
STATUTORY INSTRUMENTS

1996 No. 1901 (S.153)

FAMILY LAW

PENSIONS

The Divorce etc (Pensions) (Scotland) Regulations 1996

<i>Made</i>	- - - -	<i>18th July 1996</i>
<i>Laid before Parliament</i>		<i>29th July 1996</i>
<i>Coming into force</i>	- -	<i>19th August 1996</i>

The Secretary of State, in exercise of the powers conferred upon him by section 10(8) and (10) and 12A(8) and of the Family Law (Scotland) Act 1985(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Divorce etc (Pensions) (Scotland) Regulations 1996 and shall come into force on 19th August 1996.

(2) These Regulations shall not affect any action for divorce commenced before 19th August 1996 or any action for declarator of nullity of marriage commenced before that date.

Interpretation

2.—(1) Unless the contrary intention appears, in these Regulations—

“the Act” means the Family Law (Scotland) Act 1985;

“the 1993 Act” means the Pensions Schemes Act 1993(2);

“the 1995 Act” means the Pensions Act 1995(3);

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

“benefits under a pension scheme” has the same meaning as in section 10(10), subject to section 12A(10) and any reference to the rights or interests which a party has or may have in benefits under a pension scheme includes a reference to the rights or interests which a party has or may have in such benefits which are payable in respect of the death of either party;

(1) 1985 c. 37. Section 10(8) and (10) and 12A(8) were inserted by section 167(2)(b) and (3) of the Pensions Act 1995 c. 26. Section 10(10) is inserted because of the meaning assigned to the word “prescribed”.

(2) 1993 c. 48.

(3) 1995 c. 26.

- “deferred member” has the same meaning as in section 124 of the 1995 Act;
- “a party” means a party to a marriage;
- “occupational pension scheme” has the same meaning as in section 1 of the 1993 Act;
- “pension scheme” has the same meaning as in section 10(10);
- “personal pension scheme” has the same meaning as in section 1 of the 1993 Act but, as if the reference to employed earners in that definition were to any earner;
- “matrimonial property” has the same meaning as in section 10(4) and (5);
- “relevant date” has the same meaning as in section 10(3);
- “trustee or manager of a pension scheme” shall be construed as in section 10(11),
- and any expression used in regulations 5 to 10 to which a meaning is assigned in section 12A shall have the same meaning in these Regulations as in that section.
- (2) Unless the contrary intention appears, any reference in these Regulations to—
- (a) a numbered section is to a section bearing that number in the Act;
 - (b) a numbered regulation is to a regulation bearing that number in these Regulations.

Valuation

3.—(1) The value of any benefits under a pension scheme shall be calculated and verified, for the purposes of the Act, in accordance with this regulation.

(2) The value, as at the relevant date, of the rights or interests which a party has or may have in any benefits under a pension scheme as at that date shall be calculated as follows and in accordance with paragraphs (4) and (5) below:—

- (a) where, on the relevant date, the party 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 1993 Act if his pensionable service had terminated at that date;
- (b) where, on the relevant date, the party 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 valued as at the relevant date;
- (c) where, on the relevant date, the party 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) if he had made an application under section 95(1) of that Act on that date; and
- (d) where any benefits which a party has or may have under a pension scheme as at the relevant date are not valued in accordance with sub-paragraphs (a), (b) or (c) above, their value, as at that date, shall be such as may be calculated by the court by such method as it shall see fit.

(3) The value of the proportion of any rights or interests which a party has or may have in any benefits under a pension scheme as at the relevant date and which forms part of the matrimonial property by virtue of section 10(5) shall be calculated in accordance with the following formula—

$$A \times \frac{B}{C}$$

where—

A is the value of these rights or interests in any benefits under the pension scheme which is calculated, as at the relevant date, in accordance with paragraph (2) above; and

B is the period of C which falls within the period of the marriage of the parties before the relevant date and, if there is no such period, the amount shall be zero; and

C is the period of the membership of that party in the pension scheme before the relevant date.

(4) For the purposes of paragraph 2(a), (b) and (c) of this regulation, the value of any benefits which a party 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 of Actuaries and Faculty of Actuaries and approved for the purposes of these Regulations by the Secretary of State.

(5) In making any calculation for the purposes of this regulation, regard may be had to any information furnished by the trustees or managers of the pension scheme pursuant to

- (i) regulation 6 of, and Schedule 2 to, the Occupational Pension Schemes (Disclosure of Information) Regulations 1986⁽⁴⁾;
- (ii) paragraph 2(a) or, where applicable, paragraph 2(b), of Schedule 2 to the Personal Pensions Schemes (Disclosure of Information) Regulations 1987⁽⁵⁾; or
- (iii) regulation 4,

but this is without prejudice to any other information or evidence to which regard may also be had.

Information

4.—(1) The trustees or managers of a pension scheme shall furnish, within 3 months of being requested to do so, the information described in paragraph (2) below where—

- (a) the member of the pension scheme is the pursuer or defender in an action for divorce or an action for declarator of nullity of marriage; and either
- (b) that member has requested the information and has not previously received information under this regulation for the purpose of those proceedings; or
- (c) the member has been required by the court to request the information.

(2) In the circumstances described in paragraph (1) above—

- (a) 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 the member of the scheme requesting the information;
- (b) the trustees or managers of any personal pension scheme shall furnish in writing the information mentioned in paragraph 2(a) or, where applicable, paragraph 2(b), of Schedule 2 to the Personal Pensions Schemes (Disclosure of Information) Regulations 1987 to the member of the scheme requesting such information.

(3) For the purposes of any information to be furnished under paragraph (1) or (2) above, the value of any rights or interests in any benefits under a pension scheme shall be calculated as mentioned in regulation 3.

(4) The trustees or managers of a pension scheme shall be entitled to recover from the member any reasonable administrative expenses incurred by them in furnishing the information under paragraph (1) or (2) above.

Notices

5.—(1) This regulation applies in the circumstances set out in section 12A(6)(a).

(4) S.I.1986/1046, as amended by S.I. 1989/1641, 1992/1531 and 1994/1062.

(5) S.I. 1987/1110.

(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, and
- (b) the other party.

(3) The notice to the trustees or managers of the new scheme shall consist of a copy of every order made under section 12A(2) or (3) imposing any requirement upon the trustees or managers of the first scheme and of any order under section 12A(7) varying such an order.

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

- (a) the fact that all the accrued rights of the liable party under the first scheme have been transferred to the new scheme;
- (b) the date on which the transfer takes effect;
- (c) the name and address of the trustees or managers of the new scheme;
- (d) the fact that the order made under section 12A(2) or (3) is to have effect as if it had been made instead in respect of the trustees or managers of the new scheme.

6.—(1) This regulation applies where—

- (a) section 12A(6) has already applied; and
- (b) the liable party has transferred all his accrued rights for the second or any subsequent time to another new scheme.

(2) Where this regulation applies, the trustees or managers of the pension scheme from which the transfer is made to the other new scheme shall, within 14 days after the date of the transfer, give notice to the other party of—

- (a) the fact that all the accrued rights of the liable party have been transferred to the other new scheme;
- (b) the date on which the transfer takes effect;
- (c) the name and address of the trustees or managers of the other new scheme; and
- (d) the fact that the court may, on an application by any person having interest, vary any order under section 12A(2) or (3).

7.—(1) This regulation applies where—

- (a) an order under section 12A(2) or (3) has been made imposing any requirement on the trustees or managers of a pension scheme; and
- (b) some but not all of the accrued rights of the liable party have been transferred from the pension scheme.

(2) Where this regulation applies, the trustees or managers of the pension scheme from which the transfer is made shall, within 14 days after the date of the transfer, give notice to the other party of—

- (a) the likely extent of the reduction in the benefits payable under the scheme as a result of the transfer;
- (b) the name and address of the trustees or managers of any pension scheme under which the liable party has acquired transfer of credits as a result of the transfer;
- (c) the date on which the transfer takes effect; and
- (d) the fact that the court may, on an application by any person having an interest, vary an order under section 12A(2) or (3).

8.—(1) This regulation applies where—

- (a) an order under section 12A(2) or (3) has been made imposing any requirement on the trustees or managers of a pension scheme; and
- (b) there has been a change in the name or address of the other party.

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

9. A notice under regulation 5, 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.

Expenses

10.—(1) Where an order has been made under section 12A(2) or (3) imposing any requirement on the trustees or managers of the first scheme, the trustees or managers of that scheme shall be entitled to recover from the liable party such sum as represents the reasonable administrative expenses which they have incurred by complying with that order and, in the event of a dispute as to what constitutes this sum, it shall be determined by the court.

(2) Paragraph (1) shall also apply—

- (a) where the order under section 12A(2) or (3) has effect, by virtue of section 12A(6), as if it had been made in respect of the trustees or managers of a new scheme, to the trustees and managers of the new scheme, and
- (b) where the order under section 12A(2) or (3) has been varied under section 12A(7), to the trustees or managers of the pension scheme who were substituted for the trustees or managers specified in the order,

as it applies to the trustees or managers of the first scheme.

St Andrew's House,
Edinburgh
18th July 1996

James Douglas-Hamilton
Minister of State, Scottish Office

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with certain matters relating to the treatment on divorce or in actions for declarator of nullity of marriage of any pension rights which either party to a marriage may have. The Regulations are made under section 10(8) and (10) and 12A(8) of the Family Law (Scotland) Act 1985 (c. 37) (“the 1985 Act”), as amended by section 167 of the Pensions Act 1995 (c. 26) (“the 1995 Act”).

These Regulations do not affect any action for divorce commenced before 19th August 1996 or any action for declarator of nullity of marriage commenced before that date (Regulation 1(2)).

The Regulations make provision—

- (c) for the manner in which pension benefits are to be calculated and verified for the purposes of the 1985 Act (regulation 3);
- (d) for the trustees or managers of any pension scheme to provide information as to that value and for the recovery from the member of the pension scheme of any reasonable administrative expenses incurred by them in providing such information (regulation 4);
- (e) for notices to be given in respect of the various changes of circumstances which are relevant to orders made under section 12A(2) or (3) of the 1985 Act (regulations 5 to 9); and
- (f) for the recovery by the trustees or managers of a pension scheme from the member of that scheme of any reasonable administrative expenses of complying with orders under section 12A(2) or (3) of the 1985 Act (regulation 10).