

2001 No. 152

EDUCATION

**The Teachers' Superannuation (Pension Sharing on Divorce)
(Scotland) Regulations 2001**

Made 9th April 2001

Laid before the Scottish Parliament 18th April 2001

Coming into force 14th May 2001

The Scottish Ministers, in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a), and of all other powers enabling them in that behalf, after consulting with representatives of education authorities and of teachers and with such representatives of other persons likely to be affected by the Regulations as appear to them to be appropriate in accordance with section 9(5) of that Act, and with the consent of the Treasury(b), hereby make the following Regulations:

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Pension Sharing on Divorce) (Scotland) Regulations 2001.

(2) These Regulations shall come into force on 14th May 2001 and shall have effect from 1st December 2000.

(3) These Regulations extend to Scotland only.

Amendment of the Teachers' Superannuation (Scotland) Regulations 1992

2. The Teachers' Superannuation (Scotland) Regulations 1992(c) ("the 1992 Regulations") shall be amended in accordance with regulations 3 to 5 of these Regulations.

Pension sharing on divorce

3. After Part H of the 1992 Regulations shall be inserted the following:—

(a) 1972 c.11: section 9 was amended by sections 4(1), 8(3) and (4), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) and section 12 was amended by section 10 of that Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1, (S.I. 1999/1750).

(b) This function was transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury Order 1981 (S.I. 1981/1670) and still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(c) S.I. 1992/280, amended by S.I. 1992/1025 and 1597, 1993/490 and 2513, 1994/1715 and 2699, 1995/840, 1670 and 2865, 1997/676, 1998/718, 1999/446 and S.S.I. 2000/366.

“PART J
PENSION SHARING
PRELIMINARY PROVISIONS

Interpretation of Part J

J1.—(1) The definitions of expressions contained in Schedule 1A shall, unless the context indicates that they have a different meaning, apply for their interpretation in this Part of the Regulations as well as those definitions of expressions contained in Schedule 1.

(2) All provisions in Parts A to H of these Regulations shall, unless the context indicates otherwise, be subject to the provisions of this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

J2.—(1) Pension sharing is available under the Scheme in respect of any of a person’s shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights for the purposes of this Part of these Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme(a).

Pension sharing order activates pension sharing creating pension debits and credits

J3. On the coming into effect of a pension sharing order—

- (a) the transferor’s shareable rights under the Scheme become subject to a debit of the appropriate amount (“pension debit”(b)) as defined in regulation J4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”(c)) as against the Scottish Ministers.

Calculation of “appropriate amount”

J4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation J3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation J3 is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which he would be entitled under the Scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of his shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation J3(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(a) See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the Welfare Reform and Pensions Act 1999 (c.30) (“the 1999 Act”) 1999 Act. Additional Voluntary Contributions (“AVCs”) are paid under regulations different to those constituting the Scheme (see S.I. 1995/2814).

(b) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

(c) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect^(a).

Pension debits and reduction of benefit

J5.—(1) Subject to paragraph (2), where a member's shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which he is entitled under the Scheme 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 the Scheme of a member 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 paragraphs (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) In this regulation^(b)—

“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 of the 1999 Act 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 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.

Effect of pension sharing on protected rights and guaranteed minimum pension

J6. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member's rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993^(c).

MODE OF DISCHARGE AND IMPLEMENTATION PERIOD

Discharge of pension credit liability

J7.—(1) The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse.

(2) If the Scheme becomes closed to new members, the liability in respect of any pension credit derived from the Scheme may be discharged in accordance with paragraphs 2(3) to (5) of Schedule 5 to the 1999 Act and in accordance with regulations made under paragraph 2(3) of Schedule 5 to that Act.

(3) For the purposes of this regulation, rights conferred on the ex-spouse are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises, takes effect; and

(a) This definition is that in section 29(8) of the 1999 Act.

(b) The definitions in this paragraph are those in section 31(5) of the 1999 Act.

(c) 1993 c.30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

- (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents(a), equals the amount of the credit.

Adjustment to the amount of the pension credit - payments made without the knowledge of the pension debit

J8. If–

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit;
- (b) the Scottish Ministers make a payment which is referable to those rights without knowing of the pension debit; and
- (c) the cash equivalent of the member’s shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount(b).

Implementation period for discharge of pension credit

J9.—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within the implementation period(c), which for a pension credit is the period of 4 months beginning with the later of–

- (a) the day on which the relevant pension sharing order takes effect; and
- (b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of–
 - (i) the relevant matrimonial documents, and
 - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act(d).

(2) The reference in paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of–

- (a) the relevant pension sharing order; and
- (b) the order, decree or declarator responsible for the divorce or annulment to which it relates,

and, if the pension credit depends on provision falling within subsection (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act(e).

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 34(4)(a) and (c) of the 1999 Act which–

- (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 that 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(f).

(a) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).
(b) See the 1999 Act, Schedule 5, paragraph 9 and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).
(c) Section 33(1) of the 1999 Act.
(d) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).
(e) See regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049), which specifies circumstances in which the implementation period may be postponed.
(f) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

Failure to discharge liability in respect of pension credit within the implementation period - Death of ex-spouse within period

J10.—(1) Where the Scottish Ministers 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 under section 33(2)(a) of the 1999 Act^(a), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and
- (b) section 10 of the Pension Act 1995^(b) (power of the Regulatory Authority to impose civil penalties) shall apply where the Scottish Ministers have 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.

(2) If the Scottish Ministers fail to perform the obligation imposed by paragraph (1)(a) above, section 10 of the Pensions Act 1995 shall apply.

(3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the Scottish Ministers 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 made under section 33(4) of the 1999 Act^(c).

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by the payment of a lump sum in accordance with paragraph (6).

(6) Upon the death of a pension credit member, a death gratuity shall be paid if, at the time of his death, he has not received any pension credit benefits or if he has received a pension for less than 5 years. The amount of the death gratuity to be paid is—

- (a) if the pension credit member was already entitled to payment of pension credit benefits, a lump sum equal to 5 times the amount of the pension which would otherwise have been payable less any amount which has already been paid; or
- (b) if the pension credit member was not entitled to pension credit benefits, a lump sum equal to that to which he would have been entitled if, on the date of his death, he had attained the age of 60.

(7) Any death gratuity referred to in paragraph (6) shall be paid to the individual nominated by the deceased to receive the gratuity or, in the absence of such a nomination, to the deceased’s spouse, whom failing, to his legal personal representative. Any nomination for the purposes of this paragraph shall be made by giving written notice to the Scottish Ministers.

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

Appropriate rights and Pension credit benefits under the Scheme

J11.—(1) Except as referred to in this regulation or otherwise in this Part of the Regulations, the appropriate rights under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The amount of the lump sum on retirement to which a pension credit member shall be entitled shall be calculated on the same basis as if his pension were a deferred pension under the Scheme, except that no lump sum on retirement shall be paid to the pension credit member if the corresponding pension debit member has already received a lump sum from the Scheme before the date of the implementation of the pension sharing order.

(a) See regulation 2 of S.I. 2000/1053 which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

(b) 1995 c.26.

(c) See regulation 3 of S.I. 2000/1053.

(4) A pension credit member is entitled to his pension credit benefits on reaching his normal retirement age.

(5) The pension credit benefits are payable immediately on reaching normal retirement age and may not be deferred.

Additional contributions and additional periods

J12.—(1) Subject to paragraph (2) an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made(a).

(2) The provisions of paragraph (1) shall be relaxed if in line with any taxation exception or concession, which the Inland Revenue may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(b), or otherwise.

Commutation: small pensions

J13.—(1) Regulation H7 shall apply, if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) Regulation H7 shall apply in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall for the purpose of this regulation be aggregated with any other pension payable to that member under the Scheme.

Commutation: exceptional ill-health

J14.—(1) The whole of the pension element payable in respect of a pension credit benefit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal retirement age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled if on the date of commutation he had already reached the normal retirement age.

Transfer Values

J15. The Scottish Ministers shall not pay or accept a transfer value within the meaning of regulations F1 to F3 in respect of any pension credit rights or pension credit benefits.

MISCELLANEOUS

Charges in respect of pension sharing costs

J16.—(1) The Scottish Ministers may recover from the parties involved in pension sharing charges as set out in paragraph (2).

(a) See section 590(3)(bb) of the Taxes Act 1988 (c.1), inserted by the Finance Act 1999 (c.16) Schedule 10, paragraph 2(3).

(b) See S.I.s 2000/ 1085 and 1093.

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case(a).

(4) The Scottish Ministers shall, before a pension sharing order is made, inform the member or his spouse, as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or his spouse, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act(b).

Excluded membership

J17.—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member, he may not count any period which may count for any purpose in connection with his pension credit benefit towards any membership period required under the Scheme.

Assignment

J18. Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

Payment of Benefits/Interest on late payment of certain benefits

J19. The provisions of regulation E31 and E31A shall apply to the pension credit member.”.

Interpretation of 1992 Regulations

4. After Schedule 1 to the 1992 Regulations there shall be inserted Schedule 1A as set out in Schedule 1 to these Regulations.

Minor and consequential amendments to the 1992 Regulations

5. The 1992 Regulations shall be amended in terms of the minor and consequential amendments specified in Schedule 2 to these Regulations.

St Andrew's House,
Edinburgh
5th April 2001

We consent,

ANGUS MACKAY
A member of the Scottish Executive

JIM DOWD

CLIVE BETTS
Two of the Lords Commissioners
of Her Majesty's Treasury

9th April 2001

(a) See regulation 5 of the Pensions on Divorce etc (Charging) Regulations 2000 (S.I. 2000/1049).

(b) See regulations 2-9 of S.I. 2000/1049.

SCHEDULE 1

SCHEDULE TO BE INSERTED IN THE TEACHERS' SUPERANNUATION
(SCOTLAND) REGULATIONS 1992

“SCHEDULE 1A
INTERPRETATION

In these Regulations–

- “the 1993 Act” means the Pension Schemes Act 1993(a);
- “the 1995 Act” means the Pensions Act 1995(b);
- “the 1999 Act” means the Welfare Reform and Pensions Act 1999(c);
- “appropriate percentage” has the meaning given in regulation J5(4);
- “appropriate rights” has the meaning given in regulation J7(3);
- “ex-spouse” means an individual to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
- “indexing” means indexing according to the Government Index of Retail Prices;
- “the Inland Revenue” means the Commissioners of Inland Revenue;
- “member of the Scheme” means a member of the Scheme and includes an active member, a deferred member and a pension credit member;
- “normal retirement age” means 60;
- “pension credit” has the meaning given in regulation J3(b);
- “pension credit benefit” means in relation to the Scheme the benefits payable under the Scheme to or in respect of a pension credit member by virtue of his appropriate rights under the Scheme attributable to a pension credit;
- “pension credit member” means an individual who is a member of the Scheme, either,
- (i) solely for the provision of a pension credit benefit; or
 - (ii) for the wholly separate provision of a pension credit benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason;
- “pension credit rights” means rights to future benefits under the Scheme which are attributable to a pension credit;
- “pension debit” has the meaning given in regulation J3(a);
- “pension debit member” means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;
- “pension sharing order” means any order or provision which is mentioned in section 28(1) of the 1999 Act or article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(d);
- “pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995(e);
- “Regulatory Authority” has the meaning given in regulation J10(4);
- “the Scheme” means the pension scheme constituted by these Regulations;
- “shareable rights” has the meaning given by section 27(2) of the 1999 Act;
- “transfer day” has the meaning given in regulation J5(4);
- “transferee” has the meaning given by section 29(8) of the 1999 Act; and
- “transferor” has the meaning given by section 29(8) of the 1999 Act.”.

(a) 1993 c.48.

(b) 1995 c.26.

(c) 1999 c.30.

(d) S.I. 1999/3147 (N.I. 11).

(e) Section 124 is amended by paragraph 61 of Schedule 12 to the Welfare Reform and Pensions Act 1999.

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS TO THE TEACHERS'
SUPERANNUATION (SCOTLAND) REGULATIONS 1992**Interpretation**

1. In regulation A2 after paragraph (1) insert “(1)A Schedule 1A shall also apply as regards the interpretation of these Regulations”.

Amount of retirement pension

2. In regulation E6(1), for “E11” there shall be substituted “E11A”.

Pension debit member

3. After regulation E11 insert—

“Pension debit member

E11A.—(1) The amount of a retirement pension or retirement lump sum payable to a pension debit member shall be reduced to take into account the debit to which the shareable rights of the pension debit member are subject under a pension sharing order.

(2) The amount of the reduction shall be in accordance with guidance issued for this purpose by the Government Actuary.”.

Deficiency grants

4. In regulation E20(4), after the words “(actuarial reduction of lump sum on early retirement)” there shall be inserted the words “or any debited pension rights by virtue of regulation J5 (pension debits and reduction of benefit)”.

Amount and duration of short-term family benefits

5. In regulation E24(1)(c) after the words “retirement pension” there shall be inserted the words “save that any reduction in that retirement pension by virtue of a pension sharing order shall be disregarded if the short-term pension is payable to a child”.

Amounts of spouses’ and nominated beneficiaries’ long-term pensions

6. In regulation E26—

- (a) in paragraph (1) for the words “paragraph (2)” there shall be inserted the words “paragraphs (2) and (2A)”;
- and
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where after a pension sharing order has taken effect a surviving spouse of a nominated beneficiary becomes entitled to a pension under regulation E25, that pension shall be reduced by the same proportion by which the deceased’s retirement benefits would have been reduced if he had become entitled to them on the day he died.”.

Amounts of children’s long-term pensions

7. In regulation E27, after paragraph (3), there shall be inserted—

“(3A) In the case of a pension debit member, the pension is calculated by reference to the pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.”.

Payment of benefits

8. In regulation E31(1) after the words “this Part” insert the words “or Part J”.

Interest on late payment of certain benefits

9. In regulation E31A(1) after the words “payable under regulation E23” insert the words “or under Part J”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the Teachers' Superannuation (Scotland) Regulations 1992 ("the 1992 Regulations"). They have retrospective effect from 1st December 2000 as authorised by section 12 of the Superannuation Act 1972. "The Secretary of State" in these Regulations means The Secretary of State for Social Security.

Regulation 3 inserts a new Part J into the 1992 Regulation to allow for pension sharing on divorce.

Part J (Regulations J1 to J20) have the following effect—

Regulation J1 provides that the definitions of expression in respect of Part J are set out in Schedule 1A to the 1992 Regulations and are additional to the definitions of expression in Schedule 1 of those Regulations.

Regulation J2 provides for pension sharing in respect of a member's shareable rights under the 1992 Regulations but excludes any benefit payable to a widow or widower or other dependant of a deceased member.

Regulation J3 provides for the member's shareable rights to be debited and for the transferee to be entitled to a pension credit.

Regulation J4 provides for the calculation of the specified percentage or the amount to be transferred and defines valuation day and transfer day for the purposes of this regulation.

Regulation J5 provides for the shareable rights of the debit member to be reduced in accordance with the appropriate percentage of the pension credit.

Regulation J6 provides for the debit member's protected rights or guaranteed minimum pension to be reduced by the appropriate percentage.

Regulation J7 allows the Scottish Ministers to discharge their liability in respect of the pension credit by providing the appropriate rights within the Scheme under regulation J11 which equals the amount of the credit.

Regulation J8 makes provision for the pension credit to be reduced in circumstances where the Scottish Ministers are not aware of the pension debit and make a payment in respect of the shareable rights. If the cash equivalent of the member's shareable rights after deduction the payment is less than the amount of the pension debit, the pension credit will be reduced to the lesser amount.

Regulation J9 provides for the Scottish Ministers to discharge their liability in respect of a pension credit within the 4 months 'implementation period'. The regulation also sets out the documents which Scottish Ministers must receive in order to establish the day on which the implementation period begins. It also sets out the requirement to notify the transferor and transferee of that date or any cessation or postponement of that date.

Regulation J10 Paragraphs 1 and 2 provide that where the Scottish Ministers fail to discharge their liability within the implementation period they must notify the Regulatory Authority within the period prescribed in regulations under section 33(2)(a) of the 1999 Act and section 10 (civil penalties) of the Pensions Act 1995 will apply. The prescribed period set out in regulation 2 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 is 21 days from the day immediately following the implementation period. Paragraph 3 of regulation 10 provides for Scottish Ministers to request an extension of the implementation period under section 33(4) of the 1999 Act. Under regulation 3 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 the request must be made before the end of the implementation period. (Provision is also made under regulation 4 of those Regulations for the implementation period to be postponed or to cease where an application is made for leave to appeal out of time.)

Regulation J11 sets out the appropriate rights in respect of the pension credit member. The credit member benefits are restricted to pension and lump sum on retirement and lump sum on death and will be treated as a preserved pension. Provision is made for benefits to be increased under the Pensions Increase Act 1971. Benefits will be payable on reaching normal

retirement age for the Scheme (age 60) and may not be deferred. Provision is made for early payment of the pension credit with actuarial reduction.

Regulation J12 prevents the active member from purchasing additional service to replace any rights debited and restricts the amount of additional service which may be purchased to the amount of service the member could have purchased if the pension sharing order had not been made. This restriction is relaxed in respect of moderate earners whose earnings at the date of divorce or annulment is not more than 25 per cent of the permitted maximum or such other amount as may be prescribed.

Regulation J13 provides for a pension credit to be commuted on grounds of triviality. Where a pension credit member is also a member the Scheme, the pension credit may only be commuted if the aggregate of pension or pensions under the Scheme falls below the limit in regulation H7.

Regulation J14 provides for the pension credit to be commuted for a lump sum payment before the normal benefit age on grounds of terminal ill-health where the life expectancy is less than one year.

Regulation J15 prevents the Scheme from accepting a transfer of a pension credit from another occupational or personal pension scheme.

Regulation J16 allows the Scottish Ministers to recover the costs accrued in respect of pension sharing as set out in the Pensions on Divorce etc (Charging) Regulations 2000 (S.I. 2000/1049).

Regulation J17 ensures that, where a pension credit member is also an active or deferred member, the pension credit must be disregarded when assessing the length of service in relation to the Scheme service and benefits.

Regulation J18 provides for the pension credit not to be assigned except where required by law.

Regulation J19 provides for interest on late payment of benefits to pension credit members.

Regulation 4 inserts a new Schedule 1A giving the interpretations which apply to Part J additional to the interpretations in Schedule 1. Schedule 1A is particularly relevant to Part J.

Regulation 5 effects minor and consequential amendments to the 1992 Regulations.

2001 No. 152

EDUCATION

**The Teachers' Superannuation (Pension Sharing on Divorce)
(Scotland) Regulations 2001**

£3.00

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Queen's Printer of Acts of Parliament
600 05/01 19593

