PENSION SHARING ON DIVORCE

Introduction

The Welfare Reform and Pensions Act 1999 enabled 'Pension Sharing on Divorce.' The Police Pension Scheme 1987 (PPS) has amended its regulations to take account of the new legislation. These amendments to the PPS Regulations came into force on 1 December 2000. They introduce new provisions to enable pension rights within the PPS to be shared (or split) following the decision of a Court in England and Wales. Divorces in Scotland are also affected, although slightly different rules apply.

The new regulations supplement the existing provisions for the ‘earmarking’ of pension rights, which were introduced by the Pensions Act 1995. Earmarking is where a proportion of the member's benefits are paid to the former spouse when the member retires or dies (this can be in the form of a lump sum or part of a pension). Earmarking has been little used to date, as it does not offer a clean break settlement, and it can be uncertain (for example, the member whose pension is earmarked may die first, leaving nothing for the former spouse).

Pension sharing provisions apply to all divorce proceedings that commence after 1 December 2000, but do not apply to judicial separation. It is not compulsory and is an alternative to the earmarking provisions (which remain the only option for judicial separation cases). The exact commencement date for divorce proceedings (which may be important) is determined by documents that are signed by the petitioner and the respondent.

The overriding legislation recognises that there is a significant increase in the amount of administration by pension schemes required in dealing with these cases. Administrators are able to make charges for the provision of information in certain cases and for implementing a

'Pension Sharing Order,' a charging schedule for Lancashire Pensions Services is available.

Who May be Affected?

The pension sharing provisions apply to all members in the PPS unless you are in receipt of a spouse’s or dependant's pension i.e. they apply to an active member, deferred pensioner (someone who has left the scheme and is waiting for the payment of pension benefits at some time in the future), or if you are in receipt of a pension in your own right.

How Does Pension Sharing Work?

Full details of the cash equivalent value of the scheme member's accrued pension rights in the PPS are provided to the Court. This value is taken into account by the Court, together with all the other assets of the divorcing couple, when determining the settlement.

A Court Order is made defining the split of pension rights. The scheme member's pension rights are immediately debited and the former spouse becomes a 'Pension Credit Member' in the PPS, with an entitlement to a pension and an option to commute some of this in favour of a lump sum, normally payable from age 60. Where the scheme member is a pensioner there is no lump sum entitlement for the pension credit member.

The scheme member receives information about the effect of the 'Pension Sharing Order' on their pension rights. The pension credit member is provided with a statement giving details of their new rights.

Following Implementation of a Pension Sharing Order

The Scheme Member (debit member)

The following are key points relevant to pension debit members:

- The debit member's pension rights will be reduced to take account of the pension sharing order, in accordance with instructions provided by the Government Actuary's Department.
- A spouse's ordinary award will be reduced to take account of the pension sharing order.
- Children's benefits are attached in full to the debit member's pension rights and will be assessed as if no pension sharing order has been made.
- If the debit member remarries and that subsequent marriage breaks down, his/her pension rights (as reduced by the pension sharing order) could be subject to another pension sharing order.

It may be possible for a debit member to rebuild some of the lost pension rights by the purchase of additional service or paying additional voluntary contributions (AVCs). Any additional contributions must remain within the limit of 15% of earnings. Alternatively, Stakeholder pensions become available from 6 April 2001 to those earning less than £30,000 per annum, and this may be a further option for those wishing to rebuild pension rights.

The Pension Credit Member (former spouse)

<u>The following are key points relevant to pension credit members:</u>

- Former spouses who become pension credit members of the scheme will not be allowed to transfer their rights into another scheme.
- Pensions for pension credit members will be payable at age 60. There is no option for voluntary earlier or later payment – unless the pension sharing order is not issued until after the person has attained age 60 in which case it is put into payment immediately. There is no provision for early payment of main scheme benefits on ill-health grounds.
- Part of the Pension can be commuted into a lump sum, within normal Inland Revenue limits (up to two and a quarter times the

annual pension) unless the officer has already taken a commuted lump sum before the sharing order comes into effect.

- If the credit member dies before the pension becomes due, a death grant of two and a quarter times the value of the uncommuted pension at the date of death will be payable to the estate of the credit member.
- No spouse's benefits will be payable in respect of the pension credit as these will remain attached in full to the debit member's benefits.
- Pensions for credit members will be indexed with effect from the date the pension sharing order takes effect.
- The pension credit member's benefits cannot be combined with any other benefit to which the ex spouse may be entitled under the PPS.
- No children's benefits will be payable in respect of the pension credit as these will remain attached in full to the debit member's benefit.

Summary

If divorce proceedings commence after 1st December 2000, a court may make an order to share or 'split' pension rights. The sharing of pension rights is not compulsory and is merely an alternative to earmarking provisions that have existed for the past few years. When making a decision the court will take into account all the assets of the couple, for example any property, investments etc in addition to both sets of accrued pension rights. If an order is made the member's pension rights are reduced and the former spouse becomes a 'Pension Credit Member' with specific rights within the PPS.