

Taxation of Children's Pensions payable under Pension Schemes

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1. Introduction

The purpose of this Manual is to set out the tax treatment of children's pensions payable under pension schemes.

The terms of most pension schemes provide for the payment of a pension in respect of both the widow(er) and children (if any) of the member. Such pension schemes may provide for the creation of separate pensions - a widow(er)'s pension and a children's pension.

A widow(er)'s pension is the beneficial property of the widow(er) who is assessable in her or his own right on that income. In deciding on the tax treatment of a children's pension, it is necessary to establish -

- a. whether or not a separate children's pension is provided for under the scheme, and
- b. whether it is the child or the parent or guardian who has the beneficial interest or property in the children's pension.

2. The High Court Judgment in *E Ó Coindealbhain (Inspector of Taxes), Appellant, v Breda O'Carroll, Respondent - [1989] IR 229.*

The O'Carroll case dealt with the issue of whether a Garda Síochána children's pension should be regarded as the income of the children or of the parent or guardian.

It is accepted practice to regard the child as having a beneficial interest or property in the pension where a separate children's pension is provided for and the terms of the pension scheme express that the pension be paid **to** the child or, at the discretion of the scheme trustees, to such other person for the support, maintenance and benefit of such child. The children's pension is, in those circumstances, paid by the trustees of the scheme established under irrevocable trust and the recipient of the pension (if not the child) would be regarded as receiving the pension "in trust" for the child.

The O'Carroll case (1989) established that the children's pension is the income of the child where, under the terms of the pension scheme -

- (a) a separate children's pension is provided for the child or children of the marriage;
- (b)
 - (i) the children's pension is paid to the member's widow(er) if the eligible children are in her or his care; or
 - (ii) if they are not in such care, the children's pension is paid either to the child or to such person as may be determined by the scheme trustees or other relevant authority; or

- (iii) if the children are in the care of more than one person, different parts of the pension are paid to those persons in such proportions as the scheme trustees or other relevant authority may determine; and

(c) it is expressed that the children's pension is to be applied for the benefit of the children for whom it is granted.

The High Court found that, under the terms of the scheme in question, the widow(er) had no beneficial interest or property in the children's pension which is and remains the beneficial property of the children in respect of whom it is paid. Where the same conditions and terms of payment in respect of the children's pension apply in other pension schemes, the children's pension should be regarded as the income of the children.

Where a pension is assessable on the child, it is chargeable under Schedule E and subject to deduction under the PAYE system.

If doubt arises as to the application of the High Court judgement to any other scheme (including a private sector scheme), then a copy of the scheme should be obtained and referred through the Revenue Technical Service (RTS).

3. Claims not previously made

In 2002, the Ombudsman published a Report and made recommendations for redress for taxpayers affected by the O'Carroll case. Following on from this report, a special provision was introduced by Section 166 of Finance Act 2003 to cater for the redress recommendations. Section 166 provided for relief for loss of purchasing power to widows who were entitled to repayments of tax arising from the O'Carroll case. Where claims on foot of the decision in the O'Carroll case for a refund of tax for back years are received from individuals, they should be referred, if required, through the RTS.

4. The Supreme Court Judgment in *Seán Ó Síocháin (Inspector of Taxes), Appellant, v Bridget Neenan, Respondent* - [1999] 1 IR 533.

The Neenan case dealt with whether the increase in the widow's social welfare contributory pension in respect of dependent children should be regarded as the income of the children or the income of the parent or guardian.

In the Neenan case, the Supreme Court (1998) (overturning earlier decisions by the Appeal Commissioners and the High Court) held that the full widow's social welfare contributory pension, including the increase in respect of "qualifying children", is the beneficial entitlement of the widow and correctly assessable on her.

5. Department of Social Protection Payments and Assistance Payments

Additional amounts in respect of dependant children included in payments for Illness Benefit and Jobseekers Benefit are not assessable on the parent or guardian - **Section 126(3)(b) of the Taxes Consolidation Act 1997**.

All other Department of Social Protection (DSP) payments and assistance payments that include additional amounts in respect of dependant children are assessable in full on the parent or guardian.

As the Orphan's (Contributory) Allowance and the Orphan's (Non-Contributory) Pension (which is means tested - i.e. the amount payable depends on **the means of the child**) are paid to either -

- (i) the guardian of the orphan in respect of whom the allowance or pension is payable, or
- (ii) to some other person for the benefit of the orphan,

the payments are regarded as the beneficial property of the child. Accordingly, these payments are not chargeable as income of the guardian or such other person who is in receipt of the allowance or pension. Such payments are exempt from income tax in the hands of the child.

Appendix

Children's pension payable under the following schemes are regarded as the beneficial property of the children

1. Garda Síochána Pensions Order 1981 - S.I. No. 199 of 1981.
2. Local Government (Superannuation) (Consolidation) Scheme 1998 - S.I. No. 455/1998.
3. Civil Service Widows' and Children's Contributory Pension scheme, 1977 - S.I. No. 132 of 1977 - as amended by the Civil Service Widows' and Children's Contributory Pension (Amendment) Scheme, 1979, - S.I. No.177 of 1979 and the Civil Service Widows' and Children's Contributory Pension (Amendment) Scheme, 1981 - S.I. No. 56 of 1981.
4. Civil Service Widows' and Children's Ex-Gratia Pension scheme, 1977 - S.I. No. 133 of 1977 - as amended by the Civil Service Widows' and Children's Ex-Gratia Pension (Amendment) Scheme, 1979 - S.I. No. 175 of 1979 and the Civil Service Widows' and Children's Ex-Gratia Pension (Amendment) Scheme, 1987 - S.I. No. 24 of 1987.