

Implications following divorce, nullity of marriage or dissolution of a civil partnership

This factsheet provides general information about the treatment of USS pensions in the event of divorce, annulment of marriage or dissolution of a civil partnership within the UK.

Introduction

In the interests of simplicity, the factsheet refers only to divorce, but in all respects this should be read as including annulment of marriage or nullity proceedings and dissolution of civil partnerships. Additionally, any reference to a spouse throughout this factsheet applies equally to a civil partner.

This factsheet primarily looks at the legislation surrounding pension sharing. It explains the information that USS will provide in these situations and whether it will charge for the information. The factsheet also focuses on the options available to deal with the pensions implications of a divorce settlement.

This factsheet is intended as a guide for members, their spouse and any other interested parties. It should not be considered as providing any form of legal or financial advice with regard to either pensions or divorce.

This factsheet does not cover all aspects of the regulations and scheme rules that have been drafted to cater for pensions and divorce; in particular, there are some differences in the procedures that apply to divorces in Scotland. In the event of any discrepancy between this factsheet and the scheme rules or legislation, the rules or legislation will be overriding.

The scheme rules and other information about USS and Universities Superannuation Scheme Ltd (the Trustee Company) can be found on our website at www.uss.co.uk

Background

USS is not able to offer advice on choosing between the options available. You and your former spouse must seek your own advice and agree which option should be followed in dealing with the pension aspect of the divorce.

The following options are open to the courts for dealing with pension assets on divorce:

Offsetting

What is offsetting?

This is where a value is attached to your former spouse's pension entitlement and this is offset from other matrimonial assets such as cash or property. Not only does this achieve a clean break but it also has the additional advantage of not requiring the pension to be shared at all.

Earmarking

What is earmarking?

This is the term used to describe special attachment orders, which are made by the court.

When an attachment or earmarking order is made, the pension still remains yours but the scheme is required to make some form of payment to your former spouse when you retire or die.

What happens when an attachment order is made?

The court can order that your former spouse receive one, or a combination, of the following:

- All, or part, of your USS pension on retirement.
- All, or part, of your lump sum benefit on retirement.
- All, or part, of any lump sum payment paid in the event of your death.
- All, or part, of your USS benefits bought by additional voluntary contributions.

The order will be sent to USS and acted upon in the event of your retirement or death.

As it may be many years between a divorce and benefits coming into payment, it is important to be aware that changes in individual circumstances can change entitlement.

What happens if my former spouse remarries or enters into another civil partnership?

An earmarking order against pension payments (but not necessarily lump sums) will automatically lapse on the remarriage of your former spouse and the full pension will be restored to you.

What happens when I die after my date of retirement?

Pension payments to your former spouse also lapse on your death.

What happens if I die in service?

Your former spouse will be entitled to a lump sum as indicated in the earmarking order. They will no longer be entitled to their share of pension as it is interdependent with yours and lapses on your death. In some instances they could be entitled to a dependant's pension.

See the 'Dependants pension' factsheet at www.uss.co.uk for further details.



How will USS keep in contact with my former spouse if they move away?

Your former spouse must inform USS of any change of address and/or bank account details.

What happens if I want to transfer my benefits out of USS and into another pension arrangement?

If you transfer your benefits to another scheme, the earmarking order will also transfer.

Will I need to contact my former spouse to inform them when I intend to take my pension, or regarding any other personal circumstances?

USS will contact your former spouse when you apply for your pension benefits, or at the time of death, if the lump sum payable on death has been earmarked. We will check that the earmarking order is still valid and if so, arrange for the payment to be made to your former spouse.

Pension sharing

What is pension sharing?

Pension sharing was introduced as an option for divorce or nullity proceedings that started on or after 1 December 2000. It is more accurately referred to as 'pensions splitting' because it results in the splitting of pension benefits between the member and former spouse in a once-and-for-all clean break as determined by the courts (or, in Scotland, as agreed between the divorcees).

The offsetting and earmarking options are still open and may remain attractive for many members.

How much of my pension will be shared?

This sharing provision usually covers all pension rights earned up to the time of divorce in England, Wales and Northern Ireland, but in Scotland is concerned only with the pensions rights earned during marriage, up until the date of separation. It is the responsibility of the legal or financial advisers dealing with the divorce to determine the share of the value quoted by USS.

Most types of pensions are covered by pension sharing legislation. The only notable exceptions are the basic state pension and spouse's, dependants' or civil partner's pensions that are already in payment i.e. where the 'pensioner' was not personally a member of the pension scheme.

What happens to my additional voluntary contributions?

If you have paid additional voluntary contributions (AVCs) to USS to purchase added years' pensionable service or additional pension and lump sum, these will be included in the valuation provided by USS.

If you have paid any AVCs to the USS Money Purchase arrangement administered by Prudential, these should be included within the pension sharing exercise. USS will inform the Prudential when a request has been received for a valuation for divorce purposes but it would also be advisable for you to contact Prudential separately for information. Prudential will issue the valuation direct to the legal or financial advisers dealing with the divorce.

What happens if my former spouse remarries or enters into another civil partnership?

As your former spouse's benefits are independent of yours, a pension sharing order does not lapse on remarriage.

What happens when I die?

Similarly, your death would not mean the end of your former spouse's pension, unlike the option of earmarking.

How is a pension sharing order put into place?

There are three distinct steps to the pension sharing procedures that affect USS:

- (a) An initial indication that a sharing situation may be developing by a request for information being made to USS;
- (b) A specific notification by you, or your spouse, that as part of the divorce settlement, you/they intend to seek a pension sharing order from the court in respect of your benefits;
- (c) Action required by USS to comply with the terms of any court order.

What happens when I make a request for information?

USS will respond to requests for information from you (or a court) by providing details of the actuarial cash value of your USS benefits, otherwise referred to as the cash equivalent transfer value (CETV), together with full information complying with all regulatory requirements – whether this full information is formally required at that stage or not. This is done to avoid any unnecessary delays in obtaining the information piecemeal. The details will normally be provided within 21 days.

Is there a charge?

USS will recover any charges incurred for providing the information requested (see schedule of charges either enclosed or on the USS website). The exception is information that is ordinarily provided under disclosure requirements; this is given free of charge.

Can my former spouse request information?

Your former spouse or their legal or financial representatives are not entitled to request details of your benefits unless they have your signed authority to do so. Relevant factsheets are available which can be accessed via the USS website.

What happens if I decide to seek a pension sharing order?

You must notify USS of an intention to seek a pension sharing order.

If this is the first notification that USS has received and full details have not already been provided, then we will provide them within 21 days.

It is advisable to provide USS with a draft copy of the order or agreement before finalisation to confirm that we can comply with the terms.

What other information will USS need to proceed?

We require:

- (a) A copy of the pension sharing order (or qualifying agreement);
- (b) Evidence of the divorce or annulment (i.e. a copy of the decree absolute or declarator) to which the pension sharing order relates. Also, for an agreement, the basis under which it qualifies in terms of the Welfare Reform and Pensions Act 1999 (section 28(3));
- (c) From your former spouse: full name, date of birth, national insurance number and contact address;
- (d) Full payment of the charges.

What information will be issued by USS?

Upon receipt of all relevant information, your former spouse will be informed of the options available. Your CETV will be recalculated on the date that the pension sharing order takes effect, known as the transfer day.

What is the 'transfer day'?

The transfer day is the later of the date of the decree absolute or seven days after the period of filing notice of appeal against the pension sharing order i.e. 21 days from the date of the court order.

The cash equivalent is recalculated assuming that your service is terminated on the day prior to the transfer day. It is important to note therefore that the cash equivalent is likely to be different to the original quotation.

What could my former spouse be entitled to?

The options available are:

- (a) An internal transfer within USS to provide benefits for your former spouse in his/her own right, referred to as a pension credit; or
- (b) An external transfer to any other suitably approved pension arrangement that is specified by your former spouse, providing that arrangement is able and willing to accept the transfer. This option is only available if your former spouse is not within one year of 'normal benefit age' as defined in the rules of the scheme.

How will my former spouse's chosen option be put into place?

If your former spouse chooses the internal transfer option, USS will need further information from them.

This information is:

- (a) A statement indicating which of the following options is required for the pension:
 - i. Payable with a five-year guarantee (where the balance of any pension, if your former spouse dies within five years of retirement, may be payable as a lump sum); or
 - ii. A higher pension, payable without a guarantee.
- (b) Full details of any dependant(s) or other persons your former spouse would like to nominate for consideration by the Trustee Company if any cash sums become payable on his/her death.

What happens if my former spouse does not choose an option?

In the absence of any instructions from your former spouse (within 21 days from the date of the quotation), the default option will be the internal transfer without a five-year guarantee. Once the default option has been applied, it will not be possible to change the internal transfer option; however, this would not stop your former spouse from requesting an external transfer sometime in the future, subject to your former spouse not being within one year of 'normal benefit age' as defined in the rules of the scheme.

The benefits offered to your former spouse as an internal transfer in USS under the terms of a pension sharing order (or a pension sharing agreement in Scotland) will follow the benefit structure set out later in this factsheet.

The actual amounts will be based on the value of the pension credit (less any charges to be paid if applicable). Your former spouse will then be treated, as far as possible, in the same manner as any former member of USS.

In practice, some differences will exist in considering some aspects of the rules since, for example, your former spouse will have no pensionable salary record and will not have completed any pensionable service in respect of the pension sharing benefits. This is true even if your former spouse is a member of USS in his/her own right because the pension sharing benefits must be considered separately. Some of these differences are apparent in the examples given later in this factsheet.

It is strongly recommended that your former spouse seeks financial advice regarding the most appropriate options to follow and choices to make. In addition, if an external transfer to a personal pension or similar arrangement is chosen, financial advice may be necessary to consider which would be the most suitable fund that would be compatible with his/her needs, attitude to risk and personal circumstances.

How is a pension sharing order implemented?

Upon receipt of your former spouse's chosen option, USS will implement the pension sharing order.

There is a specified period within which to start a pension sharing order, known as the implementation period. This period is four months from the date USS receives all of the relevant information needed to implement the order.

How will my reduced pension be calculated?

A 'pension debit' will apply to your benefits in accordance with the pension sharing order. This will be expressed as a pension and lump sum amount, or for retired members just as a pension amount. Your eventual benefits are then reduced by these amounts (increased to reflect the full rise in price inflation from the date of the settlement). Please refer to the example later in this factsheet to see how the pension debit is calculated.

How will my former spouse's pension be calculated?

Your former spouse, for whom an internal transfer is being arranged in respect of a pension sharing order or provision, will be provided with benefits in USS as follows:

- (a) A pension, with or without a five-year guarantee as chosen by them, payable from age 65; this is the normal benefit age in USS (the former spouse may request that benefits are brought into payment from the age of 60, subject to an actuarial reduction).
- (b) Your former spouse has an option to take a lump sum at his/her retirement date, and receive a lower income if you are not in receipt of a USS pension on the 'transfer day'. An example of the calculation is given later in this factsheet.

What happens when my former spouse dies?

On the death of your former spouse, before the pension has come into payment:

- i. Pensions are payable to a surviving spouse, civil partner or dependant, and/or children as specified below, based on your former spouse's pension indexed to the date of death;
- ii. A cash sum equal to 2.4 times your former spouse's pension, plus increases to the date of death, payable at the discretion of the Trustee Company.

On the death of your former spouse, after the pension has come into payment:

- i. A pension is payable to a surviving spouse, civil partner or dependant equal to 40% of the pension being paid to your former spouse at the time of death;
- ii. Children's pensions may be payable; up to two eligible children may each receive a pension based on a percentage of your former spouse's pension (disregarding any conversion of pension to lump sum); and
- iii. If your former spouse opted for a guaranteed pension and died within five years of it coming into payment, a cash sum would be payable at the discretion of the Trustee Company with the amount being specified by the scheme actuary.

What happens if my former spouse dies prior to the pension sharing order being implemented?

In the event of your former spouse's death after the pension sharing order has been issued, but before implementation, the death benefits payable will be specified as above, as if implementation had occurred immediately prior to death.

Allocation

If your former spouse has chosen the internal transfer, a part of the pension may be allocated to their nominated surviving spouse, civil partner or dependant. To do this, your former spouse must be over minimum pension age and must not have been receiving his/her own pension for more than a month. A quotation can be provided on request at the appropriate time.

Trivial commutation

If, when the benefits become payable to, or in respect of, your former spouse they are equivalent to a pension that is less than the trivial amount specified in the scheme rules, the Trustee Company may commute all of those benefits for a lump sum.

What happens if my former spouse retires early due to ill-health?

- (a) If your former spouse is also an active member of USS in his/her own right, in respect of which he/she became entitled to ill-health retirement, then early payment of benefits under the pension sharing order may also be allowed without actuarial reduction.
- (b) In some circumstances, the pension may be fully commuted if it is considered that your former spouse is suffering from serious ill-health and life expectancy is very short i.e. less than 12 months.

In either of these instances, USS may require your former spouse to have a medical examination at his/her own expense, but these are the only circumstances in which such a request would be made.

How are the pension debit and pension credit amounts increased?

Pension benefits in USS are subject to annual increases linked to increases in official pensions. Official pensions are pension schemes for public sector employers like the Civil Service, Teaching and NHS.

In USS, for service before 1 October 2011, increases match those provided by official pensions. For service since 1 October 2011, increases are matched up to 5% a year. If official pensions increase by more than 5% then half of the increase over and above 5% is applied, subject to a maximum of 10% in any one year.

The impact on pension debits and credits is as follows:-

Pension Debit – if made before October 2011 then all of the pension debit would be subject to increases that fully match those to official pensions. For debits made after 1 October 2011, the debit will be split between pre and post 1 October 2011 service and the increases applied as described above.

Pension Credit – if made before 1 October 2011, the pension credit will receive increases that fully match those to official pensions. For credits made since 1 October 2011, the increases will be as described above for service since 1 October 2011.

How does it work?

Example 1 – A current contributing member of the Final Salary section

The member's benefits earned up to the valuation date of the pension sharing arrangement will be:

Gross pension
= £5,625 a year

Plus a tax free lump sum of 3 x gross annual pension
3 x £5,625 = £16,875

The cash equivalent transfer value of these benefits will depend upon the age and sex of the member. For this example, the value is assumed to be £50,000 in total.

If the court specifies a pension sharing of 50%, then this would result in the following pension debits and credits (it is important to remember that the value of the debit at the date of implementation will increase only in line with price inflation up to retirement; the remaining and future benefits of the member will be based on pensionable salary at leaving/retirement).

Debit from member's benefits
A debit to the member's benefits of:

50% plus increases from the valuation date up to the date of payment of all the retirement benefits.

This translates into a pension debit of: £2812.50 a year (£5,625 x 50%)

A corresponding lump sum debit of: £8,437.50 (£16,875 x 50%)

And a spouse's/dependant's pension debit of: £1,406.25 a year (£2,812.50 x 50%)

Effect on benefits at retirement

If the member completes another 20 years' membership to their retirement date and the pension debit has increased by 50% since the pension sharing order was implemented, the benefits payable on retirement have increased to:

Gross pension
= £26,250 a year

Less pension debit of (£2,812.50 x 1.50 (debit increase)) = £4,218.75

£26,250 – £4,218.75 = a pension of £22,031.25 a year

Plus a tax free lump sum of 3 x gross annual pension
3 x £26,250 = £78,750

Less lump sum debit of (3 x £4,218.75) = £12,656.25

£78,750 – £12,656.25 = £66,093.75

Spouse's/dependant's pension = £11,015.63 gross a year (£22,031.25 x 50%)

Because, in this example, USS benefits increased faster than price inflation since the pension share was implemented, the effect at retirement is a reduction of 16% rather than at 50% the date the order was made.

This means that, in many cases, the impact for those closer to retirement may be greater.

It is possible for the member to increase benefits within HM Revenue & Customs limits by paying additional voluntary contributions, and this may be something the member would wish to consider to counteract the effect of the debit.

Former spouse

Based on factors taking account of the age and sex of the former spouse, a pension credit will be calculated on the transfer day that will provide a total benefit package which is equal in value to the agreed cash equivalent transfer value of £25,000 (i.e. 50% x £50,000).

In this example, it has been assumed that it results in a gross pension of £3,400 a year with associated ancillary benefits. This benefit will be reviewed annually to reflect the USS pension increase rules described earlier. If the pension increases by 60% over the next 25 years until the ex-spouse attains the normal pension age, this would result in the following benefits at retirement:

Gross pension
£3,400 x 1.6 (a 60% increase) = £5,440 a year

Tax-free lump sum

In this instance it is possible for the former spouse to convert a part of the pension for a lump sum as the member was not in receipt of USS benefits on the 'transfer day'. To ensure that the benefits are comparable to a standard member, the factor of 12:1 is applied to the pension credit (up to a maximum of 1/5th of your former spouse's pension) – this results in a pension and cash sum equivalent to 1/80th and 3/80th respectively as follows:

Maximum pension to be commuted for additional lump sum on 12:1 basis

$£5,440 \times 1/5 = £1,088$
(1/5th of your former spouse's pension)

Additional lump sum

$£1,088 \times 12 = £13,056$
(1/5th of your former spouse's pension x factor of 12:1)

Residual gross pension

$£5,440 - £1,088 = £4,352$ a year

If your former spouse then elects to commute a greater amount of pension for a greater amount of cash, up to a maximum of 25% of the Lifetime Allowance (LTA), the standard USS factor would be used.

Calculation of LTA

$£4,352 \times 20 = £87,040$ + the standard lump sum of
 $£13,056 = £100,096$

Maximum lump sum

$£100,096 \times 25\% = £25,024$

An example of the residual pension using the standard USS factors has not been shown as the factors are subject to regular review and will change from time to time. A quotation can be provided nearer to the time that the benefits are paid.

In the event of your former spouse's death prior to retirement, death benefits would be:

Spouse's/dependant's gross pension:

$(£3,400 \times 40\%) = £1,360.00$ a year

Plus pension increases

Cash sum:

$(£3,400 \times 2.4) = £8,160$

Plus pension increases

Children's annuities

Children's annuities may also be payable on the death of the member or the former spouse as appropriate, taking into account the pension debit or credit respectively. Children's annuities can be payable to up to two eligible children. The scheme classes children who are under age 18, or who have been in continuous full-time education since 18, as eligible for this benefit. The annuity would stop when they no longer fulfil the eligibility criteria.

How does it work?

Example 2 – A member in receipt of pension benefits

For a member who is in receipt of a retirement pension, the pension will be reduced by the appropriate percentage immediately on the order taking effect regardless of whether the former spouse is in receipt of his/her pension.

Charges levied for pension sharing orders

Under the pension sharing regulations, the Trustee Company may recover the administrative costs of providing information and implementing pension sharing orders.

The charges that have been levied are set out in the 'Schedule of charges' document which is available on the website. All fees will normally be payable in advance.



This publication is for general guidance only. It is not a legal document and does not explain all situations or eventualities. USS is governed by a trust deed and rules and if there is any difference between this publication and the trust deed and rules the latter prevail. Every effort has been made to present accurate information at the date of publication and members are advised to check with their employer contact for latest information regarding the scheme, and any changes that may have occurred to its rules and benefits.