



MES PENSIONS

Guide to Pension
Sharing on Divorce

Guide to Pension Sharing on Divorce



Divorce and Pension Sharing is one of the most difficult subjects to talk about and there are many things to consider. Our guide focuses on the pension administration aspects of Pension Sharing in relation to UK divorce/pension sharing law and the information we will need to implement pension sharing on divorce.

MES Financial Services Limited (MESFSL) is not an expert on the law or the court procedures of the countries of the United Kingdom and we will rely on your solicitor, official documents and the guidance contained in HM Revenue and Customs (HMRC) Pension Tax Manual when administering a pension share.

Law

UK pension providers neither recognise and nor are they authorised to implement Pension Sharing Orders made by foreign courts. Only Pension Sharing Orders, or equivalent made by the courts of England & Wales or Northern Ireland or equivalent arrangements under Scottish Law may be implemented.

Any other payment will result in an unauthorised payment charge under the UK Pension Tax Law. These are punitive tax charges levied on the SIPP member and scheme administrator and so MESFSL controls implementation within the rules governing the administration process and our own internal processes are designed to eliminate such risk.

The law on divorce is different across the UK so taking legal advice in the early stage of separation is important. You can also seek guidance from Money Helper at <https://www.moneyhelper.org.uk/en> who can help you understand the rules on pension sharing.

You and your ex-spouse/civil partner will each need to tell the court the value of your pensions. You don't have the automatic right to know the value of your ex-spouses/civil partners pension, and vice versa, but you can decide to tell each other, and we can give you the information you need in respect of your MESFSL pension.

We will not provide any third party with details of your pension, including your solicitor, until you have provided us with a letter of authority authorising us to release information, unless we are ordered to do so by the court.

If you live in England & Wales or Northern Ireland, solicitors will usually approach all your pension providers to establish the current transfer value of your pensions so that the court can consider these. If you live in Scotland, the process may take a different form but will still involve a disclosure as to the value of your pensions.

Types of pension sharing

There are four ways in which pensions can be taken into account in any divorce settlement (three in Scotland).

1. Pension Offsetting

This is the simplest method of the four. Here the total value of all your and your ex-spouses/civil partners' assets will be taken into account. This includes both pension and non-pension assets such as property, savings and investments, as well as income being received. This establishes the total value of all assets. Then, the value of your pension can be offset against other matrimonial assets. You'll retain all your pension rights, whilst your ex-spouse/civil partner 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 income 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 must wait until you take your benefit (or you die) to receive theirs.

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The benefit 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 death benefits;
- A percentage or amount of any retirement lump sum at retirement.

It is important to note that if your pension has an Earmarking or Attachment Order attached, 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/civil partner will cease at the point you die. If your ex-spouse/civil partner dies first or remarries the earmarked payments will usually cease.

3. Pension Sharing Order

Here the pension is split at the point of divorce with each party getting an agreed share. This involves benefits transferring from your pension scheme to a completely different pension pot in your ex-spouses/civil partner's name. Pension Sharing offers a one-off transfer 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 Pension Sharing Order.

4. Individual Agreement (not applicable in Scotland)

Individual agreements, for example a 'pre-nuptial agreement' can present complexities. Both parties should seek legal advice before entering into one or where one is in place at the point divorce proceedings commence.

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

Pension Sharing Orders

Pension Sharing Orders divide the rights under a pension so that each spouse or civil partner has a share of the pension. A Pension Sharing Order made in England & Wales or Northern Ireland must be expressed as a percentage.

The party giving up/sharing their pension will have a 'debit' against their pension(s) and the party receiving the pension share will receive a 'credit' to their pension scheme. Once the pension share reaches the implementation stage, the party receiving the credit has the option of setting up their own scheme with MESFSL or they can choose to transfer the credit to a pension scheme with a UK pension provider or a Qualifying Recognised Overseas Pension Scheme (QROPS) of their choice.

Fees to provide information and to implement the Pension Sharing Order will apply.

For complex cases where our standard allowance of time is exceeded, we will agree fees with you. The Pension Sharing Order may make provision for how pension administration costs are paid, and this may include sharing costs, however, these are usually limited to the scheme administrators' fees. Solicitor's fees are personal costs and cannot be paid from the pension scheme.

Timescales and implementation

The process of providing information to solicitors and the time it takes will be in line with our usual service standards.

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A Pension Sharing Order takes effect from the later of 7 days after the period of appeal following the making of a financial order, or the date of decree absolute. The period of appeal is usually 21 days, so the earliest a Pension Sharing Order can take effect is 28 days after the order has been made by the court.

As the scheme administrator, we must implement the Pension Sharing Order within 4 months of the date the order takes effect or, if later, 4 months from the date we receive all the requirements we will need to receive. If there are any issues preventing a straightforward implementation, we will notify your solicitor who can decide if the court needs to be advised.

Pension schemes are not bound by the transfer value at the date of the order. This is recalculated at the time of the implementation.

Other points to note

- Only court orders drawn up in UK courts can be applied. The scheme administrator cannot pay any part of your pension directly to your ex-spouse/civil partner, only to a pension scheme and only with a court order.
- Annual benefit statements and future benefit quotations will take account of the 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).
- Court orders can take a considerable amount of time to finalise. The CETV will need to be recalculated when all the items required to implement the court order are received. This means that the amount of pension share you receive may be less than the valuation used by the courts to decide the percentage pension share.
- Pension Sharing Orders in England & Wales and Northern Ireland will be expressed as a percentage and not a fixed monetary amount.
- If crystallised funds are transferred under a Pension Sharing Order, this is called a Disqualifying Pension Credit. No additional Pension Commencement Lump Sums or uncrystallised funds pension lump sum can be paid from a Disqualifying Pension Credit.
- If an arrangement that is entirely made up of a Disqualifying Pension Credit is put into flexi-access drawdown and income is taken, it doesn't trigger the money purchase annual allowance.
- If the Pension Sharing Order does not state how the fees and charges are to be apportioned between divorcing parties, then the full charges will be attributable to the member.
- A divorce represents a large change in personal circumstances therefore you should not forget to complete a revised Expression of Wish form.

Our requirements

England & Wales and Northern Ireland

As soon as you have received the Decree Absolute from the court, we will need you to send the following documents to us so that we can implement the Pension Sharing Order:

- The original consent order stamped by the court;
- The original pension sharing annex (Form P1) stamped by the court
- A copy of the decree absolute;

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As soon as you have received the Decree Absolute from the court, we will need you to send the following documents to us so that we can implement the Pension Sharing Order:

- The original consent order stamped by the court;
- The original pension sharing annex (Form PI) stamped by the court
- A copy of the decree absolute;
- A copy of the decree nisi;
- Payment of our charges
- If the credit is to be paid to an external provider, we will need the details of the pension provider that is to receive the pension credit. We will also need to work through our own internal due diligence process before the payment can be made.
- If the credit is to be applied to a new SIPP with MESFSL, additional fees will apply to establish the new SIPP.

Scotland

We understand that in Scotland, unlike England & Wales and Northern Ireland, parties can enter into a qualifying arrangement in accordance with Section 28(1)(f) of the Welfare Reform and Pensions Act 1999. Once the agreement is entered into and registered in the Books of Council and Session, we understand it becomes the equivalent of a court order. This must be undertaken by solicitors acting for both parties and we will require the following documentation:

- A certified copy of the qualifying agreement;
- A certified copy of the extract decree of divorce or equivalent;
- Written confirmation that the agreement is entered into and registered in the Books of Council and Session along with a certified copy of evidence of this;
- The comments above regarding due diligence and fees also apply.

We understand that the agreement needs to take the form of an Annex to be attached to a pension sharing agreement in accordance with Section 28(1)(f) of the 1999 Act and that The Pensions on Divorce etc (Pension Sharing) (Scotland) Regulations 2000 set out the form it must take referred to in that section.

We will need to see either original documents, or documents that have been certified as true copies by a solicitor.



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