

SCHEDULES

SCHEDULE 7

Section 120

PENSION COMPENSATION ON DIVORCE ETC: SCOTLAND

- 1 The Family Law (Scotland) Act 1985 (c. 37) is amended as follows.
- 2 In section 8 (orders for financial provision)—
- (a) in subsection (1)—
 - (i) after paragraph (baa) insert—

“(bab) a pension compensation sharing order;”,
 - (ii) after paragraph (ba) insert—

“(bb) an order under section 12B(2);”,
 - (b) subsection (4A) is repealed,
 - (c) after subsection (7) add—
 - “(8) The court shall not, in the same proceedings, make both a pension compensation sharing order and an order under section 12B(2) in relation to the same PPF compensation.
 - (9) The court shall not make a pension compensation sharing order in relation to rights to PPF compensation that—
 - (a) derive from rights under a pension scheme which is subject to an order made under section 12A(2) or (3) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,
 - (b) derive from rights under a pension scheme which were at any time the subject of a pension sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,
 - (c) are or have been the subject of a pension compensation sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons, or
 - (d) are the subject of an order made under section 12B(2) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons.
 - (10) Where, as regards PPF compensation, the parties to a marriage or the partners in a civil partnership have in effect a qualifying agreement which contains a term relating to pension compensation sharing, the court shall not—
 - (a) make an order under section 12B(2); or
 - (b) make a pension compensation sharing order,relating to the compensation unless it also sets aside the agreement or term under section 16(1)(b) of this Act.

Status: This is the original version (as it was originally enacted).

(11) For the purposes of subsection (10)—

- (a) the expression “term relating to pension compensation sharing” is to be construed by reference to section 16(2AA) of this Act; and
- (b) a qualifying agreement is one to which section 110(1) of the Pensions Act 2008 relates.”

3 After section 8A insert—

“8B Pension compensation sharing orders: apportionment of charges

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

4 In section 10 (sharing of value of matrimonial property or partnership property)—

- (a) in subsection (5A), for the words from “compensation payable” to “that Chapter” substitute “PPF compensation”,
- (b) for subsection (8B) substitute—

“(8B) The Scottish Ministers may by regulations make provision for the purposes of this Act about—

- (a) calculation and verification of PPF compensation,
- (b) apportionment of PPF compensation.

(8C) Regulations under subsection (8B) may include provision—

- (a) for calculation or verification in a manner approved by a prescribed person,
- (b) by reference to regulations under section 112 of the Pensions Act 2008.”

5 In section 12A (orders for payment of capital sum: pensions lump sums), in subsection (7ZC), for the words “Notwithstanding the provisions of section 8(4A), for” substitute “For”.

6 After section 12A insert—

“12B Order for payment of capital sum: pension compensation

- (1) This section applies where the court makes an order under section 8(2) for payment of a capital sum (a “capital sum order”) by a party to a marriage or a partner in a civil partnership (“the liable person”) in circumstances where the matrimonial or (as the case may be) partnership property within the meaning of section 10 includes any rights to PPF compensation.
- (2) On making the capital sum order, the court may make an additional order requiring the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the liable person, to pay the whole or part of that payment to the other party or (as the case may be) other partner (“the other person”).
- (3) Any such payment by the Board of the Pension Protection Fund—
 - (a) shall discharge so much of its liability to the liable person as corresponds to the amount of the payment, and

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- (b) shall be treated for all purposes as a payment made by the liable person in or towards the discharge of the person’s liability under the capital sum order.
 - (4) Where the liability of the liable person under the capital sum order has been discharged in whole or in part, other than by a payment by the Board of the Pension Protection Fund, the court may, on an application by any person having an interest, recall the order or vary the amount specified in such an order as appears to the court appropriate in the circumstances.
 - (5) The court may not make an additional order under subsection (2) in relation to rights to PPF compensation that—
 - (a) derive from rights under a pension scheme which is subject to an order made under section 12A(2) or (3) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,
 - (b) derive from rights under a pension scheme which were at any time the subject of a pension sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,
 - (c) are or have been the subject of a pension compensation sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons, or
 - (d) are the subject of an order made under subsection (2) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons.”
- 7 In section 13 (order for periodical allowance), in subsection (2)(b), after the words “pension sharing order” insert “or pension compensation sharing order”.
- 8 In section 16 (agreements on financial provision)—
 - (a) in subsection (2)(b), for the words “does not contain a term relating to pension sharing” substitute “contains neither a term relating to pension sharing nor a term relating to pension compensation sharing”,
 - (b) in subsection (2)(c), after the word “sharing” in the first place where it occurs insert “or pension compensation sharing”,
 - (c) in subsection (2)(c)(i), after the word “sharing” insert “or (as the case may be) the term relating to pension compensation sharing”,
 - (d) after subsection (2A), insert—
 - “(2AA) For the purpose of subsection (2), a term relating to pension compensation sharing is a term corresponding to provision which may be made in a pension compensation sharing order and satisfying the requirements set out in section 109(g) of the Pensions Act 2008.”
- 9 In section 27 (interpretation)—
 - (a) in subsection (1), before the definition of “pension sharing order” insert—
 - ““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 compensation scheme (that is, specified in the order) are to

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- be subject to pension compensation sharing for the benefit of the other party, and
- (b) specifies the percentage value or amount to be transferred;”,
- (b) after subsection (1A) insert—
- “(1B) In subsection (1), in the definition of “pension compensation sharing order”, 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.
- (1C) In this Act—
- “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 and any regulations or order made under it,
 - (b) Chapter 1 of Part 3 of the Pensions Act 2008 and any regulations or order made under it,
 - (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.”