

PENSIONS AND DIVORCE

A GUIDE FOR MEMBERS OF THE LOCAL GOVERNMENT PENSION SCHEME AND THEIR SPOUSES

East Sussex Membership pre 14 only

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Introduction

Information for scheme members and their spouses

For many people, pension rights are one of their most important and valuable assets.

Until 1996 the only way pensions could be taken into account when couples were divorcing was to offset their value against the value of other financial assets in the divorce or nullity of marriage settlement.

Provisions brought into effect from 1 July 1996 (England and Wales), 19 August 1996 (Scotland) and from 1 December 2000 (all UK) allow divorcing couples two additional ways of taking their pension benefits into account. They are:

- Earmarking (from 1996)
- Pension sharing (from 1 December 2000)

This booklet gives general information about these provisions.

The right to offset the value of pension rights against the value of other financial assets in the divorce settlement still remains an option.

It should be noted that earmarking can also be used in cases of judicial separation.

This booklet is only a general guide. It is not a full statement of the law which governs the scheme, and members are advised to take legal advice on the options available to them.

Divorce proceedings

General

In cases of divorce or nullity of marriage, the petitioner (either the husband or wife) can make an application to the Court for a share of the matrimonial assets.

Once the application has been lodged with the Court, the date for the first appointment at Court will be made.

If the scheme member has not already done so, he/she will be required to apply for a valuation of his/her pension rights under the Local Government Pension Scheme (LGPS). This is because the divorcing couple are required to disclose to each other and to the Court all their financial interests. This will include details of all LGPS benefits which are shareable rights.

Obtaining information about LGPS benefits if you are involved in divorce proceedings

The Court will need information about the member's pension benefits and general information about the LGPS in order to consider whether an earmarking or pension sharing order is appropriate.

The member's spouse or their solicitor can only ask for basic information about the scheme.

Members are entitled to ask for information about the scheme and their own personal benefits in the scheme. As part of this process, members should complete Form PSO2 (available from Pension Services – contact details on page 6) to request information on the LGPS and to request a Cash Equivalent Value (CEV). This is the capitalised value of their LGPS pension benefits. It provides a convenient way of assessing the value of the pension in relation to other assets.

Members are, subject to certain exceptions, entitled to one free CEV per year for any purpose.

The charges that the scheme will make, if any, for providing a CEV and for administering an earmarking or pension sharing order are shown on the enclosed Schedule of Charges.

You should note that all correspondence received by the scheme in connection with your divorce will be acknowledged in writing. If you do not receive an acknowledgement, you should contact Pension Services to check whether your correspondence has been received.

Additional information relating to divorces in Scotland

Scottish law uses the concept of 'matrimonial property'. Pension benefits form part of the 'matrimonial property' and, unlike the rest of the UK, it is only pension rights that have built up during the marriage that can be shared or could be subject to an earmarking order.

In Scotland, a divorcing couple often makes 'Minutes of Agreement' to settle as many issues as possible before going to Court. This allows them to reach their own decisions (with legal advice) about the division of the matrimonial assets. Where the member and the member's spouse enter into such an agreement, the member must notify Pension Services that he/she intends to share pension rights with the spouse.

Disclaimer

This booklet gives general guidance only to assist scheme members and their spouses who are involved in divorce or nullity of marriage proceedings.

It is not a full statement of the law which governs the scheme.

Pension Services will provide information to you at various stages during divorce or annulment proceedings.

Individuals should seek further information from their solicitors about the relevance of earmarking or pension sharing provisions in individual divorce or annulment proceedings.

Earmarking

What is earmarking?

Earmarking is a term used to describe special attachment orders which are made by the Court.

When an attachment, or earmarking, order is made the pension still remains that of the scheme member, but the scheme is required to make some form of payment to the former spouse when the member's benefits become payable.

The Court can order that the former spouse receives one of, or a combination of, the following benefits:

- All, or part of the members LGPS pension (this does not apply in Scotland)
- All, or part, of the member's LGPS retirement grant (only if the member joined the LGPS before 1 April 2008 and has not yet retired)
- All, or part of any lump sum paid in the event of the member's death

The order will be sent to the authority administering the scheme who will acknowledge it within 21 days and ensure it is acted upon.

A copy of the decree or declarator of divorce, nullity of marriage or judicial separation including, in the first two cases, confirmation that the decree has been made absolute should be sent to the authority administering the scheme.

Changes

As it may be many years between the divorce and the benefits coming into payment, it is important to be aware of the following changes:

- An earmarking order against pension payments, but not lump sums (unless the order directs otherwise) will automatically lapse on the remarriage of the former spouse, and the full pension will be restored to the member
- Pension payments to the former spouse lapse on the death of the member
- The former spouse must inform Pension Services of any change of address, any change of name by marriage or deed poll and, where the earmarked pension is in payment, any change of bank account.
- If the scheme member transfers his/her benefits to another scheme, the earmarking order will transfer. Pension Services will, within 21 days of the transfer, inform the former spouse of any transfer.

Pension Services must be informed of the death of the member or of the former spouse.

Paying the earmarked pension

Pension Services will contact the former spouse when the member applies for payment of their LGPS benefits or, if the lump sum payable on death has been earmarked, when the member has died. Pension Services will check that the earmarking order is still valid and, if so, will arrange for payment to be made to the former spouse.

Pension sharing

What is pension sharing?

Pension sharing is similar to earmarking in that the Court will serve a Pension Sharing Order on the scheme. When the Court orders pension benefits to be shared, the former spouse is allocated a percentage (up to 100%) of the member's benefits (In Scotland, the Court may order that a specified amount of the member's benefits be allocated to the former spouse). The member's benefits are reduced accordingly, and the former spouse will hold benefits in his/her own right, independent of the scheme member.

The Pension Sharing Order will be sent to the authority administering the scheme who will implement it as directed.

A copy of the decree or declarator of divorce, nullity of marriage or judicial separation including, in the first two cases, confirmation that the decree has been made absolute should be sent to the authority administering the scheme.

Pension sharing was introduced from 1 December 2000 to enable clean break settlements and to overcome some of the inherent problems associated with earmarking orders:

- The former spouse has to wait for the scheme member to die before becoming entitled to an earmarked pension (or lump sum)
- Loss of retirement income if the former spouse remarries
- Loss of retirement income if the scheme member dies first
- Having the intended income delayed if the scheme member delays retirement

What will a pension share mean for the scheme member?

Pension share ordered before retirement

The member's pension, any lump sum retirement grant and any subsequent spouse's benefits will be reduced by the percentage allocated to their former spouse. For divorces in Scotland, the Court will specify either a percentage or a monetary amount. This reduction will be known as a 'pension debit' and will normally be calculated within 4 months of the pension sharing order being received.

At retirement, the 'pension debit' will be increased in line with the rise in the cost of living between the date the amount of the 'pension debit' was first calculated and the date the member's pension becomes payable. This revalued amount of 'pension debit' will then be deducted from the member's total benefits.

On the member's death, if they have remarried, a pension share will reduce the widow(er)'s benefit payable to the new spouse. However, if the member has dependent children, any child's pension payable will not be reduced because of a pension share.

Transferring benefits

Subject to certain conditions, the member will still be able to transfer their remaining benefits to another pension scheme or arrangement on ceasing membership of the LGPS. A transfer value will only be paid in respect of the debited amount of the member's benefits.

Pension share ordered after retirement

The pension currently in payment will be reduced by the percentage allocated by the Court to the former spouse from the date of the pension share. On the pensioner member's death, if he/she has remarried, a pension share will reduce the widow(er)'s benefit payable to the new spouse but any child's pension payable to a dependent child will not be reduced because of a pension share.

Paying the shared pension

The scheme member will claim their LGPS pension benefits in the normal way.

What will a pension share provide for the former spouse?

Pension share ordered before the member's retirement

Normally, within 4 months of a pension sharing order being received, the former spouse will be granted pension benefits in the LGPS in his/her own right. These will be equal to the value of the share of the member's benefits granted by the Court and are known as 'pension credit' benefits. These will provide:

- An annual pension and, if applicable, a lump sum. This is normally payable from age 65 (or the date of the pension share if later) but the former spouse may choose to receive payment from age 60 with appropriate reductions to reflect early payment, or
- Commutation of benefits before age 65 on the grounds of serious ill health where life expectancy is less than one year (a one off lump sum payment equal to five times the annual rate of the 'pension credit' plus the value of any lump sum can be paid), or
- A lump sum equal to three times the annual rate of the 'pension credit' if the former spouse dies before the 'pension credit' becomes payable, and
- If the credited member dies before the age of 70 and within five years of the 'pension credit' becoming payable, a lump sum equal to five times the annual rate of the 'pension credit' less the amount of annual pension already paid to the credited member.

When the 'pension credit' benefits become payable they will be increased in line with the rise in the cost of living.

'Pension credit' benefits DO NOT provide widow(er)'s or dependants' benefits.

Pension share ordered after the member's retirement

Normally, within 4 months of a pension sharing order being received, the former spouse will be granted pension benefits in the LGPS in their own right. These will be equal to the value of the share of the member's benefits granted by the Court and are known as 'pension credit' benefits. If the pension share takes place after the scheme member has retired, the 'pension credit' will provide:

- An annual pension. This is normally payable from age 65 (or the date of the pension share, if later) but the former spouse may choose to receive payment from age 60 with appropriate reductions to reflect early payment, or
- Commutation of benefits before age 65 on the grounds of serious ill health where life expectancy is less than one year (a one off lump sum equal to five times the annual rate of the 'pension credit' can be paid), or
- A lump sum equal to three times the annual rate of the 'pension credit' if the former spouse dies before the 'pension credit' becomes payable, and
- If the credited member dies before the age of 70 and within five years of the 'pension credit' benefits becoming payable, a lump sum equal to five times the annual rate of the 'pension credit' less the amount of annual pension already paid to the credited member.

When the 'pension credit' benefits become payable they will be increased in line with the cost of living between the date the amount of the 'pension credit' was first granted and the date the 'pension credit' becomes payable.

Once in payment, the annual rate of the 'pension credit' will be increased each year in line with the cost of living.

'Pension credit' benefits DO NOT provide widow(er)'s or dependants' benefits.

'Pension credit' benefits – other information

Transferring benefits

Subject to certain conditions, a former spouse can opt to transfer the value of the 'pension credit' to another qualifying pension scheme or arrangement at any time up to one year before age 65 (other than to another LGPS fund). 'Pension credit' benefits cannot be aggregated with any rights the former spouse may have in the LGPS in his/her own right.

Paying the shared pensions

Pension Services will advise the former spouse how to apply for the 'pension credit' benefits when the pension share is confirmed.

The pension, when paid, will be taxed (if appropriate).

As the former spouse's 'pension credit' benefits are independent from the scheme member's benefits, a pension sharing order does not lapse on the death of the scheme member or the remarriage of the former spouse.

If a former spouse were to remarry, and that marriage were to end in divorce or annulment, the 'pension credit' could itself be subject to a pension sharing order.

If a pension sharing order is made

If a Pension Sharing Order or provision is made, the following information must be supplied to Pension Services before the Order can be implemented:

- a) a copy of the relevant Order or provision
- b) a copy of the Order, decree or, in the case of divorce or nullity proceedings lodged in Scotland, declarator responsible for the divorce or annulment to which the Order or provision relates
- c) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, details of the apportionment of any charges the authority wishes to levy and confirmation that you have notified the authority of your intention to share pension benefits and that the authority has acknowledged receipt of that notification
- d) a copy of the decree absolute

- d) in relation to you
 - i) all the names by which you have been known
 - ii) date of birth
 - iii) home address
 - iv) National Insurance number
 - v) the name of the pension scheme to which the Order or provision relates (the Local Government Pension Scheme)
 - vi) your membership number, if appropriate
- f) in relation to your ex spouse
 - i) all the names by which they have been known
 - ii) date of birth
 - iii) National Insurance number
 - iv) home address
 - v) if he/she is also a member of the LGPS, their membership number in the scheme
 - vi) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, the amount or percentage of the cash equivalent valuation to be credited to your spouse, and
 - vii) if he/she wishes to transfer the pension credit to another pension scheme (a qualifying arrangement), the full name and address of the qualifying arrangement, the membership or policy number in that arrangement (if known), the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the Pension Credit to that qualifying arrangement.

Further Information

The authority administering the LGPS is East Sussex County Council. Contact details for the Pension Team are shown below:

ESCC Pensions,
County Hall, St Anne's Crescent
Lewes, East Sussex, BN7 1UE

Email: pensions@eastsussex.gov.uk

When you are notified of the pension share you will also be informed of the appeals process to follow if you disagree with any decision taken by the administering authority when implementing the pension sharing order.

Pension Sharing on Divorce/Dissolution - Schedule of Charges

Scheme Member not yet retired – about to divorce/dissolve civil partnership

Procedure	Comments	Estimated cost	Charged to*
1. provision of basic information relating to the LGPS.	Standard annual entitlement under Pension Schemes Act 1993	£0	
2. Produce CETV calculation	If standard annual entitlement under Pension Schemes Act 1993 (except see 3. Below) If the Scheme member or Court require the CETV quotation to be provided within 3 weeks of request being received.	£0 £163 + VAT/quotation	Scheme member
3. Additional CETV quotations within a 12 month period		£163 + VAT/additional quotation	Scheme member
4. Provision of other information	If under disclosure of information legislation Otherwise, depending on the nature of the request	£0 Minimum £0 Maximum £54 + VAT	Scheme member or ex-spouse/civil partner, depending on who requests the information
5. Receipt of pension sharing order or consent order	To cover all administration costs from receipt of the pension sharing order to completion of pension payments	£543 + VAT	Ex-spouse/ civil partner

6. Assuming all documentation is in place, settle a transfer out (instead of 5. Above)		£163 + VAT	Ex-spouse/ civil partner
7. Objections to order by pension scheme	Onus should be on the draftsman of the order to ensure that it is correctly drafted prior to issue	Scheme to notify member/solicitor that costs for dealing with inoperable orders will be passed on	

Scheme member retired – pension in payment – about to divorce/dissolve civil partnership

Procedure	Comments	Estimated cost	Charged to*
1. provision of basic information relating to the LGPS.	Standard annual entitlement under Pension Schemes Act 1993	£0	
2. Assess the value of the pension in payment, including any contingent benefits	Actual costs dependent on charges incurred for actuarial time	£272 + VAT	Pensioner
3. Administrative cost of collecting and interpreting medical evidence in respect of divorcing couple	It is assumed that the charges for supply of medical evidence will be met by the divorcing couple	Scheme to advise that payment of supply of medical evidence will be the responsibility of the member	
4. Establish new pensioner record	To cover all administration costs from the receipt of a pension sharing order to completion of pension payments	£543 + VAT	Ex- spouse/civil partner
5. Assuming all documentation is in place, settle a transfer out (instead of 4. Above)		£163 + VAT	Ex-spouse/civil partner
6. Establish a new member scheme record (record keeping/tracing reasons, etc.)		£54 + VAT	Ex-spouse/civil partner

Notes:

1. * Invoice to be issued as stated unless the court order specifies otherwise.
2. All charges associated with pension sharing on divorce/dissolution are to be paid IN FULL before the pension sharing order will be implemented.
3. VAT is required to be added to the charges specified. All charges shown are, therefore, exclusive of VAT.
4. Reasonable administrative costs associated with the implementation of an earmarking order will also be recovered and details can be provided if required.
5. All charges are correct at the time of production of this charging schedule. The authority administering the Pension Fund will increase its charges each April by CPI (over the 12 months to the previous September).
6. The County Council's in-house AVC providers may also charge for the provision information for pension sharing on divorce/dissolution or work involved in implementation of a pension sharing order. Any such charges will be charged in full in addition to the figures quoted above.