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**Changes to legislation:** There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Cross Heading: Family Law (Scotland) Act 1985 (c.37). (See end of Document for details)

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## SCHEDULES

### SCHEDULE 12

#### CONSEQUENTIAL AMENDMENTS

##### PART I

##### AMENDMENTS CONSEQUENTIAL ON PARTS III AND IV

##### *Family Law (Scotland) Act 1985 (c.37)*

5 The Family Law (Scotland) Act 1985 has effect subject to the following amendments.

6 In section 8, after subsection (3) there is inserted—

“(4) The court shall not, in the same proceedings, make both a pension sharing order and an order under section 12A(2) or (3) of this Act in relation to the same pension arrangement.

(5) Where, as regards a pension arrangement, the parties to a marriage have in effect a qualifying agreement which contains a term relating to pension sharing, the court shall not—

(a) make an order under section 12A(2) or (3) of this Act; or

(b) make a pension sharing order,

relating to the arrangement unless it also sets aside the agreement or term under section 16(1)(b) of this Act.

(6) The court shall not make a pension sharing order in relation to the rights of a person under a pension arrangement if there is in force an order under section 12A(2) or (3) of this Act which relates to benefits or future benefits to which he is entitled under the pension arrangement.

(7) In subsection (5) above—

(a) “term relating to pension sharing” shall be construed in accordance with section 16(2A) of this Act; and

(b) “qualifying agreement” has the same meaning as in section 28(3) of the Welfare Reform and Pensions Act 1999.”

7 After section 8 there is inserted—

**“8A Pension sharing orders: apportionment of charges.**

If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under section 41 of the Welfare Reform and

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Pensions Act 1999 (charges in respect of pension sharing costs) or under corresponding Northern Ireland legislation.”

- 8 (1) Section 10 is amended as follows.
- (2) In subsection (5)(b), for “scheme” there is substituted “ arrangement ”.
- (3) For subsection (8) there is substituted—
- “(8) The Secretary of State may by regulations make provision about calculation and verification in relation to the valuation for the purposes of this Act of benefits under a pension arrangement or relevant state scheme rights.”
- (4) After that subsection there is inserted—
- “(8A) Regulations under subsection (8) above may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person; and
- (b) provision by reference to regulations under section 30 or 49(4) of the Welfare Reform and Pensions Act 1999.”
- (5) In subsection (9), after “subsection (8) above” there is inserted “ may make different provision for different purposes and ”.
- (6) Subsections (10) and (11) cease to have effect.

#### Commencement Information

- II** [Sch. 12 para. 8](#) wholly in force at 15.4.2000; [Sch. 12 para. 8](#) not in force at Royal Assent see [s. 89\(1\)](#); [Sch. 12 para. 8\(1\)\(2\)\(5\)\(6\)](#) in force at 1.12.2000 by [S.I. 2000/1047](#), [art. 2\(2\)\(d\)](#), [Sch. Pt. IV](#); [Sch. 12 para. 8\(3\)\(4\)](#) in force at 15.4.2000 by [S.S.I. 2000/111](#), [art. 2](#)

- 9 (1) Section 12A is amended as follows.
- (2) In subsection (1)(a), for “scheme” there is substituted “ arrangement ”.
- (3) In subsection (2), for “trustees or managers of the pension scheme” there is substituted “ person responsible for the pension arrangement ”.
- (4) In subsection (3), in paragraphs (a) and (c) for “trustees or managers of the pension scheme” there is substituted “ person responsible for the pension arrangement ” and in paragraph (a) for “have” there is substituted “ has ”.
- (5) In subsection (4)—
- (a) for “trustees or managers” there is substituted “ person responsible for the pension arrangement ”, and
- (b) for “trustees’ or managers’ liability” there is substituted “ liability of the person responsible for the pension arrangement ”.
- (6) In subsection (5), for “trustees or managers” there is substituted “ person responsible for the pension arrangement ”.
- (7) In subsection (6)—
- (a) for “trustees or managers of”, wherever occurring, there is substituted “ person responsible for ”,
- (b) for “scheme”, wherever occurring, there is substituted “ arrangement ”, and

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- (c) in paragraph (b), for “have” there is substituted “ has ”.
- (8) In subsection (7)—
- (a) for “trustees or managers” where first occurring there is substituted “ person responsible for the pension arrangement ”,
  - (b) for “trustees or managers of” there is substituted “ person responsible for ”, and
  - (c) for “scheme” there is substituted “ arrangement ”.
- (9) For subsection (10) there is substituted—
- “(10) The definition of “benefits under a pension scheme” in section 27 of this Act does not apply to this section.”
- 10 In section 13(2)(b), after “property” there is inserted “ , or a pension sharing order, ”.
- 11 (1) Section 16 is amended as follows.
- (2) In subsection (2), for paragraph (b) there is substituted—
- “(b) under subsection (1)(b) above, if the agreement does not contain a term relating to pension sharing, on granting decree of divorce or within such time as the court may specify on granting decree of divorce; or
  - (c) under subsection (1)(b) above, if the agreement contains a term relating to pension sharing—
    - (i) where the order sets aside the agreement or sets aside or varies the term relating to pension sharing, on granting decree of divorce; and
    - (ii) where the order sets aside or varies any other term of the agreement, on granting decree of divorce or within such time thereafter as the court may specify on granting decree of divorce.”
- (3) After that subsection there is inserted—
- “(2A) In subsection (2) above, a term relating to pension sharing is a term corresponding to provision which may be made in a pension sharing order and satisfying the requirements set out in section 28(1)(f) or 48(1)(f) of the Welfare Reform and Pensions Act 1999.”
- 12 In section 27(1), the following definitions are inserted at the appropriate places—
- ““benefits under a pension arrangement” includes any benefits by way of pension, including relevant state scheme rights, whether under a pension arrangement or not;”
- ““pension arrangement” means—
- (a) any occupational pension scheme within the meaning of the <sup>M1</sup>Pension Schemes Act 1993;
  - (b) a personal pension scheme within the meaning of that Act;
  - (c) a retirement annuity contract;
  - (d) an annuity or insurance policy purchased or transferred for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme;

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- (e) an annuity purchased or entered into for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;”

““person responsible for a pension arrangement” means—

- (a) in the case of an occupational pension scheme or a personal pension scheme, the trustees or managers of the scheme;
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement” above, the provider of the annuity;
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer;”

““relevant state scheme rights” means—

- (a) entitlement, or prospective entitlement, to a Category A retirement pension by virtue of section 44(3)(b) of the <sup>M2</sup>Social Security Contributions and Benefits Act 1992 or under corresponding Northern Ireland legislation; and
- (b) entitlement, or prospective entitlement, to a pension under section 55A of the <sup>M3</sup>Social Security Contributions and Benefits Act 1992 (shared additional pension) or under corresponding Northern Ireland legislation;”

““retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the <sup>M4</sup>Income and Corporation Taxes Act 1988;”

““trustees or managers” in relation to an occupational pension scheme or a personal pension scheme means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme; and
- (b) in any other case, the managers of the scheme;”.

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**Marginal Citations**

- M1** 1993 c. 48.  
**M2** 1992 c. 4.  
**M3** 1992 c. 4.  
**M4** 1988 c. 1.

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