

NHS Pensions - Guide to pensions on divorce or dissolution of a registered civil partnership (TV74)



Disclaimer

The information contained in this guide has been prepared by NHS Pensions to assist scheme members and their spouses or civil partners.

It represents the interpretation of the NHS Pension Scheme regulations and other related legislation.

It is intended only as general guidance and whilst care has been taken to ensure its accuracy it should not be treated as a complete and authoritative statement of the law.

Legal advice needs to be taken about the relevance of pension arrangements in connection with individual divorce or dissolution of civil partnership proceedings and on the interpretation of related legislation.

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1. Introduction

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

As part of the divorce or dissolution process, the assets of the marriage or civil partnership, including the value of pension benefits are identified. An agreement is reached and an order made by the court on how these assets, or the value of these assets, are to be shared.

2. Requests for information

What information is required?

The court will need information about the NHS Pension Scheme and the scheme member's benefits. NHS Pensions will provide basic information about the Scheme within one month of receiving the request and generic information is also available in the Member Guides on our website at: www.nhsbsa.nhs.uk/nhs-pensions.

The scheme member will be asked to obtain a Cash Equivalent Transfer Value (CETV) of their pension benefits. Specific information will only be provided to the scheme member, unless they send a signed letter of authority to disclose this information to a third party. Information will be provided on receipt of a Court Order.

What is a Cash Equivalent Transfer Value (CETV)?

A CETV is the capitalised value of a member's accrued pension rights and any associated rights, and for these purposes, represents the member's fund value. For divorces/dissolutions under English and Welsh law, all scheme membership will be taken into account. For divorces/dissolutions under Scottish law, only membership relating to the period of the marriage will be used when calculating the CETV. Where the member is a scheme pensioner, the CETV represents the capitalised fund value of the pension in payment. The CETV is calculated in accordance with the NHS Pension Scheme regulations using guidance and factors provided by the Scheme Actuary.

How is the CETV requested?

Form PD1 should be completed to request the CETV. If the member is an active member or has left the Scheme within the last 12 months, they should also send form PD2 to their employer's pension or payroll department. These forms can be downloaded from our website at: www.nhsbsa.nhs.uk/nhs-pensions. They need to be sent to NHS Pensions once they have been completed.

It is important to note that the member must have two or more years' qualifying membership to be entitled to an NHS Pension. If they do not have enough membership, a CETV cannot be provided for divorce or dissolution of a civil partnership purposes because there are no pension benefits that can be the subject of a pension share.

How long will the member have to wait for a CETV?

NHS Pensions will provide a CETV for divorce/dissolution proceedings within three months from the receipt of a request. It is important to tell NHS Pensions:-

- the date of a court appointment if one has been set (please include a copy of the Court information), or
- if the Court Order includes an order to NHS Pensions to provide the CETV by a specific date (please include a copy of the Court Order).

Will the scheme member have to pay for a CETV?

The member is entitled to one CETV a year, for any purpose, free of charge.

Where the member has been provided with a CETV in the last 12 months, is a scheme pensioner or needs the CETV in less than six weeks, there will be a charge. The charges for providing information in relation to divorce or dissolution proceedings are shown in the Schedule of Charges, which can be found on our website at: www.nhsbsa.nhs.uk/nhs-pensions.

The bank account details for electronic payments are as follows:

Sort code: 60-70-80 **Account number:** 10021205

The reference for the payment should be your Scheme membership number (it starts SD) or your National Insurance Number followed by your surname.

All cheques should be made payable to 'NHS Business Services Authority'.

Unless a Court Order says otherwise, any applicable charges must be paid upfront before NHS Pensions can supply any information.

3. Pension sharing

What is pension sharing?

Pension sharing is a transfer of some or all of the member's pension benefits to their former spouse or civil partner. Pension sharing provides the former spouse or civil partner with NHS pension benefits in their own right.

Pension sharing came into effect in December 2000. From December 2005, following the introduction of civil partnerships, this provision was extended to cover the dissolution of civil partnerships. The provision also applies to same sex marriages from their introduction in March 2014.

The court makes a Pension Sharing Order specifying what proportion of the value of the member's benefits will be used to create a pension benefit for the former spouse or civil partner. The member's benefits are reduced (this is known as a Pension Debit), to create a separate and independent pension benefit for the former spouse or civil partner (this is known as a Pension Credit benefit).

NHS Pensions suggests a draft copy of the Pension Sharing Order is provided prior to finalising the pension share. This can save considerable time and costs in the event that a Pension Sharing Order cannot be implemented.

Implementing a Pension Sharing Order

Important information

NHS Pensions are unable to implement a Pension Sharing Order unless all the following documents are received:

- Sealed Consent Order
- Pension Sharing Annex/Annexes
- a copy of the Decree Absolute/Dissolution Order, and
- full payment of the implementation fee

To enable a Pension Sharing Order to be implemented, members must complete form PD3 (which can be downloaded from our website at www.nhsbsa.nhs.uk/nhs-pensions) and return it to NHS Pensions with the Court Order, Pension Sharing Annex, Decree Absolute or Dissolution Order. The Annex should refer to the NHS Pension Scheme 1995/2008 or the NHS Pension Scheme 2015. If benefits are to be shared from both schemes a separate Annex is required for each scheme.

Payment must also be enclosed or have been made by bank transfer. Payment must be received before the implementation of any Court Order can start. If payment is not received, all parties will be notified that implementation of the Court Order will be postponed until payment is made.

If the Pension Sharing Annex states the charges are to be split equally but one party agrees to pay the full amount, we must receive written confirmation that both parties have agreed to this.

NHS Pensions will acknowledge the order and implement it as directed. The former spouse or civil partner will be allocated a unique Pension Credit number in the Scheme under which their pension benefits will be held.

NHS Pensions has four months in which to implement a Pension Sharing Order. This is known as the implementation period.

The CETV will be recalculated at the valuation date using the value of the member's benefits as at the effective date of the Court Order. The valuation date will be within the four month implementation period and the effective date is either the date of the Decree Absolute or 28 days after the Court Order was made, whichever is later.

To calculate the Pension Credit benefits, NHS Pensions will take the percentage share of the fund that has been allocated to the former spouse or civil partner and apply factors to it based on the age and gender of the former spouse or civil partner. The factors used are provided by the Scheme Actuary.

Both the member and the former spouse or civil partner will receive confirmation that the Order has been implemented. This is the notice of discharge of liability.

4. What does a pension share mean for the Scheme member?

This depends on whether the Pension Sharing Order is made before or after the member retires from the NHS Pension Scheme.

Pension share ordered before the scheme member's retirement

When a Pension Sharing Order is made before the member retires, their pension, lump sum (where applicable) and any subsequent adult dependants' benefits will be reduced by the percentage allocated to the former spouse or civil partner as calculated at the effective date of the Order. This creates the Pension Debit. For divorces or dissolution of civil partnerships in Scotland, the court will specify either a percentage or a monetary amount.

At retirement, the Pension Debit is increased in line with the cost of living and deducted from the member's total pension benefits.

Dependant's benefits

On remarriage or formation of a new civil partnership, a pension share will reduce any adult dependant's benefits payable on the member's death. Children's pensions are not reduced because of a pension share.

Membership requests and benefit calculations

Where the member's benefits are subject to a pension share, the reduction will not appear in any subsequent membership statement.

If the member requires a benefit statement where the Pension Debit has been deducted, this must be specifically requested from NHS Pensions directly.

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

It is not possible to replace benefits that have been shared. However, subject to the Scheme and HM Revenue and Customs (HMRC) regulations in force at the time, it may be possible for the member to purchase Additional Pension (AP) to increase their benefits. More information is available on our website at: www.nhsbsa.nhs.uk/nhs-pensions.

Leaving the Scheme

Where a member leaves the NHS Pension Scheme before retirement and has two or more years' qualifying membership, pension benefits will be deferred and are usually paid at the member's Normal Pension Age (NPA). The Member Guides provide details of when benefits may be paid before NPA and are available on our website at: www.nhsbsa.nhs.uk/pensions.

Transferring pension benefits

Subject to other qualifying conditions, a member can transfer their remaining benefits after a pension share to another registered pension scheme or arrangement. If the member would like to transfer benefits that have been subject to a pension share out of the NHS Pension Scheme, the transfer payment will reflect the reduction applied to the member's benefits.

Pension share ordered after the scheme member's retirement

Where a pension share is ordered after a pension has been put into payment, the pension will be reduced by the percentage that has been allocated to the former spouse or civil partner with effect from the date of the Order. NHS Pensions will do this within 30 working days of receiving all the information required to implement the Order. If an overpayment of pension occurs as a result of the Order, it will be recovered from future pension payments.

Any lump sum that has already been paid to the member, providing the payment was made before the effective date of the Order is not usually affected by the Order.

On remarriage or formation of a new civil partnership, a pension share will reduce any dependant's benefits payable when the member dies. Children's pensions are not reduced because of a pension share.

5. What does a pension share mean for the former spouse or civil partner?

The Pension Credit benefits arising from the pension share are payable from either NPA of the Scheme under which the pension share was made, or from the date the order was implemented if this is later.

- In the 1995 Section, NPA is 60
- In the 2008 Section, NPA is 65
- In the 2015 Scheme, NPA is either age 65 or State Pension Age, whichever is later.

A Pension Sharing Order does not lapse on when the member dies or if the former spouse or civil partner remarries or forms a new civil partnership. This is because the Pension Credit member's benefits are independent of the scheme member's.

Pension share ordered before the scheme member's retirement

The former spouse or civil partner will receive an annual pension payable at either the relevant normal pension age or the date of the pension share, whichever is later. If the pension is very small, it may be possible to convert it into a one off payment.

A lump sum is not normally payable unless the member was entitled to an automatic lump sum.

However, if the Pension Credit is payable on or after 6 April 2009, part of a Pension Credit may be exchanged for a lump sum/additional lump sum.

If the former spouse or civil partner dies before receiving their benefits, a lump sum on death benefit will be payable to their spouse, registered civil partner or qualifying partner (unless they have nominated someone else to receive the lump sum).

If the former spouse or civil partner dies within five years of first receiving their NHS pension, a lump sum on death benefit may be payable.

The former spouse or civil partner may receive their pension benefits before NPA if they:-

- are seriously ill and their life expectancy is not more than one year
- are accepted for early payment of Pension Credit benefits because they are permanently incapable of regular employment because of ill health
- apply for early payment of Pension Credit benefits with an actuarial reduction from Minimum Pension Age.

Pension share ordered after the scheme member's retirement

The Pension Credit will provide an annual pension payable at either the relevant NPA or the date of the pension share, whichever is later. If the pension is very small it may be possible to convert it into a one off payment.

If the former spouse or civil partner dies before receiving their Pension Credit benefits, a lump sum on death benefit will be payable to their spouse, registered civil partner or qualifying partner, unless they have nominated someone else to receive the lump sum.

If the former spouse dies within five years of first receiving their Pension Credit benefits, a lump sum on death benefit may be payable.

The former spouse or civil partner may receive their pension benefits before NPA if they:-

- are seriously ill health and their life expectancy is not more than one year
- are accepted for early payment of Pension Credit benefits because they are permanently incapable of regular employment because of ill health
- apply for early payment of Pension Credit benefits with an actuarial reduction from Minimum Pension Age.

Restrictions

Pension Credit membership does not carry all the rights of a full scheme member.

Transferring pension benefits

It is not possible to transfer pension credits to another pension scheme. Similarly, pension credits cannot be transferred into the NHS Pension Scheme.

Buying Additional Pension (AP)

The Pension Credit member cannot buy Additional Pension (AP) to increase their Pension Credit benefits in the NHS Pension Scheme.

Dependant's benefits

A pension share does not provide dependant's benefits.

What 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. This means a separate application must be made for payment of pension benefits; this includes entitlement to retire early on ill health grounds.

Premature retirement

Pension sharing does not apply to any enhancements that may have previously applied to the member's pension as a result of retirement on the grounds of redundancy or in the interests of the efficiency of the service. Any CETV provided for a pensioner who retired under previous redundancy arrangements where enhancements applied will not include these enhancements.

6. Paying the shared pension benefits

The scheme member claims their NHS pension benefits in the normal way. Further information is provided in the relevant Member Guide and Retirement Guide which are available on our website at: www.nhsbsa.nhs.uk/nhs-pensions.

The Pension Credit member claims their benefits by completing form AW8PC, which is available on our website: www.nhsbsa.nhs.uk/nhs-pensions. Further information is provided when the pension share is confirmed.

Where the Pension Credit member is entitled to NHS Pension Scheme benefits in their own right, these benefits will be paid independently from any Pension Credit rights and will be payable at their NPA in the Scheme they are in, regardless of when their Pension Credit benefits are paid.

7. What is Earmarking?

Earmarking is the term used to describe attachment orders which the courts can make against benefits payable from a pension scheme. The pension remains that of the scheme member, but the Scheme is required to make payment of some of the benefits to the former spouse or civil partner.

Earmarking existed before pension sharing provisions came into force and although it continues to be an option in divorce and dissolution settlements, pension sharing is more common because it provides a 'clean break' approach to the division of pensions on divorce.

The court can order that the former spouse or civil partner receives one, or a combination, of the following:

- all, or part, of the member's NHS pension
- all, or part, of the member's retirement lump sum, where applicable
- all, or part, of any lump sum payment paid in the event of a member's death
- all, or part, of the member's NHS benefits bought by additional voluntary contributions.

Implementing an Earmarking Order

A draft copy of the Order must be issued to NHS Pensions before it is lodged with the court.

The sealed Order should be sent to NHS Pensions. It will be acknowledged and acted upon. The amount earmarked should be specified.

The former spouse or civil partner can only receive the earmarked amount when the scheme member retires.

An Earmarking Order against pension payments, but not lump sums, will automatically lapse when the former spouse or civil partner dies, remarries or forms a new civil partnership. The full pension will be restored to the member.

As it may be many years between the divorce or dissolution of a civil partnership and the benefits coming into payment, the former spouse or civil partner must inform NHS Pensions of any change of address or bank account details.

Paying the earmarked pension

The former spouse or civil partner will be contacted when the member applies for their pension benefits, or, if the lump sum payable on death has been earmarked, when the

member has died. A check will be made to ensure that the Earmarking Order is still valid and if so, payment to be made to the former spouse or civil partner will be arranged.

8. Tax information

A pension to a scheme member or the former spouse of partner may incur Income tax. This is deducted from their pension at source, in the same way as earnings.

The NHS Pension Scheme is a registered pension scheme with HMRC and is subject to HMRC tax rules and limits. HMRC's tax rules limit the level of tax relieved benefits a member can be provided with in the NHS Pension Scheme, and may restrict the actual level of benefits that can be provided.

Members or the former spouse or partner may incur a tax charge if the total amount of their pension benefits at retirement or on their death exceeds the Lifetime Allowance. Where this happens, they or their personal representative may have to pay a Lifetime Allowance charge.

Since April 2006, members have been able to apply to HMRC for protection certificates in order to protect their pension benefits from a Lifetime Allowance charge. There are different types of protection; enhanced, primary, fixed (2012, 2014 and 2016) and individual protection (2014 and 2016). A former spouse or partner may be able to qualify for a pension credit factor.

Tax relief on the annual growth of pension savings is limited by HMRC to the Annual Allowance. Growth in the value of NHS Pension Scheme benefits (plus any other pension arrangements) that exceeds the Annual Allowance may result in an Annual Allowance charge.

Pension sharing

Scheme member

The scheme member's pension benefits will be tested against the Lifetime Allowance on the reduced pension benefits after the Pension Debit has been deducted.

Where the scheme member has protection from HMRC and is then subject to a Pension Debit, this protection may be lost. They must notify HMRC that they have a Pension Debit and HMRC will confirm any revision to their protection.

Former spouse or civil partner

The Pension Credit will count towards the former spouse or civil partner's pension benefits and tested against the Lifetime Allowance.

If the former spouse or civil partner has either enhanced or fixed protection (2012, 2014 or 2016), these protections will be lost on the date the pension share is implemented. This is because the Pension Credit sets up a new pension arrangement in the NHS Pension Scheme.

Where a former spouse or civil partner receives Pension Credit rights and these come from a scheme member's pension already in payment, payable after 5 April 2006, an enhanced personal Lifetime Allowance may be available on application to HMRC. The deadline for applications is no later than five years after 31 January following the tax year when the pension share is implemented.

A Pension Credit is ignored when calculating the growth in NHS Pension Scheme benefits for Annual Allowance purposes.

Earmarking

Scheme member

Income tax, if applicable, is deducted from the full amount of the pension and following this earmarked payments are made from the net pension income.

The full amount of pension benefits, including those that are earmarked, are tested against the Lifetime Allowance at retirement or death and will count towards the scheme member's annual pension growth for Annual Allowance purposes.

Former spouse or civil partner

Earmarked benefits are not included when testing the former spouse or civil partner's NHS pension benefits against the Lifetime or Annual Allowance.

More tax information can be found on the HMRC and NHS Pension websites.

9. Money Purchase Additional Voluntary Contributions (AVCs)

Members with NHS Money Purchase AVCs should contact their provider to request details of the fund value for divorce or dissolution of civil partnership proceedings.

The NHS Money Purchase AVC providers are:-

Standard Life

Dundas House

20 Brandon Street

Edinburgh

EH3 5PP

www.standardlife.com/nhs

Helpline: 0345 272 8810

Prudential

NHS AVC Department

Prudential

Lancing

BN15 8GB

www.pru.co.uk/nhs

Helpline: 0345 600 0343

The NHS stakeholders are:

Standard life

Stakeholder Pensions

20 Brandon Street

Edinburgh

EH3 5PP

www.standardlife.co.uk/nhs

Helpline 0800 634 7479

TUC/Prudential

TUC Stakeholder Customer Service Centre

Prudential

Lancing

BN15 8GB

www.pru.co.uk/nhs

Helpline: 0808 234 5200

10. More information

More information about the Scheme can be found on our website at: www.nhsbsa.nhs.uk/nhs-pensions.

Our online knowledge base 'Ask Us' can answer questions about the NHS Pension Scheme 24 hours a day, 7 days a week. It can be accessed through our website: www.nhsbsa.nhs.uk/nhs-pensions.

NHS Pensions can be contacted at:
NHS Pensions
PO Box 683, Unit 5
Newcastle Upon Tyne
NE5 9EE

Telephone: 0300 330 1346

The switchboard is open from 8.00 am to 6.00 pm Monday to Friday, excluding public holidays.

Members and former spouses/civil partners should quote their membership number, which begins with 'SD'. If the membership number is not known the National Insurance number should be quoted.

Further advice

Advice is available from the following organisations:-

Financial Conduct Authority who can be contacted at: <https://www.fca.org.uk/> or at the Financial Conduct Authority, 25 North Colonnade, Canary Wharf, London, E14 5HS.

The Pensions Regulator can be contacted at www.thepensionsregulator.gov.uk or at the Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW.

The Pensions Advisory Service can be contacted at www.pensionsadvisoryservice.org.uk or at 10 South Colonnade, Canary Wharf, E14 4PU

The Pensions Ombudsman can be contacted at www.pension-ombudsman.org.uk or at 10 South Colonnade, Canary Wharf, E14 4PU

Complaints procedure

A complaint can be made using the contact details listed on the Contact Us page on our website: www.nhsbsa.nhs.uk/nhs-pensions

Further information

For details on how to make a Freedom of Information request please go to: www.nhsbsa.nhs.uk/contact-us/freedom-information

For information about our complaints and disputes procedure please go to: www.nhsbsa.nhs.uk/member-hub/members-contact-us

For information about our data protection policy please go to: www.nhsbsa.nhs.uk/our-policies/data-protection