

Ombudsman's Determination

Applicant	Ms Y
Scheme	Friends Provident Pension Scheme (the Scheme)
Respondents	Aviva Life & Pensions UK Limited (Aviva)

Outcome

1. Ms Y's complaint against Aviva is partly upheld.
2. To put matters right, Aviva shall pay Ms Y £500 for the significant distress and inconvenience she has experienced through Aviva's maladministration.

Complaint summary

3. Ms Y has complained that:-
 - Aviva (formerly Friends Life Limited) failed to inform her of the two-month statutory time limit under Scottish Law to provide the required information to activate her pension sharing provision.
 - As a consequence of the alleged failure, she had to seek an extension to the statutory time limit and incurred additional legal expenses of approximately £3,500.

Background information, including submissions from the parties

4. On 7 February 2011, as part of their terms of separation, Ms Y and her ex-spouse, Mr Z, registered a negotiated settlement in the form of a Minute of Agreement (**the Agreement**) in the Books of Council and Session in Scotland.
5. Annexed to the Agreement, was a schedule for pension sharing (**the Annex**) for the full transfer of Mr Z's pension benefits in the Scheme in favour of Ms Y.
6. The Agreement and the Annex, whilst not an order of the court, similarly to a Pension Sharing Order (**PSO**), is a provision to implement pension sharing on divorce.

7. The Annex stated: "Intimation to Friends Provident Pension Fund of this Agreement was made by letter on the 10th January 2011. This intimation was acknowledge[sic] by the Pension Fund by letter dated 17th January 2011."
8. On 1 December 2011, Friend Provident Life and Pensions Limited changed its name to Friends Life Limited (**Friends Life**).
9. In April 2015, Aviva acquired Friends Life.
10. On 17 March 2016, Ms Y's solicitors (**the Solicitors**) contacted Friends Life and said:

"My client and her ex-husband have separated and signed a qualifying agreement that makes provision for a pension sharing order to be implemented on the issuing of their extract decree of divorce. I was not the solicitor acting for my client when the agreement was drawn up, signed and registered and prior to the decree of divorce being granted just wanted to check that you have had sight of the agreement and that you can confirm that subject to the extract of divorce and a copy of the attached Minute of Agreement being sent to you, the pension share (which is in fact a full transfer of £100.00 [sic] of the value in the scheme) will be implemented."
11. On 23 March 2016, Friends Life replied to the Solicitors. It said it had written to Ms Y and her ex-spouse about the outstanding items it required to implement the pension sharing. The Pensions Ombudsman (**TPO**) has not seen a copy of this correspondence.
12. On 30 March 2016, Friends Life wrote to Ms Y and said that it had received a copy of a PSO from the Solicitors. It attached a notice which set out what further information it required to implement the pension sharing (**Notice of Requirements**). Moreover, it confirmed it had also written to Mr Z stating the same. The Notice of Requirements requested:
 - A copy of the Decree Absolute.
 - Details of the pension scheme Ms Y had nominated to receive the pension credit (**the Receiving Arrangement**).
 - Payment Sharing Charges for the implementation (**the Fees**).
13. On 14 April 2016, Friends Life wrote to Ms Y in relation to the Fees. TPO has not seen this correspondence.
14. On 18 April 2016, in absence of a reply to the Notice of Requirements sent on 30 March 2016, Friends Life wrote to Ms Y again and re-issued the Notice of Requirements from 30 March 2016 (**Notice of Requirements 2**).
15. On 16 August 2016, Friends Life sent a reminder letter to Ms Y and Mr Z (**the Reminder Letter**). The Reminder Letter said that Friends Life had not received a reply to the Notice of Requirements sent on 30 March 2016. It confirmed that in order

to implement the “court order” it required a copy of the Decree Absolute, the Fees and details of the Receiving Arrangement. It said that it would be able to implement the PSO when all the information was received. If Ms Y did not have all the information, she was invited to provide an update on the position.

16. On 18 December 2017, Ms Y’s divorce was finalised, and a decree of divorce (**the Decree**) issued by the Sherrif Court.
17. The Date of Extract of the Decree was 2 January 2018 (**the Date of Extract**).
18. On 4 April 2019, Ms Y contacted Aviva, who had now acquired Friends Life. Ms Y wanted to discuss where to transfer her pension credit. Aviva said this was when Ms Y first shared the Decree.
19. Subsequently, Aviva wrote to Ms Y with the Notice of Requirements again, but it would appear it sent the letter to Mr Z (**Notice of Requirements 3**). The correspondence said:-

“Thank you for your telephone call on 3 April 2019 regarding your divorce proceedings.

The attached notice sets out what Aviva needs from you to implement the pension sharing order. Please send these details to us as soon as possible and let us know if you change your address”.

20. Again, Aviva wrote to Ms Y with a further notice of requirements (**Notice of Requirements 4**). The correspondence said:-

“Further to our letter dated 4 April 2019 we have noted that we have not received a reply.

The attached notice sets out what Aviva needs from you to implement the pension sharing order. Please send these details as soon as possible and let us know if you change your address.

As this pension scheme does not allow former spouses to become members your pension credit must be transferred out to another registered pensions scheme of your choice.”

21. On 9 July 2019, Aviva sent Ms Y a chaser correspondence (**the Chaser correspondence**). TPO has not seen this.
22. On 12 May 2020, Aviva closed Ms Y’s case because it did not receive a reply to its requests for additional information required for the implementation.
23. On 3 August 2020, Ms Y telephoned Aviva. She explained that she wanted to set up a pension plan with Aviva to receive the pension credit.
24. On 6 May 2021, Ms Y telephoned Aviva to advise that she was ready to transfer the value of her pension credit, as she had now set up a pension plan with Aviva (**the**

Policy). On the same day, Aviva emailed Ms Y a pension sharing pre-implementation form, which required Ms Y to provide information, in preparation for the implementation of the pension sharing provision.

25. On 11 May 2021, Aviva emailed its technical team for advice on implementation.
26. On 24 May 2021, Aviva advised Ms Y that under Scottish Law, and in accordance with section 28(7) of the Welfare Reform and Pensions Act 1999 (**the 1999 Act**), Ms Y was required to provide all the information it required to implement the pension sharing provision within two months of the Decree being extracted.
27. On 26 May 2021, Ms Y raised a complaint with Aviva concerning its refusal to implement the pension sharing provision. On the same day, Aviva wrote to Ms Y and confirmed that she would need to apply to court for an extension to the deadline.
28. On 21 June 2021, Ms Y emailed Aviva. She said she had instructed a solicitor to assist her with making an application to court for an extension to the two months deadline (**the Court Application**).
29. On 8 July 2021, Aviva replied to Ms Y's complaint. In summary, it said:-
 - It first contacted Ms Y in March 2016 to request the additional information it required to implement the pension sharing. It then wrote to Ms Y on several occasions, but it did not receive a response.
 - While Aviva agreed it could have advised Ms Y of the two-month deadline under Scottish Law, it did not receive a response from Ms Y despite sending out several letters.
 - The value of the pension benefits in the Scheme as at May 2016 was £12,824.85. The value on 8 July 2021 was £21,631.16.
 - It could not implement the PSO unless a court extension was granted.
30. Ms Y obtained a court extension to implement the pension sharing provision.
31. On 13 December 2021, Aviva transferred the value of Ms Y's pension credit to the Policy.
32. On 19 December 2021, Ms Y wrote to Aviva to claim compensation in respect of the legal fees she had incurred in connection with the Court Application.
33. On 1 February 2022, Aviva rejected Ms Y's claim for compensation.

Ms Y's position

Aviva's timeline and complaint process

34. Aviva signposted her to the Financial Services Ombudsman (**FOS**), rather than to TPO. This has prejudiced any potential claims she may have against other parties in connection with this matter.

35. The documents provided to TPO from FOS indicated that Aviva's files contained irrelevant information. This highlights that it was unaware of how to deal with pension sharing made under Scottish Law.
36. There was information missing from the timeline Aviva sent to FOS. While it indicates that the process began in 2016, Friends Life was advised of the pension sharing provision (the Agreement and Annex) in 2011.
37. She wrote to Aviva multiple times, especially during the period 2016/2019, regarding the transfer of her pension credit. She also telephoned Aviva during the same period. She questioned why Aviva had not provided TPO with details of those telephone calls.
38. She provided Aviva with personal information about her circumstances at the time of her divorce. She explained to TPO that her son had suffered as a consequence of her divorce and that he was registered as her carer.
39. The timeline from Aviva indicates that Aviva sent reminder letters and closed her file because she failed to respond. The timeline also indicates that some of the notice of requirements and reminder letters were sent to her ex-spouse; some were addressed to her but sent to his address. So, it is unsurprising that she has not received them.
40. Further, the letters Aviva shared with FOS were all dated February 2022; the date Aviva responded to the complaint she made to FOS. Aviva has not confirmed the actual date the letters were sent out.

Alleged failure to disclose information

41. The information Aviva provided to FOS did not paint an accurate picture of the level of correspondence she exchanged with Aviva. Aviva had several opportunities to advise her of the two-month deadline for receiving the relevant information.
42. Aviva has acknowledged that, during 2019/2020, she was looking to obtain financial advice in connection with the transfer of her pension credit. However, the deadline had already expired. Aviva should have highlighted this at the time.
43. The Solicitors were instructed in 2016, in connection with a custody matter. Aviva was aware of this at the time. So, Aviva should have told her to obtain legal advice in connection with the pension sharing provision.
44. There was a failure, on the part of the Scheme, to advise her that the pension sharing provision was made under Scottish Law. It should have alerted her to the fact that she had to provide the required documents within two months of the Decree being extracted, otherwise the Scheme could not implement it.
45. While there is no explicit legal obligation on pension schemes to advise of the time limit under Scottish Law, they have a legal obligation to notify the parties of the information they require to transfer the pension credit. And, by default, of the time limit to activate the pension sharing provision or order.

46. Moreover, Aviva had conceded that it should have advised her of the time limit in its response of 8 July 2021. If she had been informed about the time limit, she would have provided the information on time and would not have had to request an extension from the courts and incur additional legal expenses.
47. The Solicitors wrote to the Scheme in 2016. While the Scheme sent a notice of its requirements it was not until December 2017 when the Decree was granted, that she would have been in a position to provide a full response.
48. She is dealing with serious health issues and is also disabled. The additional distress this situation has caused her has been totally unnecessary.

Aviva's position

49. It wrote to Ms Y, on several occasions, setting out the requirements to implement the pension sharing provision. It received no response; so it closed the case on 30 November 2018.
50. Ms Y telephoned Aviva in April 2019, and shared that she had obtained her Decree. By this time, the two-month deadline had expired.
51. Ms Y required financial advice on where to transfer the pension credit, so her case was put on hold until July 2019. On 9 July 2019, it sent a Chaser Correspondence, but it did not receive a reply. So, the case was closed on 12 May 2020.
52. Whilst Aviva had said on 8 July 2021 that it could have advised Ms Y of the two-month deadline, it may not have applied to her case. The Solicitors could have advised her of that. The Solicitors did not make Aviva aware that the pension sharing provision fell under Scottish Law.
53. Aviva does not accept that it is responsible for any legal expenses Ms Y has incurred in connection with this matter. Nevertheless, it has offered Ms Y £200, as a gesture of goodwill.

The law in Scotland

54. Section 8: Orders for financial provision of Family Law (Scotland Act) 1985 (**the 1985 Act**), states:

“(1) In an action for divorce, either party to the marriage and in an action for dissolution of a civil partnership, either partner may apply to the court for one or more of the following orders—

an order for the payment of a capital sum...to him by the other party to the action;

(aa) an order for the transfer of property to him by the other party to the action;

an order for the making of a periodical allowance to him by the other party to the action;

(baa) a pension sharing order;

(bab) a pension compensation sharing order;

(ba) an order under section 12A (2) or (3) of this Act;

(bb) an order under section 12B (2);

(c) an incidental order within the meaning of section 14(2) of this Act.

(2) Subject to sections 12 to 15 of this Act, where an application has been made under subsection (1) above, the court shall make such order, if any, as is—

(a) justified by the principles set out in section 9 of this Act; and

(b) reasonable having regard to the resources of the parties.

(5) Where, as regards a pension arrangement, 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 sharing, the court shall not—

(a) make an order under section 12A (2) or (3) of this Act; or

(b) make a pension sharing order,

relating to the arrangement unless it also sets aside the agreement or term under section 16(1)(b) of this Act.

(7) In subsection (5) above—

(b) “qualifying agreement” has the same meaning as in section 28(3) of the Welfare Reform and Pensions Act 1999.”

Relevant extracts from the 1999 Act are set out in Appendix 1.

Relevant extracts from the Pensions on Divorce etc (Provision of Information) Regulations (2000/1048) (**the 2000 Regulations**) are set out in Appendix 2.

Relevant extracts from the Pensions on Divorce etc (Pension Sharing) Scotland Regulations 2000 (SI 2000/1051) are set out in Appendix 3.

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Adjudicator's Opinion

58. Ms Y's complaint was considered by one of our Adjudicators who concluded that Aviva did not cause Ms Y's alleged financial losses in relation to the Court Application but that there was nevertheless maladministration in the handling of her case. The Adjudicator said that Ms Y had provided additional comments during the investigation which had been summarised in her position statement. Nonetheless, the Adjudicator explained that the Ombudsman may decide not to consider an issue that has not been raised at the time of the initial complaint.
59. The Adjudicator addressed whether Aviva had failed in its duty of care by failing to advise Ms Y of the two months deadline to provide the relevant information to the Scheme for the activation of the pension sharing because her case fell under the law of Scotland. The Adjudicator's findings are summarised below:-
- As part of their Scottish divorce proceedings, Ms Y and her ex-spouse, had negotiated a settlement in the form of a Minute of Agreement. This was known as a Qualifying Agreement if it met the legal requirements under the 1999 and 1985 Act, and because it involved a pension arrangement it was supplemented by a schedule (the Annex). Regulation 3 of the Pension on Divorce (Pension Sharing) (Scotland) Regulations 2000 explained the circumstances in which an agreement is to be entered into, in order to be considered a "qualifying agreement".
60. Whilst the Qualifying Agreement gave Ms Y the right to receive a transfer payment in respect of the value of her ex spouse's shareable rights in the Scheme, the provision was to be deemed to have never taken effect if the Scheme did not receive the information specified in section 28(7) of the 1999 Act within a period of two months beginning with the relevant date. The information was copies of the relevant documents, and such information relating to the transferor and transferee as prescribed by regulations under section 34(1)(b)(ii). The relevant documents in Ms Y's case were copies of the Decree and the Qualifying Agreement with the Annex. The relevant date was the date of the Extract of Decree and since this was dated 2 January 2018 all the items should have been provided to the Scheme before 2 March 2018.
61. Regulation 5 of the 2000 Regulations prescribes the information which was necessary for the purposes of section 34(1)(b) of the 1999 Act before the implementation period could begin. Regulation 5 allowed the Scheme to request any additional information before it could implement the provision.
62. The Scheme had requested additional information for implementation in the Notice of Requirements. Ms Y had provided the Scheme with a copy of her divorce in April 2019 but the two months to provide the additional information under section 34(1)(b)(iii) had expired.
63. Ms Y had argued that the Scheme should have advised her that there was a two-month deadline to provide the relevant documents. But the Adjudicator said that while there are information requirements on the Scheme as set out in Regulation

5 of the 2000 Regulation, there are no provisions under legislation that require the Scheme to notify the parties of the two-month time limit to activate the order or provision. The solicitor who acted for Ms Y in 2011 and in relation to the negotiation of the Qualifying Agreement, should have explained the position to her at the time. Ms Y explained that the Solicitors in 2016 were dealing with a custody matter but the Adjudicator highlighted that in their correspondence dated 17 March 2016, the Solicitors said:

“just wanted to check that you have had sight of the agreement and that you can confirm that subject to the extract of divorce and a copy of the attached Agreement being sent to you, the pension share...will be implemented”.

- When writing to Ms Y about activating the pension sharing, Aviva had used template letters applicable to pension sharing under the law of England and Wales. Aviva had failed to amend the letters accordingly as per the law of Scotland with guidance from its technical teams. Aviva said it would usually do so for Scottish cases, but this did not happen in Ms Y's case. Aviva explained that, at the time, the business was moving from Friends Provident to Friends Life, so there was a different administrative process in place. Aviva could not provide a detailed account of what may have happened in 2011. However, Aviva said that even if it had referred the matter to its technical team, it would not necessarily have advised Ms Y of the two months deadline. Moreover, because a copy of the Decree was missing from the information that had been provided to the Scheme, the most appropriate course of action was to ask for a copy of the Decree. In any event, given that Aviva was not under a legal obligation to advise Ms Y of the two-month deadline, these issues did not materially change the outcome of the complaint. It therefore followed that Aviva did not cause Ms Y the financial loss associated with the Court Application.
- Some of the letters containing the notice of requirements had been sent to Ms Y's ex-spouse's address. Nonetheless, at least three of the letters were sent to Ms Y's home address. So, Ms Y was notified of Aviva's requirements to implement the provision. In Ms Y's application to TPO, Ms Y acknowledged that she had received Aviva's requirements, but she was unable to provide the Decree until she was divorced.
- Some of the letters in Aviva's case file were dated February 2022 rather than the date Aviva had indicated in its timeline of events. But this was likely an administrative or a printing error. For example, whilst the Reminder Letter was dated February 2022 it specifically referred to the 30 March 2016 Letter. Notice of Requirements 4, also dated February 2022, referred to Aviva's correspondence from 4 April 2019. Aviva had confirmed the dates in its timeline of events.
- Ms Y said that Aviva did not paint an accurate picture of the level of correspondence between her and Aviva and some information was missing from its timeline. In particular, that there were multiple missed opportunities for Aviva to

advise her of the two-month time limit; she had telephoned Aviva multiple times between 2016 and 2019. Aviva said that this was not part of Ms Y's original complaint to TPO. The Adjudicator did not consider it necessary to request transcripts of telephone calls because they had no reason to doubt Ms Y's submissions. But her submissions did not change the fact that it was not Aviva's responsibility to warn Ms Y of the time limit to provide the relevant information to activate the pension sharing. That responsibility fell on her legal advisers.

64. The Adjudicator then considered whether there was any maladministration caused by Aviva which caused Ms Y distress and inconvenience which would warrant an award for non-financial injustice. The Adjudicator's findings are summarised below:-

- Friends Life failed to identify that Ms Y's case related to Scottish divorce proceedings which amounted to maladministration. When Aviva took over responsibility for the Scheme, it also failed to identify the same.
- The Scheme was proactive at the start of the process. It sent the Notice of Requirements and re-sent the same before sending a Reminder Letter. It does not appear that the Scheme contacted Ms Y between 16 August 2016 and 4 April 2019. So, there was a period of inactivity.
- Aviva wrote to Ms Y about its requirements for pension sharing implementation, but it did not amend the letters accordingly to distinguish that the case related to a Scottish divorce. It had failed to refer the case to its technical teams and the letters requested a copy of the decree absolute which is not a term used in Scotland.
- The Notice of Requirements acknowledged receipt of a pension sharing order. This was incorrect because it was a qualifying agreement making provisions for pension sharing. The Notice of Requirements should have confirmed that the scheme had received the Minute of Agreement (the Qualifying Agreement) and Annex signed and witnessed by both parties in January 2011 registered in the Books of Council and Session on 7 February 2011.
- When Ms Y contacted Aviva in April 2019, Aviva had still not identified that the two-month time limit had elapsed. Aviva is a large organisation, and it should have had appropriate procedures and processes in place to deal with pension sharing on divorce, including those cases falling under Scottish Law.
- Given the maladministration and Ms Y's personal circumstances, Aviva should pay Ms Y an overall award of £500 in recognition of the significant distress and inconvenience it has caused her.

65. Aviva accepted the Adjudicator's Opinion but Ms Y did not, and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by Ms Y who claimed that :-

- the Adjudicator had not considered Aviva's negligence in relation to the transfer of the pension to her that resulted in a breach of their duty towards her and the subsequent loss that she had incurred.
66. Ms Y said Aviva had been negligent in its handling of the transfer of the pension in the following ways:
- It had admitted that it did not follow its own procedures and did not assign her case as a Scottish case;
 - It admitted it had continued to follow the English transfer route instead of the Scottish route;
 - It had failed to send documentation to Ms Y, instead repeatedly sending it to her ex-husband's previous address which she said was a breach of General Data Protection Regulations;
 - It had closed her file when it had the Solicitor's details on record that it could have forwarded documentation to or requested updates from;
 - It had repeatedly failed to advise that the two-month period had already lapsed and it had admitted it should have advised Ms Y of the two-month time limit;
 - It had repeatedly communicated with Ms Y in organising the transfer of the pension despite the two-month period having lapsed;
 - It had insisted on Ms Y completing duplicate documentation;
 - It had provided wrong information regarding which Ombudsman Ms Y was to raise her complaint with;
 - Its actions have also meant that Ms Y has lost out on an opportunity to ascertain whether she had a claim against a legal representative.
67. Ms Y said that while the Adjudicator's Opinion had identified that there was maladministration, Ms Y believed this amounted to more than just maladministration. Aviva had been negligent and had breached its duty of care to her. She argued that Aviva's actions have been a catalogue of mistakes, omissions and neglect which have been consistently compounded.
68. Ms Y felt that the Adjudicator's investigation was limited to the information provided by the Financial Ombudsman Service who had not fully investigated the matter because they realised that Aviva had told Ms Y to complain to the wrong Ombudsman.
69. Ms Y said that the Adjudicator's review was of limited scope as they had only obtained additional information from Aviva after they had made their original findings, and the additional information was also limited.

70. Ms Y said that she did not complain to the Pension Ombudsman. Her complaint had originally been to the Financial Ombudsman Service, so she did not narrate her grounds of claim, and has never been asked to confirm her grounds.
71. Ms Y said the Adjudicator had not fully considered the whole background and the weight of the omissions and catalogue of errors and the bearing they have had on the whole process of transferring the pension to Ms Y over an eleven-year period. She reiterated that Aviva's continued and consistent mishandling of her transfer resulted in negligence, not just merely maladministration which has resulted in her loss. She wanted to ensure that the Ombudsman would have access to all the information and emails she had provided as part of the investigation.

Ombudsman's decision

72. Aviva owed a duty to Ms Y to activate the pension sharing under the Qualifying Agreement and the Annex and to transfer her share of her former spouse's pension to her Receiving Arrangement on receipt of all the relevant information. But there was no duty on Aviva to advise Ms Y that in accordance with section 28(7) of the 1999 Act she had to provide copies of the relevant documents, which included her Decree, before the end of the period of two months beginning with the date the Decree was extracted. This was a responsibility of Ms Y's Solicitors and therefore the costs associated with the Court Application are not costs I can attribute to Aviva's alleged actions or omissions.
73. I note the Adjudicator had referred to the implementation period and that by the time Ms Y provided the Scheme with a copy of the Decree (in April 2019) the two months deadline to provide the additional information under section 34(1)(b)(ii) of the 1999 Act had expired. To clarify, the Decree was not provided within two months of the Date of Extract and by the time this was provided the Qualifying Agreement had lapsed because of section 28(7) of the 1999 Act.
74. Ms Y has argued that Aviva failed to send documentation to her, instead repeatedly sending it to her former spouse's previous address which she said was a breach of UK General Data Protection Regulation. I do not agree with Ms Y's submissions. Even if the letters were meant for Ms Y, Aviva had a legitimate duty to write to her former spouse in relation to the pension sharing since the benefits in the Scheme were in his name and moreover it was not information unknown to him.
75. Nonetheless, I find that there was maladministration in the process for the reasons given by the Adjudicator and I have also considered Ms Y's additional points at paragraph 66. None of these issues, however, change the outcome of the case because the costs associated with the Court Application were not losses caused by Aviva.

Directions

76. Within 21 days of the date of this Determination, Aviva shall pay Ms Y £500 for her distress and inconvenience because of the maladministration in the process.

Camilla Barry

Deputy Pensions Ombudsman
04 April 2025

Appendix 1

Welfare Reform and Pensions Act 1999

28. Activation of pension sharing

“(1) Section 29 applies on the taking effect of any of the following relating to a person’s shareable rights under a pension arrangement—

(e) a pension sharing order under the Family Law (Scotland) Act 1985,

(f) provision which corresponds to the provision which may be made by such an order and which—

(i) is contained in a qualifying agreement between the parties to a marriage or between persons who are civil partners of each other,

(ii) is in such form as the Secretary of State may prescribe by regulations, and

(iii) takes effect on the grant, in relation to the marriage, of decree of divorce under the Divorce (Scotland) Act 1976 or of declarator of nullity or (as the case may be) on the grant, in relation to the civil partnership, of decree of dissolution or of declarator of nullity

(3) For the purposes of subsection (1)(f), a qualifying agreement is one which—

(a) has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and

(b) is registered in the Books of Council and Session.

(7) For the purposes of this section, an order or provision falling within subsection (1)(e), (f) or (g) shall be deemed never to have taken effect if the person responsible for the arrangement to which the order or provision relates does not receive before the end of the period of 2 months beginning with the relevant date—

(a) copies of the relevant documents, and

(b) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations under section 34(1)(b)(ii).

(8) The relevant date for the purposes of subsection (7) is—

(a) in the case of an order or provision falling within subsection (1)(e) or (f), the date of the extract of the decree or declarator responsible for the divorce dissolution or annulment to which the order or provision relates...

(9) The reference in subsection (7)(a) to the relevant documents is—

(a) in the case of an order falling within subsection (1)(e) or (g), to copies of the order and the order, decree or declarator responsible for the divorce[F17, dissolution] or annulment to which it relates, and

(b) in the case of provision falling within subsection (1)(f), to—

(i) copies of the provision and the order, decree or declarator responsible for the divorce dissolution or annulment to which it relates, and

(ii) documentary evidence that the agreement containing the provision is one to which subsection (3)(a) applies.

(10) The Court of Session or the sheriff may, on the application of any person having an interest, make an order—

(a) extending the period of 2 months referred to in subsection (7), and

(b) if that period has already expired, providing that, if the person responsible for the arrangement receives the documents and information concerned before the end of the period specified in the order, subsection (7) is to be treated as never having applied”.

Appendix Two

Pensions on Divorce etc (Provision of Information) Regulations (2000/1048)

5. Information required by the person responsible for the pension arrangement before the implementation period may begin

The information prescribed for the purposes of section 34(1)(b) of the 1999 Act (information relating to the transferor and the transferee which the person responsible for the pension arrangement must receive) is—

(a) in relation to the transferor—

(i) all names by which the transferor has been known;

(ii) date of birth;

(iii) address;

(iv) National Insurance number;

(v) the name of the pension arrangement to which the pension sharing order or provision relates; and

(vi) the transferor's membership or policy number in that pension arrangement;

(b) in relation to the transferee—

(i) all names by which the transferee has been known;

(ii) date of birth;

(iii) address;

(iv) National Insurance number; and

(v) if the transferee is a member of the pension arrangement from which the pension credit is derived, his membership or policy number in that pension arrangement;

(c) where the transferee has given his consent in accordance with paragraph 1(3)(c), 3(3)(c) or 4(2)(c) of Schedule 5 to the 1999 Act (mode of discharge of liability for a pension credit) to the payment of the pension credit to the person responsible for a qualifying arrangement—

(i) the full name of that qualifying arrangement;

(ii) its address;

(iii) if known, the transferee's membership number or policy number in that arrangement; and

(iv)the name or title, business address, business telephone number, and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the pension credit;

(d)where the rights from which the pension credit is derived are held in an occupational pension scheme which is being wound up, whether the transferee has given an indication whether he wishes to transfer his pension credit rights which may have been reduced in accordance with the provisions of regulation 16(1) of the Implementation and Discharge of Liability Regulations (adjustments to the amount of the pension credit—occupational pension schemes which are underfunded on the valuation day) to a qualifying arrangement; and

(e)any information requested by the person responsible for the pension arrangement in accordance with regulation 4(2)(i) or (k).

Appendix 3

Pensions on Divorce etc (Pension Sharing) Scotland Regulations 2000 (SI 2000/1051)

2. Prescribed form of provision corresponding to provision in a pension sharing order under the 1985 Act.

For the purposes of section 28(1)(f)(ii) of the 1999 Act, the provision which corresponds to the provision which may be made by a pension sharing order under the 1985 Act shall be in a form which contains in an annex to, and which is separable from, the qualifying agreement referred to in section 28(1)(f)(i) of the 1999 Act, the following information—

(a) in relation to the party who is the transferor—

(i) all names by which the transferor has been known;

(ii) date of birth;

(iii) address;

(iv) national insurance number;

(v) the name and address of the pension arrangement to which the pension sharing provision relates, and

(vi) the transferor's membership number or policy number in that pension arrangement;

(b) in relation to the party who is the transferee—

(i) all names by which the transferee has been known;

(ii) date of birth;

(iii) address;

(iv) national insurance number, and

(v) if the transferee is a member of the pension arrangement from which a pension credit is derived, his membership number in that pension arrangement;

(c) details of—

(i) the amount to be transferred to the transferee, or

(ii) the specified percentage of the cash equivalent of the relevant benefits on the valuation day to be transferred to the transferee;

(d) where the transferee has given his consent, in accordance with paragraph 1(3)(c), 3(3)(c) or 4(2)(c) of Schedule 5 to the 1999 Act (mode of discharge of liability for a pension credit), to the payment of a pension credit to the person responsible for a qualifying arrangement—

(i) the full name of that qualifying arrangement;

(ii) its address;

(iii) if known, the transferee's membership number or policy number in that arrangement, and

(iv) the name or title, business address, business telephone number and, where available, the business facsimile number and electronic mail address of a person who may be contacted in respect of the discharge of liability for the pension credit;

(e) details of the provision about the apportionment (if any) made by the transferor and the transferee of liability for any charges levied by the person responsible for the pension arrangement in relation to pension sharing under Chapter I of Part IV of the 1999 Act, and

(f) confirmation by the transferor that he has intimated to the pension arrangement his intention with respect to pension sharing and that the pension arrangement has acknowledged receipt of the intimation.

3. Circumstances in which an agreement is to be entered into, in order to be considered a "qualifying agreement" under section 28(1)(f) of the 1999 Act.

"A qualifying agreement is, for the purposes of section 28(1)(f) of the 1999 Act, one which the transferor and transferee have entered into in order to determine the financial settlement on divorce or dissolution of a civil partnership and in respect of which the transferor has intimated to the person responsible for a pension arrangement prior to the making of the agreement the intention to have the transferor's pension rights under the pension arrangement shared with the transferee."