

Divorce Update: Pensions

Until recent years it has been difficult for the Court to deal with pensions as part of a divorce settlement. The usual situation was that most often the wife was left with insufficient pension provision. The Court's attempt to remedy this was to give her a larger share of the matrimonial home or other assets, even though in practice, it was often the case that she would be unlikely or unable to invest the monies immediately in a pension for the future. The pension law of the time meant that an attempt to take part of the benefit from the pension scheme member and pass this to someone else, even their spouse, might have resulted in the complete loss of benefits. Further, on the pronouncement of a Decree Absolute of Divorce, the husband and wife cease to be spouses and the ex-wife would not automatically be entitled to a widow's benefits under her former husband's pension arrangements whether pension or lump sum.

There have been some recent developments in the law that will enable the Court to tackle pensions differently.

These are:

- a) **The Pensions Act 1995**
- b) **The Family Law Act 1996**
- c) **The Finance Act 1999 and Welfare Reform and Pensions Act 1999**

Prior to the Welfare Reform and Pensions Act 1999, it had been possible to try to treat a small self administered pension fund in a family company as savings pure and simple and to make a claim for a transfer of part. This is no longer possible.

The Pensions Act 1995

This applies to cases where the divorce petition was issued after 1 July 1996 : the Act amends the Matrimonial Causes Act 1973 (MCA) which deals with financial settlements on or after divorce. It creates a new Section to the MCA, which will allow the Court to order the trustees or managers ("responsible persons") of:

an Occupational Pension scheme, or

a Personal Pension scheme, or

a Retirement Annuity Contract.

at any time when a payment is due from that scheme to the member to divert all or part of that payment to the other spouse from the time of retirement. This may also apply to a pension, which is already in payment. A spouse or former spouse may be

designated the beneficiary of Death in Service Benefits. This is known now as "pension attachment". The trustees may recover their administrative expenses from either the husband or the wife.

Frequently no order is made where the spouses are under 40 years old on the basis (which can be untried and theoretical) that the wife has 20+ years in which to acquire a pension for herself and that additional provision from existing resources is sufficient.

Problems

- These provisions will only allow one spouse's benefits to be diverted to the other on or after the pension member's retirement.
- The trustees of the pension scheme will have to keep in touch with the divorced spouse until their member's retirement.
- If the divorced spouse remarries before the member's retirement, the attachment of income is not effective.
- If the pension scheme member dies before retiring the pension attachment order will be of no effect, unless death provisions are also the subject of an attachment order.
- If the death is shortly after retirement the provision for the other spouse will cease with his death, unless upon the annuity being purchased a joint lives' annuity instead was purchased designating the other spouse as beneficiary of an annuity to commence upon the death of the original annuitant.
- Many people are now opting to defer the purchase of an annuity and are opting for income drawdown. The attachment order does not apply to income drawdown (although a maintenance order would do so).
- It is not possible to have both pension attachment orders and a pension sharing order (see later) in relation to the same pension.

Finance Act 1999 And Welfare Reform And Pensions Act 1999

The combination of these statutes at last provides the divorce court with the power to split or share the pension fund of one spouse between both. It is available for all cases where the petition for divorce was issued after 1st December 2000.

The effect of a pension sharing order is that the pension fund – or fund notionally allocated to a non-funded pension – is divided thus creating two distinct funds. The person who receives the benefit of the Order may often require that their share of the

pension either remain where it is or be transferred to a different company. The Family Law Act 1996 and regulations set out how pension benefits are to be quantified for this purpose.

The general provisions of s25 Matrimonial Causes Act 1973 apply to the quantification of the division to enable each settlement or order to be tailored to the unique circumstances of each individual case.

This information sheet has been prepared to highlight some key issues relating to divorce and pensions. It is intended to be for general guidance only and is not a substitute for specific advice. It is

based upon our understanding of the legal position as at May 2002 and may be affected by subsequent changes in the law. If you have any queries concerning divorce and pensions, please contact one of us on 01892 510000 or by email:

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