

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part II: Pensions

Commentary on Sections

Chapter I: State Pensions

Other provisions

Section 41: Sharing of state scheme rights

435. Although the value of a pension can currently be taken into account by the courts in reaching a financial settlement on divorce or nullity of marriage, the pension itself can only be offset against other assets or “earmarked”, ie the court can order part of a pension to be paid direct to a former spouse by a pension scheme when it comes into payment. “Earmarking” has been little used because it does not facilitate a clean break and the former spouse loses her or his intended retirement income if the ex-spouse whose pension has been “earmarked” dies first.
436. By contrast, pension sharing provides a former spouse with a pension in her own right, security of income throughout retirement, and a clean break. It will also enable more couples to reach a fair settlement where the pension to be shared is the most significant asset in the marriage.
437. However, pension sharing will not be compulsory: it will be an additional option for couples to consider alongside offsetting and earmarking and the Government expects that most couples will, as now, continue to offset their pension rights against other assets.
438. The Government consulted on a draft Pension Sharing Bill in June 1998. The Social Security Select Committee conducted a detailed inquiry into the draft Bill. Many of the recommendations in the Committee’s Report, published in October 1998, were subsequently adopted by the Government when legislation on pension sharing was included in the Welfare Reform and Pensions Act 1999.
439. The pension sharing provisions in the Act broadly provide for all second-tier pensions to be shared ie private and occupational pensions and SERPS (and, in due course, the State Second Pension).
440. **Section 41** contains sub-delegation powers to enable the Secretary of State to set out in regulations how the cash equivalent of SERPS rights is to be calculated. The regulations will give the Secretary of State the power to require that the cash equivalent shall be calculated and verified in such a manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose. The Secretary of State will also have the power to require cash equivalents to be calculated and verified by adopting methods and making assumptions which

*These notes refer to the Child Support, Pensions and Social Security
Act 2000 (c.19) which received Royal Assent on 28th July 2000*

are consistent with guidance published by the Institute of Actuaries and Faculty of Actuaries.

441. *Subsection (1)* substitutes Section 49(4) of the Welfare Reform and Pensions Act 1999 to include the sub-delegation power. For consistency, *subsections (2) - (4)* of this section make equivalent changes to related provisions in sections 45B, 55A and 55B of the Social Security Contributions and Benefits Act 1992. Section 45B of that Act is concerned with the reduction in the additional pension of the member whose pension has been shared; section 55A deals with the calculation of the additional pension acquired by the former spouse who was the beneficiary of the pension share (who receives a “shared additional pension”); and section 55B makes provision for the reduction of a shared additional pension which has itself been the subject of a pension sharing order or agreement.
442. Similar provisions are already in place for other pension sharing provisions in the Welfare Reform and Pensions Act 1999 where a valuation of non-state pension rights is needed.