

*These notes refer to the Welfare Reform and Pensions Act
1999 (c.30) which received Royal Assent on 11 November 1999*

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Summary of pension sharing provisions

Part III

Section 19 (and *Schedule 3*) amends Parts II and IV of the Matrimonial Causes Act 1973. The effect of the amendments is to enable the court in England and Wales to make pension sharing orders in relation to divorce and nullity of marriage.

Section 20 makes corresponding provision for Scotland.

Section 21 (and *Schedule 4*) amends the sections about pensions inserted in the Matrimonial Causes Act 1973 by section 166 of the Pensions Act 1995.

Section 22 extends the earmarking provisions, included in the Pensions Act 1995, to applications for financial relief after an overseas divorce, separation or annulment by amending the Matrimonial and Family Proceedings Act 1984. In Scotland, it is already possible to apply for an attachment order following an overseas divorce.

Section 23 brings together the various England, Wales and Scotland powers in relation to the supply of information, calculation and verification of pension rights and charges for the provision of information into a single Great Britain power. The new power also extends the scope of the regulations to Northern Ireland in the sense that British pension arrangements will have to supply information in relation to financial relief under Northern Ireland legislation.

Section 24 provides for the making of regulations by the Secretary of State to enable pension arrangements to recover their charges for complying with earmarking orders under England, Wales, Scotland or Northern Ireland legislation.

Section 25 gives the Lord Chancellor power by order to make consequential amendments to Part III of the Act, including Schedule 3 (amendments to the Matrimonial Causes Act 1973 to enable the court in England and Wales to make pension sharing orders) if the new divorce procedure in Part II of the Family Law Act 1996 comes into force before Part III of the Act. Exercise of the power is subject to affirmative resolution of both houses of Parliament.

Section 26 provides a number of definitions which are relevant to Part III of the Act.

Part IV

Chapter I

Section 27 sets out the scope of the pension sharing mechanism relating to rights under pension arrangements.

Section 28 activates the pension sharing mechanism following a pension sharing order by the court or an agreement between the divorcing couple.

Section 29 provides, as a result of the pension sharing order or agreement, for the pension rights of a person with rights under a pension arrangement to be subject to a debit and the former spouse to become entitled to a corresponding pension credit in the form of a right against the person responsible for the arrangement.

Section 30 provides a power to specify the calculation of the cash value of the member's pension rights (the "cash equivalent").

Section 31 specifies how the member's pension rights should be reduced as a result of the pension share.

Section 32 deals with the effect of pension sharing on contracted-out rights (that is, the rights built up by members of contracted-out schemes that replace the state earnings related pension scheme (SERPS)). *Section 32* reduces contracted-out benefits to take account of a pension share. It also ensures that the state does not have to meet the cost, in the form of payment of extra additional pension, because of the reduction in the member's benefit.

Sections 33 and *34* specify the time limit within which the person responsible for a pension arrangement must discharge his liability in respect of a pension credit. *Section 33* also provides that the Occupational Pensions Regulatory Authority (OPRA) must be notified if an occupational pension scheme fails to carry out the pension share on time and enables OPRA to either impose fines in such cases or extend the time allowed for carrying out the order.

Section 35 (and *Schedule 5*) sets out the ways in which persons responsible for pension arrangements can discharge their liability for a pension credit. In the case of pension schemes, this is by creating rights for the former spouse within the scheme itself or by making a transfer payment to another suitable pension scheme or arrangement. The section also provides for cases where the person entitled to the pension credit dies before the pension share has been implemented.

Section 36 sets out the special requirements in relation to any part of a former spouse's pension rights derived from the member's contracted-out employment. These rights are called "safeguarded rights". The section also sets out the requirements that schemes wishing to hold safeguarded rights must meet.

Section 37 sets out the general rules relating to the pension rights obtained by the former spouse following a pension share where the rights are provided under an occupational pension scheme. It also provides former spouses with transfer rights except in the case of unfunded schemes.

Section 38 makes provision for pension credit rights when a pension scheme winds up.

Section 39 provides for pensions payable by public service schemes to former spouses following a pension share to be fully protected against inflation ("indexed"). This mirrors the protection enjoyed by other members of public service schemes.

Section 40 provides that the Secretary of State may regulate to make indexation provisions for pensions payable to former spouses by private sector occupational schemes and pensions or annuities derived from safeguarded rights held in personal pension schemes.

Section 41 confers power enabling the Secretary of State to make regulations enabling the person responsible for a pension arrangement to recover pension sharing costs from the parties to the pension share.

Sections 42 and *43* contain technical provisions necessary to enable public service and judicial pension schemes to comply with pension sharing orders or agreements.

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Section 44 disapplies a common provision in pensions legislation, which prevents the pension rights of an individual from being passed on to another person (except on death), to enable a pension sharing order or agreement to be carried out. The disapplication also extends to any corresponding provisions of pension arrangements.

Section 45 contains a regulation-making power to require pension schemes to disclose information relevant to a pension share.

Section 46 defines some of the terms used in Chapter I.

Chapter II

Section 47 sets out which state scheme rights may be subject to pension sharing.

Sections 48, 49 and 50 (and Schedule 6) provide for pension sharing to apply to the additional pension built up in SERPS. The additional pension rights obtained by a former spouse following a pension share are called the “shared additional pension”.

Section 51 defines some of the terms used in Chapter II.

Part VI

General

Section 84 gives effect to Schedule 12, Part I of which makes consequential amendments etc. relating to Parts III and IV.

Section 85 contains transitional provisions: subsections (3)-(5) relate to pension sharing.

Section 88 gives effect to Part III of Schedule 13 which repeals some existing legislation in consequence of the pension sharing provisions.

These sections are described in the commentary on Part VI, towards the end of this document.