THE SOCIETY OF PENSION PROFESSIONALS
making pensions work

# The Society of Pension Professionals (SPP) response to the Ministry of Justice consultation, “A fairer end to relationships”

## 1. Executive summary


1.1. **The SPP supports codifying the distinction between matrimonial and non-matrimonial property to improve clarity and consistency.**

1.2. **The SPP welcomes any additional recognition of pensions in financial remedy decisions.**
This includes explicit consideration of pension needs and pensions accrued during the relationship.

1.3. **We recommend improved pension disclosure through the new Pension Dashboards programme.**
Furthermore, that in time this be extended to secure court access to verified pension information through the same.

1.4. **The SPP supports clear statutory guidance on assessing pension needs to promote consistent outcomes.**
Furthermore, we support extending pension sharing orders to qualifying cohabitants, with sufficient implementation time for pension schemes and providers.

1.5. **The SPP would very much like to see clear, objective criteria for defining qualifying cohabitants, particularly for pensions and inheritance tax purposes.**

1.6. **We support aligning pensions legislation with wider cohabitation reforms.**
This includes extending dependant's pension eligibility to qualifying cohabitants.

1.7. **The SPP’s overarching response is that we support reforms that improve fairness, transparency and consistency.**
We also recognise the practical implications for the pensions industry, which we are naturally keen for policymakers to take into account so as to promote certainty and stability whilst maximising the likely effectiveness of any such policy changes.

## 2. Consultation response

*Part 1: Reforming the Law of Financial Remedies on Divorce*

**Q3. Do you agree with the Government's view that it should codify the distinctions between matrimonial and non-matrimonial property, in line with the Supreme Court's decision in Standish?**

2.1. Yes, the SPP agrees that the distinction between matrimonial and non-matrimonial property should be codified in line with the Supreme Court's decision in Standish.

2.2. As the consultation recognises, it can currently be difficult for couples to understand how their assets will be characterised and treated on divorce due to the lack of definitions in legislation. A clear statutory framework would improve transparency, consistency and predictability, helping parties and advisers identify the matrimonial property assets subject to the sharing principle at an earlier stage and reduce scope for dispute.

2.3. This codification would be particularly valuable in relation to pensions benefits, which often comprise a mixture of value accrued before marriage, during marriage and potentially after separation. Such benefits may also include complex growth provisions and different benefit structures. Statutory recognition of the matrimonial/non-matrimonial distinction would provide a clearer starting point for identifying the pension value attributable to the marital partnership, while preserving the court's ability to consider non-matrimonial pension provision where deemed necessary to meet needs.

2.4. Greater clarity should also support more informed decisions about whether pension sharing, offsetting against other assets, or another approach, produces a fair outcome. This is important because pensions can often be overlooked in financial remedy settlements and because unequal pension provision can have significant long-term consequences, particularly for the financially weaker party.

2.5. Successful implementation will depend upon complete and accurate disclosure of pension assets. Many individuals have multiple pension arrangements built up over their working lives, and incomplete disclosure can undermine fair outcomes. The continued rollout of Pension Dashboards[1] presents an opportunity to improve the completeness of pension information available to separating couples and the courts. In time, requiring parties to provide a verified Pension Dashboard record, or equivalent evidence of all pension entitlements, could support more comprehensive disclosure while reducing administrative burdens on pension schemes and providers.

**Q8. Do you agree that the stages should be focused on i) first consideration to the welfare of any children of the family; ii) capital and income needs, including their housing and pension needs in keeping with the standard of living during the marriage; and where resources allow, discretionary need, in keeping with the standard of living during the marriage?**

2.6. Yes. The SPP supports the proposed hierarchy, particularly the explicit inclusion of pension needs alongside capital, income and housing needs.

2.7. Pensions are fundamentally different from other financial assets. They are long-term savings intended to provide income throughout retirement and, in many cases, represent one of the largest assets accumulated during a marriage. Despite this, pension provision has historically received less attention in divorce settlements than more immediate assets such as the family home or liquid savings, increasing the risk that long-term financial security is compromised in order to meet short-term objectives.

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[1] Pension Dashboards Programme: https://www.pensionsdashboardsprogramme.org.uk/

2.8. Giving pension needs equal prominence within the assessment of capital and income needs would help ensure that financial settlements properly consider both the immediate financial requirements of each party and future retirement outcomes. This is particularly important where one party has lower pension provision as a consequence of caring responsibilities, career breaks or part-time employment during the relationship.

2.9. Overall, we support the proposed hierarchy because it appropriately recognises pensions as an essential component of financial need rather than an ancillary consideration. This should contribute to more consistent decision-making and improve long-term financial security for both parties following divorce or dissolution.

**Question 19 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?**

2.10. The SPP supports the proposal that courts should be specifically required to consider both pensions accrued during the marriage and the parties' future pension needs when making financial orders.

2.11. Pension wealth is frequently one of the largest assets accumulated during a marriage, yet it is often less well understood than property or cash savings. Failure to give pensions explicit consideration can lead to inequitable outcomes, particularly where one party has sacrificed pension accrual through career breaks or reduced working patterns to undertake caring responsibilities. Requiring courts to consider pension assets expressly would promote more consistent and transparent decision-making and should help to improve long-term retirement outcomes.

2.12. However, any reform should also recognise the practical difficulties involved in identifying and valuing all pension entitlements. Many individuals have multiple pension arrangements across different providers and employment periods. Pension assets are therefore more likely than other financial assets to be overlooked, particularly where smaller deferred pension pots exist.

2.13. SPP believes there is an opportunity to improve both disclosure and efficiency by making better use of digital infrastructure. As referenced above, when Pension Dashboards become established, parties to financial remedy proceedings could be required to produce a verified Pension Dashboard record, or equivalent evidence, as part of the standard disclosure process. This would provide a more complete picture of an individual's pension entitlements, reduce the risk of undisclosed or forgotten pensions, and improve confidence that financial settlements are based on comprehensive information.

2.14. Looking further ahead, consideration should be given to developing the Pensions Dashboards programme to deliver secure functionality that would enable authorised courts, or court-appointed professionals acting under appropriate legal authority and data protection safeguards, to access verified Pension Dashboard information directly where necessary. Such functionality could reduce delays, minimise administrative burdens on pension schemes and providers, and improve the accuracy and consistency of pension disclosure during financial remedy proceedings.

2.15. Any such access should be subject to robust governance, clear statutory authority, appropriate consent or court powers, and strong security and privacy controls. The objective should be to support accurate and efficient disclosure rather than create additional reporting obligations for pension providers.

2.16. Overall, placing an explicit duty on courts to consider pensions, combined with modernised digital disclosure processes, would help ensure that pension assets receive the same level of scrutiny as other matrimonial assets and would contribute to fairer and more sustainable financial outcomes on divorce.

**Q22. Beyond housing, capital, income and pension, are there any other elements that you think should be included in, or excluded from, the assessment of "needs" within the context of qualifying nuptial agreements? Please explain the reason for your answer in the text box.**

2.17. As a representative body for the pensions industry, the SPP has no comment on whether the assessment of "needs" should be expanded to include additional non-pension categories.

2.18. However, in relation to pensions, we consider it important that the concept of "pension needs" is sufficiently broad to encompass all aspects of retirement provision, rather than focusing solely on the capital value of pension rights. An effective assessment should recognise the long-term purpose of pensions in providing retirement income, taking account of factors such as the adequacy of future retirement provision, differences between defined benefit and defined contribution arrangements, varying retirement ages, and, where relevant, the role of State Pension entitlement in meeting retirement needs.

2.19. Clear statutory guidance on the assessment of pension needs would promote greater consistency in financial remedy proceedings and reduce uncertainty for all parties, including pension schemes responsible for implementing pension sharing and pension attachment orders.

2.20. The SPP would also encourage any measures that improve the completeness and accuracy of pension disclosure.

*Part 2: Reforming the Law for Cohabitants on Separation*

**Q26. What factors, as outlined by the Law Commission's 2007 report, do you think the court should take into account when considering whether individuals are cohabitants?**

2.21. Government should holistically consider the various roles that a qualifying cohabitant (or prospective qualifying cohabitant) may play, including but not limited to the pensions inheritance tax process, when determining the factors which are relevant.

2.22. Changes to pensions tax law means that it is possible that the concept of qualifying cohabitant could have broader application should the Government proceed with changes to financial remedies upon death, including outside the setting of the court.

2.23. In particular, legislative changes that now mean unused pension assets will be brought within the scope of inheritance tax from April 2027 onwards will require pension scheme administrators to engage with individuals connected to the deceased. Under these changes, pension scheme administrators may need to take a view on whether a person is or is not a qualifying cohabitant to allow them to discharge their legal duties.

2.24. By way of additional commentary, to facilitate the payment of inheritance tax on the pension benefits (see later in this response for more detail), this new regime will require pension scheme administrators to provide potentially sensitive information to prospective personal representatives (as it is not possible to apply for a Grant of Administration before inheritance tax is paid), who will also be able to require pension scheme administrators to withhold 50% of the death benefits payable to non-exempt beneficiaries. This raises issues for pension scheme administrators, who have traditionally relied on the Grant of Representation as evidence of a personal representative's status. HMRC has committed to providing guidance to pension scheme administrators on how a prospective personal representative's identity can be evidenced.

2.25. It is probable that the evidence required to support the identity of a qualifying cohabitant as a prospective personal representative will be more complex than that for a spouse, child or even a remoter relative, where the family connection can be shown by birth and marriage certificates. The SPP believes this should be considered when selecting the criteria to be used for defining a qualifying cohabitant, as a pension scheme administrator will need to be confident of their status when engaging with them in relation to a member's estate. For example, it would be helpful if the criteria were more objective and verifiable (e.g. financial arrangements, responsibility for children) and not subjective and/or difficult to evidence (e.g. existence of a sexual relationship).

**Q37. Do you agree with our proposed approach in relation to remedies for cohabitants?**

2.26. The SPP supports the proposal that an equivalent remedy to the current pension sharing order on divorce should be available to the court at the end of a relationship of qualifying cohabitants. Pension wealth is frequently one of the largest assets accumulated during a relationship, and failure to include pension sharing alongside wider remedies (for example, in relation to property and other assets) would lead to inequitable outcomes, particularly where one party has sacrificed pension accrual through career breaks or reduced working patterns to undertake caring responsibilities.

2.27. The SPP agrees with the observation identified in the consultation that excluding mechanisms to share pension assets from the remedies available to the court at the end of a relationship for qualifying cohabitants could also lead to unfair or unintended consequences. For example, in an extreme case, this could result in one party retaining pension assets within a "pensions wrapper" that can only be accessed at minimum pension age (currently age 55, rising to age 57 in 2028) but which provide an income in retirement, whilst the other party receives capital or property assets which are immediately available (but with little or no provision for later life).

2.28. Whilst reform of pension sharing orders to extend their application to qualifying cohabitants is supported by the SPP, we propose that the government take into account the potential impact on the pensions industry if this is implemented. In particular, the SPP requests that sufficient lead-in time is provided to allow the industry to prepare for a change in their processes and a possible uptick in demand.

2.29. The valuation requirements for pension sharing orders are complex. In particular, for defined benefit arrangements, an actuarial valuation of a member's pension entitlements is required to allow the court to understand the capital value of the benefits. Extending the scope of pension sharing orders to qualifying cohabitants (as well as divorcing couples) is likely to increase the administrative burden on pension schemes. Whilst it is expected that this can be managed (and that schemes will continue to be able to pass on charges for this work to applicants), advanced visibility of the Government's final plans will assist with the industry's planning.

2.30. From an information perspective, pension schemes and providers currently have well established processes and member communications in relation to the pension sharing process which have been prepared in accordance with the current legal framework which applies to couples which are divorcing or dissolving a civil partnership. The SPP expects that these processes could be broadened to include qualifying cohabitants within scope, but advanced notice of changes to the relevant legislation around pensions on divorce (allowing suitable time for consultation and input), together with a suitable lead-in time, would allow pension schemes and providers to have the necessary resources and knowledge to successfully implement the changes.

*<u>Part 3: Reforming the Law for Cohabitants on Death</u>*

**Q43 Should qualifying cohabitants receive the same intestacy rights as spouses or civil partners?**

2.31. The SPP understands the rationale for providing qualifying cohabitants with the same intestacy rights as spouses and civil partners.

2.32. While we recognise that pensions are outside the remit of the current report, we note that pension death benefits may be a key component of the financial support available to cohabitants on the death of their partner. The availability or otherwise of such benefits to cohabitants is determined by the pension scheme rules (in the case of lump sums) and by the pension scheme rules and tax legislation (in the case of pensions). While a lump sum can be paid to anyone who falls within the category of prospective beneficiary in the pension scheme rules, a dependant's pension can only be paid to a partner who also satisfies the definition of a dependant set out at paragraph 15(3) of Schedule 28 of the Finance Act 2004:

"*A person who was not married to, or a civil partner of, the member at the date of the member's death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member's death—*

*(a) the person was financially dependent on the member,*
*(b) the person's financial relationship with the member was one of mutual dependence, or*
*(c) the person was dependant on the member because of physical or mental impairment*."

2.33. In most cases, we would expect a qualifying cohabitant to satisfy this test. Nevertheless, there will inevitably be rare cases where financial dependence or interdependence cannot be shown (unless this becomes a necessary and defining feature of a qualifying cohabitant, which is not proposed at present). While we consider that it would be acceptable, even desirable, for it to be possible to pay dependants' pensions to dependants who are not qualifying cohabitants, it might be perceived as unreasonable for a qualifying cohabitant to be ineligible for a dependant's pension. We would therefore ask for consideration to be given by HMT/HMRC to extending the definition of "dependant" in paragraph 15 to ensure that all qualifying cohabitants are eligible to receive a dependant's pension as if they were a spouse of civil partner and without having to provide the additional evidence of dependency.

**Q44 Should qualifying cohabitants have the same priority as spouses and civil partners to apply for a Grant of Administration where their partner dies intestate?**

2.34. We agree that it would make sense for a qualifying cohabitant who inherits on intestacy to be able to apply for a Grant of Administration, as this will facilitate the timely and efficient administration of estates. This will be particularly relevant to pension schemes following the extension of the inheritance tax regime to most unused pension funds and death benefits from 6 April 2027.

**Q45 What, if any, are the other factors the Government should consider when deciding on the definition of a cohabitant for the purposes of intestacy rights?**

2.35. While the SPP supports the proposition that qualifying cohabitants should be able to apply for a Grant of Representation, we note that this may increase certain practical difficulties for pension schemes, arising from the extension of the inheritance tax regime noted in the previous paragraph.

2.36. To facilitate the payment of inheritance tax on the pension benefits, this new regime will require pension scheme administrators to provide potentially sensitive information to prospective personal representatives (as it is not possible to apply for a Grant of Administration before inheritance tax is paid), who will also be able to require pension scheme administrators to withhold 50% of the death benefits payable to non-exempt beneficiaries. This raises issues for pension scheme administrators, who have traditionally relied on the Grant of Representation as evidence of a personal representative's status. HMRC has committed to providing guidance to pension scheme administrators on how a prospective personal representative's identity can be evidenced.

2.37. It is probable that the evidence required to support the identity of a qualifying cohabitant as a prospective personal representative will be more complex than that for a spouse, child or even a remoter relative, where the family connection can be shown by birth and marriage certificates. We would ask that you keep this in mind when selecting the criteria to be used when defining a qualifying cohabitant, as a pension scheme administrator will need to be confident of their status when engaging with them in relation to a member's estate. For example, it would be helpful if the criteria were more objective and verifiable (e.g. financial arrangements, responsibility for children) and not subjective and/or difficult to evidence (e.g. existence of a sexual relationship). The SPP will, of course, seek clarification of HMRC's identity guidance for prospective personal representatives as and when any changes arising from this review become law.

## 3. About The Society of Pension Professionals

3.1. The SPP is the representative body for a wide range of providers of advice and services to pension schemes, trustees and employers. Our work harnesses the expertise of our membership, striving for a positive impact on pension scheme members, the pensions industry and its stakeholders.

3.2. The breadth of our members is a unique strength for the SPP. Our membership of 90 corporate organisations employs over 20,000 pension professionals including actuaries, lawyers, professional trustees, DC consultants, investment managers, providers, administrators, covenant assessors, and other pension specialists.

## 4. Further information

4.1. For more information about this consultation response please contact SPP Director of Policy & PR at: phil.hall@the-spp.co.uk or telephone the SPP on 0207 353 1688.

4.2. To find out more about the SPP please visit the SPP web site: https://the-spp.co.uk/

4.3. Connect with us on LinkedIn at: https://www.linkedin.com/company/the-society-of-pension-professionals/

4.4. Follow us on X (Twitter) at: https://twitter.com/thespp1

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