

## SCHEDULE 1

Regulation 18

### PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE OR DISSOLUTION OR NULLITY OF CIVIL PARTNERSHIP

#### **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 of the 1999 Act the appropriate rights must 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 must 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 must 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) subject to paragraph (6), any dependant's pension which is payable under it is payable only on the death of the pension credit member after that member has attained normal benefit age and is payable to the dependant for life; and
- (c) it is not capable in whole or in part of surrender, assignment or commutation.

(6) In the case of a person who is a child to whom—

- (a) Part H of the 2011 Regulations (dependent child allowance) applies;
- (b) regulation 2.E.9 or 3.E.9 of the 2013 Regulations (meaning of dependent child) applies; or
- (c) regulation 121 of the 2015 Regulations (eligible child) applies,

a pension referred to in paragraph (5)(b) ceases to be payable when that person ceases to be a dependent child within the meaning of whichever of the Regulations in sub-paragraph (6)(a), (b) or (c) applies.

(7) Sub-paragraph (5) does not apply where, in accordance with paragraph 4(6), a pension credit member elects to be provided with alternative benefits referred to in paragraph 4(7).

#### **Investment of appropriate rights**

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

#### **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 must 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

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credit by making a payment of a lump sum in accordance with regulation 6(2)(a)(i) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(1).

(2) The lump sum payable under this paragraph is to be paid in accordance with regulation 15(3).

### **Pension Credit Benefit**

4.—(1) The pension credit benefit to which a pension credit member is entitled under the AVC scheme consists of a pension including, where appropriate, a pension commencement lump sum.

(2) A pension credit member is entitled to the payment of the pension credit benefit when that person attains normal benefit age.

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

(4) The value of the pension referred to in sub-paragraph (1) and any alternative benefit referred to in sub-paragraph (6) is equal to 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 of attaining normal benefit age, a pension credit member, by giving notice to the Scottish Ministers, must make a benefits election which specifies—

- (a) whether only a pension payable for life is to be provided;
- (b) whether a pension commencement lump sum and a pension payable for life is to be provided;
- (c) for whom, if anyone, a dependant's pension is to be provided;
- (d) 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 pension; or
  - (ii) the dependants' pensions to be provided expressed as a percentage of the pension for life;
- (e) 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
- (f) the authorised provider who is to provide each pension.

(6) An authorised provider selected by the Scottish Ministers—

- (a) must provide a pension credit member with an option to receive the benefits referred to in sub-paragraph (5)(a), (b) and (c); and
- (b) may provide such a member with an option to receive the alternative benefits referred to in sub-paragraph (7).

(7) Those alternative benefits are benefits that are equal in value to the benefits referred to in sub-paragraph (5)(a), (b) and (c) and comply with the requirements of the 2014 Act.

(8) A member who wishes to be provided with such alternative benefits must elect to do so by giving the Scottish Ministers notice in writing not earlier than 3 months before attaining normal benefit age.

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(1) [S.I. 2000/1053](#).

(9) 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(2).

(10) Upon receipt of a notice of election under sub-paragraph (5) or as the case may be sub-paragraph (8), the Scottish Ministers must, as soon as reasonably practicable, realise investments made under paragraph 2 and—

- (a) where paragraph 5(b) does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election;
- (b) where paragraph 5(b) does apply—
  - (i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum; and
  - (ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice, and not otherwise; and
- (c) where sub-paragraph (8) applies, pay the alternative benefits the pension credit member has elected to be provided with.

(11) Where the conditions in sub-paragraph (12) are satisfied, the Scottish Ministers may realise the investments made under paragraph 2 and apply the proceeds to the purchase of benefits under these Regulations from an insurer that the Scottish Ministers consider—

- (a) suitable;
- (b) will satisfy the requirements of regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 and will comply with the requirements of the 2014 Act; and
- (c) will fully discharge its liability for payment of benefits under these Regulations.

(12) Those conditions are that the pension credit member has—

- (a) attained normal benefit age on or after 1st May 2001; and
- (b) attained the age of 75 and not given notice of an election under sub-paragraph (5) before doing so.

(13) Paragraph (11) applies notwithstanding that the benefits are payable to a pension credit member by virtue of that member being a member of the NHS Pension Scheme under—

- (a) Part E of the 2011 Regulations;
- (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2013 Regulations; or
- (c) regulations 72, 78, 80, 81, 83, 89, or 93 of the 2015 Regulations.

## **Outward Transfers**

**5.—**(1) The Scottish Ministers must, upon receipt of a notice in writing under section 101F(1) of the 1993 Act from an eligible member, pay a transfer value in accordance with the provisions of Chapter II of Part IV A of the 1993 Act and Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000.

(2) The transfer value referred to in sub-paragraph (1) is to 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 (manner of calculation and verification of cash equivalents).

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(2) [S.I. 2000/1054](#).

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

6.—(1) A pension credit member is entitled to the commutation of that member's whole pension credit benefit before having reached normal benefit age in the circumstances referred to in paragraphs (b), (e) and (f) of the lump sum rule in section 166(1) of the 2004 Act.

(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 are 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 is entitled to the commutation of that member's whole 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 total benefits payable meet the requirements of regulation 12 of the 2009 Regulations.

(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 are to 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 the schedule, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds are to be payable as a lump sum in accordance with regulation 15(3).

### **Pension credit member dies after pension credit benefit becomes payable**

9. If a pension credit member dies within a period of 5 years beginning with the date upon which payments of pension credit benefit under paragraph 4 of the schedule commence, the 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, are to be payable as a lump sum in accordance with regulation 15(3).

### **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 their pension credit benefit will not be taken into account in relation to ascertaining their 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 the schedule, unless sub-paragraph (2) or (3) below applies, the lump sum must 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, widower, surviving scheme partner or surviving civil partner, the lump sum may be paid to the widow, widower surviving scheme partner or surviving civil partner, 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, widower or surviving civil partner 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) must 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) must be given in writing;
- (c) may at any time be revoked in writing; and
- (d) must nominate the whole of the lump sum to a nominee and, in the case of a notice that specifies more than one person, must also specify the percentage of the lump sum to be paid to each such person.

(5) A person entitled to a pension credit or, as the case may be, a pension credit member who revokes such a notice under sub-paragraph (4) may give further notice for the purpose of sub-paragraphs (2) or (3).

(6) A notice given under sub-paragraph (3) must specify one or more persons who is—

- (a) an individual;
- (b) a body corporate;
- (c) an unincorporated body; or
- (d) the pension credit member's executors,

but must not specify one or more persons referred to in sub-paragraph (a) together with a body referred to in either of sub-paragraphs (b) or (c).

### **Miscellaneous provisions**

**12.** Regulations 17, 19 and 22 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) This paragraph applies in relation to pension credit benefit which arises by virtue of pension credit rights which are derived from an employer's contributions paid on or after 13th July 1998 in respect of the relevant participator.

(2) Where sub-paragraph (3) applies, the Scottish Ministers may reduce the amount of any pension credit benefit payable to or in respect of a pension credit member under this schedule to

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the extent set out, and subject to the conditions specified, in whichever of the regulations referred to in that paragraph applies.

- (3) This sub-paragraph applies where on or after 13th July 1998—
- (a) in respect of a relevant pension credit member, the circumstances set out in whichever of the following regulations applies have occurred—
    - (i) regulation T6 of the 2011 Regulations (offset for crime, negligence or fraud);
    - (ii) regulation 2.J.7 or 3.J.7 of the 2013 Regulations (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud);
    - (iii) paragraph 11 of schedule 3 of the 2015 Regulations (offset of benefits); and
  - (b) there has been a loss to public funds.
- (4) In this paragraph—
- “relevant pension credit member” means a pension credit member who is also a member of the NHS Pension Scheme; and
- “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 sub-paragraph (2) applies, the Scottish Ministers may direct that all or any part of any rights to pension credit benefit a pension credit member has under this schedule and which arise by virtue of an employer’s contributions paid on or after 13th July 1998 in respect of a relevant participator are to be forfeited.

- (2) This paragraph applies where on or after 13th July 1998—
- (a) that pension credit member commits and is convicted of an offence referred to in—
    - (i) regulation T7 of the 2011 Regulations (loss of rights to benefits);
    - (ii) regulation 2.J.8 or 3.J.8 of the 2013 Regulations (forfeiture of rights to benefits); or
    - (iii) paragraph 12 of schedule 3 of the 2015 Regulations (forfeiture of rights to benefits); and;
  - (b) the circumstances are such that a direction may be made by the Scottish Ministers under whichever of those provisions applies.
- (3) In this paragraph, “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.

## SCHEDULE 2

Regulation 25

### Revocations

**1.** The following instruments are revoked (but where an extent is specified, only to the extent specified):

- (a) the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(3);

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(3) S.I. 1998/1451, as amended by S.S.I. 2001/465, S.S.I. 2004/62, S.S.I. 2005/544, S.S.I. 2006/307, S.S.I. 2008/92 and S.S.I. 2008/225.

- (b) the National Health Service (Scotland) (Superannuation Scheme and Additional Voluntary Contributions) (Pension Sharing on Divorce) Amendment Regulations 2001 (regulation 4 and schedule 2 only)(4);
- (c) the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 2004(5);
- (d) the National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) (Scotland) Amendment Regulations 2005 (regulations 4 and 44 to 47 only)(6);
- (e) the National Health Service (Superannuation Scheme and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2006 (regulations 18 to 35 only)(7);
- (f) the National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2008 (regulation 4 only)(8); and
- (g) the National Health Service Superannuation Scheme (Additional Voluntary Contributions, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2008 (regulation 2 only)(9).

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(4) S.S.I. 2001/465.

(5) S.S.I. 2004/62.

(6) S.S.I. 2005/544.

(7) S.S.I. 2006/307.

(8) S.S.I. 2008/92.

(9) S.S.I. 2008/225.