

# **The Local Government Pension Scheme**

**Divorce, dissolution of civil partnership,  
annulment, or judicial separation**

**How your pension rights could be affected**







## BACKGROUND

Once upon a time, when deciding how a divorcing couple's finances should be divided, the courts often disregarded the value of pension rights.

Regulations made under the Pensions Act 1995 changed this. In respect of any petition for divorce, annulment, or judicial separation filed on or after 1 July 1996, the courts had to take pension rights into account. Further regulations made under the Welfare Reform and Pensions Act 1999 extended the court's powers in respect of petitions for divorce or annulment filed on or after 1 December 2000. From 5 December 2005, the Civil Partnership Act 2004 extended the provisions to apply in the case of dissolution of a civil partnership.

The court looks for fair division of material and financial possessions. Because pension rights are a valuable asset, sometimes the court will decide that a fair apportionment cannot be achieved unless part of the pension rights of one party are paid for the benefit of the other.

From 1 July 1996 this would be achieved by the court issuing a pension attachment order (often referred to as an "earmarking" order) to the pension scheme manager. In the case of the Local Government Pension Scheme and the Staffordshire County Pension Fund, the pension scheme manager is Staffordshire County Council. Consequently, if an earmarking order is made in respect of a member of the Staffordshire County Pension Fund it will instruct the County Council to ensure that, at the time that benefits become due, part of the Scheme member's pension, or lump sum, or both, should be paid to his/her former spouse or civil partner. The order could also require that the former spouse or civil partner should receive all or part of any lump sum death grant on the death of the member.

From 1 December 2000 the court could issue, instead, a "pension sharing" order. This new type of order was introduced because it was felt that, although earmarking could offer a more fair division of assets than previously available, there could still be problems. For example, in the case of earmarking –

- the former spouse or civil partner will always be financially linked to, and dependent on, the pension scheme member – it does not offer a "clean-break" solution;
- the former spouse or civil partner would not receive any financial benefit from the order if the scheme member died before the retirement pension or lump sum came into payment (unless a death grant had been earmarked);
- any entitlement to earmarked pension would cease (so would any entitlement to an earmarked lump sum if the order so instructs) if the former spouse or civil partner entered a subsequent marriage or civil partnership.

Consequently, the government decided a clean-break solution was needed and the concept of pension sharing was introduced. It differs from earmarking inasmuch as, at the time the pension sharing order is made, a portion of the accrued pension rights are transferred from the Scheme member and then are used to provide a pension credit for his/her former spouse or civil partner. This means that a subsequent marriage or civil partnership of the former spouse or civil partner would not affect the court's award to him/her.

So from 1 December 2000 there are two types of arrangement which the courts can use to adjust pension rights. These notes highlight a number of key points which you may find helpful. However, the notes do not pretend to set out all the legal issues. You should always seek professional legal advice in these matters.

## **BEFORE DIVORCE OR DISSOLUTION OF CIVIL PARTNERSHIP, WHAT PENSION ENTITLEMENT DO I HAVE?**

If you are a pensioner member of the Local Government Pension Scheme ("LGPS"), or a deferred pension member (i.e. someone who has left the Scheme before becoming entitled to receive payment of benefits) you will have been notified of your pension entitlement by the Pension Services Section of Staffordshire County Council.

If you are an active member of the LGPS, i.e. someone still in employment and still contributing to the Scheme, you are building up entitlement to –

- an annual pension,
- an automatic lump sum retirement grant in respect of any period of membership before 1 April 2008, and an optional lump sum retirement grant in respect of any period of membership on or after this date,

and you have cover, in the event of your death, for –

- a spouse's or civil partner's pension,
- children's pension
- a lump sum death grant.

A Guide to the Local Government Pension Scheme explains how these benefits work. Pension Services can send you a copy if one has not been issued with these notes (contact details are on the back cover).

All or part of the value of these benefits (with the exception of the children's pension cover) could become payable to a former spouse or civil partner if the court decides to make an earmarking or pension sharing order – see next page.

## **GENERAL POINTS ABOUT PENSION SHARING AND EARMARKING ORDERS**

### **In what circumstances can a pension sharing or earmarking order be made?**

An earmarking order can be considered by the court in a case of divorce, dissolution of civil partnership, annulment, or judicial separation. A pension sharing order can be considered in a case of divorce, dissolution or annulment. To make these notes read more simply, the expressions "divorce" and "dissolution" are used to cover all circumstances.

### **Upon divorce / dissolution, will my former spouse or civil partner always be awarded part / all of my pension?**

Not necessarily. The court may decide that a fair apportionment of assets can be achieved in some other way. And if the court does decide that pension rights need to be apportioned, it may not be your rights that they look to. If your former spouse or civil partner has substantial pension rights in his/her own right, it could be that they are made subject to a pension sharing or earmarking order.

It is assumed in the writing of these notes that it will be your pension rights that the court will consider for sharing or earmarking. If, instead, the pension rights or your former spouse or civil partner are subject to an order, some of the general principles outlined here would apply but there could be differences in the way in which the order would be worded. The County Council would not be involved in this (unless your former spouse or civil partner is also a member of the Staffordshire County Pension Fund). If you have any concerns you should discuss them with your legal adviser.

### **Why could there be differences in the way in which orders are worded?**

Pension schemes are constructed in different ways. Many cases handled by solicitors and the courts will probably relate to membership of private sector pension schemes. The rules of those schemes are set out in Trust Deeds and the scheme trustees usually have an element of discretion in the application of pension scheme rules. Your pension scheme is different. It is a statutory, public service scheme; the rules are set out in legislation made under an Act of Parliament. The County Council as Scheme manager have very limited powers of discretion. The rules of the LGPS must be understood correctly before an order is made.

### **Can I get help from the County Council?**

The County Council must provide all the information required under divorce legislation. Pension Services will always be pleased to explain to you how the LGPS works and the outcome of any proposed course of action but they cannot advise or represent either party to the divorce/dissolution proceedings. The County Council has a right to object to a court order and possibly attend before the court but this would only be in circumstances where the Council, as Scheme manager, perceive a problem with complying with the terms of any order in the context of the LGPS. If you need help with negotiation and representation you should seek qualified legal advice.

## HOW IS THE VALUE OF PENSION RIGHTS ASSESSED?

It is reasonably simple to work out entitlement to an annual retirement pension at any given date. But for the value to be compared with the money value of other assets, e.g. the value of your house or your car, your pension rights need to be expressed as a capital sum, not as a future annual amount to be paid for an unknown period. Consequently, divorce/dissolution legislation requires that the method of valuation should be on Cash Equivalent Transfer Value ("CETV") principles. These are the principles which are used to work out the sum of money which would be offered to another pension arrangement if you left the LGPS at the valuation date and asked for your pension rights to be transferred.

Consequently if required to provide a valuation of your pension rights, the County Council will prepare a CETV.

For a retired LGPS member where the pension is already in payment this will be in accordance with the guidance of the Government Actuary.

For a deferred member or an active member the starting point for the valuation is to work out the entitlement to deferred benefits at the date the request is received. Deferred benefits are the "early leaver" retirement benefits to which you would be entitled if you left the LGPS before being eligible for any other form of benefit (e.g. an ill-health or age retirement benefit). They are called "deferred" benefits because payment would normally be deferred until the earliest time at which you would have been eligible to receive them on age grounds.

When the value of deferred benefits has been worked out, it is multiplied by factors provided by the Government Actuary. These factors take into account financial and demographic considerations such as your age, market conditions, inflation and mortality rates (life expectancy). The resulting figure is the CETV. It can be a very high figure, possibly tens of thousands of pounds. Remember that it represents the capital value of all your entitlement to benefits under the LGPS, accrued to date, which would be paid for the rest of your life after retirement.

## WHAT INFORMATION MUST BE PROVIDED FOR DIVORCE PROCEEDINGS?

Normally the County Council will be asked to provide –

- (a) a valuation of pension rights
- (b) certain basic information about the Pension Scheme.

If the request is from you, as the Scheme member, both (a) and (b) will be provided. The court can also order the County Council to provide (a) or (b) or both, in the absence of a request from yourself. Your spouse or civil partner, too, is entitled to request (b) but not (a). Solicitors acting for you or your spouse/civil partner can request the information but the appropriate authorisation from you or your spouse/civil partner will be required by the County Council before the requested details will be supplied.

The court may require both you and your spouse or civil partner to complete a “Form E: Financial Statement”. When you have each completed a copy of Form E it will contain details of all the assets and liabilities which the court will need to take into account when deciding an equitable apportionment of them on divorce. One page of Form E is dedicated to the value of pension rights. If you ask the County Council for a valuation, they will provide the information formatted to follow the questions as asked in Form E. The details will also include explanatory notes, i.e. information about the LGPS, so that the answers to the questions can be put in their proper context.

If the basic information referred to in (b) above is requested, the court may require you to get your pension scheme managers to complete and return a Form P “Pension Inquiry Form”. The County Council will supply all the details required under pensions legislation – this includes the principles used for the assessment of the CETV and, if a pension sharing order were to be made, the pension rights which could potentially be shared and the benefits which would be available to a former spouse or civil partner.

The information supplied will also include a Schedule of Charges.

## **WHAT CHARGES WOULD BE MADE?**

Under divorce/dissolution legislation the County Council can charge for the provision of the valuation of pension rights and/or the basic information, provided this does not have to be supplied free of charge under disclosure regulations. (Under disclosure regulations the valuation/information must normally be supplied free of charge if it has not already been provided within the previous 12 months.)

The County Council can also impose a charge for costs reasonably incurred in the process of pension sharing or in the application of an earmarking order.

The County Council will review their policy on charging from time to time but currently they will not charge for the initial valuation and provision of information (but would charge if it is requested again within the following 12 months). They do charge for the work involved in pension sharing and earmarking.

If not supplied with these notes, ask Pension Services (contact details are on the back cover) for a copy of the Schedule of Charges.

## HOW DOES AN EARMARKING ORDER WORK?

If the court decide to issue an earmarking order, the order may require the County Council –

- to pay part or all of any death grant to your former spouse or civil partner rather than to your estate, nominee or any other person the County Council may otherwise have chosen as an appropriate beneficiary
- to pay part or all of any lump sum retirement grant to your former spouse or civil partner
- to pay periodical payments from your pension to your former spouse or civil partner.

### **Death grant**

The LGPS Regulations state that if a death grant is payable, the County Council can make the payments to or for a person nominated by the member, his/her personal representatives, or any person they decide is or has been a relative or dependant. In other words, the County Council have wide-ranging discretion as to the recipient of the death grant. Although members have a right to nominate the person(s) they would wish to be recipients, the County Council does not have to comply with the nomination. Normally they will, but, if there is any doubt as to whether this is the most appropriate recipient, they will make the payment to your personal representatives as named in Grant of Probate or Letters of Administration. (If you would like more information about nomination ask Pension Services for the detailed notes.)

The court may decide that, after the divorce/dissolution, any death grant should be paid to your former spouse or civil partner. To achieve this they will have to make an order under Section 25C(2) of the Matrimonial Causes Act 1973 or under paragraph 26 of Schedule 5 to the Civil Partnership Act 2004, requiring the County Council, as pension manager, to pay all or part of the death grant to your former spouse or civil partner. There are three parts to Section 25C(2) to cater for different pension scheme rules. For example, in some schemes a nomination overrides any discretion of the pension manager, in some the rules state that the death grant must be paid to a specific person. Because, in the LGPS, the County Council have overriding discretion, if the court order is to be achievable within the context of the LGPS Regulations it must refer to Section 25C(2)(a) of the Matrimonial Causes Act or paragraph 26(3) of Schedule 5 to the Civil Partnership Act 2004. Then the County Council must make the death grant payment as directed by the court. The earmarking order will override the discretionary powers of the County Council.

### **Lump sum payment**

The court may decide that your former spouse or civil partner should receive all or part of a lump sum retirement grant. A retirement grant is automatically payable in respect of any membership you have before 1 April 2008. The "automatic" sum is equivalent to three times the pension accrued before that date and you have the option to give up ("commute") part of that pension to provide a greater lump sum. Any membership on or after 1 April 2008 attracts a pension only but, again, you have the option to commute part of that pension to a lump sum. If the court decide to order that an amount of retirement grant is to be paid to your former spouse or civil partner the order should be made under Section 25B(4) of the Matrimonial Causes Act 1973 or paragraph 25(2) of Schedule 5 to the Civil Partnership Act 2004. If, however, you would not receive any automatic retirement grant or less than the court wish to award to your former spouse or civil partner, the court will also have to include in the order a requirement that you should commute part of your pension to provide a lump sum (under Section 25B(7) of the Matrimonial Causes Act 1973 or paragraph 25(5) of Schedule 5 to the Civil Partnership Act 2004).

## **Periodical payments**

When you retire your annual pension will be paid to you in monthly instalments. The court may decide that all or part of the monthly instalments should be paid to your former spouse or civil partner. To achieve this, the court must make an earmarking order which gives a direction under Section 25B(4) of the Matrimonial Causes Act 1973 or paragraph 25(2) of Schedule 5 to the Civil Partnership Act 2004. The order would override the obligation which the County Council has under the LGPS to pay the full monthly instalments of pension to you.

For example, if on retirement you become entitled to £1,000 of pension a month, the order may instruct that, say, 50%, i.e. £500 a month should not be paid to you but instead should be paid directly to your former spouse or civil partner.

If this type of order is to be made, you should be aware that HM Revenue and Customs require the periodic payment to be deducted from your net pay. You pay tax on the full amount of your monthly instalment of pension, and your former spouse or civil partner would receive the deduction made under the earmarking order tax-free. For example, suppose you receive £1,000 gross pension each month and pay £200 in tax. Your net pay would be £800 a month. If the order instructs payment of 50% of your gross pension to your ex-spouse, the £500 would be deducted from the net pay of £800. Your ex-spouse would receive £500 each month and you would receive £300. Bear this in mind if periodic payments are discussed.

## **What about a surviving spouse's/civil partner's pension?**

These are payable only to a legal spouse or civil partner. Once the divorce/dissolution has been finalised your former spouse or civil partner would not have entitlement, on your death, to a surviving spouse's or civil partner's pension under the LGPS Regulations.

If you enter a subsequent marriage or civil partnership, your new spouse or civil partner would have cover for dependant's benefits in the event of your death. If you do not have a spouse or civil partner but have a cohabiting partner and have been a member of the LGPS after 31 March 2008, subject to certain conditions you have the right to nominate that partner as a potential recipient of a dependant's pension. Contact Pension Services if you would like more information about this option.

## **What happens to the earmarking order if I enter a subsequent marriage or civil partnership?**

The terms of the earmarking order remain in force if you enter a subsequent marriage or civil partnership. If that new relationship were to fail, another claim could be made against your pension rights by your subsequent spouse or civil partner.

## **What happens if my former spouse or civil partner enters a subsequent marriage or civil partnership?**

Your former spouse or civil partner will be obliged to tell the County Council if he/she enters a subsequent marriage or civil partnership.

Any periodic payment order would cease. However an order made in respect of a lump sum payment (whether in respect of the death grant or retirement grant) would not cease unless a provision has been included in the order providing for it to lapse in this event. You may wish to discuss this with your legal adviser.

### **What happens if the County Council are unable to trace my former spouse or civil partner?**

Your former spouse or civil partner will be obliged to keep the County Council informed of any change of name, address, and payment details. If he or she does not keep the County Council informed and, as a result, the Council cannot make the ordered payments to him/her, the Council will make the payments to you instead. If your former spouse or civil partner subsequently re-appears and claims those payments, the claim would have to be made against you, rather than against the County Council.

### **What happens if my former spouse or civil partner dies?**

If your former spouse or civil partner dies, the County Council cannot comply with the terms of the earmarking order and the payments would be made to you instead.

### **What happens if I transfer my pension rights to another Local Government Pension Fund or to some other pension scheme?**

If you transfer to another employment covered by the LGPS your pension rights would remain in the LGPS but you may participate in some other Local Government Pension Fund. If this is the case, the administering authority for your new local Government Pension Fund would become your "scheme manager". Consequently Staffordshire County Council would send your new administering authority a copy of the earmarking order and relevant papers, and the name and address of your former spouse or civil partner. The new authority would have responsibility for complying with the order.

If you leave employment covered by the LGPS or opt out of the LGPS and transfer your pension rights to some other pension arrangement, the same would apply – Staffordshire County Council would send your new pension scheme trustees or managers a copy of the court order and relevant papers, and the name and address of your former spouse or civil partner.

The County Council must also tell your former spouse or civil partner about the transfer and the date on which it took place, the name and address of the trustees or managers of your new pension scheme, and must explain that the order is to have effect as if it had been made in respect of the new scheme.

### **What if there is a reduction in the level of my benefits?**

If an earmarking order has been made, the County Council must inform your former spouse or civil partner if an event occurs which is likely to cause a significant reduction in benefits payable. In the case of the LGPS this is most likely to happen if your benefit expectation is reduced, e.g. in the event of a reduction in pay (although there may be a means of protecting benefits in these circumstances) or if benefits are reduced or withdrawn after retirement (e.g. on re-employment).

## HOW DOES A PENSION SHARING ORDER WORK?

Unlike an earmarking order which does not come into effect until your benefits are payable by the LGPS, a pension sharing order has immediate effect. The order would direct the County Council, as pension scheme manager, to –

- reduce your benefits by a pension “debit”, expressed as a percentage of those benefits at the date the order is made
- give your former spouse or civil partner a pension “credit” equal in value to the debit.

### How is the pension debit assessed?

In very simple terms the debit assessment would be as shown in the following example.

Suppose that all your period of membership is after 31 March 2008; to make the example simpler it is assumed that your benefits are accruing as a pension only, based on 1/60 of final pay for each year of membership. The court issues a pension sharing order instructing that your former spouse or civil partner is to receive 40% of your benefit entitlement. At the date the order is made you have 5 years’ membership and your final pay is £24,000. Your deferred benefits would be assessed as –

Pension:  $5 \times 1/60 \times £24,000 = £2,000$  a year

Assume that the CETV based on this deferred pension would be £28,000.

The pension credit of your former spouse or civil partner would be 40% of this, i.e. £11,200. This would be used to provide him/her with benefits.

As a percentage of your deferred pension 40% would be £800 a year. This, revalued in line with Pensions Increase Acts and Orders, will be the pension debit applied to your benefits.

Suppose you retire at 65 after 30 years’ membership and with final pay of £48,000.

Your full pension entitlement before the pension debit is applied would be assessed as –

Pension:  $30 \times 1/60 \times £48,000 = £24,000$  a year

The value of the pension debit at the time the order was made was £800 a year. Assume that at the time that you retire, Pensions Increase would have raised this figure to £1,200 a year. Your entitlement to retirement benefits will be –

Pension:  $£24,000 - £1,200 = £22,800$  a year

(Under the LGPS rules you could convert part of the £22,800 pension to provide yourself with a lump sum retirement grant if you wish.)

A person with a deferred pension not yet in payment will have an assessment made on similar principles to those shown above. The principles of assessment for a person already drawing pension will be in line with Government Actuary guidance to achieve something similar.

Please note that this is a much simplified explanation; you would be given precise details of how your pension rights would be affected if and when an order is made.

## **What happens to the pension credit?**

Some pension schemes require the former spouse or civil partner to transfer the pension credit into an alternative pension arrangement, some offer membership of the pension scheme from which the pension credit is derived.

In the case of the LGPS the former spouse or civil partner will have a choice. If he/she prefers, and gives appropriate details, the pension credit CETV can be transferred to another qualifying arrangement. This could be –

- an occupational pension scheme (other than the Local Government Pension Scheme) provided it will accept a pension credit
- a personal pension scheme
- an appropriate retirement annuity contract
- an appropriate policy of insurance
- an appropriate overseas arrangement.

Alternatively, the former spouse or civil partner could elect to keep his/her pension credit in the LGPS and become a special category of member – a “pension credit member”.

## **What rights and benefits does a pension credit member have?**

A pension credit member has entitlement to an annual pension. Provided the Scheme member has not already received a retirement grant at the date the pension sharing order takes effect the pension credit member would also be entitled to a lump sum as part of the benefits package.

The pension (and any lump sum to the point at which it becomes payable) will be increased in line with Pensions Increase Acts and Orders.

The pension (and lump sum if appropriate) will normally be paid to a pension credit member on reaching age 65. If the pension credit member has already reached age 65 the benefits would be put into payment immediately.

The benefits can be put into payment before age 65 (the pension being commuted to a lump sum) if the pension credit member is suffering from serious ill-health where life expectancy is less than one year. Or a pension credit member can elect to receive benefits at or after age 60 and before age 65, but the benefits would be reduced to reflect early payment.

If the pension credit is very small (as defined by HM Revenue and Customs) it can be commuted into a lump sum payment at State pension age.

If a pension credit member dies before the benefits have become payable, the lump sum element of the benefits will be paid as a lump sum death grant to the personal representatives of the pension credit member. If a pension credit member dies within five years of the benefits coming into payment, a lump sum death grant equal to the balance of five years' worth of pension will be paid to whomsoever the County Council decides, at its sole discretion, should receive the payment.

Pension credit benefits cannot be combined with any other benefits payable under the LGPS Regulations.

### **What effect does a pension sharing order have on the Scheme member's cover for benefits for children and a surviving spouse or civil partner?**

Children's benefits are "attached" in full to the Scheme member's pension rights. If it becomes necessary to assess a child's pension no account is taken of the pension sharing order.

In the case of a pension for a surviving spouse or civil partner, however, account must be taken of the order as applied to the member's benefits and the level of award reduced accordingly.

### **What happens on remarriage?**

Your pension and that of your former spouse or civil partner following the implementation of a pension sharing order would not be detrimentally affected should either of you enter into a subsequent marriage or civil partnership. However, if that subsequent marriage or civil partnership should break down, your pension rights could again be subject to a pension sharing order as could those of your former spouse or civil partner.

### **Can I rebuild my pension rights?**

There are no special provisions for this but you could use the standard method of paying additional contributions to "purchase" an additional amount of pension. This would, however, be subject to limits applied by the LGPS and it may not be possible to make up the full portion of pension rights transferred to your former spouse or civil partner.

There are, of course, other means of saving for retirement through investment. To explore these, you should seek the guidance of a suitably qualified and registered financial adviser.



**If a copy of this information is needed in large print, Braille, another language or on disc or cassette, please contact:**

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