

SCHEDULES

SCHEDULE 5

Section 98.

PENSION COMPENSATION ON DIVORCE ETC.

PART 1

AMENDMENTS OF THE MATRIMONIAL CAUSES (NORTHERN IRELAND) ORDER 1978

1. The [Matrimonial Causes \(Northern Ireland\) Order 1978 \(NI 15\)](#) is amended as follows.
2. After Article 23A (pension sharing orders) insert—

“Pension compensation sharing orders

23B.—(1) For the purposes of this Order, a pension compensation sharing order is an order which—

- (a) provides that one party’s shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.

(2) In paragraph (1)—

- (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 or under Chapter 1 of Part 3 of the Pensions Act 2008;
- (b) “party” means a party to a marriage;
- (c) “specified” means specified in the order.

Pension compensation: interpretation

23C. In this Part—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 3 of the Pensions (Northern Ireland) Order 2005 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation on divorce etc.) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Great Britain.”.

3. After Article 26C (pension sharing orders: apportionment of charges) insert—

“Pension compensation sharing orders in connection with divorce proceedings

26D.—(1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this Article, make a pension compensation sharing order in relation to the marriage.

(2) A pension compensation sharing order under this Article is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension compensation sharing order under this Article may not be made in relation to rights to PPF compensation that—

- (a) are the subject of pension attachment,
- (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
- (c) are the subject of pension compensation attachment, or
- (d) are or have been the subject of pension compensation sharing between the parties to the marriage.

(4) For the purposes of paragraph (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.

(5) The first condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(4), and
- (b) that order, as modified under Article 27E(3), remains in force.

(6) The second condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(7), and
- (b) that order—

- (i) has been complied with, or
 - (ii) has not been complied with and, as modified under Article 27E(5), remains in force.
- (7) The third condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27C, and
 - (b) that order remains in force.
- (8) For the purposes of paragraph (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties.
- (9) For the purposes of paragraph (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Article 27F relating to them.
- (10) For the purposes of paragraph (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

Pension compensation sharing orders: duty to stay

- 26E.**—(1) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (2) Regulations under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Pension compensation sharing orders: apportionment of charges

26F. The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 95 of the Pensions (No. 2) Act (Northern Ireland) 2008 (charges in respect of pension compensation sharing costs), or under section 117 of the Pensions Act 2008.”.

- 4.**—(1) Article 27 (matters to which court is to have regard) is amended as follows.
- (2) In the heading, for “and 26” substitute “, 26, 26A and 26D”.

(3) In paragraphs (1) and (2) for “or 26A” substitute “, 26A or 26D”.

5. In Article 27A(1) (exercise of court’s powers in favour of party to marriage on decree of divorce or nullity of marriage) for “or 26A” substitute “, 26A or 26D”.

6. In Article 27E(9) (the Pension Protection Fund) omit the definition of “PPF compensation”.

7. After Article 27E insert—

“Attachment of pension compensation

27F.—(1) This Article applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under Article 25.

(2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.

(3) The order must express the amount of any payment required to be made by virtue of paragraph (2) as a percentage of the payment which becomes due to the party with compensation rights.

(4) Any such payment by the Board of the Pension Protection Fund—

(a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and

(b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party’s liability under the order.

(5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this Article applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.

(6) The power conferred by paragraph (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.

(7) The power conferred by paragraph (2) or (5) may not be exercised in relation to rights to PPF compensation that—

(a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or

- (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

Pension compensation: supplementary

27G.—(1) The Lord Chancellor may by regulations—

- (a) make provision, in relation to any provision of Article 27F which authorises the court making an order under Article 25 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
- (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of Article 27F in an order under Article 25, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
- (c) require notices to be given in respect of changes of circumstances relevant to orders under Article 25 which include provision made by virtue of Article 27F;
- (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27F;
- (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.

(2) Regulations under paragraph (1)(e) may include—

- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
- (b) provision by reference to regulations under section 90 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(3) Regulations under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(4) In this Article and Article 27F—

- “the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and “the other party” means the other party to the marriage;
- “prescribed” means prescribed by regulations.”.

8.—(1) Article 33 (variation, discharge etc. of certain orders for financial relief) is amended as follows.

(2) In paragraph (2)(dd)—

- (a) omit “or” at the end of head (i);
- (b) at the end of head (ii) add “or”;
- (c) after that head insert—

“(iii) Article 27F(2),”;

- (d) in the closing words, after “pension rights” insert “or pension compensation rights”.

(3) In paragraph (2)(f) after “a pension sharing order under Article 26A” insert “, or a pension compensation sharing order under Article 26D,”.

(4) In paragraph (4B) after “pension sharing order” insert “, or a pension compensation sharing order,”.

(5) In paragraph (4C) after “pension sharing order” insert “, or a pension compensation sharing order,”.

(6) In paragraph (5) after “pension sharing order” insert “or pension compensation sharing order”.

9. After Article 42A (appeals relating to pension sharing orders which have taken effect) insert—

“Appeals relating to pension compensation sharing orders which have taken effect

42B.—(1) This Article applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.

(2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—

- (a) may not set aside or vary the order;
- (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(3) In determining for the purposes of paragraph (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant.

(4) Article 26E (duty to stay) only applies to a pension compensation sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.”.

PART 2

AMENDMENTS OF THE MATRIMONIAL AND FAMILY PROCEEDINGS (NORTHERN IRELAND) ORDER 1989

10. The [Matrimonial and Family Proceedings \(Northern Ireland\) Order 1989 \(NI 4\)](#) is amended as follows.

11. In Article 21 (orders for financial provision and property adjustment) at the end of paragraph (b) add—

“(c) if the marriage has been dissolved or annulled, make an order which would, within the meaning of that Part, be a pension compensation sharing order in relation to the marriage.”.

12. In Article 22(7) (matters to which court is to have regard) for subparagraph (c) substitute—

“(c) “PPF compensation” means compensation payable under—
(i) Chapter 3 of Part 3 of the Pensions (Northern Ireland) Order 2005 (pension protection) or any regulations or order made under it,
(ii) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation sharing) or any regulations or order made under it, or
(iii) any provision corresponding to the provisions mentioned in head (i) or (ii) in force in Great Britain.”.

13.—(1) Article 25 (application of certain provisions of Part 3 of the Matrimonial Causes (Northern Ireland) Order 1978) is amended as follows.

(2) After paragraph (1)(bc) insert—

“(bca) Article 26D(3) to (10) (provisions about pension compensation orders in relation to divorce and nullity);

(bcb) Article 26E (duty to stay pension compensation sharing orders);

(bcc) Article 26F (apportionment of pension compensation sharing charges);”.

(3) After paragraph (1)(bf) insert—

“(bg) Article 27F (power, by financial provision order, to attach pension compensation payments, or to require the exercise of a right of commutation of pension compensation);”.

(4) After paragraph (1)(l) add—

“(m) Article 42B (appeals relating to pension compensation sharing orders which have taken effect).”.

(5) In paragraph (2) for “and (be)” substitute “, (be) and (bg)”.

(6) In paragraph (4) at the end add “or under paragraphs (1) and (2) of Article 27G of that Order”.

PART 3

AMENDMENTS OF THE CIVIL PARTNERSHIP ACT 2004

- 14.** The Civil Partnership Act 2004 (c. 33) is amended as follows.
- 15.** After Part 3 of Schedule 15 (pension sharing orders on or after dissolution or nullity order) insert—

“PART 3A

PENSION COMPENSATION SHARING ORDERS ON OR AFTER DISSOLUTION OR NULLITY ORDER

Circumstances in which pension compensation sharing orders may be made

- (1) The court may make a pension compensation sharing order—
- (a) on making a dissolution or nullity order, or
 - (b) at any time afterwards.
- (2) In this Schedule “pension compensation sharing order” means a pension compensation sharing order under this Part.

Pension compensation sharing orders

- (1) A pension compensation sharing order is an order which—
- (a) provides that one civil partner’s shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other civil partner, and
 - (b) specifies the percentage value to be transferred.
- (2) Shareable rights to PPF compensation are rights in relation to which pension compensation sharing is available under—
- (a) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008, or
 - (b) Chapter 1 of Part 3 of the Pensions Act 2008.
- (3) In sub-paragraph (1) “specified” means specified in the order.

Pension compensation sharing orders: apportionment of charges

- 14C.** The court may include in a pension compensation sharing order provision about the apportionment between the civil partners of any charge under—

- (a) section 95 of the Pensions (No. 2) Act (Northern Ireland) 2008 (charges in respect of pension compensation sharing costs), or
- (b) section 117 of the Pensions Act 2008.

Restrictions on making pension compensation sharing orders

- (1) A pension compensation sharing order may not be made in relation to rights to PPF compensation that—
 - (a) are the subject of pension attachment,
 - (b) derive from rights under a pension scheme that were the subject of pension sharing between the civil partners,
 - (c) are the subject of pension compensation attachment, or
 - (d) are or have been the subject of pension compensation sharing between the civil partners.
- (2) For the purposes of sub-paragraph (1)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.
- (3) The first condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under Part 1 imposing a requirement by virtue of paragraph 20(2), and
 - (b) that order, as modified under paragraph 26, remains in force.
- (4) The second condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under Part 1 imposing a requirement by virtue of paragraph 20(5), and
 - (b) that order—
 - (i) has been complied with, or
 - (ii) has not been complied with and, as modified under paragraph 27, remains in force.
- (5) The third condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under Part 1 imposing a requirement by virtue of paragraph 21, and
 - (b) that order remains in force.
- (6) For the purposes of sub-paragraph (1)(b), rights under a pension scheme “were the subject of pension sharing between the civil partners” if the rights were at any time the subject of a pension sharing order in relation to the civil partnership or a previous civil partnership between the same parties.

(7) For the purposes of sub-paragraph (1)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Part 5 relating to them.

(8) For the purposes of sub-paragraph (1)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the civil partners” if they are or have ever been the subject of a pension compensation sharing order in relation to the civil partnership or a previous civil partnership between the same parties.

When pension compensation sharing orders may take effect

(1) A pension compensation sharing order is not to take effect unless the dissolution or nullity order on or after which it is made has been made final.

(2) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.

(3) The power to make regulations under sub-paragraph (2) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(4) Regulations under sub-paragraph (2) are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and section 5 of the Statutory Instruments Act 1946 applies accordingly.

Interpretation

14F. In this Schedule—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 3 of the Pensions (Northern Ireland) Order 2005 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation sharing) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Great Britain.”.

16.—(1) Part 4 of Schedule 15 (matters to which court is to have regard under Parts 1 to 3) is amended as follows.

(2) In the heading of the Part for “3” substitute “3A”.

(3) In paragraph 15—

- (a) omit “or” at the end of paragraph (a)(ii);
- (b) for “and” at the end of paragraph (a)(iii) substitute “or”;
- (c) after that provision add—
 - “(iv) any provision of Part 3A (pension compensation sharing orders) other than paragraph 14C (apportionment of charges), and”.

(4) In paragraph 16(1)—

- (a) omit “or” at the end of paragraph (b);
- (b) at the end of paragraph (c) insert “, or”;
- (c) after that paragraph add—
 - “(d) Part 3A (pension compensation sharing orders).”.

(5) In paragraph 18(1)—

- (a) omit “or” at the end of paragraph (b);
- (b) at the end of paragraph (c) insert “or”;
- (c) after that paragraph add—
 - “(d) Part 3A (pension compensation sharing orders).”.

17.—(1) Part 6 of Schedule 15 (pension protection fund compensation etc.) is amended as follows.

- (2) Omit paragraph 25(3) (definition of PPF compensation).
- (3) After paragraph 29 insert—

“Attachment of PPF compensation

(1) This paragraph applies if, having regard to any PPF compensation to which a civil partner is or is likely to be entitled, the court decides to make an order under Part 1.

(2) To the extent to which the Part 1 order is made having regard to such compensation, it may require the Board, if at any time any payment in respect of PPF compensation becomes due to the civil partner with compensation rights, to make a payment for the benefit of the other civil partner.

(3) The Part 1 order must express the amount of any payment required to be made by virtue of sub-paragraph (2) as a percentage of the payment which becomes due to the civil partner with compensation rights.

(4) Any such payment by the Board—

- (a) discharges so much of its liability to the civil partner with compensation rights as corresponds to the amount of the payment, and

- (b) is to be treated for all purposes as a payment made by the civil partner with compensation rights in or towards the discharge of that civil partner's liability under the order.
- (5) If the civil partner with compensation rights has a right to commute any PPF compensation, the Part 1 order may require that civil partner to exercise it to any extent.
- (6) This paragraph applies to any payment due in consequence of commutation in pursuance of the Part 1 order as it applies to other payments in respect of PPF compensation.
- (7) The power conferred by sub-paragraph (5) may not be exercised for the purpose of commuting a benefit payable to the civil partner with compensation rights to a benefit payable to the other civil partner.
- (8) The powers conferred by sub-paragraphs (2) and (5) may not be exercised in relation to rights to PPF compensation that—
 - (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the civil partnership or a previous civil partnership between the same parties, or
 - (b) are or have ever been the subject of a pension compensation sharing order in relation to the civil partnership or a previous civil partnership between the same parties.”.
- (4) Before paragraph 30 insert—
 - (1) Regulations may—
 - (a) make provision, in relation to any provision of paragraph 29A which authorises the court making a Part 1 order to require the Board to make a payment for the benefit of the other civil partner, as to the person to whom, and the terms on which, the payment is to be made;
 - (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of paragraph 29A in a Part 1 order, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
 - (c) require notices to be given in respect of changes of circumstances relevant to Part 1 orders which include provision made by virtue of paragraph 29A;
 - (d) make provision for the Board to be discharged in prescribed circumstances from a requirement imposed by virtue of paragraph 29A;
 - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Schedule.
- (2) Regulations under sub-paragraph (1)(e) may include—

- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
- (b) provision by reference to regulations under section 90 of the Pensions (No. 2) Act (Northern Ireland) 2008.”.
- (5) In paragraph 32(1) of that Schedule—
 - (a) after the definition of “the Board” insert—

““the civil partner with compensation rights” means the civil partner who is or is likely to be entitled to PPF compensation;”;
 - (b) after the definition of “occupational pension scheme” insert—

““prescribed” means prescribed by regulations;”.

18.—(1) Part 10 of Schedule 15 (variation, discharge etc. of certain orders for financial relief) is amended as follows.

- (2) In paragraph 45(1)(f)—
 - (a) omit “or” at the end of sub-paragraph (i);
 - (b) at the end of sub-paragraph (ii) insert “or”;
 - (c) after that sub-paragraph add—

“(iii) paragraph 29A(2),”;
 - (d) in the closing words after “pension rights” insert “or pension compensation rights”.
- (3) In paragraph 45(1)(h) after “a pension sharing order” insert “, or a pension compensation sharing order,”.
- (4) In the italic heading before paragraph 49 for “and pension sharing orders” substitute “, pension sharing and pension compensation sharing orders”.
- (5) In the following provisions of paragraph 50, after “pension sharing order” insert “or pension compensation sharing order”—
 - (a) the opening words of sub-paragraph (1);
 - (b) sub-paragraph (1)(a)(i);
 - (c) sub-paragraph (1)(b);
 - (d) sub-paragraph (2);
 - (e) sub-paragraph (3).
- (6) In paragraph 51(1) for “or pension sharing order” substitute “, pension sharing order or pension compensation sharing order”.

19. In Part 13 of Schedule 15 (miscellaneous and supplementary) after paragraph 74 insert—

*“Appeals relating to pension compensation
sharing orders which have taken effect*

(1) This paragraph applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.

(2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—

(a) may not set aside or vary the order;

(b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(3) In determining for the purposes of sub-paragraph (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant.

(4) Paragraph 14E only applies to a pension compensation sharing order under this paragraph if the decision of the appeal court can itself be the subject of an appeal.”.

20.—(1) In Schedule 17 (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership), in the italic heading before paragraph 9, for “and pension sharing” substitute “, pension sharing and pension compensation sharing”.

(2) In paragraph 9(2) of that Schedule—

(a) for “or 3” substitute “, 3 or 3A”;

(b) for “and pension sharing” substitute “, pension sharing and pension compensation sharing”.

(3) In paragraph 10(9)(c) of that Schedule omit “Part 6 of”.

(4) In paragraph 14 of that Schedule—

(a) after sub-paragraph (1)(b) insert—

“(ba) paragraphs 14C, 14D and 14E(2) to (4) (pension compensation sharing);”;

(b) in sub-paragraph (1)(d) for “32” substitute “29 and 30 to 32”;

(c) after that provision insert—

“(da) paragraph 29A (orders under Part 1 relating to pension compensation attachment);”;

(d) in sub-paragraph (1)(h) for “74” substitute “74A”;

(e) in that provision for “and pension-sharing appeals” substitute “pension-sharing appeals and pension compensation-sharing appeals”;

(f) in sub-paragraph (2) after “Sub-paragraph (1)(d)” insert “and (da)”;

- (g) in sub-paragraph (4) at the end add “or under paragraphs 29B to 31 of that Schedule (supplementary provision about orders relating to pension compensation)”.