PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mrs J Gordon-Smith
Scheme	Armed Forces Pension Scheme 1975 (**AFPS 75**)
Respondent(s)	Veterans UK*

*At the relevant time, Veterans UK were known as the Service Personnel and Veterans Agency. For the avoidance of confusion, they will be referred as Veterans UK throughout this document.

Subject

Mrs Gordon-Smith has complained that Veterans UK provided incorrect information in connection with her divorce.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against Veterans UK because Mrs Gordon-Smith's pension credit pension should not have been reduced.

DETAILED DETERMINATION

Material Facts

1. Mrs Gordon-Smith and her husband were divorced in April 2010. Mr Gordon-Smith was a pensioner member of the AFPS 75. Following their divorce, Mrs Gordon-Smith became a pension credit member of the AFPS 75. Sections 28 and 29 of the Welfare Reform and Pensions Act 1999 apply (see appendix).

2. In connection with the divorce proceedings, Mr and Mrs Gordon-Smith engaged an actuary to advise on the settlement of their pensions. The actuary produced a report in December 2009. He advised that, in order to equalise pension income between both parties, Mrs Gordon-Smith should receive 55.7% of her former husband's AFPS pension rights. Mr Gordon-Smith was also in receipt of a pension of £2,263 p.a. from another scheme and Mrs Gordon-Smith had a personal pension policy paying £165 p.a. As at the date of the actuary's report, Mrs Gordon-Smith's total income was calculated to be £19,560; of which, £19,395 would come from a pension credit in the AFPS. The actuary noted that the pension figures were "quoted in today's terms", "The actual amounts will be higher due to inflation" and "All the pensions increase when in payment."

3. In the introduction to his report, the actuary said that the AFPS had provided a cash equivalent transfer value (**CETV**) figure of £768,809.60 in respect of Mr Gordon-Smith's pension rights in that scheme. He had calculated the current value to be £772,340 "using the Scheme's present method". The actuary went on to say,

   > "The Armed Forces Pension Scheme will only offer the "internal option" for Pension Sharing. This means that, if Pension Sharing is used, Mrs Gordon-Smith will receive "pension credit" rights in the Armed Forces Pension Scheme, which will be paid to her as a pension income immediately …"

4. The actuary explained that the Pension Sharing calculations had been based on the method used by the AFPS (he did not say whether he was referring to the 1975 or the 2005 scheme) and warned that, if the method changed, the results would be different. The actuary later noted that, in compiling his report, he had referred to (amongst other things) "details held on file" regarding the early retirement factors applicable to pension credit members in the AFPS as at November 2008. He explained that he had performed his calculations "in line

with the guidelines from the Government Actuary's Department published in October 2008 and May 2009 for calculating Cash Equivalent Transfer Values, "pension credits" and "pension debits" in public sector pension schemes such as the Armed Forces Pension Scheme".

5. At this time, the AFPS 75 Rules were contained in the 1977 Army Pensions Warrant (as amended) (the **1977 Warrant**). Section 445b provided that, where the PSO was made after 6 April 2009, the pension credit benefit was payable on the date the pension credit member reached age 55 or, if later, the date the PSO took effect. 'Pension benefit age' for PSOs made after 6 April 2009 was defined as 65. Section 446 stated that the amount of the benefit must be equal in value to the pension credit member's pension credit as calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the Welfare Reform and Pensions Act 1999. Section 447A covered the early payment of pensions with actuarial reduction and stated that, where the PSO had been made *before* 6 April 2009, a pension credit member could opt for immediate payment of a reduced pension from age 55 (or the effective date of the PSO if later). The AFPS 75 booklet (published in April 2008) stated that a PSO was not payable to a pension credit member until age 65.

6. The 1977 Warrant was replaced by Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010 (the **2010 Warrant**) with effect from 6 April 2010. Rule D.13(3)(b) provided that, where the PSO had been made after 6 April 2009, the pension credit benefit was payable when the pension credit member reached age 55 (or the effective date of the PSO if later). With effect from 3 January 2011, the AFPS Rules were further amended by the Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Amendment Warrant 2010 (the **Amendment Warrant**). Rule D.17(3) then provided for a pension credit member to opt for immediate payment of an actuarially reduced benefit from age 55. (Extracts from the various warrants are provided in an appendix to this document.)

7. A PSO was made on 17 May 2010 which provided (amongst other things) for Mrs Gordon-Smith to receive 55.7% of the CETV of her former husband's AFPS 75 benefits. The PSO took effect from the date of the Decree Absolute or, if later, 21 days from the date of the Order (7 June 2010). In addition to pension rights, Mr and Mrs Gordon-Smith had their main property (valued at £498,000 in

2010), a holiday home (valued at 230,00€) and shares (valued at £160,000). These additional assets were split equally.

8. On 25 January 2011, Veterans UK wrote to Mrs Gordon-Smith notifying her that the PSO had been implemented. They said her share of the CETV of her former husband's AFPS benefits amounted to £413,886.51 and that the value of her pension credit was a preserved pension of £18,866.00 as at the Valuation Date of 1 July 2010. Veterans UK said that Mrs Gordon-Smith's pension credit benefits were due for payment when she reached "the statutory minimum age of 55". They explained that she should submit a claim form. Mrs Gordon-Smith was then aged 60. An annual pension of £18,866.00 was put into payment in March 2011 with effect from 7 June 2010.

9. On 5 March 2012, Veterans UK wrote to Mrs Gordon-Smith explaining that an amendment to the relevant legislation affecting the early payment of pension credit benefits had been misinterpreted by Ministry of Defence (**MoD**) policy officials. They explained that it had been thought that the intention of the amended legislation was to allow pension credit benefits to be paid in full prior to age 60 or 65, rather than at a reduced rate. Veterans UK went on to say that, as a result, Mrs Gordon-Smith's benefits had been incorrectly calculated and she had been overpaid. They explained that they would normally be obliged to recover an overpayment of benefits, but due to the nature of the error no action would be taken to recover monies already paid to her. Veterans UK said that they would, however, be required to reduce Mrs Gordon-Smith's pension to the correct level and this would take effect from 1 June 2012. They explained that the current rate of pension was £19,352.74 p.a. and that it should be £13,322.64 p.a.

10. Veterans UK have explained that the legislation in question was the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 (SI2009/615) and the Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009 (SI2009/598). (Extracts from the above statutory instruments are provided in an appendix to this document.)

11. On 30 May 2012, Veterans UK wrote to Mrs Gordon-Smith confirming that, with effect from 1 June 2012, her new rate of pension would be £18,802.01 p.a. (following pensions increase in April 2012). They went on to say,

> "When finalising your revised pension rate our investigations have shown that it would be incorrect to recalculate your former spouse pension credit in the way described in our recent letter. The amounts included in that letter were calculated by actuarially reducing the original 'base rate' pension credit award of £18,866.00 as notified to you upon implementation of your Pension Sharing Order (PSO).
>
> This is because we used 'lower rate' factors which assumed payment from age 55 when implementing your PSO, rather than 'higher rate' factors which assumed payment from age 65. I apologise sincerely for any additional confusion this error causes. However, the result is that your pension will not be reduced by as much as we initially indicated."

12. Mrs Gordon-Smith appealed under the Scheme's two-stage internal dispute resolution (**IDR**) procedure. She submitted that her actuary had calculated her share of the AFPS pension on the basis of formulas produced by the Government Actuary's Department (**GAD**) and having been assured that there would be no actuarial reduction.

13. At stage one, the decision maker noted Mrs Gordon-Smith's submission that her income from the PSO was an integral part of the financial settlement between her and her former husband. He went on to say that information provided by Veterans UK prior to the implementation of the PSO did not include the actual annual income figure her pension share would provide; they only provided a CETV. The decision maker went on to say that they complied with the PSO by calculating her pension from the CETV. He acknowledged that this had been done incorrectly. He went on to say that Mrs Gordon-Smith had been awarded a payment of £250 for "distress and worry". Veterans UK also paid £396 for legal costs incurred by Mrs Gordon-Smith.

14. Mrs Gordon-Smith appealed further. The stage one decision was upheld at stage two. Veterans UK said that the Deciding Officer was unable to authorise payment of the pension at the incorrect rate or a compensation payment to take account of the reduction in Mrs Gordon-Smith's income.

Summary of Mrs Gordon-Smith's Position

15. Mrs Gordon-Smith submits:

- Veterans UK admit that her share of her former husband's pension under the PSO was incorrect because the MoD Policy officials misinterpreted DWP legislation.
- They have not recalculated her former husband's pension.
- The pension, which had been paid to them in full as a married couple, is reduced by £1,557 p.a., but the reduction applies to her alone.
- Had they been aware of the error by the MoD, they would have adjusted the PSO to ensure that the pension income was equalised or their capital settlement was adjusted.
- If they had not divorced and her former husband had died, she would have been paid a 50% widow's pension with no adjustment for female longevity.
- Her actuary has advised that the early retirement factors applied to her pension are not cost neutral, but penalise pension credit members. He has said that he wrote to the Government Actuary about this, but did not receive a reply.
- Veterans UK and the Government Actuary* advised her actuary on the split of the AFPS pension before they went to court for the decree absolute. Had her actuary been given the correct information, the percentage of the AFPS pension awarded to her would have been greater.

* The Government Actuary's Department have confirmed that they do not provide advice on individual cases.

16. The actuary who advised Mrs Gordon-Smith has provided copies of the letters he said he sent to an MP and to the Government Actuary*. In his letters, the actuary expressed the view that the actuarial reduction factor applied to pension credit members who took their pension at age 55 before 2011 (48.8%) was unfair. He said that the reduction for taking benefits at age 55 should be cost neutral to the Scheme and that the current factor (58.1%) met this requirement. The actuary suggested that Veterans UK be instructed to retrospectively apply

the current reduction factor to pension credit benefits which came into payment early between 2009 and 2011.

* The Government Actuary's Department have advised that they have no record of receiving this letter.

Summary of Veterans UK's Position

17. A summary of Veterans UK's submission is given below:

- There is no legal authority for the AFPS to pay Mrs Gordon-Smith an unreduced benefit at age 55.
- The AFPS Rules are subject to the Pension Schemes Act 1993. Section 101C requires that the "normal benefit age under a scheme must be between 60 and 65" To permit a pension to be taken at the age of 55 without actuarial reduction would be unlawful because it would be treating that age as if it was the normal benefit age.
- Normal benefit age is defined in Section 101B as the "earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule maling special provision as to early payment of pension on grounds of ill-health or otherwise)".
- The above definition implies that an occupational pension scheme can make special provision for the early payment of pension credit, but this is constrained by reference to Section 101D. Section 101D(2)(b) states that a scheme may provide "for such alternatives to pension credit benefits as may be prescribed".
- The prescribed alternatives are set out in the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009. Regulation 15 amended Regulation 7 of the Pension Sharing (Pension Credit Benefit) Regulations 2000.
- The amendment allows benefits which are different from the pension credit benefits to be paid before normal benefit age where the person entitled to the benefit suffers from ill health or has reached normal minimum pension age. Normal minimum pension age is defined (under

the Finance Act 2004) as age 50 before 6 April 2010 and age 55 after that date.

- Regulation 7 allows a scheme to provide "benefits which are different to those required to constitute pension benefit in respect of the – (a) amount; (b) recipient; and (c) time at which the benefits are payable". The benefits must not be payable before normal benefit age except where the person entitled to the benefit has either (i) met the ill health condition or (ii) attained normal minimum pension age.
- Regulation 7(2) provides that benefits are not payable before normal pension age except where the person has attained normal minimum pension age which is now age 55.
- In terms of the amount of pension which can be paid, Regulation 7(1) states that the scheme may provide benefits different to those required to constitute pension benefit in respect of the amount and time at which benefits are payable. So, where a scheme contains provisions to provide for the payment of pension credit at a date earlier than it would normally be paid (normal benefit age) there is no discretion to pay the same amount; it has to be a different amount. This means, in practice, that it has to be a lesser (actuarially reduced) amount.
- To provide for a pension to be taken early at the full rate would be to treat the earlier age as normal benefit age which is contrary to Section 101C of the Pension Schemes Act 1993.

Conclusions

18. Mrs Gordon-Smith has complained about the information provided in connection with her divorce and PSO in 2009. At the time Mrs Gordon-Smith and her former spouse were negotiating their divorce settlement, Veterans UK provided them with a CETV; they did not provide any pension figures. It appears that Mrs Gordon-Smith's actuary had obtained actuarial factors then being used by the AFPS 75. It was he who calculated that Mrs Gordon-Smith could expect to receive a pension of £19,395 from the AFPS based on a 55.7% share of her husband's AFPS CETV. It was also Mrs Gordon-Smith's actuary who stated that she could receive her pension immediately. In view of the fact that the only information supplied directly by Veterans UK at this time was the CETV and this

was correct, I do not find that there was maladministration on the part of Veterans UK in the information they provided prior to Mrs Gordon-Smith's divorce.

19. Mrs Gordon-Smith has made certain comments about the role of the Government Actuary's Department. They have kindly provided some additional clarification on their role. I do not find that they are an appropriate party to Mrs Gordon-Smith's complaint and do not, in the circumstances, come within my jurisdiction.

20. The trigger for Mrs Gordon-Smith's complaint to me was the notification from Veterans UK that she had been overpaid pension since 7 June 2010. Veterans UK have explained that the MoD misinterpreted certain pieces of legislation relating to the payment of pension credit benefits. As a result, pension credit members were being paid unreduced benefits from as early as age 55. The pension credit members concerned have been notified that they have been overpaid and future pension payments have been reduced. No action has been taken to recover any sums already paid.

21. Veterans UK have referred me to the legislation which they consider was misinterpreted by the MoD at the relevant time. However, Mrs Gordon-Smith's entitlement to payments under the AFPS 75 is governed not only by pensions legislation but also by the rules of the scheme itself. Consequently, it is necessary to consider also what the AFPS 75 Rules themselves provided for at the relevant times. If the pensions legislation in question overrides the scheme rules, then the terms of the legislation prevail. However, this is not always the case. It may be the case that the legislation enables a scheme to offer a benefit, but does not require it to do so. In such circumstances, the scheme rules, themselves, provide the authority for a benefit to be paid. There is a (sometimes) complex interplay between the legislation and the relevant scheme rules, which determines what benefits may be paid.

22. In December 2009 (when Mrs Gordon-Smith's actuary prepared his report), the AFPS 75 Rules were contained in the 1977 Warrant. Section 445b provided that, where the PSO was made after 6 April 2009, the pension credit benefit was payable on the date the pension credit member reached age 55 or, if later, the date the PSO took effect. The AFPS 75 booklet (published in April 2008) stated

that a PSO was not payable to a pension credit member until age 65. It had evidently not been updated when the 1977 Warrant was amended. The 1977 Warrant reflected the amendment to the Pension Sharing (Pension Credit Benefit) Regulations 2000 made by the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009. The relevant change being the increase in the minimum age at which benefits could be paid (except for incapacity) from 50 to 55. Regulation 7 does not, however, require schemes to pay the pension credit benefits early; it states that they "may" do so. The enabling authority for the early payment of pension credit benefits under the AFPS 75 was, at that time, the 1977 Warrant.

23. The 1977 Army Pensions Warrant was replaced by the 2010 Warrant with effect from 6 April 2010. Rule D.13(3)(b)(ii) provided that, where the PSO had been made after 6 April 2009, the pension credit benefit was payable when the pension credit member reached age 55 (or the effective date of the PSO if later). This was the Rule which was in force when Mrs Gordon-Smith became entitled to pension credit benefits under the AFPS 75. The effective date of Mrs Gordon-Smith's PSO was 7 June 2010 (21 days after the date of her PSO).The Welfare Reform and Pensions Act 1999 provides for a pension credit member to be entitled to benefits under the scheme in question "on the taking effect of" the PSO. Mrs Gordon-Smith became entitled to benefits under Rule D.13(3)(b)(ii) with effect from 7 June 2010. Veterans UK subsequently paid her unreduced benefits with effect from that date.

24. However, with effect from 3 January 2011, the AFPS Rules were further amended by the Amendment Warrant. Rule D.17(3) then provided for a pension credit member to opt for immediate payment of an actuarially reduced benefit from age 55. Mrs Gordon-Smith's PSO was implemented on 25 January 2011.

25. Veterans UK have referred me to two pieces of legislation: the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 and the Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009. Both pieces of legislation amended the Pension Sharing (Pension Credit Benefit) Regulations 2000. The latter was concerned with the abolition of "safeguarded rights", that is, rights which were derived from pensionable service which had been "contracted-out" of the State scheme(s). With effect from 6 April 2009, pension schemes were no longer required to

account for safeguarded rights separately. This made the option of early payment of pension credit benefits much simpler, but was not directly relevant to Mrs Gordon-Smith's case. The former amended the Pension Sharing (Pension Credit Benefit) Regulations 2000 so as to reflect the change to the minimum pension age referred to above. Neither pieces of legislation required pension schemes to pay pension credit benefits in full from age 55; early payment continued to be an option as before, but the earliest age for payment to begin had changed.

26. Veterans UK have referred me to the requirement, in Section 101C, for normal benefit age to be between 60 and 65. Normal benefit age is defined as the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise). Their argument is that, should they pay Mrs Gordon-Smith unreduced benefits at any age earlier than the normal benefit age, they would be altering the normal benefit age.

27. I agree that the AFPS 75 was required to have a normal benefit age between 60 and 65 (disregarding any scheme rule making special provision as to early payment). "Normal benefit age" was defined in Rule A.1, for someone in Mrs Gordon-Smith's position, as age 65. However, Regulation 7 allowed the AFPS 75 to pay Mrs Gordon-Smith's pension early; it allowed for the amount, recipient and time of payment to be different. The only constraint so far as timing is concerned is that the benefit must not be paid before "normal minimum pension age" (as defined in Section 297 of the Pension Schemes Act), unless the member meets the ill health condition. For Mrs Gordon-Smith, the normal minimum pension age was 55.

28. Veterans UK acknowledge that Regulation 7 allowed the AFPS 75 to provide benefits which are different from those required to constitute the pension credit benefit in respect of amount, recipient and time of payment. They argue that, if the benefit is paid at a different time, it must be a different amount (and a lesser amount). I do not find that Regulation 7 requires this. It is true that the Regulation refers to the amount, recipient "and" time at which the benefit is payable. However, if the argument put forward by Veterans UK is accepted, this would mean that the recipient must be different too. I do not find that Regulation 7 requires the amount necessarily to change if the timing does. The three

variables stand alone and may be altered independently of each other. There is certainly no reason why two must be linked and not all three.

29. Given that Regulation 7 specifically allows a scheme to pay pension credit benefits at an age earlier than the normal benefit age, I do not find that doing so changes the normal benefit age. Under the AFPS 75, this remained age 65 in Mrs Gordon-Smith's case. This was the latest age at which her benefit had to be paid, but she was entitled (under Rule D.13) to have the benefit paid earlier than this.

30. It is also the case that Regulation 7 does not specify that a lesser amount must be paid if payment is made before normal benefit age. This is a decision for the scheme managers to make and is a function of the strain on scheme funding which they deem to be acceptable.

31. As I have said, the actual authority for the early payment of pension credit benefits lies in the AFPS 75 Rules. It appears that the MoD were under the misapprehension that, as of 6 April 2009, they were required by the amended legislation to pay pension credit benefits in full from as early as age 55 and the AFPS 75 Rules were amended to reflect this. The Rules were subsequently amended further to remove this requirement when the MoD apparently realised that the legislation continued to give schemes the option to offer early payment and did not require payment of the benefits in full from age 55. That amendment came into effect from 3 January 2011, that is, after Mrs Gordon-Smith had acquired the right to have her pension credit benefits paid in full under Rule D.13(3)(b)(ii).

32. I find, therefore, that Mrs Gordon-Smith is entitled to the payment of unreduced pension credit benefits with effect from 7 June 2010. Whilst the later amendment to the AFPS 75 Rules was made prior to the implementation of her PSO, it post-dated her acquisition of pension credit rights. I uphold her complaint on this basis.

33. I would note that Veterans UK have acted in good faith throughout and the reduction in Mrs Gordon-Smith's pension came about as a result of an honest mistake. Nevertheless, I would normally direct payment of a modest sum in recognition of distress and inconvenience caused by the maladministration I have identified. However, Veterans UK have already paid Mrs Gordon-Smith £250 (plus £396 legal fees) which is in line with the amounts I usually award in such

circumstances. In addition, Mrs Gordon-Smith has not been asked to repay any of the pension which Veterans UK thought she had been overpaid. They have done as much as they could in the circumstances to reduce Mrs Gordon-Smith's distress. I have not, therefore, made any alternative directions.

Directions

34. I direct that, within 21 days from the date of my final determination, Veterans UK will reinstate Mrs Gordon-Smith's pension at the unreduced rate. They will pay her arrears from the date of reduction, together with simple interest at the rate quoted for the time being by the reference banks.

Jane Irvine
Deputy Pensions Ombudsman

18 November 2014

Appendix

The Pension Schemes Act 1993

35. Part IVA deals with "Requirements Relating to Pension Credit Benefit"

"101A Scope of Chapter I

(1) This Chapter applies to any occupational pension scheme whose resources are derived in whole or part from –

(a) payments to which subsection (2) applies made or to be made by one or more employers of earners to whom the scheme applies, or

(b)such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.

(2) This subsection applies to payments-

(a) under an actual or contingent legal obligation, or

(b) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money."

"101B Interpretation

In this Chapter-

"scheme" means an occupational pension scheme to which this Chapter applies;

"pension credit rights" means rights to future benefits under a scheme which are attributable (directly or indirectly) to a pension credit;

"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;

"normal benefit age", in relation to a scheme, means the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise)."

"101C Basic principle as to pension credit benefit

(1) Normal benefit age under a scheme must be between 60 and 65.

(2) A scheme must not provide for payment of pension credit benefit in the form of a lump sum at any time before

normal benefit age, except in such circumstances as may be prescribed."

"101D Form of pension credit benefit and its alternatives

(1)Subject to subsection (2) and section 101E, a person's pension credit benefit under a scheme must be-

(a)payable directly out of the resources of the scheme, or

(b)assured to him by such means as may be prescribed.

(2)Subject to subsections (3) and (4), a scheme may, instead of providing a person's pension credit benefit, provide-

(a)for his pension credit rights under the scheme to be transferred to another occupational pension scheme or a personal pension scheme with a view to acquiring rights for him under the rules of the scheme, or

(b)for such alternatives to pension credit benefit as may be prescribed.

(3)The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter II of this Part.

(4)The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for pension credit benefit-

(a)if the person entitled to the benefit consents, or

(b)in such other cases as may be prescribed …"

The Welfare Reform and Pensions Act 1999

At the date of Mrs Gordon-Smith's PSO, Sections 28 and 29 provided,

"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

(a) a pension sharing order under the Matrimonial Causes Act 1973,

…"

"29 Creation of pension debits and credits

(1) On the application of this section -

(a) the transferor's shareable rights under the relevant arrangement become subject to a debit of the appropriate amount, and

(b) the transferee becomes entitled to a credit of that amount as against the person responsible for that arrangement

…

(7) For the purposes of this section, the valuation day is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.

…"

The Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI2000/1054)

As at the date Mrs Gordon-Smith's PSO took effect, Regulation 7 provided,

"7 Early retirement or deferred retirement

(1) Subject to paragraph (2), the scheme may provide benefits which are different from those required to constitute pension credit benefit in respect of the -

(a) amount;

(b) recipient; and

(c) time at which the benefits are payable.

(2) The benefits referred to in paragraph (1) must include a benefit that is both -

(a) payable to the person entitled to the pension credit benefit; and

(b) not payable before normal benefit age except where the person entitled to the benefit has either -

(i) met the ill-health condition in accordance with paragraph 1 of Schedule 28 to the Finance Act 2004 (registered pension schemes - defined benefits and money purchase arrangements - ill-health condition) immediately before that person became entitled to the benefit; or

(ii) attained normal minimum pension age as defined in section 279(1) of that Act (other definitions).

(4) Benefits consisting of, or including, a benefit that becomes payable to the person entitled to the benefit before normal benefit age may be provided without that person's consent where-

(a) that person's earning capacity is destroyed or seriously impaired by physical or mental infirmity ; and

(b) in the opinion of the trustees or managers of the scheme, the person entitled to the benefit is incapable of deciding whether it is in his interests to consent.

(5) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, when the benefit of the person entitled to the benefit becomes payable, the total value of the benefits to be provided under this regulation is at least equal to the amount described in regulation 11 (value of alternatives to pension credit benefit)."

The Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009 (SI2009/615)

These Regulations came into force on 6 April 2009 and (amongst other things) provided,

"15 Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000

…

(4) In regulation 7 (early retirement or deferred retirement)-

(a) for paragraphs (2) and (3), substitute-

(2) The benefits referred to in paragraph (1) must include a benefit that is both-

(a) payable to the person entitled to the pension credit benefit; and

(b) not payable before normal benefit age except where the person entitled to the benefit has either-

(i) met the ill-health condition in accordance with paragraph 1 of Schedule 28 to the Finance Act 2004 (registered pension schemes - defined benefits and money purchase arrangements - ill-health condition) immediately before that person became entitled to the benefit; or

(ii) attained normal minimum pension age as defined in section 279(1) of that Act* (other definitions)."

*Age 50 before 6 April 2010 and age 55 on and after that date.

The Pensions Act 2008 (Abolition of Safeguarded Rights) (Consequential) Order 2009 (SI2009/598)

This Order also came into force on 6 April 2009 and provided,

"7 Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000

(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 are amended in accordance with this article.

(2) In regulation 1(2) (interpretation), omit the definition of "safeguarded rights".

(3) Omit regulation 13 (disqualification as a destination for pension credit - contracted-out or safeguarded rights).

8 Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000

(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000 are amended in accordance with this article.

(2) In regulation 1(2) (interpretation), omit the definition of "safeguarded rights".

(3) In regulation 10 (transfer of a person's pension credit rights without consent), omit paragraph (9).

(4) Omit -

(a) regulation 16 (transfer payments in respect of safeguarded rights - general),

(b) regulation 17 (transfer payments to money purchase contracted-out schemes and appropriate schemes),

(c) regulation 18 (transfer payments to salary related contracted-out schemes), and

(d) regulation 19 (transfer payments to overseas schemes or overseas arrangements).

(5) In regulation 20 (requirements to be met by annuities), for "Subject to regulation 19, the prescribed" substitute "The prescribed".

(6) In regulation 21 (requirements of other pension arrangements) -

(a) in paragraph (1)(a), add "or" at the end,

(b) omit paragraph (1)(b), and

(c) in paragraph (3), for "paragraph (1)(b) and (c)" substitute "paragraph (1)(c)".

(7) In regulation 22 (requirements to be met by an eligible scheme), omit sub-paragraph (a) of paragraph (1).

(8) In regulation 35 (definition of eligible pension credit rights), omit paragraph (2)(b) and the word "or" immediately preceding it.

9 Revocation of the Pension Sharing (Safeguarded Rights) Regulations 2000

The Pension Sharing (Safeguarded Rights) Regulations 2000 are revoked."

“Date of payment of pension credit benefit

445. A pension credit member shall be entitled to the payment of the pension credit benefit -

a. where the pension sharing order was made before 6 April 2009 -

(1) on the date the pension credit member reaches pension benefit age; or

(2) if it is later, the date the pension sharing order takes effect;

b. where the pension sharing order was made on or after 6 April 2009 -

(1) on the date the pension credit member reaches age 55; or

(2) if it is later, the date the pension sharing order takes effect.

For the purposes of this Section “pension benefit age” means -

a. in respect of a pension credit member whose Pension Sharing Order was made before 6 April 2006, the age of 60;

b. in respect of a pension credit member whose Pension Sharing Order was made on or after 6 April 2006, the age of 65.

Amount of pension

446. The pension referred to in Article 444(a) must be of such an amount that its value is equal to the pension credit member’s pension credit as calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.

Early payment of pensions with actuarial reduction

447A. a. Where the pension sharing order was made before 6 April 2009, a pension credit member may opt for immediate payment of a reduced pension and lump sum if -

(1) the member is aged 55 or over, and

(2) the pension sharing order from which the pension credit rights derive has taken effect.

b. If a pension credit member exercises the option under this article, the amount of the annual pension to which the member becomes entitled is first calculated as mentioned in article 446 and then that amount is reduced by such amount as the Defence Council determines after consulting the Scheme actuary.

c. If a pension credit member exercises the option under this article, the amount of the lump sum to which the member becomes entitled is first calculated as mentioned in article 447 and then that amount is reduced by such amount as the Defence Council determines after consulting the Scheme actuary.

d. The option under this article may only be exercised by notice in writing to the Scheme administrator."

The Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Warrant 2010

"D.13 Pension credit members' pensions

(1) A pension credit member is entitled to a pension for life and a lump sum derived from the member's pension credit rights, subject to the following paragraphs of this rule.

(2) No lump sum is payable if the pension debit member is a pensioner member when the pension sharing order under which the pension credit member is entitled to the pension credit takes effect.

(3) The pension and any lump sum become payable -

(a) where the pension sharing order is made before 6th April 2009 -

(i) immediately the pension credit member reaches pension benefit age*; or

(ii) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect;

(b) where the pension sharing order is made on or after 6th April 2009 -

(i) immediately the pension credit member reaches age 55; or

(ii) if the pension credit member has already reached pension benefit age* before that date, when the pension sharing order under which the member is entitled to the pension credit takes effect.

(4) If no lump sum is payable under this rule, the pension must be of such an amount that its value is equal to the member's pension credit, as calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.

(5) If a lump sum is payable under this rule -

(a) the lump sum so payable must be equal to three times the amount of the annual pension so payable; and

(b) the pension so payable must be of such an amount that its value, when aggregated with the lump sum so payable, is equal to the member's pension credit, as calculated in accordance with those regulations.

(6) Where the pension sharing order was made before 6th April 2009 and that order has taken effect, the pension credit member may opt for the immediate payment of a

reduced pension and lump sum on or after reaching age 55.

(7) Where a pension credit member has exercised the option under paragraph (6), the amount of the annual pension and lump sum to which the member is entitled are first calculated in accordance with paragraphs (4) or (5) and then that amount is reduced by such amount as the Defence Council determines after consulting the Scheme actuary.

(8) The option under paragraph (6) may only be exercised by a notice in writing to the Scheme administrators in such form as the Scheme administrator requires."

*"pension benefit age" is defined (in Rule A.1) as "(a) if the pension sharing order was made before 6th April 2006, the age of 60; and

(b) otherwise, the age of 65"

The Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) Amendment Warrant 2010

"D.17 Early payment with actuarial reduction

(1) A member who is entitled to a further pension under rule D.11(2)(b) may opt, before reaching the age of 60, to receive the pension from the age of 60 at an actuarially reduced rate.

(2) If a member exercises the option under paragraph (1) and is entitled to a further lump sum under rule D.11(5)(b) -

(a) the further lump sum is also payable at the age of 60; and

(b) the amount of the further lump sum is three times the actuarially reduced annual amount of the further pension.

(3) A pension credit member may opt, before reaching pension benefit age (within the meaning of rule D.16), to receive the pension payable under that rule at an actuarially reduced rate -

(a) if the member has not reached the age of 55, from that age;

(b) if the member has reached that age, immediately.

(4) If a pension credit member exercises the option under paragraph (3) -

(a) the annual amount of the pension is reduced by such amount as the Defence Council, after consulting the Scheme actuary, may determine; and

(b) if the member is entitled to a lump sum under rule D.16 -

(i) the lump sum is payable at the same time as the pension; and

(ii) the amount of the lump sum is three times the actuarially reduced annual amount of the pension.

(5) But, if a pension credit member exercises the option under paragraph (3), the Defence Council must be reasonably satisfied that the total value of the benefits payable by virtue of paragraph (4) is at least equal to the amount described in regulation 11 of the Pension Sharing (Pension Credit Benefit) Regulations 2000(a) (value of alternatives to pension credit benefit).

(6) An option under this rule must be exercised by notice in writing to the Scheme administrator, in such form as the Scheme administrator may require."