

# Information about the reform of the State Pension system and State Pension sharing on divorce and nullity (including overseas proceedings) and on the dissolution and annulment of a civil partnership (including overseas proceedings) for people reaching State Pension age from 6 April 2016

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## Who the information is for

1. This information note is primarily for legal and financial advisers with clients who are party to divorce proceedings or the dissolution of a civil partnership etc and the Courts who will be making State Pension sharing orders.

## What the information is for

2. The information is to explain the new arrangements for administering and implementing State Pension sharing on divorce etc. Also to help legal advisers and the courts to manage the transition from the existing system to the new system from 6 April 2016.
3. The primary focus of the note is parties to a divorce or the dissolution of civil partnership etc who reach State Pension age on or after 6 April 2016, as they will be most affected by the transitional arrangements. The rules on State Pension sharing on divorce etc are not changing for transferors who reach State Pension age before 6 April 2016. Pension sharing on divorce etc will not be available to the courts **where transferors** start their National Insurance (NI) record in the new State Pension. Further details are set out below.

## The legal status of the information note

4. Although the Department for Work and Pensions (DWP) has done its best to ensure that this information note is comprehensive, it does not cover every circumstance in relation to State Pension sharing on divorce. Ultimately, it is the legislation that describes every circumstance so it should be considered along with this note and with any relevant legal advice.

## What the information note contains

5. The information note has sections on –
  - a) The new State Pension
  - b) Existing arrangement for State Pension sharing on divorce
  - c) The new State Pension in transition
  - d) State Pension sharing on divorce etc during transition
  - e) Who the changes will affect
  - f) Valuations of state pensions under the existing arrangements
  - g) Valuations of state pensions under the new arrangements
  - h) Valuations of state pensions under the transitional arrangements
  - i) Scotland
  - j) Information that we are able to provide to individuals

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## **The new State Pension**

6. The new State Pension will be introduced for people reaching State Pension age from 6 April 2016. The value of the full new State Pension will be set above the level of the basic weekly means test. The full rate of the new State Pension for 2016/17 is £155.65. The intention is that people should build up the pension in their own right and that it should be a foundation for private pension saving. For this reason, it will no longer be possible for spouses or civil partners, **where the transferor's** National Insurance (NI) records start in the new scheme, to be awarded a shared pension based on the transferor's NI record by the courts because the new State Pension cannot be subject to a share order. However, the Protected Payment element of the transitional rate of new State Pension for those whose NI record straddles 6 April 2016 may be shareable. See below.
7. There will be a transition period for some aspects of the new State Pension including pension sharing on divorce, dissolution of a civil partnership etc. However, there are substantial differences between the old and new arrangements and it is to be noted that potential State Pension transferees and transferors may have significantly different outcomes depending on whether the proceedings for the divorce or the dissolution etc start before 6 April 2016 or; on or after 6 April 2016.

## **Existing arrangements for State Pension sharing on divorce**

8. Paragraph 14 provides a re-cap of the existing arrangements for State Pension sharing on divorce and there is a table at overleaf detailing both the new and old arrangements.

## **The new State Pension in transition**

9. Although, the State Pension system is changing for people who reach State Pension age from April 2016, those who have already made National Insurance (NI) contributions before April 2016 will have them recognised in the new system as their "starting amount". The starting amount is determined by a "better-of" calculation, which takes the higher of:
  - the value of pre-6 April 2016 NI contributions assessed under the current State Pension rules; and
  - the value of pre-6 April 2016 NI contributions assessed under the new State Pension rules.
10. In both cases a deduction will be made to reflect any periods of contracting-out (where employers and employees pay reduced NI contributions or where an amount of NI is contributed to a private pension scheme). Those with high levels of non-contracted-out additional State Pension are likely to have a starting amount that is higher than the full

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level of the new State Pension (£155.65). Where this happens the excess amount becomes a “Protected Payment”. The Protected Payment is increased each year up to retirement and through retirement by price inflation (the Consumer Price Index). Courts will be able to consider the capital value of the Protected Payment, alongside other marital assets but the share order will apply to the weekly amount of Protected Payment, (but see paragraph below regarding transitional arrangements).

## **State Pension sharing on divorce etc during transition**

11. The Protected Payment crystallises from 6 April 2016 and cannot be increased by NI contributions made after the 2015/16 tax year. The Protected Payment is a feature of the transition to the new scheme and it is important to note **that for divorce proceedings or the dissolution of a civil partnership etc that start on or after 6 April 2016 only the weekly amount of the Protected Payment element of the State Pension asset can be subject to a pension share order in proceedings. However, DWP will provide a capitalised amount to help the court with that assessment.**
12. **This can contrast significantly with the current arrangements where the additional State Pension is shareable.** Firstly, additional State Pension builds on top of basic State Pension which for the 2016/17 tax year is £119.30. Secondly, the additional State Pension is revalued each year by earnings until State Pension age and then uprated by prices during retirement. In contrast, the full rate of the new State Pension will be £155.65. It follows that there is less State Pension [additional State Pension] to share under the new arrangements because around £36 a week of what was additional State Pension would no longer be shareable as it will be consolidated into the new State Pension. In addition, any excess over that amount will be paid as a Protected Payment and will be revalued by prices rather than by earnings.

## **Who the changes will affect**

13. The arrangements that were previously to apply to State pension sharing on divorce depended on the date on which the pension share order from the court took effect. However, transitional arrangements have now been introduced to avoid disrupting proceedings that have started under the existing rules but will not be finalised until after the new rules come into force. From 6 April 2016, where divorce or dissolution proceedings etc start -
  - a) **before 6 April 2016**, then the existing arrangements apply and the additional State Pension is shareable; or
  - b) **on or after 6 April 2016**, then the new arrangements apply and the Protected Payment is shareable.

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<b>Smoothing the cliff-edge between the old and new State Pension sharing arrangements, where the transferor reaches State Pension age on or after 6 April 2016</b>	
<b>Divorce proceedings or the dissolution of a civil partnership etc start before 6 April 2016 -</b>	<b>Divorce proceedings or the dissolution of a civil partnership etc start on or after 6 April 2016 -</b>
<p>Section 49 Welfare Reform and Pensions Act 1999 applies and the additional State Pension is shareable.</p> <p>However, it does not matter when the pension sharing order takes effect or that the person whose rights are being shared reaches State Pension age in the new State Pension scheme.</p>	<p>Section 49A Welfare Reform and Pensions Act 1999 applies and the pension sharing order will take effect on or after 6 April 2016 so the Protected Payment is shareable.</p>

The table below provides details of the Order introducing the transitional arrangements.

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<b>Article 2 of The Pensions Act 2014 (Pension Sharing on Divorce etc.) (Transitional Provision) Order 2016 introduces the new transitional arrangements and defines the date on which legal proceedings are said to start, in:</b>	
<b>England and Wales: legal proceedings start before 6 April 2016, if -</b>	<b>Scotland: legal proceedings start before 6 April 2016, if -</b>
<ul style="list-style-type: none"> <li>(i) the petition for divorce or nullity of a marriage was issued before 6th April 2016;</li> <li>(ii) the application for dissolution or annulment of a civil partnership was issued before 6<sup>th</sup> April 2016; or</li> <li>(iii) in the case of the application for financial relief after overseas divorce or nullity of a marriage or overseas dissolution or annulment of a civil partnership, the application for permission of the court for financial relief was issued before 6th April 2016.</li> </ul>	<ul style="list-style-type: none"> <li>(i) the initial writ or summons in the proceedings for divorce or nullity of a marriage or for dissolution or annulment of a civil partnership was presented before 6th April 2016;</li> <li>(ii) the initial writ or summons in the application for an order for financial provision after overseas divorce or nullity of a marriage or overseas dissolution or annulment of a civil partnership was presented before 6th April 2016; or</li> <li>(iii) the qualifying agreement, referred to in section 48(1)(f)(i) of the Welfare Reform and Pensions Act 1999(1), was executed by the parties before 6th April 2016.</li> </ul>

**Valuations of State Pensions under the existing arrangements where the additional State Pension is shareable**

14. Typically, in preparation for divorce proceedings or the dissolution of a civil partnership etc –
  - (a) the divorcing couples or dissolving civil partnerships make an application to the courts for an order distributing their finances and property;
  - (b) each party asks DWP for a valuation of their additional State Pension; and
  - (c) DWP provides the court with the valuation in the form of a capital amount known as a ‘cash equivalent value’ based on the person’s NI records and derived from tables provided by the Government Actuary’s Department. It is a notional pot of money for the court to consider when deciding how the couple’s financial assets should be divided.
  
15. After the court makes the share order, DWP, on its receipt, applies actuarial factors and turns the cash equivalent into a weekly award or reduction of additional State Pension.

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(1) Section 48(1)(f) was amended by paragraph 161(4)(a) and (b) of Schedule 27 to the Civil Partnership Act 2004 (c.33).

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After 6 April 2016, parties to a divorce or the dissolution of a civil partnership will still be able to obtain a valuation of their additional State Pension in certain circumstances. One of such circumstances is where the transferor party to a divorce or dissolving civil partnership has reached State Pension age before 6 April 2016. They can continue to request a valuation of their additional State Pension beyond 6 April 2016.

## **Valuations of State Scheme rights under the new arrangements**

16. In the new system the process for obtaining valuations from DWP is similar to what happens now. DWP will provide the cash equivalent value of the Protected Payment, as well as the weekly amount. However, the way in which DWP will implement a share order has changed. See section 49A of the Welfare Reform and Pensions Act 1999<sup>2</sup> which now -
- (a) requires pension sharing orders in **England, Wales and Scotland** to specify a **percentage of the weekly amount of Protected Payment** and not its cash equivalent value; and
  - (b) provides that the person subject to a debit has their Protected Payment reduced by an amount that will exactly equal the amount paid to the person benefiting from the corresponding credit. The amounts will never be different unlike in the current system.

## **Valuations of State Scheme rights under the transitional arrangements**

17. DWP will be informing people about the change in arrangements for State Pension sharing when they request a valuation. On the date of the request, if DWP do not know when the divorce or dissolution proceedings started, it will use the legislation in force on the day to calculate the cash value of the State Pension. In cases where the valuation does not correspond with the date when the proceedings started, the parties may have to ask for another valuation to ensure that the courts have the right information in order to issue a pension sharing order.

### **Scotland**

#### Divorce or dissolution proceedings etc

18. Financial proceedings on divorce etc. in Scotland differ from those in England, Northern Ireland and Wales. Scottish family law enshrines the concept of "matrimonial property". This is defined in section 10 of the Family Law (Scotland) Act 1985 (the 1985 Act) as all

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<sup>2</sup> Inserted by paragraph 13 of Schedule 11 to the Pensions Act 2014

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the property belonging to the parties at the "relevant date"<sup>3</sup>. This includes property acquired before the marriage for use as a family home or furniture as well as property acquired during the marriage but before the relevant date. Pension benefits form part of the matrimonial property. It is the net value of the matrimonial property (i.e. after deduction of relevant debts) which is divided on divorce.

19. To assist the courts in Scotland in divorce or dissolution proceedings etc, we will provide the following in response to a request for a valuation –
- **where the proceedings started on or before 5 April 2016**, the cash equivalent value of the parties' additional State Pension and weekly additional State Pension up to the relevant date;
  - **where the proceedings started on or after 6 April 2016** and the relevant date is on or before 5 April 2016, the information in Table 1 in the annex;
  - **where proceedings start on after 6 April 2016** and the relevant date is on or after 6 April 2016, the cash equivalent of the Protected Payment and the weekly amount up to the relevant date.

In a case where the date the proceedings started is not known, it will be the date on which the request for the valuation is being processed that will determine what information we will provide –

- **where the date of processing the valuation request is on or before 5 April 2016**, the cash equivalent value of the parties' additional State Pension and weekly additional State Pension up to the relevant date;
  - **where the date of processing the valuation request is on or after 6 April 2016** and the relevant date is on or before 5 April 2016, the information in table 1 in the annex,
  - **where the date of processing the valuation request is on or after 6 April 2016** and the relevant date is on or after 6 April 2016, the cash equivalent of the Protected Payment and the weekly amount up to the relevant date.
20. When DWP provide the weekly amount of the Protected Payment, it will not be able to identify separately contributions that have been made after the relevant date where that

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<sup>3</sup> The relevant date is the earlier of either the date of separation or the date of service of the summons for divorce etc.

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date is before 6 April 2016. But DWP is providing information to the courts to enable them to identify any amounts based on contributions or credits after the relevant date and adjust the share order if necessary. Table 2 in the annex provides an example of the information provided and how it can be used.

### Minutes of Agreement

21. Minutes of agreement enable the parties to divorce or dissolution proceedings etc to reach a financial settlement without recourse to the courts. The State Pension sharing arrangements that apply depend on when the agreement was executed by the parties concerned. If the date of execution is -
- a) **before 6 April 2016**, then the existing arrangements apply and the additional State Pension is shareable or
  - b) **from 6 April 2016**, then the new arrangements apply and the Protected Payment is shareable.

### **Information that we are able to provide to individuals**

22. People who are age 55 or over can request a State Pension statement that gives an estimate of their starting amount of State Pension under the new State Pension rules. This will be based on their existing NI record, and will show the value of any existing pension share. People under age 55 can request a statement based on the current State Pension rules. Visit [www.gov.uk/state-pension-statement](http://www.gov.uk/state-pension-statement) to find out how to get a statement.

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**Re-cap of arrangements - assumes proceedings start from 6 April 2016**

	<b>Old Scheme State Pension age before 6 April 2016:</b>	<b>New Scheme State Pension age on or after 6 April 2016:</b>		<b>Old scheme State Pension age before 6 April 2016:</b>	<b>New Scheme: State Pension age on or after 6 April 2016:</b>
Transferor	Additional Pension is shareable <b>Section 45B of the CBA 1992<sup>4</sup></b>		Transferee	Additional Pension is awarded <b>Section 55A of the CBA 1992</b>	Additional pension is awarded <b>Section 13 PA 2014</b>
Transferor		Protected Payment is sharable <b>Section 14 of PA 2014<sup>5</sup></b>	Transferee	Protected Payment is awarded <b>Section 55AA CBA 1992</b>	Protected Payment is awarded <b>Section 13 of PA 2014</b>

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<sup>4</sup> Social Security Contributions and Benefits Act 1992

<sup>5</sup> Pensions Act 2014

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Scotland

ANNEX

This is a case study of a request for a valuation made on or after 6 April 2016, where the relevant date is before 6 April 2016 and the divorce or dissolution proceedings started on or after 6 April 2016 or we do not know when they start. The case study is to assist Courts in Scotland to establish the value of state pension built up between the relevant date and the request for a valuation from 6 April 2016. This additional information is required because the value of additional State Pension built up in say the 2015/16 tax year is not readily identifiable in the 2016/17 tax years and onwards (as additional State Pension has been consolidated into the individual's starting amount).

Table 1

Information that DWP can provide in respect of valuations requested on or after 6 April 2016 to assist the courts in identifying increases in the State Pension after the relevant date	
Weekly rate of AP (and the cash equivalent value) <b>Call this AP(1)</b>	As at relevant date and at the relevant date tax year rates
Weekly rate of AP. <b>Call this AP(2)</b>	As at as near to 06/04/2016 as possible and <b>revalued*</b> 2016/17 tax year rates
Weekly rate of AP. <b>Call this AP(3)</b>	As at relevant date but <b>revalued</b> to 2016/17 tax year rates
Weekly rate of Protected Payment (and the cash equivalent value)	As at 06/04/2016 and at 2016/17 tax year rates

\*Revaluation is the method for ensuring that over time the additional State Pension does not lose its value.

Table 2

Contributions made after the relevant date - example of where the divorce proceedings started on or after 6 April 2016 but the relevant date is before 6 April 2016.	
<b>Customer reaches State Pension age</b>	After 6 April 2016
Relevant date of separation	Before 6 April 2016
Request for valuation of state scheme rights received at DWP	On or after 6 April 2016
Weekly amount of AP (1)	£45.00
Weekly amount of AP (2)	£50.54
Weekly amount of AP (3)	£47.28
Weekly amount of Protected Payment	£15.24

The pension has increased by AP (2) minus AP (3) since the relevant date –