

## 2001 No. 23

### PENSIONS

#### The Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2001

*Made* 29th January 2001

*Laid before the Scottish Parliament* 31st January 2001

*Coming into force* 3rd March 2001

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972<sup>(a)</sup> and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to them to be appropriate, in accordance with section 7(5) of the Superannuation Act 1972, and not having considered consultation with any individual local authority desirable, hereby make the following Regulations:

#### **Citation, commencement, effect and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2001.

(2) These Regulations shall come into force on 3rd March but shall have effect from 1st December 2000.

(3) These Regulations extend to Scotland only.

#### **Amendment of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998**

2.—(1) In regulation 5(6) of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998<sup>(b)</sup>—

(a) delete “(except those incurred in connection with a FSAVC scheme)”; and

(b) add at the end after the word “it”—  
“except—

(a) those incurred in connection with a FSAVC scheme; and

(b) those costs and charges prescribed by regulations made by the Secretary of State which the administering authority is enabled to recover under sections 23, 24, or 41 of the Welfare Reform and Pensions Act 1999”.

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<sup>(a)</sup> 1972 c.11; sections 12(2) and (4) were amended and section 12(4A) was inserted by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), S.10; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750).

<sup>(b)</sup> S.I. 1998/2888, as amended by S.I. 2000/74.

## **Amendment of the Local Government Pension Scheme (Scotland) Regulations 1998**

3. The Local Government Pension Scheme (Scotland) Regulations 1998(a) (“the principal Regulations”) shall be amended in accordance with regulations 4 to 6 of these Regulations.

### **Pension sharing on divorce**

4. After Part V of the principal Regulations shall be inserted the following:–

“PART VI  
PENSION SHARING

CHAPTER I

PRELIMINARY PROVISIONS

#### **Interpretation of Part VI**

138.—(1) The definitions of expressions contained in Schedule 1A shall, unless the context indicates that they have a different meaning, apply for their interpretation in this Part of the Regulations as well as those definitions of expressions contained in Schedule 1.

(2)—All provisions in Parts I to V of these regulations shall, unless the context indicates otherwise, be subject to the provisions of this Part.

CHAPTER II

SHARING OF RIGHTS

#### **Pension sharing mechanism in the Scheme**

139.—(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 these 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(b).

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

140. 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”(c)) as defined in regulation 141; and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”(d)) as against the Administering Authority.

#### **Calculation of “appropriate amount”**

141.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation 140 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 140 is the lesser of–

- (a) the specified amount; and

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(a) S.I. 1998/366, as amended by S.S.I. 2000/199.

(b) See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the Welfare Reform and Pensions Act 1999 (c.30).

(c) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

(d) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

(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 would be entitled under the Scheme by virtue of his shareable rights under it had his 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 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 140(b) as the administering authority 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 or provision takes effect<sup>(a)</sup>.

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

**142.**—(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 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<sup>(b)</sup>—

“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 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;

“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**

**143.** 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 Pension Schemes Act 1993<sup>(c)</sup>.

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(a) This definition is that in section 29(8) of the 1999 Act.

(b) The definitions in this paragraph are those in section 31(5) of the 1999 Act.

(c) 1993 c.30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

## CHAPTER III

### MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”

#### **Discharge of pension credit liability by conferring “appropriate rights” or making transfer payment to another scheme**

**144.**—(1) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse—

- (a) with his consent; or
- (b) in accordance with regulations made by the Secretary of State under paragraph 1(2)(b) of Schedule 5 to the 1999 Act(a).

(2) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the ex-spouse if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit; and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State under paragraph 1(3)(c) of Schedule 5 to the 1999 Act(b).

(3) For the purposes of paragraph (1), no account is to be taken of consent of the person entitled to the pension credit unless—

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under paragraph (2); or
- (b) it is not withdrawn within 7 days of receipt of such notice.

(4) 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(c), equals the amount of the credit.

#### **Qualifying arrangements**

**145.**—(1) The following are qualifying arrangements for the purposes of regulation 144—

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) an appropriate annuity contract;
- (d) an appropriate policy of insurance; and
- (e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996(d).

(2) An annuity contract or policy of insurance is appropriate for the purposes of paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—

- (a) is carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and

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(a) See regulation 7(1) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(b) See regulation 7(2) of S.I. 2000/1053.

(c) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

(d) S.I. 1996/1462.

- (b) satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 6(2)(b) of Schedule 5 to the 1999 Act(a).
- (3) In this paragraph, “ordinary long-term insurance business” has the same meaning as in the Insurance Companies Act 1982(b).

**Disqualification as destination for pension credit**

**146.**—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988(c), an arrangement is disqualified as a destination for the credit unless—

- (a) it is also approved for those purposes; or
- (b) it satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 7(1)(b) of Schedule 5 to the 1999 Act(d).

(2) If the rights by reference to which the amount of a pension credit is determined are or include contracted-out rights or safeguarded rights, an arrangement is disqualified as a destination for the credit unless—

- (a) it is of a description prescribed by the Secretary of State by regulations made under paragraph 7(2)(a) of Schedule 5 to the 1999 Act(e); and
- (b) it satisfies such requirements as he may so prescribe under paragraph 7(2)(b) of Schedule 5 of the 1999 Act(f).

(3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Secretary of State under paragraph 7(3) of Schedule 5 to the 1999 Act(g), equals the credit.

(4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Secretary of State may prescribe by regulations made under paragraph 7(4) of Schedule 5 to the 1999 Act(h).

(5) The requirements which may be prescribed under sub-paragraph (1)(b) include, in particular, requirements of the Inland Revenue.

(6) In paragraph (2)—

“contracted-out rights” means such rights under, or derived from—

- (a) an occupational pension scheme contracted-out by virtue of section 9(2) or (3) of the 1993 Act; or
- (b) a personal pension scheme which is an appropriate scheme for the purposes of that Act,

as the Secretary of State may prescribe by regulations made under paragraph 7(6)(b) of Schedule 5 to the 1999 Act(i);

“safeguarded rights” has the meaning given by section 68A of the Pension Schemes Act 1993(j).

**Adjustment to the amount of the pension credit - payments made without knowledge of the pension debit**

**147.** If—

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit,
- (b) the administering authority makes a payment which is referable to those rights without knowing of the pension debit; and

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(a) See Regulation 11 of S.I. 2000/1053.

(b) 1982 c.50.

(c) 1988 c.1.

(d) See regulation 12 of S.I. 2000/1053.

(e) See regulation 13(1) of S.I. 2000/1053.

(f) See regulation 13(2) of S.I. 2000/1053.

(g) See regulation 14 of S.I. 2000/1053.

(h) See regulation 15 of S.I. 2000/1053.

(i) See regulation 13(3) of S.I. 2000/1053. The definition used here of “contracted-out rights” is found in section 68A(5) of the 1993 Act, as inserted by section 36 of the 1999 Act, and in paragraph 7(6) of Schedule 5 to the 1999 Act.

(j) Section 68A was inserted by section 36 of the 1999 Act.

(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(a).

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

**148.**—(1) The administering authority shall discharge its liability in respect of a pension credit within “the implementation period”(b), 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 administering authority in relation to the relevant pension sharing order is 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(c).

(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 sub-section (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which sub-section (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(d).

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 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;
- (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(e).

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

**149.**—(1) Where the administering authority has not done what is required to discharge its liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) the administering authority shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act(f), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and
- (b) section 10 of the Pensions Act 1995(g) (power of the Regulatory Authority to impose civil penalties) shall apply to any administering authority which has 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.

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(a) See the 1999 Act, Schedule 5, paragraph 9 and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(b) Section 33(1) of the 1999 Act.

(c) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

(d) See regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049), which specifies circumstances in which the implementation period may be postponed.

(e) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(f) See regulation 2 of S.I. 2000/1053 which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

(g) 1995 c.26.

(2) If the administering authority fails to perform the obligation imposed by paragraph (1)(a), section 10 of the Pensions Act 1995 shall apply.

(3) Where the administering authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the administering authority 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(a).

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse dies before the administering authority has discharged its liability in respect of the pension credit, that liability may be discharged by the appropriate authority by the payment of a lump sum, to a person other than the person entitled to the pension credit.

(6) The lump sum shall be equal to 3 times the annual rate of the pension which would have been paid to him if on the date of his death he had become entitled to a pension as a pension credit member, calculated in accordance with guidance issued by the Government Actuary.

(7) The appropriate administering authority shall pay the lump sum to the deceased’s personal representatives.

#### CHAPTER IV

#### APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

#### **“Appropriate Rights”/“Pension credit benefits” under the Scheme**

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

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

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

(4) Regulation 37 (Death grants) shall apply in relation to a pension credit member.

(5) A pension credit member is entitled to his pension credit benefits on reaching his normal benefit age.

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

#### **Additional Voluntary Contributions (“AVCs”)**

**151.** Where a pension debit member has an accumulated value of AVCs, the amount of the cash equivalent in respect of the corresponding pension credit, which is attributable to the accumulated value of the pension debit member’s AVCs, shall not be allocated to the pension credit benefits described in regulation 150(1) but, at the election of the pension credit member, must be used in one of the permissible ways specified in regulation 65(3).

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

**152.**—(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

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(a) See regulation 3 of S.I. 2000/1053.

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<sup>(a)</sup>.

(2) The provisions of paragraph (1) shall be relaxed if in line with any taxation 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<sup>(b)</sup>, or otherwise.

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

**153.**—(1) Regulation 48 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 48 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**

**154.**—(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 benefit age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a 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 benefit age.

#### **Pension Transfers**

**155.**—(1) The Scheme shall not accept any transfer into the Scheme in respect of any pension credit rights or pension credit benefits under any other pension scheme.

(2) No transfer of pension credit rights may be made from a pension credit member’s appropriate fund to another fund of the Scheme notwithstanding that that fund may be an appropriate fund for that member in respect of other rights he may have accrued under the Scheme.

### **CHAPTER V**

#### **MISCELLANEOUS**

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

**156.**—(1) The administering authority 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 administering authority 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 administering authority shall, before a pension sharing order is made, inform the member or his spouse, as the case may be, in writing of its intention to recover costs

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<sup>(a)</sup> See section 590(3)(bb) of the Taxes Act, inserted by the Finance Act 1999, Schedule 10, paragraph 2(3) (c.16).

<sup>(b)</sup> See S.I.s 2000/ 1085 and 1093.



incurred with any description of pension sharing activity and provide the member or his spouse, as the case may be, with a written schedule of changes in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act(a).

### **Excluded membership**

**157.**—(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 may not count any period which may count for any purpose in connection with his pension credit benefit towards any membership period required under the Scheme.

### **Appropriate fund and appropriate administering authority**

**158.** For a pension credit member—

- (a) the appropriate fund is the fund which is the appropriate fund for the transferor on the transfer date; and
- (b) his appropriate administering authority is the administering authority of the fund.

### **Assignment**

**159.** 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.

### **Application of Part VI to deferred members and pensioner members under the 1987 Regulations**

**160.** Part VI shall apply to those persons listed in Regulation 4(2)(a) of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998(b).”

### **Interpretation of principal Regulations**

**5.** After Schedule 1 to the principal Regulations there shall be inserted Schedule 1A as set out in Schedule 1 to these Regulations.

### **Minor and consequential amendments to the principal Regulations**

**6.** The principal Regulations shall be amended in terms of the minor and consequential amendments specified in Schedule 2 to these Regulations.

St Andrew's House,  
Edinburgh  
29th January 2001

*ANGUS MACKAY*  
A member of the Scottish Executive

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(a) See regulations 2-9 of S.I. 2000/1049.  
(b) S.I. 1998/364, as amended by S.S.I. 2000/199.

## SCHEDULE 1

SCHEDULE TO BE INSERTED IN THE LOCAL GOVERNMENT PENSION  
SCHEME (SCOTLAND) REGULATIONS 1998

## “SCHEDULE 1A

## INTERPRETATION

In these Regulations—

- “the 1993 Act” means the Pension Schemes Act 1993;
- “the 1995 Act” means the Pensions Act 1995;
- “the 1999 Act” means the Welfare Reform and Pensions Act 1999;
- “appropriate fund” for a pension credit member means the fund which is the appropriate fund for the transferor on the transfer date;
- “appropriate percentage” has the meaning given in regulation 142(4);
- “appropriate rights” has the meaning given in regulation 144(4);
- “appropriate scheme” shall be construed in accordance with section 9(5) of the 1993 Act;
- “contracted-out rights” has the meaning given in regulation 146(6);
- “ex-spouse” means an individual to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
- “indexing” means indexing in accordance with the Government Index of Retail Prices;
- “the Inland Revenue” means the Commissioners of Inland Revenue;
- “member of the Scheme” means a member of the Scheme and includes an active member, a deferred member and a pension credit member;
- “normal benefit age” means 65;
- “occupational pensions scheme” has the meaning given by section 1 of the 1993 Act;
- “overseas arrangement” has the meaning given in regulation 145(1);
- “pension credit” has the meaning given in regulation 140(b);
- “pension credit benefit” means in relation to the Scheme the benefits payable under the Scheme to or in respect of a pension credit member by virtue of his appropriate rights under the Scheme attributable to a pension credit;
- “pension credit member” means an individual who is a member of the Scheme, either,
- (i) solely for the provision of a pension credit benefit; or
  - (ii) for the wholly separate provision of a pension credit benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason;
- “pension credit rights” means rights to future benefits under the Scheme which are attributable to a pension credit;
- “pension debit” has the meaning given in regulation 140(a);
- “pension debit member” means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;
- “pension sharing order” means any order or provision which is mentioned in section 28(1) of the 1999 Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
- “pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995(a);
- “person responsible for a pension arrangement” has the meaning given by section 46(2) of the 1999 Act;
- “personal pension scheme” has the meaning given by section 1 of the 1993 Act(b);
- “Regulatory Authority” has the meaning given in regulation 149(4);
- “safeguarded rights” has the meaning given in regulation 146(6);
- “scheme” has the meaning given by section 101B of the 1993 Act(c);

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(a) Section 124 was amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraph 61.

(b) The definition of “personal pension scheme” was amended by the Welfare Reform and Pensions Act 1999, Schedule 2, paragraph 3(1)(a).

(c) Section 101B was inserted by section 37 of the Welfare Reform and Pensions Act 1999.

“shareable rights” has the meaning given by section 27(2) of the 1999 Act;  
“transfer day” has the meaning given in regulation 142(4);  
“transferee” has the meaning given by section 29(8) of the 1999 Act;  
“transferor” has the meaning given by section 29(8) of the 1999 Act; and  
“trustees or managers” has the meaning given by section 46(1) of the 1999 Act.”.

## SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS TO THE LOCAL  
GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 1998**Interpretation**

1. In regulation 2(1), for “Schedule 1 contains” substitute “Schedules 1 and 1A contain”.

**Calculations**

2. In regulation 19(4), after “However, benefits payable” insert—
  - (a) to a pension debit member are adjusted as provided in regulation 19A, and
  - (b) ”.

**Pension debit member**

3. After regulation 19 insert—

**“Pension debit member**

**19A.—**(1) The amount of a pension or retirement grant payable (or, in the case of the application of regulation 40(4), deemed to be payable) to a pension debit member shall be reduced to take into account the debit to which the shareable rights of the pension debit member are subject under a pension sharing order.

(2) The amount of the reduction shall be calculated in accordance with guidance issued for this purpose by the Government Actuary.”

**Death grants**

4. In regulation 37 after paragraph (10) insert—
 

“(11) In this regulation any reference to a member shall include a pension credit member.”.

**Surviving spouse’s long-term pension**

5. In regulation 40, after paragraph (5) insert—
 

“(5A) But where the deceased was a member within a description in paragraph (5) and a pension debit member, the long-term pension shall be equal to half the pension to which the deceased would have been entitled under regulation 24 if he had become entitled to a pension under that regulation on the date that he died (but see regulation 41).”.

**Children’s short-term pensions**

6. In regulation 44(a) after paragraph (5) insert—
 

“(5A) But in the case of a pensioner member who was a pension debit member, the pension shall be calculated by reference to the retirement pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.”.

**Children’s long-term pensions**

7. In regulation 45, after paragraph (7) insert—
 

“(7A) But in the case of a member referred to in paragraphs (5), (6) or (7) who was a pension debit member, the pension shall be calculated by reference to the pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.”.

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(a) Regulation 44 was amended by S.I. 2000/199, regulation 26.

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

8. In regulation 93(a)–
- (a) in paragraph (7), for “or 49” substitute “,49 or 154”; and
  - (b) after paragraph (7) insert–  
“ (8) In this regulation references to “member” shall include a pension credit member.”.

### **First instance decisions**

9. In regulation 96–
- (a) in paragraph (2), after “must be decided” insert–  
“  
 (a) in the case of a person entitled to a pension credit or a pension credit member in relation to his pension credit benefits or his pension credit rights respectively, by his appropriate administering authority, and (b) in any other case,”; and
  - (b) after paragraph (8) insert–  
“ (8A) Any question in relation to a pension credit member and his pension credit rights or pension credit benefits must be decided by his appropriate administering authority as soon as reasonably practical after the question arises.”

### **Right to apply for an appointed person to decide a disagreement**

10. In regulation 99, after paragraph 10 insert–  
“ (11) In this regulation, “member” includes a pension credit member.”.

### **Inward transfer of pension rights**

11. In regulation 121(2) at end of sub-paragraph (e) after “Part III” insert–  
“  
 ,  
 but do not include rights to benefits under the scheme or arrangement which are attributable (directly or indirectly) to a pension credit”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make further amendments to the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (“the Funds Regulations”) and the Local Government Pension Scheme (Scotland) Regulations 1998 (“the 1998 Regulations”). In this note “the Scheme” means the Pension Scheme constituted by the 1998 Regulations. They have retrospective effect from 1st December 2000 as authorised by section 12 of the Superannuation Act 1972. References to the Secretary of State in these Regulations means the Secretary of State for Social Security.

Regulation 2 amends a provision of the Funds Regulations which deals with costs, charges and expenses which may be paid out of the Fund, to exclude charges which relate to pension sharing on divorce.

Regulation 4 inserts a new Part VI into the 1998 Regulations to allow for pension sharing on divorce. Part VI (Regulations 138 to 160) have the following effect—

*Regulation 138 (Interpretation of part VI)* explains that this new Part is to be read using the definitions in a new Schedule 1A as well as other expressions which are defined in Schedule 1 to the 1998 Regulations. The regulation also provides that the provisions in Parts I to V of the 1998 Regulations are subject to the provisions of Part VI.

*Regulation 139 (pension sharing mechanism in the Scheme)* provides for pension sharing in respect of a member’s shareable rights under the 1998 Regulations but excludes any benefit payable to a widow or widower or other dependant of a deceased member.

*Regulation 140 (pension sharing order activates pension sharing creating pension debits and credits)* provides for the member’s shareable rights to be debited and for the transferee to be entitled to a pension credit.

*Regulation 141 (calculation of “appropriate amount”)* provides for the calculation of the specified percentage or the amount to be transferred and defines valuation day and transfer day for the purposes of this regulation.

*Regulation 142 (pension debits and reduction of benefit)* provides for the shareable rights of the debit member to be reduced in accordance with the appropriate percentage of the pension credit.

*Regulation 143 (effect of pension sharing on protected rights and guaranteed minimum pension)* provides for the debit member’s protected rights or guaranteed minimum pension to be reduced by the appropriate percentage.

*Regulation 144 (discharge of pension credit liability by conferring “appropriate rights” or making transfer payment to another scheme)* provides for the Scheme to be amended to bring the ex-spouse into the Scheme or to make a transfer payment to another scheme.

*Regulation 145 (qualifying arrangements)* specifies the appropriate destinations for a transfer and the types of annuity contracts or policies of insurance which are acceptable.

*Regulation 146 (disqualification as destination for pension credit)* defines those destinations which are not appropriate for a pension credit transfer.

*Regulation 147 (adjustment to the amount of the pension credit - payments made without the knowledge of the pension debit)* makes provision for the pension credit to be reduced in circumstances where the Scottish Ministers are not aware of the pension debit and make payment in respect of the shareable rights. If the cash equivalent of the member’s shareable rights after deduction is less than the amount of the pension debit, the pension credit will be reduced to the lesser amount.

*Regulation 148 (“implementation period” for discharge of pension credit)* provides for Scottish Ministers to discharge their liability in respect of a pension credit within the 4 months “implementation period”. The regulation also sets out the documents which Scottish Ministers must receive in order to establish the day on which the implementation period begins. It also sets out the requirement to notify the transferor and transferee of that date or any cessation or postponement of that date.

*Regulation 149 (failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse within period)*, paragraphs (1) and (2) provide that where the Scottish Ministers fail to discharge their liability within the implementation period they must notify the Regulatory Authority within the period prescribed in regulations under section 33(2)(a) of the 1999 Act and section 10 (civil penalties) of the Pensions Act 1995 will apply. The prescribed period set out in section 3 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000

(S.I. 2000/1053) is 21 days from the day immediately following the implementation period. Paragraph (3) provides for Scottish Ministers to request an extension of the implementation period under section 33(4). Under section 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 the request must be made before the end of the implementation period. Provision is also made under section 4 of those Regulations for the implementation period to be postponed or to cease where an application is made for leave to appeal out of time. Paragraph (4) defines Regulatory Authority as the Occupational Pensions Regulatory Authority. Paragraphs (5) to (7) deal with the position where an ex-spouse dies before the administering authority has discharged their liability.

*Regulation 150 (appropriate rights/pension credit benefits under the Scheme)* sets out the appropriate rights in respect of the pension credit member. The credit member benefits are restricted to pension and lump sum on retirement and lump sum on death and will be treated as a preserved pension. Provision is made for benefits to be increased under the Pensions Increase Act 1971. Benefits will be payable on reaching normal retirement age for the Scheme (age 65) and may not be deferred. Provision is made for early payment of the pension credit with actuarial reduction.

*Regulation 151 (additional voluntary contributions)* provides that where there is a reduction in the pension debit member's AVCs the pension credit cannot be included in the main scheme benefits and must be used in one of the permissible ways provided in regulation 65(3) of the Local Government Pension Scheme (Scotland) Regulations 1998.

*Regulation 152 (additional contributions and additional periods)* prevents the active member from purchasing additional service to replace any rights debited and restricts the amount of additional service which may be purchased to the amount of service the member could have purchased if the pension sharing order had not been made. This restriction is relaxed in respect of moderate earners whose earnings at the date of divorce or annulment are not more than 25 per cent of the permitted maximum or such other amount as may be prescribed.

*Regulation 153 (commutation - small pensions)* provides for a pension credit to be commuted on grounds of triviality. Where a pension credit member is also a member of the Scheme, the pension credit may only be commuted if the aggregate of pension or pensions under the Scheme falls below the limit in regulation 48.

*Regulation 154 (commutation:- exceptional ill-health)* provides for the pension credit to be commuted for a lump sum payment before the normal benefit age on grounds of terminal ill-health where the life expectancy is less than one year.

*Regulation 155 (pension transfers)* prevents the Scheme from accepting a transfer of a pension credit from another occupational or personal pension scheme.

*Regulation 156 (charges in respect of pension sharing costs)* allows the Scottish Ministers to recover the costs accrued in respect of pension sharing as set out in the Pensions on Divorce etc (Charging) Regulations 2000 (S.I. 2000/1049).

*Regulation 157 (excluded membership)* ensures that, where a pension credit member is also an active or deferred member, the pension credit must be disregarded when assessing the length of service in relation to the Scheme service and benefits.

*Regulation 159 (assignment)* provides for the pension credit not to be assigned except where required by law.

*Regulation 160 (application of Part VI to deferred members and pensioner members under the 1987 Regulations)* ensures that deferred and pensioner members who left the Scheme prior to 1st April 1998 are covered by these Regulations.

Regulation 5 inserts a new Schedule 1A into the 1998 Regulations giving the interpretations which apply to Part VI additional to the interpretations in Schedule 1.

Regulation 6 effects minor and consequential amendments to the 1998 Regulations.

**2001 No. 23**

**PENSIONS**

**The Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2001**

**£3.00**

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Queen's Printer of Acts of Parliament  
350 02/01 19593

