

**Pensions Client
Directorate**

The draft Pension Protection Fund
(Pension Compensation Sharing on
Divorce etc) Regulations 2010
and
The draft Pension Protection Fund
(Pensions on Divorce etc: Charges)
Regulations 2010

Consultation on draft Regulations

March 2010

DWP Department for
Work and Pensions

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Preface

Through this consultation document the Department for Work and Pensions seeks views on:

- the draft Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010, and
- the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010.

Provisions in the Pensions Act 2008 and the first set of draft Regulations above will enable pension compensation provided by the Pension Protection Fund (PPF) to be shared when a person seeks a divorce, a dissolution of their civil partnership or an annulment of their marriage or civil partnership. This will mean that the former spouse or civil partner of the PPF member will be able to receive a share of the pension compensation paid by the PPF to that member.

The courts may make attachment/earmarking orders in respect of pension compensation from the PPF. The provisions also allow the PPF to charge for the relevant costs it incurs.

The second set of draft Regulations above deal with when a pension sharing order or provision or an attachment/earmarking order was made before the PPF assumed responsibility for the scheme, but was not implemented by the scheme.

This consultation is primarily aimed at PPF members, potential members of the PPF, pension professionals; particularly those who may be involved in divorce, dissolution of civil partnerships and annulment; and the legal profession; particularly those involved in divorce, dissolution of civil partnerships and annulment. However, we would be interested in views from any source.

Pensions on divorce

On divorce, annulment or dissolution a couple's property, including pensions, can be shared between them. Finances on divorce are dealt with separately from the actual divorce, and come under ancillary relief procedures. Under these, the courts are able to take into account the value of any pensions held by either party in deciding a financial settlement.

There are three options open to the court in this situation: offsetting, attachment/earmarking or pension sharing.

Offsetting - the pension assets of the parties are either wholly or partly offset against the value of other assets or compensated for through a lump sum payment.

Attachment/Earmarking Orders - schemes pay a portion of a member's pension when it becomes payable direct to the former spouse/civil partner.

Pension Sharing – a percentage of the value of the member's shareable pension rights are transferred to the former spouse/civil partner. The former spouse's/civil partner's share is discharged into a pension arrangement.

The pension compensation on divorce provisions are modelled on the pensions on divorce provisions.

How pension sharing works

The pension benefits are valued before the pension sharing order is made, so that the court can decide how best to divide the couple's assets. The member's pension rights become subject to a pension debit and the former spouse/civil partner becomes entitled to an equivalent pension credit.

Once the scheme has all the relevant documents and other required information (e.g. name, address, date of birth, etc.) a four month "implementation period" begins. The person responsible for the pension arrangement (e.g. a pension scheme) chooses a day in the implementation period (the "valuation day") when the member's pension rights are valued and the pension debit and the pension credit are converted into a cash value. The pension scheme reduces the member's rights by the value of the pension debit and provides the former spouse/civil partner with their pension credit. The scheme can either pay the former spouse/civil partner a pension directly, or the former spouse/civil partner can transfer out their pension rights to another pension arrangement.

If the member's pension is in payment the person responsible for the pension arrangement has to arrange for the payments to be reduced.

Charging

The couple are responsible for the costs of their divorce, annulment or dissolution. Regulations provide that the person responsible for the pension arrangement may charge for the provision of information that would not normally be available to the member and for the implementation of attachment/earmarking orders or pension sharing orders. The courts apportion the payment of the costs.

Pension Protection Fund

The Pension Protection Fund (PPF) is a statutory fund that protects members of defined benefit and hybrid occupational pension schemes by paying them pension compensation if:

- their scheme's sponsoring employer experiences a qualifying insolvency event,
- there is no possibility of a scheme rescue, and

- there are insufficient assets in the scheme to pay benefits at PPF compensation levels.

When the PPF assumes responsibility for a scheme it pays eligible members pension compensation. Pension compensation is based on what the member could have reasonably expected from their scheme. There are two levels of compensation:

- 100 per cent level of compensation, subject to PPF rules, for people who have reached their scheme's normal pension age at the start of a PPF assessment period and for those under the scheme's normal pension age who are either in receipt of survivors' benefit or already in receipt of pension on the grounds of ill-health; and
- for the majority of people below their scheme's normal pension age, the PPF will pay the 90 per cent level of compensation, subject to the compensation cap and PPF rules.

The PPF assessment period is the period during which the PPF assesses whether or not it must assume responsibility for a scheme.

Pension compensation on divorce – current position

In financial proceedings that may be part of a divorce, the court is required to take into account the value of any pension compensation when making a financial settlement. However, at present there is no mechanism for sharing the pension compensation in the way that the value of a pension is shareable. Therefore, at present the only option available to the courts once a scheme has transferred to the PPF is offsetting the pension compensation.

The courts may make attachment/earmarking orders and pension sharing orders while a pension scheme is in a PPF assessment period. The PPF must implement any attachment/earmarking orders or pension sharing orders made by the court but not implemented by the trustees of the pension scheme before the end of the assessment period. At present, the PPF is not able to charge for undertaking this work.

Pension compensation on divorce – future position

Provisions in the Pensions Act 2008 enable pension compensation paid by the PPF to be shared on divorce, dissolution of a civil partnership or annulment of a marriage or a civil partnership. The provisions also enable the courts to make attachment/earmarking orders in respect of pension compensation.

These draft Regulations provide the detail beneath the provisions in the Act.

The provisions in the Act and these draft Regulations will mean that the courts will have similar mechanisms available to them where pension schemes have transferred to the PPF, as they can presently utilise in relation to pension schemes. This would help to facilitate the fairness of financial settlements, allow a clean break between couples and provide additional income in later life for the former spouse/civil partner.

The Act gives the courts power to make orders which require pension compensation sharing. When such an order is made, a PPF member's pension compensation becomes subject to a debit and the member's former spouse/civil partner becomes entitled to a corresponding pension compensation credit. The debit will usually be a percentage of the value of the member's pension compensation, although it may be a specific amount. This percentage or amount will have been set by the courts. (In England and Wales the debit and credit can only be a percentage, whereas in Scotland it can be either a percentage or a specified amount.)

The Act provides that the Board of the PPF ("the Board") implement the sharing of pension compensation during the "implementation period". The implementation period would normally last a maximum of four months.

The Board could recover reasonable costs from the couple as a result of implementing the pension compensation sharing order or attachment/earmarking order.

Subject of consultation

Draft Regulations on pension compensation on divorce

The draft Regulations on pension compensation on divorce set out:

- when pension compensation is not shareable;
- the information the Board must supply to members, their spouse or civil partner and the courts;
- how pension compensation and the cash equivalent value of that compensation are calculated and verified;
- what information has to be provided about the member and their spouse or civil partner;
- adjustments that can be made to and notification about the implementation period;
- that charges may be recovered by the Board from the parties to the proceedings;

- when survivors can receive pension compensation in these circumstances; and
- provisions on revaluation, commutation, early payment of pension compensation, annual increases in pension compensation and the compensation cap.

Draft Regulations on charges for pensions on divorce

The draft Regulations on charges for pensions on divorce apply where a pension sharing order or provision or an attachment/earmarking order was made before the Board of the PPF assumed responsibility for an eligible pension scheme and was not implemented by the trustees or managers of the scheme.

The draft Regulations set out the information which must be provided to the parties to the order or provision and the circumstances in which the Board may recover the costs incurred as a result of implementing a pension sharing order or provision and administration of a pension attachment/earmarking order.

Other Regulations

The draft Regulations cover Scotland. However, the Scottish Government is considering what action it needs to take in respect of any regulations on court powers which fall within devolved competence.

The Ministry of Justice will be drafting regulations and court rules that cover the England and Wales courts' ancillary relief procedure in relation to pension compensation.

When in force

The intention is that the Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010 and the Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010 will come into force on 6 April 2011; as will all related regulations and rules (e.g. on courts' ancillary procedures).

Website

Your comments on any aspect of the draft Regulations would be welcomed. This document is on the Department for Work and Pension's website at <http://www.dwp.gov.uk/consultations/2010/>

How to respond to this consultation

The consultation exercise runs from **31 March to 22 June**.

Any replies received after the closing date may not be taken into account so please ensure your response reaches us by that date.

Please send your responses, preferably by email, to:
caxton.ppf-responses@dwp.gsi.gov.uk.

or by post to:

John Isaac
Department for Work and Pensions
7th Floor Caxton House
Tothill Street
London.
SW1H 9NA
Tel. 020 7449 7419

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge your response.

We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

Freedom of Information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received, and referred to in the published consultation report.

The information you send to us that is relevant to the courts may need to be passed to colleagues within the Ministry of Justice and the Scottish Government. The information you send to us that is relevant to the implementation aspects of these draft Regulations may need to be passed to colleagues in the PPF.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

The Central Freedom of Information Team
Department for Work and Pensions
2nd Floor, Adelphi
1-11 John Adam Street
London, WC2N 6HT
Email: freedom-of-information-request@dwp.gsi.gov.uk

More information about the Freedom of Information Act can be found on the Ministry of Justice website.

- [Freedom of information](#) (Ministry of Justice website)

The consultation arrangements

The Cabinet Office Code of Practice on Consultation advises that a minimum of 12 weeks is appropriate for public consultations, unless there are good reasons for a shorter period. In this case the consultation will run for 12 weeks.

The consultation is being conducted in line with the Government Code of Practice on Consultation and its seven consultation criteria, which are as follows:

- **When to Consult.** Formal consultation should take place when there is scope to influence the policy outcome.
 - **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
 - **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
 - **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
 - **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
 - **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
 - **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.
- [Consultation guidance](#) (Department for Business Innovation and Skills website)

Feedback on this consultation

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
Room 2A, Britannia House
2 Ferensway
Hull, HU2 8NF
Tel: 01482 609571
Email: roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the Government Code of Practice on Consultation. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

What we will do after the consultation

A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website at <http://www.dwp.gov.uk/consultations/2010/>.

Impact Assessment

An assessment of the impact of these legislative changes on the private, voluntary and public sectors was included as part of the Impact Assessment that accompanied the Pensions Bill 2007. This was first published on 5 December 2007. Copies of that assessment are available in the libraries of both Houses of Parliament and may also be obtained from the DWP website at <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

Under the provisions to be implemented by the draft Regulations the overall value of pension compensation does not change; however, it may be shared between the two parties who were married or in a civil partnership.

The court costs for dealing with the pension compensation sharing as part of a divorce should not be significantly different from the costs presently incurred. Also, there should be no detrimental impact on pension schemes. There may be a minimal benefit to schemes; as, at present, the cost of pension sharing not implemented by the end of the assessment period can not be charged to the parties, and thereby must fall on the PPF (and hence on the pension schemes who fund it).

The PPF will undertake the work involved with sharing pension compensation between the parties, and the parties will pay the cost of undertaking this work. An estimate of the costs involved and the figures used for these calculations is set out in Annex C.

The PPF does not expect that the administrative costs involved will be significant. Except for the set-up costs the PPF will incur, which are expected to be minimal, the costs of implementing compensation sharing orders for couples will be met by those couples.

Benefits

The transfer of wealth on divorce, annulment or dissolution in relation to pension compensation is already possible, albeit only by means of offsetting the value of pension compensation in the settlement. These provisions increase the flexibility available to courts in relation to how this sharing of wealth is brought into effect.

To the extent that the courts will be able to effectively identify that one of the alternatives to offsetting is beneficial to both parties, there will be a welfare gain from this flexibility.

Where the value of the pension compensation is a major financial asset of the wealthier party to the divorce, annulment or dissolution the provisions will allow the party who has had less opportunity to contribute to their own pension (this is likely to include women, carers and disabled people), to acquire a share of the value of the pension compensation due to their spouse/civil partner.

The availability of this option should facilitate the fairness of financial settlements, allow clean breaks and provide additional income in later life for the former spouse/civil partner.

Men are more likely to have significant levels of pension compensation than women¹. This means that men are more likely to have reduced pension compensation following a divorce. However, this would be as a result of a settlement with their spouse, who would benefit from pension compensation following a divorce.

Monitoring and review

The PPF will build a reporting function into their systems to monitor and review this measure once it is in place.

¹ Pages 75 and 76 of the Pension Protection Fund Annual Report and Accounts 2006/07 HC1018. The report shows that both for deferred members and pensioner members of schemes in the Pension Protection Fund in March 2007 men outnumbered women by more than 10 to 1. The Pension Protection Fund expect the trend to continue to show men outnumbering women by a large degree given the nature of the schemes in assessment.

Commentary on the draft regulations

Commentary on the draft Pension Compensation Sharing on Divorce etc Regulations

The following summary explains the purpose of each of the provisions in the draft statutory instrument:

1. **Regulation 1** contains the citation, commencement arrangements and interpretations. It provides definitions of terms used in the draft Regulations, including references to other Acts.
2. **Regulation 2** explains when pension compensation is not shareable. This is when the person is receiving compensation as the survivor of the member they were previously married to or in a civil partnership with.
3. **Regulation 3** describes the information the Board of the PPF must provide to the member, their spouse or civil partner and the courts before a pension compensation sharing order is made. This information covers areas such as a valuation of the member's pension compensation. It sets out time limits within which this information has to be provided.
4. **Regulation 4** provides that where there is an application for financial relief the value of the member's pension compensation has to be calculated and verified. The valuation is made on the basis of the cash equivalent value of the pension compensation, i.e. the amount of money that would be required to make provision for the member's compensation, calculated according to actuarial assumptions approved by the Board.
5. **Regulation 5** describes the information the Board has to supply to the member or the courts when it is notified that a pension compensation sharing order or provision or an attachment/earmarking order may be made.
6. **Regulation 6** refers to the table in the schedule, which contains the information the Board has to supply to the pension compensation credit member. This table describes what the information is, who can receive this information and the time limit within which this information should be provided.
7. **Regulation 7** sets out the information the Board must have for the implementation period (the period within which the order or provision must be implemented) to start. This covers details such as the name and address of the transferor, who is the original eligible member of the PPF, and the transferee, who is their former spouse or civil partner.
8. **Regulation 8** explains the circumstances in which the implementation period can be extended. This includes when the Board does not have all of the information it requires.

9. **Regulation 9** provides that the implementation period can be postponed or cease when an application for leave to appeal out of time is made. It sets out when this postponement or cessation ends.
10. **Regulation 10** requires the Board to inform the transferor and transferee that the implementation period has begun within 21 days of it starting. It sets out notification requirements on the Board where the implementation period is delayed, extended, postponed or ceased. The Board also has to inform the parties of any charges due.
11. **Regulation 11** sets out that the amount used to determine the cash equivalent value of the pension compensation is the amount that would be required to make provision for the member's entitlement to compensation immediately before the transfer day. This is the day that the relevant order or provision takes effect. The cash equivalent value is calculated and verified in accordance with actuarial assumptions approved by the Board.
12. **Regulation 12** provides that the Board must calculate the cash equivalent value of the transferee's pension compensation credit in accordance with actuarial assumptions approved by the Board.
13. **Regulation 13** describes what happens when the transferee dies before the Board has provided them with their pension compensation credit. The Board notifies the deceased transferee's personal representative or executor. The transferee's surviving partner or dependants may become entitled to pension compensation.
14. **Regulation 14** specifies the information that the Board has to provide to the transferor and the transferee when it discharges the pension compensation credit. This may include the valuation of the pension compensation, the value of the pension compensation debit or credit, the date of transfer and any charges due. The information varies slightly depending on whether the transferor or transferee has reached pension compensation age.
15. **Regulation 15** prescribes the information the Board has to supply to the parties once it receives a pension compensation attachment order. This information may include the cash equivalent value of the pension compensation payable before and after the implementation of the order, the date when the first payment will be made, any charges due and changes in circumstances that the Board must be informed of.
16. **Regulation 16** permits the Board to recover charges from the parties in relation to the costs associated with pension compensation sharing. This could be for the cost of providing information, implementing and discharging the pension compensation credit and administration costs. The parties can pay these charges, or they can be deducted from their pension compensation. The Board must have notified the parties of the charges and the method that will be used to collect the charges.
17. **Regulation 17** explains that where one party pays the other party's charges the first party can recover this money as a debt due from the second party.

18. Under **regulation 18** a widow, widower or surviving civil partner is not entitled to pension compensation where a relevant partner is entitled to the pension compensation or where the rules of the member's scheme did not provide for payment of a survivor's pension.
19. Where the transferee dies before the Board has discharged liability for the pension compensation credit and a surviving partner of the transferee is entitled to pension compensation, **regulation 19** sets out the manner in which the rate and duration of the compensation they are entitled to is to be calculated.
20. **Regulation 20** prescribes the circumstances in which a relevant partner of a deceased transferee (i.e. a partner who is not the widow, widower or civil partner of the transferee) or surviving dependants of a deceased transferee are entitled to receive pension compensation.
21. **Regulation 21** explains the amount and duration of pension compensation that is paid to an entitled relevant partner.
22. **Regulation 22** describes the amount of pension compensation to be paid to surviving dependants, depending on the circumstances. This will vary depending on whether a surviving partner or relevant partner is also entitled to pension compensation. It also varies according to the number of surviving dependants.
23. **Regulation 23** explains when pension compensation payments to a surviving dependant will begin and cease. The date at which payments will cease depends on their circumstances and age.
24. **Regulation 24** specifies the mechanism for determining the percentage increase in the general level of prices, which used for revaluing pension compensation payable to a transferee who has not reached pension compensation age at the date of transfer.
25. **Regulation 25** sets out the circumstances in which pension compensation can be commuted by the transferor and the transferee.
26. **Regulation 26** provides that where the pension compensation to be commuted is a PPF trivial commutation lump sum it can exceed 25 per cent of the total pension compensation amount. It sets out the qualifying factors for the lump sum to be a PPF trivial commutation lump sum.
27. **Regulation 27** states that where a transferee wishes to commute their pension compensation they must notify the Board of this and provide specified information. The Board may also require the transferee to produce any other relevant documents or information.

28. **Regulation 28** describes the circumstances where a transferee is entitled to early payment of pension compensation. The transferee must give notice to the Board, be aged 55 or older, provide certain information and usually give the Board at least two months notice.
29. **Regulation 29** allows the Board, for indexation purposes, to determine how much of the transferee's entitlement to pension compensation should be treated as deriving from pensionable service before or after 6 April 1997, where it is unclear whether the transferor's rights to pension compensation derived from pensionable service before or after 6 April 1997.
30. **Regulation 30** applies the compensation cap to the transferee's entitlement to pension compensation where the transferee becomes entitled to pension compensation after the transfer day. Revaluation may mean that when the pension compensation comes into payment, the annual value of the compensation payable exceeds the compensation cap. In these circumstances, the compensation payable is capped.
31. **Regulation 31** provides that any determination by the Board of a person's entitlement to compensation under the pension compensation on divorce provisions or the failure to make such a determination is a reviewable matter.
32. **Regulation 32** includes the transferor, transferee and, where the transferee has died, their relevant partner, surviving partner or surviving dependant as interested parties in relation to reviewable matters.

Commentary on the draft Pensions on Divorce etc: Charges Regulations

The following summary explains the purpose of each of the provisions in the draft statutory instrument:

33. **Regulation 1** contains the citation, commencement arrangements and interpretation of the Regulations.
34. **Regulation 2** describes the information that the Board must provide to the parties where a relevant order or provision has been made before the Board assumed responsibility for a scheme. This includes the date the PPF took responsibility for the scheme and the fact that the PPF will implement the order.
35. **Regulation 3** allows the Board to recover the costs of implementing a pension sharing order or provision and of providing information associated with implementation from the parties, provided that the parties have been notified in advance of the charges that will be incurred.
36. **Regulation 4** sets out the methods the Board may use to recover charges and the conditions which must be fulfilled before recovery. The methods include payment from the party liable or deduction from their pension compensation.

37. **Regulation 5** covers the charges that the Board may recover for the administration of an attachment/earmarking order, and the preconditions which apply to the recovery of those charges.

38. **Regulation 6** sets out the methods by which charges in relation to an attachment order may be recovered, and the conditions which must be fulfilled before the Board can make deductions from compensation.

Consultation questions

We would in particular welcome views on the following consultation questions:

(a) the objective of the two sets of draft Regulations is to set out the detailed provisions on how pension compensation sharing on divorce etc. will work, and on what charges people will have to pay. Do the draft Regulations meet that objective?

(b) Do the provisions in the draft Regulations impose any requirements you consider to be unnecessary? Please be aware, however, that the draft Regulations may be required to make some provisions in a particular way because of the requirements in the Pensions Act 2008. We would be grateful if you would explain why you believe that any particular regulation is unnecessary. For example, because you would normally do what is required by the regulation anyway.

(c) Are any of the provisions in the draft Regulations onerous? If you think they are, we would be grateful if you would give an explanation of why you think a particular regulation is onerous. For example, if your view is that the regulation adds a financial burden, what is the estimated size of that burden; or if your view is that the regulation may simply not be easy to comply with, an explanation of why that might be the case.

(d) Could the draft Regulations be clearer about what is required? If so, how? Please be aware that the PPF intends to provide guidance for scheme members on compensation sharing and charges for pension sharing.

(e) Is there anything the PPF could do to make pension compensation sharing on divorce easier or cheaper to operate for the PPF?

(f) Is there anything else you would like to tell us?

Annex A – the draft Pension Protection Fund (Pension
Compensation Sharing on Divorce etc) Regulations
2010

Annex B – the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010

Annex C - Figures

Scheme, membership and divorce figures

Pension scheme members figures

There are 12.4m members in schemes eligible for the PPF as at 31 March 2009² and 36,799 members (in 120 schemes) have transferred to the PPF as at February 2010³.

The PPF estimate that between 115 and 165 schemes will transfer to the PPF next year, with between 100,000 to 130,000 members in these schemes, and expects a steady increase in numbers in subsequent years (although this is dependent on the economy and the number of schemes entering assessment). Further details can be found in the PPF's management plan, a revision of which is due to be published in March/April.

According to in-house analysis of Wealth and Assets Survey data, 65% of individuals with a defined benefit (DB) pension are married or in a civil partnership. This is likely to be an overestimate of the numbers affected by these reforms, as some individuals will be married to other individuals with a DB pension that has transferred to the PPF.

The divorce rate in England and Wales was 1.12% in 2008 (the most recent year for which data is available⁴). That is to say, for every 1,000 married (wo)men 1.12% of them get divorced in a given year. In Scotland the divorce rate is 1.13% based on the average divorce rate over the four years 2006 to 2009⁵. Older age groups tend to divorce less frequently than younger age groups and it may be that individuals in the PPF (who by definition have a DB pension, something which has been declining in the UK, are likely to be older than average).

Divorce figures⁶

The percentage of pension order disposals of divorces/dissolutions granted per year was 9% in 2007 and 10% in 2006.

Overall numbers

Combining these figures, for next year, we have approximately 150,000 members, of which 65% are married; i.e. 97,500 members. Of these, in any given year, 1.12% can be assumed to divorce. And, of these divorces, 9% can be assumed to result in a

² Source: PPF

³ Source: PPF

⁴ Source: ONS

⁵ Source: Internal analysis of General Register Office data. This may be an overestimate because the Family Law (Scotland) Act 2006 reduced separation periods before divorce from May 2006. So there was an increase of over 2,000 divorces in 2006 followed by decreases in 2007, 2008 and 2009.

⁶ Source: Judicial and Court Statistics.

pension order. On the basis of these projected numbers for next year, this would be approximately 100 members. The annual number of members who would benefit from these changes would be expected to grow as more pension schemes (and members) enter the PPF.

Costs

The PPF estimate that the costs of processing a pension sharing order for a member will be in line with the range for these charges in a DB scheme suggested by the National Association of Pension Funds⁷ in 2006. This is between £1,950 and £2,350 for a deferred member and between £2,000 and £2,550 for a pensioner member. These costs will be charged to the divorcing parties.

Summary

The benefits of this reform will come from the additional flexibility in how assets can be allocated in divorce settlements, enabling greater fairness. These benefits will depend on the specific circumstances, and whilst offsetting may seem generally preferable, as there are typically no extra costs involved, the benefit of pension compensation can be worth more than a straight value for value swap (e.g. such as swapping the house for the compensation).

For example, it could be beneficial in scenarios such as where the parties are around pension age, have been married for a long time, one partner has little or no pension provision of their own and the only other asset is the house. Where only offsetting is available, this could lead to one party having an income but no lump sum to assist with housing, and the other party having housing but no income to live on. The additional flexibility offered by these draft Regulations will enable the courts to ensure that both parties have access to a valuable stream of income at a time in their lives when they are unlikely to be able to secure it by other means.

There is a degree of uncertainty about the number of pension compensation sharing on divorce cases that will occur (depending on the number of members who transfer to the PPF, their likelihood of divorcing and the extent to which pension compensation sharing is part of a divorce settlement). Initially the number of people who benefit from this additional flexibility will be small, but this number will grow as more schemes and members transfer to the PPF.

The costs of administering any compensation sharing on divorce settlement will be charged to the divorcing parties.

The cost of these reforms is less than £5m to a public sector body. A formal impact assessment has not been prepared for these draft Regulations. However, an assessment of the impact of these legislative changes on the private, voluntary and public sectors was included as part of the Impact Assessment that accompanied the Pensions Bill 2007.

7

http://www.napf.co.uk/DocumentArchive/Policy/Reports%20and%20Responses%20to%20Consultations/11_2006/20060301_Pension%20sharing%20scale%20of%20charges%20-%20Mar%202006.pdf

Annex D - List of organisations consulted

Organisation

Age Concern /Help the Aged

Actuarial Profession

Association of British Insurers

Association of Chartered Certified Accountants

Association of Consulting Actuaries

Association of Corporate Trustees

Association of District Judges

Association of Independent Financial Advisers

Association of Pension Lawyers

Board for Actuarial Standards

British Chambers of Commerce

Better Regulation Executive

Carers UK

Confederation of British Industry

Consumers' Association

Department for Business, Innovation & Skills

Department for Social Development (Northern Ireland)

Engineering Employers' Federation

Equality and Human Rights Commission (EHRC)

Eversheds

Faculty & Institute of Actuaries

Family Justice Council - Money and Property sub committee

Family Proceedings Rule Committee

Federation of Small Businesses

Financial Ombudsman Service

Financial Services Authority

Government Actuary's Department
HM Revenue & Customs
HM Treasury
Hammonds LLP
Her Majesty's Courts Service (HMCS)
Hewitt Associates
Independent Pensions Research Group
Industry Wide Pension Schemes Group
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants in Scotland
Institute of Directors
Institute of Payroll and Pensions Management
Investment and Life Assurance Group
Investment Management Association
Joint Working Group
Law Debenture
Law Society
Law Society of Scotland
Ministry of Justice
National Association of Pension Funds
National Consumers Council
National Pensioners Convention
Northern Ireland Office

Office of Fair Trading

Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Pinsent Masons
Resolution
Scottish Parliament

Scotland Office

Society of Pension Consultants

The Pension Protection Fund

The Pensions Advisory Service

The Pensions Regulator

Trades Union Congress

Welsh Assembly

Wales Office

Which?