**Application of Professional Added Years**

At a meeting of the HEA Working Group on University Pensions on May 7th 2008 a Department of Finance representative informed the universities and the Higher Education Authority (HEA) that following recent consideration by the Cabinet of a proposal that the assets and the liabilities of the university pension schemes be taken over by the State, a decision in principle had been taken authorising the Department of Finance to enter into discussion with the trustees and administrators of the five university pension funds with a view to winding up the funds, having the National Pension Reserve Fund take over their assets and having the liabilities of the schemes underwritten by the State.

It was outlined that the proposal would be handled by a once-off transfer of funds to the National Pensions Reserve Fund, with no continuing tie between the universities and the NPRF. In due course legislation would be brought to government giving effect to these arrangements.

The Department of Finance representative informed the meeting that the proposal had been agreed in principle, subject to the following five firm conditions:

1. the transfer will be handled on an “all or nothing” basis – all five university funds must agree to be taken over or none of them will;
2. it is a matter for the trustees and administrators of the schemes to secure the agreement of the members of the schemes to this transfer;
3. the terms and conditions of entitlement of the members will be no more and no less favourable than currently exist;
4. should a significant windfall gain to any of the universities arise from for example, a future disposal of significant assets, the State reserves the right to seek a contribution from such gain towards the cost of this transfer, or in the absence of such a contribution to claw back funds from the core grant of the year in question;
5. pending finalisation of necessary legislation giving effect to the transfer and pending transfer of funds, universities will continue to take all possible action to ease pressure on the pension funds and to minimise their exposure in the event that the transfer does not happen.

The Department of Finance representative clarified that if any scheme opted not to have the assets and liabilities transferred as proposed, the State would withdraw the offer, it would be made clear that the Pension Schemes did not have a State Guarantee, and the schemes would no longer be listed as exempt from the funding standard of the Pensions Act. The implications of this for the University, the Pension Scheme and staff of the University would have been extremely onerous and could have resulted in a significant diminution of scheme benefits.

At its meeting on 15th July 2008, the Governing Body of the University approved in principle the transfer proposal on the basis outlined above.

Once the agreement of all five universities was secured the process of enacting legislation to facilitate the transfer commenced. As part of this process UCC provided the HEA (and in turn the Department of Finance and Department of Education & Skills) with all relevant Pension Statutes (including Statute 141 which provides for the application of professional added years) and a briefing note on the application of professional added years in UCC. The briefing note stated that the granting of added years is at the ‘discretion’ of the Pensions Committee as defined by Statute. The practice prior to the transfer was that once an individual falls within the framework (i.e. the appropriate grades) and satisfies all criteria (i.e. contributions paid in respect of all temporary service, the transfer in of all retained benefits etc.) then s/he was granted Professional Added Years on retirement in accordance with calculations under the Scheme rules. It was also noted that all staff with a Statutory entitlement to Professional Added Years are viewed as having an actual as opposed to discretionary entitlement (This is a limited category of academic staff that held office prior to 8th July 1986).

Legislation providing for the transfer was enacted on 26th June 2009 when the *Financial Measures (Miscellaneous Provisions) Act 2009* (‘2009 Act’) was signed into law by the President of Ireland. The transfer of the UCC pension fund and corresponding liabilities was given effect on 31st March 2010 through Statutory Instrument No. 124 of 2010. As part of the transfer, the ability to award a discretionary benefit transferred to the relevant Ministers. Section 11 of the 2009 Act provides that:

*“If before the coming into effect of a transfer order in relation to a covered pension fund a provision of the relevant pension scheme conferred a discretion in relation to one or more members’ rights or benefits, the provision continues in effect after the coming into effect of the order, but the discretion is to be exercised, where the Minister for Finance is the relevant Minister in relation to the scheme, by that Minister, and in any other case by the relevant Minister in relation to the scheme and the Minister for Finance acting jointly.”*

In the case of UCC the relevant Minister is the Minister for Education & Skills and therefore for all retirements with effect from 1st April 2010, the final decision on the granting of professional added years on retirement now rests with the Minister for Finance and the Minister for Education & Skills. In practice, this means the University must now, on behalf of the retiring staff member, submit to the Ministers (via the HEA) an application for professional added years. The approval process means that to date significant delays have been experienced in securing a decision on applications. In so far as is possible the University has submitted applications well in advance of planned retirement dates, however where a delay is experienced retirement benefits will be paid without the application of professional added years and once a decision is received benefits will be revised (backdated to retirement) accordingly.

In assessing the application of added years the Ministers have advised that Statute 141, Chapter VII, Section 1 (c):

*“(c) The number of years calculated in accordance with sub-section (b) shall be appropriately reduced where*

*i. pensionable service has been or could have been transferred from any previous employment;*

*ii. a participant has received or retains an entitlement to a pension, preserved pension or other superannuation benefit from any previous employment.*

*iii. a participant has a pension entitlement under the Social Welfare Acts, arising on contributions paid in previous employment.”*

will be interpreted differently to the manner in which this section was previously and consistently applied and understood by the Pensions Committee when exercising the discretion to grant professional added years. Specifically the Ministers’ interpretation of this provision is that the number of added years granted will be reduced by the number of years service that *have been or could have been* transferred to UCC.

The HEA on behalf of the Departments have advised the University that any member of staff who believes herself/himself unfairly affected may appeal a decision made by the Ministers for Finance and Education and Skills and that the appeals process (Internal Dispute Resolution (IDR) procedures) that will apply in such a situation, is the “Superannuation Schemes in the Universities – Appeals Process to Higher Education Authority”. The outcome of the appeals process can be further appealed to the Pensions Ombudsman ([www.pensionsombudsman.ie](http://www.pensionsombudsman.ie)) but any such appeal cannot take place until the HEA appeals process has concluded. The HEA is obliged to make a determination in relation to the complaint within three months from the date on which all the necessary information was received. If the time limits are not met, the Pensions Ombudsman can deem the IDR to be exhausted or allow such extra time as s/he considers reasonable.

The purpose of this note is to update all scheme members as to the current position regarding the application of the discretion. If the position changes in the future all scheme members will be notified. In the interim the University has been requested by the HEA, on behalf of the Department of Finance and Department of Education & Skills to insert the following disclaimer into all benefit statements and benefit quotations:

“*The Financial Measures (Miscellaneous Provisions) Act 2009 has not altered the rights and obligations of members under Scheme rules.   Where the Scheme rules provide for discretion in relation to members' rights and benefits, that discretionary power now vests in the Minister for Education & Skills and the Minister for Finance. Please note that an Added Years award is one of the benefits subject to the discretion of the Minister for Education & Skills and the Minister for Finance and any decision on the granting of added years will only be made at retirement.”*

**October 2010**