SCOTTISH STATUTORY INSTRUMENTS

2001 No. 310

FIRE SERVICES

SUPERANNUATION

PENSIONS

The Firemen's Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001

Made - - - -	*10th September 2001*
Laid before the Scottish Parliament - - - -	*13th September 2001*
Coming into force - -	*5th October 2001*

The Scottish Ministers, in exercise of the powers conferred by section 26 of the Fire Services Act 1947(**1**), section 8 of the Fire Services Act 1959(**2**), sections 12 and 16 of the Superannuation Act 1972(**3**) and of all other powers enabling them in that behalf, and after consultation with the Scottish Central Fire Brigades Advisory Council, hereby make the following Order:

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firemen's Pension Scheme (Pension Sharing on Divorce) (Scotland) Order 2001.

(2) This Order shall come into force on 5th October 2001 and shall have effect from 1st December 2000.

(3) This Order extends to Scotland only.

(**1**) 1947 c. 41; section 26 was amended and extended by the Fire Services Act 1951 (c. 27), section 1; by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 42; by the Superannuation Act 1972 (c. 11), sections 12 and 16; and by the Police and Firemen's Pensions Act 1997 (c. 52), section 1(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 ("the 1999 Order"), article 2 and Schedule 1, (S.I. 1999/1750); approval of the Treasury is not required by virtue of the 1999 Order, article 2.

(**2**) 1959 c. 44.

(**3**) 1972 c. 11; section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1997.

Amendment of the Firemen's Pension Scheme Order 1992

2. The Firemen's Pension Scheme Order 1992(**4**) ("the 1992 Order") shall be amended in accordance with articles 3 to 5 of this Order.

Pension sharing on divorce

3. After Part M of Schedule 2 to the 1992 Order there shall be inserted–

"PART N

PENSION SHARINGPRELIMINARY PROVISIONS

Interpretation of Part N

N1.—(1) The definitions of expressions contained in Parts I and IA(**5**) of Schedule 1 to this Scheme shall, unless the context indicates that they have a different meaning, apply for their interpretation in this Part of the Scheme.

(2) All provisions in Parts A to M of this Scheme shall, unless the context indicates otherwise, be subject to the provisions of this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

N2.—(1) Pension sharing is available under this Scheme in respect of any of a person's shareable rights under this Scheme except as otherwise provided in this rule.

(2) Excluded from shareable rights for the purposes of this Part of this Scheme are any rights under this 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 this Scheme(**6**).

Pension sharing order activates pension sharing, creating pension debits and credits

N3. On the coming into effect of a pension sharing order–

(a) the transferor's shareable rights under this Scheme become subject to a debit of the appropriate amount ("pension debit"(**7**)) as defined in rule N4, and

(b) the transferee becomes entitled to a credit of that amount ("pension credit"(**8**)) as against this Scheme.

Calculation of appropriate amount

N4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of rule N3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(**4**) S.I 1992/129 as amended by S.I. 1997/2309 and 2851 and 1998/1010.
(**5**) Inserted by this order, article 4.
(**6**) 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 be classed as shareable rights for the purposes of section 27(2) of the Welfare Reform and Pensions Act 1999 (c. 30) ("the 1999 Act").
(**7**) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.
(**8**) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of rule N3 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 this 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 this 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 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 this Scheme by virtue of his shareable rights under it.

(5) For the purposes of this rule, the valuation day is such day within the implementation period for the discharge of the credit referred to in rule N3(b) as the fire authority may specify by notice in writing to the transferor and transferee.

(6) In this rule, the transfer day means the day on which the relevant pension sharing order takes effect(**9**).

Pension debits and reduction of benefit

N5.—(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 this 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 this Scheme of a member who is in pensionable service under this Scheme on the transfer day, each benefit or future benefit–

(a) to which the person is entitled under this 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.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this rule(**10**)–

"appropriate percentage", in relation to a pension debit, means–

(a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;

(b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act represents of the amount mentioned in subsection (3)(b) of that section;

"relevant order or provision", in relation to a pension debit, means the pension sharing order on which the debit depends;

(**9**) This definition is that in section 29(8) of the 1999 Act.
(**10**) The definitions in this paragraph are those in section 31(5) of the 1999 Act.

"transfer day", in relation to a pension debit, means the day on which the relevant order or provision takes effect.

Effect of pension sharing on protected rights and guaranteed minimum pension

N6. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by this Scheme, these shall in the case of a pension debit in relation to the member's rights under this Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993(**11**).

MODE OF DISCHARGE AND IMPLEMENTATION PERIOD

Discharge of pension credit liability

N7.—(1) A fire authority, in relation to a pension credit derived from this Scheme, may discharge its liability in respect of the credit by conferring appropriate rights as defined in paragraph (3) under this Scheme on the ex-spouse.

(2) If this Scheme becomes closed to new members, the liability in respect of any pension credit derived from the Scheme may be discharged in accordance with paragraphs 2(3) to (5) of Schedule 5 to the 1999 Act and in accordance with regulations made under paragraph 2(3) of Schedule 5 to that Act.

(3) For the purposes of this rule, rights conferred on the ex-spouse 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(**12**), equals the amount of the credit.

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

N8. If–

(a) a person's shareable rights under this Scheme have become subject to a pension debit,

(b) a fire authority makes 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 the lesser amount(**13**).

Implementation period for discharge of pension credit

N9.—(1) A fire authority shall discharge its liability in respect of a pension credit within the implementation period(**14**), 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

(**11**) 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.
(**12**) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).
(**13**) See the 1999 Act, Schedule 5, paragraph 9 and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).
(**14**) See section 33(1) of the 1999 Act.

(b) the first day on which the fire authority in relation to the relevant pension sharing order is in receipt of–

(i) the relevant matrimonial 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(**15**).

(2) The reference in paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of–

(a) the relevant pension sharing order, and

(b) the order, decree or declarator responsible for the divorce or annulment 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(**16**).

(4) The provisions of this rule are subject to any provisions or requirements which the Secretary of State may make by regulations under section 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(**17**).

Failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse before implementation has taken place

N10.—(1) Where a fire authority has not done what is required to discharge its liability in respect of a pension credit before the end of the implementation period for the credit–

(a) it shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act(**18**), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and

(b) section 10 of the Pensions Act 1995(**19**) (power of the Regulatory Authority to impose civil penalties) shall apply where any fire authority has 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 a fire authority fails to perform the obligation imposed by paragraph (1)(a) above, section 10 of the Pensions Act 1995 shall apply.

(3) Where a fire authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the authority extend the implementation

(**15**) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).
(**16**) 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.
(**17**) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).
(**18**) 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.
(**19**) 1995 c. 26.