
STATUTORY INSTRUMENTS

2000 No. 1051 (S.5)

**PENSIONS
FAMILY LAW**

**The Pensions on Divorce etc. (Pension
Sharing) (Scotland) Regulations 2000**

Made - - - - *13th April 2000*
Laid before Parliament *19th April 2000*
Coming into force - - *1st December 2000*

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 28(1)(f)(ii) and (3)(a) and 48(1)(f)(ii) and (3)(a) of the Welfare Reform and Pensions Act 1999⁽¹⁾ and of all other powers enabling him in that behalf, after consulting such persons as he considered appropriate⁽²⁾, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 and shall come into force on 1st December 2000.

(2) In these Regulations—

“the 1985 Act” means the Family Law (Scotland) Act 1985⁽³⁾;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“pension arrangement” has the meaning given by section 46(1) of the 1999 Act;

“qualifying arrangement” has the meaning given by paragraph 6 of Schedule 5 to the 1999 Act;

“transferee” and “transferor” have, in regulations 2 and 3, the meaning given by section 29(8), and, in regulations 4 and 5, the meaning given by section 49(6), of the 1999 Act.

⁽¹⁾ 1999 c. 30.

⁽²⁾ See section 83(11) of the Welfare Reform and Pensions Act 1999.

⁽³⁾ 1985 c. 37.

Sharing of Rights under Pension Arrangements

Prescribed form of provision corresponding to provision in a pension sharing order under the 1985 Act.

2. For the purposes of section 28(1)(f)(ii) of the 1999 Act, the provision which corresponds to the provision which may be made by a pension sharing order under the 1985 Act shall be in a form which contains in an annex to, and which is separable from, the qualifying agreement referred to in section 28(1)(f)(i) of the 1999 Act, the following information—

- (a) in relation to the party who is the transferor—
 - (i) all names by which the transferor has been known;
 - (ii) date of birth;
 - (iii) address;
 - (iv) national insurance number;
 - (v) the name and address of the pension arrangement to which the pension sharing provision relates, and
 - (vi) the transferor's membership number or policy number in that pension arrangement;
- (b) in relation to the party who is the transferee—
 - (i) all names by which the transferee has been known;
 - (ii) date of birth;
 - (iii) address;
 - (iv) national insurance number, and
 - (v) if the transferee is a member of the pension arrangement from which a pension credit is derived, his membership number in that pension arrangement;
- (c) details of—
 - (i) the amount to be transferred to the transferee, or
 - (ii) the specified percentage of the cash equivalent of the relevant benefits on the valuation day to be transferred to the transferee;
- (d) where the transferee has given his consent, in accordance with paragraph 1(3)(c), 3(3)(c) or 4(2)(c) of Schedule 5 to the 1999 Act (mode of discharge of liability for a pension credit), to the payment of a pension credit to the person responsible for a qualifying arrangement—
 - (i) the full name of that qualifying arrangement;
 - (ii) its address;
 - (iii) if known, the transferee's membership number or policy number in that arrangement, and
 - (iv) the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the pension credit;
- (e) details of the provision about the apportionment (if any) made by the transferor and the transferee of liability for any charges levied by the person responsible for the pension arrangement in relation to pension sharing under Chapter I of Part IV of the 1999 Act, and
- (f) confirmation by the transferor that he has intimated to the pension arrangement his intention with respect to pension sharing and that the pension arrangement has acknowledged receipt of the intimation.

Circumstances in which an agreement is to be entered into, in order to be considered a “qualifying agreement” under section 28(1)(f) of the 1999 Act.

3. A qualifying agreement is, for the purposes of section 28(1)(f) of the 1999 Act, one which the transferor and transferee have entered into in order to determine the financial settlement on divorce and in respect of which the transferor has intimated to the person responsible for a pension arrangement prior to the making of the agreement the intention to have the transferor’s pension rights under the pension arrangement shared with the transferee.

Sharing of State Scheme Rights

Prescribed form of provision corresponding to provision in a pension sharing order under the 1985 Act.

4. For the purposes of section 48(1)(f)(ii) of the 1999 Act, the provision which corresponds to the provision which may be made by a pension sharing order under the 1985 Act shall be in a form which contains in an annex to, and which is separable from, the qualifying agreement referred to in section 48(1)(f)(i) of the 1999 Act, the following information—

- (a) in relation to the party who is the transferor—
 - (i) full name;
 - (ii) date of birth;
 - (iii) address;
 - (iv) national insurance number, and
 - (v) details of the specified amount or, as appropriate, the specified percentage of the cash equivalent on the transfer day of the transferor’s relevant state scheme rights immediately before that day;
- (b) in relation to the party who is the transferee—
 - (i) full name by which the transferee is or will be known;
 - (ii) date of birth;
 - (iii) address, and
 - (iv) national insurance number, and
- (c) a statement by the transferor and the transferee that they have received confirmation from the Secretary of State that shareable state scheme rights are held in the name of the transferor and that on the grant of decree of divorce or declarator of nullity of marriage a pension-sharing agreement will be implemented.

Circumstances in which an agreement is to be entered into, in order to be considered a “qualifying agreement” under section 48(1)(f) of the 1999 Act.

5. A qualifying agreement is, for the purposes of section 48(1)(f) of the 1999 Act, one which the transferor and transferee have entered into in order to determine the financial settlement on divorce and in respect of which they have received confirmation from the Secretary of State that shareable state scheme rights are held in the name of the transferor.

Signed by authority of the Secretary of State for Social Security.

13th April 2000

Jeff Rooker
Minister of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to pension-sharing in Scotland, under the Welfare Reform and Pensions Act 1999, where parties divorce or their marriage is declared to be null. Regulations 2 and 3 relate to the sharing of rights under pension arrangements. Regulations 4 and 5 relate to the sharing of state scheme rights.

Section 29 of the 1999 Act provides for the creation of a right of one party to a marriage in the other party's shareable rights under a pension arrangement and for the creation of a corresponding liability of that other party. Section 28 of the 1999 Act provides that the provisions of section 29 apply when a pension-sharing arrangement is activated. Section 28 specifies various forms of pension-sharing. In particular, it specifies a provision for pension-sharing which corresponds to the provision which may be made in a pension sharing order under the Family Law (Scotland) Act 1985 and which is in such form as the Secretary of State may prescribe. Regulation 2 prescribes the form of that provision.

Section 28 also provides that the provision corresponding to the pension-sharing order under the 1985 Act is to be contained in a qualifying agreement between the parties to a marriage and that a qualifying agreement is one which has been entered into in such circumstances as the Secretary of State may prescribe. Regulation 3 prescribes those circumstances.

Section 49 of the 1999 Act provides for the creation of a right of one party to a marriage in the other party's shareable state scheme rights and for the creation of the corresponding liability of that other party ("benefit sharing").

Section 48 of the 1999 Act provides that the provisions of section 49 apply when benefit sharing is activated. Section 48 specifies various forms of benefit sharing. In particular, it specifies a provision for benefit sharing which corresponds to the provision which may be made in a pension sharing order under the Family Law (Scotland) Act 1985 and which is in such form as the Secretary of State may prescribe. Regulation 4 prescribes the form of that provision.

Section 48 also provides that the provision corresponding to the pension sharing order under the 1985 Act is to be contained in a qualifying agreement between the parties to the marriage and that a qualifying agreement is one which has been entered into in such circumstances as the Secretary of State may prescribe. Regulation 5 prescribes those circumstances.

An assessment of the cost to business of the provisions of the Welfare Reform and Pensions Act 1999, including these Regulations, is detailed in the Regulatory Impact Assessment for that Act. A copy of this Assessment has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Pensions on Divorce, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.