

PENSIONS ON DIVORCE or DISSOLUTION OF CIVIL PARTNERSHIP

The National Health Service Superannuation Scheme (Scotland)
The NHS Pension Scheme (Scotland) 2015

Scottish Teachers' Superannuation Scheme
Scottish Teachers' Pension Scheme 2015

1. Introduction

This leaflet describes what may happen to pension assets on divorce or dissolution of civil partnership where a member is paying contributions in to, or is in receipt of, pension benefits from the following schemes:

- The National Health Service Superannuation Scheme (Scotland)
- The NHS Pension Scheme (Scotland) 2015
- The Scottish Teachers' Superannuation Scheme
- The Scottish Teachers' Pension Scheme 2015

This leaflet is intended only as a general guide and, while care has been taken to ensure that it is accurate, it does not give a complete or legally binding statement of the law and/or regulations that govern the schemes.

A list of some of the sources of information used in this leaflet can be found in Appendix 1.

2. Background

As part of the divorce or dissolution process the assets of a marriage or civil partnership are identified and agreement is reached, and/or a court order is made, as to how these assets or their cash equivalent value are to be shared.

Pensions are considered an asset of marriage or civil partnership so pension rights accrued by either or both parties, during the period of marriage or civil partnership, should be valued. The scheme member may decide to share their pension rights with their former spouse and draw up a Minute of Agreement and/or a court may issue a Pension Sharing Order with which the Scottish Public Pensions Agency (SPPA) must comply.

Valuation: A Cash Equivalent Transfer Value (CETV) or Pensioner Equivalent Transfer Value (PETV) (see paragraphs 3.1 and 3.2) of pension benefits will be provided by the SPPA on receipt of a written request. As the pension schemes administered by the SPPA on behalf of the Scottish Ministers are **unfunded** public sector schemes backed by the Treasury we use a set of factorial tables and formulas supplied by the Government

Actuary's Department (GAD) to calculate the CETV or PETV to provide an estimate of what would be available for sharing if a fund existed.

Pension sharing and Scots Law: The SPPA is subject to the laws of Scotland. In Scotland a pension sharing order takes place at the point of divorce, or dissolution. A court order or Minute of Agreement, including enforceable pension sharing details, must be registered in the Books of Council and Session before it can be implemented by the SPPA.

Pension sharing in other countries: If a Pension Sharing Order is issued in other member countries of the UK then to be enforceable in Scotland it must be registered in the Books and Councils of Session along with Form 111 certificate of money provisions. The SPPA cannot automatically accept Pension Sharing Orders from countries outside the UK. Their validity must be determined by a Scottish Court.

3. Basic Information about Pensions and Divorce

3.1 What is a CETV?

A CETV represents the value of the pension rights acquired in the pension scheme. For divorce or dissolution of civil partnership under Scots Law, only membership relating to the period of marriage or civil partnership, i.e. date of marriage or date of civil partnership to date of separation, will be used in calculating the CETV. In divorce or dissolution of civil partnership under the law of England and Wales membership relating to the whole period, from the date of joining the pension scheme to the date of the actual calculation, is used. As stated in section 2, the CETV is calculated using a range of factors supplied to the SPPA by GAD.

3.2 What is a PETV?

The SPPA can also provide a calculation of pension rights where a member is already in receipt of their pension and decides to initiate an action of divorce or dissolution of civil partnership. This is known as a PETV. It represents the estimated value of the actual pension in payment and is calculated using different actuarial factors to those used in a CETV.

The SPPA has authority from GAD to provide a PETV for divorce purposes however please bear in mind that the estimated value of the pension rights is calculated using the gross annual amount of pension currently in payment. The SPPA does not calculate a PETV to other dates in the past or apportion a PETV for a period of marriage as it is not technically possible for us to do so. If you require any apportionment relating to the period of marriage you, or your legal representatives, may wish to consult a qualified actuary.

Please note that pension sharing does not apply to any enhancements that may have previously applied to a member's pension as a result of retirement on the grounds of redundancy or in the interests of the efficiency of the service. Any PETV provided for a pensioner who retired under previous redundancy arrangements where enhancements applied, will not include these enhancements.

3.3 Pension Sharing

The CETV/PETV provided under the regulations can be used for the purposes of determining shareable rights, as defined in the Welfare Reform and Pensions Act 1999, between the member (debit member) and their former spouse or civil partner (credit member). Any Pension Sharing Order subsequently drawn up will normally specify the proportion of a CETV/PETV that is to be used to create a pension benefit for the former spouse or civil partner. In the absence of agreement it is the responsibility of the Court to decide on the actual split of potential benefits.

When the Pension Sharing Order is implemented a debit will be set against the member's annual pension (and lump sum if there is an entitlement). This debit amount will be adjusted in line with inflation, using the relevant Pension Increase factor, from the implementation date (also known as the valuation date) of the pension sharing order. At retirement benefits are calculated, the debit amount is updated to the current value by applying the relevant factor and the debit is then subtracted from the original benefit amount.

In the case of a PETV, any subsequent Pension Sharing Order would have the effect of sharing the actual pension in payment. The pension would continue to be paid at the full rate until the pension share is implemented. The reduction would be backdated to the implementation date and the overpayment of pension which accrued would be recovered.

Tax information related to pension sharing on divorce is included in Appendix 2.

4. Information Needed by the SPPA

A written request is required, stating both the date of marriage or date of civil partnership and the date of separation, in order to provide a CETV (the dates are not required where the member is in receipt of a pension i.e. the request is for a PETV) The request must also clearly specify that it is for the purposes of divorce or the dissolution of a civil partnership.

NB: To calculate any pension values, the SPPA needs information from third parties such as employers and HM Revenue & Customs (HMRC). The process can therefore take up to three months to complete (The Pensions on Divorce etc. (Provision of Information) Regulations 2000).

5. Replacing Benefits That Have Been Shared With the Credit Member

It will not be possible to replace benefits that have been shared however, dependent upon HMRC and scheme regulations in force at the time, it may be possible to purchase additional pension to increase your benefits. It will be necessary to contact the SPPA for further information.

6. Transferring Pension Benefits

When a member wishes to transfer their benefits out of the relevant SPPA scheme and these benefits have been the subject of a Pension Sharing Order, the transfer payment made will reflect the residual amount of the member's pension following the apportionment

of benefits as detailed in the Pension Sharing Order. A copy of the Pension Sharing Order will be sent to the new pension provider so that they can calculate HMRC limits, subject to the rules/regulations of the receiving scheme. The pension payable to the credit member will remain within the relevant SPPA scheme as it is non-transferable.

7. When Does a Credit Member Receive Their Share of the Pension Benefits?

The former spouse or civil partner will become a credit member of the scheme from the implementation date of the pension sharing agreement. As a credit member they will be entitled to their pension benefits at the normal scheme retirement age. This will be age 60, 65 or State Pension Age (SPA) dependent on:

- the scheme, or section of the scheme, their former spouse or civil partner is a member of
- the implementation date of the pension sharing agreement
- their date of birth (if their scheme retirement age is linked to SPA)

If credit member benefits are shared across two schemes, two different retirement ages may apply. The SPPA will advise the amount of these benefits and the age at which they will become payable. Until the benefits are put into payment they will be adjusted each year in line with inflation.

(a) With effect from 1 April 2010 amended regulations were introduced which allow some credit members to access their credit pension early, albeit on an actuarially reduced basis, from age 55.

(b) It may also be possible for a credit member to commute some of their pension for an increased lump sum. Each £1 of annual pension commuted would increase the lump sum by £12. Depending on the implementation date of the pension sharing order from which the credit pension is derived, and the specific scheme regulations of the source or debit pension, there may be no automatic lump sum payable.

If you would like more information on whether you may be eligible for early access to the credit pension on an actuarially reduced basis or whether you are entitled to commutation please contact us – see SPPA contact details on page 7.

8. Credit Member Restrictions

As credit membership does not carry all the rights of a full member, a credit member is not entitled to transfer these benefits out of the scheme, transfer benefits from any other pension arrangement into the scheme or purchase additional benefits in the scheme.

If the credit member re-marries or enters into a further Civil Partnership they will continue to be entitled to the benefits credited to them. The credit member can also receive pension benefits earlier than normal scheme retirement age if they have a terminal illness and life expectancy is not more than one year.

No dependant's benefits are payable on the death of a credit member, however, should they die before receiving benefits, or within 5 years of receiving their benefits, a lump sum may be payable.

9. Earmarking Order

An Earmarking Order is a debt against the member whereas a Pension Sharing Order is an obligation of the scheme. An Earmarking Order will normally specify the proportion or specified amount of the member's lump sum which the former spouse or civil partner is to receive on the member's retirement.

If the divorce decree or dissolution order contains an Earmarking Order, the former spouse or civil partner will receive their share of the lump sum when the member retires. If the member should die in service, then the former spouse or civil partner would receive a proportion of the death gratuity, *only* if it is specified in the Order. If the former spouse or civil partner dies before the member retires, the Earmarking Order ceases to apply.

It is possible for the member to transfer their residual pension benefits to another scheme, but an Earmarking Order remains valid and the SPPA will forward a copy of it to the new pension provider in order that they can implement the provision, subject to the rules/regulations of the receiving scheme.

10. After the Divorce / Dissolution of Civil Partnership is finalised

It is of the utmost importance to note that the SPPA must be provided with all of the information detailed in Section 5 of The Pensions on Divorce etc. (Provision of Information) Regulations 2000 **within two months** of the date of the Divorce Decree or Dissolution Order, as laid down in Section 28 (7) of The Welfare Reform and Pensions Act 1999, to enable implementation of any Pension Sharing Order or "the Order is deemed never to have taken effect". This includes such information as:-

- a copy of the final Decree or Dissolution Order and the final Pension Sharing Order or Qualifying Agreement pertaining to the Order.
- the member's superannuation scheme reference number and the name of the scheme to which the Pension Sharing Order relates i.e. NHS Superannuation Scheme (Scotland) and The NHS Pension Scheme (Scotland) 2015 or Scottish Teachers Superannuation Scheme and Scottish Teachers' Pension Scheme 2015.
- the full names, dates of birth and National Insurance numbers of the member and credit member, including maiden surnames.
- payment of the SPPA administration charges (see Paragraph 12 and Appendix 3).

NB. Transferor and transferee details are normally detailed in a schedule to a Minute of Agreement. If the member has received a CETV for the period of marriage with valuations across two schemes, eg Scottish Teachers Superannuation Scheme and Scottish Teachers' Pension Scheme 2015, then the SPPA would require two schedules naming each scheme and the amount to be shared.

The Pension Sharing implementation period will be postponed until such a time as the SPPA has received the full administration charge for the recording and implementation of the pension sharing order under the Pensions on Divorce Charging Regulations 2000 (regulation 7(1) of SI 2000/1049) and The Welfare Reform and Pensions Act 1999 Chapter 30 Part IV Section 41 2(a).

Formal notification of the administration charge recoverable under the regulations will be issued on receipt of a copy of the final Decree or Dissolution Order and the final Pension Sharing Order or Qualifying Agreement pertaining to the Order.

11. Common Terms used in Pension Sharing

The SPPA is obliged to supply the value of the *shareable rights* accrued within the scheme between the *date of marriage or civil partnership* and the *date of separation*, also known as the *relevant date*. This date can be the actual date of separation but is more usually a date agreed by the parties involved and their legal representatives.

The *Shareable Rights* are supplied in the form of a *Cash Equivalent Transfer Value, (CETV)* if the member has not taken their pension and in the form of a *Pensioner Equivalent Transfer Value, (PETV)* if the pension is in payment. It should be noted that the *PETV* is not apportioned by the SPPA for the period of marriage or length of civil partnership when it is sent out; this is the role of the legal representatives or the Court. The SPPA has 3 months to supply this information.

It is normal practice to send a copy of a draft *joint minute of agreement or qualifying agreement* together with a *schedule* or *annex* to the SPPA at an early stage in proceedings. The SPPA can then effect checks, and comment on paragraphs relating to pension sharing on divorce, to facilitate an enforceable agreement under the prevailing legislation and regulations.

Once the divorce or dissolution of civil partnership is finalised and the decree or dissolution order issued, the documents and administration charge should be sent to the SPPA. The date they are received in the office is deemed to be the *implementation or valuation date*. The SPPA then has 4 months from that date to implement the order.

When our calculations have been completed the member becomes a *debit member* of the scheme and their former spouse or civil partner becomes a *credit member* of the scheme.

Letters detailing the effect of the pension sharing order on both the debit member and the credit member are sent out with copies to the respective legal representatives if applicable.

A more detailed description of some of these processes is contained in earlier sections of this document.

12. Administration charges for the provision of information in relation to Pensions on Divorce or Dissolution of Civil Partnership

12.1 Provision of CETV

All members are entitled to one CETV per year at no cost. For any subsequent requests the charge will be £315.00 plus £63.00 VAT (£378.00)

12.2 Provision of PETV

All requests for a PETV, i.e. where the member is in receipt of retirement benefits, will attract a charge of £315.00 plus £63.00 VAT (£378.00)

12.3 Recording and Implementation of an Earmarking Order

The charge will be £1,170.00 plus £234.00 VAT (£1,404.00)

12.4 Recording and implementing of a Pension Sharing Order

The charge will be £2,620.00 plus £524.00 VAT (£3,144.00)

12.5 Any additional work such as letters, phone calls, estimates of debit and credit pensions, and any other items not specified in Appendix 3, will be billed at the rate of £65 plus VAT per hour.

The SPPA's administration charges relating to pension sharing on divorce related work increase in line with the published UK Pension Increase rate for April. April 2017 PI rate is 1.0%.

NB. The implementation (or valuation) date is the date on which the pension provider i.e. the SPPA is in receipt of all the information, documentation and administration charge necessary to implement the Pension Sharing Order.

Please note that as the schemes administered by the SPPA are unfunded public sector pension schemes it is not possible for any administration charges to be deducted from the respective debit and credit pensions. No further CETV's / PETV's will be provided or Orders recorded / implemented unless the appropriate payment is made in advance.

If you need any further information you can contact us at the following address:

Pension Sharing on Divorce Team
SPPA
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

Telephone:- 01896 893000 (ask for Divorce)

Fax No: 01896 893214

www.sppa.gov.uk – My Pension Online

Regulations

Teachers' Superannuation (Scotland) Regulations 2005 SSI 2005 No 393 (as amended)

Teachers' Superannuation (Pension Sharing on Divorce) (Scotland) Regulations 2001 SSI 2001 No 152

The Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014

The National Health Service Superannuation Scheme (Scotland) Regulations 2011 (SSI 2011/117)

The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (SSI 2013/174)

The National Health Service Pension Scheme (Scotland) Regulations 2015

Public Service Pension Act 2013

The Divorce etc. (Pensions) (Scotland) Regulations 2000 SSI 2000 No 112

The Pensions on Divorce etc. (Provision of Information) Regulations 2000 SSI 2000 No 1048

The Pensions on Divorce etc. (Charging) Regulations 2000 SSI 2000 No 1049

The Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 SSI 2000 No 1051

The Welfare Reform and Pensions Act 1999 – Chapter 30 (as amended)

The Family Law (Scotland) Act 1985 (as amended 2006)

The Civil Partnership Act 2004 (as amended)

The Finance Act 2004 (as amended)

The Matrimonial Causes Act 1973 (as amended)

The Family Law Act 1996 – Chapter 27 (as amended)

The above is not an exhaustive list of the prevailing legislation and regulations but represents the source of some of the information used in the construction of this document.

Tax Information

Registered pension schemes, and their members, are subject to HMRC tax rules and limits. The tax rules limit the level of tax relieved benefits a member can be provided within the scheme, but do not restrict the actual level of benefits that may be provided.

Lifetime Allowance (LTA)

Members may incur a tax charge if the total amount of their pension benefits at retirement exceeds the LTA. Since April 2006 members have been able to apply to HMRC for protection certificates in order to protect their pension benefits from a LTA charge. There are different types of protection; enhanced, primary, fixed and individual protection.

Debit member: The scheme member's pension benefits will be tested against the LTA on the reduced pension benefits after the pension debit has been deducted. Where the scheme member has primary or individual protection and is then subject to a pension debit, this protection may be lost. They must notify HMRC that they have a debit and HMRC will confirm any revision to their protection.

Credit Member: The credit pension will count towards pension benefits and will be tested against the LTA. If you have either enhanced or fixed protection these protections will be lost on the date the pension share is implemented. This is because the credit pension is a new pension arrangement in the scheme. If you receive a credit pension derived from a scheme member's pension already in payment, payable after 5 April 2006, an enhanced personal LTA may be available on application to HMRC. The deadline for applications is no later than five years after 31 January following the tax year when the pension share is implemented.

Annual Allowance (AA)

Tax relief on the annual growth of pension savings is limited by HMRC to the AA. Growth in the value of scheme benefits (plus any other pension arrangements) that exceeds the AA may result in an AA charge.

Debit member: If there has been a pension sharing order, and your pension becomes subject to a debit, during the pension input period, the pension debit is ignored when calculating the closing value of the pension input period. The pension debit will be deducted from benefits when calculating both the opening and closing values for the next pension input period.

Credit Member: A credit pension is a separate deferred arrangement which is ignored when calculating the growth in scheme benefits for AA purposes.

Pension Sharing – SPPA administration

Administration charge for implementation of a Pension Sharing Order £2620 + VAT

Included in that charge:-

- Examination and confirmation of acceptance (or otherwise) of wording of draft joint Minute of Agreement.
- Checking all documentation relating to the actual Pension Sharing Order, copy of final minute, decree etc. Letter confirming final order is enforceable.
- Contacting all relevant 3rd parties for information to allow actual calculations to be carried out.
- Carrying out all required calculations.
- Amending the debit member's record to reflect the changes as a result of the Pension Sharing Order.
- Creating a credit members record for the ex-spouse.
- Notifying the debit member and their solicitor of the effect of the Pension Sharing Order on the debit member's pension.
- Notifying the credit member and their solicitor of the value of the credit pension created as a result of the Pension Sharing Order.
- Annual maintenance of the credit member's records including addition of any annual pensions increase where applicable.
- Calculation and payment of the credit pension, (and any lump sum due, if applicable) when the credit member becomes eligible for payment of benefits.
- Calculation and payment of the debit pension when the debit member retires.
- Sending P60's to the credit and debit members each tax year. Notifying HM Revenue & Customs (HMRC) of pension received by each party each year.
- Provision of on-line web services to retired credit members