

2000 No. 3028

EDUCATION, ENGLAND AND WALES

The Teachers' Pensions (Sharing of Pensions on Divorce or Annulment) Regulations 2000

Made - - - - - *8th November 2000*

Laid before Parliament *10th November 2000*

Coming into force - - *1st December 2000*

The Secretary of State for Education and Employment, in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a), after consulting with representatives of the local education authorities, teachers and other persons likely to be affected, in accordance with section 9(5) of that Act, and with the consent of the Treasury,(b) hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Teachers' Pensions (Sharing of Pensions on Divorce or Annulment) Regulations 2000 and shall come into force on 1st December 2000.

(2) In these Regulations—

“the 1997 Regulations” means the Teachers' Pensions Regulations 1997(c), and

“the 1994 Regulations” means the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994(d).

Amendments to the 1997 Regulations

2.—(1) There shall be inserted after Part H of the 1997 Regulations the Part contained in Schedule 1.

(2) The definitions in Schedule 2 shall be inserted in the appropriate place in alphabetical order in Schedule 1 to the 1997 Regulations.

(3) Further amendments to the 1997 Regulations are contained in Schedule 3.

Amendments to the 1994 Regulations

3.—(1) After regulation 13 of the 1994 Regulations there shall be inserted the regulation contained in Schedule 4.

(2) Further amendments to the 1994 Regulations are contained in Schedule 5.

(a) 1972 c. 11; section 9 was amended by sections 4(1), 8(3) and (4), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) and section 12 was amended by section 10 of that Act.

(b) See S.I. 1981/1670.

(c) S.I. 1997/3001, amended by S.I. 1998/2255, S.I. 1999/607, S.I. 2000/665 and S.I. 2000/2431.

(d) S.I. 1994/2924, amended by regulation H11 of S.I. 1997/3001 and S.I. 2000/666.

PART I OF THE 1997 REGULATIONS

“PART I

PENSION SHARING

Pension sharing

11. Pension sharing within the meaning of Part IV of the 1999 Act^(a) is available under the Teachers’ Pension Scheme in respect of all or part of a person’s shareable rights as set out in this Part and the Secretary of State shall discharge his liability in respect of a pension credit which derives from the Teachers’ Pension Scheme by conferring appropriate rights under the Teachers’ Pension Scheme on the person entitled to the credit.

Safeguarded rights

12.—(1) A pension credit member’s safeguarded rights for the purposes of the Teacher’s Pension Scheme are such of his rights falling within section 68A(1) of the 1993 Act^(b) as represent the safeguarded percentage of the rights acquired by him in the Teachers’ Pension Scheme by virtue of the pension credit.

(2) For the purposes of these Regulations—

- (a) the “safeguarded percentage” is the percentage of the rights, by reference to which the amount of the pension credit is determined, which are contracted-out rights or safeguarded rights, and
- (b) “contracted-out rights” has the meaning in section 68A(5) of the 1993 Act.

Pension credit benefits

13.—(1) Subject to paragraph (3) the pension credit benefits to which a pension credit member is entitled shall consist of a pension and a lump sum which are not retirement benefits within the meaning of Part E and that Part shall not apply to pension credit benefits except as provided in this Part.

(2) The pension shall be an amount calculated by reference to the value of the rights conferred on a pension credit member calculated in accordance with regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000^(c).

(3) The lump sum shall be three times the initial annual rate of the pension paid under paragraph (2) save that no lump sum shall be paid to the pension credit member if the corresponding pension debit member has already received a lump sum before the pension sharing order takes effect.

(4) Regulation E33 (payment of benefits) shall apply to a pension credit member and for those purposes any reference to benefits payable under Part E shall be a reference to the benefits payable under this Part.

(5) Subject to making an application for payment under regulation E33(2), a pension credit member shall receive payment in accordance with this regulation upon attaining the age of 60.

(6) A pension credit member’s pension under this Part continues to be payable until the death of the person entitled to it.

Interest on late payment

14. Regulation E34 (interest on late payment of certain benefits) shall apply with the following modifications—

- (a) in regulation E34(1) the reference to all or any part of the benefits payable under Part E, other than a pension payable under regulation E24, shall be a reference to all or any part of the benefits payable under this Part, and
- (b) in regulation E34(3)(b) the reference to the death grant paid under regulation E20 or E21 shall be a reference to the death grant paid under this Part.

(a) The Welfare Reform and Pensions Act 1999 c. 30.

(b) Section 68A is inserted by section 36 of the Welfare Reform and Pensions Act 1999.

(c) S.I. 2000/1053, regulation 10 is amended by S.I. 2000/2691.

Commutation

15.—(1) Where a pension credit member is suffering from serious ill-health prior to attaining the age of 60 such as to give rise to a life expectancy of less than one year from the date on which commutation of the pension credit benefit is applied for, the Secretary of State may discharge the liability to pay a pension by payment of a lump sum save in relation to the pension credit member's safeguarded rights.

(2) The amount of the lump sum payable by virtue of paragraph (1) shall be the total of the lump sum that would have been payable under regulation I3(3) and five times the value of the initial annual pension that would have been payable under regulation I3(2) if the pension credit member had attained the age of 60 on the date he applied for commutation under this regulation.

(3) Where the aggregate of total benefits payable to a pension credit member (including, where applicable, any amounts payable under Part E and the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994) does not exceed the sum referred to in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000^(a) the Secretary of State may discharge his liability to pay those benefits, save in relation to the pension credit member's safeguarded rights, by payment of a lump sum equal to the aggregated value.

Deferment

16.—(1) This regulation applies where a pension credit member is convicted—

- (a) of an offence of treason, or
- (b) of one offence or more under the Official Secrets Acts 1911 to 1989^(b) for which he has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years,

and any pension credit benefit becomes payable to him after the offence was committed.

(2) Subject to paragraph (3), where this regulation applies the Secretary of State may—

- (a) defer or, as the case may be, suspend payment of the pension credit benefit for so long, or
- (b) reduce its amount or rate by so much,

as he may determine.

(3) A determination under paragraph (2) may not deprive a pension credit member of a pension payable to him by reference to his safeguarded rights.

Death grant

17.—(1) Upon the death of a person after a pension sharing order has been made but before the Secretary of State has discharged his liability in respect of the pension credit to which that person would otherwise be entitled, a death grant shall be paid in accordance with paragraph (3).

(2) Upon the death of a pension credit member, a death grant shall be paid in accordance with paragraph (4) if, at the time of his death, he has not received any pension credit benefits or if he has received a pension for less than five years.

(3) The amount of the death grant to be paid in the circumstances set out in paragraph (1) is—

- (a) if the deceased had attained the age of 60 on or before the date of his death, the total of a lump sum calculated in accordance with regulation I3(3) and a lump sum equal to five times the amount of the pension which would otherwise have been payable, or
- (b) in all other circumstances, a lump sum equal to that to which the deceased would have been entitled if, on the date of his death, he had attained the age of 60.

(4) The amount of the death grant to be paid in the circumstances set out in paragraph (2) is—

- (a) if the pension credit member was already entitled to payment of pension credit benefits, a lump sum equal to five times the amount of the pension which would otherwise have been payable less any amount which has already been paid, or
- (b) if the pension credit member was not entitled to pension credit benefits, a lump sum equal to that to which he would have been entitled if, on the date of his death, he had attained the age of 60.

(5) The death grant is to be paid to the individual nominated by the deceased to receive the grant or, in the absence of such a nomination—

- (a) if the deceased is survived by one widow or by a widower, to the widow or widower,
- (b) if there are two or more widows, to the widows in equal shares, or
- (c) if there is no widow or widower, to the personal representatives.

^(a) S.I. 2000/1054. The sum currently referred to is £260.

^(b) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

(6) Any nomination for the purposes of paragraph (5) shall be made by giving written notice to the Secretary of State.

Transfer values

18. The Secretary of State shall not pay or accept a transfer value within the meaning of Part F in respect of any pension credit rights or pension credit benefits.

Additional contributions and additional periods

19.—(1) Subject to paragraph (2), a pension debit member may not replace any rights debited as a consequence of a pension sharing order with any rights which he would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

(2) Paragraph (1) shall not apply to pension debit members who are moderate earners within the meaning of regulations 5(4) to (6) of the Retirement Benefits Schemes (Sharing of Pensions on Divorce or Annulment) Regulations 2000(a).

Excluded membership

110. Where a pension credit member is in pensionable employment or is not in pensionable employment but is qualified for retirement benefits, he may not count any period which could otherwise count for a purpose in connection with his pension credit benefit towards any qualifying period or period of reckonable service required under the Teachers' Pension Scheme before he is entitled to any benefit.

Assignment

111.—(1) Any assignment of or charge on or agreement to assign or charge any pension credits or pension credit benefits is void.

(2) Paragraph (1) shall not preclude any assignment of a pension credit or payment or pension credit benefits pursuant to an order of the court under section 25B or 25C of the Matrimonial Causes Act 1973, to regulations under section 25D of that Act(b) or to pension sharing under Chapter I of Part IV of the 1999 Act or corresponding Northern Ireland legislation.

(3) On the bankruptcy of a person entitled to a pension credit or pension credit benefits, no part thereof passes to any trustee or any other person acting on behalf of the creditors except in accordance with an income payments order made by a court under section 310 of the Insolvency Act 1986(c).

SCHEDULE 2

Regulation 2(2)

AMENDMENTS TO SCHEDULE 1 OF THE 1997 REGULATIONS

“The 1999 Act”	The Welfare Reform and Pensions Act 1999.
“Appropriate rights”	Rights conferred on a person entitled to a pension credit— (a) with effect from, and including, the day on which the pension sharing order, under which the pension credit arises, takes effect, and (b) which have a value, calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999(d), that equals the amount of the pension credit.
“Pension credit”	A credit under section 29(1)(b) of the 1999 Act or under corresponding Northern Ireland legislation.
“Pension credit benefits”	The benefits payable under the Teachers' Pension Scheme which are attributable (directly or indirectly) to a pension credit.
“Pension credit rights”	Rights to future benefits under the Teachers' Pension Scheme which are attributable (directly or indirectly) to a pension credit.

(a) S.I. 2000/1085.

(b) 1973 c. 18. Sections 25B, 25C and 25D were inserted by section 166 of the 1995 Act.

(c) 1986 c. 45.

(d) See regulation 10 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000, S.I. 2000/1053.

“Pension credit member”	A person who has rights under the Teachers’ Pension Scheme which are attributable (directly or indirectly) to a pension credit either solely or wholly separately from any other rights under the Teachers’ Pension Scheme.
“Pension debit”	A debit under section 29(1)(a) of the 1999 Act or under corresponding Northern Ireland legislation.
“Pension debit member”	A person whose shareable rights under the Teachers’ Pension Scheme are subject to a pension debit.
“Pension sharing order”	A pension sharing order or other provision referred to in section 28(1) of the 1999 Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.
“Shareable rights”	Any rights a person has under the Teachers’ Pension Scheme except those rights referred to in regulation 2 of the Pension Sharing (Valuation) Regulations 2000(a).
“the Teachers’ Pension Scheme”	The occupational pension scheme (within the meaning of section 1 of the 1993 Act) established under section 9 of the Superannuation Act 1972 and these Regulations.

SCHEDULE 3

Regulation 2(3)

FURTHER AMENDMENT TO THE 1997 REGULATIONS

1. In regulation E25(1)(c) after the words “retirement pension” there shall be inserted the words “save that any reduction in that retirement pension by virtue of a pension sharing order shall be disregarded if the short-term pension is payable to a child”.
2. In regulation E28—
 - (a) in paragraph (1) for the words “paragraph (2)” there shall be inserted the words “paragraphs (2) and (2A)”, and
 - (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where after a pension sharing order has taken effect a surviving spouse or a nominated beneficiary becomes entitled to a pension under regulation E26, that pension shall be reduced by the same proportion by which the deceased’s retirement benefits had been reduced or would have been reduced if he had become entitled to them on the day he died.”
3. In regulation E35 at the end of paragraph (3), there shall be added “or pursuant to pension sharing under Chapter I of Part IV of the 1999 Act or corresponding Northern Ireland legislation”.

SCHEDULE 4

Regulation 3(1)

NEW REGULATION IN THE 1994 REGULATIONS

“Pension sharing on divorce

13A.—(1) Pension sharing within the meaning of Part IV of the 1999 Act is available under the AVC Scheme in respect of all or part of a person’s shareable rights as set out in this Regulation except as otherwise provided and the Secretary of State shall discharge his liability in respect of a pension credit which derives from the AVC Scheme in accordance with paragraph 1 of Schedule 5 to the 1999 Act (pension credits: mode of discharge: funded pension schemes).

(2) Upon the taking effect of a pension sharing order, an amount representing the pension credit member’s share of the pension debit member’s accumulated additional voluntary contributions calculated in accordance with regulation 10(4) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(b), shall be invested by the Secretary of State in accordance with the wishes of the pension credit member in one or more of the funds authorised by the Secretary of State for the purposes of these Regulations managed by an insurance company selected by him.

(a) S.I. 2000/1052. See the Welfare Reform and Pensions Act 1999, section 27(2).

(b) S.I. 2000/1053, regulation 10(4) is amended by S.I. 2000/2691.

(3) The benefits that may be provided in accordance with this regulation under a pension policy purchased as described in regulation 12(7) as it applies in the circumstances of this regulation are a pension and one or more dependant's pensions.

(4) The pension will commence not earlier than the date on which the pension credit member attains the age of 60 and is payable for life.

(5) A dependant's pension is a pension which would become payable to a dependant on the death of the pension credit member after his pension has commenced as provided in paragraph (4) and is payable for life, except that, in the case of a dependant who is a child as defined in the 1997 Regulations, it shall cease to be payable when that person ceases to be a child.

(6) Upon the death of a person after a pension sharing order has been made but before the Secretary of State has discharged his liability in respect of the pension credit to which that person would otherwise be entitled, a lump sum equal to the value of the pension credit at the date of that person's death shall be paid to his personal representatives.

(7) Paragraphs (4) to (11) of regulation 12(a) apply in the circumstances of this regulation with the following modifications wherever the words to be modified appear—

- (a) the reference to participator shall be a reference to pension credit member;
- (b) the reference to retirement shall be a reference to the date on which the pension commences under regulation 13A(4);
- (c) the reference to retirement pension shall be a reference to pension credit member's pension;
- (d) the reference to investments made under regulation 9(1) or 10(2) shall be a reference to investments made under regulation 13A(2);
- (e) the reference to the insurance company referred to in regulation 9 shall be a reference to the insurance company referred to in regulation 13A(2);
- (f) the reference in paragraph (10) to serious ill-health shall be a reference to ill-health which is such as to give rise to a life expectancy of less than one year from the date on which commutation is applied for; and
- (g) the reference in paragraph (11) to the amount prescribed by regulations for the time being in force under section 21(1) of the Pension Schemes Act 1993 shall be a reference to the amount prescribed by regulation 3(2)(b)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000.

(8) In regulation 16, wherever regulation 12(5), (6) or (9) is referred to, it shall include a reference to that regulation as modified by this regulation in relation to pension credits."

SCHEDULE 5

Regulation 3(2)

FURTHER AMENDMENTS TO THE 1994 REGULATIONS

1. In regulation 2(2) after the words "Income and Corporation Taxes Act 1988," there shall be inserted the words "references to the 1999 Act are references to the Welfare Reform and Pensions Act 1999".

2. In regulation 2(3) there shall be inserted in the appropriate places in alphabetical order the following definitions—

"the AVC Scheme" means the occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993) established under section 9 of the Superannuation Act 1972 and these Regulations;

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

"pension credit benefits" means in relation to the AVC Scheme the benefits payable under that Scheme which are attributable (directly or indirectly) to a pension credit;

"pension credit member" means a person who has rights under the AVC Scheme which are attributable (directly or indirectly) to a pension credit either solely or wholly separately from any other rights under the AVC Scheme;

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

"pension debit member" means a person who has rights under the AVC Scheme and whose shareable rights under that Scheme are subject to a pension debit;

"pension sharing order" means a pension sharing order or other provision referred to in section 28(1) of the 1999 Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;

(a) Regulation 12 is amended by paragraph 4 of Schedule 5 to these Regulations.

(b) S.I. 2000/1054. The sum currently referred to is £260.

“shareable rights” means any rights a person has under the AVC Scheme except those rights referred to in regulation 2 of the Pension Sharing (Valuation) Regulations 2000.(a)

3. At the end of regulation 11 there shall be inserted the following paragraph–

“(3) The Secretary of State may pay a transfer value representing the value of a person’s pension credit or of investments made under regulation 13A(2) in the circumstances of Chapter II of Part IVA of the Pension Schemes Act 1993(b) and regulations made under that Chapter(c).”.

4. In regulation 12(11) the words “arising from the participator’s service” shall be deleted.

7th November 2000

Malcolm Wicks
Parliamentary Under-Secretary of State
Department for Education and Employment

We consent

8th November 2000

Jim Dowd
Greg Pope
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations further amend the Teachers’ Pensions Regulations 1997 (“the 1997 Regulations”) and the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1994 (“the 1994 Regulations”). The amendments make provision for pension benefits to a former spouse following the sharing of pensions on divorce or nullity of marriage.

Regulations 2(1) and Schedule 1 insert a new Part I into the 1997 Regulations, regulation 2(2) and Schedule 2 insert new definitions into Schedule 1 to the 1997 Regulations and regulation 2(3) and Schedule 3 make further amendments to those Regulations. Regulation 3(1) and Schedule 4 insert a new regulation 13A into the 1994 Regulations, and regulation 3(2) and Schedule 5 make further amendments including inserting new definitions into the 1994 Regulations.

Part I as inserted into the 1997 Regulations provides that pension sharing is available under the Teachers’ Pension Scheme within the meaning of Part IV of the Welfare Reform and Pensions Act 1999 thus entitling a former spouse (“the pension credit member”) to rights in the Teachers’ Pension Scheme (*regulation I1*). The regulations provide for the identification of the percentage of his rights that are safeguarded rights within the meaning of the Pension Schemes Act 1993 (*regulation I2*). The Secretary of State may only give effect to safeguarded rights by the provision of a pension for life by virtue of the Pension Sharing (Safeguarded Rights) Regulations 2000 (S.I. 2000/1055), regulation 9.

In addition to a pension, the pension credit member is entitled to a lump sum unless one has already been paid to his former spouse. Subject to making an application for payment, the pension credit member receives his benefits at the age of 60 (*regulation I3*). Interest is payable on late payments of benefits (*regulation I4*).

The pension of a pension credit member may be commuted to a lump sum if, prior to his reaching the age of 60, he is suffering from serious ill-health or if the aggregate of benefits payable to him do not exceed a prescribed amount, currently £260 per annum (*regulation I5*).

(a) S.I. 2000/1052. See the Welfare Reform and Pensions Act 1999, section 27(2).

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

(c) See Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000, S.I. 2000/1054.

The pension, except that payable in respect of the pension credit member's safeguarded rights, may also be deferred, suspended or reduced where he has been convicted of treason or sentenced to imprisonment of at least 10 years for one or more offences under the Official Secrets Acts 1911 to 1989 (*regulation I6*).

If a person dies after a pension sharing order has been made but before the Secretary of State has discharged his liability in respect of it, or if a pension credit member dies before he has received his benefits, or if he has received a pension for less than five years, a death grant becomes payable (*regulation I7*).

The Secretary of State will not pay or accept transfer values in respect of pension credit rights or benefits (*regulation I8*).

A pension debit member cannot replace rights debited as a consequence of pension sharing which he could not have acquired had pension sharing not occurred. This shall not apply in the case of moderate earners as defined in regulations 5(4) to (6) of the Retirement Benefits Schemes (Sharing of Pension on Divorce or Annulment) Regulations 2000 (S.I. 2000/1085) (*regulation I9*).

A pension credit member who is in pensionable employment or is not in pensionable employment but is qualified for benefits under the Teachers' Pension Scheme cannot count any period in connection with his pension credit benefit towards any qualification period required by the Teachers' Pension Scheme (*regulation I10*).

Pension credits and pension credit benefits cannot be assigned or charged except as provided for in these Regulations (*regulation I11*).

Pensions payable to children on the death of a pension debit member will not be reduced as a result of pension sharing but pensions payable to a widow, widower or nominated beneficiary will be reduced (*Schedule 3, paragraphs 1 and 2*).

Regulation 13A as inserted into the 1994 Regulations provides that pension sharing is available in the AVC Scheme. The pension credit member's share of his former spouse's contributions will be invested by the Secretary of State in accordance with the pension credit member's wishes. A pension for life and one or more dependant's pensions for life may be provided from the pension policy purchased under the Regulations. The pension will commence not earlier than the date on which the pension credit member reaches the age of 60. If a person dies after a pension sharing order has been made but before the Secretary of State has discharged his liability in respect of it then a lump sum equal to the value of that pension credit at the date of his death is paid to his personal representatives. The following paragraphs of regulation 12 apply with modifications: paragraph (4) (no surrender etc), (5) (benefits election); (6) (death within 5 years of pension commencing), (7) (purchase of pension policy), (8) (no benefit election), (9) (death before pension commences etc), (10) (commutation for serious ill-health), and (11) (commutation for triviality) (*Schedule 4*).

Regulation 11 of the 1994 Regulations is amended to provide that a pension credit member may transfer his pension credits out of the AVC Scheme (*Schedule 5, paragraph 3*).

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