
SCOTTISH STATUTORY INSTRUMENTS

2001 No. 23

The Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2001

Pension sharing on divorce

4. After Part V of the principal Regulations shall be inserted the following:—

“PART VI

PENSION SHARING

CHAPTER I

PRELIMINARY PROVISIONS

Interpretation of Part VI

138.—(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 I to V of these regulations shall, unless the context indicates otherwise, be subject to the provisions of this Part.

CHAPTER II

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

139.—(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⁽¹⁾.

Pension sharing order activates pension sharing creating pension debits and credits

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

(1) 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).

- (a) the transferor’s shareable rights under the Scheme become subject to a debit of the appropriate amount (“pension debit”(2)) as defined in regulation 141; and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”(3)) as against the Administering Authority.

Calculation of “appropriate amount”

141.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation 140 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 140 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 140(b) as the administering authority may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order or provision takes effect(4).

Pension debits and reduction of benefit

142.—(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.

(2) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.
(3) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.
(4) This definition is that in section 29(8) of the 1999 Act.

(4) In this regulation⁽⁵⁾—

“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

143. 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⁽⁶⁾.

CHAPTER III

MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”

Discharge of pension credit liability by conferring “appropriate rights” or making transfer payment to another scheme

144.—(1) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by conferring appropriate rights under the Scheme on the ex spouse—

- (a) with his consent; or
- (b) in accordance with regulations made by the Secretary of State under paragraph 1(2)(b) of Schedule 5 to the 1999 Act⁽⁷⁾.

(2) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the ex spouse if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit; and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State under paragraph 1(3) (c) of Schedule 5 to the 1999 Act⁽⁸⁾.

(3) For the purposes of paragraph (1), no account is to be taken of consent of the person entitled to the pension credit unless—

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

⁽⁶⁾ 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

⁽⁷⁾ See regulation 7(1) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

⁽⁸⁾ See regulation 7(2) of S.I. 2000/1053.

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under paragraph (2); or
 - (b) it is not withdrawn within 7 days of receipt of such notice.
- (4) 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
 - (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⁽⁹⁾, equals the amount of the credit.

Qualifying arrangements

145.—(1) The following are qualifying arrangements for the purposes of regulation 144—

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) an appropriate annuity contract;
- (d) an appropriate policy of insurance; and
- (e) an overseas arrangement within the meaning of the Contracting out (Transfer and Transfer Payment) Regulations 1996⁽¹⁰⁾.

(2) An annuity contract or policy of insurance is appropriate for the purposes of paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—

- (a) is carrying on ordinary long term insurance business in the United Kingdom or any other member State; and
- (b) satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 6(2)(b) of Schedule 5 to the 1999 Act⁽¹¹⁾.

(3) In this paragraph, “ordinary long term insurance business” has the same meaning as in the Insurance Companies Act 1982⁽¹²⁾.

Disqualification as destination for pension credit

146.—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988⁽¹³⁾, an arrangement is disqualified as a destination for the credit unless—

- (a) it is also approved for those purposes; or
- (b) it satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 7(1)(b) of Schedule 5 to the 1999 Act⁽¹⁴⁾.

(2) If the rights by reference to which the amount of a pension credit is determined are or include contracted out rights or safeguarded rights, an arrangement is disqualified as a destination for the credit unless—

⁽⁹⁾ See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

⁽¹⁰⁾ S.I. 1996/1462.

⁽¹¹⁾ See Regulation 11 of S.I. 2000/1053.

⁽¹²⁾ 1982 c. 50.

⁽¹³⁾ 1988 c. 1.

⁽¹⁴⁾ See regulation 12 of S.I. 2000/1053.

- (a) it is of a description prescribed by the Secretary of State by regulations made under paragraph 7(2)(a) of Schedule 5 to the 1999 Act⁽¹⁵⁾; and
 - (b) it satisfies such requirements as he may so prescribe under paragraph 7(2)(b) of Schedule 5 of the 1999 Act⁽¹⁶⁾.
- (3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Secretary of State under paragraph 7(3) of Schedule 5 to the 1999 Act⁽¹⁷⁾, equals the credit.
- (4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Secretary of State may prescribe by regulations made under paragraph 7(4) of Schedule 5 to the 1999 Act⁽¹⁸⁾.
- (5) The requirements which may be prescribed under sub paragraph (1)(b) include, in particular, requirements of the Inland Revenue.
- (6) In paragraph (2)—
- “contracted out rights” means such rights under, or derived from—
 - (a) an occupational pension scheme contracted out by virtue of section 9(2) or (3) of the 1993 Act; or
 - (b) a personal pension scheme which is an appropriate scheme for the purposes of that Act,
- as the Secretary of State may prescribe by regulations made under paragraph 7(6)(b) of Schedule 5 to the 1999 Act⁽¹⁹⁾;
- “safeguarded rights” has the meaning given by section 68A of the Pension Schemes Act 1993⁽²⁰⁾.

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

147. If—

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit,
 - (b) the administering authority makes 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⁽²¹⁾.

⁽¹⁵⁾ See regulation 13(1) of S.I. [2000/1053](#).

⁽¹⁶⁾ See regulation 13(2) of S.I. [2000/1053](#).

⁽¹⁷⁾ See regulation 14 of S.I. [2000/1053](#).

⁽¹⁸⁾ See regulation 15 of S.I. [2000/1053](#).

⁽¹⁹⁾ See regulation 13(3) of S.I. [2000/1053](#). The definition used here of “contracted out rights” is found in section 68A(5) of the 1993 Act, as inserted by section 36 of the 1999 Act, and in paragraph 7(6) of Schedule 5 to the 1999 Act.

⁽²⁰⁾ Section 68A was inserted by section 36 of the 1999 Act.

⁽²¹⁾ 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](#)).

“Implementation period” for discharge of pension credit

148.—(1) The administering authority shall discharge its liability in respect of a pension credit within “the implementation period”(22), 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 administering authority in relation to the relevant pension sharing order is 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(23).

(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 sub-section (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which sub section (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(24).

(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(25).

Failure to discharge liability in respect of pension credit within the implementation period and death of ex spouse within period

149.—(1) Where the administering authority has not done what is required to discharge its liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) the administering authority shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act(26), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and

(22) Section 33(1) of the 1999 Act.

(23) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

(24) 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.

(25) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(26) 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) section 10 of the Pensions Act 1995⁽²⁷⁾ (power of the Regulatory Authority to impose civil penalties) shall apply to any administering authority which 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.
- (2) If the administering authority fails to perform the obligation imposed by paragraph (1)(a), section 10 of the Pensions Act 1995 shall apply.
- (3) Where the administering authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the administering authority 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⁽²⁸⁾.
- (4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.
- (5) Where an ex spouse dies before the administering authority has discharged its liability in respect of the pension credit, that liability may be discharged by the appropriate authority by the payment of a lump sum, to a person other than the person entitled to the pension credit.
- (6) The lump sum shall be equal to 3 times the annual rate of the pension which would have been paid to him if on the date of his death he had become entitled to a pension as a pension credit member, calculated in accordance with guidance issued by the Government Actuary.
- (7) The appropriate administering authority shall pay the lump sum to the deceased’s personal representatives.

CHAPTER IV

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

“Appropriate Rights”/“Pension credit benefits” under the Scheme

150.—(1) Except as referred to in this regulation or otherwise in this Part of the Scheme, the appropriate rights under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a retirement grant and rights in relation to a death grant 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 retirement grant 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 retirement grant shall be paid to the pension credit member if the corresponding pension debit member has already received a retirement grant from the Scheme before the date of the implementation of the pension sharing order.

(4) Regulation 37 (Death grants) shall apply in relation to a pension credit member.

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

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

⁽²⁷⁾ 1995 c. 26.

⁽²⁸⁾ See regulation 3 of S.I. 2000/1053.

Additional Voluntary Contributions (“AVCs”)

151. Where a pension debit member has an accumulated value of AVCs, the amount of the cash equivalent in respect of the corresponding pension credit, which is attributable to the accumulated value of the pension debit member’s AVCs, shall not be allocated to the pension credit benefits described in regulation 150(1) but, at the election of the pension credit member, must be used in one of the permissible ways specified in regulation 65(3).

Additional contributions and additional periods

152.—(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⁽²⁹⁾.

(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⁽³⁰⁾, or otherwise.

Commutation: small pensions

153.—(1) Regulation 48 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 48 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

154.—(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 benefit 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 benefit age.

Pension Transfers

155.—(1) The Scheme shall not accept any transfer into the Scheme in respect of any pension credit rights or pension credit benefits under any other pension scheme.

(2) No transfer of pension credit rights may be made from a pension credit member’s appropriate fund to another fund of the Scheme notwithstanding that that fund may be an

⁽²⁹⁾ See section 590(3)(bb) of the Taxes Act, inserted by the Finance Act 1999, Schedule 10, paragraph 2(3) (c.16).

⁽³⁰⁾ See [S.I.s 2000/ 1085](#) and [1093](#).

appropriate fund for that member in respect of other rights he may have accrued under the Scheme.

CHAPTER V

MISCELLANEOUS

Charges in respect of pension sharing costs

156.—(1) The administering authority may recover from the parties involved in pension sharing charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the administering authority 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.

(4) The administering authority shall, before a pension sharing order is made, inform the member or his spouse, as the case may be, in writing of its 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 changes in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act⁽³¹⁾.

Excluded membership

157.—(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.

Appropriate fund and appropriate administering authority

158. For a pension credit member—

- (a) the appropriate fund is the fund which is the appropriate fund for the transferor on the transfer date; and
- (b) his appropriate administering authority is the administering authority of the fund.

Assignment

159. 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.

⁽³¹⁾ See regulations 29 of S.I. [2000/1049](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Application of Part VI to deferred members and pensioner members under the 1987 Regulations

160. Part VI shall apply to those persons listed in Regulation 4(2)(a) of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998⁽³²⁾.”

⁽³²⁾ S.I. 1998/364, as amended by S.S.I. 2000/199.