



BCSSS

British Coal
Staff Superannuation Scheme

Member factsheet - Pensions on divorce, or on dissolution of a civil partnership

When a couple divorce or separate, or their civil partnership is dissolved, the court must give adequate consideration to the value of the pension rights of each spouse or partner. The solicitor(s) handling your divorce will guide you through the options and procedures, but this factsheet will help with understanding the options open to members of BCSSS who divorce, separate or end a civil partnership.

The information in this factsheet is not a definitive statement of law - you should always consult your solicitor before acting on the information contained here. It should also be noted that family law in Scotland is administered differently to the way it applies in England and Wales.

For simplicity it is assumed in this factsheet that the BCSSS member is male and his former spouse is female. The same position applies in reverse if a wife is the party with substantial pension savings, or it is a civil partnership. Therefore, please substitute

“husband” or “civil partner” for “wife”;

“dissolution, nullification or separation of a civil partnership” for “divorce”;

“civil partnership” for “marriage”; and

“civil partner” for “spouse” as applicable to your own arrangements.

In this factsheet we also only cover proceedings begun since the introduction of pension earmarking in 1996 and pension sharing in 2000. The factsheet details do not apply to members who have been divorced before those dates. Civil partnerships date, in the UK, from December 2005.

Putting a value on pension rights

The courts will value the pension rights of one or both parties by using the “cash equivalent” transfer value (CETV). This is the same value that applies if a member transfers his BCSSS pension to another scheme or arrangement.

Deferred members

We can provide a CETV to a Scheme member who has not yet retired on request, or to his and/or his wife’s solicitor (provided authorisation from the member is given in writing). There is a charge to provide more than one CETV in any twelve-month period, so for illustration purposes the solicitor may be content with a valuation issued within the last year.

Pensioners

Members who have retired or have reached age 60 don’t have a legal right to a CETV. A CETV, therefore, has to be specially commissioned and a fee would be payable to provide this information.

When asked to provide a CETV we will do so as quickly as possible, but in any event within the statutory timescale of three months. If a court order requires the information more quickly, we will try our best to do so.

Ways that pension rights can be divided

There are essentially three ways a court can deal with the division of pension rights when a couple divorce or separate:

- **Offsetting** – this offers a clean break for both parties, as assets of the same or similar value are allocated to the ex-spouse or civil partner (typically this could be the matrimonial home) and the pension remains with the member.

Solicitors will have a view on whether this is a fair way in which to share the property in the circumstances, as actual property and assets are quite different from pension income. If both parties have similar pensions then the value of one may come close to offsetting the value of the other without much impact on the division of other joint assets.

- **Earmarking** – the court can specify that the Scheme pays a percentage of the member’s pension to their former spouse by placing an order over the benefits that come into effect when the member retires, (or immediately if already retired), or dies. This option doesn’t offer a clean break as the spouse’s pension benefits remain linked to the member.
- **Pension sharing** – this offers a clean break as the member’s pension is split and an amount (as specified by the court) is transferred to a pension in their former spouse’s own name.

As “offsetting” has no effect on the BCSSS pension, we do not consider it further in this factsheet.

Earmarking (or “attachment”) orders

An earmarking order requires the Scheme to pay benefits to the former spouse, in the proportion specified by the court, when they become due to the member.

The earmarked proportion of the lump sum and/or pension will be paid to the former spouse on the member’s retirement. Therefore, it is important that the former spouse keeps the Scheme informed of any change to her address and bank details. If pension income is earmarked (under English law), then the relevant proportion of the pension will be paid until the earliest of the member’s death, or the former spouse’s remarriage or death.

Special considerations:

- The member with the pension rights will pay tax on all of the income including the part that is earmarked. Therefore, a 50% split of the pension in retirement will not necessarily mean that both parties receive the same amount. It is possible that solicitors might recommend a different split to take account of this difference in net pension after tax.
- Earmarking doesn’t provide the opportunity for a “clean break” which is recognised as an aim of divorce proceedings. The former spouse has to remain in touch with the Scheme, but more importantly, she has no control over when payment is made, or any options as to payment (such as exercising a lump sum option). If the former spouse is younger than the member, she could find the pension stops on the member’s death just as she is entering old age, arguably when she will need the pension most.
- If the order specifies that a lump sum is payable if the member dies before retirement, it will be paid. However, if the order is silent on that point, no benefits are payable to the former spouse if the member does not live to their retirement.

These issues could be overcome with good financial planning, but the parties may wish to discuss them with their solicitor. It is our understanding that if there is a change of circumstances after the order has been served, the parties can return to court to seek a variation of the terms of the original order, but a solicitor is best placed to advise you on that point.

Pension sharing orders

A pension sharing order is served by the court on the Scheme's Trustee. If the terms relating to the pension can be accepted, we will implement the order within four months of receiving all of the relevant information and costs.

In accordance with the order, a percentage of the member's pension value (as determined by the CETV) is transferred from the member to his former spouse.

His pension is then reduced by the percentage in the court order – this is the pension debit.

The former spouse then receives her share of the value awarded by the court – this is called the pension credit.

The credit must be used to provide pension benefits. This can be done in two ways:

An Internal Transfer

- The former spouse can become a member of the BCSSS in her own right, as a pensioner (if over retirement age) or as a “deferred” member, if under that age – a member whose pension is being held for payment at a later date. Pensions may be paid from age 50 (if the credit was in place before April 2006) or from age 55 (if the pension credit was put in place after April 2006). Pension taken before age 60 will be reduced for early payment.

Benefits will be calculated based on the age of the former spouse when they join the Scheme as a pension credit member. It is important to note that she will not receive the equivalent percentage of her former husband's pension – the transfer value is used to “buy” benefits in the same way as if the former spouse had transferred in her own pension value to the Scheme. We will provide a quotation of what benefits the Scheme will pay so the former spouse can decide whether to keep her benefits in the Scheme or take an external transfer.

An External Transfer

- The former spouse can take her pension credit and transfer it to her own existing pension plan – including that of her own employer (if she is a member of such a scheme and they are prepared to accept it) or to a new personal pension plan or stakeholder scheme.

We recommended that former spouses consider taking financial advice before deciding whether to keep her benefits in the Scheme or take an external transfer. The cost of any such advice will not be met by the Scheme.

Special considerations:

- Pension Sharing represents a “clean break”, but it is irrevocable. Once a pension has been shared, it does not revert to the member on the death of the former spouse or her remarriage.
- A former spouse can choose to transfer her pension credit to another scheme or arrangement where it will provide benefits on retirement. It may also provide benefits to dependants, or a new spouse, on death, which is not the case if the former spouse remains in BCSSS as a credit member.
- If the pension was shared before the member retired, then the former spouse will normally be entitled to take part of her pension as a cash sum. This is not allowed if the member’s pension was already in payment at the date of the pension sharing order.
- Each party is responsible for their own PAYE tax on their pension when it has been shared.
- When assessing the pension credit against the Lifetime Allowance for the purposes of determining any Lifetime Allowance Charge, it will need to be added to the pension from any other arrangements such as a personal pension or employer’s plan.
- The pension debit does not reduce the member’s own Lifetime Allowance, and so further saving is not restricted for tax purposes. However pensions taxation can be complicated, especially when either or both parties have a number of pension arrangements, so specialist financial advice may be needed to make sure that you take full advantage of the appropriate tax allowances.
- If the pension credit is kept in the Scheme, the credit member will have the same rights as other Scheme members to:
 - Stand for election as a Trustee
 - Vote in elections
 - Receive regular communications from the Scheme, including newsletters and statements
 - Use the disputes resolution procedure in the event of a complaint
- The member himself, after the order has been implemented, can build up further pension savings to make good the reduction, provided he is under age 75. However, the BCSSS is a closed fund so no contributions can be paid to the Scheme itself – on retirement, your pension accrued up to your leaving British Coal (or successor company in the BCSSS) will be reduced by the relevant proportion in the original pension sharing order.
- Pensions in payment, for both parties, and in deferment before retirement, are increased in line with the Retail Prices Index.

The court order

The Trustees have a right to see a court order in draft and raise an appeal if there is any aspect of the order with which it is not possible to comply. Correcting court orders can be expensive and time consuming, so we recommend that the Scheme is consulted on the drafting of the order in advance. We will try to be as helpful as we can in assisting with the production of an order with which the Scheme can comply.

Overseas court orders

Please note - the BCSSS is not able to comply with a pension sharing order issued by an overseas court. Scheme members divorcing abroad should consider taking specific legal advice before completing an overseas divorce if their BCSSS pension is to be earmarked or shared. If not, the overseas court order may have to be unpicked and a different form of settlement negotiated, which could be difficult and very expensive.

Charges

Certain transactions and information can only be provided on payment of a fee to the Scheme. If we don't charge to cover our costs other Scheme members would effectively be paying the charges, so this is something we have to do. A schedule of the charges, where payable, is attached to this factsheet. Please be aware that we will not generally begin work or accept a court order without the payment of all of the charges. Once payment has been received court orders will be implemented from the court order date.

Warning

Late payment of charges could result in the member's pension being overpaid! If the member is a pensioner their Scheme pension will continue to be paid at the full rate until we have all of the information needed and the fees are paid. Once received, the court order will be implemented from the court order date. So the member's pension will be reduced from the court order date and the respective proportion paid to the former spouse (including any arrears due). Any overpayment would then be recovered from the member.

How to get in touch with the BCSSS

For more information please see the Scheme's website: www.bcsss-pension.org.uk

Alternatively, you can contact the BCSSS administration office:

Telephone: 0333 222 0074

Email: BCSSS@capita.co.uk

Address:

BCSSS
PO Box 555
Stead House
Darlington
DL1 9YT

Please remember to quote your National Insurance / Scheme membership number.

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