find that most professionals spend 70 % of their time on their profession and 30 % on administration.

The key to a successful marketing plan is gaining clarity of the objectives of the plan.

This presents an interesting opportunity insofar as it is acceptable (and commonplace) for such professionals to incorporate the administrative part of the business.

This is why many of the bigger firms of solicitors and accountants operate 'service companies'.

A service company is simply a structure used by partnerships and sole trading practices to carve out the non-core services, thus allowing the principals to create PAYE income from their earnings. This also creates a basis on which to establish executive pensions.

Example – No service company

Total Fee Income	€200,000
Maximum Pension contribution (say 20%)	€23,000
Taxable income	€177,000

Example – With service company

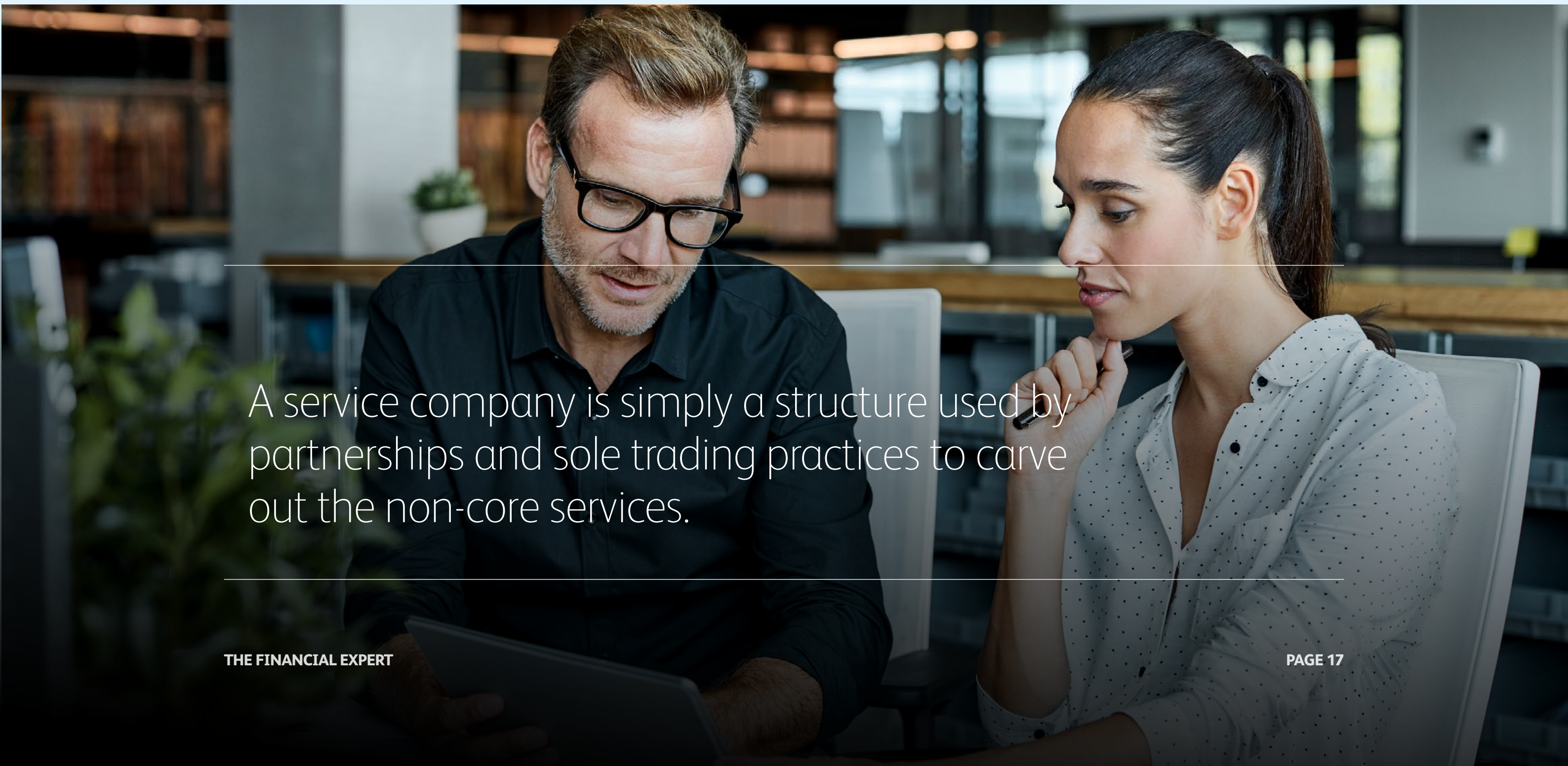
Total Fee Income (70%)	€140,000
Maximum Pension contribution (say 20%)	€23,000
Taxable income under Sch. D	€117,000

Total service income (30%)	€60,000
Distributed as	
PAYE Salary	€30,000
Executive Pension contribution	€30,000
Profit for corporation tax	€Nil

It is a relatively straightforward exercise to separate the business activities between professional and administrative.

Pension contribution is limited to the earnings cap

The service company income can be drawn out of the company in any way (salary, director fees, share dividend etc.) but the mostefficient way to extract it is through employer pension contributions.

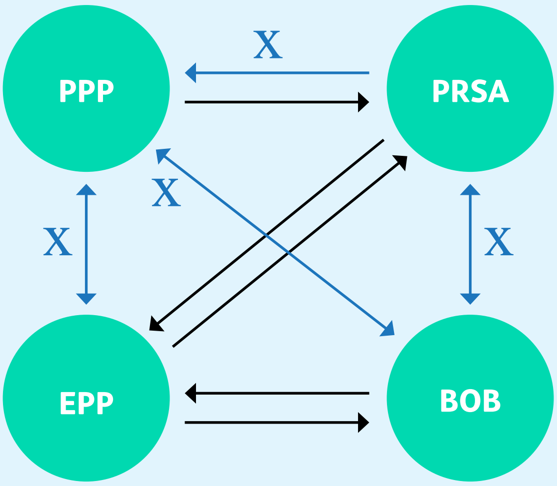


A service company is simply a structure used by partnerships and sole trading practices to carve out the non-core services.

TRANSFER NETWORK

5.1 How the transfer network operates

To say that we have a complex transfer network is a considerable understatement. However, we can simplify it by capturing all of the various rules as follows:



There is of course some small print to be aware of, most of which involves issues that relate to transfers to PRSAs. These are :

1. The 15-year rule, and
2. The requirement for a *Certificate of Benefits Comparison*.

The 15-year rule

In an attempt to address some concerns about the mass movement of valuable defined benefits to PRSAs at the point of retirement in order to avail of ARF treatment, a prohibition on PRSA transfers from any occupational scheme was introduced for individuals with over 15 years' qualifying service in schemes relating to their employment.

The Finance Bill 2021 proposes to remove the 15 year restriction.

Certificates of Benefits Comparison

When the PRSA was introduced, the legislators were anxious to avoid the mis-selling scandal that had plagued the UK market so they introduced a new requirement where PRSA investors wishing to transfer in an occupational benefit had to obtain a Certificate of Benefits Comparison before the transfer could take place.

The certificate essentially shows an investor the likely value of their fund if they leave it where it is and the corresponding value if they move it to a PRSA.

The requirement for a certificate is eliminated if:

1. The transfer value is less than €10,000, or
2. The scheme is being wound up (on the basis that you cannot compare a PRSA to a non-existent scheme).[4]
3. The transfer is as a result of a Pension Adjustment Order

[4] SALES CONSIDERATION – Actuarial firms typically charge 0.75 % of the transfer value for producing the certificate but will usually cap their fees at €2,000 plus VAT. In a group scheme context winding up the scheme is not usually a viable option so to avoid the requirement you could consider extracting the member into a one person executive pension first and subsequently winding up that scheme.

5.2. Using the transfer network for your client's benefit

There are many ways that you can use the transfer network to benefit your client, but the most common uses are:

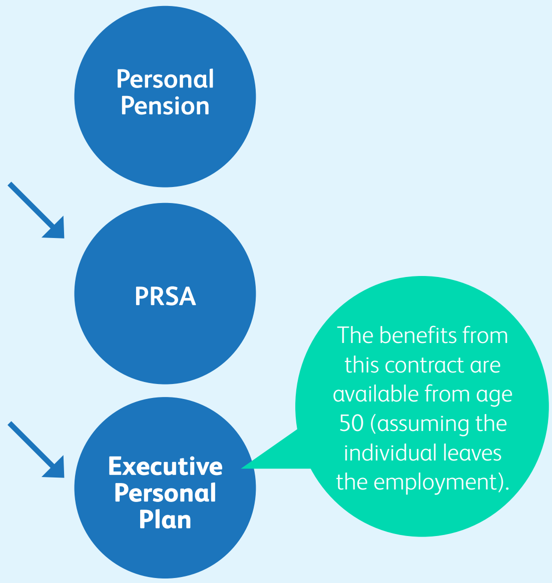
- To give access to tax free cash earlier than expected
- To give better retirement treatment – ARF access

5.2.1 Access to tax free cash

One of the biggest inequities in pensions is the fact that personal pension investors can only access their benefits from age 60 whereas occupational investors can get access from age 50 (assuming they leave the employment).

A PRSA crosses this divide insofar as a PRSA held by an employed person becomes available once they leave the employment.[5]

In the example below you can move / consolidate any portfolio of personal pensions into one PRSA contract. The PRSA can itself be amalgamated with occupational benefits by transferring the PRSA to an EPP. The entire value of the EPP becomes available if they leave the employment after the age of 50 even though the contract now contains the legacy PPP values.



5.2.2 ARF Access

ARF access has evolved over the years since it was first introduced in 1999.
The most recent change was in 2016 when individuals with BOBs made up of transfers from DB schemes were allowed to avail of the ARF option.

As a result, ARF access is now available on the following basis ..

Those who can get ARF access	Those who cannot
Proprietary Directors (i.e. 5% Shareholding Directors) – these individuals can also ARF Defined Benefits	All defined benefit schemes for non-proprietary directors
All members of defined contribution schemes	
All AVC benefits	
All BOB contracts funded by domestic transfers from occupational schemes (DC and DB)	
All BOBs funded by transfers from overseas	
All BOBs funded by transfers under PAOs	
All BOBs funded by transfers from AVCs	

5.3 Overseas transfers

The rules regarding overseas transfers are complex and subject to change on an ongoing basis.
Revenue rules have always permitted the transfer of pension assets overseas but will only allow bona fide transfers to overseas jurisdictions.

If a PRSA is transferred overseas a tax charge is incurred. Buy out Bonds, Personal Pensions and ARFs cannot be transferred – other than, in certain scenarios to the UK.

In an attempt to thwart such activities Revenue have introduced an Overseas Transfer Declaration,

[5] SALES CONSIDERATION – It is not unusual for individuals to have more than one employment, i.e. someone with concurrent employments can retire from one whilst maintaining the other.

which asks the investor to state where they are transferring to and why they are transferring overseas. They have also delegated the policing of these transfers to the insurance companies, who are now only permitted to facilitate bona fide transfers.

Whilst there are many bona fide reasons for transferring (e.g. because the investor is concerned about the Irish economy, or the euro) insurers tend to interpret the term quite narrowly and will typically only facilitate investors who are transferring to a country where they themselves have moved.

In October 2014 Revenue issued the following statement.

> **Moving Pension Funds Offshore – Statement by Irish Revenue Oct 30th 2014**
>
> Moving pension funds offshore in an effort to circumvent pension tax legislation (particularly, the condition that a scheme must be set up for the sole purpose of providing relevant benefits (within the meaning of the Irish tax legislation) may fall foul of the conditions under which the scheme was approved by the Revenue Commissioners as an exempt approved scheme and could result in the withdrawal of the approval of an occupational pension scheme in accordance with the provisions of section 772(5) of the Taxes Consolidation Act (TCA) 1997 or the withdrawal of the approval of the PRSA product under section 787k (3) and (4) TCA 1997. Any such withdrawal of approval could trigger significant tax liabilities on the sums moved off-shore and the withdrawal or claw back of tax reliefs.
>
> Moreover, depending on the circumstances, the transaction may be regarded as a tax avoidance transaction under the provisions of Section 811 of the TCA 1997 which is the general anti-avoidance rule designed to counteract tax avoidance transactions in relation to all taxes (including pensions tax) under the care and management of the Revenue Commissioners.
>
> Finally, the promoters of tax avoidance schemes which are set up to encourage individuals to transfer their pension funds off-shore in order to frustrate Irish tax rules or avoid Irish tax should be aware that under the Mandatory Disclosure of Certain Transactions legislation (Part 33 TCA 1997) they have a responsibility to report such transactions to the Revenue Commissioners. Failure to report such transactions may result in the imposition of significant penalties

[7] SALES CONSIDERATION – Caution needs to be adopted when advising individuals on overseas transfers, especially if the client has already moved abroad. Most intermediaries are only regulated to advise Irish resident individuals and therefore you can inadvertently breach your own authorisation if you advise someone who is now resident abroad (even if they are Irish nationals).

One of the biggest inequities in pensions is the fact that personal pension investors can only access their benefits from age 60 whereas occupational investors can get access from age 50

Unlike Ireland, Her Majesty's Revenue and Customs (HMRC) in the UK have a very clear and robust way of dealing with anyone who wishes to move their UK pension to another jurisdiction.

5.4 Qualifying Recognised Overseas Pension Schemes (QROPS)

QROPS is a term that only has relevance for UK transfers.

Unlike Ireland, Her Majesty's Revenue and Customs (HMRC) in the UK have a very clear and robust way of dealing with anyone who wishes to move their UK pension to another jurisdiction.
Put simply, a UK pension can be transferred to any country once the product or scheme into which it is transferred has been pre-approved as a QROPS. And in order to get QROPS status the administrator of the product must agree to inform HMRC if the fund is drawn down or transferred within certain periods.
The purpose of this reporting regime is to ensure that individuals do not enjoy preferential treatment outside the UK over what they would have enjoyed had the fund stayed within the UK regime.

Up to 6/4/2017, this reporting regime means that the UK tax treatment continues to follow the fund until such time as the individual has been out of the UK for over five years. Since 6/4/2017 the required term is now 10 years. In order to avoid an exposure to UK tax the technical requirement is that the pension investor must not have been a UK tax resident in the year of drawdown/transfer or in any of the previous five/ ten tax years. Once they can satisfy this requirement, they can draw on their QROPS contract without suffering any UK tax implications.

With effect from 6th April 2015, HMRC now require all QROPS providers to restrict access to all retirement benefits to age 55. This presents a considerable challenge to many providers, especially those that use a PRSA as their QROPS solution (as a PRSA cannot be amended to restrict the retirement age).

It is likely that some providers will be forced to withdraw from the market so you need to engage with your preferred provider to establish what their position might be.

5.4.1 Getting it wrong

The consequences of getting the timing wrong on UK transfers are stark.

If for example an individual aged 60 leaves the UK today, transfers their fund to an Irish QROPS and then retires in Ireland immediately, the QROPS administrator is under an obligation to alert HMRC to the transaction.

Imagine that the fund was worth €1m and the client took €250,000 as a pension lump sum, with the balance being invested in an ARF.
Given that the transfer has now left the QROPS environment (as an ARF cannot get QROPS approval) HMRC are likely to apply a UK tax charge which for unauthorised payments can be up to 55%. That's a UK tax bill of €550,000 just by getting the timing wrong.

If your QROPS administrator is competent in this field, then they should not let this happen. Once they establish that the client has been UK resident within the past five / ten years then they should restrict the options to those that will not give rise to UK taxes

5.4.2 Transacting business

Whilst QROPS transfers may seem daunting and complicated they are in fact very straightforward and usually involve a transfer from insurer to insurer, the twist being that one is UK based.
The key to transacting business safely is to choose a QROPS provider who you are confident will administer things correctly.

SALES CONSIDERATION – If a provider does withdraw from the QROPS market any existing business will be unaffected however you may wish to consolidate this business with a provider who remains active in the market.

If a client wishes to repatriate their UK fund to Ireland there are a number of steps involved in the transaction.

Step 1
You need to get a transfer options letter from the UK provider.

Step 2
This options letter will have a section relating to overseas transfers, which must be signed by the receiving QROPS provider.

Step 3
You need to select your QROPS provider. Alist of QROPs contracts available in Ireland can be found at: http://www.hmrc.gov.uk/pensionschemes/qrops.pdf

Step 4
The options letter should be completed by the client and submitted to the QROPS provider for them to sign. You will also need to submit an application form in respect of the product itself.

Step 5
The completed document should be returned to the UK administrator and once processed, they will issue the proceeds to the Irish QROPS administrator.

5.4.3 UK transfers and Irish thresholds

A pension fund that is transferred from the UK does not count towards the Standard Fund Threshold but the lump sum, when taken does count towards the lifetime limit.

5.4.4 UK Pensions Freedom

From the 6th April 2015 many of the pension rules in the UK have been simplified.

The most notable changes are:

1. The removal of income limits for DC schemes – scheme members can draw down what they want without any AMRF-esque type requirement
2. The introduction of Free Guidance at retirement - members must be given impartial free guidance on their pension options
3. Death benefits will be subject to a new regime which distinguishes between some under or over age 75. It appears to be a more favorable regime where the current death tax for someone aged under 75 was 55% dropped to 0% overnight.
4. DB schemes are allowed to transfer to DC structures to avail of the more favorable drawdown regime

The small print is that unfunded public sector schemes will no longer pay transfer values. So, ex-employees in, say the NHS who are now living back home in Ireland will no longer be able to avail of the option to repatriate their pension.

With effect from 6th April 2015, HMRC now require all QROPS providers to restrict access to all retirement benefits to age 55.

PART II EXECUTIVE PENSION PLANS

6.1. Parties to an EPP

The term ‘Executive Pension Plan’ is a generic brand that has been adopted by the industry to describe a one person company sponsored pension arrangement.

There are a number of parties to the arrangement.

Who they are	What they do
Employer	The employer sets up the scheme. They must make a ‘meaningful’ contribution to the scheme (which is broadly accepted as 1/10th of the contribution). They must arrange for the collection of employee contributions direct from salary.
Trustees	They are responsible for collecting and investing all of the contributions and for paying out the benefits. In an insured context these responsibilities are delegated to the insurer.
Member	Has no responsibilities.
Registered Administrator	Administers the scheme, maintains all of the scheme’s records and fulfils all reporting obligations.
Investment Manager	Invests the scheme’s assets. The insurance company usually performs both of these functions.

6.2 Establishing a scheme

The process of establishing a scheme is relatively straightforward and all insurers will follow similar procedures.

	What needs to be done	Where things are likely to go wrong
Step 1	Completing the application form	There is certain information on the form that is essential in order for the case to be processed. Revenue require evidence of earnings from the outset. From a sales perspective you should gather as much evidence of earnings as possible – P60's and payslips are best. The other area that is often incomplete is the detail of the client's other pension benefits. The easiest way to satisfy these requirements is to ask your client for their most recent statements from their existing providers / legacy employers.
Step 2	Funding Test	On receipt of the application the insurer performs a calculation to ensure that the contribution fits within Revenue limits. The absence of the information above hampers the insurer's ability to carry out the calculation.
Step 3	Revenue Approval	The details of the scheme are recorded and submitted to Revenue in an online approval system. It is not uncommon for the turnaround time to take weeks and Revenue will often postpone approval if the salary and service declared does not reflect the details held by them. It is also common for trading names to differ from incorporation names and this too can cause delays as Revenue often struggle to reconcile their records with the information included in the submission.
Step 4	Registration with the Pensions Authority	This is more of a formality and rarely causes delays.

6.2.1 Auto approval
Many insurers have received permission from Revenue to auto-approve cases under a generic approval number.

Auto approval is permitted once the total contributions to the scheme are less than the age related contribution limits for the individual themselves.

6.3 Essential technical knowledge and associated sales opportunities

There are four key areas where a thorough knowledge is critical and these are

- 6.3.1 The purpose of a trust
- 6.3.2 Restrictions on Proprietary Directors
- 6.3.3 Calculating Final Remuneration
- 6.3.4 Calculating benefits - uplifted scale

6.3.1 Purpose of a trust

It is a Revenue requirement that an approved pension scheme must be established under an irrevocable trust. In simple terms this means that once the trust is established the employer cannot simply decide to revoke it and take back the assets. As soon as a contribution leaves the employer and is received by the trustee then that money ceases to belong to the company – it now belongs the beneficiary of the trust, i.e. the member.

This is a critical aspect of the EPP as it creates a very clear and robust way to transfer the ownership of company assets.

Sales Opportunities
There are considerable sales opportunities arising from the necessity to establish schemes under trust; however we will concentrate on cash extraction / funding opportunities

6.3.1 Funding Opportunities (Cash extraction)

Imagine you have a proprietary director who owns a successful and cash rich business. We often consider the individual to be cash rich in these instances: however corporate wealth is completely different to personal wealth
– the proprietary director only becomes wealthy by extracting the cash from the business and transferring it into their own name.

And there are surprisingly few ways to do this.

Method of extracting cash from a business	
Draw a Salary	**Taxed (PAYE)**
Take a Benefit in Kind	**Taxed (PAYE)**
Director Fees	**Taxed (Sch. D)**
Declare a Dividend	**Taxed (Sch. F)**
Sell the business	**Taxed (CGT)**
Pension	**Not Taxed**

The ability for directors to extract assets via pension in a tax efficient manner can be very appealing and it is possible to add considerable value as demonstrated below.

Funding at the point of Retirement
There is no Revenue requirement for a pension scheme to run any particular duration and therefore it is possible (and common) for pension schemes to be set up at the point of retirement and to be claimed days later.

Consider this example:

Client turning 60 tomorrow
Never had a pension
Has 20 years' service
Final Remuneration of €60,000.

Advice
There are a number of ways to approach this situation:

1. Fund for tax free cash OR
2. Fund for maximum benefits OR
3. Fund somewhere in between.

Funding for tax free cash

This is a valuable exercise and allows the client to extract funds completely tax free from the company.

Step 1	Calculate the maximum tax free lump sum. In this example it will be based on the *uplifted scale*, which allows a lump sum of 120/80^{ths} after 20 years' service. Thus the formula would be: 120/80^{ths} x €60,000 = €90,000.
Step 2	Establish the scheme. This involves submitting an application and contribution to an insurer (along with all of the relevant evidence of earnings to support the contribution). It may take a few weeks to have the scheme approved. It is worth noting that the Normal Retirement Age would be recorded as 60 in this example.
Step 3	Retire. Once the scheme is approved, the client is eligible to retire from it as soon as they reach the noted NRA.[8] In this instance the €90,000 contribution can be paid back to the member wholly as a tax-free lump sum.

Funding for Maximum Benefits

If the company has considerable resources available then you may consider funding for maximum benefits, which in this case would be to fund for a pension of 2/3rds.

Step 1	Calculate the maximum benefits Again, the benefits will be based on the uplifted scale, which allows the client to enjoy a full pension entitlement of 40/60ths (or 2/3rds) of their final remuneration. Thus the formula would be: 40/60ths x €60,000 = €40,000. Given that this funding calculation is being carried out within three years of the *relevant date* Revenue allow you to calculate the maximum fund on the actual market annuity rate. And to enhance the funding further you can base the annuity rate on the 'bells and whistles' version, i.e. you can include indexation, guarantee periods, overlap, and spouses' and dependants' pensions into the rate. This will produce a very expensive annuity where the rate is likely to be circa 2%. Therefore the maximum funding position is calculated as: €40,000 / 2% = €2,000,000.
Step 2	Establish the scheme. This involves submitting an application and contribution to an insurer (along with all of the relevant evidence of earning to support the contribution). It may take a few weeks to have the scheme approved. It is worth noting that the Normal Retirement Age would be recorded as 60 in this example.
Step 3	Retire. Once the scheme is approved, the client is eligible to retire from it as soon as they reach the noted NRA. In this instance the €2,000,000 contribution can be used to draw benefit under one of two methods. New rules Lump Sum of 25% of the fund = €500,000. ARF with 75% of the fund = €1,500,000. Part of the lump sum in this instance would be taxable at 20%, given that only €200,000 can be realised tax free. Old Rules Lump Sum of 150% of Final Remuneration = €90,000. Annuity with the balance.

[8] SALES CONSIDERATION –Revenue allow you to take your lump sum as soon as you hit your NRA but you don't actually have to 'retire', i.e. you can continue to work as normal. This is particularly useful for proprietary directors.

Funding for somewhere in between
In most scenarios clients will embrace the facility to extract funds under this method and exploit it to the extent of the company's resources i.e. if a company has €400,000 available then they will usually opt to extract this amount via pension.

6.3.2 Restrictions on Proprietary Directors

The Revenue Commissioners have always had concerns about their rules being abused by owner managers and have singled out proprietary directors for special attention and treatment.

The Revenue define a proprietary director as "someone who directly or indirectly at any time in the last three years owned or controlled more than 20% of the voting rights in the employer company, or in the parent company of the employer company".

The two key restrictions that you need to be familiar with are

Restriction	Details
Early Retirement	Basically a 20% director cannot retire before their NRA unless it is a bona fide retirement. Revenue interprets this very narrowly and insists that all links with the business must be severed, including the disposal of shares in the company.
Final Remuneration	In order to avoid a situation where a 20% director inflates their salary in their final year Revenue insist that their remuneration must be calculated as an average of any three consecutive years over the previous ten years.

Proprietary Directors will frequently ask their Financial Brokers how to circumvent these restrictions. There is no legitimate way to circumvent these Revenue rules on early retirement. It may be possible to wind up Company A and transfer the trade to Company B but such strategic planning needs to be carefully considered and is beyond the scope of this manual.

However, one very common opportunity that is often overlooked by advisers is to convert an Early Retirement into a Normal Retirement.

If your client is aged 62 and they are a member of a scheme with an NRA of 65 then they cannot retire without adhering to all of the early retirement restrictions.

In such situations you can simply amend the NRA and bring it forward to the member's current age, thus allowing the member to draw their benefits

- Without having to sell their shares, and
- Without having to sever their links to the business, and
- Without having to stop working.

6.3.3 Calculating Final Remuneration

This is one of the most fundamental concepts in occupational pensions and has a critical impact on the members' benefits on retirement and on death.

We tend to refer to 'salary' very generically. For example, death benefits are often expressed as:

4 x Salary

And on retirement we often express the pension lump sum as:

150% x Salary

BOTH ARE WRONG.

Consider the example on the following page.

Year	Salary	Bonus	BIK	Remuneration
2014	30,000	20,000	Nil	50,000
2013	30,000	15,000	Nil	45,000
2012	25,000	25,000	Nil	50,000
2011	25,000	15,000	Nil	40,000
2010	50,000	Nil	10,000	60,000
2009	50,000	10,000	20,000	80,000
2008	50,000	20,000	10,000	80,000
2007	50,000	20,000	10,000	80,000
2006	50,000	50,000	20,000	120,000
2005	40,000	40,000	20,000	100,000

If this client died in 2014 what is the maximum lump sum that can be paid out under Revenue Rules?

The answer is 4 x Final Remuneration (FR).

So it is essential that you are in a position to be able to calculate this figure accurately. You simply cannot rely on an insurance company to do this for you and similarly you should not assume that the trustees will calculate benefits correctly either.

There are three ways to calculate FR, and these are

1. Basic remuneration over any twelve month period of the five years preceding the relevant date PLUS the average of fluctuating emoluments over three or more consecutive years.
[In the example above this would produce FR of €88,333 (representing the basic salary in 2010 plus the average of bonus and BIK during 2005-2010).]

2. The average of the total emoluments for any three or more consecutive years ending not earlier than 10 years before the relevant date.
[This method would produce FR of €100,000 (representing the average of total emoluments for 2007, 2006 and 2005).]

3. The rate of basic pay at the relevant date plus the average of fluctuating emoluments over three or more consecutive years.
[This produces FR of €60,500 (representing the rate of pay in 2014 and the average of 2005-2014 years Bonus/ BIK).]

In addition to the above you are allowed to apply indexation to the figures to reflect the fact that inflation would have eroded the value of the salaries in the early years.

Dynamisation of salaries cannot be used for 20% directors if the resultant lump sum exceeds 1/3rd of the value of the total retirement fund.

Your ability to interpret and apply these rules can have an enormous effect on the benefits. [9]

[9] SALES CONSIDERATION –Have any of your clients received a retirement claim or a death benefit in the past? Were they calculated correctly? Can you revisit the claim?

6.3.4 Calculating benefits – uplifted scale

This is probably the area that causes most confusion, even amongst the most accomplished practitioners. Hopefully this brief narrative sheds some light on the issue.

Basic Revenue rules were written in an era when it was common to spend your entire career with one employer and there's almost an assumption that your career would start at 25 and continue for 40 years, at which stage you would retire at 65.

During this period Revenue allow you to "accrue" pension and lump sum benefits at the rate of 1/60th and 3/80ths of salary per year of service respectively. These are referred to as accrual rates.

Therefore, after a 40 year career you would have accrued a maximum pension benefit of 40/60ths or 2/3rds Similarly the maximum lump sum would be 120/80ths or 150%.

However, Revenue also recognise that it is now less common for people to stay in the same employment for such prolonged periods and so they have introduced an accelerated accrual scale to allow individuals to enjoy maximum pension benefits even if they have service of less than 40 years.

This accelerated scale is referred to as the Uplifted Scale.

And the actual accrual rates are

Years of service	Accrual rate for Pension
1	4/60
2	8/60
3	12/60
4	16/60
5	20/60
6	24/60
7	28/60
8	32/60
9	36/60
10	40/60

Years of service	Accrual rate for lump sum
1-8	3/80 per year
9	30/80
10	36/80
11	42/80
12	48/80
13	54/80
14	63/80
15	72/80
16	81/80
17	90/80
18	99/80
19	108/80
20	120/80

The key benefit to your client is that they can fund for and draw down greater levels of benefit even where their service is short.

Watch out for...

You need to be careful of the common misperception where many advisers assume that you can get a lump sum of 1½ times salary after 10 years, which is incorrect.

You also need to be aware that where you use the *uplifted scale* you must include *Retained Benefits*, i.e. Revenue are happy for your client to enjoy a pension of 2/3rds or a lump sum of 1½ times final salary inclusive of all other pension and lump sum benefits that they accrued from other sources previously.

IORPII

EPP's taken out after April 2021 are subject to the new IORPII regulations. EPPs in place before April have a 5 year derogation until 2026 – apart from the regulations covering investment and borrowing. While the regulations allow some latitude in how the regulations are met,new EPPs will struggle to meet the new obligations.
If as it is proposed , the contribution levels to PRSAs are increased in line with what is allowed under EPP rules , then new business is likely to opt for the contract based PRSA – which are not subject to IORPII.

BUY OUT BONDS

Buy Out Bonds are commonly referred to as Personal Retirement Bonds. It doesn't really matter which term you use as they both refer to the same thing. Revenue use the term 'Buy Out Bond' so this is more technically correct.

7.1. What is a Buy Out Bond

As simple as this question sounds, this is a very difficult question to answer.

The reason it is so difficult is that the BOB has no technical birth certificate. Unlike PPPs, EPPs and PRSAs, whose DNA is captured in legislation, the BOB was not created by legislation – it is a contract that Revenue effectively 'made up' to cater for schemes in wind up.

The only source of guidance in relation to BOBs is set out in the Revenue Pensions Manual, which defines a BOB as "an insurance policy or bond purchased in the name of the beneficiary by the trustees of a pension scheme in lieu of the beneficiary's entitlement to claim benefits under the scheme".

7.2. General BOB Rules

The rules under which a BOB operates are a combination of Revenue guidance and industry practice.

For example, the definition above suggests that a BOB must be purchased by the trustees of a scheme but in practice a BOB can be purchased by the individual themselves, i.e. once a client has a BOB they are entitled to move it from provider to provider without having to get the trustees to sign subsequent forms.

The basic rules are as follows:

1. You can transfer a BOB to another BOB or to a new employer's scheme but not to a PRSA or PPP [Refer to 5.1].

2. You can split a transfer value into two or more BOBs but if you do this then each of the contracts contracts must be endorsed to

to ensure that only one of them pays out the pension lump sum. The endorsement must also ensure that all contracts are drawn down at the same time.

3. Benefits may be taken from age 50.

4. Benefits can be postponed up to age 70.

Sales Opportunities

There is a little known rule in BOBs that offers clients a considerable potential benefit. As mentioned above, a BOB can be split into two or more contracts.

When you do this you can calculate and ring-fence your pension lump sum in one of the contracts and your annuity in another.

Revenue rules allow you to draw down the 'lump sum' BOB as a lump sum irrespective of its value at retirement. So by calculating the lump sum at the outset of the BOB and ring-fencing it in an endorsed contract you are allowing your lump sum entitlement to inflate by reference to investment growth and not just by CPI.

Consider this – say someone left employment in 1995 (age 45) at which stage their maximum lump sum was €30,000. The value of that lump sum today under normal rules would be in the region of €54,000 based on 3% inflation. However if they had done the lump sum calculation at the outset of the BOB and ring-fenced the lump sum in an endorsed contract their lump sum would be equal to the value of the BOB. If the BOB had achieved 6% growth over the period, their lump sum would be circa €96,000.

This opportunity is only relevant where the lump sum is being calculated under the 3/80ths approach.

7.1. Death benefits

Again this is an issue where confusion arises. In the previous chapter on EPPs we referred to the death in service rules as being 4 x Final Remuneration. However, in a BOB context the individual will have actually left service so the death in service rule does not apply. The correct death treatment is actually set out in the Pensions Act, which governs *preserved benefits*.

And the rule for the payment of *preserved benefits* on death is that 100% of the value of the benefit is paid to the estate even if this exceeds the Revenue limit of 4 x Final Remuneration.

Sales Opportunities

(i) Revisit existing BOB contracts
As mentioned above, this is a complicated area and there tends to be a lot of confusion surrounding the payment of benefits; and this is evident in some of the BOB contracts themselves. Some contracts still refer to the Revenue rules in their policy provisions, i.e. 4 x Final Remuneration

You should revisit these contracts with a view to migrating them to a contract which clearly provides for 100% of the fund to be paid out on death.[10]

(ii) Create a preserved benefit for clients with large funds
Say you have a client with a large fund of €1m and a salary figure of €100,000. The risk to the client is that on death the benefit will be restricted to €400,000 (the balance having to be used to purchase annuity income).

If however the client winds up the pension scheme and does not replace it with another occupational scheme, then the €1m benefit becomes preserved even though they have not left service.

By doing this you increase the death benefit to €1m, thus avoiding potential income tax on €600,000.

[10] SALES CONSIDERATION –If you act as Financial Broker to any group schemes you should revisit the administrative practices for death claims to ensure that payments made to deferred members are paid out under the preserved benefits rules and not the death in service rules. This will eliminate an exposure of the trustees.

7.4 Retirement Benefits

One of the principal characteristics of a BOB contract is that the benefits are available from age 50 (this presupposes that you have left the employment of the company that gave rise to the transfer value in the first place).

Therefore, your clients can draw down the benefits from their legacy employments even if they are still employed somewhere else.

7.5. Bulk buy outs and wind-ups

By the end of 2020 there were 671 Defined Benefit schemes, the majority of which were not meeting the Minimum Funding Standard [Source: Pensions Authority "Defined benefit schemes, Review of 2020 statistics] This means that the trustees of most DB schemes do not have sufficient assets in the fund to provide all of the benefits that they have promised to pay.

In such situations the trustees will seek additional contributions from the employer to fill the funding gap; however, if the employer refuses or is unable to pay then the trustees may resolve to wind up the scheme.

The winding-up process

Once a decision is taken to wind up the scheme then the trustees will begin the process of dividing the assets between the members.

The members will be offered a transfer value and they can instruct the trustees to pay the transfer value to a BOB or PRSA, or a new employer's scheme.

If the member does not opt to give the trustees an instruction within a pre-determined timeframe their benefits will be transferred to a bulk buy out arrangement.

A bulk BOB is one where the trustees select one provider to accept all transfer values. The difficulty facing the trustees is to identify an investment solution that is appropriate to all members. Typically they will opt for a lifestyling solution where the assets are de-risked as the member approaches the NRA. The bulk BOB will also have a set charging structure (which tends to be very competitive).

Sales Opportunities

Generally, in bulk buy out situations most BOB investors

- have contracts with providers they didn't choose
- are invested in funds they didn't select that may not reflect their own investment appetite
- did not agree to the charging structure (and may not even be aware of what it is)
- have no relationship with the Financial Broker with whom their business has been transacted.

The opportunity is to offer these investors an open market alternative

The rules under which a BOB operates are a combination of Revenue guidance and industry practice.

PERSONAL RETIREMENT SAVINGS ACCOUNTS AND PERSONAL PENSION PLAN

8.1 Background

PRSA contracts were introduced in the Pensions Act 2002 and were originally intended to replace many of the other contract structures.The Government's plans to simplify the various pension products and rules – covered in the next chapter may finally achieve this objective.

The original PRSA concept was set out in the National Pensions Policy Initiative and its principal purpose was to address the issue of pensions coverage.

This was to be achieved by simplifying the product and by standardising the charging structure at 5 % for contributions and 1 % for fund management. However, pressure from PRSA providers who wished to offer more sophisticated investments and alternative pricing led to the introduction of the non-standard PRSA.

Ironically the PRSA didn't just fail to simplify the industry: it complicated it to a level where clients are more confused than ever. And rather than being used as a vehicle to address the issue of pensions coverage, the PRSA has become more of a wealth management tool than anything else.

(Most of the wealth planning opportunities have been dealt with in Part I and many of the additional opportunities with the PRSA relate to post retirement, which will be dealt with in the post retirement manual).

Quality is critical. This is your professional showcase so it must be excellent quality.

8.2 PRSAs vs. Personal Pension Plans

PRSAs are very similar to personal pensions and have identical rules on contributions and death. However, they do differ in a number of ways.

	PRSAs	PPPs
Contribution limits	Identical (see below)	Identical (see below)
Death Benefits	100 % payable to the estate	100 % payable to the estate
Retirement Benefits	Can be vested, i.e. the lump sum can be taken from the PSRA and the balance can be retained within the PRSA. Alternatively, the balance can be transferred to ARF or Annuity	25 % as a lump sum, balance as ARF or Annuity
NRA	60-70 for PRSA AVC 60-75 for PRSA	60-75
Early Retirement	PRSA assets are available from age 50 if the individual is a PAYE individual and leaves the employment post age 50. For self-employed contributors the minimum age remains at 60	Not allowed
Investment restrictions	All investments must be pre-approved by the Pensions Authority and must adhere to strict charging guidelines.	Any investment permitted by Revenue
Rules on Charges	All charges must be expressed as percentages and each product must have fixed pre-approved charging structures	None
Encashment penalties	None	May apply
Charges on transfers	None	May apply
Commission Flexibility	Restricted, in practice the premium charge funds the commission	Unlimited

Pressure from PRSA providers who wished to offer more sophisticated investments and alternative pricing led to the introduction of the non-standard PRSA.

8.2.1 Contributions

The maximum contributions that can be made to a PRSA for tax purposes are

Age	% of Relevant Earnings
Under 30	15 %
30 -39	20 %
40 – 49	25 %
50 or over	30 %
55 0r over	35 %
60 or over	40 %

Remember, you can only base your tax relief on the first €115,000 earnings

8.2.2 IORPII

PRSAs and personal pensions are not subject to IORPII regulations which is the case for EPPs. If, as it is proposed the contribution levels allowed for PRSAs are increased Financial Brokers may well find that PRSAs are a more suitable pension product for their clients.

Sales Opportunities

Revenue allow you to backdate contributions; however there are strategic timeframes that you must work to.

For Self-Employed taxpayers

The 'Return Filing Date' is the last date that tax returns are allowed to be filed and this is October 31st each year. (Revenue usually extend the deadline by typically two weeks for individuals who are making an online return via ROS, the Revenue Online Service).

Self-employed taxpayers must make two returns – a Preliminary Tax Return, where they prepay part of this year's tax bill and a Final Tax Return, where they settle the bill for last year.

It is important to understand how the Preliminary Tax liability is calculated, which is in one of two ways. It can either bee

- 90 % of the estimated liability for the current year, OR
- 100 % of last year's bill.

Therefore, if you can reduce last year's tax bill, you also reduce this year's preliminary tax bill on the basis that this year's bill can be a function of last year's.

Therefore, a pension contribution to a PRSA or PPP can make a significant reduction to the overall tax liability.

For Employees

Employed individuals who are members of occupational pension schemes can also avail of the backdating provisions by making AVC or PRSA AVC contributions before the filing deadlines.

It is important to note that your clients need to contact their tax inspector and elect to backdate the relief in these instances; otherwise they run the risk of the relief being disallowed.

8.3.0 PRSA AVCs

This is a confusing area and many advisers fall into the trap of mixing up the retirement benefits available from PRSA AVCs.

If your client is a member of an occupational pension scheme, they are entitled to make AVCs. Since the introduction of the PRSA they have the option to direct these contributions into a PRSA contract – a PRSA AVC.

It is important to remember that the PRSA in this instance is simply an AVC vehicle and therefore the benefits available must be consistent with AVC- not PRSA rules.

The common mistake is for people to assume that they can take a lump sum from the scheme based on the old rules and a separate lump sum of 25% from the PRSA – this is simply wrong.

In this situation there is only one lump sum and it must be calculated consistently – either the 25% approach applies to the entire fund or the old rules can be used as an alternative.

Rather than being a disadvantage, this presents a distinct opportunity.

Sales Opportunities

PRSA AVCs have particular relevance for members of defined *benefit schemes*.

In a DB scheme there are two ways in which the member can fund their lump sum entitlement.

The rules of the scheme will always have a commutation factor. This is the rate at which the trustees will convert or exchange the member's pension to lump sum. Most schemes operate a *commutation factor* of 9:1, i.e. for every €1 of pension that the member sacrifices the trustees will give them €9 in cash.

Whilst this may sound attractive, it isn't!

Say you have a client who is entitled to a 2/3rds pension, based on final earnings of €60,000. They have the option to avail of a 9:1 commutation to fund their pension lump sum of €90,000 (1½ x €60,000).

In order for this client to get their lump sum they must sacrifice €10,000 of their pension income.

Conversely, if the same client wanted to buy a pension of €10,000 on the open market today the cost for a 60-year-old would be in the region of €200,000 to €250,000. Funding the lump sum in this manner does not make fiscal sense.

The alternative is to fund the lump sum through AVCs – where you fund up to your lump sum entitlement in a PRSA AVC thus eliminating the need to forfeit any valuable pension benefits.

In this instance, if the client had accumulated €90,000 in a PRSA AVC **the entire value of the PRSA AVC could be taken as a lump sum**.

Pressure from PRSA providers who wished to offer more sophisticated investments and alternative pricing led to the introduction of the non-standard PRSA.

APPENDIX (i) JARGON BUSTER

Word or Phrase	What it means
Accrual Rates	These represent the speed at which you accrue pension and lump sum benefits and are expressed as a fraction of your final remuneration for each year of service. The typical accrual rates in Defined Benefit schemes are 1/60th x salary for each year of service for pensions and 3/80ths for lump sums.
Capitalisation Factor	A number used to convert a defined pension benefit into its equivalent fund value.
Certificate of Benefits Comparison	This is a document that a PRSA investor must get if they want to transfer an occupational benefit to a PRSA (if the value is over €10,000). The certificate essentially shows the potential value of the fund if it remains invested where it is and compares that value to the projected value of the PRSA. This allows the investor to form a considered opinion on the financial implications of making the transfer. The certificates themselves can be expensive as they must be signed by an actuary, who in turn must have considerable levels of professional indemnity cover for each certificate they produce. As a rough guide you should expect to pay 0.75% of the transfer value plus VAT for each certificate.
Commutation Factor	This is a term used in Defined Benefit schemes to define the rate at which the trustees will convert or exchange the member's pension to a lump sum. Most schemes operate a commutation factor of 9:1, i.e. for every €1 of pension that the member sacrifices the trustees will give them €9 in cash. Don't be fooled by this! If your client was aged 60 and had €9 available to buy a pension they would be lucky to secure 45 cents on the open market! Therefore it is not usually in the client's interests to avail of the commutation factors.
Defined Benefit	A term used to describe a pension entitlement that someone has from a pension scheme where the pension is defined by a set formula (usually 1/60th of salary for each year of service). Despite the term 'Defined Benefit' being associated with industry jargon it is actually very accurate terminology – the benefit you get is accurately defined, hence the defined benefit.
Personal Fund Threshold	If an individual had in excess of €2m when the Standard Fund Threshold was introduced on 1/1/14 then they can apply for a PFT to lock in the value they had actually accrued to that point. The maximum PFT that can be awarded is €2.3m (ie the level of the previous SFT)and this had to be made electronically prior to 2/7/15.

Preserved Benefits	The Pensions Act introduced the concept of preservation when it was enacted in 1990. Preservation gives the employee a statutory right to their pension benefits if they have been a member of the scheme for over two years. If an individual leaves an employment having satisfied this condition then they are entitled to a transfer value. The Pensions Act also governs how preserved benefits are dealt with on death, which is to pay out 100% of the value of the benefit.
Retained Benefits	This refers to pension benefits that you have built up from previous employments and must be taken into account if you are calculating your client's retirement benefits by using the uplifted scale.
Relevant Date	This is a term Revenue use when referring to the date that the member (1) retires (2) leaves service or (3) dies.
Relevant earnings	Means the income on which you can base your pension contribution. As a rule of thumb any earnings that stop when you stop working can be taken as relevant. Therefore, income such as deposit interest, rent or dividends which don't stop just because you've stopped working cannot be relevant.
Standard Fund Threshold	Represents the maximum pension fund that an individual is entitled to have.
Uplifted Scale	When an individual has short service, Revenue allow them to accrue the maximum benefits over a shorter period, e.g. an individual can get the maximum pension of 40/60ths or 2/3rds final remuneration after only 10 years' service. So rather than accruing at the rate of 1/60th per year of service the uplifted scale for pension benefits accrues at 4/60ths
Vesting period	Refers to the period of time that a member must be a member of a scheme before they become entitled to the value of the employer contributions on leaving. The vesting period cannot be greater than two years. Many schemes give immediate vesting.[11]

[11] SALES CONSIDERATION – When advising a client who is moving employment you need to consider the implications of moving within the *vesting period*.

APPENDIX (ii) UNDERSTANDING WHY INSURERS SEEK THE INFORMATION THEY SEEK

General

Insurance companies have an important Revenue function to perform. In brief they are responsible for ensuring that:

- ✓ The amount you contribute is within permitted Revenue limits
- ✓ You only invest in assets that Revenue allow
- ✓ The benefits at retirement do not exceed the maximum benefits permitted.

The only way that insurers can do this is to gather certain relevant information. The table below sets out the typical information that is sought, together with an explanation as to the function it performs.

Executive Pensions

Details required	Purpose
Company / Employer details Address Tax Registration No. Company Registration No.	Required to register the scheme with the Pensions Authority and to submit the scheme to Revenue for approval. Most providers can only establish schemes for Irish resident employers so the address used will be considered as part of routine procedures.
Member details Name	A number used to convert a defined pension benefit into its equivalent fund value.
Salary information (From 1/1/15 it is a Revenue requirement for insurers to validate the individual's salary and therefore evidence must be provided at the outset (P60 or pay slip	Multi-purpose uses: To calculate contribution (if based on a %) As part of the funding calculation To calculate death benefits.

Normal Retirement Age	Multi-purpose uses: Establishes the future date when benefits become payable Impacts on the funding calculation Can affect the cost structure.
Date of joining company	Used to establish the period of service that can be included for calculating the maximum benefits.
Shareholding percentage	Multi-purpose: To establish if ARF options apply To establish if the 20% director restrictions apply.
Vesting period	Allows the provider to know when a refund of contributions is appropriate.
Employer contribution	Relevant for refunds and funding calculations.
AVCs	Relevant for refunds, death benefits and for funding calculations. More recently it is used to establish if the member qualifies under the early access scheme.
Other retirement benefits *(Retained Benefits)*	The provider will use this information to police the maximum allowable contribution as well as to calculate the benefits on death and retirement. *Retained benefits* are relevant when the benefits are calculated under the uplifted scale
Anti-Money Laundering information	All providers are required to gather certain prescribed information which includes photographic identification / non-photographic identification / information on source of wealth and income details.
Declaration	This section asks for confirmation that the signatory agrees to be legally bound, consents to the provider seeking further information, and possibly that the signatory takes responsibility for informing the provider of relevant changes. It is always worth reading this section closely as declarations often include provisions that can render a contract voidable. For example some declarations refer to the individual being Irish resident.
Letter of Exchange / other Trust instrument	It is a requirement that all schemes are established under an irrevocable trust. The most common instrument for executive pensions is the Letter of Exchange – which is effectively a statement from the employer to the employee setting out their intent to create the trust. The trust deed will also have a section where the trustees are identified and appointed.

Buy Out Bond

As the transfer is coming from another source the provider is obliged to establish if certain restrictions exist. The two main ones are:

Details required	Purpose
Pension Adjustment Orders	If a marriage has broken down the Court can award the non-member spouse a portion of the member's benefits. This entitlement is captured in a PAO and the trustees are obliged to inform any future provider of the existence of any such order.
Waiver of the lump sum	This is a complex question that many advisers and clients answer without thoroughly understanding the question. If someone is made redundant or if they receive a termination payment on leaving an employment, then they are liable for tax on that sum. However in certain circumstances Revenue allow you to receive a higher termination or redundancy payment at the point of cessation if the individual agrees not to take any future lump sum from the pension associated with that employment. This commitment is captured in a letter to the trustees where the member waives their right to a lump sum. If the client answers 'yes' to this question, the provider will deny them a lump sum when they eventually draw the benefit.[12]

Personal Pension Plans

Personal pensions are probably the easiest product to administer in terms of calculating benefits (insofar as the lump sum is always 25% and *retained benefits* do not need to be considered) and this is reflected in the application forms, which tend to be shorter and less invasive.

The questions that appear on these forms and not on others are the eligibility questions.

Details required	Purpose
Eligibility questions: Are you employed?	These questions are used to establish if the individual is eligible to have a personal pension at all
If employed, is your job pensionable? Are you self-employed?	Personal pensions are only available to individuals who are self-employed or to employees who are not included in a pension scheme.

[12] SALES CONSIDERATION – An anomaly exists where the individual transfers to a PRSA. If an individual waives their right to a lump sum under an occupational scheme it would appear that a PRSA provider cannot deny them a lump sum in respect of a transfer received from that scheme.

Personal Retirement Savings Accounts

PRSAs are the most difficult contracts to administer given that they can be used as a substitute for any of the other vehicles.

They are also a regulated contract and this is why the PRSA application form tends to be the longest and most difficult to complete.

Details required	Purpose
Age evidence	The PRSA is the only contract where evidence of age is required at the outset of the contract.
PPS Number	The PRSA provider is obliged to gather this information although it serves no administrative purpose on their part.
Employment status	Required for reporting purposes only.
Details regarding the source of the transfer payment	Access to PRSAs is limited to certain pension investors, e.g. if you have over 15 years' service in an occupational pension arrangement you cannot transfer to a PRSA. The provider will use this information to determine if the transfer value is acceptable. The Finance Bill 2021 proposes the removal of this restriction
Copy of the *Certificate of Benefits Comparison*[13]	There are additional requirements for transfers from occupational pensions, i.e. if the transfer value is over €10,000 then the provider must ensure that the PRSA investor has been furnished with a certificate. The provider does not normally provide or pay for these.
Declarations	The PRSA includes additional declarations that the adviser must sign to ensure that they have complied with the various disclosure requirements.
CPC requirements	All PRSA clients must be provided with a note summarizing the main features of a PRSA and highlighting the differences between a standard and non-standard PRSA. For individuals considering taking out a non-standard PRSA a declaration needs to be completed by the Financial Broker confirming that the product is in the best interest of the client and that the differences between a standard and non-standard PRSA have been explained. The declaration needs to be counter signed by the client.

[13] SALES CONSIDERATION – the requirement for a *certificate of comparison* is eliminated if the transfer value is coming from a scheme that is being wound up (on the basis that you cannot compare a PRSA to a wound up scheme). Therefore if it is possible to wind up the scheme you can avoid the requirement entirely.

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