

EXPLANATORY MEMORANDUM TO
THE PENSION SHARING (MISCELLANEOUS AMENDMENTS) REGULATIONS
2016

2016 No. 289

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends various Statutory Instruments concerned with pension sharing on divorce to take account of changes which have already been made that give pension scheme members a wider range of options as to how they can take flexible benefits. It also makes amendments to existing regulations to clarify which pension rights are shareable on divorce and to make it clear when a reduction for underfunding may be made.
- 2.2 The Statutory Instruments being amended are:
 - [The Divorce etc \(Pensions\) \(Scotland\) Regulations 2000 \(SSI 2000/112\)](#)
 - [The Pensions on Divorce etc \(Provision of Information\) Regulations 2000 \(SI 2000/1048\)](#)
 - [The Pensions on Divorce etc \(Charging\) Regulations 2000 \(SI 2000/1049\)](#);
 - [The Pension Sharing \(Valuation\) Regulations 2000 \(SI 2000/1052\)](#)
 - [The Pension Sharing \(Pension Credit Benefit\) Regulations 2000 \(SI 2000/1054\)](#)
 - [The Divorce etc \(Pensions\) Regulations 2000 \(SI 2000/1123\)](#)
 - [The Dissolution etc \(Pensions\) Regulations 2005 \(SI 2005/2920\)](#)
 - [The Pension Schemes Act 2015 \(Transitional Provisions and Appropriate Independent Advice\) Regulations 2015 \(SI 2015/742\)](#)

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument relies on section 105 of the Deregulation Act 2015 in relation to the power in section 145(1) of the Pensions Act 2008. Regulation 5(6) is made under the power to make an order in section 145(1) of the Pensions Act 2008 and section 105 of the Deregulation Act 2015 allows that provision to be included in this instrument, rather than requiring a separate instrument.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 [The Taxation of Pensions Act 2014](#) ("the 2014 Act") amended the [Finance Act 2004](#) to significantly increase the flexibility of access to some pension savings. The changes are known as the "pension flexibilities".
- 4.2 [Part 4 of the Pension Schemes Act 2015](#) ("the 2015 Act") amended existing primary legislation and made substantive new provisions to support the pension flexibilities and to ensure that they operate as intended. [The Occupational Pension Schemes \(Consequential and Miscellaneous Amendments\) Regulations 2015](#), [the Occupational and Personal Pension Schemes \(Disclosure of Information\) \(Amendment\) Regulations 2015](#), [the Occupational and Personal Pension Schemes \(Transfer Values\) \(Amendment and Revocation\) Regulations 2015](#) and [the Pension Schemes Act 2015 \(Transitional Provisions and Appropriate Independent Advice\) Regulations 2015](#) made changes to secondary legislation which are required to ensure the pension flexibilities will work in relation to pension legislation.
- 4.3 This instrument extends the changes for ordinary scheme benefits introduced by the legislation in paragraph 4.2 to pension credit rights, which are derived from a pension shared on divorce.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is that Regulations 1, 2, 3, 4, 5, and 9 apply to Great Britain; Regulations 6 and 8 apply to England and Wales; and Regulation 7 applies to Scotland.
- 5.3 The Department for Social Development will be making corresponding changes in Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Amendments consequential on changes to the transfer provisions introduced by the Pension Schemes Act 2015

- 7.1 [The Pension Schemes Act 2015](#) made various changes, mainly to the [Pension Schemes Act 1993](#), concerning a member's right to transfer the value of their pension benefits to another pension arrangement and the processes involved.
- 7.2 This means that many of the cross-references and some of the terminology in the pension sharing regulations need to be amended as a result.

- 7.3 The 2015 Act also introduced a requirement that trustees or managers must check that a member has received appropriate independent advice before transferring safeguarded benefits to acquire flexible benefits (among other things) unless the benefits are valued at £30,000 or less. It was always the intention that this advice requirement would apply to pension credit rights (pension rights which have been acquired through a pension share on divorce) as well as ordinary scheme benefits. However, some amendments are needed to the [Pension Schemes Act 2015 \(Transitional Provisions and Appropriate Independent Advice\) Regulations 2015](#) to ensure that the provisions work smoothly.

Pension rights which are not shareable rights in connection with pension sharing on divorce

- 7.4 When a divorcing couple seek a financial settlement, the Court is required to take the value of all their financial assets into account, including the value of any pensions, when determining the financial settlement. One of the options available to the couple is pension sharing, when a percentage of the value of the member's pension is transferred irrevocably into a pension arrangement for the former spouse. Pension sharing can also apply on the dissolution of a civil partnership.
- 7.5 However, there have always been some pension rights which are not shareable – although this does not prevent the Court from considering these assets when making a financial settlement, if appropriate.
- 7.6 In some types of pension arrangement, a person who leaves the scheme with less than two years' pensionable service is entitled to a refund of their own contributions or a transfer to another pension arrangement rather than a preserved pension. An amendment to The [Pension Sharing \(Valuation\) Regulations 2000](#) makes it clear that non-preserved rights (or rights which would not be preserved if the person left the scheme on the valuation date) are not shareable.
- 7.7 Additionally, pension benefits that a person may be entitled to because they are the surviving spouse or dependent of a pension scheme member who has died have never been shareable. Two new types of death benefit, nominee and successor benefits, have been introduced in April 2015, and a further amendment to the Valuation Regulations makes it clear that these rights are not shareable either.

Reduction to the value of pension rights where a scheme is underfunded

- 7.8 The policy intention is that a scheme should provide a full valuation of the scheme member's rights, regardless of the scheme's funding position. The only time that an underfunded scheme is permitted to reduce the value for underfunding is during the implementation of a pension sharing order if the former spouse has refused the option of leaving the pension share within the original scheme and has requested it is transferred to another pension arrangement. In this case, the value of the pension share can be reduced by the percentage that the scheme is underfunded, otherwise the former spouse could receive a disproportionate share of the scheme's assets at the expense of other scheme members.
- 7.9 However, since the pension sharing regulations were first drafted, the regulations on valuing pension rights have been amended. Following those changes it was possible to read the regulations as requiring the reduction for underfunding to be made twice: once when the rights are valued; and again when the value of the rights is transferred out. This instrument makes various technical amendments to the pension sharing legislation to remove any ambiguity.

Consolidation

- 7.10 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website at: legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

8. Consultation outcome

- 8.1 The Government consulted on a draft of the regulations between 23 November 2015 and 15 January 2016; 25 responses were received. The government response to the consultation can be found at: <https://www.gov.uk/government/consultations/occupational-and-personal-pension-schemes-miscellaneous-amendments-regulations-2016>
- 8.2 All those who responded to the draft proposals, which aimed to reflect in the pension sharing regulations the changes which had already taken place regarding ordinary scheme benefits, were content that the changes did this (subject to a few drafting points which have been taken into account). Likewise, there was general agreement from respondents that the requirement for trustees or managers to check that independent advice had been received if transferring or converting safeguarded benefits should apply in respect of pension credit members. Respondents also agreed that the proposed amendments concerning the valuation of pension benefits made it clear how pension rights should be valued for divorce purposes and would ensure that a double reduction for underfunding would not be made. A few drafting points were also raised, which have been considered and, where appropriate, reflected in the final regulations.
- 8.3 A majority of those who responded to the question about types of pension rights which should not be shareable on divorce agreed with the proposals that both rights that would not give rise to a preserved pension and pension benefits which are paid as a result of another person’s death should not be shareable. However, those who disagreed that the latter should be shareable still believed that there should be a consistent approach to all types of pension which can be paid as death benefits, be it to a widow, widower, surviving civil partner, other dependent, successor or nominee.

9. Guidance

- 9.1 The amendments introduced by these regulations are mainly either minor and technical or reflect changes which have already been made. Separate guidance will not, therefore, be issued.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument. The impact on business is minimal because the amendments are minor and technical changes or reflect changes which have already been made.

11. Regulating small business

- 11.1 Few small businesses provide an occupational pension scheme. However, if they do, they are obliged to follow pensions legislation, otherwise the members would have less protection and fewer rights than members of other pension schemes. Therefore any impact would be negligible.

12. Monitoring & review

- 12.1 No formal post-implementation review of these amendments is planned, but the Department for Work and Pensions monitors all new pensions legislation on an ongoing basis by means of representation and feedback from the pensions community and the Pensions Regulator.

13. Contact

- 13.1 Caroline Blackett at the Department for Work and Pensions (Telephone: 020 7449 7370 or email: caroline.blackett@dwpgsi.gov.uk) can answer any queries regarding the instrument.