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STATUTORY INSTRUMENTS

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**1996 No. 1676**

**FAMILY LAW**

**PENSIONS**

**The Divorce etc. (Pensions) Regulations 1996**

<i>Made</i>	- - - -	<i>26th June 1996</i>
<i>Laid before Parliament</i>		<i>27th June 1996</i>
<i>Coming into force</i>	- -	<i>1st August 1996</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 25D(1)(b), (2) and (4) of the Matrimonial Causes Act 1973(1), hereby makes the following Regulations:

1. These Regulations may be cited as the Divorce etc. (Pensions) Regulations 1996 and shall come into force on 1st August 1996.
2. In these Regulations —
  - (a) every reference to a section by number alone means the section so numbered in the Matrimonial Causes Act 1973;
  - (b) all words and phrases defined in section 25D(3) and (4) have the meanings assigned by those subsections;
  - (c) every reference to a rule by number alone means the rule so numbered in the Family Proceedings Rules 1991(2);
  - (d) “active member” and “deferred member” have the meanings assigned by section 124 of the Pensions Act 1995(3).

**Valuation**

3.—(1) The value of any benefits which a party has under a pension scheme shall be calculated and verified, for the purposes of orders under section 23, in accordance with this regulation; and in calculating that value the court may have regard to any information furnished by the trustees or managers of the pension scheme pursuant to —

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(1) 1973 c. 18; sections 25B, 25C and 25D were inserted by section 166(1) of the Pensions Act 1995 (c. 26). Section 25D(4) is cited because of the meaning assigned to the word “regulations”.

(2) 1991/1247, as amended by S.I.1992/2067 and 1996/1674.

(3) 1995 c. 26.

- (a) regulation 6 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1986<sup>(4)</sup>;
- (b) paragraph 2(a) (or, where applicable, 2(b)) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987<sup>(5)</sup>; or
- (c) regulation 4 below.

(2) The value mentioned in paragraph (1) above shall be calculated as at a date to be specified by the court (“the specified date”), being not earlier than the date of the petition and not later than the date of the order; and in specifying a date the court may have regard to the date specified in any information furnished as mentioned in paragraph (1) above.

(3) Where the party with pension rights is an active member of an occupational pension scheme, the value of the benefits which he has under that scheme shall be taken to be the cash equivalent to which he would have acquired a right under section 94(1)(a) of the Pension Schemes Act 1993<sup>(6)</sup> if his pensionable service had terminated at the specified date.

(4) Where the party with pension rights is a deferred member of an occupational pension scheme, the value of the benefits which he has under that scheme shall be taken to be the cash equivalent to which he acquired a right under section 94(1)(a) of that Act on the termination of his pensionable service.

(5) Where the party with pension rights is a member of a personal pension scheme, the value of the benefits which he has under that scheme shall be taken to be the cash equivalent to which he would have acquired a right under section 94(1)(b) of that Act if he had made an application under section 95(1) of that Act on the specified date.

(6) Except as provided in paragraphs (3), (4) and (5), the court shall calculate the value of any benefits under the scheme which a party has or is likely to have by such method as it shall see fit.

4.—(1) The trustees or managers of any occupational pension scheme shall furnish in writing the information mentioned in regulation 6(7) of, and paragraphs 8 and 9 of Schedule 2 to, the Occupational Pension Schemes (Disclosure of Information) Regulations 1986 to a member of the scheme in the circumstances specified in paragraph (4) below.

(2) The trustees or managers of any personal pension scheme shall furnish in writing the information mentioned in paragraph 2(a) (or, where applicable, 2(b)) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987 to a member of the scheme in the circumstances specified in paragraph (4) below.

- (3) For the purposes of any information to be furnished under paragraph (1) or (2) above
  - (a) the estimated cash equivalent or value of the member’s rights shall be calculated as at a date (“the valuation date”) to be chosen by the trustees or managers of the pension scheme, which shall be within the period of three months beginning with the date of the request for information;
  - (b) the information shall be furnished to the member not more than 10 working days after the valuation date;
  - (c) the estimated cash equivalent or value mentioned in sub-paragraph (a) shall be calculated in accordance with paragraphs (3) to (5) of regulation 3, but as if the valuation date were substituted for the date specified by the court.

(4) The trustees or managers of a pension scheme shall furnish the information described in the preceding paragraphs of this regulation where the member is the petitioner or respondent in proceedings for divorce, nullity of marriage or judicial separation and

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(4) S.I. 1986 No. 1046, as amended by S.I. 1989/1641, 1992/1531 and 1994/1062.

(5) S.I. 1987/1110.

(6) 1993 c. 48.

(a) has requested the information and has not previously received information under this paragraph for the purpose of those proceedings; or

(b) has been required by the court to request the information under rule 2.70(2);

and shall in either case be entitled to recover from the member the reasonable cost of furnishing the information.

(5) When furnishing information pursuant to the preceding paragraphs of this regulation, the trustees or managers of the pension scheme shall notify the member of the date chosen by them to be the valuation date.

(6) For the purpose of any information to be furnished under this regulation, the value of any rights which a person has under a pension scheme shall be calculated and verified in accordance with any guidance for the time being in force which has been prepared or from time to time revised by the Institute and Faculty of Actuaries for the purpose of

(a) the calculation or estimation of transfer values for the purposes of section 94 of the Pension Schemes Act 1993;

(b) the furnishing of information under the Occupational Pension Schemes (Disclosure of Information) Regulations 1986 or the Personal Pension Schemes (Disclosure of Information) Regulations 1987 as appropriate; or

(c) the furnishing of information under this regulation

and approved by the Secretary of State for the purposes of this regulation.

5. Where the trustees or managers of a pension scheme have been requested to furnish or have furnished information under the preceding paragraph, they shall, if so requested by the member, state in writing what proportion of the estimated cash equivalent or value of the member's rights is in their opinion attributable to any pension or other periodical payment under the scheme to which a spouse of the member would be or might become entitled in the event of the member's death.

## Notices

6.—(1) This regulation applies in the circumstances set out in section 25D(1)(a).

(2) Where this regulation applies, the trustees or managers of the first scheme shall, within 14 days after the date of the transfer, give notice in accordance with the following paragraphs of this regulation to

(a) the trustees or managers of the new scheme or schemes, and

(b) the other party.

(3) The notice to the trustees or managers of the new scheme or schemes shall consist of a copy of every order made under section 23 imposing any requirement on the trustees or managers of the existing scheme and of any order varying such an order.

(4) The notice to the other party shall contain the following particulars: —

(a) the fact that the accrued rights of the party with pension rights have been transferred;

(b) the date on which the transfer takes effect;

(c) the name and address of the trustees or managers of the new scheme or schemes;

(d) the fact that the order made under section 23 is to have effect as if it had been made in respect of the trustees or managers of the new scheme or schemes.

7.—(1) This regulation applies where —

(a) an order under section 23 has been made by virtue of section 25B or 25C imposing any requirement on the trustees or managers of a pension scheme;

(b) an event has occurred which is likely to result in a significant reduction in the benefits payable under the scheme, other than:

- (i) the transfer from the scheme of all the accrued rights of the party with pension rights in the circumstances set out in section 25D(1)(a), or
- (ii) a reduction in the value of assets held for the purposes of the scheme by reason of a change in interest rates or other market conditions.

(2) Without prejudice to the generality of the foregoing, this regulation applies where some but not all of the accrued rights of the party with pension rights have been transferred from the scheme.

(3) Where this regulation applies, the trustees or managers of the scheme within 14 days of the occurrence of the event mentioned in paragraph (1)(b) shall give notice to the other party of—

- (a) that event;
- (b) the likely extent of the reduction in the benefits payable under the scheme;
- (c) where the event mentioned in paragraph (2) has occurred, the name and address of the trustees or managers of any pension scheme under which the party with pension rights has acquired transfer credits as a result of that event.

**8.—(1)** This regulation applies where —

- (a) an order under section 23 has been made by virtue of section 25B or 25C imposing any requirement on the trustees or managers of a pension scheme; and
- (b) any of the events set out in paragraph (2) has occurred.

(2) Those events are:

- (a) any of the particulars supplied by the other party under rule 2.70(4) or (8) has ceased to be accurate; or
- (b) by reason of the remarriage of the other party or otherwise, the order has ceased to have effect.

(3) Where this regulation applies, the other party shall, within 14 days of the occurrence of the event mentioned in paragraph (1)(b), give notice of that event to the trustees or managers of the pension scheme.

(4) Where by reason of the inaccuracy of the particulars supplied by the other party under rule 2.70(4) or (8) or of the other party's failure to give notice of their having ceased to be accurate it is not reasonably practicable for the trustees or managers of the pension scheme to make a payment to the other party as required by the order, they may instead make that payment to the party with pension rights and shall thereupon be discharged of liability to the other party to the extent of that payment.

**9.** A notice under regulation 6, 7 or 8 may be sent by ordinary first class post to the last known address of the intended recipient and shall be deemed to have been received on the seventh day following the date of posting.

### **Costs and administration**

**10.** Upon the making of any order under section 23 which by virtue of section 25B or 25C imposes any requirement on the trustees or managers of a pension scheme, the pension scheme shall be entitled to recover from the party with pension rights such sum as represents the reasonable administrative expenses which they have incurred or are likely to incur by reason of the order, and this sum shall be assessed by the court if not agreed.

**11.** In deciding whether to make an order which by virtue of section 25B or 25C imposes any requirement on the trustees or managers of a pension scheme, the court shall take into account any

representations of the trustees or managers as to whether, in all the circumstances of the case, the court ought to make the order, and in particular

- (a) whether the particulars supplied under rule 2.70(4) or (8) are sufficient to enable the trustees or managers to comply with their obligations under any such order, and
- (b) the administrative expenses which they are likely to incur in complying with their obligations under any such order.

Dated 26th June 1996

*Mackay of Clashfern, C.*

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in relation to orders made for ancillary relief in proceedings for divorce, judicial separation or nullity of marriage, so far as those orders relate to the pension rights of a party to the marriage. In particular, they provide for:

- (a) the valuation of pension rights by the court;
- (b) notices of change of circumstances to be provided by the pension scheme to the party without pension rights, or by that party to the scheme;
- (c) information concerning the value of pension rights to be provided by the pension scheme to its member; and
- (d) the recovery by the pension scheme of the costs of complying with these Regulations.

A compliance cost assessment has been prepared and is available from:

Family Policy Division

Lord Chancellor's Department

5th Floor

Selborne House

54-60 Victoria Street

London SW1E 6QW.