

Pensions and divorce

Information Leaflet in respect of the
Airways Pension Scheme (APS) and New Airways Pension Scheme (NAPS).

The information contained in this Leaflet is not intended to be a comprehensive study of issues relating to pensions and divorce, nor to provide legal advice and cannot be relied upon or treated as a substitute for a member or the spouse or civil partner or former spouse or former civil partner of a member or other third party obtaining specific legal advice concerning individual situations.

There are various ways that pensions may be taken into account when a divorce settlement is being finalised. Your solicitor will need to discuss the options available with you and determine the most appropriate course of action for your individual circumstances. Basically the options are:

Offsetting

This means that pension benefits can be offset against other assets that you both own and which are being divided in the settlement. For example the value of the pension may be balanced against the value of say a savings account or possibly some or all of a property you jointly own.

Pension sharing

This option only applies where petitions for divorce or nullity proceedings have been presented on or after 1 December 2000 and where the dissolution of a civil partnership has been presented after 5 December 2005. Pension Sharing is basically a method whereby the value of your pension benefit (including any benefit from AVCs) can be split between your former spouse or former civil partner and yourself as part of any settlement. The amount of any split would be determined by the Court. Your former spouse or former civil partner would receive a pension 'credit' and your Scheme pension will be reduced by a corresponding 'debit' amount. This option provides a clean break between you and your former spouse or former civil partner because once the credit has been allocated it will always belong to your former spouse or former civil partner. Divorce debits that are effective on or after 6 April 2014 may affect any Lifetime Allowance Individual Protection (IP14 or IP16 from April 2016) that the member may have obtained from HM Revenue & Customs (HMRC). Where this applies, the Scheme member is required to notify HMRC within 90 days of the pension debit being applied. ***Please refer to the Pension Sharing Information Leaflet for how this option applies within APS and NAPS.***

Pension Attachment (Earmarking)

This option has existed (under its former name of "earmarking") since July 1996 and provides a facility whereby a divorce, nullity, judicial separation, civil partnership dissolution settlement can contain provisions to:

- i) divert part or all of your pension when it comes into payment to your former spouse or former civil partner for the duration of the period you receive your pension, or
- ii) divert part or all of any tax-free lump sum you take from the Scheme when you start to draw your pension to be a payment paid to your former spouse or former civil partner, or
- iii) provide that part or all of any lump sum death benefit paid by the Scheme is paid to your former spouse or former civil partner in the event of your death.

This option does not provide such a clean break approach as your former spouse or former civil partner will not receive any benefit from the Scheme until such time as you draw your benefits, e.g. when you retire or die, which could be sometime after your divorce.

Please refer to the Pension Attachment (Earmarking) Information Leaflet for further details on this option.

Where divorce occurs outside of the United Kingdom (UK)

The Trustee of the Airways or New Airways Pension Scheme can only accept instructions against a member's pension in respect of divorce from a UK court (specifically England & Wales or Scotland).

Appendix 2 to the NAPS Rules and Appendix 2 to the APS Trust Deed deals with pension sharing. The Appendix 2 provides that pension sharing will take effect where "a Pension Sharing Order has been made and implemented". Pension Sharing Order is defined under the Appendix by reference to Section 28(1) of the Welfare Reform and Pensions Act 1999 ("WRPA 1999). The provision lists a number of Orders which can activate pension sharing under the Trust Deed and Rules. The member must provide one of these to the Trustee in order to allow it to give effect to the pension sharing.

We understand that one common way of achieving pension sharing in respect of divorces that occur overseas is to apply for an order under Part III of the Matrimonial and Family Proceedings Act 1984. This is specified in Section 28(1)(d) WRPA 1999 and would be an order made by a UK court. This legislation provides a method for financial provision in England & Wales in respect of divorces that occur overseas.

Members should always take independent legal advice on obtaining such an order.

Charges apply when either an Attachment or Sharing Order is applied against a Scheme pension.

Administration Costs

Divorce and pension regulations provide for the recovery by pension schemes of the administrative expenses that they are likely to incur in complying with their obligations under the regulations. The British Airways Pension Schemes make such a charge, which is payable by the Scheme member and/or ex-spouse or civil partner at the time a sealed Court Order with a Pension Attachment Annex is received by the Trustee.

The standard minimum charges applied in all cases are:

Current member or member with a deferred pension:	£1,350.00 plus VAT
Retirement member with pension in payment:	£1,600.00 plus VAT

Higher charges can be applied in certain circumstances. The actual charge levied will depend on the volume of work and the complexity of the communications that the Scheme administrators are engaged in. If the case requires the involvement of senior pensions personnel or any of the external advisors to the Scheme the Trustee has discretion to determine what the maximum charge will be.

Where a Pension Sharing Order is in place it is possible to have an Attachment (Earmarking) Order in relation to a different marriage.

Where an Attachment (Earmarking) Order is already in place a Pension Sharing Order is not permitted.

These options are very complex and there are many factors which need to be taken into consideration in assessing the appropriate action. You should make sure that you obtain comprehensive legal and financial advice.