Act Family Law provides this guide as general information, we hope you find it helpful. It is not intended to replace legal advice. Each case has different issues and requires separate individual advice.
Act is not liable for any consequences if you rely on these notes rather than seeking specific guidance on your own case.

PENSION SHARING GUIDE

Pension sharing is the most potentially complicated area of divorce financial orders (ancillary relief orders). This guide is intended only to give a general overview of some of the main points. More detailed advice is available as necessary. The same rules apply to Civil Partners legally dissolving their civil partnership as to married couples. Pension sharing is not available to separating cohabitees.

In many divorces, pensions make up the most or second most valuable class of assets, often exceeding property.

Act has particular expertise in dealing with pensions issues, with a Resolution accredited pensions specialist available to assist you. Pensions are complex investments, and there are many different types of pension giving rise to a variety of issues as to how they can be utilised in a divorce settlement.

From the common money purchase and occupational schemes through to SIPPS, Armed Forces pensions, and anything a bit out of the ordinary, we are waiting to help.

Pension sharing order introduction.

- Pension sharing is available for divorces started since 1 July 1996
- Like other Ancillary Relief orders, a pension sharing order can be agreed between the parties, or ordered by a court, but it is not compulsory, nor necessarily appropriate in every case;
- Even if you agree to pension share, there must be a pension sharing order – a pension scheme cannot create a pension share without a court order:
- Pension sharing is available to married couples, or civil partners, but not cohabitants;
- An pension sharing order can be made against almost any pension, including a pension already in payment;
- The person with the benefit of the order may retire at their own retirement age, they don’t have to wait until the original pension owner receives their pension payments;
- Pension sharing does not apply to the basic state pension but does apply to SERPS

- There are other ways of taking account of pensions, including earmarking orders and offsetting, although they have their own issues and limitations. Pension sharing is generally the preferable option.

What is a Pension Sharing Order?

A pension sharing order creates a separate pension entitlement for one spouse from the pension(s) belonging to the other spouse. The original pension is divided so as to create a new pension for the other spouse, entirely independent of the original pension which reduces correspondingly in value. The order defines the pension share as a percentage to be taken from the original pension.

How does it work?

The pension holder's pension is reduced by the percentage which the order requires to be transferred (the **pension debit**) and the transferee acquires the right to be credited with that amount (the **pension credit**). The amount to be transferred is expressed as a percentage of the CETV (cash equivalent transfer value) of the relevant benefits on the valuation date.

In a money purchase scheme this is straightforward. In a final salary scheme, the calculations involved are more complicated because there is no fund as such, and instead the value of the benefits has to be calculated.

A pension credit can never be used other than as credit into another pension scheme; it cannot be "cashed in".

The Order will not take effect until Decree Absolute has been granted.

Pension sharing issues.

Due to the different actuarial calculations applying to men and women (women have a longer life expectancy) a female transferee receiving a credit of, say, 50% of a particular pension arrangement will not necessarily receive a pension equal to that of a male transferor of the same age. If there is only one pension scheme, and if the husband and wife were the same age and both in good health, the wife would need a larger share of the fund if she is to receive the same pension income as her former husband on retirement.

Internal and External Transfers

An internal transfer means creating a separate pension for the transferee within the transferor's original scheme. An external transfer means putting the pension credit into another scheme.

In some circumstances, including unfunded statutory schemes (such as Police, Armed Forces) internal transfer is the only available option.
Funded schemes may opt not to offer internal transfers and require the transferee to transfer out into another scheme, nor does a pension scheme offering an internal transfer have to offer exactly the same pension provisions as enjoyed by the original pension holder.
Where a scheme is a funded occupational scheme or a personal pension scheme it will be possible to have either an internal or external transfer.

Valuation

The means of valuation of pensions adopted for pension sharing orders is the Cash Equivalent Transfer Value (CETV). This is an accurate formula for money purchase schemes, but is much less suited for other schemes such as unfunded statutory schemes, where CETV can give a misleading reflection of true value. It may be necessary to obtain a separate valuation from an actuary to establish the true value of the benefits making up such pensions.
Whether or not a separate pension valuation is necessary depends on many different circumstances and this needs to be considered in each case.

Procedure

Parties who wish to apply for a pension share must give notice of their intention to the pension scheme. The court requires an acknowledgement from the pension scheme that there is no legal impediment before making a pension sharing order.
Relevant pension sharing documents will be sent to the pension scheme by the Court once the order, and the Decree Absolute of divorce, are made. Pension arrangements then have four months in which to implement the pension share.
A pension sharing order cannot be varied after the Decree has been made Absolute.
Once the pension sharing is completed, the pension is the property of the transferee. Their rights are unaffected by anything the transferor does. Their pension rights are unaffected by the transferor’s death. The date on which they can draw a pension depends only on their own age and circumstances, not those of the transferor.

Charging

The general principle is that the divorcing couple should bear the cost of pension sharing and not the scheme itself. A Pension Sharing Order may specify who is to bear the charges. If the order is silent and no agreement is reached between the couple the scheme member will bear the charges.