



FACULTY OF ADVOCATES

Response by the Faculty of Advocates

to

The Pensions Act 2014 (Transitional Provision) Order 2015

The Faculty of Advocates welcomes the opportunity to comment on the draft Pensions Act 2014 (Transitional Provision) Order 2015. In relation to the comments (1-4) highlighted on the draft Order, we note the following.

Comment 1:

We are inclined to agree that the draft Order is competent as a transitional, transitory or savings provision in terms of the powers conferred by section 54(6) and 56(8) of the Pensions Act 2014.

Comment 2:

In paragraph 2(1)(b) of the draft Order, line 2, our view is that the appropriate terminology in relation to proceedings would be “commenced” as opposed to “issued”.

Comment 3:

Qualifying agreements are agreements in the form of a deed. Such agreements may be signed by parties on different dates. Therefore the date on which such an agreement is taken to be complete is the later, or latest, date on which it is validly executed by any party to the agreement. Each party's signature will usually be witnessed at the time of signing. The usual clause adopted to describe the date upon which an agreement becomes effective is "the last date of execution of this agreement" which implies a properly witnessed signature where this is required. In terms of section 48(3) of the Welfare Reform and Pensions Act 1999 (the "1999 Act"), a qualifying agreement does require to be registered in the Books of Council and Session, but we agree that the date of registration is too late to be relevant for the purposes of the transitional arrangements. We therefore recommend that the Order should apply to a qualifying agreement that "was executed by all the parties thereto before 6th April 2016."

We assume that the "transfer day" referred to in section 2(b) of the draft Order is simply for the purposes of section 49(5) of the 1999 Act and is not intended to affect the relevant date or the implementation date. It should be borne in mind that there may be a long delay (sometimes many years) between the date of signing of a qualifying agreement and the date on which pension sharing is actually implemented. In terms of section 48(1)(f)(iii) of the 1999 Act, a pension sharing arrangement agreed by way of a qualifying agreement by the parties to a marriage takes effect after the grant of divorce.

Comment 4:

Our view is that 5th April 2016 is not the correct date to use in paragraph 2(2)(b) of the Order. Having regard to section 49(5) of the 1999 Act, use of the last date in the tax year 2015/2016 would exclude the whole of that year from being taken into account in relation to prospective entitlement. The date should be the 6th April 2016 or indeed any later date in the tax year 2016/2017.

26 February 2015