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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 393**

**The Teachers' Superannuation (Scotland) Regulations 2005**

**PART F**

**PENSION SHARING**

**Pension sharing mechanism in the Scheme**

**F1.**—(1) Pension sharing is available under the Scheme in respect of any of a person's shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights for the purposes of this Part of the Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme.

**Pension sharing order activates pension sharing creating pension debits and credits**

**F2.** On the coming into effect of a pension sharing order—

- (a) the transferor's shareable rights under the Scheme become subject to a debit of the appropriate amount ("pension debit") as defined in regulation F3; and
- (b) the transferee becomes entitled to a credit of that amount ("pension credit") as against the Scottish Ministers.

**Calculation of the appropriate amount**

**F3.**—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, "appropriate amount" for the purposes of regulation F2 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation F2 is the lesser of—

- (a) the specified amount; and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which he or she would be entitled under the Scheme by virtue of his or her shareable rights under it had his or her pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of his or her shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation F2(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect.

#### **Pension debits and reduction of benefit**

**F4.**—(1) Subject to paragraph (2), where a member’s shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which he or she is entitled under the Scheme by virtue of those rights; and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the Scheme by virtue of those rights; and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this regulation—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act<sup>(1)</sup> represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends; and

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

#### **Effect of pension sharing on protected rights and guaranteed minimum pension**

**F5.** Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member’s rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the 1993 Act<sup>(2)</sup>.

#### **Discharge of pension credit liability**

**F6.**—(1) The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse.

(2) If the Scheme becomes closed to new members, the liability in respect of any pension credit derived from the Scheme may be discharged in accordance with paragraphs 2(3) to (5) of Schedule 5

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(1) 1999 c. 30.

(2) 1993 c. 48. Subsections 10(4) and (5) and section 15A were inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 32.

to the 1999 Act and in accordance with regulations made under paragraph 2(3) of Schedule 5 to that Act.

- (3) For the purposes of this regulation, rights conferred on the ex-spouse are appropriate if—
- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises, takes effect; and
  - (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents, equals the amount of the credit.

### **Adjustment of the amount of the pension credit – payments made without the knowledge of the pension debit**

**F7.** If—

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit;
- (b) the Scottish Ministers make a payment which is referable to those rights without knowing of the pension debit; and
- (c) the cash equivalent of the member’s shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount.

### **Implementation period for discharge of pension credit**

**F8.**—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within the implementation period, which for a pension credit is the period of 4 months beginning with the later of—

- (a) the day on which the relevant pension sharing order takes effect; and
- (b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of—
  - (i) the relevant matrimonial documents; and
  - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act<sup>(3)</sup>.

(2) The reference in paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of—

- (a) the relevant pension sharing order; and
- (b) the order, decree or declarator responsible for the divorce or annulment to which it relates,

and, if the pension credit depends on provision falling within subsection (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act.

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under section 34(4)(a) and (c) of the 1999 Act which—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;

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(3) 1999 c. 30.

- (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.

### **Failure to discharge liability in respect of pension credit within the implementation period – death of ex spouse within period**

**F9.**—(1) Where the Scottish Ministers have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) they shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act, notify the Pensions Regulator of that fact within such period as the Secretary of State may so prescribe; and
- (b) section 10 of the 1995 Act(4) shall apply where the Scottish Ministers have failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(2) If the Scottish Ministers fail to perform the obligation imposed by paragraph (1)(a) above, section 10 of the 1995 Act shall apply.

(3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Pensions Regulator may on the application of the Scottish Ministers extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act.

(4) Where an ex-spouse dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by the payment of a lump sum in accordance with paragraph (6).

(5) Upon the death of a pension credit member, a death grant shall be paid if, at the time of the member's death, he or she has not received any pension credit benefits or if he or she has received a pension for less than 5 years. The amount of the death grant to be paid is—

- (a) if the pension credit member was already entitled to payment of pension credit benefits, a lump sum equal to 5 times the amount of the pension which would otherwise have been payable less any amount which has already been paid; or
- (b) if the pension credit member was not entitled to pension credit benefits, a lump sum equal to that to which the member would have been entitled if, on the date of his or her death, he or she had attained the age of 60.

(6) Any death grant referred to in paragraph (5) shall be paid to the individual nominated by the deceased to receive the grant or, in the absence of such a nomination, to the deceased's spouse, whom failing, to his or her legal personal representative. Any nomination for the purposes of this paragraph shall be made by giving written notice to the Scottish Ministers.

### **Appropriate rights and pension credit benefits under the Scheme**

**F10.**—(1) Except as referred to in this regulation or otherwise in this Part, the appropriate rights under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

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(4) 1995 c. 26, as amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 18 and Schedule 2, paragraph 11 and the Pensions Act 2004 (c. 35), Schedule 12, paragraph 38 and Schedule 13, Part 1.

(3) The amount of the lump sum on retirement to which a pension credit member shall be entitled shall be calculated on the same basis as if his or her pension were a deferred pension under the Scheme, except that no lump sum on retirement shall be paid to the pension credit member if the corresponding pension debit has already received a lump sum from the Scheme before the date of the implementation of the pension sharing order.

(4) A pension credit member is entitled to his or her pension credit benefits on reaching his or her normal retirement age.

(5) The pension credit benefits are payable immediately on reaching normal retirement age and may not be deferred.

#### **Additional contributions and additional periods**

**F11.**—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

(2) The provisions of paragraph (1) shall be relaxed if in line with any tax exception or concession, which the Inland Revenue may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(5), or otherwise.

#### **Commutation: small pensions**

**F12.**—(1) Regulation J9 shall apply, if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) Regulation J9 shall apply in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall for the purpose of this regulation be aggregated with any other pension payable to that member under the Scheme.

#### **Commutation: exceptional ill-health**

**F13.**—(1) The whole of the pension element payable in respect of a pension credit benefit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal retirement age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled if on the date of commutation he had already reached the normal retirement age.

#### **Transfer values**

**F14.** The Scottish Ministers shall not pay or accept a transfer value within the meaning of regulations G1 and G2 in respect of any pension credit rights or pension credit benefits.

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(5) 1999 c. 16, Schedule 10, paragraph 18 is amended by S.I. 2000/1085 and is prospectively repealed by the Finance Act 2004 (c. 12), Schedule 42, Part 3.

### **Charges in respect of pension sharing costs**

**F15.**—(1) The Scottish Ministers may recover from the parties involved in pension sharing charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case.

(4) The Scottish Ministers shall, before a pension sharing order is made, inform the member, or his or her spouse as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or his or her spouse, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act<sup>(6)</sup>.

### **Excluded membership**

**F16.**—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member, he or she may not count any period which may count for any purpose in connection with his or her pension credit benefit towards any membership period required under the Scheme.

### **Assignment**

**F17.** Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

### **Payment of benefits/Interest on late payment of certain benefits**

**F18.** The provisions of regulations E36 and E37 shall apply to the pension credit member.

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(6) 1999 c. 30.