

*These notes refer to the Welfare Reform and Pensions Act
1999 (c.30) which received Royal Assent on 11 November 1999*

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

OVERVIEW

Pension Sharing on Divorce

Background

Since the 1970s, courts have had to take account of the value of pension rights in divorce and nullity of marriage settlements so that these can be offset against other assets in financial settlements. In addition, attachment and earmarking provisions in the Pensions Act 1995 allow courts:

in England and Wales and Northern Ireland, to require occupational and personal pension schemes to pay maintenance from a member's pension directly to their former spouse;

throughout the United Kingdom to order part or all of a lump sum payable on the death or retirement of a member to be directed to their former spouse.

Both attachment and earmarking have limitations and as yet have been little used. They do not allow a clean break in most cases, title to the pension rights remains with the spouse in whose name the rights have accrued, and they leave the person receiving the payment at risk of losing the intended retirement income if their ex-spouse dies.

The Government consulted on proposals on pension sharing in *Pension sharing on divorce: REFORMING PENSIONS FOR A FAIRER FUTURE* in June 1998. The consultation paper included draft primary legislation.

The consultation proposed that:

courts and couples should be able to deal with pension rights in the way that provides for the fairest overall financial settlement;

all couples should have the opportunity to settle their pension rights by means of a pension share – pension sharing should be available within financial settlements on divorce and nullity of marriage settled both by court order or (in the case of divorce) agreement;

pension sharing should be open to couples where rights exist under an occupational or personal pension scheme or under the State Earnings Related Pension Scheme (SERPS);

pension sharing should not be compulsory. It should still be possible to offset pension rights against other assets or to use the current attachment and earmarking arrangements;

arrangements for pension sharing should respect and comply with the fundamental principles which underpin each family law system (in England and Wales, in Scotland and in Northern Ireland);

pension sharing should apply only to proceedings which begin after the implementation of the policy. It should not apply retrospectively.

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Following consultation, the Government has now legislated to make the proposed changes.

The measures in the Act

The main measures in the Act that relate to pension sharing on divorce and nullity are contained in Parts III and IV, sections 19 - 51.

The provisions in the Act largely put in place the proposals on pension sharing set out in the consultation paper. They introduce the option of pension sharing on divorce or nullity of marriage and will:

allow pension rights to be treated like other assets and the whole, or a proportion, of their value to be transferred from one spouse to the other as part of the financial settlement; but

will not be compulsory – it will still be possible to offset pension rights against other assets or to use the current earmarking and attachment arrangements.

In addition, in the light of comments made during the consultation exercise, the provisions in the Act put beyond doubt the fact that pension sharing will be available only to those who begin proceedings for divorce or nullity after the legislation has been brought into force. The Act also includes changes designed to improve the current legislation on attachment and earmarking.