

ANNEXE 14

DIVORCE, DISSOLUTION – CIVIL PARTNERSHIP, ANNULMENT, JUDICIAL SEPARATION

In the event of divorce, dissolution of civil partnership, annulment, or judicial separation, a court can issue a **"pension attachment order"** (often called an **"earmarking order"**) in respect of your benefit entitlement under the Firefighters' Pension Scheme 1992 ("FPS") or the New Firefighters' Pension Scheme 2006 ("NFPS"). An earmarking order can be made against your pension, your lump sum by commutation, or your death grant. This means that, at the time benefits become payable, a portion must be paid directly to your former spouse or civil partner by the fire and rescue authority.

Or, in the event of divorce, dissolution of civil partnership, annulment, but not judicial separation, a court can issue a **"pension sharing order"** in respect of your benefit entitlement under the FPS/NFPS. This means that with effect from the date the order takes effect, the capital value of your benefit entitlement under the FPS/NFPS is divided between you and your former spouse or civil partner. Your future pension entitlement is reduced according to the apportionment ordered by the court. The portion of benefits deducted from the capital value of your pension entitlement is used to provide a pension and possibly a lump sum by way of pension rights for your former spouse or civil partner. Your former spouse or civil partner becomes a "pension credit member" of the FPS/NFPS in his or her own right.

This Annexe explains how earmarking and pension sharing work. It includes –

- an explanation of "earmarking" and "pension sharing" (Annexe 14A)
- model procedural notes (Annexe 14A)
- model forms (Annexe 14B)
- model letters (Annexe 14C)
- GAD guidance notes (Annexe 14D)
- a list of relevant legislation (Annexe 14D)
- general points arising (Annexe 14E)

The guidance is in line with English/Welsh legislation. If the petition is filed in Scotland, Northern Ireland or overseas, some of the principles may be different.

EXPLANATION OF “EARMARKING” AND “PENSION SHARING”

The following notes give a simple outline of the means whereby a court can order the payment of a pension scheme member's benefits to his or her former spouse or civil partner

Divorce, dissolution of civil partnership, annulment, judicial separation

Background

Once upon a time, when deciding how a divorcing couples' finances should be divided, the courts often disregarded the value of pension rights. If they were taken into account, their value would be offset against the value of other financial assets. The court could not order any adjustment of a person's pension rights.

Regulations made under the Pensions Act 1995 changed this. In respect of any petition for divorce, nullity of marriage, or judicial separation filed on or after 1 July 1996, a court had to take pension rights into account and it could make orders in respect of pension rights.

Further regulations made under the Welfare Reform and Pensions Act 1999 extended the courts' powers in respect of petitions for divorce or nullity of marriage filed on or after 1 December 2000.

With effect from 5 December 2005, with the commencement of the Civil Partnership Act 2004, the above regulations were amended to apply in a similar manner in the case of the dissolution or annulment of a civil partnership.

The court looks for a fair division of material and financial possessions. Because pension rights are a valuable asset, sometimes the court will decide that a fair apportionment cannot be achieved unless part of the pension rights of one party are paid for the benefit of the other.

From 1 July 1996 this would be achieved by the court issuing an "earmarking order" (pension attachment order) to the pension scheme manager. In the case of the FPS and NFPS, the pension scheme manager is the fire and rescue authority. The earmarking order would instruct the authority to make arrangements, at the time the benefits become due, for part of the scheme member's pension, lump sum commutation, or both, to be paid to the former spouse or civil partner. The order could also require that, in the event of death in service, the lump sum death grant should be paid to the former spouse or civil partner.

From 1 December 2000 the court could issue a "pension sharing order". This type of order was introduced because it was felt that, although earmarking could offer a more fair division of assets than available before, there could still be problems. For example, in the case of earmarking –

- the former spouse or civil partner may always be financially linked to, and dependent on, the scheme member – it does not offer a "clean-break" solution;
- the former spouse or civil partner will not receive any financial benefit from the order if the scheme member dies before the retirement pension or lump sum comes into payment (unless a death grant has been earmarked);
- any entitlement to earmarked pension would cease (so would any entitlement to an earmarked lump sum if the order so instructs) if the former spouse or civil partner enters into a subsequent marriage or civil partnership.

Divorce, dissolution of civil partnership, annulment, judicial separation

Background (continued)

Consequently the government decided a clean-break solution was needed and the concept of pension sharing was introduced. It differs from earmarking inasmuch as, at the time the pension sharing order is made, a portion of the accrued pension rights are transferred from a scheme member to provide a pension credit for his/her former spouse or civil partner. This means that if the former spouse or civil partner subsequently marries, remarries, forms a civil partnership or a subsequent civil partnership this would not affect the court's award.

So, from 1 December 2000 we have two types of arrangement which the courts can use to adjust pension rights on divorce or dissolution of civil partnership.

About these notes

These notes cover the action required in proceedings leading to divorce, dissolution of civil partnership, annulment and judicial separation.

To make the notes read more simply, the expression "divorce/dissolution" is used to cover all circumstances. Similarly, "former spouse or civil partner" will be used to describe your former husband, wife or civil partner although, in the case of judicial separation, a "former" husband or wife would still technically be your spouse.

The notes highlight a number of key points which you may find helpful. They do not, however, pretend to set out all the legal issues. A firefighter should consider seeking professional legal advice; a fire and rescue authority should have regard to all the relevant legislation relating to divorce and dissolution to ensure they are acting correctly.

On divorce or dissolution will my former spouse or civil partner always be awarded part or possibly all of my pension rights?

Not necessarily. The court may decide that a fair apportionment of assets can be achieved in some other way. If it does decide that pension rights need to be apportioned, it may not be your rights that they look to. If your spouse or civil partner has substantial pension rights in his/her own right it could be his/her rights made subject to a pension sharing or earmarking order.

It is assumed in the writing of these notes that it will be your pension rights that the court will consider for sharing or earmarking. If, instead, it is the pension rights of your former spouse or civil partner that are subject to an order, some of the general principles outlined here would apply but, if he/she is not a member of the FPS or NFPS there could be differences in the way in which the order would be worded. Your fire and rescue authority would not be involved in this and if you have any concerns you should discuss them with your legal adviser.

Divorce, dissolution of civil partnership, annulment, judicial separation

Why aren't all orders worded in the same way?

Pension schemes are constructed in different ways. Many cases handled by solicitors and the courts will probably relate to membership of private sector pension schemes. The rules of those schemes are set out in Trust Deeds and the scheme trustees usually have an element of discretion in the application of pension scheme rules. Your pension scheme is different. It is an unfunded, public service scheme; the rules are set out in legislation made under an Act of Parliament. A fire and rescue authority, as Scheme manager, have very limited powers of discretion. The FPS in particular has a number of unusual features, not normally encountered in private sector schemes, which must be understood correctly before an order is made.

Can I get help from my fire and rescue authority?

Your fire and rescue authority must provide all the information, and take all the actions, required under divorce/dissolution legislation. Pensions staff of the authority can explain to you how the FPS and NFPS work and the outcome of any proposed course of action but they cannot advise or represent either party to the divorce proceedings. The fire and rescue authority has a right to object to a court order and possibly attend before the court but this would only be in circumstances where the authority, as Scheme manager, perceive a problem with complying with the terms of any order in the context of the FPS or NFPS. If you need help with negotiation and representation you should seek qualified legal advice.

How are my pension rights valued?

It is reasonably simple to work out entitlement to an annual retirement pension at any given date. But for the value to be compared with the money value of other assets, e.g. the value of your house or car, your pension rights need to be expressed as a capital sum, not as a future annual amount to be paid for an unknown period. Consequently, divorce/dissolution legislation requires that the method of calculation should be on Cash Equivalent Transfer Value ("CETV") principles. These are the principles used to work out the sum of money which would be offered to a new pension scheme if you left firefighting and asked for your pension rights to be transferred. In some circumstances, e.g. if you have already retired, a transfer of pension rights would obviously not be possible. Nevertheless, similar principles are used in these circumstances, too.

If required to provide a valuation of your pension rights, your fire and rescue authority will assess a CETV in accordance with factors and guidance issued by the Government Actuary (see Annexe 14D).

In the case of a serving firefighter who has not reached the point at which a benefit could be paid, the starting point for the CETV calculation is the deferred benefit to which you would be entitled if leaving the fire and rescue service at the date of the calculation.

In the case of a firefighter who has reached the point at which a benefit could be paid, the starting point for the CETV calculation is the actual benefits to which you would be entitled if retiring from the service at the date of the calculation.

Divorce, dissolution of civil partnership, annulment, judicial separation

How are my pension rights valued? (continued)

In the case of a person who has left firefighting, or who has opted out of the FPS or NFPS, with entitlement to deferred benefits, it is those benefits that form the basis of the CETV calculation.

In the case of a person receiving a retirement pension from the FPS or NFPS it is that pension that forms the basis of the CETV valuation.

If you have retired and been re-employed, separate assessments will be made of the pension in payment and the pension rights accruing in the re-employment.

Whichever circumstances apply, the relevant amounts are multiplied by actuarial factors provided by the Government Actuary. These factors take into account financial and demographic considerations such as your age at the date of assessment, possible or actual retirement age, market conditions, inflation and mortality rates (life expectancy). The resultant figure can be very high, possibly tens of thousands of pounds. But remember that it represents the capital value of all your entitlement to benefits under the FPS or NFPS accrued to date and paid for the rest of your life after retirement.

What information must be provided for divorce or dissolution proceedings?

Normally a fire and rescue authority will be asked to provide –

- (a) a valuation of pension rights
- (b) certain basic information about the Pension Scheme.

If the request is from you, as the Scheme member, both (a) and (b) will be provided. A court can also order the authority to provide (a) or (b) or both, in the absence of a request from yourself. Your spouse or civil partner, too, is entitled to request (b) but not (a). Solicitors acting for you or your spouse or civil partner can request information but the appropriate authorisation from you or your spouse/civil partner will be required by the fire and rescue authority before the requested details will be supplied.

The court may require both you and your spouse or civil partner to complete a "Form E: Financial Statement". The purpose of Form E is to provide the court with details of all the assets and liabilities of each party. The court will use the details in Form E to help decide an equitable apportionment. Section 2.13 of Form E as issued since 5 December 2005 requires you to give the name and address of any pension arrangements you may have together with a CETV representing the value of the pension rights held in each of those arrangements.

Form E as issued before 5 December 2005 used to request other details about your entitlement. These details are now contained in a new form "Form P: Pensions Inquiry Form" which you may be required to send to the managers of your pension arrangements.

Your fire and rescue authority will provide the details requested.

Divorce, dissolution of civil partnership, annulment, judicial separation

What charges would be made? Under divorce legislation pension scheme managers can charge for the provision of the valuation and/or the basic information, provided it does not have to be supplied free of charge under Disclosure Regulations. Under Disclosure Regulations it must normally be supplied free of charge if the information or valuation has not already been provided within the previous 12 months.

Pension scheme managers can also impose a charge for costs reasonably incurred in the process of pension sharing or in the application of an earmarking order.

To be able to charge, the fire and rescue authority must issue its schedule of charges at an early stage in the provision of information.

The authority can decide whether charges may be collected “up-front” or by deductions from benefits. They can also decide whether to collect them from the Scheme member or from the former spouse or civil partner (although the court can override the authority’s normal means of collection as part of the order).

Current guidance from HM Revenue and Customs Excise is that VAT would be chargeable on the sums quoted.

How does an earmarking order work?

If the court decides that an earmarking order should be made, it may require the fire and rescue authority to –

- pay any death in service grant to your former spouse or civil partner rather than to any later spouse or civil partner (if you entered a subsequent marriage or civil partnership) or to your estate.
- pay a lump sum from your commuted pension to your former spouse or civil partner;
- pay periodical payments from your pension to your former spouse or civil partner.

Death in service grant

Whether or not a death grant payable under the FPS can be paid to a firefighter’s spouse or civil partner has been called into question because of the requirement in the Firemen’s Pension Scheme Order 1992 that it may only be paid to a “surviving spouse or civil partner who qualifies for it” and, in the absence of such a person, to the firefighter’s estate.

However, guidance given by the Lord Chancellor’s Department is that payment of the death grant to a former spouse or civil partner is possible provided the court uses the correct means of achieving it, i.e. by making an order under Section 25C(2)(c) of the Matrimonial Causes Act 1973 or paragraph 26(5) of Schedule 5 to the Civil Partnership Act 2004.

Divorce, dissolution of civil partnership, annulment, judicial separation

How does an earmarking order work? (continued)

Under both Acts there are three routes available to the court to require payment of a lump sum to a former spouse or civil partner. In the Matrimonial Causes Act 1973 these are under Section 25(C)(2)(a) or (b) or (c); in the Civil Partnership Act 2004 these are under paragraph 26(3), (4) or (5) of Schedule 5.

Using Section 25C(2)(a) or paragraph 26(3) would not work because they rely on the fire and rescue authority having the discretion to decide the recipient of the lump sum; the authority do not have this power.

Using Section 25(C)(2)(b) or paragraph 26(4) would not work because they rely on the firefighter having the power to nominate the recipient of the lump sum; FPS members do not have this power.

Using Section 25(C)(2)(c) or paragraph 26(5) could work because they state that the court may “in any other case, require the person responsible for the pension arrangement in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party/civil partner instead of to the person to whom apart from the order, it would be paid.” So an order made under Section 25(C)(2)(c) or paragraph 26(5) could require the fire and rescue authority to disregard the requirements of the Firemen’s Pension Scheme Order 1992 and make payment to your former spouse or civil partner rather than – if you have not entered a subsequent marriage or civil partnership – to your estate, or – if you have entered a subsequent marriage or civil partnership – to your new wife or husband or partner (to whom, in the absence of any order, it would otherwise be made).

The strength of such an order has not yet been tested. It would be tested if the fire and rescue authority complied with an order requiring the death grant to be paid to a former spouse or civil partner and then, if the FPS member had remarried, his/her surviving spouse or civil partner took the fire and rescue authority to Crown Court by making an appeal under Rule H3 of the Firemen’s Pension Scheme Order 1992, claiming that the death grant should have been paid to him/her. “Where a person claims that he is entitled to an award or to any payment in respect of an award and the fire authority do not admit the claim at all, or do not admit the claim to its full extent . . . he may appeal to the Crown Court which may . . . make such order or declaration in the matter as appears to it to be just.”

The situation in the NFPS is slightly different. There the fire and rescue authority has absolute discretion as to whom the death grant should be paid (even though the NFPS member can nominate a recipient). Section 25C(2)(a) of the Matrimonial Causes Act 1973 or paragraph 26(3) of Schedule 5 to the Civil Partnership Act 2004 would have to be the route used to enable the death grant to be paid to the former spouse or civil partner.

Divorce, dissolution of civil partnership, annulment, judicial separation

How does an earmarking order work?
(continued)

Payment of lump sum by commutation

Payment to a former spouse or civil partner of all or part of your entitlement to lump sum by commutation would be achieved by an earmarking order referring again to Section 25C(2)(c) of the Matrimonial Causes Act 1973 or paragraph 26(5) of Schedule 5 to the Civil Partnership Act 2004. This would be the case whether you are a member of the FPS or NFPS. The fire and rescue authority does not have a discretion to pay it to anyone other than yourself, nor can you nominate an former spouse or civil partner as a recipient. But by use of a direction under Section 25C(2)(c) or paragraph 26(5) the court could order the payment to be made to your former spouse or civil partner.

However, the fire and rescue authority would not be able to make the payment if you chose not to commute a portion of your pension. For this reason, an order under Section 25C(2)(c) can only operate if the court, under Section 25B(7) of the Matrimonial Causes Act 1973 or paragraph 25(5) of Schedule 5 of the Civil Partnership Act 2004 also orders you to give a valid notice of commutation upon retirement. ("Where the party with pension rights has a right of commutation under the arrangement, the order may require him to exercise it to any extent" and "If the civil partner with pension rights has a right of commutation under the arrangement, the Part 1 Order may require that civil partner to exercise it to any extent.")

Periodic payment order

It may be that the court decides to leave your lump sum payments alone, but issues an order to the fire and rescue authority under Section 25B(4) of the Matrimonial Causes Act 1973 or paragraph 25(2) of Schedule 5 to the Civil Partnership Act 2004 to make periodic payments to your former spouse or civil partner, i.e. deductions from each instalment of your pension. For example, if on retirement you become entitled to £1,000 of pension a month, the order may instruct that, say 50%, i.e. £500 a month should not be paid to you, but instead should be paid directly to your former spouse or civil partner.

If this type of order is to be made, you should be aware that HM Revenue and Customs requires the periodic payment to be deducted from your net pay (i.e. after tax). You would pay tax on the full monthly instalment of pension and your former spouse or civil partner would receive the deduction made under the earmarking order tax-free. For example, suppose you received £1,000 gross pension each month and pay £200 in tax. Your net pay would be £800 a month. If the order instructs payment of 50% of gross pension to be paid to your former spouse or civil partner, the £500 would be deducted from the net pay of £800. Your former spouse or civil partner would receive £500 each month and you would receive £300. If the order instructs payment of 50% of your net pay to your former spouse or civil partner, you would both receive £400 a month. Bear this in mind if periodic payments are discussed.

Divorce, dissolution of civil partnership, annulment, judicial separation

How does an earmarking order work?
(continued)

What about benefits for a surviving spouse or civil partner?

These are payable only to a legal spouse or civil partner. Once the divorce or dissolution has been finalised, your former spouse or civil partner would no longer have entitlement to dependant's benefits under the FPS or NFPS.

There is no provision in the Matrimonial Causes Act 1973 or the Civil Partnership Act 2004 for the surviving spouse's or civil partner's benefit to be paid to a former spouse or civil partner and so this should not feature in an earmarking order.

There is no provision in the FPS, in the absence of a spouse or legal partner, for you to nominate a recipient of the spouse's or civil partner's pension. Consequently, if you remain single after divorce/dissolution, no spouse's or civil partner's pension will be paid under the Scheme. If you enter a subsequent marriage or civil partnership, your new spouse or civil partner has entitlement to any spouse's or civil partner's benefits due.

There is provision in the NFPS for death benefits to be paid to a "nominated partner" subject to the qualifying conditions being met. If you enter a subsequent marriage or civil partnership, or nominate a partner, it will be your new spouse or civil partner or nominated partner that will have entitlement to the appropriate death benefits.

What happens to the earmarking order if I enter a subsequent marriage or civil partnership?

The terms of the earmarking order remain in force after a subsequent marriage or civil partnership. A further claim could be made against your pension rights by your new spouse or civil partner if the new marriage or civil partnership were to fail.

What happens if my former spouse or civil partner enters a subsequent marriage or civil partnership?

Your former spouse or civil partner will be obliged to tell the fire and rescue authority if he/she enters a subsequent marriage or civil partnership.

Any periodic payment order would cease. However, an order made in respect of a lump sum payment (whether in respect of the death grant or commuted lump sum) would not cease on your former spouse or civil partner entering a subsequent marriage or civil partnership unless a provision has been included in the earmarking order providing for it to lapse in this event.

Divorce, dissolution of civil partnership, annulment, judicial separation

**How does an earmarking order work?
(continued)**

What happens if the fire and rescue authority are unable to trace my former spouse or civil partner?

Your former spouse or civil partner will be obliged to keep the fire and rescue authority informed of any change of name, address and payment details. If he/she does not keep the authority informed and, as a result, the authority cannot make the ordered payments to him/her, the authority will make the payments to you instead.

If your former spouse or civil partner subsequently re-appears and claims those payments, the claim would have to be made against you rather than against the fire and rescue authority.

What happens if my former spouse or civil partner dies?

If your former spouse or civil partner dies, the fire and rescue authority cannot comply with the terms of the earmarking order and the payments would be made to you instead.

What happens if I transfer to another fire and rescue authority or to some other pension scheme?

If you transfer to another fire and rescue authority your pension rights will normally transfer with you to the FPS or NFPS as administered by your new authority. Consequently, your former fire and rescue authority would send your new authority a copy of the earmarking order and relevant papers, and the name and address of your former spouse or civil partner. The new authority will have responsibility for complying with the order.

If you leave the fire and rescue service or opt out of the FPS or NFPS and transfer your pension rights to some other pension arrangement, your fire and rescue authority would send your new pension scheme trustees or managers a copy of the court order and relevant papers, and the name and address of your former spouse or civil partner.

The fire and rescue authority must also tell your former spouse or civil partner about the transfer and the date on which it took place, the name and address of the trustees or managers of your new pension scheme, and that the order is to have effect as if it had been made in respect of the new scheme.

What if there is a reduction in the level of my benefits?

The fire and rescue authority must inform your former spouse or civil partner if an event occurs which is likely to cause a significant reduction in benefits payable. In the case of a firefighter this is most likely to happen if your benefits are reduced or withdrawn under the FPS or NFPS, e.g. withdrawal of pension on re-employment as a regular firefighter or cancellation/reduction/reassessment of an ill-health pension.

Reduction in rank and pay could also have a similar effect.

Divorce, dissolution of civil partnership, annulment, judicial separation

How does a pension sharing order work?

Unlike an earmarking order which does not come into effect until your benefits are payable by the Pension Scheme, a pension sharing order has immediate effect. The order would direct the fire and rescue authority, as pension scheme manager, to –

- reduce your benefits by a pension “debit”, expressed as a percentage of those benefits at the date the order is made
- give your former spouse or civil partner a pension “credit” equal in value to the debit.

How is the pension debit assessed?

In simple terms an example of the debit assessment would be as follows:

The court issues a pension sharing order instructing that the former wife of a firefighter is to receive 40% of his benefit entitlement. At the date the order is made he is a serving firefighter with 15 years’ pensionable service, his average pensionable pay is £30,000 and he would be able to complete 30 years’ service by normal pension age.

His CETV would be based on the deferred benefits to which he would be entitled if he were to leave the service at the date of the assessment. The deferred pension would be assessed as $15/30 \times 40/60 \times £30,000 = £10,000$ a year.

Suppose that the CETV, after applying actuarial factors to the deferred benefits, would be £100,000.

His former wife's pension credit would be 40% of this, i.e. £40,000. This would be used to provide her with benefits.

As a percentage of his deferred pension, 40% would be £4,000 a year. This, revalued at the time of his retirement, would be the pension debit applied to his pension.

Suppose he retired at compulsory retirement age after 30 years’ service and with average pensionable pay of £48,000.

His full pension entitlement before the pension debit is applied would be assessed on normal age retirement principles as $40/60 \times £48,000 = £32,000$.

The value of the pension debit at the time the order was made was £4,000 a year. Suppose its value at the time he retires (i.e. after allowing for inflation) is £6,000 a year. The pension debit is now deducted from his pension. $£32,000 - £6,000 = £26,000$. After reduction to take account of the pension sharing order the pension will be £26,000 a year.

This is a very simple explanation of the process to give you an idea of the principles involved. Details of the full process which, in most cases, will be far more complex than this, are given in the Government Actuary’s notes of guidance (see Annexe 14D).

Divorce, dissolution of civil partnership, annulment, judicial separation

How does a pension sharing order work? (continued)

What happens to the pension credit?

Some pension schemes require or allow the former spouse or civil partner to transfer the pension credit to an alternative pension arrangement, some offer membership of the pension scheme from which the pension credit is derived.

In the case of the FPS and NFPS, because they are not funded pension schemes in the normal sense, a transfer of pension rights is not allowed. All former spouses and civil partners who are entitled to a pension credit as a result of a pension sharing order will become “pension credit members” of the FPS or NFPS.

What rights and benefits does a pension credit member have?

- A pension credit member will draw his/her pension at age 60 from the FPS, from age 65 from the NFPS. There is no option for voluntary earlier or later payment, nor provision for early payment on ill-health grounds. The date at which the firefighter (from whose benefits the credit is derived) retires and the terms of his/her retirement, have no effect on the pension credit member’s entitlement.
- Commutation of pension to provide a lump sum is possible, subject to certain limits and the firefighter not having already commuted at the date of the pension sharing order.
- There is no provision to allocate a portion of the pension.
- In the event of the pension credit member’s death before being eligible to draw benefits, a death grant of two and a quarter times the uncommuted pension is payable to his/her estate (or to a nominated recipient in the case of the NFPS).
- No spouse’s or civil partner’s benefits will be payable in respect of the pension credit.
- No children’s benefits will be payable in respect of the pension credit – they remain attached, in full, to the FPS or NFPS member’s own benefits.
- The pension derived from the pension credit attracts Pensions Increase.
- If the pension derived from the pension credit is very small (as defined by HM Revenue and Customs) it may be commuted to a single lump sum payment.
- A pension credit member’s benefits are subject to similar forfeiture rules as apply to a Scheme member or the spouse or civil partner of a Scheme member and he/she has the same bankruptcy protection as a Scheme member.
- A pension credit member’s benefits cannot be combined with any other benefit to which the former spouse or civil partner may be entitled under the FPS or NFPS.

If the firefighter dies it has no effect on the pension credit member’s benefits.

Divorce, dissolution of civil partnership, annulment, judicial separation

How does a pension sharing order work? (continued)

- If the firefighter transfers to another fire and rescue authority, the pension credit responsibility remains with the authority which had responsibility for the pension credit benefits at the date of the pension sharing order.

Like Scheme members and dependants, a pension credit member has appeal rights.

What effect does a pension sharing order have on the Scheme member's cover for children's and spouse's or civil partner's benefits?

Children's benefits are "attached" in full to the Scheme member's pension rights. If it becomes necessary to assess a child's pension no account is taken of the pension sharing order.

In the case of a spouse's or civil partner's pension, however, account must be taken of the order and the level of award is reduced accordingly.

What happens if the former spouse or civil partner enters a subsequent marriage or civil partnership?

Your pension and that of your former spouse or civil partner following the implementation of a pension sharing order would not be detrimentally affected should either of you enter a subsequent marriage or civil partnership. However, if that subsequent marriage or civil partnership should break down, your pension rights could again be subject to a pension sharing order as could those of your former spouse or civil partner.

Can I rebuild my pension rights?

There is no special provision for this but you could use the standard method of "buying" additional pension rights in the FPS or NFPS, e.g. by the payment of additional contributions. This would, however, be subject to the limits applied by the Scheme and it may not be possible to make up the full portion of rights transferred.

There are of course, other means of saving for retirement through investment. To explore these, you should seek the guidance of a suitably qualified and registered independent financial adviser.

ADMINISTRATIVE PROCEDURES

On the following pages are model administrative procedures to which a fire and rescue authority may refer in order to comply with the requirements of pensions and divorce/dissolution legislation. The procedures cross-refer to model forms, letters and actuarial guidance which appear later in this Annexe.

Each fire and rescue authority will have its own system of pensions administration and may need to adapt the procedures to fit that system. Also, it will be for each authority to ensure that the steps it takes are in compliance with pensions and divorce/dissolution legislation.

Nevertheless the guidance on the following pages should act as a useful prompt to necessary action.

In this Commentary, where the expression "you" is used, it is usually the firefighter who is being addressed. However, in the model procedures which follow, it is the pensions administrator who is being addressed.

Some of the procedures, forms and standard letters in this Annexe take account of the version of Form E ("Financial Statement") which applied to cases where proceedings commenced before 5 December 2005. They have been retained for any cases which may still be "in the system".

For cases where proceedings commenced on or after 5 December 2005 a revised Form E was provided by the Court Service. It can be identified by the reference at the foot of the front page of the form – "Form E Financial Statement (12.05)". When Form E was revised, some of the information requested on the earlier version was transferred to a new Form P "Pension Inquiry Form" introduced on 5 December 2005. The procedures suggest how these forms should be completed.

PART A

INITIAL ENQUIRY

- A1** By telephone: Scheme member requests information and/or CETV
- A2** By telephone: Scheme member's spouse or civil partner requests information and/or CETV
- A3** By telephone: solicitor of Scheme member requests information and/or CETV
- A4** By telephone: solicitor of Scheme member's spouse or civil partner requests information and/or CETV
- A5** In writing: Scheme member requests CETV
- A6** In writing: Scheme member requests information, no CETV
- A7** In writing: Scheme member's spouse or civil partner requests information and/or CETV
- A8** In writing: solicitor of Scheme member requests information and/or CETV
- A9** In writing: solicitor of Scheme member's spouse or civil partner requests information and/or CETV
- A10** A court order is issued requiring the provision of information and/or CETV

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A1

**INITIAL ENQUIRY BY TELEPHONE:
SCHEME MEMBER REQUESTS INFORMATION AND/OR CETV**

1. Ask –
 - (a) Is this information needed for transfer purposes?
 - (b) Is this information needed for other purposes, e.g. for divorce/dissolution proceedings?
2. If 1(a), ask them to put their request in writing, giving full name, address, date of birth, National Insurance number. The written request, when received, should be processed as any other CETV request for that purpose.

Note –

- (a) if the person is a pensioner or within 12 months of normal pension age, a CETV cannot be paid to another pension scheme and they should be told this.
 - (b) if the person is an active member it would be unusual to receive a request for a CETV since few firefighters consider leaving the FPS and transferring rights to other pension arrangements
 - (c) it is most likely that a request for true transfer (rather than divorce/dissolution) purposes would be received from a deferred pensioner.
3. If 1(b) and the request is for divorce/dissolution proceedings, which is the most likely reason even though the caller may be reluctant to say so –
 - (a) tell them you must issue them with an authority form for them to complete and return. Instructions and information cannot be accepted or given on the basis of a telephone call; also tell them that when the authority form is returned you can provide the CETV and other relevant information
 - (b) ask them for full name, address, date of birth, National Insurance number;
 - (c) ask if divorce/dissolution proceedings have already started – this affects the timing of the provision of the information;
 - (d) send out, first class, letter LET FIRE DIV A and enclose FORM FIRE DIV 1.
4. In advance of return of FORM FIRE DIV 1 –
 - (a) extract pension file;
 - (b) send off to NISPI for GMP details if necessary;
 - (c) extract pay details.
5. When FORM FIRE DIV 1 is received - **go to Procedure B1**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A2

**INITIAL ENQUIRY BY TELEPHONE:
SCHEME MEMBER'S SPOUSE OR CIVIL PARTNER REQUESTS
INFORMATION AND/OR CETV**

1. A Scheme member's spouse or civil partner –
 - (a) is entitled to information under Disclosure of Information Regulations about potential benefits on the death of a member but such a request is very rarely received.
 - (b) may ring genuinely on behalf of a Scheme member about any aspect of the member's rights. You cannot supply information about a Scheme member's pension rights without his/her written authority.
 - (c) under divorce/dissolution rules, can request information about the application of the rules in the event of divorce, dissolution of civil partnership, annulment or judicial separation. A spouse or civil partner, however, is not entitled to be given the value of a CETV.

2. You must establish the purpose of the request.

If 1(a), tell them that if they put the request in writing you will issue a copy of the Pension Guide plus any additional details to which they may be entitled (but this cannot include details of the member's own entitlement without the member's permission to supply such information).

If 1(b), tell the person that –

- you need the written request of the member to supply information,
- if the member wishes you to give the information to a third party, i.e. the caller, you must have the member's written authorisation to do so.

If 1(c),

- ask for the name of the Scheme member and date of birth
- tell the person that you need a written request and so you will issue them with an authority form for them to complete and return. Instructions/information cannot be accepted/given on the basis of a telephone call.
- ask if proceedings have already started – this affects the timing of the provision of the information.
- send out, first class, the letter LET FIRE DIV A (spouse/civil partner) and enclose FORM FIRE DIV 2.

3. Bear in mind that if the spouse or civil partner is asking for details, the chances are that a request from the member will soon follow. Although CETV figures cannot be supplied to the spouse or civil partner, it may become necessary to assess them for the Scheme member. Consequently, by way of preparation –
 - (a) extract pension file;
 - (b) send off to NISPI for GMP details if necessary;
 - (c) extract pay details.

4. When FORM FIRE DIV 2 is received – **go to Procedure B3**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A3

**INITIAL ENQUIRY BY TELEPHONE:
SOLICITOR OF SCHEME MEMBER REQUESTS INFORMATION AND/OR CETV**

1. It is unlikely that a solicitor would make a request for information by telephone call unless they are trying to find out who has responsibility for pension rights and to whom they should write.
2. If this is the case, take details of the Scheme member and send the solicitors a copy of FORM FIRE DIV 1 for the Scheme member to complete and return.
3. In anticipation of the return of FORM FIRE DIV 1 –
 - (a) extract pension file;
 - (b) send off to NISPI for GMP details if necessary;
 - (c) extract pay details.
4. When FORM FIRE DIV 1 is received – **go to Procedure B1.**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A4

**INITIAL ENQUIRY BY TELEPHONE:
SOLICITOR OF SCHEME MEMBER'S SPOUSE OR CIVIL PARTNER REQUESTS
INFORMATION AND/OR CETV**

1. It is unlikely that a solicitor would make a request for information by telephone call unless they are trying to find out who has responsibility for pension rights and to whom they should write.
2. If this is the case, send them a copy of FORM FIRE DIV 2 for the Scheme member's spouse or civil partner to complete and return.
3. If, in the telephone call, the solicitor suggests that they will require a CETV, point out that a CETV will be given to the Scheme member or the Court on request or by order but that it cannot be supplied to the spouse, civil partner or his/her solicitor. Say that the basic information, excluding the CETV, will be provided as required under the Pensions on Divorce etc. (Provision of Information) Regulations 2000 subject to the return of FORM FIRE DIV 2.
4. Bear in mind that if the spouse's/civil partner's solicitor is asking for details, and will not be given the value of CETV, the chances are a request from the member will soon follow. Consequently, by way of preparation and in anticipation of the return of FORM FIRE DIV 2 –
 - (a) extract pension file;
 - (b) send off to NISPI for GMP details if necessary;
 - (c) extract pay details.
5. FORM FIRE DIV 2 is returned – **go to Procedure B3.**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A5

**INITIAL ENQUIRY IN WRITING:
SCHEME MEMBER REQUESTS CETV**

1. If the Scheme member has asked for CETV details without explaining the purpose –
 - (a) send letter LET FIRE DIV A (ack), and
 - (b) start collating details needed for calculation pending reply, i.e. –
 - (i) extract pension file
 - (ii) send off to NISPI for GMP details if necessary
 - (iii) extract pay details.
2. If a reply is not received to LET FIRE DIV A (ack) chase up.
3. When a reply is received to letter LET FIRE DIV A (ack)
 - (a) if the CETV is not required for divorce/dissolution purposes, process and provide details as normal
 - (b) if the CETV is required for divorce/dissolution purposes – see paragraph 4 below.
4. If he/she has asked for a CETV for divorce/dissolution purposes –
 - (a) follow procedures as in paragraph 1(b) above, if you have not already done so.
 - (b) **go to Procedure B1**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A6

**INITIAL ENQUIRY IN WRITING:
SCHEME MEMBER REQUESTS INFORMATION, NO CETV**

1. If the Scheme member does not ask for a CETV, just information, the letter will almost certainly make it clear that the information is needed for divorce/dissolution purposes. It is also likely that, although the initial request has been made for information only, there will be a later request for a CETV. If proceedings have commenced on or after 5 December 2005 it is possible that you may be sent Form P "Pension Inquiry Form" to complete.
2. In advance of receiving a request for a CETV it would be advisable to –
 - (a) extract pension file
 - (b) send off to NISPI for GMP details if necessary
 - (c) extract pay details.
3. Go to Procedure B2

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A7

**INITIAL ENQUIRY IN WRITING:
SCHEME MEMBER'S SPOUSE OR CIVIL PARTNER REQUESTS
INFORMATION AND/OR CETV**

1. What is it the spouse/civil partner is asking for?
 - (a) If he/she asks for general information about the Scheme, he/she is entitled to the general information about pension rights similar to that contained in the Scheme guide. Is this all he/she wants?
 - (b) If he/she requests details of a CETV, this cannot be supplied.
 - (c) If he/she requests information in relation to divorce/dissolution proceedings (i.e. without CETV information) this can be supplied.
2. It is most probable that the spouse/civil partner will have been prompted by his/her solicitor to write in for information and so a reference will probably be made to divorce/dissolution proceedings. Spouses and civil partners do not usually write in for other information (although certain details must be provided under Disclosure of Information requirements if they do – see 1(a) above).
3. If his/her requirements are unclear, he/she will have to be contacted (tactfully) asking him/her what information he/she needs and why. There is no standard letter for this purpose. The letter will have to be tailored to the content of his/her letter.
4. If his/her requirements are clearly to do with divorce/dissolution in the initial letter (the letter may contain Form P "Pension Inquiry Form" partially completed by the Scheme member) or upon your making further enquiries – **go to Procedure B3**.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A8

**INITIAL ENQUIRY IN WRITING:
SOLICITOR OF SCHEME MEMBER REQUESTS INFORMATION AND/OR CETV**

1. If a solicitor requests the information it is most likely that divorce/dissolution proceedings have commenced and you may have limited time in which to respond.
2. It is unlikely that a Scheme member's solicitor would ask for information and no CETV.
3. Check that you can clearly identify the Scheme member from the solicitor's letter and that the letter contains his/her authorisation to provide information to the solicitor. If the letter contains Form P "Pension Inquiry Form", if it has been signed on page 1 by the Scheme member this is authorisation to release the information, but take care to return it to the address directed by the Scheme member on page 1.
 - (a) If not,
 - (i) issue FORM FIRE DIV 1 to the solicitor asking for it to be completed by the member and returned to you.
 - (ii) pending the return of the Form, because you may have limited time to prepare a CETV calculation –
 - extract the pension file
 - send off to NISPI for GMP details if necessary
 - extract pay details.
4. If you can identify the member and suitable authorisation is given, by the solicitor's letter, in Form P, or on return of FORM FIRE DIV 1 – **go to Procedure B1**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A9

**INITIAL ENQUIRY IN WRITING:
SOLICITOR OF SCHEME MEMBER'S SPOUSE OR CIVIL PARTNER REQUESTS
INFORMATION AND/OR CETV**

1. If a solicitor requests the information it is most likely that divorce/dissolution proceedings have commenced and you may have limited time in which to respond.
2. A spouse/civil partner and his/her solicitor are not entitled to ask for CETV details but sometimes they do.
3. Check that you can clearly identify the Scheme member from the solicitor's letter and that the letter contains his/her authorisation to provide information to the solicitor. If the letter contains Form P "Pension Inquiry Form", if it has been signed on page 1 by the Scheme member this is authorisation to release the information, but take care to return it to the address directed by the Scheme member on page 1.
 - (a) If not, issue FORM FIRE DIV 2 to the solicitor asking for it to be completed by the member's spouse or civil partner and returned to you.
 - (b) Bear in mind that if the spouse's or civil partner's solicitor is asking for details and will not be given the value of CETV, the chances are that a request from the member will soon follow. Consequently, by way of preparation and in anticipation of the return of FORM FIRE DIV 2 –
 - (i) extract pension file
 - (ii) send off to NISPI for GMP details if necessary
 - (iii) extract pay details.
4. If you can identify the member and suitable authorisation is given, either by the solicitor's letter, Form P, or on return of FORM FIRE DIV 2 – **go to Procedure B3**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

A10

**A COURT ORDER IS ISSUED REQUIRING
THE PROVISION OF INFORMATION AND/OR CETV**

1. This is not likely to happen often but the order must be acted upon if received. It is possible that the order may be accompanied by Form P "Pension Inquiry Form". In this case, even if it is unsigned, it should be completed and returned to the court.
2. Do you have adequate information to identify the Scheme member? If not, write to the Court asking for more details.
3. If (and when, in the case of paragraph 2 above) you can proceed –
 - (a) if the request is for a CETV (this is most likely)– **go to Procedure B1**
 - (b) if the request is for information only (this is least likely) – **go to Procedure B2**

END

PART B

**ACKNOWLEDGEMENT OF INITIAL ENQUIRY
AND SUPPLY OF CETV AND/OR INFORMATION**

- B1** Scheme member or his/her solicitor requests, or court orders, CETV
- B2** Scheme member or his/her solicitor requests, or court orders, information (no CETV)
- B3** Spouse or civil partner of Scheme member or his/her solicitor requests CETV/information

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B1

**ACKNOWLEDGEMENT AND SUPPLY OF CETV/INFORMATION:
SCHEME MEMBER OR HIS/HER SOLICITOR REQUESTS, OR COURT ORDERS, CETV**

1. To commence action under B1, one of the following must apply –
 - (a) a letter has been received from the Scheme member or his/her solicitor giving adequate information and authorisation for the provision of a CETV and other basic information (possibly enclosing the relevant questions from Form E (12.00), Form E (12.05) or requesting that Form P should be completed), or
 - (b) FORM FIRE DIV 1 has been returned, completed correctly, or
 - (c) a court has ordered the information to be provided.Any of these is treated as the request for a CETV/information.
2. Note the date the request is received.
3. Is there an indication that divorce/dissolution proceedings have started? (It would be sensible to assume they have if the letter came from a solicitor; they will have done if a court orders the information).
 - (a) if no, you have 3 months from the date the request is received to provide the CETV and information
 - (b) if yes,
 - (i) you have 6 weeks to provide the CETV and information
but
 - (ii) if you are told that a pension sharing order may be made, you have 21 days in which to provide the CETV and information unless a court specifies a longer period. (If you are told this, it means the proceedings are well advanced. It would be unusual for such a decision to be made before the CETV and other information is supplied. Hopefully, therefore, this situation may not arise very often.)
 - (iii) if you are required to provide the CETV and information by court order the deadlines will be whatever the court has set. Otherwise, they will be 6 weeks or 21 days according to whether (i) or (ii) above apply.
 - (c) if uncertain, start off with the assumption that you have 3 months but be prepared to adjust it to a much shorter period following the issue of your acknowledgement letter (see paragraph 4 below).
4. Send letter LET DIV FIRE B out immediately. This acts as –
 - (a) an acknowledgement
 - (b) a prompt for timescales to be clarified if you do not know what stage the divorce/dissolution proceedings have reached (see paragraph 3 above).

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B1 (continued)**ACKNOWLEDGEMENT AND SUPPLY OF CETV/INFORMATION:
SCHEME MEMBER OR HIS/HER SOLICITOR REQUESTS, OR COURT ORDERS, CETV**

5. Start work on the CETV right away. If you have not already done so –
 - (a) extract pension file
 - (b) send off to NISPI for GMP details if necessary
 - (c) extract pay details.
6. Note the content of any reply to letter LET FIRE DIV B and adjust timescales if necessary.
7. Assume you are working under English/Welsh law unless advised otherwise.
8. Prepare the CETV in accordance with GAD guidelines. (The CETV is calculated as at the date the request for the valuation was received.)
9. If the request was based on Form E (12.00) – the version of Form E in use before 5 December 2005 – enter CETV details into relevant FORM FIRE DIV 3 (active), (deferred) or (pensioner). This FORM FIRE DIV 3 is formatted to match the questions as on Form E (12.00). This version of Form E predates the Civil Partnership Act 2004 and so no reference is made to civil partners in the information given.

Send out letter LET FIRE DIV D, and enclose –

FORM FIRE DIV 3 This gives the amount of CETV which has to be supplied by a Pension Scheme manager in accordance with Regulation 2(2) of the Pensions on Divorce etc (Provision of Information) Regulations 2000 and gives certain other information about pension rights. It follows the format of Form E (12.00) as issued for cases before 5 December 2005. By supplying the information in this format there is less likelihood of requests for further information.

FORM FIRE DIV 4 This gives the basic information which has to be supplied by a Pension Scheme manager in accordance with Regulation 2(3) of the Pensions on Divorce etc (Provision of Information) Regulations 2000

FORM FIRE DIV 5 This gives information which has to be supplied under Regulation 4 of the same Regulations where a Pension Scheme Manager is told that a pension sharing order or provision may be made. The Regulations allow it to be issued at an earlier stage, too. Because you may not always know what stage the divorce/dissolution proceedings have reached when a request for information is made, if this information is supplied with the basic information you are ensuring that the correct information is given, whatever stage has been reached. It is better to supply it twice than be penalised for not having supplied it at all.

Note that you have to complete FORM FIRE DIV 5 before issuing it.

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B1 (continued)

**ACKNOWLEDGEMENT AND SUPPLY OF CETV/INFORMATION:
SCHEME MEMBER OR HIS/HER SOLICITOR REQUESTS, OR COURT ORDERS, CETV**

FORM FIRE DIV 6 This form sets out the information which you will need if a pension sharing order or earmarking order is to be made. Some of it is information you are required to request, some of it is information which the court should know it must supply when it makes the order. By including it here, if certain information is not supplied and the implementation period has to be delayed, you will not be the party at fault. Note that FORM FIRE DIV 5 has a section in which you should add any additional information which you may need (i.e. over and above the standard information listed in FORM FIRE DIV 6).

FORM FIRE DIV 100 This form sets out the Schedule of Charges for work undertaken. This has to be supplied right from the start of the process or the Fire and Rescue Authority will not be able to charge for any work undertaken in connection with pension sharing or earmarking.

10. If the request was based on Form E (12.05) enter CETV details into FORM FIRE DIV 3 (12.05). This version of Form E was introduced after the Civil Partnership Act 2004 came into effect and caters for both divorce and dissolution of civil partnership. Form E (12.05) requires far less information than the previous Form E.

Send out letter LET FIRE DIV D, and enclose –

FORM FIRE DIV 3 (12.05) This gives the amount of CETV which has to be supplied by a Pension Scheme manager in accordance with Regulation 2(2) of the Pensions on Divorce etc (Provision of Information) Regulations 2000. It follows the format of Form E (12.05) as issued for cases after 5 December 2005.

10. With effect from 5 December 2005, a new form – Form P "Pension Inquiry Form" – was introduced. The court may direct the party with pension rights to file and serve this form completed in full or in part. Form P requires details previously contained in Section 2.16 of Form E (12.00) plus the information supplied in FORM FIRE DIV 4, 5, 6 and 100 as listed above. At the end of Annexe 14B (the section which contains model forms) there is guidance as to how a fire and rescue authority may wish to complete Form P. If the request for Form E (12.05) information is accompanied by Form P, send the Form E (12.05) information with a completed Form P and attaching FORMS FIRE DIV 4, 5, 6 and 100 as listed above.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B2

**ACKNOWLEDGEMENT AND SUPPLY OF INFORMATION:
SCHEME MEMBER OR HIS/HER SOLICITOR REQUESTS,
OR COURT ORDERS, INFORMATION (NO CETV)**

1. To commence action under B2, one of the following must apply –
 - (a) a letter has been received from the Scheme member or his/her solicitor giving adequate information and authorisation for the provision of information, or
 - (b) FORM FIRE DIV 1 has been returned, completed correctly but indicating a CETV is not required, or
 - (c) a court has ordered the information to be provided.Any of these is treated as the request for information.
2. Note the date the request is received.
3. Is there an indication that divorce/dissolution proceedings have started? (It would be sensible to assume they have if the letter came from a solicitor; they will have done if a court orders the information).
 - (a) if no, you have one month from the date the request is received to provide the information
 - (b) if yes,
 - (i) you still have one month in which to provide the information
but
 - (ii) if you are told that a pension sharing order may be made, you have 21 days in which to provide the information unless a court specifies a longer period. (If you are told this, it means the proceedings are well advanced. It would be unusual for such a decision to be made before the CETV and other information is supplied. Hopefully, therefore, this situation may not arise very often.)
 - (iii) if you are required to provide the information by court order the deadlines will be whatever the court has set. Otherwise, they will be one month or 21 days according to whether (i) or (ii) above apply.
4. Assume you are working under English/Welsh law unless advised otherwise.
5. Send out letter LET FIRE DIV C. This acts both as an acknowledgement letter and as a covering letter for the information you provide.
6. With letter LET FIRE DIV C enclose –

FORM FIRE DIV 4 This gives the basic information which has to be supplied by a Pension Scheme manager in accordance with Regulation 2(3) of the Pensions on Divorce etc (Provision of Information) Regulations 2000

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B2 (continued)

**ACKNOWLEDGEMENT AND SUPPLY OF INFORMATION:
SCHEME MEMBER OR HIS/HER SOLICITOR REQUESTS,
OR COURT ORDERS, INFORMATION (NO CETV)**

FORM FIRE DIV 5 This gives information which has to be supplied under Regulation 4 of the same Regulations where a Pension Scheme Manager is told that a pension order or provision may be made. The Regulations allow it to be issued at an earlier stage, too. Because you may not always know what stage the divorce/dissolution proceedings have reached when a request for information is made, if this information is supplied with the basic information you are ensuring that the correct information is given, whatever stage has been reached. It is better to supply it twice than be penalised for not having supplied it at all.

Note that you have to complete FORM FIRE DIV 5 before issuing it.

FORM FIRE DIV 6 This form sets out the information which you will need if a pension sharing order or earmarking order is to be made. Some of it is information you are required to request, some of it is information which the court should know it must supply when it makes the order. By including it here, if certain information is not supplied and the implementation period has to be delayed, you will not be the party at fault. Note that FORM FIRE DIV 5 has a section in which you should add any additional information which you may need (i.e. over and above the standard information listed in FORM FIRE DIV 6).

FORM FIRE DIV 100 This form sets out the Schedule of Charges for work undertaken. This has to be supplied right from the start of the process or the Fire and Rescue Authority will not be able to charge for any work undertaken in connection with pension sharing or earmarking.

7. There are some optional phrases for inclusion in letter LET FIRE DIV C. Use these according to the circumstances of the case.
8. If, following the issue of this letter, you are told that CETV details are required, follow the guidelines of B1 according to whether the details are requested in the terms of Form E (12.00) or Form E (12.05) and whether the request is accompanied by Form P "Pension Inquiry Form".
9. If you have to complete Form P, see the "Suggested method of completion of Form P" at the end of Annexe 14B (the Forms section).

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B3

**ACKNOWLEDGEMENT AND SUPPLY OF INFORMATION:
SPOUSE OR CIVIL PARTNER OF SCHEME MEMBER OR HIS/HER SOLICITOR
REQUESTS INFORMATION/CETV**

1. To commence action under B3, one of the following must apply –
 - (a) a letter has been received from the spouse or civil partner of the Scheme member or the spouse's or civil partner's solicitor giving adequate information and authorisation for the provision of information, or
 - (b) FORM FIRE DIV 2 has been returned, completed correctly.Either of these is treated as the request for information.
2. If the request is for a CETV, this cannot be provided to a spouse, civil partner, or his/her solicitor.
3. Note the date the request is received.
4. Is there an indication that divorce/dissolution proceedings have started? (It would be sensible to assume they have if the letter came from a solicitor).
 - (a) if no, you have one month from the date the request is received to provide the information
 - (b) if yes,
 - (i) you still have one month in which to provide the information
but
 - (ii) if you are told that a pension sharing order may be made, you have 21 days in which to provide the information unless a court specifies a longer period. (If you are told this, it means the proceedings are well advanced. It would be unusual for such a decision to be made before the CETV and other information is supplied. Hopefully, therefore, this situation may not arise very often.)
5. Assume you are working under English/Welsh law unless advised otherwise.
6. Send out letter LET FIRE DIV C. This acts both as an acknowledgement letter and as a covering letter for the information you provide.
7. With letter LET FIRE DIV C enclose –

FORM FIRE DIV 4 This gives the basic information which has to be supplied by a Pension Scheme manager in accordance with Regulation 2(3) of the Pensions on Divorce etc (Provision of Information) Regulations 2000

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

B3 (continued)

**ACKNOWLEDGEMENT AND SUPPLY OF INFORMATION:
SPOUSE OR CIVIL PARTNER OF SCHEME MEMBER OR HIS/HER SOLICITOR
REQUESTS INFORMATION/CETV**

FORM FIRE DIV 6 This form sets out the information which you will need if a pension sharing order or earmarking order is to be made. Some of it is information you are required to request, some of it is information which the court should know it must supply when it makes the order. By including it here, if certain information is not supplied and the implementation period has to be delayed, you will not be the party at fault.

FORM FIRE DIV 100 This form sets out the Schedule of Charges for work undertaken. This has to be supplied right from the start of the process or the Fire and Rescue Authority will not be able to charge for any work undertaken in connection with pension sharing or earmarking.

Note that you do not issue FORM FIRE DIV 5 to a spouse, civil partner, or his/her solicitor. This may only be issued to a member or his/her solicitor.

8. There are some optional phrases for inclusion in letter LET FIRE DIV C. Use these according to the circumstances of the case. For example, if the spouse, civil partner, or his/her solicitor have asked for a CETV, there is a paragraph explaining it cannot be provided.

END

PART C

**NOTICE IS GIVEN TO THE FIRE AND RESCUE AUTHORITY
THAT A PENSION SHARING ORDER OR PROVISION MAY BE MADE**

- C1** Notice is given that a pension sharing order or provision may be made.
- C2** A transfer of pension rights is received or member leaves FPS or NFPS after information has been provided.

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

C1

NOTICE IS GIVEN THAT A PENSION SHARING ORDER OR PROVISION MAY BE MADE

1. This will be done once the court process is underway. It may well be, however, that this stage has already been reached before the first approach had been made to you for information. Don't worry. The documentation you send out under Part B caters for this. The Pensions on Divorce etc. (Provision of Information) Regulations 2000 allow the option for it to be sent out at an earlier stage and the procedures set out in these notes use that option.
2. Whether or not the appropriate documentation has been sent out under Part B, it should be sent out again once the notice is received that a pension sharing order or provision may be made. Duplication is better than omission.
3. Note the date that the notice is received. You have 21 days from this date in which to supply the relevant documentation unless the court sets a different time limit.
4. The documentation is sent to the Scheme member, or his/her solicitors, or the Court (depending upon who issued the notice and any instructions from the Scheme member as to the issue of copy correspondence). It must not be sent to the member's spouse or civil partner, or his/her solicitors.
5. If you have not been sent Form P "Pension Inquiry Form" for completion, send letter LET FIRE DIV E in accordance with paragraph 4 above and with letter LET FIRE DIV E enclose –

FORM FIRE DIV 5 This is the information which has to be supplied by the Pension Scheme Manager under Regulation 4 of the Pensions on Divorce etc (Provision of Information) Regulations 2000 when told that a pension sharing order or provision may be made.

Note that you have to complete sections of this Form before sending it out.

FORM FIRE DIV 6 This sets out all the information you will need to implement the order or provision.

Note that there is a space on FORM FIRE DIV 5 to put in any additional information you may need.

FORM FIRE DIV 100 This is your last chance to notify charges, so include the Schedule of Charges as set out on this Form, even though it may have been sent before.

6. If you have been sent Form P, complete it in line with "Suggested method of completion of Form P" at the end of Annexe 14B (the Forms section) together with any of the FIRE DIV FORMS mentioned in the completion instructions

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

C2

**A TRANSFER OF PENSION RIGHTS IS RECEIVED
OR THE MEMBER LEAVES THE FPS AFTER INFORMATION HAS BEEN PROVIDED**

1. If, after supplying the information under Parts B and C –
 - (a) a transfer of pension rights is received from some other pension arrangement, or
 - (b) the member leaves the FPStell all parties to whom information has been sent. This is not a requirement of divorce/dissolution legislation but may avert problems.
2. Similarly, if you become aware of any other factor which could affect the information supplied, let the relevant parties know.

END

PART D

A PENSION SHARING ORDER OR PROVISION IS RECEIVED

- D1** A pension sharing order or provision is received.
- D2** Implementation cannot commence: notice to Scheme member and former spouse or civil partner.
- D3** Implementation can commence: notice to Scheme member and former spouse or civil partner.

Divorce, dissolution of civil partnership, annulment, judicial separation Administrative procedures

D1

A PENSION SHARING ORDER OR PROVISION IS RECEIVED

1. If the court decides that an equitable apportionment of assets can only be achieved through the apportionment of pension, the court will issue a pension sharing order.
2. Note the date the order is received.
3. You have 4 months from the later of –
 - (a) the day on which the relevant order or provision comes into effect, or
 - (b) the day on which you are in receipt of all the relevant information
 in which to implement the order or provision. This is called the implementation period.
4. Have you got all the information you need to implement the order? This will be all the information and documents listed as standard in FORM FIRE DIV 6 and any additional information you asked for in FORM FIRE DIV 5. Note that in the case of divorce/dissolution or nullity proceedings lodged in Scotland, an order or agreement will be treated as ineffective if the Fire and Rescue Authority do not also receive copies of the pension sharing order or agreement and the relevant decree of divorce or declarator, or pension dissolution order within 2 months of the date of the extract of the decree or declarator or order (although the court can extend this period).
5. In most circumstances you should have all the information necessary.
6. Take note of the court's instructions about charging. These may not be as proposed (if at all) in the Schedule of Charges. For example, the Fire and Rescue Authority may state in the Schedule that they will deduct the full charge from the former spouse's or civil partner's CETV. The court may vary the amount, or order that the Scheme member should pay, or both parties should share the cost, or it may require that payment is made directly to the Authority (in which case payment should be made before implementation of the order can proceed).
7. You have 21 days from the date of receipt of the order or provision to tell the member and former spouse or civil partner why it cannot be implemented if this should be the case.
8. It may be that one of the parties to the divorce/dissolution may wish to appeal against the order. If an application for appeal is made, the order is “stayed” until the appeal is determined. It is unlikely that the order will be issued until the period in which an application for the appeal may be made has lapsed. Be careful though.
9. If you do not have all the information you need to proceed or if charges due before the apportionment of the CETV remain outstanding – **go to Procedure D2**.
10. If you do have all the information you need to proceed and if no charges due before the apportionment of the CETV remain outstanding – **go to Procedure D3**.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

D2

**A PENSION SHARING ORDER OR PROVISION IS RECEIVED:
IMPLEMENTATION CANNOT COMMENCE:
NOTICE TO SCHEME MEMBER AND FORMER SPOUSE OR CIVIL PARTNER**

1. If, for any reason, implementation cannot commence, both the member and the former spouse or civil partner must be told, within 21 days of receipt of the pension sharing order or provision, with details of the problem. This could be incomplete documentation or information, or failure to pay charges (if relevant), or some other reason (e.g. incorrect drafting of the order).
2. To the pension scheme member and former spouse or civil partner send letter LET FIRE DIV F, amended as appropriate to –
 - (a) indicate where the problem lies
 - (b) with whom the problem lies (e.g. is it the member or the former spouse or civil partner who has to supply information?)
3. If the reason why implementation cannot commence is lack of certain information, with letter LET FIRE DIV F enclose FORM FIRE DIV 5 or FORM FIRE DIV 6, as appropriate, with the missing information marked by a highlighter pen.
4. When the information is received, or charges paid, and implementation can commence – **go to Procedure D3.**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

D3

**A PENSION SHARING ORDER OR PROVISION IS RECEIVED:
IMPLEMENTATION CAN COMMENCE:
NOTICE TO SCHEME MEMBER, NOTICE TO FORMER SPOUSE OR CIVIL PARTNER**

1. If you have all the information you need to commence implementation of the pension sharing order, you have 4 months in which to implement it.
2. As confirmation that implementation has commenced send out letter LET FIRE DIV F, adapted as appropriate, to –
 - (a) the Scheme member
 - (b) the former spouse or civil partner.
3. Commence implementation - **go to Procedure E1**

END

PART E

IMPLEMENTATION OF A PENSION SHARING ORDER

- E1** Implementation - calculation.
- E2** Former spouse or civil partner dies before implementation completed.
- E3** Implementation cannot be completed within 4 month time limit.
- E4** Notification to National Insurance Services to Pensions Industry

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

E1

IMPLEMENTATION - CALCULATION

1. Prepare a valuation and apportionment of benefits in accordance with the Firefighters' Pension Scheme 1992 or the New Firefighters' Pension Scheme 2006 and the guidelines of the Government Actuary.
2. Take note of any instructions of the court regarding charges and act accordingly. If the court has not made any instructions, act in accordance with Fire and Rescue Authority policy.
3. Create pension credit member pension record for former spouse or civil partner.
4. Record appropriate details on firefighter's pension record.
5. The details of the valuation and apportionment of benefits (paragraph 1 above) available –
 - (a) to the Scheme member, can be provided in the notice of discharge of liability:
 - (i) in the case of an active member – **go to Procedure F1**
 - (ii) in the case of a deferred member – **go to Procedure F2**
 - (iii) in the case of a pensioner member – **go to Procedure F3**
 - (b) to a former spouse or civil partner, can be provided in the notice of discharge of liability:
 - (i) in the case of a former spouse or civil partner under age 60 (FPS), age 65 (NFPS) – **go to page F4**
 - (ii) in the case of a former spouse or civil partner aged 60 or over (FPS), age 65 or over (NFPS) – **go to page F5**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

E2

IMPLEMENTATION:

FORMER SPOUSE OR CIVIL PARTNER DIES BEFORE IMPLEMENTATION IS COMPLETED

1. In the unusual circumstances that the former spouse or civil partner should die after the pension sharing order has been issued but before the pension credit action has been completed, Regulation 6 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 sets out the requirements and the Firefighters' Pension Scheme 1992 and the New Firefighters' Pension Scheme 2006 set the amount payable.
2. Both Schemes require the payment of a death grant equivalent to two and a quarter times the pension to which the former spouse or civil partner would have been entitled had payment been due at the date of death.
3. If the Fire and Rescue Authority's charging policy requires the deduction of charges from the spouse's or civil partner's pension credit, the death grant will be the lump sum payable in respect of the pension credit after deduction of charges.
4. The lump sum is payable to the legal personal representatives of the former spouse or civil partner as named in Grant of Probate or Letters of Administration unless he/she would have been a pension credit member in the New Firefighters' Pension Scheme 2006 and before his/her death had made a nomination for death grant purposes which was accepted by the Fire and Rescue Authority.
5. A letter setting out –
 - the value of the pension credit
 - the charges and the method of collection
 - the charges deducted from the pension credit (if any) and the net value
 - the transfer day
 - details of any periodical charges
 - the amount of death grant
 - the potential recipients

and requesting –

- any further information needed before liability for the pension credit can be discharged (i.e. anything as listed on FORM FIRE DIV 5 or FORM FIRE DIV 6 and which may still be relevant, Grant of Probate, etc.)

must be sent to “any person to whom the person responsible for the pension arrangement considers should be notified” of these matters, within 21 days of the death of the former spouse or civil partner. The most appropriate persons would probably be whoever advised the Fire and Rescue Authority of the death of the former spouse or civil partner or any contact name given by that person and possibly the solicitors acting for the person on divorce. No model letter is given for this purpose.

6. When any outstanding information has been received and the death grant assessed and paid, the liability for pension credit will have been discharged in respect of the former spouse or civil partner.

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

E2 (continued)

IMPLEMENTATION:

FORMER SPOUSE OR CIVIL PARTNER DIES BEFORE IMPLEMENTATION IS COMPLETED

7. This will not affect in any way the rights or benefits of the Scheme member. The benefits will still be reduced in accordance with the pension sharing order and the Scheme member will receive the standard notice of discharge of liability as outlined in Part F.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

E3

IMPLEMENTATION CANNOT BE COMPLETED WITHIN 4 MONTH TIME LIMIT

1. This situation should not be allowed to arise – substantial fines may be imposed if it does. The situation will be monitored by the Pensions Regulator. The Fire and Rescue Authority can also be fined if it fails to tell the Regulator of its failure to comply with the time limits.
2. In exceptional circumstances, the Regulator may allow an extension to the time limits.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

E4

NOTIFICATION TO NATIONAL INSURANCE SERVICES TO PENSIONS INDUSTRY

1. A special form "Pension Sharing on Divorce Notification" CA2202, has been introduced for completion by scheme administrators and providers to notify the pension share to National Insurance Services to Pensions Industry ("NISPI"), formerly the Contracted-Out Employments Group ("COEG") of HM Revenue and Customs.
2. Complete the form and send to NISPI after implementation of the pension sharing order. The details must show the percentage rate awarded to the former spouse or civil partner (even in the case of a Scottish divorce where the court will set a monetary value for the pension debit – see GAD guidance for how to convert a monetary amount to a percentage).
3. On receipt of the notification, NISPI will update the National Insurance records of both the member and the former spouse or civil partner, to show that a pension share has occurred.
4. The calculation of contracted-out pension rights carried out by NISPI in respect of members does not take account of any pension rights shared on divorce/dissolution, therefore the full GMP amount will continue to be notified. All statements (except those issued by magnetic media) which show a GMP amount will include a general reminder that the amount quoted does not take account of any pension rights shared on divorce/dissolution whether or not a pension share has taken place.
5. Further information is available from the HMRC National Insurance Contributions Office, SDG Technical (Pensions), Chillingham House, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1ZZ; telephone 0191 2250267.

END

PART F

NOTICE OF DISCHARGE OF LIABILITY

- F1** Notice of discharge of liability: active Scheme member.
- F2** Notice of discharge of liability: deferred Scheme member.
- F3** Notice of discharge of liability: pensioner member.
- F4** Notice of discharge of liability: former spouse or civil partner who is below age 60 (FPS), below age 65 (NFPS).
- F5** Notice of discharge of liability: former spouse or civil partner aged 60 or over (FPS), 65 or over (NFPS).

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

F1

NOTICE OF DISCHARGE OF LIABILITY: ACTIVE SCHEME MEMBER

1. Within 21 days beginning with the day on which the discharge of liability in respect of the pension sharing order is completed, both the Scheme member and the former spouse or civil partner must be supplied with a notice of discharge of liability.
2. In the case of an active member of the Scheme, send out letter LET FIRE DIV G.
3. The letter may have to be varied according to charging principles, i.e. if the court has issued instructions as to charging which are not the same as the Fire and Rescue Authority's.
4. Enclose with letter LET FIRE DIV G
 - a copy of FORM FIRE DIV 7A which outlines appeal procedures under the Firefighters' Pension Scheme 1992, or
 - a copy of FORM FIRE DIV 7B which outlines appeal procedures under the New Firefighters' Pension Scheme 2006.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

F2

NOTICE OF DISCHARGE OF LIABILITY: DEFERRED SCHEME MEMBER

1. Within 21 days beginning with the day on which the discharge of liability in respect of the pension sharing order is completed, both the Scheme member and the former spouse or civil partner must be supplied with a notice of discharge of liability.
2. In the case of a deferred member of the Scheme, send out letter LET FIRE DIV H.
3. The letter may have to be varied according to charging principles, e.g. if the court has issued instructions as to charging which are not the same as the Fire and Rescue Authority's.
4. Enclose with letter LET FIRE DIV H
 - a copy of FORM FIRE DIV 7A which outlines appeal procedures under the Firefighters' Pension Scheme 1992, or
 - a copy of FORM FIRE DIV 7B which outlines appeal procedures under the New Firefighters' Pension Scheme 2006.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

F3

NOTICE OF DISCHARGE OF LIABILITY: PENSIONER MEMBER

1. Within 21 days beginning with the day on which the discharge of liability in respect of the pension sharing order is completed, both the Scheme member and the former spouse or civil partner must be supplied with a notice of discharge of liability.
2. In the case of a pensioner member of the Scheme, send out letter LET FIRE DIV I.
3. The letter may have to be varied according to charging principles, e.g. if the court has issued instructions as to charging which are not the same as the Fire and Rescue Authority's.
4. Enclose with letter LET FIRE DIV I
 - a copy of FORM FIRE DIV 7A which outlines appeal procedures under the Firefighters' Pension Scheme 1992, or
 - a copy of FORM FIRE DIV 7B which outlines appeal procedures under the New Firefighters' Pension Scheme 2006.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

F4

**NOTICE OF DISCHARGE OF LIABILITY: FORMER SPOUSE OR CIVIL PARTNER WHO IS
BELOW AGE 60 (FPS), BELOW AGE 65 (NFPS)**

1. Within 21 days beginning with the day on which the discharge of liability in respect of the pension sharing order is completed, both the Scheme member and the former spouse or civil partner must be supplied with a notice of discharge of liability.
2. In the case of a former spouse or civil partner who has not attained age 60 (FPS), 65 (NFPS) send out letter LET FIRE DIV J.
3. The letter may have to be varied according to charging principles, e.g. if the court has issued instructions as to charging which are not the same as the Fire and Rescue Authority's.
4. The letter will also have to be adjusted to reflect no entitlement to a lump sum if the Scheme member has already retired.
5. Enclose with letter LET FIRE DIV J
 - a copy of FORM FIRE DIV 7A which outlines appeal procedures under the Firefighters' Pension Scheme 1992, or
 - a copy of FORM FIRE DIV 7B which outlines appeal procedures under the New Firefighters' Pension Scheme 2006.

END

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

F5

**NOTICE OF DISCHARGE OF LIABILITY: FORMER SPOUSE OR CIVIL PARTNER AGED 60
OR OVER (FPS), AGED 65 OR OVER (NFPS)**

1. Within 21 days beginning with the day on which the discharge of liability in respect of the pension sharing order is completed, both the Scheme member and the former spouse or civil partner must be supplied with a notice of discharge of liability.
2. In the case of an former spouse or civil partner who is age 60 or over (FPS), age 65 or over (NFPS), send out letter LET FIRE DIV K.
3. The letter may have to be varied according to charging principles, e.g. if the court has issued instructions as to charging which are not the same as the Fire and Rescue Authority's.
4. The letter will also have to be adjusted to reflect no entitlement to a lump sum if the Scheme member has already retired.
5. Enclose with letter LET FIRE DIV K –
 - (a) a copy of FORM FIRE DIV 7A which outlines appeal procedures under the Firefighters' Pension Scheme 1992, or FORM FIRE DIV 7B which outlines appeal procedures under the New Firefighters' Pension Scheme 2006
 - (b) the Fire and Rescue Authority's standard form for bank details if details not already supplied.
 - (c) a copy of FORM FIRE DIV 8A – notice of commutation (FPS 1992) or FORM FIRE DIV 8B – notice of commutation (NFPS 2006) – if the former spouse or civil partner is eligible to commute (i.e. if the Scheme member had not already retired and commuted when the pension sharing order took effect). Note that in the case of the FPS the relevant commutation factor must be inserted into the form before it is issued.

END

PART G

AN EARMARKING ORDER IS RECEIVED

- G1** An earmarking order is made
- G2** Earmarking: Scheme member's pension is in payment
- G3** Earmarking: Scheme member's pension is **not** in payment
- G4** Earmarking: Scheme member transfers the whole of pension rights away from the Fire and Rescue Authority before benefits are put into payment
- G5** Earmarking: Scheme member's benefits are "significantly" reduced
- G6** Earmarking: Scheme member's benefits come into payment

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

G1

AN EARMARKING ORDER IS MADE

1. A court may decide to make an earmarking order rather than a pension sharing order. An earmarking order can apply to divorce, dissolution of civil partnership, annulment, or judicial separation. The order can require the pension scheme manager to –
 - (a) pay part or all of a member's net pension to the former spouse or civil partner if and when the pension becomes payable, i.e. the deduction to be paid to a former spouse or civil partner is taken from the member's pension after tax has been deducted from his/her pension. This is achieved under s25B(4) of the Matrimonial Causes Act 1973 or paragraph 25(2) of Schedule 5 to the Civil Partnership Act 2004.
 - (b) pay part or all of the member's lump sum to the former spouse or civil partner if and when the lump sum becomes payable. If a scheme allows a lump sum by commutation, the order can require the member to commute. The requirement for commutation is achieved under s25B(7) of the Matrimonial Causes Act 1973 or paragraph 25(5) of Schedule 5 to the Civil Partnership Act 2004. A commuted lump sum can be paid in part or in whole to the former spouse under s25C(2)(c) of the Matrimonial Causes Act 1973 and to the former civil partner under paragraph 26(5) of Schedule 5 to the Civil Partnership Act 2004.
 - (c) pay part or all of a lump sum death grant to the former spouse or civil partner if and when the member dies. In the case of the FPS the recipient of a death grant is "a spouse or civil partner who qualifies" or, in the absence of such a person, the personal representatives. For the death grant to be paid to a former spouse or civil partner, therefore, the court should make an order overriding this under s25C(2)(c) of the Matrimonial Causes Act 1973 or paragraph 26(5) of Schedule 5 to the Civil Partnership Act 2004. In the case of the NFPS, the Fire and Rescue Authority has absolute discretion as to the recipient of the death grant. The order, therefore, should be made under Section 25C(2)(a) of the Matrimonial Causes Act 1973 or paragraph 26(3) of Schedule 5 to the Civil Partnership Act 2004.
2. The Scheme can make representations to the Court about whether an earmarking order should be made in a particular case. To allow the Scheme to do this a draft copy of the proposed order should be sent to the Scheme to check that the terms are workable. Unfortunately, this is not always done. Consequently the first time you see the terms of earmarking they may be in the actual order. Check that you can comply with the terms. If not let the solicitor who sent you the order know and, if you have a contact address, both parties involved in the matrimonial proceedings. If the solicitor or parties fail to act within a reasonable period notify the court that you cannot comply with their instructions.
3. If an earmarking order has been made, you will need a copy of the following to implement the order –
 - (a) a copy of the decree or order of divorce, dissolution, annulment, or judicial separation including confirmation that the decree or order has been made absolute or final.
 - (b) a copy of the order and, if appropriate, the annex to the order relating to the FPS setting out the details required by rule 2.70 of the Family Proceedings Rules 1991 as amended by the Family Proceedings (Amendment) Rules 2000. (All this is detailed in FORM FIRE DIV 6 and so the member, former spouse or civil partner and their solicitors should be aware of your requirements.)

If any of the information is missing you must chase up.

ANNEXE 14

Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures

G1 (continued)

AN EARMARKING ORDER IS MADE

4. Is the Scheme member's pension in payment?
- (a) Yes – **go to Procedure G2**
 - (b) No – **go to Procedure G3**

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

G2

EARMARKING: SCHEME MEMBER'S PENSION IS IN PAYMENT

1. Acknowledge receipt of the order; chase any missing information.
2. If the Scheme member's pension is already in payment at the time the earmarking order is made, the order is most likely to be in respect of periodical instalments of pension only – the order cannot apply to the lump sum retiring allowance because that will already have been paid.
3. Does the order make any provision about charges which are in conflict with the Fire and Rescue Authority's policy? (The requirements of the order will take precedence.)
4. Assess the payments due to the former spouse and civil partner and instruct the payroll section accordingly (taking account of charges). Note the date that the first payment will be activated under the order.
5. Check whether any requirements of the order conflict with the Pensions Increase systems used.
6. To the Scheme member, within 21 days of receiving the earmarking order – send letter LET FIRE DIV L, adapted as appropriate.
7. To the former spouse or civil partner, within 21 days of receiving the earmarking order – send letter LET FIRE DIV M (include bank credit detail form if needed).

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

G3

EARMARKING: SCHEME MEMBER'S PENSION IS NOT IN PAYMENT

1. Acknowledge receipt of the order; chase any missing information.
2. Note which benefits are to be earmarked.
3. Note any charging requirements (of the Fire and Rescue Authority or the court) which would require payment upfront.
4. To the Scheme member, within 21 days of receiving the earmarking order – send letter LET FIRE DIV N.
5. To the former spouse or civil partner, within 21 days of receiving the earmarking order – send letter LET FIRE DIV O

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

G4

EARMARKING: SCHEME MEMBER TRANSFERS THE WHOLE OF PENSION RIGHTS AWAY FROM THE FIRE AND RESCUE AUTHORITY BEFORE BENEFITS ARE PUT INTO PAYMENT

1. If the Scheme member decides to transfer pension rights away from the Fire and Rescue Authority before benefits become payable, a notice must be issued to –
 - (a) the new pension scheme manager
 - (b) the former spouse or civil partner.
2. To the new pension scheme manager, within 21 days of making all transfer payments to the new scheme – send letter LET FIRE DIV P. Include with the letter a copy of –
 - (a) the earmarking order(s)
 - (b) any order(s) varying the earmarking order(s)
 - (c) all the information etc. which had to be supplied by the former spouse or civil partner as part of the divorce/dissolution process
 - (d) any notice given by the former spouse or civil partner to a former pension scheme (it may be that it was a previous scheme which received the original earmarking order and that this was transferred to the Fire and Rescue Authority – see also (e) below)
 - (e) any notice about an earmarking order given by the previous scheme to the Fire and Rescue Authority.
3. To the former spouse or civil partner, within 21 days of making all transfer payments to the new scheme – send letter LET FIRE DIV Q.
4. In the unlikely circumstances that only part of the pension rights are transferred from the Fire and Rescue Authority – **go to Page G5.**

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

G5

EARMARKING: SCHEME MEMBER'S RIGHTS ARE "SIGNIFICANTLY" REDUCED

1. If, after an earmarking order has been made, an event occurs which is likely to result in a "significant" reduction in benefits, within 14 days of the event the former spouse or civil partner must be informed
 - (a) of the event
 - (b) of the likely extent of the reduction in benefits.
2. The significant reduction, according to Regulation 5 of the Divorce etc. (Pensions) Regulations 2000 could include circumstances where benefits are reduced as a result of a partial transfer of pension rights to another pension arrangement. If this is the case, the former spouse or civil partner must also be informed of the name and address of the person responsible for the new pension arrangements.
3. A Scheme member is most likely to find his or her pension reduced in the event of forfeiture, reduction in role or in the event of re-employment.
4. No model letter has been prepared for this purpose.

END

ANNEXE 14

**Divorce, dissolution of civil partnership, annulment, judicial separation
Administrative procedures**

G6

EARMARKING: SCHEME MEMBER'S BENEFITS COME INTO PAYMENT

1. No model letters have been provided for this purpose, but –
 - (a) in the case of the Scheme member make reference to the effect of earmarking in the benefit statement letter – see the content of letter LET FIRE DIV L for the sort of information to be provided
 - (b) in the case of the former spouse or civil partner, note the content of letter LET FIRE DIV M for the sort of information to be provided.
2. Notify payroll section – take account of any charging requirements.
3. Check whether any requirements of the order conflict with the Pensions Increase systems.

END