

SCHEDULES

SCHEDULE 6

PENSION COMPENSATION ON DIVORCE ETC: ENGLAND AND WALES

PART 1

AMENDMENTS OF THE MATRIMONIAL CAUSES ACT 1973

- 1 The Matrimonial Causes Act 1973 (c. 18) is amended as follows.
2 After section 21A (pension sharing orders) insert—

“21B Pension compensation sharing orders

- (1) For the purposes of this Act, a pension compensation sharing order is an order which—
- (a) provides that one party’s shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
 - (b) specifies the percentage value to be transferred.
- (2) In subsection (1)—
- (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions Act 2008 or under corresponding Northern Ireland legislation;
 - (b) “party” means a party to a marriage;
 - (c) “specified” means specified in the order.

21C Pension compensation: interpretation

In this Part—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
 - (b) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation on divorce etc) and any regulations or order made under it, and
 - (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.”
- 3 After section 24D (pension sharing orders: apportionment of charges) insert—

Status: This is the original version (as it was originally enacted).

“24E Pension compensation sharing orders in connection with divorce proceedings

- (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 a pension compensation sharing order in relation to the marriage.
- (2) A pension compensation 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 compensation sharing order under this section may not be made in relation to rights to PPF compensation that—
 - (a) are the subject of pension attachment,
 - (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
 - (c) are the subject of pension compensation attachment, or
 - (d) are or have been the subject of pension compensation sharing between the parties to the marriage.
- (4) For the purposes of subsection (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.
- (5) The first condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25B(4), and
 - (b) that order, as modified under section 25E(3), remains in force.
- (6) The second condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25B(7), and
 - (b) that order—
 - (i) has been complied with, or
 - (ii) has not been complied with and, as modified under section 25E(5), remains in force.
- (7) The third condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25C, and
 - (b) that order remains in force.
- (8) For the purposes of subsection (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties.

Status: This is the original version (as it was originally enacted).

- (9) For the purposes of subsection (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of section 25F relating to them.
- (10) For the purposes of subsection (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

24F Pension compensation sharing orders: duty to stay

- (1) No pension compensation 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.

24G Pension compensation sharing orders: apportionment of charges

The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 117 of the Pensions Act 2008 (charges in respect of pension compensation sharing costs), or under corresponding Northern Ireland legislation.”

- 4 (1) Section 25 (matters to which court is to have regard) is amended as follows.
- (2) In the heading, for “and 24A” substitute “, 24A, 24B and 24E”.
- (3) In subsections (1) and (2), for “or 24B” substitute “, 24B or 24E”.
- 5 In section 25A(1) (exercise of court’s powers in favour of party to marriage on decree of divorce or nullity of marriage), for “or 24B” substitute “, 24B or 24E”.
- 6 In section 25E(9) (the Pension Protection Fund), omit the definition of “PPF compensation”.
- 7 After section 25E insert—

“25F Attachment of pension compensation

- (1) This section applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under section 23.
- (2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.
- (3) The order must express the amount of any payment required to be made by virtue of subsection (2) as a percentage of the payment which becomes due to the party with compensation rights.

Status: This is the original version (as it was originally enacted).

- (4) Any such payment by the Board of the Pension Protection Fund—
 - (a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and
 - (b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party's liability under the order.
- (5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this section applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.
- (6) The power conferred by subsection (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.
- (7) The power conferred by subsection (2) or (5) may not be exercised in relation to rights to PPF compensation that—
 - (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or
 - (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

25G Pension compensation: supplementary

- (1) The Lord Chancellor may by regulations—
 - (a) make provision, in relation to any provision of section 25F which authorises the court making an order under section 23 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
 - (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 25F in an order under section 23, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
 - (c) require notices to be given in respect of changes of circumstances relevant to orders under section 23 which include provision made by virtue of section 25F;
 - (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of section 25F;
 - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.
- (2) Regulations under subsection (1)(e) may include—

Status: This is the original version (as it was originally enacted).

- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
 - (b) provision by reference to regulations under section 112 of the Pensions Act 2008.
 - (3) Regulations under subsection (1) may make different provision for different cases.
 - (4) The power to make regulations under subsection (1) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (5) In this section and section 25F—
 - “the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and
 - “the other party” means the other party to the marriage;
 - “prescribed” means prescribed by regulations.”
- 8 (1) Section 31 (variation, discharge etc of certain orders for financial relief) is amended as follows.
- (2) In subsection (2)(dd)—
 - (a) omit “or” at the end of sub-paragraph (i);
 - (b) at the end of sub-paragraph (ii) add “or”;
 - (c) after that sub-paragraph insert—
 - “(iii) section 25F(2),”;
 - (d) in the closing words, after “pension rights” insert “or pension compensation rights”.
 - (3) In subsection (2)(g), after “a pension sharing order under section 24B above” insert “, or a pension compensation sharing order under section 24E above,”.
 - (4) In subsection (4B), after “pension sharing order” insert “, or a pension compensation sharing order,”.
 - (5) In subsection (4C), after “pension sharing order” insert “, or a pension compensation sharing order,”.
 - (6) In subsection (5), after “pension sharing order” insert “or pension compensation sharing order”.
 - (7) In subsection (7B), after paragraph (ba) insert
 - “(bb) a pension compensation sharing order;”.
 - (8) After subsection (7G) insert—
 - “(7H) Subsections (3) to (10) of section 24E above apply in relation to a pension compensation sharing order under subsection (7B) above as they apply in relation to a pension compensation sharing order under that section.”
- 9 After section 40A (appeals relating to pension sharing orders which have taken effect) insert—

Status: This is the original version (as it was originally enacted).

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

- (1) This section applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.
- (2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—
 - (a) may not set aside or vary the order;
 - (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (3) In determining for the purposes of subsection (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant.
- (4) Section 24F (duty to stay) only applies to a pension compensation sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.”