



# Welfare Reform and Pensions Act 1999

## 1999 CHAPTER 30

### PART IV

#### PENSION SHARING

#### CHAPTER I

##### SHARING OF RIGHTS UNDER PENSION ARRANGEMENTS

##### *Pension sharing mechanism*

#### **28 Activation of pension sharing.**

- (1) Section 29 applies on the taking effect of any of the following relating to a person's shareable rights under a pension arrangement—
- (a) a pension sharing order under the <sup>M1</sup>Matrimonial Causes Act 1973,
  - [<sup>F1</sup>(aa) a pension sharing order under Schedule 5 to the Civil Partnership Act 2004,]
  - (b) provision which corresponds to the provision which may be made by such an order and which—
    - (i) is contained in a qualifying agreement between the parties to a marriage, and
    - (ii) takes effect on the dissolution of the marriage under the <sup>M2</sup>Family Law Act 1996,
  - (c) provision which corresponds to the provision which may be made by such an order and which—
    - (i) is contained in a qualifying agreement between the parties to a marriage or former marriage, and
    - (ii) takes effect after the dissolution of the marriage under the <sup>M3</sup>Family Law Act 1996,

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- (d) an order under Part III of the <sup>M4</sup>Matrimonial and Family Proceedings Act 1984 (financial relief in England and Wales in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (a),
  - [<sup>F2</sup>(da) an order under Schedule 7 to the 2004 Act (financial relief in England and Wales after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (aa),]
  - (e) a pension sharing order under the <sup>M5</sup>Family Law (Scotland) Act 1985,
  - (f) provision which corresponds to the provision which may be made by such an order and which—
    - (i) is contained in a qualifying agreement between the parties to a marriage [<sup>F3</sup>or between persons who are civil partners of each other,]
    - (ii) is in such form as the Secretary of State may prescribe by regulations, and
    - (iii) takes effect on the grant, in relation to the marriage, of decree of divorce under the <sup>M6</sup>Divorce (Scotland) Act 1976 or of declarator of nullity [<sup>F4</sup>or (as the case may be) on the grant, in relation to the civil partnership, of decree of dissolution or of declarator of nullity],
  - (g) an order under Part IV of the <sup>M7</sup>Matrimonial and Family Proceedings Act 1984 (financial relief in Scotland in relation to overseas divorce etc.) [<sup>F5</sup>or under Schedule 11 to the 2004 Act (financial provision in Scotland after overseas proceedings)] corresponding to such an order as is mentioned in paragraph (e),
  - (h) a pension sharing order under [<sup>F6</sup>the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)), ]
  - (i) an order under Part IV of the <sup>M8</sup>Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (h).
  - [<sup>F7</sup>(j) a pension sharing order under Schedule 15 to the 2004 Act, and
  - (k) an order under Schedule 17 to the 2004 Act (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (j).]
- (2) For the purposes of subsection (1)(b) and (c), a qualifying agreement is one which—
- (a) has been entered into in such circumstances as the Lord Chancellor may prescribe by regulations, and
  - (b) satisfies such requirements as the Lord Chancellor may so prescribe.
- (3) For the purposes of subsection (1)(f), a qualifying agreement is one which—
- (a) has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and
  - (b) is registered in the Books of Council and Session.
- (4) Subsection (1)(b) does not apply if—
- (a) the pension arrangement to which the provision relates is the subject of a pension sharing order under the <sup>M9</sup>Matrimonial Causes Act 1973 in relation to the marriage, or
  - (b) there is in force a requirement imposed by virtue of section 25B or 25C of that Act (powers to include in financial provision orders requirements relating to benefits under pension arrangements) which relates to benefits or future benefits to which the party who is the transferor is entitled under the pension arrangement to which the provision relates.

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- (5) Subsection (1)(c) does not apply if—
- (a) the marriage was dissolved by an order under section 3 of the <sup>M10</sup>Family Law Act 1996 (divorce not preceded by separation) and the satisfaction of the requirements of section 9(2) of that Act (settlement of future financial arrangements) was a precondition to the making of the order,
  - (b) the pension arrangement to which the provision relates—
    - (i) is the subject of a pension sharing order under the <sup>M11</sup>Matrimonial Causes Act 1973 in relation to the marriage, or
    - (ii) has already been the subject of pension sharing between the parties, or
  - (c) there is in force a requirement imposed by virtue of section 25B or 25C of that Act which relates to benefits or future benefits to which the party who is the transferor is entitled under the pension arrangement to which the provision relates.
- (6) Subsection (1)(f) does not apply if there is in force an order under section 12A(2) or (3) of the <sup>M12</sup>Family Law (Scotland) Act 1985 which relates to benefits or future benefits to which the party who is the transferor is entitled under the pension arrangement to which the provision relates.
- (7) For the purposes of this section, an order or provision falling within subsection (1)(e), (f) or (g) shall be deemed never to have taken effect if the person responsible for the arrangement to which the order or provision relates does not receive before the end of the period of 2 months beginning with the relevant date—
- (a) copies of the relevant <sup>F8</sup>... documents, and
  - (b) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations under section 34(1)(b)(ii).
- (8) The relevant date for the purposes of subsection (7) is—
- (a) in the case of an order or provision falling within subsection (1)(e) or (f), the date of the extract of the decree or declarator responsible for the divorce<sup>F9</sup>, dissolution] or annulment to which the order or provision relates, and
  - (b) in the case of an order falling within subsection (1)(g), the date of disposal of the application under section 28 of the <sup>M13</sup>Matrimonial and Family Proceedings Act 1984 [<sup>F10</sup>or, where the order is under Schedule 11 to the 2004 Act, the date of disposal of the application under paragraph 2 of that Schedule].
- (9) The reference in subsection (7)(a) to the relevant <sup>F11</sup>... documents is—
- (a) in the case of an order falling within subsection (1)(e) or (g), to copies of the order and the order, decree or declarator responsible for the divorce<sup>F12</sup>, dissolution] or annulment to which it relates, and
  - (b) in the case of provision falling within subsection (1)(f), to—
    - (i) copies of the provision and the order, decree or declarator responsible for the divorce<sup>F13</sup>, dissolution] or annulment to which it relates, and
    - (ii) documentary evidence that the agreement containing the provision is one to which subsection (3)(a) applies.
- (10) The sheriff may, on the application of any person having an interest, make an order—
- (a) extending the period of 2 months referred to in subsection (7), and
  - (b) if that period has already expired, providing that, if the person responsible for the arrangement receives the documents and information concerned before

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the end of the period specified in the order, subsection (7) is to be treated as never having applied.

- (11) In subsections (4)(b), (5)(c) and (6), the reference to the party who is the transferor is to the party to whose rights the provision relates.

#### Textual Amendments

- F1** S. 28(1)(aa) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(2)**; S.I. 2005/3175, art. 2(2)
- F2** S. 28(1)(da) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(3)**; S.I. 2005/3175, art. 2(2)
- F3** Words in s. 28(1)(f)(i) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(4)(a)**; S.I. 2005/3175, art. 2(2)
- F4** Words in s. 28(1)(f)(iii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(4)(b)**; S.I. 2005/3175, art. 2(2)
- F5** Words in s. 28(1)(g) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(5)**; S.I. 2005/3175, art. 2(2)
- F6** Words in s. 28(1)(h) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(6)**; S.I. 2005/3175, art. 2(2)
- F7** S. 28(1)(j)(k) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(7)**; S.I. 2005/3175, art. 2(2)
- F8** Word in s. 28(7)(a) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 159(8), **Sch. 30**; S.I. 2005/3175, art. 2(2)(6)
- F9** Word in s. 28(8)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(9)(a)**; S.I. 2005/3175, art. 2(2)
- F10** Words in s. 28(8)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(9)(b)**; S.I. 2005/3175, art. 2(2)
- F11** Word in s. 28(9) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 159(10)(a), **Sch. 30**; S.I. 2005/3175, art. 2(2)(6)
- F12** Word in s. 28(9)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(10)(b)**; S.I. 2005/3175, art. 2(2)
- F13** Word in s. 28(9)(b)(i) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 159(10)(b)**; S.I. 2005/3175, art. 2(2)

#### Commencement Information

- I1** S. 28 wholly in force at 1.12.2000; s. 28 in force for certain purposes at Royal Assent see s. 89(1); s. 28 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**

#### Marginal Citations

- M1** 1973 c. 18.  
**M2** 1996 c. 27.  
**M3** 1996 c. 27.  
**M4** 1984 c. 42.  
**M5** 1985 c. 37.  
**M6** 1976 c. 39.  
**M7** 1984 c. 42.  
**M8** S.I. 1989/677 (N.I. 4).  
**M9** 1973 c. 18.  
**M10** 1996 c. 27.  
**M11** 1973 c. 18.  
**M12** 1985 c. 37.

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**M13** 1984 c. 42.

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