

PENSIONS AND DIVORCE

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

Royal Borough of Kensington and Chelsea

Contents

Introduction	Page 3
Divorce proceedings	Page 3
Earmarking	Page 5
What is earmarking?	
Paying the earmarked pension	
Pension sharing	Page 6
What is pension sharing?	
What will it mean for the Scheme member?	
What will it provide for the former spouse?	
Paying the shared pension	
Further information	Page 10
Charges	Page 12

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 (as from 1996)
- ❖ Pension sharing (as from 1 December 2000)

This document 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 document 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. 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 those benefits under the Scheme which are shareable rights.

Obtaining information about benefits under the Local Government Pension Scheme if you are involved in divorce proceedings

The Court will need information about the member's pension benefits and general information about the Local Government Pension Scheme 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 the PS02 form 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 such as a house.

Members are, (excluding members in receipt of a pension other than ill health) 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 the charges the Scheme will make for administering an earmarking or pension sharing order are shown on the Schedule of Charges at the end of this document.

You should note that all correspondence received by the Scheme in connection with your divorce will be acknowledged in writing. If no acknowledgement is received, you should contact the Pensions Section (see "Further Information") to ensure that 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 in the rest of the UK, it is only pension rights that have built up during the marriage that can be shared or be subject to an earmarking order.

In Scotland, a divorcing couple often make '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 the Pensions Section (see details under "Further Information") that he / she intends to share pension rights with the spouse.

Disclaimer

This document gives general guidance only to assist Scheme members and their spouses who may be involved in divorce or nullity of marriage proceedings. It is not a full statement of the law which governs the Scheme.

RBKC Pensions will provide information to you at various stages during the 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, or a combination, of the following benefits:

- ❖ all, or part, of the member's Local Government pension (this does not apply in Scotland)
- ❖ all, or part, of the member's Local Government lump sum retirement grant
- ❖ all, or part, of any lump sum paid in the event of the member's death

An order can also require certain members who joined the LGPS before 17 March 1987 to exchange some pension for an additional lump sum retirement grant (this does not apply in Scotland).

The order will be sent to the authority administering the Scheme (see details under "Further Information") 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 (see details under "Further Information").

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 RBKC Pensions of any change of address, any change of name by marriage or by deed poll and, where the earmarked pension is in payment, any change of bank account details
- ❖ if the Scheme member transfers his / her benefits to another scheme, the earmarking order will transfer. RBKC Pensions will, within 21 days of the transfer, inform the formerspouse of any transfer
- ❖ RBKC Pensions must be informed of the death of the member or of the former spouse.

Paying the earmarked pension

RBKC Pensions will contact the former spouse when the member applies for payment of their pension benefits or, if the lump sum payable on death has been earmarked, when the member has died. RBKC Pensions 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. 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 (see details under "Further Information") 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 RBKC Pensions.

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 i.e. with an earmarking order, the former spouse has to wait for the Scheme member to retire (or die) before becoming entitled to the earmarked pension (or lump sum) and is also at risk of

- ❖ losing the retirement income if the former spouse remarries (although any earmarked lump sum is not lost, unless the order instructs otherwise)
- ❖ losing the retirement income if the Scheme member dies first (although any earmarked death grant would be payable)
- ❖ having the intended income delayed if the Scheme member delays retirement

*In Scotland, the Court may order that a specified amount of the member's benefits be allocated to the former spouse.

What will a pension share mean for the Scheme member?

Pension share ordered before retirement

The member's pension, 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 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

The member will still be able to transfer their remaining benefits to another pension scheme or arrangement on ceasing membership of the LGPS in the current pension fund. If the transfer is to another LGPS fund, the benefits will be transferred in full and the 'pension debit' applied by the new fund at retirement. If the transfer is to another type of pension scheme or arrangement, a transfer value will only be paid in respect of the debited amount of the member's benefits.

Increasing Your Pension Benefits

If a Pension Sharing Order is made in respect of your LGPS benefits it will be possible in certain circumstances to rebuild some or all of the amount to be debited by virtue of the Order.

There are two ways in which you can enhance your pension benefits:

ARCs

You can pay more in contributions to buy up to £5,000 of extra annual pension in multiples of £250. You can choose the amount you wish to purchase and the period over which you wish to pay the extra contributions. These are called Additional Regular Contributions (ARCs).

AVCs

It is still possible to pay Additional Voluntary Contributions (AVCs) through the Council's chosen provider in order to buy a top up annuity. This will act as a supplement to your potential pension benefits under the main LGPS.

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. However, if the pensioner member has dependent children, any child's pension payable will not be reduced because of a pension share.

Paying the shared pension

The Scheme member will claim their Local Government 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 Local Government Pension Scheme 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, payable from normal retirement age 65 or from age 60 with actuarial reductions applied, or if late from the date of the pension share, or
- ❖ commutation of trivial benefits at State Pension Age (if the 'pension credit' is very small it can be paid as a one off lump sum payment), or
- ❖ commutation of benefits before age 60 on the grounds of serious ill health where life expectancy is less than one year (a one off lump sum payment equal to eight 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 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 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 dependent's benefits.

Transferring benefits

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 i.e. as a result of being a contributor to the Scheme.

Buying additional pension benefits

The former spouse will NOT be able to make Additional Voluntary Contributions (AVCs) to the LGPS or purchase Additional Regular Contributions (ARCs) in the LGPS in order to increase the 'pension credit' benefits.

Paying the shared pension

The Pensions Section (see details under "Further Information") 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.

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 Local Government Pension Scheme 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. Where the pension share takes place after the Scheme member has retired, the 'pension credit' will provide:

- ❖ an annual pension, payable from normal retirement age 65 or from age 60 with actuarial reductions applied, or if late from the date of the pension share, or
- ❖ commutation of trivial benefits at State Pension Age (if the 'pension credit' is very small it can be paid as a one off lump sum payment), or
- ❖ commutation of benefits before age 60 on the grounds of serious ill health where life expectancy is less than one year (a one off lump sum payment equal to eight 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 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 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 dependent's benefits.

Transferring benefits

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 i.e. as a result of being a contributor to the Scheme.

Buying additional pension benefits

The former spouse will NOT be able to make Additional Voluntary Contributions (AVCs) to the LGPS or purchase Additional Regular Contributions (ARCs) in the LGPS in order to increase the 'pension credit' benefits.

Paying the shared pension

RBKC Pensions 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.

Further Information

If you need more information about the Scheme you should contact RBKC Pensions, at the following address:

RBKC Pensions
3rd Floor Green Zone
The Town Hall
Hornton Street
London W8 7NX

For general enquiries telephone: 020 7361 2323
Email: pensions@rbkc.gov.uk

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

Notes

For divorce proceeding to have officially commenced you must satisfy one of the following criteria:

- Part II of the 'Matrimonial Causes Act 1973' or Part III of the 'Matrimonial and Family Proceedings Act 1984' (England and Wales powers in relation to domestic and overseas divorce, etc.), or
- Part III of the 'Matrimonial Causes (Northern Ireland) Order 1978', or Part IV of the 'Matrimonial and Family Proceedings (Northern Ireland) Order 1989' (corresponding Northern Ireland powers), or
- 'The Family Law (Scotland) Act 1985' or Part IV of the 'Matrimonial and Family Proceedings Act 1984' (corresponding Scottish powers)

The Local Government Pension Scheme

Schedule of charges regarding Pensions on divorce

Schedule: CH1

A. Scheme member not yet retired

	Procedure	Comments	Cost (Excl. VAT)
1	Produce full CETV quotation where the member or court does not stipulate a deadline for completion.	Standard annual entitlement under 'The Pension Schemes Act 1993'. To be provided within 3 months of date received.	Free
2	Produce full CETV quotation where the member of court requires it within 3 months.	Standard CETV under 'The Pension Schemes Act 1993 as above. To be provided within deadline requested	£50
3	Produce partial CETV quotation. (Scottish cases only - where the date ceased cohabiting/date of service of divorce summons was more than 12 months ago or the member married after joining LGPS)	Partial CETV quote under 'The Pension Schemes Act 1993'. To be provided within 3 months or deadline requested by the pension member or the courts.	£50
4	Additional CETV quotation based on the same dates as previous request	The following charge applies if a CETV has been requested and issued within the last 12 months.	£50 per additional quote
5	Additional CETV quotation based on different dates as to previous request.	The following charge applies if a CETV has been requested and issued within the last 12 months.	£50 per additional quote
6	Provision of additional information that is not required under the 'Pension Scheme Act 1993'.	Eg. Additional information requested by you/your solicitor.	Dependent on request with a minimum charge of £50, and a maximum charge of £500.
7	Receipt of 'Pension Sharing Order' or 'Consent Order' where the spouse/credited member is under age 65.	Covers all administration costs from receipt of 'Pension Sharing Order' to completion of pension payments.	£425
8	Establish a new pensioner record where the spouse/credit member is age 65 or over.	Covers all administration costs from receipt of 'Pension Sharing Order' to completion of pension payments.	£425
9	Assuming all documentation is in place, settle a transfer out (in place of [part 7]).	This applies if the spouse/credit member asks for a transfer out at the offset of the 'Pension Sharing Order' being implemented by the courts.	£150
10	Objections to order by the Administering Authority (RBKC Pension Fund).	The responsibility falls with the draftsman of the 'Pension Sharing Order' to ensure that it is correctly drafted prior to issue.	Any legal fees incurred will be passed on to the member/ member's legal counsel.

B. Scheme members pension is already in payment

Procedure	Comments	Cost (Excl. VAT)
1 Assess the value of the pension in payment, including any contingent benefits.		£220
2 Receipt of 'Pension Sharing Order' or 'Consent Order' where the spouse/credited member is under age 65.	Covers all administration costs from receipt of 'Pension Sharing Order' to completion of pension payments.	£425
3 Establish a new pensioner record where the spouse/credit member is age 65 or over.	Covers all administration costs from receipt of 'Pension Sharing Order' to completion of pension payments.	£425
4 Assuming all documentation is in place, settle a transfer out (in place of [part 2]).	This applies if the spouse/credit member asks for a transfer out at the offset of the 'Pension Sharing Order' being implemented by the courts.	£220
5 Objections to order by the Administering Authority (RBKC Pension Fund).	The responsibility falls with the draftsman of the 'Pension Sharing Order' to ensure that it is correctly drafted prior to issue.	Any legal fees incurred will be passed on to the member/ member's legal counsel.

Notes:

1	Any additional costs arising if specialist actuarial, legal, etc., advice is requested will be charged in full in addition to the figures quoted above.
2	Where a scheme member has an Additional Voluntary Contribution contract under the LGPS, the insurance company, etc., may charge for the provision of information. Any such charges will be charged in full in addition to the figures quoted above.
3	Any reasonable administrative costs incurred or likely to be incurred in complying with an "earmarking order" will be charged to the pensioner member.
4	Any costs incurred in relation to a "pension sharing order" which is made the subject of an application for leave to appeal out of time will be recovered by the authority administering.
5	VAT will be payable in addition to all the above charges. All charges are correct at the time of production of this charging schedule. The authority administering will review its charges annually each April in line with the 'cost of living'.
6	The standard practice of the authority administering the pension fund is that the full amount of the charges must be paid, by either party to the divorce, before the relevant action is undertaken. I.e. Up-front or if the credit member wishes to immediately transfer the pension credit to another scheme, from the transfer value payable in respect of the credited member. The authority administering the pension fund will, however, comply with the charging proportionment specified in an order or agreement.