RULE G9
Pension debit members: restriction on replacement of debited rights

Rule G9 explains how a pension sharing order may restrict your right to purchase increased benefits.

This Rule was removed from the FPS with effect from 6 April 2006 when new tax rules for pension schemes were introduced by HM Revenue and Customs. The tax restriction on "purchase" was removed. There is no longer any difference in treatment of "higher" and "moderate" earners.

The explanation of Rule G9 as it applied up to 5 April 2006 appears on the following pages as "archived" material.

Pension debit members: restriction on replacement of debited rights

Rule G9 explains how a pension sharing order may restrict your right to purchase increased benefits.

Pension debit members

A pension debit member is a member of the FPS whose benefits have been made subject to a pension sharing order issued by a court on divorce, annulment of marriage, or dissolution of civil partnership. Under s31 of the Welfare Reform and Pensions Act 1999, the amount or percentage of pension rights quoted in the pension sharing order must be deducted from the capital value of the scheme member's benefits as at the date of the order. So the rights are "debited" (hence the expression "pension debit member") to provide benefits for the former spouse or civil partner (who is known as the "pension credit member"). See Annexe 14 for more information about the effect of divorce on pension rights.

Restriction

Rule G9(1) states that unless you are a person to whom Rule G9(2) applies you cannot use the "purchase" provisions contained in Rules G5 to G8 to replace the debited part of your pension rights where a pension sharing order has taken effect. In other words, if the order directed that you should lose, say, one quarter of your pension rights to your former spouse or civil partner, you cannot build back those pension rights by purchasing extra benefits under these Rules.

Rule G9(2) gives an exception to this limit. It refers to tax legislation (regulations made under paragraph 18(10) and (11) of Schedule 10 to the Finance Act 1999) which may allow you to have an exemption from the restriction. This legislation is aimed at what it describes as "moderate earners". If your earnings are below the limit set by the legislation you <u>can</u> rebuild part or all of your pension rights lost as a result of a pension sharing order. The limit is one quarter of the so-called Earnings Cap. The Earnings Cap for the tax year 2005/2006 was set at £105,600.

Useful reference source

- The Retirement Benefits Schemes (Sharing of Pensions on Divorce or Annulment) Regulations 2000 [SI 2000/1085]; these are the regulations made under paragraph 18(10) and (11) of Schedule 10 to the Finance Act 1999.
- FPSC 09/2006: restriction on replacement of debited rights deleted – a scheme limit remains so that accrued benefits cannot exceed 40/60ths

Rule G9 (continued)

Points To Note

1. You are a “higher earner” if your earnings in the tax year before divorce are higher than one quarter of the Earnings Cap figure in the tax year in which the pension sharing order is made. For example, if the pension sharing order was made in tax year 2001/2002, one quarter of the Earnings Cap in that year would be £23,850. So if your earnings in the tax year 2000/2001 were, say, £25,000 then you would be classed as a higher earner. You may still be able to improve your benefits by paying additional contributions but only to the extent that you could have done before the pension sharing order was implemented. In other words, as a higher earner, when testing your capacity to purchase benefits against HM Revenue and Customs limits, account must be taken of your benefits level **before** your former spouse’s or civil partner's pension credit is deducted.

2. If your earnings in the tax year immediately before that in which your divorce, annulment or dissolution of civil partnership took place are lower than one quarter of the Earnings Cap you are considered a “moderate earner”. If you wish to improve your benefits by paying additional contributions, subject to the tax rules on purchase (e.g. total contributions must not exceed 15% and total 60ths must not exceed 40) you may be able to build back part of the pension rights lost on pension sharing.

3. These limits will be removed on the introduction of a new tax regime with effect from 6 April 2006.