



Circular 9/2020

7 October 2020

To: Anne Marie Hoey, National Director of Human Resources, HSE
CEOs of the NCSAs &
HR Managers of the NCSAs

Guidance on the application of the Pensions Benefit Cap under section 52 (6) and (7) of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*

Dear Sir/Madam,

Please see attached Department of Public Expenditure and Reform (DPER) Circular 13/2020 the purpose of which is to

- provide guidelines for the **implementation of the Pension Benefit Cap** under subsections (6) and (7) of section 52 of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* ('the 2012 Act') in respect of the pension entitlements of individuals arising from their membership of more than one pre-existing public service pension scheme.

This Circular and DPER Circular 13/2020 supersede Department of Health Circular 6/2016 and Department of Public Expenditure & Reform Circular 15/2016 respectively.

DPER Circular 13/2020 and Explanatory Examples can be found at: <https://www.gov.ie/en/circular/802b1-guidance-on-the-application-of-the-pensions-benefit-cap-under-section-52-6-and-7-of-the-public-service-pensions-single-scheme-and-other-provisions-act-2012/>

Please bring this circular to the attention of all relevant employees in your organisation. The HSE is also requested to bring this circular to the attention of Section 38 employers.

Queries

All employee queries should be directed to the relevant employer/pensions operator. Requests for clarification from Pensions and HR managers should be directed to the HSE National Pensions Management Unit.

Technical queries may be emailed direct to pensions@per.gov.ie (placing "S52 - Benefit Cap" in the subject line).

Yours sincerely,

Margaret Campbell

Margaret Campbell
Principal Officer
People Pay & Superannuation Unit



Circular Number: Circular 13/2020

Circular Title: Guidance on the application of the Pensions Benefit Cap under section 52 (6) and (7) of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*

To: HR Manager / Personnel Officer in each Department and Office

A Dhuine Uasail

I am directed by the Minister for Public Expenditure and Reform to convey the following instructions with regard to the application of the pensions benefit cap under section 52 (6) and (7) of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* to pension entitlements under public service pre-existing pension schemes. The 'pre-existing pension schemes' refers to all public service occupational pension schemes, with the exception of the Single Public Service Pension Scheme.

This Circular should be circulated to all Offices and Bodies under your aegis.

Date: 17 September 2020

File Reference: P18-031-2016

Purpose: This Circular provides guidelines for the **implementation of the Pension Benefit Cap** under subsections (6) and (7) of section 52 of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* ('the 2012 Act') in respect of the pension entitlements of individuals arising from their membership of more than one pre-existing public service pension scheme.

The Circular is issued following a review carried out by this Department into the operation of the benefit cap. As a result of this Circular, public service bodies are required to:

- take account of the new guidance for all current and future cases in respect of which the benefit cap potentially applies; and
- re-examine all past cases arising since 28 July 2012, including those to which earlier interim advice was applied, and to re-calculate pension entitlements, as appropriate, in accordance with the guidance.



The Circular is directed primarily to units responsible for HR and pension administration functions. It will also be of interest to retired and serving public servants whose pension benefits are affected by the benefit cap.

Relevant Legislation: *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*

Effective From: Subsections (6) and (7) of section 52 of the 2012 Act are effective from **28 July 2012**, the date of enactment of the legislation

This Circular supersedes the guidance issued in Circular 15/2016 of 27 April 2016.

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Colin Menton
Assistant Secretary
Public Service Pay and Pensions Division



Circular 13/2020: Guidance on the application of the pensions benefit cap under section 52 (6) and (7) of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*

Part 1: Introduction

General

1. The pensions benefit cap introduced under section 52 (6) and (7) of the *Public Service Pensions (Single Scheme and other Provisions) Act 2012* ('the 2012 Act') provides that:
 - where a public servant is entitled to receive pension benefits from one or more than one pre-existing public service pension scheme then no more than the 'equivalent of 40 years' service' can be used in calculating the benefits payable under that scheme or those schemes;
 - anyone who has accrued more than the equivalent of 40 years' service before the passing of the 2012 Act may retain the benefit of service accrued up to 27 July 2012.
2. The introduction of the benefit cap was communicated in two Letters to Personnel Officers, on 2 August and 31 October 2012, and in Circular 19/2012 dated 31 December 2012. Guidance on its implementation was provided in Circular 15/2016 of 27 April 2016, which is now withdrawn to be replaced by this Circular.
3. In accordance with the legislation, the benefit cap applies to benefits earned or accrued under all pre-existing public service pension schemes. The 'pre-existing pension schemes' refers to all public service occupational pension schemes, with the exception of the Single Public Service Pension Scheme.¹
4. In 2018 – 2020, as a result of issues that arose in the proposed implementation of the benefit cap in individual cases, this Department carried out a review into its operation. During that period, the Department gave the interim advice on any cases referred to it that benefits should be calculated on the basis of all pensionable service accrued up to 27 July 2012.
5. Following completion of the review, new and more detailed guidance has been drawn up (below) on implementation of the benefit cap to replace Circular 15/2016. In accordance with the present Circular, public service bodies are required to:
 - take account of the new guidance for all current and future cases in respect of which the benefit cap potentially applies; and

¹ As a general rule, entrants to pensionable public service employment on or after 1 January 2013 are enrolled in the Single Scheme, with the exception of persons taking up such employment within 26 weeks of leaving previous pensionable public service employment, who are entitled to join the relevant pre-existing pension scheme.



- re-examine all past cases arising since 28 July 2012, including those to which the interim advice referred to in paragraph 4 was applied, and to re-calculate pension entitlements, as appropriate, in accordance with the guidance.
6. Please note that section 52 (6) and (7) of the 2012 Act, as well as section 49 (duty to give information, etc.), section 50 (use of PPSN), and section 51 (duty to make declarations, etc.) have direct effect on all public service bodies and pre-existing pension schemes. Accordingly, the rules of all pre-existing schemes in relation to the calculation of benefits, conditions applying to entitlements, declarations to be made by the individual, and sharing of information between public service bodies must be read as incorporating those provisions.²
 7. The guidance in this Circular must be considered in its entirety for the purposes of implementing the benefit cap in any individual case. Public service bodies and individuals should review in detail section 52 and other relevant provisions of the 2012 Act alongside this Circular.

Amendment to previous approach outlined in Circular 15/2016

8. Circular 15/2016 provided that in a case coming within the scope of the benefit cap, a retiree could choose the 'most financially beneficial combination of service' from across their various public service employments, provided such a step could be 'reasonably facilitated' by the relevant public service bodies.
9. However, the Department's review identified a number of issues with this approach. It found that while the legislative provisions express the limit on one's overall pension benefits across schemes in terms of 'the equivalent of 40 years', they are in effect applying *financial* limits to overall pension benefits, namely a financial limit on overall pension and a financial limit on overall lump sum. The review found that by establishing these limits as financial limits in this way, the benefit cap could be applied in a way that addressed the issues identified with the previous approach.
10. Thus, the financial limits in relation to pension and lump sum can be established by calculating a maximum allowable pension and lump sum using:
 - the total number of years' pensionable service allowable under the legislation, and
 - the highest, or 'Best' rate of Final Pensionable Remuneration ('BFPR'), uprated, as appropriate, to a current value, from across the different schemes and pension/lump sum calculations.

An individual whose benefits are subject to the cap will have their final benefits calculated by:

² Special note should be taken of the direct impact that the benefit cap has upon pension scheme entitlements not only for the calculation of individual entitlements but also for the purposes of the application of relevant tax legislation, family law provisions, etc. Public service bodies & pension administrators are advised to make explicit reference to the benefit cap in pension scheme documentation, annual benefit statements, job descriptions, terms & conditions of employment and, where appropriate, employment contracts (see also paragraph 48(1) below).



- having their pension benefits calculated as if the limits didn't apply,
- assessing the financial total of those benefits against the financial limits, with the most recent pension/lump sum being reduced accordingly if the limits are breached.

Part 2: Guidance on implementation of the benefit cap

Definitions

11. The pension terms used in this Circular are defined below.

Accrual Rate - The rate at which pension rights build up for each year of pensionable service in a defined benefit scheme, e.g. 1/80th and 3/80ths for pension and lump sum, respectively, for public servants in modified PRSI class.

Allowable service – For the purposes of establishing the total pensionable service on which the benefit cap is based in any individual case, this is 40 years' service (by reference to standard public service pension terms). If total pensionable service exceeds 40 years on 27 July 2012, the higher service figure on this date is the allowable service.

Atypical pension scheme – see paragraph 22.

Benefit cap – as legislated by section 52 (6) and (7) of the 2012 Act, the upper limit on pension benefits that may be paid to, or in respect of, an individual who has been a member of more than one pre-existing public service pension scheme. The benefit cap consists of a pension benefit cap and a lump sum pension cap and, where relevant, spouse's and children's scheme pension caps.

Best final pensionable remuneration ('BFPR') – The highest rate of final pensionable remuneration (uprated as appropriate to a current value) applicable under the different public service schemes of which the individual has been a member.

Commutation - The replacement of a series of future pension payments by an immediate lump sum. The exchange of pension for immediate cash is regulated by the Revenue Commissioners.

First pension scheme – This will usually be the pension scheme applying to an individual's earliest pensionable public service employment. It is assumed that the benefits under the first scheme will always be paid without any reduction resulting from application of the benefit cap. If, however, the benefits relating to the earliest employment have not yet come into payment, the 'first scheme' will instead be the scheme that pays out benefits first.

Final pensionable remuneration – Aggregate of pensionable salary and pensionable emoluments at date of retirement and on which pension benefits are based. Following retirement, it is



assumed that final pensionable remuneration is updated, as appropriate, to take account of changes to the salary or pensionable allowances of the member's former position.

Integration – The system of taking into account all or part of the benefits payable by the State under the Social Insurance system. In the public service, integration is achieved by applying a pension accrual rate, per year of service, of 1/200th for pensionable remuneration up to 3 & 1/3 times the rate of State Pension (Contributory), and 1/80th for the balance.

Member – Includes a current, deferred, or retired member of a public service pension scheme.

Modified PRSI class – Special lower rate of PRSI applicable to the majority of public servants who first entered public service employment prior to 6 April 1995 and who as a result have limited Social Insurance cover and are not entitled to Social Insurance pensions. All other public servants are in *Full PRSI class* and so are entitled to the full range of Social Insurance benefits.

Notional service/added years - Any years of pensionable service added to actual service for the purpose of calculating pension scheme benefits, including added years granted to professional/technical grades, and added years granted on early retirement on ill-health grounds.

Pensionable service – The period of service which is taken into account for the purpose of calculating pension benefits. May include service purchased under a purchase scheme, notional added years, and service transferred from other public service employments, etc.

Pre-existing pension scheme – As defined in the 2012 Act, all public service occupational pension schemes with the exception of the Single Public Service Pension Scheme

Preserved/deferred benefits – Benefits payable at a future date to, or in respect of, a member who has left the scheme prior to normal retirement age (having a minimum of two years' service).

Public service body – Public service bodies (including the civil service) as defined in the 2012 Act.

Purchase of notional service – Self-financing scheme which enables a public servant, subject to certain conditions, to purchase additional years of service by reference to a shortfall in maximum pensionable service of 40 years at retirement age.

Second or current pension scheme – It is assumed for the purposes of this Circular that the individual is a member of two pre-existing public service pension schemes, the 'first' and 'second' or 'current' scheme. Where an individual has been a member of more than two pension schemes, the 'current' scheme is the scheme in respect of which benefits are now being calculated.

Standard public service pension scheme/terms – The pension terms applied to the generality of public servants, including standard retirement age, maximum benefits based on 40 years' service,



and annual accrual rates of 1/80th for pension (for modified PRSI class public servants; see 'Integration' for pension accrual rates for full PRSI class public servants) and 3/80ths for lump sum.

State Pension (Contributory) – A pension payable at the minimum qualifying age under the Social Insurance pension system as a result of the payment of the appropriate level and number of PRSI contributions.

Responsibilities of public service bodies in relation to benefit cap

12. The stipulations of the 2012 Act that provide for effective administration of the benefit cap are listed at paragraph 6. Section 51 imposes a legal obligation on individuals to declare any pre-existing accrued pension entitlements, whether already in payment or preserved, on taking up pensionable employment in the public service.³ Public service bodies should be proactive in ensuring that such statutory declarations are obtained from the individual in every case.
13. Where a public servant has been a member of more than one public service pension scheme, there is a responsibility upon all of the relevant public service bodies to be aware of the possible implications of the benefit cap at the time benefits are being calculated for putting into payment by any one of the schemes, sharing information as necessary between the different bodies.
14. An initial benefit cap calculation should be prepared using the information provided by all the schemes; this should then be circulated between the schemes. At this stage, it should be agreed between them which scheme is to be considered the 'current' scheme (likely the scheme the individual applies to last for payment of pension benefits) and so the scheme to carry out the definitive calculations and apply any resulting reduction in benefits.
15. All of the pension schemes should be able to demonstrate compliance with the legislation and so should retain adequate documentation, including copies of statutory declarations, communications between the pension schemes, and agreement of benefit cap calculations, as appropriate, to make available for future audit/inspection.

Steps in calculation of benefit cap and amount of benefits payable from current scheme

16. The benefit cap calculation should be carried out once a public service body has been informed, whether on receipt of a statutory declaration or a communication from another public service body, as provided for under the 2012 Act, that an employee or former employee is entitled to receive benefits from more than one pre-existing pension scheme, and determines that their benefits are likely to come within the scope of the benefit cap. The calculation must be carried out prior to confirmation of the benefits payable under each scheme (with the exception of the first scheme). In addition, estimates may be carried out at key points in an individual's career, for

³ Any overpayment of pension which occurs as a result of a false declaration should be dealt with in line with existing procedures for recouping pension overpayments.



example, on taking up a new public service employment or following a promotion, and/or at the request of the individual.

17. In summary, and subject to the modifications detailed in the remainder of the Circular, including paragraphs 45 and 46 in relation to family law cases, the steps to be followed by the current pension scheme administrator in implementing the benefit cap are as follows:

Step 1: Benefits without applying benefit cap

Establish pension entitlements, pensionable service, and final pensionable remuneration (uprated as appropriate to a current value) for the previous and current pension schemes, assuming no benefit cap. For previous schemes, establish the actual amount of retirement lump sum paid, if any (this amount should not be uprated to a current value), and/or the expected date of payment for preserved benefits. Decide what is the 'best final pensionable remuneration' ('BFPR') from across all schemes.

Step 2: Allowable service for financial limit calculation

- a) Confirm that the individual's total pensionable service across all schemes exceeds 40 years. For the conversion of service under atypical schemes, see paragraphs 22 – 25 below. (If service is less than 40 years, the benefit cap does not apply.)
- b) If total pensionable service exceeds 40 years on 27 July 2012, the higher service figure on this date is the allowable service for the calculation of the benefit cap in Step 3; otherwise 40 years is the allowable service for Step 3.

Step 3: Financial limit calculation of benefit cap

Calculate the pension and lump sum financial limits by applying the standard public service pension calculation methodology for each year of allowable service:⁴

Pension financial limit (pension cap):

If the individual is in modified PRSI class: Allowable service x 1/80th of BFPR, or

If the individual is in full PRSI class: Allowable service x 1/200th for BFPR below an amount equal to 3 & 1/3 times' the rate of State Pension (Contributory), & allowable service x 1/80th for the excess

Lump sum financial limit (lump sum cap):

3/80ths of BFPR for each year of allowable service

Step 4: Benefits after applying benefit cap

To determine the benefits payable under the current scheme, deduct from the pension and lump sum financial limits the amount of benefits paid, payable or to be paid under all previous pension schemes.

⁴ All pension calculations should be carried out to six decimal places. The cut-off amount for the State Pension (Contributory), where relevant, should be taken as 3.333333 X SPC.



Application of the benefit cap under this 4-step approach is shown in a range of practical examples in the attached document, 'Explanatory examples for application of the Pensions Benefit Cap under s.52 Single Pension Scheme Act'.

Pension in payment from first scheme exceeds pension cap

18. It should be noted that in the unusual situation in which the pension under the first scheme is already in payment and the pension cap as calculated in Step 3 proves to be less than the amount of that pension (which has been calculated in line with scheme rules), that first pension may continue to be paid in full without any reduction resulting from application of the benefit cap. The reduction of benefits resulting from the benefit cap should be applied to the subsequent pension scheme or schemes in line with the standard procedure.
19. Depending on a range of circumstances, the above scenario is possible where the first pension is payable under certain atypical pension schemes, for example, the Permanent Defence Force scheme applicable to pre-1 April 2004 Enlisted Personnel. (See **Example 6.**)

Pension accrual in 60ths

20. A very small number of public service pre-existing pension schemes allow for pension accrual in 60ths rather than 80ths, with the exchange, or commutation, of pension to provide for lump sum. To cater for this, the benefits payable under such schemes, which also apply a 40 year maximum limit on pensionable service, should be entered in Steps 1 and 4 post-commutation.

Further public service employment subsequent to benefit cap implementation

21. Where the benefit cap has already been implemented for any individual who subsequently takes up a further pensionable public service employment and is enrolled in a new pre-existing pension scheme (i.e. a 'third scheme'), it will be necessary for the public service body concerned to carry out a revised benefit cap calculation to ensure compliance with section 52 (6) and (7) of the 2012 Act. It may be necessary to seek guidance from this Department in such cases (see paragraph 52).

Conversion of service in atypical pension schemes (Step 2)

22. The definition of the benefit cap refers to the 'equivalent of 40 years' service', in recognition of the service required to qualify for maximum benefits under standard public service pension schemes. Other 'atypical' pension schemes provide for maximum benefits after a lesser period of service (e.g. 20 years for Oireachtas members, 30 years for Gardaí/Prison Officers), or for the inclusion of factors other than service and final remuneration in the pension calculation (e.g. certain Permanent Defence Force pension schemes for pre-1 April 2004 entrants), etc.
23. For the purposes of part (a) of Step 2, when one of the schemes in question is an atypical scheme, the pensionable service in that scheme must be expressed in terms of the 'equivalent of 40 years' service' before it can be added to pensionable service in another scheme (if any) to which



standard pension terms apply. There are two approaches to doing this, both of which will give the same outcome.

Approach 1 – scheme uses variation of standard public service calculation methodology

24. Where the calculation methodology under the atypical scheme is a variation of the standard public service pension accrual methodology and allows for full pension with less than 40 years' *actual* service (often referred to as 'fast accrual'), subject to a limit of 40 years' *pensionable* service, the same accrual rules can be used for the identification of pensionable service in Step 2(a) as are applied when calculating the individual's benefits under those schemes, always provided the service is expressed in 40 year terms. Table 1 identifies the pensionable service in 40 year terms for sample cases under a number of 'fast accrual' schemes.

Table 1: Examples of actual and pensionable service in atypical ('fast accrual') pension schemes

<i>Atypical scheme/sample employment</i>	<i>Example of individual's actual service</i>	<i>Accrual rule in pension scheme</i>	<i>Pensionable service in scheme for purposes of Step 2(a) (in '40 year terms')</i>
Garda/Prison Officer/Fire Fighter/Post-1 April 2004 Permanent Defence Force personnel	(1) 26 years	(1) Doubling of service in excess of 20 years	32 years (20+[6x2])
	(2) 15 years	(2) No doubling, as not in excess of 20 years	15 years
Oireachtas member	10 years	Doubling of service	20 years (10x2)
Circuit Court Judge	15 years	Doubling for first 5 years; tripling for remainder up to max 15 years	40 years ([5x2]+[10x3])

(See Examples 1, 2, 11 and 12.)

Approach 2: scheme does not use variation of standard public service calculation methodology

25. For atypical schemes whose calculation methodology is not a variation of the standard public service accrual methodology (for example, the pre-1 April 2004 Permanent Defence Force pension schemes),⁵ the conversion methodology below must be followed:

- (1) Calculate the pension and lump sum that would be payable under the atypical scheme were the relevant standard public service accrual rates, based on maximum 40 years' service, applied to final pensionable remuneration, uprated as appropriate.

⁵ Permanent Defence Force schemes for Enlisted Personnel who joined before 1 April 2004; Officers who joined before 6 April 1995; and Officers who joined on or after 6 April 1995 and before 1 April 2004.



- (2) Express as percentages of the benefit amounts from (1) the pension and lump sum figures *actually* paid or payable under the atypical scheme.
- (3) Multiply those percentages by 40 years.

Example

Individual in modified PRSI class whose final pensionable remuneration (as uprated to a current value) is €70,000 p.a. Assume the individual is in receipt of a pension of €34,000 p.a.

- (1) Maximum pension under a standard public service scheme would be €35,000 p.a. (40/80ths X €70,000)
- (2) Pension actually paid / max pension standard scheme = €34,000/€35,000 = 97.143%
- (3) Multiply this percentage by 40 years: 97.143% X 40 years = 38.857 years

A-similar calculation would be carried out for lump sum. (See **Examples 4 – 9**.)

Conversion of unused lump sum cap to increase pension cap (Step 3)

26. If the application of the benefit cap in any individual case would result in an amount of the lump sum cap being left 'unused' (i.e. the lump sum cap figure is higher than the total lump sum amounts payable from all schemes) while a reduction was being applied to the pension payable under the current scheme, it shall be permissible to re-calculate the benefit cap in Step 3 by converting the amount of 'unused' lump sum cap into an addition to pension cap.

The conversion should be done by reference to the standard public service commutation ratio of €1 pension = €9 lump sum. (See **Examples 2, 6 and 8 – 11**.)

Treatment of supplementary pension for former full PRSI class public servants (Step 3)

27. Many public service pension schemes provide for the payment of a supplementary pension, subject to certain conditions, where the retiree does not qualify for Social Insurance benefits or qualifies for same at a rate that is less than the maximum personal rate of State Pension (Contributory), for reasons that are outside their control.
28. For a former public servant who was in full PRSI class, any supplementary pension that may be payable should not be taken into account in the application of the benefit cap. This is because the calculation of the benefit cap for public servants in full PRSI class assumes entitlement to the full State Pension (Contributory). As the supplementary pension is designed, subject to certain conditions, to address cases in which the full rate of State Pension (Contributory) is not paid, it is



not appropriate to make any further adjustment for supplementary pension in the benefit cap calculations. It should be noted that this Circular does not impact the rules on eligibility and calculation of the supplementary pension. (See **Example 3.**)

Where an individual has pensionable service in both modified and full PRSI class (Step 3)

29. Where an individual who comes within the scope of the benefit cap has pensionable service in modified PRSI class followed by pensionable service in full PRSI class, Step 3 should be amended as set out below so that the pension cap is calculated pro-rata to the service given in each PRSI class. (See **Example 10.**)

Step 3: Calculate the pension cap as follows:

A = 1/80th of BFPR per year of allowable service (the calculation assumes the individual to have been in modified PRSI class for all of that service)

multiplied by: the ratio of actual modified PRSI service to total actual pensionable service

B = 1/200th for BFPR, per year of allowable service, below an amount equal to 3 & 1/3 times' the rate of State Pension (Contributory), & 1/80th for the excess (the calculation assumes the individual to have been in full PRSI class for all of that service)

multiplied by: the ratio of full PRSI service to total actual pensionable service

The pension cap is the sum of A plus B

Additional guidance for service as Oireachtas members and Ministers

30. An individual who has served as a member of the Oireachtas and Minister but has no other public service employment shall not come within the scope of the benefit cap as he or she is considered to have had one public service employment rather than two. That is because ministerial pension accrual is considered coterminous with Oireachtas pension accrual.

31. Where a Minister has had other pensionable public service employment and so their pension benefits potentially come within the scope of the benefit cap, their pensionable service as an elected official should be recorded in Step 2 as service as a member of the Oireachtas only, with the service converted to the 'equivalent of 40 years' service' as per paragraph 24 above. In the exceptional case of an individual who, following a General Election, continues to serve as a Minister but not as a member of the Oireachtas (in the period prior to the formation of a new government), their pensionable service for that period of service should be recorded as ministerial service.

32. Note that final pensionable remuneration in the case of a Minister/Minister of State should be recorded in Step 1 as the sum of Oireachtas and ministerial pensionable remuneration. Note also that for a member of the Oireachtas who has also served as a teacher, the pension scheme rules



allow pension accrual as a teacher to occur simultaneously with separate pension accrual as a member of the Oireachtas up to 9 March 2011. (See **Examples 11 and 12**).

33. The pension entitlements of Ministers are atypical in that the ministerial pension scheme provides for a maximum pension of 60% of final salary (but no lump sum) after 10 years' service while the Oireachtas pension scheme provides for a maximum pension of half of salary after 20 years' service, and a lump sum of three times that amount (i.e. maximum of one and a half times' salary). Accordingly, the implementation of the benefit cap for Ministers who come within the scope of the benefit cap may involve the conversion of unused lump sum cap to increase the pension cap, as provided for in paragraph 26. (See **Example 11**.)

Additional guidance for service in the Permanent Defence Force (pre-1 April 2004 entrants)

34. For Enlisted Personnel who are members of the pension scheme applicable to pre-1 April 2004 entrants, the pension is a flat-rate 'basic pension' for 21 years' service that varies depending on retiring rank, with an addition (top-up) equal to 40% of the rate of Military Service Allowance (MSA) for the rank where service is from 21 to 30 years' inclusive. An 'additional increment' is payable at a flat rate for each year of service in excess of 21 years up to a maximum of 31 years. Where service is 31 or more years, the MSA addition to basic pension is 50% of the rate of MSA (rather than 40%).
35. In accordance with the principle of integration of occupational pension with Social Insurance entitlements, the additional increment ceases to be payable when the individual reaches the qualifying age for the State Pension (Contributory). At the same time, the 50% addition for MSA for those with 31 or more years' service reverts to the 40% rate.
36. In light of the foregoing, and consistent with the approach to supplementary pension set out in paragraph 28, the steps in implementing the benefit cap at paragraph 17 should be amended as follows for Enlisted Personnel in the pre-1 April 2004 scheme:
- the additional increment payable at a flat rate for each year of service in excess of 21 years up to a maximum of 31 years, and the additional 10% of the rate of MSA where service is 31 years or more, should be explicitly identified and *excluded* from the amount of pensionable entitlements at the end of Step 1, but *included* as part of the military pension for the purposes of the conversion calculation to 40 year terms in Step 2 (see paragraph 25); and
 - the additional increment, and the additional 10% of the rate of MSA (where relevant), should be excluded from the amount of prior pension to be deducted from the pension cap in Step 4. (See **Examples 4 – 6**.)
37. Note that the conversion methodology set out at paragraph 25 must also be applied to Commissioned Officers in the Permanent Defence Force who are pre-1 April 2004 entrants. (See **Examples 7 – 9**.)



Impact of benefit cap upon spouses' and children's scheme benefits; death gratuity

38. Subject to the legislation, the benefit cap potentially applies to 'any pensions or lump sums payable' under pre-existing public service pension schemes. Under section 5(1) of the 2012 Act, 'pension' is defined as including a pension payable 'to another person as a consequence of death or otherwise ...' and 'lump sum' as 'an amount ... due as a consequence of the retirement, resignation or death of the Scheme member or former Scheme member ...'. Accordingly, death gratuities, as well as benefits payable under public service spouses' and children's contributory pension ('S&C') schemes, are comprehended by the benefit cap provisions.
39. Where an individual's public service pension entitlements come within the scope of the benefit cap, any reduction in benefits that results therefrom will also fall to be applied to benefits payable in the event of the death of the individual (whether this occurs in service, where an entitlement to preserved entitlements exists, or following retirement), including benefits under the relevant S&C schemes.
40. Any dependants' pensions that relate to the first pension scheme should be paid in full, in accordance with the rules of the relevant S&C scheme. The benefit cap shall have no impact upon these pensions.
41. Where an entitlement to S&C scheme benefits arises in respect of a second public service employment, these should be paid up to the limit of a 'spouses' and children's pension benefit cap' that is calculated in accordance with the methodology set out at paragraph 17, with Steps 3 and 4 adapted as follows:

Step 3: Calculate the spouse's pension cap⁶ as a financial limit by applying to BFPR, uprated as appropriate to time of death, the standard public service pension calculation methodology applicable under S&C schemes, for each year of allowable service.

Example

Former public servant (modified PRSI class) dies in retirement. S&C rule is that spouse's pension is half of member's pension. Allowable service in Step 2 = 40 years (i.e. pension cap was 50% of BFPR)

Spouse's pension cap = 25% of BFPR

Step 4: To determine the spouse's entitlements payable under the current scheme, deduct from the spouse's benefit cap the amount of spouse's pension paid, payable or to be paid under all other public service S&C schemes.

(See **Examples 13 and 14.**)

⁶ 'Spouse' should also be read as 'civil partner'. Note that where the circumstances require, each child's pension cap should also be calculated and applied by making the appropriate adjustments to Steps 3 and 4.



The same methodology should be followed even where S&C benefits are payable in respect of one of the deceased public servant's employments but not in respect of others, owing to the fact that the individual had not been a member of the relevant S&C schemes. Note that as with the pension and lump sum caps, the spouse's and children's pension benefit caps are maximum *limits* on the benefits that may be payable under S&C schemes; the actual amounts payable, within those limits, are subject to the rules of individual S&C schemes.

42. In the event of death in service, or death where an entitlement to preserved benefits exists, any death gratuity that may be payable from a scheme other than the first pension scheme should be reduced as appropriate by reference to the lump sum benefit cap calculated as set out at paragraph 17.
43. The impact of the benefit cap upon the payment of member contributions under S&C schemes is addressed at paragraph 48(2).

Benefits payable under Civil Service Injury Warrants or equivalent public service provisions

44. The definition of 'pension' in section 5(1) of the 2012 Act explicitly excludes a payment made 'solely in respect of any injury caused as a result of' service as a public servant. Accordingly, the benefit cap in any case should exclude from its application any allowances awarded under the Civil Service Injury Warrants or other comparable occupational injury pension provisions operating in any other part of the public service, including the military occupational injuries code under the Army Pensions Acts 1923-1980.

Benefit cap and family law cases

45. This Department should be consulted (see paragraph 52) about all current and past cases that come within the scope of the benefit cap in which a pension adjustment order (PAO) containing retirement benefit orders is attached to a member's pension entitlements or is already in payment. It is anticipated that separate guidance will be issued in due course on the application of the family law provisions in relation to pensions in such cases.
46. For all future family law cases, any estimates or actuarial valuations of pension entitlements required for family law proceedings and, where relevant, for drawing up a new PAO must take account of any reduction in benefits that will result from application of the benefit cap. In that regard, it should be noted that the applicable pension scheme rules incorporate section 52 (6) and (7) of the 2012 Act (see paragraph 6 above).

Cost Neutral Early Retirement

47. In the implementation of the benefit cap as set out in this Circular, and consistent with the legislation, it is assumed that pension benefits are payable at normal retirement age or in accordance with decisions made by the employer (for example, immediate payment of benefits on ill health retirement). This ensures consistent application of the benefit cap across all situations, including where individuals leave employment early. Accordingly, in a case in which an



individual has opted, or proposes to opt, to retire early under a cost neutral early retirement facility, and so receive immediate benefits subject to actuarial reduction to take account of early payment of lump sum and the longer period over which pension is paid, the benefit cap should be implemented (specifically, in Steps 1 and 4 at paragraph 17) as if the individual had instead opted for, or was opting for, preserved benefits payable at normal retirement age.

Part 3: Impact of benefit cap on application of certain pension scheme rules

48. It is considered necessary to clarify the impact of the benefit cap on certain rules applying to public service pension schemes.

(1) Pension scheme access/rules where previous public service pension entitlements exist

The benefit cap has no impact on the rules governing whether or not an individual should be enrolled in a pre-existing pension scheme, even if the individual has earned a 'full' pension as a result of a previous public service employment. In that context, it should be recalled that only at final retirement can the amount of benefits that may or may not be payable under a second pension scheme, having regard to the impact of the benefit cap, be finally established.

In the specific case of the Non-Contributory Pension Scheme for Non-Established State Employees, paragraph 10 of the scheme controls the payment of benefits where previous civil service or certain other pension entitlements exist.⁷ In light of the benefit cap legislation, which has direct impact on all public service pension schemes, including the Non-Established scheme, it has been decided that, with effect from 1 January 2020, paragraph 10 of the scheme shall no longer apply with respect to any new appointments from that date onwards.

As noted in the footnote to paragraph 6, appropriate references to the benefit cap should be inserted into recruitment documentation and employment contracts.

(2) Payment of pension scheme member contributions, Additional Superannuation Contribution

Every public servant who is a member of a public service pre-existing scheme is required, as a condition of employment, to pay relevant employee pension contributions in accordance with the pension scheme rules. That remains the case even if it is projected that the individual's pension entitlements under the scheme will come within the scope of the benefit cap.

Thus, the benefit cap provisions and their implementation in any case will have no impact upon the rules on member contributions. This mirrors the position in an individual pension scheme where a public servant who has served in excess of 40 years is required to pay pension contributions throughout their full period of employment.

Similarly, as every public servant whose pension entitlements potentially come within the scope of the benefit cap is a member of a public service pension scheme, the benefit cap provisions and

⁷ Specifically, paragraph 10 precluded any person who is in receipt of a pension, or has preserved benefits, under the Superannuation Acts or any other scheme of pensions to which the employer contributed (notionally or otherwise), from qualifying for a pension under the Non-Contributory Pension Scheme for Non-Established State Employees.



their implementation will have no impact upon application to him or her of the rules on payment of the Additional Superannuation Contribution (and, previously, the Pension Related Deduction).

Finally, the rules on payment of periodic and non-periodic member contributions under individual S&C schemes are also left unchanged by the benefit cap legislation. In relation to non-periodic contributions, public service bodies are advised to contact this Department (see paragraph 52) in the case of the death in service or ill health early retirement of a public servant whose benefits come within the scope of the benefit cap.

Note that in any case in which an underpayment of pension contributions has occurred, the underpayment will still fall to be recouped regardless of any reduction which is made to the benefits to be paid by the relevant scheme arising from application of the benefit cap.

(3) Grant of notional added years (e.g. 'professional added years', ill health added years)

For individuals whose pension entitlements come within the scope of the benefit cap, the grant of notional years of pensionable service, whether under schemes of 'Professional Added Years' or equivalent schemes in the public service, or in case of early retirement on ill health grounds, will continue to be processed in line with existing provisions.

Once an individual's pension entitlements have been established, to include the effect of any award of added years, the benefit cap will then be applied in accordance with the guidance set out in this Circular.

In any case in which the cut-off date of 27 July 2012 under section 52 (7) of the 2012 Act is relevant because total pensionable service exceeds 40 years on that date, the potential award of added years should still be assessed on the basis of *total* pensionable service under the pension scheme rather than the pensionable service as it stood on the cut-off date.

(4) Purchase of notional service

In general, by virtue of the operation of the rules relating to the purchase of notional service under pre-existing pension schemes, public servants who come within the scope of the benefit cap are not permitted to purchase additional service. That is because the limit on the amount of service which can be purchased under such schemes must have regard to any pensionable service in a previous pension scheme. In the civil service, the applicable rules are set out at paragraphs 5-6 of Appendix 2 to the Letter to Personnel Officers of 12 February 1990: 'Revised Scheme for the purchase of notional service for superannuation purposes by established civil servants'.⁸

It is strongly recommended that public service bodies review all existing agreements with serving public servants for the purchase of notional service by periodic contribution where it is considered that the situation described in the previous paragraph may potentially apply. Any refunds of employee contributions that may become necessary as a result of this review should be processed in accordance with the procedures set down in the relevant purchase schemes.

⁸ See: <https://www.gov.ie/en/collection/117765-department-of-finance-letters-from-1990-to-1999/#1990>. The most recent purchase circular (Circular 4/2006) does not amend the limits on the amount of service which may be purchased.



(5) Pension abatement under section 52 (subsections 1 to 5) of the 2012 Act

If an individual whose pension entitlements come within the scope of the benefit cap is also subject to abatement of a prior pension while in a pensionable public service employment involving membership of a pre-existing scheme, the full non-abated value of the pension in question should be used in the calculation of the financial benefit cap. Pension abatement will apply to the pension in payment during re-employment in the public service.

(6) Gifting of pension

For a public servant whose pension benefits come within the scope of the benefit cap, it should be noted that any gifting of pension can only be done on the amount of pension payable following application of the benefit cap.

(7) Severance

In general, severance payments made by public service bodies are not considered pension benefits and so are not comprehended by the benefit cap. However, under certain pension schemes, a lump sum severance payment is made in lieu of, or as part of, the pension scheme retirement lump sum. Where these circumstances arise in respect of any individual whose benefits come within the scope of the benefit cap, the relevant public service body should ensure that the rules relating to the lump sum benefit cap are correctly applied in respect of the portion of the severance payment that constitutes retirement lump sum.

Part 4: Miscellaneous

Monitoring of impact of benefit cap

49. Every public service body or pension scheme administrator is requested to keep a central record of the number of individuals affected by the benefit cap and, in cases in which the benefit cap has the effect of reducing the benefits payable under their pension schemes, of the amounts by which pension (in annual terms) and lump sum (once-off amount) are so reduced. This information should be furnished as requested by this Department for the purposes of monitoring the impact of the benefit cap.

Disputes/Appeals

50. In accordance with section 52 (3) of the 2012 Act, any doubt, question or dispute arising in relation to the benefit cap shall be submitted to the Minister for Public Expenditure and Reform, whose decision shall be conclusive.

51. Where any individual wishes to lodge an appeal against the decision of a public service body in relation to the implementation of the benefit cap, such appeal should be processed in accordance with the internal dispute resolution mechanism that is applicable to the relevant pension scheme.



Further information

52. Any queries by Departments/Offices should be directed to this Department's Public Service Pensions Policy Unit (by email to: pensions@per.gov.ie) under the subject line 'Section 52 benefit cap'. Other public service bodies should consult in the first instance with their parent Department/Office. Individuals should consult with the relevant HR unit or pension administrator.
53. It is intended to provide further technical notes on implementation of the benefit cap on the Public Service Pensions section of the Department's website (<https://www.gov.ie/en/collection/1c5abb-public-service-pensions-useful-links/>). These will address a number of specific points that have been identified above as requiring consultation with the Department, and will advise on other technical matters raised in queries submitted on the operation of the Circular.

