SCOTTISH STATUTORY INSTRUMENTS

2001 No. 465

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Scotland) (Superannuation Scheme and Additional Voluntary Contributions) (Pension Sharing on Divorce) Amendment Regulations 2001

Made - - - -	*13th December 2001*
Laid before the Scottish Parliament - - - -	*20th December 2001*
Coming into force - -	*28th January 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(**1**), and of all other powers enabling them in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury(**2**), hereby make the following Regulations:

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the National Health Service (Scotland) (Superannuation Scheme and Additional Voluntary Contributions) (Pension Sharing on Divorce) Amendment Regulations 2001.

(2) These Regulations shall come into force on 28th January 2002 and shall have effect from 1st December 2000.

(3) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

(**1**) 1972 c. 11; section 10 was amended by Part II of Schedule 7 to the National Health Service (Scotland) Act 1972 (c. 58) and sections 10(2), (3A) and (6) and 12(4A) were inserted, and 10(1) and 12(2) and (4) amended, by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2), 8(5) and 10; section 10(6) was amended by the Pensions Schemes Act 1993 (c. 48), Schedule 8, paragraph 7; the functions of the Secretary of State in relation to making subordinate legislation concerning the Scottish National Health Service Superannuation Scheme were transferred to the Scottish Ministers by virtue of article 2 and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750).

(**2**) See the Superannuation Act 1972, section 10(1) and the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 article 2 (S.I. 1981/1670).

"the AVC Regulations" means the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(**3**);

"the 1995 Regulations" means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(**4**).

Amendment of the 1995 Regulations

3. The 1995 Regulations shall be amended in accordance with Schedule 1 to these Regulations.

Amendment of AVC Regulations

4. The AVC Regulations shall be amended in accordance with Schedule 2 to these Regulations.

St Andrew's House,Edinburgh
10th December 2001

ANDREW P KERR
A member of the Scottish Executive

We consent,

ANNE McGUIRE
NICK AINGER
Two of the Lords Commissioners of Her Majesty's Treasury

13th December 2001

(**3**) S.I. 1998/1451.
(**4**) S.I. 1995/365, amended by S.I. 1997/434, 1997/1916, 1998/1593, 1999/443 and 2001/437.

SCHEDULE 1 Regulation 3

AMENDMENT OF THE 1995 REGULATIONS

Amendment of Regulation A2 of the 1995 Regulations

1. In regulation A2(4) there shall be inserted in the first and second columns in the appropriate places in alphabetical order, the following definitions:–

""the 1993 Act" The Pension Schemes Act 1993(**5**);

"the 1995 Act" The Pensions Act 1995(**6**);

"the 1999 Act" The Welfare Reform and Pensions Act 1999(**7**);

"active member" A person who is in pensionable service under the scheme;"

"appropriate percentage" The meaning given in regulation W5(4);

"appropriate rights" The meaning given in regulation W7(3);

"ex-spouse" An individual to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;

"indexed" In accordance with the Government Index of Retail Prices; "

"the Inland Revenue" The Commissioners of Inland Revenue;

"member of the Scheme" A member of the Scheme and includes an active member, a deferred member and a pension credit member;

"normal benefit age" Age 60;

"pension credit" The meaning given in regulation W3(b);

"pension credit benefit" In relation to the Scheme the benefits payable under the Scheme to or in respect of a pension credit member by virtue of his appropriate rights under the Scheme attributable to a pension credit;

"pension credit member" An individual who is a member of the Scheme, either,

(i) solely for the provision of a pension credit benefit, or,

(ii) for the wholly separate provision of a pension credit benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason;

"pension credit rights" Rights to future benefits under the Scheme which are attributable to a pension credit;

"pension debit" The meaning given in regulation W3(a);

"pension debit member" A member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;

"pension sharing order or provision" Any order or provision which is mentioned in section 28(1) of the 1999 Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**8**);

"Regulatory Authority" The meaning given in regulation W10(4);

"safeguarded percentage" The meaning given by section 68A(3) or (4), as the case may be of the 1993 Act;

(**5**) 1993 c. 48.
(**6**) 1995 c. 26.
(**7**) 1999 c. 30.
(**8**) S.I. 1999/3147 (N.I.11).

"safeguarded rights" The meaning given by section 68A of the 1993 Act(**9**);

"shareable rights" The meaning given by section 27(2) of the 1999 Act and means any rights under a pension arrangement other than as described in section 2 of The Pension Sharing (Valuation) Regulations 2000(**10**);

"transfer day" The meaning given in regulation W5(4);".

Pension sharing on divorce or nullity of marriage

2.—(1) In Part R (special provisions for certain members) after regulation R13(**11**) there shall be inserted the following:–

"**Pension sharing on divorce or nullity of marriage**

R14.—(1) PART W and Schedule 1A shall have effect in relation to–

(a) pension credit rights, or, as the case may be,

(b) pension credit benefit payable, or

(c) pension debits,

under the Scheme.

(2) Except as provided for in this regulation, in Part W and in Schedule 1A, Parts B to V shall not apply to a person entitled to a pension credit or to a pension credit member.".

3. After PART V of the 1995 Regulations there shall be inserted the following:–

"PART W

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

PRELIMINARY PROVISIONS

Interpretation

W1. The definitions of expressions contained in regulation A2(4) apply for their interpretation to this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

W2.—(1) Pension sharing is available under the Scheme in respect of any of a person's shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights(**12**) for the purposes of these Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme and any other rights which are prescribed as excluded(**13**).

(**9**) Section 68A was inserted by section 36 of the 1999 Act.
(**10**) S.I. 2000/1052.
(**11**) Regulation R13 was inserted by S.I. 1999/443.
(**12**) See section 27(2) of the 1999 Act and section 2 of the Pension sharing (Valuation) Regulations 2000 (S.I. 2000/1052.
(**13**) See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) which describes rights of a description which are not to the classed as shareable rights for the purposes of section 27(2) of the 1999 Act.

Pension sharing order activates pension sharing creating pension debits and credits

W3. On the coming into effect of a pension sharing order–

(a) the transferor's shareable rights under the Scheme become subject to a debit of the appropriate amount ("pension debit"(**14**)) as defined in regulation W4, and

(b) the transferee becomes entitled to a credit of that amount ("pension credit"(**15**)) as against the Scottish Ministers.

Calculation of "appropriate amount"

W4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation W3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation W3 is the lesser of–

(a) the specified amount, and

(b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which he would be entitled under the Scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of sub-paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of his shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation W3(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect(**16**).

Pension debits and reduction of benefit

W5.—(1) Subject to paragraph (2), where a member's shareable rights are subject to a pension debit, each benefit or future benefit–

(a) to which he is entitled under the Scheme by virtue of those rights, and

(b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit–

(a) to which the person is entitled under the Scheme by virtue of those rights, and

(b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(**14**) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.
(**15**) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.
(**16**) This definition is that in section 29(8) of the 1999 Act.