

LOCAL GOVERNMENT PENSIONS COMMITTEE

Secretary, Charles Nolda

**PENSION SHARING ON  
DIVORCE**

**A GUIDE FOR AUTHORITIES  
ADMINISTERING THE LOCAL  
GOVERNMENT PENSION  
SCHEME**

This guide has been prepared based on the Secretariat's understanding of the information presently available including the Statutory Instruments listed in the guide, the Welfare Reform and Pensions Act 1999 and the explanatory notes issued therewith, and the Pension Schemes Office Update Nos. 62 and 84. The guide should not be treated as a complete and authoritative statement of the law.

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## GLOSSARY

The under-mentioned terms are shown in parentheses in this guide and have the following meanings:

"**cash equivalent transfer value**" or "**CETV**" means the cash equivalent *transfer* value in the case of an active or deferred member, but means the "**cash equivalent value**" or "**CEV**" in respect of a pensioner member.

"**contracted-out rights**" are, by virtue of section 68A(5) of the Pension Schemes Act 1993, paragraph 7(6) of Schedule 5 to the Welfare Reform and Pensions Act 1999, and regulation 13 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000, those rights under or derived from an occupational pension scheme contracted-out by virtue of section 9(2) or (3) of the Pension Schemes Act 1993 or an appropriate personal pension scheme as specified in regulation 2 of the Pension Sharing (Safeguarded Rights) Regulations 2000 i.e.

- a Guaranteed Minimum Pension;
- protected rights;
- section 9(2B) rights;
- any of the above rights which derive from a transfer payment in respect of those rights.

"**day**" means any day in the week, including weekends, but excluding bank holidays, Christmas Day and Good Friday.

"**divorce**" includes nullity of marriage but does not include judicial separation unless indicated otherwise.

"**earmarking order**" means an order for ancillary relief being:

- an Order under section 23 of the Matrimonial Causes Act 1973 (financial provision orders in connection with divorce, etc.), so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions);
- an Order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (powers in relation to pensions lump sums when making a capital sum order);  
or
- an Order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978, so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in the first bullet point above

Note: since 1 December 2000 Earmarking Orders have been known as Attachment Orders. However, to distinguish them from other types of Attachment Orders, they will continue to be referred to as Earmarking Orders in this guide.

"**earnings cap**" means the figure defined in section £590C of the Income and Corporation Taxes Act 1988 as subsequently updated by Treasury orders. For 2002/2003 the "earnings cap" was £97,200.

"**ex-spouse**" means the former husband or wife of the scheme member in the case of divorce or nullity of marriage.

"**higher earners**" are those whose taxable earnings during membership of the scheme in the year prior to that in which the marriage is dissolved or annulled were greater than 25% of the "earnings cap" for the year in which the marriage is dissolved or annulled. A controlling director of a company which is his / her employer is also deemed to be a "higher earner". All other employees are termed as "moderate earners" even if their pay subsequently increases to more than 25% of the "earnings cap".

"**implementation period**" means a period of 4 months commencing with the later of:

- the date the Court Order or agreement comes into effect, or
- the day the administering authority has all the information necessary to implement the "Pension Sharing Order" e.g. the Order itself, the Order, decree or declarator responsible for the "divorce" to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc

(Note: an extension to the "implementation period" can be granted by the "Regulatory Authority");

"**matrimonial documents**" are the relevant "Pension Sharing Order" and the Order, decree or declarator responsible for the "divorce" to which it relates.

"**moderate earners**" are those who are not "higher earners" (see definition above).

"**non-shareable rights**" means the following local government pension benefits:

- widow's and widower's pensions which are in payment;
- dependant's pensions which are in payment;
- injury allowances;
- bare EPB's i.e. where a member who was in non-participating (contracted-out) employment at any time between 1961 and 1975 took a refund of contributions but no PIL was paid and the only benefit left in the LGPS to be paid is a bare EPB;
- compensatory added years (although there is some doubt as to whether CAY should, in fact, be a "shareable right").

Please see annex 12 for an explanation.

It should be noted that the basic state pension is not shareable.

"**normal benefit age**" means age 65.

**"Pension Sharing Order or provision"** has the meaning prescribed by section 28 of the Welfare Reform and Pensions Act 1999.

**"qualifying agreement"** means an agreement which the member and the member's spouse have entered into in order to determine the financial settlement on "divorce" and in respect of which the scheme member has notified the administering authority, prior to making the agreement, that he / she intends to share pension rights with the spouse.

**"Regulatory Authority"** means the Occupational Pensions Regulatory Authority.

**"safeguarded rights"** has the meaning given by section 68A of the Pension Schemes Act 1993 (introduced by section 36 of the Welfare Reform and Pensions Act 1999) i.e. the rights in a scheme which are attributable (directly or indirectly) to a Pension Credit which was derived from (a member's) rights which included "contracted-out rights" or "safeguarded rights". "Contracted-out rights" are rights under or derived from an occupational pension scheme or from a personal pension scheme which are

- protected rights, or
- section 9(2B) rights, or
- a Guaranteed Minimum Pension, or
- any of the above rights which themselves derive from any of those rights which have been the subject of a transfer payment.

**"shareable rights"** means local government pension benefits (including benefits derived under regulations 52, 53, 58, 59 and from membership derived in accordance with regulation 66(8) - regulations 51, 52, 57, 58 and 65(5) in Scotland) other than "non-shareable" rights (see above). It should be noted that, on the wider (i.e. non LGPS) front, "shareable rights" will include FSAVC's, SERPS, personal pensions, section 32 buy-out contracts, retirement annuity contracts and Stakeholder pensions.

**"the 1995 Regulations"** means the Local Government Pension Scheme Regulations 1995.

**"valuation date"** means

- under the Local Government Pension Scheme Regulations 1997, the later of
  - i) the date the Court Order or agreement comes into effect, or
  - ii) the first day of the "implementation period". That is, the first day that the administering authority has all the information necessary to implement the "Pension Sharing Order" e.g. the Order itself, the Order, decree or declarator responsible for the "divorce" to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc

- under the Local Government Pension Scheme (Scotland) Regulations 1998, any day chosen by the administering authority within the period of 4 months commencing with the later of
  - i) the date the Court Order or agreement comes into effect, or
  - ii) the day the authority has all the information necessary to implement the "Pension Sharing Order" e.g. the Order itself, the Order, decree or declarator responsible for the "divorce" to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc

Note: In the case of "divorce" or nullity proceedings lodged in Scotland, an Order or agreement will be treated as ineffective if the administering authority does not also receive copies of the "Pension Sharing Order" or agreement and the relevant decree of "divorce" or declarator within 2 months of the date of the extract of the decree or declarator (although the Court can extend this period).

Other terminology can be found in the Regulations listed in annex 1.

## BACKGROUND

1. Since the 1970s, courts have had to take account of the value of pension rights in divorce and nullity of marriage settlements so that these could be offset against other assets in financial settlements.
2. Additions in the Pensions Act 1995 provided for courts
  - in England and Wales to require occupational pension schemes to pay maintenance, via a Court Order, from a member's pension to their "ex-spouse", and
  - throughout the UK to order part or all of a lump sum payable on the death or retirement of a member to be directed to the "ex-spouse" (but see annex 2 for further details).
3. This is known as earmarking and can be used as an alternative to offsetting the value of pension rights against other assets in the divorce settlement. A summary of the rules on earmarking is included at annex 2.
4. Earmarking has limitations and has not been widely used. Title to the pension rights remains with the member in whose name the rights accrued and, in consequence, the "ex-spouse" has to wait for the member to retire before becoming entitled to receive the earmarked pension. The "ex-spouse" is also at risk of
  - losing the intended retirement income if the member in whose name the benefits accrued dies first (although any earmarked death grant will be payable – but see annex 2 for further details), or
  - having the intended retirement income delayed if the member delays retirement
  - losing the intended retirement income if the "ex-spouse" remarries (although any earmarked lump sum is not lost, unless the Order instructs otherwise).
5. To overcome the inherent problems with earmarking and to enable clean break settlements, pension sharing provisions were included in the Welfare Reform and Pensions Act 1999.
6. The pension sharing provisions contained in section 79 and Schedule 10 of the Finance Act 1999, and changes to the Inland Revenue discretionary approval practice, have been introduced to complement the changes to Social Security, Matrimonial and Family Law contained in the Welfare Reform and Pensions Act 1999. The pension sharing

provisions contained in the 1999 Act have been supplemented by an array of subsequent statutory instruments. These are listed in annex 1.

7. The new pension sharing provisions came into force on 1 December 2000 in respect of divorce or annulment (but not judicial separation) proceedings which commence on or after that date. They are intended to provide a clean break between the parties to a "divorce" settlement in relation to pension rights.
8. The new pension sharing provisions are not compulsory. They provide an alternative to the current offset and / or the earmarking (attachment) of pension rights which will still be available as alternative routes for parties to a divorce. Indeed, in judicial separation cases, only earmarking and offset will be available.
9. It is felt, however, that pension sharing will provide a more effective way of dealing with pension assets in the overall financial settlement on "divorce" and will be more widely used by lawyers / solicitors when devising "divorce" settlements. This is because it will give the "ex-spouse" the immediate right to act in respect of the proportion of pension given to them, rather than having to wait for an earmarked part of the scheme member's pension benefits to be paid upon the scheme member's retirement / death.
10. The first stage of Pension Sharing on Divorce is the provision of pension information to the divorcing couple, or to the Court. This will allow their lawyers / solicitors and the Court to take the value of any pension rights into account in the financial settlement, and may or may not lead to the actual imposition of a "Pension Sharing Order" on the pension scheme.
11. If the Court issues a "Pension Sharing Order", the "ex-spouse" will be entitled to a Pension Credit and the scheme member's pension benefits will be subject to a Pension Debit.
12. The general legislation provides that pension schemes, other than unfunded public sector schemes, must offer a divorced spouse who has been granted a Pension Credit a transfer value to another pension scheme and may offer a benefit in the divorcing scheme member's pension scheme as an alternative to a transfer. It would clearly be both simple and administratively convenient to only offer the transfer value out route to an "ex-spouse" with a Pension Credit. This would save administering authorities a great deal of time and effort in as much as it would not be necessary to create and maintain a second set of records in respect of the scheme member's "ex-spouse".
13. However, there are a number of other issues that led the Local Government Pensions Committee at its meeting on 21 June 2000 to conclude that the LGPS should also offer the option of retaining the Pension Credit in the Scheme.

14. The Working Party convened by the LGPC recommended that the LGPS should:
- i) permit a Pension Credit to be discharged by means of a Pension Credit in the LGPS as well as by means of a transfer out to another scheme / arrangement
  - ii) specify the "valuation date" for calculating a CETV when a "Pension Sharing Order" is received as the first day of the "implementation period".
  - iii) not grant any family benefits in respect of a Pension Credit (except that a contingent spouse's pension could be provided by allocation).
  - iv) set the "Normal Benefit Age" for a Pension Credit as age 65.
  - v) set the age at which "safeguarded rights" are payable as age 65.
  - vi) not permit the early payment of a Pension Credit, other than by commutation where the Credited Member is suffering from serious ill health [life expectancy of less than 1 year] or, from State Pension Age, where the whole of the Pension Credit is commuted to a lump sum on the grounds of triviality
  - vii) not permit a Pension Credit to be aggregated with an active member's current benefits (i.e. to ring-fence Pension Credit benefits)
  - viii) not permit the transfer in to the LGPS (or, for the present, an Inter-Fund Adjustment) of Pension Credits.
  - ix) deem the Pension Credit to have been discharged if the "ex-spouse" dies before the administering authority implements the "Pension Sharing Order".
  - x) provide that the pension abatement upon re-employment in local government can, subject to each administering authority's policy, be based on the full (non-debited) member's pension.
15. A full explanation of the Working Party's recommendations is included at annex 3. The objective of the Working Party was to ensure that the LGPS rules governing a Pension Credit are as simple as possible.

16. The following Regulations have been amended to include items (i) and (iv) to (ix) in paragraph **14** above:

- Local Government Pension Scheme Regulations 1997 and, in order to cater for those deferred and pensioner members subject to "the 1995 Regulations", the Local Government Pension Scheme (Transitional Provisions) Regulations 1997, have been amended by the Local Government Pension Scheme (Pension Sharing on Divorce) Regulations 2000 [SI 2000/3025], and
- the Local Government Pension Scheme (Scotland) Regulations 1998 have been amended by the Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2000

The recommendation in respect of item (ii) ["valuation date"] has been mirrored in the Local Government Pension Scheme Regulations 1997 but under the Local Government Pension Scheme (Scotland) Regulations 1998 the "valuation date" will be any day chosen by the administering authority within the period of 4 months commencing with the later of

- i) the date the Court Order or agreement comes into effect, or
- ii) the day the authority has all the information necessary to implement the "Pension Sharing Order" e.g. the Order itself, the Order, decree or declarator responsible for the "divorce" to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box **3** of this Guide, etc

The recommendation in respect of item (iii) [family benefits] has been included in both sets of regulations except that there will be no right to provide a contingent spouse's pension by allocation.

The recommendation in respect of item (x) [abatement] has not been included in the Local Government Pension Scheme Regulations 1997 or the Local Government Pension Scheme (Scotland) Regulations 1998. Hence, Authorities abatement policies can only take into account the reduced amount of pension paid to the Debited Member.

## WHAT ARE THE STAGES IN THE PENSION SHARING PROCESS?

### General

17. In cases of divorce or nullity of marriage, the petitioner (either the husband or the wife) can make an application for a share of the matrimonial assets (this is known as ancillary relief) by, in England and Wales, filing a document called Form A with the Court. A copy is sent to the respondent i.e. the other spouse. The applicant must send a copy of Form A to the Administering Authority and, in a case where the applicant intends to proceed with an "Earmarking Order", the applicant must also supply the Administering Authority with a contact address for correspondence, an address to which any payments are to be sent, and Bank / Building Society / Department of National savings details to which any earmarked pension should be paid. A copy of Form A and various other forms relevant to the divorce process in England and Wales, including Forms E, P1 and P2, can be found on the Court Service's website [www.courtservice.gov.uk](http://www.courtservice.gov.uk).
18. Once the application has been lodged, a date for the first appointment at Court must be made. This must be within twelve to sixteen weeks of the application being lodged.
19. If they have not already done so, the applicant and the respondent will be required to apply for a valuation of their pension rights within seven "days" of receiving notification on Form C of their first appointment at Court. Members who ask for a valuation within a matter of days of the Court hearing are clearly not following this requirement<sup>1</sup>. Administering Authorities who are not able to (or choose not to) comply with such an unreasonable request may be able to use the member's failure to comply with the Statutory requirements as a defence if challenged. A valuation received by the member, at the member's request, within the twelve months prior to the date of the first appointment at Court will be acceptable.
20. In any "divorce" proceedings dealing with the division of matrimonial assets, the parties are required to disclose to each other and to the Court, all their financial interests. This will include details relating to those local government pension benefits that are "shareable rights" (see Glossary), regardless of whether a Sharing Order will eventually be made. The financial statement, of which pensions form a part, is provided on Form E and the parties to the "divorce" must exchange this information no later than five weeks before the first appointment with the Court. If, within 21 days of receiving a copy of Form A (where the applicant has indicated that he / she intends to proceed

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<sup>1</sup> See rule 2.70(2) of the Family Proceedings Rules 1991 as amended by the Family Proceedings (Amendment) Rules 2000 SI 2000/2267(L.19)

with an "Earmarking Order"), the administering authority has not received a request to provide the pension information required in section 2.16 of Form E, the Administering Authority may request the applicant to provide it with a copy of that section of the form for completion. The scheme member must, within 7 days of receiving a valuation, send a copy of it to the other party together with the name and address of the Administering Authority. It should be noted that, on the wider (i.e. non LGPS) front, shareable rights will include FSAVC's, SERPS, personal pensions, section 32 buy-out contracts, retirement annuity contracts and Stakeholder pensions.

Scottish law uses the concept of 'matrimonial property'. Pension benefits form part of the matrimonial property and it is only pension rights that have built up during the marriage and before separation that can be shared. In the rest of the UK, all pension rights built up, up to the point of "divorce", can be shared

In Scotland, parties who "divorce" commonly make Minutes of Agreement to settle as many issues as possible before going to court. This allows parties to reach their own decisions (with legal advice) about division of assets. A Minute of Agreement is conventionally registered in the Books of Council and Session (a public register kept in Edinburgh by the Keeper of the Registers of Scotland in which a variety of deeds may be registered). Deeds are usually registered for preservation and execution. This allows either party to compel the defaulting party to fulfil his or her obligations under the deed without returning to court.

Where the member and the member's spouse enter into an agreement in order to determine the financial settlement on "divorce", the scheme member should notify the administering authority, prior to making the agreement, that he / she intends to share pension rights with the spouse. The administering authority must acknowledge the notification from the member.

Note : unless and until Part II of the Family Law Act 1996 comes into force it will not be possible to pension share by agreement in England and Wales. Until that time, all pension sharing in England and Wales will be by Court Order. The Family Law Act 1996 does not extend to Northern Ireland and so all pension sharing will be by Court Order. In divorce or nullity proceedings lodged in Scotland, the majority of cases are likely to be by agreement.

21. During proceedings, a spouse may seek information from the member's scheme but not a valuation of the member's pension rights. This has to be requested by the member or, exceptionally, the Court.
22. A valuation will, in effect, be the Cash Equivalent Transfer Value (CETV) of the member's pension rights (or the cash equivalent value of a pension in payment).

23. At this stage in the process, the scheme will not be allowed to charge for the provision of information or for a CETV valuation unless:

- the information has previously been requested and issued within the last 12 months, or
- a CETV is required by the member or the Court within 3 months of receipt of the request, or
- a CETV or the provision of information is requested in respect of a member who has attained age 60 [Note: Regulation 2(8)(b) of the Pensions on Divorce etc. (Charging) Regulations 2000 says that a charge can be levied where the member has attained normal pension age. This is defined in section 180 of the Pension Schemes Act 1993 as the earliest age at which the member is entitled to receive benefits on retirement from employment. The earliest age at which a member is entitled to benefits on voluntary retirement under the LGPS is age 60 even though the LGPS defines normal pension age as age 65], or
- a CETV or the provision of information is requested where the request or Court Order is made within 12 months of the member's normal pension age i.e. within 12 months of age 60, or
- the CETV is in respect of a pension in payment, or
- a CETV is required in respect of divorce or nullity proceedings in Scotland and the relevant date (see annex 7) for the CETV calculation is greater than 12 months prior to the date of receipt of the request, or
- the member has less than 2 years membership in the LGPS and has not had a transfer of pension rights into the LGPS.

Schemes can charge for various other costs associated with Pension Sharing on Divorce (see paragraphs 80 to 89 and annex 10)

NB: The legislation governing the final three bullet points above is unclear. They have been included as chargeable items in the above list as the spirit (if not the letter) of the law appears to be that a scheme should be able to levy a charge in any case where the scheme does not have to provide a free CETV under the normal 12 month rule. The NAPF scale of charges also reflects this view. The Secretariat has written to the NAPF to press the Department for Work and Pensions to make a clarifying amendment to the Pensions On Divorce (Charging) Regulations 2000 [SI 2000/1049].

24. The legislation governing Pension Sharing on Divorce sets out a 4 stage process. Stages 1 and 2 are concerned with:

- the provision of information to the scheme member, the member's spouse, or to the Court, and
- detailing what information the administering authority will need in respect of the member and the spouse if a "Pension Sharing Order" is issued.

Stage 3 is concerned with providing both parties to the divorce or annulment with further information once a "Pension Sharing Order", including the annex to the Order relating to pensions (see annex **14**), has been received and stage 4 relates to the actual implementation of the Order.

25. Administering authorities in England and Wales will need to appreciate the small number of variations to procedures that apply to divorce or nullity proceedings in Scotland e.g. in respect of an active, deferred or pensioner member who is getting divorced or whose marriage is being annulled in Scotland. The variations in procedures to reflect the Scottish law are highlighted in this Guide.

26. The whole Pension Sharing on Divorce process is date driven and for this reason it is imperative that detailed records are kept as evidence that the administering authority has adhered to the relevant regulations. Fines of up to £200 can be levied by the "Regulatory Authority" against an individual Pension Manager or up to £1,000 against the administering authority for failing to meet the requirements of Stage 3 in the process. For failing to implement a "Pension Sharing Order" within the permitted "implementation period" (or within any extended period granted by the "Regulatory Authority"), the "Regulatory Authority" can levy a fine of up to £1,000 against the Pension Manager or up to £10,000 against the administering authority (with equivalent fines being imposed for not notifying the "Regulatory Authority" of a failure to implement within the prescribed period). It is imperative, therefore, that:

- robust administration systems are put in place
- staff receive full training, have access to comprehensive instructions and are clear about their responsibilities in relation to Pension Sharing on Divorce cases
- management have good monitoring procedures in place
- the reason for a request for a Cash Equivalent Transfer Value is always ascertained i.e. is it for a transfer out or is it connected with "divorce" proceedings
- a note of all telephone conversations relating to Pension Sharing on Divorce is kept on file
- no information is provided on the strength of a telephone call i.e. all requests should be in writing. Acting on the strength of a

telephone call could have implications under the Data Protection Act

- all incoming correspondence is date stamped
- all outgoing correspondence is dated and kept on file and a proper record is kept of discharged Pension Credits
- staff do not give advice; this should be left to the parties' solicitors and financial advisors
- management should consider the need for extra staff to meet the potential increase in workloads and the need to meet the strict timetables imposed by the Pension Sharing on Divorce legislation. Additional staff could be funded from charges made in respect of Pension Sharing work
- those administering authorities that have outsourced the pensions administration will need to consider what charges they wish to levy to the member and / or the spouse in respect of work undertaken in respect of Pension Sharing on Divorce. It is for the administering authority to set the level of charges, not the contractor. The
- administering authority will also need to determine how, through the contract / Service Level Agreement, the contractor is to be paid for any Pension Sharing on Divorce work undertaken, or charged for any fines imposed on the administering authority by the "Regulatory Authority".

27. It is also important that scheme booklets are amended to, as a minimum, show how benefits due to a Debited Member are calculated. It would also be wise to mention in the Scheme booklet that all correspondence received by the Pensions Section in relation to "divorce" matters will be acknowledged and that, if no acknowledgement is received, the member should contact the Pensions Section to ensure that his / her request has been received. This protects the administering authority from a member who claims to have sent a request for information to the Pensions Section which the Section has no trace of receiving. The Pensions Section may then be able, if a complaint is lodged, to point to the Scheme booklet in defence.

28. Annual Benefit Statements for Debited Members will need to reflect the effect of the debit to be applied to their benefits. Administering authorities will also need to consider whether or not to issue Annual Benefit Statements to Credited Members.

29. The computerised pensions administration system will also need to be amended to cater for Debits from members' records and to provide for records to be created in respect of Credited Members.

### **Active and Deferred Debited Members**

A Pension Debit record will need to be kept of the negative deferred benefit to be applied to a Debited Member's benefits when his / her benefits become payable. When he/she leaves or retires, his/her LGPS benefits will be calculated in full and when the benefits become payable the pension debit (as increased by RPI) will be deducted.

### **Pensioner Debited Members**

For members whose pension is already in payment, the debit will take the form of a permanent deduction from the pension in payment.

### **Credited Members**

A Pension Credit record will need to be kept for the Credited Member detailing the pension and, where appropriate, the lump sum derived from the Pension Credit. This will increase each year in line with the rise in the Retail Prices Index. There are no Inland Revenue limits on the amount of pension that a Credited Member may receive from Pension Credit rights (see paragraph 6A.7 of IR12).

### **Triennial Valuation**

The valuation data submitted to the scheme actuary will need to encompass the relevant data appertaining to Debit and Credit Members.

## **The Process - Flowcharts and Standard Letters**

30. The processes laid down by the Welfare Reform and Pensions Act 1999 and the various Statutory Instruments which have followed is very prescriptive. The following paragraphs set out, in detail, the procedures and time limits to be adhered to during the Pension Sharing on Divorce process. They also detail the fines that can be levied by the "Regulatory Authority" if the relevant regulations are not adhered to.
31. To assist administering authorities, a set of flow charts have been produced which summarise the processes together with a series of standard letters and forms. These are included in annex 4.

## STAGES 1 AND 2

### Stage 1: Provision of Information - The Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048].

32. If the administering authority receives a request for information for a cash equivalent valuation, either in writing or by telephone, it is important to establish whether it is in connection with a possible "divorce". If the request is made by telephone:
- i) a note of the telephone conversation should be made; and
  - ii) the caller should be informed that requests for information must be in writing (this is recommended to ensure there are no breaches of the Data Protection Act) and, where a member wants a CETV, explain that he / she will be sent a letter with a form to complete which will set out the information the administering authority need in order to comply with their request. The only circumstance where information can be given without the Scheme member's written consent is where the Court has ordered information to be provided;
  - iii) **do not offer advice** about pension sharing – assistance should be strictly limited to the process itself and the provision of information. Parties to a "divorce" seeking advice should approach their financial advisor and / or solicitor.
33. When a written request for information in connection with a "divorce" is received, **date stamp** the document. This gives proof of the date of receipt and is the starting date used for the deadlines in Box 1 below. Check whether the requested information is to be provided to the Court, the member, the member's spouse or, if authorised, to the relevant solicitor.

34. Then determine the deadline to provide the requested information in accordance with Box 1.

<p><b>Stage 1</b></p> <p><b>Regulations 2(5) and (6) of the Pension Sharing on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]</b></p> <p><b>On receipt of a written request for information in relation to divorce or annulment -</b></p> <p><b>Work out the deadline for providing the information:</b></p> <ul style="list-style-type: none"><li>• Where a request for information including a CETV is received from the member or the Court : <b>3 Months</b> from the date of receipt of the request or receipt of the Court Order.</li><li>• Where the administering authority is notified that the request is needed in connection with "divorce" proceedings that have commenced (see annex 6 on the relevant regulations under which 'qualifying' divorces may be made) : <b>6 weeks</b> from the date of receipt of the request or receipt of the Court Order. Note: The date of Form A, which will be sent to the administering authority by the solicitor, is the effective date of commencement of "divorce" proceedings.</li><li>• Where a <b>Court Order</b> imposes a shorter deadline: <b>within the deadline specified in the Court Order.</b></li><li>• Where the request is for information excluding a CETV i.e. from a spouse or where the member or Court do not request a CETV: <b>1 Month</b> from the date of receipt of the request or receipt of the Court Order.</li></ul>	<p><b>Box 1</b></p>
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35. Where the request for information, including a CETV, was received from the member or the Court, send a letter to the **member** (or the member's solicitor), and where the request came from the Court send a copy to the Court, confirming the time scale within which the administering authority will supply the information requested and include a schedule of charges. It is worth stating that, in order to provide the information requested, it is important that the relevant pay details are received in good time from the employing authority and the Guaranteed Minimum Pension figure is provided in good time by the DSS.

**NB: Where an administering authority received a request for a CETV for "divorce" purposes in the months leading up to 1 December 2000, the authority should consider issuing a letter to the member stating that if the CETV was needed for**

**"divorce" proceedings which are due to commence on or after 1 December 2000, a schedule of charges will apply i.e. send the member a copy of the authority's schedule of charges.**

36.If

- the CETV is required by the member or the Court within 3 months, or
- the information requested by either party of the Court has already been requested and provided within the previous 12 months, or
- a CETV or the provision of information is requested in respect of a member who has attained age 60 [Note: Regulation 2(8)(b) of the Pensions on Divorce etc. (Charging) Regulations 2000 says that a charge can be levied where the member has attained normal pension age. This is defined in section 180 of the Pension Schemes Act 1993 as the earliest age at which the member is entitled to receive benefits on retirement from employment. The earliest age at which a member is entitled to benefits on voluntary retirement under the LGPS is age 60 even though the LGPS defines normal pension age as age 65], or
- a CETV or the provision of information is requested where the request or Court Order is made within 12 months of the member's normal pension age i.e. within 12 months of age 60, or
- the CETV or provision of information is required in respect of an active member who has less than 2 years membership in the LGPS and has not had a transfer of pension rights into the LGPS, or
- for divorce or nullity proceedings lodged in Scotland, the relevant date (see annex 7) for a CETV calculation is greater than 12 months prior to the date the written request for information was received, or
- the CETV is required in respect of a pensioner member,

the administering authority can charge for the provision of the CETV or information.

NB: The legislation governing the final three bullet points above is unclear. They have been included as chargeable items in the above list as the spirit (if not the letter) of the law appears to be that a scheme should be able to levy a charge in any case where the scheme does not have to provide a free CETV under the normal 12 month rule. The NAPF scale of charges also reflects this view. The Secretariat has written to the NAPF to press the Department for Work and Pensions to make a clarifying amendment to the Pensions On Divorce (Charging) Regulations 2000 [SI 2000/1049].

37. The administering authority must subsequently, and within the time limit determined in accordance with Box 1, provide the information listed in Box 2. The information to be provided varies according to whether the member, spouse, or Court has requested the information and, in the case of the Court, whether or not the Court has asked for a CETV to be provided. The standard letters and forms which have been prepared (see annex 4) include all the information and comply with all the requirements prescribed for both Stages 1 and 2 of the process (see Boxes 2 to 5 below) i.e. **Stages 1 and 2 have been combined to reduce the administrative burden and ensure that overall time limits are met.** This is permitted by virtue of regulation 2(7) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000. **NB:** if an authority intends to make a separate charge for the provision of Stage 2 information, the two stages should not be combined. Stage 2 information should then only be provided (and charged for) if the administering authority is notified that a "Pension Sharing Order" or provision may be made.
38. Send the Scheme member a copy of all information sent to his / her solicitor if requested to do so by the member. Also, send the spouse a copy of all information sent to the spouse's solicitor if requested to do so by the spouse.

**Regulations 2(1), (2) and (3) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]****Information to provide in response to a first stage (basic information) request.**

- A CETV (or valuation in the case of a pensioner), including a CETV of any AVC's, or valuation of an annuity. (NB: only in cases where the request is from the Member or upon receipt of a Court Order which requests a valuation).  
See annexes **7** and **8** for details of the calculation including calculation dates.  
NB: if the member has less than 2 years and has not had a transfer in to the LGPS from another pension scheme or arrangement, provide the CETV but state that there will be no "shareable rights" until the member attains 2 years membership on [date].
- A statement that a CETV (or valuation) will be provided to the member or the Court upon the request of the member or receipt of a Court Order (in cases where the request for information is received from the spouse or where the Court requests information excluding a cash equivalent valuation).
- A statement summarising the way in which the CETV (or valuation) was calculated. It is probably also wise to state that a CETV has been calculated in accordance with the terms and conditions of the Local Government Pension Scheme Regulations 1997 (as amended) [or the Local Government Pension Scheme (Scotland) regulations 1998] which comply with the requirements of the Pensions on Divorce etc (Provision of Information) Regulations 2000.

**NB:** it is recommended that the pay and full service details upon which a CETV has been calculated are provided to the **member**. This will give the member the opportunity to query the calculation if he / she believes part of the service history is inaccurate or the pay is incorrect.

It should be noted that the Principal at the DSS Policy Group responsible for introducing the Pension Sharing on Divorce legislation has stated that at this stage of the process (i.e. Stages 1 or 2) a CETV does not have to be accurate to the penny. This is because the Court is interested in getting a general valuation of each parties assets e.g. the house is worth circa £100,000, the car is worth circa £8,000. If an administering authority is experiencing difficulties in obtaining pay details from the

employing authority or the GMP from the DSS (Inland Revenue) then, in order to meet the deadlines required by the divorce legislation, it is permissible to use an estimated GMP figure and pay derived from the previous years end of year contribution return. It is not essential to have a CETV calculated down to the last penny.

It is also recommended that the member should be told to inform his / her solicitor of any other pension rights he / she may have (including FSAVC's, deferred or actual benefits in other schemes, deferred or actual benefits in other local authority pension Funds, etc) and of any transfers in to the LGPS currently being negotiated.

If an active or deferred member is approaching voluntary or compulsory retirement age, it is worth considering including this information in the letter to the member or the Court i.e. the valuation will be different if a "Pension Sharing Order" is issued after the member retires.

- The pension benefits included in the valuation i.e. the pension, lump sum, contingent spouse's pension. The specific benefits including amounts can be sent to the member but only general information excluding amounts can be sent to a spouse.
- An explanation of the options available to a person entitled to a Pension Credit, i.e.
  - the option to become a Credited Member of the Scheme and details of the benefits such membership would provide i.e. a pension and, where the Pension Credit is derived from an active or deferred (but not pensioner) member, a lump sum, payable at age 65. The benefit can be commuted for a lump sum before age 65 if the Credited Member is suffering from serious ill health i.e. life expectancy of less than 1 year or can be commuted at State Pension Age for a lump sum on grounds of triviality;
  - the right to transfer the Pension Credit out to a suitable destination;

(see annex **9** on Discharge of Liability).

- A statement of the default option, i.e. the "ex-spouse" will become a Credit Member of the Scheme in the absence of a written instruction to do otherwise.
- A schedule of the charges to be levied (see paragraphs **80** to **89** and annex **10** for details.)

NB. The Court may require further information (see annex **6** for details)

39. Regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/ 1048] and regulation 2 of the Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 [SI 2000/1051 (S.5)] set out the information that must be provided to the administering authority before any "Pension Sharing Order" which is issued can be implemented. It will be wise to set this information out in the letter sent to the member or the spouse during Stage 1 of the process. It is understood the intention is that the information will be set out in a schedule attached to the Court Order or the agreement. The information that the administering authority will require is detailed in Box **3**. The Family Proceedings Rules 1991 (England and Wales) also specify the information the Court Order must contain in the form of an annex to the Order (see Form P1 at annex **14**).

**Regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048] and regulation 2 of the Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 [SI 2000/1051 (S.5)]**

**INFORMATION TO REQUEST** to enable the administering authority to implement a "Pension Sharing Order" or agreement.

**Details of the member:**

- a) all names by which they have been known;
- b) date of birth;
- c) address;
- d) National Insurance number;
- e) the name of the pension arrangement to which the "Pension Sharing Order" relates i.e. the LGPS;
- f) the membership number (if any); and
- g) in the case of divorce or nullity proceedings lodged in Scotland where there is a "qualifying agreement", the member's membership number, if any, in the Scheme

**Details of the spouse:**

- a) all names by which they have been known;
- b) date of birth;
- c) address;
- d) National Insurance number;
- e) Whether they are also a member of the Scheme and, if so, the membership number (if any); and
- f) in the case of divorce or nullity proceedings lodged in Scotland where there is a "qualifying agreement", the amount or the percentage of the CETV to be credited to the spouse

**And, if** the spouse decides to transfer the credit out of the Scheme to a qualifying arrangement:

- g) the full name of that qualifying arrangement;
- h) its address;
- i) if known, the spouse's membership number or policy number in that arrangement;
- j) the name or title, business address, business telephone number, and, where available, the facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the pension credit;

**And**

- a) any further information required by the administering authority in order to implement a "Pension Sharing Order" including a request for information about the member's state of health (note

: the GAD guidance for the LGPS does not require authorities to seek information about a member's state of health)

b) in the case of divorce or nullity proceedings lodged in Scotland where there is a "qualifying agreement", details of the apportionment of any charges which the administering authority wishes to levy, and

c) in the case of divorce or nullity proceedings lodged in Scotland where there is a "qualifying agreement", confirmation from the member that he / she has notified the administering authority of his / her intention with respect to pension sharing and that the administering authority has acknowledged receipt of the notification.

NB. In the case of the spouse opting to transfer out of the LGPS, the administering authority will need to ensure that the nominated destination for the pension credit is a qualifying arrangement (see annex 9)

Note: where there is a "qualifying agreement", it is intended that this will be in a specified form, contain prescribed information, and will have to be produced to the Court before being passed to the administering authority.

40. Regulation 2(7) of the Pensions on Divorce etc. (provision of Information) Regulations 2000 [SI 2000/1048] allows the administering authority, at the same time as supplying the Stage 1 information, to also supply and request Stage 2 information at the same time. This will help to reduce the administrative burden and ensure time limits are met. **It is recommended that administering authorities complete Stage 1 and Stage 2 simultaneously.** The standard letters and forms included in this guide (see annex 4) have been prepared on this basis. **NB:** if an authority intends to make a separate charge for the provision of Stage 2 information, the two stages should not be combined. Stage 2 information should then only be provided (and charged for) if the administering authority is notified that a "Pension Sharing Order" or provision may be made.

**Stage 2: Provision of Information - Regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048].**

41. Regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048] provides that the administering authority shall provide the information listed in Box 5 to the member or to the Court within the time limits set out in Box 4 if the administering authority receives a notification that a "Pension Sharing Order" or provision may be made. This should occur once the Court process is under way and is the member's or spouse's notification to

the administering authority that they intend to seek a "Pension Sharing Order" or agreement.

**Stage 2**

**Box 4**

**Regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048].**

**Time limits to provide information**

- a) where stages 1 and 2 are undertaken simultaneously, provided the administering authority has not had notification that a "Pension Sharing Order" may be issued, the administering authority can refer to the deadlines in box 1. However, if the administering authority receives notification that a "Pension Sharing Order" may be issued whilst working on Stage 1, the **following deadlines apply:**
- b) **within 21 "days"** of receiving notification that a "Pension Sharing Order" may be made; or
- c) by any date outside the 21 "days" as specified by the court.

**ACTION**

- Date stamp the notification. This gives proof of the date of receipt and is the starting date used for the above deadlines.
- Acknowledge receipt of the notification and inform the sender of the date the notification was received.
- Provide the information listed in Box 5 within the relevant deadline (see Box 4 above).
- Request the information listed in Box 3 that must be supplied before the administering authority can implement any "Pension Sharing Order".

**Regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048].****Information to be provided**

- a) the full name of the pension arrangement and the address to which any "Pension Sharing Order" or provision should be sent.
- b) Confirmation that the scheme is not in the process of being wound up
- c) confirmation that the CETV represents an active or deferred member's full CETV and will not be reduced under regulations 8(4), 8(4A), 8(6) or 8(12) of the Occupational Pension Schemes (Transfer Value) Regulations 1996
- d) whether the administering authority is aware that the member's rights under the pension arrangement are subject to any outstanding Orders or provisions (e.g. a prior "Pension Sharing Order", "earmarking order", a forfeiture order, or a bankruptcy order), and where they are, they must be specified (see annex 6 for details)
- e) whether the member's rights include "non-shareable rights"
- f) whether it may be necessary to request information about the member's state of health if a "Pension Sharing Order" were to be made; [note: the GAD guidance issued for the LGPS does not require the administering authority to request details of a member's state of health]
- g) a schedule of charges confirming whether the charges must be paid, in full or in part, before the commencement of the "implementation period" (where the administering authority has not already done so). It is, however, recommended that the administering authority sends it again as a belt and braces exercise because, if there are any outstanding charges at the time a "Pension Sharing Order" is received, the administering authority cannot postpone the "implementation period" on account of unpaid charges unless it has, by or at this stage, sent a charging schedule to the member and the person entitled to the pension credit;
- h) confirmation that the member is not a trustee of the LGPS;

It is also wise to suggest to the spouse at this point that he / she does not have enough information at this stage to make an informed choice as to whether to opt for a Pension Credit in the LGPS or a transfer out to another scheme/arrangement. This is because it is not known at this stage what percentage (if any) of the CETV (or valuation) the Court will order to be given to the "ex-spouse" nor, therefore, what the Pension Credit in the LGPS will be worth. The spouse would be better advised to make no decision regarding a TV out at this stage and defer a decision until Stage 3 or 4 when he / she will have enough information at her disposal to be in a position to make an informed decision.

42. If, after the administering authority has provided information under Stages 1 and 2, and before a "Pension Sharing Order" is received (see Stage 3), the member ceases active membership of the LGPS, or a transfer in is received from another scheme, it is recommended that the administering authority confirms the revised position to the scheme member with a suggestion that he informs the Court and other interested parties who have requested information under Stages 1 or 2. This would negate any possible implications for the administering authority under the Data Protection Act 1988. Similarly, if before a "Pension Sharing Order" is received (see Stage 3) a member opts for a transfer of accrued pension rights to another scheme, the administering authority should comply with the request (but not if the "Pension Sharing Order" is received before the transfer value is paid) and, again, suggest to the scheme member that he / she informs the Court and other interested parties who requested information under Stages 1 or 2.

### STAGE 3

**Stage 3 : Provision of Information after receiving a "Pension Sharing Order" or provision - Regulation 7 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]**

43. When the administering authority receives a "Pension Sharing Order", including the annex to the Order relating to pensions (see annex 14), it must provide certain information within specified time limits. The information and time limits are set out in Boxes 6 and 7 below.

<b>Stage 3</b>	<b>Box 6</b>
<b>Regulation 7 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]</b>	
<b>Time limits:</b>	
<ul style="list-style-type: none"> <li>i) Where there are outstanding charges which the parties have been informed have to be paid before a Court Order can be implemented, where there is a lack of necessary information or where any further documentation is required (i.e. some of the information in Box 3 is outstanding), a letter must be sent <b>to both parties</b> outlining these <b>within 21 "days"</b> of receipt of the "Pension Sharing Order" or provision explaining why the Order or provision cannot presently be implemented.</li> <li>ii) Where there are no outstanding charges and the administering authority has all the information and relevant "Matrimonial Documents" (including the decree absolute of</li> </ul>	

divorce or nullity: Proof of cessation of marriage) enabling it to implement the Pension Sharing Order or provision, the administering authority has a period of **4 months** to implement the Order or provision from the later of:

- the day on which the relevant Order or provision comes into effect; or
- the day on which the administering authority is in receipt of the relevant "Matrimonial Documents".

A letter must be sent **within 21 "days"** of the later of the above two dates notifying the relevant parties of the implementation deadline.

**NB:**

1. If the "ex-spouse" dies after a "Pension Sharing Order" is received but before the Order has been implemented, the administering authority must write to a relevant person (in the case of the LGPS this will be the personal representative) **within 21 "days"** of receipt of notification of the death. The letter must specify how the Pension Credit is to be discharged (i.e. by the payment of a Death Grant), whether the authority intends to recover any charges (in which case a schedule of charges should be included), and any other information the authority will need in order to discharge liability e.g. copy death certificate, letters of administration / grant of probate, etc.
2. In the case of divorce or nullity proceedings lodged in Scotland, an Order or agreement will be treated as ineffective if the administering authority does not also receive copies of the "Pension Sharing Order" or agreement and the relevant decree of divorce or declarator within 2 months of the date of the extract of the decree or declarator (although the Court can extend this period).
3. In the case of an overseas divorce or annulment, the relevant documents should be provided within 2 months of the date of disposal under section 28 of the Matrimonial and Family Proceedings Act 1984. The procedure will be that the burden of sending the relevant documents to the administering authority will rest with the parties to the divorce or annulment. This would normally be the person who would benefit from the pension sharing.

## ACTION

- Determine if all the required information has been received in relation to the "Pension Sharing Order" which will enable implementation.

**NB.** If the administering authority has opted to charge either party directly i.e. cash up front (as opposed to debiting the CETV or benefits of either party) ensure that all charges requested have been paid or otherwise accounted for. Cash charges cannot be recovered (with a few exceptions) after a "Pension Sharing Order" has been implemented. Also, if the administering authority intends to make charges after the implementation of the Pension Credit it must state this and say how the charges will be recovered (see paragraphs **80** to **89** and annex **10** on charging).

If the case has taken **over 12 months** between the provision of information (Stage 1), and the receipt of a "Pension Sharing Order" (Stage 3), regulation 6 of the Pensions on Divorce etc (Charging) Regulations 2000 [SI 2000/1049] allows additional interest charges to be levied. To do this the relevant parties must be informed at this stage before implementation (see paragraphs **80** to **89** and annex **10** on charging).

- **Then, write to both parties acknowledging the receipt of the "Pension Sharing Order" or provision, state the date on which it was received and either:**

**If there are outstanding information and/or charging issues**, notify the relevant parties, (see Box **7** for details) **within 21 "days"** of the receipt of the "Pension Sharing Order" or provision, explaining that the "Pension Sharing Order" will not be put into effect until they have been resolved;

**Regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 [SI 2000/1049]**

**Outstanding Charges and Postponement of Implementation**

Issue a notice to the member and the "ex-spouse" within the **21 "day"** deadline informing them:

- that the outstanding charges must be paid before implementation will be commenced;
- whether those charges must be paid in full; or
- what proportion of those charges are required to be paid as full settlement of those charges

**NB:** The implementation of a "Pension Sharing Order" can only be postponed if the above information has previously been supplied to the member and the "ex-spouse" no later than Stage 2 in the process.

**OR**

**If there are no outstanding issues**, or once any outstanding issues have been resolved, write to the relevant parties **within 21 "days"** of the later of the two dates in item (ii) of Box **6**, with a notice of implementation, including the deadline for implementation (**4 months** from the day on which the Order or provision comes into effect or, if later, 4 months from the day the administering authority is in receipt of the Order and all the relevant documents.) In the letter to the "ex-spouse" include the information in Box **8**.

- **NB! 21 "days"** after issuing the notice of implementation the administering authority can recover any charges payable which it did not require to be paid before implementation (see paragraphs **80** to **89** and annex **10** for details).

**Information to include in letter to the Spouse**

Outline the spouse's options for Pension Credit, including the value of their share of the pension as directed by the "Pension Sharing Order", the right to a CETV to a qualifying arrangement (which can be exercised at any time up to 12 months before age 65), and the default option if the spouse does not indicate a choice in writing (NB: it will be necessary to include a deadline, well within the 4 month "implementation period", for the spouse to make an active choice. Failure to make an active choice within the deadline will result in a Pension Credit being awarded in the LGPS).

44. Once the notice of implementation has been issued it will be necessary to then set about calculating the CETV (or valuation in respect of a pensioner) in respect of the member's pension rights (see annexes 7 and 8 for details of the calculation process). The relevant percentage (or, in the case of divorce or nullity proceedings lodged in Scotland, an amount may be specified) of the CETV (or valuation) as indicated in the "Pension Sharing Order" will be granted to the "ex-spouse" (or the whole of the CETV if the amount specified in a Scottish Order is more than the CETV) – see note below. The Pension Debit to be applied to the member and the Pension Credit to be awarded to the "ex-spouse" are to be calculated in accordance with guidance issued by the Government Actuary (see annex 5).

Note:

Rule 9 of the Family Proceedings (Amendment) Rules 2000 [SI 2000/2267(L.19)] replaced rule 2.70 of the Family Proceedings Rules 1991 with a new rule 2.70.

New rule 2.70(14)(f) states that where a provision is made under section 24B (pension sharing) of the Matrimonial Causes Act 1973 there shall be an annex to the Pension Sharing Order which, amongst other things, must state the specified percentage, or where appropriate the specified amount, required in order to calculate the appropriate amount for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (WRPA '99). Section 29 of the WRPA '99 states that the pension debit and the pension credit shall be equal to the appropriate amount which

- a) if the Pension Sharing Order or provision specifies a percentage value which is to be transferred, is the amount of the cash equivalent on the valuation day that the specified percentage produces, or
- b) if the Pension Sharing Order or provision specifies an amount, is the amount so specified or, if less, the cash equivalent of the member's benefits on the valuation day.

In England and Wales, the amount of the debit will be a percentage of the cash equivalent of the member's pension rights in the scheme (as provided for by section 19 and schedule 3 of the WRPA '99 which introduced section 21A into the Matrimonial Causes Act 1973).

Section 21A of the 1973 Act says that "For the purposes of this Act, a pension sharing order is an order which -

- (a) provides that one party's-
  - (i) shareable rights under a specified pension arrangement, or
  - (ii) shareable state scheme rights,be subject to pension sharing for the benefit of the other party, and

- (b) specifies the percentage value to be transferred."

The percentage will be shown in the Pension Sharing Order or agreement.

In Scotland, the Pension Sharing Order or agreement may specify that the pension sharing legislation is to apply in relation to a specified amount, rather than a percentage, of a member's pension rights (as provided for by section 20 of the WRPA '99) and, in that case, the amount of the debit will be that specified amount or, if less, the current cash equivalent of the member's rights.

A standard form (P1) – see annex **14** - has been devised by the Court Service to meet the requirements of the relevant legislation in respect of the annex to be attached to a Pension Sharing Order. At item 5 on form P1 "the specified percentage value of the pension arrangement to be transferred" has to be entered. It also states "The specified amount required in order to create a pension credit and debit should only be inserted where specifically ordered by the court".

Although it appears from the above that in England and Wales a Pension Sharing Order should specify a percentage (whereas in Scotland a percentage or a cash sum can be specified) it is known that, even in England and Wales, Orders are being issued specifying a cash sum. It would appear that this is being done to deal with the problem of long delays between the agreeing of a settlement and the decree of divorce becoming final. If an administering authority receives a **draft** Pension Sharing Order relating to a divorce in England or Wales which specifies a cash sum, the administering authority should politely point out that the relevant legislation only appears to permit a percentage to be specified. If, however, an actual Pension Sharing Order is received which specifies a cash sum this should be implemented, subject to the administering authority being able to otherwise comply with the Order, on the basis that the Court has approved the Order.

45. This leads to Stage 4 of the process unless the "ex-spouse" dies before the administering authority discharges liability by implementing the "Pension Sharing Order".
46. If the "ex-spouse" does die before the administering authority discharges liability, the administering authority must send a letter to the person nominated on any death grant expression of wish form completed by the "ex-spouse" (or any other person the administering authority considers appropriate). The letter must be issued within **21 "days"** of receipt of the notification of death and must:
  - state how the administering authority intends to discharge the Pension Credit i.e. by paying, at its sole discretion, a lump sum death grant;
  - detail any other information needed to implement the "Pension Sharing Order"; and
  - include a schedule of charges

## STAGE 4

### Stage Four: Provision of information after the implementation of a "Pension Sharing Order" or provision - Regulation 8 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]

47. The Pension Credit granted to the "ex-spouse" must be discharged by the scheme within **4 months** of the latter of the two dates in item (ii) of Box **6** (unless the "Pension Sharing Order" is subject to an application for leave to appeal in which case the Order is stayed until the appeal is determined) but, in England and Wales, cannot take effect earlier than 7 "days" after the end of the period for filing a notice of appeal against the Order. In effect, the Order will be stayed until the period allowed for an appeal 'in time' has lapsed. The period will be set in accordance with the level of the Court in which the jurisdiction is exercised and the period provides time for the parties to appeal. If an appeal is begun during this period the Order will not take effect until the appeal is disposed of.

In the case of divorce or nullity proceedings lodged in Scotland, a "Pension Sharing Order" will take effect on the day the Order is made. However, the appeal process must be completed before the extract decree or declarator is issued. If an appeal is marked, the parties will not be able to send the relevant documentation to the administering authority until the appeal process has been completed. The 4 month "implementation period" will not begin until the administering authority receives that documentation.

48. Once the necessary splitting calculations have been performed within the 4 month "implementation period", it will be necessary to issue a notice of discharge of liability to the member and the "ex-spouse" in accordance with Box **9**.

#### **Stage 4**

#### **Box 9**

**Time limit: 21 "days"** from completion of discharge of liability.

Issue a notice of discharge of liability to the member and their "ex-spouse".

#### ACTION

- Issue a notice of discharge of liability to the member and their "ex-spouse" **within the 21 "day" deadline; and**

- **Identify** the **two** relevant boxes below, one for the member (either Box **10** or Box **11**), one for the "ex-spouse" (either Box **12** or Box **13**), and provide the required information **within the 21 "day" deadline**.

**Stage 4** **Box 10**

**The letter to be sent to the member where the member's pension is not in payment must contain –**

- 1) the value of accrued rights (CETV) at the "valuation date";
- 2) the Cash Equivalent Transfer Value of the pension debit and the effect on the member's accrued benefits:  
  
Annual Pension reduced by X  
Lump Sum reduced by Y;
- 3) any amount deducted from the value of the pension rights to meet charges levied (generally not applicable as administering authorities are advised to recover the charge from the "ex-spouse" - see paragraph **81** and annex **10**);
- 4) the value of the member's accrued rights following the above reductions:  
Annual Pension of X  
Lump Sum of Y;
- 5) the transfer day i.e. the day when the "Pension Sharing Order" takes effect

**Stage 4** **Box 11**

**The letter to be sent to the member where the member's pension is already in payment must include -**

- 1) the cash equivalent value of accrued rights at the "valuation date";
- 2) the cash equivalent value of the Pension Debit;
- 3) the amount of the annual pension which was in payment before liability in respect of the Pension Credit was discharged;
- 4) the amount of annual pension which is payable following the deduction;
- 5) the transfer day i.e. the day when the "Pension Sharing Order"

takes effect ;

- 6) details of any charges which may be recovered (see paragraphs **80 to 89** and annex **10**)

NB Administering authorities are advised that charges should be recovered from the "ex-spouse" (see paragraphs **80 to 89** and annex **10**) .

**Stage 4**

**Box 12**

**The letter to be sent to the "ex-spouse" where the "ex-spouse" has become a member of the LGPS through the pension credit must include:**

- 1) the cash equivalent value of the Pension Credit at the "valuation date" and the resulting:
  - i) lump sum (n/a where the credit is derived from a pensioner member); and
  - ii) annual pension;
- 2) any amount deducted from the value of the Pension Credit for charges levied:
  - i) lump sum reduced by X (if appropriate); and
  - ii) annual pension reduced by Y (if appropriate);
- 3) the value of the Pension Credit after charging deductions:
  - i) lump sum ; and
  - ii) annual pension;
- 4) the date when it is to be paid to him/her (i.e. immediately if already aged 65 or over, or if under age 65, the date when the pension benefit would normally come into payment i.e. the 65<sup>th</sup> birthday) and the provisions for any earlier payment e.g. from any age on serious ill health grounds, or able to commute on grounds of triviality from State Pension Age;
- 5) the transfer day i.e. the day when the "Pension Sharing Order" takes effect;
- 6) any periodical charges the administering authority intends to make, including how and when those charges will be recovered (see paragraphs **80 to 89** and annex **10**);
- 7) information concerning membership of the LGPS relevant to a Credit Member e.g. in addition to the above, include reference to the benefits payable on death, appeal rights, etc.

**Stage 4****Box 13****The letter to be sent to the "ex-spouse" where the "ex-spouse" is transferring the credit out of the LGPS must include**

- 1) the value of the Pension Credit before deductions (CETV at the "valuation date");
- 2) any amount deducted from the Pension Credit (i.e. the CETV out) to meet charges levied in respect of pension sharing activity being charges which have previously been detailed and explained to the "ex-spouse", including this method of recovery;
- 3) the value of the Credit after the above deduction; (the cash value available for transfer).
- 4) the transfer day i.e. the day when the "Pension Sharing Order" takes effect;
- 5) details of the pension arrangement, including its name, address, reference number, telephone number and (where available), fax number and e-mail address, to which the Pension Credit has been transferred.

49. It is also recommended that the additional information in Box **14** is provided although this is not required by the relevant legislation.

**Box 14****Advise member & spouse that:**

- Transferring out of the Scheme remains an option (for the Credited Member who has been awarded a Pension Credit in the LGPS) until one year before age 65.

Note: Where the "ex-spouse" has been granted a Pension Credit in the LGPS and subsequently opts for a transfer to a qualifying arrangement, the normal transfer rules and time limits apply e.g.

- a CETV has to be calculated within 3 months of receipt of request and supplied to the "ex-spouse" within 10 "days" of the calculation date;
- the Credited Member has 3 months from the calculation date (the Guarantee date) to opt for the transfer to proceed;
- payment following an option to proceed must be made

within 6 months of the calculation date (otherwise the greater of the original CETV plus interest at the rate of 1% above base rate, or a new CETV calculated at the date of payment, will have to be paid);

- only one free quote is allowed within a 12 month period;
- the "ex-spouse" cannot request a transfer if he / she is within one year of age 65.

Note: any transfer out must be split between "Safeguarded" and "non-Safeguarded rights". The transfer will be calculated using the factors in tables 4 and 5 of annex 5.

- Retirement dates are independent.
- Re-marriage has no detrimental effect on either party's benefits.
- A Pension Credit can be shared in the event of a subsequent marriage and divorce.
- A member's benefit can be shared again (and again) in the event of subsequent marriage and "divorce".
- A dependant's pension e.g. a LGPS widow's, widower's or child's pension cannot be shared.
- Also, provide the Credited Member with a death grant expression of wish form and the Debited Member with a new death grant expression of wish form!

### Time extensions to discharge liability

50. If, for any reason, including legislative reasons, the administering authority will be unable to discharge the liability for the Pension Credit within the prescribed four month "implementation period", it must apply to the "Regulatory Authority" for an extension **before the end of the "implementation period"**. See Part II of Annex 9 on the Implementation and Discharge of Liability Regulations for details on the procedure and circumstances under which the "Regulatory Authority" may grant an extension.

An administering authority can only be implement an Order within the 4 month implementation period. However, the implementation period does not start until the administering authority

- a) has all the necessary information to hand i.e. a copy of the Pension Sharing Order, the decree of divorce or nullity of marriage and all the information required under regulation 5 of the Pensions on Divorce etc (Provision of Information) Regulations 2000 [SI 2000/1048] – see Box 3. This is supported by item 1 on the second page of Form P1 – see annex 14, and

- b) has received any up front charges which the parties have been informed have to be paid before a Court Order can be implemented.

However, although it seems clear that the 4 month implementation period does not start until the administering authority has all the necessary information and charges, regulation 3 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053] casts some doubt on when OPRA have to be asked for an extension to the implementation period. It says that an authority can, before the end of the implementation period, ask for an extension which OPRA can grant if, amongst other matters, it is satisfied that

- i) the member or ex-spouse has not taken such steps as the administering authority could reasonably expect in order to satisfy it of any matter which falls to be established before it can properly discharge the liability, and
- ii) the administering authority has not been provided with such information as it may reasonably require to discharge the liability.

It seems, therefore, that a reason why the commencement of an implementation period can be delayed is the lack of information and yet OPRA are saying that an extension can be granted on account of the lack of information. Why would an authority ask for an extension to an implementation period when the period itself has not yet commenced? OPRA have been asked for clarification and have confirmed that "if the implementation period has not yet commenced there is no need .... to apply for an extension of time."

**The postponement or cessation of the "implementation period" when an application is made for leave to appeal out of time**

51. Either party to the divorce or annulment may lodge an appeal out of time against the decision contained in the "Pension Sharing Order". There are specific rules to follow in such cases, which it is anticipated should be few in number. Please see paragraph 47 and Part II of Annex 9 on the Implementation and Discharge of Liability Regulations for further information. The administering authority is entitled to recover costs for any work undertaken up to the point that it is notified of an application for leave to appeal out of time.

**What if, after the "Pension Sharing Order" has been implemented / discharged, something changes that affects the valuation of benefits?**

52. If, after the "Pension Sharing Order" has been implemented / discharged, something changes that affects the original CETV (or valuation) e.g. it is discovered that the pay figure or service used was not totally accurate, it is recommended that no action should be taken. This is on the basis that the valuation of the other financial assets within a marriage e.g. the house, car, etc cannot be an exact science and the Court, in reaching a settlement, will have based the Sharing Order on the information available at the time. Similarly, if a transfer in from another scheme is subsequently received, it should be assumed that the Court was aware of the rights in that other scheme before making a Sharing Order. The other scheme may independently have been issued with a Sharing Order which has been reflected in the amount of the transfer value paid to the LGPS.

**What if benefits are paid to the Scheme member without having knowledge of a "Pension Sharing Order"?**

53. If a person's "shareable rights" under the LGPS have become subject to a Pension Debit and the administering authority makes a payment which relates to those rights without knowing of the Pension Debit then, if the cash equivalent of the member's remaining pension rights is less than the amount of the Pension Debit, the Pension Credit shall be reduced to that lesser amount.

**PENALTIES**

**Failure to provide information**

54. The "Regulatory Authority" may impose a fine for failure to disclose Stage 3 information within the required time limits. The penalty must be paid within 28 "days" of its imposition and will not exceed:

- £200 in the case of an individual
- £1,000 in any other case

**Failure to discharge liability**

55. If the administering authority fails to discharge a Pension Credit liability within the prescribed 4 month "implementation period" (or any extended period granted by the "Regulatory Authority") it must inform the "Regulatory Authority" **within 21 "days"** of the end of the period (or extended period). The "Regulatory Authority" may impose a fine of up to:

- £1,000 in the case of an individual, and
- £10,000 in any other case.

See Part II of Annex 9 on the Implementation and Discharge of Liability Regulations for details.

The "Regulatory Authority" can also levy fines consistent with those above if the administering authority fails to notify them of a failure to discharge the Pension Credit liability within the "implementation period".

## **HOW ARE AVC'S TO BE DEALT WITH FOR AN ACTIVE OR DEFERRED MEMBER?**

56. At Stages 1 and 2 of the process the member or the Court may request a valuation of the member's pension benefits. Where an active or deferred member has an AVC 'pot' (not life assurance) the administering authority should write to the Fund's AVC provider requesting a CETV valuation of the AVC 'pot(s)'. The administering authority should specify the date to which the AVC 'pot(s)' is / are to be valued i.e.:

- a) In England and Wales, the date of receipt of the member's / Court's request, or
- b) in the case of divorce or nullity proceedings lodged in Scotland,
  - the date of receipt of the member's / Court's request if it is received 12 months or less after the relevant date<sup>2</sup>, or
  - the relevant date<sup>3</sup> if the date of the member's / Court's request is received is 12 months or more after the relevant date

and the date by which the valuation is needed in order to comply with the appropriate deadline for providing information to the member / Court (see Boxes 1 and 4 in this Guide).

57. It will be prudent to request a valuation in respect of each investment 'pot' the member has (e.g. with profits, managed fund, building society, lifestyle, index tracker, green fund, etc.)

58. Technically, the Government Actuary is required to specify how an LGPS AVC 'pot' is to be valued. It is believed that, in practice, the actuary to the AVC provider will determine the valuations in accordance with standard actuarial guidelines.

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<sup>2</sup> The relevant date is the earlier of the date the parties finally ceased to cohabit or the date of service of the summons in the action for divorce. Section 10(7) of the Family Law (Scotland) Act 1985 states that in determining the date on which the parties to the divorce ceased to cohabit "no account shall be taken of any cessation of cohabitation where the parties thereafter resumed cohabitation, except where the parties ceased to cohabit for a continuous period of 90 days or more before resuming cohabitation for a period or periods of less than 90 days in all."

<sup>3</sup> See footnote above

59. There are a number of issues which the AVC provider will presumably need to address i.e.

- how to value a with profits 'pot' for an active member as no terminal bonus has yet accrued;
- in the case of divorce or nullity proceedings lodged in Scotland, how to value an AVC 'pot' using the  $A \times B/C$  formula (see annex 7).

60. The AVC provider will need to provide the valuation(s) to the administering authority within the period specified by the administering authority. The administering authority must then include the valuation(s) in the information sent at Stages 1 or 2 to the member / Court.

61. If a "Pension Sharing Order" is received which requires the AVC 'pot(s)' to be shared, the administering authority will need to ask the "ex-spouse" where he / she wishes the share of the AVC 'pot(s)' to be invested. It will be necessary to impose a deadline for a decision well within the 4 month "implementation period" and state that if no decision is received, the share of the AVC 'pot(s)' granted by the Court will be invested in a named investment route of the authority's choice.

62. Where the Credited Member is already aged 65 or over, the administering authority will need to ask the "ex-spouse" which type of annuity he / she wishes the authority to purchase for him / her (e.g. flat rate, single life, no 5 year guarantee, etc). An open market annuity option should be offered. At present, there is no option for the Credited Member to defer purchasing an annuity beyond age 65.

63. As soon as the administering authority has received all the relevant documentation and, if appropriate, any up-front Pension Sharing charges have been paid, the authority should send a copy of the "Pension Sharing Order" to the AVC provider. The authority will need to inform the AVC provider of:

- a) the "ex-spouse's" decision in respect of investment routes, enclosing a copy of the "ex-spouse's" option form and any other relevant forms required by the AVC provider;
- b) the date immediately prior to the date the Court Order takes effect in order that only contributions in respect of the period up to that date are included in the valuation of the 'pot(s)' for pension sharing purposes;
- c) the date at which the AVC 'pot(s)' is / are to be valued. Under the Local Government Pension Scheme Regulations 1997, this is the first day of the "implementation period" (i.e. the day the Court

Order takes effect or, if later, the date all relevant documents and up-front charges are received). In the case of the Local Government Pension Scheme (Scotland) Regulations 1998, it is any day chosen by the administering authority within the period of 4 months beginning with the first day of the "implementation period";

- d) the deadline date by which the "Pension Sharing Order" must be implemented; and
  - e) the earlier date by which the administering authority needs to be informed of the split and the valuation amounts i.e. the amount debited from the member's AVC 'pot(s)' and the amount credited to the "ex-spouse's" AVC 'pot(s)'.
64. The AVC provider will apply the "Pension Sharing Order" and act in accordance with the "ex-spouse's" investment option request. The AVC provider will then inform the administering authority that the "Pension Sharing Order" has been applied and confirm the amount debited from the member's AVC 'pot(s)' and the amount credited to the "ex-spouse's" AVC 'pot(s)'.
65. The administering authority will need to write to both the member and the "ex-spouse" within 21 "days" of the AVC provider implementing the "Pension Sharing Order". The letter should inform them that the "Pension Sharing Order" has been implemented and should confirm the amount of the debit / credit etc i.e. to follow the same process as outlined in Boxes **10** to **14**.
66. The administering authority will eventually need to purchase an annuity for the Credited Member at age 65 (assuming the Credited Member has not opted, at least one year before age 65, for a transfer out).
67. Annual Benefit Statements issued by the Fund's AVC provider will, of course, need to reflect the debit taken from the member's AVC 'pot(s)'. An Annual Benefit Statement ought to be provided to the Credited Member to keep him / her informed of the value of his / her 'pot(s)'.
68. Administering authorities should inform their AVC provider that they intend to recover any fines levied by the "Regulatory Authority" or the Courts against the administering authority or the Pension Manager as a result of:
- a failure to provide information in a timely manner to the administering authority in order to allow the authority to meet relevant deadlines in the pension sharing process, or

- a failure of the company to implement a "Pension Sharing Order" copied to them by the administering authority.

69. Administering authorities should also determine what, if any, charges the AVC provider would wish to recover in respect of the pension sharing process so that these can be built into the authority's schedule of charges.

#### **WHAT IF THE MEMBER IS IN RECEIPT OF AN ANNUITY?**

70. A similar process as outlined in the above section will need to be followed. However, there are a number of issues about which the LGPC Secretariat is uncertain. For example:

- how is an annuity in payment to be split, particularly given the nature of the split in the case of Scottish divorce or nullity proceedings?;
- what happens if, under the Local Government Pension Scheme Regulations 1997, the annuity is to be split as at the first day of the "implementation period" (the "valuation date") but the "Pension Sharing Order" is not actually implemented for some weeks or months after that date (but within the 4 month "implementation period") and so full annuity payments will have been paid to the member beyond the "valuation date"? Also, if the Credited Member is already aged 65 or over, what date is the annuity for the Credited Member purchased from?
- what happens where the annuity is to be split but the "ex-spouse" is under age 65? Is an AVC 'pot' then created from which an annuity will eventually be purchased when the Credited Member attains age 65?

It is to be hoped that, as annuities are relatively small compared to the level of the LGPS pension, the Court will not order the split of an annuity in payment.

#### **WHAT HAPPENS WHEN A MEMBER WHO HAS PAID FSAVC's AND WHO IS SUBJECT TO A "PENSION SHARING ORDER" LEAVES, RETIRES OR DIES?**

71. It would seem logical when completing the certificate to send to the FSAVC provider, as required by the Retirement Benefit Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 [SI 1993/3016], to provide the following information in relation to the level of LGPS benefits:

- the non-debited amount of a scheme member's pension and prospective spouse's pension where the member is a "higher earner"
- the debited amount of a scheme member's pension and prospective spouse's pension where the member is a "moderate earner".

This will ensure that the maximum annuity that can be purchased in respect of a "higher earner" is the same as it would have been prior to any debit being applied to the LGPS benefits as a result of a "Pension Sharing Order". Conversely, it will ensure that the maximum annuity that can be purchased in respect of a "moderate earner" is based on the difference between the member's debited LGPS benefits and the Inland Revenue maximum benefits.

### **HOW IS THE VALUE OF A MEMBER'S BENEFITS TO BE DETERMINED?**

72. This is covered by annexes **7** and **8**.

### **HOW IS THE PENSION DEBIT TO BE CALCULATED?**

73. This is covered in GAD guidance (see annex **5**) and DSS guidance (see annex **13**). Further GAD guidance is awaited. The Secretariat will copy any further guidance to authorities for inclusion in this guide as soon as it is received from the GAD.

### **HOW IS THE PENSION CREDIT TO BE CALCULATED?**

74. This is covered in GAD guidance (see annex **5**).

### **WHAT IF THE CREDITED MEMBER WANTS TO TRANSFER OUT?**

75. A Credit Member can request that a Cash Equivalent Transfer Value (CETV) is paid to a qualifying arrangement at any time up to one year before age 65. Paragraph 6 (1) of Schedule 5 of the Welfare Reform and Pensions Act 1999 sets out qualifying arrangements for the destination of a Pension Credit. These are:

- a) an occupational pension scheme,
- b) a personal pension scheme,
- c) an appropriate policy of insurance or annuity contract,
- d) an appropriate policy of insurance, and
- e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

76. Part IV of Annex 9 provides further details on transfers out to a qualifying arrangement.
77. Where a Credit Member stipulates at the outset that he / she wishes to transfer the value of the Credit to a qualifying arrangement the sum credited to the Credit Member is payable to the qualifying arrangement (less any charges). If, however, that transfer out is not paid until after the end of the "implementation period", the transfer payment shall be the sum credited to the Credit Member as at the "valuation date" plus interest at the rate of 1% above base rate between the original "valuation date" and the date of payment to the qualifying arrangement (less any charges) or, if greater, the sum that would have been credited to the Credit Member if the "valuation date" had been the day on which the payment to the qualifying arrangement is made (less any charges) (see regulation 18 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053]).
78. Where the "ex-spouse" is formally granted a Pension Credit in the LGPS during the implementation period and after being made a Pension Credit member subsequently wishes to transfer the value to a qualifying arrangement (even if the date of the request still falls within the implementation period), the normal transfer rules and time limits apply e.g.
- a CETV has to be calculated within 3 months of receipt of request and supplied to the "ex-spouse" within 10 "days" of the calculation date (the Guarantee date);
  - the CETV must be guaranteed for 3 months;
  - the Credited Member has 3 months from the calculation date to opt for the guaranteed transfer value to proceed;
  - payment following an option to proceed must be made within 6 months of the calculation date (otherwise the greater of the original CETV plus interest at the rate of 1% above base rate, or a new CETV calculated at the date of payment, will have to be paid);
  - only one free quote is allowed within a 12 month period;
  - the "ex-spouse" cannot request a transfer if he / she is within one year of age 65.
79. The transfer is calculated using the factors in Tables 4 and 5 at annex 5.
- 79A. When a Pension Credit member decides to transfer her/his Pension Credit to another scheme it is necessary to split the transfer value in

respect of the Pension Credit between "safeguarded rights" (derived from that part of the scheme member's CETV that related to GMP and / or Section 9(2B) rights) and the "non-safeguarded rights" .

GAD have advised that, going back to first principles, any CETV from the LGPS (whether calculated for sharing or other purposes) may be divided into four parts, each expressible in cash terms (and whose total is equal to the amount of the CETV) as follows:

- 1) Section 9(2B) part: calculated by applying the CETV tables and methodology to benefits accrued post 5/4/97 (including increases to date)
- 2) Post-88 GMP part: calculated by applying the relevant protected rights factor to the accrued and revalued post-88 GMP
- 3) Pre-88 GMP part: calculated by applying the relevant protected rights factor to the accrued and revalued pre -88 GMP
- 4) Pre-5/4-97 non-GMP element: calculated by deducting 1), 2) and 3) from the total CETV.

The "safeguarded percentage" would then be determined as the sum of 1), 2) and 3) divided by the total CETV x 100.

Note that, in practice, for the purposes of determining the safeguarded percentage, it may be simpler to work on the basis of a CETV (and its 4 constituent elements) unadjusted for market conditions, rather than to market adjust each constituent individually.

As an example, take a member's CETV of £50,000, of which £10,000 is the combined value of pre and post 88 GMPs and Section 9(2B) rights. Let's assume the courts have ruled that 60% of the CETV must be used to establish a credit to the ex-spouse. The value of the credit is thus £30,000, and it follows immediately that the value of the safeguarded component must be £6,000.

The above calculation would give you the "safeguarded percentage" at the point of the initial pension split i.e. 20%. If the ex-spouse chooses to transfer out some time later, the CETV in respect of her Pension Credit may be different as may be the cash value of the safeguarded rights element within the CETV. However, as long as we have worked out the proportionate value of the split between safeguarded and non-safeguarded rights at the date of the pension split we can then apply that same ratio to the later transfer out because both elements, safeguarded and non-safeguarded rights, will have subsequently been increased by the same amount of Pensions Increase - i.e. non-safeguarded rights and safeguarded rights (unlike GMPs) are both subject to full PI.

It will be necessary for GAD to issue protected rights factors for members aged 60 and over.

79B. Where the Pension Credit is derived from an LGPS pensioner member, and so there is no lump sum attaching to the Pension Credit, the administering authority should provide the receiving scheme with a NIL lump sum certificate.

## **WHAT CHARGES CAN BE LEVIED?**

80. There will clearly be an administrative burden placed on scheme administrators in providing information and implementing "Pension Sharing Orders". The legislation provides that the parties to the "divorce" and not the scheme can be obliged to meet certain administrative costs involved in implementing any "Pension Sharing Order" / pension splitting activity. To recover costs it will be necessary for the scheme to communicate its intention to do so at the outset. When basic information is being provided in response to initial enquiries, it should be accompanied by a schedule detailing charges. Failure to do so will mean that the scheme will be unable to recover costs relating to the Pension Sharing (or "earmarking") Order in question.

81. The Pensions on Divorce etc (Charging) Regulations 2000 [SI 2000/1049] set out the ways and methods of making charges. The charges must be reasonable and represent the additional administrative costs that have been incurred or that are likely to be incurred.

82. The Charging Regulations permit the administering authority to charge for:

- the provision of basic information and a valuation of pension rights (unless this must be provided free of charge - see annex **10**)
- pension sharing activity i.e. activity attributable directly or indirectly to the involvement in pension sharing. For example, in addition to providing information, a scheme may have to undertake a considerable amount of work in connection with apportioning the scheme member's benefits, setting up the "ex-spouse" as a Pension Credit Member or transferring a Pension Credit to another qualifying pension arrangement
- additional charges in respect of pension sharing. For example, where there is a delay of more than 12 months between the supply of basic information and the taking effect of an Order, the Scheme may have additional costs associated with the valuation of benefits.

83. Charges can also be imposed for work undertaken for earmarking e.g.

- the provision of basic information and a valuation of pension rights (unless this must be provided free of charge - see annex **10**)
- administrative work connected with payments made to an "ex-spouse". This work could be substantial if an Order is made in respect of periodical payments.

84. In principle, there is much to be said for administering authorities adopting a common charging structure although, for various reasons, some authorities' costs may be greater than others. The LGPC can only offer guidance to administering authorities; it cannot compel them to adopt a national LGPS charging structure.

85. The members of the Working Party deliberated all the permissible charging options at some length. All options were fraught with some degree of difficulty. For instance, asking for payment 'up front' before implementing a "Pension Sharing Order", although ensuring the administering authority is reimbursed immediately and may make the parties think twice about pension sharing as a means of division of financial assets, may not be tenable as many of the scheme's members may be low paid part time workers who may not have several hundred pounds available, particularly at the point of going through a "divorce". Conversely, if the recovery of charges is deferred to the point when benefits eventually become payable, the administering authority will have to remember to recover those charges, the person who is required to pay the charges may query them so many years after having gone through a "divorce", the person's lump sum retirement grant may not be large enough to recover the charges from, etc. although this method would be seen as a relatively 'painless' method of recovery and there would be no delays in the implementation of the "Pension Sharing Order".

86. The members of the Working Party did not feel that administering authorities would be best served by creating a very detailed schedule of charges i.e. separate charges for valuing the benefits when implementing the Order, for creating a debit and credit record, for implementing changes of name or address, for payroll processing charges, for processing a Pension Credit transfer out, etc. This would have created a small industry and a potential administrative headache leading to potential delays in the process. Following representations from Administering Authorities, a proposed schedule of charges has been issued (see form **CH1**). The fee for implementing a Pension Sharing Order should be recovered in one of the following ways:

- by payment 'up front' by the spouse

- by the payment of part of the fee 'up front' by the spouse with the balance being deducted from the cash equivalent granted to the spouse by the Court
- by deducting the fee from the cash equivalent granted to the spouse by the Court
- by deducting the fee from any share of a member's AVC pot granted to the "ex-spouse" [Note: in this case, the AVC provider would deduct the sum from the share of the 'pot' given to the "ex-spouse" and hand it over as an actual payment to the administering authority].

The Court should take the authority's intention to recover the money from the spouse (or from the proportion of the CETV granted to the spouse) into account when determining the overall financial settlement on "divorce". The spouse should be given the opportunity to pay by any of the available methods detailed above. By recovering the fee (or part of the fee) by deduction from the proportion of the CETV granted to the spouse, liability on the Fund is decreased i.e. if the proportion of the member's CETV awarded to the spouse amounts to £20,000 and the administering authority levies a fee of £300, the benefits granted to the spouse will be lower as they will be based on a net CETV figure to the "ex-spouse" of £19,700. The advantage with this approach is that no real money has to change hands i.e. the spouse does not have to pay £300 in cash to the Fund, but the actuarial liability on the Fund has diminished by £300 because the full deduction of £20,000 must be made to the member's benefits.

Note: although it may be the authority's intention to recover the charges from the "ex-spouse", it will have to comply with any charging instructions specified in a Court Order. If the Court Order requires that the member pays the charges, and these are not paid "up front", then the member's benefits would need to be reduced. For example, say the member's CETV when the Court Order is implemented is £100,000 and the Court had ordered 50% to be credited to the ex-spouse. The member's remaining CETV is £50,000. In simple terms (assuming there are no Pensions Increase implications such as the effective date of the Order being prior to a PI review date with the implementation date being after a PI review date) this will mean that a debit equal to half his pension (including half his GMP), half his lump sum and half his (post retirement marriage) spouse's pension at the effective date of the Order will be held as a negative deferred pension against his record. On retirement his benefits are calculated in the normal manner and the negative deferred pension (as revalued by RPI from the effective date of the Order – but see paragraph 3.4 of annex 5) will then be deducted from his benefits.

If the above member is to pay, say, £250 towards the costs then the debit to be applied to his pension benefits is not £50,000 but £50,250. Thus, the negative deferred pension is calculated as 50.25% (rather than 50%) of his pension (including 50.25% of his GMP), 50.25% of his lump sum and 50.25% of his (post retirement marriage) spouse's pension at the effective date of the Order. On retirement his benefits are calculated in the normal manner and the negative deferred pension (as revalued by RPI from the effective date of the Order – but see paragraph 3.4 of annex 5) will then be deducted from his benefits.

87. As stated above, the charges levied must be reasonable and represent the additional administrative costs that have been incurred or that are likely to be incurred. The charges being proposed by the Working Party are less than those proposed by the NAPF (see annex 11). However, the level of charges could be challenged during a "divorce" and an administering authority would need to be able to justify the level of its charges. It should be recognised that the index-linked flat fee of between £750 and £1000 recommended by the NAPF probably reflects, in part, the fact that many private sector schemes have to obtain CETV quotes from their actuary.
88. Annex 10 details what can and cannot be charged for, what must be included in the schedule of charges, and how and when charges can be recovered.
89. Administering authorities should ascertain from their AVC provider what, if any, charges the AVC provider will be seeking to recover in respect of any pension sharing work they undertake so that this can be built into the authority's schedule of charges.

#### **HOW WILL PENSION SHARING ON DIVORCE WORK UNDER THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997 AND THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 1998?**

90. The Local Government Pension Scheme (Pension Sharing on Divorce) Regulations 2000 [SI 2000/3025] and the Local Government Pension Scheme (Scotland) (Pension Sharing on Divorce) Regulations 2000 came into force on 1 December 2000.
91. They amended the main body of the Local Government Pension Scheme Regulations 1997, the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (to deal with deferred and pensioner members under "the 1995 Regulations") and the Local Government Pension Scheme (Scotland) Regulations 1998. The amendments deal with the debit from a member's pension rights following the implementation of a "Pension Sharing Order" and inserted a new Part VI to deal with the rights and benefits of a Pension

Credit member. A new Schedule 1A was also inserted to define the Pension Sharing on Divorce terms which are used in the Regulations.

### The Debited Member

92. Regulation 20 (19 in Scotland) is amended and new regulation 20A (19A in Scotland) is introduced to provide that a member's pension (other than a widow's, widower's or child's pension, or a bare EPB) and, if not already paid, the retirement grant is to be reduced on account of any "Pension Sharing Order" received and implemented by the administering authority. The method of reducing the member's benefits is in accordance with guidance issued by the Government Actuary. The Government Actuary guidance is included at annex 5.
93. Additionally, although not specified in the Local Government Pension Scheme (Pension Sharing on Divorce) Regulations 2000 or the Local Government Pension Scheme (Scotland) (Pension Sharing on Divorce) Regulations 2000, any Inter-Fund Adjustment payable in respect of a member subject to a Pension Debit will, subject to any amending guidelines issued by GAD, be payable in full (on a knock for knock basis) but the sending Fund will have to notify the receiving Fund of the amount of the Pension Debit (i.e. the negative deferred benefit) to be applied when the member's benefits become payable. The CETV for a member who wishes to transfer his / her rights to a **non-club** scheme will, of course, be the CETV in respect of the member's deferred benefits as reduced by the Pension Debit and taking account of any charges the administering authority has previously notified the scheme member they will recover from him / her. Advice on how to deal with transfers to **club** schemes is awaited.
94. Any spouse's short-term pension payable following the death of a Debited Member in receipt of a pension is equal to the pensioner member's debited rate of retirement pension immediately before death. In the case of a post retirement marriage, the spouse's short term pension is equal to the pensioner member's debited rate of retirement pension in respect of his post 5 April 1978 membership or her post 5 April 1988 membership (see regulation 42 or, in Scotland, regulation 41). For example, if a male member's pension before the application of the debit was £500 per annum in respect of his pre 6 April 1978 service and £1500 in respect of his post 5 April 1978 service his total annual pension prior to the debit was £2000. If the Pension Debit is £1000, a quarter of this will relate to the pre 6 April 1978 benefits and three quarters to the post 5 April 1978 benefits. The post 5 April 1978 pension is therefore  $£1500 - (3/4 \times £1000) = £750$ . The spouse's short term pension will therefore be £750 per annum.

95. Any spouse's long term pension will be equal to half of the member's Debited Pension ignoring any reduction under regulation 31 (regulation 30 in Scotland) for early payment, any increase under regulations 54 or 57 (regulations 53 or 56 in Scotland) for older members, any abatement applied under regulation 110, any surrender under regulation 33 (regulation 32 in Scotland) or serious ill health commutation under regulation 50 (regulation 49 in Scotland).

In the case of a post retirement marriage, the spouse's long term pension is equal to half the pensioner member's debited rate of retirement pension in respect of his post 5 April 1978 membership or her post 5 April 1988 membership as indicated in the calculation shown in paragraph 94 above (see regulation 42 or, in Scotland, regulation 41).

96. Any children's short-term and / or long-term pensions are to be calculated by reference to the member's pension as if there had been no Pension Debit.

97. Any death grant payable in respect of a Debited Member shall be

- in the case of an active member, 2 times final pay (at its part time rate for a part-timer) or, if greater,  $3/80^{\text{th}}$  of final pay multiplied by the total membership the member would have had had he / she retired on ill health grounds at the date of death;
- in the case of a deferred member, the deferred lump sum as increased by Pensions Increase less the value of the Pension Debit (as increased by Pensions Increase)
- in the case of a pensioner member, 5 times the Debited rate of pension in payment at the date of death

### **The Debited Member - Replacing the Debited Rights**

98. "Higher earners" are those whose taxable earnings during membership of the scheme in the year prior to that in which the marriage is dissolved or annulled were greater than 25% of the "earnings cap" for the year in which the marriage is dissolved or annulled. A controlling director of a company which is his / her employer is also deemed to be a "higher earner". All other employees are termed as "moderate earners" even if their pay subsequently increases to more than 25% of the "earnings cap".

99. A "higher earner" can only pay Additional Voluntary Contributions (AVC's) or purchase added years to the extent that he / she could have done prior to the implementation of a "Pension Sharing Order" (subject, of course, to the normal 15% limit). Where retained benefits

need to be taken into account, it will be necessary to determine the level of retained benefits prior to any Pension Debit which is to be applied / has been applied in the former scheme(s).

100. A "moderate earner" can pay AVC's not only to the extent that he / she could have done prior to the implementation of the "Pension Sharing Order" but also to make up the debit resulting from that Order (again subject to the normal 15% limit). However, due to the nature of added years and the method of calculating a Pension Debit (i.e. it is a sum of money rather than a loss of service), a "moderate earner", like a "higher earner", can only purchase added years to the extent that he / she could have done prior to the implementation of a "Pension Sharing Order" (subject of course to the normal 15% limit).
101. It should be noted that where a scheme member also has a separate Pension Credit, the Pension Credit does not count towards the member's Inland Revenue maxima.
102. "Higher" or "moderate earners" can, in any case, pay up to £3600 (including tax relief at basic rate) into a concurrent Stakeholder or Personal Pension Scheme from 6 April 2001 without reference to Inland Revenue limits provided their taxable earnings, as shown on their P60 (excluding the value of any P11D benefits) are less than £30,000 per annum (see LGPC Circular 91 for further details).

### **The Credited Member**

103. Upon the implementation of a "Pension Sharing Order", the member's "ex-spouse" will become a Credited Member in the Local Government Pension Scheme unless he / she opts to transfer the cash equivalent value of the Pension Credit to a qualifying arrangement. A pension Credit is the default option.
104. The administering authority is responsible for determining the benefits and entitlements of a Credited Member and must notify the Credited Member of decisions it has taken under the Regulations as soon as is reasonably practicable.
105. A Credited Member retains the right to opt to transfer the cash equivalent of the Pension Credit to a qualifying arrangement at any time up to one year prior to age 65. Any transfer out must be split between the "Safeguarded" and "non-Safeguarded rights". However, an Inter-Fund Adjustment cannot, under the present Regulations, be paid.
106. Under the Local Government Pension Scheme (Scotland) Regulations 1998, any share of an AVC 'pot' must be used by the Credited Member in one or more of the permissible ways specified in regulation 65(3).

107. Where a former spouse opts for or, by default, is awarded a Pension Credit in the LGPS, it is to be calculated in accordance with guidance issued by the Government Actuary. The guidance is included at annex 5. The Pension Credit will be in the form of a pension and a lump sum where the Credit is derived from an active or deferred scheme member. Where the Credit is derived from a pensioner member who was a pensioner member at the "Valuation Date", the Credited member will only be provided with a pension (as the scheme member has already received the lump sum and only the member's pension was subject to the "Pension Sharing Order") - see paragraph 31 of PSO Update No 62.
108. The pension scheme member's LGPS benefits are made up of pre 6 April 1997 GMP, pre 6 April 1997 excess over GMP, and post 5 April 1997 Section 9(2B) rights. Each element is subject to the "Pension Sharing Order". However, the pre 6 April 1997 GMP and the post 5 April 1997 Section 9(2B) rights included in the Cash Equivalent Transfer Value (or pension value) granted to the Credited Member under the "Pension Sharing Order" cease to be pre 6 April 1997 GMP and the post 5 April 1997 Section 9(2B) rights. Instead, they become "Safeguarded rights" which are subject to full Pensions Increase.
109. The Pension Credit (including the "Safeguarded rights") is payable from age 65. The Pension Credit can only be paid earlier if:
- a) the Credited Member is suffering from serious ill health such that he / she has a life expectancy of less than 12 months from the date he / she applies for early payment. The administering authority will need to have produced to them or obtain a certificate to this effect from an independent registered medical practitioner. The benefit payable will be a commuted pension equal to 5 times the annual rate of pension at the date of commutation (including any accrued Pensions Increase<sup>4</sup>), less 20% tax due under section 599 of the Income and Corporation Taxes Act 1988, plus the Credit Member's lump sum retirement grant, if any, (including any accrued Pensions Increase<sup>5</sup>). This will discharge the administering authority from liability for any lump sum death grant, or
  - b) a female Credited Member attains State Pension Age and wishes to commute a trivial Credited Pension for a lump sum, i.e.

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<sup>4</sup> Note that section 3(2A) of the Pensions (Increase) Act 1971 says that no pensions increase is payable in respect of a Pension Credit member until age 55 and there is no provision in the Act for payment of pensions increase before that age, even on the grounds of serious ill health.

<sup>5</sup> Note that section 3(2A) of the Pensions (Increase) Act 1971 says that no pensions increase is payable in respect of a Pension Credit member until age 55 and there is no provision in the Act for payment of pensions increase before that age, even on the grounds of serious ill health.

- in Scotland, a pension of not more than £195 per annum, or
- in England and Wales, a pension of not more than £195 per annum where the Pension Credit is in the form of a pension and lump sum, or
- in England and Wales, a pension of not more than £260 per annum where the Pension Credit is in the form of a pension only.

The above figures relate to the aggregate of all pensions the Credited Member is entitled to under the scheme i.e. the aggregate of all Pension Credits and any other pensions payable under the scheme - a pension from active membership in the person's own right, for example. The lump sum retirement grant, if any, payable to the Credited Member will be payable in addition to the lump sum in respect of the commuted trivial pension less 20% tax due under section 599 of the Income and Corporation Taxes Act 1988. This will discharge the administering authority from liability for any lump sum death grant.

Note: in England and Wales, if a Credited Member is entitled to a Pension Credit in the form of a pension only but is also entitled to a pension in his / her own right (as a result of active membership), regulation 156 would appear to allow commutation if the aggregate pensions are not more than £260 per annum but regulation 49 would appear to restrict commutation to aggregate pensions of not more than £195 per annum. If an authority experiences such a case, they should contact the LGPC for advice.

110. Where the Credited Member dies before the administering authority has implemented the "Pension Sharing Order", a death grant will be payable. The amount of the death grant shall be three times the annual pension that would have been credited to him / her if the administering authority had implemented the "Pension Sharing Order" on the date of his / her death. The amount of the (notional) annual pension upon which the death grant is based is to be calculated in accordance with guidance issued by the Government Actuary (see annex 5).

The administering authority shall pay the death grant to the deceased's personal representatives.

111. Where the Credited Member dies after the administering authority has implemented the "Pension Sharing Order", a death grant will be payable. The amount of the death grant is calculated as follows:
- a) where the Credited Member is under age 65 (i.e. the Pension Credit is not yet in payment), the death grant is equal to 3 times the rate of the annual pension that would have been payable on the date of death (including any accrued Pensions Increase)

- b) where the Credited member is 65 or over (i.e. the Pension Credit is in payment), the death grant is equal to 5 times the annual basic rate of pension at the date of death (less the amount of pension already paid)

Any death grant is, at the absolute discretion of the administering authority, payable to or for the benefit of the Credited Member's nominee(s), relative(s), dependant(s) or personal representative(s).

If the administering authority has not discharged the full death grant within 2 years of the Credited Member's date of death, it must pay any remaining sum to the personal representative(s).

112. Any sum payable to the Credited Member's personal representative(s) can be paid without the production of probate or letters of administration of the estate provided the sum payable is less than the amount specified in any Order made under section 6 of the Administration of Estates (Small Payments) Act 1965.
113. A transfer of a Pension Credit to the LGPS from another scheme, including a Pension Credit which has been aggregated with normal benefits in that scheme, is not permitted under the Local Government Pension Scheme Regulations 1997 or the Local Government Pension Scheme (Scotland) Regulations 1998. Administering authorities will, therefore, need to change their transfer value request letters to make this point clear. If the Pension Credit has been aggregated with normal benefits in the sending scheme, administering authorities will need to point out that only a disaggregated transfer value in respect of the non-Pension Credit benefits will be accepted into the LGPS.
114. A Credited Member cannot ask for pension rights from other schemes to be transferred and added to the Pension Credit rights in the LGPS.
115. A Pension Credit in the LGPS cannot be aggregated with any other benefits the Credited Member may have in the LGPS (e.g. as a result of a period of active membership or with another Pension Credit the person may have in the LGPS). The Pension Credit is, in effect, ring-fenced. As such, it does not count towards any membership period required for benefits in respect of active membership to be paid e.g. the 2, 5, 25 or 85 year rules. Nor does it count towards Inland Revenue limits should a person who is also an active member wish to pay AVC's or purchase added years.
116. Inter-Fund Adjustments in respect of Credited Members are not currently permissible under the rules of the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Scotland) Regulations 1998.

117. A Credited Member is, under the rules of the LGPS, subject to the normal Internal Dispute Resolution Procedures. An IDRPs leaflet should therefore be issued to the Credited Member whenever a decision is taken in relation to the Credited member's benefits.
118. The benefits payable to a Credited Member are subject to the normal interest provisions contained in regulation 94 of the Local Government Pension Scheme Regulations 1997 and regulation 93 of the Local Government Pension Scheme (Scotland) Regulations 1998.

## **INTERACTION WITH THE STATE SCHEME**

119. Section 32 of the Welfare Reform and Pensions Act 1999 deals with the effect of pension sharing on "contracted-out rights".
120. The section inserts section 15A into the Pension Schemes Act 1993, which provides for the reduction of a GMP payable by a contracted-out salary related scheme where it is subject to a pension debit. For example, if the cash equivalent has been reduced by 40%, the GMP accrued at the date the Order or agreement takes effect (which forms part of the cash equivalent) shall be reduced by 40%. Where the Order or agreement is expressed in monetary terms, the appropriate percentage is the amount specified (up to the limit of the cash equivalent of the member's rights) expressed as a percentage of the cash equivalent mentioned above.
121. However, where the member is in pensionable service the reduction is by reference to the appropriate percentage of the hypothetical GMP to which he would have been entitled had he ceased to be in pensionable service.
122. The member will be treated as entitled to a full GMP for the purposes of calculating entitlement to relevant social security benefits (for example, the state additional pension). This is needed to ensure that the state does not become liable to make up the resultant shortfall in the GMP or protected rights paid by the scheme directly caused by pension sharing.

For example, the member might have been entitled to an additional pension of £12 per week but this is reduced to just £2 per week to offset the £10 GMP paid by the scheme to which he would have been entitled had the "Pension Sharing Order" not been implemented. Under these provisions he will continue to be treated as entitled to a GMP of £10 per week and hence continue to receive an additional pension of just £2 per week, even though as a result of the pension debit his GMP has been reduced by 40% (that is by £4) to £6 per week.

## **PENSIONS INCREASE - IMPLICATIONS FOR THE DEBITED MEMBER**

123. The guidance from the DSS is attached at annex **13**. The Government Actuary's Department intends to issue a slightly updated version of the DSS guidance to make it more relevant to the LGPS.

## **PENSIONS INCREASE - IMPLICATIONS FOR THE CREDITED MEMBER AND FOR THE PENSION FUND**

124. As part of a member's GMP passes to the Credited Member but ceases to be GMP (i.e. it becomes "safeguarded rights"), the Pension Fund will be fully indexing an element of pension for the Credited Member which it would have provided no increase on if it had remained with the Debited Member (i.e. the pre 6.4.88. GMP) or would only have increased up to 3%, or RPI, if less, (i.e. the post 5.4.88. GMP). This would appear to be an additional (and unwarranted) cost to the Pension Fund.
125. The benefits payable to a Credited Member are subject to full increases under the Pensions Increase Act 1971 i.e. no part of the pension payable to a Credited Member is a GMP. Section 39 of the Welfare Reform and Pensions Act 1999 amends the Pensions (Increase) Act 1971 to provide for pensions derived from pension sharing in public service schemes. The Act provides for the index-linking of official pensions, including those of civil servants, teachers, NHS and local authority staff. Other public service pension schemes apply the Act by analogy.

The beginning date for the application of indexation under the Act is normally the day following the last day of service. Credited Members have no 'last day of service' and so a new subsection (8)(2A) has been added to the Act to provide that a pension derived from a Pension Credit will begin on the day which the "Pension Sharing Order" takes effect (but see paragraph 3.4 of annex **5**).

## **OTHER MATTERS FOR CONSIDERATION**

### **LGPS Injury Allowance Schemes**

126. All local authorities are required to assess an award under the terms of the Local Government (Discretionary Payments) Regulations 1996 where an employee suffers a reduction in pay, loses employment or dies as a result of an injury sustained at work or disease contracted at work resulting from anything he / she was required to do in carrying out the work. Some authorities may have adopted a formal scheme which requires the value of the LGPS pension (or the pension that would have been payable had the person opted into the LGPS at the first available opportunity) to be taken into account when determining the amount of an injury allowance payable to a person who leaves or dies as a result of a qualifying injury or disease. It will be prudent to ensure that such a scheme takes account of the value of the person's pension prior to any Pension Debit applied as a result of a "Pension Sharing Order".

### **Transfers In where the Transfer Value is in respect of a person whose rights in the former scheme are subject to a Pension Sharing Order**

127. Administering authorities should consider amending their transfer value in quotation requests to ask whether the member's rights in the former scheme have been subject to a Pension Sharing Order and, if so, to ask that both the gross (i.e. pre pension sharing debit) and net (i.e. post pension sharing debit) GMP in respect of the pre 6 April 1988 and post 5 April 1988 GMP elements are provided. This is because, as far as is known, the GMP notification issued by the DSS at State Pension Age will show the gross GMP. Requesting the above information from the sending scheme will ensure that the administering authority will, in all cases, be able to correctly determine the net GMP amount to be applied to the member's pension at State Pension Age.

Administering authorities should also amend their transfer in request letters to state that the LGPS will not accept a transfer value in relation to a Pension Credit in the sending scheme. If a Pension Credit has been aggregated with main scheme benefits in the sending scheme, the LGPS will only accept a transfer value in respect of the disaggregated main scheme benefits and not in respect of the Pension Credit element.

### **Transfers Out where the transfer value is in respect of a person whose rights in the LGPS are subject to a Pension Sharing Order**

128. If a member whose benefits in the LGPS have been subject to a Pension Sharing Order is considering a transfer out, it would be advisable for the administering authority to provide the new scheme with both the gross (i.e. pre pension sharing debit) and net (i.e. post pension sharing debit) GMP in respect of the pre 6 April 1988 and post 5 April 1988 GMP elements. This is because, as far as is known, the GMP notification issued by the DSS at State Pension Age will show the gross GMP. Issuing the above information to the new scheme will ensure that the administrators of the scheme will be able to correctly determine the net GMP amount to be applied to the person's pension at State Pension Age.

### **Transfers In where the transfer value is in respect of a person whose rights in the former scheme are subject to an Earmarking Order**

129. Administering authorities should consider amending their transfer value in quotation requests to ask whether the member's rights in the former scheme are subject to an Earmarking Order and, if so, to request that a copy of the Earmarking Order is provided with the transfer value quotation. This will enable the administering authority to determine whether it can comply with the provisions of the Order and, if not, the administering authority can refuse to accept the transfer value in accordance with regulations 121(9) of the Local Government Pension Scheme Regulations 1997.

### **Transfers Out where the transfer value is in respect of a person whose rights in the LGPS are subject to an Earmarking Order**

130. If a member whose benefits in the LGPS are subject to an Earmarking Order is considering a transfer out, it would be advisable for the administering authority to send a copy of the Order to the new scheme with the transfer value quotation. This will enable the administrators of the new scheme to determine whether or not the scheme can comply with the provisions of the Order when considering whether they should accept the transfer value.

### **Can a Pension Sharing Order be varied?**

131. In England and Wales, a Court may vary a Pension Sharing Order if the application for the variation was made before the Order has taken effect and if, at the time the application is made, the decree of divorce or nullity has not been made absolute. A variation to a Pension Sharing Order will be subject to a stay period in the same

way as an ordinary Pension Sharing Order (i.e. to allow time for an appeal against the variation).

**Can a Pension Sharing Order be issued if the member's rights are already subject to a Pension Sharing Order?**

132. A Pension Sharing Order cannot be made in relation to a member's shareable rights which are already the subject of a Pension Sharing Order in relation to that marriage (i.e. where the Order has been made but has not yet taken effect) or have been the subject of a Pension Sharing Order between the parties to the marriage (i.e. where a Pension Sharing Order or agreement has already taken effect) - see paragraph 65(9) of Schedule 12 to the Welfare Reform and Pensions Act 1999 which inserted section 24BA into Schedule 2 of the Family Law Act 1996 (which in turn amended the Matrimonial Causes Act 1973).

**Can a Pension Sharing Order be issued if the member's rights are already subject to an "Earmarking Order"?**

133. A Pension Sharing Order cannot be issued in relation to a member's pension rights or future pension rights which are already subject to an "Earmarking Order", whether the Order was made in relation to the same marriage or a previous one (see paragraph 65(9) of Schedule 12 to the Welfare Reform and Pensions Act 1999 which inserted section 24BA into Schedule 2 of the Family Law Act 1996 (which in turn amended the Matrimonial Causes Act 1973)).

**Overseas Divorces**

134. Section 22 of the Welfare Reform and Pensions Act 1999 amends Part III of the Matrimonial and Family Proceedings Act 1984 to applications for financial relief in respect of divorces, judicial separations and annulments in England and Wales after an overseas divorce, separation or annulment. Section 18 of the Matrimonial and Family Proceedings Act 1984 is amended to require the Court, when deciding whether and how to exercise its powers to grant relief under the 1984 Act, to have regard to pension benefits (in the UK) in the same way as it does in relation to a domestic case of divorce, separation or annulment. Section 28 of the Welfare Reform and Pensions Act 1999 specifies the circumstances in which the Pension Sharing mechanism is triggered. These include the taking effect of a pension sharing order under the Matrimonial Causes Act 1973 or an order corresponding to such an order made on application for financial relief in England and Wales under Part III of the Matrimonial and Family Proceedings Act 1984 following an overseas divorce, separation or annulment. Section 91 of the Pensions Act 1995 states that (apart from in prescribed circumstances - which do not

include divorce) a scheme member's entitlement or right to a pension under an occupational pension scheme cannot be assigned, commuted or surrendered, nor can a charge or lien be exercised in respect of it, no set-off can be exercised in respect of it, and no order can be made by any court the effect of which would be that the member would be restrained from receiving the pension. Regulation 96 of the Local Government Pension Scheme Regulations 1997 stipulates that no benefits under the Regulations are assignable or chargeable with the member's debts or other liabilities.

135. So, it seems that a court order issued abroad has no validity in England and Wales and is not enforceable in England and Wales. In order to obtain an "Earmarking Order" or a Pension Sharing Order, the member's ex-spouse would, following the overseas divorce, need to make an application for ancillary relief in the courts in England and Wales which would take the member's pension rights into account.

#### **COEG booklet "Pension Sharing on Divorce - Contracted-out Employment" and the introduction of form CA2022**

136. A form, CA2202 (Pension Sharing on Divorce Notification), has been introduced for completion by scheme administrators, to notify COEG of a pension share. This should be submitted to COEG following the implementation of a Pension Sharing Order, but not later than six months following the date of termination of contracted-out employment.
137. In respect of couples obtaining a divorce in Scotland, a monetary value or percentage rate will be awarded to the former spouse, but the scheme administrator will be required to notify COEG of the amount as a percentage.
138. On receipt of the notification, COEG will update the National Insurance records of both the member and the former spouse to show that a "Pension Share" has occurred.
139. At the cessation of contracted-out employment (and at State Pension Age) the GMP calculation carried out by COEG in respect of the member will **not** take account of **any** pension rights shared on divorce and the **full** GMP amount will continue to be notified. **All** statements (except those issued by magnetic media) which show a GMP amount will include the following general reminder "The amount quoted does not take account of any pension rights shared on divorce", regardless of whether or not a pension share has actually taken place.
140. A booklet "Pension Sharing on Divorce - Contracted-out Employment" has been issued to all pension scheme

administrators by COEG. Copies can be obtained from Shirley Kankowski or Sue Thompson, Inland Revenue National Insurance Contributions Office, Contracted-out Employments Group (Research & Development 3), Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1ZZ. Telephone: 0191 225 0267

ANNEX 1

PENSION SHARING ON DIVORCE - RELEVANT STATUTORY INSTRUMENTS

Title of Act, Statutory Instrument, etc	Stat. Instrument / Commencement Order Number	Department
The Matrimonial Causes Act 1973	C18	
The Matrimonial Causes (Northern Ireland) Order 1978		
The Matrimonial and Family Proceedings Act 1984	C42	
The Family Law (Scotland) Act 1985	C37	
The Divorce etc (Pensions) Regulations 1996	SI 1996/1676	
The Divorce etc (Pensions) (Scotland) Regulations 1996	SI 1996/1901	
The Welfare Reform and Pensions Act 1999	C30	
The Welfare Reform and Pensions Act 1999 (Scotland) (Commencement No. 6) Order 2000	Scottish SI 2000/111 (C.4)	Scottish Executive
The Divorce etc. (Pensions) (Scotland) Regulations 2000	Scottish SI 2000/112	Scottish Executive
The Welfare Reform and Pensions Act 1999 (Scotland) (Commencement No. 8) Order 2000	Scottish SI 2000/238 (C.7)	Scottish Executive
The Divorce etc. (Pensions) (Scotland) Amendment Regulations 2000	Scottish SI 2000/392	Scottish Executive
The Act of Sederunt (Ordinary Cause Rules) Amendment (No. 2) (Pension Sharing on Divorce) 2000	SI 2000/408	
The Act of Sederunt (Rules of the Court of Session Amendment No. 7) (Pension Sharing on Divorce etc) 2000	SI 2000/412	
The Welfare Reform and Pensions Act 1999 (Commencement No. 4) Order 2000	SI 2000/1047 (C.29)	Dept. of Social Security
The Pensions on Divorce etc. (Provision of Information) Regulations 2000	SI 2000/1048	Dept. of Social Security
The Pensions on Divorce etc. (Charging) Regulations 2000	SI 2000/1049	Dept. of Social Security
The Divorce etc. (Notification and Treatment of Pensions) (Scotland) Regulations 2000	SI 2000/1050 (S.4)	Scotland Office
The Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000	SI 2000/1051(S.5)	Scotland Office
The Pension Sharing (Valuation) Regulations 2000	SI 2000/1052	Dept. of Social Security
The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000	SI 2000/1053	Dept. of Social Security
The Pension Sharing (Pension Credit Benefit) Regulations 2000	SI 2000/1054	Dept. of Social Security
The Pension Sharing (Safeguarded Rights)	SI 2000/1055	Dept. of

Regulations 2000		Social Security
The Retirement Benefits Schemes (Sharing of Pensions on Divorce or Annulment) Regulations 2000	SI 2000/1085	Inland Revenue
The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) (Amendment) Regulations 2000	SI 2000/1086	Inland Revenue
The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Excepted Provisions) Regulations 2000	SI 2000/1087	Inland Revenue
The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) (Amendment) Regulations 2000	SI 2000/1088	Inland Revenue
The Finance Act 1999, Schedule 10, Paragraph 18, (First and Second Appointed Days) Order 2000	SI 2000/1093 (C.32)	Inland Revenue
The Welfare Reform and Pensions Act 1999 (Commencement No. 5) Order 2000	SI 2000/1116 (C.35)	Lord Chancellor's Department
The Divorce etc. (Pensions) Regulations 2000	SI 2000/1123	Lord Chancellor's Department
The Welfare Reform and Pensions Act 1999 (Commencement No. 7) Order 2000	SI 2000/1382 (C.41)	Dept. of Social Security
The Child Support, Pensions and Social Security Act 2000 (Commencement No. 1) Order 2000	SI 2000/2666 (C.74)	Dept. of Social Security
The Family Proceedings (Amendment) Rules 2000 (Supreme Court, County Courts, England and Wales)	SI 2000/2267 (L.19)	Lord Chancellor's Department
The Pension Sharing (Consequential & Miscellaneous Amendments) Regulations 2000	SI 2000/2691	Dept. of Social Security
The Sharing of State Scheme Rights (Provision of Information and Valuation) Regulations 2000	SI 2000/2693	Dept. of Social Security
The Sharing of State Scheme Rights (Provision of Information and Valuation) (No. 2) Regulations 2000	SI 2000/2914	Dept. of Social Security
The Pension Sharing (Contracting-out) (Consequential Amendments) Regulations 2000	SI 2000/2975	Dept. of Social Security
The Pension Sharing (Excepted Schemes) Order 2000	SI 2000/3088	President of the Council
The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001	SI 2001/3649	The Treasury
The Welfare Reform and Pensions Act 1999 (Commencement No. 12) Order 2001	SI 2001/4049 (C.130)	Dept for Work and Pensions
The Family Proceedings (Amendment) Rules 2003	SI 2003/184 (L.2)	
Pension Sharing on Divorce or Nullity	Update No. 62	Pension Schemes Office
Pension Sharing on Divorce or Nullity –	Update No. 84	Pension

Calculation of the Pension Debit in Money Purchase Schemes and other miscellaneous points		Schemes Office
The Occupational Pension Schemes (Transfer Values and Miscellaneous Amendments) Regulations 2003	SI 2003/1727	Dept for Work and Pensions

Notes:

- ❖ The DSS / SO / LCD regulations are available on the HMSO website under: <http://www.hmso.gov.uk/stat.htm>
- ❖ The Scottish Executive regulations are available on the HMSO website under: <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-stat.htm>
- ❖ The Inland Revenue regulations are available on their website under: <http://www.inlandrevenue.gov.uk/si/index.htm>

## A BRIEF SUMMARY OF THE EARMARKING RULES.

### Introduction

The Pensions Act 1995 changed the law about pensions on divorce. The changes applied to divorces, nullity of marriage or judicial separation where proceedings commenced on or after 1 July 1996 (in England and Wales) or 19 August 1996 (in Scotland).

The Courts are now expressly required to take account of pensions on divorce, nullity of marriage or judicial separation and have the power to make the following "earmarking orders":

- an Order requiring the Scheme to pay a specified percentage or all of a member's pension when that pension comes into payment to the member's "ex-spouse", if and when the pension becomes payable i.e. the deduction to be paid to the "ex-spouse" is taken from the member's net pension after tax. (Note: this power does not apply in Scotland);
- an Order requiring the member to exchange pension for lump sum if and when the Scheme gives the member that option (Note: this power does not apply in Scotland);
- an Order requiring the Scheme to pay part or all of the member's lump sum to the member's "ex-spouse" if and when the lump sum becomes payable;
- an Order requiring the Scheme to pay part or all of a lump sum death grant to a member's "ex-spouse" if and when the member dies i.e. under section 25C(2)(a) of the Matrimonial Causes Act 1973 or section 12A(3)(a) of the Family Law (Scotland) Act 1985.

Note: It should be noted that sections 25C(2)(b) and 12A(3)(b) of the aforementioned Acts enable the Court, where the scheme member is able to nominate a beneficiary for the death grant, to require the member to nominate the ex-spouse. Clearly, if the Court makes an Order placing such a requirement on the scheme member, this does not achieve the desired effect as the administering authority retains the right to dispose of the death grant at its sole discretion (and not necessarily in accordance with the nomination made by the scheme member). If such a draft "Earmarking Order" is received, the administering authority should point out that it will not have the desired effect and suggest that the draft Order be amended to comply with section 25C(2)(a) of the Matrimonial Causes Act 1973 or section 12A(3)(a) of the Family Law (Scotland) Act 1985.

The Scheme can make representations to the Court about whether an "earmarking order" should be made in a particular case. Authorities may receive

draft Orders for comment. These should be checked to ensure that they are workable i.e. that the administering authority could comply with the Order – see, for example, the note above – and that the Order makes it clear whether a percentage of gross or net pension is to be paid to the ex-spouse. Any comments must be made within 21 days.

**Information to be provided by the administering authority – see the Divorce etc (Pensions) Regulations 2000 [SI 2000/1123] and the Divorce etc (Notification and Treatment of Pensions) (Scotland) Regulations 2000 [SSI 2000/1050].**

The administering authority is required to provide certain information if a member requests it or a Court orders him to request it. This includes:

- whether the member is entitled to a CETV (i.e. the member has not attained Normal Retirement Age and must have 2 or more years membership of the LGPS or have had a transfer in to the LGPS from another Scheme in order to be entitled to a CETV);
- in England and Wales, an estimate of the CETV calculated as at a date within 3 months of receiving the request for information (the "valuation date"), specifying the "valuation date" used for the purpose of the calculation;
- in Scotland, an estimate if the CETV calculated as at the date the "divorce" proceedings commenced or, if earlier, the date when the member and the spouse separated. Note: the Court will decide what portion of the CETV relates to the period of marriage;
- a statement as to the proportion of the CETV which relates to a contingent spouse's pension (not applicable in Scotland);
- what charges the authority intends to make (see annex **10** for details)

The information must be supplied to the member within 10 working days of the valuation date.

### **Administration**

If an "earmarking order" is made, the administering authority will require a copy of the following to implement the Order:

1. A copy of the decree of divorce, nullity of marriage or judicial separation including confirmation that the decree has been made absolute in the case of divorce or nullity of marriage.
2. A copy of the Order and the annex to the Order (see annex **15**) relating to the LGPS setting out the details required by rule 2.70 of the Family

Proceedings Rules 1991 as amended by the Family Proceedings (Amendment) Rules 2000.

Where an administering authority receives an "earmarking order" it must comply with regulation 10 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]. This details the information to be supplied and time limits within which the authority must act (see Boxes A to E below).

**Box A**

**Time Limit**

Within **21 "days"** from the receipt of an "earmarking order" the administering authority must issue a notice with specified information to the relevant parties. Regulation 10(1) stipulates the Acts under which such an Order can be given – these are:

- a) an Order under section 23 of the Matrimonial Causes Act 1973, so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions);
- b) an Order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985; or
- c) an Order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978, so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in (a) above

**ACTION**

- 1) **Provide** the member and the "ex-spouse" with the information in **Box B and**
- 2) **if** the member's pension is in payment, and the Order is from England, Wales or Northern Ireland, provide the member and the "ex-spouse" with the information in **Box C**; additionally, provide the member with the information in **Box D**; and
- 3) **in all cases**, provide the information on charging in **Box E** within the **21 "day"** deadline.

**Box B**

England, Wales, Scotland & Northern Ireland

**Where the member's pension is not in payment, the letter to the member and the "ex-spouse" must include**

- ❖ a list of any changes which the member or "ex-spouse" must notify the Scheme about within 14 days (**21 days in Scotland**) of a relevant event occurring. For example, the "ex-spouse" must be informed that he/she is obligated to notify the Scheme of a change of address, the date of any remarriage and the new surname, the date of any change of surname by deed poll and what the new surname is. The member and the "ex-spouse" should also be made aware that the scheme must be informed if the Order ceases to apply and must be informed of either party's death.

It is also wise to inform the "ex-spouse" that the earmarked **pension** will not be paid if the member dies before her and that the earmarked pension, but not an earmarked lump sum (unless the order directs otherwise), will automatically lapse if she remarries.

**Box C**

England, Wales & Northern Ireland only

**Information to include in letter to member and "ex-spouse" where an Order is made in respect of a member's pension rights or benefits whose pension is in payment**

- 1) the cash equivalent value of the member's pension rights or benefits (but it would also be helpful to show the amount of pension, basic and Pensions Increase, in payment before the Order is implemented);
- 2) the basic amount of the member's pension after the Order has been implemented i.e. excluding PI (but it would also be helpful to show the amount of PI as well);
- 3) the first date when a payment pursuant to the Order is to be made;
- 4) a list of any changes which the member or "ex-spouse" must notify the Scheme about within 14 days of the relevant event occurring. For example, the "ex-spouse" must be informed that he/she is obligated to notify the Scheme of a change of address, the date of any remarriage and the new surname, the date of any change of surname by deed poll and what the new surname is. The member and the "ex-spouse" should also be made aware that the scheme must be informed if the Order ceases to apply and must be informed of either party's death.

It is also wise to inform the "ex-spouse" that the earmarked benefits (other than an earmarked death grant) will not be paid if the member dies before her and that the right to an earmarked **pension** will cease to apply if she remarries but not the right to an earmarked lump sum (unless a provision has been included in the Order providing for it to lapse in the event or re-marriage);

**Box D**

England, Wales & Northern Ireland only

**Additional information to include in letter to the member where an Order is made in respect of a member's pension rights whose pension is in payment –**

- 1) the amount of the pension which is currently in payment;
- 2) the amount of pension payable to the member after the Order has been implemented;

England, Wales, Scotland & Northern Ireland

**Information to include in letter to member and "ex-spouse" where an Order is made in respect of a member's pension rights**

- 1) the amount of any charges which remain unpaid by the member or the "ex-spouse"
- 2) details of how the administering authority intend to recover the charges including
  - the date when the charges are to be paid (in whole or in part)
  - the sum which is to be paid by the member or the "ex-spouse"
  - whether the sum will be deducted from the member's pension or the earmarked pension received from by the "ex-spouse".

**Subsequent actions**

The administering authority will need to:

- keep a record of the "earmarking order"
- keep track of the member and the "ex-spouse"
- apply the "earmarking order" when the member's benefits become payable

If a member with an "earmarking order" is considering a transfer out, it would be advisable for the Administering Authority to send a copy of the Order to the new Scheme with the transfer value quote. This will enable the new Scheme to determine whether it can comply with the requirements of the Order if it accepts the transfer value.

If the member does transfer his / her benefits out of the LGPS, the administering authority must, within 21 days of the transfer, send a copy of the "earmarking order" to the new scheme and give a notice to the "ex-spouse".

The notice to the "ex-spouse" must include:

- a copy of the "earmarking order"
- a statement that the transfer has been made, specifying the transfer date
- details of the new scheme i.e. name and address
- a statement that the "earmarking order" will be binding on the new scheme

- where the transfer out includes benefits which were subject to an "earmarking order" from an earlier transfer in, or the transfer out is only in respect of part of the member's benefits, a statement that the Court may vary the Order on application from any person having an interest therein, and
- where the transfer out is only in respect of part of the member's benefits, a statement of the likely extent of the reduction in benefits payable under the Scheme. This must be done within 14 days in England and Wales, or within 21 days in Scotland.

Administering Authorities may wish to amend their standard transfer value in request letters to ask for a copy of any earmarking order applicable to benefits under the sending scheme. This will enable the Administering Authority to determine whether it can comply with the provisions of the Order and, if not the Authority can refuse to accept the transfer value in accordance with regulation 121(9) of the Local Government Pension Scheme Regulations 1997.

Notes:

1. Section 22 of the Welfare Reform and Pensions Act 1999 extended the earmarking provisions (which were introduced into the Matrimonial Causes Act 1973 by the Pensions Act 1995) to applications for financial relief after an overseas divorce, separation or annulment by amending Part III of the Matrimonial and Family Proceedings Act 1984. In Scotland, it was already possible to apply for an attachment order following an overseas divorce.
2. Earmarking of an annual pension can only be expressed in percentage terms (not as a cash amount). Earmarking is not permitted in respect of a member who is already subject to a Sharing Order in respect of the same marriage (whether or not that Order has yet taken effect).
3. Compulsory nomination for a death grant is prohibited in respect of a member who is already subject to a Sharing Order in respect of the same marriage (whether or not that Order has yet taken effect).
4. The Court can issue a variation to an "earmarking order".
5. An "earmarking order" cannot be issued if the pension arrangement is subject to a "Pension Sharing Order" in relation to the marriage.
6. Where an event occurs which is likely to result in a significant reduction in the benefits payable under the LGPS (e.g. forfeiture) the administering authority must inform the ex-spouse of the likely extent of the reduction in benefits within 14 days of the event occurring.

## A SUMMARY OF THE POLICY RECOMMENDATIONS MADE BY THE PENSION SHARING ON DIVORCE WORKING PARTY

The Working Party members were:

Terry Edwards, Pensions Consultant, LGPC

Bob Claxton, Pensions Manager, London Borough of Wandsworth

Mike Ratcliffe, Consultant, Mike Ratcliffe (Pensions) Limited

The Working Party were assisted by Brian Town, Head of LGP1, ODPM and Aaron Berry, LGPD, ODPM.

### Question 1 - Should the LGPS only offer a transfer out in respect of Pension Credits or should it also offer a benefit in the LGPS as an alternative?

The general legislation provides that pension schemes, other than unfunded public sector schemes, must offer a divorced spouse who has been granted a Pension Credit a transfer value to another pension scheme or arrangement and may offer a benefit in the divorcing scheme member's pension scheme as an alternative to a transfer. It would clearly be both simple and administratively convenient to only offer the transfer value out route to an "ex-spouse" with a Pension Credit. This would save administering authorities a great deal of time and effort in as much as it would not be necessary to create and maintain a second set of records in respect of the "ex-spouse".

However, there are a number of other issues which led the LGPC to conclude that the LGPS should also offer the option of a benefit in the scheme.

Firstly, the unfunded public service schemes (Police and Fire) will only be offering the route of having a benefit in the scheme. This is because offering a transfer value to another arrangement would result in a serious drain on the revenue of the employers operating the unfunded schemes and bring forward public expenditure. The notionally funded Teachers Pension Scheme will also only be offering the benefit in the scheme route. The LGPS ought, as far as is possible, to offer its members the same options as the other schemes operating within local government.

Secondly, if the LGPS does not offer the alternative of a benefit in the scheme, the scheme could be accused of forcing the "ex-spouse" to transfer to a personal pension scheme or a buy-out policy. This is a matter that the scheme should be wary of. The scheme has, over the last few years, seen the bad publicity surrounding mis-sold personal pensions and would not wish to be tarnished with similar bad publicity. Elected members may feel that the Local Authority has a role to play in the financial well being of the electorate in their area and has a moral obligation in this respect to the "ex-spouse".

Thirdly, if the LGPS does not offer the alternative of a benefit in the scheme, and the "ex-spouse" does not specify where he / she wants the transfer value to be paid, the administering authority will be faced with having to choose a suitable transfer destination. This has best advice implications and could potentially leave the authority open to challenge if the chosen investment did not perform well.

Fourthly, if a transfer value is paid, the "ex-spouse" will inevitably seek to compare the annuity eventually received with the Pension Debit applied to the member, which could be a greater or lesser amount. If the annuity received is far less, the "ex-spouse" will feel aggrieved that he / she had been unable to have a benefit in the LGPS and the member will feel aggrieved that his / her LGPS pension benefits are being reduced by a greater amount than the "ex-spouse" is actually receiving as an annuity.

Fifthly, paying a transfer value out does not negate the need to apply a Pension Debit to the scheme member; it only negates the need to maintain and pay the Pension Credit awarded to the "ex-spouse". There is, therefore, still an administrative exercise for the administering authorities to perform.

Question 2 - What "valuation date" should be used in calculating the value of the member's CETV following receipt of a Court Order or agreement?

Section 29 of the Welfare Reform and Pensions Act 1999 specifies that in determining the pension rights available for pension sharing, only those rights accrued up to the day immediately before the day on which the "Pension Sharing Order" or agreement takes effect are included in the calculation. However, the scheme administrator is allowed to calculate the CETV based on those accrued rights at any point in time within the "implementation period". In order to ensure consistency within local government, the LGPS regulations should specify that the "valuation date" (e.g. for MLI, age, and Pensions Increase purposes) shall be the first day of the "implementation period".

Question 3 - What family benefits will attach to the benefits granted in respect of a Pension Credit?

The proportion of the member's Cash Equivalent Transfer Value which is granted to the "ex-spouse" must be used to provide benefits of equal value. Hence, if the normal rights relating to spouse's and children's/dependant's pensions are not included in the benefits granted in the scheme to the "ex-spouse", the pension credit granted in the LGPS would need to reflect this.

The Working Party originally felt that a credited member ought to be treated in the same manner as a deferred pensioner and normal family benefits would attach to the Pension Credit. However, having had time to

consider the implications further, the Working Party concluded that no family benefits should attach to the Pension Credit for the following reasons:

- i) the objective of pension sharing is to provide the "ex-spouse" with a pension in his / her own right
- ii) valuing an automatic spouse's pension attaching to a Pension Credit would be difficult due to a lack of relevant data (i.e. which "ex-spouses" will remarry and when, bearing in mind that recent divorces are not typical of the unmarried, and which "ex-spouses" will die leaving a spouse)
- iii) how many recently divorced people would want a prospective spouse's pension built into the Pension Credit thereby providing a lower pension for themselves,
- iv) the "ex-spouse" may be able to surrender a part of the credited pension in order to provide a spouse's pension (see note below), and
- v) there would be difficulties in relation to children's pensions

Note: the ODPM has not included a provision in the LGPS to permit a Credited Member to surrender part of the credited pension to provide a spouse's pension. If there is a clamour from Credited Members for such a provision to be introduced, the ODPM will consider introducing such a provision.

#### Question 4 - What is "normal benefit age"?

Regulation 7(3) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] requires that the benefits derived from a Pension Credit must not be paid before "normal benefit age" except where

- the whole of the Pension Credit is commuted to a lump sum on the grounds of serious ill health with a life expectancy of less than 1 year, or
- the whole of the Pension Credit is commuted to a lump sum on the grounds of triviality (£195 or less per annum)

A lump sum can be paid before "normal benefit age" and on or after age 50 but only in respect of benefits in excess of "safeguarded rights".

"Normal benefit age" is defined as 'the earliest age at which a person who has Pension Credit rights under the scheme is entitled to receive a

pension by virtue of those rights' (other than on the grounds of serious ill health). It can be between age 60 and age 65.

On the basis that the Pension Credit member will become a member of the scheme after 31 March 1998, it was decided that the "normal benefit age" should be age 65.

Question 5 - From what age should "safeguarded rights" be payable?

Where a Court Order specifies that, for example, 20% of the member's CETV is to be granted to the "ex-spouse" to provide a Pension Credit, 20% of the transfer value in respect of the member's pre 6.4.97. GMP and 20% of the member's post 5.4.97. rights (Section 9(2B) rights) will become "safeguarded rights" in the Pension Credit.

Regulation 10 of the Pension Sharing (Safeguarded Rights) Regulations 2000 [SI 2000/1055] requires that "safeguarded rights" must be payable from an age which is equal for men and women. On the basis that the State Retirement Age will rise to age 65 between 2010 and 2020 and the normal retirement date under the LGPS is now age 65, it was decided that the age for payment of "safeguarded rights" under the LGPS should be age 65.

Question 6 - Can actuarially reduced benefits be paid before the "normal benefit age"?

The explanatory notes which accompanied the publication of the Welfare Reform and Pensions Act 1999 stated that 'early payment of pension may be permissible as an alternative to pension credit benefit in prescribed circumstances'. However, whilst regulation 7(1) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 [SI 2000/1054] says that 'the scheme may provide benefits which are different from those required to constitute pension credit benefit in respect of the amount, recipient and time at which the benefits are payable', regulation 7(3) of those regulations stipulates that the benefit must not be payable before "normal benefit age" (except in prescribed circumstances – see details under question 4 above).

There is no specific reference in the SI to early payment of the pension (as opposed to the early payment of a lump sum in excess of the "safeguarded rights").

On the basis that

- for pre 6 April 1997 members, the Pension Credit granted to the "ex-spouse" will virtually all be "safeguarded rights" (i.e. only the pre 6 April 1997 benefits in excess of the pre 6 April 1997 GMP will not be "Safeguarded rights"), and
- for post 5 April 1997 members, the Pension Credit granted to the "ex-spouse" will all be "safeguarded rights", and
- "safeguarded rights" should not be payable before 65 (see the conclusion in question 5 above),

it is considered that the LGPS should not permit the early payment of a Pension Credit (other than in accordance with the two bullet points outlined in question 4 above). Otherwise, an actuarially reduced pension could be paid from age 60 which would have to be increased to the level of the "safeguarded rights" at age 65. This would place a heavy cost on the LGPS.

Question 7 - If the "ex-spouse" is also an active member of the LGPS should he / she be allowed to aggregate the benefits or should the Pension Credit benefits be ring fenced?

On the basis of the proposals in relation to questions 4, 5 and 6 above (i.e. "normal benefit age" of 65, "safeguarded rights" payable age of 65, and no ordinary right to receive early payment of actuarially reduced benefits) it is difficult to see how it would be possible to allow aggregation of a Pension Credit with an active member's normal benefits under the LGPS for the following reasons:

- i) aggregation will permit the member to receive the Pension Credit rights at an actuarially reduced rate from age 60. The Fund, however, would be required to uplift the pension credit element to the full level of "safeguarded rights" from age 65. If permitted, this would cost Funds dearly;
- ii) aggregation would permit the member to receive an unreduced pension credit from age 50 on redundancy / efficiency grounds, or an enhanced credit on ill health grounds from any age. Again this would cost the Fund dearly as the pension credit initially awarded to the credited member will have assumed a "normal benefit age" of 65;
- iii) if the credited benefits are aggregated with the main scheme benefits, the aggregated credited benefit will then rise in line with pay rises rather than by RPI. Historically, over time, wage increases rise by greater than RPI. As the scheme member's pension will only be debited by the original pension credit plus RPI and, additionally, as the amount of the pension credit would have been calculated

- only assuming future increases in line with RPI, there would be a cost to the Fund;
- iv) if the credited benefits are aggregated with main scheme benefits it will be necessary to separately identify them and the "safeguarded rights" proportion (and the cash equivalent in respect of each of them) should there subsequently be a TV out;
  - v) if credited benefits are aggregated with main benefits they will count towards the credited member's maximum IR limits (which will not be the case if they are not aggregated)
  - vi) a credited member will, it is believed, be treated as a Class A member. If he/she wishes to aggregate the credited benefits with his/her main benefits he/she will need to opt to be treated as a Class A member in respect of his/her main benefits as well.

*Question 8 - Should the LGPS accept transfers in of Pension Credits in respect of an active member?*

On the basis of the proposal in relation to question 7 above (i.e. internal Pension Credits should be ring-fenced within the LGPS) it would not seem appropriate to accept a transfer in of a Pension Credit for an active member as this would have to be ring-fenced within the scheme. Acceptance of such transfers would be administratively burdensome i.e. it would be necessary to ascertain the split between the pre and post '97 rights in respects of the person's main benefits in the sending scheme, and also separately ascertain the split between "safeguarded" and "non-safeguarded rights" in respect of the Pension Credit the person has in the sending scheme. The sending scheme may also have a different "normal benefit age" and a different "safeguarded rights" payable date to that provided under the LGPS. Additionally, there does not appear to be a facility to charge for the work involved in administering the Pension Credit (because the administering authority will not have issued a schedule of charges during the initial Stages of the divorce proceedings).

With regard to Inter-Fund Adjustments it may make administrative sense to permit an Inter-Fund Adjustment in respect of a pension credit where the credited member is, or becomes, an active member in another LGPS Fund, provided it is ring fenced. The credited scheme member will obviously want to have all her/his LGPS benefits paid from one source and will not want to have to deal with the problem of split tax codes if the pension benefits are paid from two separate sources. There is also little point in administering authorities incurring the cost of two separate payroll processing fees. On the other hand, there seems little point in transferring a Pension Credit every time a scheme member who also has a Pension Credit transfers to a new Fund as this serves no real purpose and adds to administration. On balance, it is felt that the transfer of a Pension

Credit via an IFA should not a present be permitted until local government gains experience in this area e.g. numbers involved, etc. The LGPS Regulations can, if necessary, subsequently be amended to, for example, permit a Pension Credit to be passed, via an IFA, to the Fund which eventually pays a pension to the scheme member at retirement.

*Question 9 - Should the LGPS permit the "ex-spouse" to nominate another person to receive the pension credit if the "ex-spouse" dies before the pension credit has been discharged?*

The original version of regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 permitted the scheme rules to allow an "ex-spouse" to nominate another person to receive the pension credit if the "ex-spouse" died before the pension credit has been discharged. This raised the question, of course, of what would happen if the "ex-spouse" had not made a nomination i.e. the lack of a nomination would mean that no benefits would be paid in respect of the pension credit. Morally, this would be indefensible. Therefore, in order to ensure that the benefits payable in respect of an "ex-spouse" who dies before the pension credit has been discharged are the same as those of an "ex-spouse" who dies after the pension credit has been discharged, the Working Party decided it would be necessary to treat the former person as though the credit had been discharged (i.e. by a deeming provision). A death grant will then be payable.

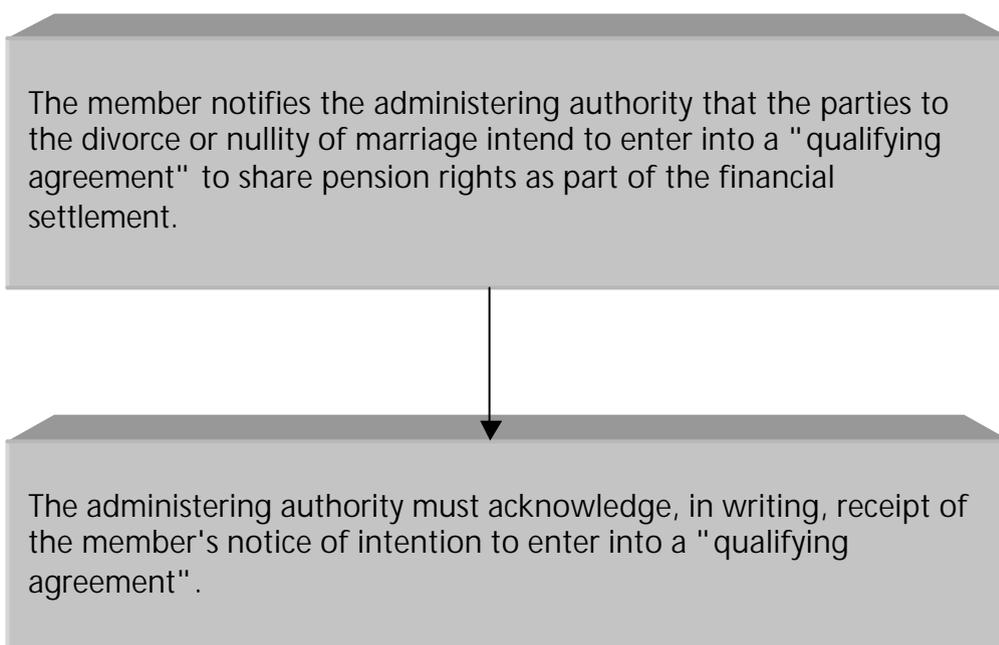
*Question 10 - Should the LGPS provide for the abatement policy to be based on the member's full (non-debited) pension?*

There are a number of different scenarios that may occur in respect of a debit and credit member. For example, both the debited and credited pension are in payment and the debited member then becomes re-employed in local government. Had the parties not been divorced, the Fund could have assessed the allowable earnings of the scheme member as being the difference between the old rate of pay (plus PI) and the full pension in payment. In order to achieve the same effect so that the Pension Fund does not 'lose out', the re-employment earnings limit of the member will need to be assessed by aggregating the amount of the debited and credited pensions. However, the member may complain that it is unjust to assess his allowable re-employment earnings by including a pension that he is not receiving (i.e. the amount of the pension credit being paid to his ex-wife). By permitting abatement to be assessed by reference to the aggregated pensions, administering authorities would be able to set and publish their own policies within this overall limit.

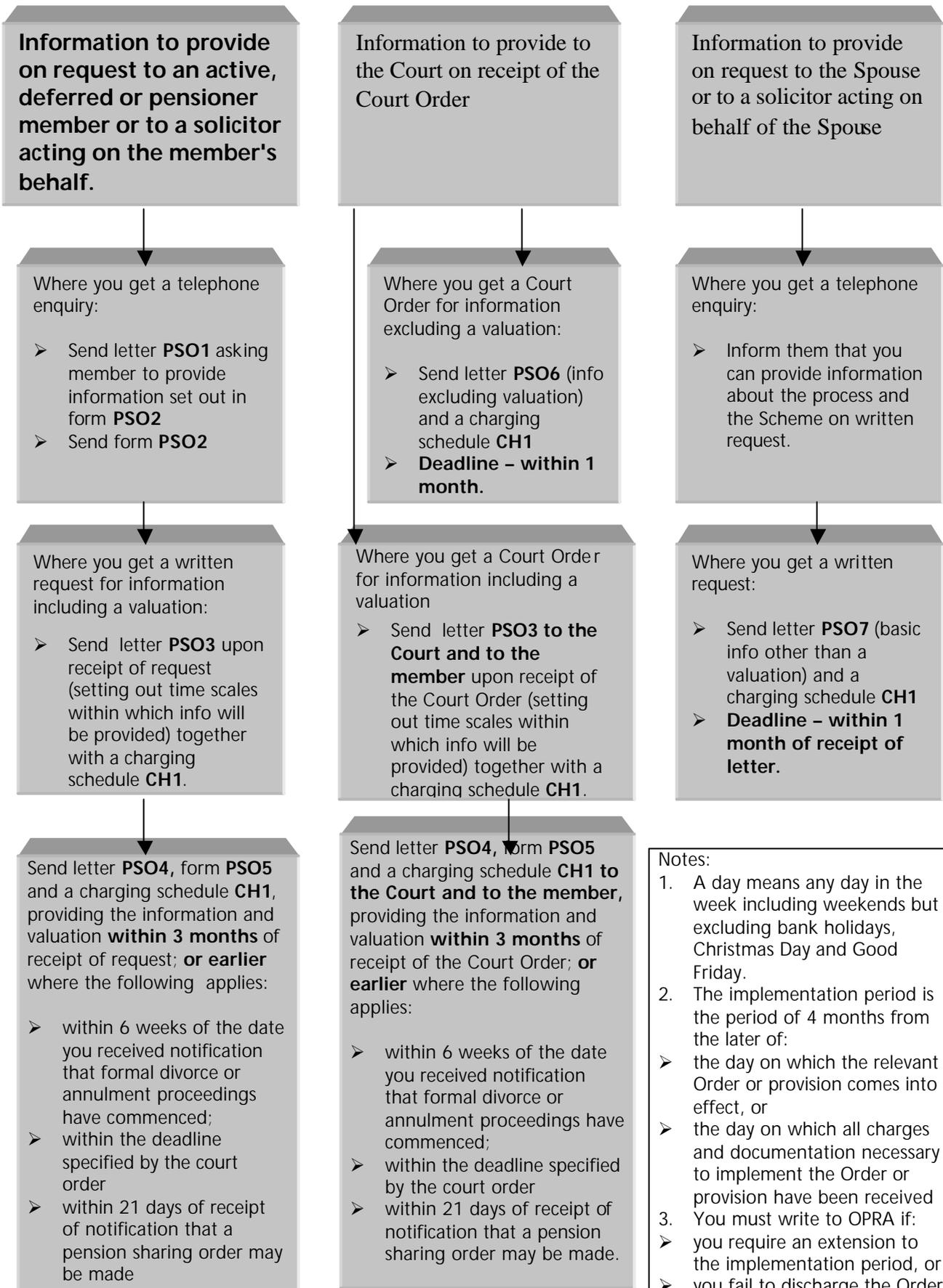
Note : The ODPM did not, however, amend the Local Government Pension Scheme Regulations 1997 to reflect this view. Authorities abatement policies can therefore only take into account the amount of pension paid to the Debited Member.

FLOW CHARTS AND STANDARD LETTERS

**FLOW CHART FOR PRE-STAGE 1 - DIVORCE OR NULLITY PROCEEDINGS IN SCOTLAND WHERE THE PARTIES INTEND TO ENTER A "QUALIFYING AGREEMENT" TO SHARE PENSION RIGHTS**



## FLOW CHART FOR STAGES 1 & 2 OF A PENSION SHARE



Notes:

1. A day means any day in the week including weekends but excluding bank holidays, Christmas Day and Good Friday.
2. The implementation period is the period of 4 months from the later of:
  - the day on which the relevant Order or provision comes into effect, or
  - the day on which all charges and documentation necessary to implement the Order or provision have been received
3. You must write to OPRA if:
  - you require an extension to the implementation period, or
  - you fail to discharge the Order within the 4 month period (or any extended period granted by OPRA).

**FLOW CHART FOR STAGES 3 & 4 - MEMBER - Provision of information after receipt of a Pension Sharing Order and, subsequently, the implementation of a Pension Sharing Order.**

**Information to provide to the member**

Where there are outstanding items preventing you from implementing the sharing order:

- Send letter **PSO8** to member informing them of the outstanding items and who they relate to.
- **Deadline – within 21 days of receipt of the sharing order**

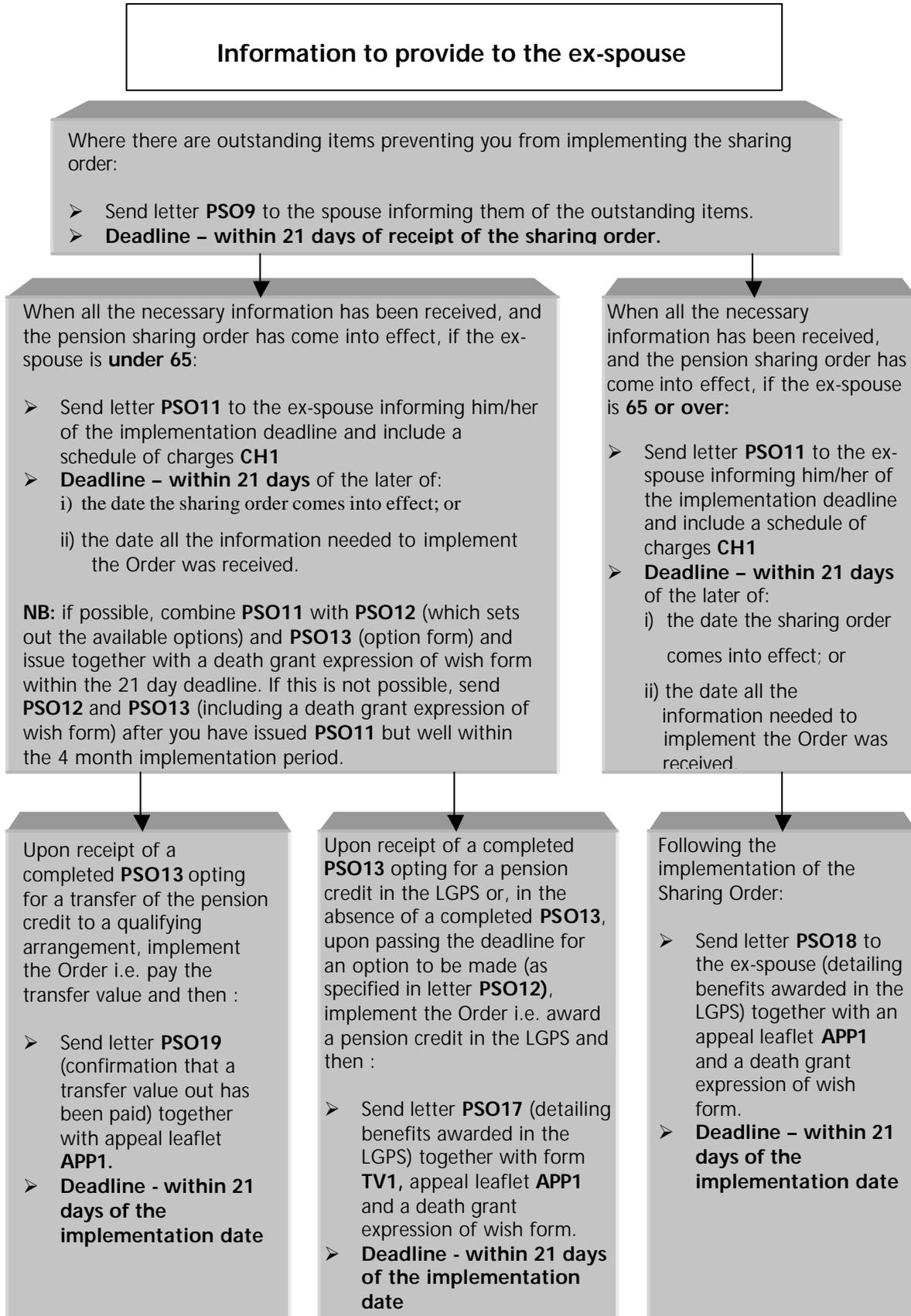
When all the necessary information has been received, and the pension sharing order has come into effect:

- Send letter **PSO10** to the member informing them of the implementation deadline and include a schedule of charges **CH1**.
- **Deadline – within 21 days** of receipt of the later of:
  - i) the date the sharing order comes into effect;
  - or
  - ii) the date all the information needed to implement the Order was received.

Following the implementation of the Sharing Order:

- Send letter **PSO14** (active), **PSO15** (deferred) or **PSO16** (pensioner) to the member, stating the revised value of their LGPS benefits and include an appeal leaflet **APP1** and a death grant expression of wish form.
- **Deadline – within 21 days of the implementation date.**

**FLOW CHART FOR STAGES 3 & 4 - EX SPOUSE - Provision of information after receipt of a Pension Sharing Order and, subsequently, the implementation of a Pension Sharing Order.**



**LETTER PSO1**

FIRST LETTER TO AN ACTIVE, DEFERRED OR PENSIONER MEMBER WHO REQUESTS A VALUATION FOR DIVORCE PURPOSES OVER THE TELEPHONE

My ref:  
Your ref:  
Date:

Dear

**Local Government Pension Scheme Regulations 1997**  
**[or Local Government Pension Scheme (Scotland) Regulations 1998]**

Thank you for your telephone call of ..... requesting, for divorce purposes, a valuation of your accrued pension rights in the Fund administered by this authority.

In order that I can provide you with the information you require please complete and return to me the attached form (**form PSO2**) as quickly as possible. This will give me your written authority to provide you (and your solicitor if you so wish) with all the pensions information that will be necessary for matrimonial proceedings.

Please note that under the Pensions on Divorce etc. (Provision of Information) Regulations 2000, I may also be required to provide similar information directly to the Court if so ordered and certain information (excluding a valuation of your pension benefits) to your spouse if requested to do so.

Yours sincerely

Pensions Manager

**LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997****[or LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 1998]****WRITTEN CONSENT FOR VALUATION AND PROVISION OF INFORMATION  
IN CONNECTION WITH MATRIMONIAL PROCEEDINGS**

Please complete the details requested in block capitals, sign, date and return the form.

Your full name	
Your date of birth	
The address to which you wish correspondence to be sent (for example, your home address)	
Your National Insurance Number	
Do you currently contribute to the Local Government Pension Scheme (LGPS), or Do you have a deferred pension in the LGPS, or Are you in receipt of a pension from the LGPS?	YES / NO* YES / NO* YES / NO* (* delete as appropriate)
The name of the employer in whose employment you are (or were) a member of the LGPS	
Have divorce or annulment proceedings formally commenced (see note 1 overleaf) i.e. have you completed a 'Form A' for your solicitor?	YES / NO* (* delete as appropriate)
The name and address of the solicitor acting for you.	
Do you authorise the Pensions Section to provide the solicitor named above with such pension information as he / she may request in relation to your benefits in the LGPS?	YES / NO* (* delete as appropriate)
Do you wish to be sent copies of any correspondence sent to your solicitor?	YES / NO* (* delete as appropriate)

Signed : \_\_\_\_\_

Date : \_\_\_\_\_

Notes :

1. Divorce or annulment proceedings must have commenced under one of the following -
  - 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)

**Please return this completed form to:**

**The Pensions Manager**  
**[insert rest of address]**



- g) the CEV is required either by you [your client] [the Court] within 3 months, or
- h) the CEV is required in respect of a member who is in receipt of a pension, or
- i) a CEV or the provision of information has already been requested and provided in the previous 12 months, or
- j) the CEV is required in the case of Scottish divorce or nullity proceedings where the relevant date to be used for the CEV is greater than 12 months prior to the date of receipt of the CEV request

[If appropriate, include the following paragraph in a letter to the member:

Where any of the above apply, I enclose my invoice for £ ..... (invoice number .....).  
 Cheques should be made payable to .....

Certain information has to be gathered from other sources before I can provide you with the information you require e.g. pay details have to be obtained from your [your client's] [the scheme member's] employer and your [your client's] [the scheme member's] Guaranteed Minimum Pension figure has to be obtained from the Inland Revenue. If I experience any difficulty in obtaining information from the other sources I will let you know.

I will write to you again within the time scale specified above.

[Where the letter is being sent to the Court, include the following paragraph:  
 A copy of this letter has been sent to the Scheme member.]

[Where the letter is being sent to a solicitor and the member has asked to be sent a copy, include the following paragraph:  
 A copy of this letter has been sent to the Scheme member.]

[Where the letter is being sent to the scheme member, include the following paragraph:

I suggest that you inform your solicitor if you have any other pension rights that you have not transferred to the Local Government Pension Scheme Fund administered by this authority. This would include any pension rights you have in another scheme, any deferred pension rights you have in another local government Fund, any pension rights where a transfer to the Local Government Pension Scheme is currently being negotiated, or any Free Standing Additional Voluntary Contribution plan you may have.]

Yours sincerely

Pensions Manager

Footnote:

Divorce or annulment proceedings must have commenced under one of the following -

- 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)



arrangement. Keeping the Pension Credit in the LGPS will provide the credited member with a pension and, where the divorced scheme member is an active or deferred member (as opposed to being a pensioner) also a lump sum. The pension and, if any, lump sum will increase each year in line with the rise in the Retail Prices Index and will normally be payable at age 65. However, the Pension Credit may be commuted for a lump sum before age 65 if the credited member is suffering from serious ill health (i.e. where life expectancy is less than 1 year). A trivial Pension Credit can also be commuted for a lump sum at State Pension Age. If a credited member dies before the benefits have become payable, the credited lump sum, if any, will be paid as a lump sum death grant to the credited member's personal representatives. If a credited member dies within 5 years of the benefits coming into payment, a lump sum death grant equal to the balance of 5 years worth of pension will be paid to whomever the administering authority decides, at its sole discretion, to make payment to. Full benefit details will be provided to the credited member if a Pension Sharing Order is issued by the Court or a sharing provision is made. The default option if a credited member does not positively opt for a transfer to another qualifying pension arrangement is a credit in the LGPS.

2. A schedule of charges relating to Pension Sharing activity is attached (**form CH1**). This sets out
  - i) the charges that will be levied by the authority administering the LGPS,
  - ii) who will be responsible for paying the charges (unless the Court directs otherwise), and
  - iii) whether the charges must be paid in full or in part before the "implementation period" in respect of any Pension Sharing Order or provision can commence.
3. If a Pension Sharing Order or provision is made in respect of your [your client's] [the scheme member's] pension rights, including any Additional Voluntary Contributions (AVC's), in the LGPS Fund administered by this Authority, it should be sent to:

The Pensions Manager  
[insert rest of address]

4. I can confirm that:
  - i) the LGPS is an occupational pension scheme and is not winding up
  - ii) any cash equivalent transfer value (CETV) provided in respect of an active or deferred member represents the full CETV to which you are [your client is] [the scheme member is] entitled and the CETV figure is not, and will not be, subject to reduction in accordance with the provisions of regulation 8(4), (4A), (6) or (12) of the Occupational Pension Schemes (Transfer Values) Regulations 1996
  - iii) you are not [your client is not] [the scheme member is not] a trustee of the LGPS Fund administered by this Authority
  - iv) I will not require details from you [your client] [the scheme member] about your [your client's] [the scheme member's] state of health if a Pension Sharing Order or provision is made
  - v) your [your client's] [the scheme member's] pension rights are / are not [delete as appropriate], as far as I am aware, subject to an Earmarking Order, a Pension Sharing Order or provision, a forfeiture order, or a bankruptcy order. Where there is such an order, details are shown below:

5. I can also confirm that you do / do not have [delete as appropriate] [your client has / does not have] [the scheme member has / does not have] non-shareable rights. If you [your client] [the scheme member] has non-shareable rights, these are detailed below: [delete as appropriate]

A bare Equivalent Pension Benefit (EPB) of £..... per annum

An injury allowance of £ ..... per annum

Annual compensation (from the award of Compensatory Added Years) of £.....

A widow's pension of £..... Per annum

A widower's pension of £ ..... Per annum

A child's pension of £..... per annum

6. If a Pension Sharing Order or provision is made I will require the following information before I can implement the Order or provision:

a) a copy of the relevant Order or provision

b) a copy of the Order, decree or, in the case of divorce or nullity proceedings lodged in Scotland, declarator responsible for the divorce or annulment to which the Order or provision relates

c) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, details of the apportionment of any charges the authority wishes to levy and confirmation that you have (your client has) (the scheme member has) notified the authority of your (his / her) intention to share pension benefits and that the authority has acknowledged receipt of that notification

d) a copy of the decree absolute

e) in relation to you [your client] [the scheme member]

(i) all the names by which you have been [your client has been] [the scheme member has been] known

(ii) your [your client's] [the scheme member's] date of birth

(iii) your [your client's] [the scheme member's] address

(iv) your [your client's] [the scheme member's] National Insurance number

(v) the name of the pension scheme to which the Order or provision relates (i.e. the Local Government Pension Scheme), and

(vi) your [your client's] [the scheme member's] membership number in the scheme [delete if not appropriate]

f) in relation to your [your client's] [the scheme member's] (ex) spouse

(i) all the names by which he / she has been known

(ii) his / her date of birth

(iii) his / her address

- (iv) his / her National Insurance number, and
- (v) if he / she is also a member of the LGPS, his / her membership number in the scheme [delete if not appropriate],
- (vi) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, the amount or percentage of the cash equivalent valuation to be credited to your (your client's) (the scheme member's) spouse, and
- (vii) if he / she wishes to transfer the Pension Credit to another pension scheme (a qualifying arrangement)
  - the full name and address of the qualifying arrangement
  - the membership or policy number in that arrangement (if known)
  - the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the Pension Credit to that qualifying arrangement

[Add the following paragraph if necessary:

I will also need the following information in order to implement any Pension Sharing Order: ]

[Where the letter is being sent to the Court, include the following paragraph:

A copy of this letter has been sent to the Scheme member.]

[Where the letter is being sent to a solicitor and the member has asked to be sent a copy, include the following paragraph:

A copy of this letter has been sent to the Scheme member.]

Yours sincerely

Pensions Manager



**NB: This draft form only relates to benefits in the LGPS. Additional information may need to be supplied if the member has an AVC 'pot', is in receipt of an annuity, is in receipt of an injury allowance, is in receipt of annual compensation following the award of compensatory added years, etc. Also, the sections on death benefits will need to be amended in accordance with the rules set out in UKSC Circular 82 for employees remaining in active membership beyond age 65.**

FORM PSO5

Name ..... Membership number .....

Details of pension interests as a member of the Local Government Pension Scheme as administered by .....  
 ..... Valuation of pension rights for the purposes of Part 2 of Form E Financial Statement (6.2000)

Form E question	Response
Name and address of scheme, plan or policy	The Local Government Pension Scheme as set out in the Local Government Pension Scheme Regulations 1997 [SI 1997/1612 as amended] (or the Local Government Pension Scheme (Scotland) Regulations 1998 [SI 1998/366 (S.14)]) and administered by .....Council.  Contact address: The Pensions Section, .....
National Insurance number	
Number of scheme, plan or policy	Not applicable.
Type of scheme, plan or policy (e.g. final salary, money purchase or other)	Public service, contracted-out, final salary, occupational pension scheme.
Cash Equivalent Value (CEV)	The total CEV in respect of the member's pension rights in the Local Government Pension Scheme administered by .....Council is £ ..... calculated at ..... A copy of the CEV calculation(s) is / are attached. Where the member has more than one benefit in the Local Government Pension Scheme administered

	<p>by .....Council (e.g. more than one job is held, or the member is an active member and a deferred member, or a pensioner and an active member, etc) then the figure above represents the total value (although a separate copy of the CEV calculation for each one is attached).</p> <p>In the case of a divorce lodged in Scotland, the CEV represents the total CEV adjusted by the relevant proportion i.e. the fraction that the period of marriage bears to the total period of membership in the scheme. For this purpose, the full calendar length of service has been used. This may produce a disproportionate figure for some scheme members e.g. where the member's contractual hours of employment have not been consistent throughout the period, where a transfer value has been received from another scheme that did not buy day for day service in the scheme, etc.</p>
<p>Cash Equivalent Value (CEV) - continued</p>	<p>The pension benefits, calculated as at ....., which are included in the CEV of the member's pension rights in the Local Government Pension Scheme administered by .....Council are as detailed below:</p> <p><u>Active Member</u></p> <p>Notional deferred retirement pension: £ ..... a year  Notional deferred retirement grant: £ ..... lump sum  Notional contingent widow's/widower's pension: £ ..... a year</p> <p><u>Deferred Member</u></p> <p>Deferred retirement pension: £ ..... a year  Deferred retirement grant: £ ..... lump sum  Contingent widow's/widower's pension: £ ..... a year</p> <p><u>Pensioner Member</u></p> <p>Pension in payment: £ ..... a year  Contingent widow's/widower's pension: £ ..... a year</p>

	<p>Note: The calculation of each CEV conforms with the rules of the Local Government Pension Scheme Regulations 1997 (or the Local Government Pension Scheme (Scotland) Regulations 1998) and with the Pensions on Divorce, etc (Provision of Information) Regulations 2000. A CEV is a mechanism of valuing the benefits that have accrued in the LGPS as at a given point in time. It is based on the pension, contingent spouse's pension and, except for members already in receipt of the pension, the lump sum which has accrued up to that point in time and takes account of such factors as age, marital status, mortality rates (life expectancy), current market (investment) conditions and inflation.</p>
<p>The lump sum payable on death in service before retirement (if the member is an active member)</p>	<p>This is twice the member's pensionable pay at the date of death or, in the case of a part time member, 3/80<sup>th</sup>s of the member's pensionable pay multiplied by the member's period of membership of the scheme, if this produces a larger sum. As at the date of assessment of the CEV, the sum is £ .....</p> <p>Note: even though the Local Government Pension Scheme Regulations 1997 (or the Local Government Pension Scheme (Scotland) Regulations 1998) allow scheme members to express a wish as to whom they would want the lump sum death grant to be paid to, .....  ..... Council, as the administering authority, retains total discretion as to whom the death grant shall be paid to.</p>
<p>The lump sum payable on death in deferment before retirement</p>	<p>A lump sum equivalent to the member's deferred retirement grant is payable. As at the date of assessment of the CEV, the sum is £ .....</p> <p>Note: even though the Local Government Pension Scheme Regulations 1997 (or the Local Government Pension Scheme (Scotland) Regulations 1998) allow scheme members to express a wish as to whom they would want the lump sum death grant to be paid to, .....  ..... Council, as the administering authority, retains total discretion as to whom the death grant shall be paid to.</p>
<p>The lump sum payable on death after retirement (members who retired on or after 1 April 1998)</p>	<p>A sum is payable equal to five times the annual rate of the member's retirement pension less the amount of any retirement pension paid up to the date of death.</p> <p>Note: even though the Local Government Pension Scheme Regulations 1997 (or the Local Government Pension Scheme (Scotland) Regulations 1998) allow scheme members to express a wish as to whom they would want the lump sum death grant to be paid to, .....  ..... Council, as the administering authority, retains total discretion as to whom the death grant shall be paid to.</p>

<p>The lump sum payable on death after retirement (members who retired before 1 April 1998)</p> <p>a) Member retired at or after Normal Retirement Date with a pension based on 10 or more years membership</p> <p>b) Member retired at or after Normal Retirement Date with a pension based on less than 10 years membership</p> <p>c) Member retired before Normal Retirement Date, or left before Normal Retirement Date with a deferred pension, with benefits based on 10 or more years membership</p>	<p>A sum equal to</p> <p>i) the greater of</p> <ul style="list-style-type: none"> <li>- the member's pensionable pay, or</li> <li>- 3/80ths of the member's pensionable pay multiplied by the period of scheme membership</li> </ul> <p>Less</p> <p>ii) if a widows pension is payable, 2/80ths of the member's pensionable pay for each year of membership prior to 1 April 1972 not uprated by the payment of additional pension contributions</p> <p>Less</p> <p>iii) the amount of pension and lump sum already paid to the pensioner</p> <p>A sum equal to 5 years pension less the amount of pension already paid to the pensioner</p> <p>A sum equal to the greater of the sums calculated in (i) and (ii) below</p> <p>i) 3/80ths of the member's pensionable pay multiplied by the period of scheme membership</p> <p>Less</p> <p>if a widows pension is payable, 2/80ths of the member's pensionable pay for each year of membership prior to 1 April 1972 not uprated by the payment of additional pension contributions</p> <p>Less</p> <p>the amount of pension and lump sum already paid to the pensioner</p>
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<p>d) Member retired before Normal Retirement Date, or left before Normal Retirement Date with a deferred pension, with benefits based on less than 10 years membership</p>	<p>ii) the member's period of membership divided by the period of membership he / she would have achieved had he / she remained in the scheme until Normal Retirement Date Multiplied by a figure equal to the member's pensionable pay which has been reduced by the following sums - if a widows pension is payable, 2/80<sup>th</sup>s of the member's pensionable pay for each year of membership prior to 1 April 1972 not uprated by the payment of additional pension contributions, and - the amount of pension and lump sum already paid to the pensioner</p> <p>If the member would have had 10 or more years membership had he / she remained in the scheme until Normal Retirement Date and has been in receipt of pension for less than 5 years, a sum calculated as for case (c) above would be payable</p> <p>If the member would have had less than 10 years membership had he / she remained in the scheme until Normal Retirement Date and has been in receipt of pension for less than 5 years, a sum calculated as follows would be payable:</p> <p>i) the member's period of membership divided by the period of membership he / she would have achieved had he / she remained in the scheme until Normal Retirement Date Multiplied by ii) a figure equal to 5 years pension less the amount of pension already paid to the pensioner</p> <p>Note: even though the Local Government Pension Scheme Regulations 1995 (or the Local Government Superannuation (Scotland) Regulations 1987) allow scheme members to express a wish as to whom they would want the lump sum death grant to be paid to, ..... ..... Council, as the administering authority, retains total discretion as to whom the death grant shall be paid to.</p>
<p>Earliest date when benefits can be paid (if the member is not already in receipt of a pension)</p>	<p>The earliest date the member can voluntarily draw pension benefits is from .....</p> <p>However [tick / complete or delete as appropriate]:</p>

	<ul style="list-style-type: none"> <li>❑ At this date the benefits would be subject to an actuarial reduction. The earliest date at which benefits could be voluntarily drawn without an actuarial reduction would be .....</li> <li>❑ At this date the member will not have achieved the maximum permissible pensionable service. The Normal Retirement Age under the Local Government Pension Scheme is age 65.</li> </ul>
<p>The estimated lump sum and monthly pension payable on retirement, assuming maximum lump sum (if the member is not already in receipt of the pension)</p>	<p><u>Active Members</u>  Assuming the member would remain in service to the earliest retirement date (see previous box) and based on current average pensionable pay, the estimated figures are:</p> <p>Monthly pension : £ ..... Lump sum : £ .....</p> <p>Assuming the member would remain in service to age 65 (see previous box) and based on current average pensionable pay, the estimated figures are:</p> <p>Monthly pension : £ ..... Lump sum : £ .....</p> <p><u>Deferred Members</u></p> <p>Monthly pension : £ ..... Lump sum : £ .....</p> <p>Note: the question assumes that the pension scheme is one which provides a pension only, with commutation of part of the pension to a lump sum at the request of the scheme member. The Local Government Pension Scheme is structured to provide the member with both a pension <u>and</u> a fixed amount of lump sum automatically. There is a limited option to change the apportionment of pension and lump sum.</p>
<p>The estimated maximum monthly pension without taking any lump sum.</p>	<p>See above.</p>

<p>Spouse's benefit on death in service (if the member is an active member).</p>	<p>As at the date of assessment of the CEV, the long term spouse's pension is £ ..... a year.</p> <p>A spouse's pension is increased to an amount equal to the scheme member's pensionable pay</p> <ul style="list-style-type: none"> <li>➤ for the first 3 months following death where there are no children in the spouse's care</li> <li>➤ for the first 6 months following death where there are children in the spouse's care</li> </ul>
<p>Spouse's benefit on death in deferment</p>	<p>As at the date of assessment of the CEV, the spouse's pension is £ ..... a year.</p>
<p>Spouse's benefit on death in retirement</p>	<ul style="list-style-type: none"> <li>❑ Male scheme member: half of the member's retirement pension entitlement.</li> <li>❑ Female scheme member: half of the member's retirement pension entitlement in respect of pension accrued on or after .....</li> </ul> <p>A spouse's pension is increased to an amount equal to the scheme member's pension in payment</p> <ul style="list-style-type: none"> <li>➤ for the first 3 months following death where there are no children in the spouse's care</li> <li>➤ for the first 6 months following death where there are children in the spouse's care</li> </ul> <p>Note: if the member married after ceasing active membership of the LGPS, the spouse's long term pension is only based on the member's pension accrued on or after 6 April 1978 (male members) or 6 April 1988 (female members) but if a widower had previously been married to the same female member whilst she was in active membership of the Local Government Pension Scheme after 31 March 1972, the widower's pension may be based on certain additional membership.</p>

<p>Dependant's benefit on death in service</p>	<p>There is no provision in the LGPS for a 'partner' other than a legal spouse of the scheme member.</p> <p>There is provision for children's benefits subject to age, relationship, whether in full time education or training for a trade, profession or vocation, state of health (i.e. physically or mentally incapacitated), etc.</p> <p>The amount due will depend upon the length of the member's pensionable service, the level of pensionable pay, the number of eligible children, and the amount of any income of the child while in remunerated training. Whether or not a spouse's pension is in payment will also affect the level of a child's pension.</p> <p>Consequently, it is not possible to give a figure for a death in service child's pension until all the circumstances are known e.g. the number of eligible children needs to be established as does whether or not a spouse's pension is payable.</p>
<p>Dependant's benefit on death in deferment.</p>	<p>There is no provision in the LGPS for a 'partner' other than a legal spouse of the scheme member.</p> <p>There is provision for children's benefits subject to age, relationship, whether in full time education or training for a trade, profession or vocation, state of health (i.e. physically or mentally incapacitated), etc.</p> <p>The amount due will depend upon the length of the member's pensionable service, the level of pensionable pay, the number of eligible children, and the amount of any income of the child while in remunerated training. Whether or not a spouse's pension is in payment will also affect the level of a child's pension.</p> <p>Consequently, it is not possible to give a figure for a death in deferment child's pension until all the circumstances are known e.g. the number of eligible children needs to be established as does whether or not a spouse's pension is payable.</p>

<p>Dependant's benefit on death in retirement</p>	<p>There is no provision in the LGPS for a 'partner' other than a legal spouse of the scheme member.</p> <p>There is provision for children's benefits subject to age, relationship, whether in full time education or training for a trade, profession or vocation, state of health (i.e. physically or mentally incapacitated), etc.</p> <p>The amount due will depend upon the length of the member's pensionable service, the level of pensionable pay, the number of eligible children, and the amount of any income of the child while in remunerated training. Whether or not a spouse's pension is in payment will also affect the level of a child's pension.</p> <p>Consequently, it is not possible to give a figure for a death in retirement child's pension until all the circumstances are known e.g. the number of eligible children needs to be established as does whether or not a spouse's pension is payable.</p>
<p>Additional information</p>	<ol style="list-style-type: none"> <li>1. The Local Government Pension Scheme is amended from time to time. The above details are based On the provisions of the Scheme as at the date the information is provided.</li> <li>2. [Optional paragraph: Please note that as you have not [your client has not] [the scheme member has not] attained two years membership of the LGPS and there has been no transfer of other pension rights into the LGPS, you are [your client is] [the scheme member is] not presently entitled to benefits under the LGPS. Entitlement to benefits, and hence to shareable rights, will not be achieved until you achieve [your client achieves] [the scheme member achieves] two years membership of the LGPS on .....]</li> <li>3. The information provided has been based on the following information: Full time equivalent pensionable pay of £..... In respect of the year ending .....</li> </ol> <p>Service details:</p>

	<p>Please inform me immediately if you believe [your client believes] either the service or pay details Used to prepare the information contained in this form are incorrect. Any query should be sent to:  The Pensions Manager  .....  .....  ..... Tel. ....</p> <p>4. The Local Government Pension Scheme is contracted-out of the State Earnings Related Pension Scheme and so no SERPS entitlement will have accrued for the period of membership of the Local Government Pension Scheme. SERPS entitlement, if any, in respect of any earlier period of non-Contracted out employment can be obtained from the Department of Social Security.</p>
--	--

**Signed** .....

**Date** .....

**Designation of signatory** .....





3. The current pension benefits which would be included in the valuation would be:

Active Member

A notional deferred annual pension, a notional deferred lump sum, and a notional annual contingent widow's / widower's pension.

Deferred Member

A deferred annual pension, a deferred lump sum, and a annual contingent widow's / widower's pension.

Pensioner Member

An annual pension and an annual contingent widow's / widower's pension.

[Note to Pensions Section: delete that or those which do not apply]

4. If the Court issues a Pension Sharing Order or a sharing provision is made, the LGPS offers the spouse of a divorced scheme member the options of retaining the Pension Credit awarded to him / her in the LGPS or of transferring the cash equivalent of the Pension Credit to another qualifying pension arrangement. Keeping the Pension Credit in the LGPS will provide the credited member with a pension and, where the divorced scheme member is an active or deferred member (as opposed to being a pensioner) also a lump sum. The pension and, if any, lump sum will increase each year in line with the rise in the Retail Prices Index and will normally be payable at age 65. However, the Pension Credit may be commuted for a lump sum before age 65 if the credited member is suffering from serious ill health (i.e. where life expectancy is less than 1 year). A trivial Pension Credit can also be commuted for a lump sum at State Pension Age. If a credited member dies before the benefits have become payable, the credited lump sum, if any, will be paid as a lump sum death grant to the credited member's personal representatives. If a credited member dies within 5 years of the benefits coming into payment, a lump sum death grant equal to the balance of 5 years worth of pension will be paid to whomever the administering authority decides, at its sole discretion, to make payment to. Full benefit details will be provided to the credited member if a Pension Sharing Order is issued by the Court or a sharing provision is made. The default option if a credited member does not positively opt for a transfer to another qualifying pension arrangement is a credit in the LGPS.
5. A schedule of charges relating to Pension Sharing activity is attached (**form CH1**). This sets out the charges that will be levied by the Authority administering the LGPS, who will be responsible for paying the charges (unless the Court directs otherwise) and whether the charges must be paid in full or in part before the "implementation period" in respect of any Pension Sharing Order or provision can commence.

6. If a Pension Sharing Order or provision is made in respect of the scheme member's pension rights, including any Additional Voluntary Contributions (AVC's), in the LGPS Fund administered by this Authority, it should be sent to:

The Pensions Manager  
[insert rest of address]

7. I can confirm that:

- i) the LGPS is an occupational pension scheme and is not winding up
- ii) any Cash Equivalent Transfer Value (CETV) figure which could be provided to the Court in respect of an active or deferred scheme member would represent the full CETV to which the scheme member is entitled and the CETV figure would not be subject to reduction in accordance with the provisions of regulation 8(4), (4A), (6) or (12) of the Occupational Pension Schemes (Transfer Values) Regulations 1996
- iii) the scheme member is not a trustee of the LGPS Fund administered by this Authority
- iv) I will not require details from the scheme member about the scheme member's state of health if a Pension Sharing Order or provision is made
- v) the scheme member's pension rights are / are not [delete as appropriate], as far as I am aware, subject to an Earmarking Order, a Pension Sharing Order or provision, a forfeiture order, or a bankruptcy order

8. I can also confirm that the scheme member has / does not have non-shareable rights. These are detailed below: [delete as appropriate]

A bare Equivalent Pension Benefit (EPB) of £..... Per annum

An injury allowance of £ ..... per annum

Annual compensation (from the award of Compensatory Added Years) of £.....

A widow's pension of £..... Per annum

A widower's pension of £ ..... Per annum

A child's pension of £..... per annum

9. If a Pension Sharing Order or provision is made I will require the following information before I can implement the Order or provision:

- a) a copy of the relevant Order or provision
- b) a copy of the Order, decree or, in the case of divorce or nullity proceedings lodged in Scotland, declarator responsible for the divorce or annulment to which the Order or provision relates
- c) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, details of the apportionment of any charges the authority wishes to levy and confirmation that the scheme member has notified the authority of his / her intention to share pension benefits and that the authority has acknowledged receipt of that notification
- d) a copy of the decree absolute

And, in relation to the scheme member

- i) all the names by which the scheme member has been known
- ii) the scheme member's date of birth
- iii) the scheme member's address
- iv) the scheme member's National Insurance number
- v) the name of the pension scheme to which the Order or provision relates (i.e. the Local Government Pension Scheme), and
- vi) the scheme member's membership number in the scheme [delete if not appropriate]

And, in relation to the scheme member's (ex) spouse

- i) all the names by which he / she has been known
- ii) his / her date of birth
- iii) his / her address
- iv) his / her National Insurance number, and
- v) if he / she is also a member of the LGPS, his / her membership number in the scheme [delete if not appropriate],
- vi) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, the amount or percentage of the cash equivalent valuation to be credited to him / her, and
- vii) if he / she wishes to transfer the Pension Credit to another pension scheme (a qualifying arrangement)
  - the full name and address of the qualifying arrangement
  - the membership or policy number in that arrangement (if known)
  - the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the Pension Credit to that qualifying arrangement

[Add the following paragraph if necessary:  
I will also need the following information in order to implement any Pension  
Sharing Order: ]

A copy of this letter has been sent to the Scheme member.

Yours sincerely

Pensions Manager

## LETTER PSO7

FIRST LETTER TO THE SPOUSE OF AN ACTIVE, DEFERRED OR PENSIONER MEMBER WHO REQUESTS IN WRITING INFORMATION IN CONNECTION WITH A DIVORCE OR TO A SOLICITOR ACTING ON BEHALF OF THE MEMBER'S SPOUSE (in the latter case, we need the member's written authorisation to send information to the solicitor)

My ref:  
Your ref:  
Date:

Dear

**Local Government Pension Scheme Regulations 1997**  
**[or Local Government Pension Scheme (Scotland) Regulations 1998]**

**Member's Name:** \_\_\_\_\_ **NI Number:** \_\_\_\_\_

Thank you for your letter of ..... requesting information in connection with divorce or annulment proceedings.

Your letter was received on .....

I am required under the Pensions on Divorce, etc (Provision of Information) Regulations 2000 to provide you with specified information within one month of the date of receipt of your letter. The information I am required to provide is set out below:

1. A Cash Equivalent Value (CEV) of the rights your spouse [your client's spouse] has accrued under the Local Government Pension Scheme (LGPS) can be supplied to your spouse [your client's spouse] or to the Court upon receipt of a written request from your spouse [your client's spouse] or the Court.

[Optional paragraph:

Please note that as your spouse [your client's spouse] has not attained two years membership of the LGPS and there has been no transfer of other pension rights into the LGPS, your spouse [your client's spouse] is not presently entitled to benefits under the LGPS. Entitlement to benefits, and hence to shareable rights, will not be achieved until your spouse [your client's spouse] achieves two years membership of the LGPS on .....

2. A CEV calculation will conform with the rules of the Local Government Pension Scheme Regulations 1997 [the Local Government Pension Scheme (Scotland) Regulations 1998] and with the Pensions on Divorce, etc (Provision of Information) Regulations 2000. A CEV is a mechanism of valuing the benefits that have accrued in the LGPS as at a given point in time. It is based on the pension, lump sum and contingent spouse's pension you have [your

client has] [the scheme member has] accrued up to that point in time and takes account of such factors as age, marital status, mortality rates (life expectancy), current market (investment) conditions and inflation.

3. The pension benefits included in the valuation would be as follows:

Active Member

A notional deferred annual pension, a notional deferred lump sum, and a notional annual contingent widow's / widower's pension.

Deferred Member

A deferred annual pension, a deferred lump sum, and a annual contingent widow's / widower's pension.

Pensioner Member

An annual pension and an annual contingent widow's / widower's pension.

[Note to Pensions Section: delete that or those which do not apply]

4. If the Court issues a Pension Sharing Order or a sharing provision is made, the LGPS would offer you [your client] the options of retaining the Pension Credit awarded to you [your client] in the LGPS or of transferring the cash equivalent of the Pension Credit to another qualifying pension arrangement. Keeping the Pension Credit in the LGPS will provide you [your client] with a pension and, where your spouse [your client's spouse] is an active or deferred member (as opposed to being a pensioner) also a lump sum. The pension and, if any, lump sum will increase each year in line with the rise in the Retail Prices Index and will normally be payable at age 65. However, the Pension Credit may be commuted for a lump sum before age 65 if the credited member is suffering from serious ill health (i.e. where life expectancy is less than 1 year). A trivial Pension Credit can also be commuted for a lump sum at State Pension Age. If a credited member dies before the benefits have become payable, the credited lump sum, if any, will be paid as a lump sum death grant to the credited member's personal representatives. If a credited member dies within 5 years of the benefits coming into payment, a lump sum death grant equal to the balance of 5 years worth of pension will be paid to whomever the administering authority decides, at its sole discretion, to make payment to. Full benefit details will be provided to you [your client] if a Pension Sharing Order is issued by the Court or a sharing provision is made. The default option if you do not [your client does not] opt in writing for a transfer to another qualifying pension arrangement is a credit in the LGPS.

5. If you are (your client is) potentially interested in a transfer of any Pension Credit to another qualifying pension scheme, you (your client) may wish to consider seeking independent financial advice either at this stage or later in the divorce process.
6. A schedule of charges relating to Pension Sharing activity is attached (**form CH1**). This sets out the charges that will be levied by the Authority administering the LGPS , who will be responsible for paying the charges (unless the Court directs otherwise) and whether the charges must be paid in full or in part before the "implementation period" in respect of any Pension Sharing Order or provision can commence.
7. If a Pension Sharing Order or provision is made I will need to know
  - i) all the names by which you [your client] has been known
  - ii) your [your client's] date of birth
  - iii) your [your client's] address
  - iv) your [your client's] National Insurance number,
  - v) if you are [your client is] also a member of the LGPS, your [your client's] membership number in the scheme [delete if not appropriate],
  - vi) in the case of divorce or nullity proceedings lodged in Scotland where there is a qualifying agreement, the amount or percentage of the cash equivalent valuation to be credited to you (your client), and
  - vii) if you wish [your client wishes] to transfer the Pension Credit to another pension scheme (a qualifying arrangement)
    - the full name and address of the qualifying arrangement
    - the membership or policy number in that arrangement (if known)
    - the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the Pension Credit to that qualifying arrangement

[Add the following paragraph if necessary:

I will also need the following information in order to implement any Pension Sharing Order: ]

You [your client] should note that you do not [he / she does not] have enough information available at this stage in the process to be able to make an informed decision on whether or not to transfer a Pension Credit to another pension scheme. This is because you do not [your client does not] know at this stage whether a Pension Sharing Order will be made, what percentage of your spouse's [your client's spouse's] pension will be subject to sharing, nor what benefits any share granted to you [to your client] will be worth. You [your client] may, therefore, wish to wait until a Pension Sharing Order (if any) is issued and I

have informed you [your client] of the value of the rights available in the LGPS before you make [your client makes] any decision.

[Where the letter is being sent to a solicitor and the spouse has asked to be sent a copy, include the following paragraph:

A copy of this letter has been sent to the Scheme member.]

Yours sincerely

Pensions Manager



- vii) if your ex-spouse wishes to transfer the Pension Credit to another pension scheme (a qualifying arrangement)
- the full name and address of the qualifying arrangement
  - the membership or policy number in that arrangement (if known)
  - the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the Pension Credit to that qualifying arrangement

You should note that your ex-spouse does not have enough information available at this stage in the process to be able to make an informed decision on whether or not to transfer a Pension Credit to another pension scheme. This is because your ex-spouse does not know at this stage what the Pension Credit will be worth. It may be prudent, therefore, for your ex-spouse to wait until I have informed him / her of the value of the rights available in the LGPS before he / she makes any decision.

[Add the following paragraph if necessary:

I will also need the following information in order to implement the Pension Sharing Order: ]

Yours sincerely

Pensions Manager



- the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the Pension Credit to that qualifying arrangement.

You should note that you do not have enough information available at this stage in the process to be able to make an informed decision on whether or not to transfer a Pension Credit to another pension scheme. This is because you do not know at this stage what the Pension Credit will be worth. It may be prudent, therefore, for you to wait until I have informed you of the value of the rights available in the LGPS before you make any decision.

[Add the following paragraph if necessary:

I will also need the following information in order to implement the Pension Sharing Order: ]

Yours sincerely

Pensions Manager



**LETTER PSO11**

LETTER TO BE SENT TO AN EX SPOUSE WITHIN 21 "DAYS" OF THE LATER OF:  
A) THE DATE THE PENSION SHARING ORDER COMES INTO EFFECT  
B) THE DATE ALL OUTSTANDING INFORMATION NEEDED TO IMPLEMENT A  
PENSION SHARING ORDER OR PROVISION IS RECEIVED

My ref:  
Your ref:  
Date:

Dear  
**Local Government Pension Scheme Regulations 1997**  
**[or Local Government Pension Scheme (Scotland) Regulations 1998]**  
**Member's Name:** **NI Number:**

I have received a Pension Sharing Order in respect of your ex - spouse's pension rights in the Local Government Pension Scheme administered by this Authority. The Order was received on .....

The Order credits you with ..... % / £..... (which represents .....%) [delete as appropriate] of the Cash Equivalent of your ex - spouse's pension rights in the Local Government Pension Scheme administered by this Authority. This is your Pension Credit. The Pension Credit can either be used to provide you with a benefit in the Local Government Pension Scheme or you can opt to transfer the value of the Pension Credit to another pension scheme of your choice (a qualifying arrangement). [delete the reference to a transfer value if the ex-spouse is aged 65 or over]

The Order to 'share' your ex-spouse's pension rights will be implemented within four months of the later of:

- a) the date the Pension Sharing Order comes into effect, and
- b) the date all the information needed to implement the Order was received

[Add the following paragraph if appropriate:  
A schedule of the charges which will be payable after the Order has been implemented is enclosed (**form CH1**).]

I will write to you again shortly. In that letter I will provide you with information on the benefit that will be granted to you in the Local Government Pension Scheme if you wish to retain the Pension Credit in the Local Government Pension Scheme and the amount of the Cash Equivalent Transfer Value that will be available to you if you decide to transfer the Pension Credit to another pension scheme. [delete the reference to a transfer value if the ex-spouse is aged 65 or over]

Yours sincerely  
Pensions Manager



The Order or provision has awarded you ..... % / £..... (which represents .....%) of your ex - spouse's CEV. Hence a sum of £..... has been awarded to you.

[Note: if charges are to be levied against the CEV sum granted to the ex - spouse, these must also be detailed and the net CEV also be shown]

In practical terms, this will provide you with a pension in the Local Government Pension Scheme of £ ..... per annum and, under current legislation, a tax free lump sum of £ .....

[Note: no lump sum will be provided where the Pension Credit is derived from a scheme member whose pension is already in payment]

[Note: if periodical charges are to be levied against the credited member, these must be detailed including how and when those charges will be recovered]

The benefits awarded to you are personal benefits. There is no provision for a contingent spouse's pension if you were to re-marry and predecease the new spouse, nor will any children's pensions be payable upon your death. Children's pensions remain "attached" in full to your ex-spouse's benefits in the Local Government Pension Scheme.

If you decide to retain the Pension Credit in the Local Government Pension Scheme, the pension [and lump sum] will be payable from age 65 and are payable for life. However, the benefits can be paid earlier than age 65 with the pension being paid as a one off lump sum equal to 5 years worth of pension if you suffer serious ill health. Serious ill health means ill health which is such to give rise to a life expectancy of less than one year. A trivial pension can be commuted for a lump sum at State Pension Age.

If, at any time, you wished to claim the Pension Credit benefits on the grounds of serious ill health you would have to write to me. Your case would then be placed before an independent registered medical practitioner.

A Pension Credit in the LGPS will, under current legislation, be increased each year in line with the rise in the Retail Prices Index i.e. it is inflation proofed during the period leading up to the date of payment and for the rest of your life whilst in payment.

If you die before the Pension Credit has been brought into payment, the Pension Credit lump sum, as increased in line with the Retail Prices Index, will be paid as a lump sum death grant to your personal representatives. If you die within 5 years of the Pension Credit being brought into payment, the balance of 5 years worth of pension will be paid as a lump sum death grant. The administering authority has total discretion as to whom this payment is made.

I enclose a Death Grant expression of wish form for you to complete and return to me in relation to any death grant that may be payable after your pension becomes payable. This enables the administering authority to take your wishes into consideration when deciding to whom to pay any death grant.

As an alternative to a Pension Credit in the LGPS you are entitled, at any time up to one year before your 65<sup>th</sup> birthday, to transfer the Cash Equivalent of your Pension Credit to another qualifying pension scheme. If you wish me to investigate a transfer to another scheme, please supply me with the information on the attached form (**form PSO13**).

You may wish to note that the date that your own Pension Credit benefits in the LGPS would be payable from is totally independent of the date that your ex - spouse may draw his / her benefits. Your ex - spouse's remaining pension rights and those granted to you are not detrimentally affected should either of you remarry. However, your Pension Credit rights could be subject to a Pension Share if any re-marriage ended by reason of divorce or annulment (as could your ex - spouse's remaining pension rights if he / she were to re-marry and the marriage were to end by reason of divorce or annulment).

I look forward to receiving your completed option form. Once I have received it I shall write to you again to confirm that I have discharged the Pension Credit in accordance with your wishes. If you require any further information or clarification please let me know.

Yours sincerely

Pensions Manager

**NB: this option form will need to be updated to include AVC investment options where a share of an AVC 'pot' has been granted to the ex-spouse under a Pension Sharing Order.**

**OPTION FORM IN RELATION TO A PENSION CREDIT**

Please complete this form in block capitals, sign, date and return it.

Your full name	
Your date of birth	
The address to which correspondence should be sent (e.g. your home address)	
Your National Insurance Number	
Do you wish to a) be awarded a Pension Credit in the Local Government Pension Scheme, or transfer the value of your pension credit to another qualifying pension scheme	YES / NO*  YES / NO*  (*delete as appropriate)
<b>If you wish to transfer the value of your pension credit to another qualifying pension scheme, please also provide the following information:</b>	
The name and address of the new scheme to which you may wish to transfer your accrued Pension Credit rights (see note 1 overleaf). The new scheme must be a qualifying arrangement (see note 2 overleaf)	
The name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the potential transfer of your accrued Pension Credit rights in the LGPS	
Your scheme or policy number in the new scheme (see note 3 overleaf)	
The date you joined (or are likely to join) the new scheme	
Whether the scheme is contracted-out	

of the State Earnings Related Pension Scheme (SERPS) and what type of scheme it is (see note 4 overleaf)	
The name and address of your new employer if your new pension scheme is an occupational pension scheme	

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Notes :

1. The name and address of the new scheme to which you may wish to transfer your accrued Pension Credit rights can be obtained from the manager / provider of the new pension scheme.
2. A qualifying pension scheme is
  - a) an occupational pension scheme (other than the Local Government Pension Scheme)
  - b) a personal pension scheme
  - c) an appropriate retirement annuity contract
  - d) an appropriate policy of insurance
  - e) an appropriate overseas arrangement
3. The scheme or policy number in the new scheme can be obtained from the manager / provider of the new pension scheme.
4. Confirmation of whether the new scheme is contracted-out of the State Earnings Related Pension Scheme (SERPS) and details of what type of scheme it is can be obtained from the manager / provider of the new pension scheme. The type of scheme could, for example, be a personal pension scheme, an occupational money purchase scheme, an occupational defined benefit (final salary) scheme, etc.

**Please return the completed form to:**

**The Pensions Manager**  
**[insert rest of address]**



On the valuation date the deferred benefits had increased to:

Annual pension of £

Lump sum of £

Contingent spouse's pension of £

The Pension Sharing Order or provision has had the effect of reducing:

(i) Your annual pension by £

(ii) Your lump sum by £

(iii) Your contingent spouse's pension (if you were to remarry whilst still an active member of the LGPS) by £

[Note: if charges are to be levied against the member's benefits, these must also be detailed.]

The figures set out in (i), (ii) and (iii) above will increase each year in line with inflation and will be deducted from your benefits when your benefits become payable to (or in respect of) you.

You may wish to note that your ex - spouse can either retain the Pension Credit granted to him / her or transfer the value of the Pension Credit to another pension scheme. In normal circumstances, a Pension Credit awarded to an ex - spouse and which is retained in the LGPS is not payable until age 65. This has no effect on the date that your own pension benefits in the LGPS are payable from. [Delete this paragraph if the ex - spouse is 65 or over]

Your remaining pension rights and those granted to your ex - spouse are not detrimentally affected should either of you remarry. However, your pension rights could be subject to a further Pension Share if any re-marriage ended by reason of divorce or annulment (as could your ex - spouse's Pension Credit rights if he / she were to re-marry and the marriage were to end by reason of divorce or annulment).

I enclose a new Death Grant expression of wish form that you may wish to complete and return to me in relation to any death grant that may be payable under the LGPS should you die.

You may wish to note that in certain circumstances there is scope for you to rebuild some or all of the amount that has been debited from your pension rights. Brief details are set out below.

The Earnings Cap in the year of your divorce / annulment was £.....  
A quarter of that is £.....

Higher earners i.e. those whose pensionable pay in the year before the divorce or annulment were more than one quarter of the Earnings Cap in the year of divorce or annulment can pay additional voluntary contributions or purchase added years in the Local Government Pension Scheme, but only to the extent that they could have done before the Pension Sharing Order was implemented.

Other earners i.e. those whose pensionable pay in the year before the divorce or annulment were equal to or less than one quarter of the Earnings Cap in the

year of divorce or annulment can pay additional voluntary contributions to bring their reduced benefits up to the maximum allowed by the Inland Revenue.

Additionally, in either case, members whose taxable earnings shown on their P60 are less than £30,000 per year can contribute up to £3,600 a year into a Stakeholder or Personal Pension Scheme, regardless of the normal Inland Revenue limits.

If you are interested in re-building your pension rights please do not hesitate to contact me for further details.

There are also other ways of saving for retirement. Please note that I am not permitted to offer financial advice but you could seek the guidance of a suitably qualified and registered independent financial advisor.

If you require any further information or clarification please let me know. You have the right of appeal against any decision taken by the [County Council] that you disagree with although it is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily. A leaflet on the Appeals Procedure is attached for your information (**leaflet APP1**).

Yours sincerely

Pensions Manager



On the valuation date the deferred benefits had increased to:

Annual pension of £

Lump sum of £

Contingent spouse's pension of £                    ]

The Pension Sharing Order or provision has had the effect of reducing these to:

Annual pension of £

Lump sum of £

Contingent spouse's pension (if you were to remarry) of £

[Note: based on post 5.4.78. or 5.4.88. service only]

[Note: if charges are to be levied against the member's benefits, these must also be detailed]

You may wish to note that your ex - spouse can either retain the Pension Credit granted to him / her or transfer the value of the Pension Credit to another pension scheme. In normal circumstances, a Pension Credit awarded to an ex - spouse and which is retained in the LGPS is not payable until age 65. This has no effect on the date that your own pension benefits in the LGPS are payable from. [Delete this paragraph if the ex - spouse is 65 or over]

Your remaining pension rights and those granted to your ex - spouse are not detrimentally affected should either of you remarry. However, your pension rights could be subject to a further Pension Share if any re-marriage ended by reason of divorce or annulment (as could your ex - spouse's Pension Credit rights if he / she were to re-marry and the marriage were to end by reason of divorce or annulment).

I enclose a new Death Grant expression of wish form that you may wish to complete and return to me in relation to any death grant that may be payable under the LGPS should you die.

If you require any further information or clarification please let me know.

You have the right of appeal against any decision taken by ..... Council that you disagree with although it is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily. A leaflet on the Appeals Procedure is attached for your information (**leaflet APP1**).

Yours sincerely

Pensions Manager

**LETTER PSO16**

LETTER TO BE SENT TO A PENSIONER SCHEME MEMBER WITHIN 21 "DAYS" OF THE IMPLEMENTATION OF A PENSION SHARING ORDER

My ref:  
Your ref:  
Date:

Dear

**Local Government Pension Scheme Regulations 1997**  
**[or Local Government Pension Scheme (Scotland) Regulations 1998]**

**Member's Name:** **NI Number:**

In my letter of ..... I promised to write to you as soon as I had implemented the Pension Sharing Order or provision and to give you details of the effect the Pension Sharing Order or provision has on your pension rights.

The Order or provision takes effect from ..... (the transfer date).

The Cash Equivalent Value (CEV) of your pension, valued as at ..... (the valuation date) and calculated in accordance with the relevant legislation was £.....

The Order or provision has awarded ..... % / £..... (which represents .....%) of the CEV to your ex - spouse. Hence a sum of £..... has been awarded to your ex -spouse.

The CEV of your pension has therefore been reduced to £ ..... (i.e. £ ..... less £..... = £.....)

[Note: if charges are to be levied against the member's CEV, these must also be detailed]

In practical terms, the pension benefits you were entitled to on the day before the Order or provision takes effect were:

Annual pension of £  
Contingent spouse's pension of £

[If a Pensions Increase award has been made between the date the Order takes effect (the transfer date) and the valuation date, add the following paragraph:  
On the valuation date the pension benefits you were entitled to had increased to:

Annual pension of £  
Contingent spouse's pension of £ ]

The Pension Sharing Order or provision has had the effect of reducing these to:

Annual pension of £  
Contingent spouse's pension (if you were to remarry) of £  
[Note: based on post 5.4.78. or 5.4.88. service only]

[Note: if charges are to be levied against the member's pension, these must also be detailed, including when payment of those charges, in whole or in part, are required to be paid, and the amount which the pensioner is required to pay, either as a lump sum or which will be deducted from his / her pension]

You may wish to note that your ex - spouse can either retain the Pension Credit granted to him / her or transfer the value of the Pension Credit to another pension scheme. In normal circumstances, a Pension Credit awarded to an ex - spouse and which is retained in the LGPS is not payable until age 65. This has no effect on the date that your own pension benefits in the LGPS are payable from. [Delete this paragraph if the ex - spouse is 65 or over]

Your remaining pension rights and those granted to your ex - spouse are not detrimentally affected should either of you remarry. However, your pension rights could be subject to a further Pension Share if any re-marriage ended by reason of divorce or annulment (as could your ex - spouse's Pension Credit rights if he / she were to re-marry and the marriage were to end by reason of divorce or annulment).

I enclose a new Death Grant expression of wish form that you may wish to complete and return to me in relation to any death grant that may be payable under the LGPS should you die.

If you require any further information or clarification please let me know.

You have the right of appeal against any decision taken by ..... Council that you disagree with although it is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily. A leaflet on the Appeals Procedure is attached for your information (**leaflet APP1**).

Yours sincerely

Pensions Manager



[Note: if periodical charges are to be levied against the credited member, these must be detailed including how and when those charges will be recovered]

The benefits awarded to you are personal benefits. There is no provision for a contingent spouse's pension if you were to re-marry and predecease the new spouse, nor will any children's pensions be payable upon your death. Children's pensions remain "attached" in full to your ex-spouse's benefits in the Local Government Pension Scheme.

The benefits will be payable from age 65 and the pension is payable for life. However, the benefits can be paid earlier than age 65 with the pension being paid as a one off lump sum equal to 5 years worth of pension if you suffer serious ill health. Serious ill health means ill health which is such to give rise to a life expectancy of less than one year. A trivial pension can be commuted for a lump sum at State Pension Age.

If, at any time, you wish to claim the Pension Credit benefits on the grounds of serious ill health you should write to me. Your case would then be placed before an independent registered medical practitioner.

The Pension Credit you have been awarded in the LGPS will, under current legislation, be increased each year in line with the rise in the Retail Prices Index i.e. it is inflation proofed during the period leading up to the date of payment and for the rest of your life whilst in payment.

If you die before the Pension Credit has been brought into payment, an amount equal to 3 years pension, as increased in line with the Retail Prices Index, will be paid as a lump sum death grant to your personal representatives. If you die within 5 years of the Pension Credit being brought into payment, the balance of 5 years worth of pension will be paid as a lump sum death grant. The administering authority has total discretion as to whom this payment is made.

I enclose a Death Grant expression of wish form for you to complete and return to me, if you have not already done so, in relation to any death grant that may be payable after your pension has been brought into payment. This enables the administering authority to take your wishes into consideration when deciding to whom to pay any death grant.

As an alternative to a Pension Credit in the LGPS you are entitled, at any time up to one year before your 65<sup>th</sup> birthday, to transfer the Cash Equivalent of your Pension Credit to another qualifying pension scheme. If you wish me to investigate a transfer to another scheme at some time in the future, please supply me with the information on the attached form (**form TV1**).

You may wish to note that the date that your own Pension Credit benefits in the LGPS are payable from is totally independent of the date that your ex - spouse may draw his / her benefits. Your ex - spouse's remaining pension rights and those granted to you are not detrimentally affected should either of you remarry. However, your Pension Credit rights could be subject to a Pension Share if any

re-marriage ended by reason of divorce or annulment (as could your ex - spouse's remaining pension rights if he / she were to re-marry and the marriage were to end by reason of divorce or annulment).

You should keep me informed of any future change of name or address.

You have the right of appeal against any decision taken by .....Council that you disagree with although it is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily. A leaflet on the Appeals Procedure is attached for your information (**leaflet APP1**).

If you require any further information or clarification please let me know.

Yours sincerely

Pensions Manager

**FORM TO REQUEST A CASH EQUIVALENT TRANSFER VALUE  
CALCULATION IN RELATION TO A PENSION CREDIT IN THE LOCAL  
GOVERNMENT PENSION SCHEME**

**POTENTIAL TRANSFER OF RIGHTS TO ANOTHER PENSION SCHEME**

If you require information in relation to a transfer of your accrued Pension Credit rights to another pension scheme please complete this form in block capitals, sign, date and return it.

Your full name	
Your date of birth	
The address to which correspondence should be sent (e.g. your home address)	
Your National Insurance Number	
The name and address of the new scheme to which you may wish to transfer your accrued Pension Credit rights (see note 1 overleaf). The new scheme must be a qualifying arrangement (see note 2 overleaf)	
The name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the potential transfer of your accrued Pension Credit rights in the LGPS	
Your scheme or policy number in the new scheme (see note 3 overleaf)	
The date you joined (or are likely to join) the new scheme	
Whether the scheme is contracted-out of the State Earnings Related Pension Scheme (SERPS) and what type of scheme it is (see note 4 overleaf)	
The name and address of your new employer if your new pension scheme is an occupational pension scheme	

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Notes :

1. The name and address of the new scheme to which you may wish to transfer your accrued Pension Credit rights can be obtained from the manager / provider of the new pension scheme.
2. A qualifying pension scheme is
  - a) an occupational pension scheme (other than the Local Government Pension Scheme)
  - b) a personal pension scheme
  - c) an appropriate retirement annuity contract
  - d) an appropriate policy of insurance
  - e) an appropriate overseas arrangement
3. The scheme or policy number in the new scheme can be obtained from the manager / provider of the new pension scheme.
4. Confirmation of whether the new scheme is contracted-out of the State Earnings Related Pension Scheme (SERPS) and details of what type of scheme it is can be obtained from the manager / provider of the new pension scheme. The type of scheme could, for example, be a personal pension scheme, a self-employed pension arrangement, a Section 32 Bond, an occupational Group Personal Pension Scheme, an occupational money purchase scheme, an occupational defined benefit (final salary) scheme, a small self administered pension scheme, etc.

**Please return the completed form to:**

**The Pensions Manager**  
**[insert rest of address]**



The benefits awarded to you are personal benefits. There is no provision for a contingent spouse's pension if you were to re-marry and predecease the new spouse, nor will any children's pensions be payable upon your death. Children's pensions remain "attached" in full to your ex-spouse's benefits in the Local Government Pension Scheme.

The benefits are payable immediately i.e. from the 'transfer date'. A cheque for the lump sum is enclosed / will be sent to you on ..... [delete if Pension Credit is derived from a pensioner member]. [Add additional wording if the lump sum has had interest added due to late payment]. The pension will be paid to you monthly in arrears on the [insert pay date e.g. last banking day of the month]. A payslip will be sent to your home address [insert frequency e.g. monthly, upon a change in the amount of your pension, etc]. To enable me to arrange payment of your pension, please complete and return to me the enclosed **bank details form**.

Your pension will be taxable in accordance with a PAYE coding issued by HM Inspector of Taxes. The Tax Office dealing with your pension is [enter details]. To enable me to obtain a tax code in respect of your pension please complete and return to me the enclosed form **P46**.

The Pension Credit you have been awarded in the LGPS will, under current legislation, be increased each year in line with the rise in the Retail Prices Index i.e. it is inflation proofed for the rest of your life whilst in payment.

If you die within 5 years of the Pension Credit being brought into payment, the balance of 5 years worth of pension will be paid as a lump sum death grant. The administering authority has total discretion as to whom this payment is made.

I enclose a Death Grant expression of wish form for you to complete and return to me, if you have not already done so, in relation to any death grant that may be payable. This enables the administering authority to take your wishes into consideration when deciding to whom to pay any death grant.

You have the right of appeal against any decision taken by ..... Council that you disagree with although it is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily. A leaflet on the Appeals Procedure is attached for your information (**leaflet APP1**).

Please keep me informed of any future change of name, address or bank details.

You should note that, for security reasons, a "life certificate" may be sent to you from time to time. Any delay in completion and return could result in payments of your pension being suspended. Under the National Fraud Initiative 1998, information held on the authority's computer records will be compared with information contained in records held by other bodies administering public funds. This will be done in full compliance with Data Protection legislation.

If you require any further information or clarification please let me know.

Yours sincerely

Pensions Manager



You have the right of appeal against any decision taken by .....Council that you disagree with although it is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved this way. They are often caused by misunderstandings or wrong information which can be explained or put right quickly and easily. A leaflet on the Appeals Procedure is attached for your information (**leaflet APP1**).

If you require any further information or clarification please let me know.

Yours sincerely

Pensions Manager

**FORM CH1**

Proposed Schedule of Charges for the Local Government Pension Scheme (LGPS)

**A. Scheme member not yet retired – about to divorce**

<b>Procedure</b>	<b>Comments</b>	<b>Cost</b>
1. Produce full CETV quotation (member or Court does not stipulate deadline for production)	1. Standard annual entitlement under PSA 1993 (to be provided within 3 months of relevant date).	£0
2. Produce full CETV quotation (member or Court requires within 3 months)	2. Standard CETV under PSA 1993 (to be provided within deadline requested).	£75 *
3. Produce partial CETV quotation (for Scottish cases where the date ceased cohabiting/date of service of divorce summons was more than 12 months ago or the member married after joining the LGPS)	3. Partial CETV quote (to be provided within 3 months or deadline requested by the member or the Court).	£75 *
2. Additional CETV quotations - Based on same dates - Based on different dates		£30 * per additional quote £75 * per additional quote
3. Provision of other information	If under disclosure of information regulations Otherwise, depending on nature of request	£0  Maximum £75 *
4. Receipt of pension sharing order or consent order where the spouse (the credited member) is under 65	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
5. Establish a new pensioner record where the spouse (the credited member) is 65 or over	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
6. Assuming all documentation is in place, settle a transfer out (instead of 4)	This only applies if the credited member asks for a transfer out at the outset. Otherwise, the charges in 4 will apply and no additional charge will be levied if the credited member subsequently asks for a transfer out	£180
7. Objections to order by scheme	Onus should be on the draftsman of the order to ensure that it is correctly drafted prior to issue	Costs for dealing with inoperable orders will be passed on

## B. Scheme member retired – pension in payment – about to divorce

Procedure	Comments	Cost
1. Assess the value of the Pension in payment, Including any contingent Benefits		£200 *
2. Receipt of pension sharing Order or consent order Where the spouse (the Credited member) is under 65	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
3. Establish new pensioner record where the spouse (the credited member) is 65 or over	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
4. Assuming all documentation is in place, settle a transfer Out (instead of 2, above)	This only applies if the credited member asks for a transfer out at the outset. Otherwise, the charges in 2 will apply and no additional charge will be levied if the credited member subsequently asks for a transfer out	£180

### 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 the pension fund.
5. VAT will be payable in addition to all the above charges.
6. All charges are correct at the time of production of this charging schedule (January 2001). The authority administering the pension fund will increase its charges each April by RPI (over the 12 months to the previous September).
7. The standard practice of the authority administering the pension fund is that the full amount of the charges marked with an "\*" must be paid, by either party to the divorce, before the relevant action is undertaken. All other charges can either be paid
  - a) in full at the point of action, by either party to the divorce, or
  - b) by part payment at the point of action, by either party to the divorce, with the balance being deducted from either the cash value awarded to the ex-spouse (the credited member) under the sharing order or agreement before it is converted into an annual pension value under the LGPS 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, or
  - c) by deduction in full from either the cash value awarded to the ex-spouse (the credited member) under the sharing order or agreement before it is converted into an annual pension value under the LGPS 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, or
  - d) by deduction in full from any share of a scheme member's Additional Voluntary Contribution 'pot' awarded to the ex-spouse (the credited member) under the sharing order or agreement.

The authority administering the pension fund will, however, comply with the charging requirements specified in an order or agreement.

### **Note for administering authorities on the application of Form CH1:**

The proposed schedule of charges has been based on costings undertaken by Scottish administering authorities. Authorities are, of course, free to determine their own level of charges although a national approach is seen to have merits. Note 5 on the schedule of charges states that VAT is payable. This is based on a preliminary determination made by the HM Customs and Excise Local VAT Office at Newcastle Under Lyme. The reasoning behind the determination appears to be questionable but, due to the relatively small sums involved, the LGPC has decided not to pursue the matter further (although authorities may wish to seek their own advice).

The proposed charging schedule does not include charges for the following cases even though authorities are permitted to make a charge:

- a) an initial CETV produced in respect of a member with less than 2 years membership in the LGPS and who has not transferred other pension rights into the LGPS
- b) an initial CETV produced for, or information provided in respect of, a member who is aged 59 or over
- c) a second request in a period of 12 months for Stage 1 information (excluding a CETV calculation) requested by the spouse or the Court

The reasoning behind (a) and (b) is that it seems inequitable to charge such members for the production of a CETV or the provision of information when other members receive the initial information for free. Members in categories (a) and (b) should therefore be subject to the standard charging schedule.

The reasoning behind (c) is that there are likely to be very few cases and the provision of the relevant information in these cases is not onerous.

The proposed charging schedule also makes no provision for the addition of interest (up to RPI) where the period between the date the initial information is provided and the date the pension sharing order or agreement takes effect is greater than 12 months. Again, this is because there are likely to be very few cases.

As the amounts shown in the proposed charging schedule are lump sum values (as opposed to any ongoing annual charges) there is probably no need to refer to the sums payable being subject to increase by the rate of RPI. Each April, administering authorities can review their level of charges and produce a new schedule to be issued to parties requesting divorce information after that date. However, note 6 has been included in the schedule of charges as a 'belt and braces' note just in case a Court stipulates an odd requirement in a Sharing Order e.g. the Order requires the member to pay the full costs but not until retirement benefits become payable.

No set charges are included in the charging schedule in respect of earmarking orders (see note 3). However, when an earmarking order is received, the administering authority must inform the member and the ex-spouse of

- a) the amount of any charges which remain unpaid by the member or the ex-spouse, and
- b) details of how the administering authority intend to recover the charges including
  - the date when the charges are to be paid (in whole or in part)
  - the sum which is to be paid by the member or the ex-spouse
  - whether the sum will be deducted from the member's pension or the earmarked pension received from by the ex-spouse.

## APPEALS PROCEDURES UNDER THE LOCAL GOVERNMENT PENSION SCHEME

### INTRODUCTION

Following your divorce the Court has issued a Pension Sharing Order. The Pension Sharing Order:

- a) awards the (ex) spouse of the pension scheme member a share of the value of the member's pension benefits. This entitles the (ex) spouse to a Pension Credit in the Local Government Pension Scheme; and
- b) correspondingly reduces the value of the scheme member's benefits in the Local Government Pension Scheme.

This guide is to help you understand the procedures for settling any disagreement or complaint you may have about decisions ..... Council have made about you or your benefits under the Local Government Pension Scheme Regulations 1997 [or Local Government Pension Scheme (Scotland) Regulations 1998] (the Scheme) following the implementation of the Pension Sharing Order. If, however, you are unhappy with the Pension Sharing Order issued by the Court, this is a matter which you should take up with your Solicitor or the Court.

..... Council administers the Pension Fund and throughout this guide is referred to as the Administering Authority.

### DECISIONS

At the point the Administering Authority implement the Pension Sharing Order or provision they have to make decisions under the Scheme rules that affect you. Similarly, the Administering Authority will need to make decisions in the future e.g. when your benefits become payable or if you decide to transfer the benefits to another pension scheme at some point in the future.

### WHAT TO DO WHEN YOU ARE NOTIFIED OF A DECISION

When you (and this includes dependants) are notified of a decision you should check, as far as you can, to see if you think it is based on the correct details and that you agree with it.

### WHAT TO DO IF YOU ARE UNHAPPY WITH A DECISION

It is normally a good idea to make an informal enquiry in the first place. Most problems are in fact resolved in this way. They are often caused by misunderstandings or wrong information which can be explained or corrected quickly and easily. So we suggest that you either telephone the number on the letter which the Administering Authority sent

to you notifying you of their decision or write to the Pensions Manager at the address given at the end of this guide.

If having done so, you remain unhappy with the decision (or the lack of one) then, under the dispute rules, you have the right to have the decision looked at afresh by an independent local referee and, if you are not happy with the referee's decision, by the Secretary of State for the Office of the Deputy Prime Minister [by the Scottish Ministers]. If you are still unhappy following the Secretary of State's [Scottish Minister's] decision, you can then take your case to the Pensions Ombudsman. The relevant addresses are listed at the end of this guide.

OPAS (the Occupational Pensions Advisory Service) is available to assist you, at any stage in the process, in connection with any difficulty with the Scheme which remains unresolved. OPAS can be contacted at 11 Belgrave Road, London, SW1V 1RB (tel 0845 601 2923).

There is no charge made for investigating any complaint at any stage under the dispute rules - the only expenses you will have to meet are those of your own (or your representative's) time, stationery and postage.

### **WHO DO I WRITE TO?**

If you wish the independent local referee to look at your case you can either write to the Pensions Manager at the address given at the end of this guide who will pass your dispute to the local referee or you can write direct to the referee.

### **WHAT INFORMATION SHOULD I PROVIDE TO THE REFEREE?**

You should provide the referee with your full name, address, date of birth, National Insurance number and

- a) the name of your employer if you are the scheme member whose benefits are being reduced in accordance with the Pension Sharing Order issued by the Court, or
- b) the name of the Pension Fund Administering Authority if you are the person to whom the Court has granted a share of the scheme member's pension rights i.e. you are the (ex) spouse.

You must set out full details of your disagreement and include a copy of the decision made by the Administering Authority that you disagree with.

### **ARE THERE ANY TIME LIMITS I SHOULD BE AWARE OF?**

Yes. If you want to use the dispute rules you must make your application to the local referee within 6 months after you were notified of the decision you are complaining about. If your complaint is that a decision has not been made, you must make your application within 6 months of the time the decision ought to have been made. You should not, therefore, leave things too long before making your application to the referee. The referee can extend the 6 months time limit for a reasonable period where there are special circumstances.

The referee should give you a decision within 2 months of receiving your written complaint or write to you at the end of 2 months telling you the reasons for a delay in reaching a decision and giving you the date he expects to be able to let you know the outcome.

If you get neither a letter giving the referee's decision nor a letter giving the reason for a delay within 3 months of the date you made the application or if you don't receive the referee's decision within 1 month of the date he said he expected to let you know his decision, you can apply directly to the Secretary of State for the Office of the Deputy Prime Minister [the Scottish Ministers] without waiting any longer (see below).

**WHAT POWER DOES THE REFEREE'S DECISION HAVE?**

Unless an application is made to the Secretary of State [Scottish Ministers], the referee's decision is binding on the Administering Authority that made the decision. This means that, if the referee's decision is contrary to their own, they must either deal with your case on the basis of the decision made by the referee or, where the decision relates to the exercise of a discretion by the Administering Authority, the Administering Authority will be required to reconsider the decision.

**APPEAL TO THE SECRETARY OF STATE FOR THE OFFICE OF THE DEPUTY PRIME MINISTER [SCOTTISH MINISTERS]**

If either you or the Administering Authority are unhappy with the referee's decision, either of you can ask the Secretary of State [the Scottish Ministers] to take a further look at the facts of the case. Such a request must be made within 6 months of the date of the referee's decision letter or, if the referee has failed to make a decision within the appropriate time limits (see above), the appeal must be lodged as soon as possible after the referee's time limit has ended.

**Useful addresses**

**The Pensions Manager**

The Pensions Manager  
[insert rest of address] Tel

**Local Referee**

The local referee is ..... and can be contacted by writing to:  
[insert address]

**OPAS**

The Occupational Pensions Advisory Service  
11 Belgrave Road  
London  
SW1V 1RB Tel 0845 601 2923

**The Secretary of State for the Office of the Deputy Prime Minister**

The Secretary of State  
The Office of the Deputy Prime Minister  
Ashdown House  
123 Victoria Street  
London  
SW1E 6DE

**[The Scottish Minister**

The Scottish Public Pensions Agency  
7 Tweedbank Park  
Tweedside  
Galashiels  
TD1 3TE]

**The Pensions Ombudsman**

The Pensions Ombudsman  
11 Belgrave Road  
London  
SW1V 1RB

Tel 020 7834 9144

**GAD GUIDANCE - PENSION DEBITS**

**LOCAL GOVERNMENT PENSION SCHEME**

**PENSION SHARING FOLLOWING DIVORCE**

**CALCULATION OF PENSION DEBIT FOR DIVORCED MEMBER AND PENSION CREDIT FOR EX-SPOUSE**

**1. Introduction**

1.1 This paper sets out the method and instructions for calculating the pension debit for divorced members and the corresponding pension credit due to the ex-spouse following the issue of a pension sharing order by the Court. Separate instructions cover the calculation of the cash equivalent of the member's benefits used to determine the member's "shareable rights", and further guidance will be issued on the future application of the debit to a member's benefits following a divorce. The guidance has been issued to comply with Statutory Instrument 2000 No. 3025, laid before Parliament on 10 November, and coming into force on 1 December. Factors have been calculated on a basis consistent with that underlying calculations in relation to Club transfers, as currently applicable within the LGPS.

**2. Calculation of the value of the "shareable rights"**

2.1 When a Pensions Sharing Order is received, the first stage is to check all the necessary information has been provided, the charges have been paid, and recalculate the amount and the value of the member's benefits before the debit is applied. This should be done using the methods and assumptions set out in the paper 'Pension Sharing Following Divorce – Calculation of Cash Equivalents'. In particular, it should be based on the age and status of the member at the calculation date, which should be within the "implementation period", and on the benefits in the scheme at that date.

2.2 For divorces under English law, the Pension Sharing Order will specify the percentage of the member's benefits that is to be shared. The cash equivalent obtained in 2.1 should be multiplied by this percentage, to give the value of the ex-spouse's benefits, or the ex-spouse cash equivalent.

2.3 In Scotland, the Pension Sharing Order will usually specify a monetary amount, and this should be used as the ex-spouse cash equivalent. The percentage for the pension debit should be calculated as the ratio of the monetary amount and the cash equivalent.

2.4 The member's annual pension [and lump sum] debit is then the member's accrued annual pension [and lump sum] at the calculation date (as taken into the cash equivalent calculation), multiplied by the percentage specified in the Sharing

Order, or that determined as in paragraph 2.3, as appropriate. The rights of an ex-spouse to a cash equivalent may be discharged by a scheme either by making a transfer payment to another appropriate scheme (as prescribed in the relevant legislation), or by establishing a pension credit within the scheme equal in value to the ex-spouse's cash equivalent.

2.5 If a pension credit is established, the ex-spouse cash equivalent will need to be converted into a benefit payable to the ex-spouse. The calculations below are based on the following benefits:

- a pension payable from age 65, or the "valuation date", if later
- if the member has not received a lump sum before the Pension Sharing Order date, a lump sum of three times the ex-spouse pension. This is payable at age 65, or the "valuation date" if the ex-spouse is aged 65 or above. If the ex-spouse dies before retirement, the deferred lump sum will be payable on the death of the ex-spouse. No lump sum is payable to the ex-spouse if the member has received their lump sum from the scheme;
- benefits to be increased in line with prices, under the provisions of the Pensions (Increase) Acts;
- on death after retirement but before age 70, a lump sum equal to five times the pension less the pension already received;
- no attaching benefits for the children or future husband or wife of the ex-spouse on the death of the ex-spouse.

### 3. **Pension Credit for the Ex-spouse**

3.1 Table 4 sets out the factors needed to calculate the pension credit for the ex-spouse, and Table 5 the market adjustment factors required.

#### 3.2 **Calculation Date**

The calculation date should be the valuation date. The factors should be based on the age and gender of the ex-spouse on this date, and the market conditions at that time. Do not use the age and gender of the member.

#### 3.3 **Calculation**

If the member has not received their lump sum prior to the calculation date, the pension credit as at the calculation date will be

$$[\text{ESCE} / \text{AMC}] / [F_p + (3x F_{is})],$$

in which case a lump sum of three times the annual pension credit will be due in addition to the credit so determined.

If the member has received their lump sum prior to the calculation date, the ex-spouse is not entitled to a lump sum, and the pension credit as at the calculation date will be

$$[ESCE / AMC] / [F_p]$$

ESCE	the ex-spouse cash equivalent (as described in paragraph 2.2 and 2.3)
$F_p$	factor for ex-spouse pension
$F_{ls}$	factor for lump sum for ex-spouse
AMC	adjustment for market conditions

The appropriate factors should be taken from the tables in force at the date of the calculation, using the age of the ex-spouse at the calculation date.

### 3.4 Pension Benefits

The ex-spouse's pension credit will be subject to pension increases with effect from the valuation date, under the provision of the Pensions (Increase) Acts. [NB: section 8(2A) of the Pensions (Increase) Act 1971 states that the ex-spouse's pension credit will be subject to pensions increase with effect from the day on which the Pension Sharing Order or provision takes effect (see paragraphs 86 and 125 of this Guide). Clearly, this will, in many cases, differ from the valuation date. GAD is currently considering what action to take e.g. amending the guidance on the calculation of the Pension Credit, or seek an amendment to the Pensions (Increase) Act 1971]

### 3.5 Adjustment for Market Conditions

The ex-spouse's cash equivalent should be adjusted for market conditions. This factor depends on the ex-spouse's age at the calculation date, and the yield on the FT Actuaries Index of British Government Index Linked Stocks of duration greater than 5 years (0% inflation assumption). The yield on the first working day of the calendar month into which the calculation date falls should be used; this is normally published on the following working day in the Financial Times. If the yield falls below 2%, then the factor for 2% should be used.

3.6 The AMC factors are shown in Table 5. Where the appropriate yield is not an integer, the factor should be obtained by interpolating between the closest two factors, to produce the transfer value payable. Please note that though the same yield is used for calculating the member's cash equivalent and the ex-spouse's pension credit, but the factor will not necessarily be the same, as it will depend on the ex-spouse's age and will be based on the factors in Table 5.

Government Actuary's Department  
29 November 2000

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Table 4

## Local Government Pension Scheme

Central Factors for Divorce Purposes  
Calculating Pension Credit for the Ex-Spouse

Males			Females		
Age last Birthday at Relevant Date	Gross Pension of £1 per annum	Lump Sum of £1	Age last Birthday at Relevant Date	Gross Pension of £1 Per annum	Lump Sum of £1
16	1.68	0.19	16	2.12	0.19
17	1.68	0.19	17	2.12	0.19
18	1.68	0.19	18	2.12	0.19
19	1.68	0.19	19	2.12	0.19
20	1.68	0.19	20	2.12	0.19
21	1.74	0.20	21	2.20	0.19
22	1.81	0.21	22	2.29	0.20
23	1.88	0.21	23	2.38	0.21
24	1.96	0.22	24	2.48	0.22
25	2.04	0.23	25	2.58	0.23
26	2.12	0.24	26	2.68	0.24
27	2.20	0.25	27	2.79	0.25
28	2.29	0.26	28	2.90	0.25
29	2.39	0.27	29	3.02	0.26
30	2.48	0.28	30	3.14	0.28
31	2.58	0.29	31	3.27	0.29
32	2.69	0.30	32	3.40	0.30
33	2.80	0.31	33	3.54	0.31
34	2.91	0.32	34	3.68	0.32
35	3.03	0.34	35	3.83	0.34
36	3.15	0.35	36	3.99	0.35
37	3.28	0.37	37	4.15	0.36
38	3.41	0.38	38	4.32	0.37
39	3.55	0.40	39	4.50	0.39
40	3.70	0.41	40	4.68	0.41
41	3.84	0.43	41	4.87	0.42
42	4.00	0.44	42	5.06	0.44
43	4.16	0.46	43	5.27	0.46
44	4.33	0.48	44	5.48	0.48
45	4.50	0.50	45	5.71	0.49
46	4.69	0.52	46	5.94	0.51
47	4.89	0.54	47	6.18	0.53
48	5.09	0.56	48	6.44	0.55
49	5.30	0.58	49	6.70	0.58
50	5.52	0.60	50	6.97	0.60

Table 4

## Local Government Pension Scheme

Central Factors for Divorce Purposes  
Calculating Pension Credit for the Ex-Spouse

## Males

## Females

Age last Birthday at Relevant Date	Gross Pension of £1 per annum	Lump Sum of £1	Age last Birthday at Relevant Date	Gross Pension of £1 Per annum	Lump Sum of £1
51	5.73	0.63	51	7.23	0.62
52	5.95	0.65	52	7.50	0.65
53	6.18	0.68	53	7.78	0.68
54	6.43	0.70	54	8.08	0.70
55	6.69	0.73	55	8.39	0.73
56	6.97	0.76	56	8.71	0.76
57	7.26	0.79	57	9.05	0.79
58	7.57	0.82	58	9.41	0.82
59	7.91	0.85	59	9.79	0.85
60	7.95	0.89	60	9.85	0.89
61	8.27	0.91	61	10.12	0.91
62	8.65	0.93	62	10.49	0.93
63	9.10	0.95	63	10.82	0.95
64	9.49	0.98	64	11.24	0.98
65	9.90	1.00	65	11.75	1.00
66	9.53	1.00	66	11.37	1.00
67	9.17	1.00	67	10.99	1.00
68	8.81	1.00	68	10.61	1.00
69	8.45	1.00	69	10.22	1.00
70	8.10	1.00	70	9.84	1.00
71	7.75	1.00	71	9.45	1.00
72	7.42	1.00	72	9.06	1.00
73	7.08	1.00	73	8.68	1.00
74	6.76	1.00	74	8.31	1.00
75	6.44	1.00	75	7.94	1.00
76	6.14	1.00	76	7.57	1.00
77	5.84	1.00	77	7.22	1.00
78	5.56	1.00	78	6.88	1.00
79	5.28	1.00	79	6.56	1.00
80	5.01	1.00	80	6.24	1.00
81	4.76	1.00	81	5.94	1.00
82	4.52	1.00	82	5.66	1.00
83	4.29	1.00	83	5.38	1.00
84	4.06	1.00	84	5.13	1.00
85	3.85	1.00	85	4.89	1.00

**Table 4**

**Local Government Pension Scheme**

**Central Factors for Divorce Purposes  
Calculating Pension Credit for the Ex-Spouse**

**Males**

<b>Age last Birthday at Relevant Date</b>	<b>Gross Pension of £1 per annum</b>	<b>Lump Sum of £1</b>
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**Females**

<b>Age last Birthday at Relevant Date</b>	<b>Gross Pension of £1 Per annum</b>	<b>Lump Sum of £1</b>
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Note:

1. The lump sum factor should only be used if the member has not received his/her lump sum from the scheme.
2. Use the age and gender of the ex-spouse, not the member

**Table 5**

**Local Government Pension Scheme  
Adjustment for Market Conditions  
for Ex-Spouses**

Adjustment to be made to pensioner cash equivalents calculated to allow for current yield on the FT-Actuaries index of index-linked stocks for Redemption periods of over 5 years with 0% inflation assumption.

<b>Age Last Birthday at Relevant Date</b>	<b>Yield on Index-Linked Stocks at Relevant Date</b>			
	<b>2.0%</b>	<b>3.0%</b>	<b>4.0%</b>	<b>5.0%</b>
16 - 25	1.60	1.23	1.00	0.84
26 - 28	1.57	1.22	1.00	0.85
29 - 31	1.54	1.21	1.00	0.85
32 - 33	1.51	1.20	1.00	0.86
34 - 35	1.50	1.19	1.00	0.86
36 - 37	1.46	1.18	1.00	0.87
38	1.45	1.18	1.00	0.87
39	1.44	1.17	1.00	0.88
40	1.43	1.17	1.00	0.88
41	1.42	1.17	1.00	0.88
42	1.40	1.16	1.00	0.88
43	1.39	1.16	1.00	0.88
44	1.38	1.15	1.00	0.89
45	1.37	1.15	1.00	0.89
46	1.36	1.15	1.00	0.89
47	1.35	1.14	1.00	0.89
48	1.33	1.14	1.00	0.90
49	1.32	1.13	1.00	0.90
50	1.31	1.13	1.00	0.90
51	1.30	1.13	1.00	0.90
52	1.29	1.12	1.00	0.91
53	1.28	1.12	1.00	0.91
54	1.25	1.11	1.00	0.91
55	1.23	1.11	1.00	0.91
56	1.20	1.10	1.00	0.92
57	1.17	1.08	1.00	0.92
58	1.15	1.06	1.00	0.92
59	1.12	1.04	1.00	0.92
60	1.15	1.07	1.00	0.92

**Table 5**

**Local Government Pension Scheme  
Adjustment for Market Conditions  
for Ex-Spouses**

Adjustment to be made to pensioner cash equivalents calculated to allow for current yield on the FT-Actuaries index of index-linked stocks for Redemption periods of over 5 years with 0% inflation assumption.

<b>Age Last Birthday at Relevant Date</b>	<b>Yield on Index-Linked Stocks at Relevant Date</b>			
	<b>2.0%</b>	<b>3.0%</b>	<b>4.0%</b>	<b>5.0%</b>
61	1.14	1.06	1.00	0.93
62	1.14	1.06	1.00	0.93
63	1.13	1.06	1.00	0.93
64	1.13	1.06	1.00	0.93
65	1.12	1.05	1.00	0.94
66	1.12	1.05	1.00	0.94
67	1.11	1.05	1.00	0.94
68	1.11	1.05	1.00	0.94
69	1.10	1.05	1.00	0.94
70	1.10	1.04	1.00	0.95
71	1.09	1.04	1.00	0.95
72	1.09	1.04	1.00	0.95
73	1.08	1.04	1.00	0.95
74	1.08	1.04	1.00	0.96
75	1.08	1.04	1.00	0.96
76	1.07	1.03	1.00	0.96
77	1.07	1.03	1.00	0.96
78	1.07	1.03	1.00	0.96
79	1.07	1.03	1.00	0.97
80	1.06	1.03	1.00	0.97
81	1.06	1.03	1.00	0.97
82	1.06	1.03	1.00	0.97
83	1.06	1.03	1.00	0.97
84	1.06	1.03	1.00	0.97
85	1.06	1.03	1.00	0.98

**Note:**

1. These factors should only be used for calculating the Pension Credit for the Ex-spouse.
2. Use the age and gender of the Ex-spouse, not the member

## FURTHER INFORMATION RELATING TO ITEMS IN BOXES 1, 2 AND 5 OF THE GUIDE

**Box 1:** For the purposes of a pension share on divorce, the divorce or annulment proceedings must have commenced under one of the following -

- 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).

**Box 2:** The Court may require further information as set out in regulation 2(4) of the provision of information regulations concerning financial relief under 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 the equivalent Scottish or Northern Ireland powers, will also have to be supplied to the Court if the Secretary of State makes regulations imposing such a duty on the Scheme Manager.

**Box 5(d)** details: whether the person responsible for the pension arrangement is aware that the member's rights under the pension arrangement are subject to any, and if so, to specify which, of the following -

- (i) any Order or provision specified in section 28(1) of the Welfare Reform and Pensions Act 1999 Act;
- (ii) an Order under section 23 of the Matrimonial Causes Act 1973 (financial provision orders in connection with divorce etc.), so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provisions about pensions);
- (iii) an Order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (powers in relation to pensions lump sums when making a capital sum order) which relates to benefits or future benefits to which the member is entitled under the pension arrangement;

- (iv) an Order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978, so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in paragraph (2)(d)(ii));
- (v) a forfeiture order;
- (vi) a bankruptcy order;
- (vii) an award of sequestration on a member's estate or the making of the appointment on his estate of a judicial factor under section 41 of the Solicitors (Scotland) Act 1980 (appointment of judicial factor).

## ANNEX 7

### HOW IS THE VALUE OF BENEFITS TO BE CALCULATED?

#### Valuation issues - active and deferred members

Generally, there will be two CETV valuations per pension share. One at the time of the initial request, a second to be used for the discharge of liability. The first and second valuations should be based on a marital status of 'single' and will be calculated in accordance with the GAD guidance (see annex 8).

GAD have confirmed that the reason the calculation should be based on a marital status of 'single' is that "one of the principles underlying the pension-sharing legislation is that it should impose no additional costs on pension schemes. This is the rationale for assuming that a member is unmarried when calculating a cash equivalent for divorce purposes. If the member were assumed to be married, the calculation would 'crystallise' the value of additional contingent benefits which would not otherwise be payable, and make them available to the former spouse. Pension schemes would effectively be paying widow(er)s' benefits in respect of divorced members who were both single and alive. In an extreme case, a court might order 100% of a man's cash equivalent to be transferred to his former wife. Suppose he were assumed to be married for this purpose. If he left service shortly afterwards and requested a Transfer Value, his cash equivalent calculated as a single man [if the court had not awarded any transfer to his former wife] could be less than the value ordered to be transferred to his former spouse."

This means that when undertaking the valuation:

- i) any pre 1 April 1972 service that a married (or formerly married) man has not updated as at the valuation date will need to be converted to 89% of its length, and
- ii) the contingent widow's pension element to be included in the valuation is to be based on post 5 April 1978 service and a contingent widower's pension element is to be based on post 5 April 1988 service, as defined in regulation 42 (regulation 41 in Scotland)

At its meeting on 10 May 2002 the LGPC Technical Group confirmed its view that, although the notional contingent widow's / widower's pension shown in the "Cash Equivalent Value (CEV) – continued" box on Form **PS05** should be the post retirement marriage figures (in order to show the benefits that, based on the GAD guidance, had been included in the CEV calculation), the following three boxes on Form **PS05**

- Spouse's benefit on death in service (if the member is an active member)
- Spouse's benefit on death in deferment, and
- Spouse's benefit on death in retirement

should all show, for a married member, the full spouse's pension (i.e. not the post retirement spouse's pension). This is because it assists the spouse to gauge the full amount of benefit being lost upon divorce (which is not reflected in the CEV). As the vast majority of couples agree the apportioning of the matrimonial assets prior to the Court appearance (the Court does not then have to determine the apportionment) it is

helpful to present the true spouse's pension figures for the benefit of the member and the spouse.

When calculating a CETV, remember to ensure that the GMP notified by the DSS relates only to the period in respect of which you are quoting a CETV. For example, if a member has opted to keep separate deferred benefits in the LGPS, ensure the GMP only relates to the period for which your Fund has liability.

In the case of divorce or nullity proceedings lodged in Scotland it will be necessary, at the CETV quotation stage, to determine how a personal pension transfer in to the LGPS (which has no actual dates of membership attached) should be taken into account when applying the  $A \times B/C$  formula described later in this annex.

Finally, in the case of an active member, it may be that when calculating the CETV quotation, the final years pay may be exceeded by

- a) one of the previous two years pay, or
- b) in the case of a member with a current Certificate of Protection of Pension Benefits, one of the previous four years pay or the average of any consecutive three years pay in the last thirteen years.

On the basis that:

- 1) there is no compulsion on the scheme member to opt for the most advantageous final pay period, and
- 2) by the time the member leaves the scheme / retires, the actual final years pay may be the best years pay

it is probably best to base the CETV quotation on the current (lower) final years pay but explain to the member / solicitor / Court that if the member leaves within [specify the relevant period] he / she could elect for benefits to be based on a higher final pay figure which would have produced higher benefits.

### **The First Valuation – the quotation**

In England and Wales, the CETV covers the member's entire accrued rights at the date of the calculation (other than "non-shareable rights"). The CETV should be calculated as at the date of receipt of the application from the member (unless a different date is ordered by the Court or the divorce proceedings are enacted under Scottish law.)

Where the divorce proceedings are enacted under Scottish law, the formula  $(A \times B)$  divided by C applies, where:

A = the benefit accrued up to the relevant date (ignoring any NI modification applicable to/acrued in respect of membership after the relevant date)

B = is the period of marriage whilst a member of the scheme which falls before the relevant date, and

C = the period of membership in the scheme before the relevant date.

The relevant date is defined in section 10(3) of the Family Law (Scotland) Act 1985 as being the earlier of

- a) the date on which the parties finally ceased to cohabit<sup>6</sup>, or
- b) the date of service of the summons in the action for divorce.

The meaning of the above formula, as contained in the Divorce etc. (Pensions) (Scotland) Regulations 2000 [SSI 2000/112] is far from clear. The Secretariat's interpretation is set out below:

Where the date the request for a valuation is received is 12 months or less after the relevant date (the relevant date being the earlier of the date the parties finally<sup>7</sup> ceased to cohabit or the date of service of the summons in the action for divorce) the CETV should be calculated as at the date the request for the valuation is received based on:

- a) the "shareable rights" benefits accrued up to the date the request was received and assuming, in the case of an active scheme member, that active membership had ceased on the date the request was received. Of course, in the case of deferred and pensioner members, the accrued benefits will be based on membership<sup>8</sup> up to the date of ceasing active membership of the LGPS (which will be before the date the request was received)
- b) the person's age at the date the request was received
- c) the MLI at the date the request was received
- d) any Pensions Increase that was applicable to the benefits at the date the request was received
- e) any revaluation of the GMP at the date the request was received

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<sup>6</sup> Section 10(7) of the Family Law (Scotland) Act 1985 states that in determining the date on which the parties to the divorce ceased to cohabit "no account shall be taken of any cessation of cohabitation where the parties thereafter resumed cohabitation, except where the parties ceased to cohabit for a continuous period of 90 days or more before resuming cohabitation for a period or periods of less than 90 days in all."

<sup>7</sup> Section 10(7) of the Family Law (Scotland) Act 1985 states that in determining the date on which the parties to the divorce ceased to cohabit "no account shall be taken of any cessation of cohabitation where the parties thereafter resumed cohabitation, except where the parties ceased to cohabit for a continuous period of 90 days or more before resuming cohabitation for a period or periods of less than 90 days in all."

<sup>8</sup> In the case of a pensioner who retired on ill health grounds it seems reasonable to include the ill health enhancement in the valuation of the "shareable rights". However, for the purposes of B and C in the calculation it would seem appropriate not to include the ill health enhancement as it cannot be said to readily fit within the definitions of B or C.

Having determined the CETV (i.e. the value of A in the equation) the amount of the CETV should be multiplied by B / C where:

B = the (calendar length<sup>9</sup>) period of marriage whilst a member of the Scheme<sup>10</sup> which falls before the date the request was received, and

C = the (calendar length<sup>11</sup>) period of membership in the Scheme<sup>12</sup> before the date the request was received.

Whilst the member may have ceased cohabiting before the date the request for the valuation was received it seems reasonable to interpret the Divorce etc. (Pensions) (Scotland) Regulations 2000 [SSI 2000/112] to require B and C to be calculated as set out above.

Take the following case as an example:

Joined private sector scheme 1.7.80. (transfer value subsequently paid to the LGPS)

Married 1.7.85.

Joined LGPS 1.7.90.

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<sup>9</sup> Although the SSI does not use the words "calendar length" it seems clear that there can be no other interpretation.

<sup>10</sup> As the CETV calculated under "A" will include the benefits resulting from membership derived from any transfer in of pension rights, it seems appropriate that (in order to be consistent) the calendar length of the period of marriage in the former scheme should be included in B. Note that, for the purposes of B, the period of marriage whilst a member of the scheme ends on the earlier of the date on which the parties finally ceased to cohabit or the date of service of the summons in the action for divorce.

<sup>11</sup> Although the SSI does not use the words "calendar length" it seems appropriate, in order to be consistent with B, that the calendar length should also be used in C.

<sup>12</sup> In order to be consistent with A and B it seems appropriate to include the calendar length of any transferred in service. Also, to ensure consistency of approach, membership derived from the purchase of added years should not be included in C as they cannot be included in B.

Notes 10, 11 and 12 above represent only one possible interpretation of the relevant legislation. For example, one might argue that transferred in service should not be included in B or C as it does not relate to a period of membership in the Scheme. However, this would, in the Secretariat's opinion, not be consistent with the calculation required for A. One might alternatively argue that only the actual period of membership bought by the transfer in should be included in C (and maybe even B) rather than the calendar length of the period the person was in the former Scheme. Including only the period of membership bought by the transfer value in C but not in B would be inconsistent; including only the period of membership bought by the transfer value in B and C could not work where the transfer in bought greater than calendar length service (e.g. transfers in from the Police Pension Scheme). There is no "right" answer and so the Secretariat's proposals set out in notes 10, 11 and 12 have been made with a mind to consistency of approach. There will equally be problems where a member's contractual hours in the LGPS have varied over time, as using calendar lengths will distort the weighting of the B / C apportionment. As there is no "right" answer it is suggested that, for the sake of consistency, authorities adopt the Secretariat's suggested approach and include the following wording in the CEV box on form PSO5 "The CEV represents the total CEV adjusted by the relevant proportion of the period of marriage to the total period of membership in the Scheme. For this purpose the full calendar length of service has been used. This may produce a disproportionate figure for some Scheme members e.g. where the member's contractual hours have not been consistent throughout the period, where a transfer value has been received from another Scheme that did not buy day for day service in the Scheme, etc." It is important that, whatever approach authorities adopt, a clear explanation of how the B / C apportionment has been calculated should be provided.

Ceased to cohabit 1.7.99.  
Requested CETV for divorce purposes 1.7.00.  
CETV of £20,000  
In the example:

A = £20,000  
B = 14 (i.e. 1985 to 1999)  
C = 20 (i.e. 1980 to 2000)

Thus  $A \times B/C = £14,000$

Where the date the request for a valuation is received is more than 12 months after the relevant date (the relevant date being the earlier of the date the parties finally ceased to cohabit or the date of service of the summons in the action for divorce) the CETV should be calculated as at the relevant date based on:

- a) the "shareable rights" benefits accrued up to the relevant date (ignoring any NI modification applicable to / accrued in respect of membership after the relevant date – only applicable in cases where cohabitation ceased prior to 1 April 1980; if the relevant date occurs prior to 1 April 1998, the Scottish Pension Officer Group has concluded that, for a female scheme member, the 1.4.72. to 6.4.88. membership should be included in the widower's pension element of the CETV if the member was uprating that service or the employing authority agreed, post 31.3.98., to treat the membership as counting for widower's pension purposes)
- b) the person's age at the relevant date
- c) the MLI at the relevant date
- d) any Pensions Increase that was applicable to the benefits at the relevant date
- e) any revaluation of the GMP at the relevant date

Having determined the CETV (i.e. the value of A in the equation) the amount of the CETV should be multiplied by B / C where:

B = the period of marriage whilst a member of the Scheme which falls before the relevant date, and

C = the period of (calendar length) membership in the Scheme before the relevant date.

Take the following case as an example:

Joined private sector scheme 1.7.80. (transfer value subsequently paid to the LGPS)

Married 1.7.85.

Joined LGPS 1.7.90.

Ceased to cohabit 1.7.99.

Requested CETV for divorce purposes 1.7.00.

CETV of £18,000

In the example:

A = £18,000  
B = 14 (i.e. 1985 to 1999)  
C = 19 (i.e. 1980 to 1999)

Thus  $A \times B/C = \text{£}13,263.16$

It should be noted that there will be cases where the member was an active or deferred member at the relevant date but is currently a pensioner. When supplying details of the active or deferred member's CETV as at the relevant date (apportioned by  $A \times B / C$ ) authorities might wish to include in the letter to the member / solicitor / Court that whilst the sum represents the CETV at the relevant date (as requested), the member is now a pensioner and a different valuation will apply to the valuation of the pensioner's benefits on the "valuation date" following receipt of a Pension Sharing Order. An optional paragraph has been included in letter **PS04**. This does, of course, raise the interesting possibility that the Pension Sharing Order may stipulate a sum to be credited to the ex-spouse that exceeds the amount of the pensioner's CETV.

It should also be noted that some Scottish authorities consider that there is no legal requirement to perform the  $A \times B/C$  calculation and that only the standard CETV needs to be provided.

## The Second Valuation – NB Rules governing this valuation are made under the Pension Sharing (Valuation) Regulations 2000.

- The "valuation date" of the CETV to be used for discharge of liability (e.g. for age, MLI and Pensions Increase purposes) is
  - in the case of a pension share under the Local Government Pension Scheme Regulations 1997, the later of
    - i) the date the Court Order or agreement comes into effect, or
    - ii) the first day of the "implementation period". That is, the first day that the administering authority has all the information necessary to implement the Pension Sharing Order e.g. the Order itself, the Order, decree or declarator responsible for the divorce to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc
  - in the case of a pension share under the Local Government Pension Scheme (Scotland) Regulations 1998, any day chosen by the administering authority within the period of 4 months commencing with the later of
    - a) the date the Court Order or agreement comes into effect, or
    - b) the day the authority has all the information necessary to implement the "Pension Sharing Order" e.g. the Order itself, the Order, decree or declarator responsible for the divorce to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc

### BUT

- in the case of divorce or nullity proceedings lodged in England, Wales, Scotland or Northern Ireland, the CETV must be based only on the benefits accrued up to the day before the Court Order or provision takes effect<sup>13</sup>;

#### Notes:

1. In the case of Scottish divorce or nullity proceedings, an Order or agreement will be treated as ineffective if the scheme administrator does not also receive copies of the "Pension Sharing Order" or agreement and the relevant decree of divorce or declarator within 2 months of the date of the extract of the decree or declarator (although the Court can extend this period).
2. In the case of Scottish divorce or nullity proceedings the Pension Sharing Order will usually quote a sum to be transferred to the ex-spouse. If a percentage is quoted this could result in the ex-spouse being awarded a larger sum than perhaps the Court intended i.e. because the member's CETV could have increased significantly compared to that provided at the quotation stage.

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<sup>13</sup> Section 24B of the Matrimonial Causes Act 1973 says "A pension sharing order ... is not to take effect unless the decree on or after which it is made is made absolute". It could be argued, therefore, that where the date of a decree absolute is later than the date shown on the Pension Sharing Order as the Effective Date of the Order, the Order does not take effect until the date of the decree absolute.

### **Valuation issues - pensioner members**

The valuation of a pensioner members benefits will be calculated in accordance with guidance issued by GAD (see annex 8) but as modified at the quotation stage by the formula  $(A \times B)$  divided by C, as described above, in the case of divorce or nullity proceedings lodged in Scotland.

**GAD GUIDANCE  
LOCAL GOVERNMENT PENSION SCHEME**

**PENSION SHARING FOLLOWING DIVORCE  
CALCULATION OF CASH EQUIVALENTS**

**1. Introduction**

- 1.1 This paper sets out the method and instructions for calculating the cash equivalent of a member's benefits for divorce purposes. This method should be used both when a member applies for a quotation of the value of the benefits during the divorce proceedings, and after a Pensions Sharing Order has been made. A separate paper has been prepared to cover the calculation of the pension debit to the member and the pension credit to the ex-spouse, and further guidance will be issued on the future application of the debit to the member's benefits. The guidance has been issued to comply with Statutory Instrument 2000 No. 3025, laid before Parliament on 10 November, and coming into force on 1 December. Factors have been calculated on a basis consistent with that underlying calculations in relation to Club transfers, as currently applicable within the LGPS.

**2. Active Members and Deferred Pensioners**

- 2.1 In the case of an active member or deferred pensioner, that is where no benefits have yet come into payment, the cash equivalent transfer value should be quoted. This should be calculated using the same approach as would apply to a normal Club transfer value, even if the member is not normally entitled to a transfer value.
- 2.2 If the cash equivalent transfer value is requested for divorce purposes, it should be assumed that the member is unmarried, and the appropriate factor used.

**3. Members already in receipt of benefits**

- 3.1 Those in receipt of benefits do not have an entitlement to a cash equivalent transfer value. The pensioner cash equivalent can be calculated using the method and factors set out in this guidance, but should be used for divorce purposes only.

- 3.2 There are three sets of tables:

Table 1 Pensioners and former deferred pensioners who retired on grounds other than ill-health ;

Table 2 Pensioners who retired on ill health grounds;.

Table 3 Adjustment for Market conditions, to be used for pensioner cash equivalents only.

Tables 1 and 2 differ due to differences in expected mortality rates and also due to the fact that, prior to age 55, only ill-health pensions attract any increases.

### 3.3 Calculation Date

The date for the calculation will depend on the stage of the divorce:

- if a quotation is required for part of the proceedings, in Scottish cases, the date will usually be specified by the Court. For divorces in England & Wales, the date used should be consistent with the date used for normal transfer value calculations (i.e. the guarantee date).
- if the calculation is being done after a Pension Sharing Order has been made, the calculation date should be the valuation date, during the "implementation period" following the Pension Sharing Order.

The age of the member, and the adjustment for market conditions should be calculated at this date. Benefits should also be taken at this date, as described below.

### 3.4 Calculation

The pensioner cash equivalent should be calculated as follows:

$$[CP \times F_p + CWP \times F_{wid} - NI \times F_{ni} - (PRE \text{ GMP} + (0.45 \times POST \text{ GMP})) \times F_{gmp} + Adj \text{ A} + Adj \text{ B}] \times AMC$$

#### Benefits:

CP	current member's pension – see paragraph 3.5 below
CWP	pension payable on the death of the member to their spouse, in respect of a post exit marriage (i.e. service after 6.4.78 for a man and after 6.4.88 for a woman)
NI	National Insurance modification, where applicable – see paragraph 3.6
PRE GMP	annual GMP accrued before 6.4.88, including revaluation to the calculation date
POST GMP	annual GMP accrued after 6.4.88, including revaluation to the calculation date
Adj A	see paragraph 3.8 below
Adj B	see paragraph 3.9 below

#### Factors:

$F_p$	factor for member's pension
$F_{wid}$	factor for widow or widower's pension
$F_{ni}$	factor for national insurance modification
$F_{gmp}$	factor for GMP

The appropriate factors should be taken from the tables in force at the date of the calculation, using the member's age at that date.

### 3.5 Pension Benefits

The member's pension and the widow(er)'s pension should be the rate of pension in payment. The last increase should be that awarded up to and including the April increase immediately before the calculation date.

A member who is under age 55, who retired on grounds other than ill health, does not receive index linking until age 55. In these cases, the pension used for the

calculation of CP<sup>14</sup> above should exclude pension increases for the period between exit and April immediately before the calculation date inclusive. Allowance is made for this increase in Adjustment B.

If the member is over age 65 for a man, or over age 60 for a woman, and has a National Insurance modification, the pension used should be that after the deduction of the modification.

If the member's pension is reduced because an allocation option was taken out, then the pension before this reduction should be used (including subsequent pension increases where appropriate).

If the member's pension is reduced due to abatement, then the abatement reduction should be ignored for the purpose of this calculation. Benefits should be calculated as though the member had ceased re-employment on the date of calculation, and valued accordingly.

### 3.6 **National Insurance modification**

An adjustment may be needed for National Insurance modification. This will apply where the member left service prior to 1 April 1998 (England, Wales and Scotland), and is under age 65 for a male, and under age 60 for a female

The amount of modification should be expressed as an annual rate, and increased in line with the pension increases awarded between leaving and the April prior to the date of calculation inclusive. The relevant factor from Table 1 and Table 2 should be applied to that amount.

### 3.7 **Guaranteed Minimum Pension**

The cash equivalent must be adjusted to reflect increases on the Guaranteed Minimum Pension (GMP) that are the responsibility of the State after State Pension Age. (These comprise all increases on the pre April 1998 GMPs, and increases above 3% per annum on the post April 1988 GMPs). Separate pre and post 1988 GMPs should therefore be used.

Where the member is below State Pension Age, the GMP used should include revaluation up to and including the increase in the April immediately before the calculation date, using section 148 orders, in line with normal practice for cash equivalent transfer values.

Where the member has passed State Pension Age, the pre 1988 GMP should be the rate at State Pension Age. The post 1988 GMP should include the increases granted by the scheme on that part of the benefits up to and including the April increase immediately before the calculation date (i.e. 3% per annum or the pension increase order if less).

Annual GMP figures can be obtained by multiplying the weekly GMP figures by 52. The sum of the GMP in respect of service up to 5 April 1988 and 45% of the GMP

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<sup>14</sup> Note from LGPC Secretariat – the CWP element should have pensions increase added (as per GAD 5 March 2003)

in respect of service after that date should be multiplied by the appropriate factor in the tables and the resulting figure used in the cash equivalent calculation.

### 3.8 Adjustment A

This only applies to former deferred pensioners who took early retirement between age 50 and 55 and are aged less than 55 at the calculation date. Such pensioners will be entitled to a supplementary lump sum at age 55 representing the pension increases on the lump sum between date of leaving and date of commencement of payment of pension.

Adjustment A = increases on the lump sum to be paid at age 55 x  $f_{LS-A}$  where  $f_{LS-A}$  comes from the table below, and is the same for males and females:

Age at last birthday	$F_{LS-A}$
50	0.69
51	0.75
52	0.82
53	0.88
54	0.96

### 3.9 Adjustment B

This applies to pensioners aged under 55 where the pension increases are deferred until age 55 (i.e. all pensioners under age 55 except those who have retired due to ill health). At age 55, the pension will increase up to the level it would have been if it had been index linked since retirement.

Adjustment B =  $PI \times f_{P-B}$  where PI represents the increase to the pension in £ for the period since exit, including the increase applied in the April prior to the calculation date. (NB use the extra pension, not the percentage increase), and  $f_{P-B}$  comes from the table below, and is the same for males and females:

Age at last birthday	$f_{P-B}$	
	Males	Females
50	11.70	13.05
51	12.16	13.55
52	12.64	14.06
53	13.14	14.60
54	13.67	15.16

### 3.10 Adjustment for Market Conditions

The cash equivalent should be adjusted for market conditions. This factor depends on the member's age at the calculation date, and the yield on the FT Actuaries Index of British Government Index Linked Stocks of duration greater than 5 years (0% inflation assumption). The yield on the first working day of the calendar month into which the calculation date falls should be used; this is normally published on the

following working day in the Financial Times. If the yield falls below 2%, then the factor for 2% should be used.

3.11 The AMC factors are shown in Table 3. Where the appropriate yield is not an integer, the factor should be obtained by interpolating to four decimal places between the closest two factors. Please note that though the same yield is used for pensioner and normal cash equivalent transfer values, the adjustment for market conditions is different for each type of calculation.

#### 4. **A special case**

##### 4.1 **Members under age 55 with dependent children**

Some beneficiaries who would not normally be entitled to pension increases (due to retirement on grounds other than ill-health prior to reaching age 55) are in practice entitled to pension increases on part of their benefit, because they support dependent children. Generally this is women in respect of service before 31 December 1992, and men in respect of service between 17 May 1990 and 31 December 1992. The approach described in this note would not allow for pension increases in those cases, and any such cases may be referred to GAD.

Government Actuary's Department  
26 January 2001

Table 1

**Local Government Pension Scheme**  
**Central Factors for Pensioner Cash Equivalents for Divorce Purposes**  
**Retirement not on Grounds of Ill-Health**

## Males

Age last Birthday At Relevant Date	Gross Pension of £1 per annum	Widower's Pension of £1 per annum	Deduction <sup>1</sup> for GMP of £1 per annum	Deduction for NI Modification of £1 pa
50	15.29	1.73	2.72	5.44
51	15.06	1.67	2.78	5.68
52	14.79	1.62	2.84	5.93
53	14.48	1.57	2.91	6.19
54	14.14	1.52	2.98	6.46
55	13.76	1.47	3.05	6.73
56	13.39	1.42	3.13	7.00
57	13.01	1.36	3.20	7.28
58	12.62	1.31	3.29	7.58
59	12.17	1.25	3.37	7.89
60	11.87	1.20	3.43	8.23
61	11.48	1.15	3.48	8.60
62	11.09	1.10	3.53	8.99
63	10.70	1.05	3.58	9.41
64	10.31	1.00	3.64	9.88
65	9.90	0.94	3.72	
66	9.53	0.88	3.42	
67	9.17	0.82	3.24	
68	8.81	0.76	3.06	
69	8.45	0.69	2.88	
70	8.10	0.62	2.70	
71	7.75	0.56	2.53	
72	7.42	0.49	2.37	
73	7.08	0.47	2.21	
74	6.76	0.46	2.05	
75	6.44	0.45	1.91	
76	6.14	0.45	1.76	
77	5.84	0.45	1.63	
78	5.56	0.45	1.49	
79	5.28	0.45	1.37	
80	5.01	0.45	1.25	
81	4.76	0.45	1.13	
82	4.52	0.45	1.03	
83	4.29	0.45	0.93	
84	4.06	0.45	0.83	
85	3.85	0.45	0.74	

Note:

1. When calculating the deduction for GMP, the factor given should be applied to the sum of the GMP amount in respect of service up to 5 April 1988 and 45% of the GMP amount in respect of service after that date.
2. Values calculated with these central factors must be multiplied by the Adjustment for Market Conditions for Pensioner Cash Equivalents.

Table 1

**Local Government Pension Scheme**  
**Central Factors for Pensioner Cash Equivalents for Divorce Purposes**  
**Retirement not on Grounds of Ill-Health**

## Females

Age last birthday At Relevant Date	Gross Pension Of £1 per annum	Widower's Pension of £1 per annum	Deduction <sup>1</sup> for GMP of £1 Per annum	Deduction for NI Modification of £1 pa
50	16.65	0.54	3.55	9.55
51	16.45	0.49	3.65	9.90
52	16.21	0.45	3.75	10.27
53	15.94	0.41	3.85	10.66
54	15.62	0.37	3.95	11.06
55	15.27	0.32	4.06	11.49
56	14.93	0.27	4.18	11.93
57	14.57	0.22	4.30	12.40
58	14.21	0.18	4.42	12.89
59	13.86	0.14	4.55	13.41
60	13.49	0.13	4.78	
61	13.14	0.12	4.34	
62	12.79	0.11	4.15	
63	12.44	0.10	3.96	
64	12.09	0.09	3.77	
65	11.75	0.09	3.59	
66	11.37	0.09	3.40	
67	10.99	0.09	3.21	
68	10.61	0.09	3.03	
69	10.22	0.09	2.85	
70	9.84	0.09	2.67	
71	9.45	0.09	2.50	
72	9.06	0.09	2.33	
73	8.68	0.09	2.17	
74	8.31	0.09	2.01	
75	7.94	0.09	1.86	
76	7.57	0.09	1.72	
77	7.22	0.09	1.58	
78	6.88	0.09	1.46	
79	6.56	0.09	1.34	
80	6.24	0.09	1.22	
81	5.94	0.09	1.12	
82	5.66	0.09	1.02	
83	5.38	0.09	0.93	
84	5.13	0.09	0.85	
85	4.89	0.09	0.77	

Note:1. When calculating the deduction for GMP, the factor given should be applied to the sum of the GMP amount in respect of service up to 5 April 1988 and 45% of the GMP amount in respect of service after that date.

2. Values calculated with these central factors must be multiplied by the Adjustment for Market Conditions for Pensioner Cash Equivalents.

Table 2

## Local Government Pension Scheme

Central Factors for Pensioner Cash Equivalents for Divorce Purposes  
Retirement on Grounds of Ill-Health

## Males

Age last birthday At Relevant Date	Gross Pension Of £1 per annum	Widow's pension of £1 per annum	Deduction <sup>1</sup> for GMP of £1 per annum	Deduction for NI Modification of £1 pa
30	16.64	5.75	1.43	2.32
31	16.55	5.75	1.47	2.42
32	16.45	5.72	1.50	2.51
33	16.35	5.71	1.54	2.61
34	16.25	5.69	1.58	2.72
35	16.14	5.64	1.61	2.83
36	16.02	5.59	1.65	2.95
37	15.90	5.52	1.69	3.07
38	15.78	5.44	1.73	3.19
39	15.65	5.35	1.77	3.33
40	15.51	5.03	1.81	3.46
41	15.37	4.69	1.85	3.60
42	15.23	4.30	1.89	3.74
43	15.07	3.93	1.93	3.89
44	14.92	3.56	1.98	4.05
45	14.76	3.21	2.02	4.22
46	14.59	2.88	2.06	4.39
47	14.42	2.57	2.11	4.57
48	14.24	2.27	2.16	4.76
49	14.06	2.04	2.20	4.96
50	13.83	1.90	2.25	5.17
51	13.57	1.79	2.30	5.39
52	13.30	1.71	2.35	5.63
53	13.02	1.65	2.41	5.88
54	12.73	1.58	2.46	6.14
55	12.39	1.52	2.52	6.40
56	12.12	1.45	2.57	6.65
57	11.84	1.38	2.64	6.91
58	11.55	1.31	2.70	7.20
59	11.19	1.25	2.77	7.50
60	10.98	1.20	2.84	7.82
61	10.68	1.15	2.92	8.17
62	10.37	1.10	2.99	8.54
63	10.06	1.05	3.07	8.94
64	9.74	1.00	3.14	9.39
65	9.40	0.94	3.22	
66	9.10	0.88	2.92	
67	8.80	0.82	2.76	
68	8.50	0.76	2.61	

Table 2

## Local Government Pension Scheme

Central Factors for Pensioner Cash Equivalents for Divorce Purposes  
Retirement on Grounds of Ill-Health

## Males

Age last birthday At Relevant Date	Gross Pension Of £1 per annum	Widow's pension of £1 per annum	Deduction <sup>1</sup> for GMP of £1 per annum	Deduction for NI Modification of £1 pa
69	8.20	0.69	2.45	
70	7.90	0.62	2.30	
71	7.60	0.56	2.15	
72	7.30	0.49	2.01	
73	7.01	0.47	1.87	
74	6.73	0.46	1.74	
75	6.44	0.45	1.61	
76	6.14	0.45	1.48	
77	5.84	0.45	1.37	
78	5.56	0.45	1.25	
79	5.28	0.45	1.14	
80	5.01	0.45	1.04	
81	4.76	0.45	0.94	
82	4.52	0.45	0.85	
83	4.29	0.45	0.76	
84	4.06	0.45	0.68	
85	3.85	0.45	0.60	

## Note:

1. When calculating the deduction for GMP, the factor given should be applied to the sum of the GMP amount in respect of service up to 5 April 1988 and 45% of the GMP amount in respect of service after that date.
2. Values calculated with these central factors must be multiplied by the Adjustment for Market Conditions for Pensioner Cash Equivalents.

Table 2

## Local Government Pension Scheme

Central Factors for Pensioner Cash Equivalents for Divorce Purposes  
Retirement on Grounds of Ill-Health

## Females

Age last birthday at Relevant Date	Gross Pension of £1 per annum	Widower's pension of £1 per annum	Deduction <sup>1</sup> for GMP of £1 per annum	Deduction for NI Modification of £1 pa
30	17.65	4.19	1.44	3.96
31	17.56	4.19	1.47	4.12
32	17.47	4.13	1.51	4.29
33	17.37	4.07	1.55	4.46
34	17.27	4.03	1.59	4.64
35	17.16	3.99	1.63	4.83
36	17.05	3.94	1.67	5.03
37	16.94	3.84	1.71	5.24
38	16.82	3.74	1.75	5.45
39	16.69	3.70	1.80	5.67
40	16.56	3.52	1.84	5.90
41	16.43	3.26	1.89	6.14
42	16.29	3.01	1.94	6.39
43	16.14	2.73	1.99	6.64
44	15.99	2.45	2.04	6.91
45	15.83	2.17	2.09	7.20
46	15.67	1.92	2.14	7.49
47	15.50	1.66	2.20	7.80
48	15.33	1.41	2.25	8.12
49	15.15	1.20	2.31	8.46
50	14.93	1.00	2.37	8.79
51	14.68	0.82	2.43	9.11
52	14.41	0.66	2.50	9.46
53	14.14	0.51	2.57	9.81
54	13.86	0.44	2.64	10.19
55	13.64	0.37	2.71	10.57
56	13.42	0.30	2.79	10.98
57	13.18	0.24	2.87	11.41
58	12.93	0.19	2.95	11.87
59	12.68	0.14	3.04	12.34
60	12.42	0.13	3.15	
61	12.17	0.12	2.86	
62	11.91	0.11	2.71	
63	11.66	0.10	2.57	
64	11.40	0.09	2.42	
65	11.14	0.09	2.28	
66	10.84	0.09	2.13	
67	10.54	0.09	2.00	
68	10.23	0.09	1.86	

Table 2

## Local Government Pension Scheme

Central Factors for Pensioner Cash Equivalents for Divorce Purposes  
Retirement on Grounds of Ill-Health

## Females

Age last birthday at Relevant Date	Gross Pension of £1 per annum	Widower's pension of £1 per annum	Deduction <sup>1</sup> for GMP of £1 per annum	Deduction for NI Modification of £1 pa
69	9.92	0.09	1.73	
70	9.60	0.09	1.60	
71	9.27	0.09	1.48	
72	8.94	0.09	1.36	
73	8.61	0.09	1.26	
74	8.29	0.09	1.15	
75	7.96	0.09	1.06	
76	7.57	0.09	0.97	
77	7.22	0.09	0.89	
78	6.88	0.09	0.81	
79	6.56	0.09	0.74	
80	6.24	0.09	0.67	
81	5.94	0.09	0.61	
82	5.66	0.09	0.56	
83	5.38	0.09	0.51	
84	5.13	0.09	0.47	
85	4.89	0.09	0.42	

## Note:

1. When calculating the deduction for GMP, the factor given should be applied to the sum of the GMP amount in respect of service up to 5 April 1988 and 45% of the GMP amount in respect of service after that date.
2. Values calculated with these central factors must be multiplied by the Adjustment for Market Conditions for Pensioner Cash Equivalents.

**Table 3**

**Local Government Pension Scheme**

**Adjustment for Market Conditions  
for Pensioner Cash Equivalents**

Adjustment to be made to pensioner cash equivalents calculated to allow for current yield on the FT-Actuaries index of index-linked stocks for redemption periods of over 5 years with 0% inflation assumption.

Age Last Birthday at Relevant Date	Yield on Index-Linked Stocks at Relevant Date			
	2.00%	3.00%	4.00%	5.00%
20	1.46	1.19	1.00	0.86
21	1.45	1.19	1.00	0.86
22	1.45	1.19	1.00	0.86
23	1.44	1.18	1.00	0.86
24	1.43	1.18	1.00	0.86
25	1.42	1.18	1.00	0.87
26	1.41	1.17	1.00	0.87
27	1.40	1.17	1.00	0.87
28	1.39	1.16	1.00	0.87
29	1.39	1.16	1.00	0.87
30	1.38	1.16	1.00	0.87
31	1.37	1.15	1.00	0.87
32	1.36	1.15	1.00	0.87
33	1.35	1.15	1.00	0.88
34	1.34	1.14	1.00	0.88
35	1.33	1.14	1.00	0.88
36	1.32	1.14	1.00	0.88
37	1.32	1.13	1.00	0.88
38	1.31	1.13	1.00	0.88
39	1.30	1.13	1.00	0.89
40	1.29	1.12	1.00	0.89
41	1.28	1.12	1.00	0.89
42	1.27	1.12	1.00	0.89
43	1.27	1.11	1.00	0.89
44	1.26	1.11	1.00	0.89
45	1.25	1.11	1.00	0.90
46	1.24	1.10	1.00	0.90
47	1.24	1.10	1.00	0.90
48	1.23	1.10	1.00	0.90
49	1.22	1.10	1.00	0.90
50	1.22	1.09	1.00	0.90
51	1.21	1.09	1.00	0.91
52	1.20	1.09	1.00	0.91
53	1.19	1.08	1.00	0.91
54	1.19	1.08	1.00	0.91
55	1.18	1.08	1.00	0.91
56	1.17	1.08	1.00	0.92

**Table 3****Local Government Pension Scheme****Adjustment for Market Conditions  
for Pensioner Cash Equivalents**

Adjustment to be made to pensioner cash equivalents calculated to allow for current yield on the FT-Actuaries index of index-linked stocks for redemption periods of over 5 years with 0% inflation assumption.

<b>Age Last Birthday at Relevant Date</b>	<b>Yield on Index-Linked Stocks at Relevant Date</b>			
	<b>2.00%</b>	<b>3.00%</b>	<b>4.00%</b>	<b>5.00%</b>
57	1.17	1.07	1.00	0.92
58	1.16	1.07	1.00	0.92
59	1.15	1.07	1.00	0.92
60	1.15	1.07	1.00	0.92
61	1.14	1.06	1.00	0.93
62	1.14	1.06	1.00	0.93
63	1.13	1.06	1.00	0.93
64	1.13	1.06	1.00	0.93
65	1.12	1.05	1.00	0.94
66	1.12	1.05	1.00	0.94
67	1.11	1.05	1.00	0.94
68	1.11	1.05	1.00	0.94
69	1.10	1.05	1.00	0.94
70	1.10	1.04	1.00	0.95
71	1.09	1.04	1.00	0.95
72	1.09	1.04	1.00	0.95
73	1.08	1.04	1.00	0.95
74	1.08	1.04	1.00	0.96
75	1.08	1.04	1.00	0.96
76	1.07	1.03	1.00	0.96
77	1.07	1.03	1.00	0.96
78	1.07	1.03	1.00	0.96
79	1.07	1.03	1.00	0.97
80	1.06	1.03	1.00	0.97
81	1.06	1.03	1.00	0.97
82	1.06	1.03	1.00	0.97
83	1.06	1.03	1.00	0.97
84	1.06	1.03	1.00	0.97
85	1.06	1.03	1.00	0.98

**Note:**

These factors are to be used only with cash equivalents calculated for pensions in payment.

## The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053]

### Part II – Extension, Postponement or Cessation of "Implementation Period"

#### Regulation 2- Failure to discharge liability...

If the administering authority has failed to discharge a pension credit liability in the prescribed 4 month period of implementation (or the extended period - see regulation 3 below), it must notify the "Regulatory Authority" **within 21 "days"** following the end of the "Implementation Period" (or the end of any extended period granted by the "Regulatory Authority" - see regulation 3 below) .

See regulation 5 below for details of possible fines.

#### Regulation 3 – Time extensions to discharge liability.

To get an extension on the "Implementation Period" the administering authority must apply to the "Regulatory Authority" **before** the end of the "implementation period"; **and**

- a) the "Regulatory Authority" must be satisfied that –
  - i) the scheme is being wound up or is about to be wound up;
  - ii) the scheme is ceasing to be a contracted out scheme
  - iii) the financial interests of the members of the scheme generally will be prejudiced if the administering authority does what is needed to discharge the liability for the pension credit within that period;
  - iv) the member or ex-spouse has not taken such steps as the administering authority could reasonably expect in order to satisfy it of any matter which falls to be established before it can properly discharge the liability.
  - v) the administering authority has not been provided with such information as it may reasonably require to discharge the liability;
  - vi) the member or ex-spouse has disputed the amount of the CETV; or
- b) a formerly contracted-out occupational pension scheme is under the supervision of the Inland Revenue (this is not applicable to Public Sector schemes such as the LGPS).
- c) the application has been made on one or more of the grounds specified above and the "Regulatory Authority's" consideration of the application cannot be completed before the end of the "implementation period" .

#### Regulation 4 – Postponement or cessation of "implementation period" when an application is made for leave to appeal out of time

In the case of a Pension Sharing Order which becomes subject to an **application for leave to appeal out of time** –

- a) if the "implementation period" has not commenced, its commencement must be postponed; or
- b) if it has commenced, its operation should cease;

and, in either case, should not commence or recommence until the Scheme receives confirmation from the Court that the Pension Sharing Order has not been varied or discharged or receives a copy of the varied Pension Sharing Order.

In a case where the Pension Credit has **already been discharged**, and the Scheme **subsequently receives a notification of a leave to appeal** out of time (i.e. it's too late to stop the process), the Scheme must inform the Court **within 21 "days"** of receiving that notification that the Pension Credit has been discharged.

#### Regulation 5 – Civil Penalties

Failure to discharge liability in respect of a "Pension Sharing Order" may result in a fine imposed by the "Regulatory Authority" of up to:

- a) £1,000 in the case of an individual, and
- b) £10,000 in any other case.

### **Part III – Death of Person Entitled to a Pension Credit Before Liability in Respect of the Pension Credit is Discharged**

#### Regulation 6 – Discharge of Liability following the death of a credited member before the pension credit is discharged

In accordance with the provisions of this regulation, the LGPS will pay a standard death grant. Any difference between the value of the Pension Credit and the amount of the death grant is retained in the Fund.

### **Part IV – Discharge of Liability in Respect of a Pension Credit**

#### Regulation 7 – Funded pension schemes

Regulation 7 cross refers to paragraph 1 of Schedule 5 of the Welfare Reform and Pensions Act 1999 sets out the mode of discharge of liability for a Pension Credit from a funded pension scheme.

1. - (1) This paragraph applies to a pension credit which derives from-
  - (a) a funded occupational pension scheme, or
  - (b) a personal pension scheme.

- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit-
- (a) with his consent, or
  - (b) in accordance with regulations made by the Secretary of State.
- (3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if-
- (a) the qualifying arrangement is not disqualified as a destination for the credit,
  - (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
  - (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.
- (4) For the purposes of sub-paragraph (2), no account is to be taken of consent of the person entitled to the pension credit unless-
- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under sub-paragraph (3), or
  - (b) it is not withdrawn within 7 "days" of receipt of such notice.

Regulation 7 sets out the process to follow where the person entitled to the credit ("ex-spouse") has failed to provide her/his consent to have the pension credit conferred upon her/him. The Scheme can discharge the liability by granting a Pension Credit in the Scheme or by paying the amount of the credit to a qualifying arrangement with a view to acquiring rights under that arrangement for the "ex-spouse" i.e. the Scheme must make a decision on their behalf.

In the LGPS, the default option will be to grant a Pension Credit in the LGPS. A transfer to a qualifying arrangement will only be made where the "ex-spouse" so requests.

#### Regulation 8 - Unfunded Pension Schemes (other than Unfunded Public Service Pension Schemes)

Not applicable to the LGPS.

#### Regulation 9 - Other Pension Arrangements

Paragraph 4 of Schedule 5 of the Welfare Reform and Pensions Act 1999 sets out the mode of discharge of liability for a pension credit from 'other pension arrangements'. This does not appear to be relevant to the LGPS.

#### Regulation 10 – Calculation of the value of Appropriate Rights

The value of the pension credit must be calculated and verified in such a manner as approved by the Government Actuary (or an actuary authorised by the Government

Actuary to act on his behalf) using the same methods adopted and assumptions made as when other pension rights are received, and must be consistent with the Guidance Note 11 'Retirement Benefit Schemes – Transfer Values', published by the Institute of Actuaries and the Faculty of Actuaries.

### Regulation 11 – Qualifying Arrangements – Including Annuity Contracts

Regulation 11, when read in conjunction with paragraph 6 (1) of Schedule 5 of the Welfare Reform and Pensions Act 1999, sets out qualifying arrangements for the destination of a pension credit. These are-

- a) an occupational pension scheme,
- b) a personal pension scheme,
- c) an appropriate annuity contract,
- d) an appropriate policy of insurance, and
- e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

An annuity contract or policy of insurance is appropriate for the above purposes, if, at the time it is entered into or taken out, the insurer with which it is entered into or taken out –

- a) is carrying on long-term insurance business (within the meaning of the Insurance Companies Act 1982) in the United Kingdom or any other member State, **and**
- b) has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance, or
- c) is an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.

Paragraphs (b) and (c) must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order made under that section, and Schedule 2 to that Act.

### Regulation 12 – Disqualification as a destination for pension credit - general

Regulation 12 and Paragraph 7 of Schedule 5 of the Welfare Reform and Pensions Act 1999 disqualifies a pension arrangement as a destination for a pension credit unless, where the credit is derived from a scheme approved under Part XIV of the Income & Corporation Taxes Act 1988, the pension arrangement is

- a) approved to receive pension credits; or
- b) satisfies such requirements as the Secretary of State may prescribe, i.e. it is:
  - i) an arrangement which carries on pension business as defined by section 431B of the Income and Corporation Taxes Act 1988 (meaning of pension business); or
  - ii) an overseas arrangement within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (citation, commencement and interpretation); or
  - iii) an overseas scheme within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

### Regulation 13 - Disqualification as a destination for pension credit – contracted out or "safeguarded rights".

Regulation 13 and Paragraph 7 of Schedule 5 of the Welfare Reform and Pensions Act 1999 disqualifies a pension arrangement as a destination for a pension credit unless, where the rights by reference to which the amount of the credit is determined are or include contracted-out or "safeguarded rights", the pension arrangement is

- 1) of a description prescribed by the Secretary of State, namely:
  - a) a contracted-out salary related occupational pension scheme which satisfies the requirements of section 9(2) of the Pension Schemes Act 1993 (requirements for certification of occupational salary related schemes); or
  - b) a contracted-out money purchase occupational pension scheme which satisfies the requirements of section 9(3) of the Pension Schemes Act 1993 Act (requirements for certification of occupational money purchase schemes); or
  - c) a contracted-out occupational pension scheme to which section 149 of the Pensions Act 1995 (hybrid occupational pension schemes) applies; or
  - d) an appropriate personal pension scheme within the meaning of section 7(4) of the Pension Schemes Act 1993 Act (issue of appropriate scheme certificates); or

- e) an annuity contract or an insurance policy which satisfies the requirements of paragraph 6 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (qualifying arrangements);
  - f) an overseas arrangement within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996; or
  - g) an overseas scheme within the meaning given by regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.
- 2) satisfies such requirements as the Secretary of State may prescribe, i.e.:
- a) in relation to the descriptions of pension arrangement referred to in paragraph (1)(a) to (d) above, the requirements specified in the Pension Sharing (Safeguarded Rights) Regulations 2000 that are to be met by an occupational pension scheme or a personal pension scheme;
  - b) in relation to the descriptions of pension arrangement referred to in paragraph (1)(e) above, the requirements specified in regulation 15 (disqualification as a destination for pension credit - annuity contracts and insurance policies) and regulation 7(3) and (4) of the Pension Sharing (Safeguarded Rights) Regulations 2000 (the pension and annuity requirements - money purchase schemes);
  - c) in relation to the descriptions of pension arrangement referred to in paragraphs (1)(f) and (g) above, the requirements specified in regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (transfer payments to overseas schemes or arrangements in respect of section 9(2B) rights), as if the references in that regulation to -
    - (i) 'earner' were to 'the person entitled to a pension credit'; and
    - (ii) 'accrued section 9(2B) rights' were to 'safeguarded rights'.

Where a transfer, including "safeguarded rights", is to be made to an overseas scheme or arrangement, the administering authority must take reasonable steps to satisfy itself that the person with the Pension Credit has emigrated on a permanent basis and, where the receiving scheme is an occupational pension scheme, that the person has entered employment to which the receiving scheme applies. The person with the Pension Credit rights must acknowledge that he / she accepts the scheme or arrangement to which the transfer payment is to be made may not be regulated in any way by the law of the UK and that as a consequence there may be no obligation under that law on the receiving scheme or arrangement or on its trustees or managers to provide any particular value or benefit in return for the transfer payment. Also, where the transfer is to an overseas arrangement, the arrangement must be one to which a transfer payment can be made in accordance with regulation 6 or 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000.

Regulation 14 - Disqualification as a destination for pension credit – Occupational Pension Schemes.

An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired are equal in value to the pension credit. The calculation of the value of rights of the "ex-spouse" must be in accordance with the methods adopted and assumptions made by that scheme when transfers of other pension rights are received by the scheme.

Regulation 15 – Disqualification as a destination for a pension credit – annuity contracts and insurance policies

Regulation 15 and paragraph 7(4) of Schedule 5 to the Welfare Reform and Pensions Act 1999 set out the requirements that must be satisfied for an annuity contract or an insurance policy to be a suitable qualifying arrangement for a pension credit i.e. :

- 1) the annuity contract or insurance policy must provide that that contract or policy, as the case may be, may not be assigned or surrendered unless -
  - (a) the person entitled to the pension credit; or
  - (b) if the person entitled to the pension credit has died, his widow or widower, has consented to the assignment or surrender.
- 2) the benefits previously secured by the annuity contract or insurance policy must become secured, or be replaced by benefits which are secured by another qualifying arrangement.
- 3) the annuity contract or insurance policy, as the case may be, must provide that the benefits secured by that contract or policy may be commuted if either -
  - (a) the conditions set out in paragraph (4) are satisfied; or
  - (b) the conditions set out in paragraph (5) are satisfied.
- 4) the conditions referred to in paragraph (3)(a) are -
  - (a) the benefits secured by the annuity contract or insurance policy have become payable, and the aggregate of those benefits does not exceed £260 per annum;
  - (b) an actuary certifies that the methods and assumptions to be used to calculate any benefit in a lump sum form will result in the benefit being broadly equivalent to the annual amount of benefits which would have been payable in pension benefits; and

- (c) all of the interest of the person entitled to the pension credit under the annuity contract or insurance policy is discharged upon payment of a lump sum.
- 5) the conditions referred to in paragraph (3)(b) are -
- (a) the benefits secured by the annuity contract or insurance policy have become payable and the person entitled to the pension credit requests or consents to the commutation;
  - (b) the person entitled to the pension credit is suffering from serious ill health prior to "normal benefit age"; and
  - (c) the insurance company with which the annuity contract is entered into, or with which the insurance policy is taken out, assumes an obligation to pay the benefits secured by the annuity contract or insurance policy to -
    - (i) the person entitled to the pension credit;
    - (ii) the trustees of a trust for the benefit of the person entitled to the pension credit; or
    - (iii) the trustees of a trust for the benefit of the dependants of the person entitled to the pension credit.
- 6) the annuity contract or insurance policy must contain, or be endorsed with, terms so as to provide for any increase in accordance with regulation 32 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (increase of relevant pension) which would have been applied to the benefits which have become secured or been replaced by the annuity contract or insurance policy had the discharge of liability not taken place.
- 7) In this regulation -
- 'serious ill health' means ill health which is such as to give rise to a life expectancy of less than one year from the date on which commutation of the benefits secured by the annuity contract or insurance policy is applied for.

Regulation 16 – Adjustments to the amount of the pension credit in the event that the occupational scheme is underfunded on "valuation date".

Not applicable to the LGPS.

Regulation 17 - Adjustment to the amount of the pension credit - payments made without knowledge of the pension debit.

If a person's "shareable rights" under the LGPS have become subject to a Pension Debit and the administering authority makes a payment which relates to those rights without knowing of the Pension Debit then, if the cash equivalent of the member's remaining pension rights is less than the amount of the Pension Debit, the Pension Credit shall be reduced to that lesser amount.

Regulation 18 - Adjustment to the amount of the pension credit - increasing the amount of the Pension Credit

Where a Credit Member stipulates at the outset that he / she wishes to transfer the value of the Credit to a qualifying arrangement the sum credited to the Credit Member is payable to the qualifying arrangement (less any charges). If, however, that transfer out is not paid until after the end of the "implementation period", the transfer payment shall be the sum credited to the Credit Member as at the "valuation date" plus interest at the rate of 1% above base rate between the original "valuation date" and the date of payment to the qualifying arrangement (less any charges) or, if greater, the sum that would have been credited to the Credit Member if the "valuation date" had been the day on which the payment to the qualifying arrangement is made (less any charges) (see regulation 18 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 [SI 2000/1053]).

Where the "ex-spouse" is formally granted a Pension Credit in the LGPS during the implementation period and after being made a Pension Credit member subsequently wishes to transfer the value to a qualifying arrangement (even if the date of the request still falls within the implementation period), the normal transfer rules and time limits apply.

## WHAT CHARGES CAN BE LEVIED?

### The Pensions on Divorce etc. (Charging) Regulations 2000 [SI 2000/1049]

#### Regulations 2, 3, 5 and 6 - General requirements and charges recoverable in respect of the provision of basic information and pension sharing activities.

Regulations 2, 3, 5 and 6 set out the requirements that must be met by the administering authority before it can charge to cover the costs of a "Pension Sharing Order" or provision.

Essentially, this is simply that the administering authority must, before a "Pension Sharing Order" or provision is made, inform the member or the spouse in writing of the intention to recover specified costs, including the intention to recover any charges in respect of costs incurred in complying with an "earmarking order". As well as notifying the member or the spouse of the intention to recover costs, the administering authority must also detail, in a schedule of charges, the charges to be recovered, but this does not have to include details of the costs to be recovered as a result of complying with an "earmarking order". The schedule of charges must be comprehensive, as the administering authority cannot charge for anything it has not specified it will make a charge for (other than "earmarking order" costs). This must include, for example, whether the administering authority is required to recover VAT; whether there will be periodical charges if the "ex-spouse" becomes a credited member; etc. The schedule of charges produced by the LGPC (see form **CH1** in annex **4**) contains further information on VAT.

#### CHARGING LIST

The Charging Regulations set out what can and cannot be charged for in the administration of a "Pension Sharing Order" or provision.

NB. The schedule of charges **MUST** be sent out, for the majority of the charges, with the basic information (i.e. at Stages 1 and 2 of the process) if they are to be recoverable under the regulations.

**Exclusions: What the administering authority cannot charge for    **Box A****

- At Stages 1 and 2, one free valuation (if requested by the member or the Court) and provision of 'basic information' excluding a CETV (if requested by the spouse or the Court) every 12 months (**but excluding the first 8 points in the next box**)
- Any costs incurred as a result of providing information under regulation 4 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (basic information about the LGPS i.e. most of Stages 1 and 2), unless it has been requested and provided within the last 12 months.
- Any costs incurred as a result of complying with a request for, or an Order of the court requiring, a valuation under regulation 2(2) of the Provision of Information regulations (**excluding the first 8 points in the next box**)
- Any costs the administering authority has not specified it was going to charge for, except those relating to interest charges on cases where more than 12 months elapse between the date of provision of information (Stages 1 and 2) and the date the "Pension Sharing Order" takes effect.
- Any costs which are not directly related to the costs which arise in relation to an individual case (e.g. reprogramming costs)

**What can be charged for – and what must be listed if it is to be charged for.**

**What can be charged for**

- i. A CETV calculation which the member or the Court require to be provided in less than 3 months from the date the request is received (regardless of the fact that no CETV calculation has been requested in the previous 12 months)
- ii. A CETV for a member with less than 2 years membership in the LGPS and who has not transferred other pension rights into the LGPS
- iii. A CETV or the provision of information in respect of a member who has attained age 60\* on the date of the Court Order for the provision of that information or the date of the request for the information [\*Note: Regulation 2(8)(b) of the Pensions on Divorce etc. (Charging) Regulations 2000 says that a charge can be levied where the member has attained normal pension age. This is defined in section 180 of the Pension Schemes Act 1993 as the earliest age at which the member is entitled to receive benefits on retirement from employment. The earliest age at which a member is entitled to benefits on voluntary retirement under the LGPS is age 60 even though the LGPS defines normal pension age as age 65.]
- iv. A CETV or the provision of information where the request or Court Order is made within 12 months of the member's normal pension age i.e. within 12 months of age 60
- v. A cash equivalent valuation for a pensioner
- vi. A second CETV calculation in a period of 12 months
- vii. A second request in a period of 12 months for Stage 1 information requested by the spouse or the Court (excluding a CETV calculation)
- viii. A CETV calculation in the case of Scottish divorce or nullity proceedings where the relevant date to be used for the CETV is greater than 12 months prior to the date of receipt of the CETV request
- ix. The cost of providing a pension credit in the scheme or of processing a TV out request i.e. post Stage 3
- x. Any costs incurred where a Sharing Order has been made the subject of an application for leave to appeal out of time

Notes:

- 1 The charges levied in respect of a "Pension Sharing Order" or "earmarking order" must represent the administration costs that have been, or are likely to be, incurred and must be reasonable.
2. The legislation governing (ii), (v) and (viii) above is unclear. They have been included as chargeable items in the above list as the spirit (if not the letter) of the law appears to be that a scheme should be able to levy a charge in any case where the scheme does not have to provide a free CETV under the normal 12 month rule. The NAPF scale of

charges also reflects this view. The Secretariat has written to the NAPF to press the Department for Work and Pensions to make a clarifying amendment to the Pensions On Divorce (Charging) Regulations 2000 [SI 2000/1049].

### Information to include

- Whether the administering authority intends to recover the cost of providing a Pension Credit in the LGPS before or after the "Pension Sharing Order" is implemented
- a price list of all the things to be charged for either as a single estimate of the overall cost of the pension sharing activity, or a range of estimates of the overall cost of the pension sharing activity which is dependent upon the complexity of the individual case, or a breakdown of the cost of each element of the pension sharing activity for which a charge will be made

Note that the price list does not need to state the charge for

- Complying with any Order specified in Section 24 of the Welfare Reform and Pensions Act 1999 (charges levied by pension schemes in relation to an "earmarking order"), but **does** have to state whether the administering authority intends to charge for reasonable administrative expenses incurred or likely to be incurred in complying with an "earmarking order", or
- costs incurred in relation to a "Pension Sharing Order" which is made the subject of an application for leave to appeal out of time
- details of any periodical charges
- who the administering authority intends to charge (but confirm that if the "Pension Sharing Order" requires an apportionment of the charges, the administering authority will comply with the Order)
- whether the charges are subject to VAT and, if so, whether the charges are inclusive or exclusive of VAT
- state that interest of (X) up to RPI will be added to any charges not yet due or remaining unpaid at the date the "Pension Sharing Order" takes effect if a period of more than 12 months elapses between supplying the basic information (Stage 1) and the date the "Pension Sharing Order" takes effect. Note: If the case has taken **over 12 months** between the provision of information (Stage 1) and the receipt of a "Pension Sharing Order" (Stage 3), the administering authority must again inform the relevant parties (at Stage 3) of its intention to charge interest.
- state that charges in the price list will be uplifted by (Y) up to RPI if the administering authority undertakes activity connected with the pension credit from time to time

## **Method of Recovery in respect to provision of information - Regulation 4**

### **Box C**

- the administering authority can require payment at any time between the request for basic information (Stage 1) and completion of the "implementation period" or compliance with Section 24 of the Welfare Reform and Pensions Act 1999 (provision of information after receipt of an "earmarking order"), or
- the administering authority can require full payment before the provision of basic information (Stage 1) or the provision of information under the rules governing an "earmarking order" except where a Court has ordered the member to obtain the information or the information has to be provided in response to the receipt of a notification that a "Pension Sharing Order" may be made (Stage 2)

## **Postponement of the "implementation period" where there are outstanding charges - Regulation 7.**

### **Box D**

This regulation states that the administering authority can postpone the implementation of the "Pension Sharing Order" or provision if it notifies the member and the person entitled to the pension credit no later than 21 "days" of receipt of the Order or provision that there are outstanding charges to be paid and that the "implementation period" will not commence until the charges are paid.

This can only be done if the following information has previously been supplied to the member and the "ex-spouse" no later than Stage 2 in the process:

- that the outstanding charges must be paid before implementation will be commenced;
- whether those charges must be paid in full; or
- what proportion of those charges are required to be paid as full settlement of those charges

Once payment of the charges has been made, the administering authority must:

- a notice of implementation (see Stage 3) within 21 "days" of the date the charges are paid, provided there is no other outstanding information, and commence the "implementation period"

## Reimbursement – Regulation 8

**Box E**

This regulation states that, where one party to the pension sharing makes a payment of charges on behalf of the other, those costs are recoverable in the form of a personal debt.

## Charges and Method of Recovery – Regulation 9

**Box F**

The administering authority can recover charges by:

- a) requiring the charges to be paid before the "Pension Sharing Order" is commenced;
- b) deducting them from the pension credit;
- c) deducting them from the accrued rights of the member;
- d) deducting them from the member's pension benefits (if in payment already);
- e) deducting them from payments of the credited member's pension benefits;
- f) deducting them from the transfer value (e.g. the transfer value granted to the spouse).

**The administering authority cannot recover any of these charges, excluding (a), unless**

- i) a "Pension Sharing Order" or "earmarking order" has been made;
- ii) the implementation has commenced;
- iii) the administering authority is not aware of an appeal against the "Pension Sharing Order" where the appeal began on or after the day on which the Order takes effect ;
- iv) the person(s) the administering authority wishes to charge are liable for them;
- v) the administering authority has issued a notice of implementation (Stage 3);
- vi) at the notice of implementation stage the administering authority specified the methods of recovery which could be used;
- vii) 21 "days" have elapsed since notice of implementation was issued (Stage 3).

**Timing Allowed to recover the charges:** The administering authority can recover the charges b,c,d –

- a) at any time within the "implementation period" (providing that 21 "days" of notice of implementation have elapsed), including any case in which the period has been extended in agreement with the "Regulatory Authority" .
- b) within 21 "days" of the end of the "Implementation Period" / extended "Implementation Period" , as the case may be.

Even if the schedule of charges specifies the administering authority intends to recover costs from the spouse, the administering authority must nevertheless comply with any term in the "Pension Sharing Order" in relation to the pension sharing charges. i.e. if the Order states that the charges are to be split 50:50, then the administering authority must do so.

The administering authority cannot charge one party to the divorce for charges that are specifically liable to the other e.g. if a "Pension Sharing Order" specifies a 50:50 split, and one party pays and the other does not, the administering authority cannot recover the other half from the party that has paid (though they may voluntarily do so, and recover the charge themselves under Regulation 8.)

The administering authority is allowed to recover costs already incurred where the "implementation period" is postponed or ceases (where an application is made for **leave to appeal out time**).

The administering authority can require any outstanding charges to be paid immediately in respect of –

- a) all costs which have been incurred prior to the date of postponement or cessation; or
- b) any reasonable cost related to the application for leave to appeal out of time or the appeal out of time itself.

### **The Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/1048]**

Regulations 8(3)(f) and (g) of the Provision of Information Regulations stipulates that when notifying a pensioner member of the effect on his / her pension of a "Pension Sharing Order" (Stage 4) the administering authority must notify the pensioner of any unpaid charges and how and when the administering authority intends to recover those charges i.e.

- a) whether charges will be deducted from the pension in payment;
- b) the date when payment of the charges in whole or in part is required;
- c) the amount of charges to be paid by the pensioner or which will be deducted from the pension on that date.

Regulations 8(6)(d) and (e) of the Provision of Information Regulations stipulates that when notifying a Credited Member who has attained age 65 on the transfer day of the amount of his / her credit benefits (Stage 4), the administering authority must notify the Credited Member of any unpaid charges and how and when the administering authority intends to recover those charges i.e.

- a) whether charges will be deducted from the pension in payment;
- b) the date when payment of the charges in whole or in part is required;
- c) the amount of charges to be paid by the Credited Member or which will be deducted from the pension on that date.

## ANNEX 11

### Proposed NAPF Schedule of Charges

#### A. Scheme member not yet retired – about to divorce

Procedure	Comments	Estimated cost
1. Produce CETV quotation	Standard annual entitlement under PSA 1993	£0
2. Additional CETV quotations		£150 per additional quotation
3. Provision of other information	If under disclosure of information regulations  Otherwise, depending on nature of request	£0  minimum £25 maximum £75
4. Receipt of pension sharing order or consent order	To cover all administration costs from receipt of pension sharing order to completion of pension payments	Maximum £750
5. Objections to order by scheme	Onus should be on the draftsman of the order to ensure that it is correctly drafted prior to issue	Scheme to notify member/solicitor that costs for dealing with inoperable orders will be passed on

#### B. Scheme member retired – pension in payment – about to divorce

Procedure	Comments	Estimated cost
1. Assess the value of the pension in payment, including any contingent benefits	Actual cost dependent on charges incurred for actuarial time	Maximum £500
2. Administrative cost of collecting and interpreting medical evidence in respect of divorcing couple	It is assumed that the charges for supply of medical evidence will be met by the divorcing couple	Scheme to advise that payment for the supply of medical evidence will be the responsibility of the member
3. Establish new pensioner record	To cover all administration costs from receipt of pension sharing order to completion of pension payments	Maximum £750
4. Assuming all documentation is in place, settle a transfer out (instead of 3, above)		Maximum £300
5. Establish a new member scheme record (record keeping/tracing reasons etc)		Minimum £25 Maximum £100

## ANNEX 12

### Non-shareable rights

1. Reg 2(3)(a) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 [SI 2000/ 1048] provides that the scheme manager must provide a CETV in respect of pension rights or benefits accrued under a member's pension arrangement.
2. Reg 1 of the Provision of Information Regulations defines a member as "a person who has rights to future benefits, or has rights to benefits payable, under a pension arrangement".
3. Reg 1 of the Provision of Information Regulations defines a pension arrangement as having "the meaning given in section 46(1) of the 1999 Act".
4. Section 46(1) of the Welfare Reform and Pensions Act 1999 defines a pension arrangement as an "occupational pension scheme" and further defines an occupational pension scheme as having "the meaning given by section 1 of the Pension Schemes Act 1993".
5. Section 1 of the Pension Schemes Act 1993 defines an occupational pension scheme as "any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category".
6. This would appear to cover not just benefits under the Local Government Pension Scheme but also injury allowances and gratuities payable under the Local Government (Discretionary Payments) Regulations 1996 and Compensatory Added Years payable under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000. However, it is then necessary to determine what benefits are non-shareable by looking at the Pension Sharing (Valuation) Regulations 2000 [SI 2000/1052].
7. Regulation 2 of the Pension Sharing (Valuation) Regulations 2000 defines "rights under a pension arrangement which are not shareable". These include
  - widows, widowers and dependants pensions (or annuities) in payment following the death of a person with rights under a pension arrangement;
  - a bare EPB (equivalent pension benefit) i.e. where a member who was in non-participating (contracted-out) employment at any time between 1961 and 1975 took a refund of contributions but no PIL was paid and the only benefit left in the LGPS to be paid is a bare EPB; and
  - "any rights which do not result in the payment of relevant benefits".

8. Regulation 1 of the Pension Sharing (Valuation) Regulations 2000 defines relevant benefits as having "the meaning given by section 612 of the Income and Corporation Taxes Act 1988".
9. Section 612 of the Income and Corporation Taxes Act 1988 defines relevant benefits as "any pension, lump sum, gratuity or like benefit given or to be given on retirement or on death, [or by virtue of a "Pension Sharing Order" or provision,] or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason".
10. Thus Gratuities would need to be valued for the purposes of Pension Sharing on Divorce but Injury Allowances would not. On the face of it, Compensatory Added Years (CAY) would also need to be valued for the purposes of Pension Sharing on Divorce. However, the explanatory notes which accompanied the Welfare Reform and Pensions Act 1999 stated, in relation to section 27 of the Act, that the government intended "to use the regulation-making power to exclude survivors' benefits payable to a member in his capacity as a survivor (such as a widow's or widower's pension payable in respect of a former marriage), an injury benefit, compensation payment, and incidental benefits such as travel concessions." On the basis that:
  - a) the government intends to exclude compensation i.e. it is intended that this should be a non-shareable right, and
  - b) no amendments have been made to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 to facilitate a pension share

it is probably wisest at this point to treat CAY as a non-shareable right. If it is treated as a shareable right and the Court issues a "Pension Sharing Order" which the authority complies with, the authority could be in difficulties if it is subsequently proven to be a non-shareable right. Provided authorities disclose the amount of annual CAY being paid when providing details of non-shareable rights, the Court can take the payment into account when determining the financial settlement between the divorcing parties.

Note:

Where authorities augment membership under regulation 52 (regulation 51 in Scotland) as an alternative to CAY, such membership would, unlike CAY, be a shareable right. This is because there is nothing in regulation 52 (regulation 51 in Scotland) that stipulates additional membership can only be granted, for example, in cases of redundancy or efficiency nor is there anything in the regulation that in any way refers to compensation. Anyone aged 50 or over could be granted additional membership under regulation 52 (regulation 51 in Scotland), regardless of the reason for leaving (other than on the grounds of ill health retirement with an enhanced pension). The fact that an authority uses regulation 52 (regulation 51 in Scotland) as an alternative to awarding CAY under the Discretionary Compensation

Regulations does not technically make it compensation. Regulation 52 (regulation 51 in Scotland) merely empowers the employing authority to increase a member's total membership, whereas the Discretionary Compensation Regulations empower the employing authority to award a credited period which produces lump sum and annual compensation

**PENSION SHARING ON DIVORCE AND NULLITY  
ILLUSTRATIVE EXAMPLES OF THE TREATMENT OF A PENSION DEBIT**

This document gives general information and illustrative examples of the operation of pension debits for the purposes of pension sharing on divorce or nullity of marriage. Neither the information nor the examples should be treated as a complete and authoritative statement of the law. The examples illustrate ways in which scheme trustees and managers may interpret the law in different circumstances. It is for scheme trustees and managers themselves to consider whether the examples may be applicable to any particular case or whether another approach would be suitable.

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## **PENSION SHARING ON DIVORCE ILLUSTRATIVE EXAMPLES OF THE PENSION DEBIT**

### **Introduction**

Pension sharing on divorce or nullity of marriage will come into force on 1 December 2000. The primary objective of pension sharing is to give couples and the courts greater flexibility and choice on divorce or nullity of marriage, by allowing pension rights to be treated in a way which provides for the fairest overall settlement of assets in each case.

Pension sharing will increase the opportunity for divorcing couples to achieve complete financial independence through a "clean break" settlement because the ex-spouses keep their share of pension rights regardless of changes in the other's personal circumstances following divorce or nullity. In practice this is achieved by a reduction in the pension rights of the scheme member (called a pension debit) and a transfer of pension rights equivalent to the amount of the reduction to the former spouse (called a pension credit).

Section 31 of the Welfare Reform and Pensions Act provides that effect is to be given to a pension debit by reducing a member's pension rights by a percentage specified in the court order or, if the order is in terms of a specified amount, by the percentage that amount represents of the cash equivalent value of the member's rights.

This document gives some illustrative examples of the operation of the pension debit for pension sharing purposes. The examples illustrate ways in which a scheme might interpret the law in different circumstances. It is for the trustees or managers of schemes to consider whether the examples are applicable to any particular case or whether another approach might be more suitable. The examples should not be treated as a complete and authoritative statement of the law.

December 2000  
Department of Social Security

## Background Information and Assumptions

1. These examples cannot cover every possible situation where a scheme needs to implement a pension debit in accordance with section 31 Welfare Reform and Pensions Act 1999. As mentioned above, the examples must not be treated as a complete and authoritative statement of the law. The cash equivalent transfer value of the pension rights to which a member would be entitled (the "relevant benefits" in section 29 of the Welfare Reform and Pensions Act 1999) forms the basis of the pension debit and of the pension credit.
2. In implementing a pension debit a key consideration is which benefits are included as the "relevant benefits" in the calculation of the cash equivalent transfer value. These will form the "qualifying benefits" referred to in section 31 of the Welfare Reform and Pensions Act. Since allowance should be made, either explicitly or implicitly, in the calculation for benefits such as any lump sums payable on death for deferred or pensioner members, and benefits to dependants following death, such benefits should be reduced appropriately by a debit.
3. Except for a member in active pensionable service the "relevant benefits" are broadly all the benefits to which the member is entitled. For a member who is in pensionable service the relevant benefits are those which the member would receive if he or she had left service immediately before the day on which the pension sharing order had come into effect. Hence for a member in pensionable service the debit will be a proportion of the deferred benefits that she or he would have received if she or he had become a deferred pensioner at the time of the divorce (the "qualifying benefit"). This means that the situation for implementing debits against members in active pensionable service may have features where the debit and the main scheme benefit behave in slightly different ways – this is covered in example 3.
4. A divorce under Scottish law will see the pension sharing order made in terms of an amount rather than a percentage value. It is expected that schemes may wish to calculate the initial amount of the pension debit by turning the amount into a percentage value by comparing it with the cash equivalent transfer value of the relevant benefits on which the pension share was based. Once this has been done the pension debit can be enforced in the manner shown in these examples. For Scottish divorces where the pension benefits included in the matrimonial property on which the cash equivalent transfer value, and therefore the pension sharing order, was based are not the whole of the pension rights under the scheme the debit should similarly apply only to the rights included in cash equivalent transfer value.

5. Readers should refer to the relevant Inland Revenue Practice Notes, and in particular to PSO Update 62 and subsequent updates, in considering these examples. The examples do not cover situations relating to Inland Revenue maximum benefits where members can rebuild their pension rights following a divorce by virtue of having earnings below one-quarter of the earnings cap.
6. The examples assume that rights in the State Earnings-Related Pension Scheme will generally not be shared where shareable rights exist in a non-state pension arrangement. Where rights in a pension arrangement that is or has been contracted-out on a salary-related basis are shared, the Guaranteed Minimum Pension (GMP) from the non-state arrangement (after sharing) and the State Earnings-Related Pension Scheme net of contracted-out deduction will probably no longer equal the State Earnings-Related Pension Scheme had the member not been contracted-out. Although this is not covered with a numerical example, scheme administrators may like to be aware of this feature in case their members raise queries about their total benefits.
7. The examples all assume that the member who is subject to the pension sharing order is male. The same principles apply in enforcing a debit against a female member's pension rights.
8. Readers are advised to ensure that they are considering the latest version of the examples in this document by checking in the "publications" section of the DSS website [www.dss.gov.uk](http://www.dss.gov.uk). Any comments on the content of the examples may be sent to:

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## Example 1: Debit for a pensioner of a defined benefit pension scheme

A pensioner aged 68 with a pension of £10,000 a year is made subject to a pension sharing order. The share to be given to the member's former spouse is 40%. Of the £10,000 a year pension, £1,000 a year represented pre-88 GMP and £500 a year represented post-88 GMP. Other than the GMP elements the whole pension is subject to increases in line with limited-price indexation. Taking the valuations of these different components into account should produce the following result.

### At the time of the pension share (age 68)

Total gross pension	£10,000 a year
Debit (= 40% x £10,000)	£4,000 a year
Pension net of debit (= £10,000 – £4,000)	£6,000 a year
Splitting the debit and residual pension into GMP and non-GMP...	
The total <b>gross pension</b> was split	
Pre-88 GMP	£1,000 a year
Post-88 GMP	£500 a year
Thus excess over GMP (= £10,000 – £1,000 – £500)	£8,500 a year

The **debit can be split** in the same proportions

Pre-88 GMP included in debit (= £4,000 x £1,000 / £10,000)	£400 a year
Post-88 GMP included in debit (= £4,000 x £500 / £10,000)	£200 a year
Excess over GMP included in debit (= £4,000 – £400 – £200)	£3,400 a year

Hence the **residual pension after the debit** is made up of

Pre-88 GMP (= £1,000 – £400)	£600 a year
Post-88 GMP (= £500 – £200)	£300 a year
Excess over GMP (= £6,000 – £600 – £300)	
(or = £8,500 – £3,400)	£5,100 a year

In the first year after the pension sharing, assume that the LPI increase is 3.5%. Thus the increase which the scheme must pay on post-88 GMPs is 3.0% a year

The **increase on the pension net of debit** is as follows:

Increase on pre-88 GMP	£0 a year
Increase on post-88 GMP (= £300 x 0.03)	£9 a year
Increase on excess over GMP (= £5,100 x 0.035)	£179 a year
Total increase	£188 a year

## Example 1A – death of pensioner with debit

Now suppose that the pensioner in example 1 remarries almost immediately after the divorce, but dies aged 70. Retail Prices Index (RPI) increases were 3.5% in the first year (as above) and 2.5% in the second year.

By the **time of death, the pension net of debit** has increased to

Pre-88 GMP (no increases paid by scheme)	£600 a year
Post-88 GMP (increases up to 3% paid by scheme) (= (£300 + £9) x (1 + 0.025))	£317 a year
Excess (LPI increases paid) (= (£5,100 + £179) x (1 + 0.025))	£5,411 a year
<b>Total pension net of debit at time of death</b>	<b>£6,328 a year</b>

Under the scheme rules the **spouse inherits a 2/3 rate pension**, ie

(= £6,328 x 2/3), £4,219 a year

of which a portion is GMP (ignored in this example)

The widow's pension is also affected by the debit because benefits to widows were included in the valuation of the total benefit at the time of the pension share, of which the specified proportion was awarded to the former spouse.

As a **check**, consider the position of the member if there had been no pension debit...

The **pension at time of death** would have been

Pre-88 GMP (no increases paid by scheme)	£1,000 a year
Post-88 GMP (£500 x (1 + 0.03) x (1 + 0.025))	£528 a year
Excess over GMP (£8,500 x (1 + 0.035) x (1 + 0.025))	£9,017 a year
Total	£10,545 a year

And the **spouse's pension with no debit**, two-thirds of this,

is £7,030 a year

Ratio of spouse's pension paid after debit (£4,219) to this amount is 60% (= £4,219 / £7,030), as to be expected following a 40% debit.

Any **lump sum benefit** related to the level of the pension (eg "balance" payments or "guarantees" in early years of retirement) should be adjusted to reflect the rate of the debit on the same basis, even if they have not explicitly been included in the valuation of pensions in payment.

## Example 2 – pension debit for deferred pensioner of a defined benefit pension scheme

A deferred pensioner of a defined-benefit scheme aged 50 has a deferred pension, including revaluations to date of divorce, of £10,000 a year. The scheme has a normal pension age of 60. Based on the cash equivalent transfer value (whose value is unimportant in this context), the member is made subject to a debit of 40%, which directly represents a debit of a deferred pension of £4,000 a year.

<b>At divorce at age 50</b> total gross deferred pension	£10,000 a year
Debit	£4,000 a year

### At scheme normal pension age (60)

Increases to deferred benefit in line with statutory revaluation, say 4.1% a year on average (50% over 10 years – **used in all examples**)

Thus total gross pension (= £10,000 x 1.041 <sup>10</sup> )	£15,000 a year
Debit (= £4,000 x 1.041 <sup>10</sup> )	£6,000 a year
Net pension put into payment (= £15,000 – £6,000)	£9,000 a year

If the deferred pension contained a GMP, **anti-franking** will apply at GMP payment age (65 if member is male, 60 for a woman)

Assume that of the £10,000 pension at age 50, £2,000 was GMP...

Increases to GMP at statutory fixed rate revaluation of 6.25% a year

Gross GMP (= £2,000 x 1.0625 <sup>14</sup> )	£4,673 a year
Gross excess over GMP (= £8,000 x 1.041 <sup>10</sup> x 1.035 <sup>5</sup> )	£14,252 a year
<b>Total anti-franking minimum gross of debit</b> (= £4,673 + £14,252)	£18,925 a year

This will generally be higher than the **scheme pension at GMP payment age** – for example this could be

(= £15,000 x 1.035 <sup>5</sup> )	£17,815 a year
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Therefore **anti-franking** will require a **one-off increase** in the pension-in-payment at GMP payment age.

The calculation of the **cash equivalent transfer value on which the pension sharing order was based should take into account anti-franking**. Thus the debit, calculated as a proportion of that cash equivalent transfer value, is also bound by anti-franking requirements (subject in due course to the new requirements in the Child Support Pensions and Social Security Act 2000 where applicable).

The **debit can be split into GMP and excess** elements

GMP in debit at age 50 (= 40% x £2,000)	£800 a year
Excess over GMP in debit at age 50 (= 40% x £8,000)	£3,200 a year
At GMP payment age (65)	
GMP in debit (= £800 x 1.0625 <sup>14</sup> )	£1,869 a year
Excess over GMP in debit (= £3,200 x 1.041 <sup>10</sup> x 1.035 <sup>5</sup> )	£5,701 a year

**Total debit after allowing for anti-franking**

(= £1,869 + £5,701)

£7,570 a year

The total debit is still 40% of the gross pension after the effects of complying with the anti-franking requirements

**The net pension after allowing for anti-franking at age 65 is**

thus (= £18,925 – £7,570)

£11,355 a year

Note that where the scheme revalues GMPs at a fixed rate, the same fixed rate should be used for the GMP element of the debit for a deferred pensioner as for the gross benefit. This is because the transfer value, and thus the debit, should have been calculated on this basis.

## Example 2A – commuting pension for lump sum at retirement

At retirement the member in example 2 may wish to commute part of his pension in order to provide a lump sum (if the scheme rules allow this). The Inland Revenue maximum lump sum will depend on whether or not the member has pre-17 March 1987 continued rights or not (ie whether the member is covered by the pre-1987 or 1987-1989 tax regimes or the post-1989 tax regime).

### For a member without continued rights (post-1989 member)

Pension at age 60 **without debit** £15,000 a year

**Maximum lump sum** (= 2.25 x £15,000) £33,750

If maximum lump sum taken, then maximum residual pension using Inland Revenue approved commutation factor is

(= £15,000 – (£33,750 / 12)) £12,188 a year

Pension at age 60 **with debit** £9,000 a year

Maximum lump sum (= 2.25 x £9,000) £20,250

If maximum lump sum taken, then maximum residual pension using Inland Revenue approved commutation factor is

(= £9,000 – (£20,250 / 12)) £7,313 a year

The maximum lump sum and the maximum pension where the maximum lump sum has been taken are 60% of the amount without the debit.

For a member with continued rights (ie who enjoys pre - 1987 limits) the maximum lump sum could depend on the salary and service as at date of leaving service.

**Maximum lump sum without debit** say £39,000

Maximum residual pension if maximum lump sum taken without debit (= £15,000 – (£39,000 / 12)), £11,750 a year

assuming that the scheme has adopted a 12:1 commutation factor for all members irrespective of tax regime.

Where the member has a debit, the debit is, in effect, treated as post - 1989 rights, and the maximum lump sum can be calculated **on the better of two bases**

**Approach one:** maximum lump sum

(= £39,000 – (2.25 x £6,000)) £25,500

And maximum pension if maximum lump sum is taken is

(= £9,000 – (£25,500 / 12)) £6,875 a year

**Approach two – as if completely under post-1989 regime:**

maximum lump sum (= 2.25 x £9,000) £20,250

And maximum pension if maximum lump sum is taken is, as before

(= £9,000 – (£20,250 / 12)) £7,313 a year

For further details on calculation of the maximum lump sum and pension where there is a pension debit, please see the guidance from the Inland Revenue contained in PSO Update No 62.

## Example 2B – death during deferment

If the pension scheme **member remarries and dies at age 55**

Assume that **deferred pension revalued to date of death** gross of  
debit is ( $=£10,000 \times 1.0415$ ) £12,225 a year

Further assume that the scheme pays a 2/3 spouse's pension  
(and ignore anti-franking in this case)

Then **gross pension payable to widow** is ( $= £12,225 \times 2/3$ ) £8,150 a year

Using the same rules for calculating the amount of the debit  
as for the main scheme pension gives a **debit at death** of  
( $= £4,000 \times 1.0415 \times 2/3$ ) £3,260 a year

And thus a **net pension for the widow** of  
( $= £8,150 - £3,260$ ) £4,890 a year

The debit from the widow's pension is still 40% of the scheme  
benefit, as expected

Any **benefits to other dependants** (eg to children) should also be reduced by the  
debit in the appropriate proportion if they are included in the cash equivalent transfer  
value on which pension sharing was based.

## Example 2C – deferred pensioner choosing to take pension after scheme normal pension age

Under regulation 8 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991<sup>①</sup>, a preserved pension can come into payment after scheme normal pension age provided that the value of the late retirement pension is at least as great as the value of the pension payable from scheme normal pension age. This implies that schemes must offer increases (enhancements) to deferred pensioner members who wish to receive their pension after scheme normal pension age, if such postponement is permitted by the scheme. Inland Revenue restrictions will also apply, meaning that such postponement of pension will not be possible in all cases.

The following example is based on the assumption that the scheme offers an increment of 10% a year for each year after the scheme normal pension age that the benefit is deferred, with allowance for LPI increases as well (at an average of 3.5% a year over the period in question). Also, that the member in the example 2 chooses to defer his pension so that it commences at age 65.

**Gross pension before debit** (for simplicity this does not take into account anti-franking requirements)

(= £10,000 x 1.041<sup>10</sup> x 1.035<sup>5</sup> x (1 + 5 x 0.10)) £26,723 a year

The debit, which must be calculated and brought into account whenever the main scheme benefits are first put into payment, should receive similar enhancements

So the **debit which comes into payment at 65** is

(= £4,000 x 1.041<sup>10</sup> x 1.035<sup>5</sup> x (1 + 5 x 0.10)) £10,689 a year

The pension net of debit is thus (= £26,723 – £10,689) £16,034 a year

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<sup>①</sup> S.I. 1991/167

**Example 2D – other contingencies for deferred pensioners (ill-health or incapacity pension, voluntary early pension)**

Please see corresponding examples for actives (examples 3D and 3E that follow).

### Example 2E – deferred pensioner subsequently re-admitted to active membership

At age 52 the deferred pensioner in example 2 is readmitted to active scheme membership, and the 20 years' service on which his deferred pension was based is reinstated. His new salary is £35,000. By scheme normal pension age, 60, his salary has increased to £48,000. He now has 28 years' service.

<b>Gross pension at scheme normal pension age is</b> (= $28/60 \times £48,000$ )	£22,400 a year
The debit, however, behaves exactly as if he had remained a deferred pensioner, ie from normal pension age it is (as in example 2 above)	£6,000 a year
Leaving a net pension of (= $£22,400 - £6,000$ )	£16,400 a year

Both scheme pension and debit may receive an increase at GMP payment age (65) as result of the application of anti-franking rules.

The debit is calculated as if he remained a deferred pensioner, because its treatment must be consistent with the calculation of the cash equivalent transfer value on which it was based.

Any cost to the scheme experienced as a result of a deferred pensioner rejoining and having past service counting in full is unaffected by the pension debit.

### Example 3 – pension debit for active member

A 50-year-old male active member of a defined-benefit scheme with a 1/60ths accrual rate has 20 years' service and a salary of £30,000 a year, giving an accrued (deferred) pension of £10,000 a year. The scheme has a normal pension age of 60. Based on the cash equivalent transfer value, the member is subject to a debit of 40%, which leads directly to a debit of a deferred pension of £4,000 a year.

#### At age 50

##### Total **gross deferred pension as if service terminated at divorce**

on which cash equivalent transfer value for pension sharing was

based £10,000 a year

**Debit** £4,000 a year

#### At scheme normal pension age (60)

Salary, say £48,000 a year

Service 30 years

##### Thus **gross pension at scheme pension age**

(= £48,000 x 30/60) £24,000 a year

Increases to debit in line with statutory revaluation as if it were a deferred benefit, say 4.1% a year on average

(50% over 10 years) Debit (= £4,000 x 1.041<sup>10</sup>) £6,000 a year

**Net pension put into payment** (= £24,000 – £6,000) £18,000 a year

Both scheme pension and debit may need to be increased at, GMP payment age, 65 in the case of a man, to meet the anti-franking requirements – the treatment of the debit would be same as in the case of the deferred member in example 2.

### Revaluation of GMP element of debits for active members

In the private sector, schemes will generally choose to revalue the GMP element of a deferred pension in line with fixed rate revaluations. However, there is the option for schemes to revalue the GMP element of deferred pensions in line with section 148 orders as with GMPs for those who remain in active service (see section 16 of the Pension Schemes Act 1993). The fixed rate for GMP revaluations is set to approximate the level of future section 148 orders that may be expected.

Schemes may decide to revalue the GMP element of debits in line with section 148 orders for those continuing in active service.

### Example 3A – commuting pension for lump sum at retirement

At retirement the member in example 3 may wish to commute part of his pension in order to provide a lump sum (if the scheme rules allow this). The Inland Revenue maximum lump sum will depend on whether or not the member has pre-17 March 1987 continued rights or not (ie whether the member is covered by the pre-1987 or 1987 -1989 tax regimes or the post-1989 tax regime).

For a **member without continued rights** (post-1989 member)

Pension at age 60 **without debit** £24,000 a year

**Maximum lump sum** (= 2.25 x £24,000) £54,000

If maximum lump sum taken, then maximum residual pension

using Inland Revenue approved commutation factor is

(= £24,000 – (£54,000 / 12)) £19,500 a year

Pension at age 60 **with debit** £18,000 a year

Maximum lump sum (= 2.25 x £18,000) £40,500

If maximum lump sum taken, then maximum residual pension

using Inland Revenue approved commutation factor is

(= £18,000 – (£40,500 / 12)) £14,625 a year

For a **member with continued rights** (ie who enjoys pre-1987 limits)

**Maximum lump sum without debit** (= 1.5 x £48,000) £72,000

Maximum residual pension if maximum lump sum

taken without debit (= £24,000 – (£72,000 / 12)) £18,000 a year

Where the member has a debit, the debit is, in effect, treated as post-1989 rights, and the maximum lump sum can be calculated on **the better of two bases**

**Approach one:** maximum lump sum

(= (1.5 x £48,000) – (2.25 x £6,000)) £58,500

and maximum pension if maximum lump sum is taken is

(= £18,000 – (£58,500 / 12)) £13,125 a year

assuming, that the scheme has adopted a 12:1 commutation factor

for all members irrespective of tax regime.

**Approach two – as if completely under post-1989 regime:**

maximum lump sum (= 2.25 x £18,000) £40,500

And maximum pension if maximum lump sum is taken is, as

before, (= £18,000 – (£40,500 / 12)) £14,625 a year

### Example 3B – death of active member with debit

If the member (now earning £39,000 a year) dies at age 55, with 25 years' service... If the scheme pays a **lump sum** of 4 times salary on death in service, this would be paid as (= 4 x £39,000) £156,000 with **no reduction** arising from the debit.

If the pension **scheme member has remarried** or is otherwise eligible for a surviving dependant's pension...

Assuming that the scheme pays a spouse's pension of 2/3 of the pension that the member would have received if he had retired at the date of death, based on actual service and salary (ignore anti-franking in this case).

Then the **gross spouse's pension** is

(= £39,000 x 25 / 60 x 2/3) £10,833 a year

Using the same rules for calculating the amount of the debit as for the deferred pensioner member in example 2 gives a debit of

(= £4,000 x 1.041 5 x 2/3) £3,260 a year

And thus a net pension for the widow of (= £10,833 – £3,260) £7,573 a year

Any **benefits to other dependants** (eg to children) should also be reduced by the debit in the appropriate proportion.

**Example 3C – active member choosing to postpone retirement until after scheme normal pension age**

Assume the member decides to remain at work until age 65. Assume further that the scheme allows service beyond normal pension age to count as pensionable and to base the final pension on salary at eventual retirement.

At age 65 the member’s salary is £60,000 and he now has 35 years’ service, the **gross scheme pension** will be £35,000 a year  
 Allowing for increments on the debit from age 60 as if it were a deferred pension (say 10% a year) as well as the increases that it would have had had it been in payment (averaging 3.5% a year) gives a debit of  
 (= £4,000 x 1.041 10 x 1.035 5 x (1 + 5 x 0.10)) £10,689 a year  
 Giving a net pension from age 65 of (= £35,000 – £10,689) £24,311 a year

If the scheme adopted the more usual approach of ceasing pension accrual at scheme normal pension age and enhancing the pension until it came into payment as if it were a deferred pension, then this example would look just like the deferred pensioner postponing retirement at example 2C.

### Example 3D – active member taking pension early voluntarily

Assume that at 55, when the member has 25 years' service and a salary of £39,000 a year, he wishes to take voluntary early retirement.

Formally the member leaves with a **short service benefit payable from scheme normal pension age, 60,**  
of ( $= £39,000 \times 25 / 60$ ) £16,250 a year

The debit revalued until age 55 is ( $= £4,000 \times 1.0415$ ) £4,890 a year

The scheme in fact applies early retirement factors to this pension amount to allow for early payment. These factors are constructed so that the provisions of regulation 8 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 are complied with – ie ensuring that the value of the immediate early retirement benefit exceeds the value of the short service benefit/deferred pension. In this case assume that the factor is a 4% reduction for each year before scheme normal pension age. In addition a check may be needed to ensure that the GMP is covered at GMP payment age, which may lead to early retirement not being an option at some ages (other than this anti-franking is disapplied in the case of such early retirements).

Hence the pension that is put into payment at age 55 is  
( $= £16,250 \times (1 - (5 \times 0.04))$ ) £13,000 a year

The debit, which is a negative deferred pension, should be reduced in the same proportion,  
ie to ( $= £4,890 \times (1 - (5 \times 0.04))$ ) £3,912 a year

Thus the net early retirement pension  
is ( $= £13,000 - £3,912$ ) £9,088 a year

### Example 3E – active member awarded pension early on ill-health/incapacity

Benefits on ill-health retirement are generally at the discretion of the scheme trustees. In the example below the trustees have decided that the debit is to be applied with no reduction for early payment as would apply in the case of a voluntary early retirement (see example 3D above). Where the trustees of the scheme felt that applying an unreduced debit in such cases resulted in the member experiencing a debit of a considerably higher value than that intended, they may conclude that the appropriate course of action would be to reduce the debit. This might apply particularly to ill-health retirements at young ages where there was no impairment of life expectation. Trustees may consider that the maximum reduction in debit should ideally be no more than the reduction that would be applied in the case of a voluntary early retirement at the same age.

Assume that at 55, when the member has 25 years' service and a salary of £39,000 a year, the member has to take early retirement on ill-health grounds. The scheme provides a pension based on actual service and salary.

Hence the **gross ill-health retirement pension** from age 55 is  
(= £39,000 x 25 / 60) £16,250 a year

The scheme member's **debit on ill-health retirement**  
should be (= £4,000 x 1.041 5 ) £4,890 a year

And the net ill-health retirement pension after allowing for the  
debit is (= £16,250 – £4,890) £11,360 a year

The same debit could apply where the scheme chooses to pay a higher ill-health retirement pension based, say, on full potential service to scheme normal pension age, with the same flexibility for the debit as described above.

### Example 3F – active member subsequently becomes deferred pensioner member

Assume that at 55, when the member has 25 years' service and a salary of £39,000 a year, he leaves service with a deferred pension (short service benefit) payable from scheme normal pension age, 60.

The **short service benefit payable from scheme normal pension age, 60**,  
is ( $= £39,000 \times 25 / 60$ ) £16,250 a year  
The **debit**, which is already treated as a negative deferred pension is  
( $= £4,000 \times 1.0415$ ) £4,890 a year

Both the actual gross deferred pension and the debit are revalued using rules for deferred pensions until age 60

#### At age 60

The **gross pension** is now ( $= £16,250 \times 1.0415$ ) £19,939 a year  
The debit is ( $= £4,890 \times 1.0415$ ) £6,000 a year  
Note that the debit is the same as if the member had been an active member until age 60, or indeed had been a deferred pensioner member for the whole period for 50 to 60  
Thus the **net early retirement pension**  
is ( $= £19,939 - £6,000$ ) £13,939 a year

This ignores the effect of anti-franking which will apply at 65 if the member is male (at 60, scheme normal pension age, if the member is female).

In order to avoid any problems with the GMP element of the debit growing disproportionately compared with the gross GMP, trustees might decide to revalue the GMP element of the debit in line with section 148 orders while the member remains in active service and by the same fixed rate as the gross GMP in subsequent deferment (ie based on the date of leaving contracted-out employment). Although this may well not be the practice that schemes follow for deferred pensions (and in most cases the debit is treated as a negative deferred pension) trustees might conclude that it should be broadly consistent with the valuation of the debit.

For consideration of further contingencies following leaving service, see example 2.

#### Example 4 – pension debit for active member of a money-purchase arrangement

These differ from earlier defined-benefit examples in that they are not examples of how the pension put into payment is determined, but rather examples of how the maximum benefits permissible under Inland Revenue rules are determined. The benefits actually put into payment will depend, of course, on the fund available to the member at retirement and annuity rates for the chosen form of annuity at that time.

The examples here cover only active members of defined-contribution schemes. For pensioner members of defined-contribution schemes the principles of application of a debit are similar to those for pensioner members of defined-benefit schemes, and many aspects of examples 1 and 1A are relevant. For deferred members of defined-contribution arrangements, the examples given below for active members generally apply with future contributions being ignored and pre-debit maximum benefit limits taken as appropriate.

A 40-year-old male active member of a defined-contribution scheme has a fund of £80,000. The scheme has a normal pension age of 60. His final remuneration is £30,000 a year and he has 10 years' service. For simplicity, any retained benefits and the earnings cap are ignored. The pension target ("P1") is taken as £20,000 a year (2/3 rd s of £30,000 a year). The member is subject to a debit of 50%, which leads directly to a reduction of £40,000 in the value of the fund.

##### At age 40

Total fund at divorce	£80,000
Debit (transferred to his (ex-)wife for her to use to provide a pension in a form largely of her own choosing)	£40,000
Notional pension equivalent of debit (= £40,000 / 6.405), where 6.405 is Factor [5] (as defined in the extended tables of factors in Appendix VIII and Appendix IX to Inland Revenue Practice Note IR12(1997)) for a man aged 40	£6,245 a year

##### At scheme normal pension age (60)

Salary, say	£80,000 a year
Service	30 years
Thus maximum gross pension at scheme pension age (= £80,000 x 2/3)	£53,333 a year
Increases to debit in line with statutory revaluation as if it were a defined-benefit deferred pension, say 4.1% a year on average (same assumption as in defined-benefit examples 2 and 3 – equivalent to 50% over 10 years and 125% over 20 years).	
Debit for deduction from maximum (= £6,245 x 1.041 20 )	£14,051 a year
Net maximum pension that could be put into payment (= £53,333 – £14,051)	£39,282 a year

#### **Example 4A – commuting pension for lump sum at retirement**

The same principles apply here as in the example for defined-benefit schemes at 3A – ie the maximum lump sum is effectively reduced by 2.25 x the (revalued) debit.

#### **Example 4B – death of active member with debit**

There are no special issues here. In some cases the scheme will pay a death-in-service lump sum and pensions to dependants (if any) based on salary and service at the time of the member's death. In this case, as with the corresponding example for members of defined-benefit schemes, a death-in-service lump sum will be unaffected by the pension debit, but the maximum dependants' pensions should take account of the pension debit revalued between the date of divorce and the date of the member's death.

### Example 4C – active member choosing to postpone retirement until after scheme normal pension age

Assume the member decides to remain at work until age 65. Assume further that the scheme allows service beyond normal pension age to count as pensionable and to base the final pension on salary at eventual retirement.

The maximum permissible pension can be calculated on one of two bases. The effect of the debit on the maximum permissible pension must be consistent with the approach used for the gross maximum benefit. (Some members of pension schemes may be restricted as to which of the two approaches can apply to them.)

#### Approach 1 – late retirement factor applied to pension as at scheme normal pension age

Suppose a factor of 1.42 is used by the scheme to increase the scheme pension at normal pension age to allow for late retirement

The **maximum scheme pension**

would be (= £53,333 x 1.42) £75,733 a year

The **debit** to be taken into account would become

(= £14,051 x 1.42) £19,952 a year

And hence the **maximum pension net of debit** would be

(= £75,733 – £19,952) £55,781 a year

#### Approach 2 – recalculate the maximum based on salary (and service) at eventual retirement

At age 65 the member's salary is £100,000, say, so the **maximum**

**gross scheme pension** will be (= £100,000 x 2/3) £66,667 a year

The debit to be taken into account should be that from age 60 increased in line with statutory revaluation

(= £14,051 x 1.041 5) £17,178 a year

Giving a **net pension from age 65** of (= £66,667 – £17,178) £49,489 a year

#### Example 4D – active member taking pension early voluntarily

Assume that at 50, when the member has 20 years' service and a salary of £50,000 a year, he chooses to take early retirement voluntarily.

The **maximum gross retirement pension** from age 50 is  
(= £50,000 x 2/3) £33,333 a year

The debit **as it affects the maximum pension** should be  
(= £6,245 x 1.041<sup>10</sup> x (1 – 0.065)<sup>10</sup>) £4,783 a year

Note that in calculating the maximum pension the debit is brought into play with an actuarial reduction as if it were a pension paid before normal retirement age in a defined-benefit scheme.

And the **net maximum pension** after allowing for the debit is  
(= £33,333 – £4,783) £28,550 a year

The factor of 0.065 (compound) for actuarial reduction on early retirement is set by the Inland Revenue for use in these circumstances by money-purchase schemes determining the maximum benefits – such schemes would not generally have cause to use early retirement factors. *Version 1 - December 2000 26*

#### Example 4E – active member awarded pension early on ill-health/incapacity

Assume that at 50, when the member has 20 years' service and a salary of £50,000 a year, he has to take early retirement on ill-health grounds. The same approach is used here as in voluntary early retirement, with the same 6.5% a year compound reductions factors coming into play.

The **maximum gross ill-health retirement pension** from age 50 is  
(= £50,000 x 2/3) £33,333 a year

The **debit as it affects the maximum pension** should be  
(= £6,245 x 1.041<sup>10</sup> x (1 – 0.065)<sup>10</sup>) £ 4,783 a year

Note that since we are defining the way in which the debit affects a *maximum* pension in this case, it is appropriate to treat the person retiring early on ill-health no less favourably than the person retiring early voluntarily, with the debit reduced for early payment. For this reason the reduction in debit should be the same reduction that would be applied in the case of a voluntary early retirement at the same age.

And the **net maximum pension** after allowing for the debit is  
(= £33,333 – £4,783) £28,550 a year

**Example 4F – active member subsequently becomes deferred pensioner member**

No special issues here.

## THE PENSION ANNEX TO A PENSION SHARING ORDER

The following is a copy of the annex (form P1) which is required to be attached to a Pension Sharing Order by virtue of rule 2.70 of the Family Proceedings Rules 1991 [SI 1991/1247], as amended by regulation 9 of the Family Proceedings (Amendment) Regulations 2000 [SI 2000/2267 (L.19)].

It should be noted that the former reference at item 5 on form P1 to the Court specifying a valuation date was NOT one of the requirements for Form P1 specified in rule 2.70(14) of the Family Proceedings Rules 1991. There was no statutory reason for the date to be included on Form P1 and it has now been removed. The date that used to be shown at item 5 on Form P1 merely related to regulation 3 of the Divorce etc. (Pensions) Regulations 2000 [SI 2000/1123]. This stipulates that when the Court is exercising any of its powers under Part II of the Matrimonial Causes Act 1973, benefits under a pension arrangement must be calculated and verified in the manner set out in regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 and

- a) the benefits shall be valued as at a date to be specified by the Court (being not earlier than one year before the date of the petition and not later than the date on which the Court is exercising its power);
- b) in determining that value the Court may have regard to information furnished by the person responsible for the pension arrangement pursuant to any of the provisions set out in paragraph (2) [of regulation 3 to the Divorce etc. (Pensions) Regulations 2000 [SI 2000/1123] e.g. a valuation provided to the Court for divorce purposes];
- c) in specifying a date under sub-paragraph (a) above the Court may have regard to the date specified in any information furnished as mentioned in sub-paragraph (b) above.

In other words, it was nothing more than the date the Court took into account in valuing the pension benefits when determining the share of assets upon divorce in the same way that it took the value of other assets into account (e.g. the value of the matrimonial home) at a given date. IT IS/WAS NOT the date the administering authority must use when recalculating the Cash Equivalent Value of a member's pension benefits when implementing the Pension Sharing Order. That date must be the "valuation date" as provided for by sections 29(2) and (7) of the Welfare Reform and Pensions Act 1999 and which, for age, MLI and Pensions Increase purposes is

- in the case of a pension share under the Local Government Pension Scheme Regulations 1997, the later of
  - i) the date the Court Order or agreement comes into effect, or
  - ii) the first day of the "implementation period". That is, the first day that the administering authority has all the information necessary to implement the Pension Sharing Order e.g. the Order itself, the Order, decree or declarator responsible for the divorce to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc

- in the case of a pension share under the Local Government Pension Scheme (Scotland) Regulations 1998, any day chosen by the administering authority within the period of 4 months commencing with the later of
  - j) the date the Court Order or agreement comes into effect, or
  - k) the day the authority has all the information necessary to implement the "Pension Sharing Order" e.g. the Order itself, the Order, decree or declarator responsible for the divorce to which it relates, the decree absolute, receipt of charges which are to be paid up-front, the information listed in Box 3 of this Guide, etc

**BUT**

- in the case of divorce or nullity proceedings lodged in England, Wales, Scotland or Northern Ireland, the CETV must be based only on the benefits accrued up to the day before the Court Order or provision takes effect.

**Pension Sharing Annex  
under Section 24B of the  
Matrimonial Causes Act  
1973**

(Rule 2.70 (14) FPR 1991)

<p><b>In the</b></p> <p style="text-align: right;">*[County Court] *[Principal Registry of the Family Division]</p> <p><b>Case No.</b> <small>Always quote this</small></p> <p>Applicant's Solicitor's reference Respondent's Solicitor's reference</p>
---

The marriage of

and

**Take Notice that:**

On \_\_\_\_\_ the court

- made a pension sharing order under Part IV of the Welfare Reform and Pensions Act 1999.
- [varied] [discharged] an order which included provision for pension sharing made under Part IV of the Welfare Reform and Pensions Act 1999 and dated \_\_\_\_\_

This annex to the order provides the person responsible for the pension arrangement with the information required by virtue of The Family Proceedings Rules 1991 as amended.

1. Name of the Transferor:  
\_\_\_\_\_
2. Name of the Transferee:  
\_\_\_\_\_
3. The Transferor's National Insurance Number:  
\_\_\_\_\_
4. Details of the Pension Arrangement: -
  - (i) Name and address of the person responsible  
For the pension arrangement:  
  
\_\_\_\_\_
  - (ii) Policy Reference Number:  
  
\_\_\_\_\_
  - (iii) *if appropriate, such other details to enable  
the pension arrangement to be identified:*  
  
\_\_\_\_\_
5. The specified percentage value of the pension  
arrangement to be transferred:  
*(The specified amount required in order to create a  
pension credit and debit should only be inserted where  
specifically ordered by the court).*  
  
\_\_\_\_\_

6. Pension Sharing Charges:  
(\*Delete as appropriate)

It is directed that:

\*The pension sharing charges be apportioned between the parties as follows:

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\*The pension sharing charges be paid in full by the transferor.

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The court is satisfied that the person responsible for the pension arrangement has furnished the information required by Regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 and, that it appears from the information that there is power to make an order including provision under section 24B (pension sharing) of the Act of 1973.

THIS [ORDER] [PROVISION] TAKES EFFECT FROM \_\_\_\_\_

To the person responsible for the pension arrangement:

(\*Delete as appropriate)

1. \*Take notice that you must discharge your liability within the period of 4 months beginning with the later of :
  - the day on which this order or provision takes effect; or,
  - the first day on which you are in receipt of -
    - a. this [order] [provision] for ancillary relief, including the annex;
    - b. the decree of divorce or nullity of marriage; and
    - c. the information prescribed by Regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000.
2. \*The court directs that the implementation period for discharging your liability should be determined by regulations made under section 34(4) or 41(2)(a) of the Welfare Reform and Pensions Act 1999, in that:

## THE PENSION ANNEX TO AN EARMARKING ORDER

The following is a copy of the annex (form P2) which is required to be attached to an Earmarking Order by virtue of rule 2.70 of the Family Proceedings Rules 1991, as amended by regulation 9 of the Family Proceedings (Amendment) Regulations 2000 [SI 2000/2267 (L.19)].

It should be noted that the former reference at item 5 on form P2 to the Court specifying a valuation date was NOT one of the requirements for Form P2 specified in rule 2.70(14) of the Family Proceedings Rules 1991. There was no statutory reason for the date to be included on Form P2 and it has now been removed. The date that used to be shown at item 5 on Form P2 merely related to regulation 3 of the Divorce etc. (Pensions) Regulations 2000 [SI 2000/1123]. This stipulates that when the Court is exercising any of its powers under Part II of the Matrimonial Causes Act 1973, benefits under a pension arrangement must be calculated and verified in the manner set out in regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 and

- a) the benefits shall be valued as at a date to be specified by the Court (being not earlier than one year before the date of the petition and not later than the date on which the Court is exercising its power);
- b) in determining that value the Court may have regard to information furnished by the person responsible for the pension arrangement pursuant to any of the provisions set out in paragraph (2) [of regulation 3 to the Divorce etc. (Pensions) Regulations 2000 [SI 2000/1123] e.g. a valuation provided to the Court for divorce purposes];
- c) in specifying a date under sub-paragraph (a) above the Court may have regard to the date specified in any information furnished as mentioned in sub-paragraph (b) above.

In other words, it was nothing more than the date the Court took into account in valuing the pension benefits when determining the share of assets upon divorce in the same way that it took the value of other assets into account (e.g. the value of the matrimonial home) at a given date.

**Pension Attachment  
Annex under  
Section 25B or 25C of the  
Matrimonial Causes Act  
1973**

(Rule 2.70 (15) FPR 1991)

**In the**

**\*[County Court]**

**\*[Principal Registry of the Family Division]**

**Case No.**

Always quote this

Applicant's Solicitor's

reference

Respondent's Solicitor's

reference

**The marriage of**

**and**

**Take Notice that:**

On \_\_\_\_\_ the court

- made an order including provision under section[25B][25C]\*of the Matrimonial Causes Act 1973.
- [varied][discharged]an order which included provision under section[25B][25C]\*of the Matrimonial Causes Act 1973 and dated \_\_\_\_\_  
(\*delete as appropriate)

This annex to the order provides the person responsible for the pension arrangement with the information required by virtue of The Family Proceedings Rules 1991 as amended.

1. Name of the party with the pension rights:

\_\_\_\_\_

\_\_\_\_\_

2. Name of the other party:

\_\_\_\_\_

\_\_\_\_\_

3. The National Insurance Number of the party with pension rights:

\_\_\_\_\_

\_\_\_\_\_

4. Details of the Pension Arrangement:-  
(i) Name and address of the person responsible for the pension arrangement:

(ii) Policy Reference Number:

(iii) *if appropriate, such other details to enable the pension arrangement to be identified:*

\_\_\_\_\_

\_\_\_\_\_

5. \*The specified percentage of any payment due to the party with pension rights that is to be paid for the benefit of the other party:

\*The person responsible for the pension arrangement is required to:

(\*delete as appropriate)

\_\_\_\_\_

To the person responsible for the pension arrangement:

(\*Delete if this information has already been provided to the person responsible for the pension arrangement with Form A or pursuant to FPR 2.70(11))

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1. \*You are required to serve any notice under the Divorce etc. (Pensions) Regulations 2000 on the other party at the following address:

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2. \*You are required to make any payments due under the pension arrangement to the other party at the following address:

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3. \*If the address at 2. above is that of a bank, building society or the Department of National Savings the following details will enable you to make payment into the account of the other party (e.g. Account Name, Number, Bank/Building Society/etc. Sort code):

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Note: Where the order to which this annex applies was made by consent the following section should also be completed

The court also confirms:

(\*Delete as appropriate)

\*That notice under Rule 2.70(11) of the Family Proceedings Rules 1991 has been served on the person responsible for the pension arrangement and that no objection has been received under Rule 2.70(12).

\*That notice under Rule 2.70(11) of the Family Proceedings Rules 1991 has been served on the person responsible for the pension arrangement and that the court has considered any objection received under Rule 2.70(12)(b).

ANNEX 16

# **PENSIONS AND DIVORCE**

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

April 2002

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## **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 booklet 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 booklet 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 form at the end of this booklet 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, 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 enclosed Schedule of Charges.

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 booklet 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.

The Pensions Section (see details under "Further Information") 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 the Pensions Section (see details under "Further Information") 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. The Pensions Section (see details under "Further Information") will, within 21 days of the transfer, inform the former spouse of any transfer

The Pensions Section (see details under "Further Information") must be informed of the death of the member or of the former spouse.

### **Paying the earmarked pension**

The Pensions Section (see details under "Further Information") 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. The Pensions Section 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<sup>15</sup> (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 the authority administering the Scheme (see details under "Further Information").

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

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<sup>15</sup> 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 rise in the Retail Prices Index (i.e. it will be increased in line with the rise in 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.

### **Buying additional pension benefits**

If, in the tax year before that in which the divorce or annulment occurs, the member's earnings are equal to or less than one quarter of the Inland Revenue earnings cap, currently £97,200 for the tax year 2002/2003, the member will have scope to rebuild the pension rights 'lost' on account of the 'pension debit'. The member can do so by paying Additional Voluntary Contributions (AVCs) or, provided the member is under age 64<sup>16</sup>, by purchasing additional years of membership in the LGPS.

If the member's earnings exceed one quarter of the earnings cap, the scope to pay AVCs or to

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<sup>16</sup> The authority administering the pension fund may also require the member to satisfy them that he / she is in reasonably good health.

purchase additional years of membership may be limited and it may not be possible to rebuild some or all of the pension rights 'lost' on account of the 'pension debit'.

Irrespective of whether or not a member earns more or less than one quarter of the earnings cap, a member, whose taxable earnings (as shown on the P60) in at least one of the preceding 5 tax years (but not counting any tax year prior to 2000/2001), did not exceed £30,000 a year can contribute<sup>17</sup> up to £3,600 a year (including tax relief) into a Stakeholder Pension Scheme or a Personal Pension Scheme at the same time as contributing to the LGPS. All such members will, therefore, have the opportunity to rebuild some or all of the pension benefits 'lost' on account of a 'pension debit'.

Further information on the options available can be obtained from the Pensions Section (see details under "Further Information").

### **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.

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<sup>17</sup> A member who is or who has been a controlling director in the tax year the contributions are made or in any one of the preceding 5 tax years cannot contribute to a concurrent Stakeholder or Personal Pension Scheme.

## 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 and a lump sum equal to three times the pension, payable from age 65 or, if later, 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 65 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 the rise in the Retail Prices Index i.e. they will be increased in line with the rise in the 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 rise in the Retail Prices Index.

'Pension credit' benefits do NOT provide widow(er)'s or dependants 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 added years of membership 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 age 65 or, if later, 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 65 on the grounds of serious ill health where life expectancy is less than one year (a one off lump sum payment equal to five 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 the rise in the Retail Prices Index i.e. they will be increased in line with the rise in the 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 rise in the Retail Prices Index.

'Pension credit' benefits do NOT provide widow(er)'s or dependants 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 added years of membership 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.

## Further information

The authority administering the Local Government Pension fund is [enter name].

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

[enter address and general enquiry telephone number]

There is also a number which you can dial direct and get through to the person dealing with your case. You will find this on any letter we send to you.

You can also get in touch with us by fax on [enter number].

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.

## LOCAL GOVERNMENT PENSION SCHEME REGULATIONS

**WRITTEN CONSENT FOR VALUATION AND PROVISION OF INFORMATION  
IN CONNECTION WITH MATRIMONIAL PROCEEDINGS**

Please complete the details requested in block capitals, sign, date and return the form to [enter address].

Your full name	
Your date of birth	
The address to which you wish correspondence to be sent (for example, your home address)	
Your National Insurance Number	
Do you currently contribute to the Local Government Pension Scheme (LGPS), or Do you have a deferred pension in the LGPS, or Are you in receipt of a pension from the LGPS?	YES / NO* YES / NO* YES / NO* (* delete as appropriate)
The name of the employer in whose employment you are (or were) a member of the LGPS	
Have divorce or annulment proceedings formally commenced (see note 1 overleaf) i.e. have you completed a 'Form A' for your solicitor?	YES / NO* (* delete as appropriate)
The name and address of the solicitor acting for you.	
Do you authorise the Pensions Section to provide the solicitor named above with such pension information as he / she may request in relation to your benefits in the LGPS?	YES / NO* (* delete as appropriate)
Do you wish to be sent copies of any correspondence sent to your solicitor?	YES / NO* (* delete as appropriate)

Signed : \_\_\_\_\_

Date : \_\_\_\_\_

Notes :

1. Divorce or annulment proceedings must have commenced under one of the following -
  - 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)

**FORM CH1**

Schedule of Charges for the Local Government Pension Scheme (LGPS)

**A. Scheme member not yet retired – about to divorce**

<b>Procedure</b>	<b>Comments</b>	<b>Cost</b>
1. Produce full CETV quotation (member or Court does not stipulate deadline for production)	1. Standard annual entitlement under PSA 1993 (to be provided within 3 months of relevant date).	£0
2. Produce full CETV quotation (member or Court requires within 3 months)	2. Standard CETV under PSA 1993 (to be provided within deadline requested).	£75 *
3. Produce partial CETV quotation (for Scottish cases where the date ceased cohabiting/date of service of divorce summons was more than 12 months ago or the member married after joining the LGPS)	3. Partial CETV quote (to be provided within 3 months or deadline requested by the member or the Court).	£75 *
4. Additional CETV quotations - Based on same dates - Based on different dates		£30 * per additional quote £75 * per additional quote
5. Provision of other information	If under disclosure of information regulations Otherwise, depending on nature of request	£0  Maximum £75 *
6. Receipt of pension sharing order or consent order where the spouse (the credited member) is under 65	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
7. Establish a new pensioner record where the spouse (the credited member) is 65 or over	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
8. Assuming all documentation is in place, settle a transfer out (instead of 4)	This only applies if the credited member asks for a transfer out at the outset. Otherwise, the charges in 4 will apply and no additional charge will be levied if the credited member subsequently asks for a transfer out	£180
9. Objections to order by scheme	Onus should be on the draftsman of the order to ensure that it is correctly drafted prior to issue	Costs for dealing with inoperable orders will be passed on

### 3. Scheme member retired – pension in payment – about to divorce

Procedure	Comments	Cost
1. Assess the value of the Pension in payment, Including any contingent Benefits		£200 *
2. Receipt of pension sharing Order or consent order where the spouse (the Credited member) is under 65	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
3. Establish new pensioner record where the spouse (the credited member) is 65 or over	To cover all administration costs from receipt of pension sharing order to completion of pension payments	£420
4. Assuming all documentation is in place, settle a transfer out (instead of 2, above)	This only applies if the credited member asks for a transfer out at the outset. Otherwise, the charges in 2 will apply and no additional charge will be levied if the credited member subsequently asks for a transfer out	£180

#### 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 the pension fund.
5. VAT will be payable in addition to all the above charges.
6. All charges are correct at the time of production of this charging schedule (January 2001). The authority administering the pension fund will increase its charges each April by RPI (over the 12 months to the previous September).
7. The standard practice of the authority administering the pension fund is that the full amount of the charges marked with an "\*" must be paid, by either party to the divorce, before the relevant action is undertaken. All other charges can either be paid
  - a) in full at the point of action, by either party to the divorce, or
  - b) by part payment at the point of action, by either party to the divorce, with the balance being deducted from either the cash value awarded to the ex-spouse (the credited member) under the sharing order or agreement before it is converted into an annual pension value under the LGPS 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, or
  - c) by deduction in full from either the cash value awarded to the ex-spouse (the credited member) under the sharing order or agreement before it is converted into an annual pension value under the LGPS 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, or
  - d) by deduction in full from any share of a scheme member's Additional Voluntary Contribution 'pot' awarded to the ex-spouse (the credited member) under the sharing order or agreement.

The authority administering the pension fund will, however, comply with the charging requirements specified in an order or agreement.