

SCHEDULE 1

AMENDMENT OF THE 1995 REGULATIONS

Pension sharing on divorce or nullity of marriage

3. After PART V of the 1995 Regulations there shall be inserted the following:—

“PART W

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

PRELIMINARY PROVISIONS

Interpretation

W1. The definitions of expressions contained in regulation A2(4) apply for their interpretation to this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

W2.—(1) Pension sharing is available under the Scheme in respect of any of a person’s shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights⁽¹⁾ for the purposes of these Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme and any other rights which are prescribed as excluded⁽²⁾.

Pension sharing order activates pension sharing creating pension debits and credits

W3. On the coming into effect of a pension sharing order—

- (a) the transferor’s shareable rights under the Scheme become subject to a debit of the appropriate amount (“pension debit”⁽³⁾) as defined in regulation W4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”⁽⁴⁾) as against the Scottish Ministers.

Calculation of “appropriate amount”

W4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation W3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation W3 is the lesser of—

- (a) the specified amount, and

(1) See section 27(2) of the 1999 Act and section 2 of the Pension sharing (Valuation) Regulations 2000 (S.I.2000/1052).

(2) See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the 1999 Act.

(3) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

(4) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

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(b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which he would be entitled under the Scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of sub-paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of his shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation W3(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect⁽⁵⁾.

Pension debits and reduction of benefit

W5.—(1) Subject to paragraph (2), where a member’s shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which he is entitled under the Scheme by virtue of those rights, and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the Scheme by virtue of those rights, and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this regulation⁽⁶⁾—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

⁽⁵⁾ This definition is that in section 29(8) of the 1999 Act.

⁽⁶⁾ The definitions in this paragraph are those in section 31(5) of the 1999 Act.

Effect of pension sharing on protected rights and guaranteed minimum pension

W6. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member's rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993(7).

MODE OF DISCHARGE AND "IMPLEMENTATION PERIOD"

Discharge of pension credit liability

W7.—(1) The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse.

(2) For the purposes of this paragraph, rights conferred on the ex-spouse are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises takes effect, and
- (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents(8), equals the amount of the credit.

Adjustment to the amount of the pension credit payments made without the knowledge of the pension debit

W8. If—

- (a) a person's shareable rights under the Scheme have become subject to a pension debit,
- (b) the Scottish Ministers make a payment which is referable to those rights without knowing of the pension debit, and
- (c) the cash equivalent of the member's shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount(9).

"Implementation period" for discharge of pension credit

W9.—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within "the implementation period"(10), which for a pension credit is the period of 4 months beginning with the later of—

- (a) the day on which the relevant pension sharing order takes effect, and
- (b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of—
 - (i) the relevant matrimonial documents, and

(7) 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

(8) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

(9) See paragraph 9 of Schedule 5 to the 1999 Act and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(10) Section 33(1) of the 1999 Act.

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- (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act⁽¹¹⁾.
- (2) The reference in sub-paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of—
- (a) the relevant pension sharing order, and
 - (b) the order, decree or declarator responsible for the divorce or annulment to which it relates,
- and, if the pension credit depends on provision falling within sub-section (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which sub-section (3)(a) of that section applies.
- (3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act⁽¹²⁾.
- (4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 34(4)(a) and (c) of the 1999 Act which—
- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
 - (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time⁽¹³⁾.

Failure to discharge liability in respect of pension credit within the implementation period – Death of ex-spouse within period

- W10.**—(1) Where the Scottish Ministers have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—
- (a) they shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act⁽¹⁴⁾, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
 - (b) section 10 of the Pension Act 1995⁽¹⁵⁾ (power of the Regulatory Authority to impose civil penalties) shall apply where Scottish Ministers have failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.
- (2) If the Scottish Ministers fail to perform the obligation imposed by regulation 10(1)(a), section 10 of the Pensions Act 1995 shall apply.
- (3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Regulatory Authority may, on the application of the Scottish Ministers, extend the implementation period for the pension credit for the purposes of this section if it is satisfied

⁽¹¹⁾ See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

⁽¹²⁾ See regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049), which specifies circumstances in which the implementation period may be postponed.

⁽¹³⁾ See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

⁽¹⁴⁾ See regulation 2 of S.I. 2000/1053 which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

⁽¹⁵⁾ 1995 c. 26.

that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act(16).

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex spouse dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by payment of a lump sum.

(6) The lump sum shall be equal to 3 times the annual rate of the pension which would have been paid to him if on the date of his death he had become entitled to a pension as a pension credit member calculated under regulation W11(3) in accordance with guidance issued by the Government Actuary.

(7) The Scottish Ministers shall pay the lump sum to the deceased’s personal representative.

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

“Appropriate rights”/“Pension credit benefits” under the Scheme

W11.—(1) Except as referred to in regulation W14 or otherwise in this Regulation, the “appropriate rights” under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The value of the pension referred to in this paragraph shall equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(4) A pension credit member is entitled to his pension credit benefits on reaching his normal benefit age.

(5) The pension credit benefits are payable immediately on reaching normal benefit age and may not be deferred.

(6) A pension payable in accordance with this Regulation shall be payable to the pension credit member for life.

(7) The amount of the lump sum on retirement to which a pension credit member shall be entitled shall be calculated on the same basis as if his pension were a deferred pension under the Scheme and shall be equal to 3 times the annual rate of pension, except that no lump sum on retirement shall be paid to the pension credit member if the corresponding pension debit member has already received a lump sum on retirement from the Scheme before the date of the implementation of the pension sharing order.

Pension credit member dies after pension credit benefit becomes payable

W12.—(1) If a pension credit member dies after his pension under the Scheme becomes payable, a lump sum on death shall be payable in accordance with Regulation F5 (payment of lump sum).

(2) Subject to paragraph (3), the lump sum on death shall be equal to 5 times the annual rate of the pension credit member’s pension as calculated under regulation W11(3) less the amount of pension already paid.

(3) The maximum payment under paragraph (2) shall not exceed an amount equal to twice the pension debit member’s final year’s pensionable pay on the valuation day,

(16) See regulation 3 of S.I. 2000/1053.

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from whose rights the pension credit is derived, less an amount equal to the pension credit member's retirement lump sum paid in accordance with regulation W11(7).

(4) The final year's pensionable pay under paragraph (3) shall be increased by the amount that the member's benefits would have been increased under Part 1 of the Pensions (Increase) Act 1971⁽¹⁷⁾ if benefits had been preserved on the valuation day.

Pension credit member dies before pension credit benefit becomes payable

W13.—(1) If a pension credit member dies before his pension under the Scheme becomes payable, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) The lump sum shall be equal to 3 times the annual rate of the pension credit member's pension calculated under regulation W11(3).

Additional contributions and additional periods

W14.—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made⁽¹⁸⁾.

(2) The provisions of paragraph (1) shall be relaxed if in line with any taxation exception or concession, which the Inland Revenue may stipulate in relation to "moderate earners" in accordance with the limits imposed in Schedule 10 to the Finance Act 1999⁽¹⁹⁾ and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule⁽²⁰⁾, or otherwise.

Commutation: small pensions

W15.—(1) Regulation T7 shall apply, if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) A pension may be treated as "trivial" under regulation T7 in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall, for the purpose of this regulation, be aggregated with any other pension payable to that member under the Scheme.

Commutation: exceptional ill health

W16.—(1) The whole of the pension element payable in respect of the pension credit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal benefit age.

(2) In this regulation, "serious ill health" means ill health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

⁽¹⁷⁾ 1971 (c. 56).

⁽¹⁸⁾ See section 590(3)(bb) of the Taxes Act, inserted by paragraph 2(3) of Schedule 10 to the Finance Act 1999 (c. 16).

⁽¹⁹⁾ 1999 c. 16.

⁽²⁰⁾ See S.I.s 2000/ 1085 and 1093.

(3) The lump sum shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled as calculated under regulation W11(3) of this Part if on the date of commutation he had already reached the normal benefit age and shall be payable in addition to any retirement lump sum as calculated under regulation W11(7) of this Part.

Pension Transfers

W17. The Scottish Ministers shall not accept any transfer value into the Scheme or pay any transfer value out of the Scheme in respect of any pension credit rights or pension credit benefits.

MISCELLANEOUS

Charges in respect of pension sharing costs

W18.—(1) The Scottish Ministers may recover from the parties involved in pension sharing, charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case⁽²¹⁾.

(4) The Scottish Ministers shall, before a pension sharing order is made, inform the member or his spouse, as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or his spouse, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act⁽²²⁾.

Excluded membership

W19.—(1) Subject to regulation W15(2) of this Part, pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member of the Scheme, he may not count any period which may count for any purpose in connection with his pension credit benefit towards any membership period required under the Scheme.

General rules about benefits

W20. Regulations T1 (claims for benefits), T2 (deduction of tax), and T4 (beneficiary who is incapable) shall apply to a pension credit member.

Assignment

W21. Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

⁽²¹⁾ See regulation 5 of the Pensions on Divorce etc (Charging) Regulations 2000 (S.I. [2000/1049](#)).

⁽²²⁾ See regulations 2-9 of S.I. [2000/1049](#).

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Administrative matters

W22. Regulation U2 (determination of questions) shall apply to a person who is entitled to a pension credit or, as the case may be, a pension credit member.”.”