

Statutory Document No. 2004/0225

*Matrimonial Proceedings Act 2003*

## MATRIMONIAL PROCEEDINGS (PENSIONS) REGULATIONS 2004<sup>1</sup>

*Approved by Tynwald: 20 April 2004*  
*Coming into operation in accordance with Article 1*

In exercise of the powers conferred on the Department of Health and Social Security by sections 36, 44(4) and 87(4) of the Matrimonial Proceedings Act 2003<sup>1</sup>, and of all other enabling powers, the following Regulations are hereby made: —

### **1 Citation, commencement and transitional provisions**

- (1) These Regulations may be cited as the Matrimonial Proceedings (Pensions) Regulations 2004 and, subject to sections 36(9), 44(5) and 87(5) of the Act, shall come into operation on 1<sup>st</sup> May 2004.
- (2) These Regulations apply to any proceedings for a divorce order, separation order or annulment order commenced on or after 1<sup>st</sup> October 2001, and any such proceedings commenced before that date shall be treated as if these Regulations had not come into operation.

### **2 Interpretation**

In these Regulations —

- (a) “the Act” means the Matrimonial Proceedings Act 2003;
- (b) a reference to a section by number alone means the section so numbered in the Act;
- (c) expressions defined in sections 26 and 36 have the meanings given by those sections;
- (d) a reference to a rule by number alone means the rule so numbered in the Rules of the High Court (Matrimonial Proceedings) 2004; and
- (e) a reference to a provision of the Pension Schemes Act 1993<sup>2</sup> (an Act of Parliament) or to an instrument made under that or any other Act of Parliament is to that provision or instrument (as the case may be) as it has effect in the Isle of Man.

<sup>1</sup> 2003 c.7.

<sup>2</sup> 1993 c.48;

### 3 Valuation

- (1) For the purposes of the Court's functions in connection with the exercise of any of its powers under Part 2 of the Act, benefits under a pension arrangement shall be calculated and verified in the manner set out in regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000<sup>3</sup>, and
  - (a) the benefits shall be valued as at a date to be specified by the Court (being not earlier than one year before the date of the petition and not later than the date on which the Court is exercising its power);
  - (b) in determining that value the Court may have regard to information furnished by the person responsible for the pension arrangement pursuant to any of the provisions set out in paragraph (2); and
  - (c) in specifying a date under sub-paragraph (a) the Court may have regard to the date specified in any information furnished as mentioned in sub-paragraph (b).
- (2) The relevant provisions for the purposes of paragraph (1)(b) are —
  - (a) the Pensions on Divorce etc. (Provision of Information) Regulations 2000;
  - (b) regulation 5 of, and Schedule 2 to, the Occupational Pension Schemes (Disclosure of Information) Regulations 1996<sup>4</sup>;
  - (c) section 94(1)(a) of the Pension Schemes Act 1993 (an Act of Parliament);
  - (d) section 94(1)(b) of the Pension Schemes Act 1993 (an Act of Parliament) or paragraph 2(a) or (where applicable) 2(b) of Schedule 2 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987<sup>5</sup>.

### 4 Pension earmarking notices

- (1) This regulation applies in the circumstances set out in section 36(1)(a) (transfers of pension rights).
- (2) Where this regulation applies, the person responsible for the first arrangement shall give notice in accordance with the following paragraphs of this regulation to —
  - (a) the person responsible for the new arrangement; and
  - (b) the other party.
- (3) The notice to the person responsible for the new arrangement shall include copies of the following documents —

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<sup>3</sup> S.I.2000/1048 (see S.D.381/01)

<sup>4</sup> S.I. 1996/1655 (see S.D. 192/98)

<sup>5</sup> S.I. 1987/1110 (see G.C. 109/88)

- (a) every order made under section 28 imposing any requirement on the person responsible for the first arrangement in relation to the rights transferred;
  - (b) any order varying such an order;
  - (c) all information or particulars which the other party has been required to supply under any provision of rule 67 for the purpose of enabling the person responsible for the first arrangement —
    - (i) to provide information, documents or representations to the Court to enable it to decide what if any requirement should be imposed on that person, or
    - (ii) to comply with any order imposing such a requirement;
  - (d) any notice given by the other party to the person responsible for the first arrangement under regulation 6;
  - (e) where the pension rights under the first arrangement were derived wholly or partly from rights held under a previous pension arrangement, any notice given to the person responsible for the previous arrangement under paragraph (2) on the occasion of that acquisition of rights.
- (4) The notice to the other party shall contain the following particulars —
- (a) the fact that the pension rights have been transferred;
  - (b) the date on which the transfer takes effect;
  - (c) the name and address of the person responsible for the new arrangement;
  - (d) the fact that the order made under section 28 is to have effect as if it had been made in respect of the person responsible for the new arrangement.
- (5) Both notices shall be given —
- (a) within the period provided by section 99 of the Pension Schemes Act 1993 (an Act of Parliament) for the person responsible for the first arrangement to carry out what the member requires; and
  - (b) before the expiry of 21 days after the person responsible for the first arrangement has made all required payments to the person responsible for the new arrangement.

## **5 Pension earmarking: reduction in benefits**

- (1) This regulation applies where —
- (a) an order under section 28 or 83 has been made by virtue of section 34 or 35 imposing any requirement on the person responsible for a pension arrangement;

- (b) an event has occurred which is likely to result in a significant reduction in the benefits payable under the arrangement, other than —
  - (i) the transfer from the arrangement of all the rights of the party with pension rights in the circumstances set out in section 36(1)(a), or
  - (ii) a reduction in the value of assets held for the purposes of the arrangement by reason of a change in interest rates or other market conditions.
- (2) Where this regulation applies, the person responsible for the arrangement shall, within 14 days of the occurrence of the event mentioned in paragraph (1)(b), give notice to the other party of —
  - (a) the event; and
  - (b) the likely extent of the reduction in the benefits payable under the arrangement.
- (3) Where the event mentioned in paragraph (1)(b) consists of a transfer of some but not all of the rights of the party with pension rights from the arrangement, the person responsible for the first arrangement shall, within 14 days of the transfer, give notice to the other party of the name and address of the person responsible for any pension arrangement under which the party with pension rights has acquired rights as a result of that event.

## **6 Pension earmarking: change of circumstances**

- (1) This regulation applies where —
  - (a) an order under section 28 or 83 has been made by virtue of section 34 or 35 imposing any requirement on the person responsible for a pension arrangement; and
  - (b) any of the events set out in paragraph (2) has occurred.
- (2) Those events are —
  - (a) any of the particulars supplied by the other party under rule 67 for any purpose mentioned in regulation 4(3)(c) has ceased to be accurate; or
  - (b) by reason of the remarriage of the other party or otherwise, the order has ceased to have effect.
- (3) Where this regulation applies, the other party shall, within 14 days of the event, give notice of it to the person responsible for the pension arrangement.
- (4) Where, because of the inaccuracy of the particulars supplied by the other party under rule 67 or because the other party has failed to give notice of their having ceased to be accurate, it is not reasonably practicable for the

- person responsible for the pension arrangement to make a payment to the other party as required by the order —
- (a) it may instead make that payment to the party with pension rights; and
  - (b) it shall then be discharged of liability to the other party to the extent of that payment.
- (5) Where an event set out in paragraph (2)(b) has occurred and, because the other party has failed to give notice in accordance with paragraph (3), the person responsible for the pension arrangement makes a payment to the other party as required by the order —
- (a) its liability to the party with pension rights shall be discharged to the extent of that payment; and
  - (b) the other party shall, within 14 days of the payment being made, make a payment to the party with pension rights to the extent of that payment.

## **7 Pension earmarking: transfer of rights**

- (1) This regulation applies where —
- (a) a transfer of rights has taken place in the circumstances set out in section 36(1)(a);
  - (b) notice has been given in accordance with regulation 4(2)(a) and (b);
  - (c) either of the events set out in regulation 6(2) has occurred; and
  - (d) the other party has not, before receiving notice under regulation 4(2)(b), given notice of that event to the person responsible for the first arrangement under regulation 6(3).
- (2) Where this regulation applies, the other party shall, within 14 days of the event, give notice of it to the person responsible for the new arrangement.
- (3) Where, because of the inaccuracy of the particulars supplied by the other party under rule 67 for any purpose mentioned in regulation 4(3)(c) or because the other party has failed to give notice of their having ceased to be accurate, it is not reasonably practicable for the person responsible for the new arrangement to make a payment to the other party as required by the order —
- (a) it may instead make that payment to the party with pension rights; and
  - (b) it shall then be discharged of liability to the other party to the extent of that payment.
- (4) Subject to paragraph (5), where this regulation applies and the other party, within one year from the transfer, gives to the person responsible for the first arrangement notice of the event set out in regulation 6(2) in purported

compliance with paragraph (2), the person responsible for the first arrangement shall –

(a) send that notice to the person responsible for the new arrangement, and

(b) give the other party a second notice under regulation 4(2)(b);

and the other party shall be deemed to have given notice under paragraph (2) to the person responsible for the new arrangement.

- (5) Upon complying with paragraph (4), the person responsible for the first arrangement shall be discharged from any further obligation under regulation 4 or paragraph (4), whether in relation to the event in question or any further event set out in regulation 6(2) which may be notified to it by the other party.

## **8 Service**

A notice under any of regulations 4 to 7 may be sent by fax or by post to the last known address of the intended recipient and shall be deemed to have been received on the 7<sup>th</sup> day after the day on which it was sent.

## **9 Pension sharing order not to take effect pending appeal**

(1) No pension sharing order under section 31 or variation of a pension sharing order under section 43 shall take effect earlier than 7 days after the end of the period for filing notice of appeal against the order.

(2) The filing of a notice of appeal within the time allowed for doing so prevents the order taking effect before the appeal has been dealt with.

## **10 Revocation**

The Matrimonial Proceedings (Pensions) Regulations 2001<sup>6</sup> are revoked.

MADE 10 MARCH 2004

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<sup>6</sup> S.D. 828/01

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.