

2001 No. 459

PENSIONS

**The Police Pensions (Pension Sharing on Divorce) (Scotland)
Amendment Regulations 2001**

Made 12th December 2001

Laid before the Scottish Parliament 17th December 2001

Coming into force 21st January 2002

The Scottish Ministers, in exercise of the powers conferred by section 1 of the Police Pension Act 1976(a) after consultation with the Police Negotiating Board for the United Kingdom, hereby make the following Regulations—

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Police Pensions (Pension Sharing on Divorce) (Scotland) Amendment Regulations 2001.

(2) These Regulations shall come into force on 21st January 2002 and shall have effect from 1st December 2000.

(3) These Regulations extend to Scotland only.

Amendment of the Police Pensions Regulations 1987

2. The Police Pensions Regulations 1987(b) (“the 1987 Regulations”) shall be amended in accordance with regulations 3 and 4 of these Regulations.

Pension sharing on divorce

3. After Part L of the 1987 Regulations shall be inserted the following:—

“PART M

PENSION SHARING

PRELIMINARY PROVISIONS

Interpretation of Part M

M1.—(1) The definitions of expressions contained in Schedule A shall apply for their interpretation in this Part of the Regulations.

(a) 1976 c.35, as amended by section 2(3) of the Police Negotiating Board Act 1980 (c.10); the functions of the Secretary of State as regards Scotland 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); consent of the Treasury is not required in the exercise by Scottish Ministers of the transferred functions.

(b) S.I. 1987/257, amended by S.I.s 1991/1517, 1992/1343, 1002/2349, 1996/867, 1997/1429 (s.109) and 1998/577.

(2) All provisions in parts A to L 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

M2.—(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 regulation.

(2) Excluded from shareable rights for the purposes of these Regulations are any rights under this 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 this Scheme (a).

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

M3. 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"(b)) as defined in regulation M4, and
- (b) the transferee becomes entitled to a credit of that amount ("pension credit"(c)) as against this Scheme.

Calculation of "appropriate amount"

M4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation M3 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 M3 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 regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation M3(b) as the police 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 takes effect(d).

Pension debits and reduction of benefit

M5.—(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.

(a) 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 1999 Act.
(b) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.
(c) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.
(d) This definition is that in section 29(8) of the 1999 Act.

(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–

- (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 Regulation(a)–

“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

M6. 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(b).

MODE OF DISCHARGE AND IMPLEMENTATION PERIOD

Discharge of pension credit liability

M7.—(1) A police authority, in relation to a pension credit derived from the 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 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.

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

M8. If–

- (a) a person’s shareable rights under this Scheme have become subject to a pension debit,

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

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

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

- (b) a police 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(a).

Implementation period for discharge of pension credit

M9.—(1) A police 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 police 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 sub-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 before implementation has taken place

M10.—(1) Where a police 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(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 where any police authority has failed to take all

(a) See paragraph 9 of Schedule 5 to the 1999 Act 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.

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

(3) Where a police 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(a).

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

(5) Where an ex-spouse dies before the police authority has discharged its liability in respect of the pension credit, that liability may be discharged by the police authority by the payment of a lump sum calculated 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 payable 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

M11.—(1) Except as referred to in regulation M7, in this Regulation, or otherwise in this Part of this 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(b).

(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 regulation 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 police 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 day on which it is received by the police authority; and
- (b) the day on which the pension becomes payable.

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

(b) 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.

(9) When a pension credit member's notice of commutation takes effect, the police 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

M12.—(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(a).

(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(b) and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(c), or otherwise.

Commutation:— small pensions

M13.—(1) Regulation 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 regulation.

(2) Regulation 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 regulation be aggregated with any other pension payable to that member under this Scheme.

Pension Transfers

M14.—(1) A police 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 police authority shall not pay a transfer value in respect of any pension credit rights.

MISCELLANEOUS

Charges in respect of pension sharing costs

M15.—(1) A police 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 police authority in connection with pension sharing activity other than those costs specified in paragraph (3).

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

(b) 1999 (c.16).

(c) See S.I.s 2000/1085 and 1093.

(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(a).

(4) A police 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(b).

Excluded membership

M16.—(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.

Assignment

M17. 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

M18. 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 general regulations to pension credit benefits and pension credit members

M19.—(1) The following provisions of this Scheme apply to pension credit members and awards payable to or in respect of them:—

Regulation H1 (determination by police authority),

Regulation H5 (appeal by a member of a home police force),

Regulation H6 (appeals by overseas policeman, inspector of constabulary or central police officer),

Regulation L2 (funds out of which and into which payments are to be made)

and

Regulation L3 (payment and duration of awards).

(2) In the application of regulations H1, H5 and H6 by virtue of this regulation –

(a) those regulations apply as if the references to the police authority were references to the relevant police authority, and

(b) the references in regulations H5 and H6 to a person claiming an award in respect of a member of a particular description to whom those regulations apply include references to a pension credit member whose pension credit is derived from the rights of a pension debit member of that description.”.

(a) See regulation 5 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049).

(b) See regulations 2-9 of S.I. 2000/1049.

Minor and consequential amendments to the 1987 Regulations

4. The 1987 Regulations shall be amended in accordance with the Schedule to these Regulations.

St Andrew's House,
Edinburgh
12th December 2001

ANDREW P KERR
A member of the Scottish Executive

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS TO THE POLICE PENSIONS
REGULATIONS 1987

Amendment of regulation A9 (reckoning of service for purpose of awards)

1. In regulation A9, after paragraph (3) there shall be inserted–

“(4) In the case of a regular policeman who is also a pension credit member under Part M, no account shall be taken of the pension credit in the reckoning of service for purposes of awards.”.

Amendment of regulation B7 (commutation – general provision)

2. In regulation B7, after paragraph (9) there shall be inserted–

“(10) This regulation shall not apply to a pension credit member, who shall be subject to the commutation provisions in Regulation M11.”.

Amendment of regulation B8 (commutation – small pensions)

3. In regulation 8, in paragraph (1) after the words “together with” there shall be inserted–

“any pension to which he is entitled under regulation M11 and”.

Amendment of regulation B9 (allocation)

4. In regulation B9, in paragraph (1) after the word “Part” there shall be inserted “but not to a pension credit under Part M”.

Insertion of new regulation B12

5. After regulation B11 the following regulation shall be inserted–

“Pension debit members

B12. Where a pension debit member is entitled to an award under regulation B1, B2, B3 or B5–

- (a) the award is calculated by reference to the member’s rights under this Scheme as reduced by virtue of section 31 of the 1999 Act and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary; and
- (b) regulations B7 to B10 have effect accordingly.”.

Insertion of new regulation C10

6. After regulation C9 the following regulation shall be inserted–

“Pension debit members

C10. Where a pension debit member dies leaving a surviving spouse, any award under regulations C1, C4, C5, C6, C7 or C8, and the pension under any of those regulations by reference to which any payment under regulation C9 is made, is calculated by reference to the member’s rights under this Scheme as reduced by virtue of section 31 of the 1999 Act and in accordance with such tables and other guidance as are provided for the purpose by the Government Actuary.”.

Insertion of new regulation D6

7. After regulation D5 the following regulation shall be inserted–

“Pension debit members

D6. Where a pension debit member dies leaving a child, the reduction in his rights under this Scheme by virtue of section 31 of the 1999 Act is disregarded for the purposes of calculating any award payable under this Part.”.

Amendment of regulation E3 (gratuity – estate)

8. In regulation E3,
- (a) at the end of sub-paragraph (2)(c) the word “and” shall be omitted; and
 - (b) after sub-paragraph (2)(d) there shall be inserted–
 - “(e) the actuarial value of any pension credit under Part M.”.

Amendment of regulation F8A (former police authority to provide certificate of the amount of pensionable service giving entitlement to pension)

9. In regulation F8A, in paragraph (2) after sub-paragraph (b) there shall be added–
“(c) where that policeman is a pension debit member under Part M, the appropriate percentage by which his future benefits are to be reduced under Regulation M5.”.

Amendment of regulation F9 (Transfer values payable under interchange arrangements)

10. In regulation F9–
- (a) in paragraph (3) after “Subject to paragraph (3A)” there shall be inserted “and paragraph (3B)” ; and
 - (b) after paragraph (3A) there shall be inserted–
 - “(3B) Where a pension debit exists under Part M, the amount of any transfer value payable under this regulation shall be decreased by the actuarial value of that debit.”.

Amendment of regulation F10 (Transfer values payable following cessation of contributions)

11. In regulation F10–
- (a) in paragraph (4) after “Subject to paragraph (5)” there shall be inserted “and paragraph (9)” ; and
 - (b) after paragraph (8) there shall be inserted:–
 - “(9) Where a pension debit exists under Part M, the amount of any transfer value payable under this regulation shall be decreased by the actuarial value of that debit.”.

Insertion of new regulation F10A

12. After regulation F10 the following regulation shall be inserted:–

“Prohibition on accepting or paying transfer values for pension credit rights

F10A. A transfer value may not be accepted or paid in respect of any pension credit rights under Part M.”.

Amendment of regulation G3 (additional and further contributions)

13. In regulation G3, after paragraph (5) there shall be inserted–
“(6) This regulation is subject to regulation M12.”.

Amendment of regulation K4 (withdrawal of pension during service as a regular policeman)

14. In regulation K4, in paragraph (1) after “force” there shall be inserted “, save that such withdrawal shall not apply to any pension credit under Part M.”.

Amendment of regulation K5 (forfeiture of pension)

15. In regulation K5(1) after “special pension” there shall be inserted “or to a pension payable to a pension credit member under Part M”.

Amendment of regulation L1 (authorities responsible for payment of awards)

16. In regulation L1 after paragraph (2) there shall be inserted–

“(3) An award payable to or in respect of a pension credit member under Part M, and any sum paid in commutation of such an award, is payable by the relevant police authority.

(4) In this Scheme “the relevant police authority”, in relation to a pension credit member, means–

- (a) the police authority who employ the pension debit member from whose rights the pension credit member’s pension credit is derived at the time when the pension sharing order takes effect, or,
- (b) if he is not then employed by a police authority, the police authority by whom he was last employed.”.

Amendment of regulation L4 (payment of awards otherwise than to beneficiary and application of payments)

17. In regulation L4(1) after “member of a police force” there shall be inserted “or a pension credit member”.

Amendment of Schedule A

18. In Schedule A (glossary of expressions) there shall be inserted in the appropriate places in alphabetical order the following definitions–

“the 1993 Act” means the Pension Schemes Act 1993(a);

“the 1995 Act” means the Pensions Act 1995(b);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999(c);

“active member” has the same meaning as in section 124 of the 1995 Act;

“appropriate percentage” has the meaning given in regulation M5(4);

“appropriate rights” has the meaning given in regulation M7(3);

“ex-spouse” means an individual to whom pension credit rights under this Scheme have been or are to be awarded 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 this Scheme” means a member of this Scheme and includes an active member, a deferred member and a pension credit member;

“pension credit benefits” means in relation to this Scheme the benefits payable under the Scheme to or in respect of a pension credit member by virtue of his appropriate rights under this Scheme attributable to a pension credit;

“pension credit member” means an individual who is a member of this 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 this Scheme for any other reason;

“pension credit rights” means rights to future benefits under this Scheme which are attributable to a pension credit;

“pension credit” has the meaning given in regulation M3(a);

“pension debit member” means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights under this Scheme are subject to a pension debit;

(a) 1993 c.48.
(b) 1995 c.26.
(c) 1999 c.30.

“pension sharing order or provision” means any order 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(a);

“pensionable service” has the meaning given by section 124(1) of the 1995 Act;

“shareable rights” has the same meaning given by section 27(2) of the 1999 Act and means any rights under a pension arrangement other than those described in section 2 of The Pension Sharing (Valuation) Regulations 2000(b);

“this Scheme” means the pension scheme regulated by the 1987 Regulations;

“transferee” has the meaning given by section 29(8) of the 1999 Act; and

“transferor” has the meaning given by section 29(8) of the 1999 Act.”

Amendment of Schedule B

19. In Part I of Schedule B (policeman’s ordinary pension)–

- (a) in paragraph 2 after the words “subject to” there shall be inserted “paragraph 3 and”;
and
- (b) after paragraph 2 there shall be inserted–

“**3.** For the purposes of paragraph 2 any difference in those amounts attributable to a pension debit is disregarded.”.

20. In paragraph 3(2) of Part V of Schedule B (policeman’s injury award), after “up-rating of widow’s pension)” there shall be inserted “or by virtue of a pension debit”.

Amendment of Schedule C

21. In Schedule C (widows’ awards), after paragraph 4 there shall be added:–

“**5.** Where the spouse is the spouse of a pension debit member, paragraph 3 shall not apply unless the pension calculated in accordance with Regulation E10 is greater than the pension derived from the member’s pension before account is taken of the reduction under section 31 of the 1999 Act.”.

Amendment of Schedule F

22. In Part II of Schedule F (transfers and current interchange arrangements) after paragraph 12 of Section 1 there shall be inserted–

“**13.** In the case of a pension debit member, the transfer value is reduced by such amount as is calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.”.

23. In Part IV of Schedule F (calculation of transfer values and reckonable service by reference to accrued rights) after paragraph 4 of section 1 there shall be inserted–

“**5.** In the case of a pension debit member, the transfer value shall be reduced by such amount as is calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.”.

(a) S.I. 2000/1052.
(b) S.I. 2000/1052.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend, in relation to police officers in Scotland, the Police Pensions Scheme as set out in the Police Pensions Regulations 1987 (“the 1987 Regulations”). The amendments relate to cases where police officers are divorced, and stem from the pension sharing provisions in the Welfare Reform and Pensions Act 1999 and associated subordinate legislation.

The Regulations have retrospective effect from 1st December 2000 as authorised under section 1(5) of the Police Pensions Act 1976. References in the Regulations to the Secretary of State are to the Secretary of State for Work and Pensions.

Regulation 3 inserts a new Part M (Pension Sharing) into the 1987 Regulations. The new Part has the following effect:–

Regulation M1 provides that the definition of expressions in Schedule A to the 1987 Regulations apply to Part M. The regulation also provides that the provisions in Parts A to L of the 1987 Regulations are subject to the provisions of Part M.

Regulation M2 provides for pension sharing in respect of a member’s shareable rights under the 1987 Regulations, but excludes any benefit payable to a widow or widower or other dependant of a deceased member.

Regulation M3 provides that, when a relevant pension sharing order comes into effect, the police officer’s pension rights under the 1987 Regulations become subject to a “pension debit” and the ex-spouse becomes entitled to a “pension credit”.

Regulation M4 prescribes how the pension debit is to be calculated, depending on whether the pension sharing order specifies a percentage, or an amount, to be transferred to the ex-spouse.

Regulation M5 provides for the shareable rights of the police officer to be reduced in accordance with the pension sharing order.

Regulation M6 provides that, where a pension sharing order has effect, the police officer’s protected rights and guaranteed minimum pension are subject to the pension debit.

Regulation M7 allows a police authority to discharge its liability in respect of a pension credit by conferring on the ex-spouse “appropriate rights”, which are rights within the 1987 Regulations to the same value as the pension credit.

Regulation M8 makes provision for the pension credit to be reduced in any case where a police authority makes a payment to a police officer under the 1987 Regulations without knowing that it was subject to a pension debit because of a pension sharing order. In such a case, if the cash equivalent of the police officer’s shareable rights after deduction of the payment is less than the amount of the pension debit, the corresponding pension credit is reduced to the remaining cash equivalent. The effect of this is to restrict, in certain circumstances, the pension credit for which the Scheme is liable.

Regulation M9 requires a police authority to discharge its liability in respect of a pension credit within a 4 month ‘implementation period’. Basically, this period begins from the date on which the pension sharing order takes effect or, if later, from the date on which all relevant documents (as set out in the regulation) are with the authority.

In *Regulation M10*, paragraphs (1), (2) and (4) require a police authority to inform the Occupational Pensions Regulatory Authority (“OPRA”) if the period for implementing a pension sharing order is not met, and also clarify that civil penalties for the breach may be imposed. Paragraph (3) enables OPRA to extend the implementation period in certain circumstances. Paragraphs (5) and (6) refer to cases where an ex-spouse dies before the pension credit liability has been implemented. In such circumstances, provision is made for the police authority to discharge its liability by paying a death grant equal to the annual rate of the pension which would have become payable to the ex-spouse, multiplied by 2.25.

Regulation M11 sets out the appropriate rights in respect of the pension credit member (the police officer's ex-spouse). The credit member's benefits, which will be treated in a similar way to a deferred pension, are basically restricted to a pension at age 60 (part of which can be commuted to a lump sum, in the circumstances described in paragraph (4)), and a lump sum death grant. Benefits will be payable on reaching the normal age for a deferred pension under the Regulations (age 60) and may not be further deferred. Provision is made for the benefits to be increased under the Pensions (Increase) Act 1971. Paragraphs (5) to (9) make detailed provision for the commutation of part of the pension, including notifying the police authority. The lump sum death grant (paragraph 10)) is payable if the pension credit member dies before the age of 60.

Regulation M12 restricts the amount of additional service which the police officer may purchase in order to replace rights debited. The restricted amount is the amount of service he could have purchased if the pension sharing order had not been made. This restriction is relaxed in respect of moderate earners, i.e. those whose earnings at the date of divorce or annulment do not exceed 25 per cent of the permitted Inland Revenue maximum.

Regulation M13 allows a police authority to commute under regulation B8 (commutation – small pensions) the pension of a police officer who has been affected by a pension debit. It also allows a police authority to commute a small pension payable to a pension credit number (as long as that pension is still trivial when aggregated with any other pension payable to the person under the 1987 Regulations).

Regulation M14 prevents a police authority accepting into the Scheme a transfer of a pension credit from another occupational or personal pension scheme, and also prevents it transferring-out a pension credit.

Regulation M15 allows police authorities to recover, from the parties involved in the divorce, the costs accrued in administering the pension sharing (as set out in the Pensions on Divorce etc. (Charging) Regulations 2000. The police authority has to give notice of its schedule of charges, in advance of the pension sharing order being made.

Regulation M16 provides that a pension credit cannot be aggregated with other Scheme benefits. It also ensures that, where a pension credit member is also an active member of the Scheme, the pension credit must be disregarded when assessing the length of service in relation to Scheme benefits.

Regulation M17 provides for the pension credit not to be assigned except where required by law.

Regulation M18 provides for calculations relating to pension credits and pension debits to be done in accordance with guidance issued by the Government Actuary.

Regulation M19 specifies which of the 1987 Regulations apply to pension credit members.

Regulation 4, along with the Schedule, makes minor and consequential amendments to the 1987 Regulations and inserts into Schedule A to the 1987 Regulations definitions of expressions relevant to the pension sharing provisions.

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