

**THE PROVISIONS OF  
THE REGULATIONS  
UNDER SECTION 166  
OF THE  
PENSIONS ACT 1995  
  
SUMMARY PAPER**

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## **THE PROVISIONS OF THE REGULATIONS UNDER SECTION 166 OF THE PENSIONS ACT 1995**

### **VALUATION OF PENSIONS**

1. Power is taken in section 166(1) of the Pensions Act 1995 for the Lord Chancellor to make Regulations prescribing the method of valuing pension rights for the purposes of orders for financial provision upon divorce under the Matrimonial Causes Act 1973. Under the Matrimonial Causes Act 1973 currently and as amended by the Pensions Act 1995, when considering financial provision on divorce, the Court has to have regard to benefits under a pension which a spouse 'has or is likely to have' in the future.
2. With regard to the rights under the pension that the scheme member currently has, the prescribed method of valuation is to be a calculation of the Cash Equivalent Transfer Value (CETV) provided by the pension scheme(s) of which the party with the pension rights is a member. Schemes will be obliged to provide a CETV calculation where they are subject to the CETV legislation and the Court will be obliged to consider the CETV calculation.
3. The prescribed method will apply to active and deferred scheme members. It will be calculated by the scheme in accordance with existing legislation and, where applicable, with existing guidance produced by the Institute and Faculty of Actuaries. Unfunded schemes subject to the CETV legislation are included in the prescribed method of valuation and are obliged to provide calculations of CETVs.
4. The Regulations will remain silent as to the provision of information as to the future expectations of a pension. This will mean that the scheme member is only required to provide CETV calculation for the purposes of valuation of his or her current rights under the scheme. It will also mean that the parties will not be barred from providing additional information as to the future expectations of the pension. The Court may, but will not be obliged, to take this into account in deciding the quantum of the Court order to reflect the loss of the future benefit of the pension to the party without pension rights. It will also mean that the scheme(s) **will not be required** to provide anything other than a calculation of the CETV to the scheme member.

5. The basic state pension and State Earnings Related Pension Scheme (SERPS) will be excluded from the prescribed method of valuation as it is not appropriate to them. The substitution rules relating to the basic state pension, whereby a former spouse's National Insurance record may be substituted for a person's own, will mean that a former spouse will not normally qualify for a basic state pension in his/her own right. The Department of Social Security Benefits Agency offers a pensions forecasting service from which a quotation of the notional capital value of the accrued net SERPS entitlement will be available on request. The loss of the benefit of both the basic state pension and SERPS by the party without pension rights would still be taken into account by the Court.
6. Schemes will be required (upon written request when the CETV calculation is requested) to identify, in a 'broad brush' manner the proportion of the total CETV attributable to the value of the spouse's pension payable on death before or after retirement.

#### **DATE AT WHICH CETV SHOULD BE CALCULATED**

7. The trustees or managers of the scheme will be required to calculate the CETV as soon as practicable, but within 3 months of its request, and provide it to the member within 10 working days of calculation in accordance with DSS Regulations.
8. The Regulations will specify the date on which the pensionable service is assumed to have terminated to enable the calculation of the CETV. For active scheme members this will be the date on which the scheme actually calculates the transfer value and for deferred members it is to be the actual date of termination of pensionable service.

#### **ADJUSTMENTS TO THE CETV**

#### **DEATH IN SERVICE BENEFITS**

9. There will not be a prescribed method of valuing such benefits. The scheme information to which members are entitled under DSS Regulations will provide information as to their nature.

## **DE MINIMIS**

10. Although it will not be possible to exclude any pension rights from consideration by the Court, the prescribed method of valuation is not to apply to pensions which have not vested for the purpose of preservation under scheme rules.

## **NON-AVAILABILITY OF CETV**

### **PERSONAL PENSIONS & RETIREMENT ANNUITY CONTRACTS**

11. Personal Pension Arrangements entered into after 1 July 1988 may be ascribed a transfer value. The transfer value provided by the personal pension arrangement providers is to be the prescribed method of valuation for divorce purposes. Retirement Annuity Contracts entered into prior to 1 July 1988 do not allow members to transfer rights to another scheme. The internal transfer value provided by the contract providers will, therefore, be the prescribed method of valuation.

### **USE OF OTHER METHODS OF VALUATION**

12. In so far as pension rights accrued up to the time when the Court considers financial provision on divorce are concerned, the divorcing parties will not be permitted to use any method of valuation other than the prescribed methods. It would, however, be open to them to dispute whether the prescribed method had been correctly applied.
13. The Regulations will not prevent the parties providing further information as to the future expectations of the pension, and will not prevent the Court from taking account of that information in circumstances where it deems the Cash Equivalent Transfer Value method of valuation provided an inappropriate or inadequate indication.
14. The prescribed method cannot be used for discretionary benefits not included in the CETV or pensions administered outside England and Wales. Regulations cannot, therefore, bar other methods of valuing such pension benefits.

## **PROVISION OF INFORMATION TO THE SCHEME MEMBER**

15. DSS Regulations currently allow for a CETV to be provided to the scheme members once every 12 months. It is intended that the scheme member will be able to make one request for a CETV calculation for the purposes of divorce proceedings, even if they have already received such calculations within the last 12 months under DSS Regulations. It is intended that the Court will be able to order provision of a further CETV if there are exceptional circumstances requiring a further valuation.
16. It is intended that the next 12 months is to run from the date of the last CETV calculation under DSS Regulations, as pension schemes often have an annual date for generation of CETV information for members. Schemes will be able to charge for the provision of calculation of the CETV over and above what they are required to provide under DSS Regulations.
17. If the scheme member refuses to provide a valuation, the Court may request a valuation directly from the scheme and/or require the trustees or managers of the scheme to attend Court. If this were the case, and such instances are likely to be rare, the scheme could ask the Court to order the scheme member to pay the scheme's costs of attending Court, as the scheme member's non compliance with the order would have necessitated the scheme's attendance.

## **OTHER CIRCUMSTANCES**

18. Regulations will allow the Court to require the scheme member to provide information on any pension or accrued rights not subject to the prescribed method of valuation.

## **ROUTE OF APPLICATION**

19. Where a party intends to make application in respect of a pension, they must give notice of the application to the scheme and the scheme member. The party without pension rights will also be required to provide the scheme with a contact address and the name, address and account details of an account (bank or building society) into which payments under an attachment order may be made. This may be the address of

a third party, such as solicitor. Failure to provide this may be grounds for the scheme to object to the making of an attachment order.

20. Within 14 days of service of the application on the pension scheme, the scheme may request a copy of the party without pension right's affidavit supporting their application. Within 14 days of receipt of the affidavit, the scheme may file an affidavit in reply or apply to make representations to the Court or to be joined as a party to the proceedings. Where the Court makes an attachment order, a copy of the order is to be served on the scheme by the party without pension rights.

### **NOTICES FROM THE PARTY WITHOUT PENSION RIGHTS**

21. It is intended that once the Court has made an attachment order, the party without pension rights will be required to inform the scheme in writing of any change of his or her name, address or account details as soon as they have occurred.
22. An attachment order ceases upon remarriage of the party without pension rights as under current law. The party without pension rights is, therefore, to inform the scheme of their remarriage. The party without pension rights will also be required to comply with reasonable requests for information to facilitate payment under an order and as to their continued eligibility to receive payments from the scheme.
23. In the event of any over-payment to the party without pension rights as a result of a failure to comply with the requirement to inform the scheme of their remarriage or with a request from the scheme for information as to continuing eligibility, any application by the party with pension rights to recover such over-payment is to be made against the party without pension rights, not the pension scheme.
24. Where the scheme is unable to make payment to the party without pension rights through the party's failure to provide information for payment purposes, the scheme is to pay sums due to the party with pension rights. Any application to the Court to recover payments which the party without pension rights had not received, would be made against the scheme member.

## **NOTICES IN RESPECT OF THE PARTY WITH PENSION RIGHTS**

### **COMPLETE TRANSFER OF PENSION RIGHTS**

25. Where there is a transfer of all pension rights in respect of which an attachment order has been made, the order automatically affects the new scheme providing appropriate notices are given. The original scheme will be required to notify the new scheme of the order. The original scheme will send the new scheme a copy of the Court order and details of the name and contact address of the party without pension rights and their account details. As with all transfers currently, the new scheme cannot be compelled to accept a transfer. This will remain the case where there is an attachment order in force in respect of a pension.
26. The original scheme will also be required to notify the party without pension rights of the transfer, to their last recorded address, indicating a complete transfer of rights has taken place, giving details of the new scheme and stating that the order remains in force. The order will lapse on a deemed buyback into the State scheme.

### **PARTIAL TRANSFER OF PENSION RIGHTS**

27. In the case of a partial transfer, the original scheme could only comply with the order to the extent that it was able in the light of the reduced benefits. The party without pension rights would receive part payment from the scheme and then seek the remainder from the scheme member. The order does not transfer to the new scheme on partial transfer. The original scheme will be required to notify the party without pension rights of the partial transfer and that such transfer may affect the terms of the attachment order. The party without pension rights would then be able to decide whether to make application to Court for variation of the attachment order.
28. An order requiring the scheme member to nominate the party without pension rights as beneficiary of a lump sum payable on death would take effect to the extent that, if there were not sufficient funds to make a full payment in compliance with the terms of the order, the original scheme would be obliged to make a part payment.

## **OTHER CIRCUMSTANCES**

29. It is intended that a duty be placed on the trustees and managers of the pension scheme to notify the party without pension rights of any action by the party with pension rights or the scheme which will result in a reduction to the benefits payable under the attachment order. This is intended to ensure that the party without pension rights is aware of any changes to the pension which could reduce the eventual amount of payments made from it, so that he or she can consider whether to apply to the Court for variation of the Court order. It is also intended to ensure as far as possible that scheme members cannot avoid liability under an order by transferring pensions assets. It should be noted, however, that such a requirement would not necessitate schemes providing notification to the party without pension rights of reductions to the value of the pension resulting from minor market fluctuations.

## **ROUTE OF PAYMENT UNDER AN ATTACHMENT ORDER**

30. Payments under an attachment order will be made direct to the party without pension rights. The Court does not have power to order a party without pension rights to open a bank or building society account or other suitable account into which payments could be made. Regulations will, therefore, refer to payments being made direct to the account of the party without pension rights by any method by which a specific amount may be paid from the scheme's account to the account of the party without pension rights, for example, by standing order.

31. The party without pension rights will be required to ensure that the scheme has up to date information as to his or her personal details. There will be no obligation on the scheme to check whether these details have changed. The obligation to inform rests on the party without pension rights.

32. The President of the Family Division has agreed to make a Practice Direction encouraging the making of orders directly affecting pension schemes only where the payee has an account into which payments could be made via the BACS system.

## **RECOVERY OF ADMINISTRATIVE EXPENSES BY SCHEMES**

33. Schemes will be able to recover their reasonable administrative expenses of:

Providing information on the value of any benefits under the scheme, in so far as its provision exceeds the requirements of DSS Regulations. Such costs are to be recouped by charging a fee to the scheme member. This fee may be recouped from the Legal Aid Fund if the party with pension rights is legally aided.

Complying with attachment orders. Schemes will be able to recoup their 'reasonable' costs of creating records, providing notices of change of circumstances and making payments under orders from the scheme member.

34. The Court will need to take account of the likely quantum of those costs and when and from whom they will be recoverable when making an attachment order.

## **COMMENCEMENT**

35. The new provisions will apply to the Court's consideration of financial provision where the petition for divorce, judicial separation or nullity has been presented to the Court on or after 1 July 1996 and where the prescribed notice of application has been filed with the Court on or after 1 August 1996. In addition, where the petition has been presented to the Court on or after 1 July 1996 and where the prescribed notice of application has been filed with the Court before 1 August 1996, the Regulations will allow an amended application to be filed on or after 1 August to allow the provisions of section 166 of the 1995 Act to apply.
36. Provisions which directly affect schemes, will not affect them to the extent of having to make a payment under an order under section 166 of the 1995 Act until 6 April 1997 with one exception. Orders requiring schemes to make a one off lump sum payment to the party without pension rights are to be capable of taking effect from 1 July 1996, even if the order involves schemes making payment prior to 6 April 1997. Only orders containing a direction for the scheme to pay periodical payments direct to the party without pension rights, therefore, will not take effect until 6 April 1997.