



# Welfare Reform and Pensions Act 1999

## 1999 CHAPTER 30

### PART IV

#### PENSION SHARING

#### CHAPTER I

##### SHARING OF RIGHTS UNDER PENSION ARRANGEMENTS

**Modifications etc. (not altering text)**

- C1** Pt. IV Ch. I power to apply (with modifications) conferred (1.1.2006) by [Pensions Act 2004 \(c. 35\), ss. 220\(2\), 322\(1\)](#) (with s. 313); S.I. 2005/3331, art. 2(3), Sch. Pt. 3
- C2** Pt. IV Ch. I modified (1.8.2006) by [The Pension Protection Fund \(Pension Sharing\) Regulations 2006 \(S.I. 2006/1690\)](#), regs. 1(1), 2

#### *Pension sharing mechanism*

**27 Scope of mechanism.**

- (1) Pension sharing is available under this Chapter in relation to a person's shareable rights under any pension arrangement other than an excepted public service pension scheme.
- (2) For the purposes of this Chapter, a person's shareable rights under a pension arrangement are any rights of his under the arrangement, other than rights of a description specified by regulations made by the Secretary of State.
- (3) For the purposes of subsection (1), a public service pension scheme is excepted if it is specified by order made by such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the scheme.

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

### Commencement Information

- II** S. 27 wholly in force at 1.12.2000; s. 27 in force for certain purposes at Royal Assent see s. 89(1); s. 27 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), [art. 2\(2\)\(d\)](#), [Sch. Pt. IV](#)

## 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,
  - (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

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- 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—
- has been entered into in such circumstances as the Lord Chancellor may prescribe by regulations, and
  - satisfies such requirements as the Lord Chancellor may so prescribe.
- (3) For the purposes of subsection (1)(f), a qualifying agreement is one which—
- has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and
  - is registered in the Books of Council and Session.
- (4) Subsection (1)(b) does not apply if—
- 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
  - 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.
- (5) Subsection (1)(c) does not apply if—
- 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,
  - the pension arrangement to which the provision relates—
    - is the subject of a pension sharing order under the <sup>M11</sup>Matrimonial Causes Act 1973 in relation to the marriage, or
    - has already been the subject of pension sharing between the parties, or
  - 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—
- copies of the relevant <sup>F8</sup>... documents, and

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- (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) <sup>F14</sup>[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 (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 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)

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- 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)
- F14** Words in s. 28(10) substituted (26.1.2009) by Pensions Act 2008 (c. 30), **ss. 128(2)**, 149(1); S.I. 2009/82, art. 2(1)(b)

#### Commencement Information

- I2** 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.  
**M13** 1984 c. 42.

## 29 Creation of pension debits and credits.

- (1) On the application of this section—
- the transferor's shareable rights under the relevant arrangement become subject to a debit of the appropriate amount, and
  - the transferee becomes entitled to a credit of that amount as against the person responsible for that arrangement.
- (2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.
- (3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of subsection (1) is the lesser of—
- the specified amount, and
  - the cash equivalent of the relevant benefits on the valuation day.
- (4) Where the relevant arrangement is an occupational pension scheme and the transferor is in pensionable service under the scheme on the transfer day, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which

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he would be entitled under the scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

- (5) Otherwise, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the relevant arrangement by virtue of his shareable rights under it.
- (6) The Secretary of State may by regulations provide for any description of benefit to be disregarded for the purposes of subsection (4) or (5).
- (7) For the purposes of this section, the valuation day is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.
- (8) In this section—
- “relevant arrangement” means the arrangement to which the relevant order or provision relates;
- “relevant order or provision” means the order or provision by virtue of which this section applies;
- “transfer day” means the day on which the relevant order or provision takes effect;
- “transferor” means the person to whose rights the relevant order or provision relates;
- “transferee” means the person for whose benefit the relevant order or provision is made.

**Modifications etc. (not altering text)**

**C3** S. 29(1)(b) extended (1.12.2000) by [S.I. 1999/3147](#), arts. 32, 39(6), 40(5), [Sch. 5 para. 4\(5\)](#); [S.R. 2000/133](#), art. 2(3)(d), [Sch. Pt. IV](#)

**Commencement Information**

**I3** S. 29 wholly in force at 1.12.2000; s. 29 in force for certain purposes at Royal Assent see s. 89(1); s. 29 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

**30 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 29.
- (2) The power conferred by subsection (1) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a person prescribed by the regulations, or
- (b) in accordance with guidance from time to time prepared by a person so prescribed.

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*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

#### Commencement Information

- I4** S. 30 wholly in force at 1.12.2000; s. 30 in force for certain purposes at Royal Assent see s. 89(1); s. 30 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

### *Pension debits*

#### **31 Reduction of benefit.**

- (1) Subject to subsection (2), where a person's shareable rights under a pension arrangement are subject to a pension debit, each benefit or future benefit—
  - (a) to which he is entitled under the arrangement by virtue of those rights, and
  - (b) which is a qualifying benefit,is reduced by the appropriate percentage.
- (2) Where a pension debit relates to the shareable rights under an occupational pension scheme of a person who is in pensionable service under the scheme on the transfer day, each benefit or future benefit—
  - (a) to which the person is entitled under the scheme by virtue of those rights, and
  - (b) which corresponds to a qualifying benefit,is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.
- (3) A benefit is a qualifying benefit for the purposes of subsections (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.
- (4) The provisions of this section override any provision of a pension arrangement to which they apply to the extent that the provision conflicts with them.
- (5) In this section—

“appropriate percentage”, in relation to a pension debit, means—

  - (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
  - (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order or provision on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

#### Commencement Information

- I5** S. 31 wholly in force at 1.12.2000; s. 31 in force for certain purposes at Royal Assent see s. 89(1); s. 31 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

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## **32 Effect on contracted-out rights.**

- (1) The <sup>M14</sup>Pension Schemes Act 1993 shall be amended as follows.
- (2) In section 10 (protected rights), in subsection (1), for “subsections (2) and (3)” there shall be substituted “ the following provisions of this section ”, and at the end there shall be added—
  - “(4) Where, in the case of a scheme which makes such provision as is mentioned in subsection (2) or (3), a member’s rights under the scheme become subject to a pension debit, his protected rights shall exclude the appropriate percentage of the rights which were his protected rights immediately before the day on which the pension debit arose.
  - (5) For the purposes of subsection (4), the appropriate percentage is—
    - (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
    - (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the Welfare Reform and Pensions Act 1999 (lesser of specified amount and cash equivalent of transferor’s benefits) represents of the amount mentioned in subsection (3)(b) of that section (cash equivalent of transferor’s benefits).”
- (3) After section 15 there shall be inserted—

### **“15A Reduction of guaranteed minimum in consequence of pension debit.**

- (1) Where—
  - (a) an earner has a guaranteed minimum in relation to the pension provided by a scheme, and
  - (b) his right to the pension becomes subject to a pension debit,
 his guaranteed minimum in relation to the scheme is, subject to subsection (2), reduced by the appropriate percentage.
- (2) Where the earner is in pensionable service under the scheme on the day on which the order or provision on which the pension debit depends takes effect, his guaranteed minimum in relation to the scheme is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.
- (3) For the purposes of subsection (2), the corresponding qualifying benefit is the guaranteed minimum taken for the purpose of calculating the cash equivalent by reference to which the amount of the pension debit is determined.
- (4) For the purposes of this section the appropriate percentage is—
  - (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
  - (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the Welfare Reform and Pensions Act 1999 (lesser of specified amount and cash equivalent of transferor’s benefits) represents of the amount



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mentioned in subsection (3)(b) of that section (cash equivalent of transferor’s benefits).”

(4) In section 47 (entitlement to guaranteed minimum pensions for the purposes of the relationship with social security benefits), at the end there shall be added—

“(6) For the purposes of section 46, a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled but for any reduction under section 15A.”

(5) In section 181(1), there shall be inserted at the appropriate place—

““pension debit” means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999;”.

#### Commencement Information

**I6** S. 32 wholly in force at 1.12.2000; s. 32 in force for certain purposes at Royal Assent see s. 89(1); s. 32 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

**M14** 1993 c. 48.

### *Pension credits*

## **33 Time for discharge of liability.**

- (1) A person subject to liability in respect of a pension credit shall discharge his liability before the end of the implementation period for the credit.
- (2) Where the trustees or managers of an occupational pension scheme have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—
  - (a) they shall, except in such cases as the Secretary of State may prescribe by regulations, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
  - (b) section 10 of the <sup>M15</sup>Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.
- (3) If trustees or managers to whom subsection (2)(a) applies fail to perform the obligation imposed by that provision, section 10 of the <sup>M16</sup>Pensions Act 1995 shall apply to any trustee or manager who has failed to take all reasonable steps to ensure that the obligation was performed.
- (4) On the application of the trustees or managers of an occupational pension scheme who are subject to liability in respect of a pension credit, the Regulatory Authority may extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations.
- (5) In this section “the Regulatory Authority” means <sup>F15</sup>[the Pensions Regulator].

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#### **Textual Amendments**

**F15** Words in s. 33 substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), **ss. 7(2)(d)**, 322(1) (with s. 313); [S.I. 2005/275](#), art. 2(7), Sch. Pt. 7

#### **Modifications etc. (not altering text)**

**C4** [S. 33](#) modified (1.4.2008) by [The Agriculture and Horticulture Development Board Order 2008 \(S.I. 2008/576\)](#), **Sch. 4 para. 5**

#### **Commencement Information**

**I7** S. 33 wholly in force at 1.12.2000; s. 33 in force for certain purposes at Royal Assent see s. 89(1); s. 33 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**

**M15** 1995 c. 26.

**M16** 1995 c. 26.

### **34 “Implementation period”.**

- (1) For the purposes of this Chapter, the implementation period for a pension credit is the period of 4 months beginning with the later of—
- (a) the day on which the relevant order or provision takes effect, and
  - (b) the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of—
    - (i) the relevant <sup>F16</sup>... documents, and
    - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.
- (2) The reference in subsection (1)(b)(i) to the relevant <sup>F17</sup>... documents is to copies of—
- (a) the relevant order or provision, and
  - (b) the order, decree or declarator responsible for the divorce<sup>F18</sup>, dissolution] or annulment to which it relates,
- and, if the pension credit depends on provision falling within subsection (1)(f) of section 28, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.
- (3) Subsection (1) is subject to any provision made by regulations under section 41(2)(a).
- (4) The Secretary of State may by regulations—
- (a) make provision requiring a person subject to liability in respect of a pension credit 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 pension arrangement to which the relevant order or provision relates is being wound up;
  - (c) provide for this section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.
- (5) In this section—

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“relevant order or provision”, in relation to a pension credit, means the pension sharing order or provision on which the pension credit depends;

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

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

#### Textual Amendments

**F16** Word in s. 34(1)(b)(i) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 160\(2\)](#), [Sch. 30](#); [S.I. 2005/3175](#), art. 2(2)(6)

**F17** Word in s. 34(2) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 160\(3\)\(a\)](#), [Sch. 30](#); [S.I. 2005/3175](#), art. 2(2)(6)

**F18** Word in s. 34(2)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b), [Sch. 27 para. 160\(3\)\(b\)](#); [S.I. 2005/3175](#), art. 2(2)

#### Modifications etc. (not altering text)

**C5** S. 34 modified (1.12.2000) by [S.I. 2000/1053](#), [art. 4](#)

#### Commencement Information

**I8** S. 34 wholly in force at 1.12.2000; s. 34 in force for certain purposes at Royal Assent see s. 89(1); s. 34 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), [art. 2\(2\)\(d\)](#), [Sch. Pt. IV](#)

### 35 Mode of discharge of liability.

- (1) Schedule 5 (which makes provision about how liability in respect of a pension credit may be discharged) shall have effect.
- (2) Where the person entitled to a pension credit dies before liability in respect of the credit has been discharged—
  - (a) Schedule 5 shall cease to have effect in relation to the discharge of liability in respect of the credit, and
  - (b) liability in respect of the credit shall be discharged in accordance with regulations made by the Secretary of State.

#### Commencement Information

**I9** S. 35 wholly in force at 1.12.2000; s. 35 in force for certain purposes at Royal Assent see s. 89(1); s. 35 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), [art. 2\(2\)\(d\)](#), [Sch. Pt. IV](#)

### *Treatment of pension credit rights under schemes*

### <sup>F19</sup>36 Safeguarded rights.

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*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

#### **Textual Amendments**

- F19** S. 36 repealed (6.4.2009) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), [Sch. 11 Pt. 2](#); S.I. 2009/82, art. 2(2) (g)

### **37 Requirements relating to pension credit benefit.**

After section 101 of the <sup>M17</sup>Pension Schemes Act 1993 there shall be inserted—

#### **“PART IVA**

#### REQUIREMENTS RELATING TO PENSION CREDIT BENEFIT

#### **CHAPTER I**

#### PENSION CREDIT BENEFIT UNDER OCCUPATIONAL SCHEMES

#### **101A Scope of Chapter I.**

- (1) This Chapter applies to any occupational pension scheme whose resources are derived in whole or part from—
  - (a) payments to which subsection (2) applies made or to be made by one or more employers of earners to whom the scheme applies, or
  - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.
- (2) This subsection applies to payments—
  - (a) under an actual or contingent legal obligation, or
  - (b) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money.

#### **101B Interpretation.**

In this Chapter—

“scheme” means an occupational pension scheme to which this Chapter applies;

“pension credit rights” means rights to future benefits under a scheme which are attributable (directly or indirectly) to a pension credit;

“pension credit benefit”, in relation to a scheme, means the benefits payable under the scheme to or in respect of a person by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

“normal benefit age”, in relation to a scheme, means the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise).

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*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

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### **101C Basic principle as to pension credit benefit.**

- (1) Normal benefit age under a scheme must be between 60 and 65.
- (2) A scheme must not provide for payment of pension credit benefit in the form of a lump sum at any time before normal benefit age, except in such circumstances as may be prescribed.

### **101D Form of pension credit benefit and its alternatives.**

- (1) Subject to subsection (2) and section 101E, a person's pension credit benefit under a scheme must be—
  - (a) payable directly out of the resources of the scheme, or
  - (b) assured to him by such means as may be prescribed.
- (2) Subject to subsections (3) and (4), a scheme may, instead of providing a person's pension credit benefit, provide—
  - (a) for his pension credit rights under the scheme to be transferred to another occupational pension scheme or a personal pension scheme with a view to acquiring rights for him under the rules of the scheme, or
  - (b) for such alternatives to pension credit benefit as may be prescribed.
- (3) The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter II of this Part.
- (4) The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for pension credit benefit—
  - (a) if the person entitled to the benefit consents, or
  - (b) in such other cases as may be prescribed.

### **101E Discharge of liability where pension credit or alternative benefits secured by insurance policies or annuity contracts.**

- (1) A transaction to which section 19 applies discharges the trustees or managers of a scheme from their liability to provide pension credit benefit or any alternative to pension credit benefit for or in respect of a member of the scheme if and to the extent that—
  - (a) it results in pension credit benefit, or any alternative to pension credit benefit, for or in respect of the member being appropriately secured (within the meaning of that section),
  - (b) the transaction is entered into with the consent of the member or, if the member has died, of the member's widow or widower, and
  - (c) such requirements as may be prescribed are met.
- (2) Regulations may provide that subsection (1)(b) shall not apply in prescribed circumstances.

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*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

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## CHAPTER II

### TRANSFER VALUES

#### **101F Power to give transfer notice.**

- (1) An eligible member of a qualifying scheme may by notice in writing require the trustees or managers of the scheme to use an amount equal to the cash equivalent of his pension credit benefit for such one or more of the authorised purposes as he may specify in the notice.
- (2) In the case of a member of an occupational pension scheme, the authorised purposes are—
  - (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme,
  - (b) to purchase from one or more insurance companies such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy the prescribed requirements, and
  - (c) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.
- (3) In the case of a member of a personal pension scheme, the authorised purposes are—
  - (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme, and
  - (b) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.
- (4) The cash equivalent for the purposes of subsection (1) shall—
  - (a) in the case of a salary related occupational pension scheme, be taken to be the amount shown in the relevant statement under section 101H, and
  - (b) in any other case, be determined by reference to the date the notice under that subsection is given.
- (5) The requirements which may be prescribed under subsection (2) or (3) include, in particular, requirements of the Inland Revenue.
- (6) In subsections (2) and (3), references to an eligible scheme are to a scheme—
  - (a) the trustees or managers of which are able and willing to accept payment in respect of the member's pension credit rights, and
  - (b) which satisfies the prescribed requirements.
- (7) In this Chapter, “transfer notice” means a notice under subsection (1).

#### **101G Restrictions on power to give transfer notice.**

- (1) In the case of a salary related occupational pension scheme, the power to give a transfer notice may only be exercised if—

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*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

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- (a) the member has been provided with a statement under section 101H, and
  - (b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.
- (2) The power to give a transfer notice may not be exercised in the case of an occupational pension scheme if—
- (a) there is less than a year to go until the member reaches normal benefit age, or
  - (b) the pension to which the member is entitled by virtue of his pension credit rights, or benefit in lieu of that pension, or any part of it has become payable.
- (3) Where an eligible member of a qualifying scheme—
- (a) is entitled to make an application under section 95 to the trustees or managers of the scheme, or
  - (b) would be entitled to do so, but for the fact that he has not received a statement under section 93A in respect of which the guarantee date is sufficiently recent,
- he may not, if the scheme so provides, exercise the power to give them a transfer notice unless he also makes an application to them under section 95.
- (4) The power to give a transfer notice may not be exercised if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.

#### **101H Salary related schemes: statements of entitlement.**

- (1) The trustees or managers of a qualifying scheme which is a salary related occupational pension scheme shall, on the application of an eligible member, provide him with a written statement of the amount of the cash equivalent of his pension credit benefit under the scheme.
- (2) For the purposes of subsection (1), the amount of the cash equivalent shall be determined by reference to a date falling within—
  - (a) the prescribed period beginning with the date of the application, and
  - (b) the prescribed period ending with the date on which the statement under that subsection is provided to the applicant.
- (3) Regulations may make provision in relation to applications under subsection (1) and may, in particular, restrict the making of successive applications.
- (4) If trustees or managers to whom subsection (1) applies fail to perform an obligation under that subsection, section 10 of the <sup>M18</sup>Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to secure that the obligation was performed.

#### **101I Calculation of cash equivalents.**

Cash equivalents for the purposes of this Chapter shall be calculated and verified in the prescribed manner.

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

### **101J Time for compliance with transfer notice.**

- (1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice—
  - (a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and
  - (b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.
- (2) The Regulatory Authority may, in prescribed circumstances, extend the period for complying with the notice.
- (3) If the Regulatory Authority are satisfied—
  - (a) that there has been a relevant change of circumstances since they granted an extension under subsection (2), or
  - (b) that they granted an extension under that subsection in ignorance of a material fact or on the basis of a mistake as to a material fact,
 they may revoke or reduce the extension.
- (4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance—
  - (a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
  - (b) section 10 of the <sup>M19</sup>Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.
- (5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, section 10 of the Pensions Act 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.
- (6) Regulations may—
  - (a) make provision in relation to applications under subsection (2), and
  - (b) provide that subsection (4) shall not apply in prescribed circumstances.
- (7) In this section, “valuation date”, in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means—
  - (a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 101H is determined, and
  - (b) in the case of any other scheme, the date the notice is given.

### **101K Withdrawal of transfer notice.**

- (1) Subject to subsections (2) and (3), a person who has given a transfer notice may withdraw it by giving the trustees or managers to whom it was given notice in writing that he no longer requires them to comply with it.



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*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

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- (2) A transfer notice may not be withdrawn if the trustees or managers have already entered into an agreement with a third party to use the whole or part of the amount they are required to use in accordance with the notice.
- (3) If the giving of a transfer notice depended on the making of an application under section 95, the notice may only be withdrawn if the application is also withdrawn.

#### **101L Variation of the amount required to be used.**

- (1) Regulations may make provision for the amount required to be used under section 101F(1) to be increased or reduced in prescribed circumstances.
- (2) Without prejudice to the generality of subsection (1), the circumstances which may be prescribed include—
  - (a) failure by the trustees or managers of a qualifying scheme to comply with a notice under section 101F(1) within 6 months of the date by reference to which the amount of the cash equivalent falls to be determined, and
  - (b) the state of funding of a qualifying scheme.
- (3) Regulations under subsection (1) may have the effect of extinguishing an obligation under section 101F(1).

#### **101M Effect of transfer on trustees' duties.**

Compliance with a transfer notice shall have effect to discharge the trustees or managers of a qualifying scheme from any obligation to provide the pension credit benefit of the eligible member who gave the notice.

#### **101N Matters to be disregarded in calculations.**

In making any calculation for the purposes of this Chapter—

- (a) any charge or lien on, and
- (b) any set-off against,

the whole or part of a pension shall be disregarded.

#### **101O Service of notices.**

A notice under section 101F(1) or 101K(1) shall be taken to have been given if it is delivered to the trustees or managers personally or sent by post in a registered letter or by recorded delivery service.

#### **101P Interpretation of Chapter II.**

- (1) In this Chapter—
  - “eligible member”, in relation to a qualifying scheme, means a member who has pension credit rights under the scheme;
  - “normal benefit age”, in relation to an eligible member of a qualifying scheme, means the earliest age at which the member is entitled to receive a pension by virtue of his pension credit rights under

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

the scheme (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise);

“pension credit benefit”, in relation to an eligible member of a qualifying scheme, means the benefits payable under the scheme to or in respect of the member by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

“pension credit rights”, in relation to a qualifying scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit;

“qualifying scheme” means a funded occupational pension scheme and a personal pension scheme;

“transfer notice” has the meaning given by section 101F(7).

- (2) For the purposes of this Chapter, an occupational pension scheme is salary related if—
- (a) it is not a money purchase scheme, and
  - (b) it does not fall within a prescribed class.
- (3) In this Chapter, references to the relevant statement under section 101H, in relation to a transfer notice given to the trustees or managers of a salary related occupational pension scheme, are to the statement under that section on which the giving of the notice depended.
- (4) For the purposes of this section, an occupational pension scheme is funded if it meets its liabilities out of a fund accumulated for the purpose during the life of the scheme.

### **101Q Power to modify Chapter II in relation to hybrid schemes.**

Regulations may apply this Chapter with prescribed modifications to occupational pension schemes—

- (a) which are not money purchase schemes, but
- (b) where some of the benefits that may be provided are money purchase benefits.”

#### **Commencement Information**

**I10** S. 37 wholly in force at 1.12.2000; s. 37 in force for certain purposes at Royal Assent see s. 89(1); s. 37 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**

**M17** 1993 c. 48.

**M18** 1995 c. 26.

**M19** 1995 c. 26.

### **38 Treatment in winding up.**

<sup>F20</sup>(1) .....

- (2) In the case of an occupational pension scheme which is not a scheme to which [<sup>F21</sup>this section] applies, rights attributable (directly or indirectly) to a pension credit are to be accorded in a winding up the same treatment—

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

- (a) if they have come into payment, as the rights of a pensioner member, and
- (b) if they have not come into payment, as the rights of a deferred member.

[<sup>F22</sup>(2A) This section applies to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.]

(3) Subsection (2) overrides the provisions of a scheme to the extent that it conflicts with them, and the scheme has effect with such modifications as may be required in consequence.

(4) In subsection (2)—

- (a) “deferred member” and “pensioner member” have the same meanings as in Part I of the Pensions Act 1995,
- (b) “pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b), and
- (c) references to rights attributable to a pension credit having come into payment are to the person to whom the rights belong having become entitled by virtue of the rights to the present payment of pension or other benefits.

#### Textual Amendments

- F20** S. 38(1) repealed (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 13](#); S.I. 2005/695, art. 2(7), [Sch. 1](#)
- F21** Words in s. 38(2) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 75\(a\)](#); S.I. 2005/3331, art. 2(1)(a)(b), [Sch. Pt. 1](#)
- F22** S. 38(2A) inserted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 75\(b\)](#); S.I. 2005/3331, art. 2(1)(a)(b), [Sch. Pt. 1](#)

#### Commencement Information

- I11** S. 38 wholly in force at 1.12.2000; s. 38 in force for certain purposes at Royal Assent see s. 89(1); s. 38 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

### Indexation

#### 39 Public service pension schemes.

(1) The <sup>M20</sup>Pensions (Increase) Act 1971 shall be amended as follows.

(2) In section 3 (qualifying conditions), after subsection (2) there shall be inserted—

“(2A) A pension attributable to the pensioner having become entitled to a pension credit shall not be increased unless the pensioner has attained the age of fifty-five years.”

(3) In section 8, in subsection (1) (definition of “pension”), in paragraph (a), the words from “(either” to “person)” shall be omitted.

(4) In that section, in subsection (2) (when pension deemed for purposes of the Act to begin), after “pension”, in the first place, there shall be inserted “ which is not attributable to a pension credit ”, and after that subsection there shall be inserted—

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

“(2A) A pension which is attributable to a pension credit shall be deemed for purposes of this Act to begin on the day on which the order or provision on which the credit depends takes effect.”

(5) In section 17(1) (interpretation)—

(a) for the definitions of “derivative pension” and “principal pension” there shall be substituted—

““derivative pension” means a pension which—

- (a) is not payable in respect of the pensioner’s own services, and
- (b) is not attributable to the pensioner having become entitled to a pension credit;”

(b) after the definition of “pension” there shall be inserted—

““pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;

“principal pension” means a pension which—

- (a) is payable in respect of the pensioner’s own services, or
- (b) is attributable to the pensioner having become entitled to a pension credit;”

(c) for the definition of “widow’s pension” there shall be substituted—

““widow’s pension” means a pension payable—

- (a) in respect of the services of the pensioner’s deceased husband, or
- (b) by virtue of the pensioner’s deceased husband having become entitled to a pension credit.”

**Commencement Information**

**I12** S. 39 wholly in force at 1.12.2000; s. 39 in force for certain purposes at Royal Assent see s. 89(1); s. 39 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047, art. 2\(2\)\(d\)](#), [Sch. Pt. IV](#)

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**Marginal Citations**

**M20** [1971 c. 56](#).

**40 Other pension schemes.**

(1) The Secretary of State may by regulations make provision for a pension to which subsection (2) applies to be increased, as a minimum, by reference to [<sup>F23</sup>relevant percentage increases], so far as not exceeding [<sup>F24</sup>the maximum percentage] per annum.

(2) [<sup>F25</sup>Subject to subsection (2A), this] subsection applies to—

(a) a pension provided to give effect to eligible pension credit rights of a member under a qualifying occupational pension scheme, <sup>F26</sup>...

<sup>F26</sup>(b) .....

[<sup>F27</sup>(2A) Subsection (2) does not apply to pensions which—

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

- (a) are money purchase benefits, and
- (b) become pensions in payment on or after the commencement day.]

[<sup>F28</sup>(2AA) In subsection (1) “relevant percentage increases” means percentage increases estimated by the Secretary of State from time to time for the purposes of paragraph 2(3)(a) of Schedule 3 to the Pension Schemes Act 1993 for revaluation periods of 12 months.]

[<sup>F27</sup>(2B) For the purposes of subsection (1) the “ maximum percentage ” means—

- (a) 5% in a case where—
  - (i) the pension is in payment before the commencement day, or
  - (ii) the pension is not in payment before the commencement day but the entitlement to the relevant pension credit arose before that day, and
- (b) 2.5% in a case where the entitlement to the relevant pension credit arises on or after the commencement day.]

(3) In this section—

[<sup>F29</sup> “ commencement day ” means the day appointed for the coming into force of section 280 of the Pensions Act 2004 (amendments to section 40); ]

“eligible”, in relation to pension credit rights, means of a description prescribed by regulations made by the Secretary of State;

[<sup>F29</sup> “ money purchase benefit ” has the meaning given by section 181(1) of the Pension Schemes Act 1993; ]

“pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a credit under section 29(1)(b) or under corresponding Northern Ireland legislation;

“qualifying occupational pension scheme” means an occupational pension scheme which is not a public service pension scheme;

[<sup>F29</sup> “ relevant pension credit ” means the pension credit to which the eligible pension credit rights <sup>F30</sup>... are (directly or indirectly) attributable; ]

“safeguarded rights” has the meaning given in section 68A of the <sup>M21</sup>Pension Schemes Act 1993.

#### Textual Amendments

- F23** Words in s. 40(1) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 19(10)**, 38(4); S.I. 2011/3034, art. 3(b)
- F24** Words in s. 40(1) substituted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 280(2)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F25** Words in s. 40(2) substituted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 280(3)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F26** S. 40(2)(b) repealed (6.4.2009) by [Pensions Act 2008 \(c. 30\)](#), s. 149(1), **Sch. 11 Pt. 2**; S.I. 2009/82, art. 2(2)(g)
- F27** S. 40(2A)(2B) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 280(4)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F28** S. 40(2AA) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 19(11)**, 38(4); S.I. 2011/3034, art. 3(b)

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

- F29** Words in s. 40(3) inserted (15.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), **ss. 280(5), 322(1)** (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/695, art. 2(4)
- F30** Words in s. 40(3) repealed (6.4.2009) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 11 Pt. 2**; S.I. 2009/82, art. 2(2)(g)

**Modifications etc. (not altering text)**

- C6** S. 40 modified (30.12.2005) by Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, 16, **Sch. 2 para. 5**
- C7** S. 40(3) modified by SI 2000/1054 reg. 35 (as substituted (6.4.2005) by Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/704), regs. 1(2), **16**)

**Commencement Information**

- I13** S. 40 wholly in force at 1.12.2000; s. 40 in force for certain purposes at Royal Assent see s. 89(1); s. 40 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**

- M21** 1993 c. 48.

*Charges by pension arrangements*

**41 Charges in respect of pension sharing costs.**

- (1) The Secretary of State may by regulations make provision for the purpose of enabling the person responsible for a pension arrangement involved in pension sharing to recover from the parties to pension sharing prescribed charges in respect of prescribed descriptions of pension sharing activity.
- (2) Regulations under subsection (1) may include—
  - (a) provision for the start of the implementation period for a pension credit to be postponed in prescribed circumstances;
  - (b) provision, in relation to payments in respect of charges recoverable under the regulations, for reimbursement as between the parties to pension sharing;
  - (c) provision, in relation to the recovery of charges by deduction from a pension credit, for the modification of Schedule 5;
  - (d) provision for the recovery in prescribed circumstances of such additional amounts as may be determined in accordance with the regulations.
- (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 sharing is to be determined as follows—
  - (a) where the relevant order or provision includes provision about the apportionment of charges under this section, there is attributable to the party so much of the charge as is apportioned to him by that provision;
  - (b) where the relevant order or provision does not include such provision, the charge is attributable to the transferor.
- (4) For the purposes of subsection (1), a pension arrangement is involved in pension sharing if section 29 applies by virtue of an order or provision which relates to the arrangement.

*Status: Point in time view as at 03/01/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

- (5) In that subsection, the reference to pension sharing activity is to activity attributable (directly or indirectly) to the involvement in pension sharing.
- (6) In subsection (3)—
- (a) the reference to the relevant order or provision is to the order or provision which gives rise to the pension sharing, and
  - (b) the reference to the transferor is to the person to whose rights that order or provision relates.
- (7) In this section “prescribed” means prescribed in regulations under subsection (1).

#### Commencement Information

**I14** S. 41 wholly in force at 1.12.2000; s. 41 in force for certain purposes at Royal Assent see s. 89(1); s. 41 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

#### *Adaptation of statutory schemes*

## **42 Extension of scheme-making powers.**

- (1) Power under an Act to establish a pension scheme shall include power to make provision for the provision, by reference to pension credits which derive from rights under—
- (a) the scheme, or
  - (b) a scheme in relation to which the scheme is specified as an alternative for the purposes of paragraph 2 of Schedule 5,
- of benefits to or in respect of those entitled to the credits.
- (2) Subsection (1) is without prejudice to any other power.
- (3) Subsection (1) shall apply in relation to Acts whenever passed.
- (4) No obligation to consult shall apply in relation to the making, in exercise of a power under an Act to establish a pension scheme, of provision of a kind authorised by subsection (1).
- (5) Any provision of, or under, an Act which makes benefits under a pension scheme established under an Act a charge on, or payable out of—
- (a) the Consolidated Fund,
  - (b) the Scottish Consolidated Fund, or
  - (c) the Consolidated Fund of Northern Ireland,
- shall be treated as including any benefits under the scheme which are attributable (directly or indirectly) to a pension credit which derives from rights to benefits charged on, or payable out of, that fund.
- (6) In this section—
- “pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b);
  - “pension scheme” means a scheme or arrangement providing benefits, in the form of pensions or otherwise, payable on termination of service, or

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on death or retirement, to or in respect of persons to whom the scheme or arrangement applies.

#### **Commencement Information**

**I15** S. 42 wholly in force at 1.12.2000; s. 42 in force for certain purposes at Royal Assent see s. 89(1); s. 42 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

### **43 Power to extend judicial pension schemes.**

(1) The appropriate minister may by regulations amend the <sup>M22</sup>Sheriffs' Pensions (Scotland) Act 1961, the <sup>M23</sup>Judicial Pensions Act 1981 or the <sup>M24</sup>Judicial Pensions and Retirement Act 1993 for the purpose of—

- (a) extending a pension scheme under the Act to include the provision, by reference to pension credits which derive from rights under—
  - (i) the scheme, or
  - (ii) a scheme in relation to which the scheme is specified as an alternative for the purposes of paragraph 2 of Schedule 5, of benefits to or in respect of those entitled to the credits, or
- (b) restricting the power of the appropriate minister to accept payments into a pension scheme under the Act, where the payments represent the cash equivalent of rights under another pension scheme which are attributable (directly or indirectly) to a pension credit.

(2) Regulations under subsection (1)—

- (a) may make benefits provided by virtue of paragraph (a) of that subsection a charge on, and payable out of, the Consolidated Fund;
- (b) may confer power to make subordinate legislation, including subordinate legislation which provides for calculation of the value of rights in accordance with guidance from time to time prepared by a person specified in the subordinate legislation.

(3) The appropriate minister for the purposes of subsection (1) is—

- (a) in relation to a pension scheme whose ordinary members are limited to those who hold judicial office whose jurisdiction is exercised exclusively in relation to Scotland, the Secretary of State, and
- (b) in relation to any other pension scheme, the Lord Chancellor.

(4) In this section—

“pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b);

“pension scheme” means a scheme or arrangement providing benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of persons to whom the scheme or arrangement applies.

#### **Commencement Information**

**I16** S. 43 wholly in force at 1.12.2000; s. 43 in force for certain purposes at Royal Assent see s. 89(1); s. 43 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)



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#### Marginal Citations

- M22** 1961 c. 42.  
**M23** 1981 c. 20.  
**M24** 1993 c. 8.

### Supplementary

#### 44 Disapplication of restrictions on alienation.

- (1) Nothing in any of the following provisions (restrictions on alienation of pension rights) applies in relation to any order or provision falling within section 28(1)—
- (a) [<sup>F31</sup>section 356 of the Armed Forces Act 2006] and section 159(4) and (4A) of the <sup>M25</sup>Pension Schemes Act 1993,
  - (b) section 91 of the <sup>M26</sup>Pensions Act 1995,
  - (c) any provision of any enactment (whether passed or made before or after this Act is passed) corresponding to any of the enactments mentioned in paragraphs (a) and (b), and
  - (d) any provision of a pension arrangement corresponding to any of those enactments.
- (2) In this section, “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the <sup>M27</sup>Interpretation Act 1978).

#### Textual Amendments

- F31** Words in s. 44(1)(a) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 162](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

#### Commencement Information

- I17** S. 44 wholly in force at 1.12.2000; s. 44 in force for certain purposes at Royal Assent see s. 89(1); s. 44 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

- M25** 1993 c. 48.  
**M26** 1995 c. 26.  
**M27** 1978 c.30.

#### 45 Information.

- (1) The Secretary of State may by regulations require the person responsible for a pension arrangement involved in pension sharing to supply to such persons as he may specify in the regulations such information relating to anything which follows from the application of section 29 as he may so specify.
- (2) Section 168 of the <sup>M28</sup>Pension Schemes Act 1993 (breach of regulations) shall apply as if this section were contained in that Act (otherwise than in Chapter II of Part VII).
- (3) For the purposes of this section, a pension arrangement is involved in pension sharing if section 29 applies by virtue of an order or provision which relates to the arrangement.

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*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I. (See end of Document for details)*

#### **Commencement Information**

**I18** S. 45 wholly in force at 1.12.2000; s. 45 in force for certain purposes at Royal Assent see s. 89(1); s. 45 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**

**M28** 1993 c. 48.

## **46 Interpretation of Chapter I.**

(1) In this Chapter—

“implementation period”, in relation to a pension credit, has the meaning given by section 34;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pension arrangement” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (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, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a credit under section 29(1)(b) or under corresponding Northern Ireland legislation;

“pension credit” means a credit under section 29(1)(b);

“pension debit” means a debit under section 29(1)(a);

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the <sup>M29</sup>Income and Corporation Taxes Act 1988;

“shareable rights” has the meaning given by section 27(2);

“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.

(2) In this Chapter, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to 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” in subsection (1), to the provider of the annuity, and

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- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, to the insurer.
- (3) In determining what is “pensionable service” for the purposes of this Chapter—
- (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
  - (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

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**Commencement Information**

**I19** S. 46 wholly in force at 1.12.2000; s. 46 in force for certain purposes at Royal Assent see s. 89(1); s. 46 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

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**Marginal Citations**

**M29** 1988 c. 1.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, Chapter I.