

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Supplementary

Chapter II – Sharing of State Scheme Rights

Schedule 12: Consequential amendments – Part I

Paragraph 1: adds a new paragraph (fa) to paragraph 3 of Schedule 1 to the Supreme Court Act 1981. Paragraph 3 lists the proceedings in the High Court that are assigned to the Family Division. By paragraph (fa) all proceedings relating to debits and credits arising under section 29(1) or 49(1) of the Act are assigned to the Family Division.

Paragraphs 2 to 4 amend the Matrimonial and Family Proceedings Act 1984.

Paragraph 3 amends section 17 of the Act. This enables the court to make a pension sharing order on an application for financial relief in relation to a marriage dissolved or annulled overseas. A pension sharing order may not be made where the court has jurisdiction solely by virtue of a matrimonial home within the jurisdiction.

Paragraph 4 amends section 21 of the Act by adding provisions about pension sharing to the list of provisions that shall apply to orders made under that Act.

Paragraphs 5 to 12 concern amendments to sections 8, 10, 12A, 13, 16, and 27 of the Family Law (Scotland) Act 1985 in consequence of the pension sharing provisions in the Act, consistent with the changes to sections 25B, 25C and 25D of the Matrimonial Causes Act 1973 above. Two provisions are worth particular mention. Paragraph 10 inserts into section 13 (periodical allowance) of the 1985 Act a reference to a pension sharing order. This is in keeping with the principles of the 1985 Act that a periodical allowance should only be made if it is not appropriate or sufficient to make one or more of the property adjustment orders provided for in section 8, namely an order for payment of capital, transfer of property and now a pension sharing order.

Paragraph 11 amends section 16 of the 1985 Act which enables the court to make an order to vary or to set aside an agreement on financial provision. It may make an order where the agreement (or any term in it) was not fair and reasonable at the time it was entered into. The court may do so on granting decree of divorce or within such time as the court may specify on granting decree of divorce. The amendment to section 16 limits the court's power to vary or set aside a pension sharing provision in an agreement so that the court may only do so at the time it grants decree of divorce. This is to avoid re-opening a pension sharing provision after it has been made. Any non-pension sharing terms of the agreement would not be affected by this limitation.

Paragraph 13: amends the Income and Corporation Taxes Act 1988 to update the cross-reference to pension sharing provisions in the Act.

Paragraphs 14 to 22: amend the Social Security Contributions and Benefits Act 1992.

*These notes refer to the Welfare Reform and Pensions Act 1999
(c.30) which received Royal Assent on 11 November 1999*

Paragraphs 15 and 16: the amendments to section 20 and section 21 are consequential upon the provisions for the sharing of SERPS rights set out in Schedule 6 to the Act, which inserts a new section 55A “shared additional pension” into the Act.

Paragraph 17 amends section 39 to ensure that the reduction in the member’s additional pension as a consequence of pension sharing is also reflected in any widowed mother’s allowance or widow’s pension payable on the member’s death.

Paragraph 18 amends section 43, which is concerned with which category of retirement pension a person receives when he is entitled to more than one. The new subsection (6) to section 43 provides that shared additional pension is not covered by the term “retirement pension”. Thus, a person may receive it in addition to any category of retirement pension.

Paragraphs 19 to 21 amend sections 48A to 48C to ensure that the reduction in the member’s additional pension in consequence of pension sharing is also reflected in any Category B pension payable on the member’s death.

Paragraph 22 amends section 54(1) to provide for an election by a person to be treated as not having become entitled to a Category A or B retirement pension to apply also to any shared additional pension to which he may be entitled.

Paragraphs 23 to 27 amend the Social Security Administration Act 1992 to take account of the shared additional pension that will become payable to the former spouse in pension sharing cases.

Paragraphs 28 to 42 amend the Pension Schemes Act 1993.

Paragraphs 29 and 30 are consequential upon the creation of safeguarded rights in section 36 of this Act.

Paragraph 31 amends section 83 which contains provisions for revaluing the benefits of early leavers from occupational schemes from the date on which pensionable service ends until the scheme’s normal pension age (NPA). The new subsection (1A) excludes benefits payable by virtue of pension credit rights, except, in the case of salary-related occupational pension schemes, to the extent that the benefits are payable by virtue of rights which involve the member being credited with added years of pensionable service.

Paragraph 32 amends section 85 to make it clear that the revaluation provisions in Chapter II of Part IV of the Act do not apply to such alternatives to pension credit as may be prescribed under the regulation-making power at section 101D(2)(b) inserted by section 37 of this Act.

Paragraphs 33 to 35 amend sections 93, 93A and 94 of the Act to exclude rights which are attributable to a pension credit from the provision relating to “Transfer Values” for members of occupational and personal pension schemes in Part IV of Chapter IV of the Act. (Separate provisions for Transfer Values in respect of pension credit rights are contained in Chapter II of Part IVA of the Act as inserted by section 37 of this Act.)

Paragraph 36 inserts a new subsection (4) to section 96 of the Act to enable an occupational or personal pension scheme to prevent a member from making an application to exercise his right to a cash equivalent without also giving the trustees or managers of the scheme a transfer notice in respect of his pension credit rights under section 101F (as inserted by section 37 of this Act).

Paragraph 37 amends section 98 so that its operation is not affected by anything that happens in relation to rights under a personal pension scheme attributable to a pension credit. There are separate transfer provisions for pension credit rights and other rights.

Paragraph 38: the effect of this amendment is that where an application under Chapter IV of Part IV of the Act depended on the giving of a transfer notice under section 101F,

the application under Chapter IV of Part IV can only be withdrawn if the notice is also withdrawn.

Paragraph 39 inserts a reference to Chapters I and II of Part IVA into section 129(1) of the Act and a reference to Chapter II of Part IVA into section 129(2) of the Act. Section 129 is concerned with the relationship between statutory requirements and scheme rules.

Paragraph 40 inserts a reference to section 25D of the Matrimonial Causes Act 1973 section 12A of the Family Law (Scotland) Act 1985 or Part III or Part IV of this Act into section 178(a) of the Act. Section 178(a) gives the Secretary of State a regulation-making power to provide who is treated as a manager of an occupational pension scheme. The paragraph also inserts a reference to Chapter 1 of Part IVA into section 178(b) of the Act. Section 178(b) gives the Secretary of State a regulation-making power to provide who is to be treated as a trustee of a pension scheme for the purposes of various parts of the Act.

Paragraph 41 inserts a definition of “pension credit” and “safeguarded rights” into the general interpretation section of the Act.

Paragraph 42 extends the scope of section 183(3) to the new section 101I inserted by section 37 of this Act.

Paragraphs 43 to 63 amend the Pensions Act 1995.

Paragraph 44: the amendment to section 3(2)(a) of the Act extends the circumstances in which the Occupational Pensions Regulatory Authority (OPRA) may prohibit a person from being a trustee of a scheme to include serious or persistent breaches of duty under Chapter II of Part IVA of the Pension Schemes Act 1993 (pension credit benefit transfer values).

Paragraphs 45 to 49: the effect of the amendments to sections 16, 17, 18, 20 and 21 of the Act is to exclude members whose only rights are attributable to a pension credit from the statutory consultation procedures relating to member-nominated trustees.

Paragraph 50: section 38 provides a power to enable the trustees of a scheme to defer the winding up of the scheme. The effect of the amendment is to give the trustees the option of either deferring winding up the scheme and permitting no new members to be admitted to it or admitting no new members except pension credit members.

Paragraph 51: the effect of the amendment to section 51(6) is to exclude pensions derived from pension credit rights from the requirements to index pensions in payment in section 51 of the Act.

Paragraph 52: the amendment to section 53 is consequential upon the amendment to section 51(6) above.

Paragraph 53: section 67 imposes restrictions on the power to alter occupational pension schemes to enhance the security of entitlements and rights accrued by members. The effect of this amendment is to bring former spouse members within the scope of section 67 and give them the same protection as that enjoyed by other members.

Paragraph 54: the amendment to section 68(2) extends the powers to alter occupational pension schemes or modify them by resolution to enable them to accommodate pension credit rights.

Paragraph 55: the amendment to section 73 in section 38 of this Act provides for pension credit benefit to be included in the preferential liabilities on the winding up of a scheme to which section 56 of the Act applies. The new subsection (3A) will ease administration. It will mean that a scheme will not be required to separately identify the part, if any, of pension credit rights which is derived from voluntary contributions.

Paragraph 56: this amendment will enable a scheme to which section 73 applies to discharge its liability for pension credit benefit on winding up under section 74(3)(b).

Paragraphs 57 to 59: the effects of the amendments to sections 91, 92 and 93 of the Act are to include pension credit rights within the provisions concerning assignment, forfeiture, bankruptcy etc that relate to occupational pension schemes.

Paragraph 60: amends section 99(2) of the Act to enable an inspector to enter the premises of an occupational pension scheme in connection with the provisions relating to pension credit transfer values inserted into Chapter II of Part IVA of the Act by section 37 of this Act.

Paragraph 61: extends the definition of member in section 124(1) of the Act to include a pension credit member and makes other consequential amendments to the interpretation of Part I of the Act consequential upon this Act.

Paragraph 62 and 63 amend section 166 and section 167(4) of the Act to reflect the changes from “pension scheme” to “pension arrangement” in, respectively, sections 25B to 25D of the Matrimonial Causes Act 1973 and the corresponding provisions of the Family Law (Scotland) Act 1985.

Paragraphs 64 to 66 amend the Family Law Act 1996. They amend the prospective amendments of the Matrimonial Causes Act 1973 which are contained in Schedules 2 and 8 to the 1996 Act. They are consequential on the provisions in Schedule 3 to this Act coming into force before the new divorce and separation proceedings contained in the Family Law Act 1996.

Paragraph 65 amends Schedule 2 to the Family Law Act 1996.

Sub-paragraphs (3) and (5) to (8) incorporate the definition of a pension sharing order into section 21 of the Matrimonial Causes Act 1973 as amended by the 1996 Act and make consequential amendments to the numbering of the subsections.

Sub-paragraph (4) makes an amendment corresponding to the amendment of section 24 of the Matrimonial Causes Act 1973 made by paragraph 3 of Schedule 3 to this Act (section 24 of the 1973 Act being substituted by paragraph 6 of Schedule 2 to the 1996 Act).

Sub-paragraph (9) replaces section 24B of the Matrimonial Causes Act 1973 with 4 new sections, numbered 24B, 24BA, 24BB and 24BC. These will empower the court to make pension sharing orders in relation to divorces under the Family Law Act 1996 and nullity under the 1973 Act.

Section 24B(1) gives the court power on application at the appropriate time to make a pension sharing order on application;

Subsection (2) specifies the times at which the court can make the order. The definition of “appropriate time” mirrors, so far as relevant, the times when the court can make financial provision and property adjustment orders under the Act.

Subsection (3) ensures that, wherever practicable, the court will make all the relevant pension sharing orders for a given divorce at once, rather than piecemeal.

Subsection (4) makes section 24B subject to restrictions contained in the Matrimonial Causes Act 1973 and in section 19 of the Family Law Act 1996. Section 19 makes provision for when the court has jurisdiction in relation to divorce. For example, the court has no jurisdiction to make a pension sharing order where neither of the parties was domiciled in England or Wales on the date of the statement of marital breakdown, or habitually resident in England or Wales throughout the preceding year.

Section 24BA imposes further restrictions on the court’s power to make a pension sharing order. An order cannot be made:

*These notes refer to the Welfare Reform and Pensions Act 1999
(c.30) which received Royal Assent on 11 November 1999*

subsection (1): to take effect before the making of a divorce order in relation to the marriage;

subsection (2): while the period of reflection and consideration (described in section 7 of the Family Law Act 1996) is interrupted under section 7(8) of that Act;

subsection (3): where the divorce process has lapsed under section 5(3) or 7(9) of the Family Law Act 1996;

subsection (4): after the divorce order has been made, except in response to an application made before the divorce order was made, or with leave of the court;

subsections (5) to (7): impose restrictions on the making of a pension sharing order in relation to divorce which are equivalent to those imposed by section 24B(3) to (5) of the Matrimonial Causes Act 1973 inserted by paragraph 4 of Schedule 3 to this Act.

subsections (5) and (6): where a pension arrangement, or shareable state scheme rights, are the subject of a pension sharing order in relation to the marriage (ie where the order has been made, but has not yet taken effect) or have been the subject of pension sharing between the parties to the marriage (ie where a pension sharing order or agreement has already taken effect);

subsection (7): in relation to a person's pension rights which are subject to a financial provision order which includes provision under the earmarking/attachment provisions (sections 25B and 25C), whether the order was made in relation to the same marriage or a previous one;

subsection (8) provides the period of reflection and consideration is to have the same meaning as in section 7 of the Family Law Act.

Section 24BB makes provision for pension sharing in cases where a marriage is annulled. As with pension sharing on divorce, the court is required, wherever practicable, to make all the relevant pension sharing orders at once, rather than piecemeal. Orders on nullity can be made on or after the granting of the decree of nullity. They cannot take effect unless the decree has been made absolute.

Section 24BC imposes restrictions on the making of pension sharing orders in relation to nullity which are equivalent to those imposed by section 24BA(5) to (7) on the making of such orders in relation to divorce.

Paragraph 66 amends Schedule 8 to the Family Law Act 1996.

Sub-paragraph (2) alters the amendments of section 25(1) of the Matrimonial Causes Act 1973 to take account of the sections introduced by paragraph 66(9) above. In essence it extends the application of section 25 of the Matrimonial Causes Act 1973 (which lists the factors which the court has to take into account when considering whether and how to exercise its powers to make a financial provision order or property adjustment order) to cover pension sharing orders.

Sub-paragraph (3) Section 25A(1) of the Matrimonial Causes Act 1973 imposes a duty on the court when it is deciding to exercise its powers to make financial provision orders and property adjustment orders to consider whether it would be appropriate to exercise its powers to achieve a clean break (that is to terminate all financial obligations between the parties). This paragraph alters the amendments of section 25A(1) of the 1973 Act so that that provision extends to pension sharing orders.

Sub-paragraph (4) substitutes new paragraphs 11 and 11A for paragraph 11 of Schedule 8 to the 1996 Act. These paragraphs amend sections 25B, 25C and 25D of the 1973 Act. The amendments in the new paragraph 11 and 11A(a) replicate those to sections 25B and 25C in the present paragraph 11. Paragraph 11A(b) effects a consequential change in numbering.

*These notes refer to the Welfare Reform and Pensions Act 1999
(c.30) which received Royal Assent on 11 November 1999*

Sub-paragraph (5) inserts two additional paragraphs into paragraph 16(2) of Schedule 8 to the 1996 Act. The first paragraph inserts a new sub-paragraph (fa) into section 31(2) of the 1973 Act and allows the court to vary, discharge, suspend a provision in or revive operation of a suspended provision of a pension sharing order where no divorce order has been made and no separation order is in force. The change in numbering reflects the fact that on the introduction of pension sharing a new sub-paragraph (g) is inserted. That sub-paragraph is amended by the second of the additional paragraphs so that it just applies to nullity.

Sub-paragraph (6) inserts a new sub-paragraph, making a consequential amendment.

Sub-paragraph (7) inserts a new subsection (4AB) into section 31 of the Matrimonial Causes Act 1973. It prevents the variation of a pension sharing order taking effect before the marriage is dissolved.

Sub-paragraph (8) is a consequential amendment. It ensures that the new section 31(4B) will, after the introduction of the new divorce and separation procedures, only be applicable to nullity.

Sub-paragraph (9) inserts two additional sub-paragraphs in paragraph 16 of Schedule 8 to the 1996 Act. They impose on the making of a pension sharing order under section 31(7B) the same duty to make orders on the same occasion and the same restrictions as apply under sections 24B and 24BA.

Sub-paragraph (10) inserts section 31B into the Matrimonial Causes Act 1973. It provides for a pension sharing order to be automatically discharged where a separation order is made following the pension sharing order. Pension sharing orders can only take effect when a divorce order is made. They cannot take effect if a separation order is made. The pension sharing order therefore becomes redundant, and will be discharged.

Sub-paragraphs (11), (12) and (13) make minor consequential amendments to paragraphs 19 and 21 of Schedule 8 to the Family Law Act 1996 following the insertion of pension sharing provisions into the Matrimonial Causes Act 1973.

Sub-paragraphs (14), (15) and (16) have the effect of making minor amendments to the Matrimonial and Family Proceedings Act 1984. They reflect the various technical changes made to the Matrimonial Causes Act 1973 by the amendments to permit pension sharing under the new divorce process which to be established by the Family Law Act 1996.