

SCHEDULE 2

Regulation 4

AMENDMENT OF THE AVC REGULATIONS AND THEIR APPLICATION TO PENSION SHARING ON DIVORCE

Application of the AVC Regulations to a person entitled to a pension credit or a pension credit member

1. Except as provided for in this Schedule, the AVC Regulations shall not apply to a person entitled to a pension credit or to a pension credit member.

Amendment of regulation 2

2. In regulation 2 (interpretation) there shall be inserted in the appropriate places in alphabetical order the following definitions:—

- “the 1993 Act” means the Pension Schemes Act 1993(1);
- “the 1999 Act” means the Welfare Reform and Pensions Act 1999(2);
- “the AVC scheme” means the National Health Service (Scotland) Additional Voluntary Contributions Scheme, the rules of which are set out in these Regulations;
- “appropriate rights” means rights which are described in paragraph 5 of Schedule 5 to the 1999 Act (pension credits: mode of discharge, appropriate rights);
- “eligible member” has the meaning given by section 101P(1) of the 1993 Act(3);
- “NHS Superannuation Scheme” means the National Health Service Superannuation Scheme for Scotland, the rules of which are set out in the 1995 Regulations;
- “normal benefit age”, in relation to the scheme, means the age of 60;
- “pension credit” means a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;
- “pension credit benefit” has the meaning given by section 101B of the 1993 Act;
- “pension credit member” means has the meaning given by section 124(1) of the Pensions Act 1995(4);
- “pension credit rights” has the meaning given by section 101B of the 1993 Act;”.

Amendment of regulation 13

3. In regulations 13(1) and (2) (benefit limits) for “the Schedule” at each place where those words appear there shall be substituted “Schedule 1” and accordingly “the Schedule to these Regulations” shall become “Schedule 1 to these Regulations”.

Amendment of regulation 15

- 4.—(1) In regulation 15 (payments by the Secretary of State)—
- (a) in paragraph (2) after “participator” there shall be inserted “or a person entitled to a pension credit”;
 - (b) for paragraph (3) substitute—

(1) 1993 c. 48.

(2) 1999 c. 30.

(3) Sections 101A to 101Q were inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

(4) 1995 c. 26

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“(3) Lumps sums payable as mentioned in regulation 11(4), or under regulations 11(7) or 12, or paragraphs 3(2), 8 or 9 of Schedule 2, shall be paid–

- (a) to the deceased’s spouse; or
- (b) to the deceased’s personal representative if–
 - (i) there is no spouse; or
 - (ii) a notice has be given in accordance with regulation F5(3) or (3A) of the 1995 Regulations (payment of lump sum) or, as the case may be, paragraph 11 of Schedule 2 that the spouse is not to receive the payment.”.

Insertion of new regulation in Part IV

5. In Part IV (miscellaneous provisions), after regulation 17 there shall be inserted the following regulation–

“Pension sharing on divorce or nullity of marriage

17A. Schedule 2 shall have effect in relation to–

- (a) pension credit rights; or, as the case may be,
- (b) pension credit benefit payable,

under the AVC scheme.”.

Insertion of new Schedule

6. After Schedule 1 there shall be inserted the following Schedule–

“SCHEDULE 2

Regulation 17A

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

Discharge of liability in respect of a pension credit

1.—(1) Where the Scottish Ministers discharge their liability in respect of a pension credit in accordance with sub-paragraph (2) of paragraph 1 of Schedule 5 to the 1999 Act (pension credits: mode of discharge: funded pension schemes – internal transfers) the appropriate rights shall be invested under paragraph 2 to provide for the purchase from an insurance company of an annuity which complies with the requirements of sub-paragraph (5) below.

(2) Where sub-paragraph (1) applies, the person entitled to the pension credit may elect, by giving written notice to the Scottish Ministers, the authorised fund or funds in which the appropriate rights are to be invested.

(3) The Scottish Ministers shall notify in writing the person who has made an election under sub-paragraph (2) of the Scottish Ministers acceptance of that election.

(4) Once an election has been made under sub-paragraph (2) it shall not be varied or cancelled after liability in respect of the pension credit has been discharged by the Scottish Ministers.

(5) An annuity complies with the requirements of this paragraph if–

- (a) it provides a pension which commences not earlier than normal benefit age and is payable to the pension credit member for life;
- (b) any dependant’s pension which is payable under it is payable only on the death of the pension credit member after he has reached normal benefit age and is payable to the dependant for life, except that in the case of a dependant who is a child to whom Part

- H of the 1995 Regulations (child allowance) would apply if the pension credit member were a member of the NHS Superannuation Scheme, it shall cease to be payable when that person ceases to be a dependant child within the meaning of those Regulations; and
- (c) it is not capable in whole or in part of surrender, assignment or commutation.

Investment of appropriate rights

2. Any appropriate rights invested under this paragraph shall be invested by the Scottish Ministers as soon as is reasonably practicable in accordance with any notice given under sub-paragraph (2) of paragraph 1.

Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit

3.—(1) The Scottish Ministers shall following the death of the person entitled to a pension credit before liability in respect of that credit has been discharged, discharge their liability in respect of that credit by making a payment of a lump sum in accordance with paragraph (2)(a)(i) of regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(5).

(2) The lump sum payable under this paragraph shall be paid in accordance with regulation 15(3) (payments by the Scottish Ministers).

Pension Credit Benefit

4.—(1) The pension credit benefit to which a pension credit member shall be entitled under the AVC scheme shall consist of a pension.

(2) A pension credit member shall be entitled to the payment of the pension credit benefit when he reaches normal benefit age.

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

(4) 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.

(5) Not earlier than 3 months before the date he reaches normal benefit age, a pension credit member, by giving notice to the Scottish Ministers, shall make a benefits election which shall specify—

- (a) whether only a pension payable for life is to be provided;
- (b) for whom, if anyone, a dependant's pension is to be provided;
- (c) if more than one pension is to be provided, either—
 - (i) the proportion of the amount secured by the total investments made under paragraph 2 that is to be applied to the purchase of each of them; or
 - (ii) the dependants' pensions to be provided expressed as a percentage of the pension for life;
- (d) in respect of every pension to be provided, whether the annual rate of the pension—
 - (i) is to be fixed;
 - (ii) is to vary in accordance with the Index; or

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(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index for the year in question; and

(e) the authorised provider who is to provide each pension.

(6) For the purposes of this Schedule the authorised provider must meet the requirements referred to in regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽⁶⁾.

(7) Upon receipt of a notice of election under sub-paragraph (5) the Scottish Ministers shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election.

(8) Notwithstanding whether benefits to which a pension credit member may be entitled under Part E of the 1995 Regulations (benefits for members) are payable, where a pension credit member has reached normal benefit age on or after 1st December 2000 and he has—

(a) reached the age of 75; and

(b) failed to give a notice of election under sub-paragraph (5) on or before the date of his 75th birthday,

the Scottish Ministers may realise the investments made under paragraph 2 and apply the proceeds to the purchase of a pension policy which satisfies the requirements of regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 from an insurance company in order to provide such benefits as appear to him to be suitable.

Outward Transfers

5.—(1) The Scottish Ministers shall, upon receipt of a notice in writing under section 101F⁽¹⁾ of the 1993 Act⁽⁷⁾ (power to give transfer notice) from an eligible member, pay a transfer value in accordance with the provisions of Chapter II of Part IVA of the 1993 Act (requirements relating to pension credit benefit: transfer values) and Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (provision of benefits).

(2) The transfer value referred to in sub-paragraph (1) shall represent the value of the appropriate rights invested under paragraph 2 calculated in accordance with regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽⁸⁾ (manner of calculation and verification of cash equivalents).

Commutation of the whole of pension credit benefit before normal benefit age

6.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit before having reached normal benefit age in the circumstances described in regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit).

(2) In the case where a pension credit benefit is payable in accordance with this paragraph, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and, in that event, the proceeds shall be payable to the pension credit member as a lump sum.

⁽⁶⁾ S.I. 2000/1054 as amended by S.I. 2000/2691.

⁽⁷⁾ Section 101F is inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽⁸⁾ Regulation 24 is amended by S.I. 2000/2691.

Commutation of the whole of pension credit benefit at normal benefit age

7.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit at normal benefit age in the circumstances described in sub-paragraph (2).

(2) The circumstances described in this sub-paragraph are—

- (a) the pension credit member is suffering from serious ill-health at normal benefit age; or
- (b) the aggregate of total benefits payable to the pension credit member, including any pension credit benefit, does not exceed £260 per annum at normal benefit age.

(3) In the case of a pension credit member to whom this paragraph applies, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable to the pension credit member as a lump sum.

(4) In this paragraph “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 payment of the pension credit benefit of the pension credit member is applied for.

Pension credit member dies before pension credit benefit becomes payable

8. If a pension credit member dies before his pension under the AVC scheme becomes payable under paragraph 4 of this Schedule, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

Pension Credit member dies after pension credit benefit becomes payable

9. If a pension credit member dies within the period of 5 years beginning with the date upon which payments of pension credit benefit under paragraph 4 of this Schedule commence, the balance that would have been payable during the remainder of that period, if the payments of pension credit benefit had continued at the rate in force at the time of the pension credit member’s death, shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

Excluded membership

10. Where a pension credit member is also a member of the AVC scheme, any period of time which may count for any purpose in connection with his pension credit benefit shall not be taken into account in relation to ascertaining his entitlement to, or as the case may be, the calculation of, benefits other than pension credit benefits under the AVC scheme.

Payment of lump sum on death

11.—(1) Where a lump sum is payable under any of paragraphs 3, 8 or 9 of this Schedule, unless sub-paragraph (2) or (3) below applies, the lump sum shall be paid to the personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member.

(2) Where the person entitled to a pension credit or, as the case may be, the pension credit member dies and leaves a widow or widower, the lump sum may be paid to the widow or widower, unless—

- (a) the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Scottish Ministers in accordance with sub-paragraph (4) below that the widow or widower is not to receive the payment, and has not revoked that notice; or
- (b) sub-paragraph (3) below applies.

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(3) Where the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Scottish Ministers in accordance with sub-paragraphs (4) and (5) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless—

- (a) that person has died before the payment can be made; or
- (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(4) Notice to the Scottish Ministers for the purpose of sub-paragraph (2) or (3) above—

- (a) shall be given only by a person entitled to a pension credit or, as the case may be, a pension credit member under the AVC scheme;
- (b) shall be given in writing; and
- (c) may at any time be revoked in writing,

and a person entitled to a pension credit or, as the case may be, a pension credit member who revokes such a notice may give further notice for the purpose of the one of those sub paragraphs.

(5) A notice given for the purposes of the sub-paragraph (3) above shall specify one person, who may be—

- (a) an individual;
- (b) a body corporate; or
- (c) an unincorporated body.

Miscellaneous provisions

12. Regulations 17 (payments in respect of deceased persons), 18 (benefits not assignable on bankruptcy) and 21 (determination of questions) shall apply in respect of a person entitled to a pension credit or, as the case may be, a pension credit member.

Offset for crime, negligence or fraud

13.—(1) Where, on or after the date on which this Schedule comes into force—

- (a) the circumstances set out in regulation T5 of the 1995 Regulations (offset for crime, negligence or fraud) have occurred in respect of a pension credit member who is also a member of the NHS Superannuation Scheme; and
- (b) there has been a loss to public funds,

the Scottish Ministers may, in relation to pension credit benefit which arises by virtue of pension credit rights which are derived from any employer's contributions paid on or after the date on which the AVC Regulations came into force in respect of the relevant participator, reduce the amount of any pension credit benefit payable to or in respect of a pension credit member under this Schedule, to the extent set out, and subject to the conditions specified, in that regulation.

(2) In this paragraph and in paragraph 12 “relevant participator” means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.

Loss of rights to benefits

14.—(1) Where—

- (a) a pension credit member is convicted of an offence referred to in paragraph (1) of regulation T6 of the 1995 Regulations (loss of rights to benefits), which was committed on or after the date on which this Schedule comes into force; and

- (b) the circumstances are such that a direction may be made by the Scottish Ministers under regulation T6 of those Regulations,
- the Scottish Ministers may direct that all or part of any rights to pension credit benefit under this Schedule which arise by virtue of pension credit rights which are derived from any employer's contributions paid on or after the date on which the AVC Regulations came into force in respect of the relevant participator, are to be forfeited.
- (2) "Relevant participator" has the meaning given to that expression in paragraph 13(2)."