



Pension Attachment Orders are available for divorce petitions filed on or after 1st July 1996 and in respect of financial applications in divorce made on or after the 1st August 1996.

To give an example of what “Pension attachment” means, for example the Trustees of a husband’s pension fund could be ordered by the Court to pay direct to his wife, some of the capital or income when it becomes payable to him.

The Court can make an Attachment Order by way of **Periodical Payments**. This is effectively a maintenance order secured against the Pension Fund and ordered to be paid at some future date.

A Periodical Payments Attachment Order will end on the death of either party and is fully variable. This means it could be varied before it has ever been paid.

The Court can make a **Lump Sum** Pension Attachment Order. This orders the Trustees or Managers of the Pension Fund to pay a percentage of the lump sum which one spouse will receive on retirement to the other spouse.

If you are to be the recipient, where there is a right of commutation (the ability to assign some of the pension benefits) under your spouse’s pension arrangement, the Court can direct your spouse to commute his/her pension benefits up to the maximum allowed by the scheme to your benefit, or alternatively order that there should be no commutation. However, the Court cannot order your spouse to retire at any set date.

The Court can order that a lump sum payable on death (**death benefit**) by virtue of your spouse’s pension should be paid to you, provided that the Trustees have the power to decide to whom it should be paid. If your spouse has a right to say to whom it should be paid, then the court can order your spouse to nominate you.

If you are to be the payer, and if you do not wish a claim to be made against your pension fund direct, you can explore the possibilities of seeing whether the reasonable needs of your spouse for retirement income or capital, can be met from resources other than your pension. This is called **off-setting**. You could consider Life Assurance or contracting to leave funds in a Will to your spouse or off-set with a capital sum.

If you are to be the recipient and want to off-set your notional entitlement to your spouse’s pension, an Actuary could place a figure on loss of pension payable during your spouse’s lifetime and an actuarial value on your loss of chance of surviving your spouse and receiving any death benefit (if payable) for the balance of your life. The Court would be presented with a figure for the value of your lost benefits and a figure for the sum which you would need to buy an Annuity to compensate you which would come into payment on your spouse’s death. However, a lump sum of this nature would not always be awarded as a matter of right in all cases. Furthermore, the court applies a discount to reflect present

payment as compensation for future loss and, a contingency factor, to reflect the probabilities of survival and death at various points in the future, for both you and your spouse.

Please note that all periodic payment Pension Attachment Orders are variable. For example if an order was made against you, and then your spouse remarried, you could argue that that was a ground for variation, particularly if the new spouse was wealthy. Please note however that the lump sum orders are not variable after the death of either party. Therefore there must be a specific non-payment provision in the event of the intended recipient dying first, if it is not intended that the lump sum should go to the estate of the deceased, in such an event.

Please note that all lump sum Pension Attachment Orders are similarly variable. For example if you are due to pay your spouse a commuted lump sum, it could be written into any Order before the commuting of the lump sum the words "for so long as he/she remains eligible to receive periodical payments". In other words, if your spouse remarried you could argue that he/she had no need of sharing the commuted lump sum, therefore it could theoretically be varied.

Please note by way of contrast that Pension Sharing Orders (see our related Fact Sheet) are not variable once the Decree of Divorce has been made absolute (final), though it can before in limited circumstances.

The intended beneficiary must keep the Trustees aware of his or her current address and Bank details. If, through lack of a current address, the Order cannot be paid to the intended beneficiary, the Trustees can return the payments to the pension member.

The intended beneficiary must also inform the Trustees of any changes such as remarriage which would mean that the intended beneficiary would no longer be entitled to payment.

Where you and your spouse are comparatively young and the pension will not become payable for many years (says, 20 years or more) the value of pension may not be taken into account by the Court in determining how assets are to be divided on divorce. You and your spouse are still under a duty to obtain the valuation information and the court has a duty to consider it. However, it will probably not be a matter of great relevance.

A Pension Sharing Order may not be made where there is in force a Pension Attachment Order in relation to that same pension.

Please note that there are risks associated with Pension Attachment Orders if you are the recipient. Your pension will not survive the death of your paying spouse.

There can be taxation advantages to a Pension Attachment Order if you are the recipient. We recommend you take expert advice about the tax implications.

If you obtain any financial advantage in legal proceedings, whether by winning or preserving any asset, and you have had the benefit of CLS Funding (Legal Aid) the **Statutory Charge** normally applies.

Where the **Statutory Charge** applies, you are very likely to be liable to repay your legal costs from **any and all** applicable assets received or preserved in your proceedings.

However of all the Pension Orders the Court can make, the Statutory Charge only applies to Pension Attachment Lump Sum and Pension Sharing Lump sum Orders.

This means the Statutory Charge does not apply to: -

- Pension Attachment Periodical Payments Orders
- Pension Sharing Periodical Payment Orders

Actuaries usually advise that in virtually every case where one Party has little or no pension and the Other Party has a pension with a CETV greater than £20,000, **an independent actuarial report** should be sought.

By the same token, the CETV can normally be accepted at face value in cases where the pension value is so low that the usually high cost of an actuarial valuation would be disproportionate to the value of the pension benefits to be derived from the same.

Kindly let us know if you would be prepared for us to incur this expense on your behalf.

Making a Pension Attachment Order in respect of the death benefit may be advantageous, for example to a wife where the CETV (value) of the husband's pension is modest, but the death in service benefits are unrelated to the size of the funds. This means if she had young children with substantial obligations to meet ongoing school fees and a dependence on maintenance payments, for herself or the children, attachment of the death benefits could ensure a fund in lieu of maintenance if the husband died early.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.