
STATUTORY INSTRUMENTS

1990 No. 1511 (N.I. 15)

NORTHERN IRELAND

The Social Security (Northern Ireland) Order 1990

Made - - - - *24th July 1990*
Laid before Parliament *9th August 1990*
Coming into operation in accordance with Article 1

At the Court at Buckingham Palace, the 24th day of July 1990
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 1990⁽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 22 of the said Act of 1990) 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 1990.

(2) This Order, other than Articles 17 and 22(4), and the Social Security (Northern Ireland) Acts 1975 to 1989 may be cited together as the Social Security (Northern Ireland) Acts 1975 to 1990.

(3) Subject to paragraph (4), this Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(4) 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;
- (b) Articles 5(6), 7, 8, 9, 12, 17, 18(1), (4) to (7) and (9), 20, 21 and 22(3) to (5);

(1) 1990 c. 27
(2) 1974 c. 28

- (c) Schedule 1;
- (d) paragraphs 5, 7, 8 and 14 of Schedule 4 (and Article 16 so far as relating to those provisions);
- (e) paragraphs 1 to 7, 10 to 12, 15, 16 and 19 of Schedule 6 (and Article 22 so far as relating to those provisions);
- (f) the amendments in that Schedule to the extent that they are consequential on any provision specified in sub-paragraphs (a) to (e) (and Article 22 so far as relating to those amendments);
- (g) the repeals in Schedule 7 to the extent that they are consequential on any provision specified in sub-paragraphs (a) to (f) (and Article 22 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—

- “the Department” means the Department of Health and Social Services;
- “the National Insurance Fund” means the Northern Ireland National Insurance Fund;
- “the 1982 Order” means the Social Security (Northern Ireland) Order 1982⁽⁴⁾;
- “the 1986 Order” means the Social Security (Northern Ireland) Order 1986⁽⁵⁾;
- “the 1989 Order” means the Social Security (Northern Ireland) Order 1989⁽⁶⁾;
- “the Old Cases Act” means the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975⁽⁷⁾;
- “the Pensions Order” means the Social Security Pensions (Northern Ireland) Order 1975⁽⁸⁾;
- “prescribed” means prescribed by regulations;
- “the principal Act” means the Social Security (Northern Ireland) Act 1975⁽⁹⁾;
- “regulations” means, except in Article 17, regulations made by the Department;
- “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Benefits

Attendance allowance for persons who are terminally ill

3.—(1) In section 35 of the principal Act (attendance allowance), after subsection (2A) there shall be inserted the following subsections—

“(2B) If a terminally ill person makes a claim expressly on the ground that he is such a person, then—

- (a) he shall be taken for the purposes of subsection (2) above—

(3) 1954 c. 33 (N.I.)

(4) 1982 NI 16

(5) 1986 NI 18

(6) 1989 NI 13

(7) 1975 c. 17

(8) 1975 NI 15

(9) 1975 c. 15

- (i) to satisfy, or to be likely to satisfy, both of those conditions for the remainder of his life, beginning with the date of the claim or, if later, the date determined under section 105 or 106 below as the first date on which he is terminally ill; and
 - (ii) to have satisfied those conditions for the period of 6 months immediately preceding that date (so however that no allowance shall be payable by virtue of this sub-paragraph for any period preceding that date); and
 - (b) the period specified in a certificate issued by virtue of paragraph (a) above shall be the remainder of the person's life, beginning with that date.
- (2C) For the purposes of subsection (2B) above—
 - (a) a person is “terminally ill” at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months; and
 - (b) where a person purports to make a claim for an attendance allowance by virtue of that subsection on behalf of another, that other shall be regarded as making the claim, notwithstanding that it is made without his knowledge or authority.”
- (2) In subsection (4) of that section, after the words “otherwise provide” there shall be inserted the words “and subject to subsection (2B) above”.
- (3) In section 105(3) of that Act (questions to be determined by the Attendance Allowance Board), after the words “whether a person” there shall be inserted “(a)” and for the words “section 35(1) of this Act” there shall be substituted the words—
“subsection (1) of section 35 above;
 - (b) suffers, or has at any time suffered, from renal failure, for the purposes of subsection (2A) of that section; or
 - (c) is or has at any time been terminally ill, within the meaning of subsection (2B) of that section.”
- (4) In section 106 of that Act (review of, and appeal from, Board's decisions), at the beginning of subsection (1) there shall be inserted the words “Subject to the following provisions of this section” and after paragraph (a) of that subsection there shall be inserted the following paragraph—
 - “(aa) at any time review a determination of theirs under section 105(3) above or this subsection of any question whether a person is or was at any time terminally ill, within the meaning of section 35(2B) above, if there has been a change in medical opinion with respect to his condition or his reasonable expectation of life;”.
- (5) After that subsection there shall be inserted the following subsection—
 - “(1A) No determination under section 105(3) or subsection (1) above shall be reviewed on the ground that the person in question is or was at any time terminally ill, within the meaning of section 35(2B) above, unless an application for review is made expressly on that ground either—
 - (a) by the person himself; or
 - (b) by any other person purporting to act on his behalf, whether or not that other person is acting with his knowledge or authority;and a determination may be so reviewed on such an application, notwithstanding that no claim under section 35(2B) above has been made.”.
- (6) In section 154A of that Act (making of claim a condition of entitlement) there shall be added at the end the following subsection—

“(3) Where a person purports to make a claim for an attendance allowance by virtue of section 35(2B) above on behalf of another, that other shall be regarded for the purposes of this section as making the claim, notwithstanding that it is made without his knowledge or authority.”.

Severe disablement allowance: age related addition

4.—(1) After section 36 of the principal Act (severe disablement allowance) there shall be inserted the following section—

“Severe disablement allowance: age related addition.

36A.—(1) If a person was under the age of 60 on the day on which he qualified for severe disablement allowance, the weekly rate of his severe disablement allowance shall be increased by an age related addition at whichever of the weekly rates specified in the second column of paragraph 2A of Part III of Schedule 4 to this Act is applicable in his case, that is to say—

- (a) the higher rate, if he was under the age of 40 on the day on which he qualified for severe disablement allowance;
- (b) the middle rate, if he was between the ages of 40 and 50 on that day; or
- (c) the lower rate, if he was between the ages of 50 and 60 on that day.

(2) Subject to subsection (4) below, for the purposes of this section the day on which a person qualified for severe disablement allowance is his first day of incapacity for work in the period of not less than 196 consecutive days mentioned in section 36(2)(b) or (3)(b) above, as the case may be, which preceded the first day in his current period of entitlement.

(3) For the purposes of this section, a person’s “current period of entitlement” is a current period—

- (a) which consists of one or more consecutive days on which he is or has been entitled to a severe disablement allowance; and
- (b) which begins immediately after the last period of one or more consecutive days for which he was not entitled to such an allowance.

(4) Regulations—

- (a) may prescribe cases where a person is to be treated for the purposes of this section as having qualified for severe disablement allowance on a prescribed day earlier than the day ascertained in accordance with subsection (2) above;
- (b) may provide for days which are not days of incapacity for work in relation to a person to be treated as days of incapacity for work for the purpose of determining under this section the day on which he qualified for severe disablement allowance; and
- (c) may make provision for disregarding prescribed days in computing any period of consecutive days for the purposes of subsection (3) above.”.

(2) In Part III of Schedule 4 to that Act, after paragraph 2 (weekly rate of severe disablement allowance) there shall be inserted the following paragraph—

“2A. Age related addition (section 36A).	(a) higher rate £10.00
	(b) middle rate £6.20
	(c) lower rate £3.10 (the appropriate rate being determined in accordance with section 36A(1)).”.

(3) In consequence of paragraphs (1) and (2), in section 34(1)(b) of that Act (which specifies severe disablement allowance as one of the non-contributory benefits under Chapter II of Part II of that Act), after the word “(with” there shall be inserted the words “age related addition and”.

Reduced earnings allowance and retirement allowance

5.—(1) In subsection (1) of section 59A of the principal Act (conditions of entitlement to reduced earnings allowance), after paragraph (b) there shall be added the words—

“but a person shall not be entitled to reduced earnings allowance to the extent that the relevant loss of faculty results from an accident happening on or after the appointed day.”.

(2) After that subsection there shall be inserted the following subsections—

“(1A) A person—

(a) who immediately before the appointed day is entitled to reduced earnings allowance in consequence of the relevant accident, but

(b) who subsequently ceases to be entitled to that allowance for one or more days, shall not again be entitled to reduced earnings allowance in consequence of that accident; but this subsection does not prevent the making at any time of a claim for, or an award of, reduced earnings allowance in consequence of that accident for a period which commences not later than the day after that on which the claimant was last entitled to that allowance in consequence of that accident.

(1B) For the purposes of subsection (1A) above—

(a) a person who, apart from section 57(4) above, would have been entitled to reduced earnings allowance immediately before the appointed day shall be treated as entitled to that allowance on any day (including a Sunday) on which he would have been entitled to it apart from that provision;

(b) regulations may prescribe other circumstances in which a person is to be treated as entitled, or as having been entitled, to reduced earnings allowance on any prescribed day.”.

(3) In paragraph (b) of subsection (6) of that section (further awards), after the words “for such further period” there shall be inserted the words “, commencing as mentioned in subsection (1A) above.”.

(4) After subsection (10A) of that section there shall be inserted the following subsection—

“(10B) In this section “the appointed day” means the day on which Article 5 of the Social Security (Northern Ireland) Order 1990 comes into operation.”.

(5) In section 59B of that Act (retirement allowance) the following provisions shall cease to have effect—

(a) in subsection (1) (circumstances in which a beneficiary ceases to be entitled to reduced earnings allowance and in which he may become entitled to it again) the words from “and may become” onwards;

(b) in subsection (3) (retirement allowance payable for life, unless beneficiary returns to regular employment, etc.) the words “Unless he returns to regular employment,”; and

(c) subsection (4) (entitlement to retirement allowance to cease on return to regular employment, etc.).

(6) That section shall have effect, and be taken at all times on and after 1st January 1990 to have had effect, with the addition of the following subsection after subsection (8)—

“(9) “Day of interruption of employment” has the same meaning for the purposes of this section as it has for the purposes of provisions of this Act relating to unemployment benefit, sickness benefit or invalidity benefit.”

(7) In section 77(2)(a) of that Act (regulations modifying provisions relating to certain benefits in their application to prescribed diseases and injuries), after the words “(isableness benefit” there shall be inserted the words “or reduced earnings allowance”.

(8) The following provisions shall cease to have effect—

- (a) in Article 4 of the Social Security (Northern Ireland) Order 1988⁽¹⁰⁾, the paragraph (7) originally made (restriction on entitlement to reduced earnings allowance); and
- (b) in Schedule 1 to the 1989 Order, paragraph 8(7) (which substitutes for paragraph (7) a paragraph (7) and a paragraph (7A)).

Computation of additional pension for purposes of invalidity pension, etc.

6.—(1) In Article 16 of the Pensions Order (which provides for the rate of an invalidity pension under section 15 of the principal Act to be calculated in accordance with Article 8 of the Pensions Order, in similar manner to a Category A retirement pension, but with modifications), for the words from “taking the reference” onwards there shall be substituted the words

“but with the substitution for paragraph (6) of that Article of the following paragraph—

“(6) In the application of this Article for the purpose of determining the weekly rate of a person’s invalidity pension for any period of interruption of employment—

- (a) “relevant year” means any tax year, being neither earlier than the tax year 1978—79 nor later than the tax year 1990—91, in the period which—
 - (i) begins with the tax year in which the invalidity pensioner attained the age of 16; and
 - (ii) ends with the tax year immediately preceding the tax year which includes or included the first day of entitlement to the pension in respect of that period of interruption of employment; and
- (b) “final relevant year” means the last tax year which is a relevant year in relation to the invalidity pensioner.”.

(2) In Article 17 of the Pensions Order, in paragraph (4) (determination of weekly rate of widow’s invalidity pension by reference to notional rates of widow’s pension), after sub-paragraph (b) there shall be added the words—

“but, in calculating the weekly rate of a widow’s pension for the purposes of sub-paragraph (a), or the weekly rate of a widow’s pension without reduction, for the purposes of sub-paragraph (b), any additional pension by virtue of Article 8 as it applies for the purposes of Article 15 shall be determined without reference to any surpluses in her late husband’s earnings factors for tax years after 1990—91”.

(3) In Article 18 of that Order (invalidity pension for widowers), for paragraph (4) there shall be substituted the following paragraph—

“(4) The weekly rate mentioned in sub-paragraph (b) of paragraph (3) is a rate determined in the manner specified in Article 8 for a Category A retirement pension, but with the modifications that—

- (a) where the man’s wife was over pensionable age when she died, references in that Article to the pensioner shall be taken as references to the wife;

- (b) where the man's wife was under pensionable age when she died, references in that Article to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the wife and the tax year in which she died; and
- (c) any additional pension shall be determined without reference to any surpluses in her earnings factors for tax years after 1990—91.”.

Retrospective effect of section 154A of the principal Act

7.—(1) After section 154A of the principal Act there shall be inserted the following section—

“Retrospective effect of section 154A.

154B.—(1) This section applies where a claim for benefit is made or treated as made at any time on or after 2nd September 1985 (the date on which section 154A above, as originally enacted, came into force) in respect of a period the whole or any part of which falls on or after that date.

(2) Where this section applies, any question arising as to—

- (a) whether the claimant is or was at any time (whether before, on or after 2nd September 1985) entitled to the benefit in question, or to any other benefit on which his entitlement to that benefit depends; or
- (b) in a case where the claimant's entitlement to the benefit depends on the entitlement of another person to a benefit, whether that other person is or was so entitled,

shall be determined as if section 154A above, as in force at the time of the claim referred to in subsection (1) above, and any regulations made under or referred to in that section as so in force, had also been in force, with any necessary modifications, at all times relevant for the purpose of determining the entitlement of the claimant, and, where applicable, of the other person, to the benefit or benefits in question (including the entitlement of any person to any benefit on which that entitlement depends, and so on).

(3) In any case where—

- (a) a claim for benefit was made or treated as made (whether before, on or after 2nd September 1985, and whether by the same claimant as the claim referred to in subsection (1) above or not), and benefit was awarded on that claim, in respect of a period falling wholly or partly before that date, but
- (b) that award would not have been made had the current requirements applied in relation to claims for benefit, whenever made, in respect of periods before that date, and
- (c) entitlement to the benefit claimed as mentioned in subsection (1) above depends on whether the claimant or some other person was previously entitled or treated as entitled to that or some other benefit,

then, in determining whether the conditions of entitlement to the benefit so claimed are satisfied, the person to whom benefit was awarded as mentioned in paragraphs (a) and (b) above shall be taken to have been entitled to the benefit so awarded, notwithstanding anything in subsection (2) above.

(4) In subsection (3) above “the current requirements” means—

- (a) the provisions of section 154A above, as in force at the time of the claim referred to in subsection (1) above, and any regulations made under or referred to in that section as so in force, with any necessary modifications; and
- (b) subsection (1) (with the omission of the words following “at any time”) and subsection (2) above.

(5) Any reference in any enactment to section 154A of this Act (but not a reference to any specific provision of that section) shall be taken to include a reference to this section.

(6) This section shall be taken to have come into force on 2nd September 1985.”.

(2) In Schedule 17 to the principal Act (glossary of expressions), the entry relating to “entitled” and cognate expressions—

(a) shall be taken at all times on or after 2nd September 1985 but before the commencement of this paragraph to have had effect with the substitution, in the second column, of the words “sections 154A and 154B” for the words “section 154A”; and

(b) shall have effect as from the commencement of this paragraph with the substitution for those words of the words “sections 154A to 154D”.

(3) Article 1(6) of the Social Security (Northern Ireland) Order 1985(11) (which made similar provision to that made by subsection (3) of the section inserted by paragraph (1)) shall be deemed never to have been made.

(4) In paragraph 32 of Schedule 9 to the 1986 Order (which applies sections 87 and 154A(1) of the principal Act to income-related benefits), in sub-paragraph (b), for the words “section 154A(1)” there shall be substituted the words “sections 154A(1) and 154B”.

(5) Paragraph 32 of Schedule 9 to the 1986 Order shall have effect, and be taken always to have had effect, as if it had originally been made as amended by paragraph (4).

Late claims for widowhood benefits where death is difficult to establish

8.—(1) In section 154A of the principal Act (no entitlement to benefit without claim)—

(a) in subsection (1), after the words “Except in such cases as may be prescribed” there shall be inserted the words “and subject to section 154C below”; and

(b) in subsection (2), after paragraph (b) there shall be inserted the words—
“except as provided by section 154C below”.

(2) After the section 154B of that Act inserted by Article 7 there shall be inserted the following section—

“Late claims for widowhood benefits where death is difficult to establish.

154C.—(1) This section applies where a woman’s husband has died, or may be presumed to have died, and the circumstances are such that—

(a) more than twelve months have elapsed since the date of death (whether he died, or is presumed to have died, before or after the coming into force of this section);

(b) either—

(i) the husband’s body has not been discovered or identified or, if it has been discovered and identified, the woman does not know that fact, or

(ii) less than twelve months have elapsed since she first knew of the discovery and identification of the body; and

(c) no claim for any of the widowhood benefits, that is to say—

(i) widow’s benefit,

(ii) an invalidity pension under Article 17 of the Pensions Order, or

(iii) a Category A retirement pension by virtue of paragraph (5) of that Article,

was made or treated as made in respect of the death by the woman before the coming into force of this section.

(2) Where this section applies, notwithstanding that any time prescribed for making a claim for a widowhood benefit in respect of the death has elapsed, then—

(a) in any case falling within paragraph (b)(i) of subsection (1) above where it has been determined—

(i) under subsection (1)(b) of section 98 above on a claim made by the woman, or

(ii) under subsection (2A) of that section on the submission of a question by her, that the husband has died or is presumed to have died, or

(b) in any case falling within paragraph (b)(ii) of subsection (1) above where the identification was made not more than twelve months before the woman first knew of the discovery and identification of the body,

such a claim may be made or treated as made at any time before the expiration of the period of twelve months beginning with the date on which that determination was made or, as the case may be, the date on which she first knew of the discovery and identification.

(3) If, in a case where a claim for a widowhood benefit is made or treated as made by virtue of this section, the claimant would, apart from subsection (2) of section 154A above, be entitled to—

(a) a widow's payment in respect of the husband's death more than twelve months before the date on which the claim is made or treated as made, or

(b) any other widowhood benefit in respect of his death for a period more than twelve months before that date,

then, notwithstanding anything in that section, she shall be entitled to that payment or, as the case may be, to that other benefit (together with any increase under section 41(4) above)."

(3) In section 104 of that Act, after subsection (5) (regulations restricting the arrears of benefit payable in consequence of a review, etc.) there shall be added the following subsection—

"(6) Regulations under subsection (5)(b) above shall not restrict the payment to or for a woman of so much of—

(a) any widow's benefit, any invalidity pension under Article 17 of the Pensions Order or any Category A or Category B retirement pension, or

(b) any increase of such a benefit or pension,

as falls to be paid by reason of a review which takes place by virtue of subsection (1)(a) or (b) above in consequence of a claim for a widowhood benefit, within the meaning of section 154C below, which is made or treated as made by virtue of that section."

(4) The Social Security (Widow's Benefit) (Transitional) Regulations (Northern Ireland) 1987(12) shall have effect with the addition in regulation 2, at the end of paragraph (b), of the words

—
"; and

(c) any reference in section 154C of the Act to widow's payment included a reference to widow's allowance, together with any increase under section 41(2)(e) of the Act"

(5) The amendment by paragraph (4) of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision.

Recovery from damages, etc., of sums equivalent to benefit: further provision

9. The statutory provisions specified in Schedule 1 shall have effect with the amendments specified in that Schedule.

Liability to maintain dependants

10.—(1) After Article 25 of the 1986 Order (recovery of expenditure on benefit from person liable for maintenance) there shall be inserted the following Articles—

“Recovery of expenditure on income support: additional amounts and transfer of orders

25A.—(1) In any case where—

- (a) the claim for income support referred to in paragraph (1) of Article 25 is or was made by the parent of one or more children in respect of both himself and those children, and
- (b) the other parent is liable to maintain those children but, by virtue of not being the claimant’s husband or wife, is not liable to maintain the claimant,

the sum which the court may order that other parent to pay under paragraph (4) of that Article may include an amount, determined in accordance with regulations, in respect of any income support paid to or for the claimant by virtue of such provisions as may be prescribed.

(2) Where the sum which a court orders a person to pay under Article 25(4) includes by virtue of paragraph (1) an amount (in this Article referred to as a “personal allowance element”) in respect of income support by virtue of paragraph 1(2) of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987⁽¹³⁾ (personal allowance for lone parent) the order shall separately identify the amount of the personal allowance element.

(3) In any case where—

- (a) there is in force an order under paragraph (4) of Article 25 made against a person (“the liable parent”) who is the parent of one or more children, in respect of the other parent or the children, and
- (b) payments under the order fall to be made to the Department by virtue of paragraph (6) (a) of that Article, and
- (c) that other parent (“the dependent parent”) ceases to claim income support,

the Department may, by giving notice in writing to the court which made the order and to the liable parent and the dependent parent, transfer to the dependent parent the right to receive the payments under the order, exclusive of any personal allowance element, and to exercise the relevant rights in relation to the order, except so far as relating to that element.

(4) Notice under paragraph (3) shall not be given (and if purportedly given, shall be of no effect) at a time when there is in force a maintenance order made against the liable parent—

- (a) in favour of the dependent parent or one or more of the children; or
- (b) in favour of some other person for the benefit of the dependent parent or one or more of the children;

and if such a maintenance order is made at any time after notice under that paragraph has been given, the order under Article 25(4) shall cease to have effect.

(5) Except as provided by paragraphs (7) and (8), where the Department gives notice under paragraph (3), it shall cease to be entitled—

(13) S.R. 1987 No. 459

- (a) to receive any payment under the order in respect of any personal allowance element, or
- (b) to exercise the relevant rights, so far as relating to any such element,

notwithstanding that the dependent parent does not become entitled to receive any payment in respect of that element or to exercise the relevant rights so far as so relating.

(6) If, in a case where the Department gives notice under paragraph (3), a payment under the order is or has been made to the Department wholly or partly in respect of the whole or any part of the period beginning with the day on which the transfer takes effect and ending with the day on which the notice under paragraph (3) is given to the liable parent, the Department shall—

- (a) repay to or for the liable parent so much of the payment as is referable to any personal allowance element in respect of that period or, as the case may be, the part of it in question; and
- (b) pay to or for the dependent parent so much of any remaining balance of the payment as is referable to that period or part;

and a payment under sub-paragraph (b) shall be taken to discharge, to that extent, the liability of the liable parent to the dependent parent under the order in respect of that period or part.

(7) If, in a case where the Department has given notice under paragraph (3), the dependent parent makes a further claim for income support, then—

- (a) the Department may, by giving a further notice in writing to the court which made the order and to the liable parent and the dependent parent, transfer back from the dependent parent to the Department the right to receive the payments and to exercise the relevant rights; and
- (b) that transfer shall revive the Department's right to receive payment under the order in respect of any personal allowance element and to exercise the relevant rights so far as relating to any such element.

(8) A transfer under paragraph (3) or (7) does not transfer or otherwise affect the right of any person—

- (a) to receive a payment which fell due to him at a time before the transfer took effect; or
- (b) to exercise the relevant rights in relation to any such payment;

and, where notice is given under paragraph (3), paragraph (5) does not deprive the Department of its right to receive such a payment in respect of any personal allowance element or to exercise the relevant rights in relation to such a payment.

(9) For the purposes of this Article—

- (a) a transfer under paragraph (3) takes effect on the day on which the dependent parent ceases to be in receipt of income support in consequence of the cessation referred to in sub-paragraph (c) of that paragraph, and
- (b) a transfer under paragraph (7) takes effect on—
 - (i) the first day in respect of which the dependent parent receives income support after the transfer under paragraph (3) took effect, or
 - (ii) such later day as may be specified for the purpose in the notice under paragraph (7),

irrespective of the day on which notice under the paragraph in question is given.

(10) Section 24(1) of the Interpretation Act (Northern Ireland) 1954 as it applies to the giving of a notice under paragraph (3) or (7), shall have effect as if the word "registering" were omitted.

(11) In this Article—

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

“court” shall be construed in accordance with Article 25;

“maintenance order” means an order for the making of periodical payments or the payment of a lump sum under any statutory provision prescribed for the purposes of this paragraph;

“the relevant rights”, in relation to an order under Article 25(4), means the right to bring any proceedings, take any steps or do any other thing under or in relation to the order which the Department could have brought, taken or done apart from any transfer under this Article.

Reduction of expenditure on income support: certain maintenance orders to be enforceable by the Department

25B.—(1) This Article applies where—

- (a) a person (“the claimant”) who is the parent of one or more children is in receipt of income support either in respect of those children or in respect of both himself and those children; and
- (b) there is in force a maintenance order made against the other parent (“the liable person”)—
 - (i) in favour of the claimant or one or more of the children; or
 - (ii) in favour of some other person for the benefit of the claimant or one or more of the children;

and in this Article “the primary recipient” means the person in whose favour that maintenance order was made.

(2) If, in a case where this Article applies, the liable person fails to comply with any of the terms of the maintenance order—

- (a) the Department may bring any proceedings or take any other steps to enforce the order that could have been brought or taken by or on behalf of the primary recipient; and
- (b) any court before which proceedings are brought by the Department by virtue of subparagraph (a) shall have the same powers in connection with those proceedings as it would have had if they had been brought by the primary recipient.

(3) The Department’s powers under this Article are exercisable at the Department’s discretion and whether or not the primary recipient or any other person consents to their exercise; but any sums recovered by virtue of this Article shall be payable to or for the primary recipient, as if the proceedings or steps in question had been brought or taken by him or on his behalf.

(4) The powers conferred on the Department by paragraph (2)(a) include power—

- (a) to apply for the registration of the maintenance order under—
 - (i) section 17 of the Maintenance Orders Act 1950;
 - (ii) section 11 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966; or
 - (iii) the Civil Jurisdiction and Judgments Act 1982; and
- (b) to make an application under section 2 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (application for enforcement in reciprocating country).

(5) Where this Article applies, the prescribed person shall in prescribed circumstances give the Department notice of any application—

(a) to alter, vary, suspend, discharge, revoke, revive, or enforce the maintenance order in question; or

(b) to remit arrears under that maintenance order;

and the Department shall be entitled to appear and be heard on the application.

(6) Where by virtue of this Article, the Department commences any proceedings to enforce a maintenance order, the Department shall, in relation to those proceedings, be treated for the purposes of any statutory provision relating to maintenance orders as if it were a person entitled to payment under the maintenance order in question (but shall not thereby become entitled to any such payment).

(7) Where, in any proceedings under this Article, the court makes an order for the whole or any part of the arrears due under the maintenance order in question to be paid as a lump sum, the Department shall inform the Incorporated Law Society of Northern Ireland of the amount of that lump sum if the Department knows—

(a) that the primary recipient received legal aid under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 in connection with the proceedings in which the maintenance order was made; and

(b) that a sum remains unpaid on account of the contribution required of the primary recipient under Article 12 of that Order in respect of those proceedings.

(8) In this Article “maintenance order” has the same meaning as it has in Article 25A, but does not include any such order for the payment of a lump sum.”.

(2) In Article 27 of the 1986 Order, in paragraph (3) (definitions for purposes of Articles 25, 26 and 27) after the words “Articles 25” there shall be inserted “, 25A, 25B”.

Income support in respect of accommodation charges for persons in nursing homes, etc.

11. In Article 23 of the 1986 Order (calculation of income-related benefits), after paragraph (2) there shall be inserted the following paragraphs—

“(2A) In prescribing, for the purposes of income support, amounts under paragraph (1) in respect of accommodation in any area for qualifying persons in cases where prescribed conditions are fulfilled, the Department shall take into account—

(a) the amounts which the Department has agreed to pay, and

(b) information provided by the Board or other prescribed persons with respect to the amounts which the Board or such persons have agreed to pay,

for the provision of accommodation in relevant premises in that area.

(2B) In paragraph (2A)—

“accommodation” includes any board or care;

“the Board” means the Health and Social Services Board for that area;

“qualifying persons” means persons who are ordinarily resident in relevant premises and the Department may by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in relevant premises for the purposes of this paragraph;

“relevant premises” means subject to such exemptions as may be prescribed—

(a) nursing homes in respect of which a person is registered under section 1 of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971;

(b) homes for persons in need in respect of which a person is registered under Article 35 of, and Schedule 5 to, the Health and Personal Social Services (Northern Ireland) Order 1972.”.

Amendments relating to the social fund

12.—(1) In Article 33 of the 1986 Order, after paragraph (8D) there shall be inserted the following paragraph—

“(8E) The Department may give general directions to social fund officers or groups of social fund officers, with respect to the control and management by social fund officers or groups of social fund officers of the amounts allocated to them under paragraphs (8A) to (8D).”.

(2) In paragraph (10) of that Article (power to nominate social fund officer to issue guidance to other officers in his area on specified matters) for the words “to issue” there shall be substituted the words “who shall issue”.

(3) In Article 34 of that Order, after paragraph (10) (questions to be determined in accordance with general directions) there shall be inserted the following paragraph—

“(10ZA) Without prejudice to the generality of paragraph (10), the Department may issue directions under that paragraph for the purpose of securing that a social fund officer or group of social fund officers shall not in any specified period make awards of any specified description which in the aggregate exceed the amount, or a specified portion of the amount, allocated to that officer or group of officers under Article 33(8A) to (8D) for payments under awards of that description in that period.”.

(4) In paragraph (10A) of that Article (which specifies certain matters with respect to which directions may be given), after sub-paragraph (e) there shall be inserted the following sub-paragraph—

“(f) that a social fund payment such as is mentioned in Article 33(2)(b) shall only be awarded to a person if either—

- (i) he is in receipt of a benefit under the benefit Acts which is specified in the direction and the circumstances are such as are so specified; or
- (ii) in a case where the conditions specified in head (i) are not satisfied, the circumstances are such as are specified in the direction;”.

(5) At the end of that Article there shall be added the following paragraph—

“(13) The Department may by regulations—

- (a) make provision with respect to the time at which an application for a social fund payment such as is mentioned in Article 33(2)(b) is to be treated as made;
- (b) prescribe conditions that must be satisfied before any determination in connection with such an application may be made or any award of such a payment may be paid;
- (c) prescribe circumstances in which such an award becomes extinguished.”.

*Occupational and personal pensions, etc.***Annual increase of certain occupational pensions**

13.—(1) After Article 68 of the Pensions Order there shall be inserted the following Article—

“Annual increase in rate of pension, other than guaranteed minimum pension or money purchase benefit

68A.—(1) This Article applies in relation to any occupational pension scheme—

- (a) which is neither a public service pension scheme nor a money purchase scheme; and

(b) whose rules do not require the annual rate of every pension which commences or has commenced under the scheme to be increased each year by at least an amount equal to the appropriate percentage of that rate.

(2) On and after the appointed day, Schedule 4A shall have effect for the purpose of requiring the provision by schemes to which this Article applies of annual increases in the annual rates of pensions under those schemes.

(3) In this Article—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under Schedule 4A;

“the appointed day” means the day on which this Article and Schedule 4A come into operation;

“the appropriate percentage”, in relation to an increase in the annual rate of a pension, means the percentage specified in the last revaluation order made before the increase is to take effect as the revaluation percentage for the last revaluation period of 12 months;

“money purchase scheme” means a pension scheme under which all the benefits that may be provided are money purchase benefits;

“pension” does not include—

(a) a guaranteed minimum pension or any increase in such a pension under Article 39A; or

(b) any money purchase benefit;

“revaluation order” means an order under Article 53A, “revaluation period” has the meaning given by paragraph (2) of that Article, and “revaluation percentage” means a percentage specified for a revaluation period by a revaluation order.”.

(2) After Schedule 4 to the Pensions Order there shall be inserted the Schedule set out in Schedule 2.

(3) In the case of an occupational pension scheme—

(a) such as is mentioned in paragraph (1) of Article 68A of the Pensions Order, and

(b) which is constituted by trust deed,

no payment shall be made out of the resources of the scheme to or for a person who is or has been the employer of persons in the description or category of employment to which the scheme relates until such time as provision has been made by the scheme for every pension which commences or has commenced under it to be increased as mentioned in sub-paragraph (b) of that paragraph.

(4) Nothing in paragraph (3) applies in relation to payments made to or for a person by virtue of his or any other person’s membership of the scheme in question.

(5) Expressions used in this Article and the Pensions Order have the same meaning in this Article as they have in that Order.

(6) The provisions of paragraph (3) override any provision of a scheme to the extent that it conflicts with them.

The Pensions Ombudsman

14. The Pensions Order shall have effect with the amendments made by Schedule 3, which are made for the purpose of conferring functions on, and making general provision in connection with, the Pensions Ombudsman appointed under section 59B of the Social Security Pensions Act 1975(**14**).

Registration of occupational and personal pension schemes

15.—(1) At the beginning of Part VI of the Pensions Order there shall be inserted the following Article—

“Registration of occupational and personal pension schemes

69J.—(1) In this Article—

“employer”, in relation to a pension scheme, includes a person who is or has been treated under Article 2(4) as an employer in relation to the scheme for the purposes of Part IV or V;

“the register” means the register of occupational and personal pension schemes compiled and maintained under section 59K of the Social Security Pensions Act 1975;

“the registrar” means the Registrar of Occupational and Personal Pension Schemes appointed under that section.

(2) Regulations may make provision with respect to the staff and the facilities which are to be available to the registrar.

(3) Regulations may require—

(a) any person who is or has been—

(i) a trustee or manager of an occupational or personal pension scheme or an administrator of a public service pension scheme, or

(ii) the employer in relation to employment of any description or category to which an occupational pension scheme relates, and

(b) such other persons as may be prescribed,

to provide the registrar with such information for the purposes of the register in such form and within such time as may be prescribed.

(4) The Department, the Inland Revenue and the Occupational Pensions Board may provide the registrar with such information as he may request for the purposes of the register; and no obligation as to secrecy or confidentiality imposed by statute or otherwise on—

(a) persons employed in the Department,

(b) persons employed in relation to the Inland Revenue, or

(c) the staff of the Occupational Pensions Board,

shall prevent them from disclosing to the registrar such information as is necessary for the purposes of the register.

(5) The Department may direct the registrar to submit to the Department, in such form and at such intervals as may be specified in the direction, such statistical and other reports as the Department may require; and the Department may determine at its discretion whether or not to publish a report submitted to it under this paragraph.”.

(2) The following provisions of the Pensions Order (which make provision with respect to the registration of occupational pension schemes and which are set out in Schedule 2 to the Social Security (Northern Ireland) Order 1985(15) and have not all been brought into operation) shall cease to have effect—

(a) Articles 58B to 58D;

(b) Article 58E(1)(c);

(c) Articles 58F to 58J;

- (d) Article 58K(1)(b), (5)(b) and (7); and
- (e) Article 58L.

Miscellaneous amendments relating to pensions

16.—(1) The statutory provisions mentioned in Schedule 4 (which relate to occupational and personal pensions) shall have effect with the amendments there specified.

(2) Regulations may modify the provisions inserted into the Pensions Order by paragraph 2 of that Schedule in any manner which the Department thinks appropriate with a view to securing the orderly implementation of those provisions and to obtaining general compliance with them.

Energy efficiency in certain dwellings, etc.

Grants for the improvement of energy efficiency in certain dwellings, etc.

17.—(1) The Department of Economic Development may make or arrange for the making of grants—

- (a) towards the cost of carrying out work—
 - (i) for the purpose of improving the thermal insulation of dwellings, or
 - (ii) otherwise for the purpose of reducing or preventing the wastage of energy in connection with space or water heating in dwellings; and
- (b) where any such work is, or is to be, carried out, towards the cost of providing persons with advice relating to thermal insulation or to the economic and efficient use of domestic appliances or of facilities for lighting, or for space or water heating, in dwellings;

but no grants shall be made under this Article except in accordance with regulations made by that Department.

- (2) The regulations may make provision with respect to—
 - (a) the descriptions of dwelling and work in respect of which a grant under paragraph (1)(a) may be made;
 - (b) the nature and extent of the advice with respect to the provision of which grants under paragraph (1)(b) may be made;
 - (c) the descriptions of person from whom an application for a grant under paragraph (1)(a) or (b) may be entertained;
 - (d) the persons to whom such an application is to be made;
 - (e) the payment of such grants to persons other than the applicant;
 - (f) the conditions on which such a grant may be made.
- (3) The regulations—
 - (a) may specify or make provision for determining the amount or maximum amount of any grant under this Article; and
 - (b) may include provision requiring work to comply with standards of materials and workmanship (whether prescribed standards, or standards otherwise laid down by a prescribed person) if it is to be eligible for a grant under paragraph (1)(a).

(4) Paragraphs (1) to (3) shall apply in relation to any building in multiple occupation as they apply in relation to a dwelling; and for this purpose “building in multiple occupation” means a building, which is occupied by persons who do not form a single household, exclusive of any part of the building which is occupied as a separate dwelling by persons who form a single household.

(5) The Department of Economic Development may delegate any of its functions in relation to grants under this Article to such persons as it may determine, and may pay to any person to whom functions are so delegated, or upon whom functions are otherwise conferred under this Article, such fees as may be agreed.

(6) Without prejudice to the generality of the powers conferred by this Article, the regulations may make provision for any of the following matters, that is to say—

- (a) for appointing for any particular area a person (an “administering agency”) to perform in that area such functions as the Department of Economic Development may confer upon him for the purposes of, or otherwise in connection with, this Article (whether those functions are prescribed, or specified otherwise than in regulations);
- (b) for the administering agency for any area to select, in accordance with criteria (whether prescribed criteria, or criteria otherwise laid down by a prescribed person), and register as the network installer for any particular locality within that area, a person capable of carrying out, or arranging for the carrying out of, work in respect of which grants under paragraph (1)(a) may be made, to perform in that locality such functions as the Department of Economic Development or that agency may confer upon that person for the purposes of, or otherwise in connection with, this Article (whether those functions are prescribed, or specified otherwise than in regulations);
- (c) for the allocation by the Department of Economic Development to an administering agency of the sums which are to be available to that agency in any period for the purpose of making grants under this Article in that period, and for the re-allocation of any sums so allocated;
- (d) for the allocation by an administering agency to a network installer of an amount which represents the total amount of grant under this Article which the agency determines is, or is to be, available for any period in respect of work carried out, and advice given, by that installer and any sub-contractors of his in that period, and for the re-allocation of any amount so allocated.

(7) The provision that may be made in regulations by virtue of paragraph (6) includes provision—

- (a) for the making of appointments, or the conferring of functions, under that paragraph to be effected in whole or in part by or under a contract made between prescribed persons and for requiring any such contract to contain prescribed terms and conditions or terms and conditions with respect to prescribed matters;
- (b) for terminating any appointment as an administering agency or any registration as a network installer;
- (c) for conferring upon network installers the exclusive right to apply for grants by virtue of paragraph (4);
- (d) for conferring upon administering agencies functions relating to the general oversight of network installers and the verification of claims made, and information supplied, by them.

(8) Regulations under this Article shall not be made without the consent of the Department of Finance and Personnel.

(9) Regulations under this Article shall be subject to negative resolution.

(10) In this Article—

“functions” means powers and duties and includes the exercise of a discretion with respect to any matter;

“prescribed” means specified in, or determined in accordance with, regulations under this Article;

“regulations” means regulations made by the Department of Economic Development.

Financial provisions

Removal of certain liabilities from the National Insurance Fund

18.—(1) In section 1 of the principal Act (outline of the contributory system), at the end of paragraph (a) of subsection (1) there shall be added the word “and” and paragraph (c) of that subsection (benefit under the Old Cases Act to be provided by means of contributions, etc.) shall cease to have effect.

(2) At the end of that subsection there shall be added the words “together with the additions under subsection (4A) below” and after subsection (4) there shall be inserted the following subsection—

“(4A) For the financial year beginning with 1st April 1990 and for each subsequent financial year, there shall, by way of addition to contributions, be paid out of money hereafter appropriated for that purpose, in such manner and at such times as the Department of Finance and Personnel may determine, amounts the total of which for any such year is equal to the aggregate of all statutory sick pay and statutory maternity pay paid by employers and others in that year, as estimated by the Department.”.

(3) In section 128 of that Act (destination of contributions, etc.), after subsection (2) there shall be inserted the following subsection—

“(2A) The additions paid under section 1(4A) above shall be paid, in accordance with any directions given by the Department of Finance and Personnel, into the National Insurance Fund.”.

(4) In section 129 of that Act, at the end of subsection (2) (which specifies the benefits which are to be paid out of money appropriated for that purpose instead of out of the National Insurance Fund) there shall be added the following paragraph—

“(h) industrial injuries benefit.”.

(5) In subsection (5) of that section (Consolidated Fund to be reimbursed out of the National Insurance Fund in respect of certain administrative expenses, but excluding those specified in the paragraphs of that subsection), after paragraph (a) there shall be inserted the following paragraph—

“(aa) expenses attributable to the carrying into effect of the Old Cases Act; and”.

(6) In section 150 of that Act, in subsection (4) (certain payments in respect of pre-1948 cases to be made out of the National Insurance Fund), for the words “the National Insurance Fund” there shall be substituted the words “money hereafter appropriated for that purpose”.

(7) In the Old Cases Act—

(a) in section 2(1) (allowances to be financed out of the National Insurance Fund), for the words “the National Insurance Fund” there shall be substituted the words “money hereafter appropriated for that purpose”;

(b) in section 4(3)(e) (provision for the repayment to the National Insurance Fund of payments subsequently found not to have been due), for the words “the National Insurance Fund” there shall be substituted the words “the Department”; and

(c) section 8 (reciprocal arrangements with Great Britain in relation to payments out of the respective National Insurance Funds) shall cease to have effect.

(8) Article 37 of the 1982 Order and Article 82(2)(a) of the 1986 Order (which provide for the payment of sums out of the National Insurance Fund into the Consolidated Fund in respect of estimated administrative expenses relating to statutory sick pay and statutory maternity pay) shall cease to have effect.

(9) Paragraphs (1) and (4) to (7) shall be taken to have come into operation on 1st April 1990.

Interest and penalties in respect of certain contributions

19.—(1) In section 128 of the principal Act (destination of contributions, etc.), after the subsection (2A) inserted by Article 18 there shall be inserted the following subsection—

“(2B) The sums paid over to the Department by the Secretary of State under section 9(6) of the Social Security Act 1975 and by the Inland Revenue under paragraphs 5(3)(b) and 5A(7) of Schedule 1 to this Act in respect of interest and penalties recovered by them in connection with contributions of any class shall be paid, in accordance with any directions given by the Department of Finance and Personnel, into the National Insurance Fund.”.

(2) In section 129 of that Act (general financial arrangements), after subsection (6) there shall be added the following subsection—

“(7) Any expenditure in respect of the payment of interest or repayment supplements under or by virtue of paragraph 5 of Schedule 1 to this Act or paragraph 7 of Schedule 2 to the Social Security Act 1975 shall be defrayed out of the National Insurance Fund in accordance with any directions given by the Department of Finance and Personnel.”.

(3) In paragraph 5 of Schedule 1 to that Act (power to combine collection of contributions with collection of tax), after sub-paragraph (1) there shall be inserted the following sub-paragraphs—

“(1A) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be made by virtue of paragraph (a) of that sub-paragraph includes, in relation to Class 1 contributions—

- (a) provision for requiring the payment of interest on sums due in respect of Class 1 contributions which are not paid by the due date, for determining the date (being not less than 14 days after the end of the tax year in respect of which the sums are due) from which such interest is to be calculated and for enabling the repayment or remission of such interest;
- (b) provision for requiring the payment of interest on sums due in respect of Class 1 contributions which fall to be repaid and for determining the date (being not less than one year after the end of the tax year in respect of which the sums are due) from which such interest is to be calculated;
- (c) provision for, or in connection with, the imposition and recovery of penalties in relation to any returns required to be made which relate to Class 1 contributions, but subject to sub-paragraph (2) and paragraph 5A below;

and any reference to contributions or income tax in paragraph (b) or (c) of sub-paragraph (1) above shall be construed as including a reference to any interest or penalty in respect of contributions or income tax, as the case may be.

(1B) The rate of interest applicable for any purpose of this paragraph shall be—

- (a) the rate from time to time prescribed under section 178 of the Finance Act 1989 for the purpose of any enactment (whether or not extending to Northern Ireland) if prescribed by regulations made by virtue of this paragraph; or
- (b) such other rate as may be prescribed by such regulations.

(1C) Regulations under this paragraph may require the payment of interest on sums due in respect of contributions, notwithstanding that a question arising in relation to the contributions has not been determined under section 93 of this Act by the Department, except that where—

- (a) any such question arises which affects a person’s liability for, or the amount of, any such interest, and
- (b) either—
 - (i) that person requires the question to be determined under section 93, or

(ii) a question of law arising in connection with the determination of the question is, or is to be, referred to the court under section 94 of this Act,

the regulations shall not require the payment of any such interest until the question has been determined under section 93 by the Department or the reference has been finally disposed of under section 94, as the case may be; but, subject to that, this paragraph is without prejudice to sections 93, 94 and 96 of this Act.”.

(4) In sub-paragraph (3) of that paragraph (payment of receipts to Department), after the words “pay to it” there shall be inserted “(a)” and at the end of that sub-paragraph there shall be added the words “; and

(b) so much of any interest recovered by the Inland Revenue by virtue of this paragraph as remains after the deduction by them of any administrative costs attributable to its recovery”.

(5) After that paragraph there shall be inserted the provisions set out in Schedule 5, which relate to the imposition and recovery of certain penalties.

General financial provisions

20. 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 6, 8 and 19, Schedules 1 and 5 and paragraphs 1, 3, 7, 15 and 16 of Schedule 6 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 Article.

General and supplementary provisions

Regulations and orders

21.—(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, other than Article 17, 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) All regulations and orders made under this Order, other than orders under Article 1, shall be subject to negative resolution.

(3) A power conferred by this Order to make any regulations or an order, where the power is not expressed to be exercisable with the consent of the Department of Finance and Personnel, shall if that Department so directs be exercisable only in conjunction with it.

Minor and consequential amendments and repeals

22.—(1) The statutory provisions mentioned in Schedule 6 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 7 (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) Subject to paragraph (4), 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.

(4) The power conferred by paragraph (3) shall, in relation to Article 17, be exercisable by the Department of Economic Development.

(5) Where by virtue of any provision of this Order the Pensions Order contains a reference to any provision of the Insolvency (Northern Ireland) Order 1989⁽¹⁶⁾ the Department may by regulations make such provision as it considers necessary or expedient in preparation for or in connection with the coming into operation of that provision of this Order if any such provision of the Insolvency (Northern Ireland) Order 1989 is not in operation.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 9.

AMENDMENTS RELATING TO THE RECOVERY FROM DAMAGES, ETC., OF SUMS EQUIVALENT TO BENEFIT

Payments under compensation schemes for motor accidents

- 1.—(1) In Article 24(3) of the 1989 Order, in the definition of “compensation payment”—
- (a) at the beginning of paragraph (b) insert “either (i)” and at the end of that paragraph insert “or
 - (ii) in pursuance of a compensation scheme for motor accidents,”; and
 - (b) for the words following that paragraph substitute “but does not include benefit or an exempt payment or so much of any payment as is referable to costs incurred by any person”.
- (2) After that definition insert the following definition—
- ““compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons;”.
- (3) In consequence of the amendment made by sub-paragraph (1)(b), in the definition of “relevant period” in the said Article 24(3) the words from “whether or not” onwards shall cease to have effect.
- (4) In paragraph 13 of Schedule 4 to that Order, after sub-paragraph (2) insert the following sub-paragraph—
- “(2A) A person who makes any payment (whether a compensation payment or not) on behalf of himself or another—
- (a) in consequence of any accident, injury or disease suffered, or any damage to property sustained, by any other person, or
 - (b) which is referable to any costs incurred by any such other person by reason of such an accident, injury, disease or damage,
- shall, if the Department so requests him in writing, furnish the Department with such particulars relating to the size and composition of the payment as may be specified in the request.”.

Payments into court

- 2.—(1) In paragraph 12 of Schedule 4 to that Order, in sub-paragraph (2)(b) (payments into court: compensator not liable to make relevant payment, etc., until he is notified that the money has been paid out to or for the other party) after “notified that” insert “the whole or any part”.
- (2) In sub-paragraph (5) of that paragraph (special provision where payment into court is paid out to or for the other party within 21 days), for “paid out of court to or for” substitute “accepted by” and for “was made” substitute

“(or, if there were two or more such payments, the last of them) was made; but where the payment into court is not so accepted, then—

- (a) the relevant period as respects that compensator shall end on the day on which he is notified that the payment has been paid out of court to or for that other party; and
 - (b) in determining the amount of the relevant payment, that compensator shall be treated as if his payment into court had been made on that day.”
- (3) In sub-paragraph (6) of that paragraph (the initial period), after “payment into court” insert “(or, if there were two or more such payments, the last of them)”.
- (4) After that sub-paragraph insert the following sub-paragraph—
- “(6A) Where a payment into court is paid out wholly to or for the party who made the payment (otherwise than to or for the other party to the action) the making of the payment into court shall cease to be regarded as the making of a compensation payment”.

Appeals: special time limit for provisional damages

3. In paragraph 17 of that Schedule, in sub-paragraph (3) (which provides a special time limit for appeals in cases where provisional damages are awarded), for head (a) substitute the following head—

- “(a) an award of damages (“provisional damages”) has been made under paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982; and”.

Appeal to Commissioner by Department on point of law

4. In sub-paragraph (11) of that paragraph (appeal on point of law from decision of medical appeal tribunal or social security appeal tribunal), after “at the instance of” insert “the Department,”.

Interest on damages: reductions in respect of relevant payments

5. After paragraph 22 of that Schedule add the following paragraph—

“Interest on damages: reductions in respect of relevant payments

23. In assessing the amount of interest payable in respect of an award of damages, the amount of the award shall be treated as reduced by a sum equal to the amount of the relevant payment (if any) required to be made in connection with the payment of the damages and, if both special and general damages are awarded, any such reductions shall be treated as made first against the special damages and then, as respects any remaining balance, against the general damages.”.

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

6. In section 3(1) (half of certain benefits to be brought into account in assessing damages), for “him” substitute “the injured person”.

SCHEDULE 2

Article 13(2).

SCHEDULE TO BE INSERTED AS SCHEDULE 4A TO THE PENSIONS ORDER

“SCHEDULE 4A

ANNUAL INCREASE IN RATE OF CERTAIN OCCUPATIONAL PENSIONS

Interpretation

1. In this Schedule—

“annual rate”, in relation to a pension or the later or earlier service component of a pension, means the annual rate of the pension or component, as previously increased under the rules of the scheme or this Schedule;

“the appointed day” means the day on which this Schedule and Article 68A come into operation;

“the appropriate percentage”, in relation to an increase in the annual rate of a pension or a component of a pension, means the percentage specified in the last revaluation order made before the increase is to take effect as the revaluation percentage for the last revaluation period of 12 months;

“earlier service component” means so much (if any) of the annual rate of the pension as is attributable to pensionable service before the appointed day;

“later service component” means so much (if any) of the annual rate of the pension as is attributable to pensionable service on or after the appointed day;

“pension” in relation to a scheme, means any pension which commences or has commenced under the scheme but does not include—

(a) a guaranteed minimum pension or any increase in such a pension under Article 39A; or

(b) any money purchase benefit;

“pensionable service” has the meaning given by paragraph 3 of Schedule 3;

“qualifying scheme” means a scheme to which Article 68A applies;

“revaluation order”, “revaluation percentage” and “revaluation period” shall be construed in accordance with Article 68A.

Annual increase of later service component

2.—(1) If, apart from this Schedule, the annual rate of a pension under a qualifying scheme would not be increased as mentioned in Article 68A(1)(b), the annual rate of its later service component shall be increased annually by at least an amount equal to the appropriate percentage of the annual rate of that component as applicable immediately before the increase takes effect.

(2) The first increase by virtue of this paragraph in the rate of a pension shall take effect not later than the first anniversary of the commencement of the pension and subsequent increases shall take effect at intervals of not more than 12 months thereafter.

(3) This paragraph is subject to paragraphs 4 to 7.

Annual increase of earlier service component where scheme is in surplus

3.—(1) If on any valuation day the value of a qualifying scheme's assets, as determined in accordance with regulations, exceeds the value of its liabilities, as so determined, the amount of the excess (the "valuation surplus") shall be applied in accordance with the following provisions of this paragraph in providing for annual increases, up to the aggregate referred to in sub-paragraph (6), in the annual rate of the earlier service component of each pension under the scheme that would not, apart from this Schedule, be increased as mentioned in Article 68A(1)(b).

(2) The amount of each annual increase to be provided in pursuance of this paragraph in consequence of a valuation surplus shall be an amount equal to the appropriate percentage of the annual rate of the earlier service component of the pension in question as applicable immediately before that annual increase takes effect.

(3) Except in a case where regulations otherwise provide, the days which are "valuation days" for the purposes of this paragraph are—

- (a) the appointed day; and
- (b) each subsequent day as at which the assets and liabilities of the scheme in question are actuarially valued for any purpose.

(4) Where, in consequence of a valuation surplus, this paragraph requires provision to be made for annual increases in the annual rate of the earlier service component of a pension, the first of those increases shall take effect not later than the first anniversary of the later of—

- (a) the valuation day as at which the valuation was made which disclosed the valuation surplus; or
- (b) the commencement of the pension;

and subsequent increases shall take effect at intervals of not more than 12 months thereafter.

(5) In any case where—

- (a) a valuation of the assets and liabilities of a qualifying scheme discloses a valuation surplus, but
- (b) the amount of the surplus is insufficient to provide in full for the annual increases otherwise required by this paragraph in pensions under the scheme,

the valuation surplus shall be applied in providing for the increases so required, but only at the percentage rate that would apply year by year in relation to those increases if, for the maximum percentage of 5 per cent. specified in sub-paragraph (9), there were substituted such lower percentage as represents the greatest maximum percentage as determined in accordance with regulations by reference to which the valuation surplus is sufficient to provide for annual increases in the earlier service component of the pensions in question.

(6) If a valuation surplus is disclosed on a valuation at any time when either—

- (a) provision has already been made by the scheme for the annual rate of the earlier service component of every such pension as is mentioned in sub-paragraph (1) to be increased annually in the aggregate by at least the appropriate percentage of that rate, or
- (b) the application of part only of the valuation surplus would be sufficient to secure that result,

this paragraph does not require that valuation surplus or, as the case may be, the remaining part of it, to be applied in the provision of increases under this paragraph.

(7) The powers conferred by sub-paragraphs (1) and (5) to make regulations include, respectively, power to provide that the valuation of the scheme's assets or liabilities is to be calculated and verified, or the percentage in question is to be determined,—

- (a) in such manner as may, in the particular case, be approved—

- (i) by a prescribed person;
 - (ii) by a person with prescribed professional qualifications or experience; or
 - (iii) by a person approved by the Department;
 - (b) in accordance with guidance prepared by a prescribed body;
 - (c) in accordance with prescribed principles and requirements; or
 - (d) in accordance with principles determined by the person who performs the duties of calculation and verification.
- (8) This paragraph is subject to paragraphs 4 to 7.
- (9) The maximum percentage of 5 per cent. referred to in sub-paragraph (5) is the maximum percentage which may be specified as the revaluation percentage in the case of a revaluation period of 12 months by a revaluation order.

Proportional increases where first period is less than 12 months

4.—(1) Where a pension commenced to be paid less than 12 months before the date on which its first increase under paragraph 2 is to take effect, the amount of that first increase shall be determined by the application of the formula—

where—

M is the number of complete months in the period beginning with the commencement of the pension and ending immediately before that date; and

I is the amount of the increase that would have been required by that paragraph, apart from this sub-paragraph.

(2) This paragraph shall apply in relation to the first increase of a pension by virtue of paragraph 3 in consequence of each successive valuation surplus as it applies in relation to the first increase of a pension under paragraph 2.

Restriction on increases where member is under 55

5.—(1) No increase under paragraph 2 or 3 is required to be paid to or for a member of a scheme whose pension has commenced but who has not attained the age of 55 at the time when the increase takes effect, unless—

- (a) he is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or
- (b) he has retired on account of mental or physical infirmity from the office or employment in respect of which, or on retirement from which, the pension is payable,

in which case the pension shall be payable at the annual rate at which it would have been payable apart from this sub-paragraph.

(2) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of head (a) or (b) of sub-paragraph (1), the member—

- (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
- (b) continues to be entitled to the pension,

any increases subsequently taking effect under paragraph 2 or 3 in the annual rate of the pension shall not be paid or shall not be paid in full.

(3) In any case where—

- (a) by virtue only of sub-paragraph (1) or (2), increases are not paid to or for a member or are not paid in full, but
- (b) the member attains the age of 55 or, in a case falling within sub-paragraph (2), again satisfies the conditions set out in head (a) or (b) of sub-paragraph (1),

his pension shall thereupon become payable at the annual rate at which it would have been payable apart from sub-paragraph (1) or (2).

Application of Schedule to pensions not attributable to pensionable service

6. Regulations may provide that this Schedule (other than this paragraph) shall apply in relation to any pension under a qualifying scheme as if so much of the annual rate of the pension as would not otherwise be attributable to pensionable service were attributable in accordance with the regulations

- (a) to pensionable service before the appointed day;
- (b) to pensionable service on or after that day; or
- (c) partly to pensionable service before, and partly to pensionable service on or after, that day;

and any reference to the earlier or later service component of the pension shall be construed accordingly.

Regulations

7.—(1) The Department may by regulations direct that Article 68A and this Schedule shall have effect, in such cases as the Department may specify in the regulations, subject to such modifications as the Department may specify.

(2) In sub-paragraph (1) “modification”, without prejudice to the generality of that sub-paragraph, includes addition, omission and amendment.

Overriding effect of the increase provisions

8. The provisions of Article 68A, this Schedule and any regulations made under it override any provision of a qualifying scheme, other than a protected provision (within the meaning of paragraph 7 of Schedule 1A), to the extent that it conflicts with them.”.

SCHEDULE 3

Article 14.

THE PENSIONS OMBUDSMAN

After Part V of the Pensions Order there shall be inserted the following Part—

“PART VA THE PENSIONS OMBUDSMAN

The Pensions Ombudsman

69B.—(1) In this Part “the Pensions Ombudsman” means the person appointed under section 59B(2) of the Social Security Pensions Act 1975.

(2) The Department may make available such staff and other facilities as it thinks fit for the Pensions Ombudsman, and any function of the Pensions Ombudsman, other than the determination of complaints made and disputes referred under this Part, may be performed by any member of that staff who is authorised for that purpose by the Pensions Ombudsman.

(3) The Department may reimburse the Pensions Ombudsman in respect of any expenses incurred by him in the performance of his functions.

Functions of the Pensions Ombudsman

69C.—(1) The Pensions Ombudsman may investigate and determine any complaint made to him in writing by or on behalf of an authorised complainant who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of the trustees or managers of an occupational or personal pension scheme.

(2) The Pensions Ombudsman may also investigate and determine any dispute of fact or law which arises in relation to such a scheme between—

- (a) the trustees or managers of the scheme, and
- (b) an authorised complainant in relation to the scheme,

and which is referred to him in writing by or on behalf of the authorised complainant.

(3) The Department may by regulations provide that, subject to any modifications or exceptions specified in the regulations, this Part shall apply in relation to—

- (a) the employer in relation to any description or category of employment to which an occupational pension scheme relates or has related, or
- (b) any prescribed person concerned with the financing or administration of, or the provision of benefits under, any occupational or personal pension scheme,

as it applies in relation to the trustees or managers of such a scheme.

(4) The Pensions Ombudsman may investigate a complaint or dispute notwithstanding that it arose, or relates to a matter which arose, before the commencement of this Part.

(5) The Pensions Ombudsman shall not investigate or determine a complaint or dispute—

- (a) if, before the making of the complaint or the reference of the dispute, proceedings have been commenced in any court in respect of the matters which would be the subject of the investigation;
- (b) if the scheme is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this paragraph; or
- (c) if and to the extent that the complaint or dispute, or any matter arising in connection with the complaint or dispute, is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this paragraph.

(6) The persons who, for the purposes of this Part are “authorised complainants” in relation to a scheme are—

- (a) a member of the scheme;

- (b) the widow or widower, or any surviving dependant, of a deceased member of the scheme;
- (c) where the complaint or dispute relates to the question—
 - (i) whether a person who claims to be such a person as is mentioned in subparagraph (a) or (b) is such a person, or
 - (ii) whether a person who claims to be entitled to become a member of the scheme is so entitled,
 the person so claiming.

(7) In this Part—

“employer”, in relation to a pension scheme, includes a person—

- (a) who is or has been an employer in relation to the scheme, or
- (b) who is or has been treated under Article 2(4) as an employer in relation to the scheme for the purposes of Part IV or V, or under section 66(3) of the Social Security Pensions Act 1975 as an employer in relation to the scheme for the purposes of Part III or IV of that Act;

“member”, in relation to a pension scheme, includes a person—

- (a) who is or has been in pensionable service under the scheme, as defined in paragraph 3 of Schedule 3 or in paragraph 3 of Schedule 16 to the Social Security Act 1973, or
- (b) who is or has been treated under Article 2(5) as a member in relation to the scheme for the purposes of Part IV or V, or under section 66(4) of the Social Security Pensions Act 1975 as a member in relation to the scheme for the purposes of Part III or IV of that Act;

“United Kingdom public service pension scheme” means a public service pension scheme, within the meaning of section 51(3)(b) of the Social Security Act 1973;

“trustees or managers”, in relation to a pension scheme which is a public service pension scheme or a United Kingdom public service pension scheme, includes the scheme’s administrators.

Death, insolvency or disability of authorised complainant

69D.—(1) Where an authorised complainant dies or is a minor or is otherwise unable to act for himself, then, unless paragraph (3) applies—

- (a) any complaint or dispute (whenever arising) which the authorised complainant might otherwise have made or referred under this Part may be made or referred by the appropriate person, and
- (b) anything in the process of being done by or in relation to the authorised complainant under this Part may be continued by or in relation to the appropriate person,

and any reference in this Part, except this Article, to an authorised complainant shall be construed as including a reference to the appropriate person.

(2) For the purposes of paragraph (1) “the appropriate person” means—

- (a) where the authorised complainant has died, his personal representatives; or
- (b) in any other case, a member of the authorised complainant’s family, or some body or individual suitable to represent him.

(3) Where a person is acting as an insolvency practitioner in relation to an authorised complainant, investigations under this Part shall be regarded for the purposes of the Insolvency (Northern Ireland) Order 1989 as legal proceedings.

(4) In this Article “acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, but disregarding paragraph (5) of that Article (exclusion of official receiver).

Staying court proceedings where a complaint is made or a dispute is referred

69E.—(1) This Article applies where—

- (a) a complaint has been made or a dispute referred to the Pensions Ombudsman; and
- (b) any party to the investigation subsequently commences any legal proceedings in any court against any other party to the investigation in respect of any of the matters which are the subject of the complaint or dispute.

(2) Where this Article applies any party to the legal proceedings may—

- (a) if the proceedings are in the High Court, at any time after an appearance has been entered and before delivering any pleadings or taking any other step in the proceedings,
- (b) if the proceedings are in the county court, at any time after the civil bill or other originating process has been served and before taking any step in the proceedings,

apply to the court to stay the proceedings.

(3) On an application under paragraph (2) the court may make an order staying the proceedings if it is satisfied—

- (a) that there is no sufficient reason why the matter should not be investigated by the Pensions Ombudsman; and
- (b) that the applicant was at the time when the legal proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the investigation.

(4) For the purposes of this Article the parties to an investigation are—

- (a) the authorised complainant in question;
- (b) the trustees or managers of the scheme in question;
- (c) any person against whom allegations are made in the complaint or reference; and
- (d) any person claiming under a person falling within sub-paragraphs (a) to (c).

Procedure on an investigation

69F.—(1) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall afford to the trustees and managers of the scheme concerned, and any other person against whom allegations are made in the complaint or reference, an opportunity to comment on any allegations contained in the complaint or reference.

(2) The Department may make rules with respect to the procedure which is to be adopted in connection with the making of complaints, the reference of disputes, and the investigation of complaints made and disputes referred under this Part.

(3) The rules may include provision—

- (a) requiring any oral hearing held in connection with an investigation under this Part to take place in public, except in such cases as may be specified in the rules; and
- (b) as to the persons entitled to appear and be heard on behalf of parties to an investigation, as defined in Article 69E(5).

(4) Subject to any provision made by the rules, the procedure for conducting an investigation under this Part shall be such as the Pensions Ombudsman considers appropriate in the circumstances of the case; and he may, in particular, obtain information from such persons and in such manner, and make such inquiries, as he thinks fit.

Investigations: further provisions

69G.—(1) For the purposes of an investigation under this Part or under any corresponding legislation having effect in Great Britain, the Pensions Ombudsman may require any trustee or manager of the scheme concerned, or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such documents.

(2) For the purposes of any such investigation, the Pensions Ombudsman shall have the same powers as a county court in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) No person shall be compelled for the purposes of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before a county court.

(4) If any person without lawful excuse obstructs the Pensions Ombudsman in the performance of his functions or is guilty of any act or omission in relation to an investigation under this Part which, if that investigation were a proceeding in a county court, would constitute contempt of court, the Pensions Ombudsman may certify the offence to a county court.

(5) Where an offence is certified under paragraph (4), the court may inquire into the matter and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

(6) To assist him in an investigation, the Pensions Ombudsman may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may determine with the approval of the Department of Finance and Personnel.

(7) The Pensions Ombudsman may refer any question of law arising for determination in connection with a complaint or dispute to the Court of Appeal.

Determinations of the Pensions Ombudsman

69H.—(1) Where the Pensions Ombudsman has conducted an investigation under this Part, he shall send by ordinary post a written statement of his determination of the complaint or dispute in question—

- (a) to the authorised complainant in question; and
- (b) to the trustees or managers of the scheme in question;

and any such statement shall contain the reasons for his determination.

(2) Where the Pensions Ombudsman makes a determination under this Part or under any corresponding legislation having effect in Great Britain, he may direct the trustees or managers of the scheme concerned to take, or refrain from taking, such steps as he may specify in the statement referred to in paragraph (1) or otherwise in writing.

(3) Subject to paragraph (4), the determination by the Pensions Ombudsman of a complaint or dispute, and any direction given by him under paragraph (2), shall be final and binding on—

- (a) the authorised complainant in question;

- (b) the trustees or managers of the scheme concerned; and
- (c) any person claiming under them respectively.

(4) An appeal on a point of law shall lie to the Court of Appeal from a determination or direction of the Pensions Ombudsman at the instance of any person falling within subparagraphs (a) to (c) of paragraph (3).

(5) Any determination or direction of the Pensions Ombudsman shall be enforceable as if it were a judgment or order of the county court.

(6) If the Pensions Ombudsman considers it appropriate to do so in any particular case, he may publish in such form and manner as he thinks fit a report of any investigation under this Part and of the result of that investigation.

(7) For the purposes of the law of defamation, the publication of any matter by the Pensions Ombudsman—

- (a) in submitting or publishing a report under section 59B(6) of the Social Security Pensions Act 1975 or paragraph (6), or
- (b) in sending to any person a statement under paragraph (1) or a direction under paragraph (2),

shall be absolutely privileged.

Power to apply county court rules

69I. Without prejudice to the generality of Article 69F(2), rules made by the Department under this Article may to any extent, and with or without modifications, apply any county court rules to proceedings under this Part other than proceedings in any court.”.

SCHEDULE 4

Article 16(1).

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

PART I

PROTECTING PENSIONS

Occupational pensions: independent trustee where employer insolvent, etc.

1. After the Article 63B of the Pensions Order inserted by paragraph 10 insert the following Articles—

“Requirement for independent trustee where employer becomes insolvent, etc.

63C.—(1) This Article applies in relation to an occupational pension scheme which is constituted by trust deed—

- (a) if a person (“the practitioner”) commences to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer of persons in the description or category of employment to which the scheme relates; or
- (b) if the official receiver becomes—

- (i) the liquidator or provisional liquidator of a company which is the employer of any such persons, or
- (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer of any such persons.

(2) If and so long as this Article applies to a scheme, it shall be the duty of the practitioner or official receiver—

- (a) to satisfy himself that at all times at least one of the trustees of the scheme is an independent person; and
- (b) if at any time he is not so satisfied, to appoint under this sub-paragraph, or to secure the appointment of, an independent person as a trustee of the scheme;

but this paragraph is subject to paragraph (5).

(3) For the purposes of paragraph (2) a person is “independent” only if—

- (a) he has no interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme;
- (b) he is neither connected with, nor an associate of—
 - (i) the employer;
 - (ii) any person acting as an insolvency practitioner in relation to the employer; or
 - (iii) the official receiver, acting in any of the capacities mentioned in paragraph (1)(b) in relation to the employer; and
- (c) he satisfies such other requirements as may be prescribed;

and any reference in this Article or Article 63D to an “independent trustee” shall be construed accordingly.

(4) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989 (connected and associated persons) shall apply for the purposes of paragraph (3)(b) as they apply for the purposes of that Order.

(5) Where, apart from this paragraph, the duties imposed by paragraph (2) in relation to a scheme would fall to be discharged at the same time by two or more persons acting in different capacities, those duties shall be discharged—

- (a) if the employer is a company, by the person or persons acting as the company’s liquidator, provisionsal liquidator or administrator; or
- (b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy or interim receiver of his property.

(6) If the practitioner or official receiver neglects or refuses to discharge any duty imposed upon him by paragraph (2) in relation to a scheme, any member of the scheme may apply to the High Court for an order requiring him to discharge his duties under that paragraph.

(7) Where this Article applies in relation to a scheme, it shall cease to do so—

- (a) if some person other than the employer mentioned in paragraph (1) becomes the employer of persons in the description or category of employment to which the scheme relates; or
- (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;

but nothing in this paragraph affects the application of this Article in relation to the scheme on any subsequent occasion when the conditions specified in paragraph (1)(a) or (b) are satisfied in relation to the scheme.

(8) In this Article—

“acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989;

“bankrupt” has the meaning given by Article 9(1) of the Insolvency (Northern Ireland) Order 1989;

“company” means a company within the meaning given by Article 3(1) of the Companies (Northern Ireland) Order 1986 or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies);

“the official receiver” has the meaning given by Article 2(2) of the Insolvency (Northern Ireland) Order 1989.

(9) References in this Article to an individual include references to a partnership.

Independent trustees: further provisions

63D.—(1) If and so long as Article 63C applies in relation to a scheme, no independent trustee of the scheme shall be removed from being a trustee by virtue only of any provision of the scheme.

(2) If a trustee appointed under paragraph (2)(b) of that Article ceases to be an independent trustee, then—

(a) he shall forthwith give written notice of that fact to the practitioner or official receiver by whom the duties under that provision fall to be discharged; and

(b) he shall cease to be a trustee of the scheme, unless the circumstances are such that upon his cessation there would be no other trustee of the scheme, in which case he shall not cease by virtue of this paragraph to be a trustee until such time as another trustee is appointed.

(3) A trustee appointed under paragraph (2)(b) of that Article shall be entitled to be paid out of the scheme’s resources his reasonable fees for acting in that capacity and any expenses reasonably incurred by him in doing so, and to be so paid in priority to all other claims falling to be met out of the scheme’s resources.

(4) If, immediately before the appointment of an independent trustee under paragraph (2)(b) of that Article, there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.

(5) If and so long as Article 63C applies in relation to a scheme—

(a) any power vested in the trustees or managers of the scheme and exercisable at their discretion shall be exercisable only by the independent trustee; and

(b) any power—

(i) which the scheme confers on the employer (otherwise than as trustee or manager of the scheme), and

(ii) which is exercisable by him at his discretion but only as trustee of the power, shall be exercisable only by the independent trustee; but if, in either case, there is more than one independent trustee, the power shall also be exercisable with the consent of at least half of those trustees by any person who could exercise it apart from this paragraph.

(6) Notwithstanding anything in Article 133 of the Insolvency (Northern Ireland) Order 1989 (court orders for inspection, etc.), if and so long as Article 63C applies in relation to a scheme, it shall be the duty of the practitioner or official receiver to provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.

(7) Any expenses incurred by the practitioner or official receiver in complying with a request under paragraph (6) shall be recoverable by him as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under that paragraph to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

(8) The provisions of Article 63C and this Article, and of any regulations made under that Article or this Article, override any provision of a scheme to the extent that it conflicts with them.

(9) The Department may make regulations modifying Article 63C and this Article in their application—

- (a) to any occupational pension scheme which applies to earners in employments under different employers;
- (b) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 3; or
- (c) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.

(10) Article 63C and this Article (other than this paragraph) shall not apply in relation to an occupational pension scheme of a prescribed description.”.

Employer to make good deficiencies on winding up

2. After the Article 68A of the Pensions Order inserted by Article 13 insert the following Article

“Deficiencies in the assets of a scheme on winding up

68B.—(1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the scheme’s liabilities, as determined in accordance with regulations, exceeds the value of its assets, as so determined, then—

- (a) an amount equal to the excess shall be treated as a debt due from the employer to the trustees of the scheme; and
- (b) if that debt has not been discharged before the default time then, for the purposes of the law relating to winding up or bankruptcy as it applies in relation to the employer, it shall be taken to arise at the default time.

(2) In this Article—

“the applicable time” means the earlier of—

- (a) any time when the scheme is being wound up which falls before the default time; or
- (b) the default time;

“the default time” means—

- (a) where the employer is a company, immediately before the company goes into liquidation, within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989;

- (b) where the employer is an individual, immediately before the commencement of his bankruptcy, within the meaning of Article 252 of that Order;
- “the employer” means the employer of persons in the description or category of employment to which the scheme relates;
- “money purchase scheme” has the same meaning as it has in Article 68A.
- (3) The power to make regulations conferred by paragraph (1) includes power to provide—
- (a) that, in calculating the value of the scheme’s liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded;
- (b) that the value of the scheme’s liabilities or assets is to be calculated and verified in such manner as may, in the particular case, be approved—
- (i) by a prescribed person,
- (ii) by a person with prescribed professional qualifications or experience, or
- (iii) by a person approved by the Department,
- or that their value is to be calculated and verified in accordance with guidance prepared by a prescribed body.
- (4) This Article is without prejudice to any other right or remedy which the trustees may have in respect of the deficiency.
- (5) A debt due by virtue only of this Article shall not be regarded as a preferential debt for the purposes of the Insolvency (Northern Ireland) Order 1989.
- (6) The Department may make regulations modifying this Article in its application—
- (a) to any occupational pension scheme which applies to earners in employments under different employers;
- (b) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme;
- (c) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 3; or
- (d) to any case where the assets and liabilities of the scheme are transferred to another occupational pension scheme.
- (7) The provisions of this Article and of any regulations made under it override any provision of a scheme to the extent that it conflicts with this Article or those regulations.”.

Investment of scheme’s resources

3. After Article 63 of the Pensions Order and the cross-heading “Other provisions” insert the following Article—

“Restrictions on investment of scheme’s resources in employer-related assets

63A.—(1) An occupational pension scheme shall comply with such restrictions as may be prescribed with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.

(2) In this Article—

“employer-related investments” means—

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer;
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person;
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person;
- (d) loans to the employer or any such person;

“the employer” means the employer of persons in the description or category of employment to which the scheme in question relates;

“securities” means any asset, right or interest falling within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986.

(3) If and to the extent that any sums due and payable by a person to the trustees or managers of a scheme remain unpaid, those sums shall be regarded for the purposes of this Article as loans made to that person by the trustees or managers, and resources of the scheme shall be regarded as invested accordingly.

(4) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989 (connected and associated persons) shall apply for the purposes of this Article as they apply for the purposes of that Order.”.

Revaluation of preserved pensions

4.—(1) For the definition of “qualifying pensionable service” in paragraph 2(3) of Schedule 1A to the Pensions Order (which includes revaluation of accrued rights referable to service before 1st January 1985) substitute the following definition—

““qualifying pensionable service” means—

- (a) where the termination of pensionable service occurs after the commencement of this paragraph of this definition, the whole of the member’s pensionable service, as defined in this sub-paragraph; and
- (b) in any other case, so much of any such service as falls on or after 1st January 1985.”.

(2) In paragraph 3 of that Schedule (average salary benefits), in sub-paragraph (5) (definition of “salaries”), for the words from “means” to “terminated” substitute

“means, subject to sub-paragraph (5A), the member’s salaries for the period between the date when his pensionable service commenced and the date when it terminated”.

(3) After that sub-paragraph insert the following sub-paragraph—

“(5A) Where the member’s pensionable service terminated before the commencement of this sub-paragraph, sub-paragraph (5) shall have effect with the substitution for the words from “means” to “terminated” of “means the member’s salaries for the period between 1st January 1985 and the date when his pensionable service terminated”.”.

PART II

MISCELLANEOUS AMENDMENTS

Contracting-out conditions: age at which pension or annuity is to commence under a money purchase scheme

5.—(1) In Article 34 of the Pensions Order, in paragraph (2B) (modifications of Schedule 1 to the 1986 Order in its application for the purpose of determining whether a money purchase scheme can be contracted-out), in sub-paragraph (d) after head (ii) insert the following head—

“(iii) for the references in sub-paragraphs (3)(a) and (7)(a)(i) to the date on which the member attains pensionable age there shall be substituted a reference to a date not earlier than that on which he attains the age of 60 nor later than that on which he attains the age of 65; and”.

(2) The amendment made by sub-paragraph (1) shall be taken to have come into operation on 17th May 1990.

Contracting-out conditions: guaranteed minimum for married women and widows paying reduced rate contributions

6.—(1) In Article 35 of the Pensions Order, in paragraph (1A) (special conditions in the case of married women and widows liable to pay reduced rate contributions), in sub-paragraph (a) after “if she attains pensionable age” insert “and does not have a guaranteed minimum under Article 37”.

(2) In Article 37 of that Order, after paragraph (2) (calculation of guaranteed minimum by reference to earnings factors derived from earnings on which primary Class 1 contributions have been paid) insert the following paragraph—

“(2ZA) In determining the guaranteed minimum in a case where—

- (a) earnings such as are mentioned in paragraph (1) have been paid to a married woman or widow who is liable to pay primary Class 1 contributions at a reduced rate by virtue of Article 5, and
- (b) the tax week in which those earnings are paid falls in the tax year 1991—92 or any subsequent tax year,

the married woman or widow shall be treated for the purposes of this Article as having such earnings factors derived from those earnings as she would have had if primary Class 1 contributions had been payable, and paid, upon them otherwise than at a reduced rate.”.

(3) If, immediately before the commencement of this paragraph, there is in force in relation to an occupational pension scheme a contracting-out certificate under Part IV of the Pensions Order then, to the extent that the rules of the scheme are inconsistent with any provision made by sub-paragraph (1) or (2), they shall be overridden by that provision.

Protection of earner's and widow's pensions

7.—(1) Articles 43A and 43B of the Pensions Order (protection of earner's and widow's pension) shall have effect, and be taken at all times on and after 23rd August 1989 to have had effect, with the amendments made by sub-paragraphs (2) to (7), which are in substitution for the amendments made by paragraphs 2 and 3 of Schedule 6 to the 1989 Order; and those paragraphs shall be taken never to have come into operation.

(2) In Article 43A of the Pensions Order, in paragraph (1C) (which defines the “relevant aggregate”), after sub-paragraph (c) add “; and

- (d) where the scheme provides that part of the earner's pension shall accrue after the termination of employment date by reason of employment after that date, the later earnings addition".
- (3) After paragraph (2) of that Article insert the following paragraphs—
- “(2A) In this Article “the later earnings addition” means the amount (if any) by which (R2–G2) exceeds (R1–G1), where—
- R1 is the relevant sum;
- G1 is the earner's guaranteed minimum on the day after his termination of employment date;
- R2 is the amount that would have been the relevant sum, had the weekly rate of the benefit which determines that sum been calculated by reference to the earner's later earnings level; and
- G2 is that amount which bears to R2 the proportion which G1 bears to R1.
- (2B) For the purposes of paragraph (2A), the earner's “later earnings level” is the level of earnings by reference to which the weekly rate of the benefit which determines the relevant sum would have been calculated, had the termination of employment date fallen on the earlier of—
- (a) the commencement of payment date, or
- (b) the date on which the earner ceased to be in pensionable service under the scheme.”.
- (4) In paragraph (11) of that Article (definitions), for “short service benefit” is substituted “pensionable service” and “short service benefit” are.
- (5) In Article 43B of the Pensions Order, in paragraph (1A) (which defines the “relevant aggregate”), after sub-paragraph (c) add “; and
- (d) where the scheme provides that part of the widow's pension shall accrue after the termination of employment date by reason of the earner's employment after that date, the later earnings addition”.
- (6) After paragraph (3) of that Article insert the following paragraphs—
- “(3A) In this Article “the later earnings addition” means the amount (if any) by which (R2–G2) exceeds (R1–G1), where—
- R1 is the relevant sum;
- G1 is one half of the earner's guaranteed minimum on the day after his termination of employment date;
- R2 is the amount that would have been the relevant sum, had the weekly rate of the pension which determines that sum been calculated by reference to the earner's later earnings level; and
- G2 is that amount which bears to R2 the proportion which G1 bears to R1.
- (3B) For the purposes of paragraph (3A), the earner's “later earnings level” is the level of earnings by reference to which the weekly rate of the pension which determines the relevant sum would have been calculated, had the earner's termination of employment date fallen on the earlier of—
- (a) the earner's commencement of payment date, or
- (b) the date on which the earner ceased to be in pensionable service under the scheme.”.
- (7) After paragraph (5) of that Article add the following paragraph—

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

(8) In Article 43A, in paragraph (1), for “relevant date” substitute “commencement of payment date” and paragraphs (1A) and (1B) shall cease to have effect.

(9) In consequence of this paragraph, regulation 2(1) and (2) of the Occupational Pension Schemes (Transitional Provisions and Savings) Regulations (Northern Ireland) 1989⁽¹⁷⁾ shall be deemed never to have been made.

(10) If, before 23rd August 1989, an earner ceased to be in contracted-out employment by reference to an occupational pension scheme other than a money purchase contracted-out scheme, Articles 43A and 43B of the Pensions Order shall apply in relation to the earner and the earner’s widow or widower as if neither this paragraph nor paragraphs 2 and 3 of Schedule 6 to the 1989 Order had been made.

(11) Expressions used in sub-paragraph (10) and the Pensions Order have the same meaning in that sub-paragraph as they have in that Order.

Provisions for the suspension or forfeiture of pensions

8.—(1) In Article 43C(3) of the Pensions Order—

- (a) in sub-paragraph (a), omit head (ii) and for the word “or” immediately preceding it substitute “and”; and
- (b) in sub-paragraph (d) (provisions about commutation of pensions to be included among the provisions which are not overridden by Articles 43A and 43B of that Order), for “commutation” substitute “the commutation, suspension or forfeiture”.

(2) After that sub-paragraph insert—

“; and

- (e) any provision of a scheme whereby, as respects so much of a widow’s or widower’s pension as exceeds the guaranteed minimum pension—
 - (i) no pension, or a pension at a reduced rate, is payable if the earner and the widow or widower married not more than six months before the earner’s death;
 - (ii) the whole or any part of the pension is not paid to the widow or widower, but instead comparable benefits are provided for one or more dependants of the deceased earner; or
 - (iii) no pension, or a pension at a reduced rate, is payable to the widow or widower (or, where a provision such as is mentioned in head (ii) operates, to another dependant of the deceased earner) who was more than ten years younger than the deceased earner”.

(3) In paragraph 7(4) of Schedule 1A to the Pensions Order, in head (a) (adaptations of Article 43C(3) in its application for certain purposes to schemes which are not contracted-out), after sub-head (iii) add the following sub-head—

“(iv) from sub-paragraph (e), the words from “as respects” to “guaranteed minimum pension””; and omit head (b) (which made, in relation to schemes which are not contracted-out, similar provision to that made by sub-paragraph (2) as modified by this sub-paragraph).

⁽¹⁷⁾ S.R. 1989 No. 354

(4) The amendments made by sub-paragraph (1) shall be deemed to have come into operation on 1st December 1986 (the date on which certain amendments relating to commutation, suspension and forfeiture took, or are deemed to have taken, effect).

The insurance companies which may take transfer values

9. In Article 53C of the Pensions Order (extinguishment of scheme’s liability for pensions appropriately secured by insurance policies or annuity contracts), in paragraph (4) (meaning of “appropriately secured”), for sub-paragraph (a) substitute the following sub-paragraph—

- “(a) the insurance company with which it is or was taken out or entered into—
- (i) is, or was at the relevant time, carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and
 - (ii) satisfies, or satisfied at the relevant time, prescribed requirements; and”.

Grants by the Occupational Pensions Board to advisory bodies

10. After the Article 63A of the Pensions Order inserted by paragraph 3 insert the following Article—

“Grants by the Occupational Pensions Board to advisory bodies, etc.

63B.—(1) The Occupational Pensions Board may make grants on such terms and conditions as they think fit to any person providing advice or assistance, or carrying out other prescribed functions, in connection with occupational or personal pensions.

(2) The Department may pay to the Occupational Pensions Board such sums as the Department may think fit towards any expenditure of the Board in making grants under this Article.”.

*Levy towards meeting cost of the Pensions Ombudsman,
the Registry and certain grants made by the Board*

11. After Article 70 of the Pensions Order insert the following Article—

“Levy towards meeting certain expenditure under this Order

70ZA.—(1) For the purpose of meeting some or all of the expenditure under Article 63B, Part VA and Article 69J, regulations may make provision for imposing a levy in respect of such occupational or personal pension schemes as may be prescribed.

(2) Any levy imposed under this Article shall be payable to the Department by or on behalf of—

- (a) the administrators of such public service pension schemes as may be prescribed,
- (b) the trustees or managers of such other occupational or personal pension schemes as may be prescribed, or
- (c) such other persons as may be prescribed,

at such rates and at such times as may be prescribed.

(3) The amount payable by any person on account of the levy shall be a debt due from him to the Department and shall be recoverable accordingly.

(4) Regulations under this Article may include provision relating to the collection and recovery of amounts payable by way of levy under this Article, but this paragraph is without prejudice to the generality of paragraph (1).”.

Preservation of rights for persons opting out of schemes

12.—(1) In Schedule 3 to the Pensions Order, in sub-paragraph (1) of paragraph 6 (short service benefit where member’s service in relevant employment terminates before normal pension age, etc.), for “service in relevant employment” substitute “pensionable service”.

(2) At the end of that paragraph add the following sub-paragraph—

“(6) In any case where—

- (a) the pensionable service of a member of a scheme terminated during the period beginning with 6th April 1988 and ending immediately before the commencement of this sub-paragraph, otherwise than on the termination of his service in relevant employment, and
- (b) during that period no payments in discharge of his rights under the scheme were made in consequence of that termination,

sub-paragraph (1) shall be taken at all times on and after 6th April 1988 (the date on which Article 17 of the Social Security (Northern Ireland) Order 1986 came into operation for occupational pensions) to have had effect in relation to that member and his rights under the scheme with the amendment made by paragraph 12(1) of Schedule 4 to the Social Security (Northern Ireland) Order 1990 (which substituted the words “pensionable service” for the words “service in relevant employment”).”.

(3) In paragraph 15(4) of that Schedule (commutation of widow's, widower's or dependant's benefit by the beneficiary), for “by the beneficiary” substitute “of that benefit”.

(4) In consequence of the amendment made by sub-paragraph (1)—

- (a) in paragraph 2(b) of that Schedule (definition of “long service benefit”), after “remains in relevant employment” insert “, and continues to render service which qualifies him for benefits.”;
- (b) in paragraph 17(1)(b) of that Schedule, for “relevant employment” substitute “pensionable service”;
- (c) in Schedule 1A to the Pensions Order (revaluation of pensions and transfer values) the following provisions shall cease to have effect—
 - (i) in paragraphs 1(1)(b), 2(2)(d) and 11(1)(b), sub-head (ii) and the word “or” immediately preceding it;
 - (ii) in paragraphs 1(4) and 11(2), the words ““relevant employment””; and
 - (iii) paragraph 12(1)(b) and the word “or” immediately preceding it.

Revaluation: extension of certain provisions to widowers

13. In Article 11(4) of the 1986 Order, in sub-paragraph (i) (which was inserted by paragraph 14(b) of Schedule 6 to the 1989 Order and which specifies certain provisions in Schedule 1A to the Pensions Order which are to be construed as if “widow” included “widower”), after “paragraphs” insert “2(2)(e),”.

Overriding effect of certain 1989 Order amendments

14.—(1) In paragraph 16 of Schedule 6 to the 1989 Order (which made minor amendments to the requirements specified in Schedule 1 to the 1986 Order which appropriate schemes must satisfy), after sub-paragraph (2) add the following sub-paragraph—

“(3) If immediately before the commencement of paragraph 14(1) of Schedule 4 to the Social Security (Northern Ireland) Order 1990 there is in force in relation to an occupational or personal pension scheme either—

- (a) a contracting-out certificate under Part IV of the Pensions Order which states that the scheme is contracted-out by virtue of Article 34(2A), or
- (b) an appropriate scheme certificate under Part II of the 1986 Order,

then, to the extent that the rules of the scheme are inconsistent with any provision made by sub-paragraph (1) or (2), they shall be overridden by that provision.”.

(2) In paragraph 17 of Schedule 6 to the 1989 Order (amendments relating to the manner of giving effect to protected rights), after sub-paragraph (3) add the following sub-paragraph—

“(4) If immediately before the commencement of paragraph 14(2) of Schedule 4 to the Social Security (Northern Ireland) Order 1990 there is in force in relation to an occupational or personal pension scheme either—

- (a) a contracting-out certificate under Part IV of the Pensions Order which states that the scheme is contracted-out by virtue of Article 34(2A), or
- (b) an appropriate scheme certificate under Part II of the 1986 Order,

then, to the extent that the rules of the scheme are inconsistent with any provision made by sub-paragraphs (1) to (3), they shall be overridden by that provision.”.

SCHEDULE 5

Article 19(5).

SPECIAL PENALTIES IN THE CASE OF CERTAIN RETURNS

The provisions referred to in Article 19(5) are as follows—

“Special penalties in the case of certain returns

5A.—(1) This paragraph applies where regulations under paragraph 5 above make provision requiring any return which is to be made in accordance with a specified provision of regulations under that paragraph (the “contributions return”) to be made—

- (a) at the same time as any specified return required to be made in accordance with a provision of regulations made by the Inland Revenue under section 203(2) (PAYE) or 566(1) (sub-contractors) of the Income and Corporation Taxes Act 1988 to which section 98A of the Taxes Management Act 1970 applies (the “tax return”); or
- (b) if the circumstances are such that the return mentioned in paragraph (a) above does not fall to be made, at a time defined by reference to the time for making that return, had it fallen to be made;

and, in a case falling within paragraph (b) above, any reference in the following provisions of this paragraph to the tax return shall be construed as a reference to the return there mentioned.

(2) Where this paragraph applies, regulations under paragraph 5 above may provide that section 98A of the Taxes Management Act 1970 (penalties for late, fraudulent or negligent returns) shall apply in relation to any specified provision of regulations in accordance with

which the contributions return is required to be made; and where they so provide then, subject to the following provisions of this paragraph—

- (a) that section shall apply in relation to the contributions return as it applies in relation to the tax return; and
- (b) sections 100 to 100D and 102 to 104 of that Act shall apply in relation to a penalty under section 98A of that Act to which a person is liable by virtue of this sub-paragraph as they apply in relation to any other penalty under that section.

(3) Where a person is liable to a penalty under paragraph (a) of subsection (2) of section 98A of that Act (first twelve months' default) in consequence of a failure in respect of a tax return, he shall not also be liable to a penalty under that paragraph in respect of any failure in respect of the associated contributions return.

(4) In any case where—

- (a) a person is liable to a penalty under subsection (2)(b) or (4) of that section (tax-related penalties) in respect of both a tax return and its associated contributions return, and
- (b) an officer of the Inland Revenue authorised for the purposes of section 100 of that Act has determined that a penalty is to be imposed under that provision in respect of both returns,

the penalty so imposed shall be a single penalty of an amount not exceeding the limit determined under sub-paragraph (5) below.

(5) The limit mentioned in sub-paragraph (4) above is an amount equal to the sum of—

- (a) the maximum penalty that would have been applicable under subsection (2)(b) or (4) of section 98A of that Act (as the case may be) for a penalty in relation to the tax return only; and
- (b) the maximum penalty that would have been so applicable in relation to the associated contributions return only.

(6) So much of any single penalty imposed by virtue of sub-paragraph (4) above as is recovered by the Inland Revenue shall, after the deduction of any administrative costs of the Inland Revenue attributable to its recovery, be apportioned between the Inland Revenue and the Department in the ratio $T : C$, where—

T is the maximum penalty that could have been imposed under the provision in question in relation to the tax return only; and

C is the maximum penalty that could have been so imposed in relation to the associated contributions return only.

(7) The Inland Revenue shall, at such times and in such manner as the Department of Finance and Personnel may direct, account to the Department for, and pay to it—

- (a) the amounts apportioned to the Department under sub-paragraph (6) above in respect of such penalties as are there mentioned; and
- (b) so much of any penalty otherwise imposed by virtue of this paragraph and recovered by the Inland Revenue as remains after the deduction by them of any administrative costs attributable to its recovery.

(8) Sub-paragraphs (6) and (7) above shall have effect notwithstanding any provision which treats a penalty under section 98A of that Act as if it were tax charged in an assessment and due and payable.

(9) In the application of section 98A of that Act by virtue of this paragraph, any reference to a year of assessment shall be construed, in relation to a contributions return, as a reference to the tax year corresponding to that year of assessment.

(10) In the application of section 100D of that Act (court proceedings for penalties in cases of fraud) by virtue of this paragraph—

- (a) subsection (2) shall have effect with the omission of “England, Wales or” and paragraphs (a) and (b); and
- (b) subsection (3) shall have effect with the omission of the words from “instituted in England and Wales” to “and any such proceedings” and the substitution for “that Part of that Act” of “Part II of the Crown Proceedings Act 1947”.

(11) In the application of section 103 of that Act (time limit for recovery) by virtue of this paragraph—

- (a) any reference in subsection (1) to tax shall be taken to include a reference to Class 1 contributions;
- (b) any penalty by virtue of sub-paragraph (4) above shall be regarded as a penalty in respect of the tax return in question; and
- (c) where, by virtue of subsection (2) (death), subsection (1)(b) does not apply in relation to a penalty under section 98A(2)(b) or (4) of that Act in respect of a tax return, it shall also not apply in relation to a penalty so imposed in respect of the associated contributions return.

(12) A penalty under section 98A of that Act as it applies by virtue of this paragraph may be imposed notwithstanding that a question arising in relation to contributions has not been determined under section 93 of this Act by the Department, except that where—

- (a) any such question arises which affects a person’s liability for, or the amount of the penalty, and
- (b) either—
 - (i) that person requires the question to be determined under section 93, or
 - (ii) a question of law arising in connection with the determination of the question is, or is to be, referred to the court under section 94 of this Act,

the penalty shall not be imposed until the question has been determined under section 93 by the Department or the reference has been finally disposed of under section 94, as the case may be; but, subject to that, this paragraph is without prejudice to sections 93, 94 and 96 of this Act.

(13) For the purposes of this paragraph—

- (a) “contributions return” and “tax return” shall be construed in accordance with sub-paragraph (1) above; and
- (b) a contributions return and a tax return are “associated” if the contributions return is required to be made—
 - (i) at the same time as the tax return, or
 - (ii) where sub-paragraph (1)(b) above applies, at a time defined by reference to the time for making the tax return.”.

SCHEDULE 6

Article 22(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Restriction on dependency increases

1.—(1) In section 33 of the principal Act, in subsection (3) (which requires benefit payable by virtue of that section where the contribution conditions are only partially satisfied to be paid at a reduced rate), after “conditions are satisfied” insert “(and may be nil)”.

(2) In section 47A of that Act (rate of adult dependency increases to be determined in accordance with regulations in certain cases where the associated retirement pension is attributable to reduced contributions), after “pension is determined” insert “(a)” and at the end of that section add “; and

(b) the regulations shall not provide for any such increase in a case where the retirement pension by reference to which the rate of the said benefit or invalidity pension is determined—

(i) would have been payable only by virtue of section 33 above; and

(ii) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension”.

(3) In Article 7 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(18), in paragraph (1) (which precludes any increase on account of a child in the amount of certain pensions payable by virtue of section 33(2) of the principal Act where a contribution condition is not satisfied), after “on account of a child” insert “or an adult, or under section 28(7) of the principal Act (invalidity)”.

(4) In paragraph (2) of that Article (which contains a similar restriction in relation to unemployment or sickness benefit where entitlement to a retirement pension would have arisen only by virtue of section 33), after “on account of a child” add “or an adult, or under section 28(7) of the principal Act (invalidity)”.

Regulations relating to industrial injuries and diseases

2.—(1) In section 76 of the principal Act, after subsection (4) (power to make regulations for determining, among other things, the time at which a person is to be treated as having developed a prescribed injury or disease) insert the following subsection—

“(4A) Notwithstanding any other provision of this Act, the power conferred by subsection (4)(a) above includes power to provide that the time at which a person shall be treated as having developed a prescribed disease or injury shall be the date on which he first makes a claim which results in the payment of benefit by virtue of this Chapter in respect of that disease or injury.”.

(2) In section 77 of that Act, at the end of subsection (2) (power to modify provisions relating to disablement benefit and its administration) add—

“and for the purposes of this subsection the provisions of this Act which relate to the administration of disablement benefit or reduced earnings allowance shall be taken to include section 154A and any provision which relates to the administration of both the benefit in question and other benefits.”.

(3) Regulations 6(2)(c), 23 and 34 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986(19) (onset of occupational deafness and time for claiming in respect of occupational deafness or occupational asthma), and any former regulations

(18) 1977 NI 11

(19) S.R. 1986 No. 179

which they directly or indirectly re-enact with or without amendment, shall be taken to be, and always to have been, validly made.

*Certain officers in Great Britain to be eligible for
appointment as adjudication officers for Northern Ireland*

3.—(1) In section 97 of the principal Act, in subsection (1) (appointment of adjudication officers), after “Adjudication officers” insert “(a)” and at the end add “; and

(b) may include officers of the Department of Social Security appointed with the concurrence of the Secretary of State”.

(2) In Article 57 of the 1986 Order (legal proceedings), after paragraph (3) add the following paragraph—

“(3A) Any proceedings in respect of any act or omission of an adjudication officer which, apart from this paragraph, would fall to be brought against a person appointed by virtue of section 97(1)(b) of the principal Act who is resident in Great Britain, other than proceedings for an offence, may instead be brought against the Chief Adjudication Officer; and, for the purposes of any proceedings so brought, the acts or omissions of the adjudication officer shall be treated as the acts or omissions of the Chief Adjudication Officer.”.

Adjudication

4.—(1) In section 100 of the principal Act (appeal to social security appeal tribunal) add at the end the following subsections—

“(7) In any case where—

(a) an adjudication officer has decided any claim or question under Chapter IV or V of Part II of this Act, and

(b) the right to benefit under those Chapters of any person other than the claimant is or may be, under Schedule 9 to this Act, affected by that decision,

that other person shall have the like right of appeal to a social security appeal tribunal as the claimant.

(8) Subsection (2) above shall apply to a person with a right of appeal under subsection (6) or (7) above as it applies to a claimant.”.

(2) In section 101 of that Act, in subsection (2) (persons at whose instance an appeal lies from a social security appeal tribunal to a Commissioner on a point of law), after paragraph (b) insert the following paragraph—

“(bb) in a case relating to industrial injuries benefit, a person whose right to benefit is or may be, under Schedule 9 to this Act, affected by the decision appealed against;”.

(3) In subsection (3) of that section, in paragraph (c) (appeal at the instance of a trade union where the claimant was a member of the union), after “the claimant” insert “or, in relation to industrial death benefit, the deceased”.

(4) The amendments made by this paragraph shall be deemed to have come into operation on 11th April 1988 (the day on which paragraph 2 of Schedule 1 to the Social Security (Northern Ireland) Order 1988(20) came into operation).

Restrictions on entitlement to benefit in certain cases of error

5.—(1) In section 104 of the principal Act (reviews), after the subsection (6) inserted by Article 8(3) insert the following subsections—

“(7) Subsection (8) below applies in any case where—

- (a) on the determination, whenever made, of a Commissioner or the court (the “relevant determination”), a decision made by an adjudicating authority is or was found to have been erroneous in point of law, and
- (b) in consequence of that determination, any other decision—
 - (i) which was made before the date of that determination, and
 - (ii) which is referable to a claim made or treated as made by any person for any benefit,

falls (or would, apart from subsection (8) below, fall) to be revised on a review carried out under subsection (1A) above after the coming into force of this subsection.

(8) Where this subsection applies, any question arising on the review referred to in subsection (7)(b) above, or on any subsequent review of a decision which is referable to the same claim, as to any person’s entitlement to, or right to payment of, any benefit—

- (a) in respect of any period before the date of the relevant determination, or
 - (b) in the case of widow’s payment, in respect of a death occurring before that date,
- shall be determined as if the decision referred to in subsection (7)(a) above had been found by the Commissioner or court in question not to have been erroneous in point of law.

(9) In determining whether a person is entitled to benefit in a case where his entitlement depends on his having been entitled to the same or some other benefit before attaining a particular age, subsection (8) above shall be disregarded for the purpose only of determining the question whether he was so entitled before attaining that age.

(10) For the purposes of subsections (7) to (9) above—

- (a) “adjudicating authority” and “the court” have the same meaning as they have in section 154D below;
- (b) any reference to—
 - (i) a person’s entitlement to benefit, or
 - (ii) a decision which is referable to a claim,shall be construed in accordance with subsection (5) of that section; and
- (c) the date of the relevant determination shall, in prescribed cases, be determined in accordance with any regulations made under subsection (6) of that section.”.

(2) After the section 154C of that Act inserted by Article 8(2) insert the following section—

“Restrictions on entitlement to benefit in certain cases of error.

154D.—(1) This section applies where—

- (a) on the determination, whenever made, of a Commissioner or the court (the “relevant determination”), a decision made by an adjudicating authority is or was found to have been erroneous in point of law; and
- (b) after both the coming into force of this section and the date of the relevant determination, a claim which falls, or which would apart from this section fall, to be decided in accordance with the relevant determination is made or treated under

Article 52(1)(i) of the Social Security (Northern Ireland) Order 1986 as made by any person for any benefit.

(2) Where this section applies, any question which arises on, or on the review of a decision which is referable to, the claim mentioned in subsection (1)(b) above and which relates to the entitlement of the claimant or any other person to any benefit—

(a) in respect of a period before the relevant date, or

(b) in the case of a widow's payment, in respect of a death occurring before that date,

shall be determined as if the decision referred to in subsection (1)(a) above had been found by the Commissioner or court in question not to have been erroneous in point of law.

(3) In determining whether a person is entitled to benefit in a case where—

(a) his entitlement depends on his having been entitled to the same or some other benefit before attaining a particular age, and

(b) he attained that age—

(i) before both the date of the relevant determination and the date of the claim referred to in subsection (1)(b) above, but

(ii) not before the earliest day in respect of which benefit could, apart from this section, have been awarded on that claim,

subsection (2) above shall be disregarded for the purpose only of determining the question whether he was entitled as mentioned in paragraph (a) above.

(4) In this section—

“adjudicating authority” means—

(a) an adjudication officer, the Attendance Allowance Board, a social security appeal tribunal or a medical appeal tribunal;

(b) any of the following former bodies or officers, that is to say, the National Assistance Board for Northern Ireland, the Supplementary Benefits Commission for Northern Ireland, a benefit officer, an insurance officer or a supplement officer; or

(c) any of the officers who, or tribunals or other bodies which, in Great Britain correspond to those mentioned in paragraph (a) or (b) above;

“the court” means the High Court, the Court of Appeal, the Court of Sessions, the High Court or Court of Appeal in England, the House of Lords or the Court of Justice of the European Community;

“the relevant date” means whichever is the latest of—

(a) the date on which the relevant determination was made;

(b) the date which falls twelve months before the date on which the claim referred to in subsection (1)(b) above is made or treated under Article 52(1)(i) of the Social Security (Northern Ireland) Order 1986 as made; and

(c) the earliest date in respect of which the claimant would, apart from this section, be entitled on that claim to the benefit in question.

(5) For the purposes of this section—

(a) any reference in this section to entitlement to benefit includes a reference to entitlement—

(i) to any increase in the rate of a benefit, or

(ii) to a benefit, or increase of benefit, at a particular rate; and

(b) any reference to a decision which is “referable to” a claim is a reference to—

- (i) a decision on the claim,
 - (ii) a decision on a review of the decision on the claim, or
 - (iii) a decision on a subsequent review of the decision on the review,
- and so on.

(6) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.”

(3) In paragraph 32 of Schedule 9 to the 1986 Order (which applies sections 87 and 154A(1) of the principal Act to income-related benefits), at the end of sub-paragraph (b) add “; and

(c) section 154D (restrictions on entitlement in certain cases of error)”.

Control of regulations and orders

6.—(1) In section 156 of the principal Act (regulations and orders: control by Northern Ireland Assembly), for subsection (3) substitute the following subsection—

“(3) Subsection (1) above does not apply to—

- (a) regulations under section 124 of this Act, where the statutory rule containing the regulations states that the regulations are made for the purpose of making provisions consequential on the making of an order under section 120;
- (b) regulations under powers conferred by any provision mentioned in paragraph (a) of subsection (2) above which are to be made for the purpose of consolidating regulations thereby revoked;
- (c) regulations which, in so far as they are made under powers so conferred, only replace provisions of previous regulations with new provisions to the same effect.”.

(2) In Article 71 of the Pensions Order, for paragraphs (1) and (2) substitute the following paragraphs—

“(1) Section 156 of the principal Act shall have effect as if in subsection (2) (regulations and orders subject to confirmatory procedure) there were included in paragraph (a) references to—

- (a) regulations made by virtue of Article 5;
- (b) regulations prescribing actuarial tables for the purposes of Articles 46(7), 46ZA(14), 46A(3) and 47(4).

(2) Subsection (4) of that section (regulations and orders subject to negative resolution) shall have effect as if after the words “other than” there were inserted the words “an order which, under any provision of the Pensions Order, is required to be laid before the Assembly after being made or”.”.

(3) In Article 24(2) of the Child Benefit (Northern Ireland) Order 1975⁽²¹⁾, after “19(1)” insert “, and any regulations contained in a statutory rule which includes any such regulations,”.

(4) In Article 19(3) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977, at the beginning insert “Subject to section 156(1) of the principal Act,”.

(5) In Article 7(4) of the Social Security (No. 2) (Northern Ireland) Order 1980⁽²²⁾, after “Article 6(3)” insert “and any regulations contained in a statutory rule which includes any such regulations,”.

(6) In Article 36 of the 1982 Order, for paragraph (2) substitute the following paragraph—

⁽²¹⁾ 1975 NI 16

⁽²²⁾ 1980 NI 13

“(2) Regulations and orders made by the Department under this Order, other than those to which section 156(1) of the principal Act applies and orders under Article 1(2), shall be subject to negative resolution.”.

(7) Article 23(3) and (4) of the Social Security (Northern Ireland) Order 1985⁽²³⁾ (which require confirmatory procedure for certain regulations and which are spent) shall cease to have effect.

(8) In Article 81 of the 1986 Order, for paragraph (4) substitute the following paragraph—

“(4) Regulations and orders made by the Department under this Order, other than those to which section 156(1) of the principal Act applies and orders under Article 1, shall be subject to negative resolution.”.

(9) After Article 15 of the Social Security (Northern Ireland) Order 1988 insert the following Article—

“Regulations and orders, etc.

15A.—(1) Section 155(1) to (3A) of the principal Act (regulations and orders: general provisions) shall apply in relation to any power conferred by any provision of this Order to make orders or regulations under this Order as they apply in relation to any power conferred by that Act to make orders or regulations, but as if for references to that Act there were substituted references to this Order.

(2) Regulations and orders made under this Order, other than those to which section 156(1) of the principal Act applies and orders under Article 1(3), shall be subject to negative resolution.

(3) In this Order—

“prescribe” means prescribe by regulations; and

“regulations” means regulations made under this Order by the Department.”.

(10) In consequence of sub-paragraph (9), the following provisions of that Order shall cease to have effect—

(a) in Article 13, paragraph (6) and in paragraph (7) the words from “and regulations” to the end;

(b) in Article 17, in paragraph (1) the words “subject to negative resolution” and paragraph (3).

(11) In Article 30 of the 1989 Order, for paragraph (3) substitute the following paragraph—

“(3) Regulations and orders made under this Order, other than those to which section 156(1) of the principal Act applies and orders under Article 1(2), shall be subject to negative resolution.”;

and, in consequence of this paragraph, paragraph (4) of that Article shall cease to have effect.

(12) This sub-paragraph applies to any regulations or order made under the benefit Acts which—

(a) would but for sub-paragraph (13) be subject to negative resolution, and

(b) are contained in a statutory rule which includes any regulations or order subject to confirmatory procedure (that is to say, the procedure described in section 156(1) of the principal Act).

(13) Any regulations or order to which sub-paragraph (12) applies shall not be subject to negative resolution but shall be subject to the confirmatory procedure.

(14) This sub-paragraph applies to any regulations or order under the benefit Acts which—

(23) 1985 NI 16

- (a) would but for sub-paragraph (15) be subject to annulment in pursuance of a resolution of either House of Parliament, and
- (b) are contained in an instrument which is subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament.

(15) Any regulations or order to which sub-paragraph (14) applies shall not be subject as described in head (a) but shall be subject to the requirement described in head (b) of that sub-paragraph.

(16) In section 156(5A) of the principal Act (regulations made by the Lord Chancellor), after “Lord Chancellor” insert “which are not contained in an instrument which is subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament”.

(17) In sub-paragraphs (12) and (14) “the benefit Acts” has the meaning given by Article 2(2) of the 1986 Order except that it includes section 5 of the National Insurance Measure (Northern Ireland) 1974(24), section 14 of the Social Security Act 1980(25) so far as subsection (8)(b) applies to that section, and Article 6 of the Forfeiture (Northern Ireland) Order 1982(26).

Return of Class 2 contributions paid by low-earners

7. In Schedule 1 to the principal Act (contributions: supplementary provisions), in paragraph 6(1) (matters for which regulations may provide), after the paragraph (gg) inserted by Article 4 of the 1989 Order insert the following paragraphs—

- “(gh) for the repayment, on the making of an application in the prescribed manner and within the prescribed time, of Class 2 contributions paid by a person in respect of a period which consists of, or falls within, a tax year for which his earnings from employment as a self-employed earner were, or were such as to be treated by regulations under subsection (5) of section 7 of this Act as being, at a lower rate than the one specified in that subsection for that year;
- (gj) for excepting a person from liability for contributions repaid by virtue of paragraph (gh) above, to the extent that he would not have been so excepted by virtue of section 7(5) of this Act;”.

Maternity allowance: contribution conditions for women paid otherwise than weekly

8.—(1) In Schedule 3 to the principal Act, at the beginning of paragraph 3 (contribution conditions for maternity allowance) insert—

“(1) Subject to sub-paragraph (2) below,”.

(2) At the end of that paragraph add the following sub-paragraphs—

- “(2) In the case of a claimant who is or has been paid otherwise than weekly, any week—
 - (a) in respect of which she did not pay contributions of a relevant Class, but
 - (b) for which her earnings were such that, had she been paid weekly, she would have been required to pay primary Class 1 contributions in respect of that week, and
 - (c) for which no such election as is mentioned in Article 5(2)(a) of the Pensions Order (contributions at a reduced rate) was in force in her case,

shall be treated for the purposes of sub-paragraph (1) above as a week in respect of which she actually paid such contributions otherwise than at a reduced rate.

(24) 1974 c. 4 (N.I.)

(25) 1980 c. 30

(26) 1982 NI 14

(3) For the purposes of sub-paragraph (2) above, the amount of the claimant's earnings for any week shall be determined in accordance with regulations.”.

Tax years

9. In Schedule 17 to the principal Act (glossary of expressions), in the entry relating to “tax year”, at the end of the second column add the following paragraph—

“The expression “1978—79” means the tax year beginning with 6th April 1978, and any correspondingly framed reference to a pair of successive years shall be construed as a reference to the tax year beginning with 6th April in the earlier of them.”.

Re-establishment courses

10. Articles 36 and 37 of the Supplementary Benefits (Northern Ireland) Order 1977(27) (power to provide re-establishment courses and to make contributions to voluntary organisations providing similar courses) shall cease to have effect.

Statutory sick pay

11.—(1) In paragraph (1A) of Article 9 of the 1982 Order (rates of statutory sick pay: power by regulations to substitute alternative provisions for paragraph (1)(a) to (c) and to make consequential amendments)—

(a) for “regulations” substitute “order”; and

(b) in sub-paragraph (a), for “paragraph (1)(a) to (c)” substitute “the sub-paragraphs of paragraph (1)”.

(2) In paragraph (1B) of that Article (regulations under paragraph (1A) to be subject to confirmatory procedure), for “regulations” in the second and fourth place where it occurs substitute “an order”, and for “regulations” in the third place where it occurs substitute “order”.

Income support and trade disputes, etc.: “the relevant sum”

12.—(1) Article 24 of the 1986 Order (income support and trade disputes, etc.) shall be amended in accordance with sub-paragraphs (2) and (3).

(2) For paragraph (6) (meaning of “the relevant sum”) substitute the following paragraph—

“(6) Subject to paragraph (7), “the relevant sum” for the purposes of paragraph (5) shall be £19.50.”.

(3) For sub-paragraph (a) of paragraph (7) (annual increase of the relevant sum by reference to the percentage increase in applicable amounts under the up-rating order) substitute the following sub-paragraph—

“(a) increasing that sum by the percentage by which the personal allowance under paragraph 1(1) of Part I of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987 for a single person aged not less than 25 has been increased by the order; and”.

Income support: implementation of increases due to attainment of particular ages

13. After Article 65A of the 1986 Order (effect of alteration in component rates of income support) insert the following Article—

“Implementation of increases in income support due to attainment of particular ages

65B.—(1) This Article applies where—

- (a) an award of income support is in force in favour of a person (“the recipient”); and
- (b) there is a component which becomes applicable, or applicable at a particular rate, in his case if he or some other person attains a particular age.

(2) If, in a case where this Article applies, the recipient or other person attains the particular age referred to in sub-paragraph (b) of paragraph (1) and, in consequence,—

- (a) the component in question becomes applicable, or applicable at a particular rate, in the recipient’s case (whether or not some other component ceases, for the same reason, to be applicable, or applicable at a particular rate, in his case), and
- (b) after taking account of any such cessation, the recipient becomes entitled to an increased amount of income support,

then, except as provided by paragraph (3), as from the day on which he becomes so entitled, the amount of income support payable to or for him under the award shall be that increased amount, without any further decision of an adjudication officer, and the award shall have effect accordingly.

(3) Paragraph (2) does not apply in any case where, in consequence of the recipient or other person attaining the age in question, some question arises in relation to the recipient’s entitlement to any benefit under the benefit Acts, other than—

- (a) the question whether the component concerned, or any other component, becomes or ceases to be applicable, or applicable at a particular rate, in his case; and
- (b) the question whether, in consequence, the amount of his income support falls to be varied.

(4) In this Article “component”, in relation to a person and his income support, means any of the sums specified in regulations under Article 23(1).”.

Statutory maternity pay for servicewomen

14. Article 79(5) of the 1986 Order (which precludes the payment of statutory maternity pay to women members of HM forces) shall cease to have effect.

Christmas bonus for pensioners

15.—(1) In Schedule 6 to the 1986 Order, in paragraph 3 (Christmas bonus for pensioners: circumstances in which a person is to be treated as entitled to a qualifying benefit in a relevant week) the following provisions shall cease to have effect—

- (a) sub-paragraph (2)(a)(iii) (persons otherwise not entitled to a qualifying benefit in consequence of the former limit on pensioners' earnings or the requirement to claim the qualifying benefit); and
- (b) sub-paragraph (3)(d) (couples: members otherwise not entitled to an increase in respect of the other member in consequence of the requirement to claim the benefit).

(2) This paragraph shall be deemed to have come into operation on 1st October 1989.

Benefits for women widowed before 11th April 1988

16.—(1) The Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1987(28) shall have effect, and be taken always to have had effect, with the substitution for regulations 3 and 4 (transitional provisions about widowed mother's allowance where the husband died before 11th April 1988, which were retrospectively amended by Article 8(2) of the 1989 Order, and savings) of the following regulation—

“3. Regulation 16(1) of the principal regulations shall apply to a widow whose late husband died before 11th April 1988 as if regulation 2(6) above had not been made.”.

(2) 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 paragraph, 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 paragraph 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.

(3) Where, in consequence of regulation 2(6) of the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1987 (deemed entitlement to a child allowance for purposes of widowed mother's allowance, etc.), an adjudicating authority has decided before the commencement of this paragraph 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.

(4) 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 paragraph,

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.

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

(6) In this paragraph “adjudicating authority” means—

- (a) an adjudication officer;
- (b) a social security appeal tribunal;
- (c) a Commissioner, as defined in Schedule 17 to the principal Act.

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

(8) Nothing in this paragraph shall be taken to prejudice section 29 of the Interpretation Act (Northern Ireland) 1954⁽²⁹⁾ (effect of substitutions, etc.).

Unauthorised disclosure of information relating to particular persons

17.—(1) In Article 21 of the 1989 Order, in paragraph (7) (construction of references to government departments), after “include” insert “(a)” and at the end add “; and

(b) the Scottish Courts Administration”.

(2) In paragraph (9)(d) of that Article (lawful authority: court proceedings), after “Schedule 2” insert “or in any corresponding enactment having effect in Great Britain”.

(3) In paragraph (10)(d) of that Article—

(a) in head (i), for “or any similar appointee in Great Britain” substitute “or sub-paragraph (a) of rule 41(1) of the Court of Protection Rules 1984”;

(b) in head (ii), for the words from “that rule” onwards substitute “the said rule 38(1) or a receiver ad interim appointed under sub-paragraph (b) of the said rule 41(1)”.

(4) In Part I of Schedule 2 to that Order, after the entry “An insurance officer” add the following entry—

“A supplement officer.”.

Employment related schemes for pensions or other benefits: equal treatment for men and women

18. In Schedule 5 to that Order, in paragraph 5 (unfair maternity provisions), in sub-paragraph (2) (a), after “women” insert “members”.

Incapacity for work: councillor’s allowances and expenses

19.—(1) In Schedule 8 to that Order, paragraph 2 (which makes provision with respect to councillors and incapacity for work) shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In sub-paragraph (2) (certain benefits to be reduced by the excess of the councillor’s allowance over the earnings limit specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984⁽³⁰⁾, which was £35 at the making of this Order), for “the amount of councillor’s allowance” substitute “the net amount of councillor’s allowance”.

(3) In sub-paragraph (6), after the definition of “incapacity benefit” insert the following definition

—
““net amount”, in relation to any councillor’s allowance to which a person is entitled, means the aggregate amount of the councillor’s allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question;”.

(4) In section 36(7) of the principal Act (regulations relating to severe disablement allowance), in paragraph (cc) (which was inserted by paragraph 2(5) of Schedule 8 to the 1989 Order and authorises the reduction of benefit by the excess of the amount of councillor’s allowance over a prescribed sum), for “the amount of councillor’s allowance” substitute “the net amount of councillor’s allowance”.

⁽²⁹⁾ 1954 c. 33 (N.I.)

⁽³⁰⁾ S.R. 1984 No. 245

Joint citations

20. In the following statutory provisions, for “the Social Security (Northern Ireland) Acts 1975 to 1989” in each place where they occur substitute “the Social Security (Northern Ireland) Acts 1975 to 1990”—

- (a) section 5(1) of the National Insurance Measure (Northern Ireland) 1974**(31)**;
- (b) section 9(7) of the Social Security Act 1980**(32)**;
- (c) Article 6(5) of the Forfeiture (Northern Ireland) Order 1982**(33)**;
- (d) Article 7(1)(a) of the Social Security (Northern Ireland) Order 1985**(34)**;
- (e) paragraph (b) of the definition of “the benefit Acts” in Article 2(2) of the 1986 Order.

SCHEDULE 7

Article 22(2).

REPEALS

Chapter or Number	Title	Extent of repeal
1975 c. 15.	The Social Security (Northern Ireland) Act 1975.	In section 1(1), paragraph (c) and the word “and” immediately preceding it. In section 59B— (a) in subsection (1) the words from “and may become” onwards; (b) in subsection (3) the words “Unless he returns to regular employment,”; (c) subsection (4); (d) in subsection (7)(b) the words “, or returned to,”; (e) in subsection (8) the words “, or as not having returned to,” the words “as having returned to, or” and the words “, or returned to,”. In section 129(5) the word “and” at the end of paragraph (a). In section 143(4) the words “the supplements under section 1(5) and”.
1975 c. 17.	The Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975.	Section 8.
1975 NI 15.	The Social Security Pensions (Northern Ireland) Order 1975.	In Article 34(2B)(d)(i), the word “and”. In Article 35(2) the words “and (4)”. In Article

(31) 1974 c. 4 (N.I.)**(32)** 1980 c. 30**(33)** 1982 NI 14**(34)** 1985 NI 16

Chapter or Number	Title	Extent of repeal
		43A, paragraphs (1A) and (1B) and in paragraph (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). Articles 58B to 58D. In Article 58E(1) sub-paragraph (c) and the word “and” immediately preceding it. Articles 58F to 58J. In Article 58K — (a) in paragraph (1), in sub-paragraph (a) the words “or (c)”, sub-paragraph (b) and the word “or” immediately preceding it; (b) in paragraph (5), sub-paragraph (b) and in sub-paragraph (c) the words “or the registrar”; (c) paragraph (7). Article 58L. In Schedule 1A— (a) in paragraphs 1(1)(b), 2(2) (d) and 11(1)(b), sub-head (ii) and the word “or” immediately preceding it; (b) in paragraphs 1(4) and 11(2) the words ““relevant employment””; (c) in paragraph 7(4), in head (a) the word “and” immediately preceding sub-head (iii), and head (b); (d) in paragraph 12(1), head (b) and the word “or” immediately preceding it.
1977 NI 11.	The Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977.	Article 3(8).
1977 NI 27.	The Supplementary Benefits (Northern Ireland) Order 1977.	Articles 36 and 37.
1982 NI 16.	The Social Security (Northern Ireland) Order 1982.	Article 37.
1985 NI 16.	The Social Security (Northern Ireland) Order 1985.	Article 1(6). Article 23(3) and (4). In Schedule 5, paragraph 14.
1986 NI 18.	The Social Security (Northern Ireland) Order 1986.	In Article 34(10A) the word “and” immediately preceding sub-paragraph (e). In Article 79, in paragraph (4) the words “Subject to paragraph (5),” and

Chapter or Number	Title	Extent of repeal
1988 NI 2.	The Social Security (Northern Ireland) Order 1988.	paragraph (5). Article 82(2)(a). In Schedule 6, in paragraph 3 — (a) in sub-paragraph (2) (a) sub-head (iii); (b) in sub-paragraph (3) head (d) and the word “or” immediately preceding it. In Article 4, paragraphs (7) and (7A). In Article 13, paragraph (6) and in paragraph (7) the words from “and regulations” to the end. In Article 17, in paragraph (1) the words “subject to negative resolution” and paragraph (3). In Schedule 4, paragraph 17(2).
1989 NI 13.	The Social Security (Northern Ireland) Order 1989.	Article 8(2). In Article 24(3), in the definition of “relevant period”, the words from “whether or not” onwards. Article 30(4). In Schedule 1, in paragraph 8, sub-paragraphs (3), (4) and (7). In Schedule 6 paragraphs 2, 3 and 4(1)(a). In Schedule 9 the entries relating to Articles 43A(1C) (b), 43B(1A)(b) and 43C(3)(a) (ii) of the Pensions Order.

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 1990.

Article 3 is concerned with the conditions for entitlement to attendance allowance for persons who are terminally ill. Article 4 provides for an age related addition to the weekly rate of severe disablement allowance. Article 5 abolishes reduced earnings allowance in respect of accidents happening on or after the appointed day. Article 6 provides that no tax year after 1990—91 will count in determining the amount of additional pension payable with invalidity pension.

Article 7 provides that a person is not entitled to benefit for any past period unless in addition to any other condition relating to it, he has made a claim for it in the prescribed manner and at the prescribed time and Article 8 provides for late claims for widowhood benefits where death is difficult to establish. Article 9 makes amendments to the scheme for recovery from damages, etc., of sums

equivalent to benefit and Articles 10 to 12 make amendments relating to income support and the social fund.

Articles 13 to 16 amend the Social Security Pensions (Northern Ireland) Order 1975 to provide, among other things, for the role of the Pensions Ombudsman and for the registration of occupational and personal pension schemes.

Article 17 makes provision in respect of grants for the improvement of the insulation of dwellings and related matters.

Articles 18 to 22 contain financial and supplementary provisions including provision for the payment of interest and penalties in respect of certain overdue national insurance contributions.