

OCOP (99)9  
7 October 1999

**HM TREASURY**  
**OFFICIAL COMMITTEE ON OCCUPATIONAL PENSIONS**

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**NOTE BY THE SECRETARY**  
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**PENSIONS ON DIVORCE: PREPARATIONS BY PUBLIC SERVICE PENSION  
SCHEMES**

Further to OCOP(99)4, I attach a note by HM Treasury advising Departments of the steps they need to take to ensure they can implement pension sharing by the end of 2000

Due to the short notice, if any Departments have comments they wish to make on the draft LCD regulations at Annex B, could they send them direct to LCD

**ELIZABETH ROBERTS**

**HM Treasury  
Treasury Chambers  
Parliament Street  
LONDON SW1P 3AG**

## PENSIONS ON DIVORCE: PREPARATIONS BY PUBLIC SERVICE PENSION SCHEMES

*Note by HM Treasury, Public Service Pensions*

*7 October 1999*

### Introduction

1 Advice was given to public service pension schemes earlier this year (OCOP(99)04, dated 25 March 1999) on proposed legislation enabling divorcing couples to share accrued pensions rights as part of a divorce settlement

2 The Welfare Reform Bill is now close to enactment with a view to pension sharing becoming effective within a year or so. Public service pension schemes which have not already done so should now take the necessary steps to ensure that they will be ready no later than the end of 2000 to implement pension sharing arrangements made under the new legislation

3 This means that -

\* **all public service schemes (with the sole exception of those for service in one of the 'great offices of State) will need to be able to implement pension sharing between a member and his or her former spouse;**

\* **Departments responsible for schemes whose rules are set out in legislation will need to have amended that legislation as necessary;**

\* **for unfunded schemes which are closed to new members, arrangements must be made for the pension share of a former spouse to be transferred to another unfunded public service scheme; and**

\* **for the great offices of State, arrangements must be made by the responsible Departments (Cabinet Office, Lord Chancellor's Department and Scottish Public Pensions Agency) to exempt the relevant pension scheme from pension sharing provisions.**

4 Departments responsible for public service pension schemes will need to have achieved these objectives by the end of 2000. Given pressures on resources for legislative drafting Departments should be making arrangements now to earmark the necessary resources and any Parliamentary time which may be needed for secondary legislation. Scheme administrators should also be considering the scope of staff training needs and the timetables for meeting them

### Timing of legislation

5 The new pension sharing provisions are contained in Parts III and IV of the Welfare Reform and Pensions Bill, which is expected to receive Royal Assent in early November 1999. For ease of reference, Annex A to this paper contains the text of the clauses most relevant to public service schemes, which are not expected to be amended in substance during the further passage of the Bill

6 Since OCOP (99) 04 was issued it has been decided that pension sharing will be introduced initially under the Matrimonial Causes Act pending a decision on implementation of Part II of the Family Law Act 1996, which would introduce new divorce procedures. Regulations will be made by the Lord Chancellor's Department under the Matrimonial Causes Act 1973 (as amended by the Welfare Reform and Pensions Bill), which together with regulations by the DSS and Inland Revenue and Scottish Executive will establish the statutory framework for pension sharing on divorce. A copy of draft LCD Regulations is attached at Annex B. Draft DSS Regulations will be circulated for information when available, in November.

7 It is anticipated that the pension sharing regime will come into effect from around the end of 2000. Public service pension schemes should assume a requirement to be able to implement pension sharing arrangements from the end of 2000 onwards.

#### Necessary preparations

8 The general principles set out in OCOP(99)04 are unaffected by the choice of the Matrimonial Causes Act as the vehicle for LCD Regulations. Schemes will need to be able to implement pension sharing between former spouses, and to make appropriate charges in relation to administration of the process. Public service schemes should follow the advice in OCOP(99)04. Further copies of the paper are available on request to Elizabeth Roberts in the OCOP Secretariat, HM Treasury (0171 270 4997, [elizabeth.roberts@hm-treasury.gov.uk](mailto:elizabeth.roberts@hm-treasury.gov.uk)).

9 For prudence, Departments may wish to plan for any new Regulations which are required to come into force by Summer Recess 2000, assuming that the Welfare Reform and Pensions Bill is enacted by the end of 1999 and the requisite LCD and DSS Regulations come into force soon after. New primary powers to allow amendment of public service scheme Regulations to comply with pension sharing will be conferred by the Welfare Reform and Pensions Bill (see clause 39 and 40 in Annex A). There is no requirement to consult on regulations for this purpose.

#### Coverage: great offices of State

10 All public service pension schemes must be capable of implementing pension sharing, with the exception of pensions from service in the 'five great offices of State' ('goos'). The 'goos' are -

the Prime Minister,  
the Speaker of the House of Commons,  
the Lord Chancellor for England and Wales;  
the First Minister of the Scottish Executive, and  
the Presiding Officer of the Scottish Executive

11 Clause 24(3) in Annex A may be used to provide exemption for the goos schemes. No other public service pension scheme should be exempted by order under this provision.

12 Departments responsible for the pension schemes for service in the 'goos' (Cabinet Office, Lord Chancellor's Department and Scottish Public Pensions Agency respectively) should take the necessary action to achieve the intended exemption of these schemes. Annex C gives references to the relevant primary legislation.

### Charges for administration

13 Departments should set their own charges for administration and devise mechanisms for recovery of charges, consistent with DSS Regulations and the general principles of cost recovery

### Transfers out closed schemes

14. As a general principle of public service pension policy, unfunded public service schemes (including 'notionally' funded schemes) should not offer transfers-out of former spouses' pension entitlements created by pension sharing on divorce (See Schedule 5, para 2(2) in Annex A ) The exception to this is where the relevant scheme is unable to create a liability to the former spouse because it is closed. Where schemes are closed the Department responsible for the scheme should make arrangements, with any necessary statutory amendments, for the former spouse's pension share to be transferred to another unfunded public service scheme, nominated by the Department as suitable for that purpose (See Schedule 5, para 2(3) and (4).) This is necessary to avoid accelerated accrual of unfunded public service pension liabilities

15 Questions on this note should be addressed to Elizabeth Roberts here (contact details above)