
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

**The National Health Service Superannuation
Scheme (Scotland) Regulations 2011**

PART V

**PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE
OR ON DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP**

PRELIMINARY PROVISIONS

MODE OF DISCHARGE AND "IMPLEMENTATION PERIOD"

Discharge of pension credit liability

V7.—(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 or the ex-civil partner.

(2) For the purposes of this paragraph, rights conferred on the ex-spouse or the ex-civil partner 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^{M1}, equals the amount of the credit.

Marginal Citations

M1 See the [Pension Sharing \(Valuation\) Regulations 2000 \(S.I. 2000/1052\)](#).

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

V8. 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^{M2}.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, Cross Heading: MODE OF DISCHARGE AND "IMPLEMENTATION PERIOD". (See end of Document for details)

Marginal Citations

M2 See paragraph 9 of Schedule 5 to the 1999 Act and regulation 17 of the [Pension Sharing \(Implementation and Discharge of Liability\) Regulations 2000 \(S.I. 2000/1053\)](#).

“Implementation period” for discharge of pension credit

V9.—(1) The Scottish Ministers must discharge their liability in respect of a pension credit within “the implementation period”^{M3}, 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 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^{M4}.
- (2) The reference in sub-paragraph (1)(b)(i) to the relevant documents is to copies of—
- (a) the relevant pension sharing order, and
 - (b) the order, decree or declarator responsible for the divorce, annulment or dissolution 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^{M5}.

(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^{M6}.

Marginal Citations

M3 Section 33(1) of the 1999 Act.

M4 See regulation 5 of the [Pensions on Divorce etc. \(Provision of Information\) Regulations 2000 \(S.I. 2000/1048\)](#).

M5 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.

M6 See regulation 4 of [S.I. 2000/1053](#).

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

V10.—(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 must, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act ^{M7}, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
- (b) section 10 of the 1995 Act (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 1995 Act will 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 ^{M8}.

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

(5) Where an ex-spouse or ex-civil partner 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 referred to in paragraph (5) will be equal to 3 times the annual rate of the pension which would have been paid to the deceased if on the date of death the deceased had become entitled to a pension as a pension credit member calculated under regulation W11(3) in accordance with guidance issued by the scheme actuary.

(7) The Scottish Ministers must pay the lump sum to the deceased's personal representative.

Marginal Citations

M7 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.

M8 See regulation 3 of [S.I. 2000/1053](#).

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, Cross Heading: MODE OF DISCHARGE AND "IMPLEMENTATION PERIOD".