



Pensions Act 2008

2008 CHAPTER 30

PART 3

PENSION COMPENSATION

CHAPTER 1

PENSION COMPENSATION ON DIVORCE ETC

107 Scope of mechanism

- (1) Pension compensation sharing is available under this Chapter in relation to a person's shareable rights to PPF compensation.
- (2) For the purposes of this Chapter, a right of a person to PPF compensation is "shareable" unless it is of a description specified by regulations made by the Secretary of State.

108 Interpretation

In this Chapter—

"the Board" means the Board of the Pension Protection Fund;

"PPF compensation" means compensation payable under the pension compensation provisions;

"the pension compensation provisions" means—

- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
- (b) this Chapter and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland;

"prescribed" means prescribed by regulations made by the Secretary of State;

Status: This is the original version (as it was originally enacted).

“the relevant order or provision” means the pension compensation sharing order, or provision contained in a qualifying agreement, which gives rise to the pension compensation sharing;

“the transfer day” means the day on which the relevant order or provision takes effect;

“the transferee” means the person for whose benefit the relevant order or provision is made;

“the transferor” means the person to whose rights the relevant order or provision relates.

109 Activation of pension compensation sharing

Section 111 applies on the taking effect of any of the following relating to a person’s shareable rights to PPF compensation—

- (a) a pension compensation sharing order under the Matrimonial Causes Act 1973 (c. 18);
- (b) a pension compensation sharing order under Schedule 5 to the Civil Partnership Act 2004 (c. 33);
- (c) an order under Part 3 of the Matrimonial and Family Proceedings Act 1984 (c. 42) (financial relief in England and Wales in relation to overseas divorce etc) corresponding to such an order as is mentioned in paragraph (a);
- (d) an order under Schedule 7 to the Civil Partnership Act 2004 (c. 33) (financial relief in England and Wales after overseas dissolution etc of a civil partnership) corresponding to such an order as is mentioned in paragraph (b);
- (e) an order under any provision corresponding to a provision mentioned in any of paragraphs (a) to (d) in force in Northern Ireland.
- (f) a pension compensation sharing order under section 8 of the Family Law (Scotland) Act 1985 (c. 37) (orders for financial provision);
- (g) any provision corresponding to 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 the partners in a civil partnership,
 - (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 or of declarator of nullity or (as the case may be) on the grant, in relation to the civil partnership, of decree of dissolution or of declarator of nullity,

except where the provision relates to the same rights to PPF compensation as are the subject of an order made under section 12B(2) of the Family Law (Scotland) Act 1985 (order for payment of capital sum: pension compensation).

110 Activation of pension compensation sharing: supplementary (Scotland)

- (1) For the purposes of this Chapter, a qualifying agreement is an agreement 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.

- (2) For the purposes of section 109, an order or provision mentioned in paragraph (f) or (g) of that section is to be regarded as never having taken effect if the Board does not receive before the end of the period of 2 months beginning with the relevant date—
 - (a) a copy of the relevant documents, and
 - (b) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations under section 115(1)(b)(ii).
- (3) The relevant date for the purpose of subsection (2) is—
 - (a) the date of the extract of the decree or declarator responsible for the divorce, dissolution or annulment to which the order or provision relates, or
 - (b) if the order is made in relation to disposal of an application under section 28 of the Matrimonial and Family Proceedings Act 1984, or of an application under paragraph 2 of Schedule 11 to the Civil Partnership Act 2004, the date of the disposal.
- (4) The relevant documents referred to in subsection (2) are—
 - (a) in the case of an order mentioned in paragraph (f) of section 109, that order and the decree or declarator responsible for the divorce, dissolution or annulment to which it relates,
 - (b) in the case of provision mentioned in paragraph (g) of that section—
 - (i) that provision and the decree or declarator responsible for the divorce, dissolution or annulment to which it relates, and
 - (ii) documentary evidence that the agreement containing the provision is one to which subsection (1)(a) applies.
- (5) The Court of Session or 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 (2), and
 - (b) where that period has already expired, providing that, if the Board receives the documents and information concerned before the end of the period specified in the order, subsection (2) is to be treated as never having applied.

111 Creation of pension compensation debits and credits

- (1) On the application of this section—
 - (a) the transferor’s shareable rights to PPF compensation that derive from rights under the specified scheme become subject to a debit of the appropriate amount, and
 - (b) the transferee becomes entitled to a credit of that amount as against the Board.
- (2) For the purposes of subsection (1) “the appropriate amount” means—
 - (a) where the relevant order or provision specifies a percentage to be transferred, that percentage of the cash equivalent of the relevant compensation on the valuation day;
 - (b) where the relevant order or provision specifies an amount to be transferred, the lesser of—
 - (i) that specified amount, and
 - (ii) the cash equivalent of the relevant compensation on the valuation day.
- (3) For the purposes of subsection (2) “the relevant compensation” means the payments or future payments to which, immediately before the transfer day, the transferor is entitled

Status: This is the original version (as it was originally enacted).

under the pension compensation provisions by virtue of the transferor’s shareable rights to PPF compensation that derive from rights under the specified scheme.

- (4) The Secretary of State may by regulations provide for any description of payment to be disregarded for the purposes of subsection (3).
- (5) For the purposes of this section—
 - “the specified scheme” means the pension scheme specified in the relevant order or provision;
 - “the valuation day” means such day within the implementation period for the credit under subsection (1)(b) as the Board may specify by notice in writing to the transferor and transferee.
- (6) The credit to which the transferee becomes entitled under subsection (1)(b) is referred to in this Chapter as a “pension compensation credit”.

112 Cash equivalents

- (1) The Secretary of State may by regulations make provision about the calculation and verification of cash equivalents for the purposes of section 111.
- (2) Regulations under this section may include provision for calculation and verification in a manner approved by the Board.

113 Reduction of compensation

- (1) Where any of a person’s shareable rights to PPF compensation are subject to a pension compensation debit, each payment or future payment—
 - (a) to which the person is entitled under the pension compensation provisions by virtue of those rights, and
 - (b) which is a qualifying payment,
 is reduced by the appropriate percentage.
- (2) For the purposes of subsection (1) a payment is “qualifying payment” if the cash equivalent by reference to which the amount of the pension compensation debit is determined includes an amount in respect of it.
- (3) In this section “the appropriate percentage”, in relation to a pension compensation debit, means—
 - (a) the percentage specified in the pension compensation sharing order or provision on which the debit depends; or
 - (b) if the pension compensation sharing order or provision on which the debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 111 represents of the amount mentioned in subsection (2)(b)(ii) of that section.

114 Time for discharge of liability

- (1) This section applies where the Board is subject to a liability in respect of a pension compensation credit.
- (2) The Board must discharge the liability before the end of the implementation period for the credit.

Status: This is the original version (as it was originally enacted).

- (3) The Secretary of State may make provision by regulations as to circumstances in which the implementation period for the credit is extended for the purposes of this section.

115 “Implementation period”

- (1) For the purposes of this Chapter, the implementation period for a pension compensation credit is the period of 4 months beginning with the later of—
- (a) the transfer day, and
 - (b) the first day on which the Board is in receipt of—
 - (i) the relevant documents, and
 - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.
- (2) In subsection (1)(b)(i), “the relevant documents” means copies of—
- (a) the relevant order or provision, and
 - (b) the order, decree or declarator responsible for the divorce, dissolution or annulment to which it relates.
- (3) Subsection (1) is subject to any provision made by regulations under section 117(2)(a).
- (4) The Secretary of State may by regulations—
- (a) make provision requiring the Board to notify the transferor and transferee of the day on which the implementation period for the credit begins;
 - (b) provide for this section to have effect with modifications where the credit depends on a pension compensation sharing order and the order is the subject of an application for leave to appeal out of time.

116 Discharge of liability

- (1) This section applies where the Board is subject to a liability in respect of a pension compensation credit.
- (2) The Board must discharge the liability by sending a notice to the transferee.
- (3) On the sending of the notice the transferee becomes entitled, with effect from (and including) the transfer day, to compensation calculated in accordance with Schedule 5.
- (4) For the purposes of that calculation, the initial annual rate of compensation is an amount determined by the Board.
- (5) The Board must determine that amount in such a way as to secure that the cash equivalent value of the compensation to which the transferee becomes entitled under subsection (3) equals the amount of the credit.
- (6) The Secretary of State may by regulations make provision about the calculation of cash equivalents for the purposes of subsection (5).
- (7) The notice sent under this section must—
- (a) state that the transferee is entitled to periodic pension compensation calculated under Schedule 5, and
 - (b) specify the amount determined under subsection (4).
- (8) Where the transferee dies before liability in respect of the credit has been discharged—

Status: This is the original version (as it was originally enacted).

- (a) subsections (2) to (7) do not have effect in relation to the discharge of liability in respect of the credit, and
- (b) liability in respect of the credit must be discharged in accordance with regulations made by the Secretary of State.

117 Charges in respect of pension compensation sharing costs

- (1) The Secretary of State may by regulations make provision for the purpose of enabling the Board to recover from the parties to pension compensation sharing prescribed charges in respect of prescribed descriptions of pension compensation sharing activity.
- (2) Regulations under subsection (1) may include—
 - (a) provision for the start of the implementation period for a pension compensation credit to be postponed in prescribed circumstances;
 - (b) provision enabling the Board to set off against any PPF compensation payable to a party to pension compensation sharing any charges owed to it by that party under the regulations;
 - (c) provision, in relation to payments in respect of charges recoverable under the regulations, for reimbursement as between the parties to pension compensation sharing.
- (3) For the purposes of regulations under subsection (1), the question of how much of a charge recoverable under the regulations is attributable to a party to pension compensation sharing is to be determined as follows—
 - (a) where the relevant order or provision includes provision (“provision for apportionment”) about the apportionment of charges under this section, there is attributable to the party so much of the charge as is apportioned to that party by that provision for apportionment;
 - (b) where the relevant order or provision does not include provision for apportionment, the charge is attributable to the transferor.
- (4) In subsection (1), the reference to pension compensation sharing activity is to activity attributable directly or indirectly to the application of section 111 by virtue of the relevant order or provision.

118 Supply of information about pension compensation in relation to divorce etc

- (1) The Secretary of State may by regulations—
 - (a) make provision imposing on the Board requirements with respect to the supply of information relevant to any power with respect to—
 - (i) financial relief under Part 2 of the Matrimonial Causes Act 1973 (c. 18) or Part 3 of the Matrimonial and Family Proceedings Act 1984 (c. 42) (England and Wales powers in relation to domestic and overseas divorce etc),
 - (ii) financial relief under Schedule 5 or 7 to the Civil Partnership Act 2004 (c. 33) (England and Wales powers in relation to domestic and overseas dissolution of civil partnerships etc),
 - (iii) financial relief under any provision corresponding to a provision mentioned in sub-paragraph (i) or (ii) in force in Northern Ireland,
 - (iv) orders for financial provision under section 8 of the Family Law (Scotland) Act 1985 (c. 37) (orders for financial provision), or

Status: This is the original version (as it was originally enacted).

- (v) provision as to pension sharing, or pension compensation sharing, that is contained in an agreement that is a qualifying agreement for the purposes of section 28(1)(b) and (c) of the Welfare Reform and Pensions Act 1999 (c. 30) (activation of pension sharing) or this Chapter;
 - (b) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of regulations under paragraph (a);
 - (c) make provision for the purpose of enabling the Board to recover prescribed charges in respect of providing information in accordance with regulations under paragraph (a).
- (2) Regulations under subsection (1)(b) may include provision for calculation and verification in a manner approved by the Board.
- (3) Regulations under subsection (1)(c) may include provision for the application in prescribed circumstances, with or without modification, of any provision made by virtue of section 117(2).

119 Supply of information about pension compensation sharing

The Secretary of State may by regulations require the Board to supply, to such persons as the Secretary of State may specify in the regulations, such information relating to anything which follows from the application of section 111 as the Secretary of State may so specify.

120 Pension compensation sharing and attachment on divorce etc

Schedule 6 (which amends matrimonial and civil partnership legislation for the purpose of enabling the court to make pension compensation sharing orders, and orders for the attachment of pension compensation, in connection with proceedings in England and Wales) and Schedule 7 (which amends in relation to pension compensation sharing orders similar legislation applying in Scotland) have effect.

CHAPTER 2

OTHER PROVISION ABOUT PENSION COMPENSATION

121 Charges in respect of pension sharing etc

After section 168 of the Pensions Act 2004 (c. 35) (administration of compensation) insert—

“Charges in respect of pension sharing etc

168A Charges in respect of pension sharing etc

- (1) Regulations may make provision for the purpose of enabling the Board to recover prescribed charges in respect of complying with a relevant order or provision.
- (2) In subsection (1) “a relevant order or provision” means any of the following—

Status: This is the original version (as it was originally enacted).

- (a) an order under section 23 of the Matrimonial Causes Act 1973 (financial provision in connection with divorce etc: England and Wales) so far as the order—
 - (i) includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions), and
 - (ii) applies in relation to the Board by virtue of section 25E of that Act;
 - (b) an order under section 23 of that Act so far as the order includes provision made by virtue of section 25F of that Act (attachment of pension compensation on divorce etc: England and Wales);
 - (c) an order under Part 1 of Schedule 5 to the Civil Partnership Act 2004 (financial provision orders in connection with dissolution of civil partnerships etc: England and Wales) so far as the order—
 - (i) includes provision made by virtue of Part 6 of that Schedule (powers to include provision about pensions), and
 - (ii) applies in relation to the Board by virtue of Part 7 of that Schedule;
 - (d) an order under Part 1 of that Schedule so far as the order includes provision made by virtue of paragraph 34A of that Schedule (attachment of pension compensation on dissolution of civil partnership etc: England and Wales);
 - (e) an order made under any provision corresponding to a provision mentioned in paragraphs (a) to (d) in force in Northern Ireland;
 - (f) an order under section 8(1)(baa) to (bb) of the Family Law (Scotland) Act 1985 (orders for financial provision) so far as the order applies in relation to the Board;
 - (g) any provision corresponding to provision which may be made by such an order and which is contained in a qualifying agreement (to which section 28(3) of the Welfare Reform and Pensions Act 1999, or section 110(1) of the Pensions Act 2008 relates) so far as the agreement applies in relation to the Board;
 - (h) an order or provision of a kind mentioned in section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing) so far as the order or provision applies in relation to the Board by virtue of section 220 of this Act.
- (3) Regulations under subsection (1) may include provision enabling the Board to set off against any PPF compensation payable to a person any charges owed to it by that person under the regulations.
- (4) In this section “PPF compensation” means compensation payable—
- (a) under or by virtue of this Chapter, or
 - (b) under or by virtue of Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation on divorce etc).”

122 Amendments of Schedule 7 to the Pensions Act 2004

Schedule 8 (amendments of Schedule 7 to the Pensions Act 2004) has effect.

123 Consequential amendments

- (1) The Pensions Act 2004 (c. 35) is amended as follows.
- (2) In section 173 (Pension Protection Fund)—
 - (a) in subsection (3)(b), after “the pension compensation provisions” insert “or Chapter 1 of Part 3 of the Pensions Act 2008”;
 - (b) in subsection (5), omit “of this Act”.
- (3) After paragraph 18(2)(d) of Schedule 5 (Board of the Pension Protection Fund) insert—
 - “(da) section 168A (charges in respect of pension sharing etc);”.
- (4) After paragraph 18(2)(g) of that Schedule insert—
 - “(ga) section 116 of, and Schedule 5 to, the Pensions Act 2008 (discharge of liability in respect of pension compensation credit);
 - (gb) section 117 of that Act (charges in respect of pension compensation sharing costs);
 - (gc) section 118 of that Act (supply of information about pension compensation in relation to divorce etc);
 - (gd) section 119 of that Act (supply of information about pension compensation sharing);”.
- (5) In paragraph 18(2)(h) of that Schedule—
 - (a) after “section 111” insert “of this Act”;
 - (b) for “(g)” substitute “(gd)”.