
STATUTORY INSTRUMENTS

1997 No. 745 (S.71)

**FAMILY LAW
PENSIONS**

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

<i>Made</i>	- - - -	<i>7th March 1997</i>
<i>Laid before Parliament</i>		<i>13th March 1997</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 10(8) and (10) and 12A(8) of the Family Law (Scotland) Act 1985(1) and of all 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) Amendment Regulations 1997 and shall come into force on 6th April 1997.

(2) These Regulations shall not affect any action for divorce commenced before 6th April 1997 or any action for declarator of nullity of marriage commenced before that date.

Interpretation

2. In these Regulations—

“the principal Regulations” means the Divorce etc (Pensions) (Scotland) Regulations 1996(2) and, unless the contrary intention appears, any reference to a numbered regulation is to a regulation bearing that number in the principal Regulations.

Amendments to the principal Regulations

(1) 1985 c. 37. Sections 10(8) and (10) and 12A(8) were inserted by section 167(2)(b) and (3) of the Pensions Act 1995 (c. 26) (“the 1995 Act”). Section 10(10) contains a definition of “prescribed” relevant to the statutory powers under which these Regulations are made.

(2) S.I. 1996/1901.

Regulation 2 of the principal Regulations

3.—(1) In regulation 2(1)–

- (a) in the definition of “the 1993 Act” for the word “Pensions” there shall be substituted the word “Pension”;
- (b) after the definition of “deferred member”, there shall be inserted the following definitions:–

““guaranteed cash equivalent” shall have the same meaning as in section 94(1A) of the 1993 Act(3);

“guarantee date” shall have the same meaning as in section 93A(2) of the 1993 Act(4);” and

- (c) after the definition of “relevant date”, there shall be inserted the following definitions:–

““salary related” in relation to an occupational pension scheme shall be construed in accordance with section 93(1A) of the 1993 Act(5);

“statement of entitlement” shall have the same meaning as in section 93A(1) of the 1993 Act;”.

(2) After regulation 2(2), there shall be inserted the following:–

“(3) Any reference in these Regulations to–

- (a) any of the provisions in Chapter IV (Transfer Values) of Part IV of the 1993 Act: or
- (b) any of the provisions in regulations made, or having effect as if made, under the powers conferred by that Chapter,

shall be treated as having effect as if the following words were omitted:–

(i) in subsection (1)(a)(i) of section 93 of that Act(6) (Scope of Chapter IV), the words “at least one year”, and

(ii) in subsection (1)(b) of that section, the words “(other than a scheme which is comprised in an annuity contract made before 4th January 1988)”.

Regulation 3 of the principal Regulations

4.—(1) In sub-paragraph (a) of regulation 3(2), for the words from “the cash equivalent” to the end of that sub-paragraph there shall be inserted the following:–

“—

- (i) 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 1993 Act(7) if his pensionable service had terminated at that date; and
- (ii) 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 1993 Act(8) if the guarantee date was the relevant date and he had received a statement of entitlement in respect of that date and had made a relevant application within three months beginning with that date;”.

(2) In sub-paragraph (b) of regulation 3(2), for the words “the cash equivalent” to the end of that sub-paragraph there shall be inserted the following:–

(3) Section 94(1A) of the 1993 Act was inserted by section 154(3) of the 1995 Act.

(4) Section 93A of the 1993 Act was inserted by section 153 of the 1995 Act.

(5) Section 93(1A) of the 1993 Act was inserted by section 152(3) of the 1995 Act.

(6) Section 93(1)(a)(i) was substituted by section 152(2) of the 1995 Act.

(7) Section 94(1)(a) of the 1993 Act was amended by section 154(1) of the 1995 Act.

(8) Section 94(1)(aa) of the 1993 Act was inserted by section 154(2) of the 1995 Act.

“

- (i) 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 1993 Act on the termination of his pensionable service valued as at the relevant date; and
 - (ii) 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 1993 Act if the guarantee date was the relevant date and he had received a statement of entitlement in respect of that date and had made a relevant application within three months beginning with that date;”.
- (3) For regulation 3(5)(i), there shall be substituted the following:—
- “(i) regulation 5 of and Schedule 2 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(9) and regulation 11 of and Schedule 1 to the Occupational Pension Schemes (Transfer Values) Regulations 1996(10);
 - (ia) section 93A of the 1993 Act(11);”.

Regulation 4 of the principal Regulations

5.—(1) In regulation 4(2)(a), 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(4), there shall be inserted at the end the following:—

“but, where the request is made on or after 6th April 1997, they shall only be entitled to recover any reasonable administrative expenses incurred by them in furnishing that information to the extent that those expenses exceed the expenses which they would have incurred in furnishing that information if, instead of the request being made under these Regulations, the request had been—

- (a) a request made under the Regulations referred to in paragraph (2)(a) or (b) above; or
- (b) an application for a statement of entitlement under section 93A(1) of the 1993 Act.”.

Regulation 5 of the principal Regulations

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

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

- (a) every order made under section 12A(2) or (3) imposing any requirement upon the trustees or managers of the first scheme;
- (b) any order under section 12A(7) varying such an order;
- (c) any notice given by the other party to the trustees or managers of the first scheme under regulation 8;
- (d) where the rights of the liable party 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.”.

Regulation 8 of the principal Regulations

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

(9) S.I. 1996/1655.

(10) S.I. 1996/1847.

(11) Section 93A of the 1993 Act was inserted by section 153 of the 1995 Act.

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

- (a) a transfer of accrued rights has taken place in the circumstances set out in section 12A(6)(a);
- (b) notice has been given in accordance with regulation 5(2)(a) and (b); and
- (c) there has been a change in the name or address of the other party but the other party has not, before receiving notice under regulation 5(2)(b), given notice of that change to the trustees or managers of the first scheme under regulation 8(2).

(2) Where this regulation applies, the reference in regulation 8(2) 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 that change in purported compliance with regulation 8(2), 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 5(2)(b),

and the other party shall thereupon be deemed to have given notice under regulation 8(2) 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 that paragraph, whether in relation to the change in question or any further change in the name or address of the other party which may be notified to them by the other party.”.

Regulation 9 of the principal Regulations

8. In regulation 9, for the words “or 8”, there shall be substituted the words “,8 or 8A”.

St Andrew’s House,
Edinburgh
7th March 1997

James Douglas-Hamilton
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Divorce etc (Pensions) (Scotland) Regulations 1996 (S.I. 1996/1901) (“the principal Regulations”), which 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.

These Regulations do not affect any action for divorce commenced before 6th April 1997 or any action for declarator of nullity of marriage commenced before that date (regulation 1(2)).

These Regulations provide for—

- (a) the manner of valuation of salary related occupational pension schemes as governed by the amendments to the Pension Schemes Act 1993 (c. 48) effected by sections 152 to 154 of the Pensions Act 1995 (c. 26) which come into force on 6th April 1997 (regulations 3(1) and 4(1) and (2)).
- (b) the manner of valuation of certain pension benefits which are excluded from the scope of the provisions of Chapter IV of Part IV of the Pension Schemes Act 1993 (which provides for the calculation of transfer values), namely pension benefits under occupational pension schemes within a year of payment and under a personal pension scheme comprised in an annuity contract made before 4th January 1988 (regulation 3);
- (c) the updating of references to regulations, which have been replaced since the principal Regulations were made (regulations 4(3) and 5(1));
- (d) a limitation upon the expenses which may be recovered by the trustees or managers of a pension scheme in providing information for the purposes of the principal Regulations where the request is made on or after 6th April 1997 (regulation 5(2));
- (e) information to be provided to the trustees or managers of a pension scheme by the other party to the marriage after all the rights of the liable party have been transferred to another scheme (regulations 6, 7 and 8).