
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 310

The Firemen's Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firemen's Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001.

(2) This Order shall come into force on 5th October 2001 and shall have effect from 1st December 2000.

(3) This Order extends to Scotland only.

Amendment of the Firemen's Pension Scheme Order 1992

2. The Firemen's Pension Scheme Order 1992(1) ("the 1992 Order") shall be amended in accordance with articles 3 to 5 of this Order.

Pension sharing on divorce

3. After Part M of Schedule 2 to the 1992 Order there shall be inserted—

"PART N

PENSION SHARING PRELIMINARY PROVISIONS

Interpretation of Part N

N1.—(1) The definitions of expressions contained in Parts I and IA(2) of Schedule 1 to this Scheme shall, unless the context indicates that they have a different meaning, apply for their interpretation in this Part of the Scheme.

(2) All provisions in Parts A to M of this Scheme shall, unless the context indicates otherwise, be subject to the provisions of this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

N2.—(1) Pension sharing is available under this Scheme in respect of any of a person's shareable rights under this Scheme except as otherwise provided in this rule.

(2) Excluded from shareable rights for the purposes of this Part of this Scheme are any rights under this Scheme in respect of which a person is in receipt of a pension by virtue of

(1) [S.I. 1992/129](#) as amended by [S.I. 1997/2309](#) and [2851](#) and [1998/1010](#).

(2) Inserted by this order, article 4.

being the surviving spouse or other dependant of a deceased member with pension rights under this Scheme(3).

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

N3. On the coming into effect of a pension sharing order–

- (a) the transferor’s shareable rights under this Scheme become subject to a debit of the appropriate amount (“pension debit”(4)) as defined in rule N4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”(5)) as against this Scheme.

Calculation of appropriate amount

N4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of rule N3 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 rule N3 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 this 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 this 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 this Scheme by virtue of his shareable rights under it.

(5) For the purposes of this rule, the valuation day is such day within the implementation period for the discharge of the credit referred to in rule N3(b) as the fire authority may specify by notice in writing to the transferor and transferee.

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

Pension debits and reduction of benefit

N5.—(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 this 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 this Scheme of a member who is in pensionable service under this Scheme on the transfer day, each benefit or future benefit–

(3) 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) (“the 1999 Act”).

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

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

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

- (a) to which the person is entitled under this 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 rule(7)–

“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

N6. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by this Scheme, these shall in the case of a pension debit in relation to the member’s rights under this Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993(8).

MODE OF DISCHARGE AND IMPLEMENTATION PERIOD

Discharge of pension credit liability

N7.—(1) A fire authority, in relation to a pension credit derived from this Scheme, may discharge its liability in respect of the credit by conferring appropriate rights as defined in paragraph (3) under this Scheme on the ex-spouse.

(2) If this 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 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 rule, 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(9), equals the amount of the credit.

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

(8) 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

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

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

N8. If–

- (a) a person’s shareable rights under this Scheme have become subject to a pension debit,
- (b) a fire authority makes 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 the lesser amount**(10)**.

Implementation period for discharge of pension credit

N9.—(1) A fire authority shall discharge its liability in respect of a pension credit within the implementation period**(11)**, 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 fire 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**(12)**.

(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**(13)**.

(4) The provisions of this rule 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;

(10) 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).

(11) See section 33(1) of the 1999 Act.

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

(13) 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.

- (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⁽¹⁴⁾.

Failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse before implementation has taken place

N10.—(1) Where a fire 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) it shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act⁽¹⁵⁾, 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⁽¹⁶⁾ (power of the Regulatory Authority to impose civil penalties) shall apply where any fire authority 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.

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

(3) Where a fire authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the 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⁽¹⁷⁾.

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

(5) Where an ex-spouse dies before the fire authority has discharged its liability in respect of the pension credit, that liability may be discharged by the fire authority by the payment of a lump sum in accordance with paragraph (6) to the deceased’s spouse, whom failing to his personal representatives.

(6) The lump sum shall be equal to two and a quarter times the annual rate of the pension which would have been paid to the ex-spouse if on the date of his death he had become entitled to a pension as a pension credit member.

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

Appropriate rights and pension credit benefits under this Scheme

N11.—(1) Except as referred to in rule N7, in this rule, or otherwise in this Part of the Scheme, the appropriate rights under this Scheme to which a pension credit member shall be entitled shall consist only of a pension and rights in relation to a death grant as provided under paragraph (10).

(2) Pension credit benefits are subject to the same indexing as other benefits payable under this Scheme, beginning on the day on which the relevant pension sharing order takes effect⁽¹⁸⁾.

⁽¹⁴⁾ See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 ([S.I. 2000/1053](#)).

⁽¹⁵⁾ 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.

⁽¹⁶⁾ [1995 c. 26](#).

⁽¹⁷⁾ See regulation 3 of [S.I. 2000/1053](#).

⁽¹⁸⁾ See section 39 of the Welfare Reform and Pensions Act 1999 ([c. 30](#)), which amends the Pensions (Increase) Act 1971 ([c. 57](#)) to apply it to pensions attributable to a pensioner having become entitled to a pension credit.

- (3) A pension credit member is entitled to his benefits on the later of—
- (a) the day on which the pension sharing order takes effect; and
 - (b) the day on which he attains age 60.
- (4) If on the day on which the relevant pension sharing order takes effect the pension debit member has not commuted part of his pension under rule B7, the pension credit member may commute for a lump sum a portion of the pension to which he is entitled under paragraph (1).
- (5) The lump sum is the actuarial equivalent of the commuted portion of the pension at the later of—
- (a) the day on which the pension sharing order takes effect; and
 - (b) the day on which the pension credit member attains age 60.
- (6) The commuted portion must not be such that the lump sum exceeds two and a quarter times the annual rate of the pension before commutation.
- (7) In order to commute a portion of a pension the pension credit member must, not later than 6 months after the later of—
- (a) the day on which the pension sharing order takes effect; and
 - (b) the day on which he attains age 60,
- give the fire authority written notice of commutation, specifying the portion to be commuted.
- (8) Notice of commutation under paragraph (7) takes effect from the later of—
- (a) the date on which it is received by the fire authority; and
 - (b) the date on which the pension becomes payable.
- (9) When a pension credit member's notice of commutation takes effect, the fire authority shall—
- (a) reduce the pension, as from the effective date, by the commuted portion; and
 - (b) pay him the lump sum, reduced, where the effective date is the date of receipt of the notice, by the difference between the aggregate payments made in respect of the pension and the aggregate payments which would have been made in respect of it if it had been reduced from the later of—
 - (i) the day on which the pension sharing order took effect; and
 - (ii) the day on which the pension credit member attained age 60.
- (10) If a pension credit member dies before any benefits deriving from the pension credit have become payable to him under this Scheme, there shall be payable to his personal representatives a lump sum death grant amounting to two and a quarter times the annual rate of the pension to which he would have become entitled if he had attained age 60 on the date of his death.

Additional contributions and additional periods

N12.—(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⁽¹⁹⁾.

⁽¹⁹⁾ See section 590(3)(bb) of the Taxes Act 1988 (c. 1), inserted by the Finance Act 1999 (c. 16), Schedule 10, paragraph 2(3).

(2) The provisions of paragraph (1) shall be relaxed if the relaxation is 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⁽²⁰⁾, or otherwise.

Commutation: small pensions

N13.—(1) Rule B8 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 rule.

(2) Rule B8 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 rule be aggregated with any other pension payable to that member under this Scheme.

Pension Transfers

N14.—(1) A fire authority shall not accept any transfer into this Scheme in respect of any pension credit rights or pension credit benefits under any other pension scheme.

(2) A fire authority shall not pay a transfer value in respect of any pension credit rights.

MISCELLANEOUS

Charges in respect of pension sharing costs

N15.—(1) A fire 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 a fire 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⁽²¹⁾.

(4) A fire 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 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 charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act⁽²²⁾.

Excluded membership

N16.—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under this 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 this Scheme.

⁽²⁰⁾ See [S.I. 2000/1085](#) and [1093](#).

⁽²¹⁾ See regulation 5 of the Pensions on Divorce etc. (Charging) Regulations 2000 ([S.I. 2000/1049](#)).

⁽²²⁾ See regulations 2 to 9 of [S.I. 2000/1049](#).

Assignment

N17. 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 this Scheme, pension credit benefits under this Scheme may not be assigned, charged or otherwise made subject to a security.

Calculation of debits and credits

N18. Calculations under this Part of this Scheme shall, so far as legally possible, be made in accordance with any relevant guidance issued by the Government Actuary.

Application of rules of this Scheme to pension credit members etc.

N19. The following provisions of this Scheme apply to pension credit members and awards payable to or in respect of them—

- rule H1 (determination by fire authority),
- rule H3 (appeal to sheriff),
- rule K5 (withdrawal of pension on conviction of certain offences),
- rule L2 (expenses and receipts of fire authorities),
- rule L3 (payment of awards), and
- rule L5(1) to (5) and (10) (payment of awards – supplementary).”.

Interpretation of the Firemen’s Pension Scheme Order 1992

4. In Schedule 2 to the 1992 Order after Part I of Schedule 1 to the Firemen’s Pension Scheme 1992 there shall be inserted Part IA as set out in Schedule 1 to this Order.

Minor and consequential amendments to the Firemen’s Pension Scheme Order 1992

5. Schedule 2 to the 1992 Order shall be amended in terms of the minor and consequential amendments specified in Schedule 2 to this Order.

St Andrew’s House,
Edinburgh
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ANGUS MACKAY
A member of the Scottish Executive