SCOTTISH STATUTORY INSTRUMENTS

2001 No. 152

EDUCATION

The Teachers' Superannuation (Pension Sharing on Divorce) (Scotland) Regulations 2001

Made - - - -	*9th April 2001*
Laid before the Scottish Parliament - - - -	*18th April 2001*
Coming into force - -	*14th May 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(**1**), and of all other powers enabling them in that behalf, after consulting with representatives of education authorities and of teachers and with such representatives of other persons likely to be affected by the Regulations as appear to them to be appropriate in accordance with section 9(5) 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 Teachers' Superannuation (Pension Sharing on Divorce) (Scotland) Regulations 2001.

(2) These Regulations shall come into force on 14th May 2001 and shall have effect from 1st December 2000.

(3) These Regulations extend to Scotland only.

Amendment of the Teachers' Superannuation (Scotland) Regulations 1992

2. The Teachers' Superannuation (Scotland) Regulations 1992(**3**) ("the 1992 Regulations") shall be amended in accordance with regulations 3 to 5 of these Regulations.

(**1**) 1972 c. 11: section 9 was amended by sections 4(1), 8(3) and (4), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) and section 12 was amended by section 10 of that Act. 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, article 2 and Schedule 1, (S.I. 1999/1750).

(**2**) This function was transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury Order 1981 (S.I. 1981/1670) and still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(**3**) S.I. 1992/280, amended by S.I. 1992/1025 and 1597, 1993/490 and 2513, 1994/1715 and 2699, 1995/840, 1670 and 2865, 1997/676, 1998/718, 1999/446 and S.S.I. 2000/366.

Pension sharing on divorce

3. After Part H of the 1992 Regulations shall be inserted the following:–

"PART J

PENSION SHARINGPRELIMINARY PROVISIONS

Interpretation of Part J

J1.—(1) The definitions of expressions contained in Schedule 1A shall, unless the context indicates that they have a different meaning, apply for their interpretation in this Part of the Regulations as well as those definitions of expressions contained in Schedule 1.

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

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

J2.—(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 for the purposes of this Part 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(**4**).

Pension sharing order activates pension sharing creating pension debits and credits

J3. 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"(**5**)) as defined in regulation J4, and

(b) the transferee becomes entitled to a credit of that amount ("pension credit"(**6**)) as against the Scottish Ministers.

Calculation of "appropriate amount"

J4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation J3 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 J3 is the lesser of–

(a) the specified amount, and

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

(**4**) 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") 1999 Act. Additional Voluntary Contributions ("AVCs") are paid under regulations different to those constituting the Scheme (see S.I. 1995/2814).

(**5**) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

(**6**) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

(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 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 J3(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(**7**).

Pension debits and reduction of benefit

J5.—(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.

(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 regulation(**8**)–

"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;

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

(**7**) This definition is that in section 29(8) of the 1999 Act.

(**8**) The definitions in this paragraph are those in section 31(5) of the 1999 Act.

Effect of pension sharing on protected rights and guaranteed minimum pension

J6. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member's rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993(**9**).

MODE OF DISCHARGE AND IMPLEMENTATION PERIOD

Discharge of pension credit liability

J7.—(1) The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse.

(2) If the 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 regulation, 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(**10**), equals the amount of the credit.

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

J8. If–

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

(b) the Scottish Ministers make 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 that lesser amount(**11**).

Implementation period for discharge of pension credit

J9.—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within the implementation period(**12**), 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

(b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of–

(**9**) 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.
(**10**) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).
(**11**) 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).
(**12**) Section 33(1) of the 1999 Act.

(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(**13**).

(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 subsection (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which subsection (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(**14**).

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 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(**15**).

Failure to discharge liability in respect of pension credit within the implementation period Death of ex spouse within period

J10.—(1) Where the Scottish Ministers have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit–

(a) they shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act(**16**), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and

(b) section 10 of the Pension Act 1995(**17**) (power of the Regulatory Authority to impose civil penalties) shall apply where the Scottish Ministers have 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 the Scottish Ministers fail to perform the obligation imposed by paragraph (1)(a) above, section 10 of the Pensions Act 1995 shall apply.

(3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the Scottish Ministers extend the

(**13**) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).
(**14**) 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.
(**15**) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).
(**16**) 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.
(**17**) 1995 c. 26.