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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 228**

**The Local Government Pension Scheme  
(Administration) (Scotland) Regulations 2008**

**PART 10**

**PENSION SHARING**

**CHAPTER III**

*MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”*

**Discharge of pension credit liability by conferring “appropriate rights” or making transfer payment to another scheme**

**89.**—(1) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse or ex civil partner—

- (a) with the consent of the ex-spouse or ex civil partner; or
- (b) in accordance with regulations made by the Secretary of State under paragraph 1(2)(b) of Schedule 5 to the 1999 Act<sup>(1)</sup>.

(2) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the ex-spouse or ex civil partner if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit;
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit; and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State under paragraph 1(3)(c) of Schedule 5 to the 1999 Act<sup>(2)</sup>.

(3) For the purposes of paragraph (1), no account is to be taken of consent of the person entitled to the pension credit unless—

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under paragraph (2); or
- (b) it is not withdrawn within 7 days of receipt of such notice.

(4) For the purposes of this Part, rights conferred on the ex-spouse or ex civil partner are appropriate if—

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(1) See regulation 7(1) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I.2000/1053).  
(2) See regulation 7(2) of S.I. 2000/1053.

- (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<sup>(3)</sup>, equals the amount of the credit.

### Qualifying arrangements

**90.**—(1) The following are qualifying arrangements for the purposes of regulation 89 (discharge of pension credit liability)—

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) an appropriate annuity contract;
- (d) an appropriate policy of insurance; and
- (e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996<sup>(4)</sup>.

(2) An annuity contract or policy of insurance is appropriate for the purposes of paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—

- (a) is carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and
- (b) satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 6(2)(b) of Schedule 5 to the 1999 Act<sup>(5)</sup>.

(3) Paragraph (2)(a) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000<sup>(6)</sup>;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act.

### Disqualification as destination for pension credit

**91.**—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988, an arrangement is disqualified as a destination for the credit unless—

- (a) it is also approved for those purposes; or
- (b) it satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 7(1)(b) of Schedule 5 to the 1999 Act (disqualification as destination for pension credit)<sup>(7)</sup>.

(2) If the rights by reference to which the amount of a pension credit is determined are or include contracted-out rights, an arrangement is disqualified as a destination for the credit unless—

- (a) it is of a description prescribed by the Secretary of State by regulations made under paragraph 7(2)(a) of Schedule 5 to the 1999 Act<sup>(8)</sup>; and

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<sup>(3)</sup> See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

<sup>(4)</sup> S.I. 1996/1462.

<sup>(5)</sup> See Regulation 11 of S.I. 2000/1053.

<sup>(6)</sup> 2000 c. 8.

<sup>(7)</sup> See regulation 12 of S.I. 2000/1053.

<sup>(8)</sup> See regulation 13(1) of S.I. 2000/1053.

(b) it satisfies such requirements as the Secretary of State may so prescribe under paragraph 7(2)(b) of Schedule 5 of the 1999 Act(9).

(3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Secretary of State under paragraph 7(3) of Schedule 5 to the 1999 Act(10), equals the credit.

(4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Secretary of State may prescribe by regulations made under paragraph 7(4) of Schedule 5 to the 1999 Act(11).

(5) The requirements which may be prescribed under sub-paragraph (1)(b) include, in particular, requirements of HM Revenue and Customs.

(6) In paragraph (2)–

“contracted-out rights” means such rights under, or derived from–

(a) an occupational pension scheme contracted-out by virtue of section 9(2) or (3) of the 1993 Act; or

(b) a personal pension scheme which is an appropriate scheme for the purposes of that Act, as the Secretary of State may prescribe by regulations made under paragraph 7(6)(b) of Schedule 5 to the 1999 Act(12).

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

92. If–

(a) a person’s shareable rights under the Scheme have become subject to a pension debit;

(b) the administering authority makes 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(13).

#### **“Implementation period” for discharge of pension credit**

93.—(1) The administering authority shall discharge its liability in respect of a pension credit within “the implementation period”(14), 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 administering authority in relation to the relevant pension sharing order is in receipt of–

(i) the relevant documents; and

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(9) See regulation 13(2) of S.I. 2000/1053.

(10) See regulation 14 of S.I. 2000/1053.

(11) See regulation 15 of S.I. 2000/1053.

(12) See regulation 13(3) of S.I. 2000/1053. The definition used here of “contracted-out rights” is found in section 68A(5) of the 1993 Act, as inserted by section 36 of the 1999 Act, and in paragraph 7(6) of Schedule 5 to the 1999 Act.

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

(14) See section 33(1) of the 1999 Act.

- (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<sup>(15)</sup>.
- (2) The reference in paragraph (1)(b)(i) to the relevant documents is to copies of—
- (a) the relevant pension sharing order; and
  - (b) the order, decree or declarator responsible for the divorce, dissolution 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<sup>(16)</sup>.
- (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<sup>(17)</sup>.

#### **Failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse within period**

- 94.**—(1) Where the administering authority has not done what is required to discharge its liability in respect of a pension credit before the end of the implementation period for the credit—
- (a) the administering authority shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act<sup>(18)</sup>, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and
  - (b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties)<sup>(19)</sup> shall apply to any administering authority which has 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 administering authority fails to perform the obligation imposed by paragraph (1)(a), section 10 of the 1995 Act shall apply.
- (3) Where the administering authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the administering authority extend the implementation period for the credit for the purposes of this section if it is satisfied 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<sup>(20)</sup>.
- (4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

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<sup>(15)</sup> See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

<sup>(16)</sup> 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.

<sup>(17)</sup> See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

<sup>(18)</sup> 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.

<sup>(19)</sup> 1995 c. 26.

<sup>(20)</sup> See regulation 3 of S.I. 2000/1053.

(5) Where an ex-spouse or ex civil partner dies before the administering authority has discharged its liability in respect of the pension credit, that liability may be discharged by the appropriate authority by the payment of a lump sum, to a person other than the person entitled to the pension credit.

(6) The lump sum shall be equal to 3 times the annual rate of the pension which would have been paid to the ex-spouse or ex civil partner if on the date of the death the ex-spouse or ex civil partner had become entitled to a pension as a pension credit member, calculated in accordance with guidance issued by the scheme actuary.

(7) The appropriate administering authority shall pay the lump sum to the deceased's personal representatives.