

Pensions and divorce

Pension guide – Information for members

The purpose of this guide is to provide members with an explanation of the impact divorce can have on their pension. Owing to the often significant value of pension benefits it is important to understand the implications of a divorce.

If you are married and you divorce, or you dissolve a civil partnership, your pension benefits are taken into account in your divorce/dissolution proceedings. This doesn't necessarily mean they will be divided (see **(1)** below). In order for pension benefits to be taken into account you first need to go through divorce proceedings or dissolve the civil partnership. The legal process will result in the Court producing an Order that will stipulate how any pensions should be shared between the two parties.

If you are not married and not in a civil partnership, neither party would be automatically entitled to a share of the other party's pension. If you are co-habiting you do not have the same rights as a married couple or those in a civil partnership. In Scotland the situation can sometimes be different. For further information visit citizensadvice.org.uk/scotland/family

For more information about your scheme please refer to your [Member Booklet](#)

A divorce represents a significant change in personal circumstances, therefore please ensure you review and update your Nomination of Beneficiaries. Please read the [Nomination of Beneficiaries](#) guide for more information about how to do this.

1. What are the options available on divorce?

There are four ways in which pension benefits can be taken into account in a divorce settlement (three in Scotland). In England, Wales and Northern Ireland this would normally mean the total value of all pension rights, regardless of when they were built up, being taken into account. The situation is different in Scotland where only the value of pensions built up during the period of marriage or civil partnership are taken into account.

(1) Pension offsetting

This is the simplest method. Here the total value of all yours and your ex-spouse/civil partner's assets will be taken into account. This includes both pension and non-pension assets such as property, savings and investments, as well as all income being received. This establishes a total value of all assets. Then, the value of your pension can be offset against other matrimonial assets. You will retain all your pension rights, while your spouse will receive other assets to offset the value of your pension. This may be property, or other assets such as savings.

(2) Attachment Order (or Pension Earmarking)

Earmarking used to be available throughout the UK but is now only available in Scotland. In the rest of the UK this has been replaced with Attachment Orders. Both redirect benefits (lump sum in Scotland, lump sum and

pension in the rest of the UK) to your ex-spouse/civil partner at the point the benefit comes into payment.

Here the link between you and your ex-spouse/civil partner remains as they have to wait until you take your benefits (or you die) in order to receive theirs.

The benefits stipulated for payment by an Earmarking or Attachment Order could be one or a combination of the following:

- A percentage or amount of pension at retirement
- A percentage or amount of any lump sum at retirement
- A percentage or amount of any lump sum death benefits

It is important to note that if your pension has an Earmarking or Attachment Order attached to it, you will pay tax on the pension you receive and any pension that is paid to your ex-spouse/civil partner. Any pension payment to an ex-spouse will cease at the point you die. If your ex-spouse/civil partner dies first or remarries the earmarked payments will revert back to you.

(3) Pension Sharing Order

Here the pension is split at the point of divorce/dissolution, with each party getting an agreed share. This involves benefits transferring from your pension scheme to a completely different pension arrangement in your ex-spouse/civil partner's name.

Pension sharing offers a one-off transfer out at a point in time stipulated by the Court. This provides a clean break between you and your ex-spouse/civil partner, so any benefits built up after implementation will not be subject to the Sharing Order.

(4) Individual agreement (not applicable in Scotland)

Individual agreements, for example a 'pre-nuptial agreement' are a complex area. Both parties should seek legal advice before entering into one.

In addition to the above, you and your ex-spouse/civil partner could reach agreement between yourselves, but this would need to be ratified by the Court in order to be legally binding.

2. What is the process for obtaining a Pension Sharing Order?

The vast majority of Orders now issued by the Courts in respect of divorce are Pension Sharing Orders. The rest of this guide will therefore concentrate on these.

As part of the divorce/dissolution proceedings you will be asked to obtain a cash equivalent transfer value (CETV) from your scheme administrator. The administrator must issue this to you or your appointed representative within three months of receiving the request. The CETV represents the total cash value of your benefits that would be available for transfer to another pension scheme. This forms part of the assessment of your assets.

If it is decided that pension assets will be split as part of the divorce agreement a Pension Sharing Order is then issued by the Court that details how much of the CETV should be transferred to your ex-spouse/civil partner. This Court Order is forwarded to the scheme administrator who has to implement it within four months of receiving all the required information, this being:

- The final Pension Sharing Order stamped by the Court, including its effective date
- The Decree Absolute
- Confirmation of the percentage of the CETV that should be transferred to the ex-spouse/civil partner
- Details of the receiving scheme where benefits are to be transferred
- The implementation fee(s) charged by the Trustee

3. Are there costs involved in processing a Pension Sharing Order?

Yes. The Trustee can charge a fee in respect of the cost incurred for implementing a Pension Sharing Order. The Court Order will generally stipulate who should pay the fee, however if not, the cost will fall to you as the scheme member. If one or both parties refuses to pay their part of the fee the Court Order will not be implemented.

4. What else do I need to know?

Please note the following other important notes about the implementation of Pension Sharing Orders:

- Only Court Orders drawn up in UK courts can be applied by the Trustee
- The Trustee cannot pay any part of your pension directly to your ex-spouse/civil partner without a Court Order, i.e. if an informal agreement is reached between the parties
- Annual benefit statements and future benefit quotations will take account of Pension Sharing Orders that have been placed on your benefits. Earmarking Orders have no impact on benefit statements as the benefit payable to your ex-spouse/civil partner only becomes payable when you retire or die (depending on the terms of the Order)
- The Trustee must provide a CETV based on your full period of membership. However if the divorce or dissolved civil partnership is being dealt with by a Scottish Court then upon implementation of a Pension Sharing Order, legislation requires that the CETV is recalculated based only on the dates of your marriage or civil partnership
- Court Orders can take a considerable amount of time to finalise. The CETV will need to be recalculated when all of the items required to implement the Court Order are received
- Pension Sharing Orders issued in England and Wales will be expressed as a percentage of the CETV to be transferred rather than a fixed monetary amount