



# Welfare Reform and Pensions Act 1999

## 1999 CHAPTER 30

### PART IV

#### PENSION SHARING

#### CHAPTER II

##### SHARING OF STATE SCHEME RIGHTS

#### **47 Shareable state scheme rights**

- (1) Pension sharing is available under this Chapter in relation to a person's shareable state scheme rights.
- (2) For the purposes of this Chapter, a person's shareable state scheme rights are—
  - (a) his entitlement, or prospective entitlement, to a Category A retirement pension by virtue of section 44(3)(b) of the Contributions and Benefits Act (earnings-related additional pension), and
  - (b) his entitlement, or prospective entitlement, to a pension under section 55A of that Act (shared additional pension).

#### **48 Activation of benefit sharing**

- (1) Section 49 applies on the taking effect of any of the following relating to a person's shareable state scheme rights—
  - (a) a pension sharing order under the Matrimonial Causes Act 1973,
  - (b) provision which corresponds to the provision which may be made by such an order and which—
    - (i) is contained in a qualifying agreement between the parties to a marriage, and
    - (ii) takes effect on the dissolution of the marriage under the Family Law Act 1996,

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- (c) provision which corresponds to the provision which may be made by such an order and which—
    - (i) is contained in a qualifying agreement between the parties to a marriage or former marriage, and
    - (ii) takes effect after the dissolution of the marriage under the Family Law Act 1996,
  - (d) an order under Part III of the Matrimonial and Family Proceedings Act 1984 (financial relief in England and Wales in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (a),
  - (e) a pension sharing order under the Family Law (Scotland) Act 1985,
  - (f) provision which corresponds to the provision which may be made by such an order and which—
    - (i) is contained in a qualifying agreement between the parties to a marriage,
    - (ii) is in such form as the Secretary of State may prescribe by regulations, and
    - (iii) takes effect on the grant, in relation to the marriage, of decree of divorce under the Divorce (Scotland) Act 1976 or of declarator of nullity,
  - (g) an order under Part IV of the Matrimonial and Family Proceedings Act 1984 (financial relief in Scotland in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (e),
  - (h) a pension sharing order under Northern Ireland legislation, and
  - (i) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (h).
- (2) For the purposes of subsection (1)(b) and (c), a qualifying agreement is one which—
- (a) has been entered into in such circumstances as the Lord Chancellor may prescribe by regulations, and
  - (b) satisfies such requirements as the Lord Chancellor may so prescribe.
- (3) For the purposes of subsection (1)(f), a qualifying agreement is one which—
- (a) has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and
  - (b) is registered in the Books of Council and Session.
- (4) Subsection (1)(b) does not apply if the provision relates to rights which are the subject of a pension sharing order under the Matrimonial Causes Act 1973 in relation to the marriage.
- (5) Subsection (1)(c) does not apply if—
- (a) the marriage was dissolved by an order under section 3 of the Family Law Act 1996 (divorce not preceded by separation) and the satisfaction of the requirements of section 9(2) of that Act (settlement of future financial arrangements) was a precondition to the making of the order,
  - (b) the provision relates to rights which are the subject of a pension sharing order under the Matrimonial Causes Act 1973 in relation to the marriage, or
  - (c) shareable state scheme rights have already been the subject of pension sharing between the parties.

- (6) For the purposes of this section, an order or provision falling within subsection (1)(e), (f) or (g) shall be deemed never to have taken effect if the Secretary of State does not receive before the end of the period of 2 months beginning with the relevant date—
- (a) copies of the relevant matrimonial documents, and
  - (b) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations under section 34(1)(b)(ii).
- (7) The relevant date for the purposes of subsection (6) is—
- (a) in the case of an order or provision falling within subsection (1)(e) or (f), the date of the extract of the decree or declarator responsible for the divorce or annulment to which the order or provision relates, and
  - (b) in the case of an order falling within subsection (1)(g), the date of disposal of the application under section 28 of the Matrimonial and Family Proceedings Act 1984.
- (8) The reference in subsection (6)(a) to the relevant matrimonial documents is—
- (a) in the case of an order falling within subsection (1)(e) or (g), to copies of the order and the order, decree or declarator responsible for the divorce or annulment to which it relates, and
  - (b) in the case of provision falling within subsection (1)(f), to—
    - (i) copies of the provision and the order, decree or declarator responsible for the divorce or annulment to which it relates, and
    - (ii) documentary evidence that the agreement containing the provision is one to which subsection (3)(a) applies.
- (9) The sheriff may, on the application of any person having an interest, make an order—
- (a) extending the period of 2 months referred to in subsection (6), and
  - (b) if that period has already expired, providing that, if the Secretary of State receives the documents and information concerned before the end of the period specified in the order, subsection (6) is to be treated as never having applied.

#### **49 Creation of state scheme pension debits and credits**

- (1) On the application of this section—
- (a) the transferor becomes subject, for the purposes of Part II of the Contributions and Benefits Act (contributory benefits), to a debit of the appropriate amount, and
  - (b) the transferee becomes entitled, for those purposes, to a credit of that amount.
- (2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) is the specified percentage of the cash equivalent on the transfer day of the transferor's shareable state scheme rights immediately before that day.
- (3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of subsection (1) is the lesser of—
- (a) the specified amount, and
  - (b) the cash equivalent on the transfer day of the transferor's relevant state scheme rights immediately before that day.

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- (4) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations made by the Secretary of State.
- (5) In determining prospective entitlement to a Category A retirement pension for the purposes of this section, only tax years before that in which the transfer day falls shall be taken into account.
- (6) In this section—
- “relevant order or provision” means the order or provision by virtue of which this section applies;
  - “transfer day” means the day on which the relevant order or provision takes effect;
  - “transferor” means the person to whose rights the relevant order or provision relates;
  - “transferee” means the person for whose benefit the relevant order or provision is made.

## **50 Effect of state scheme pension debits and credits**

- (1) Schedule 6 (which amends the Contributions and Benefits Act for the purpose of giving effect to debits and credits under section 49(1)) shall have effect.
- (2) Section 55C of that Act (which is inserted by that Schedule) shall have effect, in relation to incremental periods (within the meaning of that section) beginning on or after 6th April 2010, with the following amendments—
- (a) in subsection (3), for “period of enhancement” there is substituted “period of deferment”,
  - (b) in subsection (4), for “1/7th per cent.” there is substituted “1/5th per cent.”,
  - (c) in subsection (7), for “period of enhancement”, in both places, there is substituted “period of deferment”, and
  - (d) in subsection (9), the definition of “period of enhancement” (and the preceding “and”) are omitted.

## **51 Interpretation of Chapter II**

In this Chapter—

“shareable state scheme rights” has the meaning given by section 47(2); and  
“tax year” has the meaning given by section 122(1) of the Contributions and Benefits Act.