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Family Justice Policy Team
Ministry of Justice
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By email to frcohabconsultation@justice.gov.uk

14 August 2026

Dear Sir or Madam

A fairer end to relationships: consultation document

I am writing on behalf of the Association of Consulting Actuaries (**ACA**) in response to the consultation on a fairer end to relationships[1].

The ACA welcomes the opportunity to provide input. We are responding in the capacity of a representative body for professional advisors who provide advice to a range of occupational pension schemes.

The vast majority of this consultation concerns matters that lie outside our field of expertise but we have a few comments to contribute in respect of pension matters, both on divorce or the end of a cohabitation relationship and on pensions following an intestate death of a cohabiting partner. These relate to questions 19 and 44 of the consultation.

Question 19 – Pension sharing

Do you agree with the Government's view that the court should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders?

Whether as a matter of public policy the courts should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders is not within our field of expertise and we are neutral on the specific point. However, there are four related points we think should be considered when addressing this matter.

[1] https://www.gov.uk/government/consultations/a-fairer-end-to-relationships

Definition of a dependant

Pension schemes exist not only to provide benefits for the scheme's members in retirement but also to provide benefits to dependants of scheme members on the member's death. Providing financial security, or benefits that help towards financial security for dependants, is an important part of many pension schemes' role.

Registered pension schemes are governed by detailed tax legislation, including a specific definition of who is permitted to be a "dependant" for the purpose of a pension scheme. This is set out in Finance Act 2004 Schedule 28 paragraph 15[2]. Schemes are also governed by detailed DWP legislation on pension matters. It would be important that any proposals arising from the consultation that involve pension schemes should be consistent with this tax law definition and with any DWP requirements so that tax law, the DWP's occupational pensions laws and family law do not unintentionally contradict each other.

An increase in the volume of pension sharing orders

If the courts were required specifically to give consideration to pensions accrued during the marriage and pension needs when making financial orders, then a foreseeable consequence would be an increase in the number of pension sharing orders. An academic study[3] referenced by the consultation (see footnote 58 of the consultation document) noted that "Amongst divorcees where one or both spouses had a pension they were not yet drawing, only one in nine (11 per cent) had made an arrangement for pension sharing" (page 193 of the study's report).

As a very simple first approximation, if nine out of nine divorcees rather than one out of nine were required to address pension sharing as part of a financial settlement then there would be a ninefold increase in workload around pension sharing activities. Including some long-term cohabitees in pension sharing would increase this estimate while other factors might reduce it, and it is only a very simple first approximation, but in any event the increase in pension sharing activity would be material. While pension schemes are allowed to charge for certain processing requests involved with pension sharing, and for implementing sharing orders, some currently do not do so and absorb the costs within general scheme administration budgets. A material increase in the volume of work could force many schemes to reconsider these positions in order to be fair to other members and parties to the pension scheme who would otherwise have to shoulder the extra costs. The result could be additional costs for all divorce cases.

Many pension pots are tiny and unable to sensibly absorb the cost of processing an order. A 2025 report estimated that 13 million pots of less than £1,000 had been created since the introduction of automatic enrolment with a further million created each year.[4] A pragmatic approach would be required.

Further, charges cannot always be made. For example, it is not usually possible to charge for provision of a cash equivalent transfer value[5]. A material increase in such requests would again to lead to costs which would need to be met by scheme sponsors or members.

A material change in this area might also have a particular effect on public sector pension schemes. Pension sharing arrangements are usually more complicated and consequently more costly to handle for defined benefit schemes than defined contribution schemes, and public sector schemes are mainly defined benefit arrangements.

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[2] https://www.legislation.gov.uk/ukpga/2004/12/schedule/28/part/2/crossheading/defined-benefits-and-money-purchase-arrangements-meaning-of-dependant

[3] Hitchings, E., Bryson, C., Douglas, G., Purdon, S., & Birchall, J. (2023). *Fair Shares? Sorting out money and property on divorce: Report*. University of Bristol. https://www.bristol.ac.uk/media-library/sites/law/news/2023/Fair%20Shares%20report%20-%20final.pdf

[4] Paragraphs 214 to 217 of the "Small Pots Delivery Group Report" (24 April 2025) published by DWP estimated 13 million deferred pension pots in 2024 worth less than £1,000 (the average value was around £330). https://www.gov.uk/government/publications/small-pots-delivery-group-report/small-pots-delivery-group-report

[5] https://www.legislation.gov.uk/uksi/2000/1049/regulation/3

In order to manage costs:

- It should be unambiguous as to what information needs to be provided by pension schemes and calculations should be straightforward to carry out, for example a current cash equivalent transfer value as required by existing legislation.
- There should be clear signposting in material outlining the divorce process to other sources of information for pensions benefits to limit unnecessary requests, such as existing pension statements and the Pensions Dashboards.

Unrepresented parties and pension sharing

Anecdotally, we understand that pension schemes currently tend to see pension sharing orders in higher value cases where the parties are more likely to have lawyers and other professionals who understand the rules and processes better than a lay person. Even so, when the pension sharing legislation was introduced, the pensions industry saw many orders that did not comply with the legislation – and we still encounter problems[6]. If explicitly considering pension rights were to become mandatory in all divorce cases, then there may be a greater challenge for the courts and pension schemes dealing with unrepresented parties who understand neither family law nor pension scheme law and rules. The above academic study noted (at page 197) that amongst divorcees in its survey "there was a considerable level of ignorance about pensions in general".

We would be concerned about unrepresented parties, unable to get advice, guidance or support elsewhere, by default being drawn towards seeking that advice, guidance or support from the only "experts" they were in touch with, viz the pension scheme administrators. While expert in pension schemes and scheme administration, the administrators would not have the desire, any expertise in family law or the resources to absorb aid requests from unrepresented parties. Any proposals developed as a result of this consultation should consider how unrepresented parties in divorce cases would be guided and supported through the system.

Pension attachment orders – abolish for future divorces?

Pension attachment orders are an older form of splitting a pension than pension sharing orders. Under an attachment order, the legal ownership and rights to the pension remain exclusively with the original scheme member who accrued the pension, but the court orders the scheme to pay a percentage of a lump sum or each instalment of the pension to the bank account of the ex-spouse. There are practical problems with attachment orders. For example, the pension is taxed and reported to HMRC as the income of the original scheme member, even if 100% of each instalment is paid to the member's ex-spouse. The pension ceases on the scheme member's death, even if the ex-spouse is still alive and needs that income to live on. The ex-spouse has no control over how or when benefits are taken[7]. For these and other reasons, new pension attachment orders are very rarely made these days and almost all pension splitting that our pension schemes see use pension sharing orders.

If this consultation is an initial step in the Ministry of Justice overhauling and modernising divorce law then, would it simplify a complex area of family law if the option of a pension attachment order, as opposed to a pension sharing order, was abolished from a future date? Existing pension attachment orders should continue undisturbed and the courts should still be permitted to amend existing orders.

Question 44 – Qualifying cohabitants and applications for a Grant of Administration

Should qualifying cohabitants have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate?

[6] For example, see the Pension Ombudsman's decision PO-19073 regarding a pension sharing order and the Rettig UK Pension Scheme: https://www.pensions-ombudsman.org.uk/decision/2018/po-19073/rettig-uk-pension-scheme-po-19073

[7] See the discussion in paras 19 to 32 of the response to the consultation on the Occupational and Personal Pension Schemes Miscellaneous Amendments Regulations 2016

Again, whether as a matter of public policy a qualifying cohabitant should have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate is not within our field of expertise and we are neutral on the specific point. However, were qualifying cohabitants to acquire this priority then it could have practical consequences for pension schemes regarding inheritance tax (**IHT**), and this would need to be addressed as part of developing any proposals in this area.

Recent changes to the Inheritance Tax Act 1984 mean that from 6 April 2027 many death benefits (primarily unused pension pots and lump sums) from pension schemes could be in scope of IHT. We understand that the Probate Registry will not usually issue a Grant of Administration until HMRC has confirmed that any IHT due has been paid. However, the new law requires pension schemes to pay the tax, or a part of it, directly to HMRC if the deceased scheme member's personal representatives request this. This will require the pension scheme administrators to assess if a person is indeed the personal representative before the Probate Registry has issued the formal Grant confirming this appointment since the IHT usually has to be paid before any grant would be issued.

Where a person dies intestate there is no will to help evidence that someone is properly the personal representative. Currently, the priority order in rule 22 of the Non-Contentious Probate Rules (NCPR) 1987 (as amended)[8] covers a surviving spouse or civil partner or close blood relatives. These are all statuses that can be shown by a formal marriage certificate or civil partnership certificate, or by birth certificates to show a close blood relationship. The status of a qualifying cohabitant would be undocumented (i.e. without a formal definitive state document) and potentially dependent on a subjective "marriage equivalence" test.

We are concerned about the practical implications of including qualifying cohabitants in the priority order list since pension scheme administrators must by law pay IHT directly to HMRC if requested to do so by a personal representative, but have no authority to do so (and it would be both a breach of trust and could incur adverse tax consequences for the scheme) if scheme funds were applied when the requestor had no authority to make it. This is not to say that a qualifying cohabitant could not rank equally with spouses in the priority order, but were this to happen then it would be important to develop practical ways that pension scheme administrators and others could identify qualifying cohabitants before a Grant of Administration was issued.

[8] https://www.legislation.gov.uk/uksi/1987/2024/rule/22

We would be happy to discuss this matter further. Please contact Kirsty Cotton on 01737 274496 or Kirsty.cotton@wtwco.com.

Yours faithfully

Kirsty Cotton FIA C.Act
Chair of the Pensions Taxation Committee

Tim Sexton FIA C.Act
Vice Chair of the Pensions Taxation Committee
On behalf of the Association of Consulting Actuaries Limited

About the Association of Consulting Actuaries

Members of the ACA are all qualified actuaries – mainly Fellows of the Institute and Faculty of Actuaries. All actuarial advice given by our members is subject to the Actuaries' Code. Advice given to clients is independent and impartial. Members provide advice to thousands of private sector, local government and public sector employers. The associated pension schemes provide defined benefit (**DB**), defined contribution (**DC**), cash balance (**CB**) and collective defined contribution (**CDC**) rights, with total assets of DB private sector schemes alone exceeding £1 trillion. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes including most of the country's largest schemes. Members also advise thousands of smaller pension arrangements and individuals (many in self-employment) as well as advising life and general insurers.