

## **EXECUTIVE NOTE**

### **The Divorce etc. Pensions (Scotland) Amendment Regulations 2008 SSI/2008/ 293**

1. This instrument is being made in exercise of the powers conferred by section 10(8) and (8A) of the Family Law (Scotland) Act 1985 and is subject to negative resolution procedures.

#### **Policy Objectives**

2. The Divorce etc. (Pensions) (Scotland) Regulations 2000 provide for the calculation and verification of benefits under a pension arrangement, for the purposes of establishing the value of matrimonial property on divorce, nullity of marriage and dissolution of a civil partnership. The purpose of the current regulations is to take account of the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 introduced by the Department for Work and Pensions, which change the method by which pensions are valued. The regulation of occupational and personal pensions is reserved under Section F3 of Schedule 5 to the Scotland Act 1998.

3. In the past, the calculation of cash equivalent transfer values of pension rights has been completed with reference to a mandatory guidance note, called GN11. However, the actuarial profession, which issues the guidance note, no longer wishes to be responsible for setting rules in this area. DWP have consequently produced the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 which largely mirror the current arrangements (i.e. the methodology contained in GN11) and will come into force on 1 October 2008.

4. The GN11 guidance note is also used to calculate the value of pensions for use by the courts when making pension sharing orders for couples in divorce proceedings. As divorce is a devolved matter for Scotland, the new regulations impact on the Divorce etc. (Pensions) (Scotland) Regulations 2000, a Scottish Statutory Instrument which refers to the use of GN11 for valuing pension rights at divorce. Pension providers across the UK will be bound to follow the new DWP regulations from 1 October and GN11 will no longer have relevance. These amending regulations will update the Divorce etc. (Pensions) (Scotland) Regulations 2000 to reflect the new method of calculation. The changes to the Scottish regulations mirror similar changes to the equivalent regulations operational in relation to divorce in England and Wales: the Pensions on Divorce etc. (Provision of Information) Regulations 2000, which are amended by paragraph 3 of Schedule 2 to the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008.

#### **Consultation**

5. As these new Regulations are amending the Divorce etc. (Pensions) (Scotland) Regulations 2000 as a consequence of the UK government resuming direct responsibility for determining how cash equivalent transfer values are to be calculated, a separate consultation for Scotland was not considered necessary. The Department for Work and Pensions did consult on their proposals, and asked Scottish stakeholders for comments. The consultation received 39 responses.

## **Financial Implications**

6. These Regulations have no significant financial effects on the Scottish Government, local authorities, business, charities or the voluntary sector. Pension providers will continue to be required to provide a valuation of pension rights for the purposes of divorce, using a methodology not dissimilar to the GN11 guidance now being replaced by regulations. The costs incurred during divorce proceedings will continue to be met by the divorcing couple.

Scottish Government  
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