



# Pensions Act 1995

## 1995 CHAPTER 26

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Pensions on divorce, etc.*

#### **167 Pensions on divorce, etc.: Scotland.**

(1) In section 8(1) (orders for financial provision) of the <sup>M1</sup>Family Law (Scotland) Act 1985 (“the 1985 Act”), after paragraph (b) there is inserted—

“(ba) an order under section 12A(2) or (3) of this Act;”.

(2) In section 10 of the 1985 Act (sharing of value of matrimonial property)—

(a) in subsection (5)—

(i) after “party” there is inserted “ (a) ”; and

(ii) for “or occupational pension scheme or similar arrangement” there is substituted—

“or similar arrangement; and

(b) in any benefits under a pension scheme which either party has or may have (including such benefits payable in respect of the death of either party),

which is ”; and

(b) after subsection (7) there is inserted—

“(8) The Secretary of State may by regulations make provision—

(a) for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of this Act, in a prescribed manner;

(b) for the trustees or managers of any pension scheme to provide, for the purposes of this Act, information as to that

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value, and for the recovery of the administrative expenses of providing such information from either party,

and regulations made by virtue of paragraph (a) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed body and approved by the Secretary of State.

(9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this section—

“benefits under a pension scheme” includes any benefits by way of pension, whether under a pension scheme or not;

“pension scheme” means—

(a) an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners);

(b) a retirement annuity contract; or

(c) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme falling within paragraph (a) above; and

“prescribed” means prescribed by regulations.

(11) In this section, references to the trustees or managers of a pension scheme—

(a) in relation to a contract or annuity referred to in paragraph (b) or (c) of the definition of “pension scheme” in subsection (10) above, shall be read as references to the provider of the annuity;

(b) in relation to an insurance policy referred to in paragraph (c) of that definition, shall be read as a reference to the insurer.”.

(3) After section 12 of the 1985 Act there is inserted—

**“12A Orders for payment of capital sum: pensions lump sums.**

(1) This section applies where the court makes an order under section 8(2) of this Act for payment of a capital sum (a “capital sum order”) by a party to the marriage (“the liable party”) in circumstances where—

(a) the matrimonial property within the meaning of section 10 of this Act includes any rights or interests in benefits under a pension scheme which the liable party has or may have (whether such benefits are payable to him or in respect of his death); and

(b) those benefits include a lump sum payable to him or in respect of his death.

(2) Where the benefits referred to in subsection (1) above include a lump sum payable to the liable party, the court, on making the capital sum order, may make an order requiring the trustees or managers of the pension scheme in

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question to pay the whole or part of that sum, when it becomes due, to the other party to the marriage (“the other party”).

- (3) Where the benefits referred to in subsection (1) above include a lump sum payable in respect of the death of the liable party, the court, on making the capital sum order, may make an order—
- (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, requiring them to pay the whole or part of that sum, when it becomes due, to the other party;
  - (b) if the liable party has power to nominate the person to whom the sum, or any part of it, is to be paid, requiring the liable party to nominate the other party in respect of the whole or part of that sum;
  - (c) in any other case, requiring the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, to the other party instead of to the person to whom, apart from the order, it would be paid.
- (4) Any payment by the trustees or managers under an order under subsection (2) or (3) above—
- (a) shall discharge so much of the trustees’ or managers’ liability to or in respect of the liable party as corresponds to the amount of the payment; and
  - (b) shall be treated for all purposes as a payment made by the liable party in or towards the discharge of his liability under the capital sum order.
- (5) Where the liability of the liable party under the capital sum order has been discharged in whole or in part, other than by a payment by the trustees or managers under an order under subsection (2) or (3) above, the court may, on an application by any person having an interest, recall any order under either of those subsections or vary the amount specified in such an order, as appears to the court appropriate in the circumstances.
- (6) Where—
- (a) an order under subsection (2) or (3) above imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the liable party acquires transfer credits under another scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme; and
  - (b) the trustees or managers of the new scheme have been given notice in accordance with regulations under subsection (8) below,
- the order shall have effect as if it had been made instead in respect of the trustees or managers of the new scheme; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.
- (7) Without prejudice to subsection (6) above, the court may, on an application by any person having an interest, vary an order under subsection (2) or (3) above by substituting for the trustees or managers specified in the order the trustees or managers of any other pension scheme under which any lump sum referred to in subsection (1) above is payable to the liable party or in respect of his death.

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- (8) The Secretary of State may by regulations—
- (a) require notices to be given in respect of changes of circumstances relevant to orders under subsection (2) or (3) above;
  - (b) make provision for the recovery of the administrative expenses of complying with such orders from the liable party or the other party.
- (9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Subsection (10) (other than the definition of “benefits under a pension scheme”) and subsection (11) of section 10 of this Act shall apply for the purposes of this section as those subsections apply for the purposes of that section.”.
- (4) Nothing in the provisions mentioned in section 166(5) above applies to a court exercising its powers under section 8 (orders for financial provision on divorce, etc.) or 12A (orders for payment of capital sum: pensions lump sums) of the 1985 Act in respect of any benefits under a pension [<sup>F1</sup>arrangement] which fall within subsection (5)(b) of section 10 of that Act [<sup>F2</sup>(“pension arrangement” having the meaning given in subsection (1) of section 27 of that Act, as it has effect for the purposes of subsection (5) of the said section 10).]

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#### Textual Amendments

- F1** Word in s. 167(4) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(1\), Sch. 12 para. 63\(a\)](#); S.I. 2000/1047, art. 2(2)(d) Sch. Pt. 4
- F2** Words in s. 167(4) substituted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(1\), Sch. 12 para. 63\(b\)](#); S.I. 2000/1047, art. 2(2)(d) Sch. Pt. 4
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#### Commencement Information

- I1** S. 167 in force at 15.7.1996 for specified purposes and 19.8.1996 in so far as not already in force by S.I. 1996/1843, [art. 3](#) (with [art. 4](#))
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#### Marginal Citations

- M1** [1985 c. 37.](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 36](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 37(1A)(b) inserted by [2015 c. 8 Sch. 2 para. 7\(b\)](#)
- s. 51(5A)-(5C) inserted by [2015 c. 8 s. 43\(1\)](#)
- s. 51(7A) inserted by [2015 c. 8 s. 41\(1\)\(b\)](#)
- s. 51(9)(10) inserted by [2015 c. 8 s. 42\(3\)](#)
- s. 67A(3)(aa)-(ac) inserted by [2015 c. 8 s. 45\(3\)](#)
- s. 67A(9)(a)(viii)-(x) inserted by [2015 c. 8 s. 45\(6\)\(a\)](#)
- s. 67A(9)(b)(vi)-(viii) inserted by [2015 c. 8 s. 45\(6\)\(b\)](#)
- s. 73(2)(2A) substituted for s. 73(2) by [2015 c. 8 Sch. 2 para. 11](#)
- s. 75(1)-(1B) substituted for s. 75(1) by [2015 c. 8 Sch. 2 para. 12](#)
- s. 175(2)(ca) inserted by [2004 c. 35 s. 240\(2\)](#)
- s. 175(2)(za) inserted by [2015 c. 8 s. 43\(2\)](#)