

Divorce

The implications for your USS benefits

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

This factsheet refers only to 'divorce', but this should be read as including annulment of marriage and dissolution of civil partnerships. In addition, any reference to 'spouse' throughout this factsheet applies equally to civil partner.

It does not cover all aspects of the regulations and **scheme rules** that cover 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 and/or legislation, the rules or legislation will be overriding. Scheme rules and other information about USS can be found on our website at uss.co.uk.

This factsheet is intended as a guide for members, members' spouses, former spouses and any other interested parties. It's split into sections for your convenience, but you should read it all.

While the content focuses on USS members and the entitlements of your former spouse in respect of your USS pension, this factsheet does not provide legal or financial advice. You and your former spouse must seek your own advice when dealing with the pension aspect of the divorce.

Information for you and your former spouse

The courts may apply one of the following options for dealing with pension assets on divorce:

- **Offsetting**
- **Pension sharing**
- **Earmarking**

These options don't apply to your State Pension.

Offsetting

This is where a value is attached to your pension entitlement or that of your former spouse. This value is offset against other matrimonial assets, such as cash and property. It achieves a clean break, and means the pension isn't shared. In England, Wales and Northern Ireland, the total value of your pension benefits are taken into account. In Scotland, only the benefits you've built up during your marriage count.

Offsetting can be applied by the court, with the value of your benefits at the time of divorce being offset against the value of any assets held by you and your former spouse at the same time.

Should you choose offsetting, your former spouse will have no claim to your pension benefits, including death in service, because offsetting would already have achieved a clean break.

We don't need to be informed, if you choose offsetting: Because you'd maintain your full pension benefits, so there's no need to let us know. However, in this instance, we advise that you review your expression of wish and dependent nomination forms.

Pension sharing

Pension sharing – often referred to as pension splitting – splits pension benefits between a member and former spouse in a once-and-for-all clean break as determined by the court or, in Scotland, as agreed between the divorcees. It doesn't lapse on remarriage or death because your former spouse's benefits are independent of yours. It's the responsibility of the legal or financial advisers dealing with the divorce to determine the share.

If you're a USS member and you divorce before you retire: Pension sharing usually applies to all pension rights earned up to the time of divorce so, your former spouse isn't entitled to a share of benefits built up afterwards. If you've paid additional contributions to build up a USS Investment Builder pot, bought added years' pensionable service or additional pension and lump sum, these will be included in any pension sharing.

Likewise, if you've paid any additional contributions to the USS Money Purchase arrangement, which remains invested with Prudential, these will also be included.

If you're a USS member and you divorce after you retire: Pension sharing will apply to your pension in payment, and any USS Investment Builder pot or USS Money Purchase arrangement funds you haven't taken.

If you're the former spouse of a USS member: Once we receive a request from your former spouse or the court, asking for the cash equivalent transfer value of your former spouse's USS pension benefits, we'll issue all information in accordance with regulatory requirements – normally within 21 days.

You'd be entitled either to:

- A pension credit, which is an internal transfer within USS to receive benefits in your own right (**Note:** the pension credit will be calculated using the percentage of cash equivalent value you are awarded and is not a percentage of your ex-spouses pension value); or
- an external transfer to any other suitably approved pension arrangement that you specify, so long as that arrangement is able and willing to accept a transfer.

If you choose an internal transfer, we'll need:

- A statement indicating which of the following options is required for the pension:
 - payable with a five-year guarantee (where the balance of any pension, if you die within five years of retirement, may be payable as a lump sum); or
 - a higher pension, payable without a guarantee.
- Full details of any dependant(s) or other persons you would like to nominate for consideration by us if any cash sums become payable on your death. You can complete an **Expression of Wish** or **Register a potential dependant** using the forms available on uss.co.uk.

If you choose an external transfer, you'll need to provide us with details of the alternative pension arrangement. See our **transfer out page** on uss.co.uk.

Once you tell us which option you've chosen, we'll implement the pension sharing order (PSO) within four months. If you don't give us any instructions within 21 days of the date of the cash equivalent transfer value 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. However, you would be able to request an external transfer sometime in the future, subject to not being past 'normal benefit age' (currently age 65) as defined in the **scheme rules**. You should seek financial advice regarding the most appropriate option.

If you and your former spouse decide to seek a pension sharing order: You must tell us and make a request for information. We'll provide full details within 21 days. You should give us a draft copy of the order or agreement before it's finalised, so we can confirm that we can comply with the terms.

When you make a request for information: We'll respond to requests for information from you (or the court), by providing details of the cash equivalent transfer value of your USS benefits, together with full information complying with all regulatory requirements.

There's some other information we need to proceed with a pension sharing arrangement:

- A copy of the pension sharing order (or qualifying agreement in Scotland);
- evidence of the divorce (e.g. a copy of the decree absolute or declarator) to which the pension sharing order relates. Also, for a qualifying agreement, the basis by which it qualifies under the Welfare Reform and Pensions Act 1999 (section 28(3));
- full name, date of birth, national insurance number and contact address from your former spouse; and
- full payment of any charges.

Your reduced pension will be calculated: In accordance with the pension sharing order. A pension debit will apply to your benefits; it will be expressed as a pension and lump sum amount (for retired members, it's just as a pension amount and will be applied immediately upon receipt of the Pension Sharing Order). In most cases an over-payment of pension will need to be recovered in respect of the period from the effective date of the Pension Sharing Order to the date the deduction is applied. Your eventual benefits are then reduced by these amounts.

Your former spouse's pension will be calculated: As an internal transfer in USS under the terms of a pension sharing order (or a qualifying agreement in Scotland):

- Either a pension, with or without a five-year guarantee (your former spouse's choice), payable from age 65, which is the normal USS benefit age (your former spouse can request that benefits be paid from age 60, subject to a reduction); or
- your former spouse can choose to take a lump sum at his/her retirement date and receive a lower income, if you're not in receipt of a USS pension on the transfer day. This is calculated as $12 \times 1/5$ of the pension they would receive under the PSO, subject to HMRC Lifetime Allowance limits.

The actual amounts will be based on the value of the pension credit less any applicable charges, and a quotation can be provided nearer to the time that the benefits are paid.

Your former spouse can allocate his/her share of your USS benefits to someone else: If your former spouse has chosen the internal transfer, he/she can nominate a spouse to receive part of their pension credit. To do this, your former spouse must be above minimum pension age and must not have been receiving his/her own pension for more than a month. See the [allocation factsheet](#) on uss.co.uk.

When the former spouse of a USS member, who has chosen an internal USS transfer, dies:

	Benefits payable, if your former spouse has a USS Investment Builder pot or a money purchase AVC arrangement with Prudential	Cash Lump Sum	Surviving spouse pension payable to any spouse or civil partner of your former spouse	Pension payable to children of your former spouse, where a surviving spouse pension is payable	Pension payable to children of your former spouse, where there's no surviving spouse pension
If your former spouse dies before the pension comes into payment	A refund of your former spouse's USS Investment Builder or money purchase AVC entitlement would go to his/her nominated beneficiaries or under discretionary trusts.	2.4 times your former spouse's pension payable at our discretion. This would go to his/her nominated beneficiaries or under discretionary trusts.	The surviving spouse pension is 40% of your former spouse's pension entitlement.	If there are one or two eligible children, they would each get 30% of the former spouse pension. Three or more children would get an equal share of the total that would have been payable to two children (60% of the former spouse pension).	If there are one or two eligible children, they would each get 40% of the former spouse pension. Three or more children would get an equal share of the total that would have been payable to two children (80% of the former spouse pension).
If your former spouse dies after the pension has come into payment	A refund of your former spouse's USS Investment Builder or money purchase AVC entitlement would go to his/her nominated beneficiaries or under discretionary trusts.	There's no cash lump sum in these circumstances, unless the former spouse dies within 5 years of the pension coming into payment and opted for a guaranteed pension.	As above.	As above.	As above.

If your former spouse dies before the pension sharing order is implemented but after it's issued: The death benefits payable will be as above, as though implementation had occurred immediately prior to death.

Earmarking

What is earmarking?

When an earmarking (or special attachment) order's made by the court, the pension remains yours but we need to make one or a combination of the following payments to your former spouse when you retire or die:

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

If your former spouse remarries, any earmarking order against pension payments (but not necessarily lump sums) will automatically lapse and the full pension will be restored to you.

If you're a USS member and you divorce before you retire: An earmarking order made by the court before you retire would mean your former spouse would need to wait until after you retire to get any of your pension benefits.

If you're a USS member and you divorce after you retire: The court would send the earmarking order to us, and we'd implement it accordingly.

If you're a USS member and you divorce before you retire but die before retiring: Your former spouse will be entitled to a lump sum, as indicated in any earmarking order, but would no longer be entitled to a share of pension, as it is interdependent with yours and lapses on your death. In some instances, your former spouse could be entitled to a dependant's pension. See the [dependant's pension factsheet](#) on [uss.co.uk](#).

If you're a USS member and you divorce before or after you retire and die in retirement: Pension payments to your former spouse would lapse. In some instances, your former spouse could be entitled to a dependant's pension. See the [dependant's pension factsheet](#) on [uss.co.uk](#).

If you want to transfer your benefits out of USS and into another pension arrangement: Any earmarking order will also transfer.

You don't need to tell your former spouse when you intend to take your USS pension: When you apply for your pension benefits, we'll check whether any earmarking order is still valid and arrange for any payment to be made to your former spouse.

There's some information we need to proceed with an earmarking attachment:

- A copy of the attachment;
- evidence of the divorce (e.g. a copy of the decree absolute or declarator) to which the pension sharing order relates. Also, for a qualifying agreement, the basis by which it qualifies under the Welfare Reform and Pensions Act 1999 (section 28(3));
- full name, date of birth, national insurance number and contact address from your former spouse; and
- full payment of any charges.

If you're the former spouse of a USS member: Earmarking applies to you in the same way as to your former spouse. If you remarry (including a civil partnership), any earmarking order against your former spouse's pension payments (but not necessarily lump sums) will lapse. It's up to you to keep us informed of any changes of name, address and contact details.

FAQs

What is a 'clean break'?

A Clean Break Order is a legally binding order applied in divorce, which means your financial affairs are completely separated from those of your former spouse and that neither you nor your former spouse can have any future claim against the other's assets.

Is there a charge?

We'll recover any charges incurred for providing information requested, unless it's information that's normally provided under disclosure requirements which is free of charge (see [Divorce information charges](#) on the factsheet page of the [USS website](#)).

Can my former spouse request information?

Your former spouse and his/her legal or financial representatives are not entitled to details of your benefits, unless they have your signed authority.

What information will be issued by USS?

Once we have all relevant information, we'll let your former spouse know what options are available. We'll also recalculate your cash equivalent transfer value as at the date the pension sharing order takes effect, known as the transfer day. The cash equivalent is likely to be different to the original quotation because it's calculated as at the transfer day.

What is the transfer day?

The transfer day is the later of the date of the decree absolute, or the date by which any appeal against a pension sharing order can be made (usually 28 days after the order is made), or the completion of any appeal proceedings. In Scotland, if the parties have entered into a qualifying agreement, the transfer date will be the date of the decree of divorce. As the cash equivalent is recalculated assuming that your service is terminated on the day prior to the transfer day, it's important to note that the cash equivalent is likely to be different to the original quotation.

Are the pension debit and pension credit amounts increased?

Yes. Pension benefits in USS are subject to annual increases linked to increases in official pensions. Official pensions are pension schemes for public sector employees like the civil servants, teachers and NHS staff.

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

What if my pension benefits aren't worth a lot?

If, when they become payable to or in respect of your former spouse, the benefits are less than what the **scheme rules** define as a trivial amount, we may pay the full value of those benefits as a lump sum.

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

Usually, early retirement would result in benefits being reduced. However, if your former spouse is an active member of USS, and entitled to ill-health retirement, early payment of benefits under a pension sharing order may be allowed without reduction if taken at the same time.

In some circumstances, if your former spouse is an active member of USS, and is suffering from serious ill-health and life expectancy is less than 12 months, pension benefits may also be paid as a lump sum without any reduction. If your former spouse also wishes to take their pension credit benefits in the same way they would need to be taken at the same time.

In either of these instances, we 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.

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. 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. Any references to the Trustee or USSL in this document means Universities Superannuation Scheme Limited, the trustee company of Universities Superannuation Scheme and any references to the scheme or USS means Universities Superannuation Scheme. For a glossary of our terms please see more information on our [important terms](#) page.