

2008 No. 293

FAMILY LAW

**The Divorce etc. (Pensions) (Scotland) Amendment
Regulations 2008**

Made - - - - - *28th August 2008*

Laid before the Scottish Parliament *3rd September 2008*

Coming into force - - - *1st October 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10(8) and (8A) of the Family Law (Scotland) Act 1985(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Divorce etc. (Pensions) (Scotland) Amendment Regulations 2008 and shall come into force on 1st October 2008.

Amendment of the Divorce etc. (Pensions) (Scotland) Regulations 2000

2.—(1) The Divorce etc. (Pensions) (Scotland) Regulations 2000(b) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the appropriate alphabetical places, insert—

““normal pension age” has the meaning given in section 180 (normal pension age) of the 1993 Act;”;

““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996(c);”;

(b) for the definition of “salary related occupational pension scheme”, substitute—

““salary related occupational pension scheme” has the meaning given by regulation 1A of the Transfer Values Regulations;”.

(3) In regulation 3 (valuation)—

(a) in paragraph (2)(d)—

(i) for “paragraphs (7) to (9)” substitute “paragraphs (7) and (8)”;

(a) 1985 c.37. Section 10(8) was inserted by the Pensions Act 1995 (c.26), section 167(2)(b), and substituted by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 12 paragraph 8(3); Schedule 12 paragraph 8(4) inserted section 10(8A). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) as read with section 91(4) of the 1999 Act which deemed paragraph 8(3) and (4) of Schedule 12 to the 1999 Act to be a pre-commencement enactment.

(b) S.S.I. 2000/112, as amended by S.S.I.s 2000/392 and 438, and 2007/122.

(c) S.I. 1996/1847, as amended by S.I.s 1997/786 and 1613, 2003/1727, 2005/72, 686, 706 and 3377, 2006/34 and 744, 2007/60, and 2008/1050 (in force 1st October 2008).

- (ii) after head (iii), insert–
 - “; or
 - (iv) the pension of the person with pension rights is not in payment and the person has attained normal pension age.”;
- (b) for paragraph (4)(b), substitute–
 - “(b) in accordance with regulation 11 (disclosure) of, and Schedule 1 to, the Transfer Values Regulations.”;
- (c) for paragraphs (7) to (9), substitute–
 - “(7) Cash equivalents are to be calculated and verified in accordance with regulations 7 to 7C and 7E(1) to (3) of the Transfer Values Regulations as appropriate.
 - (8) But when calculating and verifying a cash equivalent in accordance with those regulations–
 - (a) references to “trustees” must be read as references to “person responsible for the pension arrangement”;
 - (b) where the person with pension rights is a pensioner member on the date on which the request for the valuation is received, the value of his pension must be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations as appropriate;
 - (c) where the person is over normal pension age but not in receipt of a pension–
 - (i) the value of his pension must be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations as appropriate; and
 - (ii) the person responsible for the pension arrangement must assume that the pension came into payment on the date on which the request for the valuation was received; and
 - (d) the date by reference to which the cash equivalent is to be calculated and verified is to be the date on which the request for the valuation was received.”; and
- (d) in paragraph (10), for “paragraph (3), (4), (7) or (9)”, substitute “paragraph (3), (4) or (7)”.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
28th August 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Divorce etc. (Pensions) (Scotland) Regulations 2000 in consequence of the UK government's resumption of direct responsibility for determining how cash equivalent transfer values ("cash equivalents") of pension rights are to be calculated. From 1st October 2008, the Actuarial Profession's GN11 guidance no longer applies and cash equivalents are to be calculated in accordance with rules set out in the Occupational Pension Schemes (Transfer Values) Regulations 1996, as amended by the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008. These Regulations provide for the same methodology to be used for valuation of pensions in connection with divorce or dissolution of civil partnerships.

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