

NHS Pension Scheme - Pension Sharing on Divorce or Dissolution of a registered civil partnership

Introduction

This factsheet describes what may happen to pension benefits on divorce or dissolution of a civil partnership where a member has NHS Pension Scheme (England & Wales) membership or is in receipt of pension benefits from the NHS Pension Scheme (England & Wales).

It is intended only as general guidance and whilst care has been taken to ensure its accuracy it is not intended to be a complete or legally binding statement of the law or regulations governing the NHS Pension Scheme. All references to divorce should be taken as also referring to dissolution of a registered civil partnership.

Background

The value of pension benefits can be taken into account in divorce and related financial settlements. From 1995 the **Earmarking** of pensions became possible and with effect from December 2000 the Welfare Reform and Pensions Act 1999 introduced **Pension Sharing** at the time of divorce as part of an agreed settlement, from 13 March 2014 this includes a divorce by same sex couples. From 5 December 2005 following the introduction of the Civil Partnership Act 2004 **Pension Sharing** can apply in respect of the dissolution of a registered civil partnership.

As part of the divorce or dissolution process the assets of a marriage or civil partnership are identified and agreement reached and/or an order made by the courts on how these assets or their cash equivalent value are to be shared.

What is Earmarking?

Earmarking Orders are special attachment orders, which the courts can make against benefits payable from the NHS Pension Scheme. The pension still remains that of the Scheme member, but the Scheme is required to make some form of payment to the former spouse; this can be derived from the member's pension, lump sum (if the scheme provides for one), death benefit or Additional Voluntary Contributions benefit.

What is Pension Sharing?

Pension Sharing Orders are orders, which the courts can serve on the NHS Pension Scheme, specifying a proportion of the value of the member's benefits to be used to create a pension benefit for the former spouse. The member's benefits are reduced (known as a Pension Debit) and the former spouse (known as a Pension Credit Member) holds benefits in their own right, independent of the Scheme member.

Note: Although Earmarking is still possible, Pension Sharing is more common because of its 'clean break' approach to the division of pensions on divorce by providing the former spouse/partner with a pension in their own right.

Requests for information

The court will need information about the member's pension benefits and the NHS Pension Scheme when considering a Pension Sharing Order. As part of the first stage towards pension sharing, a Scheme member may be asked to obtain a Cash Equivalent Transfer Value of their pension benefits.

What is a Cash Equivalent Transfer Value?

A Cash Equivalent Transfer Value is the capitalised value of a members pension benefits under the Scheme. It is calculated in accordance with the NHS Pension Scheme regulations by reference to guidance and tables provided by the Scheme Actuary. Where a member is a Scheme pensioner the Cash Equivalent Transfer Value represents the capitalised value of the actual pension in payment.

How does a Scheme member request a Cash Equivalent Transfer Value?

A member can download a copy of the Pensions on divorce/dissolution of a civil partnership Cash Equivalent Transfer Value (PD1) from NHS Pensions website or request a copy from their employer (in download format only).

The member will apply direct to their employer on form Cash Equivalent Transfer Value (PD2) for pensionable pay or Scheme membership information needed for the calculation of the Cash Equivalent Transfer Value. The completed form Cash Equivalent Transfer Value (PD2) should be returned to the member and will form part of their request to NHS Pensions for a Cash Equivalent Transfer Value for divorce proceedings.

Members are entitled to one Cash Equivalent Transfer Value per year for any purpose. They must confirm if the Cash Equivalent Transfer Value is for divorce proceedings and it is important to let NHS Pensions know if a court date has been set.

Will a Scheme member have to pay for a Cash Equivalent Transfer Value?

Where a member has not been provided with a Cash Equivalent Transfer Value in the last 12 months, the answer is usually no. However, where a Cash Equivalent Transfer Value has already been provided within the last 12 months or where the member is a Scheme pensioner, there will be a charge. Please advise the member to read the Schedule of Charges in the divorce or dissolution of a civil partnership and your pension area of the Member Hub on the website for more information.

How long will a member have to wait for a Cash Equivalent Transfer Value?

Under the Pension Sharing on Divorce (Provision of Information) Regulations 2000, NHS Pensions has three months from the receipt of a request for a Cash Equivalent Transfer Value for divorce proceedings to provide the information.

However, where properly completed forms Pensions on divorce/dissolution of a civil partnership Cash Equivalent Transfer Value (PD1) and Cash Equivalent Transfer Value (PD2) are received and workload permits, NHS Pensions aims to provide the Cash Equivalent Transfer Value within six weeks.

Implementing a Pension Sharing Order

Once the court and the couple have agreed the terms of any pension sharing, a Pension Sharing Order will be served on the Scheme. It will specify a percentage of the Cash Equivalent Transfer Value to be allocated to the former spouse and the effective date of the Order.

NHS Pensions has four months under the Welfare Reform and Pensions Act 1999 in which to implement a Pension Sharing Order and this is known as the implementation period.

Both the member and the former spouse will receive confirmation that the Order has been implemented via a Notice of Discharge of Liability.

What happens to the members benefits?

The value of the member's benefits is reduced by the percentage allocated to the former spouse at the effective date of the Order and this is known as the Pension Debit.

When the member retires, the Pension Debit will be increased in line with the cost of living and deducted from the benefits payable.

What about dependant benefits?

If the member remarries, the pension share will reduce any surviving partner benefits payable but allowances for dependent children are not affected.

What if the member leaves the Scheme?

If the member leaves the Scheme and has two years or more membership their benefits will be deferred. However if they choose they can still transfer their remaining benefits to another registered pension scheme or arrangement.

What does the pension share provide for the former spouse?

A pension share provides the former spouse, known as the Pension Credit Member, with pension benefits payable at the Normal Pension Age. This will be either age 60 (1995 Section) age 65, (2008 Section), or State Pension Age (minimum age 65) for the 2015 Scheme.

NHS Pensions will advise them of the amount of these benefits and the age at which they will become payable. A Pension Credit will provide the following options:

- Commutation of trivial (small) pension
- Early payment of a Pension Credit with actuarial reduction
- Early payment of a Pension Credit on health grounds
- The option to exchange part of a Pension Credit for lump sum (this only applies where the Pension Sharing Order has been implemented prior to the members retirement **and** the pension credit is payable on or after 6 April 2009)
- Maximum commutation on the grounds of terminal ill health.

Restrictions

Pension Credit membership does not carry all the rights of a full Scheme member. A Pension Credit Member is not entitled to:

- transfer these benefits out of the Scheme
- transfer benefits from any other pension arrangement into the Scheme or purchase additional benefits in the Scheme
- a pension share does not provide surviving partner or dependant's benefits.

If the Pension Credit Member is also a Scheme member in their own right, Pension Credit benefits are held separately and do not count towards any other benefit entitlement from the NHS Pension Scheme.

Premature Retirement Compensation (PRC)

Pension Sharing does not apply to mandatory compensation payments or discretionary enhancements. A Cash Equivalent Transfer Value for divorce purposes will not take account of these benefits.

Membership requests and benefit calculations

Employers should be aware that if they obtain membership details from NHS Pensions there is no reduction in membership when a member's benefits are subject to a Pension Sharing Order; it is the benefits payable in respect of that membership that are reduced. Pension benefits in these cases are calculated as follows:

- Benefits are calculated as normal, i.e. as if no Pension Sharing has occurred
- Cost of living increases are applied up to the date of retirement to the basic amount of reduction in the benefits (the Pension Debit), calculated at the time of Pension Sharing
- The second calculation is deducted from the first to get the reduced amounts payable.

The benefits that are reduced are the pension, lump sum (if the scheme provides for a lump sum), and surviving partner pension (short term pensions, where the person dies in membership, are unaffected) and all dependent children's allowances are unaffected.

All such calculations will be undertaken by NHS Pensions.

Can a member replace benefits that have been subject to a Pension Sharing Order?

It is not possible to replace benefits that have been shared, however dependent upon HMRC and Scheme Regulations in force at the time, it may be possible for a member to purchase additional pension to increase their benefits. It will be necessary to contact NHS Pensions for further information. You can read more about increasing benefits on the website.

Transferring pension benefits

If a member wishes to transfer their benefits out of the NHS Pension Scheme and these benefits have been the subject of a Pension Sharing Order, the transfer payment made will reflect the reduction applied to the member's benefits following the implementation of the Pension Sharing Order. The pension payable to the Pension Credit Member will remain within the NHS Pension Scheme however as it is non-transferable.

After the divorce is finalised

It is of the utmost importance that NHS Pensions is provided with all of the information detailed in Section 5 of The Pensions on Divorce (Provision of Information) Regulations 2000 within seven days of the date of the Decree Absolute or Dissolution Order as laid down in Section 28(7) of The Welfare Reform and Pensions Act 1999 to enable implementation of any Pension Sharing Order. This includes such information as:

- a copy of the Decree Absolute or Dissolution Order and the final Pension Sharing Order
- the members NHS Pension Scheme reference (SD) number and the name of the Scheme to which the Pension Sharing Order relates i.e. NHS Pension Scheme
- the full names and National Insurance (NI) numbers of the Scheme member and former spouse including any maiden names
- payment of NHS Pension administration charges.

It is the member's responsibility to ensure this information is provided.