

# WELFARE REFORM AND PENSIONS ACT 1999

---

## EXPLANATORY NOTES

### COMMENTARY

#### Part IV – Pension Sharing

##### *Chapter I – Sharing of Rights under Pension Arrangements*

##### *Section 29: Creation of pension debits and credits*

This important section provides for the member's pension rights to be subject to a debit and for his former spouse to become entitled to a pension credit equal to the amount of the debit.

In England and Wales, the amount of the debit will be a percentage of the current cash equivalent of the member's pension rights in the scheme or arrangement. The percentage will be that stated in the pension sharing order or agreement.

In Scotland, the pension sharing order or agreement may specify that the pension sharing legislation is to apply in relation to a specified amount, rather than a percentage, of the member's pension rights (see section 20) and in that case the amount of the debit will be that specified amount or, if less, the current cash equivalent of the member's rights.

The method for calculating the cash equivalent for these purposes (see section 27) will be similar to the well-established method used for calculating cash equivalents of the pension rights of members who wish to transfer those rights.

In determining the cash equivalent of pension rights available for pension sharing, only those rights accrued up to the day immediately before the day on which the pension sharing order or agreement takes effect are included in the calculation.

*Subsection (1)* provides for the shareable rights of a scheme member (the transferor) to become subject to a debit of an appropriate amount, and the former spouse (the transferee) to become entitled as against the person responsible for the pension arrangement to a credit of the same amount.

*Subsection (2)* provides that where the pension sharing order or agreement expresses the value to be transferred as a percentage, the appropriate amount will be that percentage of the cash equivalent of the transferor's rights.

*Subsection (3)* provides that where the pension sharing order or agreement expresses the value to be transferred as a specific amount (as may be the case in Scotland) rather than as percentage, that amount is the appropriate amount. But, if that amount is greater than the cash equivalent of the transferor's rights, the amount of the cash equivalent is the appropriate amount.

*Subsection (4)* provides a special rule for determining the benefits by reference to which the cash equivalent is to be calculated where the transferor is currently accruing rights in an occupational scheme (that is, he is an "active" member). In that case, the calculation is to be based on the hypothetical benefits to which he would have been entitled by virtue

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

of his shareable rights under the pension arrangement had he ceased to be an active member immediately before the day on which the pension sharing order or agreement takes effect.

*Subsection (5)* provides that in all other cases the benefits by reference to which the cash equivalent is to be calculated are those to which the transferor is entitled by virtue of his shareable rights under the pension arrangement at that time.

*Subsection (6)* provides a regulation-making power to enable any description of benefit to be disregarded for the purposes of subsections (4) and (5) above.

*Subsection (7)* defines the valuation date for the purpose of calculating the cash equivalent of the relevant benefits. It provides scope for the person responsible for the pension arrangement to choose the day that the valuation will be made, provided that the day chosen falls within the period allowed for implementing the order or agreement. This flexibility broadly follows the existing provisions for the calculation of cash equivalent values for early leavers.