

SCHEDULES

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⁽¹⁾ 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”.

⁽¹⁾ S.R. 1989 No. 354

(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).

(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.”.