



# Pensions Act 1995

## 1995 CHAPTER 26

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Pensions on divorce, etc.*

#### 166 Pensions on divorce etc

(1) In the Matrimonial Causes Act 1973, after section 25A there is inserted—

##### **“25B Pensions**

- (1) The matters to which the court is to have regard under section 25(2) above include—
- (a) in the case of paragraph (a), any benefits under a pension scheme which a party to the marriage has or is likely to have, and
  - (b) in the case of paragraph (h), any benefits under a pension scheme which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,
- and, accordingly, in relation to benefits under a pension scheme, section 25(2) (a) above shall have effect as if “in the foreseeable future” were omitted.
- (2) In any proceedings for a financial provision order under section 23 above in a case where a party to the marriage has, or is likely to have, any benefit under a pension scheme, the court shall, in addition to considering any other matter which it is required to consider apart from this subsection, consider—
- (a) whether, having regard to any matter to which it is required to have regard in the proceedings by virtue of subsection (1) above, such an order (whether deferred or not) should be made, and
  - (b) where the court determines to make such an order, how the terms of the order should be affected, having regard to any such matter.

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- (3) The following provisions apply where, having regard to any benefits under a pension scheme, the court determines to make an order under section 23 above.
- (4) To the extent to which the order is made having regard to any benefits under a pension scheme, the order may require the trustees or managers of the pension scheme in question, if at any time any payment in respect of any benefits under the scheme becomes due to the party with pension rights, to make a payment for the benefit of the other party.
- (5) The amount of any payment which, by virtue of subsection (4) above, the trustees or managers are required to make under the order at any time shall not exceed the amount of the payment which is due at that time to the party with pension rights.
- (6) Any such payment by the trustees or managers—
  - (a) shall discharge so much of the trustees or managers liability to the party with pension rights as corresponds to the amount of the payment, and
  - (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.
- (7) Where the party with pension rights may require any benefits which he has or is likely to have under the scheme to be commuted, the order may require him to commute the whole or part of those benefits; and this section applies to the payment of any amount commuted in pursuance of the order as it applies to other payments in respect of benefits under the scheme.

### **25C Pensions: lump sums**

- (1) The power of the court under section 23 above to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension scheme include any lump sum payable in respect of his death, power to make any of the following provision by the order.
- (2) The court may—
  - (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, require them to pay the whole or part of that sum, when it becomes due, to the other party,
  - (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum,
  - (c) in any other case, require the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.
- (3) Any payment by the trustees or managers under an order made under section 23 above by virtue of this section shall discharge so much of the

trustees, or managers, liability in respect of the party with pension rights as corresponds to the amount of the payment.

### **25D Pensions: supplementary**

(1) Where—

- (a) an order made under section 23 above by virtue of section 25B or 25C above imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the party with pension rights acquires transfer credits under another pension scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme (including transfer credits allowed by that scheme), and
- (b) the trustees or managers of the new scheme have been given notice in accordance with regulations,

the order shall have effect as if it has been made instead in respect of the trustees or managers of the new scheme; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.

(2) Regulations may—

- (a) in relation to any provision of sections 25B or 25C above which authorises the court making an order under section 23 above to require the trustees or managers of a pension scheme to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made,
- (b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 25B and 25C above,
- (c) make provision for the trustees or managers of any pension scheme to provide, for the purposes of orders under section 23 above, information as to the value of any benefits under the scheme,
- (d) make provision for the recovery of the administrative expenses of—
  - (i) complying with such orders, so far as they include provision made by virtue of sections 25B and 25C above, and
  - (ii) providing such information,from the party with pension rights or the other party,
- (e) make provision for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of orders under section 23 above, in a prescribed manner,

and regulations made by virtue of paragraph (e) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed person and approved by the Secretary of State.

(3) In this section and sections 25B and 25C above—

- (a) references to a pension scheme include—
  - (i) a retirement annuity contract, or
  - (ii) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme,

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- (b) in relation to such a contract or annuity, references to the trustees or managers shall be read as references to the provider of the annuity,
  - (c) in relation to such a policy, references to the trustees or managers shall be read as references to the insurer,
- and in section 25B(1) and (2) above, references to benefits under a pension scheme include any benefits by way of pension, whether under a pension scheme or not.
- (4) In this section and sections 25B and 25C above—
- “the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension scheme and “the other party” means the other party to the marriage,
  - “pension scheme” means an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners),
  - “prescribed” means prescribed by regulations, and
  - “regulations” means regulations made by the Lord Chancellor;
- and the power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 25(2)(h) of that Act (loss of chance to acquire benefits), “(for example, a pension)” is omitted.
- (3) In section 31 of that Act (variation, discharge, etc. of orders)—
- (a) in subsection (2), after paragraph (d) there is inserted—
    - “(dd) any deferred order made by virtue of section 23(1)(c) (lump sums) which includes provision made by virtue of—
      - (i) section 25B(4), or
      - (ii) section 25C,
 (provision in respect of pension rights)”, and
  - (b) after subsection (2A) there is inserted—
    - “(2B) Where the court has made an order referred to in subsection (2)(dd) (ii) above, this section shall cease to apply to the order on the death of either of the parties to the marriage”.
- (4) Nothing in the provisions mentioned in subsection (5) applies to a court exercising its powers under section 23 of the Matrimonial Causes Act 1973 (financial provision in connection with divorce proceedings, etc.) in respect of any benefits under a pension scheme (within the meaning of section 25B(1) of the Matrimonial Causes Act 1973) which a party to the marriage has or is likely to have.
- (5) The provisions referred to in subsection (4) are —
- (a) section 203(1) and (2) of the Army Act 1955, 203(1) and (2) of the Air Force Act 1955, 128G(1) and (2) of the Naval Discipline Act 1957 or 159(4) and (4A) of the Pension Schemes Act 1993 (which prevent assignment, or orders being made restraining a person from receiving anything which he is prevented from assigning),
  - (b) section 91 of this Act,

- (c) any provision of any enactment (whether passed or made before or after this Act is passed) corresponding to any of the enactments mentioned in paragraphs (a) and (b), and
  - (d) any provision of the scheme in question corresponding to any of those enactments.
- (6) Subsections (3) to (7) of section 25B, and section 25C of the Matrimonial Causes Act 1973, as inserted by this section, do not affect the powers of the court under section 31 of that Act (variation, discharge, etc.) in relation to any order made before the commencement of this section.

### **167 Pensions on divorce, etc.: Scotland**

- (1) In section 8(1) (orders for financial provision) of the Family Law (Scotland) Act 1985 (“the 1985 Act”), after paragraph (b) there is inserted—
- “(ba) an order under section 12A(2) or (3) of this Act;”.
- (2) In section 10 of the 1985 Act (sharing of value of matrimonial property)—
- (a) in subsection (5)—
    - (i) after “party” there is inserted “(a)”; and
    - (ii) for “or occupational pension scheme or similar arrangement” there is substituted—
      - “or similar arrangement; and
      - (b) in any benefits under a pension scheme which either party has or may have (including such benefits payable in respect of the death of either party),
  - which is”; and
  - (b) after subsection (7) there is inserted—
    - “(8) The Secretary of State may by regulations make provision—
      - (a) for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of this Act, in a prescribed manner;
      - (b) for the trustees or managers of any pension scheme to provide, for the purposes of this Act, information as to that value, and for the recovery of the administrative expenses of providing such information from either party,
    - and regulations made by virtue of paragraph (a) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed body and approved by the Secretary of State.
  - (9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (10) In this section—
    - “benefits under a pension scheme” includes any benefits by way of pension, whether under a pension scheme or not;
    - “pension scheme” means—

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- (a) an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners);
  - (b) a retirement annuity contract; or
  - (c) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme falling within paragraph (a) above; and
- “prescribed” means prescribed by regulations.

(11) In this section, references to the trustees or managers of a pension scheme—

- (a) in relation to a contract or annuity referred to in paragraph (b) or (c) of the definition of “pension scheme” in subsection (10) above, shall be read as references to the provider of the annuity;
- (b) in relation to an insurance policy referred to in paragraph (c) of that definition, shall be read as a reference to the insurer.”.

(3) After section 12 of the 1985 Act there is inserted—

**“12A Orders for payment of capital sum: pensions lump sums**

- (1) This section applies where the court makes an order under section 8(2) of this Act for payment of a capital sum (a “capital sum order”) by a party to the marriage (“the liable party”) in circumstances where—
  - (a) the matrimonial property within the meaning of section 10 of this Act includes any rights or interests in benefits under a pension scheme which the liable party has or may have (whether such benefits are payable to him or in respect of his death); and
  - (b) those benefits include a lump sum payable to him or in respect of his death.
- (2) Where the benefits referred to in subsection (1) above include a lump sum payable to the liable party, the court, on making the capital sum order, may make an order requiring the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, to the other party to the marriage (“the other party”).
- (3) Where the benefits referred to in subsection (1) above include a lump sum payable in respect of the death of the liable party, the court, on making the capital sum order, may make an order—
  - (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, requiring them to pay the whole or part of that sum, when it becomes due, to the other party;
  - (b) if the liable party has power to nominate the person to whom the sum, or any part of it, is to be paid, requiring the liable party to nominate the other party in respect of the whole or part of that sum;
  - (c) in any other case, requiring the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it

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becomes due, to the other party instead of to the person to whom, apart from the order, it would be paid.

- (4) Any payment by the trustees or managers under an order under subsection (2) or (3) above—
  - (a) shall discharge so much of the trustees' or managers' liability to or in respect of the liable party as corresponds to the amount of the payment; and
  - (b) shall be treated for all purposes as a payment made by the liable party in or towards the discharge of his liability under the capital sum order.
- (5) Where the liability of the liable party under the capital sum order has been discharged in whole or in part, other than by a payment by the trustees or managers under an order under subsection (2) or (3) above, the court may, on an application by any person having an interest, recall any order under either of those subsections or vary the amount specified in such an order, as appears to the court appropriate in the circumstances.
- (6) Where—
  - (a) an order under subsection (2) or (3) above imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the liable party acquires transfer credits under another scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme; and
  - (b) the trustees or managers of the new scheme have been given notice in accordance with regulations under subsection (8) below,the order shall have effect as if it had been made instead in respect of the trustees or managers of the new scheme; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.
- (7) Without prejudice to subsection (6) above, the court may, on an application by any person having an interest, vary an order under subsection (2) or (3) above by substituting for the trustees or managers specified in the order the trustees or managers of any other pension scheme under which any lump sum referred to in subsection (1) above is payable to the liable party or in respect of his death.
- (8) The Secretary of State may by regulations—
  - (a) require notices to be given in respect of changes of circumstances relevant to orders under subsection (2) or (3) above;
  - (b) make provision for the recovery of the administrative expenses of complying with such orders from the liable party or the other party.
- (9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Subsection (10) (other than the definition of “benefits under a pension scheme”) and subsection (11) of section 10 of this Act shall apply for the purposes of this section as those subsections apply for the purposes of that section.”.

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- (4) Nothing in the provisions mentioned in section 166(5) above applies to a court exercising its powers under section 8 (orders for financial provision on divorce, etc.) or 12A (orders for payment of capital sum: pensions lump sums) of the 1985 Act in respect of any benefits under a pension scheme which fall within subsection (5)(b) of section 10 of that Act (“pension scheme” having the meaning given in subsection (10) of that section).