

*These notes refer to the Welfare Reform and Pensions Act  
1999 (c.30) which received Royal Assent on 11 November 1999*

# WELFARE REFORM AND PENSIONS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part III – Pensions on Divorce Etc.**

##### ***Section 19: Pension sharing orders in England and Wales***

This section gives effect to Schedule 3, which amends the Matrimonial Causes Act 1973 to enable the court to make pension sharing orders in connection with proceedings for divorce or nullity of marriage in England and Wales.

##### ***Section 20: Pension sharing orders in Scotland***

This section amends the Family Law (Scotland) Act 1985 to enable the court in Scotland to make pension sharing orders in relation to divorce and nullity of marriage in Scotland.

*Subsection (2)* inserts into section 8(1) (which sets out the types of order for financial provision a court may make in an action for divorce) a new type of order named “a pension sharing order”.

*Subsections (3) and (4)* insert various definitions into section 27 (interpretation). These definitions largely correspond to the equivalent definitions for England and Wales at Schedule 3, paragraph 2.

The sole point of difference occurs at subsection (3)(b) in the definition of “pension sharing order”. This provides for the percentage value or the amount of the shareable rights to be transferred. Allowing the transfer of an amount reflects substantive law and current practice in Scotland in relation to orders for financial provision on divorce.

##### ***Section 21: Sections 25B to 25D of the Matrimonial Causes Act 1973***

This section gives effect to Schedule 4 which amends the provisions about pensions inserted in the Matrimonial Causes Act 1973 by section 166 of the Pensions Act 1995. These provisions reinforced the courts’ existing duty to take account of pensions in divorce settlements and gave courts in England and Wales new powers to require that, when a pension comes into payment or a lump sum death benefit becomes payable, part or all of it shall be paid by the pension scheme direct to the former spouse.

##### ***Section 22: Extension to overseas divorces etc.***

This section amends Part III of the Matrimonial and Family Proceedings Act 1984 to extend the earmarking introduced into the Matrimonial Causes Act 1973 by the Pensions Act 1995, in relation to applications for financial relief in respect of divorces, judicial separations and annulments in England and Wales after an overseas divorce, separation or annulment.

*Subsection (2)* amends section 18 to require the court, when deciding whether and how to exercise its powers to grant relief under the 1984 Act, to have the same regard to

pension benefits as it does in relation to a domestic case. *Subsection (3)* defines pension arrangement and benefits under a pension arrangement.

*Subsection (4)* amends section 21 of the 1984 Act by inserting two new paragraphs into what was section 21, but which, as a result of the Act, will be section 21(1). Section 21 of the 1984 Act applies provisions of the 1973 Act to financial relief orders under section 17 (financial provision and property adjustment orders) of the 1984 Act.

The additions made by subsection (4) apply to section 17 orders the same provisions about earmarking and attachment as apply under the 1973 Act where, having regard to any benefits under a pension arrangement, the court makes a financial provision order on divorce or nullity.

*Subsection (5)* inserts new subsections (2) to (5) into section 21 of the Matrimonial and Family Proceedings Act 1984. Of these new subsections:

- (2) excludes the power to earmark a pension arrangement under new section 21(1)(bd) and (be) in cases where the only link with England and Wales is the matrimonial home;
- (3) applies section 25D(1) of the Matrimonial Causes Act 1973 (transfers of rights between pension arrangements) to pension earmarking orders under the new section 21(1)(bd) and (be); and
- (4) allows the Lord Chancellor to make regulations equivalent to those which may be made under section 25D(2) to (2B) of the Matrimonial Causes Act 1973. Section 25D(2) (as amended by the Act) provides that regulations may make provisions as to:
  - (a) payment of sums due under earmarking orders
  - (b) rights and liabilities of the parties affected in cases where a payment has been made under a mistaken belief that an earmarking order was valid;
  - (c) notification of change of circumstances;
  - (d) discharge of liability under an earmarking order of the person responsible for a pension arrangement;
  - (e) calculation and verification in relation to the valuation of benefits under a pension arrangement or shareable state scheme rights for the purpose of enabling the court to exercise its powers.

**Section 23: Supply of pension information in connection with divorce etc.** *Subsection (1)* provides for the Secretary of state to make regulations in relation to the supply of information, calculation and verification of pension rights and charges for the provision of information by pension arrangements in Great Britain in relation to financial relief on divorce, nullity and judicial separation within the United Kingdom.

*Subsection (2)* provides that regulations under subsection (1) may include for calculation and verification in accordance with guidance from time to time prepared by a person prescribed by the regulations.

*Subsection (3)* ensures that regulations in subsection (1) may provide for the application in prescribed circumstances (with or without modification) of any provision made under section 41(2) so that, if pension sharing takes place, a pension arrangement may recover charges to which these provisions relate together with charges covered by section 41.

**Section 24: Charges by pension arrangements in relation to earmarking orders.** The section provides for the making of regulations by the Secretary of State to enable pension arrangements in Great Britain to recover their charges for complying with earmarking orders under England, Wales, Scotland or Northern Ireland legislation.

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***Section 25: Power to make consequential amendments of Part III.***

The section gives the Lord Chancellor power by order to make certain consequential amendments to Part III of the Act, including Schedule 3 (amendments to the Matrimonial Causes Act 1973 to enable the court in England and Wales to make pension sharing orders). By subsection (2) of this section, the order will only be exercisable if any amendment made to the Matrimonial Causes Act 1973 by the Family Law Act 1996 is brought into force before any provision in Part III of the Act.