

Guide to Divorce & Pension Rights

The sad fact of the matter is that many marriages do end in divorce. Whatever emotional mess that may result in, it may also have profound implications for any pension arrangements made by soon-to-be ex-spouses.

How pensions are treated in divorce is governed by the Pensions Act 1995 and the Welfare Reform and Pensions Act 1999. A child carer (usually the wife) may have little prospect of being able to build up a pension provision of her own whereas the main earner of the household (usually the husband) has the prospect of continued earnings to build up a retirement fund. In the event of divorce there are three ways of sharing the value of a pension:

Offsetting pension value

The courts have been able to take pensions into account in dividing up the matrimonial assets for some time. Allocation of assets is decided mainly according to principles set out in section 25 of the Matrimonial Causes Act 1973. Taking the needs of dependant children into account, the court may order that the family home be awarded to one partner. Doing so may involve a substantial amount of equity. Thus rather than split the pension as well, pension values may be "offset" against other matrimonial assets - for instance, the wife might keep the family home in exchange for letting her spouse keep the pension.

Earmarking pension provision

The Pensions Act 1995 gave courts power to make an "earmarking" order such that a portion of the pension may be paid to the spouse on the retirement of the named pension fund holder. If a pension scheme member or policy holder (typically the husband) has built up a pension provision with a transfer value of, say, £100,000 the court may earmark a percentage of future pension benefits for the wife. This also applies to any lump sum as well as pension in payment. There are two drawbacks. First, death of the husband would mean the wife losing the benefit of any earmarking order, and second, it means there is no clean break between husband and wife.

Pension splitting

The third option for sharing pension benefits was introduced with the Welfare Reform and Pensions Act 1999. The courts still have the option of making earmarking orders but they may also order a pension provider to "split" a pension so that both husband and wife have separate, independent pensions. The advantages here are that the wife no longer has to wait for her ex-partner to take pension benefits but may make her own arrangements and she will not lose this pension if her ex dies before reaching pensionable age. Sharing is done at a fixed date. Thereafter the wife will not benefit from any further pension contributions made by her ex - thus the husband is able to rebuild his own pension provision.



Earmarking or pension sharing are not discriminatory. If the wife has the bigger pension, an earmarking or pension sharing order could be made out in favour of the husband. There is also no requirement to split equally. It is done on the basis of percentages. The percentage to be transferred from one party to another will depend on individual circumstances.

Pension sharing is not compulsory. Pension provision is often the second largest capital asset of the marriage after the former matrimonial home so it is almost always looms large in a divorce settlement. However, you should be aware that there is no "automatic" entitlement to a spouse's pension. People may assume that because they have been married they are entitled to half of everything - including the pension. This is not the case.

It is up to the respective parties and their lawyers to agree on the most equitable way of dividing up all the matrimonial assets, not just the pension, and offsetting may still be appropriate in some cases, particularly where the pension fund is small.