SCOTTISH STATUTORY INSTRUMENTS

2001 No. 23

PENSIONS

The Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2001

Made - - - -	*29th January 2001*
Laid before the Scottish Parliament - - - -	*31st January 2001*
Coming into force - -	*3rd March 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(**1**) and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to them to be appropriate, in accordance with section 7(5) of the Superannuation Act 1972, and not having considered consultation with any individual local authority desirable, hereby make the following Regulations:

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Pension Sharing on Divorce) (Scotland) Regulations 2001.

(2) These Regulations shall come into force on 3rd March but shall have effect from 1st December 2000.

(3) These Regulations extend to Scotland only.

Amendment of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998

2.—(1) In regulation 5(6) of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998(**2**)—

(a) delete "(except those incurred in connection with a FSAVC scheme)"; and

(b) add at the end after the word "it"—

(**1**) 1972 c. 11; sections 12(2) and (4) were amended and section 12(4A) was inserted by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), S.10; 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**) S.I. 1998/2888, as amended by S.I. 2000/74.

"except—

(a) those incurred in connection with a FSAVC scheme; and

(b) those costs and charges prescribed by regulations made by the Secretary of State which the administering authority is enabled to recover under sections 23, 24, or 41 of the Welfare Reform and Pensions Act 1999".

Amendment of the Local Government Pension Scheme (Scotland) Regulations 1998

3. The Local Government Pension Scheme (Scotland) Regulations 1998(**3**) ("the principal Regulations") shall be amended in accordance with regulations 4 to 6 of these Regulations.

Pension sharing on divorce

4. After Part V of the principal Regulations shall be inserted the following:—

"PART VI

PENSION SHARING

CHAPTER I

PRELIMINARY PROVISIONS

Interpretation of Part VI

138.—(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 I to V of these regulations shall, unless the context indicates otherwise, be subject to the provisions of this Part.

CHAPTER II

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

139.—(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

140. On the coming into effect of a pension sharing order—

(**3**) S.I. 1998/366, as amended by S.S.I. 2000/199.

(**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).

(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 141; and

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

Calculation of "appropriate amount"

141.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation 140 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 140 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 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 140(b) as the administering authority 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 or provision takes effect(**7**).

Pension debits and reduction of benefit

142.—(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.

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

(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.

Effect of pension sharing on protected rights and guaranteed minimum pension

143. 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**).

CHAPTER III

MODE OF DISCHARGE AND "IMPLEMENTATION PERIOD"

Discharge of pension credit liability by conferring "appropriate rights" or making transfer payment to another scheme

144.—(1) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by conferring appropriate rights under the Scheme on the ex spouse—

(a) with his consent; or

(b) in accordance with regulations made by the Secretary of State under paragraph 1(2)(b) of Schedule 5 to the 1999 Act(**10**).

(2) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the ex spouse if—

(a) the qualifying arrangement is not disqualified as a destination for the credit,

(b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit; and

(c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State under paragraph 1(3)(c) of Schedule 5 to the 1999 Act(**11**).

(3) For the purposes of paragraph (1), no account is to be taken of consent of the person entitled to the pension credit unless—

(**8**) The definitions in this paragraph are those in section 31(5) of the 1999 Act.
(**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 regulation 7(1) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).
(**11**) See regulation 7(2) of S.I. 2000/1053.

(a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under paragraph (2); or

(b) it is not withdrawn within 7 days of receipt of such notice.

(4) 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(**12**), equals the amount of the credit.

Qualifying arrangements

145.—(1) The following are qualifying arrangements for the purposes of regulation 144—

(a) an occupational pension scheme;

(b) a personal pension scheme;

(c) an appropriate annuity contract;

(d) an appropriate policy of insurance; and

(e) an overseas arrangement within the meaning of the Contracting out (Transfer and Transfer Payment) Regulations 1996(**13**).

(2) An annuity contract or policy of insurance is appropriate for the purposes of paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—

(a) is carrying on ordinary long term insurance business in the United Kingdom or any other member State; and

(b) satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 6(2)(b) of Schedule 5 to the 1999 Act(**14**).

(3) In this paragraph, "ordinary long term insurance business" has the same meaning as in the Insurance Companies Act 1982(**15**).

Disqualification as destination for pension credit

146.—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988(**16**), an arrangement is disqualified as a destination for the credit unless—

(a) it is also approved for those purposes; or

(b) it satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 7(1)(b) of Schedule 5 to the 1999 Act(**17**).

(2) If the rights by reference to which the amount of a pension credit is determined are or include contracted out rights or safeguarded rights, an arrangement is disqualified as a destination for the credit unless—

(**12**) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).
(**13**) S.I. 1996/1462.
(**14**) See Regulation 11 of S.I. 2000/1053.
(**15**) 1982 c. 50.
(**16**) 1988 c. 1.
(**17**) See regulation 12 of S.I. 2000/1053.