



Aberdeen City Council
Pension Fund



ABERDEEN CITY COUNCIL

PENSION FUND

**Pensions and Divorce or Dissolution of a Civil Partnership
A Guide for Members of the LGPS**

**THE LOCAL GOVERNMENT PENSION SCHEME
(LGPS) – SCOTLAND**

[Scottish version, April 2009]

INFORMATION AND DISCLAIMER

The information in this booklet is based on the Local Government Pension Scheme (Scotland) Regulations 2008 (effective from 1st April 2009) and other relevant legislation. It applies to people who were contributing members of the Local Government Pension Scheme on 1st April 2009 or who have since joined the Scheme. The booklet was up-to-date at the time of publication in 2009. It is for general use and cannot cover every personal circumstance, nor does it cover specific protected rights that apply to a very limited number of employees. In the event of any dispute over your pension benefits, the appropriate legislation will prevail as this booklet does not confer any contractual or statutory rights and is provided for information purposes only.

The booklet explains how, as a member of the Local Government Pension Scheme, your pension benefits may be affected by a divorce or dissolution of a **civil partnership**. This booklet gives general guidance only to assist Scheme members and their spouses or **civil partners** who may be involved in divorce or nullity of marriage or dissolution of **civil partnership** proceedings. It is not a full statement of the law which governs the Scheme. The Pension Fund will provide information to you at various stages during the divorce, dissolution or annulment proceedings. Individuals should seek further information from their solicitors about the relevance of earmarking or pension sharing provisions in individual divorce, dissolution or annulment proceedings.

Where pension terms are used, they appear in **bold** type. These terms are defined in **PENSION TERMS EXPLAINED** at the back of this booklet.

Aberdeen City Council is your **administering authority**. This means that the Local Government Pension Scheme is administered locally by Aberdeen City Council who guarantee to pay pension benefits. To meet this guarantee, Aberdeen City Council controls the Aberdeen City Council Pension Fund, which is run completely separately from any other local government finances.

The Aberdeen City Council Pension Fund has over 50,000 members and has assets of approximately £1.6 billion. In addition to the three main Councils (Aberdeen, Aberdeenshire and Moray) there are over 50 other employers who have been admitted to the Fund.

More detailed information about the Local Government Pension Scheme is available from:

Aberdeen City Council Pension Fund
Pensions Section
AECC – 2nd Floor
Balgownie One
Conference Way
Bridge of Don
Aberdeen AB23 8AQ

Helpdesk: (01224) 814949
Fax: (01224) 814969
Email: Pensions@accpf.org.uk
Website: www.accpf.org.uk

INTRODUCTION

For many people, pension rights are one of their most important and valuable assets, and if your marriage or **civil partnership** ends these benefits have to be taken into account.

You may wish to get legal advice from your solicitor on how to deal with your LGPS benefits and you and your partner will need to consider how to treat your pension rights as part of any divorce/dissolution settlement.

What happens to my benefits if I get divorced or my civil partnership is dissolved?

- Your ex-wife, ex-husband or ex-**civil partner** will cease to be entitled to a widow's, widower's or **civil partner's** pension should you die before them.
- Any children's pension paid to **eligible children** in the event of your death will not be affected by your divorce or dissolution.
- If you have nominated your ex-wife, ex-husband or ex-**civil partner** to receive any lump sum death grant payable on your death, your Nomination will remain in place unless you change it. If you wish to change your Nomination of Beneficiary contact the Pension Fund for the relevant form. The Court may, however, issue an Earmarking Order stating that all or part of any death grant is payable to your ex-spouse or ex-**civil partner**.

What is the process to be followed?

You will need specific information about your LGPS benefits as part of the proceedings for a divorce, judicial separation or nullity of marriage, or for dissolution, separation or nullity of a **civil partnership**. You or your solicitor should contact the Pension Fund for this information, including an estimate of the cash equivalent value (CEV) of your pension rights. The Court will take this value into account in your settlement. In Scotland, only the pension rights built up during your marriage / **civil partnership** are taken into account.

You usually get one free CEV estimate each year. Any other costs for supplying information or complying with a Court Order will be recovered from you and/or your ex-spouse or ex-**civil partner** in accordance with a schedule of charges available from the Pension Fund.

You should send a copy of the decree of divorce or dissolution or separation, or declarator of nullity, to the Pension Fund as soon as it has been obtained.

All correspondence we receive in connection with divorce or dissolution proceedings will be acknowledged in writing. If no acknowledgement is received, please contact us again.

Additional information relating to divorces in Scotland

In Scotland, a couple often make 'Minutes of Agreement' to settle as many issues as possible before going to Court. This allows them to reach their own decisions (with legal advice) about the division of the matrimonial assets.

How the Court may proceed

The Court may offset the value of your pension rights against your other assets in the divorce/dissolution settlement, or it may issue a Pension Sharing Order or an Earmarking Order against your pension.

Offsetting pension rights

You can offset the value of your pension rights against the value of other financial assets in your divorce/dissolution settlement. For example, you could keep your pension, and your ex-spouse or ex-**civil partner** could get a larger share of the value of your house.

Pension Sharing Order

If the Court issues a Pension Sharing Order, or your benefits are subject to a qualifying agreement in Scotland, part of your benefits are transferred into your ex-spouse's or ex-**civil partner's** possession. They will keep that share even if your or their circumstances change. Your ex-spouse or ex-**civil partner** will hold those benefits in his or her own right. They can be left in the Scheme and are normally paid from age 65, or can be transferred to another qualifying pension scheme.

These benefits are known as a Pension Credit and will provide an annual pension, tax-free lump sum, and a lump sum death gratuity if your ex-spouse or ex-**civil partner** dies before their 75th birthday. They do not provide survivors' or children's pensions and cannot be increased by additional contributions.

Your pension and any lump sum will be reduced by the percentage allocated to your ex-spouse or ex-**civil partner** at the point of divorce/dissolution. The reduction to your benefits is known as a Pension Debit. The amount of the Pension Debit will be increased in line with the rise in the **Retail Prices Index** between the date it was first calculated and the date your benefits are paid. When your benefits are paid, the revalued amount of the Pension Debit will be deducted from your retirement benefits.

You may be able to top up your benefits by buying extra Scheme pension through **Additional Regular Contributions (ARCs)**, paying **Additional Voluntary Contributions (AVCs)**, or by paying into a concurrent personal pension plan or stakeholder pension scheme in order to make up for the benefits 'lost' following a Pension Share.

You can still transfer your remaining benefits to another pension arrangement on leaving the LGPS. If you transfer within the LGPS, your new fund will reduce your benefits by the Pension Debit at retirement.

In assessing the value of your benefits against the value of all the pension savings you are allowed before you become subject to a tax charge (the **lifetime allowance**), the reduced value of your benefits after the Pension Debit has been deducted will be used. If you are a high earner affected by the introduction of the **lifetime allowance** from 6 April 2006, a Pension Debit may affect any **primary lifetime allowance protection** or **enhanced protection** you may have.

Earmarking Order

If the Court makes an Earmarking Order, your LGPS benefits still belong to you, but some will have to be paid to your ex-spouse or ex-**civil partner** when your benefits are paid, reducing the amount paid to you. The Order can require that your ex-spouse or ex-**civil partner** receive one or a combination of the following:

- all or part of any lump sum payable to you, and
- all or part of any lump sum payable on your death.

When earmarked benefits become payable, the Pension Fund will contact your ex-spouse or ex-**civil partner** to check that the Earmarking Order is still valid and arrange payment of the earmarked benefits.

You can transfer your benefits to another pension arrangement on leaving the LGPS, as long as your new pension provider can accept the earmarking order.

Earmarking has limitations and is not widely used. As the pension rights remain with you, your ex-spouse or ex-**civil partner** must wait for you to retire or die before they can receive the earmarked benefits. If your former spouse or **civil partner** remarries or enters into a new **civil partnership** an Earmarking Order against pension payments, but not lump sums (unless the Order directs otherwise), would cease and the full pension would be restored to you. Pension payments to your former spouse or **civil partner** would cease on your death, although any earmarked lump sum death grant would then become payable to your ex-spouse or ex-**civil partner**.

What if I remarry or enter into a new civil partnership?

If your LGPS benefits are subject to a Pension Sharing Order and you remarry, enter into a new **civil partnership** or nominate a co-habiting partner to receive a survivor's pension, any spouse's pension, **civil partner's** pension or **nominated co-habiting partner's** pension payable following your death will also be reduced.

If you remarry or enter into a new **civil partnership** and then divorce or dissolve your **civil partnership** again, your remaining pension rights can be subject to further division, although a Pension Sharing Order cannot be issued if an Earmarking Order has already been issued against your LGPS pension rights. Similarly, an Earmarking Order cannot be issued if your pension benefits are already subject to a Pension Sharing Order in respect of the marriage / **civil partnership**.

For more information, or if you have a problem or question about your LGPS membership or benefits, please contact the Pension Fund. Our contact details are at the front of this guide. The national web site for members of the LGPS can be found at www.lgps.org.uk.

PENSION TERMS EXPLAINED

Administering authority - Your administering authority is Aberdeen City Council.

Additional Regular Contributions (ARCs) - ARCs are a method of buying extra pensions. They are deducted from your pay over a number of whole years. You can decide how long you want to pay them for, although you cannot pay for extra pension after age 64, and you can choose to stop paying at any time. If you leave (other than on the grounds of permanent ill health) before completion of the ARC contract you will be credited with the proportion purchased to the date of cessation. Should you be retired on grounds of permanent ill health or die in service while paying ARCs to increase your pension, the contributions will be deemed to be fully paid. For more information or a quotation contact the Pension Fund.

Additional Voluntary Contributions (AVCs) - If you choose to pay into an AVC arrangement, the contributions you make to it are invested separately, in funds managed by an insurance company or building society. At retirement the accumulated fund in your account is used to buy you an annuity. An annuity is a fixed amount of additional pension benefit, although you may be able to choose to include guaranteed annual increases and dependents' benefits. Alternatively, upon leaving the LGPS with an immediate payment of pension benefits you will be able to use your AVC account to buy a top-up pension from the LGPS, or use part to buy a top-up pension from the LGPS and part to purchase an annuity. At retirement, you may (subject to certain provisions) elect to take up to 100% of your in-house AVC as a tax-free lump sum if you draw it at the same time as your LGPS pension benefits. For more information or a quotation contact the Pension Fund.

Civil Partnership - A civil partnership is the legal recognition of a same-sex relationship, registered in the same way and with the same legal force as a marriage. It is ended by dissolution rather than divorce.

Eligible Children - Eligible children qualify for a benefit under the Scheme if you die. To be eligible they must be, at the date of your death, wholly or mainly dependent on you and:

- less than seventeen years of age, or
- under age 23 and in full-time education or in training for a trade, profession or vocation, or
- dependent by reason of incapacity which arose whilst an eligible child as defined above.

If a child who depended on you is under 23 and begins full-time education or vocational training after your death, the **administering authority** may treat that child as an eligible child, and may ignore a break in the education or training, although payment of the child's pension may be suspended during the break.

If your child is born 12 months or more after your death, that child is not eligible under the regulations.

Enhanced protection - See under **Primary and Enhanced Lifetime Allowance Protection**.

Lifetime Allowance - The total capital value of all pension benefits you can have in tax-registered pension arrangements - not just the LGPS - before triggering an excess benefits tax charge. If the value of your pension benefits when you draw them (not including any state retirement pension, state pension credit or any survivor's or children's pension you may be entitled to) is more than the lifetime allowance, or more than any **primary lifetime allowance protection** or **enhanced protection** you may have, you will have to pay tax on the excess benefits. The lifetime allowance is set by the Treasury; for 2009/2010 it is £1.75 million and thereafter until the end of the financial year in 2016 it will be £1.80 million. Most scheme member's pension savings will be significantly less than the lifetime allowance.

Nominated Co-habiting Partner - To be able to nominate a cohabiting partner, of either opposite or same sex, to receive a survivor's pension on your death, all of the following conditions must have applied to both you and your nominated co-habiting partner for a continuous period of at least 2 years on the date you both sign the nomination form:

- both you and your nominated co-habiting partner are, and have been, free to marry each other or enter into a **civil partnership** with each other, and
- you and your nominated co-habiting partner have been living together as if you were husband and wife, or **civil partners**, and
- neither you or your nominated co-habiting partner have been living with someone else as if you/they were husband and wife or **civil partners**, and
- either your nominated co-habiting partner is financially dependent on you or you are financially interdependent on each other.

You and your partner should be aware that on your death we will have to verify that the conditions for paying a survivor's pension have been satisfied. There is a right of appeal if we decide not to pay a pension and your partner believes that he/she has entitlement. For more information or to make a nomination contact the Pension Fund.

Primary and Enhanced Lifetime Allowance Protection – On 6 April 2006 HMRC introduced new tax rules for the treatment of pension contributions and retirement benefits. If the value of your pension benefits exceeded the **lifetime allowance** on 5 April 2006 you could register for primary protection, giving you a higher individual **lifetime allowance**. If you believed that the value of your pension benefits would exceed the standard **lifetime allowance** in the future you could register for enhanced protection, which would mean no tax on benefits in excess of the **lifetime allowance** provided your benefits have not increased since 5 April 2006 beyond certain limits. If you did not register with HMRC by 6 April 2009 you will not have this protection.

Retail Prices Index - This shows the changes in the cost of living. It reflects the movement of prices covering a range of goods and services over time. The amount by which pensions are increased annually is based on movement in the Retail Prices Index during the 12 months to September.