

Draft Model Rules For Pension Sharing on Divorce

RULE 1

DEFINITIONS

Ex-Spouse means an individual to whom *pension credit rights* have been or are to be allocated following a *pension sharing order*, agreement or equivalent provision.

[**Ex-Spouse Participant** is an *Ex-Spouse* who participates in the scheme. For this purpose the ex-spouse participant must participate in the schemes, either,

(i) solely for the provision of a *pension credit benefit*, or,

(ii) for the wholly separate provision of a *pension credit benefit*, where benefits accrue or have accrued to that individual under the Scheme for any other reason.]

Insurance Company is as defined in section 659B of the Act.

Negative Deferred Pension means the amount by which the Member's pension or deferred pension under the scheme which arose/arises from Service with the Employer(s), is reduced at the Relevant Date (\$) by section 31 Welfare Reform and Pension Act 1999 or under corresponding Northern Ireland Legislation, following a *pension sharing order*, agreement or equivalent provision. For this purpose, Service with the Employer(s) includes all periods of service with other employers which have been treated as if they were Service with the Employer(s) where a transfer payment has been made to the scheme in respect of that other service.

[**Pension Credit** means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation.]

[**Pension Credit Benefit** in relation to a scheme, means the benefits payable under the scheme to or in respect of a person by virtue of rights under the scheme attributable (directly or indirectly) to a *pension credit*.]

[**Pension Credit Rights** means rights to future benefits under a scheme which are attributable (directly or indirectly) to a *pension credit*.]

Pension Debit means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation.

Pension Debit Member means a Member whose benefits have been permanently reduced by a *pension debit*. Such a Member will either be:

(i) a Member who is a controlling director of a company which is his/her employer if he/she is a director of the company to whom paragraph (b) of section 417(5) of the Taxes Act 1988 applies either at the date on which the marriage was dissolved or annulled, or at any time within the period of 10 years before that date or,

(ii) a Member whose earnings at the date at which his/her marriage was dissolved or annulled exceeded 1/4 of the Permitted Maximum for the year of assessment in which the dissolution or annulment occurred. Earnings for these purposes shall be taken to be the total emoluments -

(a) which were paid to the member in consequence of pensionable service to which the scheme relates during the year of assessment before the year of assessment in which the marriage was dissolved or annulled, and

(b) from which tax was deducted in accordance with the Income Tax (Employments) Regulations 1993.

Pension Sharing Order means any order or provision as is mentioned in section 28(1) of the Welfare Reform and Pensions Act 1999 or Article 25 (1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

- [**Scheme Member** means a member of the scheme to whom benefit is currently accruing as a result of service as an employee, or an *ex-spouse participant* whose rights under the scheme derive from a pension sharing order, agreement or equivalent provision.]

RULE 2

Assignment

Rule is amended to permit the assignment of part or all of the Member's retirement benefits or rights to benefits under the scheme to his/her *ex-spouse* to the extent necessary to comply with a *pension sharing order*, agreement or equivalent provision [or the assignment of part or all of the *ex-spouse participant's* benefits or rights to benefits under the scheme to his/her *ex-spouse* to the extent necessary to comply with a *pension sharing order*, agreement or equivalent provision].

[RULE 3

The Trustees must make provision for the *pension credit benefits* under the scheme to be treated as provided separately from any benefits provided under the scheme for the same individual as an employee or as the Dependant of an employee.

RULE 4

Participation in the scheme offered to *ex-spouse* either where the requirement in Rule 3 is satisfied, or where the *ex-spouse* only has *pension credit benefits* under the scheme.

The following options will be available to the *ex-spouse participant* in relation to the *pension credit benefit*, subject to compliance with Social Security legislation.

(i) A pension can be paid at the request of the *ex-spouse participant* at any time between attaining age 50 and 75, or earlier on grounds of incapacity where he/she is simultaneously taking benefits on incapacity grounds arising from Service as an employee under the scheme in which the *pension credit benefits* are held. Additionally a pension not yet in payment may be fully commuted, at any age, on the grounds of exceptional circumstances of serious ill-health. The *ex-spouse participant* cannot defer commencement of the pension beyond his/her 75th birthday. If he/she is aged 75 or over at the date the *pension sharing order* is implemented, the pension must come into payment immediately. There is no limit on the amount of the pension. Such a pension should not be commuted, surrendered or assigned except in accordance with the scheme rules. Such a pension must be payable for life unless it is fully commuted under Rule 4(vi), and may be guaranteed.

(ii) No lump sum may be paid to the *ex-spouse participant* where the Member (who was formerly married to the *ex-spouse participant*) has already received a Lump Sum Retirement Benefit from the scheme before the date of the implementation by the scheme of the *pension sharing order*, agreement or equivalent provision.

- No lump sum may be paid to the *ex-spouse participant* where all of the *pension credit rights* under the scheme have been transferred into the scheme with a lump sum nil certificate.
- Otherwise the *ex-spouse participant* may choose to take a lump sum in commutation for part of the pension, at the time the pension first becomes payable. The lump sum is limited to a maximum of 2.25 x the initial annual pension. For this purpose, the initial annual pension should be calculated on the

following bases:

- (a) if the pension payable for the year changes, the initial pension payable should be taken;
- (b) it should be assumed that the *ex-spouse participant* will survive for a year;
- (c) the effect of commutation should be ignored.

(iii) Where the *ex-spouse participant* dies before benefits come into payment a lump sum death benefit may be paid. This lump sum can be paid to any person at the discretion of the Trustees.

The lump sum is limited to 25% of what would have been the cash equivalent of the *pension credit rights* at the *ex-spouse participant's* date of death. The balance of the said cash equivalent may be used to provide a non-commutable pension to a Dependant of the *ex-spouse participant*. The amount of pension payable to a Dependant is limited to a maximum of 2/3 of the amount of the pension that could have been paid to the *ex-spouse participant* at the date of death had the whole of the cash equivalent of the *pension credit rights* been used to purchase an annuity at an available market rate. For the purpose of determining the pension which could have been paid to the *ex-spouse participant*, it should be assumed that he/she was aged 50 at the date of death, where he/she died at an earlier age. Where more than one pension is to be paid the total of all the pensions cannot exceed the amount of the pension that could have been paid to the *ex-spouse participant*.

Such pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on the cessation of full time education. Such pensions may, however, be fully commuted for a lump sum on the grounds of triviality at the time that such a pension becomes payable.

(iv) Where the *ex-spouse participant* dies after pension has come into payment, a non-commutable pension may be payable to a Dependant of the *ex-spouse participant*.

The amount of pension payable to a Dependant is limited to a maximum of 2/3 of the initial annual pension which was paid to the *ex-spouse participant* as increased by any rise in the Index (£) since the commencement of the *ex-spouse participant's* pension. Where more than one pension is to be paid the total of all the pensions cannot exceed the amount of the initial annual pension which was paid to the *ex-spouse participant*, as increased by any rise in the Index since the commencement of the *ex-spouse participant's* pension. For these purposes initial annual pension should be calculated on the same basis as for Rule 4(ii).

Such pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on the cessation of full time education. Such pensions may, however, be fully commuted for a lump sum on the grounds of triviality at the time that such a pension becomes payable.

Where the *ex-spouse participant* selected a guarantee not exceeding 5 years and the guarantee period has not expired, the remaining balance of the pension instalments can be paid as a lump sum. This lump sum can be paid to any person at the discretion of the Trustees. Where the *ex-spouse participant* selected a guarantee exceeding 5 years and the guarantee period has not expired, the remaining balance of the pension instalments must be paid in pension form to an individual or individuals at the discretion of the Trustees.

(v) [On the date the *ex-spouse participant's* pension becomes payable (but not where the pension is paid in the form of income drawdown), part of this pension may be surrendered for the provision, on the death of the *ex-spouse participant*, of a pension

payable to a Dependant of the *ex-spouse participant*. The amount of pension surrendered should not exceed the reduced pension that the *ex-spouse participant* retains.]

(vi) Full commutation of the *pension credit rights* on the grounds of triviality or exceptional circumstances of serious ill-health is permitted when the pension first becomes payable. Where the *ex-spouse participant* is also entitled to benefits under the scheme arising from Service as an employee, for the purposes of determining the aggregate value of the total benefits payable to the Member under triviality rule, benefits from *pension credit rights* must be included. Where the *ex-spouse participant* is also entitled to benefits under the scheme arising from Service as an employee, full commutation of the *pension credit rights* on the grounds of triviality will only be permitted where benefits arising from Service as an employee are simultaneously commuted.

(vii) The *ex-spouse participant* may request that the Trustees arrange a transfer of his/her *pension credit rights* to another scheme approved under Chapter I Part XIV of the Act if he/she is already a member of that scheme or an *ex-spouse participant* in that scheme or to a scheme approved under Chapter IV Part XIV of the Act. The *ex-spouse participant* may request that the Trustees arrange a transfer of his/her *pension credit rights* to any other scheme if the Inland Revenue's requirements are satisfied in relation to a transfer to that scheme. The Trustees must confirm to the receiving scheme or arrangement, that the transfer value consists wholly or partly of *pension credit rights* for the benefit of an *ex-spouse participant*.

(viii) At the point the pension becomes payable, the *ex-spouse participant* may request that the Trustees arrange for the purchase of an annuity from an *insurance company* of his/her choice.

(ix) The rights to a *pension credit benefit* under the scheme shall not be absolute, but shall be forfeited upon the bankruptcy of the *ex-spouse participant*. Such benefits may then be paid to any individuals or individual as specified by the Trustees, in their absolute discretion.]

RULE 5

Notwithstanding any other provisions of the rules, the benefits for a *pension debit member* are additionally subject to the following limits, subject to compliance with Social Security legislation:

(i) The pension shall not exceed the Aggregate Retirement Benefit in rule less the *negative deferred pension* in this scheme and the *negative deferred pension* in any Associated Scheme and, furthermore in the case of a Class A Member the *negative deferred pension* in any Connected Scheme.

(ii) The lump sum from this and any Associated Scheme shall not exceed:

(a) for *pension debit members* who are Class A Members or Class B Members, an amount determined by $2.25 \times$ the initial annual pension payable

(b) for *pension debit members* who are Class C Members, an amount of the greater of:

$2.25 \times$ the initial annual pension payable or,

an amount determined in accordance with rule as if there had been no *pension debit*, less $2.25 \times$ the *negative deferred pension*.

For the purposes of this Rule, the initial annual pension should be calculated on the following bases:

- if the pension payable for the year changes, the initial pension payable should be taken;
- it should be assumed that the *pension debit member* will survive for a year;
- the effect of commutation should be ignored.

(iii) On the death of the *pension debit member*, any pension for a Dependant shall not exceed $\frac{2}{3}$ x an amount determined in accordance with rule as if there had been no *pension debit*, less the *negative deferred pension* and the *negative deferred pension* in any Associated Scheme and, furthermore in the case of a Class A Member the *negative deferred pension* in any Connected Scheme. Where more than one pension is to be paid the total of all the pensions cannot exceed 100% of an amount determined in accordance with rule as if there had been no *pension debit*, less the *negative deferred pension* and the *negative deferred pension* in any Associated Scheme and, furthermore in the case of a Class A Member, the *negative deferred pension* in any Connected Scheme.

RULE 6

The Trustees must give full details of the *pension debit* and a lump sum certificate specifying the maximum permissible lump sum, to the receiving scheme/arrangement where the fund underlying the benefits for a *pension debit member* is transferred to another scheme approved under Chapter I Part XIV of the Act or a scheme approved under Chapter IV Part XIV of the Act.

[RULE 7

Where the Trustees accept a transfer payment for an individual who is already a Member of the scheme or is already an *ex-spouse participant* in the scheme and are informed by the transferer that the transfer value consists wholly or partly of *pension credit rights* in the former scheme or arrangement, then the Trustees must separately identify the transfer payment relating to the *pension credit rights* or the part of the transfer payment relating to the *pension credit rights* from other funds held for the benefit of the Member. Furthermore the Trustees must comply with the requirements of Rule 3 in respect of the transferred-in *pension credit rights*. Then the individual will acquire the status of an *ex-spouse participant* in the scheme in relation to his/her transferred-in *pension credit benefits*. Such *pension credit benefits* will not count towards any limit on benefits for that Member.]

RULE 8

Where the Trustees accept a transfer payment and are informed by the transferer of the details of a *pension debit* relating to the transfer payment, the Trustees must take account of the *pension debit*, if appropriate, in the calculation of any limit on benefits for that Member. If a transfer of the fund underlying the benefits for the Member is made to a scheme approved under Chapter I Part XIV of the Act or a scheme approved under Chapter IV Part XIV of the Act, the Trustees must give full details of the *pension debit* to the receiving scheme/arrangement.

RULE 9

If the *ex-spouse* dies after a *pension sharing order*, agreement or equivalent provision is made but before it is acted upon by the Trustees, the following benefits may be paid:

A lump sum death benefit may be paid to any person at the discretion of the Trustees.

The lump sum is limited to 25% of what would have been the cash equivalent of the fund which would have provided the *pension credit rights* for the *ex-spouse*. The balance of the fund may be used to provide a non-commutable pension to a Dependant of the *ex-spouse*.

The amount of pension payable to a Dependant is limited to a maximum of $\frac{2}{3}$ of the amount of the

pension that could have been paid to the *ex-spouse* at the date of death if the whole of what would have been the cash equivalent of the fund which would have provided the *pension credit rights* had been used to purchase an annuity at an available market rate. Where more than one pension is to be paid the total of all the pensions cannot exceed the amount of the pension that could have been paid to the *ex-spouse*.

Such pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on the cessation of full time education. Such pensions may be fully commuted, however, for a lump sum on the grounds of triviality at the time such a pension becomes payable.

NOTES

All text in square brackets [] is optional.

For Small Self-Administered Schemes the new definition of '*scheme member*' replaces the current definition, where *ex-spouses* are permitted to join the scheme.

§ If the rules do not already contain a definition of "Relevant Date", the definition below should be inserted:

"Relevant Date shall mean the date of retirement, leaving Pensionable Service or death as the case may be."

Alternatively if the rules already define the circumstances covered by "Relevant Date", but another defined term is used, that term should be substituted for "Relevant Date" in the definition of *negative deferred pension*.

£ If the rules do not already contain a definition of "Index", the definition below should be inserted:

"Index shall mean the Government's Index of Retail Prices."

Alternatively if the rules already cover indexation, but another defined term is used, that term should be substituted for "Index" in Rule 4(iv).

It is furthermore assumed that the rules will already contain definitions of the following terms because they are all defined terms in the PS123(8/2002) "Act" "Aggregate Retirement Benefit" "Associated Scheme" "Class A Member" "Class B Member" "Class C Member" "Connected Scheme" "Lump Sum Retirement Benefit".

If the rules define these terms in another way then the terms used in the rules should be substituted in these bolt-on rules.

It is assumed that the term "Trustees" is defined already in scheme rules but again a suitable definition should be incorporated where this term is not defined.

The rules should also contain a definition of "Dependant" (this term to include "widow" or "widower").

The references to Rule in the above refers to the existing scheme rules and the appropriate rule number should be shown when drafting scheme specific rules.

USAGE AND LIMITATION OF MODEL RULES

The model rules are only for use with schemes that are approved under section 591 ICTA 1988; they are not intended for use by schemes approved under section 590 ICTA 1988.

The model rules are intended to bolt on to existing scheme documentation and will be used in connection with our Standard Documentation certification procedures. Powers of alteration clauses will vary from scheme to scheme. It is therefore the responsibility of the drafters of

scheme documentation to ensure that the model rules are brought into effect so that they fit into the existing scheme documentation.

Please note additionally the model rules are not intended for use without amendment with the following types of scheme:

Simplified Defined Contribution Schemes.

Free-Standing AVC Schemes

Pure Lump Sum Benefit Schemes

Schemes that provide a lump sum scheme by separate allocation rather than by commutation

Death-in-Service Schemes

THE DETAILED OPERATION OF THE DRAFT RULES.

Please note that where a term is in capital letters it has either been defined in the bolt-on rules or it is assumed to be one that is defined in the existing rules.

For the avoidance of doubt Class A, Class B and Class C Members have the following meanings:

Class A Member shall be any Member who is not a Class B or Class C Member

Class B Member shall mean any Member:

who, on or after 17 March 1987 and before 1 June 1989, joined the Scheme being a scheme which commenced before 14 March 1989, or

who the Board of Inland Revenue have agreed in writing to be a Class B Member by virtue of previous membership of a Relevant Scheme

and in either case, has not opted to become a Class A Member.

Class C Member shall mean any Member who joined the Scheme before 17 March 1987 or who joined subsequently and the Board of Inland Revenue have agreed in writing to be a Class C Member by virtue of previous membership of a Relevant Scheme and, in either case, has not opted to become a Class A Member.

Please note that rules 3, 4 and 7 and certain definitions have been shown in square brackets because they are optional and will only need to be adopted by schemes offering membership to *ex-spouses*. Where this is the case, the scheme eligibility rule will need widening to permit the *ex-spouse* to join. We have not attempted to draft an amended eligibility rule as such rules will vary widely from scheme to scheme. We have drafted the model rules to distinguish between a member of a scheme by virtue of service with an employer (“member”) and someone being offered scheme membership by virtue of a pension sharing order (“*ex-spouse*”). Drafters of scheme documentation using the model rules will therefore need to ensure when they draft the extension to the eligibility clause, that they do not inadvertently classify *ex-spouses* as “members”. For the purpose of the Standard Documentation certification procedure, an extension of the eligibility clause solely to permit *ex-spouses* to join the scheme, will be considered to be an integral element of the process of adopting the model rules. It will not be necessary to submit changes to eligibility clauses for this purpose for PSO approval. The Standard Document certificate (PS 5 or PS 6) should state either, “Pension Sharing on Divorce model rules dated 4/2000 adopted , *ex-spouses* not permitted to join scheme.” or , “Pension Sharing on Divorce model rules dated 4/2000 adopted , *ex-spouses* permitted to join scheme.”

The model rules are designed to separate the provision of *pension credit rights* from the provision of other benefits accruing to the same individual under the scheme (as an employee or the

dependant of an employee). This separation is maintained even where the *pension credit rights* are transferred into the scheme from elsewhere. The model rules cannot be used where it is desired to offer membership to *ex-spouses*, but it is not intended to separate the provision of *pension credit rights* from the provision of other benefits under the scheme for the same individual.

For SSASs which allow *ex-spouses* to join the scheme, a new definition of “scheme member” must be adopted. In SSASs the definition of “scheme member” is used to trigger the specific additional restrictions required by the SSAS Regulations: there will usually be a separate definition of “member” for the purpose of scheme eligibility.

Any SSAS which includes a definition of “SSAS” in its scheme documentation must ensure that a suitable amendment is made to comply with the requirement stated in the second bullet point of paragraph 21 of Update 62.

Please note that Rule 4 (v) is also optional, as all schemes do not permit members to allocate part of their pension benefits.

The model rules can be used in connection with non-standard documentation. Please certify in the covering letter that accompanies the documentation the use of the model bolt-on rules dated 4/2000 relating to pension sharing on divorce, amended only to fit in with defined terms used in the scheme documentation in question.