
STATUTORY INSTRUMENTS

1989 No. 1342 (N.I. 13)

NORTHERN IRELAND

The Social Security(Northern Ireland) Order 1989

Made - - - - 2nd August 1989

Laid before Parliament 22nd August 1989

Coming into operation in accordance with Article 1

At the Court at Buckingham Palace, the 2nd day of August 1989

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the Social Security Act 1989⁽¹⁾:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974⁽²⁾ (as modified by section 32 of the said Act of 1989) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title, citation and commencement

1.—(1) This Order may be cited as the Social Security (Northern Ireland) Order 1989; and this Order may be cited together with the Social Security (Northern Ireland) Acts 1975 to 1988 as the Social Security (Northern Ireland) Acts 1975 to 1989.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) The following provisions of this Order shall come into operation on the twenty-first day after the day on which this Order is made—

(a) this Article and Article 2;

(1) 1989 c. 24

(2) 1974 c. 28

- (b) Articles 4 to 6, 8, 16 to 22, 29, 30 and 31(3), subject in the case of Article 21 to paragraph (11) of that Article;
- (c) Schedule 2;
- (d) paragraphs 1, 12 and 13 of Schedule 3 (and Article 23 so far as relating to those paragraphs);
- (e) paragraphs 2 to 4, 9 and 14 to 18 of Schedule 6 (and Article 26 so far as relating to those paragraphs);
- (f) paragraphs 1 to 7 and 12 of Schedule 7 (and Article 27 so far as relating to those paragraphs);
- (g) paragraphs 1, 4 to 6, 8 to 12, 16 and 17 of Schedule 8 (and Article 31 so far as relating to those paragraphs);
- (h) the repeals in Schedule 9 to the extent that they are consequential on any provision specified in sub-paragraphs (a) to (g) (and Article 31 so far as relating to those repeals).

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽³⁾ shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

- “Commissioner” has the same meaning as it has in the principal Act;
- “the Department” means the Department of Health and Social Services;
- “the Old Cases Act” means the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975⁽⁴⁾;
- “the 1982 Order” means the Social Security (Northern Ireland) Order 1982⁽⁵⁾;
- “the 1986 Order” means the Social Security (Northern Ireland) Order 1986⁽⁶⁾;
- “the Pensions Order” means the Social Security Pensions (Northern Ireland) Order 1975⁽⁷⁾;
- “prescribed” means prescribed by regulations;
- “the principal Act” means the Social Security (Northern Ireland) Act 1975⁽⁸⁾;
- “regulations” means regulations made by the Department;
- “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) In this Order references to Northern Ireland include references to the territorial waters of the United Kingdom adjacent to Northern Ireland.

Contributions

Amendments relating to primary Class 1 contributions

3.—(1) In section 4 of the principal Act, for subsections (6) to (6B) (computation of primary Class 1 contributions) there shall be substituted the following subsections—

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- (3) 1954 c. 33 (N.I.)
 - (4) 1975 c. 17
 - (5) 1982 NI 16
 - (6) 1986 NI 18
 - (7) 1975 NI 15
 - (8) 1975 c. 15

“(6) Where a primary Class 1 contribution is payable, the amount of that contribution shall be the aggregate of—

- (a) the initial primary percentage of so much of the earnings paid in the tax week, in respect of the employment in question, as does not exceed the current lower earnings limit; and
- (b) the main primary percentage of so much of those earnings as exceeds that limit but does not exceed the upper earnings limit;

but this subsection is subject to regulations under subsection (7) below or sections 123 to 126 below and to Article 29 of the Pensions Order (contracted-out rates).

(6A) For the purposes of this Act the primary percentages shall be as follows—

- (a) the initial primary percentage shall be 2 per cent.; and
- (b) the main primary percentage shall be 9 per cent.;

but the rates of those primary percentages are subject to alteration under section 120 below.

(6B) In the case of earners paid otherwise than weekly, any reference in subsection (6) above to the current upper, or (as the case may be) lower, earnings limit shall be taken as a reference to the prescribed equivalent of that limit.”.

(2) In section 128 of that Act (destination of contributions), in paragraphs (a) and (i) of subsection (4) (“appropriate health service allocation” and “appropriate employment protection allocation”, when in force, to include specified percentage of earnings in respect of which primary Class 1 contributions were paid) after the word “paid” there shall be inserted the words “at the main primary percentage rate”.

(3) In Schedule 17 to that Act (glossary of expressions) there shall be inserted at the appropriate places—

““Initial primary percentage”; “main primary percentage”; “primary percentage”.	See section 4(6) and (6A). Construe “initial primary percentage rate” and “main primary percentage rate” as references to the percentage rates from time to time specified in section 4(6A)(a) or (b) as the initial or, as the case may be, main primary percentage.”
““Main primary percentage”.	See “initial primary percentage”; “main primary percentage”; “primary percentage” above.”
““Primary percentage”.	See “initial primary percentage”; “main primary percentage”; “primary percentage” above.”

Repayment of contributions where earnings become repayable

4. In Schedule 1 to the principal Act (contributions: supplementary provisions) in paragraph 6(1) (matters for which regulations may provide) after head (g) there shall be inserted the following head—

- “(gg) for the repayment, in prescribed cases, of the whole or a prescribed part of any contributions paid by reference to earnings which have become repayable;”.

Abolition of Consolidated Fund supplement to contributions

5. No payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act shall be made after 31st March 1989 in respect of any contributions whether paid before, on or after that date.

Earnings factors

6.—(1) Section 13 of the principal Act (contribution conditions and earnings factors) shall be amended in accordance with paragraphs (2) to (4).

(2) In subsection (5) (manner in which tables and rules are to be drawn up) after the words “so that in general—” there shall be inserted the following paragraph—

“(a) for any tax year beginning on or after 6th April 1987, the amount of earnings on which primary Class 1 contributions have been paid or treated as paid gives rise, subject to subsection (5A) below, to an earnings factor for that year equal or approximating to the amount of those earnings; and”.

(3) After subsection (5A) there shall be inserted the following subsection—

“(5AA) Regulations may impose limits with respect to the earnings factors which a person may have or be treated as having in respect of any one tax year.”.

(4) After subsection (5B) (duty to maintain and retain records) there shall be inserted the following subsection—

“(5C) Where the Department is satisfied that records of earnings relevant for the purpose of calculating a person’s earnings factors for a tax year beginning on or after 6th April 1987 have not been maintained or retained or are otherwise unobtainable then, for the purpose of determining those earnings factors, it may—

- (a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of that person’s earnings on which primary Class 1 contributions have been paid or treated as paid, or
- (b) take the amount of those earnings to be such sum as it may specify in the particular case.”.

(5) The Earnings Factor Regulations, as in operation for the purpose of determining earnings factors for the tax years beginning with 6th April 1985 and 6th April 1986, shall have effect, and be taken always to have had effect, with the substitution in paragraph 3 of Schedule 1 (which, as amended by regulation 2(3) of the Amending Regulations, provided in certain cases for the aggregation of separate contributions) for the words from “where the values” to “those sums” of the words—

“where, in the case of any two or more separate sums—

- (a) the values to be accorded to F (apart from this paragraph) would fall to be ascertained under the same head of paragraph 2(e) above, and
- (b) the values to be so accorded to G would fall to be ascertained under the same head of paragraph 2(f) above,

those sums”.

(6) In paragraph (5)—

“the Earnings Factor Regulations” means the Social Security (Earnings Factor) Regulations (Northern Ireland) 1979(9); and

“the Amending Regulations” means the Social Security (Earnings Factor) (Amendment) Regulations (Northern Ireland) 1985⁽¹⁰⁾.

(7) The amendment by paragraph (5) of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision, whether in relation to the tax years there mentioned or otherwise.

(8) The Social Security (Earnings Factor) (Amendment) Regulations (Northern Ireland) 1988⁽¹¹⁾ shall have effect, and be deemed always to have had effect, as if the amendment made by paragraph (3) had come into operation before the making of those regulations.

Liability to maintain children

Liability of parents to maintain children under the age of nineteen in respect of whom income support is paid

7.—(1) In Article 21(11) of the 1986 Order (definitions for Part III) for the definition of “child” there shall be substituted the following definition—

“ “child”, subject to Article 27(3)(d), means a person under the age of 16;”.

(2) In Article 27(3) of that Order (person liable to maintain spouse and children, etc.)—

- (a) in sub-paragraph (a), for the words “his children” there shall be substituted the words “any children of whom he is the father”;
- (b) in sub-paragraph (b), for the words “her children” there shall be substituted the words “any children of whom she is the mother”; and
- (c) after sub-paragraph (c) there shall be added the words
“and
- (d) “child” includes a person who has attained the age of 16 but not the age of 19 and in respect of whom either parent, or some person acting in the place of either parent, is receiving income support..”

(3) In Article 27(4) of that Order (application to illegitimate children)—

- (a) in sub-paragraph (a), for the words “a man’s children” there shall be substituted the words “children of whom the man is the father”; and
- (b) in sub-paragraph (b), for the words “a woman’s children” there shall be substituted the words “children of whom the woman is the mother”.

Benefits under the principal Act

Benefits for women widowed before 11th April 1988

8.—(1) In the case of a widow whose late husband died before 11th April 1988 and who either—

- (a) was over the age of 40 but under the age of 55 at the time of her husband’s death, or
- (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother’s allowance,

section 26 of the principal Act (widow’s pension) shall have effect, and be taken always to have had effect, as if Article 37(3) of the 1986 Order (which substituted “45” for “40”, and “55” for “50”, in subsections (1) and (2)) had never come into operation.

⁽¹⁰⁾ S.R. 1985 No. 263

⁽¹¹⁾ S.R. 1988 No. 73

(2) The Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1987⁽¹²⁾ shall have effect, and be taken always to have had effect, with the addition at the end of regulation 3 (transitional provision for widowed mother's allowance where husband died before 11th April 1988) of the following paragraphs—

“(3) In determining whether a widow—

(a) whose late husband died on or after 7th October 1987 and before 11th April 1988, and

(b) who became entitled to a widow's allowance on his death,

is also entitled, after the cessation of that allowance, to a widowed mother's allowance for any period beginning on or after 11th April 1988, regulation 16(1) of the principal regulations shall apply as if regulation 2(6) above had not been made.

(4) In determining whether a widow—

(a) whose late husband died before 11th April 1988,

(b) who immediately before that date was entitled to a widowed mother's allowance otherwise than by virtue of regulation 16(1) of the principal regulations, and

(c) who would, apart from this paragraph, cease to be entitled to that allowance on or after that date,

is entitled to such an allowance for any period beginning on or after that date, that regulation shall apply as if regulation 2(6) above had not been made.”.

(3) The Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1989⁽¹³⁾ shall have effect, and be taken always to have had effect, with the insertion after regulation 3 (which made amendments concerning widowed mother's allowance to regulation 4B of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977⁽¹⁴⁾) of the following regulation—

“**3A.** The amendment made by regulation 3(a) above shall not have effect in relation to a widow whose late husband died before 11th April 1988.”.

(4) In any case where—

(a) a claim for a widow's pension or a widowed mother's allowance is made, or treated as made, before the commencement of this Article, and

(b) the Department has made a payment to or for the claimant on the ground that, if the claim had been received immediately after the commencement of this Article, she would have been entitled to that pension or allowance, or entitled to it at a higher rate, for the period in respect of which the payment is made,

the payment so made shall be treated as a payment of that pension or allowance; and, if and to the extent that an award of the pension or allowance, or an award at a higher rate, is made for the period in respect of which the payment was made, the payment shall be treated as made in accordance with that award.

(5) Where, apart from section 154A of the principal Act (making of claim a condition of entitlement), a widow falling within paragraph (1) would be entitled to a widow's pension for any period beginning on or after 11th April 1988, then, notwithstanding anything in that section, she shall be entitled to that pension for that period if she has made a claim for it before the end of the period of twelve months beginning with the commencement of this Article.

⁽¹²⁾ S.R. 1987 No. 404

⁽¹³⁾ S.R. 1989 No. 103

⁽¹⁴⁾ S.R. 1977 No. 74

(6) Where a widow's late husband died on or after 7th October 1987 and before 11th April 1988 and, apart from section 154A of the principal Act, she would have become entitled to a widow's allowance on his death, then if either—

- (a) she was over the age of 40 but under the age of 55 at the time of his death, or
- (b) she would, apart from that section, have been entitled to a widowed mother's allowance on the cessation of her entitlement to the widow's allowance,

she shall, notwithstanding anything in that section, be entitled to the widow's allowance (and, accordingly, in a case falling within sub-paragraph (b), to the widowed mother's allowance) if she has made a claim, or is treated as having made a claim, for it before the end of the period of twelve months beginning with the commencement of this Article.

(7) Where in consequence of any of the amending provisions an adjudicating authority has decided before the commencement of this Article that a widow whose husband died before 11th April 1988 either—

- (a) is not entitled to a benefit under section 25 or 26 of the principal Act, or
- (b) is entitled to such a benefit at a particular rate,

an adjudication officer may review that decision, notwithstanding anything in section 104 of the principal Act.

(8) In any case where—

- (a) it is determined on such a review that the widow in question was entitled to a benefit under section 25 or 26 of the principal Act, or was entitled to such a benefit at a higher rate, and
- (b) the application for the review was made before the end of the period of twelve months beginning with the commencement of this Article,

the decision on the review may take effect on 11th April 1988 or any later date, notwithstanding any statutory provision restricting the payment of any benefit or increase of benefit to which a person would otherwise be entitled by reason of a review in respect of any period before the review.

(9) Subsection (4) of section 104 (appeals from reviews) of the principal Act shall apply in relation to a review under this Article as it applies in relation to a review under that section.

(10) In this Article—

“adjudicating authority” means—

- (a) an adjudication officer;
- (b) a social security appeal tribunal;
- (c) a Commissioner; and

“the amending provisions” are—

- (a) Article 37(3) of the 1986 Order; and
- (b) regulation 2(6) of the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1987⁽¹⁵⁾ (deemed entitlement to child allowance for purposes of widowed mother's allowance, etc.).

(11) The amendment by this Article of provisions contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending those provisions.

(12) Nothing in this Article shall be taken to prejudice section 28 or 29 of the Interpretation Act (Northern Ireland) 1954⁽¹⁶⁾ (effect of repeals, substitutions, etc.).

⁽¹⁵⁾ S.R. 1987 No. 404

⁽¹⁶⁾ 1954 c. 33 (N.I.)

Abolition of earnings rule etc.

9.—(1) In section 30 of the principal Act, subsection (1) (the earnings rule) shall cease to have effect.

(2) In section 28(1)(a) of that Act (conditions of entitlement to Category A retirement pension) the words “and has retired from regular employment” shall cease to have effect.

(3) In section 29 of that Act (woman’s Category B retirement pension)—

- (a) in subsections (2) and (3) (first and second cases of entitlement) in paragraph (a), for the words “both of them have retired from regular employment” there shall be substituted the words “has become entitled to a Category A retirement pension”; and
- (b) in subsection (5), paragraph (a) (requirement, in fourth such case, to have retired from regular employment) shall cease to have effect.

(4) For Article 14 of the Pensions Order (deferred retirement) there shall be substituted the following Article—

“Increase of retirement pension where entitlement is deferred

14.—(1) Where a person’s entitlement to a Category A or Category B retirement pension is deferred, Schedule 1 shall have effect for increasing the rate of his pension.

(2) For the purposes of this Order and the principal Act, a person’s entitlement to a Category A or Category B retirement pension is “deferred” if and so long as he does not become entitled to that pension by reason only—

- (a) that he has not satisfied the conditions of section 154A of the principal Act (requirement to claim); or
- (b) that, in the case of a woman’s Category B retirement pension by virtue of her husband’s contributions, her husband has not satisfied those conditions with respect to his Category A retirement pension;

and, in relation to any such pension, “period of deferment” shall be construed accordingly.”.

(5) Paragraph (1) affects the rate of pension to which a person is entitled for the week in which that paragraph comes into operation as well as any subsequent week (“week” having the same meaning in this paragraph as it had in the proviso to the said section 30(1) immediately before its repeal).

(6) The statutory provisions mentioned in Schedule 1 shall have effect with the amendments there specified.

Mobility allowance: increase of age limit to 80 years

10.—(1) In section 37A of the principal Act (mobility allowance), in paragraphs (a) and (aa) of subsection (4) and in subsection (5A) (each of which refers to the age of 75) for “75” there shall be substituted “80”.

(2) For subsection (5B) of that section there shall be substituted the following subsection—

“(5B) Where, before the coming into force of this subsection, a person has been awarded a mobility allowance for a specified period ending with—

- (a) the date on which he will attain pensionable age, or
- (b) the date on which he will attain the age of 75,

that award shall have effect as if it referred instead to a period ending with the date on which he will attain the age of 80.”.

Extension to personal pensions of occupational pension provisions relating to the abatement of unemployment benefit and the meaning of “earnings”

11.—(1) In Article 5 of the Social Security (No. 2) (Northern Ireland) Order 1980⁽¹⁷⁾ (abatement of unemployment benefit on account of payments of occupational pensions) in paragraphs (1), (2) and (4) for the words “occupational pension” in each place where they occur there shall be substituted the words “occupational or personal pension”.

(2) In paragraph (3) of that Article (definitions) for the definition of “payments by way of occupational pension” there shall be substituted the following definition—

““payments by way of occupational or personal pension” means, in relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him—

- (a) out of money provided wholly or partly by the employer or under arrangements made by the employer; or
- (b) out of money provided under an enactment or instrument having the force of law in any part of the United Kingdom or elsewhere; or
- (c) under a personal pension scheme as defined in Article 2(2) of the Social Security (Northern Ireland) Order 1986; or
- (d) under a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988⁽¹⁸⁾; or
- (e) under a personal pension scheme approved under Chapter IV of that Part of that Act, and such other payments as are prescribed.”.

(3) In sections 47B and 66A of the principal Act (earnings to include occupational pensions for the purposes of certain benefits) for the words “occupational pension” in each place where they occur there shall be substituted the words “occupational or personal pension”.

(4) In Schedule 17 of that Act (glossary of expressions) in the entry relating to “payments by way of occupational pension” for the words “occupational pension” there shall be substituted the words “occupational or personal pension”.

Unemployment benefit: requirement to seek employment actively

12.—(1) Section 17 of the principal Act (determination of days for which benefit is payable) shall have effect with the amendments made by paragraphs (2) to (4), which are made for the purpose of requiring a claimant for unemployment benefit to show that he is actively seeking employment.

(2) In subsection (1)(a)(i) (days not to be treated as days of unemployment unless certain conditions are fulfilled) after the words “available to be employed in employed earner’s employment” there shall be inserted the words “and that day falls in a week in which he is, or is deemed in accordance with regulations to be, actively seeking such employment”.

(3) In subsection (2) (regulations) after paragraph (a) there shall be inserted the following paragraph—

- “(aa) make provision with respect to—
 - (i) steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner’s employment in that week;
 - (ii) the meaning of “week” in subsection (1)(a)(i) above or in any other provision relating to a person’s actively seeking employed earner’s employment;”.

⁽¹⁷⁾ 1980 NI 13

⁽¹⁸⁾ 1988 c. 1

(4) After subsection (2A) of that section (determination of actual availability for employment on review of determination of deemed availability) there shall be inserted the following subsection—

“(2B) Where it has been determined that a person is to be deemed in accordance with regulations to be actively seeking employed earner’s employment in any week, the question of his actually doing so in that week may be subsequently determined on a review of the determination as to his deemed doing so.”.

(5) In section 104 of that Act (review of decisions), in subsection (1)(d), after the words “section 17(2A)” there shall be inserted the words “or (2B)”.

Requalification for unemployment benefit

13. In section 18 of the principal Act, for subsection (2) (requalification for unemployment benefit) there shall be substituted the following subsections—

“(2) A person who has exhausted his right to unemployment benefit requalifies for it on the next occasion when, having again been in employment as an employed earner, he makes a claim for that benefit in circumstances such that the requalification conditions are satisfied with respect to each of at least 13 weeks in the period of 26 weeks immediately preceding—

- (a) the day on which the claim is made, or
- (b) if he would not requalify by reference to that day, his first day of unemployment since he was last in employment as an employed earner.

(2A) For the purposes of subsection (2) above the requalification conditions are satisfied with respect to any week if—

- (a) the person in question has been in employment as an employed earner in that week;
- (b) he has worked in such employment for at least 16 hours in that week; and
- (c) the week begins after the last day for which he was entitled to unemployment benefit.

(2B) Subsection (2) above shall have effect in prescribed cases with the substitution for the reference to 26 weeks of a reference to such longer period as may be prescribed.”.

Disqualification for unemployment benefit

14.—(1) In subsection (1) of section 20 of the principal Act (disqualifications, etc.)—

- (a) at the beginning, there shall be inserted the words “Subject to section 20A below”;
- (b) in paragraphs (b), (c) and (d), for the words “suitable employment” there shall be substituted the word “employ-ment”;
- (c) in paragraphs (c) and (g), immediately before the word “neglected” there shall be inserted the words “without good cause”.

(2) In subsection (1A) of that section the words “longer or” shall cease to have effect.

(3) For subsection (4) of that section (meaning of “suitable employment”) there shall be substituted the following subsection—

“(4) For the purposes of subsection (1) above, regulations may—

- (a) prescribe matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
- (b) prescribe circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission;

but, subject to any such regulations, in determining for the purposes of that subsection whether a person does or does not have good cause for any act or omission, there shall be disregarded any matter relating to the level of remuneration in the employment in question.”.

(4) After that section there shall be inserted the following section—

“Exemptions from disqualification for unemployment benefit.

20A.—(1) Nothing in section 20 above or in regulations under that section shall be taken to disqualify a person for receiving unemployment benefit by reason only of his refusal—

- (a) to seek or accept employment in a situation which is vacant in consequence of a stoppage of work due to a trade dispute; or
- (b) to seek or accept during the permitted period any employment other than employment in his usual occupation at a level of remuneration not lower than he is accustomed to receive.

(2) Regulations shall make provision for the purpose of enabling any person of a prescribed description to accept any employed earner’s employment without being disqualified under—

- (a) subsection (1)(a) of section 20 above, so far as it relates to a person who voluntarily leaves such employment without just cause, or
- (b) subsection (1)(c) of that section,

should he leave that employment voluntarily and without just cause at any time after the end of the 6th week, but not later than the end of the 12th week, of a trial period.

(3) In this section—

“permitted period” in relation to any person, means such period, whether expired or not, as may be determined in accordance with regulations by an adjudication officer on the submission of the question whether that person is disqualified under section 20 above for receiving unemployment benefit; and any such regulations may prescribe—

- (a) the day on which any such period shall be regarded as having commenced in any case;
- (b) the shortest and longest periods which may be so determined in any case; and
- (c) criteria to which the adjudication officer is to have regard in determining the permitted period in any case; and

“trial period” means a period of 12 weeks beginning with the commencement of the employment in question; but regulations may—

- (a) make provision for the purpose of determining the day on which a person’s employment is to be regarded as commencing; and
- (b) provide that, for the purpose of determining the time at which the 6th or 12th week of a trial period ends, prescribed periods may be disregarded in prescribed circumstances.”.

(5) In Schedule 17 to that Act (glossary of expressions) in the second column of the entry relating to “employment”, the following paragraph shall be added at the end—

“Regulations may make provision modifying the meaning of “employment” for the purposes of any provision of this Act.”.

(6) Nothing in paragraph (2) shall affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order (Northern Ireland) 1988⁽¹⁹⁾ (which substituted the period of 26 weeks for the period of 13 weeks in section 20(1) of the principal Act).

*Income-related benefits***Income support and unemployment**

15.—(1) In Article 21 of the 1986 Order (income-related benefits) in paragraph (3)(d)(i) (availability for employment as a condition for income support) after the words “available for” there shall be inserted the words “, and actively seeking,”.

(2) In paragraph (12) of that Article, for sub-paragraph (d) (regulations defining availability for employment etc.) there shall be substituted the following sub-paragraph—

- “(d) as to circumstances in which a person is or is not to be treated as—
- (i) engaged or normally engaged in remunerative work;
 - (ii) available for employment; or
 - (iii) actively seeking employment;”.

Housing benefit to take the form of payments or reductions

16.—(1) In Article 29 of the 1986 Order (arrangements for housing benefit) after paragraph (1) there shall be inserted the following paragraph—

“(1A) The rebates and allowances referred to in paragraph (1) may take any of the following forms, that is to say—

- (a) a payment or payments by the Executive or the Department of the Environment, as the case may be, to the person entitled to the benefit;
- (b) a reduction in the amount of any payments which that person is liable to make to the Executive or the Department of the Environment, as the case may be, by way of rent or rates; or
- (c) such a payment or payments and such a reduction;

and in any statutory provision (whenever passed or made) “pay”, in relation to housing benefit, includes discharge in any of those forms.”.

(2) Paragraph (1) shall be deemed to have come into operation on 1st April 1988.

Housing benefit grant

17. In Article 31 of the 1986 Order for paragraph (4) (conditions for payment of grant) there shall be substituted the following paragraphs—

“(4) A grant under this Article shall be payable by the Department at such time and in such manner as the Department may think fit.

(5) Unless the Department otherwise determines, a grant under this Article shall not be payable until the Executive has made a claim for it in such form as the Department may determine.

(6) The Department may withhold from the Executive so much of any grant under this Article as it thinks fit until either—

- (a) the Executive has supplied it with prescribed particulars relating to its claim for a grant and complied with prescribed conditions as to records, certificates, audit or otherwise; or
- (b) the Department is satisfied that there is a good reason for the Executive’s failure to supply those particulars or comply with those conditions.

(7) If the Executive fails to make a claim for a grant within such period as the Department considers reasonable, it may withhold from the Executive such part of the grant as it thinks fit for so long as it thinks fit.

(8) Where the amount of the grant paid to the Executive for any year is found to be incorrect, the amount payable to it for any subsequent year may be adjusted for the purpose of rectifying that mistake in whole or in part.”.

Expenses in making transitional payments relating to income support and housing benefit

18.—(1) Any expenses of the Department or the Department of the Environment in making payments to persons falling within paragraph (2) or (3) may be paid out of money appropriated by Measure.

(2) A person falls within this paragraph if—

- (a) he was entitled to supplementary benefit immediately before 11th April 1988, but
- (b) he did not become entitled to income support in respect of the week beginning with that day.

(3) A person falls within this paragraph if he was entitled to any one or more of the former housing-related benefits in respect of a qualifying week but either—

- (a) he did not become entitled to housing benefit under Part III of the 1986 Order in respect of the commencement week, or
- (b) the amount of any such housing benefit to which he became entitled in respect of that week was less than the amount of the former housing-related benefits to which he had been entitled in respect of the qualifying week.

(4) In this Article—

“commencement day” means the day on which the new provisions came into operation in the case of the person in question (1st or 4th April 1988, according to the circumstances);

“commencement week”, in relation to any person, means the week beginning with the commencement day in his case;

“the former housing-related benefits” means—

- (a) rent rebates, rate rebates and rent allowances, within the meaning of the Housing Benefits (Northern Ireland) Order 1983⁽²⁰⁾; and
- (b) housing benefit supplement;

“the new provisions” means the following provisions of Part III of the 1986 Order, so far as relating to housing benefit, that is to say, Articles 21 to 23, 29 and 30;

“qualifying week”, in relation to any person, means any week beginning on or after 21st March 1988 and ending before the commencement day in his case;

“week” means a period of 7 days.

(5) For the purposes of this Article—

- (a) a person shall be regarded as having been entitled to housing benefit supplement in respect of a week if an amount was applicable in respect of him under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983⁽²¹⁾ in respect of that week; and
- (b) the amount of housing benefit supplement to which he was entitled in respect of that week shall be taken to be an amount equal to the amount so applicable.

⁽²⁰⁾ 1983 NI 14

⁽²¹⁾ S.R. 1983 No. 61

*Up-rating***Rectification of mistakes in up-rating orders**

19.—(1) After Article 64 of the 1986 Order (up-rating of certain sums) there shall be inserted the following Article—

“Rectification of mistakes in orders under Article 64

64A. Whenever the Secretary of State makes an order under section 63A (rectification of mistakes) of the Social Security Act 1986⁽²²⁾ the Department may make a corresponding order for Northern Ireland.”.

(2) In the 1986 Order—

- (a) in paragraph (1)(b) of Article 65 (effect of alteration of rates of benefit), after the words “Article 64” there shall be inserted the words “or 64A”;
- (b) in paragraph (3) of Article 81 (orders and regulations), after sub-paragraph (c) there shall be inserted the following sub-paragraph—
“(cc) an order under Article 64A;”.

(3) In section 59B of the principal Act (retirement allowance) after subsection (5) there shall be inserted the following subsection—

“(5A) For the purpose of determining under subsection (5) above the weekly rate of retirement allowance in the case of a beneficiary who—

- (a) retires or is deemed to have retired on 10th April 1989, and
- (b) on 9th April 1989 was entitled to reduced earnings allowance at a rate which was restricted under section 59A(8) above by reference to 40 per cent. of the maximum rate of disablement pension,

it shall be assumed that the weekly rate of reduced earnings allowance to which he was entitled on 9th April 1989 was £26.96.”.

(4) Article 4 of the Social Security (Northern Ireland) Order 1988⁽²³⁾ (certain persons to be entitled to reduced earnings allowance after introduction of retirement allowance etc.) shall have effect with the amendments specified in paragraphs (5) and (6).

(5) After paragraph (4) there shall be inserted the following paragraphs—

“(4A) For the purpose of determining under paragraph (4) the weekly rate of reduced earnings allowance payable in the case of a qualifying beneficiary, it shall be assumed that the weekly rate at which the allowance was payable to him on the relevant date was—

- (a) £25.84, where that date is 10th April 1988, or
- (b) £26.96, where that date is 9th April 1989.

(4B) In paragraph (4A) “qualifying beneficiary” means a person entitled to reduced earnings allowance by virtue of paragraph (3) who—

- (a) did not attain pensionable age before 6th April 1987, or
- (b) did not retire from regular employment before that date,

and who, on the relevant date, was entitled to the allowance at a rate which was restricted under section 59A(8) of the principal Act by reference to 40 per cent. of the maximum rate of disablement pension.”.

(22) 1986 c. 50

(23) 1988 NI 2

(6) In paragraph (6) (relevant date for persons entitled to the allowance by virtue of paragraph (3) (b)) after the words “by virtue” there shall be inserted the word “only”.

(7) Paragraphs (3) to (6) shall be deemed to have come into operation on 10th April 1989.

Effect of alteration in the component rates of income support

20. After Article 65 of the 1986 Order (effect of alteration of rates of benefit) there shall be inserted the following Article—

“Effect of alteration in the component rates of income support

65A.—(1) Subject to such exceptions and conditions as may be prescribed, where—

- (a) an award of income support is in force in favour of any person (“the recipient”), and
- (b) there is an alteration in any of the relevant amounts, that is to say—
 - (i) any of the component rates of income support,
 - (ii) any of the other sums specified in regulations under Part III, or
 - (iii) the recipient’s benefit income, and
- (c) the alteration affects the computation of the amount of income support to which the recipient is entitled,

then paragraph (2) or (3) (as the case may be) shall have effect.

(2) Where, in consequence of the alteration in question, the recipient becomes entitled to an increased or reduced amount of income support (“the new amount”), then, as from the commencing date, the amount of income support payable to or for the recipient under the award shall be the new amount, without any further decision of an adjudication officer, and the award shall have effect accordingly.

(3) Where, notwithstanding the alteration in question, the recipient continues on and after the commencing date to be entitled to the same amount of income support as before, the award shall continue in force accordingly.

(4) In any case where—

- (a) there is an alteration in any of the relevant amounts, and
- (b) before the commencing date (but after that date is fixed) an award of income support is made in favour of a person,

the award either may provide for income support to be paid as from the commencing date, in which case the amount shall be determined by reference to the relevant amounts which will be in force on that date, or may provide for an amount determined by reference to the amounts in force at the date of the award.

(5) In this Article—

“alteration” means—

- (a) in relation to—
 - (i) the component rates of income support, or
 - (ii) any other sums specified in regulations under Part III,their alteration by or under any statutory provision whether or not contained in that Part; and
- (b) in relation to a person’s benefit income, the alteration of any of the applicable sums—

- (i) by any statutory provision, or
- (ii) by an order under Article 64 or 64A,

to the extent that any such alteration affects the amount of his benefit income;

“applicable sums” means sums to which an order made under Article 64 corresponding to an order made under section 63 of the Social Security Act 1986 by virtue of subsection (1) of that section may apply;

“benefit income”, in relation to any person, means so much of his income as consists of—

- (a) benefit under the benefit Acts, other than income support; or
- (b) a war disablement pension or war widow’s pension;

“the commencing date”, in relation to an alteration, means the date on which the alteration comes into operation in the case of the person in question;

“component rate”, in relation to income support, means the amount of—

- (a) any of the sums specified in regulations under Article 23(1); or
- (b) the sum referred to in Article 24(5)(b)(i) and (ii);

“relevant amounts” has the meaning given by paragraph (1)(b).”.

Information and adjudication

Unauthorised disclosure of information relating to particular persons

21.—(1) A person who is or has been employed in social security administration or adjudication is guilty of an offence if he discloses without lawful authority any information which he acquired in the course of his employment and which relates to a particular person.

(2) A person who is or has been employed in the audit of expenditure or the investigation of complaints is guilty of an offence if he discloses without lawful authority any information—

- (a) which he acquired in the course of his employment;
- (b) which is, or is derived from, information acquired or held by or for the purposes of any of the government departments or other bodies or persons referred to in Part I of Schedule 2 or in any corresponding enactment having effect in Great Britain; and
- (c) which relates to a particular person.

(3) It is not an offence under this Article—

- (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or
- (b) to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this Article to prove that at the time of the alleged offence—

- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
- (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(5) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(6) For the purposes of this Article, the persons who are “employed in social security administration or adjudication” are—

- (a) any person specified in Part I of Schedule 2 or in any corresponding enactment having effect in Great Britain;
- (b) any other person who carries out the administrative work of any of the government departments or other bodies or persons referred to in that Part of that Schedule or that corresponding enactment; and
- (c) any person who provides, or is employed in the provision of, services to any of those departments, persons or bodies;

and “employment”, in relation to any such person, shall be construed accordingly.

(7) For the purposes of paragraphs (2) and (6), any reference in Part I of Schedule 2 or any corresponding enactment having effect in Great Britain to a government department shall be construed in accordance with Part II of that Schedule or any corresponding enactment having effect in Great Britain, and for this purpose “government department” shall be taken to include the Commissioners of Inland Revenue.

(8) For the purposes of this Article, the persons who are “employed in the audit of expenditure or the investigation of complaints” are—

- (a) the Comptroller and Auditor General for Northern Ireland;
- (b) the Northern Ireland Parliamentary Commissioner for Administration;
- (c) the Northern Ireland Commissioner for Complaints;
- (d) the Comptroller and Auditor General;
- (e) the Parliamentary Commissioner for Administration;
- (f) any member of the staff of the Northern Ireland Audit Office or of the National Audit Office;
- (g) any other person who carries out the administrative work of either of those Offices, or who provides, or is employed in the provision of, services to either of them;
- (h) the Health Service Commissioner for England, Wales or Scotland; and
- (i) any officer of any of the Commissioners referred to in sub-paragraphs (b), (c), (e) or (h);

and “employment”, in relation to any such person, shall be construed accordingly.

(9) For the purposes of this Article a disclosure is to be regarded as made with lawful authority if, and only if, it is made—

- (a) in accordance with his official duty—
 - (i) by a civil servant; or
 - (ii) by a person employed in the audit of expenditure or the investigation of complaints who does not fall within paragraph (8)(g);
- (b) by any other person either—
 - (i) for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the person responsible; or
 - (ii) to, or in accordance with an authorisation duly given by, the person responsible;
- (c) in accordance with any statutory provision or order of a court;

- (d) for the purpose of instituting, or otherwise for the purposes of, any proceedings before a court or before any tribunal or other body or person referred to in Part I of Schedule 2; or
- (e) with the consent of the appropriate person;

and in this paragraph “the person responsible” means the Department, the Lord Chancellor or any person authorised by the Department or the Lord Chancellor for the purposes of this paragraph and includes a reference to “the person responsible” within the meaning of any corresponding enactment having effect in Great Britain.

(10) For the purposes of paragraph (9)(e), “the appropriate person” means the person to whom the information in question relates, except that if the affairs of that person are being dealt with—

- (a) under a power of attorney,
- (b) by a controller appointed under Article 101 of the Mental Health (Northern Ireland) Order 1986⁽²⁴⁾ or by a receiver appointed under section 99 of the Mental Health Act 1983⁽²⁵⁾,
- (c) by a Scottish mental health custodian, that is to say—
 - (i) a curator bonis, tutor or judicial factor, or
 - (ii) the managers of a hospital acting on behalf of that person under section 94 of the Mental Health (Scotland) Act 1984⁽²⁶⁾, or
- (d) by a mental health appointee, that is to say—
 - (i) a person directed or authorised as mentioned in sub-paragraph (a) of rule 38(1) of Order 109 of the Rules of the Supreme Court (Northern Ireland) 1980⁽²⁷⁾ or any similar appointee in Great Britain, or
 - (ii) a controller ad interim appointed under sub-paragraph (b) of that rule or any similar appointee in Great Britain,

the appropriate person is the attorney, controller, receiver, custodian or appointee, as the case may be, or, in a case falling within sub-paragraph (a), the person to whom the information relates.

(11) This Article shall come into operation—

- (a) on the repeal of section 2 of the Official Secrets Act 1911⁽²⁸⁾; or
- (b) in accordance with Article 1(3),

whichever is the later.

Disclosure of information by Inland Revenue for social security purposes

22. In Article 60 of the 1986 Order (information which may be disclosed by the Inland Revenue for social security purposes)—

- (a) in paragraph (1) (information obtained in connection with the assessment or collection of income tax) after the word “obtained” there shall be inserted the words “or held”; and
- (b) in paragraph (2) (which restricts the information which may be so disclosed about self-employed earners to the commencement and cessation of their trade, etc.) after the words “cessation of” there shall be inserted the words “, and employed earners engaged in,”.

⁽²⁴⁾ 1986 NI 4

⁽²⁵⁾ 1983 c. 20

⁽²⁶⁾ 1984 c. 36

⁽²⁷⁾ S.R. 1980 No. 346

⁽²⁸⁾ 1911 c. 28

Miscellaneous amendments relating to adjudication

23. The statutory provisions mentioned in Schedule 3 (which relate to adjudication) shall have effect with the amendments there specified.

Recovery from damages, etc., of sums equivalent to benefit

Recovery of sums equivalent to benefit from compensation payments in respect of accidents, injuries and diseases

24.—(1) A person (the “compensator”) making a compensation payment, whether on behalf of himself or another, in consequence of an accident, injury or disease suffered by any other person (the “victim”) shall not do so until the Department has furnished him with a certificate of total benefit and shall then—

- (a) deduct from the payment an amount, determined in accordance with the certificate of total benefit, equal to the gross amount of any relevant benefits paid or likely to be paid to or for the victim during the relevant period in respect of that accident, injury or disease;
- (b) pay to the Department an amount equal to that which is required to be so deducted; and
- (c) furnish the person to whom the compensation payment is or, apart from this Article, would have been made (the “intended recipient”) with a certificate of deduction.

(2) Any right of the intended recipient to receive the compensation payment in question shall be regarded as satisfied to the extent of the amount certified in the certificate of deduction.

(3) In this Article—

“benefit” means any benefit under—

- (a) the Social Security (Northern Ireland) Acts 1975 to 1988, or
- (b) the Old Cases Act,

and the “relevant benefits” are such of those benefits as may be prescribed for the purposes of this Article;

“certificate of total benefit” means a certificate given by the Department in accordance with Schedule 4;

“certificate of deduction” means a certificate given by the compensator specifying the amount which he has deducted and paid to the Department in pursuance of paragraph (1);

“compensation payment” means any payment falling to be made (whether voluntarily, or in pursuance of a court order or an agreement, or otherwise)—

- (a) to or in respect of the victim in consequence of the accident, injury or disease in question, and
- (b) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of that accident, injury or disease,

and includes, in particular, so much of the payment as represents reimbursement for costs incurred in procuring it, but does not include benefit or an exempt payment;

“compensator”, “victim” and “intended recipient” shall be construed in accordance with paragraph (1);

“payment” means payment in money or money’s worth;

“relevant period” means—

- (a) in the case of a disease, the period of 5 years beginning with the date on which the victim first claims a relevant benefit in consequence of the disease; or

- (b) in any other case, the period of 5 years from the day on which the accident or injury in question occurred;

but where before the end of that period the compensator makes a compensation payment in final discharge of any claim made by or in respect of the victim and arising out of the accident, injury or disease, the relevant period shall end on the date on which that payment is made whether or not any subsequent payment falls to be made in respect only of taxed costs.

- (4) For the purposes of this Article the following are the “exempt payments”—

- (a) any small payment, as defined in paragraph 4 of Schedule 4;
- (b) any payment made to or for the victim under Article 3 of the Criminal Justice (Northern Ireland) Order 1980⁽²⁹⁾;
- (c) any payment to the extent that it is made—
 - (i) in consequence of an action under the Fatal Accidents (Northern Ireland) Order 1977⁽³⁰⁾; or
 - (ii) in circumstances where, had an action been brought, it would have been brought under that Order;
- (d) without prejudice to section 6(4) of the Vaccine Damage Payments Act 1979⁽³¹⁾ (which provides for the deduction of any such payment in the assessment of any award of damages), any payment made under that Act to or in respect of the victim;
- (e) any award of compensation made to or in respect of the victim by the Secretary of State under Article 3 or Article 10 of the Criminal Injuries (Compensation) (Northern Ireland) Order 1988⁽³²⁾;
- (f) any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50 per cent. by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of—
 - (i) the accident, injury or disease suffered by the victim in question; or
 - (ii) the same or any connected accident, injury or disease suffered by another;
- (g) any payment made out of property held for the purposes of any prescribed trust (whether the payment also falls within sub-paragraph (f) or not);
- (h) any payment made to the victim by an insurance company within the meaning of the Insurance Companies Act 1982⁽³³⁾ under the terms of any contract of insurance entered into between the victim and the company before—
 - (i) the date on which the victim first claims a relevant benefit in consequence of the disease in question; or
 - (ii) the occurrence of the accident or injury in question;
- (i) any redundancy payment falling to be taken into account in the assessment of damages in respect of an accident, injury or disease.

- (5) The Department may by regulations provide that any prescribed payment shall be an exempt payment for the purposes of this Article.

(29) 1980 NI 6

(30) 1977 NI 18

(31) 1979 c. 17

(32) 1988 NI 4

(33) 1982 c. 50

(6) Except as provided by any other statutory provision, in the assessment of damages in respect of an accident, injury or disease the amount of any relevant benefits paid or likely to be paid shall be disregarded.

(7) Schedule 4 shall have effect for the purpose of supplementing the provisions of this Article; and this Article shall have effect subject to the provisions of that Schedule.

(8) This Article and that Schedule shall apply in relation to any compensation payment made after the coming into operation of this Article to the extent that it is made in respect of—

- (a) an accident or injury occurring on or after 1st January 1989; or
- (b) a disease, if the victim's first claim for a relevant benefit in consequence of the disease is made on or after that date.

Occupational and personal pensions, etc.

Equal treatment for men and women

25. Schedule 5 shall have effect for the purpose of implementing the directive of the Council of the European Communities, dated 24th July 1986(34), relating to the principle of equal treatment for men and women in occupational social security schemes, and of making additional, supplemental and consequential provision.

Miscellaneous amendments relating to pensions

26. The statutory provisions mentioned in Schedule 6 (which relate to occupational and personal pensions) shall have effect with the amendments there specified.

General and supplementary provisions

Pre-consolidation amendments

27.—(1) The statutory provisions mentioned in Schedule 7 shall have effect subject to the amendments there specified, being amendments designed to facilitate, or otherwise desirable in connection with, the consolidation of statutory provisions relating to social security or pensions.

(2) The amendment by that Schedule of any statutory provision which takes effect by virtue of any order or regulations shall not be taken to have prejudiced any power to make further orders or regulations revoking or amending that statutory provision.

Application to the Crown

28. The provisions of Article 24 and Schedule 4 shall apply in relation to the making of a compensation payment by the Crown as they apply in relation to the making of such a payment by any other compensator, within the meaning of that Article.

Financial provisions

29.—(1) There shall be paid out of the National Insurance Fund into the Consolidated Fund, at such times and in such manner as the Department of Finance and Personnel may direct, such sums as the Department may estimate (in accordance with any directions given by the Department of Finance and Personnel) to be the amount of the administrative expenses incurred by the Department under Articles 3 to 6, 8, 9, 11 to 14 and 24 excluding any category of expenses or payments which

the Department of Finance and Personnel may direct, or any statutory provision may require, to be excluded from the Department's estimates under this paragraph.

(2) Any sums paid to the Department in pursuance of Article 24 shall be paid—

- (a) into the Consolidated Fund, to the extent that the Department estimates that those sums relate to payments out of money appropriated by Measure; and
- (b) into the National Insurance Fund, to the extent that the Department estimates that they relate to payments out of that Fund.

(3) Any expenses of the Department in making payments under paragraph 4, 16 or 18 of Schedule 4 shall be paid—

- (a) out of money appropriated by Measure, to the extent that the Department estimates that those payments relate to sums paid into the Consolidated Fund; and
- (b) out of the National Insurance Fund, to the extent that the Department estimates that they relate to sums paid into that Fund.

(5) In this Article “the National Insurance Fund” means the Northern Ireland National Insurance Fund.

Regulations and orders: general provisions

30.—(1) Subject to the following provisions of this Article, subsections (1) to (3A) of section 155 of the principal Act shall apply in relation to any power conferred by any provision of this Order to make regulations or an order as they apply in relation to any power conferred by that Act to make regulations or an order, but as if for references to that Act there were substituted references to this Order.

(2) Section 156(1) of the principal Act shall apply to—

- (a) the first regulations made under section 17 of the principal Act by virtue of Article 12,
- (b) the first regulations made by virtue of Article 14,
- (c) the first regulations made under Article 21 of the 1986 Order by virtue of Article 15,
- (d) the first regulations prescribing relevant benefits for the purposes of Article 24,
- (e) the first regulations made under section 59B(7) of the principal Act (retirement allowance) by virtue of paragraph 8(6) of Schedule 1,
- (f) the first regulations made under Article 4 of the Social Security (Northern Ireland) Order 1988⁽³⁵⁾ (reduced earnings allowance, etc.) by virtue of paragraph 8(7) of Schedule 1,
- (g) the first regulations made under paragraph 4 of Schedule 4,
- (h) any regulations made under paragraph 21(2) of Schedule 4,

and any regulations contained in a statutory rule which includes any regulations to which the foregoing sub-paragraphs apply.

(3) All regulations and orders made under this Order, other than those to which paragraph (2) applies and orders under Article 1(2), shall be subject to negative resolution.

(4) Section 156(4) of the principal Act and Article 81(4) of the 1986 Order (regulations subject to negative resolution) shall not apply in relation to—

- (a) any regulations to which sub-paragraph (a), (b), (c) or (e) of paragraph (2) applies; or
- (b) any regulations contained in a statutory rule which includes any regulations to which sub-paragraph (a), (b), (c) or (e) of paragraph (2) applies.

(5) Any power to make—

- (a) regulations prescribing relevant benefits for the purposes of Article 24, or
 - (b) regulations under paragraph 4 of Schedule 4,
- shall be exercisable with the consent of the Department of Finance and Personnel.
- (6) A power conferred by this Order to make any regulations or order, where the power is not expressed to be exercisable with the consent of the Department of Finance and Personnel, shall if the Department of Finance and Personnel so directs, be exercisable only in conjunction with it.
- (7) Nothing in this Article applies to orders of the Occupational Pensions Board under Schedule 5.

Minor and consequential amendments, repeals and transitional provisions

31.—(1) The statutory provisions mentioned in Schedule 8 shall have effect with the amendments there specified (being minor amendments and amendments consequential on provisions of this Order).

(2) The statutory provisions mentioned in Schedule 9 (which include some that are spent or of no further practical utility) are repealed to the extent specified in the third column of that Schedule.

(3) The Department may by regulations make—

- (a) such transitional provision,
- (b) such consequential provision, or
- (c) such savings,

as it considers necessary or expedient in preparation for or in connection with the coming into operation of any provision of this Order or the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 9(6).

ABOLITION OF EARNINGS RULE, ETC.

Category A and Category B retirement pensions

1. In section 27 of the principal Act, subsections (3), (4) and (5) (retirement from regular employment) shall cease to have effect.

2.—(1) In section 30 of that Act, in subsection (3) (election to be treated as if entitlement to retirement pension had not commenced) the following shall cease to have effect—

- (a) in paragraph (a) the words “retired from regular employment or has otherwise”; and
- (b) the words “retired or”.

(2) For subsection (5) of that section (advance notice of retirement) substitute the following subsection—

“(5) In any case where—

- (a) a person claims a Category A or Category B retirement pension; and
- (b) the date specified in the claim as the date on which entitlement to the pension is to commence falls after the date when the claim was made,

such a pension may be awarded as from the date so specified but, if so awarded, shall be conditional on the person’s not ceasing to be entitled to the pension in consequence of any election under subsection (3) above.”.

(3) Subsection (6)(a) of that section (power to vary 5 year period in sections 27(5) and 30(1)) shall cease to have effect.

Deferred entitlement to retirement pension

3.—(1) In Schedule 1 to the Pensions Order (deferred retirement), for the words from the beginning of the Schedule to “age” in paragraph 1 substitute the following—

“SCHEDULE 1

INCREASE OF PENSION WHERE ENTITLEMENT IS DEFERRED

Increase of pension where pensioner’s entitlement is deferred

1. Where a person’s entitlement to a Category A or Category B retirement pension is deferred”.

(2) In paragraph 2 of that Schedule, in sub-paragraph (1), for “period of deferment” substitute “period of enhancement”.

(3) For sub-paragraph (2) of that paragraph (definitions) substitute the following sub-paragraph—

“(2) In this Schedule—

“incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this Schedule in relation to the person and the pension in question; and

“the period of enhancement”, in relation to that person and that pension, means the period which—

- (a) begins on the same day as the period of deferment in question; and
- (b) ends on the same day as that period or, if earlier, on the day before the fifth anniversary of the beginning of that period.”.

(4) In sub-paragraph (3) of that paragraph, for “if he had retired on attaining pensionable age” substitute “if his entitlement had not been deferred”.

(5) In sub-paragraph (5) of that paragraph, for “period of deferment” in both places where it occurs substitute “period of enhancement”.

(6) In sub-paragraph (6) of that paragraph, for “if he had retired from regular employment” substitute “if his entitlement had not been deferred”.

(7) In paragraph 3 of that Schedule—

- (a) for “period of deferment” substitute “period of enhancement”; and
- (b) for “if he had retired from regular employment” substitute “if his entitlement to the pension had commenced”.

(8) In the cross-heading preceding paragraph 4 of that Schedule, for “deferred retirement” substitute “deferred entitlement”; and in that paragraph—

- (a) in sub-paragraph (1)(b)(ii) for “if he had retired on the date of” substitute “if his period of deferment had ended on the day before”; and
- (b) in sub-paragraph (2)(c)(ii) for “if she had retired on the date of” substitute “if her period of deferment had ended on the day before”.

(9) In paragraph 5 of that Schedule (married women), for sub-paragraphs (1) and (2) substitute the following sub-paragraphs—

“(1) For the purposes of paragraphs 1 to 3 in their application to a Category B retirement pension to which a married woman is entitled by virtue of her husband’s contributions, a married woman who would have become entitled to such a pension on an earlier day if her husband’s entitlement to his Category A retirement pension had not been deferred shall be treated as having (in addition to any other period of enhancement) a period of enhancement which begins on that earlier day and ends on the same day as her husband’s period of enhancement.

(2) The reference in sub-paragraph (1) to the day on which the woman’s husband’s period of enhancement ends shall, where the marriage is terminated before that day, be construed as a reference to the day on which the marriage is terminated.”.

(10) In sub-paragraph (3) of that paragraph—

- (a) for “if he had retired on attaining pensionable age” substitute “if his entitlement had not been deferred”; and
- (b) for “if she and her husband had so retired” substitute “if neither her nor her husband’s entitlement to a retirement pension had been deferred”.

(11) In Schedule 17 to the principal Act (glossary of expressions) insert the following at the appropriate places—

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

““Deferred” and “period of deferment” (in relation to entitlement to a Category A or Category B retirement pension).	See Article 14 of the Pensions Order.”
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““Period of deferment” (in relation to a Category A or Category B retirement pension).	See “deferred” and “period of deferment” above.”.
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Unemployment and sickness benefit

4.—(1) In section 14 of the principal Act, in subsection (2) (conditions of entitlement for unemployment and sickness benefit), for paragraphs (b) and (c) substitute the following paragraphs—

“(b) on that day the person—

- (i) is over pensionable age, but not more than five years over that age; and
 - (ii) would be entitled to a Category A retirement pension (section 28) if his entitlement had not been deferred or if he had not made an election under section 30(3) below;
- or

(c) on that day the person—

- (i) is over pensionable age, but not more than five years over that age; and
- (ii) would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.”.

(2) In subsection (6) of that section (rate of benefit: disregard of certain increases) the words following paragraph (c) shall cease to have effect.

Invalidity pension

5.—(1) In section 15 of that Act (invalidity pension), in subsection (1)(b)(ii) for “and not having retired from regular employment” substitute “, but not more than five years over it”.

(2) For subsection (2) of that section (additional conditions for those over pensionable age) substitute the following subsection—

“(2) The conditions of this subsection are that on that day—

- (a) the person would be entitled to a Category A retirement pension (section 28) if his entitlement had not been deferred or if he had not made an election under section 30(3) below; or
- (b) the person would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.”.

(3) In subsection (6)(a) of that section (regulations making provision for persons over pensionable age corresponding to section 50A) the words “but have not retired from regular employment” shall cease to have effect.

Category C retirement pension

6. In section 39(1)(b) of that Act (Category C pension for retired woman over pensionable age whose husband is entitled to such pension) the words “and has retired from regular employment” shall cease to have effect.

Increases for dependants

7. Section 48(2) and (3) of that Act (application of earnings rule in connection with increase of Category A pension in respect of dependants) shall cease to have effect.

Industrial injuries benefit

8.—(1) In section 50A of that Act (sickness benefit in respect of industrial injury), in subsection (3)(b) for “but has not retired from regular employment” substitute “but who is not for the time being entitled to a Category A or Category B retirement pension”.

(2) In section 59B of that Act (retirement allowance, etc.), in subsection (1)—

- (a) in paragraph (b), for the words from the beginning to “from” substitute “gives up”;
- (b) in paragraph (c), for “retired or is deemed to have retired” substitute “gave up such employment”; and
- (c) in the words following that paragraph, for the words from “retires” onwards substitute “gives up regular employment and may become entitled to it again only if he returns to regular employment”.

(3) In subsection (3) of that section (duration of entitlement) for “Unless he makes an election in accordance with regulations under section 30(3) above” substitute “Unless he returns to regular employment”.

(4) For subsection (4) of that section substitute the following subsection—

“(4) If he returns to regular employment, his entitlement to retirement allowance shall cease on the day on which he does so; but he may again become entitled to reduced earnings allowance or, if he again gives up regular employment, retirement allowance.”.

(5) In subsection (5) of that section (rate of benefit), for paragraph (a) substitute the following paragraph—

“(a) 25 per cent. of the weekly rate at which he was last entitled to reduced earnings allowance; or”.

(6) After subsection (6) of that section add the following subsections—

“(7) Regulations may—

- (a) make provision with respect to the meaning of “regular employment” for the purposes of this section; and
- (b) prescribe circumstances in which, and periods for which, a person is or is not to be regarded for those purposes as having given up, or returned to, such employment.

(8) Regulations under subsection (7) above may, in particular—

- (a) provide for a person to be regarded—
 - (i) as having given up, or as not having returned to, regular employment, notwithstanding that he is or intends to be an earner; or
 - (ii) as having returned to, or as not having given up, regular employment, notwithstanding that he has or may have one or more days of interruption of employment; and
- (b) prescribe circumstances in which a person is or is not to be regarded as having given up, or returned to, regular employment by reference to—
 - (i) the level or frequency of his earnings during a prescribed period; or
 - (ii) the number of hours for which he works during a prescribed period calculated in a prescribed manner.”.

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

(7) In Article 4 of the Social Security (Northern Ireland) Order 1988⁽³⁶⁾, for paragraph (7) (which provides that no retired person over pensionable age shall be entitled to reduced earnings allowance except under paragraph (3) of that Article) substitute the following paragraphs—

“(7) Paragraph (3) shall, in prescribed circumstances, cease to apply in the case of a person who is engaged in regular employment; and, subject to regulations, any subsequent entitlement of his to reduced earnings allowance or retirement allowance shall be determined as if that paragraph had never been made.

(7A) In paragraph (7), “regular employment” has the same meaning as it has in section 59B of the principal Act (retirement allowance) and regulations may prescribe circumstances in which a person is or is not to be regarded as engaged in such employment.”.

(8) Paragraph (8) of that Article (definitions relating to retirement) shall cease to have effect.

Category B retirement pension for widower

9.—(1) In Article 10 of the Pensions Order, in paragraph (1) (conditions of entitlement for widower’s Category B pension) the words “who has retired from regular employment” shall cease to have effect.

(2) For paragraph (3) of that Article (period of entitlement) substitute the following paragraph—

“(3) Subject to the provisions of the principal Act, a man shall become entitled to a Category B retirement pension on the day on which the conditions of entitlement become satisfied in his case and his entitlement shall continue throughout his life.”.

Invalidity pensions for widows and widowers

10.—(1) In Article 17 of that Order, in paragraph (5) (disentitlement to widow’s invalidity pension)—

- (a) for “and has retired from regular employment” substitute “and is entitled to a Category A or Category B retirement pension”; and
- (b) for “she retires from regular employment, having attained” substitute “she has attained”.

(2) In Article 18 of that Order, in paragraph (5) (disentitlement to widower’s invalidity pension)—

- (a) for “and has retired from regular employment” substitute “and is entitled to a Category A or Category B retirement pension”; and
- (b) for “he retires from regular employment, having attained” substitute “he has attained”.

Occupational and personal pensions

11. In Article 31 of that Order (contracted-out rates of benefit), in paragraph (2) (circumstances in which a person is treated as entitled to a guaranteed minimum pension), before “if” in each of the places where it occurs insert respectively “(a)”, “(b)” and “(c)”; and at the end of that paragraph add “or

- (d) if its commencement had not been postponed, as mentioned in Article 35(3)..”

(36) 1988 NI 2

SCHEDULE 2

Article 21.

PERSONS EMPLOYED IN SOCIAL SECURITY ADMINISTRATION OR ADJUDICATION

PART I

THE SPECIFIED PERSONS

Government departments

A civil servant in—

- (a) the Department;
- (b) the Department of Social Security;
- (c) the Northern Ireland Court Service.

The Inland Revenue

A member or officer of the Commissioners of Inland Revenue.

Adjudication officers

The Chief Adjudication Officer.

An adjudication officer.

Adjudicating bodies

The clerk to, or other officer or member of the staff of, any of the following bodies—

- (a) a social security appeal tribunal;
- (b) the Attendance Allowance Board for Northern Ireland;
- (c) a medical appeal tribunal;
- (d) a vaccine damage tribunal;
- (e) a Pensions Appeal Tribunal constituted under the Pensions Appeal Tribunals Act 1943⁽³⁷⁾.

The Occupational Pensions Board

The chairman or deputy chairman of the Occupational Pensions Board.

A member of that Board.

A member of the staff of that Board.

The Social Fund

The Social Fund Commissioner.

A social fund officer.

A social fund inspector.

A member of any staff employed in connection with the Social Fund.

(37) 1943 c. 39

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

Former statutory bodies and officers

An officer or other member of the staff of—

- (a) the former Supplementary Benefits Commission for Northern Ireland;
- (b) the former National Assistance Board for Northern Ireland.

A benefit officer.

An insurance officer.

PART II

CONSTRUCTION OF REFERENCES TO GOVERNMENT DEPARTMENTS ETC.

1.—(1) The reference in Part I of this Schedule to the Department is a reference to the Department only to the extent that it carries out functions relating to social security or to occupational or personal pension schemes.

(2) The reference in Part I of this Schedule to the Department includes a reference to that Department when styled—

- (a) the Ministry of Health and Social Services; or
- (b) the Ministry of Labour and National Insurance;

and to any former government department, but only (in each case) to the extent mentioned in subparagraph (1).

(3) In this paragraph—

“occupational pension scheme” has the meaning given by Article 2(2) of the Pensions Order; and

“personal pension scheme” has the meaning given by Article 2(2) of the 1986 Order.

2. The reference in Part I of this Schedule to the Department of Social Security shall be construed subject to paragraph 1 of Schedule 2 to the Social Security Act 1989.

3. The reference in Part I of this Schedule to the Northern Ireland Court Service is a reference to that Service only to the extent that the functions carried out relate to functions of the Chief Social Security Commissioner or any other Social Security Commissioner.

4. The reference in Part I of this Schedule to the Commissioners of Inland Revenue is a reference to those Commissioners only to the extent that the functions carried out by them or any officer of theirs relate to—

(a) any of the following aspects of social security—

- (i) National Insurance contributions,
- (ii) statutory sick pay,
- (iii) statutory maternity pay, or

(b) the tax treatment of occupational or personal pension schemes, as defined in paragraph 1(3).

SCHEDULE 3

Article 23.

ADJUDICATION

Questions arising for determination by the Department

1.—(1) In section 93 of the principal Act (questions for the Department), after subsection (2) insert the following subsection—

“(2A) Regulations may make provision restricting the persons who may apply to the Department for the determination of any such question as is mentioned in subsection (1) above.”.

(2) In section 115 of that Act (power to make procedure regulations), in subsection (5) (declaration of extent of certain powers) after “declared” insert “(a)” and at the end of that subsection add

“and

(b) that the power to provide for the manner in which questions arising for determination by the Department are to be raised includes power to make provision with respect to the formulation of any such questions (whether arising on a reference under section 139 below or otherwise)..”

Procedure on determination of claims or questions

2. At the end of section 99 of that Act (decision of adjudication officer) add the following subsection—

“(4) Where—

- (a) a case has been referred to a social security appeal tribunal (“the tribunal”); and
- (b) the claimant makes a further claim which raises the same or similar questions; and
- (c) that further claim is referred to the tribunal by the adjudication officer,

then the tribunal may proceed to determine the further claim whether or not notice of its reference has been given to the claimant under subsection (3) above.”.

3.—(1) After section 115 of that Act insert the following sections—

“Power of adjudicating authorities to refer matters to experts.

115A.—(1) An authority to which this section applies may refer any question of special difficulty arising for decision by the authority to one or more experts for examination and report.

(2) The authorities to which this section applies are—

- (a) an adjudication officer;
- (b) an adjudicating medical practitioner, or two or more such practitioners acting together;
- (c) a specially qualified adjudicating medical practitioner appointed by virtue of section 113 above, or two or more such practitioners acting together;
- (d) a social security appeal tribunal;
- (e) a medical appeal tribunal;
- (f) the Attendance Allowance Board;

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

- (g) a Commissioner;
- (h) the Department.

(3) Regulations may prescribe cases in which a Commissioner shall not exercise the power conferred by subsection (1) above.

(4) In this section “expert” means a person appearing to the authority to have knowledge or experience which would be relevant in determining the question of special difficulty.

Assessors.

115B.—(1) Where it appears to an authority to which this section applies that a matter before the authority involves a question of fact of special difficulty, then, unless regulations otherwise provide, the authority may direct that in dealing with that matter they shall have the assistance of one or more assessors.

(2) The authorities to which this section applies are—

- (a) two or more adjudicating medical practitioners acting together;
- (b) two or more specially qualified adjudicating medical practitioners, appointed by virtue of section 113 above, acting together;
- (c) a social security appeal tribunal;
- (d) a medical appeal tribunal;
- (e) the Attendance Allowance Board;
- (f) a Commissioner;
- (g) the Department.”.

(2) The following provisions of that Act (which enable certain adjudicating authorities to refer matters to medical practitioners or to have the assistance of assessors and which are superseded by sub-paragraph (1)) shall cease to have effect—

- (a) section 101(6) and (7);
- (b) paragraph 4 of Schedule 11;
- (c) paragraphs 8 and 9 of Schedule 13.

4. In Schedule 13 to that Act, in paragraph 1 (procedure to be followed in connection with determination of claims and questions by Department, etc.) after “Department” insert “, an adjudication officer”.

Appeals and appellate bodies

5. In section 100 of that Act (appeals to social security appeal tribunal), in subsection (3) the words from “without leave” onwards shall cease to have effect.

6. In section 101 of that Act (appeals from social security appeal tribunal to Commissioner on point of law), in subsection (5) (powers of Commissioner when holding that there has been error of law)—

- (a) after “point of law” insert “he shall set it aside and”; and
- (b) after paragraph (b) (Commissioner to refer case to tribunal with directions for determination) add—

“and, subject to any direction of the Commissioner, the tribunal on a reference under paragraph (b) above shall consist of persons who were not members of the tribunal which gave the erroneous decision”.

7. In section 104 of that Act (review of decisions), after subsection (3A) insert the following subsection—

“(3B) Where a claimant has appealed against a decision of an adjudication officer and the decision is reviewed under this section by an adjudication officer, then—

- (a) if the adjudication officer considers that the decision which he has made on the review is the same as the decision that would have been made on the appeal had every ground of the claimant’s appeal succeeded, then the appeal shall lapse; but
- (b) in any other case, the review shall be of no effect and the appeal shall proceed accordingly.”.

8. In section 106 of that Act, for subsection (2) (regulations to make provision concerning appeals from determination of the Attendance Allowance Board on point of law, etc.) substitute the following subsections—

“(2) An appeal lies to a Commissioner, with his leave or that of another Commissioner, against a determination by the Board of any question of law arising either—

- (a) on a review under subsection (1) above; or
- (b) in connection with a refusal by the Board to review a determination made by them under section 105(3) above or this section,

at the instance of the claimant in question or the Department.

(2A) Where the Commissioner holds that the Board’s determination was erroneous in point of law—

- (a) he shall set it aside and refer the case to the Board; and
- (b) unless the Commissioner otherwise directs, the Board shall not delegate the determination of that case to the medical practitioner, or any of the medical practitioners, who gave the erroneous decision.

(2B) The references to the Board in subsection (2) above, and the first such reference in subsection (2A) above, include a reference to a delegate appointed in pursuance of paragraph 5 of Schedule 11 to this Act.

(2C) Regulations may make provision as to the manner in which, and the time within which, appeals under subsection (2) above are to be brought and applications for leave to appeal under that subsection are to be made.”.

9.—(1) In section 112A of that Act (appeals from medical appeal tribunal to Commissioner on point of law)—

- (a) subsection (4) (power of tribunal to refer question of law to a Commissioner) shall cease to have effect; and
- (b) in subsection (5) (tribunal to revise decision on case in light of Commissioner’s decision on point of law) the words “or reference” and the words from “and the medical” onwards shall cease to have effect.

(2) After subsection (5) of that section insert the following subsections—

“(5A) Where the Commissioner holds that the decision was erroneous in point of law he shall set it aside and refer the case to a medical appeal tribunal with directions for its determination.

(5B) Subject to any direction of the Commissioner, the tribunal on a reference under subsection (5A) above shall consist of persons who were not members of the tribunal which gave the erroneous decision.”.

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

10. In Schedule 13 to that Act (provision which may be made by procedure regulations), after paragraph 7 insert the following paragraph—

“**7A.** Provision empowering the chairman of a social security appeal tribunal or a medical appeal tribunal to give directions for the disposal of any purported appeal which he is satisfied that the tribunal does not have jurisdiction to entertain.”.

Review of decisions

11.—(1) In section 104 of that Act (review of decisions), in subsection (1) after paragraph (b) insert the following paragraph—

“(bb) it is anticipated that a relevant change of circumstances will so occur; or”.

(2) After that subsection insert the following subsection—

“(1ZA) Where a decision is reviewed on the ground mentioned in subsection (1)(bb) above, the decision given on the review—

- (a) shall take effect on the day prescribed for that purpose by reference to the date on which the relevant change of circumstances is expected to occur; and
- (b) shall be reviewed again if the relevant change of circumstances either does not occur or occurs otherwise than on that date.”.

(3) In subsection (5) of that section (regulations), in paragraph (a) after the words “subsection (1)(b)” insert “and (bb)”.

(4) At the end of paragraph (b) of that subsection add “(whether that period falls wholly or partly before or after the making of the regulations)”.

Disablement benefit, etc.

12.—(1) In section 108 of that Act (disablement questions), at the end of subsection (1) add “(and accordingly fall to be determined by an adjudication officer)”.

(2) For subsection (4A) of that section substitute the following subsections—

“(4A) Where, in the case of a claimant for disablement benefit, the extent of any disablement of his resulting from an aggregable accident (that is to say, an accident other than the one which is the basis of the claim in question) has been assessed in accordance with paragraph 4(2) of Schedule 8 to this Act at less than 14 per cent., then—

- (a) the adjudication officer may refer the disablement questions relating to the aggregable accident to one or more adjudicating medical practitioners for fresh determination; and
- (b) on any such reference—
 - (i) those questions shall be determined as at the first day of the common period; and
 - (ii) the period to be taken into account shall be the period beginning with that day.

(4B) In subsection (4A) above “the first day of the common period” means whichever is the later of—

- (a) the first day of the period taken into account by the assessment of the extent of the claimant’s disablement resulting from the accident which is the basis of the claim in question;

- (b) the first day of the period taken into account by the assessment of the extent of his disablement resulting from the aggregable accident.”.

13.—(1) In Schedule 8 to that Act (assessment of extent of disablement), for paragraph 4(2) substitute the following sub-paragraphs—

“(2) Where the assessed extent of a claimant’s disablement amounts to less than 14 per cent., then, subject to sub-paragraphs (3) and (4) below, that assessment shall be a final assessment and the period to be taken into account by it shall not end before the earliest date on which it seems likely that the extent of the disablement will be less than 1 per cent.

(3) Sub-paragraph (2) above does not apply in any case where it seems likely that—

- (a) the assessed extent of the disablement will be aggregated with the assessed extent of any present disablement; and
- (b) that aggregate will amount to 14 per cent. or more.

(4) Where the extent of the claimant’s disablement is assessed at different percentages for different parts of the period taken into account by the assessment, then—

- (a) sub-paragraph (2) above does not apply in relation to the assessment unless the percentage assessed for the latest part of that period is less than 14 per cent.; and
- (b) in any such case that sub-paragraph shall apply only in relation to that part of that period (and subject to sub-paragraph (3) above).”.

(2) In paragraph 5 of that Schedule, in paragraph (a) of the proviso (degree of particularity in assessment of extent and period of disablement)—

- (a) for “section 57” substitute “sections 57 and 59A”; and
- (b) at the end add “and reduced earnings allowance (whether or not a claim has been made)”.

Recovery of overpayments

14.—(1) In Article 54 of the 1986 Order (overpayments), after paragraph (1) insert the following paragraph—

“(1A) Where any such determination as is referred to in paragraph (1) is made on an appeal or review, there shall also be determined in the course of the appeal or review the question whether any, and if so what, amount is recoverable under that paragraph by the Department.”.

(2) In paragraph (4) of that Article after “unless” insert “(a)” and at the end add “and

- (b) it has been determined on the appeal or review that the amount is so recoverable.”

Miscellaneous

15. In section 103 of the principal Act (reference of special questions), in subsection (2) after “making” insert “or directing”.

16. In section 156 of that Act (control of regulations and orders), after subsection (5) insert the following subsection—

“(5A) All regulations made under this Act by the Lord Chancellor 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.”.

17. In Schedule 10 to that Act (supplementary provision as to social security appeal tribunals, etc.) paragraphs 1(7) and 2(2) (which require, so far as practicable, tribunal panel members and chairmen to serve in turn) shall cease to have effect.

18. In paragraph 2(5) of Schedule 12 to that Act (chairman of medical appeal tribunal to be barrister or solicitor of at least 7 years' standing), for "7 years" substitute "5 years".

SCHEDULE 4

Article 24.

RECOVERY OF SUMS EQUIVALENT TO BENEFIT FROM COMPENSATION PAYMENTS IN RESPECT OF ACCIDENTS, ETC: SUPPLEMENTARY PROVISION

PART I INTERPRETATION

1.—(1) In this Schedule—

"the recoupment provisions" means the provisions of Article 24 and this Schedule;

"the relevant deduction" means the deduction required to be made from the compensation payment in question by virtue of the recoupment provisions;

"the relevant payment" means the payment required to be made to the Department by virtue of the recoupment provisions;

"the total benefit" means the gross amount referred to in Article 24(1)(a).

(2) If, after making the relevant deduction from the compensation payment, there would be no balance remaining for payment to the intended recipient, any reference in this Schedule to the making of the compensation payment shall be construed in accordance with regulations.

(3) Expressions used in this Schedule and in Article 24 have the same meaning in this Schedule as they have in that Article.

PART II PAYMENTS, DEDUCTIONS AND CERTIFICATES

Time for making payment to Department

2. The compensator's liability to make the relevant payment arises immediately before the making of the compensation payment, and he shall make the relevant payment before the end of the period of 14 days following the day on which the liability arises.

The certificate of total benefit

3.—(1) It shall be for the compensator to apply to the Department for the certificate of total benefit and he may, subject to sub-paragraph (5), from time to time apply for fresh certificates.

(2) The certificate of total benefit shall specify—

(a) the amount which has been, or is likely to be, paid on or before a specified date by way of any relevant benefit which is capable of forming part of the total benefit;

(b) where applicable—

- (i) the rate of any relevant benefit which is, has been, or is likely to be, paid after the date so specified and which would be capable of forming part of the total benefit; and
- (ii) the intervals at which any such benefit is paid and the period for which it is likely to be paid;

(c) the amounts (if any) which, by virtue of the recoupment provisions, are to be treated as increasing the total benefit; and

(d) the aggregate amount of any relevant payments made on or before a specified date (reduced by so much of that amount as has been paid by the Department to the intended recipient before that date in consequence of the recoupment provisions).

(3) On issuing a certificate of total benefit, the Department shall be taken to have certified the total benefit as at every date for which it is possible to calculate an amount that would, on the basis of the information so provided, be the total benefit as at that date, on the assumption that payments of benefit are made on the days on which they first become payable.

(4) The Department may estimate, in such manner as it thinks fit, any of the amounts, rates or periods specified in the certificate of total benefit.

(5) A certificate of total benefit shall remain in force until such date as may be specified in the certificate for that purpose and no application for a fresh certificate shall be made before that date.

(6) Where a certificate ceases to be in force, the Department may issue a fresh certificate, whether or not an application has been made to it for such a certificate.

(7) The compensator shall not make the compensation payment at any time when there is no certificate of total benefit in force in respect of the victim, unless his liability to make the relevant deduction and the relevant payment has ceased to be enforceable by virtue of paragraph 15.

Exemption from deduction in cases involving small payments

4.—(1) Regulations may make provision exempting persons from liability to make the relevant deduction or the relevant payment in prescribed cases where the amount of the compensation payment in question, or the aggregate amount of two or more connected compensation payments, does not exceed the prescribed sum.

(2) Regulations may make provision for cases where an amount has been deducted and paid to the Department which, by virtue of regulations under sub-paragraph (1), ought not to have been so deducted and paid, and any such regulations may, in particular, provide for the Department to pay that amount to the intended recipient or the compensator or to pay a prescribed part of it to each of them.

(3) The reference in Article 24(4)(a) to a “small payment” is a reference to a payment from which by virtue of this paragraph no relevant deduction falls to be made.

(4) For the purposes of this paragraph—

- (a) two or more compensation payments are “connected” if each is made to or in respect of the same victim and in respect of the same accident, injury or disease; and
- (b) any reference to a compensation payment is a reference to a payment which would be such a payment apart from Article 24(4)(a).

Multiple compensation payments

5.—(1) This paragraph applies where—

- (a) a compensation payment has been made (an “earlier payment”) to or in respect of the victim; and

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- (b) subsequently another such payment (a “later payment”) falls to be made to or in respect of the same victim in respect of the same accident, injury or disease (whether by the same or another compensator).

(2) In determining the amount of the relevant deduction and payment required to be made in connection with the later payment, the amount referred to in Article 24(1)(a) shall be reduced by the amount of any relevant payment made in connection with the earlier payment, or, if more than one, the aggregate of those relevant payments.

(3) In relation to the later payment, the compensator shall take the amount of the reduction required by sub-paragraph (2) to be such as may be specified under paragraph 3(2)(d) in the certificate of total benefit issued to him in connection with that later payment.

(4) In any case where—

- (a) the relevant payment made in connection with an earlier payment is not reflected in the certificate of total benefit in force in relation to a later payment; and
- (b) in consequence, the aggregate of the relevant payments made in relation to the later payment and every earlier payment exceeds what it would have been had that relevant payment been so reflected,

the Department shall pay the intended recipient an amount equal to the excess.

(5) In determining any rights and liabilities in respect of contribution or indemnity, relevant payments shall be treated as damages paid to or for the intended recipient in respect of the accident, injury or disease in question.

Collaboration between compensators

6.—(1) This paragraph applies where compensation payments in respect of the same accident, injury or disease fall (or apart from the recoupment provisions would fall) to be made to or in respect of the same victim by two or more compensators.

(2) Where this paragraph applies, any two or more of those compensators may give the Department notice that they are collaborators in respect of compensation payments in respect of that victim and that accident, injury or disease.

(3) Where such a notice is given and any of the collaborators makes a relevant payment in connection with such a compensation payment, each of the other collaborators shall be treated as if the aggregate amount of relevant payments specified in his certificate of total benefit, as in force at the time of that relevant payment, or in a fresh certificate which does not purport to reflect the payment, were increased by the amount of that payment.

Structured settlements

7.—(1) This paragraph applies where—

- (a) in final settlement of a person’s claim, an agreement is entered into—
 - (i) for the making of periodical payments (whether of an income or capital nature) to or in respect of the victim; or
 - (ii) for the making of such payments and one or more lump sum payments; and
- (b) apart from this paragraph, those payments would fall to be regarded for the purposes of the recoupment provisions as compensation payments.

(2) Where this paragraph applies, the recoupment provisions (other than this paragraph) shall have effect on the following assumptions, that is to say—

- (a) the relevant period in the case of the compensator in question shall be taken to end (if it has not previously done so) on the day of settlement;
- (b) the compensator in question shall be taken—
 - (i) to have been liable to make on that day a single compensation payment of the amount referred to in Article 24(1)(a) (reduced or increased in accordance with such of the recoupment provisions as would have applied in the case of a payment on that day); and
 - (ii) to have made from that single payment a relevant deduction of an amount equal to it; and
- (c) the payments under the agreement referred to in sub-paragraph (1) shall be taken to be exempt payments.

(3) The intended recipient shall not by virtue of anything in this paragraph become entitled to be paid any sum, whether by the compensator or the Department, and if on a review or appeal under paragraph 16 or 18 it appears that the amount paid by a compensator in pursuance of this paragraph was either greater or less than it ought to have been, then—

- (a) any excess shall be repaid to the compensator instead of to the intended recipient; but
- (b) any deficiency shall be paid to the Department by the intended recipient.

(4) Where any further compensation payment falls to be made to or in respect of the victim otherwise than under the agreement in question, sub-paragraph (2)(a) shall be disregarded for the purpose of determining the end of the relevant period in relation to that further payment.

(5) In any case where—

- (a) the person making the periodical payments (“the secondary party”) does so in pursuance of arrangements entered into with another (as in a case where an insurance company purchases an annuity for the victim from another such company); and
- (b) apart from those arrangements, that other (“the primary party”) would have been regarded as the compensator,

then for the purposes of the recoupment provisions, the primary party shall be regarded as the compensator and the secondary party shall not be so regarded.

(6) In determining for the purposes of this paragraph whether any periodical payments would fall to be regarded as compensation payments, Article 24(4)(a) shall be disregarded.

(7) In this paragraph “the day of settlement” means—

- (a) if the agreement referred to in sub-paragraph (1) is approved by a court, the day on which that approval is given; and
- (b) in any other case, the day on which that agreement is entered into.

Insolvency

8. Where the intended recipient has been adjudged bankrupt, nothing in the Bankruptcy Acts (Northern Ireland) 1857 to 1980 shall affect the operation of the recoupment provisions.

Protection of legal aid charges

9.—(1) In any case where—

- (a) the compensation payment is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(38); and

(38) 1981 NI 8

- (b) after the making of the relevant deduction, the balance of the compensation payment is insufficient to satisfy that charge,

the Department shall make such a payment as will secure that the deficiency is made good to the extent of the relevant payment.

(2) Where the Department makes a payment under this paragraph, then, for the purposes of paragraph 3, the amount of the payment shall be treated as increasing the total benefit.

Overpaid benefits

10. In any case where—

- (a) during the relevant period, there has, in respect of the accident, injury or disease, been paid to or for the victim any relevant benefit to which he was not entitled (“the overpaid benefit”); and
- (b) the amount of the relevant payment is such that, after taking account of the rest of the total benefit, there remains an amount which represents the whole or any part of the overpaid benefit,

then, notwithstanding anything in Article 54 of the 1986 Order or any regulations under that Article, the receipt by the Department of the relevant payment shall be treated as the recovery of the whole or, as the case may be, that part of the overpaid benefit.

Death

11. In the case of any compensation payment the whole or part of which is made—

- (a) in consequence of an action under the Fatal Accidents (Northern Ireland) Order 1977(39); or
- (b) in circumstances where, had an action been brought, it would have been brought under that Order,

regulations may make provision for estimating or calculating the portion of the payment which is to be regarded as so made for the purposes of Article 24(4)(c).

Payments into court

12.—(1) Nothing in the recoupment provisions requires a court to make any relevant deduction or payment in connection with money in court.

(2) Where a party to an action makes a payment into court which, had it been paid directly to the other party, would have constituted a compensation payment, the making of that payment shall be regarded for the purposes of the recoupment provisions as the making of a compensation payment, but the compensator—

- (a) may either—
 - (i) withhold from such a payment into court an amount equal to the relevant deduction; or
 - (ii) make such a payment into court before the certificate of total benefit has been issued to him; and
- (b) shall not become liable to make the relevant payment, or to furnish a certificate of deduction, until he has been notified that the payment into court has been paid out of court to or for the other party.

(3) Where a person making a payment into court withholds an amount in accordance with sub-paragraph (2)(a)(i)—

(a) he shall, at the time when he makes that payment, furnish the court with a certificate of the amount so withheld; and

(b) the amount paid into court shall be regarded as increased by the amount so certified;

but no person shall be entitled by virtue of this sub-paragraph to the payment out of court of any amount which has not in fact been paid into court.

(4) Where a payment into court is made as mentioned in sub-paragraph (2)(a)(ii), the compensator—

(a) shall apply for the certificate of total benefit no later than the day on which the payment into court is made; and

(b) shall become liable to make the relevant payment as mentioned in sub-paragraph (2)(b), notwithstanding that the relevant deduction has not been made.

(5) Where any such payment into court as is mentioned in sub-paragraph (2) is paid out of court to or for the other party to the action within the initial period, then, as respects the compensator in question, the relevant period shall be taken to have ended on the day on which the payment into court was made.

(6) In sub-paragraph (5) “the initial period” means the period of 21 days following the making of the payment into court, but rules of court and county court rules may make provision varying the length of that period.

(7) Rules of court and county court rules may make provision regulating or prescribing the practice and procedure to be followed in relation to such payments into court as are mentioned in sub-paragraph (2).

PART III

ADMINISTRATION AND ADJUDICATION

Provision of information

13.—(1) Any person who is, or is alleged to be, liable in respect of an accident, injury or disease, or any person acting on his behalf, shall furnish the Department with the prescribed information relating to any person seeking compensation, or in respect of whom compensation is sought, in respect of that accident, injury or disease.

(2) Any person who claims a relevant benefit or who has been in receipt of such a benefit or, if he has died, the personal representatives of such a person, shall furnish the Department with the prescribed information relating to any accident, injury or disease suffered by that person.

(3) Any person—

(a) who is the employer of a person who suffers or has suffered an accident, injury or disease; or

(b) who has been the employer of such a person at any time during the relevant period,

shall furnish the Department with the prescribed information relating to the payment of statutory sick pay in respect of that person.

(4) In sub-paragraph (3) “employer” has the same meaning as it has in Part II of the 1982 Order.

(5) Any person furnishing information under this paragraph shall do so in the prescribed manner, at the prescribed place and within the prescribed time.

Applications for certificates of total benefit

14.—(1) If at any time before he makes the compensation payment in question the compensator applies to the Department in accordance with paragraph 3 for a certificate of total benefit relating to the victim in question—

- (a) the Department shall furnish him with such a certificate before the end of the period of 4 weeks, or such other number of weeks as may be prescribed, following the day on which the application is, or is deemed in accordance with regulations to be, received; and
- (b) any certificate so furnished shall, in particular, specify for the purposes of paragraph 3(2)
 - (a) a date not earlier than the date of the application.

(2) Where it furnishes any person with a certificate of total benefit, the Department shall also provide the information contained in that certificate to the person who appears to the Department to be the victim in relation to the compensation payment in question.

(3) The victim may apply to the Department for particulars of the manner in which any amount, rate or period specified in a certificate of total benefit has been determined.

Liability of compensator unenforceable if certificate not issued within time limit

15.—(1) The liability of the compensator to make the relevant deduction and payment relating to the first compensation payment after the default date shall not be enforceable if—

- (a) he has made a request under paragraph 14(1) which—
 - (i) accurately states the prescribed particulars relating to the victim and the accident, injury or disease in question; and
 - (ii) specifies the name and address of the person to whom the certificate is to be sent;
- (b) he has in his possession a written acknowledgment, sent to him in accordance with regulations, of the receipt of the request; and
- (c) the Department does not, within the time limit referred to in paragraph 14(1) send the certificate to the person specified in the request as the person to whom the certificate is to be sent, at the address so specified,

and accordingly, where those liabilities cease to be enforceable, nothing in the recoupment provisions shall prevent the compensator from making that compensation payment.

(2) In any case where—

- (a) the liability to make the relevant deduction and payment becomes unenforceable by virtue of this paragraph; but
- (b) the compensator nevertheless makes that deduction and payment,

he shall be treated for all purposes as if the liability had remained enforceable.

(3) Where the compensator, in reliance on this paragraph, does not make the relevant deduction and payment, then—

- (a) he shall within 14 days of the default date give the Department notice of that fact together with such other particulars as may be prescribed; and
- (b) in determining the amount of the relevant deduction and payment to be made in connection with any subsequent compensation payment made by the same or any other compensator, the amount which, apart from this paragraph, would have fallen to be deducted and paid by him shall continue to form part of the total benefit and shall not be treated as if it had been paid.

(4) If, in the opinion of the Department, circumstances have arisen which adversely affect normal methods of communication—

- (a) the Department may by order provide that no liability shall become unenforceable by virtue of this paragraph during a specified period not exceeding 3 months; and
- (b) the Department may continue any such order in force for further periods not exceeding 3 months at a time.

(5) In this paragraph “the default date” means the date on which the time limit mentioned in sub-paragraph (1)(c) expires.

Review of certificates of total benefit

16.—(1) The Department may review any certificate of total benefit if the Department is satisfied that it was issued in ignorance of, or was based on a mistake as to, some material fact or that a mistake (whether in computation or otherwise) has occurred in its preparation.

(2) On any such review the Department may either—

- (a) confirm the certificate; or
- (b) issue a fresh certificate containing such variations as it considers appropriate,

but the Department shall not so vary the certificate as to increase the total benefit.

(3) In any case where—

- (a) one or more relevant payments have been made; and
- (b) in consequence of a review under this paragraph, it appears that the aggregate amount so paid exceeds the amount that ought to have been paid,

the Department shall pay the intended recipient an amount equal to the excess.

Appeals

17.—(1) An appeal shall lie in accordance with this paragraph against any certificate of total benefit at the instance of the compensator, the victim or the intended recipient, on the ground—

- (a) that any amount, rate or period specified in the certificate is incorrect; or
- (b) that benefit paid or payable otherwise than in consequence of the accident, injury or disease in question has been brought into account.

(2) No appeal shall be brought under this paragraph until—

- (a) the claim giving rise to the compensation payment has been finally disposed of; and
- (b) the relevant payment, or where more than one such payment may fall to be made, the final relevant payment, has been made.

(3) Notwithstanding sub-paragraph (2), where—

- (a) an award of provisional damages has been made under paragraph 10 of Schedule 6 to the Administration of Justice Act 1982⁽⁴⁰⁾; and
- (b) the relevant payment or, where more than one such payment falls to be made, the final relevant payment in relation to the provisional damages so awarded has been made,

an appeal may be brought under this paragraph against any certificate of total benefit by reference to which the amount of that relevant payment, or any of those relevant payments, was made.

(4) Regulations may—

(40) 1982 c. 53

- (a) make provision as to the manner in which, and the time within which, appeals under this paragraph are to be brought; and
- (b) make provision for the purpose of enabling any such appeal to be treated as an application for review under paragraph 16,

and regulations under head (b) may, in particular, provide that the circumstances in which such a review may be carried out shall not be restricted to those specified in paragraph 16.

(5) If any of the medical questions arises for determination on an appeal under this paragraph, the Department shall refer that question to a medical appeal tribunal, whose determination shall be binding, for the purposes of the appeal, on any social security appeal tribunal to whom a question is referred under sub-paragraph (7).

(6) A medical appeal tribunal, in determining any of the medical questions, shall take into account any decision of any court relating to the same, or any similar, issue arising in connection with the accident, injury or disease in question.

(7) If any question concerning any amount, rate or period specified in the certificate of total benefit arises for determination on an appeal under this paragraph, the Department shall refer that question to a social security appeal tribunal, but where any medical questions arising on the appeal have been referred to a medical appeal tribunal—

- (a) the Department shall not refer any question to the social security appeal tribunal until the Department has received the determination of the medical appeal tribunal on the questions referred to them; and
- (b) the Department shall notify the social security appeal tribunal of the determinations of the medical appeal tribunal.

(8) On a reference under sub-paragraph (7) a social security appeal tribunal may either—

- (a) confirm the amounts, rates and periods specified in the certificate of total benefit; or
- (b) specify any increases, reductions or other variations which are to be made on the issue of the fresh certificate under sub-paragraph (9).

(9) When the Department has received the determinations of the tribunals on the questions referred to them under sub-paragraphs (5) and (7), it shall in accordance with those determinations either—

- (a) confirm the certificate against which the appeal was brought; or
- (b) issue a fresh certificate.

(10) Regulations may make provision with respect to the procedure for the reference under this paragraph of questions to medical appeal tribunals or social security appeal tribunals.

(11) An appeal shall lie to a Commissioner at the instance of the compensator, the victim or the intended recipient from a decision of a medical appeal tribunal or a social security appeal tribunal under this paragraph on the ground that the decision was erroneous in point of law; and for the purposes of appeals under this sub-paragraph—

- (a) section 101(5), (5A) and (5B) of the principal Act shall apply in relation to an appeal from the decision of a social security appeal tribunal; and
- (b) section 112A(3) of that Act shall apply in relation to an appeal from the decision of a medical appeal tribunal.

(12) In this paragraph “the medical questions” means—

- (a) any question whether, as the result of a particular occurrence, a person suffered an injury, sickness or disease;
- (b) any question as to the period for which a person suffered any injury, sickness or disease.

Recovery in consequence of an appeal

18.—(1) Where it appears, in consequence of an appeal under paragraph 17, that the aggregate amount of the relevant payment or payments actually made exceeds the amount that ought to have been paid, the Department shall pay the intended recipient an amount equal to that excess.

(2) Where it appears, in consequence of such an appeal, that the aggregate amount of the relevant payment or payments actually made is less than the amount that ought to have been paid, the intended recipient shall pay the Department an amount equal to the deficiency.

(3) Without prejudice to any other method of enforcement, an amount payable under sub-paragraph (2) may be recovered by deduction from any benefits which are prescribed benefits for the purposes of Article 54 of the 1986 Order (recovery of overpayments).

Recovery of relevant payment in cases of default

19.—(1) This paragraph applies in any case where the compensator has made a compensation payment but—

- (a) has not requested a certificate of total benefit in respect of the victim; or
- (b) if he has done so, has not made the relevant payment within the time limit imposed by paragraph 2.

(2) Where this paragraph applies, the Department may—

- (a) if no certificate of total benefit has been issued to the compensator, issue to him such a certificate and a demand for the relevant payment to be made forthwith; or
- (b) if a certificate of total benefit has been issued to the compensator, issue to him a copy of that certificate and such a demand,

and that relevant payment shall, to the extent that it does not exceed the amount of the compensation payment, be recoverable by the Department from the compensator.

(3) Any amount recoverable under this paragraph shall, if the county court so orders, be enforceable as if it were payable under an order of the court.

(4) A document bearing a certificate which—

- (a) is signed by a person authorised in that behalf by the Department; and
- (b) states that the document, apart from the certificate, is a record of the amount recoverable under this paragraph,

shall be conclusive evidence that that amount is so recoverable; and a certificate purporting to be signed as aforesaid shall be deemed to be so signed unless the contrary is proved.

(5) Where this paragraph applies in relation to two or more connected compensators, the Department may proceed against them as if they were jointly and severally liable for an amount equal to the difference between—

- (a) the total benefit determined in accordance with the latest connected certificate of total benefit issued to any of them; and
- (b) the aggregate amount of any connected relevant payments previously made.

(6) Nothing in sub-paragraph (5) authorises the recovery from any person of an amount in excess of the compensation payment by virtue of which this paragraph applies to him (or, if there are two or more such payments which are connected, the aggregate amount of those payments).

(7) In sub-paragraphs (5) and (6), “connected” means relating to the same victim and the same accident, injury or disease.

Inspection

20.—(1) Article 59 of the 1986 Order (inspection) shall be amended in accordance with the following provisions of this paragraph.

(2) In paragraph (2) (powers of inspector to enter, examine and enquire), for head (ii) of sub-paragraph (b) substitute the following head—

“(ii) for investigating the circumstances in which any accident, injury or disease which has given or may give rise to a claim for industrial injuries benefit, or for any benefit which is a relevant benefit for the purposes of the recoupment provisions, occurred or may have occurred, or was or may have been received or contracted;”.

(3) In sub-paragraph (c) of that paragraph, after head (ii) insert the following head—

“(iii) a compensation payment or a relevant payment, within the meaning of the recoupment provisions;”.

(4) In paragraph (3) (premises which are liable to inspection), after sub-paragraph (c) insert the following sub-paragraph—

“(d) any person—

(i) who is the compensator, within the meaning of the recoupment provisions, in relation to any such accident, injury or disease as is referred to in paragraph (2) (b)(ii); or

(ii) on whose behalf any such compensator has or may have made, or may make, a compensation payment, within the meaning of those provisions, carries on business or is to be found;”.

(5) In paragraph (6) (persons to furnish information required for ascertaining whether certain sums are or have been paid or payable), in sub-paragraph (a), after head (ii), insert the following head—

“(iii) any compensation payment or relevant payment, within the meaning of the recoupment provisions;”.

(6) In paragraph (7) (persons who are under a duty to provide information), in sub-paragraph (e) at the end add “or to make any compensation payment or relevant payment, within the meaning of the recoupment provisions”.

(7) After paragraph (9) add the following paragraph—

“(10) In this Article “the recoupment provisions” means Article 24 of, and Schedule 4 to, the Social Security (Northern Ireland) Order 1989 (recovery from damages, etc., of sums equivalent to benefit paid).”.

PART IV**MISCELLANEOUS***Foreign compensators: duties of intended recipient*

21.—(1) Where, immediately before the making of the compensation payment, the compensator is not resident and does not have a place of business in Northern Ireland, any deduction, payment or other thing which would, apart from this paragraph, fall to be made or done under the recoupment provisions by the compensator shall instead be made or done by the intended recipient and references to the compensator shall be construed accordingly.

(2) The Department may by regulations make such provision as it considers expedient for the purpose of modifying the recoupment provisions in their application in such a case.

Amendment of Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23)

22.—(1) In section 3, in subsection (1) (which requires that, in assessing damages, half of certain benefits shall be brought into account against loss of profits or earnings)—

- (a) after “contract),” insert “where this section applies”;
- (b) for the words from “against any loss” to “from the injuries” substitute “against them”; and
- (c) for the words from “therefrom” onwards substitute
“from the injuries in respect of—

- (a) any of the relevant benefits, within the meaning of Article 24 of the Social Security (Northern Ireland) Order 1989; or

- (b) any corresponding benefits payable in Great Britain,
for the five years beginning with the time when the cause of action accrued.”

(2) After that subsection insert the following subsection—

“(1A) This section applies in any case where the amount of the damages that would have been awarded apart from any reduction under subsection (1) above is less than the sum for the time being prescribed under paragraph 4(1) of Schedule 4 to the Social Security (Northern Ireland) Order 1989 (recoupment of benefit: exception for small payments).”.

(3) Subsection (2) of that section (disregard of increase for constant attendance) shall cease to have effect.

SCHEDULE 5

Article 25.

EMPLOYMENT-RELATED SCHEMES FOR PENSIONS OR OTHER
BENEFITS: EQUAL TREATMENT FOR MEN AND WOMEN

PART 1

COMPLIANCE BY SCHEMES

Schemes to comply with the principle of equal treatment

1. Every employment-related benefit scheme shall comply with the principle of equal treatment.

The principle

2.—(1) The principle of equal treatment is that persons of the one sex shall not, on the basis of sex, be treated less favourably than persons of the other sex in any respect relating to an employment-related benefit scheme.

(2) Sub-paragraphs (3) to (6) have effect, where applicable, for the purpose of determining whether a scheme complies with the principle of equal treatment.

(3) Where any provision of the scheme imposes on both male and female members a requirement or condition—

- (a) which is such that the proportion of persons of the one sex (“the sex affected”) who can comply with it is considerably smaller than the proportion of persons of the other sex who can do so; and
- (b) which is not justifiable irrespective of the sex of the members,

the imposition of that requirement or condition shall be regarded as less favourable treatment of persons of the sex affected.

(4) No account shall be taken of—

- (a) any difference, on the basis of the sex of members, in the levels of contributions—
 - (i) which members are required to make, to the extent that the difference is justifiable on actuarial grounds; or
 - (ii) which the employer makes, to the extent that the difference is for the purpose of removing or limiting differences, as between men and women, in the amount or value of money purchase benefits;
- (b) any difference, on the basis of sex, in the amount or value of money purchase benefits, to the extent that the difference is justifiable on actuarial grounds;
- (c) any special treatment for the benefit of women in connection with pregnancy or childbirth;
- (d) any permitted age-related differences;
- (e) any difference of treatment in relation to benefits for a deceased member’s surviving husband, wife or other dependants;
- (f) any difference of treatment in relation to any optional provisions available; or
- (g) any provisions of a scheme to the extent that they have been specially arranged for the benefit of one particular member of the scheme;

but where the scheme includes any unfair maternity provisions, it shall to that extent be regarded as according less favourable treatment to women on the basis of sex.

(5) Where the scheme treats persons of the one sex differently according to their marital or family status, that treatment is to be compared with the scheme’s treatment of persons of the other sex who have the same status.

(6) The principle of equal treatment applies in relation to members' dependants as it applies in relation to members.

(7) If any question arises whether a condition or requirement falling within sub-paragraph (3)(a) is or is not justifiable irrespective of the sex of the members, it shall be for those who assert that it is so justifiable to prove that fact.

(8) In this paragraph—

“money purchase benefits” has the meaning given by Article 2(2) of the 1986 Order, but with the substitution for references to a personal or occupational pension scheme of references to an employment-related benefit scheme;

“optional provisions available” means those provisions of a scheme—

- (a) which apply only in the case of members who elect for them to do so; and
- (b) whose purpose is to secure for those members—
 - (i) benefits in addition to those otherwise provided under the scheme; or
 - (ii) a choice with respect to the date on which benefits under the scheme are to commence; or
 - (iii) a choice between any two or more benefits;

“permitted age-related difference” means any difference, on the basis of sex, in the age—

- (a) at which a service-related benefit in respect of old age or retirement commences; or
 - (b) at which, in consequence of the commencement of such a benefit, any other service-related benefit either ceases to be payable or becomes payable at a reduced rate calculated by reference to the amount of the benefit so commencing.
- (9) For the purposes of this paragraph—
- (a) any reference to a person's family status is a reference to his having an unmarried partner or any dependants; and
 - (b) a person "has an unmarried partner" if that person and some other person to whom he is not married live together as husband and wife.

Non-compliance: compulsory levelling up

3.—(1) To the extent that any provision of an employment-related benefit scheme does not comply with the principle of equal treatment, it shall be overridden by this Schedule and the more favourable treatment accorded to persons of the one sex shall also be accorded to persons of the other sex.

(2) Where more favourable treatment is accorded to any persons by virtue of sub-paragraph (1), that sub-paragraph requires them, in accordance with the principle of equal treatment—

- (a) to pay contributions at a level appropriate to the treatment so accorded; and
- (b) to bear any other burden which is an incident of that treatment,

but persons of either sex may instead elect to receive the less favourable treatment and, in accordance with the principle of equal treatment, pay contributions at the level appropriate to that treatment and bear the other burdens incidental to it.

(3) Where any provision of a scheme is overridden by sub-paragraph (1), nothing in this Schedule shall affect any rights accrued or obligations incurred during the period before the date on which that provision is so overridden.

(4) Sub-paragraph (1) is without prejudice to the exercise, in compliance with the principle of equal treatment, of any power to amend the scheme.

Modification of schemes by the Occupational Pensions Board

4.—(1) On an application made to them in respect of an employment-related benefit scheme, other than a public service scheme, by persons competent to make such an application, the Occupational Pensions Board ("the Board") may make an order modifying, or authorising the modification of, the scheme, for the purpose—

- (a) of making provision implementing the principle of equal treatment otherwise than as provided by sub-paragraph (1) of paragraph 3; or
- (b) of reflecting in the rules of the scheme any changes consequential upon the operation of that sub-paragraph.

(2) In relation to any employment-related benefit scheme, the persons competent to make an application to the Board under this paragraph are—

- (a) the trustees or managers of the scheme;
- (b) any person other than the trustees or managers who has power to alter the rules of the scheme;
- (c) any person who is an employer of persons in service in an employment to which the scheme applies; and

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

- (d) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this paragraph in respect of a scheme of that category.
- (3) The Board shall not entertain an application for an order by them under this paragraph unless they are satisfied that the modification of the scheme in question—
 - (a) cannot be achieved otherwise than by means of such an order; or
 - (b) can only be achieved in accordance with a procedure which is liable to be unduly complex or protracted, or involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.
- (4) Subject to sub-paragraph (3), the Board may on an application under this paragraph make (with the consent of the applicants) an order under sub-paragraph (1) and may exercise their powers under this paragraph from time to time; and the extent of their powers under this paragraph is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.
- (5) An order of the Board under sub-paragraph (1) authorising the modification of a scheme shall be framed so as to confer the power of modification on such persons as the Board think proper (including persons who were not parties to the application made to the Board) and shall include such directions as the Board think appropriate indicating the modifications which they consider to be desirable.

Unfair maternity provisions

- 5.—**(1) In this Schedule “unfair maternity provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid maternity absence in the case of any woman who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a woman otherwise than in accordance with the normal employment requirement; or
 - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings during a period which included a period of paid maternity absence, to be determined otherwise than in accordance with the normal employment requirement.
- (2) In the case of any unfair maternity provision—
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the women in accordance with the normal employment requirement;
 - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; and
 - (c) paragraph 4(1)(a) does not authorise the making of any modification which does not satisfy the requirements of head (a),
- but, in respect of a period of paid maternity absence, a woman shall only be required to pay contributions on the amount of contractual remuneration or statutory maternity pay actually paid to or for her in respect of that period.
- (3) In this paragraph—
- (a) “period of paid maternity absence” means any period—

- (i) throughout which a woman is absent from work due to pregnancy or confinement; and
- (ii) for which her employer (or, if she is no longer in his employment, her former employer) pays her any contractual remuneration or statutory maternity pay;
- (b) “the normal employment requirement” is the requirement that any period of paid maternity absence shall be treated as if it were a period throughout which the woman in question works normally and receives the remuneration likely to be paid for doing so.

Unfair family leave provisions

6.—(1) Where an employment-related benefit scheme includes any unfair family leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
- (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.
- (2) In this Schedule “unfair family leave provisions” means any provision—
 - (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid family leave in the case of any member who is an employed earner and which treats such a member otherwise than in accordance with the normal leave requirement; or
 - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member to the extent that it falls to be determined by reference to earnings during a period which included a period of paid family leave, to be determined otherwise than in accordance with the normal leave requirement.
- (3) In the case of any unfair family leave provision—
 - (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the members in accordance with the normal leave requirement;
 - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; and
 - (c) paragraph 4(1)(a) does not authorise the making of any modification which does not satisfy the requirements of head (a),

but, in respect of a period of paid family leave, a member shall only be required to pay contributions on the amount of contractual remuneration actually paid to or for him in respect of that period.

- (4) In this paragraph—
 - (a) “period of paid family leave” means any period—
 - (i) throughout which a member is absent from work for family reasons; and
 - (ii) for which the employer pays him any contractual remuneration;
 - (b) “the normal leave requirement” is the requirement that any period of paid family leave shall be treated as if it were a period throughout which the member in question works normally but only receives the remuneration in fact paid to him for that period.

Meaning of “employment-related benefit scheme”, etc.

7. In this Schedule—

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

- (a) “employment-related benefit scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide service-related benefits to or in respect of employed or self-employed earners—
 - (i) who have qualifying service in an employment of any such description or category, or
 - (ii) who have made arrangements with the trustees or managers of the scheme to enable them to become members of the scheme,

but does not include a limited scheme;

- (b) “limited scheme” means—
 - (i) any personal scheme for employed earners to which the employer does not contribute;
 - (ii) any scheme which has only one member, other than a personal scheme for an employed earner to which his employer contributes;
 - (iii) any contract of insurance which is made for the benefit of employed earners only and to which the employer is not a party;
- (c) “personal scheme” means any scheme or arrangement which falls within sub-paragraph (a) by virtue of head (ii) of that sub-paragraph (or which would so fall apart from sub-paragraph (b));
- (d) “public service scheme” has the meaning given by Article 2(2) of the Pensions Order;
- (e) “service-related benefits” means benefits, in the form of pensions or otherwise, payable in money or money’s worth in respect of—
 - (i) termination of service;
 - (ii) retirement, old age or death;
 - (iii) interruptions of service by reason of sickness or invalidity;
 - (iv) accidents, injuries or diseases connected with employment;
 - (v) unemployment; or
 - (vi) expenses incurred in connection with children or other dependants,
 and includes, in the case of a member who is an employed earner, any other benefit so payable to or in respect of the member in consequence of his employment.

Extension of ban on compulsory membership

8. Article 17(1) of the 1986 Order (which renders void any provision making membership of a pension scheme compulsory for an employed earner) shall apply in relation to a self-employed earner as it applies in relation to an employed earner, but with the substitution for references to a personal pension scheme of references to an employment-related benefit scheme which would be such a pension scheme if self-employed earners were regarded as employed earners.

Jurisdiction

9.—(1) The court, on the application of any person interested, shall have jurisdiction to determine any question arising as to—

- (a) whether any provision of an employment-related benefit scheme does or does not comply with the principle of equal treatment; or
- (b) whether, and with what effect, any such provision is overridden by paragraph 3.

- (2) In sub-paragraph (1) “the court” means the High Court or a county court.
- (3) An application under sub-paragraph (1) may be commenced in a county court notwithstanding—
- (a) any financial limit otherwise imposed on the jurisdiction of such a court; or
 - (b) that the only relief claimed is a declaration or an injunction.

Interpretation

10. Expressions other than “benefit” which are used in this Part of this Schedule and in the principal Act have the same meaning in this Part of this Schedule as they have in that Act.

Supplemental

11. In consequence of the foregoing provisions of this Schedule the following provisions of the Pensions Order shall cease to have effect—

- (a) Articles 55 to 58 (equal access to schemes for men and women); and
- (b) Article 60(3)(e) (functions of the Occupational Pensions Board relating to equal access).

Future repeal of actuarial provisions

12. The Department may by order repeal paragraph 2(4)(a)(i); and if and to the extent that the Department has not done so before 30th July 1999 that sub-head shall cease to have effect on that date.

PART II

AMENDMENT OF PROVISIONS RELATING TO EMPLOYMENT

The Equal Pay Act (Northern Ireland) 1970 (c. 32)

13. In section 6 (equality clauses and pensions, etc.), in subsection (1A)(a) for the words following “1975)” substitute “which is also an employment-related benefit scheme, within the meaning of Schedule 5 to the Social Security (Northern Ireland) Order 1989, so far as those terms relate to any matter in respect of which the scheme has to comply with the principle of equal treatment in accordance with that Schedule; but”.

The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)

- 14.—**(1) In Article 6(1) (victimisation of complainants, etc.)—
- (a) in sub-paragraphs (a), (b) and (c) after “Equal Pay Act” insert “or Part I of Schedule 5 to the Social Security (Northern Ireland) Order 1989”; and
 - (b) at the end of sub-paragraph (d) add “or proceedings under Part I of Schedule 5 to the Social Security (Northern Ireland) Order 1989”.
- (2) In Article 8, in paragraph (4) (disapplication of certain provisions in relation to death or retirement), for the words from “except” to “retirement, they” substitute
- “except as provided in paragraphs (4A) and (4B).
- (4A) Paragraph (4) does not prevent the application of paragraphs (1)(b) and (2) to provision in relation to retirement in so far as those paragraphs.”

(3) After paragraph (4A) of that Article insert the following paragraphs—

“(4B) Paragraph (4) does not prevent the application of paragraphs (1)(b) and (2) to provision in relation to death or retirement in so far as those paragraphs render it unlawful for a person to discriminate against a woman—

- (a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to any benefits, facilities or services under an occupational pension scheme; or
- (b) in the way he affords her access to any such benefits, facilities or services; or
- (c) by refusing or deliberately omitting to afford her access to any such benefits, facilities or services; or
- (d) by subjecting her to any detriment in connection with any such scheme,

but an act of discrimination is rendered unlawful by virtue of this paragraph only to the extent that the act relates to a matter in respect of which an occupational pension scheme has to comply with the principle of equal treatment in accordance with Part I of Schedule 5 to the Social Security (Northern Ireland) Order 1989.

(4C) In the application of paragraph (4B) to discrimination against married persons of either sex, Part I of Schedule 5 to the Social Security (Northern Ireland) Order 1989 shall be taken to apply to less favourable treatment of married persons on the basis of their marital status as it applies in relation to less favourable treatment of persons on the basis of sex, and references to persons of either sex shall be construed accordingly.”.

(4) At the end of that Article add the following paragraph—

“(8) In this Article “occupational pension scheme” means an occupational pension scheme, within the meaning of the Social Security Pensions (Northern Ireland) Order 1975, which is also an employment-related benefit scheme, within the meaning of Schedule 5 to the Social Security (Northern Ireland) Order 1989.”.

The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)

15. In Article 28, at the end of paragraph (2)(b) (rights on return to work after maternity absence) add “but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (credit for the period of absence in certain cases)”.

SCHEDULE 6

Article 26.

OCCUPATIONAL AND PERSONAL PENSIONS

The Pensions Order

1. In Article 37 (earner’s guaranteed minimum), after paragraph (2) insert the following paragraph—

“(2A) Where the amount of a person’s earnings for any period is relevant for any purpose of paragraph (1) or (2) and the Department is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, the Department may for that purpose—

- (a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or
- (b) take their amount to be such sum as it may specify in the particular case.”.

2.—(1) In Article 43A (protection of earners' pensions), in paragraph (1C) (which defines “the relevant aggregate”), after sub-paragraph (c) add

“and

(d) in the case of an earner whose later earnings level is higher than his termination earnings level, the later earnings addition.”

(2) After paragraph (2) insert the following paragraphs—

“(2A) In this Article “the later earnings addition” means an amount equal to the difference between the relevant sum and what that sum would have been had the benefits in question been calculated by reference to the earner’s later earnings level.

(2B) In this Article—

“later earnings level” means the level of earnings by reference to which the benefits which constitute the relevant sum would have been calculated had the termination of employment date fallen on the cessation date;

“termination earnings level” means the level of earnings by reference to which those benefits would have been calculated had the cessation date fallen on the termination of employment date; and

“the cessation date” means the earlier of—

(a) the date on which the earner ceased to be employed in relevant employment; and

(b) the relevant date, within the meaning of paragraph (1).”.

(3) In paragraph (11) (definitions) for “short service benefit is” substitute ““relevant employment” and “short service benefit” are”.

3.—(1) In Article 43B (protection of widows' pensions), in paragraph (1A) (which defines “the relevant aggregate”), after sub-paragraph (c) add

“and

(d) in a case where the earner’s later earnings level was higher than his termination earnings level, the later earnings addition.”

(2) After paragraph (3) insert the following paragraphs—

“(3A) In this Article “the later earnings addition” means an amount equal to the difference between the relevant sum and what that sum would have been had the pension in question been calculated by reference to the earner’s later earnings level.

(3B) In this Article—

“later earnings level” means the level of earnings by reference to which the pension which constitutes the relevant sum would have been calculated had the termination of employment date fallen on the cessation date;

“termination earnings level” means the level of earnings by reference to which that pension would have been calculated had the cessation date fallen on the termination of employment date; and

“the cessation date” means the earlier of—

(a) the date on which the earner ceased to be employed in relevant employment; and

(b) the date which, in relation to the earner, was the relevant date within the meaning of Article 43A(1).”.

(3) After paragraph (5) add the following paragraph—

“(6) In this Article “relevant employment” shall be construed in accordance with Schedule 3.”.

4.—(1) In Article 43C (which, among other things, provides for Articles 43A and 43B to override provisions of pension schemes), in paragraph (3) (exceptions)—

(a) in sub-paragraph (a)(ii) omit “or 41”; and

(b) after sub-paragraph (c) add

“and

(d) any provision of a scheme to the extent that it deals with commutation of the whole or part of a pension..”

(2) Sub-paragraph (1) shall be deemed to have come into operation on 1st December 1986 (the date on which the repeal of Article 41(2) and (3) of the Pensions Order took effect).

5.—(1) In Article 45 (which relates to the premium on termination of contracted-out employment), after paragraph (1A) insert the following paragraphs—

“(1B) Where the amount of a person’s earnings for any period (whether before or after the making of this Order) is relevant for any purpose of paragraph (1) or (1A) and the Department is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, the Department may for that purpose—

(a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or

(b) take their amount to be such sum as it may specify in the particular case.

(1C) Where—

(a) the Department subsequently ascertains the amount of those earnings; and

(b) it appears to the Department that the amount of the premium would have been different if it had not made the calculation on the basis described in paragraph (1A),

the Department shall refund to the prescribed person the amount by which it would have been less or, as the case may be, the prescribed person shall pay to the Department the amount by which it would have been more.”.

(2) At the beginning of paragraph (2A) (meaning of “linked qualifying service”) insert “Subject to paragraphs (2B) and (2C)” and after that paragraph insert the following paragraphs—

“(2B) Only so much of the earlier period as is a period of service in respect of which there accrued under the first scheme any of the rights transferred to the second scheme shall be linked qualifying service in relation to the later period of service.

(2C) As respects any case where the rules of a scheme provide—

(a) that an earner is not entitled to become a member unless he satisfies specified conditions; but

(b) that, if he becomes a member, rights are to accrue to him in respect of periods of service before he satisfied any such conditions,

regulations may provide for any such periods to be treated, in such cases and to such extent as may be prescribed, as linked qualifying service with later periods of service.”.

(3) In Article 2(2) (interpretation), in the definition of “linked qualifying service” for “Article 45(2A)” substitute “Article 45(2A) to (2C)”.

6.—(1) In Article 46 (premium on termination of contracted-out scheme), for paragraph (5A) (earnings deemed to equal upper earnings limit where their amount is not readily ascertainable) substitute the following paragraph—

“(5A) Where, in calculating the costs referred to in paragraph (5), the Department cannot readily ascertain the amount of any earnings in a tax week, the Department may for the purpose of calculating those costs—

(a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of those earnings; or

(b) take their amount to be such sum as it may specify in the particular case, and it may certify the costs accordingly.”.

(2) In paragraph (5B) (refund where true amount of earnings ascertained)—

(a) in sub-paragraph (b) for “less” substitute “different”; and

(b) at the end of that paragraph add “or, as the case may be, the prescribed person shall pay to the Department the amount by which it would have been more.”.

7. In Article 46A(1) (circumstances in which transfer premiums may be paid), for sub-paragraph (c) substitute the following sub-paragraph—

“(c) the scheme to which his accrued rights are transferred is neither a contracted-out scheme nor one which was formerly contracted-out and in respect of which the Occupational Pensions Board have duties under Article 50 at the time of the transfer; and”.

8. In Article 47(3) (election as to method of computation where guaranteed minimum pension excluded from full revaluation)—

(a) the words “unless the person liable for the premium elects in the prescribed manner that this paragraph shall not apply” shall cease to have effect; and

(b) after sub-paragraph (b) add—

“but this paragraph shall not apply in any case where its application would result in the amount of the premium being greater than it would have been apart from this paragraph.”.

9. In Article 53C(1) (discharge of scheme’s liability to provide benefits, etc.) sub-paragraph (b) shall have effect, and be deemed always to have had effect, with the words following head (i) set out as follows—

“(ii) short service benefit, or an alternative to short service benefit, for or in respect of that person being appropriately secured; and”.

10. Article 54 (which provides for regulations freeing earners from liability to join pension schemes of certain kinds and which is superseded by Article 17 of the 1986 Order) shall cease to have effect.

11. In Article 60 (modification of occupational pension schemes by order of the Occupational Pensions Board), after paragraph (10) add the following paragraph—

“(10A) Regulations may provide that in prescribed circumstances paragraph (7) shall not apply or shall apply with prescribed modifications.”.

12. In Schedule 3 (preservation of benefit under occupational schemes)—

(a) in paragraph 2, for “his wife or widow” substitute “the member’s wife or husband, widow or widower”;

(b) in paragraph 15(2) and (3)(a), for “member’s widow or a dependant of his” substitute “widow or widower or a dependant of the member”;

(c) in paragraphs 15(4) and 16(3)(b), for “widow” substitute “widow or widower”; and

(d) in paragraph 17(1), for “his widow or a dependant” substitute “a member’s widow or widower or dependant”.

The Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (NI 11)

13. In Article 17 (election as to method of computation where guaranteed minimum pension preserved under approved arrangements), in paragraph (1)—

- (a) the words “unless the prescribed person otherwise elects in the prescribed manner” shall cease to have effect; and
- (b) after sub-paragraph (b) add—
“but this paragraph shall not apply in any case where the application of those provisions would result in the amount of the guaranteed minimum being greater than it would have been apart from this paragraph”.

The 1986 Order

14. In Article 11(4) (which specifies provisions of the Pensions Order relating to guaranteed minimum pensions which are to be construed as if “widow” included “widower”)—

- (a) in sub-paragraph (f), after “Article 43B(1)(c)” insert “and (i)”; and
- (b) after sub-paragraph (h) insert—
“(i) paragraphs 8(b) and 13(6) of Schedule 1A.”.

15. After Article 18 insert the following Article—

“Reciprocity with other countries

18A.—(1) Section 134 of the principal Act (orders providing for reciprocity) shall apply as if any reference to that Act included a reference to this Part.

(2) An order made by virtue of paragraph (1) may, in particular, provide for the Department to make payments for any period beginning on or after 6th April 1987 and may make provision with respect to any matters relating to payments so made.”.

16.—(1) In Schedule 1 (appropriate personal pension schemes), in sub-paragraphs (4) and (5) of paragraph 7 (calculation and verification of value of protected rights such as are mentioned in sub-paragraph (2) of that paragraph) omit “such as are mentioned in sub-paragraph (2)”.

(2) In head (a) of sub-paragraph (4) of that paragraph, after “shall” insert “in the case of any such protected rights as are mentioned in sub-paragraph (2)”.

17.—(1) For paragraph 8 of that Schedule substitute the following paragraph—

“8. The rules shall provide for effect to be given to the protected rights of a member—

- (a) in any case where sub-paragraph (2) of paragraph 9 so requires, by the purchase of such an annuity as is mentioned in that sub-paragraph; and
- (b) in any other case, in such of the ways permitted by that paragraph as the rules may specify,

and they shall not provide for any part of a member’s protected rights to be discharged otherwise than in accordance with that paragraph.”.

(2) In sub-paragraph (2) of paragraph 9 of that Schedule (cases in which protected rights may be given effect by purchase of annuity)—

- (a) at the beginning insert “Subject to sub-paragraphs (4) and (6),”; and
- (b) for “effect may be given to protected rights” substitute “then, except to the extent that effect is given to protected rights in accordance with sub-paragraph (3), effect shall be given to those rights”.

(3) After sub-paragraph (7) of that paragraph (half rate pension or annuity for earner's widow or widower, etc.) insert the following sub-paragraph—

“(7A) As respects the period of 5 years beginning with the commencement of the pension or annuity referred to in sub-paragraph (7), that sub-paragraph shall have effect in relation to that pension or annuity as if the words “at least” were inserted immediately before the words “one-half” in head (b)(i).”.

*The Occupational Pension Schemes (Contracting-out)
Regulations(Northern Ireland) 1985 (S.R. 1985 No. 259)*

18.—(1) In regulation 21 (additional requirement alternative to limited revaluation premium), in paragraphs (3A) and (7A) (which were inserted by regulation 2 of the Contracting-out (Miscellaneous Amendments) Regulations (Northern Ireland) 1988(**41**) and which provide for the rate of increase to be 7½ per cent. in certain cases) for “and in relation to another scheme,” substitute “(and whether in relation to the same or another scheme)”.

(2) The amendment by sub-paragraph (1) of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision.

(3) This paragraph shall be deemed to have come into operation on 6th April 1988.

SCHEDULE 7

Article 27(1).

PRE-CONSOLIDATION AMENDMENTS

The principal Act

1.—(1) In section 4, for subsection (3) (persons liable to pay Class 1 contributions) substitute the following subsection—

“(3) The primary and secondary contributions referred to in subsection (2) above are payable as follows—

- (a) the primary contribution shall be the liability of the earner; and
- (b) the secondary contribution shall be the liability of the secondary contributor,

but nothing in this subsection shall prejudice the provisions of paragraph 3 of Schedule 1 to this Act relating to the manner in which the earner's liability falls to be discharged.”.

(2) In subsection (6C) of that section (amount of secondary Class 1 contribution), for “the amount of a secondary Class 1 contribution” substitute “where a secondary Class 1 contribution is payable, the amount of that contribution”.

2. In section 7A(3) (late paid Class 2 contributions)—

- (a) omit “Class 2” in each place where it occurs;
- (b) for “from the week” substitute “beginning with the week”; and
- (c) for “to the day” substitute “and ending with the day”.

3. In section 8(2C) (late paid Class 3 contributions), for “any amount” substitute “any other amount”.

4. In section 9 (Class 4 contributions recoverable under Tax Acts)—

(41) S.R. 1988 No. 108

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

- (a) in subsection (1), after “payable”, where first occurring, insert “for any tax year”;
- (b) in that subsection, for the words from “any year” to “1975” substitute “the year of assessment corresponding to that tax year”; and
- (c) after that subsection insert the following paragraph—
 “For the purposes of this section the year of assessment which corresponds to a tax year is the year of assessment (within the meaning of the Tax Acts) which consists of the same period as that tax year.”.
- 5. In section 12(1) (contributory benefits), for paragraph (d) substitute the following paragraph—
 “(d) maternity allowance (with increase for adult dependants)”.
- 6. In section 13(5) (earnings factors) as it has effect in relation to tax years before 1987—88, for “shall be derived” substitute “may be derived”.
- 7. In section 18(4) (unemployment benefit), for “for regulations” substitute “of regulations”.
- 8. In section 24 (widow’s payment), as substituted by the 1986 Order, add the following subsection at the end—
 “(3) A widow’s payment is payable only in cases where the husband dies after the coming into operation of Article 37 of the Social Security (Northern Ireland) Order 1986.”.
- 9. In section 30(6)(b) (amendment of provisions relating to earnings after retirement age), for “36(5)” substitute “36(8)”.
- 10. In section 48(3)(a) (sequence in which certain reductions of Category A pensions are to be made), for “45(3)” substitute “45(2A)”.
- 11. In section 57(4) (90 day waiting period for disablement benefit), for “Disablement benefit shall not be available to a person” substitute “A person shall not be entitled to disablement benefit”.
- 12. In section 59A(1), at the end of paragraph (a) add “and”.
- 13. In section 106(1)(a) (review of decisions of Attendance Allowance Board), for “paragraph or paragraph (b) below” substitute “subsection”.
- 14. In Schedule 3 (contribution conditions for entitlement to benefit), in paragraph 8 (satisfaction in early years), in sub-paragraph (1), after “short-term benefit” insert “or a widow’s payment”.
- 15. In sub-paragraph (5) of paragraph 2 of Schedule 12 (constitution of medical appeal tribunals), for “to the panel mentioned in sub-paragraph (4)” substitute “chairman of a tribunal under sub-paragraph (4)(a)”.
- 16. In Schedule 17 (glossary of expressions), in the definition of “week” omit “midnight between Saturday and”.

The Pensions Order

- 17.—(1) In Article 17 (invalidity pension for widows), after paragraph (1) insert the following paragraph—
 “(1A) This Article does not apply to a woman unless—
 (a) her husband died after 5th April 1979; or
 (b) she ceased to be entitled to a widowed mother’s allowance after that date (whenever her husband died).”.

(2) In consequence of sub-paragraph (1), paragraph 17 of Schedule 1 to the Social Security (Northern Ireland) Order 1979⁽⁴²⁾ shall cease to have effect.

18. In Article 45(2A) (linked qualifying service), at the end of sub-paragraph (a) insert “and”.

Child Benefit (Northern Ireland) Order 1975 (NI 16)

19. In Article 8(1) (necessity for claim), for the words following “claims it” substitute “in the manner, and within the time, prescribed in relation to child benefit by regulations under Article 52 of the Social Security (Northern Ireland) Order 1986”.

Social Security (Northern Ireland) Order 1982 (NI 16)

20. In Article 29 (statutory sick pay: Crown employment), at the end add the following paragraphs—

“(3) For the purposes of this Article Her Majesty’s forces shall be taken to consist of such establishments and organisations as may be prescribed by regulations made by the Secretary of State, being establishments and organisations in which persons serve under the control of the Defence Council.

(4) The following provisions, namely—

section 155(8) of the principal Act (regulation-making power exercisable by statutory instrument, etc.); and

section 142(5) of the Social Security Act 1975 (application of provision relating to Parliamentary control of statutory instruments),

as they apply to regulations made by the Secretary of State under section 123(3) of the principal Act, apply also to regulations made by him under paragraph (3).”.

21. In Article 35 (territorial waters), omit paragraph (3) (which is spent) and paragraph (4) (which is of no further practical utility).

The 1986 Order

22. In Article 48(7)(b)(i) (the maternity pay period), for “between the 11th and 6th weeks before” substitute “during the period beginning with the 11th week, and ending with the 7th week, before”.

23. In Article 51(1) (definitions relating to statutory maternity pay), in the definition of “week” omit “midnight between Saturday and”.

24. In paragraph 3(3) of Schedule 6 (Christmas bonus for pensioners) omit head (c).

SCHEDULE 8

Article 31(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Earnings to include payments for restrictive undertakings

1. In section 3 of the principal Act (meaning of “earnings”), after subsection (1C) insert the following subsection—

(42) 1979 NI 5

“(1D) For the purposes of this section there shall be treated as remuneration derived from an employed earner’s employment any sum paid to or for the benefit of an employed earner which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) otherwise than by virtue of subsection (4) of that section.”.

Incapacity for work: work as councillor to be disregarded

2.—(1) In determining for the purposes of—

- (a) any provisions of the principal Act which relate to sickness benefit or invalidity benefit; or
- (b) Article 17 or 18 of the Pensions Order (invalidity pensions for widows and widowers),

whether any day is to be treated as a day of incapacity for work in relation to a person, there shall be disregarded any work which that person has undertaken, or is capable of undertaking, as a councillor.

(2) Where the amount of councillor’s allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(3) In determining whether a person satisfies the conditions of entitlement for an incapacity benefit, he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
- (b) would not have been so treated apart from this sub-paragraph.

(4) In determining whether a person satisfies the conditions specified in subsections (2)(b) and (3)(b) of section 36 of the principal Act (severe disablement allowance) he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
- (b) would not have been so treated apart from this sub-paragraph.

(5) In subsection (7) of that section (regulations), after paragraph (c) insert the following paragraph—

“(cc) may provide that, where the amount of councillor’s allowance (within the meaning of paragraph 2 of Schedule 8 to the Social Security (Northern Ireland) Order 1989) to which a person is entitled in respect of any week exceeds a prescribed sum, then, except in prescribed cases, an amount equal to the excess shall be deducted from the amount of any severe disablement allowance to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable; and”.

(6) In this paragraph—

“councillor” means a member of a district council;

“councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a councillor as the Department may prescribe for the purposes of this paragraph; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments;

“incapacity benefit” means any of the following benefits—

- (a) sickness benefit;

(b) invalidity benefit;

(c) an invalidity pension under Article 17 or 18 of the Pensions Order;

“permitted earnings limit” means the amount specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984⁽⁴³⁾ (work of certain kinds to be disregarded where earnings do not exceed £28.50 per week);

“pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before the coming into operation of this paragraph.

(7) Any reference in this paragraph to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.

Disallowance of days of unemployment by reference to termination payments

3. In section 17 of the principal Act (determination of days for which benefit is payable), after the subsection (2B) inserted by Article 12(4) insert the following subsections—

“(2C) If regulations under paragraph (a) of subsection (2) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—

- (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
- (b) for calculating or estimating that person’s level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
- (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

(2D) In subsection (2C) above “post-employment period” means a period following the termination of a person’s employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.”.

Certain benefits not payable for periods of entitlement before deemed date of entitlement

4.—(1) In section 25 of that Act (widowed mother’s allowance), for subsection (3) substitute the following subsections—

“(3) The widow shall not be entitled to the allowance for any period after she remarries, but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1)(a), (b) or (c) above.

(4) A widowed mother’s allowance shall not be payable—

- (a) for any period falling before the day on which the widow’s entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986; or
- (b) for any period during which she and a man to whom she is not married are living together as husband and wife.”.

⁽⁴³⁾ S.R. 1984 No. 245

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

(2) In section 26 of that Act (widow's pension), for subsection (3) substitute the following subsections—

“(3) The widow shall not be entitled to the pension for any period after she remarries, but, subject to that, she shall continue to be entitled to it until she attains the age of 65.

(4) A widow's pension shall not be payable—

- (a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986;
- (b) for any period for which she is entitled to a widowed mother's allowance; or
- (c) for any period during which she and a man to whom she is not married are living together as husband and wife.”.

(3) In section 28 of that Act (Category A retirement pension), in subsection (1) for the words following paragraph (b) substitute—

“and, subject to the provisions of this Act, he shall become so entitled on the date on which he attains pensionable age and his entitlement shall continue throughout his life”.

(4) After that subsection insert the following subsection—

“(1A) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986.”.

(5) In section 29 of that Act (Category B retirement pension), for subsection (9) substitute the following subsections—

“(9) Subject to the provisions of this Act, a woman's entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.

(9A) A woman's Category B retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986.”.

(6) In section 39 of that Act (Category C and D retirement pensions, etc.), for subsection (3) substitute the following subsections—

“(3) Entitlement to a Category C or Category D retirement pension shall continue throughout the pensioner's life.

(3A) A Category C or Category D retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986.”.

Entitlement to, and right to payment of, attendance allowance

5.—(1) Section 35 of that Act (attendance allowance) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (2), for “an attendance allowance is payable to any person” substitute “a person is entitled to an attendance allowance”.

(3) In subsection (4)—

- (a) for “An attendance allowance shall not be payable to a person” substitute “A person shall not be entitled to an attendance allowance”; and
- (b) in paragraph (a)—
 - (i) for “the allowance is payable” substitute “the person to whom the claim relates is entitled to the allowance”; and
 - (ii) for “the person to whom the claim relates” substitute “that person”.
- (4) In subsection (4A), for “an attendance allowance to be paid to a person” substitute “a person to be entitled to an attendance allowance”.

Severe disablement allowance: daily rates, and deduction of statutory maternity pay

6. In section 36 of that Act (severe disablement allowance), after subsection (6) (weekly rate of benefit) insert the following subsections—

“(6A) The amount of severe disablement allowance payable for any relevant day shall be 1/6th of the weekly rate referred to in subsection (6) above.

(6B) In any case where—

- (a) a severe disablement allowance is payable to a woman in respect of one or more relevant days in a week; and
- (b) an amount of statutory maternity pay becomes payable to her on any day in that week,

the amount of the severe disablement allowance (including any increase for a child or adult dependant under section 49(a) below) so payable shall be reduced by the amount of the statutory maternity pay, and only the balance (if any) shall be payable.”.

Dependency increases: fluctuating earnings

7.—(1) In section 47 of that Act (invalidity pension: dependant relative), for paragraph (a) of subsection (1) substitute the following paragraph—

“(a) for any period during which either—

- (i) the pensioner and her husband are residing together and he does not have earnings at a weekly rate in excess of the amount specified in paragraph 1(a) of Part I of Schedule 4; or
- (ii) they are not residing together, he does not have earnings at a weekly rate in excess of the amount specified in Schedule 4, Part IV, column (3) and she is contributing to his maintenance at a weekly rate not less than the amount so specified.”.

(2) After section 84 of that Act (persons maintaining dependants, etc.) insert the following section—

“Dependency increases: continuation of awards in cases of fluctuating earnings.

84A.—(1) Where a beneficiary—

- (a) has been awarded a dependency increase; but
- (b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person (“the relevant earner”) exceed the amount of the increase or, as the case may be, some specified amount,

then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase

shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.

(2) In this section—

- (a) “dependency increase” means any of the increases in benefit provided for under Chapter III of Part II of this Act or section 64 or 66 above; and
- (b) the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this section, would be taken into account in determining whether the beneficiary is entitled to the increase in question for that week.”.

Necessity for claim

8. In section 154A(1) of the principal Act (claim necessary for entitlement to benefit), for paragraphs (a) and (b) substitute the following paragraphs—

- “(a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under Article 52 of the Social Security (Northern Ireland) Order 1986; or
- (b) he is treated, by virtue of regulations under that Article, as making a claim for it.”.

Transitional and consequential provision in regulations

9.—(1) Section 155(3) of the principal Act and section 4(1) of the Old Cases Act (both of which contain general provisions about orders and regulations) shall have effect, and be taken always to have had effect, with the substitution for the words “or supplementary” of the words “, supplementary, consequential or transitional”.

(2) In Article 84 of the 1986 Order (transitional regulations in connection with coming into operation of provisions of that Order), after paragraph (1) insert the following paragraphs—

- “(1A) Without prejudice to any other powers conferred on it, the Department—
 - (a) may, for the purpose of making provision with respect to persons falling within paragraph (1B), modify or revoke any regulations made under this Article if the Department considers it necessary or expedient to do so in consequence of, or otherwise in connection with, any statutory provisions or provisions of schemes, arrangements or other instruments coming into operation after the making of this Order; and
 - (b) may, for the purpose of consolidation, revoke and re-enact, with any modifications which the Department considers necessary or desirable, any regulations under this Article.
- (1B) The persons referred to in paragraph (1A)(a) are any persons—
 - (a) to whom regulations under paragraph (1) apply; or
 - (b) to whom regulations made under Part III relating to income support applied at any time before the making of the Social Security (Northern Ireland) Order 1989.”.

Restriction on first up-rating of additional pension

10. In Article 11 of the Pensions Order (increase of additional pension in Category A retirement pension), at the end add the following paragraph—

- “(3A) Where a person is entitled to a Category A retirement pension with an increase under paragraph (3) in the additional pension and the circumstances are such that—

- (a) the deceased spouse to whose contributions that increase is referable died during that part of the tax year which precedes the date on which the order under Article 64 of the Social Security (Northern Ireland) Order 1986 comes into operation (“the initial up-rating order”), and
 - (b) the deceased spouse’s final relevant year for the purposes of Article 8 is the tax year immediately preceding that in which the death occurred,
- then, in determining the amount of the additional pension which falls to be increased by the initial up-rating order, so much of that pension as is attributable to the increase under paragraph (3) shall be disregarded.”.

Consultations about subordinate legislation

11.—(1) In section 9 of the Social Security Act 1980⁽⁴⁴⁾ (the Social Security Advisory Committee), in subsection (7) (meaning of “the relevant Northern Ireland enactments”, etc.), at the end of paragraph (c) add “and Part II of the Social Security (Northern Ireland) Order 1986 and Schedule 5 to the Social Security (Northern Ireland) Order 1989”.

(2) In Article 62 of the 1986 Order (consultations about subordinate legislation), for paragraphs (5) and (6) substitute the following paragraphs—

“(5) Except to the extent that this paragraph is excluded by any statutory provision passed or made after this Order, nothing in any statutory provision shall require the reference to the Committee of any regulations contained in either—

- (a) a statutory rule made before the end of the period of 6 months beginning with the coming into operation of the statutory provision under which those regulations are made; or
- (b) a statutory rule—
 - (i) which states that it contains only regulations made by virtue of, or consequential upon, a specified statutory provision; and
 - (ii) which is made before the end of the period of 6 months beginning with the coming into operation of that specified statutory provision.

(6) In this Article “regulations” means regulations under this Order or under any other statutory provision, whenever passed or made.”.

(3) In Schedule 3 to the Social Security Act 1980, in Part II (regulations not requiring prior submission to the committee), in paragraph 15AA, for the words from “and corresponding” to the end of the paragraph substitute “or under paragraphs 1 to 5 of Schedule 4 to the Social Security (Northern Ireland) Order 1986”.

Regulations relating to home responsibilities

12. Head (i) of Article 71(1)(a) of the Pensions Order (confirmatory, instead of negative, procedure for regulations under paragraph 5(6) of Schedule 3 to the principal Act relating to contributors who were precluded from regular employment by responsibilities at home) shall cease to have effect.

⁽⁴⁴⁾ 1980 c. 30

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

Statutory sick pay: trade disputes

13. In paragraph 7 of Schedule 1 to the 1982 Order (no disqualification for statutory sick pay by virtue of stoppage of work where employee shows he did not participate in, or have a direct interest in, the trade dispute), the words “participate in, or” shall cease to have effect.

Family credit: up-rating

14. In Article 21 of the 1986 Order (income-related benefits), in paragraph (6) (awards of family credit not to be affected by changes of circumstances), at the end add “or by any order under Article 64”.

Income support: return to work after trade dispute

15. In Article 24A of the 1986 Order (effect of person’s return to work after trade dispute), in paragraph (c) (certain sums paid by way of income support to be recoverable in the prescribed manner) for “in the prescribed manner” substitute “in accordance with the regulations”.

Personal representatives to give information about estate

16. After Article 28 of the 1986 Order insert the following Article—

“Personal representatives to give information about the estate of a deceased beneficiary

28A.—(1) The personal representatives of a person who was in receipt of income support or supplementary benefit at any time before his death shall provide the Department with such information as it may require relating to the assets and liabilities of that person’s estate.

(2) If the personal representatives fail to supply any information within 28 days of being required to do so under paragraph (1), then—

- (a) the county court may, on the application of the Department, make an order directing them to supply that information within such time as may be specified in the order; and
- (b) any such order may provide that all costs of and incidental to the application shall be borne personally by any of the personal representatives.”.

Statutory maternity pay: employers to provide information relating to claims for certain other benefits

17. In Schedule 4 to the 1986 Order (supplementary provisions relating to statutory maternity pay), after paragraph 8 insert the following paragraph—

“8A.—(1) Regulations may make provision requiring an employer in prescribed circumstances to furnish information in connection with the making of a claim by a woman who is or has been his employee for—

- (a) a maternity allowance;
 - (b) sickness benefit;
 - (c) an invalidity pension; or
 - (d) severe disablement allowance.
- (2) Regulations under this paragraph shall prescribe—

- (a) the kind of information to be furnished in accordance with the regulations;
- (b) the person to whom information of the prescribed kind is to be furnished; and
- (c) the manner in which, and period within which, it is to be furnished.”.

Joint citations

18. In the following statutory provisions, for “Social Security (Northern Ireland) Acts 1975 to 1986” in each place where they occur substitute “the Social Security (Northern Ireland) Acts 1975 to 1989”—

- (a) section 5(1) of the National Insurance Measure (Northern Ireland) 1974⁽⁴⁵⁾;
- (b) section 9(7) of the Social Security Act 1980⁽⁴⁶⁾;
- (c) Article 6(5) of the Forfeiture (Northern Ireland) Order 1982⁽⁴⁷⁾;
- (d) Article 7(1)(a) of the Social Security (Northern Ireland) Order 1985;
- (e) paragraph (b) of the definition of “the benefit Acts” in Article 2(2) of the 1986 Order.

SCHEDULE 9

Article 31(2).

REPEALS

Chapter or Number	Title	Extent of repeal
1948 c. 23 (N.I.)	The Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.	Section 3(2) and (6).
1975 c. 15.	The Social Security (Northern Ireland) Act 1975.	In section 1, in subsection (1) the words from “together with” onwards, and subsections (5) and (5A). In section 7A(3), the words “Class 2” wherever occurring. In section 14(6), the words following paragraph (c). In section 15(6)(a), the words “but have not retired from regular employment”. In section 20(1A) the words “longer or”. Section 27(3), (4) and (5). In section 28(1)(a), the

The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 128(3) of that Act, Article 29(6) of the Pensions Order, Article 4(2) of the Social Security (Contributions) (Northern Ireland) Order 1981 and Article 4 of the Social Security (Contributions) (Northern Ireland) Order 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.

The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order (Northern Ireland) 1988.

⁽⁴⁵⁾ 1974 c. 4 (N.I.)

⁽⁴⁶⁾ 1980 c. 30

⁽⁴⁷⁾ 1982 NI 14

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

Chapter or Number	Title	Extent of repeal
		words “and has retired from regular employment”.Section 29(5)(a).In section 30, subsection (1), in subsection (3), in paragraph (a), the words “retired from regular employment or has otherwise” and the words “retired or” and subsection (6)(a).In section 36(7), the word “and” at the end of paragraph (c).In section 39(1)(b), the words “and has retired from regular employment”.In section 41(1), the words “section 30(1) of this Act and to”.Section 48(2) and (3).In section 100(3), the words from “without leave” onwards.Section 101(6) and (7).In section 112A, subsection (4) and, in subsection (5), the words “or reference” and the words from “and the medical” onwards.Section 128(3).In section 156(2)(b), the words “section 1(5A) (alteration of Consolidated Fund supplement to contributions);”.In Schedule 10, paragraphs 1(7) and 2(2).In Schedule 11, paragraph 4.In Schedule 13, paragraphs 8 and 9.In Schedule 17, in the definition of “week”, the words “midnight between Saturday and” and “30(1)”.
1975 c. 18.	The Social Security (Consequential Provisions) Act 1975.	In Schedule 2, paragraph 72.
1975 NI 15.	The Social Security Pensions (Northern Ireland) Order 1975.	In Article 10(1), the words “who has retired from regular employment”. Article 13.

The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 128(3) of that Act, Article 29(6) of the Pensions Order, Article 4(2) of the Social Security (Contributions) (Northern Ireland) Order 1981 and Article 4 of the Social Security (Contributions) (Northern Ireland) Order 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.

The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order (Northern Ireland) 1988.

Chapter or Number	Title	Extent of repeal
		Article 29(6). In Article 43A(1C), the word “and” at the end of sub-paragraph (b). In Article 43B(1A), the word “and” at the end of sub-paragraph (b). Article 43C(3)(a)(ii). In Article 47(3), the words from “, unless the person” to “shall not apply,”. Articles 54 to 58. Article 60(3)(e). Article 71(1)(a)(i). In Schedule 5, paragraph 3, 21(a) and 22(a). Article 13(1).
1977 NI 11.	The Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977.	In Article 17(1), the words “, unless the prescribed person otherwise elects in the prescribed manner,”. In Article 18(2), the words “25(3), 26(3)”.
1979 NI 5.	The Social Security (Northern Ireland) Order 1979.	In Schedule 1, paragraph 17. In Schedule 3, paragraph 17.
1980 NI 8.	The Social Security (Northern Ireland) Order 1980.	Article 4(2).
1981 NI 9.	The Social Security (Contributions) (Northern Ireland) Order 1981.	Article 4(2).
1982 NI 4.	The Social Security (Contributions) (Northern Ireland) Order 1982.	Article 4.
1982 NI 16.	The Social Security (Northern Ireland) Order 1982.	Article 35(3) and (4). In Schedule 1, in paragraph 7, the words “participate in, or”. In Schedule 4, paragraph 7.
1983 NI 17.	The Social Security Adjudications (Northern Ireland) Order 1983. In Schedule 1, paragraph 9.	
1984 NI 8.	The Health and Social Security (Northern Ireland) Order 1984.	In Schedule 2, paragraph 1.
The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 128(3) of that Act, Article 29(6) of the Pensions Order, Article 4(2) of the Social Security (Contributions) (Northern Ireland) Order 1981 and Article 4 of the Social Security (Contributions) (Northern Ireland) Order 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.		
The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order (Northern Ireland) 1988.		

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

Chapter or Number	Title	Extent of repeal
1985 NI 16.	The Social Security (Northern Ireland) Order 1985. In Schedule 5, paragraph 23.	
1986 NI 18.	The Social Security (Northern Ireland) Order 1986. In Article 27(3), the word “and” at the end of sub-paragraph (b). In Article 51(1), in the definition of “week”, the words “midnight between Saturday and”. In Schedule 1, in paragraph 7(4) and (5), the words “such as are mentioned in sub-paragraph (2)”. In Schedule 3, paragraph 14(b) and 16(b). In Schedule 6, in paragraph 3, sub-paragraph (2)(a)(ii), in sub-paragraph (3)(b), the words “30(1),”, sub-paragraph (3)(c), sub-paragraph (4)(b) and the word “or” immediately preceding it. In Schedule 9, paragraph 61.	
1988 NI 2.	The Social Security (Northern Ireland) Order 1988.	Article 4(8).
The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 128(3) of that Act, Article 29(6) of the Pensions Order, Article 4(2) of the Social Security (Contributions) (Northern Ireland) Order 1981 and Article 4 of the Social Security (Contributions) (Northern Ireland) Order 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.		
The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order (Northern Ireland) 1988.		

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to those of the Social Security Act 1989.

Article 3 makes amendments relating to primary Class 1 contributions. Primary contributions will consist of an initial primary percentage of 2 per cent. of the current lower earnings limit and a main primary percentage of 9 per cent. of earnings that exceed the lower earnings limit up to the upper earnings limit. Article 4 enables provision to be made in regulations for the refund of contributions where earnings become repayable and Article 5 abolishes the Consolidated Fund supplement to contributions. Article 6 revises the provisions relating to earnings factors and enables the Department

of Health and Social Services to assess the level of earnings where such information is not available. Article 7 extends a parent's liability for income support purposes in certain circumstances to maintain his or her child up to the age of 19.

Article 8 provides that women widowed before 11th April 1988 shall have their entitlement to widow's benefit determined under the legislation in force before that date.

Article 9 and Schedule 1 abolish the retirement pensions earnings rule together with the related retirement condition. Article 10 extends from 75 to 80 the upper age limit for entitlement to a mobility allowance.

Article 11 provides for unemployment benefit to be abated on account of payments by way of personal pension and that earnings will include payments by way of personal pension in relation to the earnings rules for dependency increases paid with benefits under the Social Security (Northern Ireland) Act 1975.

Article 12 makes it a requirement for entitlement to unemployment benefit that the person must be actively seeking work and Article 13 amends provisions relating to requalification for unemployment benefit. Article 14 amends the provisions under which an unemployed person must have good cause for refusing an opportunity of employment. Article 15 amends the conditions for entitlement to income support to provide that a person must be actively seeking work.

Article 16 amends provisions relating to housing benefit to provide for rebates to be in the form of a payment or a reduction in a person's liability for rent or rates, or by way of both. Article 17 amends certain conditions under which the Department of Health and Social Services will pay housing benefit grant to the housing Executive. Article 18 makes arrangements for the payment of the expenses of the Department of Health and Social Services and the Department of the Environment in making transitional payments relating to income support and housing benefit.

Article 19 enables the Department of Health and Social Services to make corresponding orders for Northern Ireland where orders are made in Great Britain to rectify mistakes in up-rating orders. Article 20 provides for the automatic up-rating of awards of income support.

Article 21 and Schedule 2 make it an offence for a person employed in social security administration or adjudication to disclose without lawful authority certain information obtained in the course of his employment and Article 22 extends the power of the Inland Revenue to disclose for social security purposes information obtained or held by them. Article 23 and Schedule 3 contain amendments relating to matters of adjudication.

Article 24 and Schedule 4 provide for the recovery by the Department of Health and Social Services from a compensation payment of an amount equivalent to the gross social security benefits received by a person in consequence of an accident, injury or disease for which compensation has been paid.

Article 25 and Schedule 5 implement the principle of equal treatment for men and women in occupational social security schemes and Article 26 and Schedule 6 contain amendments to occupational and personal pension provisions. Articles 27 to 31 contain general and supplementary provisions.