STATUTORY RULES OF NORTHERN IRELAND

2000 No. 143

PENSIONS
FAMILY LAW

The Pensions on Divorce etc. (Charging) Regulations (Northern Ireland) 2000

Made - - - -	*26th April 2000*
Coming into operation	*1st December 2000*

The Department for Social Development, in exercise of the powers conferred on it by Articles 21(1)(*d*) and (3), 22, 38(1) and (2) and 73(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**1**), and now vested in it(**2**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions on Divorce etc. (Charging) Regulations (Northern Ireland) 2000 and shall come into operation on 1st December 2000.

(2) In these Regulations—

"the Provision of Information Regulations" means the Pensions on Divorce etc. (Provision of Information) Regulations (Northern Ireland) 2000(**3**);

"day" means any day other than a public holiday;

"implementation period" has the meaning given by Article 31(1);

"notice of implementation" has the meaning given by regulation 1(2) of the Provision of Information Regulations;

"pension arrangement" has the meaning given by Article 43(1);

"pension credit" means a credit under Article 26(1)(*b*);

"pension credit benefit" has the meaning given by section 97B(**4**);

"pension credit rights" has the meaning given by section 97B;

"pension sharing activity" has the meaning given by Article 38(5);

(**1**) S.I. 1999/3147 (N.I. 11)
(**2**) *See* Article 8(*b*) of S.R. 1999 No. 481
(**3**) S.R. 2000 No. 142
(**4**) Section 97B is inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

"pension sharing order or provision" means an order or provision which is mentioned in Article 25(1);

"person responsible for a pension arrangement" has the meaning given by Article 43(2);

"the relevant date" has the meaning given by section 10(3) of the Family Law (Scotland) Act 1985(**5**);

"trustees or managers" has the meaning given by Article 43(1).

(3) In these Regulations—

(a) any reference to a numbered section is a reference to the section of the Pension Schemes Act bearing that number, and

(b) any reference to a numbered Article or Schedule is a reference to the Article of, or Schedule to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 bearing that number.

(4) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**6**), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

General requirements as to charges

2.—(1) Subject to paragraph (8), a person responsible for a pension arrangement shall not recover any charges incurred in connection with—

(a) the provision of information under—

(i) regulation 2 of the Provision of Information Regulations (basic information about pensions on divorce);

(ii) regulation 4 of those Regulations (provision of information in response to a notification that a pension sharing order or provision may be made), or

(iii) regulation 10 of those Regulations (provision of information after receipt of an earmarking order);

(b) complying with any order specified in Article 22 (charges by pension arrangements in relation to earmarking orders), or

(c) any description of pension sharing activity specified in regulation 5,

unless he has complied with the requirements of paragraphs (2) to (5).

(2) The requirements mentioned in paragraph (1) are that the person responsible for a pension arrangement shall, before a pension sharing order or provision is made—

(a) inform the member or his spouse, as the case may be, in writing of his intention to recover costs incurred in connection with any of the matters specified in sub-paragraph (*a*), (*b*) or (*c*) of paragraph (1), and

(b) provide the member or his spouse, as the case may be, with a written schedule of charges in accordance with paragraphs (3) and (4) in respect of those matters specified in sub-paragraph (*a*) or (*c*) of paragraph (1) for which a charge may be recoverable.

(3) No charge shall be recoverable in respect of any of the items mentioned in paragraph (4) unless the person responsible for a pension arrangement has specified in the written schedule of charges mentioned in paragraph (2)(*b*) that a charge may be recoverable in respect of that item.

(4) The items referred to in paragraph (3) are—

(**5**) 1985 c. 37; section 10 was amended by section 167(2) of the Pensions Act 1995 (c. 26), and is amended by paragraph 8 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30)

(**6**) 1954 c. 33 (N.I.)

(a) the provision of a cash equivalent other than one which is provided in accordance with the provisions of—

(i) section 89A or 90(**7**) (salary related schemes: right to statement of entitlement, and right to cash equivalent);

(ii) regulation 11(1) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(**8**) (disclosure), or

(iii) regulation 5 (information to be made available to individuals) of, and paragraph 2(2) of Schedule 2 (provision of cash equivalent) to, the Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1987(**9**);

(b) subject to regulation 3(2)(*b*) or (*c*), as the case may be, the provision of a valuation in accordance with regulation 2(2) of the Provision of Information Regulations;

(c) whether a person responsible for a pension arrangement intends to recover the cost of providing membership of the pension arrangement to the person entitled to a pension credit, before or after the pension sharing order is implemented;

(d) whether the person responsible for a pension arrangement intends to recover additional charges, in the circumstances prescribed in regulation 6, in respect of pension sharing activity described in regulation 5;

(e) whether the charges are inclusive or exclusive of value added tax, where the person responsible for a pension arrangement is required to charge value added tax in accordance with the provisions of the Value Added Tax Act 1994(**10**);

(f) periodical charges in respect of pension sharing activity which the person responsible for a pension arrangement may make when a person entitled to a pension credit becomes a member of the pension arrangement from which the pension credit is derived;

(g) whether the person responsible for a pension arrangement intends to recover charges specified in regulation 10 (charges in relation to earmarking orders).

(5) In the case of the cost referred to in paragraph (4)(*c*) or the charges to be imposed in respect of pension sharing activity described in regulation 5, the person responsible for a pension arrangement shall provide—

(a) a single estimate of the overall cost of the pension sharing activity;

(b) a range of estimates of the overall cost of the pension sharing activity which is dependent upon the complexity of an individual case, or

(c) a breakdown of the cost of each element of pension sharing activity for which a charge shall be made.

(6) Subject to regulation 9(3) and (4), a person responsible for a pension arrangement shall recover only those sums which represent the reasonable administrative expenses which he has incurred or is likely to incur in connection with any of the activities mentioned in paragraph (1), or in relation to a pension sharing order having been made the subject of an application for leave to appeal out of time.

(7) The requirements of paragraph (2) do not apply in connection with the recovery by a person responsible for a pension arrangement of costs incurred in relation to a pension sharing order having been made the subject of an application for leave to appeal out of time.

(**7**) Section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and is amended by paragraph 23 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, and section 90 was amended by Article 150 of the Pensions (Northern Ireland) Order 1995 and paragraph 24 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**8**) S.R. 1996 No. 619; to which there are amendments not relevant to this regulation

(**9**) S.R. 1987 No. 288; relevant amending regulations are S.R. 1988 No. 107, S.R. 1992 No. 304, S.R. 1994 No. 300, S.R. 1996 Nos. 95 and 508 and S.R. 1997 No. 160

(**10**) 1994 c. 23

(8) Unless the person responsible for the pension arrangement has furnished the information specified in regulation 2(2) and (3) of the Provision of Information Regulations to the member or his spouse, on request, or the court, within a period of 12 months immediately prior to the date of the request for, or the court order for the provision of, that information, the information shall be provided to the member or, where appropriate, his spouse, without charge.

Charges recoverable in respect of the provision of basic information

3.—(1) Subject to paragraph (2), the charges prescribed for the purposes of Article 21(1)(*d*) (charges which a person responsible for a pension arrangement may recover in respect of supplying pension information in connection with divorce etc.) are any charges incurred by the person responsible for the pension arrangement in connection with the provision of any of the information set out in—

(a) regulation 2 of the Provision of Information Regulations, which may be recovered in accordance with regulation 2(8) of these Regulations;

(b) regulation 4 of those Regulations, or

(c) regulation 10 of those Regulations.

(2) The charges mentioned in paragraph (1) shall not include any costs incurred by a person responsible for a pension arrangement in respect of the matters specified in sub-paragraphs (*a*) to (*f*)—

(a) any costs incurred by the person responsible for a pension arrangement which are directly related to the fulfilment of his obligations under regulation 2(3) of the Provision of Information Regulations, other than charges which may be recovered in the circumstances described in regulation 2(8) of these Regulations;

(b) any costs incurred by the person responsible for the pension arrangement as a result of complying with a request for, or an order of the court requiring, a valuation under regulation 2(2) of the Provision of Information Regulations, unless—

(i) he is required by a member or a court to provide that valuation in less than 3 months beginning with the date the person responsible for the pension arrangement receives that request or order for the valuation;

(ii) the valuation is requested by a member who is not entitled to a cash equivalent under any of the provisions referred to in regulation 2(4)(*a*);

(iii) a member has requested a cash equivalent in accordance with any of those provisions within 12 months immediately prior to the date of the request for a valuation under regulation 2(2) of the Provision of Information Regulations;

(c) any costs incurred by the person responsible for a pension arrangement as a result of providing a valuation of benefits calculated and verified in accordance with regulation 3 of the Divorce etc. (Pensions) (Scotland) Regulations 2000(**11**) (valuation), unless—

(i) he is required by the court to provide that valuation in less than 3 months beginning with the date the person responsible for the pension arrangement receives that order;

(ii) the valuation is requested by a member who is not entitled to a cash equivalent under any of the provisions referred to in regulation 2(4)(*a*);

(iii) a member has requested a cash equivalent in accordance with any of those provisions within 12 months immediately prior to the date of the request for a valuation under regulation 2(2) of the Provision of Information Regulations, or

(**11**) S.S.I. 2000/112

(iv) the relevant date is more than 12 months immediately prior to the date the person responsible for the pension arrangement receives the request for the valuation;

(d) any costs incurred by the trustees or managers of—

(i) an occupational pension scheme in connection with the provision of information under regulation 4 of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997(**12**) (basic information about the scheme), or

(ii) a personal pension scheme in connection with the provision of information under regulation 4 of the Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1987(**13**) (basic information about the scheme),

which the trustees or managers shall provide to the member free of charge under those Regulations;

(e) any costs incurred by the trustees or managers of an occupational pension scheme, or a personal pension scheme, as the case may be, in connection with the provision of a transfer value in accordance with the provisions of—

(i) section 89A or 90;

(ii) regulation 11(1) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996, or

(iii) regulation 5 of, and paragraph 2(2) of Schedule 2 to, the Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1987, or

(f) any costs not specified by the person responsible for a pension arrangement in the information on charges provided to the member pursuant to regulation 2 of the Provision of Information Regulations with the exception of any additional amounts under regulation 6(1)(*a*) of these Regulations.

Charges in respect of the provision of information— method of recovery

4.—(1) A person responsible for a pension arrangement may recover the charges specified in regulation 3(1) by using either of the methods described in sub-paragraph (*a*) or (*b*)—

(a) requiring payment of charges at any specified time between the request for basic information and the completion of the implementation of a pension sharing order or provision, or the compliance with an order specified in Article 22, as the case may be, or

(b) subject to paragraph (2), requiring as a condition of providing information in accordance with—

(i) regulation 2 of the Provision of Information Regulations, or

(ii) regulation 10 of those Regulations,

that payment of the charges to which regulation 3(1) refers shall be made in full by the member before the person responsible for the pension arrangement becomes obliged to provide the information.

(2) Paragraph (1)(*b*) shall not apply—

(a) where a court has ordered a member to obtain the information specified in regulation 2 of the Provision of Information Regulations;

(b) where, in accordance with regulation 2(8) of these Regulations, the person responsible for the pension arrangement shall provide that information without charge, or

(**12**) S.R. 1997 No. 98; regulation 4 was amended by regulation 8 of S.R. 1997 No. 544
(**13**) Regulation 4 was amended by S.R. 1988 No. 107 and S.R. 1992 No. 304