



Guide to the Treatment of Pensions on Divorce Second Edition:

Summary List of Changes

Below is a summary of the changes made to the Second Edition of the Guide to the Treatment of Pensions on Divorce (PAG2), with thanks to Pension Advisory Group members Paul Coble and Rhys Taylor for their article in the Financial Remedies Journal on which this list is based [Financial Remedies Journal: The PAG2 Guide – What Has Changed?](#).

The remit of PAG2 was not to re-write the original guidance or to start afresh. Rather, the aim was to make changes only where they were required, where case-law had moved on since 2019, to correct any errors and omissions and to make any improvements in light of feedback PAG has received since 2019. There has been a general refresh of the original text, including changes to legal terminology following the introduction of no-fault divorce, and the addition of references to recent case law.

The main changes can be summarised as follows:

Part 2 – Essential action points

2.5 – Adds the McCloud ruling as a potentially complicating factor for public sector pension schemes

2.13 – Refers to increases to the Normal Minimum Pension Age from April 2028

Part 3 – The first stage: computation of pension assets and methods of division

3.19 – Refers to the introduction by the Government of the Pension Dashboard Programme which will enable individuals to identify and view their various pensions in a single online platform

Part 4 – Treatment of pensions in ‘needs-based’ and ‘sharing’ (non-needs) cases

Significant guidance update to entire section, including:

4.4 – Whilst there can be no ‘one size fits all’ approach to the interplay between ‘needs’ and ‘sharing’, it would be wrong to apportion pensions so as to exclude the ‘non-cohabitation/marriage’ element without first considering the relevant s.25 factors, which in most cases [save where parties young or marriage is very short] will include the income needs of the parties in retirement

4.6 – If apportionment is justified, then the date for commencement of apportionment will almost without exception be the date of commencement of seamless cohabitation, and not the date of marriage, see for example *GW v RW* [2003] EWHC 611 (Fam), *Co v Co (Ancillary Relief – Pre Marriage Cohabitation)* [2004] 1 FLR 1095

4.7 – Post separation accrual – there remains room for debate and some conflict in the authorities, with references to the various key competing cases

4.8 to 4.11 – Section on Short Marriages now added

Part 6 – Dealing with pensions fairly on divorce

6.4 – Reference to Defined Benefit tax free cash differences and pension credits from already crystallised benefits, known as ‘disqualifying pension credit’

6.4 – Percentage pension share must apply to each component of a pension arrangement, including crystallised and uncrystallised benefits

6.10 Case 1 – Commentary on the Defined Contribution issues to be aware of

6.10 Case 3 – ‘Big Money’ cases where pensions are relatively modest in value compared to the capital – the approach in the High Court exemplified by *SJ v RA* [2014] EWHC 4054 and *CMX v EJX* (French Marriage Contract) [2022] EWFC 136

6.11 Case 5 – Comment added – There may be terms on your firm’s professional indemnity insurance that require a PODE report to be recommended to be obtained for all pension funds over the value of £100,000, whatever the nature

6.11 Case 8 – Clarifies valuation method for Defined Contribution pension rights subject to Market Value Reduction

6.11 Case 12 – Cases in Family Court below High Court level exemplified by *W v H (divorce financial remedies)* [2020] EWFC B10

6.15 to 6.29 – greatly expanded commentary regarding the debate and leading authorities/opinions for equality of income v equality of capital

Part 7 – Pension Offsetting

Expansion of Key Points to highlight issue relating to the weight to be attached to PODE offsetting figures

7.18 – Additional information about recognising Defined Contribution pensions with guarantees

7.19 – More complex cases – expands on situation where the value of the loss of pension rights to the pension scheme member following a share may be different to the gain in pension rights to the ex-spouse and appropriate action to take in this circumstance. An example of this situation could be where there is potential destruction of value of pension rights following pension sharing order

7.24 – Inclusion of the Galbraith tables as an offsetting valuation methodology and commentary on the limitations of these tables [7.25]

7.31 – Expansion of guidance on adjusting for tax in offsetting cases

7.34 – Some PODEs may consider that when the offset amount is invested it may be subject to tax

Part 8 – Pension Freedoms

8.21 – Commentary on changes to the Normal Minimum Pension Age from 2028

Part 9 – Taxation of pension benefits

Refresh of all pension tax allowances

9.6 – Commentary on the abolition of the LTA

9.7 – Explanation of anticipated restrictions to future tax-free cash amounts, the legacy of LTA protections continuing and the introduction of a new Lump Sum Allowance and a Lump Sum Death Benefit Allowance

9.8 – Funding changes for those with Fixed Protections

Part 10 – Age differential and ‘income gap’ syndrome

Expansion of Key Points

10.8 – Possible mitigation of the ‘age differential and income gap syndrome’ issue – expanded from 6 to 10 ways, with new methods including Judicial Separation, Spousal Maintenance, an increased percentage PSO and Consecutive Orders (PAO to PSO)

Part 11 – State Pensions

Expansion of Key points

11.3 New commentary on reclaiming credits from ex-spouses where ‘working spouse’ also claimed child benefit

11.20 – New guidance if considering apportioning State Pension rights to period of cohabitation/marriage

Part 12– Some issues in valuing pensions for divorce

12.2 – Additional commentary that pre-marital cohabitation running seamlessly into marriage should be treated as part of the marriage

12.4 – Clarification of possible approaches to marital apportionment where the pension arrangement is a defined contribution pension.

12.5 – Clarification of the circumstances where the parties’ health status should be reflected in the calculations.

Part 13 – Pensions where an application has been made to vary the original order

Significant expansion of Part 13 by inclusion of new sections on Applications to vary Pension Sharing Orders [13.10 to 13.17] and Applications to set aside Pension Sharing Orders [13.18 to 13.25], including detailed case law commentary and references

Part 14 – Pensions and International issues

14.11 – Refinement to post Brexit changes

Appendix A – Glossary

General refresh and some additions

Appendix C – Who can be instructed as a PODE or SJE

General refresh and update

C.8 – Adds that when instructing experts, check to ensure the PODE currently resides in the UK and expects to do so for the foreseeable future, and that the PODE has *either* Professional Indemnity Insurance *or* other Appropriate Arrangements

Appendix D – Self-certification of expertise

General refresh

xxii – New para dealing with experts having appropriate arrangements in place to cover professional shortcomings

Appendix E – Specimen letter of instruction to SJE/PODE

Some amendments to letter of instruction and the notes now recorded separately to the letter for ease of reference. Includes greater clarity on offsetting calculations and changes the emphasis from “retirement date” to “retirement age” for the purposes of income equalisation calculations

Appendix F – Post-order implementation issues

New Key Points commenting on new Standard Family Order template and the unresolved debate about when the 28 days starts where a *Rose Order* is made at FDR.

F.31 – New paragraph referencing *Goodyear v Goodyear (Deceased)* [\[2022\] EWFC 96](#)

Appendix I – Complexities in certain public sector occupational schemes

I.6 – Updated commentary regarding the McCloud ruling

I.41 to I.54 – Significant new material on the McCloud ruling and the McCloud remedy

Appendix J – Underfunding of Defined Benefit schemes and reduced CEs

J.6 – Reference to danger of ticking box F in the PSO and reference to *T v T (Variation of a Pension Sharing Order and underfunded schemes)* [\[2021\] EWFC B67](#)

Appendix K – The Pension Protection Fund and Financial Assistance Scheme

Significant refresh of chapter, particularly regarding the Financial Assistance Scheme, with assistance from the PPF

Appendix S – Apportionment of final salary pension rights

Additional commentary on specific issues with each method of apportionment

S.8 – New commentary about extra work involved in ‘Deferred Pension’ method

S.12 – New commentary about flaws of CE method

S.13, S.14 and S.15 – Additional commentary on ‘Straight-line’ method

S.16 – New commentary on PAG’s preferred approaches

Appendix U – A future approach to pension valuation. The emergence of the Galbraith Tables

Valuing pensions – The emergence of the Galbraith tables as a new development replaces the previous Appendix U suggesting ideas for the development of such tables

Appendix V – Recommendations for issues beyond the remit of PAG

V.30 – Recommendations for changes to Form A

V.31 and V.32 – Recommendations for changes to Form P and a suggestion for a modernising review by the Family Procedure Rule Committee

Appendix X – Other useful resources

Additional resources added and a significant addition of references (and links where available) to valuable articles and blogs on pension-related issues, as well as a ‘one stop’ list of links to relevant legislation and Caselaw.