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STATUTORY INSTRUMENTS

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**2000 No. 3025**

**PENSIONS**

**The Local Government Pension Scheme (Pension Sharing on Divorce) Regulations 2000**

*Made* - - - - *9th November 2000*  
*Laid before Parliament* *10th November 2000*  
*Coming into force* - - *1st December 2000*

The Secretary of State, in exercise of the powers conferred on him by section 7 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, hereby makes the following Regulations:—

**Citation and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Pension Sharing on Divorce) Regulations 2000.

(2) These Regulations shall come into force on 1st December 2000.

**Pension sharing and the Local Government Pension Scheme Regulations 1995**

2.—(1) This regulation applies to persons specified in regulation 4(2)(a) of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997(2) (deferred members and pensioner members who immediately before 1st April 1998 were deferred members or pensioner members of the Scheme and who do not on or after that date become active members of the Scheme) who are also pension debit members.

(2) Where the shareable rights of a person to whom this regulation applies become subject to a pension debit—

- (a) the benefits payable to him shall be reduced to take into account that debit; and
- (b) the amount of the reduction shall be calculated in accordance with guidance issued by the Government Actuary.

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(1) 1972 c. 11.  
(2) S.I.1997/1613, amended by S.I. 1998/2118, 1999/1212.

(3) For the purposes of calculating—

- (a) a deferred pensioner’s children’s long-term pension under regulation G5 of the Local Government Pension Scheme Regulations 1995(3);
- (b) a pensioner’s children’s long-term pension under regulation G6 of those regulations; or
- (c) a pensioner’s children’s short-term pension under regulation G7 of those regulations

the reference to the deceased’s retirement pension shall be to the retirement pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.

(4) In this regulation, expressions used in the Local Government Pension Scheme Regulations 1995, the Local Government Pension Scheme Regulations 1997(4) (as amended by these Regulations) and the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 have the same meanings as in those regulations.

### **Amendment of the Local Government Pension Scheme Regulations 1997**

3. The Local Government Pension Scheme Regulations 1997 shall be amended in accordance with the Schedule to these Regulations.

### **The Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998**

4. In regulation 5(6) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998(5) for “(except those incurred in connection with a FSAVC scheme) may be paid from it” substitute—

“may be paid from it except—

- (a) those incurred in connection with an FSAVC scheme, and
- (b) those costs and charges prescribed by regulations made under sections 23, 24 or 41 of the Welfare Reform and Pensions Act 1999(6) which the administering authority is enabled to recover by or under any such regulations”.

Signed by authority of the Secretary of State

*Hilary Armstrong*  
Minister of State,  
Department of the Environment, Transport and  
the Regions

9th November 2000

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(3) S.I. 1995/1019.

(4) S.I. 1997/1612, amended by S.I. 1997/1613, 1998/1238, 2118, 1999/1212, 3438, 2000/1005, 1164, 2826.

(5) S.I. 1998/1831, to which there are amendments not relevant to the subject matter of these Regulations.

(6) 1999 c. 30; see S.I. 2000/1049, 2691.

## SCHEDULE

Regulation 3

### AMENDMENTS TO THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997

#### Interpretation

1. In regulation 2(1) for “Schedule 1 contains” substitute “Schedule 1 (Interpretation) and Schedule 1A (Interpretation for pension sharing on divorce) contain”.

#### Calculation of benefits

2. For the wording of paragraph (4) of regulation 20 substitute—

“But—

- (a) benefits payable to a pension debit member are reduced as provided in regulation 20A; and
- (b) benefits payable on or after the death of a pensioner member are calculated by multiplying the amount of his former retirement pension by the multiplier specified for the benefit in question.”.

#### Pension debit member

3. After regulation 20 insert—

##### “Pension debit member

**20A.**—(1) The benefits payable to a pension debit member shall be reduced to take into account the debit to which the shareable rights of the pension debit member are subject under a pension sharing order.

(2) The amount of the reduction shall be calculated in accordance with guidance issued by the Government Actuary.

##### Replacement of rights

**20B.**—(1) Subject to paragraph (2), a pension debit member who is an active member may not replace any rights debited as a consequence of a 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<sup>(7)</sup>.

(2) The provisions of paragraph (1) shall not apply in circumstances which the Commissioners of Inland Revenue may stipulate in relation to “moderate earners” in any taxation exception or concession made by them from time to time under paragraph 18(10) and (11) of Schedule 10 to the Finance Act 1999<sup>(8)</sup>, or otherwise.

(3) For the purpose of this regulation, “moderate earners” has the meaning in paragraphs (4) to (6) of regulation 5 of the Retirement Benefits Schemes (Sharing of Pensions on Divorce) Regulations 2000<sup>(9)</sup>.”.

(7) See section 590(3)(bb) of the Income and Corporation Taxes Act 1988 (1988 c. 1) inserted by paragraph 2(3) of Schedule 10 to the Finance Act 1999 (1999 c. 16).

(8) See S.I. 2000/1085, 1093.

(9) S.I. 2000/1085.

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### **Surviving spouse's long-term pension**

4. In regulation 41, after paragraph (5) insert—

“(5A) But where the deceased was a deferred member and a pension debit member, the long-term pension is equal to half the pension to which the deceased would have been entitled under regulation 25 if he had become entitled to a pension under that regulation on the date that he died (but see regulation 42).”.

### **Children's short-term pensions**

5. In regulation 45(10), after paragraph (5) insert—

“(5A) But in the case of a pensioner member who was a pension debit member, the pension is calculated by reference to the retirement pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.”.

### **Children's long-term pensions**

6. In regulation 46(11), after paragraph (7) insert—

“(7A) But in the case of a member who was a pension debit member, the pension is calculated by reference to the pension to which the deceased would have been entitled had his shareable rights not been subject to a pension debit.”.

### **Interest on late payment of certain benefits**

7. In regulation 94(12)—

- (a) in paragraph (1A)(b), after “38(1)” insert “or 155”;
- (b) in paragraph (5), for “or 50” substitute “, 50, 156 or 157”; and
- (c) after paragraph (5) add—

“(6) In this regulation, references to “member” include reference to a pension credit member and the reference in paragraph (2A) to the “retirement grant” includes the lump sum grant referred to in regulation 147(2)(a).”.

### **First instance decisions**

8. In regulation 97—

- (a) in paragraph (2), for everything after “must be decided” substitute—
  - (a) “in the case of a person entitled to a pension credit or a pension credit member and in relation to his pension credit rights or pension credit benefits, by his appropriate administering authority, and
  - (b) in any other case by the Scheme employer who last employed him”;
- (b) after paragraph (8) insert—

“(8A) But any question in relation to a person entitled to a pension credit or a pension credit member and his pension credit rights or pension credit benefits must be decided by his appropriate administering authority as soon as is reasonably practicable after the question arises.”; and

- (c) after paragraph (13), add—

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(10) Regulation 45 was amended by S.I. 1998/1238, regulation 18.  
(11) Regulation 46 was amended by S.I. 1998/1238, regulation 19.  
(12) Regulation 94 was amended by S.I. 1998/1238, regulation 27.

“(14) For this Chapter, references to the appropriate administering authority of a person entitled to a pension credit are references to the body that would be his appropriate administering authority if he were to become a pension credit member.”.

### **Right to apply for an appointed person to decide a disagreement**

9. In regulation 100—

- (a) in paragraph (1) delete (“the complainant”);
- (b) in paragraph (2), after sub-paragraph (b) insert—
  - “(ba) a pension credit member;
  - (bb) a person entitled to a pension credit;”;
- (c) in paragraph (2)(c), for “or (b)” substitute “, (b), (ba) or (bb)”;
- (d) in paragraph (2)(d), after “(b)” insert “, (ba), (bb)”;
- (e) after paragraph (4) insert—
  - “(4A) An application by—
    - (a) a person entitled to a pension credit or a pension credit member,
    - (b) a person who ceased to be such a person or member during the period of six months ending with the date of the application, or
    - (c) a person claiming to be a person or member within sub-paragraph (a) or (b),must set out his full name, address, date of birth, and the name of his appropriate administering authority.”.

### **Inward transfer of pension rights**

10. In regulation 121(2) after sub-paragraph (e) add—

“, but do not include rights to benefits under the scheme, contract or arrangement which are attributable (directly or indirectly) to a pension credit”.

### **Pension sharing**

11. After Part V insert the following Part—

**“PART VI**  
**PENSION SHARING**  
**CHAPTER I**  
**SHARING OF RIGHTS UNDER THE SCHEME**

#### **Interpretation**

146. References in this Part to a pension credit member are to that person in relation to his pension credit rights and not in relation to any other rights he may have under the Scheme.

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### **Discharge of liability for pension credit rights**

**147.**—(1) An administering authority may discharge their liability in respect of a pension credit in accordance with either sub-paragraph (2) or sub-paragraph (3) of paragraph 1 of Schedule 5 to the 1999 Act.

(2) Where the appropriate administering authority discharges its liability by conferring pension credit rights on the person entitled to the pension credit, those rights shall be to—

- (a) a pension and a lump sum grant; and
- (b) a death grant.

(3) But a pension credit member is not entitled to a lump sum grant if the transferor has been paid a retirement grant before the valuation date.

(4) The pension at the valuation date shall be calculated—

- (a) by reference to the value of the pension credit member's credit rights calculated in accordance with regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000<sup>(13)</sup>, and
- (b) in accordance with guidance issued by the Government Actuary.

### **Aggregation**

**148.**—(1) 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, he may not count any period which may count for any purpose as a period of membership in connection with his pension credit benefits towards the membership period required before he is entitled to any benefit which relates to his active membership.

### **Death of person entitled to a pension credit before discharge**

**149.**—(1) Where a person entitled to a pension credit dies before liability in respect of his pension credit has been discharged in accordance with regulation 147(1), such liability shall be discharged by the appropriate administering authority by the payment of a lump sum.

(2) The lump sum shall be equal to 3 times the annual rate of the pension that would have been paid to him if on the date of his death he had become entitled to a pension as a pension credit member, calculated in accordance with guidance issued by the Government Actuary.

(3) The appropriate administering authority shall pay the lump sum to the deceased's personal representatives.

### **Safeguarded rights**

**150.**—(1) A pension credit member's safeguarded rights for the purposes of the Scheme and of the Pension Schemes Act 1993<sup>(14)</sup> and regulations made under that Act are such of his rights falling within section 68A(1)<sup>(15)</sup> of that Act as represent the safeguarded percentage of the rights acquired by him in the Scheme by virtue of the pension credit.

(2) The "safeguarded percentage" is the percentage of the shareable rights by reference to which the amount of the pension credit is determined which are contracted-out rights.

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<sup>(13)</sup> S.I. 2000/1053; amended by S.I. 2000/2691.

<sup>(14)</sup> 1993 c. 48.

<sup>(15)</sup> Section 68A was inserted by section 36 of the Welfare Reform and Pensions Act 1999.

(3) “Contracted-out rights” has the meaning given in section 68A(5) of the Pension Schemes Act 1993.

#### **Valuation date**

**151.** For the purposes of—

- (a) calculating the cash equivalent referred to in section 29(2) of the 1999 Act; and
- (b) regulation 147(3) and (4) and regulation 153(1),

the valuation date shall be the first day of the implementation period as defined in section 34(1) of that Act.

## **CHAPTER II**

### **PENSION CREDIT MEMBERS AND PENSION CREDIT**

#### **Application of the Regulations to pension credit members**

**152.** Part I (preliminary provisions), regulations 94 (interest on late payment of certain benefits), 95 (payments due in respect of deceased persons) and 96 (non-assignability) and Chapter IV (determinations, information and records) of Part IV (Administration) of these Regulations apply to a pension credit member.

#### **Calculation**

**153.—(1)** The annual rate of the pension at normal benefit age shall be the pension calculated as referred to in regulation 147(4), increased in accordance with the Pensions (Increase) Act 1971<sup>(16)</sup> and the Pensions (Increase) Act 1974<sup>(17)</sup> from the valuation date.

(2) The lump sum grant shall be equal to 3 times the annual rate of the pension.

#### **Payment of benefits**

**154.—(1)** A pension credit member who attains normal benefit age is entitled to immediate payment of a pension and, if applicable, a lump sum grant.

(2) The pension and the lump sum grant are payable from the pension credit member’s appropriate pension fund.

(3) The pension is payable for life.

#### **Death grants**

**155.—(1)** When a pension credit member dies before he attains the age of 70, the appropriate administering authority shall pay a death grant.

(2) The amount of the death grant of a pension credit member who dies before his normal benefit age is a lump sum equal to 3 times the annual rate of the pension that would have been paid to him if on the date of his death he had become entitled to a pension.

(3) The amount of the death grant of a pension credit member who dies after he is in receipt of a pension under this Part is a lump sum equal to 5 times the annual rate of that pension being paid to him at the date of his death but reduced by the amounts of any retirement pension paid to him.

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<sup>(16)</sup> 1971 c. 56; sections 3,8 and 17 are amended by section 39 of the Welfare Reform and Pensions Act 1999.

<sup>(17)</sup> 1974 c. 9.

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(4) The appropriate administering authority at their absolute discretion may make payments of a death grant to or for the benefit of the pension credit member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(5) If the appropriate administering authority have not made payments under paragraph (4) equalling in aggregate the pension credit member's death grant before the expiry of the period of 2 years beginning with his death, they must pay an amount equal to the shortfall to the pension credit member's personal representatives.

### **Commutation: small pensions**

**156.**—(1) If the annual rate of the pension to which a pension credit member is entitled is—

- (a) not more than £195, if he has received a lump sum grant, or
- (b) otherwise, not more than £260,

the appropriate administering authority may pay him a lump sum representing the capital value of the pension.

(2) If the pension credit member is entitled to more than one pension under the Scheme, a lump sum is only payable if the aggregate amount payable to that member is less than £195 or £260, as the case may be.

(3) The capital value of a pension must be calculated as shown in guidance issued by the Government Actuary.

(4) The payment of a lump sum in respect of a pension due to the pension credit member under this Part discharges the appropriate administering authority from their liability for it.

(5) The appropriate administering authority must deduct from any payment under this regulation any tax to which they become chargeable under section 599 of the Taxes Act<sup>(18)</sup>.

### **Commutation: serious ill-health**

**157.**—(1) In circumstances where a pension credit member is suffering from serious ill-health at any time prior to the date when he first becomes entitled to receive a pension under this Part, the whole of that pension may be commuted for a lump sum and the total of—

- (a) that lump sum, and
- (b) the lump sum grant (if applicable)

(“the commutation payment”) may be paid to the pension credit member.

(2) The lump sum referred to in paragraph (1)(a) shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled if on the date of commutation he had reached the normal benefit age.

(3) The lump sum grant shall be equal to three times that annual rate.

(4) 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 commutation of the pension is to take effect.

(5) Before making any decision as to whether a pension credit member may be entitled under paragraph (1), the appropriate administering authority must have produced to them or obtain a certificate from an independent registered medical practitioner as to whether in his opinion the pension credit member suffers from serious ill-health.

<sup>(18)</sup> Section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11, 18.



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(6) Payment of the commutation payment discharges the authority's liability to the pension credit member in respect of his pension credit benefits.

(7) The authority must deduct from the commutation payment any tax to which they may become chargeable under section 599 of the Taxes Act.

#### **Appropriate fund and appropriate administering authority**

**158.** For a pension credit member—

- (a) the appropriate fund is the fund which is the appropriate fund for the transferor on the transfer date, and
- (b) his appropriate administering authority is the administering authority of that fund.

### **CHAPTER III**

#### **TRANSFERS**

##### **Transfers out**

**159.** For the purposes of Chapter II of Part IVA(19) of the Pension Schemes Act 1993 (requirements relating to pension credit benefits), the managers of the Scheme in relation to a pension credit member are his appropriate administering authority.

##### **Transfers in**

**160.—(1)** A pension credit member is not entitled to request his appropriate administering authority to accept a transfer value for relevant pension rights and an administering authority may not accept a transfer value of such rights where they have accrued to a pension credit member.

- (2) “Relevant pension rights” has the meaning given in regulation 121(2).

##### **Changes of funds**

**161.** No transfer of pension credit rights may be made from a pension credit member's appropriate fund to another fund of the Scheme notwithstanding that that fund may be an appropriate fund for that member in respect of other rights he may have accrued under the Scheme.”

#### **Schedule 1: Interpretation**

**12.** In Schedule 1, in the definition of “member”, after “section 124(1) of the Pensions Act 1995”(20) add “except that it shall not include a pension credit member except where specific reference is made to such member in regulation 94”.

#### **Schedule 1A: Definitions for pension sharing on divorce**

**13.** After Schedule 1, insert the following Schedule—

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(19) Part IVA of the Pension Schemes Act 1993 was inserted by section 37 of the Welfare Reform and Pensions Act 1999.

(20) 1995 c. 26; section 124(1) was amended by the Welfare Reform and Pensions Act 1999, section 84(1), Schedule 12, paragraph 61.

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“SCHEDULE 1A

Regulation 2(1)

**INTERPRETATION FOR PENSION SHARING ON DIVORCE**

In these Regulations—

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“normal benefit age” means 65;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act or corresponding Northern Ireland legislation;

“pension credit benefits” means benefits payable under the Scheme to or in respect of a pension credit member by virtue of rights under the Scheme attributable to a pension credit;

“pension credit member” means a person who has pension credit rights or benefits under the Scheme;

“pension credit rights” means rights to future benefits under the Scheme which are attributable to a pension credit;

“pension debit” means a debit under section 29(1)(a) of the 1999 Act or corresponding Northern Ireland legislation;

“pension debit member” means a member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;

“pension sharing order” in relation to a pension credit member, a pension debit member, a person entitled to a pension credit or pension credit rights means the order or provision by virtue of which section 29 of the 1999 Act takes effect;

“shareable rights” has the same meaning as in section 27(2) of the 1999 Act;

“transfer date” in relation to a pension credit member and pension credit rights means the day on which the pension sharing order takes effect;

“transferor” in relation to a pension credit member or a person entitled to a pension credit means the person to whose shareable rights the pension sharing order relates.”

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision in connection with the pension rights of certain members of the Local Government Pension Scheme (“the Scheme”) and amend the Local Government Pension Scheme Regulations 1997 which regulate the Scheme. They also amend the Local Government Pension Scheme (Investment and Management of Funds) Regulations 1998.

The provisions and amendments are in relation to the sharing of pensions following divorce or nullity of a marriage, introduced by the Welfare Reform and Pensions Act 1999.

Regulation 1 provides for citation and commencement.

Regulation 2 makes provision in connection with the effect of pension sharing and the creation of a pension debit on the rights of pensioners and deferred members of the Scheme whose benefits are

regulated by the Local Government Pension Scheme Regulations 1995 and other regulations relating to the Scheme made under section 7 of the Superannuation Act 1972 which continue in effect.

Regulation 3 and the Schedule to these regulations amend the Local Government Pension Scheme Regulations 1997. Paragraphs 1 to 10 and paragraph 12 make amendments to the wording of the existing provisions. Paragraph 11 adds a new Part VI to the regulations to make provision for pension credit members and paragraph 13 inserts a new Schedule of definitions for pension sharing as Schedule 1A.

Part VI provides that a person entitled to a pension credit may become a pension credit member of the Scheme. A pension credit member is entitled to receive pension benefits at age 65. The benefits take the form of a pension and, where the person whose rights are subject to a debit has not been paid a lump sum, a lump sum. There is no provision for earlier payment of the benefits except that they may be commuted for a lump sum in circumstances where life expectancy is less than one year. A pension of less than a stated annual amount may also be commuted for a lump sum.

There are no surviving spouse's or children's pensions payable following the death of a pension credit member. There is provision for payment of a death grant.

A pension credit member may not aggregate his pension credit rights with any other rights he may have under the Scheme nor may he ask for the Scheme to accept a transfer value for pension rights from other schemes or arrangements.

Regulation 4 amends the Local Government Pension Scheme (Investment and Management of Funds) Regulations 1998 to provide that certain costs and charges incurred in connection with pension sharing (as prescribed in regulations made under the Welfare Reform and Pensions Act 1999) are not borne by the Scheme.

These Regulations do not impose any costs on business.