

# Pension Benefits on Divorce



There are three pension schemes for members of the Armed Forces. The first was introduced in 1975 and was closed to new entrants from 6 April 2005. This is known as AFPS 75. On 6 April 2005 two new schemes were introduced. From that date those joining the Regular Armed Forces were eligible to become members of the Armed Forces Pension Scheme 2005 (AFPS 05) and those joining Full Time Reserve Service (FTRS) were eligible for membership of the Reserve Forces Pension Scheme (RFPS). Members of AFPS 75 were given the opportunity to transfer to AFPS 05 from 6 April 2006. Members of AFPS 75 – FTRS (part of AFPS 75) were also given the opportunity to transfer to RFPS from this date.

This booklet is intended to assist members of AFPS 75, AFPS 05 or RFPS who are currently going through the process of divorce or may do so in the future. It guides you through the pensions implications of divorce, the steps which the scheme administrators may be required to take as part of any divorce settlement and the administrative charges that may need to be paid as a result. It does not attempt to advise you on the best options available given your particular personal circumstances. This booklet refers throughout to arrangements following a divorce. However, with the commencement of the Civil Partnership Act (CPA) 2004, similar provisions will apply when a civil partnership is dissolved.

This booklet provides a straightforward guide to the implications of divorce for your pension benefits. There are some special terms that you need to know: you can find them on pages 2 to 6 and refer to them as you go along. They appear in ***bold italics***.

**IMPORTANT: This booklet provides only a summary of some of the rules of the relevant schemes, more details relating to AFPS 75 are contained in the Order in Council made under the Naval and Marine Pay and Pensions Act, the Army Pensions Warrant, and the Queens Regulations for the Royal Air Force. More details relating to AFPS 05 and RFPS can be found in Joint Service Publication 764. These are not a full explanation of the rules and are not the legal basis for any entitlement under the schemes. If there are any differences between the rules and an explanation in this booklet, the rules will be followed.**

**This booklet provides only a summary of the rules relating to pensions on divorce. It is not a full explanation of the law.**

**In addition, this booklet does not give you financial or legal advice. If you want financial or legal advice you should seek independent advice. Unit administrative or personnel staffs can offer information and an explanation of benefits, but will not take responsibility for your pensions decisions. They will be able to let you have a list of Services Insurance and Investment Advisory Panel approved independent financial advisers, although you are free to use any independent financial adviser that you wish.**

## ***FINDING YOUR WAY ABOUT THIS BOOKLET***

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## TERMS YOU NEED TO UNDERSTAND

Here is a list which explains the meaning of some special terms used in this booklet.

### Added Years

An arrangement in which a member makes contributions to buy extra years of service to reckon in the calculation of his/her final pension and lump sum and/or that of his/her dependants.

### AVCs – Additional Voluntary Contributions

Tax deductible payments made by an individual to enhance his/her income in retirement or death benefits.

### AFPAA – Armed Forces Personnel Administration Agency

They are the pensions schemes' administrators.

### AFPS 75 – Armed Forces Pension Scheme 1975

AFPS 75 is the pension scheme for Service personnel which was introduced in 1975 and was closed to new entrants from 6 April 2005. Personnel who were serving before 6 April 2005 and still serving on 6 April 2006, who were in AFPS 75, were given the opportunity to transfer to AFPS 05.

### AFPS 75 – FTRS – Armed Forces Pension Scheme 1975 – Full Time Reserve Service

AFPS 75 – FTRS was incorporated into AFPS 75 in 1997 to cater for pensions in respect of FTRS personnel. Personnel who were serving before 6 April 2005 and still serving on 6 April 2006, who were in AFPS 75 – FTRS were given the opportunity to transfer to RFPs.

### AFPS 05 – Armed Forces Pension Scheme 2005

This is the pension scheme for Regular Service personnel. It is effective for new entrants from 6 April 2005 and from 6 April 2006 for Service personnel who were in service on that date and who elected to transfer from AFPS 75 as a result of the Offer To Transfer.

### Attributable Benefits

Benefits that are paid when a Service person is injured, becomes ill or dies where the condition or death is caused by service in the Armed Forces.

### Civil Partner

An individual who has formed a legally recognised partnership with

another person of the same sex under the procedure provided by the Civil Partnership Act (CPA) 2004. If the civil partnership is legally dissolved, the former civil partner is not eligible to receive a pension.

### **Civil Partnership**

An arrangement under which same sex couples can enter into a legally recognised partnership under the procedure set out in the Civil Partnership Act 2004.

### **CETV – Cash Equivalent Transfer Value**

A payment (reflecting the value of the rights an individual has in that scheme) made from one pension scheme to another to buy benefits in the receiving scheme. This transfer may only be made, at the individual's request, when he changes from one pension scheme to another.

### **Dependants**

For AFPS 75 and AFPS 75 – FTRS members – a member's spouse, civil partner or eligible children and, for attributable benefits only, an eligible partner.

For AFPS 05 and RFPS members – a

member's spouse, civil partner, eligible partner or eligible children.

### **EDP – Early Departure Payments**

Payments to personnel who leave service before age 55, after a minimum of 18 years' service AND who are at least age 40 (the EDP 18/40 Point). Payments are made up of a tax-free lump sum equal to three times the value of the preserved annual pension and an income payment equal to at least 50% of the preserved pension. EDP income ceases at age 65 when the preserved pension and tax-free pension lump sum become payable. Members of AFPS 75 and RFPS are not eligible for EDP.

### **Earmarking Order**

A court order made as part of a divorce settlement instructing the scheme to pay all or part of a member's pension and/or tax-free pension lump sum to the member's former spouse when these benefits become payable in the future. The same arrangements will apply when a civil partnership is dissolved. These orders are sometimes known as "Attachment Orders" when the member's pension is already in payment at the

time of the order. However, they will be referred to as “Earmarking Orders” throughout this booklet.

### Eligible Child

AFPS 75 and AFPS 75 – FTRS members – a child whose parents were married when he or she was born provided he or she was born no later than 12 months after the member’s death. In certain circumstances the definition can include:

- a child whose parents are not married when he or she is born, a stepchild or an adopted child (further details on eligibility can be obtained from AFPAA);
- in all cases the child must be dependent on the member and 16 or under or receiving full-time education or training, or not able to support him or herself due to disability.

Children born of a relationship entered into after the member leaves the Armed Forces are NOT eligible for benefits.

AFPS 05 and RFPS members – a natural child and any child who is financially dependent on the member, who is:

- under 18, or
- in full-time education or vocational training and is under 23, or
- unable to engage in gainful employment because of physical or mental disability which began before the age of 23.

This includes children born within one year of the member’s death.

### Former Spouse

A member’s former husband or former wife after they have divorced or their marriage has been annulled.

### Index-Linking

Annual increase in pension value in line with movements in the Retail Prices Index (RPI). Changes are made in April, using the previous September’s annual headline rate of inflation. All ill-health pensions, pensions and dependants’ pensions are index-linked from the date of payment. Preserved pensions are index-linked using prices since the date of leaving the Armed Forces.

For AFPS 75 members – the Immediate Pension is not index-linked until age 55.

For AFPS 05 members – Early Departure Payments are not index-linked until age 55.

### **Member**

A person who has joined one of the Armed Forces pension schemes and who is earning benefits under one of the schemes, has a preserved pension under one of the schemes or is receiving a pension under one of the schemes.

### **Pension Credit**

The rights arising from a share of the value of a scheme member's pension rights as the result of a Pension Sharing Order.

### **Pension Debit**

The reduction of a scheme member's pension rights by a certain percentage as a result of a Pension Sharing Order.

### **Pension Lump Sum**

A one-off tax-free lump sum equal to three times the annual pension awarded. The pension lump sum is paid in addition to the pension when the pension first comes into payment.

### **Pension Sharing Order**

Creating pension rights for a former spouse out of the benefits in the scheme which the member has built up at the time that the Pension Sharing Order is made. The share will depend on the percentage specified in the Pension Sharing Order. The same arrangement will apply to the sharing of benefits when a civil partnership is legally dissolved.

### **Preserved Pension**

A pension which is kept for a member leaving the Armed Forces after a minimum of two years' service or a transfer in from another scheme, but before becoming eligible to receive a pension immediately.

For AFPS 75 and AFPS 75 – FTRS members who have not reached the Immediate Pension Point – the preserved pension is payable from age 60 for service built up before 6 April 2006 and payable from age 65 for service built up from this date.

For AFPS 05 and RFPS members – the preserved pension is payable from the age of 65.

### Reckonable Service

Reckonable service is the service which is used to calculate a member's pension:

For AFPS 75 and AFPS 75 – FTRS members – for officers this starts at age 21 for a maximum of 34 years and for other ranks this starts at age 18 for a maximum of 37 years.

For AFPS 05 and RFPS members – this starts from the first day of paid service in the Armed Forces, but may not exceed 40 years.

The value of any pension benefits transferred in from another scheme increases the service which counts towards a member's pension, as does a credit resulting from the purchase of added years. For those who transferred from AFPS 75 as a result of the Offer To Transfer, their service under AFPS 75 will count too.

### RFPS – Reserve Forces Pension Scheme

Those who start or restart on Full Time Reserve Service (FTRS), including Additional Duties Commitment (ADC) terms, on or after 6 April 2005 will automatically be members of RFPS. Personnel mobilised under Parts 4, 5 or 6 of the Reserve Forces Act 1996 (or corresponding provisions of the Reserve Forces Act 1980) from that date may choose to become members of RFPS. Those in service before that date and still in service on 6 April 2006, were given the opportunity to transfer to this scheme.

### RPI – Retail Prices Index

This is published monthly to measure the change in price levels. Used to increase the value of pensions in April.

### Scheme Managers

Service Personnel Policy (Pensions), an MOD branch, manages the Armed Forces pensions' schemes.

### Spouse

A legally married (including separated, but not divorced) husband or wife.

## BACKGROUND

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The courts have powers to take account of pensions in divorce settlements. In the past courts have simply been able to take account of the value of a pension by offsetting it against other assets belonging to the divorcing couple. Since 1996 courts have been able to directly deal with a pension by making an **Earmarking Order** so that one member of a divorcing couple receives payments out of the pension belonging to the other member.

Since 1 December 2000, the Courts have additionally been able to award a **pension credit** (the right to a certain percentage of the value of the pension at the time of the divorce) to the **former spouse** with an equivalent reduction in the **member's** pension. In this way a financial "clean break" is achieved and a pension created for the former spouse in their own right. This is known as pension sharing.

The Civil Partnership Act (CPA) 2004 makes provision for same sex partners to register their relationship. By doing so, they become entitled to similar treatment

as a married couple in relation to pension entitlements. This booklet refers to spouses throughout because at the time of writing the Act had not been commenced, but it is expected that the courts will follow the procedures set out in the pages that follow in the event of a **civil partnership** being dissolved. Pension benefits for **civil partners** will be in respect of service from April 1988.

# EARMARKING ORDERS

Courts in England, Wales and Northern Ireland can make **Earmarking Orders** with respect to your benefits as a member of **AFPS 75**, **AFPS 05** or **RFPS**. Provided these comply fully with the law, they are binding on the scheme administrators. The Earmarking Orders are as follows:

- An order requiring **AFPAA** to pay part or all of your pension to your **former spouse** if and when the pension becomes payable.
- An order requiring AFPAA to pay all or part of your **pension lump sum** to your former spouse if and when it becomes payable.
- An order requiring AFPAA to pay part or all of any lump sum death benefit to your former spouse, if and when, you die in service.

Such orders can be varied by subsequent court orders, as circumstances change, and can be used where a “clean break” is

impractical at the time of the divorce.

AFPAA can make representations to courts about whether an Earmarking Order should be made in a particular case.

## How the Process Works

There are three stages in the earmarking process:

- Getting the information
- The court order
- Paying the earmarked pension

### Stage 1: Getting the Information

In deciding whether an application for an Earmarking Order may be appropriate, the court may need information about the benefits you are due as a scheme **member**. Detailed information can only be disclosed to you, as a scheme member, or to your solicitor.

Your **spouse** (or their solicitor) can only request general information about the scheme. You, as the **member**, are legally entitled to ask for information about the scheme and your benefits under it. You can obtain a benefit statement giving specific details of pension benefits you have earned by contacting **AFPAA**. (See page 22 for address.)

You can also ask for an estimate of the Cash Equivalent Transfer Value (**CETV**) which will tell the court what your pension benefits are worth when considering all the assets relating to the marriage. This provides a convenient way of assessing the capitalised value of your pension benefits relative to other assets of the marriage (eg a house). In asking for a CETV estimate, you should say that this request is in connection with divorce proceedings.

You are entitled to one benefit statement per year and, unless you have completed enough service to qualify for an Immediate Pension (under **AFPS 75**), one CETV estimate per year. These will be free

of charge. You will be charged for any additional information supplied.

AFPAA must provide the information not later than three months after the request for an estimate. They may recover the reasonable cost of providing the information from the member. Where a charge is made, AFPAA require payment before their work commences. The scale of charges, which is reviewed periodically, is available from AFPAA.

Early Departure Payments (**EDP**) are not included in the CETV although, if you are in receipt of them, you will have to disclose details about them, along with other financial information.

The rules applying to pensions on divorce in Scotland are different from those which apply in England and Wales and are described in a separate section of this booklet (see pages 16 to 20). Divorce law in Northern Ireland is broadly similar to that in England and Wales, so for the purposes of this booklet, the procedures explained on pages 8 to 15 apply to Northern Ireland.

## Stage 2: The Court Order

When applying to the court for an **Earmarking Order**, the person making the application (or their legal representative) must serve notice of the application on the scheme. This must be done in writing to **AFPAA**.

The court can order that your **former spouse** receives:

- all or part of your pension;
- all or part of the **pension lump sum**;
- all or part of the lump sum paid if you die in service;
- all or part of any benefits that you may have bought through Additional Voluntary Contributions (**AVCs**).

Court orders should be forwarded to AFPAA (see page 22 for address). The court order must be received by AFPAA at least ten working days before the date of entitlement to the benefits it authorises. Because it may be many years between the divorce

and the time the pension comes into payment, your former spouse must make sure that AFPAA are kept informed of any changes of name or address. MOD is not in a position to monitor the status of your former spouse to ensure that his/her circumstances are unchanged, so AFPAA must be informed if he or she remarries.

In the event of your former spouse's remarriage, Earmarking Orders against monthly pension payments (but not lump sums) will cease automatically. If your former spouse dies before your pension benefits come into payment no payments will be payable to them or their estate.

## Stage 3: Paying the Earmarked Pension

AFPAA will only make payments to your former spouse where specifically directed by a court order and only so far as the scheme rules and relevant legislation allow. Without a valid Earmarking Order from a court, AFPAA will continue to make payments to you.

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A few weeks before you are due to retire, **AFPAA** will contact both you and your **former spouse** to check that the **Earmarking Order** is still valid and to obtain bank details for payment purposes. Payments will be deducted from your pension after tax.

If you die after leaving service, no periodic payments will be made after your death, but any order against the **pension lump sum** is not normally affected.

AFPAA must issue a notice to you and your former spouse containing information such as the value of the pension rights and the amount of pension payable after an Earmarking Order has been implemented.

If you die in service after the divorce, no periodic payments to you or your spouse will be made, but any part of the order that earmarks your death-in-service lump sum will not normally be affected.

If your former spouse remarries whilst you are still serving, no periodic payments will be made to him or her, but any part of the order that earmarks your pension or death-in-service lump sums will not normally be affected.

## PENSION SHARING

Pension sharing involves the division of pension rights at the time of divorce. The procedure followed is the same three-stage process as that for an **Earmarking Order** (see page 8).

**Pension Sharing Orders** cannot be used in cases of judicial separation and, once implemented, cannot be varied. In England and Wales under the pension sharing regulations, a court may order that a percentage of the value of your benefits (valued at a specified date close to the date of the order) are transferred permanently to your **former spouse**.

This percentage is applied to the following elements of your benefits to create a **pension debit**:

- pension, including in-scheme **AVCs**;
- **pension lump sum**;
- **spouse's** or **civil partner's** pension for any future spouse or civil partner you may have. For AFPS 05 and RFPS only, an eligible partner's pension would be affected too.

The percentage figure is then applied to your **CETV** at the valuation date to calculate your former spouse's **pension credit**. The pension credit is converted into a pension and, if you are not already receiving your pension, a lump sum. Benefits are payable to your former spouse as below:

- If you are a member of **AFPS 75** and the Pension Sharing Order is made before the increase in the preserved benefits age on 6 April 2006, your former spouse will receive benefits at age 60 or when the order takes effect if that is later. If the Pension Sharing Order was made on or after 6 April 2006, payments to your former spouse will begin when they reach age 65 or when the order takes effect if that is later.
- If you are a member of **AFPS 05** or **RFPS**, your former spouse will receive benefits at age 65 or the date the order takes effect if that is later.

## It is your former spouse's responsibility to claim the pension.

If you are purchasing **added years**, those you have bought up to the day before the date of the divorce will be included in the **CETV** calculation.

If you have pension rights earned during service on Full Time Reserve Service (FTRS) terms as well as from Regular service, your FTRS rights will be valued separately and two CETVs will be provided. Both will be subject to any **Pension Sharing Order**.

## Your Former Spouse's Pension Credit

When a Pension Sharing Order is made, your **former spouse** becomes a special category of scheme **member** known as a **pension credit** member. If they are a serving or ex-serving member of the scheme in their own right, their pension credit does not affect their own pension (or **AVC**) rights under the scheme.

Your former spouse's pension credit award attracts full **index-linking** – ie it is re-valued annually in line with increases in the Retail Prices Index (**RPI**) to ensure that it retains its purchasing power over time. Your former spouse has no right to transfer his/her pension credit rights to another pension scheme or arrangement, nor will he or she be permitted to purchase added years or to inversely commute (exchange all or part of any lump sum which may be part of the pension credit) any lump sum payable. No **dependants'** benefits flow from a pension credit.

Pension Sharing Orders are unaffected by the death of either party in a divorce case, once the sharing arrangement has been implemented. Unlike **Earmarking Orders**, Pension Sharing Orders are also unaffected by the subsequent remarriage of your former spouse. This is because, once a Pension Sharing Order is made, your former spouse becomes a member of the pension scheme in his or her own right. However, if he or she dies before you, your pension will not be restored to its original level.

## Your Pension Debit

While you are still serving, a notional reduction of your benefits will be recorded on your file at the time the **Pension Sharing Order** comes into force, though no actual reduction takes place at that time. You will continue to earn pension rights for your service after the divorce, but these will not form part of the **pension credit** rights awarded to your **former spouse** and you will not have to share these with him or her.

When you leave the Armed Forces, your pension will first be calculated as though the pension share had not taken place, then the reduction that was recorded at the time of the pension sharing exercise will be applied. This is worked out by increasing the amount awarded to your former partner in line with inflation and taking it away from your pension, calculated in the normal way.

### Example - AFPS 05

A Servicewoman (salary of £20,000) who has 15 years' reckonable service at the point of her divorce, who is ordered to pay 50% (ie 7½ years) of her pension accrued for this period to her ex-husband, would have her pension file annotated with the amount of the sum to be debited as a result of the Pension Sharing Order. In this example the sum to be debited is £2,143.

If she served for a further 15 years, leaving with final pensionable pay of £30,000, her pension would be worked out as follows (assuming RPI at 2% pa compound):

$$(30 \times 30,000 \times \frac{1}{70}) \text{ less } (2,143 \text{ increased by } 2\% \text{ pa compound for } 15 \text{ years}) = 12,857 - £2,884 = £9,973$$

Thus the Servicewoman's annual pension would be £9,973 and it would be this sum that the pensions of any eligible dependants would be based on in the event of her death.

If you leave the Armed Forces with an entitlement to a preserved

pension, payable at the age of 60 or 65 or a combination of the two (depending upon which scheme you belong to and whether you have served before and after 6 April 2006), the reduction is made at the time that the **Pension Sharing Order** comes into force and you are awarded a **preserved pension** reduced in accordance with the Pension Sharing Order. When the pension becomes payable, this reduced award will be uprated in line with the annual increases in the **RPI** that have taken place since you left the Armed Forces.

If your pension is already in payment at the time of the divorce, you will receive a reduced pension from the date the Pension Sharing Order comes into force. The reduced pension will be uprated in line with the RPI in the normal way.

The benefits of any future **spouse, civil partner or eligible partner** will be based on the member's entitlement, less the amount awarded to the former spouse (after adjustment for RPI). This means that,

using the example on the previous page, if that Servicewoman remarried, on her death her husband will receive a pension based on a member's entitlement £2,884 lower than it would have been if she had not had her pension reduced by a Pension Sharing Order.

## Eligible Children's Benefits

In the event of your death, your **eligible children** will not lose any part of their current or future entitlement to survivor benefits following a divorce.

For further information about children's benefits, **AFPS 75** members should see the booklet "**Family Pension Benefits**" – **MMP/114**. Members of **AFPS 05** should see "**Family Pension Benefits**" – **MMP/126**, and members of the **RFPS** should see the booklet "**Reserve Forces Pension and Compensation Benefits**" – **MMP/123**.

## SCOTTISH LAW

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This chapter explains how your pension rights could be affected by divorce, where the financial settlement is decided by a Scottish court. There are four main points of difference from English law that are contained in Scottish law on pensions on divorce:

- Scottish law sets out a definition of matrimonial property (see below) that needs to be quantified by you and your **former spouse**, or the court.
- Your pension rights will be that part of those rights that you earned or purchased during your marriage up to the date on which you ceased to cohabit as husband and wife; or the date on which the summons was served in the action for divorce, if you continue living together.
- If you can agree with your former spouse that your marriage ended on a date more than 12 months before the divorce, then **AFPAA** will

supply you with a valuation of benefits as at that date. If you do not nominate a date, or the one you supply is less than 12 months before you request a valuation, AFPAA will supply a current valuation.

You will need to obtain from AFPAA a calculation of the value of your pension rights that you claim fall within the definition of matrimonial property, using a special formula, and disclose this to the court.

### Matrimonial Property

Under Scottish law, matrimonial property is defined as all the property belonging to the couple jointly or separately at the date on which they cease to cohabit as husband and wife. Alternatively, it is the date when divorce proceedings were started, if the couple continue living together. (This date is known as the relevant date.) For pension purposes, matrimonial property includes the portion of any rights or interest of either **spouse** under an

occupational pension scheme earned during the period of marriage before the relevant date.

## Valuation of Pension Rights

If you intend to seek or defend a divorce case in a Scottish court, you need to:

- submit a request for the valuation of your pension rights to **AFPAA**; (see page 22 for address)
- notify the scheme if a relevant date for the valuation is appropriate.

On receipt of your request, AFPAA will be required to provide you or your legal representative with a statement of the value of pension rights held for your benefit as at the relevant date. In order to carry out the necessary calculations, AFPAA will classify you in one of the following four ways:

1. Benefits for service of less than two years (AFPS 75 and AFPS 05 only). If, at the relevant date, you have completed less than two years' **reckonable service**, then your pension rights will have no value at all, unless by that date you have purchased additional benefits giving a total of two years or more – either by transfer of benefits from another pension scheme, or by purchasing **added years**.

2. Serving Member. If you were still in pensionable service on the relevant date and have more than two years' reckonable service in **AFPS 75** or **AFPS 05** or any reckonable service in **RFPS**, your benefits will be assessed on the assumption that you left service on the relevant date or the day your request for a valuation was received. Your pension will be calculated using:

- For **AFPS 75** members – your rank for pension purposes as it was on that day (even if you have subsequently been promoted, reduced in rank or discharged) and,

- the pension rates in force on that day (even if they have subsequently been revised) and,
- the **reckonable service** you had completed up to that day (even if you have completed more since then) or,
- for **AFPS 05** and **RFPS** members – your final pensionable pay (ie the greatest amount of pensionable earnings received for 365 consecutive days over the last three years of service. Pensionable pay comprises basic pay including the X factor but excluding allowances, bonuses, financial retention incentives, loan service pay, bounties and any form of specialist pay) and,
- the reckonable service you had completed up to that day (even if you have completed more since then).

3. Deferred Member. If, at the relevant date, you have been discharged with **preserved pension** rights,

then your benefits will be assessed as they were at the date of valuation.

4. Pensioner. If, at the relevant date, your pension was in payment, then the value of your pension rights will be assessed as they were at the relevant date.

## Calculating the Pension Value

The law requires that the value of the matrimonial element of your pension is calculated using the formula  $A \times (B \div C)$  where:

A is the value of your pension rights, calculated as at the relevant date.

B is the period of your membership of the scheme before the relevant date which falls within the period of your marriage to your **former spouse**; where there is no such period, the value of B is zero.

C is the period of your membership of the scheme before the relevant date.

To assist you with this calculation, **AFPAA** will supply you on request with the following:

- the cash equivalent value of A (based on the relevant date, or the current date).
- the period at C (expressed in years and days) up to the date at A.

The third value, B, is one best known and defined by you in agreement with your **former spouse**.

## Deciding the Financial Settlement

Scottish law provides the same legal tools for the financial settlement as those available to courts in England and Wales. However, where an **Earmarking Order** or **Pension Sharing Order** is being considered, the method of implementation is slightly different.

## Earmarking

As in English law, the court may earmark any of the pension benefits that may fall due to you in the future. However, orders made in Scottish courts may nominate a sum of money to be paid to your former spouse, in preference to a percentage of the maturing benefit. Where they choose to do that, the value of the earmarked sum will have no built in inflation factor, unless this is specified in the order. For example, the order could require that the sum is inflated in line with the **RPI** or that any other method to safeguard its value is used.

If a court directs that a percentage of the benefit is to be earmarked, then this will be a percentage of the maturing benefit. This would, therefore, include any additional scheme benefits you may earn or purchase after the relevant date and up to the date you qualify to receive them.

## Pension Sharing

As in English law, the court could make a **Pension Sharing Order**. The main difference is that the Scottish court may direct that your **former spouse's** share should be initially defined in the order as a sum of money. That sum may be determined in the process of dividing all other matrimonial property. Since this may involve some offsetting of the value of other assets, it is quite possible that the final pension share could be just a small proportion of your pension. Yet **AFPAA** will be required to make a pension sharing arrangement within four months of receipt of the Order. This would mean:

- recalculating the current **CETV** value of all your benefits held in the scheme, but this time showing the total value as at the sharing date;
- calculating the proportion (to the nearest full percentage) of the above that is represented by the sum of your former spouse's share (shown in the

court order) in this way:

- if the whole value of your pension at the sharing date was £200,000, and
- the court order showed your former spouse's share to be £50,000, then the proportion of your pension rights represented by his or her share would be  $50,000 \div 200,000 \times 100\% = 25\%$

The arrangements for giving a 25% pension share to your former spouse would then be the same as under English law.

## ADMINISTRATION AND COSTS

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All pension providers are required to supply services to their **members** who are involved in divorce cases. Because no additional public money has been made available to implement these provisions, the law permits the scheme's reasonable administrative costs to be met directly by members who use these services.

No charges may be raised for any service which the member already has a right to receive free. The scheme has an obligation to inform the member that a charge will be made before providing any additional service(s).

### Charges

In some cases, the court order will make provision for the scheme's charges for administration costs to be apportioned between the two divorcing parties. In these cases, **AFPAA** will raise charges against both yourself as the scheme member and against your **former spouse** according to the percentages laid down in the court order. In cases where no such provision has been made, the administrators may

recover charges entirely from yourself. The levels of these charges, which are subject to periodic review, are available from AFPAA.

### Invoicing Procedure

AFPAA will raise an invoice and send it to the scheme member or to a person designated in the Court Order. Payment is to be made (within 21 calendar days) to the address shown on page 22.

### Complaints Procedure

Any person who receives an invoice for services supplied under this charging arrangement may make a complaint in relation to a charge. In the first instance such complaints should be presented in writing to AFPAA.

Complaints will be investigated immediately. Where the complaint cannot be resolved following investigation by **AFPAA**, further appeals may be heard using the Internal Disputes Resolution Procedures (IDRP). See the MOD internet and intranet sites shown on page 23 for further information about these procedures.

## FURTHER INFORMATION

If you have any queries about issues raised in this booklet, please contact your unit administration office in the first instance. In addition, the Armed Forces Personnel Administration Agency (**AFPA**) is also on hand to answer questions. They can be contacted at the following address:

Pensions Division  
Mail Point 480  
Kentigern House  
65 Brown Street  
Glasgow  
G2 8EX

Phone: 0800 085 3600  
(enquiry service)  
Military: 94561 3600  
EMail: [afpaa-pensions-div@  
dial.pipex.com](mailto:afpaa-pensions-div@dial.pipex.com)

### Other Booklets in this Series

Your unit administrator can obtain these booklets from DSDC (Llangennech) by quoting the relevant MMP number.

Relating to **AFPS 75**:

- **Your Pension Scheme Explained – MMP/104**
- **Commutation – MMP/107**
- **Family Pension Benefits – MMP/114**
- **Invaliding – MMP/115**

Relating to **AFPS 05**:

- **Your Pension Scheme Explained – MMP/124**
- **Re-employment – MMP/116**
- **Family Pension Benefits – MMP/126**
- **Ill-Health Benefits – MMP/127**

Relating to **AFCS**:

- **Your Armed Forces Compensation Scheme Explained – MMP/125**

Relating to **RFPS**:

- **Reserve Forces Pension and Compensation Benefits – MMP/123**

Relating to **AFPS 75**, **AFPS 05** and **RFPS**:

- **Transferring Benefits – MMP/129**

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## Other Sources of Information

More on pensions, compensation, how you can increase your benefits, and the Internal Disputes Resolution Procedure, and all the booklets in the series can be found on the Defence Intranet at:

[http://defenceintranet.diiweb.r.mil.uk/  
DefenceIntranet/Admin/Find  
OutAboutArmedForcesPensions](http://defenceintranet.diiweb.r.mil.uk/DefenceIntranet/Admin/FindOutAboutArmedForcesPensions)

or on the internet at:

[www.mod.uk/issues/pensions](http://www.mod.uk/issues/pensions)

If you have any further queries please contact AFPAA.

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