

## SCHEDULES

### SCHEDULE 1

Section 80.

#### REVALUATION OF ACCRUED BENEFITS ETC.

#### PART 1

#### REVALUATION OF ACCRUED PENSION BENEFITS

##### *Amendments to Schedule 2 to the Pension Schemes (Northern Ireland) Act 1993*

1. This Part makes amendments to Schedule 2 to the Pension Schemes Act (methods of revaluing accrued pension benefits).

2. In paragraph 1 (the final salary method), for sub-paragraphs (1) to (3) substitute—

“(1) The final salary method is to add to the amount that would be payable but for Chapter 2 of Part 4, or regulations made under it, the additional amount specified in sub-paragraph (1A), (1B), (1C) or (1D) (whichever applies).

(1A) Where—

- (a) the termination of pensionable service occurs before 1st January 1991, and
- (b) the whole of the member’s pensionable service falls on or after 1st January 1985,

the additional amount is the appropriate higher revaluation percentage of the accrued benefit.

(1B) Where—

- (a) the termination of pensionable service occurs before 1st January 1991, and
- (b) some of the member’s pensionable service falls before 1st January 1985,

the additional amount is such proportion of the appropriate higher revaluation percentage of the accrued benefit as the member’s pensionable service falling on or after 1st January 1985 bears to the member’s total pensionable service.

(1C) Where the termination of pensionable service occurs—

- (a) on or after 1st January 1991, but

- (b) before the day on which section 80 of the Pensions (No. 2) Act (Northern Ireland) 2008 comes into operation (“the Pensions Act commencement day”),

the additional amount is the appropriate higher revaluation percentage of the accrued benefit.

(1D) Where the termination of pensionable service occurs on or after the Pensions Act commencement day, the additional amount is the aggregate of—

- (a) the appropriate higher revaluation percentage of so much of the accrued benefit as is attributable to the member’s pensionable service falling before the Pensions Act commencement day, and
- (b) the appropriate lower revaluation percentage of so much of the accrued benefit as is attributable to the member’s pensionable service falling on or after that day.

(1E) In this paragraph “the accrued benefit” means the amount of the pension or other benefit which on the termination date has accrued to the member or to any other person in respect of the member (excluding any part of that amount which consists of—

- (a) the member’s guaranteed minimum, or
- (b) the guaranteed minimum of the member’s widow, widower or surviving civil partner).

(2) For the purposes of this paragraph, a member’s pensionable service includes any notional pensionable service which is credited to the member by the scheme (“notional service”).

But notional service shall not be taken into account in determining which of sub-paragraphs (1A), (1B), (1C) and (1D) applies.

(3) For the purposes of determining the additional amount where sub-paragraph (1B) applies, any notional service shall be taken to have ended immediately before the member’s actual pensionable service began.

(3A) For the purposes of determining the additional amount where sub-paragraph (1D) applies, any notional service shall be treated as falling on or after the Pensions Act commencement day only if, or to the extent that, it is so treated for the purposes of the scheme.”.

**3.—**(1) Paragraph 2 (the revaluation percentage and the appropriate revaluation percentage) is amended as follows.

(2) In sub-paragraph (1)—

- (a) for “a revaluation percentage” substitute “a higher revaluation percentage and a lower revaluation percentage”;

(b) for “a corresponding revaluation percentage” substitute “a corresponding higher revaluation percentage and a corresponding lower revaluation percentage”.

(3) For sub-paragraph (3) substitute—

“(3) In paragraph 1—

“the appropriate higher revaluation percentage” means the higher revaluation percentage specified in the last calendar year before the date on which the member attains normal pension age as the higher revaluation percentage for the revaluation period which is of the same length as the number of complete years in the pre-pension period;

“the appropriate lower revaluation percentage” has a corresponding meaning.”.

## PART 2

### REVALUATION OF ACCRUED AMOUNTS ETC.

#### *Amendments to Schedule 6 to the 2005 Order*

4. This Part makes amendments to Schedule 6 to the 2005 Order (pension compensation provisions).

5.—(1) Paragraph 12 (active members who have not attained normal pension age at assessment date: the revaluation amount for the revaluation period) is amended as follows.

(2) In sub-paragraph (3), for paragraph (b) substitute—

“(b) in any other case, the aggregate of—

(i) the higher revaluation percentage of so much of the accrued amount as is attributable to the active member’s pensionable service falling before the day on which section 80 of the Pensions (No. 2) Act (Northern Ireland) 2008 comes into operation (“the Pensions Act commencement day”), and

(ii) the lower revaluation percentage of so much of the accrued amount as is attributable to the active member’s pensionable service falling on or after that day.”.

(3) After sub-paragraph (3) insert—

“(3A) For the purposes of sub-paragraph (3)(b)—

(a) any service within paragraph 36(4)(b) (notional pensionable service) is to be treated as falling on or after the Pensions Act commencement day if, or to the extent that, it is so treated for the purposes of the scheme;

- (b) regulations may make provision in relation to cases where it is unclear whether or not any particular pensionable service (either actual or notional) falls, or is to be treated as falling, on or after that day.”.

(4) For sub-paragraphs (4) and (5) substitute—

“(4) In sub-paragraph (3)(b)—

“the higher revaluation percentage” means the lesser of—

- (a) the percentage increase referred to in paragraph (a) of the definition of “the higher revaluation percentage” in paragraph 12(4) of Schedule 7 to the Pensions Act 2004 (“the inflation percentage”), and
- (b) the higher maximum revaluation rate;

“the lower revaluation percentage” means the lesser of—

- (a) the inflation percentage, and
- (b) the lower maximum revaluation rate.

(5) For the purposes of sub-paragraph (4)—

“the higher maximum revaluation rate”, in relation to the revaluation period, is—

- (a) if that period is a period of 12 months, 5%, and
- (b) in any other case, the percentage referred to in paragraph (b) of the definition of “the higher maximum revaluation rate” in paragraph 12(5) of Schedule 7 to the Pensions Act 2004;

“the lower maximum revaluation rate”, in relation to the revaluation period, is—

- (a) if that period is a period of 12 months, 2.5%, and
- (b) in any other case, the percentage referred to in paragraph (b) of the definition of “the lower maximum revaluation rate” in paragraph 12(5) of Schedule 7 to the Pensions Act 2004.

This is subject to paragraph 29 (power of Board to determine maximum revaluation rates etc.).”.

**6.—(1)** Paragraph 17 (deferred members who have not attained normal pension age at assessment date: the revaluation amount for the second revaluation period) is amended as follows.

(2) In sub-paragraph (3), for paragraph (b) substitute—

“(b) in any other case, the aggregate of—

- (i) the higher revaluation percentage of so much of the relevant amount as is attributable to the deferred member’s pensionable service falling before the day on which section 80 of the Pensions (No. 2) Act (Northern Ireland) 2008 comes into operation (“the Pensions Act commencement day”), and

- (ii) the lower revaluation percentage of so much of the relevant amount as is attributable to the deferred member's pensionable service falling on or after that day."

(3) After sub-paragraph (3) insert—

"(3A) For the purposes of sub-paragraph (3)(b)—

- (a) any service within paragraph 36(4)(b) (notional pensionable service) is to be treated as falling on or after the Pensions Act commencement day if, or to the extent that, it is so treated for the purposes of the scheme;
- (b) regulations may make provision in relation to cases where it is unclear whether or not any particular pensionable service (either actual or notional) falls, or is to be treated as falling, on or after that day."

(4) For sub-paragraphs (4) and (5) substitute—

"(4) In sub-paragraph (3)—

"the higher revaluation percentage" means the lesser of—

- (a) the percentage increase referred to in paragraph (a) of the definition of "the higher revaluation percentage" in paragraph 17(4) of Schedule 7 to the Pensions Act 2004 ("the inflation percentage"), and
- (b) the higher maximum revaluation rate;

"the lower revaluation percentage" means the lesser of—

- (a) the inflation percentage, and
- (b) the lower maximum revaluation rate;

"the relevant amount" means the aggregate of—

- (a) the accrued amount, and
- (b) the revaluation amount for the first revaluation period (see paragraph 16).

(5) For the purposes of sub-paragraph (3)—

"the higher maximum revaluation rate", in relation to the second revaluation period, is—

- (a) if that period is a period of 12 months, 5%, and
- (b) in any other case, the percentage referred to in paragraph (b) of the definition of "the higher maximum revaluation rate" in paragraph 17(5) of Schedule 7 to the Pensions Act 2004;

"the lower maximum revaluation rate", in relation to the second revaluation period, is—

- (a) if that period is a period of 12 months, 2.5%, and
- (b) in any other case, the percentage referred to in paragraph (b) of the definition of "the lower maximum revaluation rate" in paragraph 17(5) of Schedule 7 to the Pensions Act 2004.

This is subject to paragraph 29 (power of Board to determine maximum revaluation rates etc.).”.

7. In paragraph 29 (Board’s powers to alter rates of revaluation etc.), for sub-paragraph (1) substitute—

“(1) The Board may determine what is to be the higher maximum revaluation rate or the lower maximum revaluation rate for the purposes of paragraphs 12(4) and 17(4), and where it does so the relevant definitions in paragraphs 12(5) and 17(5) do not apply.”.

## PART 3

### CONSEQUENTIAL AMENDMENTS

8. In Article 51ZA of the 1995 Order (meaning of “the appropriate percentage”)—

(a) in paragraph (a), for “revaluation percentage” substitute “higher revaluation percentage”;

(b) for paragraph (b) substitute—

“(b) in the case of a category Y pension, means the lower revaluation percentage for that period.”.

9. In Article 54(3) of the 1995 Order (Articles 51 to 53: supplementary)—

(a) after the definition of “the commencement day” insert—

““higher revaluation percentage” and “lower revaluation percentage” mean the higher revaluation percentage and the lower revaluation percentage specified for a revaluation period by a revaluation order;”;

(b) omit the definition of “revaluation percentage”.

## SCHEDULE 2

Section 81.

### ADDITIONAL PENSION CONSOLIDATION

After Schedule 4B to the Contributions and Benefits Act insert—

#### “SCHEDULE 4C

#### ADDITIONAL PENSION: CONSOLIDATED AMOUNT FOR THE PURPOSES OF SECTION 45(2A)

1. For the purposes of this Schedule, the “consolidation date” means the first day of the flat rate introduction year.

2. The Department must, in accordance with the following provisions of this Schedule, calculate an amount representing the weekly rate of the additional pension in a pensioner's Category A retirement pension in relation to tax years before the flat rate introduction year.

3. The Department must comply with paragraph 2 before the pensioner attains pensionable age.

4. The calculation under paragraph 2 shall be treated for the purposes of Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (social security decisions and appeals) as a decision under Article 9 of that Order.

5. The amount to be calculated under paragraph 2 is the sum of—

- (a) the GRB amount, and
- (b) the section 45(2)(a), (b) and (c) amounts.

6. The GRB amount is the amount that would, on the pensioner attaining pensionable age, be the increase in the weekly rate of retirement benefit calculated under section 35(1) of the National Insurance Act (Northern Ireland) 1966 (graduated retirement benefit) if that provision applied in the case of a pensioner attaining pensionable age on or after 6th April 2020.

(1) The section 45(2)(a), (b) and (c) amounts are the amounts that would, on the pensioner attaining pensionable age, be the weekly equivalents calculated under section 45(2)(a), (b) and (c) of this Act if section 45(2) applied in the case of a pensioner attaining pensionable age on or after 6th April 2020, but applying the provisions of this Act with the following modifications.

(2) The following provisions apply as if a reference to the end of the final relevant year were a reference to the consolidation date—

- (a) section 44(5A)(c);
- (b) in Schedule 4A, paragraphs 2(2)(b), 6(2)(a) and 7(2)(b).

(1) This paragraph applies to any calculation under paragraph 2 above.

(2) The calculation is to be made in accordance with all relevant provisions as they have effect on the consolidation date.

(3) For the purposes of the calculation, it is to be assumed that any entitlement of the pensioner to graduated retirement benefit or to a retirement pension is not deferred.

9. The revalued consolidated amount for the purposes of section 45(2A)(a) is the sum of the following amounts—

- (a) the amount calculated under paragraph 2;
- (b) that amount multiplied by the revaluing percentage specified in the last order under section 130AB of the Administration Act to come into force

before the beginning of the tax year in which the pensioner attains pensionable age.”.

### SCHEDULE 3

Section 83.

#### ADDITIONAL STATE PENSION ETC.: MINOR AND CONSEQUENTIAL AMENDMENTS

*The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)*

1. The Contributions and Benefits Act is amended as follows.
2. In section 21(5A)(c) (contribution conditions) after “5(2)(b) and (4)(a)” insert “, 5A(3)(a)”.
3. In section 39(1) (rate of widowed mother’s allowance and widow’s pension) for “46(2)” substitute “46”.
- 4.—(1) Section 39C (rate of widowed parent’s allowance and bereavement allowance) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “45” substitute “45AA”;
    - (b) for “and Schedule 4A” substitute “and Schedules 4A to 4C”;
    - (c) for “46(2) and (4)” substitute “46”.
  - (3) In subsections (3) and (4)—
    - (a) for “45” substitute “45AA”;
    - (b) for “and Schedule 4A” substitute “and Schedules 4A to 4C”.
- 5.—(1) After section 45 (additional pension in Category A retirement pension) insert—

#### **“45AA Effect of working families' tax credit and disabled person’s tax credit on earnings factor**

(1) For the purposes of calculating additional pension under sections 44 and 45 where, in the case of any relevant year, working families' tax credit is paid in respect of any employed earner, or disabled person’s tax credit is paid to any employed earner, section 44(6)(a)(i) shall have effect as if—

- (a) where that person had earnings of not less than the qualifying earnings factor for that year, being earnings upon which primary Class 1 contributions were paid or treated as paid (“qualifying earnings”) in respect of that year, the amount of those qualifying



earnings were increased by the aggregate amount (“AG”) of working families' tax credit, or, as the case may be, disabled person's tax credit paid in respect of that year, and

- (b) in any other case, that person had qualifying earnings in respect of that year and the amount of those qualifying earnings were equal to AG plus the qualifying earnings factor for that year.

(2) The reference in subsection (1) to the person in respect of whom working families' tax credit is paid—

- (a) where it is paid to one of a couple, is a reference to the prescribed member of the couple, and
- (b) in any other case, is a reference to the person to whom it is paid.

(3) A person's qualifying earnings in respect of any year cannot be treated by virtue of subsection (1) as exceeding the upper earnings limit for that year multiplied by 53.

(4) Subsection (1) does not apply to any woman who has made, or is treated as having made, an election under regulations under section 19(4), which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.

(5) In this section—

“couple” has the same meaning as in Part 7 (see section 133);

“relevant year” has the same meaning as in section 44.”.

(2) Sub-paragraph (1) together with paragraphs 4(2)(a) and (3)(a), 9(2)(a) and (3)(a) and 11 (which make amendments consequential on sub-paragraph (1)) are referred to in the following provisions of this paragraph as “the relevant provisions”.

(3) Subject to sub-paragraphs (4) and (5), the relevant provisions apply to a person (“the pensioner”) who attains pensionable age after 5th April 1999 and, in relation to such a person—

- (a) have effect for 1995–96 and subsequent tax years, and
- (b) are deemed so to have had effect (with the necessary modifications) during the period—
  - (i) beginning with 6th April 2003, and
  - (ii) ending with the coming into operation of this paragraph.

(4) Where the pensioner is a woman, the relevant provisions have effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Contributions and Benefits Act by virtue of section 39 of that Act (widowed mother's allowance and widow's pension), including Category B retirement pension payable under section 48B(4), if her husband—

- (a) dies after 5th April 1999, and
- (b) has not attained pensionable age on or before that date.

(5) The relevant provisions have effect, where additional pension falls to be calculated under sections 44 and 45 of the Contributions and Benefits Act as applied by section 48A or 48B(2) of that Act (other Category B retirement pension) if—

- (a) the pensioner attains pensionable age after 5th April 1999, and
- (b) the pensioner's spouse has not attained pensionable age on or before that date.

**6.—**(1) Section 46 (modifications of section 45 for calculating the additional pension in certain benefits) is amended as follows.

(2) In subsection (2) for “, 48B(2) or 48BB(5)” substitute “or 48B(2)”.

(3) After subsection (4) add—

“(5) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of prescribed provisions of this Act, that section has effect subject to the following modifications—

- (a) the omission in subsection (2) of the words “but before 6th April 2020”, and
- (b) the omission of subsection (2A).

(6) Regulations under subsection (5) may prescribe a provision in relation to—

- (a) all cases, or
- (b) cases of a prescribed description.”.

**7.** In section 48A(4) (Category B retirement pension for married person)—

- (a) for “and 4B” substitute “to 4C”;
- (b) for “46(2)” substitute “46”.

**8.** In section 48B(2) (Category B retirement pension for widows and widowers)

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- (a) for “and 4B” substitute “to 4C”;
  - (b) for “46(2)” substitute “46”.

**9.—**(1) Section 48BB (Category B retirement pension: entitlement by reference to benefits under section 39A or 39B) is amended as follows.

(2) In subsection (5)—

- (a) for “45” substitute “45AA”;
- (b) after “45AA” (inserted by paragraph (a)) insert “and 45B”;
- (c) for “and 4B” substitute “to 4C”;
- (d) for “46(3)” substitute “46”.

(3) In subsection (6)—

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*Status: This is the original version (as it was originally enacted).*

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(a) for “45” substitute “45AA”;

(b) after “45AA” (inserted by paragraph (a)) insert “and 45B”.

**10.** In section 48C(4) (Category B retirement pension: general) for “and 4B” substitute “to 4C”.

**11.** In section 51(2) and (3) (Category B retirement pension for widowers) for “45” substitute “45AA”.

**12.—(1)** Schedule 4B (additional pension: accrual rates for purposes of section 45(2)(d)) is amended as follows.

(2) In paragraph 2 (application of Part 2 of Schedule)—

(a) after “if” insert “—

(a)”;

(b) after paragraph (a) (created by virtue of paragraph (a) above) insert “and

(b) there is a surplus in the pensioner’s earnings factor for the year.”.

(3) In paragraph 3 (appropriate amount for year)—

(a) in paragraph (a), for the words from “there is” to “which” substitute “the pensioner’s earnings factor for the year”;

(b) in paragraph (b), for “there is such a surplus which” substitute “that earnings factor”.

(4) In paragraph 5(a) for “surplus” substitute “earnings factor”.

(5) In paragraph 6 (application of Part 3 of Schedule)—

(a) after “if” insert “—

(a)”;

(b) after paragraph (a) (created by virtue of paragraph (a) above) insert “and

(b) there would be a surplus in the pensioner’s earnings factor for the year if section 44A of the Pensions Act did not apply in relation to any tax week falling in the year.”.

(6) In paragraph 8(1) (calculation of amount A: assumed surplus not exceeding LET), for the words from “there” to “which” substitute “the pensioner’s assumed earnings factor for the year”; and, accordingly, in the heading before paragraph 8 for “*surplus*” substitute “*earnings factor*”.

(7) In paragraph 9 (calculation of amount A: assumed surplus exceeding LET)—

(a) in sub-paragraph (1), for the words from “there” to “which” substitute “the pensioner’s assumed earnings factor for the year”;

(b) in sub-paragraph (2)(a), for “assumed surplus” substitute “assumed earnings factor”.

and, accordingly, in the heading before paragraph 9 for “*surplus*” substitute “*earnings factor*”.

(8) In paragraph 10(1)(a) (amount B), for “assumed surplus” substitute “pensioner’s assumed earnings factor”.

(9) In paragraph 12 (interpretation)—

(a) omit the definition of “assumed surplus”;

(b) before the definition of “the QEF” insert—

““the pensioner’s assumed earnings factor”, in relation to a year, means the earnings factor that the pensioner would have for the year if section 44A(1) of the Pensions Act did not apply in relation to any tax week falling in the year;”.

**13.** In Schedule 7 (industrial injuries benefits) in paragraph 3(3) after “section 42” insert “or 42A”.

*The Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

**14.** After section 130AA of the Social Security Administration (Northern Ireland) Act 1992 (revaluation of flat rate accrual amount) insert—

**“130AB Revaluation of consolidated amount**

**130AB.** Whenever the Secretary of State makes an order under section 148AB of the Great Britain Administration Act (revaluation of consolidated amount), the Department may make a corresponding order for Northern Ireland.”.

*The Pension Schemes (Northern Ireland) Act 1993 (c. 49)*

**15.** The Pension Schemes Act is amended as follows.

**16.—(1)** Section 42 (effect of entitlement to guaranteed minimum pensions on payment of social security benefits) is amended as follows.

(2) In subsection (6), in the substituted paragraph 3(3) of Schedule 7 to the Contributions and Benefits Act, after “section 42(1)” insert “or 42A(2)”.

**17.—(1)** Section 43 (further provisions concerning entitlement to guaranteed minimum pensions) is amended as follows.

(2) At the end of the heading add “and s. 42A”.

(3) In subsections (2), (3), (5), (6), (7), (8) and (9), for “section 42” substitute “sections 42 and 42A”.

**18.** In section 44(2) (reduced benefits where minimum payments or minimum contributions paid) for “section 42” substitute “sections 42 and 42A”.

**19.** In section 45(b) (women, married women and widows) after “42(1),” insert “42A(2),”.

**20.** In section 160(5) (Crown employment) after “42(1),” insert “42A(2),”.

**21.** In section 161(2)(b) (cases with a foreign element) after “those subsections)” insert “, section 42A(2)”.

**22.—(1)** In section 163(4) (application of provisions relating to social security administration) for “section 42” substitute “sections 42 and 42A”.

(2) Sub-paragraph (1) has effect only until the repeal of section 163(4) by the Social Security (Northern Ireland) Order 1998 has come into operation for all purposes.

## SCHEDULE 4

Section 94.

### PENSION COMPENSATION PAYABLE ON DISCHARGE OF PENSION COMPENSATION CREDIT

## PART 1

### INTRODUCTORY

#### *Introductory*

**1.** This Schedule applies for the purposes of determining the compensation payable to or in respect of a person entitled to compensation on the discharge of a pension compensation credit in accordance with this Chapter.

#### *Interpretation*

**2.** In this Schedule—

“the initial annual rate of compensation” is the amount determined by the Board under section 94(4);

the “pension compensation age” of the transferee is the age determined in accordance with paragraph 3.

#### *Pension compensation age*

**3.—(1)** This paragraph applies for the purpose of determining the transferee’s pension compensation age.

(2) Sub-paragraphs (3) and (4) apply where the transferor’s PPF compensation, or any of it, is determined under Schedule 6 to the 2005 Order.

(3) Where the transferor's right to PPF compensation arises by virtue of his or her status as a member of a pension scheme for which the Board assumed responsibility in accordance with Chapter 3 of Part 3 of that Order, the transferee's pension compensation age is the same as—

- (a) the normal pension age of the transferor, or
- (b) where the transferor was a pension credit member, the normal benefit age of the transferor.

(4) Where the transferor's right to PPF compensation arises by virtue of his or her status as a person connected with a member of a scheme for which the Board assumed responsibility in accordance with Chapter 3 of Part 3 of that Order, the transferee's pension compensation age is the same as—

- (a) the normal pension age of that member, or
- (b) where that member was a pension credit member, the normal benefit age of that member.

(5) Sub-paragraph (6) applies where the transferor's PPF compensation is determined only under this Schedule.

(6) The transferee's pension compensation age is the same as the pension compensation age of the transferor.

(7) In this paragraph, "normal benefit age", "normal pension age" and "pension credit member" have the same meanings as in Schedule 6 to the 2005 Order.

## PART 2

### TRANSFEEE ATTAINS PENSION COMPENSATION AGE BEFORE OR ON TRANSFER DAY

#### *Compensation payable to transferee*

4.—(1) Compensation is payable in accordance with this paragraph where the transferee attains pension compensation age before or on the transfer day.

(2) The transferee is entitled to periodic compensation commencing on the transfer day and continuing for life.

(3) The annual rate of the periodic compensation is the aggregate of—

- (a) the initial annual rate of compensation, and
- (b) any increases under paragraph 17 (annual increases in periodic compensation).

(4) This paragraph is subject to paragraph 18 (compensation cap).

*Compensation payable to widow, widower or surviving civil partner*

5.—(1) This paragraph applies where—

- (a) the transferee dies after liability in respect of the pension compensation credit has been discharged under section 94,
- (b) the transferee was before death entitled under paragraph 4 to periodic compensation commencing on the transfer day, and
- (c) the transferee is survived by a widow, widower or surviving civil partner (“the surviving partner”).

(2) Subject to sub-paragraph (4), the surviving partner is entitled to periodic compensation commencing on the day following the transferee’s death and continuing for life.

(3) The annual rate of the periodic compensation at any time is half of the annual rate of the periodic compensation (including any increases under paragraph 17) to which the transferee would at that time have been entitled under paragraph 4 had the transferee not died.

(4) The surviving partner is not entitled to periodic compensation under this paragraph in such circumstances as may be prescribed.

### PART 3

#### TRANSFEEE ATTAINS PENSION COMPENSATION AGE AFTER TRANSFER DAY

*Compensation payable to transferee*

6.—(1) Compensation is payable in accordance with this paragraph where the transferee attains pension compensation age after the transfer day.

(2) The transferee is entitled to periodic compensation commencing at that age and continuing for life.

(3) The annual rate of the periodic compensation is the aggregate of—

- (a) the initial annual rate of compensation,
- (b) the revaluation amount (see paragraph 8), and
- (c) any increases under paragraph 17 (annual increases in periodic compensation).

(4) This paragraph is subject to—

- paragraph 9 (commutation),
- paragraph 10 (early payment),
- paragraph 11 (deferred payment),

paragraph 15 (terminal illness lump sum), and  
paragraph 18 (compensation cap).

*Compensation payable to widower, widow or surviving civil partner*

7.—(1) This paragraph applies where—

- (a) the transferee dies after liability in respect of the pension compensation credit has been discharged under section 94,
- (b) the transferee—
  - (i) was, before death, entitled under paragraph 6 to periodic compensation commencing at pension compensation age, or
  - (ii) would have become so entitled had he or she not died, and
- (c) the transferee is survived by a widow, widower or surviving civil partner (“the surviving partner”).

(2) Subject to sub-paragraph (4), the surviving partner is entitled to periodic compensation commencing on the day following the transferee’s death and continuing for life.

(3) The annual rate of the periodic compensation at any time is—

- (a) where the transferee dies after attaining pension compensation age, half of the annual rate of the periodic compensation (including the revaluation amount (see paragraph 8) and any increases under paragraph 17) to which the transferee would at that time have been entitled under paragraph 6 had the transferee not died;
- (b) where the transferee dies before attaining pension compensation age, half of the annual rate of the periodic compensation (including the revaluation amount (see paragraph 8) and any increases under paragraph 17) to which the transferee would at that time have been entitled under paragraph 6 if—
  - (i) the transferee’s pension compensation age had been the transferee’s actual age immediately before the date of the transferee’s death, and
  - (ii) the transferee had not died.

(4) For the purposes of this paragraph, a person’s entitlement under paragraph 6 is to be determined disregarding paragraph 15(1)(b) (successful applicant for terminal illness lump sum loses entitlement to periodic compensation).

(5) The surviving partner is not entitled to periodic compensation under this paragraph in such circumstances as may be prescribed.

*Revaluation*

8.—(1) This paragraph applies for the purpose of calculating the revaluation amount mentioned in paragraph 6(3)(b).



- (2) In this paragraph “the revaluation period” means the period—
  - (a) beginning with the transfer day, and
  - (b) ending with the day before the transferee attains pension compensation age.
- (3) The revaluation amount is—
  - (a) in a case in which the revaluation period is less than a month, nil;
  - (b) in any other case, the revaluation percentage of the initial annual rate of compensation.
- (4) For the purposes of sub-paragraph (3)(b) “the revaluation percentage” means the lesser of—
  - (a) the percentage increase referred to in paragraph 8(4)(a) of Schedule 5 to the Pensions Act 2008, and
  - (b) the maximum revaluation rate.
- (5) For the purposes of sub-paragraph (4)(b) “the maximum revaluation rate” is—
  - (a) in a case in which the revaluation period is a period of 12 months, 2.5%, and
  - (b) in any other case, the percentage referred to in paragraph 8(5)(b) of Schedule 5 to the Pensions Act 2008.

This is subject to paragraph 20 (power of Board to alter rates of revaluation and indexation).

#### *Commutation of periodic compensation*

- 9.—(1) A transferee who is entitled to periodic compensation under paragraph 6 may, in prescribed circumstances, opt to commute for a lump sum a portion of the periodic compensation with effect from the time it becomes payable.
- (2) Except in such circumstances as may be prescribed, the portion commuted under sub-paragraph (1) must not exceed 25%.
- (3) Any reduction required to be made by virtue of paragraph 18 (compensation cap) must be made before determining the amount of the transferee’s periodic compensation which may be commuted under this paragraph.
- (4) Where the transferee opts to commute any part of his or her periodic compensation under this paragraph, the lump sum payable under sub-paragraph (1) is the actuarial equivalent of the commuted portion of the periodic compensation calculated from tables designated for this purpose by the Board.
- (5) The Board must publish in such manner as it considers appropriate the tables designated by it for the purposes of sub-paragraph (4).

(6) Regulations may prescribe the manner in which an option to commute periodic compensation under this paragraph may be exercised.

(7) The Department may, by order, amend sub-paragraph (2) so as to substitute a different percentage for that for the time being specified there.

#### *Early payment of compensation*

**10.—**(1) Regulations may prescribe circumstances in which, and conditions subject to which, the transferee may become entitled to periodic compensation under paragraph 6 before attaining pension compensation age.

(2) The Board must determine the amount of the actuarial reduction to be applied to compensation to which the transferee is entitled by virtue of this paragraph.

(3) Where, by virtue of this paragraph, periodic compensation is payable to the transferee before he or she attains pension compensation age, paragraph 8(2)(b) (end of revaluation period) applies as if the reference to the day before the transferee attains pension compensation age were to the day on which compensation is payable by virtue of this paragraph.

#### *Deferral of compensation*

**11.—**(1) Regulations may prescribe circumstances in which, and conditions subject to which, the transferee may opt to defer entitlement to periodic compensation under paragraph 6 until some time after attaining pension compensation age.

(2) The Board must determine the amount of the actuarial increase to be applied to compensation to which the transferee is entitled by virtue of this paragraph.

(3) Where, by virtue of this paragraph, periodic compensation is payable to the transferee after he or she attains pension compensation age, paragraph 8(2)(b) (end of revaluation period) applies as if the reference to the day before the transferee attains pension compensation age were to the day on which compensation is payable by virtue of this paragraph.

#### *Terminal illness lump sum: eligibility*

**12.—**(1) This paragraph applies where all of the following conditions are met—

- (a) the transferee is terminally ill;
- (b) if the transferee lived to the relevant age, he or she would become entitled on attaining that age to compensation under paragraph 6 in respect of the pension compensation credit;
- (c) the transferee has not yet become entitled to any compensation under this Chapter in respect of the pension compensation credit;

(d) the whole or any part of the transferee's lifetime allowance is available.

(2) The transferee may make an application to the Board to commute the future entitlement mentioned in sub-paragraph (1)(b) for a lump sum ("a terminal illness lump sum") payable on the granting of the application.

(3) For the purposes of this Chapter a person is "terminally ill" at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within six months.

(4) In this paragraph—

"lifetime allowance", in relation to a person, has the same meaning as in Part 4 of the Finance Act 2004 (c. 12) (pension schemes etc.) (see section 218 of that Act);

"relevant age", in relation to a person, means—

- (a) in relation to compensation entitlement to which has been accelerated or deferred under regulations under paragraph 10 or (as the case may be) 11, the age at which the person becomes entitled to the compensation in accordance with the regulations;
- (b) in relation to compensation entitlement to which has not been so accelerated or deferred, pension compensation age.

*Terminal illness lump sum: application and evidence*

**13.** An application for a terminal illness lump sum—

- (a) must be made in writing, either on a form approved by the Board for the purposes of this paragraph or in such other manner as the Board may accept as sufficient in the circumstances of the case;
- (b) must be accompanied by such information as the Board may require for the purpose of determining the application.

*Terminal illness lump sum: determination of application*

**14.—(1)** The Board must determine an application for a terminal illness lump sum in accordance with this paragraph.

(2) The Board must—

- (a) if satisfied that the conditions in paragraph 12(1) are met, grant the application;
- (b) in any other case (subject to sub-paragraph (3)), reject the application.

(3) The Board may hold over the application for determination at a later date if it is satisfied that—

- (a) although the condition in paragraph 12(1)(a) is not met, the transferee suffers from a progressive disease and may become terminally ill within six months, and
- (b) the conditions in paragraph 12(1)(b) to (d) are met.

*Terminal illness lump sum: effect of successful application*

**15.—**(1) If the Board grants an application for a terminal illness lump sum, the transferee—

- (a) becomes entitled to a terminal illness lump sum calculated in accordance with this paragraph, and
  - (b) loses the entitlement he or she otherwise would have had on attaining the relevant age to compensation under paragraph 6 in respect of the pension compensation credit.
- (2) The amount of the terminal illness lump sum is 2 times the amount to which the transferee would have been entitled under paragraph 6 in respect of the pension compensation credit in the year following the granting of the application, if he or she had attained the relevant age on the granting of the application.
- (3) In this paragraph “the relevant age” has the same meaning as in paragraph 12.

*Terminal illness lump sum: information*

**16.—**(1) Relevant information held by the Department or the Secretary of State about an individual may be disclosed to the Board for use for a purpose relating to its functions under paragraphs 12 to 15.

- (2) In sub-paragraph (1) “relevant information” means—
- (a) information held for the purposes of any function of the Department relating to social security; or
  - (b) information held for the purposes of any function of the Secretary of State relating to any scheme made under section 286 of the Pensions Act 2004 (c. 35) (financial assistance scheme).

## PART 4

### PROVISIONS APPLICABLE IRRESPECTIVE OF AGE OF TRANSFeree ON TRANSFER DAY

*Annual increase in periodic compensation*

**17.—**(1) This paragraph provides for annual increases to compensation payable to the transferee.

(2) The transferee is entitled, on each indexation date, to an increase of the appropriate percentage of the underlying rate.

(3) The increase to which the transferee is entitled on the first indexation date is restricted to 1/12 of the amount calculated under sub-paragraph (2) for each full month in the period beginning with the transfer day and ending with that indexation date.

(4) For the purposes of sub-paragraph (2)—

“the appropriate percentage”, as at an indexation date, is the lesser of—

(a) the percentage increase referred to in paragraph (a) of the definition of “the appropriate percentage” in paragraph 17(4) of Schedule 5 to the Pensions Act 2008, and

(b) 2.5%;

“the indexation date” means—

(a) the 1st January next falling after the transferee first becomes entitled to the periodic compensation, and

(b) each subsequent 1st January during the transferee’s lifetime;

“the underlying rate”, as at an indexation date, is the aggregate of—

(a) the indexed proportion (as determined under sub-paragraph (5) or (6)) of the aggregate of the initial annual rate of compensation and (in the case of compensation payable under paragraph 6) the revaluation amount, and

(b) any annual increase to which the transferee is entitled under this paragraph in respect of earlier indexation dates.

(5) Where the transferor’s PPF compensation is payable in accordance with paragraph 3, 5, 8, 11, 15 or 22 of Schedule 6 to the 2005 Order (“the relevant paragraph of Schedule 6”), “the indexed proportion” is the proportion of the amount mentioned in sub-paragraph (3)(a) of the relevant paragraph of Schedule 6 that is attributable to the transferor’s post-1997 service.

Paragraph 28(4) of that Schedule applies for the purpose of attributing amounts to the transferor’s post-1997 service under this sub-paragraph.

(6) Where the transferor’s PPF compensation is payable otherwise than as mentioned in sub-paragraph (5), “the indexed proportion” is such proportion as is determined in accordance with regulations made by the Department.

(7) Where the compensation payable to the transferee is—

(a) reduced as a result of the commutation of periodic compensation under paragraph 9, or

(b) restricted under regulations under paragraph 18 (compensation cap),

the references in the definition of “the underlying rate” in sub-paragraph (4) to the initial annual compensation rate and the revaluation amount are to that rate and that amount as so restricted or reduced.

(8) the definition of “the appropriate percentage” in sub-paragraph (4) is subject to paragraph 20 (power of Board to alter rates of revaluation and indexation).

(9) In this paragraph “post-1997 service” has the same meaning as in paragraph 28 of Schedule 6 to the 2005 Order (annual increase in periodic pension compensation).

#### *Compensation cap*

**18.—**(1) The Department may by regulations make provision for restricting the amount of periodic compensation payable under this Schedule in a case in which, on the transfer day, the transferor is not entitled to present payment of PPF compensation.

(2) Without prejudice to the generality of sub-paragraph (1), the regulations may restrict an amount payable to a person in any period by reference to the compensation cap specified by the Department by order under paragraph 26(7) of Schedule 6 to the 2005 Order (compensation cap).

#### *Compensation in form of dependant’s benefits*

**19.—**(1) The Department may by regulations make provision for compensation to be payable to—

- (a) prescribed descriptions of partners, or
- (b) prescribed descriptions of dependants,

of prescribed descriptions of transferees.

(2) The regulations may, in particular—

- (a) provide for compensation in the form of periodic or lump sum payments;
- (b) provide for periodic compensation to be payable for a prescribed period;
- (c) apply paragraph 17 (annual increases in respect of periodic compensation), with or without modifications, in respect of compensation in the form of periodic payments.

#### *Board’s power to alter rates of revaluation and indexation*

**20.—**(1) The Board may determine the percentage that is to be—

- (a) the maximum revaluation rate for the purposes of paragraph 8(4)(b);
- (b) the appropriate percentage for the purposes of paragraph 17(2).

(2) Before making a determination under this paragraph the Board must—

- (a) consult such persons as it considers appropriate, and

- (b) publish details of the proposed determination in such manner as it considers appropriate and consider any representations made in respect of it.
- (3) The rate determined under this paragraph may be nil.
- (4) A determination under this paragraph may be expressed so as to have effect for a limited period.
- (5) A determination under sub-paragraph (1)(b)—
  - (a) has effect in relation to future increases under paragraph 17 only, and
  - (b) may be expressed to have effect—
    - (i) in all cases (whether the entitlement to the periodic compensation first arose before or after the date the determination is made), or
    - (ii) only in cases where entitlement to the periodic compensation first arose on or after a date determined by the Board.
- (6) Notice of any determination under this paragraph must be published in such manner as the Board considers appropriate.

## 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 sub-paragraph (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)”.

## SCHEDULE 6

Section 100.

## AMENDMENTS OF SCHEDULE 6 TO THE 2005 ORDER

1. Schedule 6 to the 2005 Order (pension compensation provisions) is amended as follows.
  2. In paragraph 3(6), at the end, add “to the scheme”.
  3. In paragraph 5(5), at the end, add “to the scheme”.
  4. In paragraph 11(8), after paragraph (b) insert—
    - “(ba) paragraph 25E (terminal illness lump sum),”.
  5. In paragraph 13, after sub-paragraph (3) insert—
    - “(3A) For the purposes of this paragraph, a person’s entitlement under paragraph 11 is to be determined disregarding paragraph 25E(1)(b) (successful applicant for terminal illness lump sum loses entitlement to periodic compensation).”.
  6. In paragraph 14(9), after paragraph (a) insert—
    - “(aa) paragraph 25E (terminal illness lump sum),”.

7. In paragraph 15(6), after paragraph (a) insert—  
“(aa) paragraph 25E (terminal illness lump sum),”.
8. In paragraph 18, after sub-paragraph (3) insert—  
“(3A) For the purposes of this paragraph, a person’s entitlement under paragraph 15 is to be determined disregarding paragraph 25E(1)(b) (successful applicant for terminal illness lump sum loses entitlement to periodic compensation).”.
9. In paragraph 19(8), after “This paragraph is subject to—” insert—  
“(za) paragraph 25E (terminal illness lump sum),”.
10. In paragraph 21(1) for “15, 18 and 19” substitute “15 to 19”.
11. For paragraph 21(2)(b) and (c) substitute—  
“(c) for paragraph 15(5) substitute—  
“(5) Subject to sub-paragraph (5A), for the purposes of this paragraph and paragraphs 16 and 17, “the accrued amount” means the amount equal to the initial annual rate of the pension which, under the admissible rules, the deferred member is entitled to receive at normal benefit age by virtue of his pension credit rights.  
(5A) For the purposes of calculating the amounts mentioned in sub-paragraph (4)(b) and (c), the accrued amount is to be treated as reduced by such amount as is not attributable to rights of the deferred member that involve the member being credited by the scheme with notional pensionable service.”,  
(ca) in paragraph 16(2)(a) before “pensionable service” insert “notional”,  
(cb) in paragraph 17(2)(b) the reference to normal pension age is to be read as a reference to normal benefit age,  
(cc) in paragraph 17(6) omit “, “the accrued amount””,.”.
12. In paragraph 25(3), after “before that person attains normal pension age” insert “(or, in a case to which paragraph 21 applies, normal benefit age)”.
13. After paragraph 25 insert—

*“Deferral of compensation*

**25A.—**(1) Regulations may prescribe circumstances in which, and conditions subject to which, a person may elect to defer entitlement to any relevant compensation until some time after attaining normal pension age (or, in a case to which paragraph 21 applies, normal benefit age).

(2) For this purpose “any relevant compensation” means any compensation to which a person is or will be entitled under the pension compensation provisions,

except for compensation payable in accordance with paragraph 3 (pensions in payment at assessment date).

(3) The Board must determine the amount of the actuarial increase to be applied to compensation to which a person is entitled by virtue of this paragraph.

(4) Where, by virtue of this paragraph, periodic compensation is payable to a person under paragraph 11 or 15 after that person attains normal pension age (or, in a case to which paragraph 21 applies, normal benefit age)—

- (a) paragraph 12(2) applies as if the reference to the date on which the active member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph, and
- (b) paragraph 17(2)(b) applies as if the reference to the date on which the deferred member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph.”.

**14.** After paragraph 25A (inserted by paragraph 13) insert—

*“Terminal illness lump sum: eligibility*

**25B.**—(1) This paragraph applies to a person in relation to whom all of the following conditions are met—

- (a) the person is terminally ill;
- (b) if the person lived to the relevant age, the person would become entitled on attaining that age to relevant compensation in relation to the scheme;
- (c) the person has not yet become entitled to any compensation under the pension compensation provisions in relation to the scheme;
- (d) the whole or any part of the person’s lifetime allowance is available.

(2) A person to whom this paragraph applies may make an application to the Board to commute the future entitlement mentioned in sub-paragraph (1)(b) for a lump sum (“a terminal illness lump sum”) payable on the granting of the application.

(3) For the purposes of this Chapter a person is “terminally ill” at any time if at that time the person suffers from a progressive disease and the person’s death in consequence of that disease can reasonably be expected within six months.

(4) In this paragraph—

“lifetime allowance”, in relation to a person, has the same meaning as in Part 4 of the Finance Act 2004 (c. 12) (pension schemes etc.) (see section 218 of that Act);

“relevant age”, in relation to a person, means—

- (a) in relation to compensation entitlement to which has been accelerated or deferred under regulations under paragraph 25 or (as the case

may be) 25A, the age at which the person becomes entitled to the compensation in accordance with the regulations;

- (b) in relation to compensation entitlement to which has not been so accelerated or deferred, normal pension age (or, in a case to which paragraph 21 applies, normal benefit age);

“relevant compensation” means—

- (a) periodic compensation under paragraph 11 or 15, or
- (b) lump sum compensation under paragraph 14 or 19.

*Terminal illness lump sum: application*

**25C.** An application for a terminal illness lump sum—

- (a) must be made in writing, either on a form approved by the Board for the purposes of this paragraph or in such other manner as the Board may accept as sufficient in the circumstances of the case;
- (b) must be accompanied by such information as the Board may require for the purpose of determining the application.

*Terminal illness lump sum: determination of application*

**25D.—**(1) The Board must determine an application for a terminal illness lump sum in accordance with this paragraph.

(2) The Board must—

- (a) if satisfied that the conditions in paragraph 25B(1) are met in relation to the applicant, grant the application;
- (b) in any other case (subject to sub-paragraph (3)), reject the application.

(3) The Board may hold over the application for determination at a later date if it is satisfied that—

- (a) although the condition in paragraph 25B(1)(a) is not met in relation to the applicant, the applicant suffers from a progressive disease and may become terminally ill within six months, and
- (b) the conditions in paragraph 25B(1)(b) to (d) are met in relation to the applicant.

*Terminal illness lump sum: effect of successful application*

**25E.—**(1) If the Board grants an application for a terminal illness lump sum, the applicant—

- (a) becomes entitled to a terminal illness lump sum calculated in accordance with this paragraph, and



- (b) loses the entitlement the applicant otherwise would have had on attaining the relevant age to relevant compensation in relation to the scheme.
- (2) The amount of the terminal illness lump sum is 2 times the sum of—
  - (a) the periodic compensation annual amount, and
  - (b) the lump sum compensation annual amount.
- (3) In sub-paragraph (2) “the periodic compensation annual amount” means the annual amount to which the applicant would have been entitled under paragraph 11 or 15 in relation to the scheme in the year following the granting of the application, if the applicant had attained the relevant age on the granting of the application.
- (4) In sub-paragraph (2) “the lump sum compensation annual amount” means the annualised value of the lump sum to which the applicant would have been entitled under paragraph 14 or 19 in relation to the scheme on the granting of the application, if the applicant had attained the relevant age on the granting of the application.
- (5) In sub-paragraph (4) “the annualised value” of a lump sum means the annualised actuarially equivalent amount of that sum, determined in accordance with actuarial factors published by the Board.
- (6) In this paragraph “relevant compensation” and “the relevant age” have the same meanings as in paragraph 25B.

*Terminal illness lump sum: information*

**25F.**—(1) Relevant information held by the Department or the Secretary of State about an individual may be disclosed to the Board for use for a purpose relating to—

- (a) the Board’s functions under paragraphs 25B to 25E;
- (b) the compliance of the trustees or managers of a pension scheme with Article 122 (limit on amount of scheme benefits payable during an assessment period).
- (2) In sub-paragraph (1) “relevant information” means—
  - (a) information held for the purposes of any function of the Department relating to social security; or
  - (b) information held for the purposes of any function of the Secretary of State relating to any scheme made under section 286 of the Pensions Act 2004 (financial assistance scheme).”.

**15.** In paragraph 33 make the existing provision sub-paragraph (1) and at the end add—

“(2) Where the scheme is a variable-rate scheme, regulations under this paragraph may have the effect that the amount of periodic compensation payable to a person is, from a specified time, to be different from the amount that would otherwise be payable under this Schedule.

(3) A “variable-rate scheme” is a scheme under which the annual rate of pension to which a person is entitled would have increased (otherwise than by way of revaluation) or decreased at any time after the assessment date, had the scheme continued in existence until that time (and had the scheme rules remained unchanged).

(4) Where the scheme is a fixed-term scheme, regulations under this paragraph may have the effect that no periodic compensation is to be payable to a person from a specified time.

(5) A “fixed-term scheme” is a scheme under which a person’s entitlement to benefits would have ceased at any time after the assessment date, had the scheme continued in existence until that time (and had the scheme rules remained unchanged).

(6) In this paragraph “a specified time” means a time determined in accordance with regulations under this paragraph.”.

**16.** In paragraph 34(1) after “ill health” insert “or otherwise”.

**17.** For paragraph 35(2)(a) substitute—

“(a) in the case of a scheme to which sub-paragraph (3) applies, any recent rule changes, and”.

**18.** For paragraph 35(3) substitute—

“(3) This sub-paragraph applies to a scheme if, in calculating the protected liabilities in relation to the scheme at the relevant time, the effect of taking into account—

- (a) any recent rule changes, and
- (b) any recent discretionary increases,

is that those liabilities are greater than they otherwise would be.”.

## SCHEDULE 7

Section 102.

### ADDITIONAL PENSION: CONSEQUENTIAL AMENDMENTS

*The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)*

- 1.** The Contributions and Benefits Act is amended as follows.
- 2.** In section 22 (earnings factors), after subsection (8) add—

“(9) References in this Act or any other statutory provision to earnings factors derived from so much of a person’s earnings as do not exceed the upper accrual point or the upper earnings limit are to be read, in relation to earners paid otherwise than weekly, as references to earnings factors derived from so much of those earnings as do not exceed the prescribed equivalent.”.

**3.—**(1) Section 23 is amended as follows.

(2) In subsection (3)(a), for “subsection” substitute “subsections (3A) and”.

(3) After subsection (3) insert—

“(3A) For the purposes specified in section 22(2)(b) (additional pension), subsection (3)(a) has effect in relation to 2009–10 and subsequent tax years as if the reference to the upper earnings limit were to the upper accrual point.”.

**4.—**(1) Section 44A (deemed earnings factors) is amended as follows.

(2) In subsection (1)(a), for “the upper earnings limit” substitute “the applicable limit”.

(3) After subsection (5) insert—

“(5A) In subsection (1)(a) “the applicable limit” has the same meaning as in section 44.”.

**5.** In section 44B(2)(a) (deemed earnings factors: 2010–11 onwards), for “the applicable limit” substitute “the upper accrual point”.

**6.—**(1) Paragraph 1 of Schedule 1 (Class 1 contributions where earner employed in more than one employment) is amended as follows.

(2) In sub-paragraph (3) (as it has effect without the amendments made by paragraph 44(2) of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c. 1))—

(a) in paragraph (b), for “the current upper earnings limit” (in both places) substitute “the upper accrual point”,

(b) after that paragraph insert—

“(ba) if paragraph (b) applies, the amount obtained by applying the main primary percentage referred to in paragraph (d) to such part of the aggregated earnings attributable to COMPS service as, when added to the APPS earnings (if any), exceeds the upper accrual point and does not exceed the current upper earnings limit,”,

(c) in paragraph (c), for “the current upper earnings limit” (in both places) substitute “the upper accrual point”, and

(d) after that paragraph insert—

“(ca) if paragraph (c) applies, the amount obtained by applying the main primary percentage referred to in paragraph (d) to such part

of the aggregated earnings attributable to COSRS service as, when added to the APPS earnings or the part attributable to COMPS service (or both), exceeds the upper accrual point and does not exceed the current upper earnings limit.”.

(3) In sub-paragraph (3) (as amended by sub-paragraph (2) and by paragraph 44(2) of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c. 1))—

(a) omit paragraph (ba),

(b) in paragraph (c)—

(i) omit “if some of the aggregated earnings are attributable to COSRS service,”, and

(ii) for “the current upper earnings limit” substitute “the upper accrual point”, and

(c) in paragraph (ca), omit—

(i) “if paragraph (c) applies,”, and

(ii) “, when added to the APPS earnings or the part attributable to COMPS service (or both),”.

(4) After sub-paragraph (10) add—

“(11) In relation to such earnings, any reference in this paragraph to the upper accrual point is to be read as a reference to the prescribed equivalent (see section 121(6A)).”.

(5) The amendments made by sub-paragraphs (2) and (4) have effect in relation to 2009–10 and subsequent tax years.

#### *The Pension Schemes (Northern Ireland) Act 1993 (c. 49)*

7. The Pension Schemes Act is amended as follows.

8.—(1) Section 4 (meaning of “contracted-out employment” etc.) is amended as follows.

(2) In subsection (2), in the definition of “minimum payment”, for “the current upper earnings limit” substitute “the applicable limit”.

(3) After that subsection insert—

“(2A) In subsection (2) “the applicable limit” means—

(a) in relation to a tax year before 2009–10, the upper earnings limit;

(b) in relation to 2009–10 or any subsequent tax year, the upper accrual point.”.

9. In section 8B(7) (contracted-out pension scheme: reference scheme), in the definition of “the applicable limit”—

(a) for “the flat rate introduction year” (in both places) substitute “2009–10”,  
and

(b) in paragraph (b), after “point” insert “multiplied by 53”.

**10.—**(1) Section 37 (reduced rates of Class 1 contributions for members of salary related contracted-out schemes) is amended as follows.

(2) In subsection (1) for “the applicable limit for that week” substitute “the upper accrual point”.

(3) Omit subsection (1ZA).

(4) The amendments made by this paragraph have effect in relation to 2009–10 and subsequent tax years.

**11.—**(1) In section 38A(1) (reduced rates of Class 1 contributions, and rebates, for members of money purchase contracted-out schemes), for “the current upper earnings limit for that week” substitute “the upper accrual point”.

(2) The amendment made by sub-paragraph (1) has effect in relation to 2009–10 and subsequent tax years.

**12.—**(1) In section 41(1) (personal pensions: amount of minimum contributions), for “the current upper earnings limit for that week” substitute “the upper accrual point”.

(2) The amendment made by sub-paragraph (1) has effect in relation to 2009–10 and subsequent tax years.

**13.—**(1) Paragraph 2 of Schedule 3 (priority in bankruptcy etc.: employee’s contributions to occupational pension scheme) is amended as follows.

(2) In sub-paragraph (5), in paragraph (b) of the definition of “reckonable earnings”, for “the applicable limit” substitute “the upper accrual point”.

(3) Omit sub-paragraph (6).

(4) The amendments made by this paragraph have effect in relation to payments made in a tax week falling in 2009–10 or any subsequent tax year.

## SCHEDULE 8

Section 103.

### CONTRIBUTION NOTICES AND FINANCIAL SUPPORT DIRECTIONS UNDER 2005 ORDER

#### *Introduction*

1. The 2005 Order is amended as follows.

*Contributions notices: material detriment test*

2.—(1) In Article 34(5)(a) (main purpose or one of main purposes of act or failure to prevent recovery of employer debt under Article 75 of the 1995 Order etc.), after “is of the opinion that” insert “the material detriment test is met in relation to the act or failure (see Article 34A) or that”.

(2) After Article 34 insert—

**“Article 34 contribution notice: meaning of “material detriment test”**

**34A.**—(1) For the purposes of Article 34 the material detriment test is met in relation to an act or failure if the Regulator is of the opinion that the act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise).

(2) In this Article any reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.

(3) In this Article “the relevant time” means—

(a) in the case of an act, the time of the act, or

(b) in the case of a failure—

(i) the time when the failure occurred, or

(ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period;

and, in the case of acts or failures to act forming part of a series, any reference in this paragraph to an act or failure is a reference to the last of the acts or failures in that series.

(4) In deciding for the purposes of Article 34 whether the material detriment test is met in relation to an act or failure, the Regulator must have regard to such matters as it considers relevant, including (where relevant)—

(a) the value of the assets or liabilities of the scheme or of any relevant transferee scheme,

(b) the effect of the act or failure on the value of those assets or liabilities,

(c) the scheme obligations of any person,

(d) the effect of the act or failure on any of those obligations (including whether the act or failure causes the country or territory in which any of those obligations would fall to be enforced to be different),

- (e) the extent to which any person is likely to be able to discharge any scheme obligation in any circumstances (including in the event of insolvency or bankruptcy),
  - (f) the extent to which the act or failure has affected, or might affect, the extent to which any person is likely to be able to do as mentioned in sub-paragraph (e), and
  - (g) such other matters as may be prescribed.
- (5) In paragraph (4) “scheme obligation” means a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to—
- (a) the scheme, or
  - (b) any relevant transferee scheme in respect of any persons who were members of the scheme before the relevant time.
- (6) In this Article—
- (a) “relevant transferee scheme” means any work-based pension scheme to which any accrued rights to benefits under the scheme are transferred;
  - (b) any reference to the assets or liabilities of any relevant transferee scheme is a reference to those assets or liabilities so far as relating to persons who were members of the scheme before the relevant time.
- (7) For the purposes of paragraph (6)(a) the reference to the transfer of accrued rights of members of a pension scheme to another pension scheme includes a reference to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (8) In this Article—
- (a) “work-based pension scheme” has the meaning given by Article 4(3);
  - (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).
- (9) In deciding for the purposes of this Article whether an act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following statutory provisions are to be disregarded—
- (a) Chapter 3 of Part 3 (the Board of the Pension Protection Fund: pension protection), and
  - (b) section 286 of the Pensions Act 2004 (the financial assistance scheme for members of certain pension schemes).

(10) Regulations may amend any provision of paragraphs (4) to (8).

**Article 34 contribution notice issued by reference to material detriment test: defence**

**34B.**—(1) This Article applies where—

- (a) a warning notice is given to any person (“P”) in respect of a contribution notice under Article 34, and
- (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator’s opinion that the material detriment test is met in relation to an act or deliberate failure to act to which P was a party.

(2) If the Regulator is satisfied that P has shown that—

- (a) conditions A and C are met, and
- (b) where applicable, condition B is met,

the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).

(3) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which the act or failure might detrimentally affect in a material way the likelihood of accrued scheme benefits being received.

(4) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential detrimental effects that the act or failure might have on the likelihood of accrued scheme benefits being received.

(5) Condition C is that, having regard to all relevant circumstances prevailing at the relevant time, it was reasonable for P to conclude that the act or failure would not detrimentally affect in a material way the likelihood of accrued scheme benefits being received.

(6) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.

(7) For the purposes of condition C—

- (a) “the relevant time” means the time at which the act occurred or the failure to act first occurred;
- (b) the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at that time (including acts or failures to act which have occurred before that time and P’s expectation at that time of other acts or failures to act occurring).



(8) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in paragraph (2) if P shows in the case of each of the acts or failures in the series that—

- (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or
- (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.

(9) The matters to be shown are that—

- (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
- (b) condition B is (where applicable) met in relation to that effect, and
- (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).

(10) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—

- (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of paragraph (8), and
- (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in paragraph (9).

Nothing in sub-paragraph (b) is to be read as preventing P from showing the matters mentioned in paragraph (8)(a).

(11) If—

- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in paragraph (8)(a) or (b) are met, but
- (b) does show in the case of some of them that those matters are met,

the acts or failures within sub-paragraph (b) are not to count for the purposes of Article 34A as acts or failures to act in the series.

(12) In this Article—

- (a) “a warning notice” means a notice given as mentioned in Article 91(2)(a);
- (b) any reference to an act or failure to which a person is a party has the same meaning as in Article 34(6)(a);
- (c) any reference to the accrued scheme benefits being received has the same meaning as in Article 34A;

and paragraph (9) of Article 34A applies for the purposes of conditions A to C as it applies for the purposes of that Article.

(13) Regulations may amend this Article.”.

3. In Article 85(2) (the matters in relation to which the Pensions Regulator must issue codes of practice), after sub-paragraph (a) insert—

“(aa) the circumstances in which the Regulator expects to issue contribution notices under Article 34 as a result of being of the opinion that the material detriment test is met in relation to an act or failure;”.

4. In Article 91 (standard procedure), after paragraph (1) insert—

“(1A) In any case where—

- (a) a warning notice is given to any person in respect of a contribution notice under Article 34, and
- (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator’s opinion that the material detriment test is met in relation to an act or failure,

the standard procedure must provide for the following matters.

(1B) The matters are—

- (a) a requirement for the warning notice to explain the general effect of Article 34B, and
- (b) a requirement for the person to be given an opportunity before the contribution notice is issued to show the matters mentioned in paragraph (2) of that Article.”.

5. In Article 288(3) (orders and regulations under Order that are subject to confirmatory procedure), after sub-paragraph (a) insert—

“(aa) regulations under Article 34A(10) or 34B(13) (Article 34 contribution notices: “the material detriment test”);”.

*Contribution notices: acting or failing to act otherwise than in good faith*

6. In Article 34(5) (acts or failures to act in relation to which Pensions Regulator may issue contribution notices), in sub-paragraph (a)(ii), omit “otherwise than in good faith,”.

*Whether reasonable for Pensions Regulator to issue contribution notice*

7.—(1) Article 34 (contribution notices where avoidance of employer debt) is amended as follows.

(2) In paragraph (3) (conditions which must be met before Pensions Regulator can issue contribution notice), for sub-paragraph (d) substitute—

- “(d) the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice, having regard to—
  - (i) the extent to which, in all the circumstances of the case, it was reasonable for the person to act, or fail to act, in the way that the person did, and
  - (ii) such other matters as the Regulator considers relevant, including (where relevant) the matters falling within paragraph (7).”.
- (3) In paragraph (7) (list of relevant matters for purposes of paragraph (3)(d))—
  - (a) for the words from the beginning to “the following matters—” substitute “The matters within this paragraph are—”; and
  - (b) after sub-paragraph (e) insert—
    - “(ea) the value of any benefits which directly or indirectly the person receives, or is entitled to receive, from the employer or under the scheme;
    - (eb) the likelihood of relevant creditors being paid and the extent to which they are likely to be paid;”.
- (4) After that paragraph insert—
  - “(7A) In paragraph (7)(eb) “relevant creditors” means—
    - (a) creditors of the employer, and
    - (b) creditors of any other person who has incurred a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to the scheme.”.

*Contribution notices: series of acts or failures to act*

- 8.—(1)** In Article 34 (contribution notices where avoidance of employer debt), at the end add—
- “(12) Paragraph (13) applies if the Regulator is of the opinion that—
    - (a) a person was a party to a series of acts or failures to act,
    - (b) each of the acts or failures in the series falls within paragraph (5) (b) and (c), and
    - (c) the material detriment test is met in relation to the series, or the main purpose or one of the main purposes of the series was as mentioned in paragraph (5)(a)(i) or (ii).
  - (13) The series of acts or failures to act is to be regarded as an act or failure to act falling within paragraph (5) (and, accordingly, the reference in paragraph (6)(b)(i) to the act or failure to act falling with paragraph (5) is to the first of the acts or failures to act in the series).”.
- (2) In Article 35 (the sum specified in an Article 34 contribution notice)—

(a) in paragraph (4), after “means” insert “(subject to paragraph (4A))”; and

(b) after paragraph (4) insert—

“(4A) In the case of a series of acts or failures to act, “the relevant time” is determined by reference to whichever of the acts or failures in the series is, in the Regulator’s opinion, most appropriate.”.

*Contribution notices and financial support directions: bulk transfers*

9. After Article 35 (the sum specified in an Article 34 contribution notice) insert—

**“Article 34 contribution notice: transfer of members of the scheme**

**35A.—**(1) This Article applies where—

(a) the Regulator is of the opinion that in relation to a scheme (“the initial scheme”) in relation to which Article 34 applies—

(i) an act or failure to act falling within paragraph (5) of that Article has occurred (or first occurred) at any time, and

(ii) the other conditions in that Article for issuing a contribution notice are met in relation to the initial scheme (or, but for any transfer falling within sub-paragraph (b), would be met), and

(b) the accrued rights of at least two persons who were members of the initial scheme are transferred at that or any subsequent time to one or more work-based pension schemes (whether by virtue of the act or otherwise).

(2) The Regulator may issue a contribution notice under Article 34 in relation to any transferee scheme (and, accordingly, any reference in Article 36 or 37 to the scheme is to the transferee scheme).

(3) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is not within paragraph (5)(a) or (b), Article 35 has effect as if any reference in that Article to the scheme were a reference to whichever of—

(a) the initial scheme, and

(b) the transferee scheme,

the Regulator determines to be more appropriate in the circumstances.

(4) In any case where Article 35 has effect in relation to the transferee scheme by virtue of paragraph (3), any reference in that Article to a debt under Article 75 of the 1995 Order is a reference to so much of that debt as, in the Regulator’s opinion, is attributable to those members of the transferee scheme who were members of the initial scheme.

(5) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is—

- (a) a scheme to which Article 75 of the 1995 Order does not apply, or
- (b) a scheme to which that Article does apply in a case where the liabilities of the scheme that would be taken into account for the purposes of that Article do not relate to the members of the initial scheme,

the sum specified by the Regulator in the notice is determined in accordance with regulations (and not in accordance with Article 35).

(6) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the sum payable under the notice is applied for the benefit of the members of the transferee scheme who were members of the initial scheme.

(7) If the trustees or managers fail to comply with a direction issued to them under paragraph (6), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### **Article 35A: supplemental**

**35B.**—(1) In Article 35A a “transferee scheme”, in relation to any time, means any work-based pension scheme—

- (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
- (b) of which any of those persons are members at that time.

(2) For the purposes of Article 35A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 35A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 35A and this Article—

- (a) “work-based pension scheme” has the meaning given by Article 4(3);
- (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

- (5) Article 35A applies even if the initial scheme—
  - (a) is wound up as a result of any transfer falling within paragraph (1) (b) of that Article, or
  - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in paragraph (1) of that Article—
  - (a) the reference to a scheme to which Article 34 applies is a reference to a scheme which was such a scheme before the transfer;
  - (b) the reference to any conditions in Article 34 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in Article 35A or this Article is to be read as preventing the Regulator from issuing a contribution notice in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by or under Article 35A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
  - (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
  - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
  - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
  - (d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).
- (9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under paragraph (8) may—
  - (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and
  - (b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to contribution notices under Article 34.”.

**10. After Article 39 (financial support directions) insert—**

**“Financial support directions: transfer of members of the scheme**

**39A.—(1) This Article applies where—**

- (a) the Regulator is of the opinion by reference to any time that the conditions in Article 39 for issuing a financial support direction are met in relation to a scheme (“the initial scheme”) in relation to which that Article applies (or, but for any transfer falling within sub-paragraph (b), would be met), and
- (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at any subsequent time to one or more work-based pension schemes.

(2) The Regulator may issue a financial support direction under that Article in relation to any transferee scheme (and, accordingly, any reference in Article 41 or any of Articles 43 to 46 to the scheme is to the transferee scheme).

(3) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the financial support is put in place for the benefit of the members of the transferee scheme who were members of the initial scheme.

(4) If the trustees or managers fail to comply with a direction issued to them under paragraph (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

**Article 39A: supplemental**

**39B.—(1) In Article 39A a “transferee scheme”, in relation to any time, means any work-based pension scheme—**

- (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
- (b) of which any of those persons are members at that time.

(2) For the purposes of Article 39A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 39A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

- (4) In Article 39A and this Article—
  - (a) “work-based pension scheme” has the meaning given by Article 4(3);
  - (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).
- (5) Article 39A applies even if the initial scheme—
  - (a) is wound up as a result of any transfer falling within paragraph (1) (b) of that Article, or
  - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in paragraph (1) of that Article—
  - (a) the reference to a scheme to which Article 39 applies is a reference to a scheme which was such a scheme before the transfer;
  - (b) the reference to any conditions in Article 39 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in Article 39A or this Article is to be read as preventing the Regulator from issuing a financial support direction in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by Article 39A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
  - (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
  - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
  - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
  - (d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).
- (9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.



(10) Regulations under paragraph (8) may—

- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and
- (b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to financial support directions under Article 39.”.

**11.** In Article 279(2) (overriding requirements)—

- (a) after sub-paragraph (d) insert—
  - “(da) any direction issued by the Regulator under Article 35A(6);”;
  - and
- (b) after sub-paragraph (e) insert—
  - “(ea) any direction issued by the Regulator under Article 39A(3);”.

**12.** In Article 288(3) (orders and regulations under Order that are subject to confirmatory procedure), after sub-paragraph (aa) (as inserted by paragraph 5 of this Schedule) insert—

- “(ab) regulations under Article 35A(5), 35B(8) or 39B(8) (contribution notices and financial support directions: bulk transfers);”.

**13.** In Part 4 of Schedule 2 (the reserved regulatory functions of Pensions Regulator: functions under Order)—

- (a) after paragraph 30 insert—
  - “**30A.** The power to issue a direction under Article 35A(6) to any person.”; and
- (b) after paragraph 33 insert—
  - “**33A.** The power to issue a direction under Article 39A(3) to any person.”.

*Financial support directions: meaning of “insufficiently resourced”*

**14.—(1)** In Article 40(3) (meaning of “insufficiently resourced”), for sub-paragraph (b) substitute—

- “(b) condition A or B is met.”.

**(2)** After paragraph (3) insert—

- “(3A) Condition A is met if—
  - (a) there is at that time a person who falls within Article 39(6)(b) or (c), and

- (b) the value at that time of that person's resources is not less than the relevant deficit, that is to say the amount which is the difference between—
  - (i) the value of the resources of the employer, and
  - (ii) the amount which is the prescribed percentage of the estimated Article 75 debt.
- (3B) Condition B is met if—
  - (a) there are at that time two or more persons who—
    - (i) fall within Article 39(6)(b) or (c), and
    - (ii) are connected with, or associates of, each other, and
  - (b) the aggregate value at that time of the resources of the persons who fall within sub-paragraph (a) (or any of them) is not less than the relevant deficit.”.
- (3) In paragraph (4), for “paragraph (3)” substitute “paragraphs (3) to (3B)”.

*Effect of amendments made by this Schedule*

- 15.—**(1) The amendments made by paragraphs 2, 6 and 7 have effect in relation to any act occurring, or any failure to act first occurring, on or after 14th April 2008.
- (2) The amendments made by paragraph 8 have effect—
- (a) for the purposes of the material detriment test, where at least one of the acts or failures to act occurs or first occurs on or after 14th April 2008, and
  - (b) for all other purposes, where at least one of the acts or failures to act occurs or first occurs on or after the day on which the Pensions Act 2008 is passed.
- (3) The amendments made by paragraphs 9 and 10 have effect in relation to any case where rights are transferred or extinguished on or after 14th April 2008.
- (4) The amendments made by paragraph 14 have effect so as to enable the Regulator to make a financial support direction under Article 39 of that Order by reference to any time falling on or after 14th April 2008.

*Transitional provision*

- 16.—**(1) In the case of the first set of regulations made under paragraph (8) of Article 35B, paragraph (10)(a) of that Article has effect as if for the words from “the date” to “the regulations” there were substituted “20th October 2008”.
- (2) In the case of the first set of regulations made under paragraph (8) of Article 39B, paragraph (10)(a) of that Article has effect as if for the words from “the date” to “the regulations” there were substituted “20th October 2008.”.

## SCHEDULE 9

Section 104.

## INTEREST ON LATE PAYMENT OF LEVIES

*The Pension Schemes (Northern Ireland) Act 1993 (c. 49)*

1. After section 170 of the Pension Schemes Act (levies towards certain expenditure) insert—

**“170A Levies: interest for late payment**

(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a levy imposed under section 170(1).

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this section is a debt due from the person to the Department.

(4) Interest is recoverable by the Department or, if the Department so determines, by the Regulatory Authority on the Department’s behalf.

(5) Without prejudice to the generality of subsection (1), regulations under this section may include provision relating to—

- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.”.

*The Pensions (Northern Ireland) Order 2005 (NI 1)*

2. The 2005 Order is amended as follows.

3. After Article 103 (PPF administration levy) insert—

**“Administration levy: interest for late payment**

**103A.**—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of an administration levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Department.

(4) Interest is recoverable by the Department or, if the Department so determines, by the Regulator on the Department’s behalf.

(5) Without prejudice to the generality of paragraph (1), regulations under this Article may include provision relating to—

- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.”.

4. After Article 164 (calculation, collection and recovery of levies) insert—

**“Pension protection levy: interest for late payment**

**164A.**—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a pension protection levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Board.

(4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf.

(5) Without prejudice to the generality of paragraph (1), regulations under this Article may include provision relating to—

- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.”.

5. After Article 171 (fraud compensation levy) insert—

**“Fraud compensation levy: interest for late payment**

**171A.**—(1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a fraud compensation levy.

(2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.

(3) Interest payable by a person by virtue of this Article is a debt due from the person to the Board.

(4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf.

(5) Without prejudice to the generality of paragraph (1), regulations under this Article may include provision relating to—

- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.”.

6. In Article 191 (the PPF Ombudsman) at the end add—

“(5) Where regulations make provision under paragraph (3), Article 103A (interest for late payment of administration levy) applies in relation to the levy as it applies in relation to an administration levy.”.

## SCHEDULE 10

Section 116.

## REPEALS

## PART 1

## PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

Short Title	Extent of repeal
The <a href="#">Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11)</a>	<p>In Article 5–</p> <ul style="list-style-type: none"> <li>(a) paragraphs (2) to (4);</li> <li>(b) in paragraph (5), “fourth” and the words from “of his” to “qualifying scheme”;</li> <li>(c) paragraph (6);</li> <li>(d) paragraph (8)(a)(ii) and (iii);</li> <li>(e) in paragraph (9), the definitions of “qualifying scheme” and “relevant employees”.</li> </ul> <p>Article 8(1), (2) and (4).</p> <p>In Article 9(1), the definition of “designated scheme”.</p>
The <a href="#">Pensions (Northern Ireland) Order 2005 (NI 1)</a>	In Article 75(1)(a) at the end of head (iii), the word “or”.
The <a href="#">Pensions Act (Northern Ireland) 2008 (c. 1)</a>	Section 16.

## PART 2

## SAFEGUARDED RIGHTS

Short Title	Extent of repeal
The <a href="#">Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)</a>	In Schedule 4B, in paragraph 12, the definition of “assumed surplus”.
The <a href="#">Pension Schemes (Northern Ireland) Act 1993 (c. 49)</a>	<p>In section 46(1)–</p> <ul style="list-style-type: none"> <li>(a) paragraph (a)(iii);</li> <li>(b) in paragraph (b), the words “, or safeguarded,”.</li> </ul> <p>In section 48–</p>

Short Title	Extent of repeal
	<ul style="list-style-type: none"> <li>(a) subsection (2A)(c);</li> <li>(b) in subsection (3)(b), the words “, or safeguarded,” (in both places).</li> </ul> <p>Part 3A.</p> <p>In section 176(1), the definition of “safeguarded rights”.</p>
The Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11)	<p>Article 33.</p> <p>In Article 37—</p> <ul style="list-style-type: none"> <li>(a) paragraph (2)(b) and the word “and” preceding it;</li> <li>(b) in paragraph (3), in the definition of “relevant pension credit”, the words “or, as the case may be, the safeguarded rights”;</li> <li>(c) in that paragraph, the definition of “safeguarded rights”.</li> </ul> <p>In Schedule 5, paragraph 7(2) and (6).</p> <p>In Schedule 9—</p> <ul style="list-style-type: none"> <li>(a) paragraphs 18 and 19;</li> <li>(b) paragraph 30(b).</li> </ul>
The Proceeds of Crime Act 2002 (c. 29)	In Schedule 11, paragraph 23(5).
The Pensions Act (Northern Ireland) 2008 (c. 1)	<p>In Schedule 4—</p> <ul style="list-style-type: none"> <li>(a) paragraph 27;</li> <li>(b) paragraph 39.</li> </ul>

## PART 3

### CONTRACTING-OUT: ABOLITION OF ALL PROTECTED RIGHTS

Short Title	Extent of repeal
The Pension Schemes (Northern Ireland) Act 1993 (c. 49)	<p>Section 6.</p> <p>Sections 21A to 23A.</p> <p>Section 26.</p> <p>Sections 28 and 28A.</p> <p>Section 29A.</p>

These repeals have effect in accordance with section 85.

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*Status: This is the original version (as it was originally enacted).*

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Short Title	Extent of repeal
The <a href="#">Pensions (Northern Ireland) Order 1995 (NI 22)</a>	In Schedule 3, paragraph 18.
The <a href="#">Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11)</a>	Article 29(2).
The <a href="#">Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (SI 1999/671)</a>	In Schedule 1, paragraphs 39, 45 and 47.
The <a href="#">Proceeds of Crime Act 2002 (c. 29)</a>	In Schedule 11, paragraph 23(2).
The <a href="#">Pensions Act (Northern Ireland) 2008 (c. 1)</a>	In Schedule 4, paragraphs 5, 8 to 10 and 12 to 14.
These repeals have effect in accordance with section 85.	

## PART 4

### PENSION COMPENSATION

Short Title	Extent of repeal
The <a href="#">Matrimonial Causes (Northern Ireland) Order 1978 (NI 15)</a>	In Article 27E(9), the definition of “PPF compensation”.  In Article 33(2)(dd), at the end of head (i), the word “or”.
The <a href="#">Civil Partnership Act 2004 (c. 33)</a>	In Schedule 15— (a) at the end of paragraph 15(a)(ii), the word “or”; (b) at the end of paragraph 16(1)(b), the word “or”; (c) at the end of paragraph 18(1)(b), the word “or”; (d) paragraph 25(3); (e) at the end of paragraph 45(1)(f)(i), the word “or”.  In Schedule 17, in paragraph 10(9)(c), the words “Part 6 of”.

## PART 5

### MISCELLANEOUS

Short Title	Extent of repeal
The <a href="#">Social Security Pensions (Northern Ireland) Order 1975 (NI 15)</a>	In Article 69(5ZA) the words from “but this paragraph” to the end.
The <a href="#">Pensions (Northern Ireland) Order 1995 (NI 22)</a>	In Article 7(3), at the end of sub-paragraph (b), the word “or”.  In Article 54(3), the definition of “revaluation percentage”.
The Tax Credits Act <a href="#">2002 (c. 21)</a>	In Schedule 3, paragraph 41.
The <a href="#">Pensions (Northern Ireland) Order 2005 (NI 1)</a>	In Article 34(5)(a)(ii), the words “otherwise than in good faith,”.  Article 294.
The repeal in Article 34(5)(a)(ii) of the 2005 Order has effect in accordance with paragraph 15(1) of Schedule 8.	

## PART 6

### ADDITIONAL PENSIONS

Short Title	Extent of repeal
The Social Security Contributions and Benefits (Northern Ireland) Act <a href="#">1992 (c. 7)</a>	Section 44B(7)(a).  Section 121(7) and (8).  In section 172(2)(c), “121(8)”.  In Schedule 1, in paragraph 1(3)— (a) paragraph (ba), (b) in paragraph (c), the words “if some of the aggregated earnings are attributable to COSRS service,”, and
1. The repeals of— a. section 37(1ZA) of the Pension Schemes Act, b. The definition of “the flat rate introduction year” in section 176(1) of that Act, and c. paragraph 34 of Schedule 1 to the Pensions Act (Northern Ireland) <a href="#">2008 (c. 1)</a>	have effect in relation to 2009–10 and subsequent tax years.
2. The repeals of— 1. paragraph 2(6) of Schedule 3 to the Pension Schemes Act, and 2. paragraph 36 of Schedule 1 to the Pensions Act (Northern Ireland) <a href="#">2008</a>	have effect in relation to payments made in a tax week falling in 2009–10 or any subsequent tax year.



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*Status: This is the original version (as it was originally enacted).*

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Short Title	Extent of repeal
	<p>(c) in paragraph (ca), the words “if paragraph (c) applies,” and “, when added to the APPS earnings or the part attributable to COMPS service (or both),”.</p> <p>In Schedule 4A—</p> <p>(a) in paragraph 2, in sub-paragraph (4A) in table 2A the words “but not exceeding AUEL”, and sub-paragraph (6)(d),</p> <p>(b) in paragraph 5(4A), in table 4A the words “but not exceeding AUEL”,</p> <p>(c) in paragraph 7(4A), in table 6A the words “but not exceeding AUEL”, and</p> <p>(d) paragraph 8(4)(d).</p> <p>In Schedule 4B—</p> <p>(a) in paragraph 5(a), the words “but which does not exceed the UAP”,</p> <p>(b) in paragraph 9(2)(a), the words “but which does not exceed the UAP”,</p> <p>(c) in paragraph 10(1)(a), the words “but which does not exceed the UAP”, and</p> <p>(d) in paragraph 12, the definition of “the UAP”.</p>
The Pension Schemes (Northern Ireland) Act 1993 (c. 49)	<p>Section 37(1ZA).</p> <p>In section 176(1), the definition of “the flat rate introduction year”.</p> <p>In Schedule 3, paragraph 2(6).</p>
1. The repeals of—	
a. section 37(1ZA) of the Pension Schemes Act,	
b. The definition of “the flat rate introduction year” in section 176(1) of that Act, and	
c. paragraph 34 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1)	
have effect in relation to 2009–10 and subsequent tax years.	
2. The repeals of—	
1. paragraph 2(6) of Schedule 3 to the Pension Schemes Act, and	
2. paragraph 36 of Schedule 1 to the Pensions Act (Northern Ireland) 2008,	
have effect in relation to payments made in a tax week falling in 2009–10 or any subsequent tax year.	

Short Title	Extent of repeal
The Pensions Act (Northern Ireland) 2008 (c. 1)	Section 8(2)(c) and (5). Section 10(3). In Schedule 1, paragraphs 32(a), 34 and 36. In Schedule 2, paragraph 4(2).
1. The repeals of— a. section 37(1ZA) of the Pension Schemes Act, b. The definition of “the flat rate introduction year” in section 176(1) of that Act, and c. paragraph 34 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1), have effect in relation to 2009–10 and subsequent tax years.	
2. The repeals of— 1. paragraph 2(6) of Schedule 3 to the Pension Schemes Act, and 2. paragraph 36 of Schedule 1 to the Pensions Act (Northern Ireland) 2008, have effect in relation to payments made in a tax week falling in 2009–10 or any subsequent tax year.	