

SCHEDULE 1

Regulation 3

AMENDMENT OF THE 1995 REGULATIONS

Amendment of Regulation A2 of the 1995 Regulations

1. In regulation A2(4) there shall be inserted in the first and second columns in the appropriate places in alphabetical order, the following definitions:—

- “the 1993 Act” The Pension Schemes Act 1993(1);
- “the 1995 Act” The Pensions Act 1995(2);
- “the 1999 Act” The Welfare Reform and Pensions Act 1999(3);
- “active member” A person who is in pensionable service under the scheme;”
- “appropriate percentage” The meaning given in regulation W5(4);
- “appropriate rights” The meaning given in regulation W7(3);
- “ex-spouse” An individual to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
- “indexed” In accordance with the Government Index of Retail Prices; ”
- “the Inland Revenue” The Commissioners of Inland Revenue;
- “member of the Scheme” A member of the Scheme and includes an active member, a deferred member and a pension credit member;
- “normal benefit age” Age 60;
- “pension credit” The meaning given in regulation W3(b);
- “pension credit benefit” 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” 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” Rights to future benefits under the Scheme which are attributable to a pension credit;
- “pension debit” The meaning given in regulation W3(a);
- “pension debit member” 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 or provision” 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(4);
- “Regulatory Authority” The meaning given in regulation W10(4);
- “safeguarded percentage” The meaning given by section 68A(3) or (4), as the case may be of the 1993 Act;

(1) 1993 c. 48.

(2) 1995 c. 26.

(3) 1999 c. 30.

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

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- “safeguarded rights” The meaning given by section 68A of the 1993 Act⁽⁵⁾;
“shareable rights” The meaning given by section 27(2) of the 1999 Act and means any rights under a pension arrangement other than as described in section 2 of The Pension Sharing (Valuation) Regulations 2000⁽⁶⁾;
“transfer day” The meaning given in regulation W5(4);”.

Pension sharing on divorce or nullity of marriage

2.—(1) In Part R (special provisions for certain members) after regulation R13⁽⁷⁾ there shall be inserted the following:—

“Pension sharing on divorce or nullity of marriage

R14.—(1) PART W and Schedule 1A shall have effect in relation to—

- (a) pension credit rights, or, as the case may be,
- (b) pension credit benefit payable, or
- (c) pension debits,

under the Scheme.

(2) Except as provided for in this regulation, in Part W and in Schedule 1A, Parts B to V shall not apply to a person entitled to a pension credit or to a pension credit member.”.

3. After PART V of the 1995 Regulations there shall be inserted the following:—

“PART W

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

PRELIMINARY PROVISIONS

Interpretation

W1. The definitions of expressions contained in regulation A2(4) apply for their interpretation to this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

W2.—(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⁽⁸⁾ for the purposes 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 and any other rights which are prescribed as excluded⁽⁹⁾.

⁽⁵⁾ Section 68A was inserted by section 36 of the 1999 Act.

⁽⁶⁾ S.I. [2000/1052](#).

⁽⁷⁾ Regulation R13 was inserted by S.I. [1999/443](#).

⁽⁸⁾ See section 27(2) of the 1999 Act and section 2 of the Pension sharing (Valuation) Regulations 2000 (S.I. [2000/1052](#)).

⁽⁹⁾ 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 1999 Act.

Pension sharing order activates pension sharing creating pension debits and credits

W3. 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”**(10)**) as defined in regulation W4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”**(11)**) as against the Scottish Ministers.

Calculation of “appropriate amount”

W4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation W3 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 W3 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 sub-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 W3(b) as the Scottish Ministers 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 takes effect**(12)**.

Pension debits and reduction of benefit

W5.—(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.

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

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

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

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(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(13)–

“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 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

W6. 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(14).

MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”

Discharge of pension credit liability

W7.—(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) For the purposes of this paragraph, 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(15), equals the amount of the credit.

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

W8. 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

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

(14) 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

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

(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⁽¹⁶⁾.

“Implementation period” for discharge of pension credit

W9.—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within “the implementation period”⁽¹⁷⁾, 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⁽¹⁸⁾.

(2) The reference in sub-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⁽¹⁹⁾.

(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⁽²⁰⁾.

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

W10.—(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—

⁽¹⁶⁾ See paragraph 9 of Schedule 5 to the 1999 Act and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. [2000/1053](#)).

⁽¹⁷⁾ Section 33(1) of the 1999 Act.

⁽¹⁸⁾ See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. [2000/1048](#)).

⁽¹⁹⁾ 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.

⁽²⁰⁾ See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. [2000/1053](#)).

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- (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⁽²¹⁾, 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⁽²²⁾ (power of the Regulatory Authority to impose civil penalties) shall apply where 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 regulation 10(1)(a), 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 pension 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⁽²³⁾.
- (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 payment of a lump sum.
- (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 under regulation W11(3) in accordance with guidance issued by the Government Actuary.
- (7) The Scottish Ministers shall pay the lump sum to the deceased’s personal representative.

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

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

W11.—(1) Except as referred to in regulation W14 or otherwise in this Regulation, 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 value of the pension referred to in this paragraph shall equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

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

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

(6) A pension payable in accordance with this Regulation shall be payable to the pension credit member for life.

(21) 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.

(22) [1995 c. 26](#).

(23) See regulation 3 of S.I. [2000/1053](#).

(7) 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 and shall be equal to 3 times the annual rate of pension, 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 on retirement from the Scheme before the date of the implementation of the pension sharing order.

Pension credit member dies after pension credit benefit becomes payable

W12.—(1) If a pension credit member dies after his pension under the Scheme becomes payable, a lump sum on death shall be payable in accordance with Regulation F5 (payment of lump sum).

(2) Subject to paragraph (3), the lump sum on death shall be equal to 5 times the annual rate of the pension credit member's pension as calculated under regulation W11(3) less the amount of pension already paid.

(3) The maximum payment under paragraph (2) shall not exceed an amount equal to twice the pension debit member's final year's pensionable pay on the valuation day, from whose rights the pension credit is derived, less an amount equal to the pension credit member's retirement lump sum paid in accordance with regulation W11(7).

(4) The final year's pensionable pay under paragraph (3) shall be increased by the amount that the member's benefits would have been increased under Part 1 of the Pensions (Increase) Act 1971(24) if benefits had been preserved on the valuation day.

Pension credit member dies before pension credit benefit becomes payable

W13.—(1) If a pension credit member dies before his pension under the Scheme becomes payable, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) The lump sum shall be equal to 3 times the annual rate of the pension credit member's pension calculated under regulation W11(3).

Additional contributions and additional periods

W14.—(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(25).

(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(26) and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(27), or otherwise.

(24) 1971 (c. 56).

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

(26) 1999 c. 16.

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

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Commutation: small pensions

W15.—(1) Regulation T7 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) A pension may be treated as “trivial” under regulation T7 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

W16.—(1) The whole of the pension element payable in respect of the pension credit 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 as calculated under regulation W11(3) of this Part if on the date of commutation he had already reached the normal benefit age and shall be payable in addition to any retirement lump sum as calculated under regulation W11(7) of this Part.

Pension Transfers

W17. The Scottish Ministers shall not accept any transfer value into the Scheme or pay any transfer value out of the Scheme in respect of any pension credit rights or pension credit benefits.

MISCELLANEOUS

Charges in respect of pension sharing costs

W18.—(1) The Scottish Ministers 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 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⁽²⁸⁾.

(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⁽²⁹⁾.

⁽²⁸⁾ See regulation 5 of the Pensions on Divorce etc (Charging) Regulations 2000 (S.I. 2000/1049).

⁽²⁹⁾ See regulations 2-9 of S.I. 2000/1049.

Excluded membership

W19.—(1) Subject to regulation W15(2) of this Part, 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 of the Scheme, 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.

General rules about benefits

W20. Regulations T1 (claims for benefits), T2 (deduction of tax), and T4 (beneficiary who is incapable) shall apply to a pension credit member.

Assignment

W21. 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.

Administrative matters

W22. Regulation U2 (determination of questions) shall apply to a person who is entitled to a pension credit or, as the case may be, a pension credit member.”.”

Insertion of new Schedule

4. After Schedule 1 there shall be inserted the following Schedule—

“SCHEDULE 1A

Regulation R14

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

Retirement pension and retirement lump sum

1. PART E of these Regulations shall be subject to the following modifications—
- (a) where the shareable rights of a pension debit member are subject to a pension sharing order, the amount of the retirement pension or retirement lump sum payable to a pension debit member shall be reduced in accordance with regulation W5 (pension debits and reduction of benefit); and
 - (b) the amount of the reduction shall be calculated in accordance with guidance issued for this purpose by the Government Actuary.

Lump sum on death

2. PART F of these Regulations shall be subject to the following modification—
- (a) regulation F2 (lump sum when member dies after pension becomes payable) shall, subject to regulation S4, apply in respect of a pension debit member so that—
 - (i) references to the “member’s pension” is the pension reduced in accordance with regulation W5; and

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- (ii) “the member’s retirement lump sum paid under regulation E7” is the retirement lump sum that would have been payable under that Regulation had there been no reduction under regulation W5; and
- (b) regulation F5 (payment of lump sum) shall apply in respect of a person entitled to a pension credit or a pension credit member, as the case may be, or a pension debit member with the modification that the references in that regulation to “member” shall be references to person entitled to a pension credit or, as the case may be, a pension credit member.

Widows and widowers

3. PART G (widows and widowers), shall be modified so that references to “the pension that would have been payable to the member” in respect of a pension debit member shall be the pension reduced in accordance with regulation W5 to which the pension debit member would have been entitled had he become entitled to a pension on the date that he died.

Dependent child allowance

4. Part H (dependant child allowance) shall be modified so that–
- (a) references to the pension that would have been payable to the member in respect of the death of a pension debit member, means the pension that would have been payable to the pension debit member under Part E had the pension sharing order not applied; and
 - (b) references to “member” do not include a reference to a pension credit member.

Contracting out and guaranteed minimum pension

5. Part K shall be modified so that–
- (a) references to the member’s guaranteed minimum shall in respect of a pension debit member subject to a reduction under 10(4) and (5) and 15A of the Pension Schemes Act 1993 in respect of protected rights or guaranteed minimum pension, be those protected rights or guaranteed pension reduced in accordance with regulation W6 of these Regulations;
 - (b) paragraph (2)(a) of section 68A of the 1993 Act (safeguarded rights) applies in relation to the safeguarded rights in respect of a pension credit member; and
 - (c) safeguarded rights shall be identified in the Scheme as being the safeguarded percentage of the pension credit rights derived from the member’s guaranteed minimum.

Transfer-out arrangements and buy-outs

6. Part M (transfer-out arrangements and buy-outs) is modified as follows so that–
- (a) accrued benefits in respect of a pension debit member will be subject to a reduction under PART W of these Regulations; and
 - (b) references to “member” does not include a reference to a pension credit member.

Right to buy additional service and unreduced lump sum

7. PART Q (Right to buy additional service and unreduced lump sum) is modified so that–
- (a) these Regulations will apply to a pension debit member subject to the limitations in regulation W14; and
 - (b) references to “member” do not include a reference to a pension credit member.

Members who return to pensionable employment after pension becomes payable

8. PART S (members who return to pensionable employment after pension becomes payable) shall be modified so that references to “pension” and “member’s pension” shall not include a pension credit benefit.

Offset for crime, fraud or negligence

9. Regulation T5 (offset for crime, fraud or negligence) shall apply to a pension credit member with the following modifications wherever the words to be modified appear:–

- (a) the reference to “member's” or “member” shall be a reference to pension credit member’s or pension credit member, as the case may be; and
- (b) the reference to “(other than guaranteed minimum pensions and benefits arising out of a transfer payment)” shall be a reference to (other than safeguarded rights).

10. Regulation T6 (loss of rights to benefits) shall apply to a pension credit member with the following modifications wherever the words to be modified appear:–

- (a) the reference to “member” shall be a reference to pension credit member; and
- (b) the reference in paragraph (2) to “A guaranteed minimum pension” shall be a reference to Safeguarded rights.”

SCHEDULE 2

Regulation 4

AMENDMENT OF THE AVC REGULATIONS AND THEIR APPLICATION TO PENSION SHARING ON DIVORCE

Application of the AVC Regulations to a person entitled to a pension credit or a pension credit member

1. Except as provided for in this Schedule, the AVC Regulations shall not apply to a person entitled to a pension credit or to a pension credit member.

Amendment of regulation 2

2. In regulation 2 (interpretation) there shall be inserted in the appropriate places in alphabetical order the following definitions:–

“the 1993 Act” means the Pension Schemes Act 1993(30);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999(31);

“the AVC scheme” means the National Health Service (Scotland) Additional Voluntary Contributions Scheme, the rules of which are set out in these Regulations;

“appropriate rights” means rights which are described in paragraph 5 of Schedule 5 to the 1999 Act (pension credits: mode of discharge, appropriate rights);

“eligible member” has the meaning given by section 101P(1) of the 1993 Act(32);

“NHS Superannuation Scheme” means the National Health Service Superannuation Scheme for Scotland, the rules of which are set out in the 1995 Regulations;

(30) 1993 c. 48.

(31) 1999 c. 30.

(32) Sections 101A to 101Q were inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

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- “normal benefit age”, in relation to the scheme, means the age of 60;
- “pension credit” means a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;
- “pension credit benefit” has the meaning given by section 101B of the 1993 Act;
- “pension credit member” means has the meaning given by section 124(1) of the Pensions Act 1995(33);
- “pension credit rights” has the meaning given by section 101B of the 1993 Act;”.

Amendment of regulation 13

3. In regulations 13(1) and (2) (benefit limits) for “the Schedule” at each place where those words appear there shall be substituted “Schedule 1” and accordingly “the Schedule to these Regulations” shall become “Schedule 1 to these Regulations”.

Amendment of regulation 15

- 4.**—(1) In regulation 15 (payments by the Secretary of State)—
- (a) in paragraph (2) after “participator” there shall be inserted “or a person entitled to a pension credit”;
 - (b) for paragraph (3) substitute—
 - “(3) Lumps sums payable as mentioned in regulation 11(4), or under regulations 11(7) or 12, or paragraphs 3(2), 8 or 9 of Schedule 2, shall be paid—
 - (a) to the deceased’s spouse: or
 - (b) to the deceased’s personal representative if—
 - (i) there is no spouse; or
 - (ii) a notice has be given in accordance with regulation F5(3) or (3A) of the 1995 Regulations (payment of lump sum) or, as the case may be, paragraph 11 of Schedule 2 that the spouse is not to receive the payment.”.

Insertion of new regulation in Part IV

5. In Part IV (miscellaneous provisions), after regulation 17 there shall be inserted the following regulation—

“Pension sharing on divorce or nullity of marriage

17A. Schedule 2 shall have effect in relation to—

- (a) pension credit rights; or, as the case may be,
- (b) pension credit benefit payable,

under the AVC scheme.”.

Insertion of new Schedule

6. After Schedule 1 there shall be inserted the following Schedule—

“SCHEDULE 2

Regulation 17A

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

Discharge of liability in respect of a pension credit

1.—(1) Where the Scottish Ministers discharge their liability in respect of a pension credit in accordance with sub-paragraph (2) of paragraph 1 of Schedule 5 to the 1999 Act (pension credits: mode of discharge: funded pension schemes – internal transfers) the appropriate rights shall be invested under paragraph 2 to provide for the purchase from an insurance company of an annuity which complies with the requirements of sub-paragraph (5) below.

(2) Where sub-paragraph (1) applies, the person entitled to the pension credit may elect, by giving written notice to the Scottish Ministers, the authorised fund or funds in which the appropriate rights are to be invested.

(3) The Scottish Ministers shall notify in writing the person who has made an election under sub-paragraph (2) of the Scottish Ministers acceptance of that election.

(4) Once an election has been made under sub-paragraph (2) it shall not be varied or cancelled after liability in respect of the pension credit has been discharged by the Scottish Ministers.

(5) An annuity complies with the requirements of this paragraph if—

- (a) it provides a pension which commences not earlier than normal benefit age and is payable to the pension credit member for life;
- (b) any dependant’s pension which is payable under it is payable only on the death of the pension credit member after he has reached normal benefit age and is payable to the dependant for life, except that in the case of a dependant who is a child to whom Part H of the 1995 Regulations (child allowance) would apply if the pension credit member were a member of the NHS Superannuation Scheme, it shall cease to be payable when that person ceases to be a dependant child within the meaning of those Regulations; and
- (c) it is not capable in whole or in part of surrender, assignment or commutation.

Investment of appropriate rights

2. Any appropriate rights invested under this paragraph shall be invested by the Scottish Ministers as soon as is reasonably practicable in accordance with any notice given under sub-paragraph (2) of paragraph 1.

Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit

3.—(1) The Scottish Ministers shall following the death of the person entitled to a pension credit before liability in respect of that credit has been discharged, discharge their liability in respect of that credit by making a payment of a lump sum in accordance with paragraph (2)(a)(i) of regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000⁽³⁴⁾.

(2) The lump sum payable under this paragraph shall be paid in accordance with regulation 15(3) (payments by the Scottish Ministers).

(34) S.I. 2000/1053.

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Pension Credit Benefit

4.—(1) The pension credit benefit to which a pension credit member shall be entitled under the AVC scheme shall consist of a pension.

(2) A pension credit member shall be entitled to the payment of the pension credit benefit when he reaches normal benefit age.

(3) A pension payable in accordance with this paragraph shall be payable to the pension credit member for life.

(4) The value of the pension referred to in this paragraph shall equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(5) Not earlier than 3 months before the date he reaches normal benefit age, a pension credit member, by giving notice to the Scottish Ministers, shall make a benefits election which shall specify—

- (a) whether only a pension payable for life is to be provided;
- (b) for whom, if anyone, a dependant's pension is to be provided;
- (c) if more than one pension is to be provided, either—
 - (i) the proportion of the amount secured by the total investments made under paragraph 2 that is to be applied to the purchase of each of them; or
 - (ii) the dependants' pensions to be provided expressed as a percentage of the pension for life;
- (d) in respect of every pension to be provided, whether the annual rate of the pension—
 - (i) is to be fixed;
 - (ii) is to vary in accordance with the Index; or
 - (iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index for the year in question; and
- (e) the authorised provider who is to provide each pension.

(6) For the purposes of this Schedule the authorised provider must meet the requirements referred to in regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽³⁵⁾.

(7) Upon receipt of a notice of election under sub-paragraph (5) the Scottish Ministers shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election.

(8) Notwithstanding whether benefits to which a pension credit member may be entitled under Part E of the 1995 Regulations (benefits for members) are payable, where a pension credit member has reached normal benefit age on or after 1st December 2000 and he has—

- (a) reached the age of 75; and
- (b) failed to give a notice of election under sub-paragraph (5) on or before the date of his 75th birthday,

the Scottish Ministers may realise the investments made under paragraph 2 and apply the proceeds to the purchase of a pension policy which satisfies the requirements of regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 from an insurance company in order to provide such benefits as appear to him to be suitable.

⁽³⁵⁾ S.I. 2000/1054 as amended by S.I. 2000/2691.

Outward Transfers

5.—(1) The Scottish Ministers shall, upon receipt of a notice in writing under section 101F(1) of the 1993 Act⁽³⁶⁾ (power to give transfer notice) from an eligible member, pay a transfer value in accordance with the provisions of Chapter II of Part IVA of the 1993 Act (requirements relating to pension credit benefit: transfer values) and Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (provision of benefits).

(2) The transfer value referred to in sub-paragraph (1) shall represent the value of the appropriate rights invested under paragraph 2 calculated in accordance with regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽³⁷⁾ (manner of calculation and verification of cash equivalents).

Commutation of the whole of pension credit benefit before normal benefit age

6.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit before having reached normal benefit age in the circumstances described in regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit).

(2) In the case where a pension credit benefit is payable in accordance with this paragraph, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and, in that event, the proceeds shall be payable to the pension credit member as a lump sum.

Commutation of the whole of pension credit benefit at normal benefit age

7.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit at normal benefit age in the circumstances described in sub-paragraph (2).

(2) The circumstances described in this sub-paragraph are—

- (a) the pension credit member is suffering from serious ill-health at normal benefit age; or
- (b) the aggregate of total benefits payable to the pension credit member, including any pension credit benefit, does not exceed £260 per annum at normal benefit age.

(3) In the case of a pension credit member to whom this paragraph applies, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable to the pension credit member as a lump sum.

(4) In this paragraph “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 payment of the pension credit benefit of the pension credit member is applied for.

Pension credit member dies before pension credit benefit becomes payable

8. If a pension credit member dies before his pension under the AVC scheme becomes payable under paragraph 4 of this Schedule, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

Pension Credit member dies after pension credit benefit becomes payable

9. If a pension credit member dies within the period of 5 years beginning with the date upon which payments of pension credit benefit under paragraph 4 of this Schedule commence, the

⁽³⁶⁾ Section 101F is inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽³⁷⁾ Regulation 24 is amended by S.I. 2000/2691.

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balance that would have been payable during the remainder of that period, if the payments of pension credit benefit had continued at the rate in force at the time of the pension credit member's death, shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

Excluded membership

10. Where a pension credit member is also a member of the AVC scheme, any period of time which may count for any purpose in connection with his pension credit benefit shall not be taken into account in relation to ascertaining his entitlement to, or as the case may be, the calculation of, benefits other than pension credit benefits under the AVC scheme.

Payment of lump sum on death

11.—(1) Where a lump sum is payable under any of paragraphs 3, 8 or 9 of this Schedule, unless sub-paragraph (2) or (3) below applies, the lump sum shall be paid to the personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member.

(2) Where the person entitled to a pension credit or, as the case may be, the pension credit member dies and leaves a widow or widower, the lump sum may be paid to the widow or widower, unless—

- (a) the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Scottish Ministers in accordance with sub-paragraph (4) below that the widow or widower is not to receive the payment, and has not revoked that notice; or
- (b) sub-paragraph (3) below applies.

(3) Where the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Scottish Ministers in accordance with sub-paragraphs (4) and (5) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless—

- (a) that person has died before the payment can be made; or
- (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(4) Notice to the Scottish Ministers for the purpose of sub-paragraph (2) or (3) above—

- (a) shall be given only by a person entitled to a pension credit or, as the case may be, a pension credit member under the AVC scheme;
- (b) shall be given in writing; and
- (c) may at any time be revoked in writing,

and a person entitled to a pension credit or, as the case may be, a pension credit member who revokes such a notice may give further notice for the purpose of the one of those sub paragraphs.

(5) A notice given for the purposes of the sub-paragraph (3) above shall specify one person, who may be—

- (a) an individual;
- (b) a body corporate; or
- (c) an unincorporated body.

Miscellaneous provisions

12. Regulations 17 (payments in respect of deceased persons), 18 (benefits not assignable on bankruptcy) and 21 (determination of questions) shall apply in respect of a person entitled to a pension credit or, as the case may be, a pension credit member.

Offset for crime, negligence or fraud

13.—(1) Where, on or after the date on which this Schedule comes into force—

- (a) the circumstances set out in regulation T5 of the 1995 Regulations (offset for crime, negligence or fraud) have occurred in respect of a pension credit member who is also a member of the NHS Superannuation Scheme; and
- (b) there has been a loss to public funds,

the Scottish Ministers may, in relation to pension credit benefit which arises by virtue of pension credit rights which are derived from any employer's contributions paid on or after the date on which the AVC Regulations came into force in respect of the relevant participator, reduce the amount of any pension credit benefit payable to or in respect of a pension credit member under this Schedule, to the extent set out, and subject to the conditions specified, in that regulation.

(2) In this paragraph and in paragraph 12 “relevant participator” means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.

Loss of rights to benefits

14.—(1) Where—

- (a) a pension credit member is convicted of an offence referred to in paragraph (1) of regulation T6 of the 1995 Regulations (loss of rights to benefits), which was committed on or after the date on which this Schedule comes into force; and
- (b) the circumstances are such that a direction may be made by the Scottish Ministers under regulation T6 of those Regulations,

the Scottish Ministers may direct that all or part of any rights to pension credit benefit under this Schedule which arise by virtue of pension credit rights which are derived from any employer's contributions paid on or after the date on which the AVC Regulations came into force in respect of the relevant participator, are to be forfeited.

(2) “Relevant participator” has the meaning given to that expression in paragraph 13(2).”