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Pension sharing on divorce

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Summary

Pensions can be divided on divorce or dissolution in different ways. This can apply to personal pensions, workplace pensions and the earnings-related additional State Pension (or the 'protected element' for people entitled to the new State Pension). What exactly can be divided depends on where in the UK you're divorcing or dissolving your civil partnership. The different options include:

- **A pension sharing order**, where an individual gets a percentage share of their ex-spouse or civil partner's pension (s). This is either transferred into a pension in their name or they can join their ex-partner's pension scheme.
- **Pension offsetting**, where the value of any pensions is offset against other assets. For example, an individual might get a bigger share of the family home in return for their ex-partner keeping their pension.
- **Pension 'earmarking'**, where an individual gets some of their ex-partner's pension when it starts being paid to them. You can get some of the pension income, the lump sum or both. But you can't get pension payments before your ex-partner has started taking their pension.

Guidance from the [Money Advice Service](#) says that the rules of the pension scheme will help inform which of these options will work best in an individual case. It recommends that individuals get professional advice from a solicitor or a financial adviser before acting.

The [Pensions Advisory Service](#) (TPAS) offers a Pensions and Divorce Guidance session for anyone who's about to start divorce proceedings. There is also guidance on [divorce, dissolution and separation](#) on its website.

Other sources of information are:

- Money Advice Service, [Your options for legal or financial advice on divorce or dissolution](#)
- Advicenow, [A survival guide to pensions on divorce](#)
- Family Justice Council, [Sorting out Finances on Divorce](#), April 2016, pp42-47

See also, Commons Library Briefing Papers: [Financial provision when a relationship ends](#), CBP 5655, 20 February 2020 (section 1.4 has information for litigants in person) and [Legal advice: where to go and how to pay](#), CBP 3207, August 2019.

The Pensions Advisory Group has produced a [Guide to the Treatment of Pensions on Divorce](#) (July 2019), to be used when issues regarding pensions fall to be determined in Financial Remedy cases before the Family Court.

1. Background

From the 1970s, courts 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.¹

However, until the [Pensions Act 1995](#), they had no power to divide and transfer ownership of pension assets, rights or future pension payments between parties. So, in practice, where one party had significant pension assets, the courts would usually take this into account by awarding the other party a larger share in the house or other assets. This was subject to criticism because:

- The obligation to take pension rights into account was not explicitly set out in law in English law. In Scottish law, it has been a legal requirement to include pension rights in a divorce settlement since 1988. However, settlement payments had to be made out of the member's non-pension assets, which meant that it was common for scheme members to lose the matrimonial home if pension rights were substantial.²
- In addition, although the courts could require one party to make maintenance payments to the other out of their retirement income, they had no power to require the pension fund to pay a portion the pension direct to the ex-spouse.³

This was remedied in the [Pensions Act 1995](#), by giving English courts the power to 'attach' a portion of the pension, so that it would be paid direct to the ex-spouse by the pension scheme. Scottish courts were also given added flexibility in arriving at an equitable settlement.⁴

Representative bodies and campaign groups argued for many years that these provisions did not go far enough. One of the disadvantages was that they did not allow a clean break in most cases: title to the pension rights remained with the partner who had built them up, leaving the other at risk of losing the intended retirement income if their ex-spouse died.⁵ The introduction of pension sharing on divorce was intended to address some of these issues.

1.1 Consultation on pension sharing

Consultation carried out in 1996-97 established that there was a broad consensus that the government should provide for pension sharing on divorce. A Green Paper published in July 1996 said that, important as the Pensions Act 1995 provisions were, they were not necessarily sufficient for all cases. In particular, a maintenance payment awarded by a court could end when the scheme member died, and the provisions gave limited support to the Government's general aim that divorcing

¹ [Welfare Reform and Pensions Act 1999](#) – Explanatory Notes

² IDS Pension Service, Pension Scheme Design, May 2010, para 7.1

³ DSS, [The treatment of pensions rights on divorce](#), Cm 3345, July 1996

⁴ [Pensions Act 1995](#), s166-7

⁵ Explanatory Notes to the [Welfare Reform and Pensions Act 1999](#), page 6; [DSS press release 1999/316, 15 December 1999](#)

couples should be able to make a financial ‘clean break’ wherever appropriate.⁶

A White Paper published in February 1997, set out a framework for new arrangements. This would enable the court to order the splitting of pension rights, if it considered that this would help to achieve an equitable financial settlement.⁷

Following the May 1997 general election, the new Secretary of State for Social Security, Harriet Harman, said the Government would consult on a draft Bill, with the aim of introducing pension sharing by the year 2000. The proposals would lead to fairer treatment of pensions in financial settlements between divorcing couples:

It is not currently possible to share pension rights between men and women. Under the current arrangements, maintenance payments can be made from one spouse to another—we expect usually from husband to wife—once the pension is in payment. But these payments can stop on the death of the pension scheme member, and a former spouse who re-marries could lose their share of the pension. In addition, these arrangements mean that a financial break between the spouses is not achieved; ties between them remain throughout their retirement.

Our proposals will lead to fairer treatment of pensions in financial settlements between divorcing couples and will provide a better and more secure income in retirement for those receiving a share of pension rights.⁸

Draft legislation

In June 1998, the Department of Social Security published the draft *Pension Sharing Bill*, together with a consultation document.⁹ The draft bill formed the basis of what subsequently became Parts III and IV of the *Welfare Reform and Pensions Act 1999*. The procedure used to examine the pension sharing legislation was described as a milestone in the modernisation of Parliament. For the first time a departmental select committee was able to hold an enquiry into a draft Bill published before its First Reading.¹⁰

The Social Security Select Committee examined the draft Bill in detail and collected evidence from a range of individuals and organisations. It explained that pensions and divorce brought together two notoriously complex areas of law. The various interactions of the proposed changes with the existing tax regime, regulatory provisions and family law, in the separate jurisdictions of Northern Ireland, Scotland and England and Wales were a challenge to those drafting the proposals.¹¹

⁶ DSS, [The treatment of pensions rights on divorce](#), Cm 3345, July 1996

⁷ DSS, [Pension rights on divorce](#), Cm 3564, Feb 1997

⁸ [HC Deb 5 June 1997 c 240-1W](#); DSS Press Release, Harriet Harman Targets Year 2000 for Pension Sharing on Divorce, 5 June 1997

⁹ Department of Social Security, *Pensions Sharing On Divorce: Reforming Pensions For A Fairer Future*, Part 1: Consultation and Part 2: Draft Legislation

¹⁰ Social Security Committee, [Pensions On Divorce](#), Fifth Report of 1997/98, HC 869 of 1997/98 (which points out that Select Committees have on occasion examined draft Bills but in different circumstances).

¹¹ *Ibid* p 26

6 Pension sharing on divorce

The Government responded to the Committee's Report prior to the Bill's second reading in the House of Commons.¹² It accepted several of the Committee's recommendations, including:

- making absolutely clear that pension sharing will be available only to those who begin divorce proceedings after the legislation has been brought into force;
- giving schemes the discretion to impose a single indexation requirement on the whole of a pension credit;
- allowing the Pensions Ombudsman to rule on the reasonableness of administration charges imposed on the divorcing couple;
- evaluating and monitoring the impact of pension sharing legislation.¹³

The Committee produced another report on the pension sharing provisions which were introduced in Part II and IV of the *Welfare Reform and Pensions Bill*.¹⁴ This was intended to serve as a handbook for the Standing Committee on the Bill, by highlighting unresolved issues and giving interested parties a further opportunity to express their views.¹⁵ Substantive issues raised by the Committee included the application of the provisions to unfunded public service pension schemes, application to unmarried survivors and the costs of pension sharing.¹⁶

The provisions on pension sharing are now contained in Part III and IV of the [Welfare Reform and Pensions Act 1999](#). They were largely redrafted from those contained in the original Bill. This was a direct result of the decision by the Lord Chancellor not to implement Part II of the *Family Law Act 1996*, as originally intended. The amendments ensured that the pension sharing provisions in the Act could take effect independently of Part II of the *Family Law Act 1996*. The broad intentions behind Part III and IV of the original Bill remained largely unchanged.

The [Civil Partnership Act 2004](#) provided for pension sharing, on broadly the same basis, after the dissolution of a civil partnership.¹⁷ Schedule 5 of that Act made provision similar to that available for married couples, allowing for financial provision on dissolution "including the making of pension sharing and pension attachment orders."¹⁸

For background, see Library Research Paper RP 99/19 [Welfare Reform and Pensions Bill, Bill 44 \[1998/99\]](#).

¹² Social Security Committee, [Pensions On Divorce: The Government's Response To The Committee's Fifth Report Of Session 1997/98](#), HC 146 of 1998/99, January 1999

¹³ Ibid

¹⁴ Social Security Committee, [Pensions On Divorce: Parts III and IV of the Welfare Reform and Pensions Bill 1998-99](#), HC 304 of 1998/99, March 1999

¹⁵ Social Security Committee, [Parts III and IV of the Welfare Reform and Pensions Bill](#), HC 304, March 1989, 1998-99

¹⁶ Ibid

¹⁷ [Dissolution etc \(Pensions\) Regulations 2005 \(SI 2005/2920\)](#) and [Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential etc Provisions\) Order 2005 \(SI 2005/2877\)](#)

¹⁸ [Explanatory Memorandum to the Dissolution etc \(Pensions\) Regulations 2005 \(SI 2005/2920\)](#)

1.2 Welfare Reform and Pensions Act 1999

Pension sharing was introduced by Parts III and IV of the [Welfare Reform and Pensions Act 1999](#), which made changes to the [Matrimonial Causes Act 1973](#). The main provisions are:

- Pension sharing is not compulsory. Courts retained their existing discretionary powers and, where they choose to do so, can use the pre-existing methods of taking pensions into account.
- The courts will be free to decide what percentage of the pension will be transferred. (the pension is valued by a method known as Cash Equivalent Transfer Value, which is the method used when people transfer rights out of an occupational scheme).
- The divorcing couple meet the administrative costs of pension sharing.
- Pension sharing applies to shareable rights in occupational and personal pensions, the additional State Pension (and protected payments in the new State Pension) and Pension Protection Fund compensation.
- The courts decide what proportion of the pension is to be transferred. Pension schemes can charge a reasonable fee.
- The provisions were not retrospective. Pension sharing was only available to couples beginning divorce proceedings after the legislation came into force (1 December 2000).¹⁹

The arrangements for pensions sharing in the 1999 Act apply to the whole of Great Britain but there are separate provisions within the Act applying to Scotland to take into account the different system of family law.²⁰ Provisions for Northern Ireland are covered by a separate order.²¹

The regulations

On 15 December 1999, the Government announced it was publishing draft regulations to enable pension sharing on divorce and that it intended to implement pension sharing “around the end of 2000.”²² The consultation process ended on 14 February 2000.

Nine sets of draft regulations and a brief commentary were contained in a DSS consultation document, *Pension sharing on divorce: consultation on draft regulations*. The draft regulations in this document included those made by the DSS under powers in the *Welfare Reform and Pensions Act 1999*. The package also included complementary draft regulations prepared by the Lord Chancellor’s Department, and some initial regulations prepared by the Inland Revenue, under powers in the *Finance Act 1999*. It did not include regulations made under powers in Part IV of the *Welfare Reform and Pensions Act 1999* that provide for the sharing of rights to SERPS on divorce. Similarly, it also excluded

¹⁹ [Commons Library Research Paper RP 19/99](#), February 1999

²⁰ For some differences in Scottish law, section 8 of MoD leaflet [MMP/13](#)

²¹ [Welfare Reform and Pensions \(Northern Ireland\) Order 1999 \(SI 1999/3147\)](#)

²² DSS press release, [Government announces consultation on draft pension sharing regulations](#), 15 December 1999

regulations under the powers which relate exclusively to Scotland.²³ The vast majority of pension sharing regulation-making powers are reserved matters.

Issues by the regulations covered included:

- **Information.** Pension schemes would to provide individuals information need for the purposes of their court hearings within prescribed timescales, with financial penalties for non-compliance;
- **Charges:** schemes would be able to recover costs from the divorcing parties, but these charges must be reasonable, declared upfront and related to the actual costs incurred.
- **Valuation:** pension sharing orders (PSOs) create a pension debit on the scheme member and a corresponding credit for his or her spouse, based on the 'well- established' methods for valuing early leavers' cash equivalents.
- **Implementation:** PSOs would need to be satisfied by the member's pension scheme within a four-month period by either an internal transfer (making the non-member spouse an associate member) or an external transfer (for example, to a personal pension which the spouse has taken out). Failure to implement an order could be referred to regulator for a sanction.
- **Safeguarded rights:** If the scheme member was in a contracted-out pension scheme, any pension credit rights derived from this were initially subject to restrictions on the way in which they eventually come to be paid, respecting their contracted-out origin. These rules were later removed, as discussed [below](#).²⁴

Pension sharing was made available in respect of divorce and marriage annulment proceedings that begin on or after 1 December 2000.²⁵

Opinions varied on the extent to which the new arrangements would be used. Some reports suggested pensions administrators and divorce lawyers were anticipating an estimated 50,000 cases a year.²⁶ However, there were approximately 150,000 divorce cases a year and earmarking was only applied in 300 of these cases leading some pensions experts to suggest that pension sharing would be even rarer due to complexity of the provisions.²⁷ The Government said the effect was uncertain. Illustrative estimates assumed pension sharing would take place in around a third of divorces.²⁸ Another issue raised by commentators was the extent to which individuals would need advice, particularly on transferring rights into a personal pension.²⁹

²³ Sections 28(1) (f) ii and 3(a); DSS, [Consultation on draft regulations](#), 15 December 1999, chapter 1, para 1.2

²⁴ *Pensions Today*, January 2000, pp 5-6

²⁵ SI 2000/1048, SI 2000/1049, SI 2000/1050, SI 2000/1051, SI 2000/1052, SI 2000/1053, and SI 2000/1054. See Inland Revenue press release, *Pension sharing on divorce to begin 1 December 2000*, 19 April 2000

²⁶ "Pension sharing at the big split", *Sunday Telegraph*, 13 February 2000

²⁷ *Pensions World*, February 2000, p 5

²⁸ Social Security Committee, [Pensions On Divorce: The Government's Response To The Committee's Fifth Report Of Session 1997/98](#), HC 146 1998-99, para 16

²⁹ see, for example, "Divorcees will get pension split before 2001", *Daily Telegraph*, 21 August 1999; "Pension splitting plans postponed", *Times*, 17 July 1999

2. How pension sharing works

Pension sharing is intended to facilitate a clean break approach to dealing with pension rights. The aim is that the capital value of the pension is divided between the parties in a proportion determined by the courts. The scheme member's pension is reduced by a 'pension debit' and the ex-spouse or civil partner is granted a 'pension credit' of that amount. The pension credit amount, which may be discharged by giving them rights in the scheme or an amount to transfer elsewhere.³⁰ The pension debit operates by reducing the member's current and future benefits under the pension arrangement by the specified percentage on the transfer day (which is the day the order takes effect). The pension sharing order takes effect from the later of 28 days after it was granted or the date of the decree absolute ("the transfer day").³¹

The Money Advice Service explains that with a pension sharing order:

- You get a percentage share of any one (or more) of your ex-partner's pensions.
- This is either transferred into a pension in your name or you can join your ex-partner's pension scheme. It will depend on the pension scheme rules as to which method they allow.
- If the pension is transferred to you and you don't already have your own pension, you'll have to set one up.

This can apply to shareable rights in an occupational or personal pension arrangement, shareable State Pension rights or Pension Protection Fund compensation.³²

Information and guidance

The [Money Advice Service](#) says that the rules of the pension scheme will help inform which of these options will work best in an individual case. It recommends that individuals get professional advice from a solicitor or a financial adviser before acting. It provides further guidance on [Your options for legal or financial advice on divorce or dissolution](#). See also, [Legal advice: where to go and how to pay](#), Commons Library Briefing Paper CBP 3207 (August 2019).

The [Pensions Advisory Service](#) (TPAS) offers a Pensions and Divorce Guidance session for anyone who's about to start divorce proceedings. It explains the options and the process to you. If you'd like a Pensions and Divorce Guidance session, email their booking service on virtual.appointments@maps.org.uk. There is also guidance on [divorce, dissolution and separation](#) on its website.

A multi-disciplinary Pensions Advisory Group, supported by the Family Justice Council, has produced [Guidance on the treatment of pensions on divorce – a guide for professionals](#) (July 2019). This followed a Nuffield-funded study on Pensions on Divorce, which found a

³⁰ Ibid, s35; [Pension Sharing \(Implementation and Discharge of Liability\) Regulations 2000 \(SI 2000/1035\)](#)

³¹ [Welfare Reform and Pensions Act 1999, s31](#)

³² Money Advice Service, [Dividing pensions on divorce or dissolution](#)

widespread lack of confidence amongst practitioners on the issue, poor quality pension disclosure on the court files and a substantial proportion of potentially unfair outcomes:

Of the 369 court files with a final financial remedy order studied, 80% revealed at least one relevant pension and yet only 14% contained a pension order. Practitioners confirmed that offsetting pensions against other capital assets remained the most common way of dealing with pensions, but there was little if any agreement on how the pensions or the offset should be valued. The little, and sometimes contradictory, guidance that case law offers is chiefly geared towards bigger money cases.

The aim of the project was to improve practice, particularly for those divorcing couples who are not especially wealthy but nevertheless hold pensions of some value.³³

2.1 Pension credit benefits in workplace pensions

The 1999 Act provided that a pension sharing order (PSO) relating to a workplace pension could be discharged by giving the ex-spouse (the pension credit member) an amount to transfer to another pension - or by giving them membership of their ex-spouse's workplace pension scheme, if scheme rules allow. There is an exception for unfunded public service pension schemes, which cannot provide the option to transfer out – see [below](#).

If an ex-spouse/civil partner participant becomes a member of the scheme, their pension credit benefits have protection in the legislation which broadly reflects the existing provisions for early leavers from occupational pension schemes.³⁴ This is because the Government decided to create a new category of membership for pension credit members, to ensure that “this group can be readily distinguished from those who have acquired membership from a direct employment link with the employer concerned.”³⁵

Pension credit benefits are payable at ‘normal benefit age’. (This must be between 60 and 65 unless the scheme has a normal pension age higher than 65. in which case the normal benefit age can be up to, but no higher than, the scheme's normal pension age).³⁶ They can be taken as a lump sum only in prescribed circumstances (which includes a pension commencement lump sum, trivial commutation lump sum and serious ill-health lump sum).³⁷ Changes to the regulations in 2009, enabled them to be paid before normal benefit age in the same

³³ Nuffield Foundation, [Pensions on divorce: interdisciplinary working group](#), June 2017-April 2020

³⁴ [Welfare Reform and Pensions Act 1999, section 37; Pension Sharing \(Pension Credit Benefit\) regulations 2000 \(SI 2000/1054\)](#)

³⁵ DSS, [Pension rights on Divorce](#), February 1997, CM 3564, para 4.14

³⁶ [Pension Schemes Act 1993](#), s101C (1) and (1A), as amended/inserted by section 82(3) of the [Pension Schemes Act 2015](#)

³⁷ [Welfare Reform and Pensions Act 1999, s37; Pension Sharing \(Pension Credit Benefit\) Regulations 2000 \(SI 2000/1054\)](#)

circumstances as apply to other pension scheme members in most pension arrangements.³⁸

Members with pension credit rights are entitled to request that their cash equivalent be transferred to another pension scheme that satisfies the necessary criteria, subject to certain requirements.³⁹

Abolition of safeguarded rights

Workplace pension schemes that were contracted-out of the additional State Pension were required to meet certain conditions, broadly intended to ensure that the individual was not worse off for having contracted out.⁴⁰

When PSOs were first introduced, ‘safeguarded rights’ rules applied to pension credits that derived from a scheme member’s rights in a [contracted-out](#) pension scheme. These rights were subject to restrictions, relating to the type of scheme that could hold these rights and the way they could be paid. For example, they could not be paid before age 60 or as lump sum.⁴¹

In July 2007, a Deregulatory Review of Private Pensions recommended simplifying the rules on pensions on divorce.⁴² In response, the Labour Government said it would repeal the “safeguarded rights” legislation and align the payment of pension credit benefits with the rules applying to occupational pension schemes more generally.⁴³

Safeguarded rights in the [Pensions Act 2008](#) (s110 and Sch 11). The then Parliamentary Under Secretary of State, James Plaskitt, explained:

Safeguarded rights were introduced for contracted-out benefits—derived from the national insurance rebate—to protect public funds. Therefore, safeguarded rights were created to protect the national insurance rebate when contracted-out rights were shared between the parties to a marriage or a civil partnership. They were broadly intended to reflect contracted-out rights and to ensure that those rights were securely protected and used for their intended purpose, that is to provide an income in retirement. When they were introduced it was thought that they provided additional protection to pension credit members, but since they do not require a minimum level of payment that is not in fact the case. They were introduced for good reasons but have proved to be unnecessarily bureaucratic and that is why we brought forward the proposal to abolish them.⁴⁴

³⁸ [Occupational, Personal and Stakeholder Pensions \(Miscellaneous Amendments\) Regulations 2009](#) (SI 2009/615); Explanatory Memorandum, para 4.1 and 7.8; [The Government response to the consultation on The Pension Sharing \(Pension Credit Benefit\) \(Amendment\) Regulations 2008, August 2008](#)

³⁹ Ibid

⁴⁰ [State Pension – deductions for contracting-out](#), Commons Library Briefing Paper, CBP 2674, September 2019

⁴¹ DWP, [Government response to the consultation on the Pension Sharing \(Pension Credit Benefit\) \(Amendment\) Regulations 2008](#), 27 August 2008, para 8

⁴² Lewin and Sweeney, [Deregulatory Review of Private Pensions, An independent report to the Department for Work and Pensions](#), July 2007, p 4

⁴³ DWP, [Deregulatory review – Government response](#), October 2007, page 17

⁴⁴ [Pensions Bill Deb, 7 February 2008, c453](#)

The provisions came into force on 6 April 2009.⁴⁵ The result is that shared rights deriving from contracted-out rights are treated in the same way as other shared rights.⁴⁶

2.2 Public service pension schemes

In the case of a pension sharing order applying to rights built up in an unfunded public service pension scheme, the pension credit member does not have the option of transferring their rights to another scheme.⁴⁷ The reason was to prevent public expenditure being brought forward (with the Government having to meet the costs of transfers earlier than would be the case if pensions benefits were paid at pension age). It argued that former spouses were unlikely to lose out as a result on the basis that “public service schemes are high quality schemes which offer good value-for-money.”⁴⁸ The exception is the Local Government Pension Scheme, which operates on a funded basis, unlike the other main public service schemes.⁴⁹

Guidance on the rules is in:

- Armed Forces Pension Scheme - [Pension benefits on divorce and dissolution of civil partnerships](#), MoD, September 2016
- [Civil service pensions – divorce, dissolution or annulment](#), May 2019
- NHS Pension Scheme (England and Wales), [Pension Sharing on divorce or dissolution of a civil partnership](#), October 2018
- [Police Pensions – transfer values and pension sharing on divorce](#), updated March 2017
- [Firefighters pension schemes \(England\) – pensions on divorce](#), Factsheet, July 2016
- [Teachers’ Pensions \(England and Wales\) – divorce and dissolution](#), July 2015
- [Local Government Pension Scheme \(England and Wales\)](#)

Guides for the schemes for which the Scottish Government has responsibility are on the website of the [Scottish Public Pensions Agency](#). For example: [NHS](#), [Teachers](#), [Firefighters](#), [Police](#), [Local Government](#).

Excepted public service arrangements

Pension sharing is available in relation to shareable rights under any pension arrangement other than an excepted public service pension scheme.⁵⁰ Exceptions were made by regulations in 2001 for the special

⁴⁵ *Pensions Act 2008 (Commencement No 2) Order 2009* (SI 2009/82)

⁴⁶ *Pensions Act 2008 - Explanatory Notes*, para 237; *Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009* (SI 2009/508)

⁴⁷ *Welfare Reform and Pensions Act 1999*, Sch 5 (2)

⁴⁸ *HC Deb, 12 January 1999, c157*; Deposited Paper, Dep 99/131; *Social Security Committee, Pensions on Divorce, Fifth Report of 1997-98, HC 869*, para 22 to 25

⁴⁹ *Pension sharing on divorce – a guide for authorities administering the LGPS*, p65

⁵⁰ *Welfare Reform and Pensions Act 1999*, s27 (1) and 46

pension arrangements for the Prime Minister, Lord Chancellor and Speaker of the House of Commons.⁵¹

Until ended by the [Public Service Pensions Act 2013](#), holders of these offices were entitled to a pension equal to one half of their final salary when they left that office, regardless of age or length of service.⁵² The special nature of these pension arrangements was the reason they were excepted from pension sharing.⁵³ When the legislation was before Parliament, the then Parliamentary Under Secretary of State, Hugh Bayley, explained that because there was no defined eligibility date, it was impossible to put a capital value on the pension and, in turn, technically impossible to achieve pension sharing:

The pension arrangements for the great offices of state are unique because the pension comes into payment immediately the postholder leaves office, regardless of the period of office. In each case, the pension is equal to half the salary of the incumbent on leaving office. However, to place a capital value on salary-related pension rights, an actuary needs to know the date on which the pension normally comes into payment. Without that information, it is impossible to capitalise the income stream due from the pension [...] In respect of the three great offices of state, there is no defined eligibility date. It is therefore impossible to put a capital value on the pension and, in turn, technically impossible to achieve pension splitting.⁵⁴

If they had other pension arrangements, these would be capable of pension sharing:

Let me make it perfectly clear that the Prime Minister, the Lord Chancellor and the Speaker of the House of Commons are not above the law. Their pension arrangements—save the pension that they get by virtue of holding a great office of state—are dealt with in the same way as any other person's pension arrangements.⁵⁵

2.3 Pension Protection Fund compensation

The Pension Protection Fund (PPF) was established under the [Pensions Act 2004](#) to pay compensation to members of defined benefit and hybrid occupational pension schemes that wind up underfunded on the insolvency of an employer.⁵⁶ The PPF provides two levels of compensation, initially:

- 100% for individuals that have reached their scheme's normal pension age (or, irrespective of age, are either already in receipt of survivors' pension or a pension on the grounds of ill health); and
- For the majority of people below their scheme's normal pension age 90%, subject to a cap.⁵⁷

⁵¹ [Pension Sharing \(Excepted Schemes Order\) 2001 \(SI 2001/358\)](#)

⁵² [Public Service Pensions Act 2013, s33](#); Commons Library Briefing Paper [CBP 4586](#)

⁵³ [House of Lords Select Committee on Delegated Powers and Deregulation, 17th report of session 1998-99](#)

⁵⁴ [SC Deb, 23 March 1999](#)

⁵⁵ *Ibid*

⁵⁶ PPF, [Annual Report and Accounts 2008-09](#), HC 1084, November 2009, page 3

⁵⁷ PPF website, [Compensation pages](#)

Pension sharing provisions were extended to PPF compensation under the *Pensions Act 2008* (Part Three, Chapter One) and the regulations made under it.⁵⁸ Guidance is in PPF leaflet, [Sharing your compensation](#), July 2020.

2.4 State Pensions

The State Pension for people who reached State Pension age before 6 April 2016, was made up of a [basic State Pension](#) (paid at a flat-rate for people with sufficient 'qualifying years') and an [additional State Pension](#) (which was earnings-related). From 1978, it was possible to [contract-out](#) of the additional State Pension into a workplace pension that met certain criteria, the broad intention of which was to ensure individuals were not worse off for having contracted-out.⁵⁹

The [additional State Pension](#) could be shared on divorce. The person who received the settlement got a credit to their State Pension. The other person got a debit. They are notified of this when the court order is implemented, after which it is consolidated, rather than identified separately.⁶⁰ In debate in July 2013, the then Pensions Minister, Steve Webb, explained the reason pension sharing could apply to the additional State Pension but not the basic State Pension:

By analogy with someone's occupational pension, for example, if there is a divorce and one partner is at home looking after the kids and is not able to build up an occupational pension of their own, it is right that they should be able to get part of the occupational pension of the spouse, and therefore, by analogy, with the additional state pension. Those arguments do not apply in the case of the basic state pension, because someone at home with children would be building up pension rights in their own right.⁶¹

The new State Pension introduced under the *Pensions Act 2014* is single-tier and it is not possible to contract-out of it. Pension sharing does not apply, except that:

- Existing orders would be honoured; and
- It would still be possible to make a pension sharing order relating to the 'protected payment' (paid to a person with a transitional rate that exceeds the full rate of the new state pension).⁶²

There is information on the rules in DWP, [State Pension – valuation on divorce or dissolution](#), Updated Feb 2020

⁵⁸ [Pensions Act 2008 – Explanatory Notes](#), para 8; [The Divorce & Dissolution etc \(Pension Protection Fund Regulations 2011 \(SI 2011 No. 780\); The Pension Protection Fund \(Pensions on Divorce etc: Charges\) Regulations 2011 \(SI 2011 No 726\); The Pension Protection Fund \(Pension Compensation Sharing and Attachment on Divorce etc Regulations 2011 \(2011 No 731\)\)](#)

⁵⁹ Commons Library Briefing Papers CBP 7981, [State Pensions 2020 FAQs](#), Nov 2020, section 1.2; CBP 2674, [State Pensions: deductions for contracting-out](#), Sept 2019

⁶⁰ [PBC Deb 3 July 2013 c193](#)

⁶¹ [PBC Deb 3 July 2013 c194](#);

⁶² [HL Deb 9 January 2014 c383](#); [Pensions Act 2014, s13-15](#); DWP, [State Pensions – your guide](#), April 2020, section 3.b

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