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STATUTORY INSTRUMENTS

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**1997 No. 636**

**FAMILY LAW  
PENSIONS**

**The Divorce etc. (Pensions) (Amendment) Regulations 1997**

*Made* - - - - *16th March 1997*

*Laid before Parliament* *6th March 1997*

*Coming into force in accordance with article 1*

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) (Amendment) Regulations 1997 and shall come into force immediately after the coming into force of sections 152, 153 and 154 of the Pensions Act 1995.

2. In these Regulations, every reference to a regulation by number alone means the regulation so numbered in the Divorce etc. (Pensions) Regulations 1996(2).

**Amendments to the Divorce etc. (Pensions) Regulations 1996**

3.—(1) For regulation 3(1)(a) there shall be substituted the following—

“(a) regulation 5 of and Schedule 2 to the Occupational Pensions Schemes (Disclosure of Information) Regulations 1996(3) and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Values) Regulations 1996(4);

(aa) section 93A of the Pension Schemes Act 1993(5);”.

(2) In regulation 3(3), for the words from “the cash equivalent” to the end of the paragraph, there shall be substituted the following:—

“(a) in the case of an occupational pension scheme other than a salary related scheme, the cash equivalent to which he would have acquired a right under section 94(1)(a) of the Pension Schemes Act 1993(6) if his pensionable service had terminated at the specified

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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) S.I.1996/1676.

(3) S.I. 1996/1655.

(4) S.I. 1996/1847.

(5) 1993 c. 48: section 93A was inserted by section 153 of the Pensions Act 1995 (c. 26).

(6) Section 94(1)(a) was amended by section 154(1) of the Pensions Act 1995.

date, calculated on the assumption that he made an application under section 95 of that Act on that date;

- (b) in the case of a salary related occupational pension scheme, the guaranteed cash equivalent to which he would have acquired a right under section 94(1)(aa) of the Pension Schemes Act 1993(7) if the guarantee date had fallen on the specified date and he had received a statement of entitlement in respect of that date and had made an application under section 95(1) of that Act within the period of three months beginning on that date.”.

(3) In regulation 3(4), for the words from “the cash equivalent” to the end of the paragraph, there shall be substituted the following:—

“(a) in the case of an occupational pension scheme other than a salary related scheme, the cash equivalent to which he acquired a right under section 94(1)(a) of the Pension Schemes Act 1993 on the termination of his pensionable service, calculated on the assumption that he made an application under section 95 of that Act on the specified date;

- (b) in the case of a salary related occupational pension scheme, the guaranteed cash equivalent to which he would have acquired a right under section 94(1)(aa) of the Pension Schemes Act 1993 if the guarantee date had fallen on the specified date and he had received a statement of entitlement in respect of that date and had made an application under section 95(1) of that Act within the three months beginning on that date.”.

(4) In regulation 3(6), for “and (5)” there shall be substituted “, (5) and (7)”.

(5) After regulation 3(6) there shall be inserted the following:—

“(7) In relation to a personal pension scheme comprised in an annuity contract made before 4th January 1988, paragraph (5) shall apply as if such schemes were not excluded from the scope of Chapter IV of Part IV of that Act by the exception in section 93(1)(b) of that Act.”.

4.—(1) In regulation 4(1), for the words from “regulation 6(7)” to “1986” there shall be substituted “regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Values) Regulations 1996”.

(2) In regulation 4(3)(c), after “(5)” there shall be inserted “and (7)”.

(3) In regulation 4(4), the words from “; and shall in either case” to the end shall be omitted.

(4) In regulation 4(6)(b), for “the Occupational Pension Schemes (Disclosure of Information) Regulations 1986” there shall be substituted “the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 and the Occupational Pension Schemes (Transfer Values) Regulations 1996”.

(5) After regulation 4(6) there shall be inserted the following:—

“(7) For the purposes of this regulation, all regulations referred to herein and made, or having effect as if made, under the powers of the Pension Schemes Act 1993 shall be treated as having effect as if

- (a) the words “at least one year” had been omitted from section 93(1)(a)(i) of that Act; and
- (b) the words “(other than a scheme which is comprised in an annuity contract made before 4th January 1988)” had been omitted from section 93(1)(b) of that Act.”.

5. For regulation 6(3) there shall be substituted the following:—

“(3) The notice to the trustees or managers of the new scheme or schemes shall consist of copies of the following documents:—

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(7) Section 94(1)(aa) was inserted by section 154(2) of the Pensions Act 1995.

- (a) every order made under section 23 imposing any requirement on the trustees or managers of the first scheme;
- (b) any order varying such an order;
- (c) all particulars supplied by the other party under rule 2.70(4) or (8);
- (d) any notice given by the other party to the trustees or managers of the first scheme under regulation 8;
- (e) where the rights of the party with pension rights under the first scheme were derived in whole or in part from a transfer from a previous pension scheme, any notice under paragraph (2)(a) of this regulation given on the occasion of that transfer.”.

6. After regulation 8 there shall be inserted the following:—

“**8A.**—(1) This regulation applies where:—

- (a) a transfer of accrued rights has taken place in the circumstances set out in section 25D(1)(a);
- (b) notice has been given in accordance with regulation 6(2)(a) and (b); and
- (c) any of the events set out in regulation 8(2) has occurred, and the other party has not, before receiving notice under regulation 6(2)(b), given notice of that event to the trustees or managers of the first scheme under regulation 8(3).

(2) Where this regulation applies, any reference in regulation 8(3) and (4) to the trustees or managers of the pension scheme shall be construed as referring to the trustees or managers of the new scheme and not the trustees or managers of the first scheme.

(3) Subject to paragraph (4), where this regulation applies and the other party, within one year from the transfer, gives to the trustees or managers of the first scheme notice of the event set out in regulation 8(2) in purported compliance with regulation 8(3), the trustees or managers of the first scheme shall—

- (a) send that notice to the trustees or managers of the new scheme, and
- (b) give the other party a second notice under regulation 6(2)(b);

and the other party shall thereupon be deemed to have given notice under regulation 8(3) to the trustees or managers of the new scheme.

(4) Upon complying with paragraph (3) above, the trustees or managers of the first scheme shall be discharged from any further obligation under regulation 6 or 8A(3), whether in relation to the event in question or any further event set out in regulation 8(2) which may be notified to them by the other party.”.

7. After regulation 10 there shall be inserted the following:—

“**10A.**—(1) The trustees or managers of a pension scheme shall be entitled to recover from the party with pension rights the reasonable cost of furnishing information following a request under regulations 4 and 5, whether or not an order imposing any requirement on them is subsequently made, to the extent that that cost exceeds the cost of furnishing information which the trustees or managers would have been required to furnish if the request had been—

- (a) a request made under the regulations referred to in regulation 4(1) and (2), or
- (b) an application for a statement of entitlement under section 93A(1) of the Pension Schemes Act 1993<sup>(8)</sup>;

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(8) Section 93A was inserted by section 153 of the Pensions Act 1995.

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**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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instead of being made under these Regulations.

(2) The costs referred to in paragraph (1) shall be assessed by the court if not agreed.”.

Dated 6th March 1997

*Mackay of Clashfern, C.*

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## EXPLANATORY NOTE

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

These Regulations amend the Divorce etc. (Pensions) Regulations 1996 (“the principal regulations”), which 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 updating of references to other regulations, which have been replaced since the principal regulations were made;
- (b) salary related occupational pension schemes, as governed by the amendments to the Pension Schemes Act 1993 effected by sections 152 to 154 of the Pensions Act 1995, which come into force at the same time as these Regulations;
- (c) retirement annuity contracts excluded from the scope of Chapter IV of Part IV of the Pension Schemes Act 1993;
- (d) information provided to the trustees or managers of a pension scheme by the party without pension rights after all the rights of the party with pension rights have been transferred to another scheme;
- (e) limitation of the recovery by pension schemes of the costs of providing information for the purpose of the principal regulations.