

# **PE2124/A: Keep private and work place pensions out of divorce**

## **Minister for Victims and Community Safety written submission, 6 December 2024**

Thank you for your email dated 5 November 2024 requesting the Scottish Government's views on the action called for in Petition PE2124: Keep private and work place pensions out of divorce.

The petition is asking the Scottish Parliament to call on the Scottish Government to introduce legislation that would stop an individual's private and work-place pensions being considered as matrimonial property during divorce proceedings.

This letter specifically refers to divorce. However, the legislation on financial provision when a civil partnership is dissolved is on the same lines and the same considerations would apply.

When a couple divorces in Scotland, the assets acquired during the relationship or before the marriage for use as a family home, whether owned jointly or as individuals, are treated as "matrimonial property." This is then divided between the couple in line with a number of principles laid down in the [Family Law \(Scotland\) Act 1985](#).

There is provision in the 1985 Act that the value of pension benefits accrued during the duration of the marriage is part of the "matrimonial property" and may therefore be split between separating spouses.

As part of the financial settlement, the court can make a Pension Sharing Order which will grant an individual a share of their former spouse's pension. The Scottish Government understands it is more common in practice for the pension to be included as part of "matrimonial property" but not actually be shared: so, for example, one spouse may keep the house and the other may keep the pension.

The Scottish Government does not support the aims of this petition. A pension can be a significant asset and including it as part of "matrimonial property" helps ensure that all relevant assets are taken into account. The petitioner says no contribution is made by the partner to the pension. However, if, for example, one spouse goes out to work whilst the other stays at home (or works part time) to care for the children or other family members, then there is an indirect contribution.

Taking pensions out of the "matrimonial property" regime could be disadvantageous to women. The Scottish Government has published analysis from the [Wealth and Assets Survey](#), which is conducted by the Office for National Statistics. This shows that 71% of men had private pension wealth in 2018-2020, whereas only 66% of women did.

The UK Government [reported in 2023](#) that there is a gender pension gap of 35% between men and women. This is the difference between male and female median pension wealth at the normal minimum pension age of 55 and is based on data from 2018 to 2020.

Although financial provision on divorce is a devolved matter, pensions are generally reserved. The [Scottish Public Pensions Agency](#), a Scottish Government agency, manages public sector pensions in some areas (such as the Police, Fire, Teachers, Local Government and the NHS Schemes) but private sector pensions, the State Pension and other public sector pensions (such as civil service pensions) are reserved. The main legislation on pension sharing (the [Welfare Reform and Pensions Act 1999](#)) is UK legislation. (There are separate provisions within the 1999 Act which take account of the different rules on financial provision on divorce applying in Scotland. The 1999 Act amended the Family Law (Scotland) Act 1985).

Therefore, any changes to the legislation on pension sharing on divorce would need to be discussed with the UK Government (e.g. the Department for Work and Pensions) and there would be considerable reserved implications. However, as indicated above, we do not consider changes along the lines of those suggested by the petitioner should be made.

Yours sincerely,

**SIOBHIAN BROWN**