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# **Pension Preservation Orders**

## **What are they?**

This type of Order directs the administrators/trustees of the pension scheme concerned not to regard the separation of spouses, resulting from a Judicial Separation Decree, as a ground for disqualifying the non-member spouse from the receipt of a benefit under the pension scheme, where the Pension Scheme contains a condition that the spouses must be living together at the time the benefit becomes payable.

## **What benefits can be affected by the Order?**

Some pension schemes have a number of pension benefits. Others only provide a pension for the member in the event of his/her retirement. The benefits that can be affected by a Pension Preservation Order are as follows:

1. Contingent Benefits (otherwise known as death-in-service benefits) payable to the widow or widower of the member spouse upon the death **before retirement** of the member spouse and if that member spouse is in the same employment. This can include a spouse's pension and/or a lump sum and/or death gratuity.
2. Retirement Benefits payable to the non member **on the death after retirement** of the member spouse. This can include a spouse's pension and/or a lump sum and/or death gratuity.

## **When can such Orders be made?**

The Court can, when granting a Judicial Separation of a marriage (**and not a Divorce**), make a Pensions Preservation Order. It can also make such an Order at any time after a Judicial Separation has been granted so long as the member spouse is still alive.

## **Who can apply for such an Order?**

Either of the spouses involved in Judicial Separation proceedings.

## **Why are they needed?**

Some pension schemes have rules that provide that a non-member spouse who is separated, either factually and/or legally, from the member spouse, is precluded from receiving benefits as the "spouse" of the member spouse, where such spousal benefits are provided for under the pension scheme.

**Can a Pension Preservation Order be varied in the future?**

Yes. However, on Divorce, the Order will cease to have effect as the non-member spouse will cease to be a “spouse” entirely, thus precluding them for entitlement to any benefits payable to a “spouse” of the member spouse under the pension scheme.

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