

SCHEDULES

SCHEDULE 3

Section 19.

PENSION SHARING ORDERS: ENGLAND AND WALES

- 1 The Matrimonial Causes Act 1973 is amended as follows.
2 After section 21 there is inserted—

“21A Pension sharing orders

- (1) For the purposes of this Act, a pension sharing order is an order which—
- (a) provides that one party's—
 - (i) shareable rights under a specified pension arrangement, or
 - (ii) shareable state scheme rights,be subject to pension sharing for the benefit of the other party, and
 - (b) specifies the percentage value to be transferred.
- (2) In subsection (1) above—
- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation,
 - (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, or under corresponding Northern Ireland legislation, and
 - (c) “party” means a party to a marriage.”

- 3 In section 24 (property adjustment orders in connection with divorce proceedings, etc), in paragraphs (c) and (d) of subsection (1), there is inserted at the end “, other than one in the form of a pension arrangement (within the meaning of section 25D below)”.

- 4 After section 24A there is inserted—

“24B Pension sharing orders in connection with divorce proceedings etc

- (1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this section, make one or more pension sharing orders in relation to the marriage.
- (2) A pension sharing order under this section is not to take effect unless the decree on or after which it is made has been made absolute.
- (3) A pension sharing order under this section may not be made in relation to a pension arrangement which—

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- (a) is the subject of a pension sharing order in relation to the marriage, or
 - (b) has been the subject of pension sharing between the parties to the marriage.
- (4) A pension sharing order under this section may not be made in relation to shareable state scheme rights if—
- (a) such rights are the subject of a pension sharing order in relation to the marriage, or
 - (b) such rights have been the subject of pension sharing between the parties to the marriage.
- (5) A pension sharing order under this section may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of section 25B or 25C below which relates to benefits or future benefits to which he is entitled under the pension arrangement.

24C Pension sharing orders: duty to stay

- (1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

24D Pension sharing orders: apportionment of charges

If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under section 41 of the Welfare Reform and Pensions Act 1999 (charges in respect of pension sharing costs), or under corresponding Northern Ireland legislation.”

- 5 In section 25 (matters to which the court is to have regard in deciding how to exercise its powers with respect to financial relief)—
- (a) in subsection (1), for “or 24A” there is substituted “, 24A or 24B”, and
 - (b) in subsection (2), for “or 24A” there is substituted “, 24A or 24B”.
- 6 In section 25A(1) (court’s duty to consider desirability of exercising power to achieve clean break), for “or 24A” there is substituted “, 24A or 24B”.
- 7 (1) Section 31 (variation, discharge etc. of certain orders for financial relief) is amended as follows.
- (2) In subsection (2), at the end there is inserted—
 - “(g) a pension sharing order under section 24B above which is made at a time before the decree has been made absolute.”
 - (3) After subsection (4) there is inserted—
 - “(4A) In relation to an order which falls within paragraph (g) of subsection (2) above (“the subsection (2) order”)—
 - (a) the powers conferred by this section may be exercised—

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- (i) only on an application made before the subsection (2) order has or, but for paragraph (b) below, would have taken effect; and
 - (ii) only if, at the time when the application is made, the decree has not been made absolute; and
 - (b) an application made in accordance with paragraph (a) above prevents the subsection (2) order from taking effect before the application has been dealt with.
- (4B) No variation of a pension sharing order shall be made so as to take effect before the decree is made absolute.
- (4C) The variation of a pension sharing order prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.”
- (4) In subsection (5)—
 - (a) for “(7F)” there is substituted “(7G)”,
 - (b) for “or (e)” there is substituted “, (e) or (g)”, and
 - (c) after “property adjustment order” there is inserted “or pension sharing order”.
- (5) In subsection (7B), after paragraph (b) there is inserted—

“(ba) one or more pension sharing orders;”.
- (6) After subsection (7F) there is inserted—

“(7G) Subsections (3) to (5) of section 24B above apply in relation to a pension sharing order under subsection (7B) above as they apply in relation to a pension sharing order under that section.”
- (7) After subsection (14) there is inserted—

“(15) The power to make regulations under subsection (4C) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 8 In section 33A (consent orders), in subsection (3), in the definition of “order for financial relief”, after “24A” there is inserted “, 24B”.
- 9 In section 37 (avoidance of transactions intended to prevent or reduce financial relief), in subsection (1), after “24,” there is inserted “24B,”.
- 10 After section 40 there is inserted—

“40A Appeals relating to pension sharing orders which have taken effect

- (1) Subsections (2) and (3) below apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.
- (2) If the pension sharing order relates to a person’s rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.

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- (3) If the pension sharing order relates to a person's shareable state scheme rights, the appeal court may not set aside or vary the order if the Secretary of State has acted to his detriment in reliance on the taking effect of the order.
- (4) In determining for the purposes of subsection (2) or (3) above whether a person has acted to his detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.
- (5) Where subsection (2) or (3) above applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (6) Section 24C above only applies to a pension sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.
- (7) In subsection (2) above, the reference to the person responsible for the pension arrangement is to be read in accordance with section 25D(4) above."

11 In section 52 (interpretation), in subsection (2), for "and" at the end of paragraph (a) there is substituted—

“(aa) references to pension sharing orders shall be construed in accordance with section 21A above; and”.