SCOTTISH STATUTORY INSTRUMENTS

2000 No. 112

FAMILY LAW

The Divorce etc. (Pensions) (Scotland) Regulations 2000

Made - - - -	*18th April 2000*
Laid before the Scottish Parliament - - - -	*19th April 2000*
Coming into force - -	*1st December 2000*

The Scottish Ministers, in exercise of the powers conferred upon them by section 10(8) and (8A) of the Family Law (Scotland) Act 1985(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and application

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

(2) These Regulations shall not affect any action for divorce commenced before 1st December 2000 or any action for declarator of nullity of marriage commenced before that date.

(3) For the purposes of these Regulations an action for divorce or action for declarator of nullity of marriage shall commence on the date of service of the summons.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Family Law (Scotland) Act 1985;

"the 1993 Act" means the Pension Schemes Act 1993(**2**);

"the 1995 Act" means the Pensions Act 1995(**3**);

"the 1999 Act" means the Welfare Reform and Pensions Act 1999(**4**);

"active member" has the same meaning as in section 124(1) of the 1995 Act;

(**1**) 1985 c. 37; section 10(8) was substituted by the Welfare Reform and Pensions Act 1999 c. 30 ("the 1999 Act"), Schedule 12, paragraph 8(3); section 10(8A) was inserted by the 1999 Act, Schedule 12, paragraph 8(4). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) as read with section 91(4) of the 1999 Act which deemed paragraphs 8(3) and (4) of Schedule 12 to the 1999 Act to be a pre-commencement enactment.
(**2**) 1993 c. 48.
(**3**) 1995 c. 26.
(**4**) 1999 c. 30.

"benefits under a pension arrangement" has the same meaning as in section 27(1)(**5**), subject to section 12A(10)(**6**) and any reference to the rights or interests which a party has or may have in benefits under a pension arrangement includes a reference to the rights or interests which a party has or may have in such benefits which are payable in respect of the death of either party;

"deferred member" has the meaning given by section 124(1) of the 1995 Act;

"a party" means a party to a marriage;

"occupational pension scheme" has the same meaning as in section 1 of the 1993 Act;

"pension arrangement" has the same meaning as in section 46(1) of the 1999 Act;

"person responsible for a pension arrangement" has the same meaning as in section 46(2) of the 1999 Act;

"personal pension scheme" has the same meaning as in section 1 of the 1993 Act but, as if the reference to employed earners in that definition were to any earner;

"matrimonial property" has the same meaning as in section 10(4) and (5);

"relevant date" has the same meaning as in section 10(3);

"salary related occupational pension scheme" has the meaning given in regulation 1A of the Occupational Pension Schemes (Transfer Values) Regulations 1996(**7**).

(2) Any reference in these Regulations to–

(a) a numbered section is to a section bearing that number in the Act;

(b) a numbered regulation is to a regulation bearing that number in these Regulations.

Valuation

3.—(1) The value of any benefits under a pension arrangement shall be calculated and verified, for the purposes of the Act, in accordance with this regulation and regulation 4.

(2) The value, as at the relevant date, of the rights or interests which a party has or may have in any benefits under a pension arrangement as at that date shall be calculated as follows and in accordance with–

(a) paragraph (3), if the party with pension rights is a deferred member of an occupational pension scheme;

(b) paragraph (4), if the party with pension rights is an active member of an occupational pension scheme;

(c) paragraphs (5) and (6), if–

(i) the party with pension rights is a member of a personal pension scheme; or

(ii) those rights are contained in a retirement annuity contract; or

(d) paragraphs (7) to (9), if–

(i) the pension of the party with pension rights is in payment;

(ii) the party with the pension rights holds an annuity other than a retirement annuity contract; or

(iii) the rights of the party with pension rights are contained in a deferred annuity contract other than a retirement annuity contract.

(**5**) The definitions of "benefits under a pension arrangement" and "pension arrangement" were inserted by the 1999 Act, Schedule 12, paragraph 12.
(**6**) Section 12A(10) was substituted by the 1999 Act, Schedule 12, paragraph 9(9).
(**7**) S.I.1996/1847; regulation 1A was inserted by S.I. 1997/786, regulation 12(3).

(3) Where the party with pension rights is a deferred member of an occupational pension scheme, the value of the benefits which he has under that scheme shall be taken to be–

(a) in the case of an occupational pension scheme other than a salary related scheme, the cash equivalent to which he acquired a right under section 94(1)(a) of the 1993 Act(**8**) (right to cash equivalent) on the termination of his pensionable service, calculated on the assumption that he has made an application under section 95 of that Act(**9**) (ways of taking right to cash equivalent) on the date on which the request for the valuation was received; or

(b) in the case of salary related occupational pension scheme, the guaranteed cash equivalent to which he would have acquired a right under section 94(1)(aa) of the 1993 Act(**10**) if he had made an application under section 95(1) of that Act, calculated on the assumption that he has made an application under section 95 of that Act on the date on which the request for the valuation was received.

(4) Where the party with pension rights is an active member of an occupational pension scheme, the valuation of the benefits which he has accrued under that scheme shall be calculated and verified–

(a) on the assumption that the member has made a request for an estimate of the cash equivalent that would be available to him were his pensionable service to terminate on the date on which the request for valuation was received; and

(b) in accordance with regulation 11 and Schedule 1 to the Occupational Pension Schemes (Transfer Values) Regulations 1996(**11**) (disclosure).

(5) Where the party with pension rights is a member of a personal pension scheme, or those rights are contained in a retirement annuity contract, the value of thebenefits which he has under that scheme or contract shall be taken to be the cash equivalent to which he would have acquired a right under section 94(1)(b) of the 1993 Act, if he had made an application under section 95(1) of that Act on the date on which the request for the valuation was received.

(6) In relation to a personal pension scheme which is comprised in a retirement annuity contract made before 4th January 1988, paragraph (5) shall apply as if such a scheme were not excluded from the scope of Chapter IV of Part IV of the 1993 Act by section 93(1)(b) of that Act (scope of Chapter IV).

(7) Except in a case to which, or to the extent to which, paragraph (9) applies, the cash equivalent of benefits in respect of a person referred to in paragraph (2)(d) shall be calculated and verified in such a manner as may be approved in particular cases by–

(a) a Fellow of the Institute of Actuaries;

(b) a Fellow of the Faculty of Actuaries(**12**);or

(c) a person with actuarial qualifications who is approved by the Scottish Ministers, at the request of the person responsible for the pension arrangement in question, as being a proper person to act for the purposes of this regulation in connection with that arrangement.

(8) Except in a case to which paragraph (9) applies, cash equivalents are to be calculated and verified by adopting methods and making assumptions which–

(a) if not determined by the person responsible for the pension arrangement in question, are notified to him by the actuary referred to in paragraph (7); and

(b) are certified by the actuary to the person responsible for the pension arrangement in question as being consistent with the "Retirement Benefit Scheme-Transfer Values

(**8**) Section 94(1)(a) was amended by the Pensions Act 1995 ("the 1995 Act"), section 154.
(**9**) Section 95 was amended by the 1995 Act, Schedule 6, paragraph 3.
(**10**) Section 94(1)(aa) was inserted by the 1995 Act, section 154(2).
(**11**) S.I. 1996/1847.
(**12**) The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WCIV 7QJ. The Faculty of Actuaries is at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.