
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

**The National Health Service Superannuation
Scheme (Scotland) Regulations 2011**

PART V

**PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE
OR ON DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP**

PRELIMINARY PROVISIONS

Interpretation

V1. The definitions of expressions contained in regulation A2(4) apply for their interpretation to this Part.

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

V2.—(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(1) for the purposes 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 dependent of a deceased member with pension rights under the Scheme and any other rights which are prescribed as excluded(2).

Pension sharing order activates pension sharing creating pension debits and credits

V3. 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"(3)) as defined in regulation V4, and
- (b) the transferee becomes entitled to a credit of that amount ("pension credit"(4)) as against the Scottish Ministers.

(1) See section 27(2) of the 1999 Act and section 2 of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).
(2) 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 1999 Act. Regulation 2(1)(b) (iv) was substituted by the Taxation of Pension Schemes (Consequential Amendments of Occupational and Personal Pension Schemes Legislation) Order 2006 (S.I. 2006/744), article 16(3)(a).
(3) This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.
(4) This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

Calculation of “appropriate amount”

V4.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation V3 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 V3 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 the transferor would be entitled under the Scheme by virtue of the transferor’s shareable rights under the scheme had the transferor’s pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of sub-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 the transferor’s 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 V3(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⁽⁵⁾.

Pension debits and reduction of benefit

V5.—(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 the member 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⁽⁶⁾—

“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;

⁽⁵⁾ This definition is that in section 29(8) of the 1999 Act.

⁽⁶⁾ The definitions in this paragraph are those in section 31(5) of the 1999 Act.

- (b) if the relevant order 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

V6. 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 1993 Act(7).

MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”

Discharge of pension credit liability

V7.—(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 or the ex-civil partner.

(2) For the purposes of this paragraph, rights conferred on the ex-spouse or the ex-civil partner 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(8), equals the amount of the credit.

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

V8. 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(9).

(7) 1993 c.48. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

(8) See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

(9) See paragraph 9 of Schedule 5 to the 1999 Act and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

“Implementation period” for discharge of pension credit

V9.—(1) The Scottish Ministers must discharge their liability in respect of a pension credit within “the implementation period”(10), 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—
 - (i) the relevant 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(11).
- (2) The reference in sub-paragraph (1)(b)(i) to the relevant documents is to copies of—
 - (a) the relevant pension sharing order, and
 - (b) the order, decree or declarator responsible for the divorce, annulment or dissolution 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(12).

(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(13).

Failure to discharge liability in respect of pension credit within the implementation period – Death of ex-spouse or ex-civil partner within period

V10.—(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 must, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act(14), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
- (b) section 10 of the 1995 Act (power of the Regulatory Authority to impose civil penalties) shall apply where 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.

(10) Section 33(1) of the 1999 Act.

(11) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

(12) 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.

(13) See regulation 4 of S.I. 2000/1053.

(14) 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.

(2) If the Scottish Ministers fail to perform the obligation imposed by regulation 10(1)(a), section 10 of the 1995 Act will 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 implementation period for the pension credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act(15).

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse or ex-civil partner dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by payment of a lump sum.

(6) The lump sum referred to in paragraph (5) will be equal to 3 times the annual rate of the pension which would have been paid to the deceased if on the date of death the deceased had become entitled to a pension as a pension credit member calculated under regulation W11(3) in accordance with guidance issued by the scheme actuary.

(7) The Scottish Ministers must pay the lump sum to the deceased’s personal representative.

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

“Appropriate rights”/“Pension credit benefits” under the Scheme

V11.—(1) Except as referred to in regulation V15 or otherwise in this Regulation, the “appropriate rights” under the Scheme to which a pension credit member is entitled consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The value of the pension referred to in this paragraph is to equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(4) A pension credit member is entitled to pension credit benefits on reaching normal benefit age.

(5) The pension credit benefits are payable immediately on reaching normal benefit age and may not be deferred.

(6) A pension payable in accordance with this regulation is payable to the pension credit member for life.

(7) A pension credit member is entitled to a lump sum calculated on the same basis as if the pension was a deferred pension under the Scheme.

(8) Except where the member opts to exchange part of the member’s pension under paragraph (9) the lump sum is to be equal to three times the annual rate of pension except that no lump sum on retirement shall be paid to the credit member if the corresponding pension debit member has already received a lump sum on retirement from the Scheme before the date of the implementation of the pension sharing order.

(9) If a pension credit member opts to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, for every £1 by which the pension credit member’s annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(15) See regulation 3 of [S.I. 2000/1053](#).

(10) An option under paragraph (9) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(11) In paragraph (10) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these Regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(12) A pension credit member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(13) The option under paragraph (9) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.

Pension credit benefit before attaining normal benefit age (with actuarial reduction)

V12.—(1) Subject to paragraph (2), a pension credit member is entitled to the payment of the pension credit benefit described in regulation V11 on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in regulation V11(1) will be reduced by such amount as the Scottish Ministers, after taking the advice of the scheme actuary, may determine.

Pension credit member dies after pension credit benefit becomes payable

V13.—(1) If a pension credit member dies after the member’s pension under the Scheme becomes payable, a lump sum on death is payable in accordance with regulation F5 (payment of lump sum).

(2) Subject to paragraph (3), the lump sum on death will be equal to 5 times the annual rate of the pension credit member’s pension as calculated under regulation V11(3) less the amount of pension already paid.

(3) The maximum payment under this regulation must not exceed an amount calculated in accordance with paragraph (4) less the aggregate of—

- (a) the amount of any lump sum paid to the pension credit member in accordance with regulation V11 (8); and
- (b) the amount of any lump sum paid to the pension credit member in accordance with regulation V11(9).

(4) An amount calculated in accordance with this sub-paragraph is an amount equal to twice the amount on the valuation day of the final year’s pensionable pay of the member from whose rights the pension credit is derived.

(5) The final year’s pensionable pay under paragraph (3) will be increased by the amount that the member’s benefits would have been increased under Part 1 of the Pensions (Increase) Act 1971(16) if benefits had been preserved on the valuation day.

(6) Where a pension credit member referred to in paragraph (1) has attained the age of 75 at the date of the pension credit member’s death—

- (a) the lump sum referred to in that paragraph ceases to be payable; and
- (b) that lump sum is to be converted into an annual pension to be determined and paid in accordance with paragraph (6).

- (7) The annual pension referred to in paragraph (5) will be—
- (a) determined in accordance with guidance and tables provided by the scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;
 - (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5 (payment of lump sum); and
 - (c) paid to that person from the day after the pension credit member's death until the fifth anniversary of the day the pension credit member's pension under this Section of the scheme became payable.

(8) If, in accordance with regulation F5, a pension credit member has given notice that more than one person is to receive a share of the lump sum, each such person will receive the same percentage of the annual pension as was specified for that person in the pension credit member's notice.

(9) If, in accordance with regulation F5, the annual pension is to be paid to the pension credit member's personal representatives they may, as part of the distribution of the pension credit member's estate, give irrevocable notice to the Scottish Ministers—

- (a) specifying—
 - (i) one or more individuals; or
 - (ii) one incorporated or unincorporated body,
 - to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Scottish Ministers is to be assigned; and
- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (10) applies.

- (10) This paragraph applies if—
- (a) the person specified in the notice has died before payment can be made;
 - (b) payment to the person or body specified in the notice is not, in the opinion of the Scottish Ministers, reasonably practicable; or
 - (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the pension credit member's death is forfeited.

(11) The prohibition on assignation of pension credit benefits in regulation V23 shall not apply to an assignation by personal representatives under this regulation.

Pension credit member dies before pension credit benefit becomes payable

V14.—(1) If a pension credit member dies before the member's pension under the Scheme becomes payable, a lump sum is payable in accordance with regulation F5 (payment of lump sum).

(2) The lump sum will be equal to 3 times the annual rate of the pension credit member's pension calculated under regulation V11(3).

Additional contributions and additional periods

V15.—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, is not allowed to replace any rights debited to the member as a consequence

of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made⁽¹⁷⁾.

(2) The provisions of paragraph (1) are relaxed if in line with any taxation exception or concession, which Revenue and Customs may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999⁽¹⁸⁾ and any modifications thereto made by Revenue and Customs from time to time under paragraph 18(10) and (11) of that Schedule⁽¹⁹⁾, or otherwise.

Commutation: small pensions

V16.—(1) Regulation T8 applies if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) A pension may be treated as “trivial” under regulation T8 in respect of the retirement pension payable to a pension credit member in respect of a pension credit providing that the total benefit payable to the pension credit member, including any pension credit benefit, is of an amount that complies with the provisions of paragraphs 7 to 9 of Part 1 of Schedule 29 to the 2004 Act (lump sum rule: trivial commutation lump sum) at normal benefit age.

Commutation: exceptional ill-health

V17.—(1) The whole of the pension element payable in respect of the pension credit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal benefit age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum will be equal to five times the annual rate of the pension to which the pension credit member would have been entitled as calculated under regulation V11(3) of this Part if on the date of commutation the member had already reached the normal benefit age and is payable in addition to any retirement lump sum as calculated under regulation V11(7), (8) and (9) of this Part.

Pension Transfers

V18. The Scottish Ministers must not accept any transfer value into the Scheme or pay any transfer value out of the Scheme in respect of any pension credit rights or pension credit benefits.

MISCELLANEOUS

Charges in respect of pension sharing costs

V19.—(1) The Scottish Ministers may recover from the parties involved in pension sharing, charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

⁽¹⁷⁾ See section 590(3)(bb) of the Taxes Act, inserted by paragraph 2(3) of Schedule 10 to the Finance Act 1999 (c.16).

⁽¹⁸⁾ 1999 c.16.

⁽¹⁹⁾ See S.I.s 2000/1085 and 1093.

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case⁽²⁰⁾.

(4) The Scottish Ministers must, before a pension sharing order is made, inform the member or his spouse or civil partner, as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or the member's spouse or civil partner, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Scottish Ministers under section 41(1) of the 1999 Act⁽²¹⁾.

Excluded membership

V20.—(1) Subject to regulation V16(2) of this Part, pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member of the Scheme, the member may not count any period which may count for any purpose in connection with the member's pension credit benefit towards any membership period required under the Scheme.

General rules about benefits

V21. Regulations T1 (claims for benefits), T2 (deduction of tax), T3 (deduction of tax: further provisions) and T5 (beneficiary who is incapable) apply to a pension credit member.

Interest on late payment of benefits

V22.—(1) Regulation T10 (interest on late payment of benefits) applies in respect of a pension credit member with the following modifications.

(2) In paragraph (2)—

- (a) the reference to “member” is a reference to “pension credit member”; and
- (b) the reference to “member’s” is a reference to “pension credit member’s”.

(3) In paragraph (4) in the definition of “due date”—

- (a) in sub-paragraph (a)—
 - (i) the reference to “a lump sum under Part F above” is a reference to “a lump sum under regulation V13, V14 or paragraph 2 of Schedule 2”; and
 - (ii) the reference to “the member’s death” is a reference to “the death of the person entitled to the pension credit or the pension credit member”;
- (b) sub-paragraphs (a)(ii), (iii) and (iv) are omitted; and
- (c) in sub-paragraph (a)(v) the reference to “of the member’s retirement from pensionable employment” is a reference to “when the pension credit member becomes entitled to the payment of pension credit benefit”.

(4) In paragraph (4) in the definition of “qualifying payment” the reference to “, or by way of a refund of contributions,” is omitted.

Assignment

V23. Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

⁽²⁰⁾ See regulation 5 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049).

⁽²¹⁾ See regulation 2-9 of S.I. 2000/1049.

Administrative matters

V24. Regulation U2 (determination of questions) applies to a person who is entitled to a pension credit or, as the case may be, a pension credit member.