



# Family Law Act 1996

## 1996 CHAPTER 27

### PART II

#### DIVORCE AND SEPARATION

##### *Financial provision*

#### **15 Financial arrangements**

- (1) Schedule 2 amends the 1973 Act.
- (2) The main object of Schedule 2 is—
  - (a) to provide that, in the case of divorce or separation, an order about financial provision may be made under that Act before a divorce order or separation order is made; but
  - (b) to retain (with minor changes) the position under that Act where marriages are annulled.
- (3) Schedule 2 also makes minor and consequential amendments of the 1973 Act connected with the changes mentioned in subsection (1).

#### **16 Division of pension rights: England and Wales**

- (1) The Matrimonial Causes Act 1973 is amended as follows.
- (2) In section 25B (benefits under a pension scheme on divorce, etc.), in subsection (2), after paragraph (b), insert—
  - “(c) in particular, where the court determines to make such an order, whether the order should provide for the accrued rights of the party with pension rights (“the pension rights”) to be divided between that party and the other party in such a way as to reduce the pension rights of the party with those rights and to create pension rights for the other party.”.

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*Status: This is the original version (as it was originally enacted).*

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(3) After subsection (7) of that section, add—

“(8) If a pensions adjustment order under subsection (2)(c) above is made, the pension rights shall be reduced and pension rights of the other party shall be created in the prescribed manner with benefits payable on prescribed conditions, except that the court shall not have the power—

- (a) to require the trustees or managers of the scheme to provide benefits under their own scheme if they are able and willing to create the rights for the other party by making a transfer payment to another scheme and the trustees and managers of that other scheme are able and willing to accept such a payment and to create those rights; or
- (b) to require the trustees or managers of the scheme to make a transfer to another scheme—
  - (i) if the scheme is an unfunded scheme (unless the trustees or managers are able and willing to make such a transfer payment); or
  - (ii) in prescribed circumstances.

(9) No pensions adjustment order may be made under subsection (2)(c) above—

- (a) if the scheme is a scheme of a prescribed type, or
- (b) in prescribed circumstances, or
- (c) insofar as it would affect benefits of a prescribed type.”

(4) In section 25D (pensions: supplementary), insert—

- (a) in subsection (2)—
  - (i) at the end of paragraph (a), the words “or prescribe the rights of the other party under the pension scheme,”; and
  - (ii) after paragraph (a), the following paragraph—
    - “(aa) make such consequential modifications of any enactment or subordinate legislation as appear to the Lord Chancellor necessary or expedient to give effect to the provisions of section 25B; and an order under this paragraph may make provision applying generally in relation to enactments and subordinate legislation of a description specified in the order,”;
- (b) in subsection (4), in the appropriate place in alphabetical order, the following entries—

““funded scheme” means a scheme under which the benefits are provided for by setting aside resources related to the value of the members' rights as they accrue (and“unfunded scheme” shall be construed accordingly);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978;”;

- (c) after subsection (4), the following subsection—

“(4A) Other expressions used in section 25B above shall be construed in accordance with section 124 (interpretation of Part I) of the Pensions Act 1995.”

## **17 Division of pension assets: Scotland**

Section 10 of the Family Law (Scotland) Act 1985 (sharing of value of matrimonial property), is amended as follows—

- (a) in subsection (5) at the end of paragraph (b), insert “, and
- (c) in the assets in respect of which either party has accrued rights to benefits under a pension scheme”; and
- (b) after subsection (5) insert—

“(5A) In the case of an unfunded pension scheme, the court may not make an order which would allow assets to be removed from the scheme earlier than would otherwise have been the case.”.

## **18 Grounds for financial provision orders in magistrates' courts**

- (1) In section 1 of the Domestic Proceedings and Magistrates' Courts Act 1978, omit paragraphs (c) and (d) (which provide for behaviour and desertion to be grounds on which an application for a financial provision order may be made).
- (2) In section 7(1) of that Act (powers of magistrates' court where spouses are living apart by agreement), omit “neither party having deserted the other”.