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GUIDE TO

PENSIONS ON DIVORCE

NAVIGATING THROUGH WHAT MAY BE
UNCERTAIN TERRITORY DURING THIS
EMOTIONAL TIME

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PENSIONS ON DIVORCE

Navigating through what may be uncertain territory during this emotional time

If you're going through a divorce, dividing up any pensions you have will usually be one of the largest financial decisions you need to make. Agreeing financial arrangements in your divorce can seem daunting; there are so many misconceptions and myths as to what each party is entitled to that it gets confusing. The rules surrounding dissolution of a registered civil partnership are the same as those for divorce. In this guide, we use the term 'divorce' to mean the end of a registered civil partnership as well as the end of a marriage.

A pension is often the largest or second largest capital asset in a marriage or registered civil partnership. However, pensions can be complex and confusing at the best of times. Frequently, one person has a substantial pension and the other might have none or a very limited pension provision because, for example, they have given up their job to look after the children. A decision will need to be made as to whether that pension or pensions should be shared or if you should receive more of another asset, such as the home instead.

Universal valuation method for pensions

It is important that pensions are considered in the financial settlement to arrive at an accurate valuation. The universal valuation method for pensions is the Cash Equivalent (CE). A divorcing couple will inevitably be required to obtain CEs for each pension scheme of which they are or have been a member. The advantage of CEs is that they are easily obtainable and

provide an approximate 'snapshot' value of a pension fund.

The difficulty is that, in some circumstances, the CE can provide a wildly inaccurate valuation. The CE, which will be calculated by the trustees of each scheme in accordance with their own rules, is a calculation of the cash sum that the scheme will pay to discharge their obligation to pay income in retirement.

The value of the pension benefits to the individual member may be very different, and it may cost far more to purchase equivalent benefits on the open market. This can be important in a divorce context, where using only CEs can produce unfair outcomes.

What exactly can be divided depends on where in the UK you're divorcing

In England and Wales: the total value of the pensions you've each built up is taken into account. This doesn't only mean the pensions that you or your ex-partner built up while you were married or in a registered civil partnership, but all of your pensions (except the basic State Pension).

In Scotland: only the value of the pensions you've both built up during your marriage or registered civil partnership is taken into account. This means that anything built up after your 'date of separation' or before you married or became registered civil partners doesn't count.

There are a number of different approaches to tackle pension assets depending on the circumstances of the couple concerned.

Pension sharing

Pension sharing is the preferred route of most divorce courts. Thanks to the Welfare Reform and Pensions Act 1999 (WRPA), this allows one party the opportunity to secure a percentage of their spouse's pension rights and to put that percentage into their own name.

This is preferable in many cases because a person can feel more in control of their own future rather than being dependent on an ex-spouse. They can decide when they retire, and if the recipient dies before retirement, the pension investment can be paid to children or a new spouse.



It is important to note that when a pension is divided or shared, this does not mean that the recipient will receive a cash lump sum. A pension or part of a pension that is ordered from one party to another still remains a pension and has to be invested in a pension plan.

If the pension is in payment already to the older spouse, a deferred order means that the pension is shared with the younger spouse when they reach retirement age.

Offsetting

With this option, the pension holder keeps their pension fund intact, which is offset by giving the other spouse a greater share of other assets such as cash savings or equity in a shared home. Offsetting involves balancing the pension fund against other matrimonial assets, such as the house. For instance, the wife might cede the pension fund to her husband in return for a larger share or the profits from any property.

Anyone considering this route should think about it very carefully because of the different nature of capital assets and pensions. Pensions are not liquid assets and, as such, can only be turned into cash on

retirement. Their value on retirement could be much higher than at the time of assessment.

Earmarking

With earmarking, the court awards a percentage (it can be 100%) of the income the other party gets from the pension to the former spouse. This seems fairly straightforward and fair. However, it has numerous disadvantages – for instance, the income stops on the death of the pension holder or if the wife remarries.

Deferred lump sum order

This leaves the pension fund intact for the time being, on the understanding that both parties will receive an agreed lump sum at the time of the pension holder's retirement.

Pension attachment order

A portion of the lump sum and/or pension income will be paid to the other spouse when the pension holder retires, based on the fund's value at that time. While there are advantages and

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From 6 April 2016 onwards, neither the old basic State Pension nor the new State Pension can be shared. However, if you get divorced and the court issues a 'pension sharing order', you or your ex-partner may have to share any extra State Pension entitlement you've built up such as an additional State Pension or any protected payment.

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disadvantages for both parties in this option, it should be noted that this doesn't achieve the clean break many people desire, and also removes quite a lot of certainty, particularly for the party who must wait for their former spouse to decide to take their pension.

State pensions and divorce

Your basic State Pension can't be shared if you divorce. However, under the current rules, if one of you has paid enough National Insurance contributions, this could increase the State Pension the other gets, providing they don't remarry or enter a registered civil partnership before they reach their State Pension age.

If you have an additional State Pension, you may have to share this with your ex-partner. But if they later remarry or enter a registered civil partnership, they could lose this right.

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The process of considering pensions in a financial settlement should be as follows:

- Find out what pension provision there is, (private, company and state) and secure a valuation and forecast
- Decide with your lawyer and professional financial adviser if the amount of the pension and the facts of your case make further investigation justifiable (i.e. cost versus benefit). Further investigation can mean a drastic increase or reduction in the pension asset,

frequently seen with Final Salary Pensions and with Government and Civil Service pensions such as those that teachers and members of the Armed Forces have

- Decide how to adjust the settlement in the light of this knowledge

Time to consider your options

The most common question people ask is: 'Do I need to share my pension?' There is no simple answer to this question as it will depend on other factors. What other assets are available to be shared? What is the value of your pension? Does your spouse have savings, investments and pensions in their own name? Are you willing to 'offset' the value of other matrimonial assets to enable you to keep your pension?

There are also many different types of pensions, and their terms and value can differ too. You and your spouse may have a State Pension, company pension and perhaps a personal pension too. Your first step, therefore, is to quantify your pensions alongside your savings, shares, investments and any property of business interest you may have. Having quantified the pension assets, you can then consider fully your options in relation to your pension. ■

MAKING INFORMED DECISIONS THROUGH THIS DIFFICULT TIME

It's important to understand that pensions are an asset in the same way as your house or other savings. In many cases, the personal or workplace pensions of you and your partner will be taken into account when a divorce financial settlement is worked out. If you would like to discuss how we can help you make informed decisions through this difficult time, please contact us.



WHAT ARE MY PENSIONS ON DIVORCE OPTIONS?

Pensions on divorce can throw up a lot of complexity and uncertainty. Obtaining professional financial advice can be key in helping you review your pension situation objectively, as well as helping navigate through what may be uncertain territory during this emotional time.

For more information, or to discuss your situation, please contact us – we look forward to hearing from you.

This guide is for your general information and use only, and is not intended to address your particular requirements. The content should not be relied upon in its entirety and shall not be deemed to be, or constitute, advice. Although endeavours have been made to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No individual or company should act upon such information without receiving appropriate professional advice after a thorough examination of their particular situation. We cannot accept responsibility for any loss as a result of acts or omissions taken in respect of the content. Thresholds, percentage rates and tax legislation may change in subsequent Finance Acts. Levels and bases of, and reliefs from, taxation are subject to change and their value depends on the individual circumstances of the investor. The value of your investments can go down as well as up and you may get back less than you invested. All figures relate to the 2020/21 tax year, unless otherwise stated.