

SCHEDULES

SCHEDULE 12

CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS CONSEQUENTIAL ON PARTS III AND IV

Family Law Act 1996 (c. 27)

- 64 The Family Law Act 1996 has effect subject to the following amendments.
- 65 (1) Schedule 2 is amended as follows.
- (2) In paragraph 2, for “section 21” there is substituted “sections 21 and 21A”.
- (3) In the section set out in that paragraph, for the sidenote there is substituted “Financial provision orders, property adjustment orders and pension sharing orders.”
- (4) In that section, in paragraphs (c) and (d) of subsection (2), there is inserted at the end “, other than one in the form of a pension arrangement (within the meaning of section 25D below)”.
- (5) In that section, after subsection (2) there is inserted—
- “ (3) For the purposes of this Act, a pension sharing order is an order which—
- (a) provides that one party's—
- (i) shareable rights under a specified pension arrangement, or
- (ii) shareable state scheme rights,
- be subject to pension sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.”
- (6) In that section, subsections (3), (4) and (5) become (4), (5) and (6).
- (7) In that section, after subsection (6) (new numbering) there is inserted—
- “ (7) In subsection (3)—
- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation, and
- (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation.”
- (8) In that section, subsection (6) becomes subsection (8).

Status: This is the original version (as it was originally enacted).

(9) After paragraph 6 there is inserted—

“Pension sharing orders: divorce and nullity

6A For section 24B substitute—

“24B Pension sharing orders: divorce

- (1) On an application made under this section, the court may at the appropriate time make one or more pension sharing orders.
- (2) The “appropriate time” is any time—
 - (a) after a statement of marital breakdown has been received by the court and before any application for a divorce order or for a separation order is made to the court by reference to that statement;
 - (b) when an application for a divorce order has been made under section 3 of the 1996 Act and has not been withdrawn;
 - (c) when an application for a divorce order has been made under section 4 of the 1996 Act and has not been withdrawn;
 - (d) after a divorce order has been made.
- (3) The court shall exercise its powers under this section, so far as is practicable, by making on one occasion all such provision as can be made by way of one or more pension sharing orders in relation to the marriage as it thinks fit.
- (4) This section is to be read subject to any restrictions imposed by this Act and to section 19 of the 1996 Act.

24BA Restrictions affecting section 24B

- (1) No pension sharing order may be made under section 24B above so as to take effect before the making of a divorce order in relation to the marriage.
- (2) The court may not make a pension sharing order under section 24B above at any time while the period for reflection and consideration is interrupted under section 7(8) of the 1996 Act.
- (3) No pension sharing order may be made under section 24B above by virtue of a statement of marital breakdown if, by virtue of section 5(3) or 7(9) of the 1996 Act (lapse of divorce process), it has ceased to be possible—
 - (a) for an application to be made by reference to that statement, or
 - (b) for an order to be made on such an application.
- (4) No pension sharing order may be made under section 24B above after a divorce order has been made, except—
 - (a) in response to an application made before the divorce order was made, or
 - (b) on a subsequent application made with the leave of the court.

Status: This is the original version (as it was originally enacted).

- (5) A pension sharing order under section 24B above may not be made in relation to a pension arrangement which—
 - (a) is the subject of a pension sharing order in relation to the marriage, or
 - (b) has been the subject of pension sharing between the parties to the marriage.
- (6) A pension sharing order under section 24B above may not be made in relation to shareable state scheme rights if—
 - (a) such rights are the subject of a pension sharing order in relation to the marriage, or
 - (b) such rights have been the subject of pension sharing between the parties to the marriage.
- (7) A pension sharing order under section 24B above may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 25B or 25C below which relates to benefits or future benefits to which he is entitled under the pension arrangement.
- (8) In this section, “period for reflection and consideration” means the period fixed by section 7 of the 1996 Act.

24BB Pension sharing orders: nullity of marriage

- (1) On or after granting a decree of nullity of marriage (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more pension sharing orders in relation to the marriage.
- (2) The court shall exercise its powers under this section, so far as is practicable, by making on one occasion all such provision as can be made by way of one or more pension sharing orders in relation to the marriage as it thinks fit.
- (3) Where a pension sharing order is made under this section on or after the granting of a decree of nullity of marriage, the order is not to take effect unless the decree has been made absolute.
- (4) This section is to be read subject to any restrictions imposed by this Act.

24BC Restrictions affecting section 24BB

- (1) A pension sharing order under section 24BB above may not be made in relation to a pension arrangement which—
 - (a) is the subject of a pension sharing order in relation to the marriage, or
 - (b) has been the subject of pension sharing between the parties to the marriage.
- (2) A pension sharing order under section 24BB above may not be made in relation to shareable state scheme rights if—

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- (a) such rights are the subject of a pension sharing order in relation to the marriage, or
 - (b) such rights have been the subject of pension sharing between the parties to the marriage.
- (3) A pension sharing order under section 24BB above may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 25B or 25C below which relates to benefits or future benefits to which he is entitled under the pension arrangement.””
- 66 (1) Schedule 8 is amended as follows.
- (2) In paragraph 9—
- (a) in sub-paragraph (2)—
 - (i) for “or 24A” there is substituted “, 24A or 24B”, and
 - (ii) for “to 24A” there is substituted “to 24BB”, and
 - (b) in sub-paragraph (3), after paragraph (a) there is inserted—
 - “(aa) for “or 24B” substitute “, 24B or 24BB”.”.
- (3) In paragraph 10, in sub-paragraph (2), for “24A” there is substituted “24BB”.
- (4) For paragraph 11 there is substituted—
- “11 In each of sections 25B(3) and 25C(1) and (3), for “section 23” substitute “section 22A or 23”.
- 11A In section 25D—
- (a) in each of subsections (1)(a) and (2)(a) and (ab), for “section 23” substitute “section 22A or 23”, and
 - (b) in subsection (3), in the definition of “shareable state scheme rights”, for “section 21A(1)” substitute “section 21(3)”.”
- (5) In paragraph 16, in sub-paragraph (2), at the end there is inserted—
- “(f) after paragraph (f) there is inserted—
 - “(fa) a pension sharing order under section 24B which is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;”
 - (g) in paragraph (g), for “24B” substitute “24BB”.”
- (6) In that paragraph, after sub-paragraph (3) there is inserted—
- “(3A) In subsection (4A), after “paragraph” insert “(de), (ea), (fa) or”.”
- (7) In that paragraph, in sub-paragraph (4), for the words from “subsection (4)” to the end of the first of the inserted subsections there is substituted “subsection (4A) insert —”, the second of the inserted subsections is renumbered “(4AA)” and after that subsection there is inserted—
- “(4AB) No variation of a pension sharing order under section 24B above shall be made so as to take effect before the making of a divorce order in relation to the marriage.”
- (8) In that paragraph, after sub-paragraph (4) there is inserted—

Status: This is the original version (as it was originally enacted).

“(4A) In subsection (4B), after “order” insert “under section 24BB above”.”

(9) In that paragraph, after sub-paragraph (7) there is inserted—

“(8) After subsection (7F) insert—

“(7FA) Section 24B(3) above applies where the court makes a pension sharing order under subsection (7B) above as it applies where the court makes such an order under section 24B above.”

(9) In subsection (7G)—

- (a) for “Subsections (3) to (5) of section 24B” substitute “Section 24BA(5) to (7)”, and
- (b) for “that section” substitute “section 24B above”.

(10) After that paragraph there is inserted—

“16A After section 31A insert—

“31B Discharge of pension sharing orders on making of separation order

Where, after the making of a pension sharing order under section 24B above in relation to a marriage, a separation order is made in relation to the marriage, the pension sharing order is discharged.”

(11) In paragraph 19, in sub-paragraph (3)—

- (a) after “24A” there is inserted “, 24B”, and
- (b) after “property adjustment order,” there is inserted “any pension sharing order,”.

(12) In paragraph 21—

- (a) after “24,” in the first place, there is inserted “24B,” and
- (b) for “24,” in the second place, there is substituted “24BB,”.

(13) After paragraph 25 there is inserted—

“25A In section 52(2)(aa), for “section 21A” substitute “section 21”.”

(14) In paragraph 32, in sub-paragraph (2), for the words from “the words” to the end there is substituted “paragraph (a) substitute—

- “(a) make one or more orders each of which would, within the meaning of Part II of the 1973 Act, be a financial provision order in favour of a party to the marriage or a child of the family or a property adjustment order in relation to the marriage;.”

(15) In that paragraph, in sub-paragraph (3), for “21(a)” there is substituted “21(1)(a)”.

(16) In that paragraph, after sub-paragraph (3) there is inserted—

“(3A) For section 21(1)(ba) substitute—

- “(ba) sections 24BA(5) to (7) (provisions about pension sharing orders in relation to divorce);

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(baa) section 24BC(1) to (3) (provisions about pension sharing orders in relation to nullity);”.

(3B) In section 21(3), for “section 23” substitute “section 22A or 23”.

(17) At the end of Part I insert—

“The Welfare Reform and Pensions Act 1999

43A In section 24 of the Welfare Reform and Pensions Act 1999 (charges by pension arrangements in relation to earmarking orders), for “section 23” substitute “section 22A or 23”.