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STATUTORY INSTRUMENTS

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**1999 No. 3147 (N.I. 11)**

**NORTHERN IRELAND**

**The Welfare Reform and Pensions  
(Northern Ireland) Order 1999**

*Made - - - - 24th November 1999*  
*Laid before Parliament 25th November 1999*  
*Coming into operation in accordance with Article 1*

At the Court at Buckingham Palace, the 24th day of November 1999

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those 1999 c. of the Welfare Reform and Pensions Act 1999:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 87 of the said Act of 1999) 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:—

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Welfare Reform and Pensions (Northern Ireland) Order 1999.

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

(3) The following provisions shall come into operation on such day or days as the Lord Chancellor may by order appoint—

(a) Articles 18, 19 and 20;

(b) Article 74(1) so far as relating to paragraphs 1 to 3 and 52 of Schedule 9;

- (c) Article 75(3) and (4); and
  - (d) Article 76 so far as relating to the entries in Part II of Schedule 10.
- (4) The following provisions come into operation on the seventh day after the day on which this Order is made—
- (a) this Article and Article 2;
  - (b) Articles 49, 54, 55, 57, 65 and 68;
  - (c) Article 67 so far as relating to Part V of Schedule 8;
  - (d) Article 69;
  - (e) Articles 70 to 73;
  - (f) Article 74(1) so far as relating to paragraphs 55 to 59 and 61 of Schedule 9;
  - (g) Article 74(2) to (4);
  - (h) Article 75(1), (2), (5) and (6).
- (5) The following provisions come into operation on the seventh day after the day on which this Order is made, but for the purpose only of the exercise of any power to make regulations—
- (a) Parts II to V;
  - (b) Articles 56 and 58;
  - (c) Article 67 so far as relating to paragraph 22 of Schedule 8.

## **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 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 Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“the Department” means the Department of Health and Social Services;

“government department” means a Northern Ireland department or a department of the government of the United Kingdom;

“the Housing Executive” means the Northern Ireland Housing Executive;

“the Matrimonial Causes Order” means the Matrimonial Causes (Northern Ireland) Order 1978;

“the Pension Schemes Act” means the Pension Schemes (Northern Ireland) Act 1993;

“the Pensions Order” means the Pensions (Northern Ireland) Order 1995;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“the Welfare Reform Act” means the Welfare Reform and Pensions Act 1999.

(3) In this Order, except Articles 1, 74(2) and (3) and 75(1) and (5), and in any statutory provision amended by this Order, references to the coming into operation of any provision of this Order are to its coming into operation otherwise than for the purpose of authorising the making of regulations.

## PART II

### STAKEHOLDER PENSION SCHEMES

#### **Meaning of “stakeholder pension scheme”**

**3.—(1)** A pension scheme is a stakeholder pension scheme for the purposes of this Part if it is registered as such a scheme under Article 4 and each of the following is fulfilled, namely—

- (a) the conditions set out in paragraphs (2) to (9); and
- (b) such other conditions as may be prescribed.

(2) The first condition is that the scheme is established under a trust or in such other way as may be prescribed.

(3) The second condition is that the provisions made by the instruments establishing the scheme comply with such requirements as may be prescribed.

(4) The third condition is that, subject to such exceptions as may be prescribed, the benefits provided by the scheme are money purchase benefits within the meaning given by section 176 of the Pension Schemes Act.

(5) The fourth condition is that the scheme complies with such requirements as may be prescribed as regards the extent to which, and the circumstances in which—

- (a) any payment made to the scheme by or on behalf of a member of the scheme;
- (b) any income or capital gain arising from the investment of such a payment; or
- (c) the value of rights under the scheme,

may be used to defray the administrative expenses of the scheme, to pay commission or in any other way which does not result in the provision of benefits for or in respect of members.

(6) The fifth condition is that the scheme complies with such of the requirements of regulations under section 109 of the Pension Schemes Act (disclosure of information about schemes to members etc.) as are applicable to it.

(7) The sixth condition is that, subject to such minimum contribution levels and other restrictions as may be prescribed, members of the scheme may make such contributions to the scheme as they think appropriate.

(8) The seventh condition is that, except in so far as is necessary to ensure that the scheme has tax-exemption or tax-approval (within the meaning of the Pension Schemes Act), the scheme accepts transfer payments in respect of members' rights under—

- (a) other pension schemes;
- (b) contracts and schemes approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 (retirement annuity contracts);
- (c) annuities and insurance policies purchased or transferred for the purpose of giving effect to rights under pension schemes; and
- (d) annuities purchased or entered into for the purpose of discharging liability in respect of pension credits under Article 26(1)(b) or under section 29(1)(b) of the Welfare Reform Act.

(9) The eighth condition is that the scheme has such exemption or approval as is mentioned in paragraph (8).

#### **Registration of stakeholder pension schemes**

**4.—(1)** The Authority shall keep a register of stakeholder pension schemes.

(2) Subject to paragraph (3), the Authority shall register a pension scheme under this Article if the trustees of the scheme, or any person or persons prescribed in relation to the scheme—

- (a) make an application for the purpose and pay such fee as the Authority may determine; and
- (b) declare that each of the following is fulfilled in relation to the scheme, namely—
  - (i) the conditions set out in paragraphs (2) to (9) of Article 3; and
  - (ii) such other conditions as may be prescribed under paragraph (1) of that Article.

(3) Where the Authority are satisfied on reasonable grounds that any of those conditions is not fulfilled in relation to a pension scheme, the Authority may—

- (a) refuse to register the scheme; or
- (b) where the scheme is registered under this Article, remove it from the register.

(4) Article 3 (prohibition orders) and Article 10 (civil penalties) of the Pensions Order apply to any trustee of a pension scheme which is or has been registered under this Article, and Article 10 of that Order applies to any person prescribed in relation to such a scheme, if—

- (a) he fails to take all such steps as are reasonable to secure that each of those conditions is fulfilled in relation to the scheme or (as the case may be) while the scheme was so registered he failed to take all such steps as were reasonable to secure that each of those conditions was so fulfilled; or
- (b) where the scheme was registered on his application, any of those conditions was not fulfilled in relation to the scheme at the time of the application.

(5) Any person who, in applying for registration of a pension scheme under this Article, knowingly or recklessly provides the Authority with information which is false or misleading in a material particular shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment or a fine or both.

(6) The Department may by regulations make provision—

- (a) for the register, or extracts from the register, or for copies of the register or of extracts from the register, to be open to inspection by, and
- (b) for copies of the register, or of extracts from it, to be supplied to,

such persons, in such manner, at such times, on payment of such fees, and subject to such other terms and conditions, as may be prescribed.

### **Duty of employers to facilitate access to stakeholder pension schemes**

5.—(1) Except in so far as regulations otherwise provide, it shall be the duty of an employer of relevant employees to comply with the requirements set out below.

(2) The first requirement is that the employer shall ensure that at all times there is at least one scheme designated by him for the purposes of this paragraph which is registered under Article 4 and offers membership to all his relevant employees (whether or not any other scheme registered under that Article which does not offer membership to all those employees is for the time being designated by him for those purposes).

Before designating a scheme for the purposes of this paragraph the employer shall consult with his relevant employees and any organisations representing them.

(3) The second requirement is that the employer shall supply his relevant employees with—

- (a) the name and address of the designated scheme or, as the case may be, of each of the designated schemes; and
- (b) such other information as may be prescribed.

(4) The third requirement is that the employer shall allow representatives of the designated scheme or schemes reasonable access to his relevant employees for the purpose of supplying them with information about the scheme or schemes.

(5) The fourth requirement is that, subject to such exceptions and qualifications as may be prescribed, the employer shall, if he is requested to do so by a relevant employee of his who is a member of a qualifying scheme—

- (a) deduct the employee's contributions to the scheme from his remuneration; and
- (b) pay them to the trustees or managers of the scheme or, if regulations so provide, to a prescribed person.

(6) The fifth requirement is that the employer shall, if any scheme designated by him for the purposes of paragraph (2) ceases to be registered under Article 4, withdraw his designation of the scheme (but this requirement is not to be taken as implying that he cannot withdraw his designation of a scheme in other circumstances).

(7) Article 10 of the Pensions Order (civil penalties) applies to an employer who fails to comply with any of the requirements set out above.

(8) An employer is not, whether before designating a scheme for the purposes of paragraph (2) or at any time while a scheme is designated by him for those purposes, under any duty—

- (a) to make any enquiries, or act on any information, about the scheme for any purpose not connected with—
  - (i) ascertaining whether the scheme is for the time being registered under Article 4,
  - (ii) ascertaining the persons to whom it offers membership, or
  - (iii) enabling him to comply with paragraph (3), or
- (b) in particular, to investigate or monitor, or make any judgment as to, the past, present or future performance of the scheme.

(9) In this Article—

“employer” means any employer, whether or not resident or incorporated in any part of the United Kingdom;

“qualifying scheme”, in relation to an employer, means—

- (a) the designated scheme or one of the designated schemes; or
- (b) if regulations so provide, any other stakeholder pension scheme;

“regulations” means regulations made by the Department;

“relevant employees”, in relation to an employer, means all employees of his employed in Northern Ireland and also, in the case of an employer resident or incorporated in Northern Ireland, all employees of his employed outside the United Kingdom, but with the exception, in the case of any employer, of any employees of his—

- (a) whose employment qualifies them for membership of an occupational pension scheme of the employer;
- (b) whose earnings fall below the lower earnings limit as defined in section 176 of the Pension Schemes Act; or
- (c) who are of such other description as may be prescribed.

**Obtaining information with respect to compliance with Article 5 and corresponding legislation in Great Britain**

6.—(1) Any person appearing to the Authority to be a person who holds, or is likely to hold, information which is relevant to the issue whether an employer is complying, or has complied, with the requirements under—

- (a) Article 5, or
- (b) section 3 of the Welfare Reform Act,

must, if required to do so by the Authority by notice in writing, produce any document which is so relevant.

(2) To comply with paragraph (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) Article 98 of the Pensions Order shall have effect as if references to Article 96(1) or 97(1)(b) of that Order included references to paragraph (1) or Article 7(1)(b).

(4) Articles 99 to 101 of that Order shall have effect as if references which are or include references to Article 96 or 97 of that Order included references to this Article or Article 7.

(5) In this Article and Article 7 “document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

**Powers of inspection for securing compliance with Article 5 and corresponding legislation in Great Britain**

7.—(1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under Article 5 or section 3 of the Welfare Reform Act, at any reasonable time enter premises liable to inspection and, while there—

- (a) may make such examination and inquiry as may be necessary for such purposes,
- (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with those requirements for his inspection, and
- (c) may, as to any matter relevant to compliance with those requirements, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

(2) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that—

- (a) employees of the employer are employed there,
- (b) documents relevant to the administration of the employer’s business are being kept there, or
- (c) the administration of the employer’s business, or work connected with that administration, is being carried out there,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(3) An inspector applying for admission to any premises for the purposes of this Article must, if so required, produce his certificate of appointment.

(4) In this Article “inspector” means a person appointed by the Authority as an inspector.

### **Application of certain statutory provisions**

8.—(1) Articles 69 and 133 of the Employment Rights (Northern Ireland) Order 1996 (occupational pension scheme trustees: protection from unfair dismissal and other detriment) shall apply in relation to an employee who is (or is a director of a company which is) a trustee of a scheme designated by his employer under Article 5(2) as they apply in relation to an employee who is (or is a director of a company which is) a trustee of a relevant occupational pension scheme which relates to his employment.

(2) Article 86 of that Order (occupational pension scheme trustees: time off) shall apply to the employer in relation to a designated scheme as it applies to the employer in relation to a relevant occupational pension scheme.

(3) Schedule 1 (application of the Pension Schemes Act and the Pensions Order to registered schemes) shall have effect.

(4) In this Article “relevant occupational pension scheme” has the meaning given by Article 69 of the Employment Rights (Northern Ireland) Order 1996.

### **Interpretation and application of Part II**

9.—(1) In this Part—

“the Authority” means the Occupational Pensions Regulatory Authority;

“designated scheme” in relation to an employer, means a scheme designated by him for the purposes of Article 5(2);

“occupational pension scheme” and “personal pension scheme” have the meanings given by section 1 of the Pension Schemes Act;

“pension scheme” means an occupational pension scheme or a personal pension scheme;

“prescribed” means prescribed by regulations made by the Department;

“stakeholder pension scheme” shall be construed in accordance with Article 3.

(2) The Department may by regulations make provision for a stakeholder pension scheme which

(a) is of a prescribed description, and

(b) would (apart from the regulations) be an occupational pension scheme,

to be treated for all purposes, or for such purposes as may be prescribed, as if it were a personal pension scheme and not an occupational pension scheme.

(3) This Part applies to a pension scheme managed by or on behalf of the Crown as it applies to other pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of, or person prescribed in relation to, a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(4) This Part applies to persons employed by or under the Crown in like manner as if such persons were employed by a private person; and references in this Part to a person in his capacity as an employer include the Crown, or a person acting on behalf of the Crown, in that capacity.

(5) Paragraphs (3) and (4) do not apply to any provision of this Part under which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.

(6) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

**PART III**  
**PENSIONS: GENERAL**

*Payments by employers to pension schemes*

**Monitoring of employers' payments to personal pension schemes**

**10.** In Part VI of the Pension Schemes Act (further requirements for protection of scheme members), after section 107 there shall be inserted—

**“Monitoring of employers' payments to personal pension schemes.**

**107A.**—(1) This section applies where—

- (a) an employee is a member of a personal pension scheme; and
- (b) direct payment arrangements exist between the employee and his employer.

(2) In this section “direct payment arrangements” means arrangements under which contributions fall to be paid by or on behalf of the employer towards the scheme—

- (a) on the employer’s own account (but in respect of the employee); or
- (b) on behalf of the employee out of deductions from the employee’s earnings.

(3) The employer must secure that there is prepared, maintained and from time to time revised a record of the direct payment arrangements which complies with subsection (4).

(4) The record must—

- (a) show the rates and due dates of contributions payable under the direct payment arrangements, and
- (b) satisfy prescribed requirements.

(5) The employer must, within the prescribed period after the preparation or any revision of the record, send a copy of the record or (as the case may be) of the revised record to the trustees or managers of the scheme.

(6) Except in prescribed circumstances, the trustees or managers of the scheme must, where any contribution shown by the record to be payable under the direct payment arrangements has not been paid on or before its due date, give notice of that fact, within the prescribed period, to the Regulatory Authority and the employee.

(7) The trustees or managers of the scheme must before the end of prescribed intervals send the employee a statement setting out the amounts and dates of the payments made under the direct payment arrangements during a prescribed period.

(8) If—

- (a) the employer fails to take all such steps as are reasonable to secure compliance with subsection (3) or (5), or
- (b) a contribution payable under the direct payment arrangements is not paid to the trustees or managers of the scheme on or before its due date,

Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) applies to the employer.

(9) If subsection (6) or (7) is not complied with, Article 10 of the Pensions (Northern Ireland) Order 1995 applies to any trustee or manager of the scheme who has failed to take all such steps as are reasonable to secure compliance.

(10) If—

- (a) subsection (6) or (7) is not complied with, and
- (b) the scheme—
  - (i) is established under a trust, and
  - (ii) is or has been registered under Article 4 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (stakeholder schemes),  
Article 3 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to remove trustees) applies to any trustee of the scheme who has failed to take all such steps as are reasonable to secure compliance.

(11) A person shall not be required by virtue of subsection (8)(b) to pay a penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 in respect of a failure if in respect of that failure he has been—

- (a) required to pay a penalty under that Article by virtue of Article 5(7) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (failures in respect of stakeholder pensions), or
- (b) convicted of an offence under subsection (12).

(12) A person is guilty of an offence if he is knowingly concerned in the fraudulent evasion of the direct payment arrangements so far as they are arrangements for the payment by him or any other person of any such contribution towards the scheme as is mentioned in subsection (2)(b).

(13) A person guilty of an offence under subsection (12) is liable—

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

(14) No prosecution shall be brought against the Crown for an offence under subsection (12), but that subsection applies to persons in the public service of the Crown as to other persons.

(15) In this section “due date”, in relation to a contribution payable under the direct payment arrangements, means—

- (a) if the contribution falls to be paid on the employer’s own account, the latest day under the arrangements for paying it;
- (b) if the contribution falls to be paid on behalf of the employee, the last day of a prescribed period.

(16) Regulations may provide for this section to apply with such modifications as may be prescribed in a case where—

- (a) the direct payment arrangements give effect to a requirement arising under paragraph (5) of Article 5 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (deduction and payment of employee’s contributions to stakeholder scheme), and
- (b) in accordance with regulations under that paragraph, that requirement is for the employer to pay contributions to a person prescribed by such regulations (instead of to the trustees or managers of the scheme).

(17) Nothing in this section shall be taken as varying the provisions of the direct payment arrangements or as affecting their enforceability.

**Obtaining information for purposes of section 107A and corresponding legislation in Great Britain.**

**107B.**—(1) Any person appearing to the Regulatory Authority to be a person who holds, or is likely to hold, information which is relevant to the issue—

- (a) whether any provision made by or under section 107A is being, or has been, complied with by an employer or the trustees or managers of a personal pension scheme,
- (b) whether, in the case of any direct payment arrangements existing between an employee and his employer, there has been such a failure to pay a contribution as is mentioned in subsection (8)(b) of that section, or
- (c) whether an offence has been committed under subsection (12) of that section in relation to any such arrangements,

must, if required to do so by the Regulatory Authority by notice in writing, produce any document which is so relevant.

(2) To comply with subsection (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) An inspector may, for the purposes of investigating any of the matters set out in subsection (1)(a) to (c), at any reasonable time enter premises liable to inspection and, while there—

- (a) may make such examination and inquiry as may be necessary for such purposes,
- (b) may require any person on the premises to produce for his inspection, or secure the production for his inspection of, any document relevant—
  - (i) to compliance with any provision made by or under section 107A, or with the direct payment arrangements, or
  - (ii) to the issue whether an offence has been committed under subsection (12) of that section in relation to those arrangements, and
- (c) may, as to any matter so relevant, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

(4) An inspector applying for admission to any premises in pursuance of subsection (3) must, if so required, produce his certificate of appointment.

(5) For the purposes of subsection (3) premises are liable to inspection if the inspector has reasonable grounds to believe that—

- (a) employees of the employer are employed there,
- (b) documents relevant to the administration of—
  - (i) the employer's business,
  - (ii) the direct payment arrangements, or
  - (iii) the scheme to which those arrangements relate, are kept there, or
- (c) either of the following is being carried out there, namely—
  - (i) the administration of the employer's business, the arrangements or the scheme, or
  - (ii) work connected with the administration of the employer's business, the arrangements or the scheme,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(6) Article 98 of the Pensions (Northern Ireland) Order 1995 (warrants) shall have effect as if references to Article 96(1) or 97(1)(b) of that Order included references to subsection (1) or (3)(b).

(7) Articles 99 to 101 of that Order (penalties, savings and reports) shall have effect as if references which are or include references to Article 96 or 97 of that Order included references to this section.

(8) In this section—

“direct payment arrangements” has the same meaning as in section 107A;

“document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form;

“inspector” means a person appointed by the Regulatory Authority as an inspector.

(9) References in this section to, or to any provision of, section 107A include references to corresponding provisions of legislation in Great Britain; and in this section as it has effect in relation to those corresponding provisions, “employee” and

“employer” have the same meaning as they have for the purposes of those provisions.”.

### **Late payments by employers to occupational pension schemes**

**11.**—(1) For Article 49(8) of the Pensions Order (offence where deduction from earnings not paid in timely fashion to occupational pension scheme) there shall be substituted—

“(8) Where on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, the amount deducted is to be paid, within a prescribed period, to the trustees or managers of the scheme.

(9) If in any case there is a failure to comply with paragraph (8)—

(a) Article 10 applies to the employer; and

(b) except in prescribed circumstances, the trustees or managers must give notice of the failure, within the prescribed period, to the Authority and the member.

(10) If in any case paragraph (9)(b) is not complied with—

(a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance; and

(b) Article 10 applies to any trustee or manager who has failed to take all such steps.

(11) If any person is knowingly concerned in the fraudulent evasion of the obligation imposed by paragraph (8) in any case, he is guilty of an offence.

(12) A person guilty of an offence under paragraph (11) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both.

(13) A person shall not be required by virtue of paragraph (9)(a) to pay a penalty under Article 10 in respect of a failure if in respect of that failure he has been—

(a) required to pay a penalty under that Article by virtue of Article 5(7) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (failures in respect of stakeholder pensions), or

(b) convicted of an offence under paragraph (11).”.

(2) In Article 86(3) of that Order (civil penalty where contributions by or on behalf of employer to occupational pension scheme not paid by due date) after “by or on behalf of the employer” there shall be inserted “on the employer’s own account”.

*Pensions and bankruptcy*

**Effect of bankruptcy on pension rights: approved arrangements**

**12.**—(1) Where a bankruptcy order is made against a person on a petition presented after the coming into operation of this Article, any rights of his under an approved pension arrangement are excluded from his estate.

(2) In this Article “approved pension arrangement” means—

- (a) an exempt approved scheme;
- (b) a relevant statutory scheme;
- (c) a retirement benefits scheme set up by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees;
- (d) a retirement benefits scheme which is being considered for approval under Chapter I of Part XIV of the Taxes Act;
- (e) a contract or scheme which is approved under Chapter III of that Part (retirement annuities);
- (f) a personal pension scheme which is approved under Chapter IV of that Part;
- (g) an annuity purchased for the purpose of giving effect to rights under a scheme falling within any of sub-paragraphs (a) to (c) and (f);
- (h) any pension arrangements of any description which may be prescribed by regulations made by the Department.

(3) The reference in paragraph (1) to rights under an approved pension arrangement does not include rights under a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act unless those rights arise by virtue of approved personal pension arrangements.

(4) Paragraph (5) applies if—

- (a) at the time when a bankruptcy order is made against a person a retirement benefits scheme is being considered for approval under Chapter I of Part XIV of the Taxes Act, and
- (b) the decision of the Commissioners of Inland Revenue is that approval is not to be given to the scheme.

(5) Any rights of that person under the scheme shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—

- (a) the Commissioners' decision being made, or
- (b) (if later) the trustee’s appointment taking effect or, in the case of the official receiver, his becoming trustee.

(6) Paragraph (7) applies if, at any time after a bankruptcy order is made against a person, the Commissioners of Inland Revenue give notice—

- (a) withdrawing their approval under Chapter I of Part XIV of the Taxes Act from a retirement benefits scheme, or
- (b) withdrawing their approval under Chapter IV of that Part from a personal pension scheme or from any approved personal pension arrangements,

and the date specified as being that from which the approval is withdrawn (“the withdrawal date”) is a date not later than that on which the bankruptcy order is made.

(7) Any rights of that person under the scheme or arising by virtue of the arrangements, and any rights of his under any related annuity, shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—

- (a) the giving of the notice, or
- (b) (if later) the trustee's appointment taking effect or, in the case of the official receiver, his becoming trustee.

(8) In paragraph (7) "related annuity" means an annuity purchased on or after the withdrawal date for the purpose of giving effect to rights under the scheme or (as the case may be) to rights arising by virtue of the arrangements.

(9) Where under paragraph (5) or (7) any rights vest in a person's trustee in bankruptcy, the trustee's title to them has relation back to the commencement of the person's bankruptcy; but where any transaction is entered into by the trustees or managers of the scheme in question—

- (a) in good faith, and
- (b) without notice of the making of the decision mentioned in paragraph (4)(b) or (as the case may be) the giving of the notice mentioned in paragraph (6),

the trustee in bankruptcy is not in respect of that transaction entitled by virtue of this paragraph to any remedy against them or any person whose title to any property derives from them.

(10) Without prejudice to Article 73, regulations under paragraph (2)(h) may, in the case of any description of arrangements prescribed by the regulations, make provision corresponding to any provision made by paragraphs (4) to (9).

(11) In this Article—

- (a) "exempt approved scheme", "relevant statutory scheme" and "retirement benefits scheme" have the same meaning as in Chapter I of Part XIV of the Taxes Act;
- (b) "approved personal pension arrangements" and "personal pension scheme" have the same meaning as in Chapter IV of that Part;
- (c) "estate", in relation to a person against whom a bankruptcy order is made, means his estate within the meaning of Article 11 of the Insolvency (Northern Ireland) Order 1989;
- (d) "the Taxes Act" means the Income and Corporation Taxes Act 1988.

(12) For the purposes of this Article a person shall be treated as having a right under an approved pension arrangement where—

- (a) he is entitled to a credit under Article 26(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part V), and
- (b) the person so responsible has not discharged his liability in respect of the credit.

### **Effect of bankruptcy on pension rights: unapproved arrangements**

**13.**—(1) The Department may by regulations make provision for or in connection with enabling rights of a person under an unapproved pension arrangement to be excluded, in the event of a bankruptcy order being made against that person, from his estate within the meaning of Article 11 of the Insolvency (Northern Ireland) Order 1989.

(2) Regulations under this Article may, in particular, make provision—

- (a) for rights under an unapproved pension arrangement to be excluded from a person's estate—
  - (i) by an order made on his application by a prescribed court, or

- (ii) in accordance with a qualifying agreement made between him and his trustee in bankruptcy;
  - (b) for the court's decision whether to make such an order in relation to a person to be made by reference to—
    - (i) future likely needs of him and his family, and
    - (ii) whether any benefits (by way of a pension or otherwise) are likely to be received by virtue of rights of his under other pension arrangements and (if so) the extent to which they appear likely to be adequate for meeting any such needs;
  - (c) for the prescribed persons in the case of any pension arrangement to provide a person or his trustee in bankruptcy on request with information reasonably required by that person or trustee for or in connection with the making of such applications and agreements as are mentioned in sub-paragraph (a).
- (3) In this Article—
- “prescribed” means prescribed by regulations under this Article;
- “qualifying agreement” means an agreement entered into in such circumstances, and satisfying such requirements, as may be prescribed;
- “unapproved pension arrangement” means a pension arrangement which—
- (a) is not an approved pension arrangement within the meaning of Article 12, and
  - (b) is of a prescribed description.
- (4) For the purposes of this Article a person shall be treated as having a right under an unapproved pension arrangement where—
- (a) he is entitled to a credit under Article 26(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part V), and
  - (b) the person so responsible has not discharged his liability in respect of the credit.

### **No forfeiture on bankruptcy of rights under pension schemes**

**14.—(1)** In the Pension Schemes Act, after section 155 there shall be inserted—

**“No forfeiture on bankruptcy of rights under personal pension schemes.**

**155A.—(1)** A person's rights under a personal pension scheme cannot be forfeited by reference to his bankruptcy.

(2) For the purposes of this section—

- (a) a person shall be treated as having a right under a personal pension scheme where—
  - (i) he is entitled to a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (sharing of rights on divorce etc.),
  - (ii) he is so entitled as against the person responsible for the scheme (within the meaning of Chapter I of Part V of that Order), and
  - (iii) the person so responsible has not discharged his liability in respect of the credit; and
- (b) forfeiture shall be taken to include any manner of deprivation or suspension.”.

(2) In Article 90(2) of the Pensions Order (exceptions to the rule preventing forfeiture of rights under occupational pension schemes), sub-paragraph (b) (which allows forfeiture of such rights by reference to a scheme member's bankruptcy) shall cease to have effect.

## **Excessive pension contributions made by persons who have become bankrupt**

15. For Articles 315A to 315C of the Insolvency (Northern Ireland) Order 1989 there shall be substituted—

### **“Recovery of excessive pension contributions**

**315A.**—(1) Where an individual who is adjudged bankrupt—

- (a) has rights under an approved pension arrangement, or
- (b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt’s estate may apply to the High Court for an order under this Article.

(2) If the High Court is satisfied—

- (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
- (b) that the making of any of the relevant contributions (“the excessive contributions”) has unfairly prejudiced the individual’s creditors,

the Court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Paragraph (4) applies where the High Court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under Article 26(1)(a) of the Welfare Reform Order (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this paragraph applies—

- (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of paragraph (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
- (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of sub-paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of sub-paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that sub-paragraph.

(5) In paragraphs (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—

- (a) which the individual has at any time made on his own behalf, or
- (b) which have at any time been made on his behalf.

(6) The High Court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular—

- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual’s creditors or any of them, and
- (b) whether the total amount of any contributions—
  - (i) made by or on behalf of the individual to pension arrangements, and
  - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this Article and Articles 315B and 315C ("the recovery provisions"), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under Article 13 of the Welfare Reform Order.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in Article 12 of the Welfare Reform Order,

"unapproved pension arrangement" has the same meaning as in Article 13 of that Order.

### **Orders under Article 315A**

**315B.**—(1) Without prejudice to the generality of Article 315A(2), an order under Article 315A may include provision—

- (a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,
- (b) adjusting the liabilities of the arrangement in respect of the individual,
- (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,
- (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under Article 315C(1) or in giving effect to the order.

(2) In paragraph (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In paragraph (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within Article 25(1) of the Welfare Reform Order (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under Article 315A is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under Article 315A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

- (a) the amount of the liabilities immediately before the reduction, and
- (b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

- (7) An order under Article 315A in respect of an arrangement—
  - (a) shall be binding on the person responsible for the arrangement, and
  - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

#### **Orders under Article 315A: supplementary**

**315C.**—(1) The person responsible for—

- (a) an approved pension arrangement under which a bankrupt has rights,
- (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
- (c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under Article 315A.

(2) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the arrangement in question corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 315A.

(3) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315B(4)(b);
- (b) any such amounts as are mentioned in Article 315B(6)(a) and (b).

(5) The power conferred by paragraph (4) includes power to provide for calculation or verification—

- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
- (b) in accordance with guidance—
  - (i) from time to time prepared by a prescribed person, and
  - (ii) approved by the Department.

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—

- (a) the trustees, managers or provider of the arrangement, or
- (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(7) In this Article and Articles 315A and 315B—

“the Department” means the Department of Health and Social Services;  
 “prescribed” means prescribed by regulations;  
 “the recovery provisions” means this Article and Articles 315A and 315B;  
 “regulations” means regulations made by the Department;  
 “the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(9) Regulations under the recovery provisions shall be subject to negative resolution.”.

### *Miscellaneous*

#### **Compensating occupational pension schemes**

**16.**—(1) In paragraph (1)(d) of Article 79 of the Pensions Order (compensation not payable by the Pensions Compensation Board unless assets of salary related trust scheme worth less than 90 per cent. of its liabilities), for “90 per cent. of the amount of the liabilities of the scheme” there shall be substituted “the protection level”.

(2) After paragraph (2) of that Article there shall be inserted—

“(2A) In paragraph (1)(d) “the protection level” means the aggregate of—

- (a) the amount of the liabilities of the scheme to, or in respect of, its pensioner members and such other of its members as fall within a prescribed class or description,
- (b) 90 per cent. of the amount of the liabilities of the scheme to, or in respect of, any other members of the scheme, and
- (c) the amount of the liabilities of the scheme which are not liabilities to, or in respect of, its members;

and references in this paragraph to liabilities to, or in respect of, members of the scheme are references to liabilities in respect of pensions or other benefits.”.

(3) Article 81 of that Order (amount of compensation) shall be amended as follows.

(4) In paragraph (3)(a) (compensation not to exceed 90 per cent. of shortfall), the words “90 per cent. of” shall be omitted.

(5) In paragraph (3)(b) (compensation not to cause value of salary-related trust scheme’s assets to exceed 90 per cent. of amount of its liabilities), for the words from “90 per cent.” onwards there shall be substituted “the aggregate of the protected liabilities”.

(6) After paragraph (3) there shall be added—

“(4) In paragraph (3) “the protected liabilities” means—

- (a) the amount on the settlement date of the liabilities of the scheme to, or in respect of, its pensioner members and such other of its members as fall within a prescribed class or description,
- (b) 90 per cent. of the amount on that date of the liabilities of the scheme to, or in respect of, any other members of the scheme, and
- (c) the amount on that date of the liabilities of the scheme which are not liabilities to, or in respect of, its members;

and references in this paragraph to liabilities to, or in respect of, members of the scheme are to liabilities in respect of pensions or other benefits.”.

### **Miscellaneous amendments**

17. Schedule 2 (which contains amendments of the law relating to pensions) shall have effect.

## **PART IV**

### **PENSIONS ON DIVORCE ETC.**

#### **Pension sharing orders**

18. Schedule 3 (which amends the Matrimonial Causes Order for the purpose of enabling the court to make pension sharing orders in connection with proceedings in Northern Ireland for divorce or nullity of marriage, and for supplementary purposes) shall have effect.

#### **Amendments of Articles 27B to 27D of the Matrimonial Causes Order**

19. Schedule 4 (which amends the Articles about pensions inserted in the Matrimonial Causes Order by Article 162 of the Pensions Order) shall have effect.

#### **Extension to overseas divorces etc.**

20.—(1) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland after overseas divorce etc.) shall be amended as follows.

(2) In Article 22 (matters to which the court is to have regard in exercising its powers to make orders for financial relief), after paragraph (3) there shall be inserted—

“(3A) The matters to which the court is to have regard under paragraph (3)—

- (a) so far as relating to sub-paragraph (a) of Article 27(2) of the principal Order, include any benefits under a pension arrangement which a party to the marriage has or is likely to have (whether or not in the foreseeable future), and
- (b) so far as relating to sub-paragraph (h) of that provision, include any benefits under a pension arrangement which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring.”.

(3) In that Article, at the end there shall be added—

“(7) In this Article—

- (a) “pension arrangement” has the meaning given by Article 27D(3) of the principal Order, and
- (b) references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.”.

(4) In Article 25 (application of provisions of Part III of the Matrimonial Causes Order), the existing provision shall become paragraph (1) and, in that paragraph, after sub-paragraph (b) there shall be inserted—

- “(bd) Article 27B(3) to (9) (power, by financial provision order, to attach payments under a pension arrangement, or to require the exercise of a right of commutation under such an arrangement);
- (be) Article 27C (extension of lump sum powers in relation to death benefits under a pension arrangement);”.

(5) In that Article, after paragraph (1) there shall be added—

“(2) Paragraph (1)(bd) and (be) shall not apply where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in Northern Ireland of a dwelling-house which was a matrimonial home of the parties.

(3) Article 27D(1) of the principal Order (effect of transfers on orders relating to rights under a pension arrangement) shall apply in relation to an order made under Article 21 by virtue of paragraph (1)(bd) or (be) as it applies in relation to an order made under Article 25 of the principal Order by virtue of Article 27B or 27C of that Order.

(4) The Lord Chancellor may by regulations make for the purposes of this Part provision corresponding to any provision which may be made by him under paragraphs (2) and (2A) of Article 27D of the principal Order.

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

#### *Miscellaneous*

#### **Supply of pension information in connection with divorce etc.**

21.—(1) The Department may by regulations—

- (a) make provision imposing on the person responsible for a pension arrangement, or on the Department, requirements with respect to the supply of information relevant to any power with respect to—
  - (i) financial relief under Part III of the Matrimonial Causes Order or Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (powers in relation to domestic and overseas divorce etc.),
  - (ii) financial relief under Part II of the Matrimonial Causes Act 1973 or Part III of the Matrimonial and Family Proceedings Act 1984 (corresponding England and Wales powers), or
  - (iii) financial provision under the Family Law (Scotland) Act 1985 or Part IV of the Matrimonial and Family Proceedings Act 1984 (corresponding Scottish powers),
- (b) make provision about calculation and verification in relation to the valuation of—
  - (i) benefits under a pension arrangement, or
  - (ii) shareable state scheme rights, for the purposes of regulations under sub-paragraph (a)(i) or (ii),
- (c) make provision about calculation and verification in relation to—
  - (i) the valuation of shareable rights under a pension arrangement or shareable state scheme rights for the purposes of regulations under sub-paragraph (a)(iii), so far as relating to the making of orders for financial provision (within the meaning of the Family Law (Scotland) Act 1985), or
  - (ii) the valuation of benefits under a pension arrangement for the purposes of such regulations, so far as relating to the making of orders under section 12A of that Act,
- (d) make provision for the purpose of enabling the person responsible for a pension arrangement to recover prescribed charges in respect of providing information in accordance with regulations under sub-paragraph (a).

(2) Regulations under paragraph (1)(b) or (c) may include provision for calculation or verification in accordance with guidance from time to time prepared by a person prescribed by the regulations.

(3) Regulations under paragraph (1)(d) may include provision for the application in prescribed circumstances, with or without modification, of any provision made by virtue of Article 38(2).

(4) In paragraph (1)—

- (a) the reference in sub-paragraph (c)(i) to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part V, or under Chapter I of Part IV of the Welfare Reform Act, and
- (b) the references to shareable state scheme rights are to rights in relation to which pension sharing is available under Chapter II of Part V, or under Chapter II of Part IV of the Welfare Reform Act.

### **Charges by pension arrangements in relation to earmarking orders**

**22.** The Department may by regulations make provision for the purpose of enabling the person responsible for a pension arrangement to recover prescribed charges in respect of complying with—

- (a) an order under Article 25 of the Matrimonial Causes Order (financial provision orders in connection with divorce etc.), so far as it includes provision made by virtue of Article 27B or 27C of that Order (powers to include provisions about pensions),
- (b) an order under section 23 of the Matrimonial Causes Act 1973, so far as it includes provision made by virtue of section 25B or 25C of that Act (England and Wales powers corresponding to those mentioned in paragraph (a)), or
- (c) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (powers in relation to pensions lump sums when making a capital sum order).

### **Interpretation of Part IV**

**23.**—(1) In this Part—

“occupational pension scheme” has the same meaning as in the Pension Schemes Act;

“pension arrangement” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under Article 26(1)(b) or under section 29(1)(b) of the Welfare Reform Act;

“personal pension scheme” has the same meaning as in the Pension Schemes Act;

“prescribed” means prescribed by regulations made by the Department;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(2) References to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement”, the provider of the annuity, and
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.

## PART V

### PENSION SHARING

#### CHAPTER I

#### SHARING OF RIGHTS UNDER PENSION ARRANGEMENTS

##### *Pension sharing mechanism*

#### **Scope of mechanism**

**24.**—(1) Pension sharing is available under this Chapter in relation to a person’s shareable rights under any pension arrangement other than an excepted public service pension scheme.

(2) For the purposes of this Chapter, a person’s shareable rights under a pension arrangement are any rights of his under the arrangement, other than rights of a description specified by regulations made by the Department.

(3) For the purposes of paragraph (1), a public service pension scheme is excepted if it is specified by order made by such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the scheme.

#### **Activation of pension sharing**

**25.**—(1) Article 26 applies on the taking effect of any of the following relating to a person’s shareable rights under a pension arrangement—

- (a) a pension sharing order under the Matrimonial Causes Order;
- (b) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order mentioned in sub-paragraph (a);
- (c) an order or provision to which any of paragraphs (a) to (g) of subsection (1) of section 28 of the Welfare Reform Act applies (pension sharing orders under the Matrimonial Causes Act 1973 and the Family Law (Scotland) Act 1985 and other provisions and orders in Great Britain corresponding to pension sharing orders under those Acts).

(2) The reference in paragraph (1) to paragraphs (a) to (g) of subsection (1) of section 28 of the Welfare Reform Act is to those paragraphs as they have effect subject to the provisions of that section and section 85(5) of that Act.

#### **Creation of pension debits and credits**

**26.**—(1) On the application of this Article—

- (a) the transferor's shareable rights under the relevant arrangement become subject to a debit of the appropriate amount, and
- (b) the transferee becomes entitled to a credit of that amount as against the person responsible for that arrangement.

(2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of paragraph (1) is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of paragraph (1) is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(4) Where the relevant arrangement is an occupational pension scheme and the transferor is in pensionable service under the scheme on the transfer day, the relevant benefits for the purposes of paragraphs (2) and (3) are the benefits or future benefits to which he would be entitled under the scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(5) Otherwise, the relevant benefits for the purposes of paragraphs (2) and (3) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the relevant arrangement by virtue of his shareable rights under it.

(6) The Department may by regulations provide for any description of benefit to be disregarded for the purposes of paragraph (4) or (5).

(7) For the purposes of this Article, the valuation day is such day within the implementation period for the credit under paragraph (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.

(8) In this Article—

- “relevant arrangement” means the arrangement to which the relevant order or provision relates;
- “relevant order or provision” means the order or provision by virtue of which this Article applies;
- “transfer day” means the day on which the relevant order or provision takes effect;
- “transferor” means the person to whose rights the relevant order or provision relates;
- “transferee” means the person for whose benefit the relevant order or provision is made.

### **Cash equivalents**

**27.—**(1) The Department may by regulations make provision about the calculation and verification of cash equivalents for the purposes of Article 26.

(2) The power conferred by paragraph (1) includes power to provide for calculation or verification

- (a) in such manner as may, in the particular case, be approved by a person prescribed by the regulations, or
- (b) in accordance with guidance from time to time prepared by a person so prescribed.

*Pension debits***Reduction of benefit**

**28.**—(1) Subject to paragraph (2), where a person’s shareable rights under a pension arrangement are subject to a pension debit, each benefit or future benefit—

- (a) to which he is entitled under the arrangement by virtue of those rights, and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under an occupational pension scheme of a person who is in pensionable service under the scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the scheme by virtue of those rights, and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) The provisions of this Article override any provision of a pension arrangement to which they apply to the extent that the provision conflicts with them.

(5) In this Article—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of paragraph (1) of Article 26 represents of the amount mentioned in paragraph (3)(b) of that Article;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order or provision on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

**Effect on contracted-out rights**

**29.**—(1) The Pension Schemes Act shall be amended as follows.

(2) In section 6 (protected rights), in subsection (1), for

“subsections (2) and (3)” there shall be substituted “the following provisions of this section”, and at the end there shall be added—

“(4) Where, in the case of a scheme which makes such provision as is mentioned in subsection (2) or (3), a member’s rights under the scheme become subject to a pension debit, his protected rights shall exclude the appropriate percentage of the rights which were his protected rights immediately before the day on which the pension debit arose.

(5) For the purposes of subsection (4), the appropriate percentage is—

- (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;

- (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of paragraph (1) of Article 26 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (lesser of specified amount and cash equivalent of transferor's benefits) represents of the amount mentioned in paragraph (3)(b) of that Article (cash equivalent of transferor's benefits)."

(3) After section 11 there shall be inserted—

**“Reduction of guaranteed minimum in consequence of pension debit.**

**11A.—**(1) Where—

- (a) an earner has a guaranteed minimum in relation to the pension provided by a scheme, and
- (b) his right to the pension becomes subject to a pension debit,

his guaranteed minimum in relation to the scheme is, subject to subsection (2), reduced by the appropriate percentage.

(2) Where the earner is in pensionable service under the scheme on the day on which the order or provision on which the pension debit depends takes effect, his guaranteed minimum in relation to the scheme is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) For the purposes of subsection (2), the corresponding qualifying benefit is the guaranteed minimum taken for the purpose of calculating the cash equivalent by reference to which the amount of the pension debit is determined.

(4) For the purposes of this section, the appropriate percentage is—

- (a) if the order or provision on which the pension debit depends specifies the percentage value to be transferred, that percentage;
- (b) if the order or provision on which the pension debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of paragraph (1) of Article 26 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (lesser of specified amount and cash equivalent of transferor's benefits) represents of the amount mentioned in paragraph (3)(b) of that Article (cash equivalent of transferor's benefits)."

(4) In section 43 (entitlement to guaranteed minimum pensions for the purposes of the relationship with social security benefits), at the end there shall be added—

“(6) For the purposes of section 42, a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled but for any reduction under section 11A.”.

(5) In section 176(1), there shall be inserted at the appropriate place—

““pension debit” means a debit under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;”.

*Pension credits*

**Time for discharge of liability**

**30.—**(1) A person subject to liability in respect of a pension credit shall discharge his liability before the end of the implementation period for the credit.

(2) Where the trustees or managers of an occupational pension scheme have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) they shall, except in such cases as the Department may prescribe by regulations, notify the Authority of that fact within such period as the Department may so prescribe, and
- (b) Article 10 of the Pensions Order (power of the Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(3) If trustees or managers to whom paragraph (2)(a) applies fail to perform the obligation imposed by that provision, Article 10 of the Pensions Order shall apply to any trustee or manager who has failed to take all reasonable steps to ensure that the obligation was performed.

(4) On the application of the trustees or managers of an occupational pension scheme who are subject to liability in respect of a pension credit, the Authority may extend the implementation period for the credit for the purposes of this Article if it is satisfied that the application is made in such circumstances as the Department may prescribe by regulations.

(5) In this Article “the Authority” means the Occupational Pensions Regulatory Authority.

#### **“Implementation period”**

**31.**—(1) For the purposes of this Chapter, the implementation period for a pension credit is the period of 4 months beginning with (and including) the later of—

- (a) the day on which the relevant order or provision takes effect, and
- (b) the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of—
  - (i) the relevant matrimonial documents, and
  - (ii) such information relating to the transferor and transferee as the Department may prescribe by regulations.

(2) The reference in paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of—

- (a) the relevant order or provision, and
- (b) the order, decree or declarator responsible for the divorce or annulment to which it relates,

and, if the pension credit depends on provision falling within section 28(1)(f) of the Welfare Reform Act, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under Article 38(2)(a).

(4) The Department may by regulations—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for this Article to have effect with modifications where the pension arrangement to which the relevant order or provision relates is being wound up;
- (c) provide for this Article to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.

(5) In this Article—

“relevant order or provision”, in relation to a pension credit, means the pension sharing order or provision on which the pension credit depends;

“transferor” means the person to whose rights the relevant order or provision relates;

“transferee” means the person for whose benefit the relevant order or provision is made.

### **Mode of discharge of liability**

**32.**—(1) Schedule 5 (which makes provision about how liability in respect of a pension credit may be discharged) shall have effect.

(2) Where the person entitled to a pension credit dies before liability in respect of the credit has been discharged—

(a) Schedule 5 shall cease to have effect in relation to the discharge of liability in respect of the credit, and

(b) liability in respect of the credit shall be discharged in accordance with regulations made by the Department.

### *Treatment of pension credit rights under schemes*

### **Safeguarded rights**

**33.** After section 64 of the Pension Schemes Act there shall be inserted—

## **“PART IIIA**

## **SAFEGUARDED RIGHTS**

### **Safeguarded rights.**

**64A.**—(1) Subject to subsection (2), the safeguarded rights of a member of an occupational pension scheme or a personal pension scheme are such of his rights to future benefits under the scheme as are attributable (directly or indirectly) to a pension credit in respect of which the reference rights are, or include, contracted-out rights or safeguarded rights.

(2) If the rules of an occupational pension scheme or a personal pension scheme so provide, a member’s safeguarded rights are such of his rights falling within subsection (1) as—

(a) in the case of rights directly attributable to a pension credit, represent the safeguarded percentage of the rights acquired by virtue of the credit, and

(b) in the case of rights directly attributable to a transfer payment, represent the safeguarded percentage of the rights acquired by virtue of the payment.

(3) For the purposes of subsection (2)(a), the safeguarded percentage is the percentage of the rights by reference to which the amount of the credit is determined which are contracted-out rights or safeguarded rights.

(4) For the purposes of subsection (2)(b), the safeguarded percentage is the percentage of the rights in respect of which the transfer payment is made which are contracted-out rights or safeguarded rights.

(5) In this section—

“contracted-out rights” means such rights under, or derived from—

- (a) an occupational pension scheme contracted-out by virtue of section 5(2) or (3),  
or
  - (b) an appropriate personal pension scheme, as may be prescribed;
- “reference rights”, in relation to a pension credit, means the rights by reference to which the amount of the credit is determined.

**Requirements relating to safeguarded rights.**

**64B.** Regulations may prescribe requirements to be met in relation to safeguarded rights by an occupational pension scheme or a personal pension scheme.

**Reserve powers in relation to non-complying schemes.**

**64C.**—(1) This section applies to—

- (a) any occupational pension scheme, other than a public service pension scheme, and
- (b) any personal pension scheme.

(2) If any scheme to which this section applies does not comply with a requirement prescribed under section 64B and there are any persons who—

- (a) have safeguarded rights under the scheme, or
- (b) are entitled to any benefit giving effect to such rights under the scheme,

the Inland Revenue may direct the trustees or managers of the scheme to take or refrain from taking such steps as they may specify in writing for the purpose of safeguarding the rights of persons falling within paragraph (a) or (b).

(3) A direction under subsection (2) shall be final and binding on the trustees or managers to whom the direction is given and any person claiming under them.

(4) An appeal on a point of law shall lie to the High Court from a direction under subsection (2) at the instance of the trustees or managers, or any person claiming under them.

(5) A direction under subsection (2) shall be enforceable in a county court, as if it were an order of that court.

**Power to control transfer or discharge of liability.**

**64D.** Regulations may prohibit or restrict the transfer or discharge of any liability under an occupational pension scheme or a personal pension scheme in respect of safeguarded rights except in prescribed circumstances or on prescribed conditions.”.

**Requirements relating to pension credit benefit**

**34.** After section 97 of the Pension Schemes Act there shall be inserted—

**“PART IVA**  
**REQUIREMENTS RELATING TO PENSION CREDIT BENEFIT**  
**CHAPTER I**  
**PENSION CREDIT BENEFIT UNDER OCCUPATIONAL SCHEMES**

**Scope of Chapter I.**

**97A.**—(1) This Chapter applies to any occupational pension scheme whose resources are derived in whole or part from—

- (a) payments to which subsection (2) applies made or to be made by one or more employers of earners to whom the scheme applies, or
  - (b) such other payments by the earner or his employer, or both, as may be prescribed for different categories of scheme.
- (2) This subsection applies to payments—
- (a) under an actual or contingent legal obligation, or
  - (b) in the exercise of a power conferred, or the discharge of a duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money.

**Interpretation.**

**97B.** In this Chapter—

- “scheme” means an occupational pension scheme to which this Chapter applies;
- “pension credit rights” means rights to future benefits under a scheme which are attributable (directly or indirectly) to a pension credit;
- “pension credit benefit”, in relation to a scheme, means the benefits payable under the scheme to or in respect of a person by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;
- “normal benefit age”, in relation to a scheme, means the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise).

**Basic principle as to pension credit benefit.**

**97C.**—(1) Normal benefit age under a scheme must be between 60 and 65.

(2) A scheme must not provide for payment of pension credit benefit in the form of a lump sum at any time before normal benefit age, except in such circumstances as may be prescribed.

**Form of pension credit benefit and its alternatives.**

**97D.**—(1) Subject to subsection (2) and section 97E, a person’s pension credit benefit under a scheme must be—

- (a) payable directly out of the resources of the scheme, or
- (b) assured to him by such means as may be prescribed.

(2) Subject to subsections (3) and (4), a scheme may, instead of providing a person's pension credit benefit, provide—

- (a) for his pension credit rights under the scheme to be transferred to another occupational pension scheme or a personal pension scheme with a view to acquiring rights for him under the rules of the scheme, or
- (b) for such alternatives to pension credit benefit as may be prescribed.

(3) The option conferred by subsection (2)(a) is additional to any obligation imposed by Chapter II of this Part.

(4) The alternatives specified in subsection (2)(a) and (b) may only be by way of complete or partial substitute for pension credit benefit—

- (a) if the person entitled to the benefit consents, or
- (b) in such other cases as may be prescribed.

**Discharge of liability where pension credit or alternative benefits secured by insurance policies or annuity contracts.**

**97E.**—(1) A transaction to which section 15 applies discharges the trustees or managers of a scheme from their liability to provide pension credit benefit or any alternative to pension credit benefit for or in respect of a member of the scheme if and to the extent that—

- (a) it results in pension credit benefit, or any alternative to pension credit benefit, for or in respect of the member being appropriately secured (within the meaning of that section),
- (b) the transaction is entered into with the consent of the member or, if the member has died, of the member's widow or widower, and
- (c) such requirements as may be prescribed are met.

(2) Regulations may provide that subsection (1)(b) shall not apply in prescribed circumstances.

## CHAPTER II

### TRANSFER VALUES

**Power to give transfer notice.**

**97F.**—(1) An eligible member of a qualifying scheme may by notice in writing require the trustees or managers of the scheme to use an amount equal to the cash equivalent of his pension credit benefit for such one or more of the authorised purposes as he may specify in the notice.

(2) In the case of a member of an occupational pension scheme, the authorised purposes are—

- (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme;
- (b) to purchase from one or more insurance companies such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy the prescribed requirements; and
- (c) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.

(3) In the case of a member of a personal pension scheme, the authorised purposes are—

- (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme; and
  - (b) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.
- (4) The cash equivalent for the purposes of subsection (1) shall—
- (a) in the case of a salary related occupational pension scheme, be taken to be the amount shown in the relevant statement under section 97H, and
  - (b) in any other case, be determined by reference to the date the notice under that subsection is given.
- (5) The requirements which may be prescribed under subsection (2) or (3) include, in particular, requirements of the Inland Revenue.
- (6) In subsections (2) and (3), references to an eligible scheme are to a scheme—
- (a) the trustees or managers of which are able and willing to accept payment in respect of the member's pension credit rights, and
  - (b) which satisfies the prescribed requirements.
- (7) In this Chapter, "transfer notice" means a notice under subsection (1).

**Restrictions on power to give transfer notice.**

**97G.**—(1) In the case of a salary related occupational pension scheme, the power to give a transfer notice may only be exercised if—

- (a) the member has been provided with a statement under section 97H, and
- (b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.

(2) The power to give a transfer notice may not be exercised in the case of an occupational pension scheme if—

- (a) there is less than a year to go until the member reaches normal benefit age, or
- (b) the pension to which the member is entitled by virtue of his pension credit rights, or benefit in lieu of that pension, or any part of it has become payable.

(3) Where an eligible member of a qualifying scheme—

- (a) is entitled to make an application under section 91 to the trustees or managers of the scheme, or
- (b) would be entitled to do so, but for the fact that he has not received a statement under section 89A in respect of which the guarantee date is sufficiently recent,

he may not, if the scheme so provides, exercise the power to give them a transfer notice unless he also makes an application to them under section 91.

(4) The power to give a transfer notice may not be exercised if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.

**Salary related schemes: statements of entitlement.**

**97H.**—(1) The trustees or managers of a qualifying scheme which is a salary related occupational pension scheme shall, on the application of an eligible member, provide him with a written statement of the amount of the cash equivalent of his pension credit benefit under the scheme.

(2) For the purposes of subsection (1), the amount of the cash equivalent shall be determined by reference to a date falling within—

- (a) the prescribed period beginning with the date of the application, and
- (b) the prescribed period ending with the date on which the statement under that subsection is provided to the applicant.

(3) Regulations may make provision in relation to applications under subsection (1) and may, in particular, restrict the making of successive applications.

(4) If trustees or managers to whom subsection (1) applies fail to perform an obligation under that subsection, Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to secure that the obligation was performed.

#### **Calculation of cash equivalents.**

**97I.** Cash equivalents for the purposes of this Chapter shall be calculated and verified in the prescribed manner.

#### **Time for compliance with transfer notice.**

**97J.**—(1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice—

- (a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and
- (b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.

(2) The Regulatory Authority may, in prescribed circumstances, extend the period for complying with the notice.

(3) If the Regulatory Authority are satisfied—

- (a) that there has been a relevant change of circumstances since they granted an extension under subsection (2), or
- (b) that they granted an extension under that subsection in ignorance of a material fact or on the basis of a mistake as to a material fact,

they may revoke or reduce the extension.

(4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance—

- (a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
- (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.

(5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, Article 10 of the Pensions (Northern Ireland) Order 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.

(6) Regulations may—

- (a) make provision in relation to applications under subsection (2), and
- (b) provide that subsection (4) shall not apply in prescribed circumstances.

(7) In this section “valuation date”, in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means—

- (a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 97H is determined, and
- (b) in the case of any other scheme, the date the notice is given.

#### **Withdrawal of transfer notice.**

**97K.**—(1) Subject to subsections (2) and (3), a person who has given a transfer notice may withdraw it by giving the trustees or managers to whom it was given notice in writing that he no longer requires them to comply with it.

(2) A transfer notice may not be withdrawn if the trustees or managers have already entered into an agreement with a third party to use the whole or part of the amount they are required to use in accordance with the notice.

(3) If the giving of a transfer notice depended on the making of an application under section 91, the notice may only be withdrawn if the application is also withdrawn.

#### **Variation of the amount required to be used.**

**97L.**—(1) Regulations may make provision for the amount required to be used under section 97F(1) to be increased or reduced in prescribed circumstances.

(2) Without prejudice to the generality of subsection (1), the circumstances which may be prescribed include—

- (a) failure by the trustees or managers of a qualifying scheme to comply with a notice under section 97F(1) within 6 months of the date by reference to which the amount of the cash equivalent falls to be determined, and
- (b) the state of funding of a qualifying scheme.

(3) Regulations under subsection (1) may have the effect of extinguishing an obligation under section 97F(1).

#### **Effect of transfer on trustees' duties.**

**97M.** Compliance with a transfer notice shall have effect to discharge the trustees or managers of a qualifying scheme from any obligation to provide the pension credit benefit of the eligible member who gave the notice.

#### **Matters to be disregarded in calculations.**

**97N.** In making any calculation for the purposes of this Chapter—

- (a) any charge or lien on, and
- (b) any set-off against,

the whole or part of a pension shall be disregarded.

**Service of notices.**

**97O.** A notice under section 97F(1) or 97K(1) shall be taken to have been given if it is delivered to the trustees or managers personally or sent by post in a registered letter or by recorded delivery service.

**Interpretation of Chapter II.**

**97P.**—(1) In this Chapter—

“eligible member”, in relation to a qualifying scheme, means a member who has pension credit rights under the scheme;

“normal benefit age”, in relation to an eligible member of a qualifying scheme, means the earliest age at which the member is entitled to receive a pension by virtue of his pension credit rights under the scheme (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise);

“pension credit benefit”, in relation to an eligible member of a qualifying scheme, means the benefits payable under the scheme to or in respect of the member by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

“pension credit rights”, in relation to a qualifying scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit;

“qualifying scheme” means a funded occupational pension scheme and a personal pension scheme;

“transfer notice” has the meaning given by section 97F(7).

(2) For the purposes of this Chapter, an occupational pension scheme is salary related if—

- (a) it is not a money purchase scheme, and
- (b) it does not fall within a prescribed class.

(3) In this Chapter, references to the relevant statement under section 97H, in relation to a transfer notice given to the trustees or managers of a salary related occupational pension scheme, are to the statement under that section on which the giving of the notice depended.

(4) For the purposes of this section, an occupational pension scheme is funded if it meets its liabilities out of a fund accumulated for the purpose during the life of the scheme.

**Power to modify Chapter II in relation to hybrid schemes.**

**97Q.** Regulations may apply this Chapter with prescribed modifications to occupational pension schemes—

- (a) which are not money purchase schemes, but
- (b) where some of the benefits that may be provided are money purchase benefits.”.

**Treatment in winding up**

**35.**—(1) In Article 73 of the Pensions Order (treatment of rights on winding up of an occupational pension scheme to which Article 56 of that Order (minimum funding requirement) applies), in paragraph (3) (classification of liabilities), in sub-paragraph (c) (accrued rights), at the end of head (i) there shall be inserted—

“(ia) future pensions, or other future benefits, attributable (directly or indirectly) to pension credits (but excluding increases to pensions).”.

(2) In the case of an occupational pension scheme which is not a scheme to which Article 56 of the Pensions Order applies, rights attributable (directly or indirectly) to a pension credit are to be accorded in a winding up the same treatment—

- (a) if they have come into payment, as the rights of a pensioner member, and
- (b) if they have not come into payment, as the rights of a deferred member.

(3) Paragraph (2) overrides the provisions of a scheme to the extent that it conflicts with them, and the scheme has effect with such modifications as may be required in consequence.

(4) In paragraph (2)—

- (a) “deferred member” and “pensioner member” have the same meanings as in Part II of the Pensions Order;
- (b) “pension credit” includes a credit under section 29(1)(b) of the Welfare Reform Act;
- (c) references to rights attributable to a pension credit having come into payment are to the person to whom the rights belong having become entitled by virtue of the rights to the present payment of pension or other benefits.

### *Indexation*

#### **Public service pension schemes**

**36.**—(1) The Pensions (Increase) Act (Northern Ireland) 1971 shall be amended as follows.

(2) In section 3 (qualifying conditions), after subsection (2) there shall be inserted—

“(2A) A pension attributable to the pensioner having become entitled to a pension credit shall not be increased unless the pensioner has attained the age of fifty-five years.”. (3) In section 8—

- (a) in subsection (1) (definition of “pension”), in paragraph (a), the words from “(either” to “person)” shall be omitted;
- (b) in subsection (2) (when pension deemed for purposes of the Act to begin), after “pension”, in the first place where that word occurs, there shall be inserted “which is not attributable to a pension credit”; and
- (c) after that subsection there shall be inserted—

“(2A) A pension which is attributable to a pension credit shall be deemed for purposes of this Act to begin on the day on which the order or provision on which the credit depends takes effect.”.

(4) In section 15(1) (interpretation)—

- (a) for the definitions of “derivative pension” and “principal pension” there shall be substituted—

““derivative pension” means a pension which—

- (a) is not payable in respect of the pensioner’s own services, and
- (b) is not attributable to the pensioner having become entitled to a pension credit;”,

- (b) after the definition of “pension” there shall be inserted—

““pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“principal pension” means a pension which—

- (a) is payable in respect of the pensioner’s own services; or
- (b) is attributable to the pensioner having become entitled to a pension credit;”,  
and
- (c) for the definition of “widow’s pension” there shall be substituted—  
““widow’s pension” means a pension payable—
  - (a) in respect of the services of the pensioner’s deceased husband, or
  - (b) by virtue of the pensioner’s deceased husband having become entitled to a pension credit.”.

### **Other pension schemes**

**37.**—(1) The Department may by regulations make provision for a pension to which paragraph (2) applies to be increased, as a minimum, by reference to increases in the retail prices index, so far as not exceeding 5 per cent. per annum.

- (2) This paragraph applies to—
  - (a) a pension provided to give effect to eligible pension credit rights of a member under a qualifying occupational pension scheme, and
  - (b) a pension provided to give effect to safeguarded rights of a member under a personal pension scheme.

- (3) In this Article—

“eligible”, in relation to pension credit rights, means of a description prescribed by regulations made by the Department;

“pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a credit under Article 26(1)(b) or under section 29(1)(b) of the Welfare Reform Act;

“qualifying occupational pension scheme” means an occupational pension scheme which is not a public service pension scheme;

“safeguarded rights” has the meaning given in section 64A of the Pension Schemes Act (which is inserted by Article 33).

### *Charges by pension arrangements*

#### **Charges in respect of pension sharing costs**

**38.**—(1) The Department may by regulations make provision for the purpose of enabling the person responsible for a pension arrangement involved in pension sharing to recover from the parties to pension sharing prescribed charges in respect of prescribed descriptions of pension sharing activity.

- (2) Regulations under paragraph (1) may include—
  - (a) provision for the start of the implementation period for a pension credit to be postponed in prescribed circumstances;
  - (b) provision, in relation to payments in respect of charges recoverable under the regulations, for reimbursement as between the parties to pension sharing;
  - (c) provision, in relation to the recovery of charges by deduction from a pension credit, for the modification of Schedule 5;

- (d) provision for the recovery in prescribed circumstances of such additional amounts as may be determined in accordance with the regulations.
- (3) For the purposes of regulations under paragraph (1), the question of how much of a charge recoverable under the regulations is attributable to a party to pension sharing is to be determined as follows—
  - (a) where the relevant order or provision includes provision about the apportionment of charges under this Article, there is attributable to the party so much of the charge as is apportioned to him by that provision;
  - (b) where the relevant order or provision does not include such provision, the charge is attributable to the transferor.
- (4) For the purposes of paragraph (1), a pension arrangement is involved in pension sharing if Article 26 applies by virtue of an order or provision which relates to the arrangement.
- (5) In that paragraph, the reference to pension sharing activity is to activity attributable (directly or indirectly) to the involvement in pension sharing.
- (6) In paragraph (3)—
  - (a) the reference to the relevant order or provision is to the order or provision which gives rise to the pension sharing, and
  - (b) the reference to the transferor is to the person to whose rights that order or provision relates.
- (7) In this Article “prescribed” means prescribed in regulations under paragraph (1).

#### *Adaptation of statutory schemes*

#### **Extension of scheme-making powers**

- 39.**—(1) Power under any statutory provision to establish a pension scheme shall include power to make provision for the provision, by reference to pension credits which derive from rights under—
- (a) the scheme, or
  - (b) a scheme in relation to which the scheme is specified as an alternative for the purposes of paragraph 2 of Schedule 5,
- of benefits to or in respect of those entitled to the credits.
- (2) Paragraph (1) is without prejudice to any other power.
  - (3) Paragraph (1) shall apply in relation to statutory provisions whenever passed or made.
  - (4) No obligation to consult shall apply in relation to the making, in exercise of a power under any statutory provision to establish a pension scheme, of provision of a kind authorised by paragraph (1).
  - (5) Any statutory provision which makes benefits under a pension scheme established under a statutory provision a charge on, or payable out of—
    - (a) the Consolidated Fund; or
    - (b) the Consolidated Fund of the United Kingdom,shall be treated as including any benefits under the scheme which are attributable (directly or indirectly) to a pension credit which derives from rights to benefits charged on, or payable out of, that fund.
  - (6) In this Article—
    - “pension credit” includes a credit under section 29(1)(b) of the Welfare Reform Act;

“pension scheme” means a scheme or arrangement providing benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of persons to whom the scheme or arrangement applies.

### **Power to extend judicial pension schemes**

**40.**—(1) The appropriate authority may by regulations amend any statutory provision to which paragraph (2) applies for the purpose of—

- (a) extending a pension scheme under that statutory provision to include the provision, by reference to pension credits which derive from rights under—
  - (i) the scheme, or
  - (ii) a scheme in relation to which the scheme is specified as an alternative for the purpose of paragraph 2 of Schedule 5,
 of benefits to or in respect of those entitled to the credits, or
- (b) restricting the power of the appropriate authority to accept payments into a pension scheme under that statutory provision, where the payments represent the cash equivalent of rights under another pension scheme which are attributable (directly or indirectly to a pension credit).

(2) For the purposes of this Article, this paragraph applies to the pension schemes under the following statutory provisions, namely—

- (a) theJudicial Pensions Act (Northern Ireland) 1951;
- (b) theCounty Courts Act (Northern Ireland) 1959;
- (c) theResident Magistrates' Pensions Act (Northern Ireland) 1960;
- (d) theLands Tribunal and Compensation Act (Northern Ireland) 1964;
- (e) theSuperannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969;
- (f) theSocial Security (Northern Ireland) Act 1975; or
- (g) theJudicature (Northern Ireland) Act 1978.

(3) Regulations under paragraph (1)—

- (a) may make benefits provided by virtue of sub-paragraph (a) of that paragraph a charge on, and payable out of, the Consolidated Fund in the case of pension schemes to which paragraph (2)(d) and (e) applies or the Consolidated Fund of the United Kingdom in the case of pension schemes to which paragraph (2)(a) to (c), (f) and (g), applies;
- (b) may confer power to make subordinate legislation, including subordinate legislation which provides for calculation of the value of rights in accordance with guidance from time to time prepared by a person specified in the subordinate legislation.

(4) The appropriate authority for the purposes of paragraph (1) is—

- (a) in relation to a pension scheme referred to in paragraph (2)(a) to (c), (f) and (g), the Lord Chancellor;
- (b) in relation to a pension scheme referred to in paragraph (2)(d), the Department of Finance and Personnel;
- (c) in relation to a pension scheme referred to in paragraph (2)(e), the Department of Economic Development.

(5) In this Article—

“pension credit” includes a credit under section 29(1)(b) of the Welfare Reform Act;

“pension scheme” means a scheme or arrangement providing benefits in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of persons to whom the scheme or arrangement applies.

### *Supplementary*

#### **Disapplication of restrictions on alienation**

**41.** Nothing in any of the following provisions (restrictions on alienation of pension rights) applies in relation to any order or provision falling within Article 25(1)—

- (a) section 155(4) and (4A) of the Pension Schemes Act,
- (b) Article 89 of the Pensions Order,
- (c) any statutory provision (whether passed or made before or after this Order is made) corresponding to any of the statutory provisions mentioned in paragraphs (a) and (b), and
- (d) any provision of a pension arrangement corresponding to any of those statutory provisions.

#### **Information**

**42.—(1)** The Department may by regulations require the person responsible for a pension arrangement involved in pension sharing to supply to such persons as it may specify in the regulations such information relating to anything which follows from the application of Article 26 as it may so specify.

(2) Section 164 of the Pension Schemes Act (breach of regulations) shall apply as if this Article were contained in that Act (otherwise than in Chapter II of Part VII).

(3) For the purposes of this Article, a pension arrangement is involved in pension sharing if Article 26 applies by virtue of an order or provision which relates to the arrangement.

#### **Interpretation of Chapter I**

**43.—(1)** In this Chapter—

“implementation period”, in relation to a pension credit, has the meaning given by Article 31;  
“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act;

“pension arrangement” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a credit under Article 26(1)(b) or under section 29(1)(b) of the Welfare Reform Act;

“pension credit” means a credit under Article 26(1)(b);

“pension debit” means a debit under Article 26(1)(a);

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act;  
 “retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“shareable rights” has the meaning given by Article 24(2);

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(2) In this Chapter, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of

“pension arrangement” in paragraph (1), to the provider of the annuity, and

- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, to the insurer.

(3) In determining what is “pensionable service” for the purposes of this Chapter—

- (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
- (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

## CHAPTER II

### SHARING OF STATE SCHEME RIGHTS

#### **Shareable state scheme rights**

**44.**—(1) Pension sharing is available under this Chapter in relation to a person’s shareable state scheme rights.

(2) For the purposes of this Chapter, a person’s shareable state scheme rights are—

- (a) his entitlement, or prospective entitlement to a Category A retirement pension by virtue of section 44(3)(b) of the Contributions and Benefits Act (earnings-related additional pension), and
- (b) his entitlement, or prospective entitlement, to a pension under section 55A of that Act (shared additional pension).

#### **Activation of benefit sharing**

**45.**—(1) Article 46 applies on the taking effect of any of the following relating to a person’s shareable state scheme rights—

- (a) a pension sharing order under the Matrimonial Causes Order;
- (b) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order mentioned in sub-paragraph (a);
- (c) an order or provision to which any of paragraphs (a) to (g) of subsection (1) of section 48 of the Welfare Reform Act applies (pension sharing orders under the Matrimonial Causes Act 1973 and the Family Law (Scotland) Act 1985 and other provisions and orders in Great Britain corresponding to pension sharing orders under those Acts).

(2) The reference in paragraph (1) to paragraphs (a) to (g) of subsection (1) of section 48 of the Welfare Reform Act is to those paragraphs as they have effect subject to the provisions of that section and section 85(5) of that Act.

### **Creation of state scheme pension debits and credits**

**46.**—(1) On the application of this Article—

- (a) the transferor becomes subject, for the purposes of Part II of the Contributions and Benefits Act (contributory benefits), to a debit of the appropriate amount, and
- (b) the transferee becomes entitled, for those purposes, to a credit of that amount.

(2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of paragraph (1) is the specified percentage of the cash equivalent on the transfer day of the transferor’s shareable state scheme rights immediately before that day.

(3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of paragraph (1) is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent on the transfer day of the transferor’s relevant state scheme rights immediately before that day.

(4) Cash equivalents for the purposes of this Article shall be calculated in accordance with regulations made by the Department.

(5) In determining prospective entitlement to a Category A retirement pension for the purposes of this Article, only tax years before that in which the transfer day falls shall be taken into account.

(6) In this Article—

“relevant order or provision” means the order or provision by virtue of which this Article applies;

“transfer day” means the day on which the relevant order or provision takes effect;

“transferor” means the person to whose rights the relevant order or provision relates;

“transferee” means the person for whose benefit the relevant order or provision is made.

### **Effect of state scheme pension debits and credits**

**47.**—(1) Schedule 6 (which amends the Contributions and Benefits Act for the purpose of giving effect to debits and credits under Article 46(1)) shall have effect.

(2) Section 55C of that Act (which is inserted by that Schedule) shall have effect, in relation to incremental periods (within the meaning of that section) beginning on or after 6th April 2010, with the following amendments—

- (a) in subsection (3), for “period of enhancement” there is substituted “period of deferment”,
- (b) in subsection (4), for “1/7th per cent.” there is substituted “1/5th per cent.”,
- (c) in subsection (7), for “period of enhancement”, in both places, there is substituted “period of deferment”, and
- (d) in subsection (9), the definition of “period of enhancement” (and the preceding “and”) are omitted.

## **Interpretation of Chapter II**

**48.** In this Chapter—

“shareable state scheme rights” has the meaning given by Article 44(2); and

“tax year” has the meaning given by section 121(1) of the Contributions and Benefits Act.

## **PART VI**

### **WELFARE**

#### **CHAPTER I**

#### **SOCIAL SECURITY BENEFITS**

##### *Additional pensions*

### **Preservation of rights in respect of additional pensions**

**49.—**(1) The Department may by regulations make such provision as is authorised by one or more of paragraphs (2) to (4).

(2) The regulations may provide for any prescribed provision of Part II of the Contributions and Benefits Act (contributory benefits) which relates to additional pension for widows or widowers to have effect, in relation to persons of any prescribed description, with such modifications as may be prescribed for securing—

(a) that any such additional pension, or

(b) in the case of any provision of Schedule 5 to that Act (increase of pension where entitlement is deferred), that any constituent element of an increase provided for by that Schedule,

is increased by such percentage as may be prescribed (which may be 100 per cent.).

(3) The regulations may amend (or further amend) any prescribed provision of Part II of the Contributions and Benefits Act falling within paragraph (2) by substituting for any reference to the year 2000 (or any year previously substituted by virtue of this paragraph) a reference to such later year as may be prescribed.

(4) The regulations may make provision for and in connection with—

(a) the establishment, for a prescribed period, of a scheme for dealing with claims made by persons on the grounds that, in reliance on any incorrect or incomplete information provided by a government department with respect to the SERPS reduction (however that information came to their knowledge), they—

(i) failed to take any, or any particular, relevant steps which they would have taken, or

(ii) took any steps which they would not have taken, had they instead received correct and complete information with respect to that reduction; and

(b) securing that, where persons have made successful claims under the scheme, surviving spouses of those persons (or, as the case may be, those persons themselves) will not be affected by the SERPS reduction.

(5) In paragraph (4) “relevant steps”, in relation to a person, means steps towards safeguarding the financial position of that person’s spouse in the event of the spouse becoming that person’s surviving spouse or (as the case may be) towards safeguarding that person’s own financial position in the event

of that person becoming a surviving spouse (whether or not, in either case, that person was at any material time already married); and “the SERPS reduction” means—

- (a) (in the context of paragraph (4)(a)) the operation of any of—
    - (i) the provisions of Article 20 of the Social Security (Northern Ireland) Order 1986, or
    - (ii) the provisions of Part II of the Contributions and Benefits Act reproducing the effect of those provisions;
  - (b) (in the context of paragraph (4)(b)) the operation of any of the provisions of the Contributions and Benefits Act mentioned in sub-paragraph (a)(ii) or of section 39C(4) or 48BB(7) of that Act.
- (6) Regulations under paragraph (4) may, in particular, make provision—
- (a) with respect to the time within which, and the manner in which, claims under the scheme are to be made;
  - (b) for requiring claimants—
    - (i) to supply such information in connection with their claims as may be prescribed or reasonably requested by any person for the purpose of dealing with their claims,
    - (ii) to attend interviews at such time and place as may be reasonably specified by any person for that purpose;
  - (c) for a claim to be disallowed where the claimant fails to comply with a requirement imposed by virtue of sub-paragraph (a) or (b) and does not show within the prescribed period that he had good cause for that failure;
  - (d) prescribing—
    - (i) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any failure to comply with any such requirement, or
    - (ii) circumstances in which a person is or is not to be regarded as having or not having good cause for any such failure;
  - (e) prescribing the conditions which must be satisfied in relation to any claim in order for it to be a successful claim under the scheme;
  - (f) with respect to—
    - (i) the manner in which decisions under the scheme are to be made (which may include authorising decisions of any prescribed description to be made by a computer), and
    - (ii) the time within which, and the manner in which, such decisions are to be notified to claimants;
  - (g) for provisions of Chapter II of Part II of the Social Security (Northern Ireland) Order 1998 (social security decisions and appeals) to apply in relation to decisions under the scheme with such modifications as may be prescribed;
  - (h) for provisions of Part II of the Contributions and Benefits Act to apply in relation to—
    - (i) surviving spouses of persons who have made successful claims under the scheme, or
    - (ii) persons who have themselves made such claims, with such modifications as may be prescribed.
- (7) If no regulations under this Article are in operation on 6th April 2000, then until such time as any such regulations come into operation—
- (a) any provisions of Part II of the Contributions and Benefits Act which (whether alone or together with other provisions) would otherwise result in a reduction of one-half in the

amount payable by way of additional pension in cases where a person's spouse dies after 5th April 2000 shall be taken—

- (i) as not applying, or
  - (ii) as providing for the full amount to be payable by way of additional pension, as the case may require; and
- (b) in Schedule 5 to that Act—
- (i) any provision which is expressed to apply in relation to deaths occurring after that date shall not apply, and
  - (ii) any provision which (with or without any other limitation) is expressed to apply in relation to deaths occurring before 6th April 2000 shall be taken as applying also in relation to deaths occurring on or after that date.

(8) Regulations made under this Article shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(9) In this Article “prescribed” means prescribed by regulations under paragraph (2), (3) or (4), as the case may be.

#### *State maternity allowance*

#### **Extension of entitlement to state maternity allowance**

**50.**—(1) In section 35 of the Contributions and Benefits Act (state maternity allowance), for subsections (1) and (1A) there shall be substituted—

“(1) A woman shall be entitled to a maternity allowance, at the appropriate weekly rate determined under section 35A below, if—

- (a) she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
- (b) she has been engaged in employment as an employed or self-employed earner for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the expected week of confinement; and
- (c) (within the meaning of section 35A) her average weekly earnings are not less than the maternity allowance threshold; and
- (d) she is not entitled to statutory maternity pay for the same week in respect of the same pregnancy.”.

(2) In subsection (3) of that section—

- (a) in paragraph (b), for “Schedule 3, Part I, paragraph 3” there shall be substituted “section 35A below”; and
- (b) in paragraph (c), for “and (c) above” there shall be substituted “above or in section 35A(2) or (3) below”.

(3) After that section there shall be inserted—

#### **“Appropriate weekly rate of maternity allowance.**

**35A.**—(1) For the purposes of section 35(1) above the appropriate weekly rate is that specified in whichever of subsection (2) or (3) below applies.

(2) Where the woman's average weekly earnings are not less than the lower earnings limit for the relevant tax year, the appropriate weekly rate is a weekly rate equal to the lower rate of statutory maternity pay for the time being prescribed under section 162(3) below.

(3) Where the woman's average weekly earnings—

(a) are less than the lower earnings limit for the relevant tax year, but

(b) are not less than the maternity allowance threshold for that tax year,

the appropriate weekly rate is a weekly rate equivalent to 90 per cent. of her average weekly earnings or (if lower) the rate specified in subsection (2) above.

(4) For the purposes of this section a woman's

“average weekly earnings” shall be taken to be the average weekly amount (as determined in accordance with regulations) of specified payments which—

(a) were made to her or for her benefit as an employed earner, or

(b) are (in accordance with regulations) to be treated as made to her or for her benefit as a self-employed earner,

during the specified period.

(5) Regulations may, for the purposes of subsection (4) above, provide—

(a) for the amount of any payments falling within paragraph (a) or (b) of that subsection to be calculated or estimated in such manner and on such basis as may be prescribed;

(b) for a payment made outside the specified period to be treated as made during that period where it was referable to that period or any part of it;

(c) for a woman engaged in employment as a self-employed earner to be treated as having received a payment in respect of a week—

(i) equal to the lower earnings limit in force on the last day of the week, if she paid a Class 2 contribution in respect of the week, or

(ii) equal to the maternity allowance threshold in force on that day, if she was excepted (under section 11(4) above) from liability for such a contribution in respect of the week;

(d) for aggregating payments made or treated as made to or for the benefit of a woman where, either in the same week or in different weeks, she was engaged in two or more employments (whether, in each case, as an employed earner or a self-employed earner).

(6) In this section—

(a) “the maternity allowance threshold”, in relation to a tax year, means (subject to subsection (7) below) £30;

(b) “the relevant tax year” means the tax year in which the beginning of the period of 66 weeks mentioned in section 35(1)(b) above falls; and

(c) “specified” means prescribed by or determined in accordance with regulations.

(7) Whenever the Secretary of State makes an order under section 35A of the Great Britain Contributions and Benefits Act (increase of maternity allowance threshold), the Department may make a corresponding order for Northern Ireland.”.

(4) This Article applies in relation to the payment of maternity allowance in cases where a woman's expected week of confinement (within the meaning of section 35 of the Contributions and Benefits Act) begins on or after 20th August 2000.

*Benefits for widows and widowers***Bereavement payments**

**51.**—(1) For section 36 of the Contributions and Benefits Act there shall be substituted—

**“Bereavement payment.**

**36.**—(1) A person whose spouse dies on or after the appointed day shall be entitled to a bereavement payment if—

- (a) either that person was under pensionable age at the time when the spouse died or the spouse was then not entitled to a Category A retirement pension under section 44 below; and
- (b) the spouse satisfied the contribution condition for a bereavement payment specified in Schedule 3, Part I, paragraph 4.

(2) A bereavement payment shall not be payable to a person if that person and a person of the opposite sex to whom that person was not married were living together as husband and wife at the time of the spouse’s death.

(3) In this section “the appointed day” means the day appointed for the coming into operation of Articles 51 to 53 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.”.

(2) In Schedule 4 to the Contributions and Benefits Act (rates of benefits etc.), for Part II there shall be substituted—

**“PART II****BEREAVEMENT PAYMENT**

Bereavement payment.	£2,000.00”.
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**New allowances for bereaved spouses**

**52.**—(1) After section 36 of the Contributions and Benefits Act there shall be inserted—

**“Cases in which sections 37 to 41 apply.**

**36A.**—(1) Sections 37 to 39 and section 40 below apply only in cases where a woman’s husband has died before the appointed day, and section 41 below applies only in cases where a man’s wife has died before that day.

(2) Sections 39A to 39C below apply in cases where a person’s spouse dies on or after the appointed day, but section 39A also applies (in accordance with subsection (1)(b) of that section) in cases where a man’s wife has died before that day.

(3) In this section, and in sections 39A and 39B below, “the appointed day” means the day appointed for the coming into operation of Articles 51 to 53 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.”.

(2) After section 39 of the Contributions and Benefits Act there shall be inserted—

**“Widowed parent’s allowance.**

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

- (a) a person whose spouse dies on or after the appointed day is under pensionable age at the time of the spouse’s death, or
- (b) a man whose wife died before the appointed day—
  - (i) has not remarried before that day, and
  - (ii) is under pensionable age on that day.

(2) The surviving spouse shall be entitled to a widowed parent’s allowance at the rate determined in accordance with section 39C below if the deceased spouse satisfied the contribution conditions for a widowed parent’s allowance specified in Schedule 3, Part I, paragraph 5 and—

- (a) the surviving spouse is entitled to child benefit in respect of a child falling within subsection (3) below; or
- (b) the surviving spouse is a woman who either—
  - (i) is pregnant by her late husband, or
  - (ii) if she and he were residing together immediately before the time of his death, is pregnant in circumstances falling within section 37(1)(c) above.

(3) A child falls within this subsection if one of the conditions specified in section 81(2) below is for the time being satisfied with respect to the child and the child is either—

- (a) a son or daughter of the surviving spouse and the deceased spouse; or
- (b) a child in respect of whom the deceased spouse was immediately before his or her death entitled to child benefit; or
- (c) if the surviving spouse and the deceased spouse were residing together immediately before his or her death, a child in respect of whom the surviving spouse was then entitled to child benefit.

(4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries, but, subject to that, the surviving spouse shall continue to be entitled to it for any period throughout which she or he—

- (a) satisfies the requirements of subsection (2)(a) or (b) above; and
- (b) is under pensionable age.

(5) A widowed parent’s allowance shall not be payable—

- (a) for any period falling before the day on which the surviving spouse’s entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act; or
- (b) for any period during which the surviving spouse and a person of the opposite sex to whom she or he is not married are living together as husband and wife.

**Bereavement allowance where no dependent children.**

**39B.—**(1) This section applies where a person whose spouse dies on or after the appointed day is over the age of 45 but under pensionable age at the spouse’s death.

(2) The surviving spouse shall be entitled to a bereavement allowance at the rate determined in accordance with section 39C below if the deceased spouse satisfied the contribution conditions for a bereavement allowance specified in Schedule 3, Part I, paragraph 5.

(3) A bereavement allowance shall be payable for not more than 52 weeks beginning with the date of the spouse's death or (if later) the day on which the surviving spouse's entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act.

(4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries, but, subject to that, the surviving spouse shall continue to be entitled to it until—

- (a) she or he attains pensionable age, or
- (b) the period of 52 weeks mentioned in subsection (3) above expires,

whichever happens first.

(5) The allowance shall not be payable—

- (a) for any period for which the surviving spouse is entitled to a widowed parent's allowance; or
- (b) for any period during which the surviving spouse and a person of the opposite sex to whom she or he is not married are living together as husband and wife.

#### **Rate of widowed parent's allowance and bereavement allowance.**

**39C.**—(1) The weekly rate of a widowed parent's allowance shall be determined in accordance with the provisions of sections 44 to 45A below as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.

(2) The weekly rate of a bereavement allowance shall be determined in accordance with the provisions of section 44 below as they apply in the case of a Category A retirement pension so far as consisting only of the basic pension referred to in subsection (3)(a) of that section, but subject, in particular, to the following provisions of this section.

(3) In the application of sections 44 to 45A or (as the case may be) section 44 below by virtue of subsection (1) or (2) above—

- (a) where the deceased spouse was over pensionable age at his or her death, references in those sections to the pensioner shall be taken as references to the deceased spouse, and
- (b) where the deceased spouse was under pensionable age at his or her death, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the deceased spouse and the tax year in which he or she died.

(4) Where a widowed parent's allowance is payable to a person whose spouse dies after 5th April 2000, the additional pension falling to be calculated under sections 44 to 45A below by virtue of subsection (1) above shall be one half of the amount which it would be apart from this subsection.

(5) Where a bereavement allowance is payable to a person who was under the age of 55 at the time of the spouse's death, the weekly rate of the allowance shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which that person's age at that time was less than 55 (any fraction of a year being counted as a year).".

#### **Entitlement to Category B retirement pension by reference to new allowances**

**53.** After section 48B of the Contributions and Benefits Act there shall be inserted—

**“Category B retirement pension: entitlement by reference to benefits under section 39A or 39B.**

**48BB.**—(1) Subsection (2) below applies where a person (“the pensioner”) who has attained pensionable age—

- (a) was, immediately before attaining that age, entitled to a widowed parent’s allowance in consequence of the death of his or her spouse; and
- (b) has not remarried.

(2) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse, which shall be payable at the same weekly rate as the widowed parent’s allowance.

(3) Subsections (4) to (10) below apply where a person (“the pensioner”) who has attained pensionable age—

- (a) was in consequence of the death of his or her spouse either—
  - (i) entitled to a bereavement allowance at any time prior to attaining that age, or
  - (ii) entitled to a widowed parent’s allowance at any time when over the age of 45 (but not immediately before attaining pensionable age); and
- (b) has not remarried.

(4) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse.

(5) A Category B retirement pension payable by virtue of subsection (4) above shall be payable at a weekly rate corresponding to the weekly rate of the additional pension determined in accordance with the provisions of sections 44 to 45A above as they apply in relation to a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) above.

(6) Where the spouse died under pensionable age, references in the provisions of sections 44 to 45A above, as applied by subsection (5) above, to the tax year in which the pensioner attained pensionable age shall be taken as references to the tax year in which the spouse died.

(7) Where the spouse dies after 5th April 2000, the pension payable by virtue of subsection (4) above shall (before making any reduction required by subsection (8) below) be one half of the amount which it would be apart from this subsection.

(8) Where the pensioner was under the age of 55 at the relevant time, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied—

- (a) by the number of years by which the pensioner’s age at that time was less than 55 (any fraction of a year being counted as a year), or
- (b) by ten, if that number exceeds ten.

(9) In subsection (8) above “the relevant time” means—

- (a) where the pensioner became entitled to a widowed parent’s allowance in consequence of the death of the spouse, the time when the pensioner’s entitlement to that allowance ended; and
- (b) otherwise, the time of the spouse’s death.

(10) The amount determined in accordance with subsections (5) to (9) above as the weekly rate of the pension payable to the pensioner by virtue of subsection (4) above shall be increased by such percentage as equals the overall percentage by which, had the pension been in payment as from the date of the spouse’s death until the date when the pensioner attained pensionable age, that weekly rate would have been increased during that period

by virtue of any orders under section 132 of the Administration Act (annual up-rating of benefits).”.

*Work-focused interviews*

**Claim or full entitlement to certain benefits conditional on work-focused interview**

**54.** After section 2 of the Administration Act there shall be inserted—

*“Work-focused interviews*

**Claim or full entitlement to certain benefits conditional on work-focused interview.**

- 2A.—**(1) Regulations may make provision for or in connection with—
- (a) imposing, as a condition falling to be satisfied by a person who—
    - (i) makes a claim for a benefit to which this section applies, and
    - (ii) is under the age of 60 at the time of making the claim,
 a requirement to take part in a work-focused interview;
  - (b) imposing, at a time when—
    - (i) a person is under that age and entitled to such a benefit, and
    - (ii) any prescribed circumstances exist,
 a requirement to take part in such an interview as a condition of that person continuing to be entitled to the full amount which is payable to him in respect of the benefit apart from the regulations.
- (2) The benefits to which this section applies are—
- (a) income support;
  - (b) housing benefit;
  - (c) widow’s and bereavement benefits falling within section 20(1)(e) and (ea) of the Contributions and Benefits Act (other than a bereavement payment);
  - (d) incapacity benefit;
  - (e) severe disablement allowance; and
  - (f) invalid care allowance.
- (3) Regulations under this section may, in particular, make provision—
- (a) for securing, where a person would otherwise be required to take part in interviews relating to two or more benefits—
    - (i) that he is only required to take part in one interview, and
    - (ii) that any such interview is capable of counting for the purposes of all those benefits;
  - (b) for determining the persons by whom interviews are to be conducted;
  - (c) conferring power on such persons or the designated authority to determine when and where interviews are to take place (including power in prescribed circumstances to determine that they are to take place in the homes of those being interviewed);
  - (d) prescribing the circumstances in which persons attending interviews are to be regarded as having or not having taken part in them;

- (e) for securing that the appropriate consequences mentioned in subsection (4)(a) or (b) below ensue if a person who has been notified that he is required to take part in an interview—
    - (i) fails to take part in the interview, and
    - (ii) does not show, within the prescribed period, that he had good cause for that failure;
  - (f) prescribing—
    - (i) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any failure to comply with the regulations, or
    - (ii) circumstances in which a person is or is not to be regarded as having or not having good cause for any such failure.
- (4) For the purposes of subsection (3)(e) above the appropriate consequences of a failure falling within that provision are—
- (a) where the requirement to take part in an interview applied by virtue of subsection (1)(a) above, that as regards any relevant benefit either—
    - (i) the person in question is to be regarded as not having made a claim for the benefit, or
    - (ii) if (in the case of an interview postponed in accordance with subsection (7) below) that person has already been awarded the benefit, his entitlement to the benefit is to terminate immediately;
  - (b) where the requirement to take part in an interview applied by virtue of subsection (1)(b) above, that the amount payable to the person in question in respect of any relevant benefit is to be reduced by the specified amount until the specified time.
- (5) Regulations under this section may, in relation to any such reduction, provide—
- (a) for the amount of the reduction to be calculated in the first instance by reference to such amount as may be prescribed;
  - (b) for the amount as so calculated to be restricted, in prescribed circumstances, to the prescribed extent;
  - (c) where the person in question is entitled to two or more relevant benefits, for determining the extent, and the order, in which those benefits are to be reduced in order to give effect to the reduction required in his case.
- (6) Regulations under this section may provide that any requirement to take part in an interview that would otherwise apply to a person by virtue of such regulations—
- (a) is, in any prescribed circumstances, either not to apply or not to apply until such time as is specified;
  - (b) is not to apply if the designated authority determines that an interview—
    - (i) would not be of assistance to that person, or
    - (ii) would not be appropriate in the circumstances;
  - (c) is not to apply until such time as the designated authority determines, if that authority determines that an interview—
    - (i) would not be of assistance to that person, or
    - (ii) would not be appropriate in the circumstances,until that time;

and the regulations may make provision for treating a person in relation to whom any such requirement does not apply, or does not apply until a particular time, as having complied with that requirement to such extent and for such purposes as are specified.

(7) Where—

- (a) a person is required to take part in an interview by virtue of subsection (1)(a) above, and
- (b) the interview is postponed by or under regulations made in pursuance of subsection (6)(a) or (c) above,

the time to which it is so postponed may be a time falling after an award of the relevant benefit to that person.

(8) In this section—

“the designated authority” means such of the following as may be specified—

- (a) a Northern Ireland department;
- (b) a person providing services to a Northern Ireland department;
- (c) any other body established by or under a statutory provision;
- (d) a person providing services to, or authorised to exercise any function of, any such body;

“interview” (in subsections (3) to (7) above) means a work-focused interview;

“relevant benefit”, in relation to any person required to take part in a work-focused interview, means any benefit in respect to which that requirement applied by virtue of subsection (1)(a) or (b) above;

“specified” means prescribed by or determined in accordance with regulations;

“work-focused interview”, in relation to a person, means an interview conducted for such purposes connected with employment or training in the case of that person as may be specified;

and the purposes which may be so specified include purposes connected with a person’s existing or future employment or training prospects or needs, and (in particular) assisting or encouraging a person to enhance his employment prospects.

### **Supplementary provisions relating to work-focused interviews.**

**2B.**—(1) Chapter II of Part II of the Social Security (Northern Ireland) Order 1998 (social security decisions and appeals) shall have effect in relation to relevant decisions subject to and in accordance with subsections (3) to (8) below (and in those subsections “the 1998 Order” means that Order).

(2) For the purposes of this section a “relevant decision” is a decision made under regulations under section 2A above that a person—

- (a) has failed to comply with a requirement to take part in an interview which applied to him by virtue of the regulations, or
- (b) has not shown, within the prescribed period mentioned in section 2A(3)(e)(ii) above, that he had good cause for such a failure.

(3) Article 9(1)(c) of the 1998 Order (decisions falling to be made under certain statutory provisions are to be made by the Department) shall have effect subject to any provisions of regulations under section 2A above by virtue of which relevant decisions fall to be made otherwise than by the Department.

(4) For the purposes of each of Articles 10 and 11 of the 1998 Order (revision and supersession of decisions of Department) any relevant decision made otherwise than by the Department shall be treated as if it were such a decision made by the Department (and accordingly may be revised by it under Article 10 or superseded by a decision made by it under Article 11).

(5) Subject to any provisions of regulations under either Article 10 or 11 of the 1998 Order, any relevant decision made, or (by virtue of subsection (4) above) treated as made, by the Department may be—

(a) revised under Article 10 by a person or authority exercising functions under regulations under section 2A above other than the Department, or

(b) superseded under Article 11 by a decision made by such a person or authority, as if that person or authority were the Department.

(6) Regulations shall make provision for conferring (except in any prescribed circumstances) a right of appeal under Article 13 of the 1998 Order (appeal to appeal tribunal) against—

(a) any relevant decision, and

(b) any decision under Article 11 of that Order superseding any such decision, whether made by the Department or otherwise.

(7) Subsections (4) to (6) above apply whether—

(a) the relevant decision, or

(b) (in the case of subsection (6)(b)) the decision under Article 11 of the 1998 Order, is as originally made or has been revised (by the Department or otherwise) under Article 10 of that Order; and regulations under subsection (6) above may make provision for treating, for the purposes of Article 13 of that Order, any decision made or revised otherwise than by the Department as if it were a decision made or revised by it.

(8) Article 13 of the 1998 Order shall not apply to any decision falling within subsection (6) above except in accordance with regulations under that subsection.

(9) In the following provisions, namely—

(a) section 3(1) of the Social Security Act 1998 (use of information), and

(b) Article 69(6) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (supply of information),

any reference to information relating to social security includes any information supplied by a person for the purposes of an interview which he is required to take part in by virtue of section 2A above.

(10) In this section “interview” means a work-focused interview within the meaning of section 2A above.”

### **Optional work-focused interviews**

**55.** After section 2B of the Administration Act (inserted by Article 54) there shall be inserted—

#### **“Optional work-focused interviews.**

**2C.—**(1) Regulations may make provision for conferring on the prescribed authorities functions in connection with conducting work-focused interviews in cases where such interviews are requested or consented to by persons to whom this section applies.

(2) This section applies to persons making claims for or entitled to—

- (a) any of the benefits listed in section 2A(2) above, or
- (b) any prescribed benefit;

and it so applies regardless of whether such persons have, in accordance with regulations under section 2A above, already taken part in interviews conducted under such regulations.

(3) The functions which may be conferred on the prescribed authorities by regulations under this section include functions relating to—

- (a) the obtaining and receiving of information for the purposes of work-focused interviews conducted under the regulations;
- (b) the recording and forwarding of information supplied at, or for the purposes of, such interviews;
- (c) the taking of steps to identify potential employment or training opportunities for persons taking part in such interviews.

(4) Regulations under this section may make different provision for different areas.

(5) In this section—

“authorities” means a Northern Ireland department and any other body established by or under a statutory provision;

“work-focused interview”, in relation to a person to whom this section applies, means an interview conducted for such purposes connected with employment or training in the case of such a person as may be prescribed; and the purposes which may be so prescribed include—

- (a) purposes connected with the existing or future employment or training prospects or needs of such a person, and
- (b) (in particular) assisting or encouraging such a person to enhance his employment prospects.”.

#### *Jobseeker's allowance*

#### **Couples to make joint claim for allowance**

**56.** Schedule 7 (which makes provision in connection with requiring certain couples to make joint claims for an income-based jobseeker's allowance) shall have effect.

#### **Special schemes for claimants for jobseeker's allowance**

**57.—**(1) The Department may by regulations make provision for or in connection with the participation of claimants for a jobseeker's allowance in schemes of any prescribed description, being schemes established for designated areas in Northern Ireland (or for the whole of Northern Ireland) and designed to assist such persons to obtain sustainable employment.

(2) Regulations under this Article may, in particular, make provision—

- (a) for the imposition during any prescribed period, as additional conditions for entitlement to a jobseeker's allowance applying in the case of persons participating in schemes, of requirements to take steps determined in accordance with the regulations with a view to improving those persons' prospects of securing employment;
- (b) for the suspension, during any prescribed period, of any prescribed conditions that would otherwise apply to such persons.

(3) Regulations under this Article may make provision for any provisions of the Jobseekers (Northern Ireland) Order 1995 to apply for the purposes of the regulations subject to prescribed modifications.

(4) The provisions of that Order which may be so applied include in particular any provisions of—

- (a) Article 21 or 22A (circumstances in which jobseeker's allowance is not payable); or
- (b) Article 22 or 22B (exemptions from Article 21 or 22A).

(5) The Department or the Department of Economic Development may for the purposes of, or in connection with, any scheme—

- (a) make such arrangements (whether or not with other persons) for the provision of any facilities,
- (b) provide such support (by whatever means) for arrangements made by other persons for the provision of any facilities,
- (c) make such payments—
  - (i) by way of fees, grants, loans or otherwise, to persons undertaking the provision of facilities under arrangements within sub-paragraph (a) or (b),
  - (ii) by way of grants, loans or otherwise, to persons participating in the scheme, or
  - (iii) in respect of any incidental expenses,as that Department considers appropriate.

(6) In paragraph (5) “facilities” includes services, and any reference to the provision of facilities includes the making of payments to persons participating in the scheme.

(7) The power of the Department of Economic Development to make an order under Article 4 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (status of trainees) shall include power to make, in relation to—

- (a) persons participating in any scheme, and
- (b) payments received by them by virtue of paragraph (5), provision corresponding to any provision which (by virtue of that Article) may be made in relation to persons using such facilities, and to such payments received by them, as are mentioned in paragraph (1) of that Article.

(8) In this Article—

“designated” means designated by the Department;

“employment” has the meaning given by regulations under this Article;

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

“scheme” means a scheme such as is mentioned in paragraph (1).

### *Incapacity for work*

#### **Incapacity for work: personal capability assessments**

**58.** For section 167C of the Contributions and Benefits Act there shall be substituted—

##### **“Personal capability assessments.**

**167C.—**(1) Where the own occupation test is not applicable, or has ceased to apply, in the case of a person, the question whether the person is capable or incapable of work shall be determined in accordance with a personal capability assessment.

- (2) Provision shall be made by regulations—
- (a) defining a personal capability assessment by reference to the extent to which a person who has some specific disease or bodily or mental disablement is capable or incapable of performing such activities as may be prescribed;
  - (b) as to the manner of assessing whether a person is, in accordance with a personal capability assessment, incapable of work.
- (3) Regulations may provide that, in any prescribed circumstances, a person to whom subsection (1) above applies shall, if the prescribed conditions are met, be treated as incapable of work in accordance with a personal capability assessment until such time as—
- (a) such an assessment has been carried out in his case, or
  - (b) he falls to be treated as capable of work in accordance with regulations under section 167A(2) or (3) above or section 167E below.
- The prescribed conditions may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question is or is to be treated as capable of work.
- (4) Except in prescribed circumstances, a personal capability assessment carried out in the case of a person before the time when subsection (1) above applies to him shall be as effective for the purposes of that subsection as one carried out thereafter.
- (5) The Department may, in the case of a person who for any purpose of this Act has been determined to be incapable of work in accordance with a personal capability assessment (including one carried out by virtue of this subsection), require the question whether the person is capable or incapable of work to be determined afresh in accordance with a further personal capability assessment.”.

### *Incapacity benefits*

#### **Incapacity benefit: restriction to recent contributors**

**59.**—(1) Paragraph 2 of Schedule 3 to the Contributions and Benefits Act (contribution conditions for short-term incapacity benefit) shall be amended as follows.

- (2) In sub-paragraph (2) (the first condition), for paragraph (a) there shall be substituted—
- “(a) the claimant must have actually paid contributions of a relevant class in respect of one of the last three complete years before the beginning of the relevant benefit year, and those contributions must have been paid before the relevant time; and”.
- (3) In sub-paragraph (7) (claim by person who does not satisfy second contribution condition to be disregarded in relation to subsequent claim), after “does not satisfy” there shall be inserted
- “the first contribution condition (specified in sub-paragraph (2) above) or, as the case may be,”.
- (4) After sub-paragraph (7) there shall be added—
- “(8) Regulations may—
- (a) provide for the first contribution condition (specified in sub-paragraph (2) above) to be taken to be satisfied in the case of persons who have been entitled to any prescribed description of benefit during any prescribed period or at any prescribed time;
  - (b) with a view to securing any relaxation of the requirements of that condition (as so specified) in relation to persons who have been so entitled, provide for that condition to apply in relation to them subject to prescribed modifications.
- (9) In sub-paragraph (8)—

“benefit” includes (in addition to any benefit under Parts II to V of this Act)—

- (a) any benefit under Parts VII to XII of this Act, and
- (b) credits under regulations under section 22(5) above;

“modifications” includes additions, omissions and amendments.”.

### **Incapacity benefit: reduction for pension payments**

**60.** After section 30D of the Contributions and Benefits Act there shall be inserted—

#### **“Incapacity benefit: reduction for pension payments.**

**30DD.**—(1) Where—

- (a) a person is entitled to incapacity benefit in respect of any period of a week or part of a week,
- (b) a pension payment is payable to him in respect of that period (or a period which forms part of that period or includes that period or part of it), and
- (c) the amount of that payment (or, as the case may be, the amount which in accordance with regulations is to be taken as payable to him by way of pension payments in respect of that period) exceeds the threshold,

the amount of that benefit shall be reduced by an amount equal to 50 per cent. of that excess.

(2) In subsection (1) above “the threshold” means—

- (a) if the period in question is a week, £85 or such greater amount as may be prescribed; or
- (b) if that period is not a week, such proportion of the amount mentioned in paragraph (a) as falls to be calculated in accordance with regulations on such basis as may be prescribed.

(3) Regulations may secure that a person of any prescribed description does not suffer any reduction under subsection (1) above in any amount of incapacity benefit to which he is entitled.

(4) Regulations may provide—

- (a) for sums of any specified description to be disregarded for the purposes of this section;
- (b) for sums of any specified description to be treated for those purposes as payable to persons as pension payments (including, in particular sums in relation to which there is a deferred right of receipt);
- (c) for the aggregation of sums of any specified description which are payable as pension payments (or treated as being so payable) in respect of the same or different periods;
- (d) for such sums or aggregate sums to be apportioned between or otherwise allocated to periods in respect of which persons are entitled to incapacity benefit.

(5) In this section “pension payment” means—

- (a) a periodical payment made in relation to a person under a personal pension scheme or, in connection with the coming to an end of an employment of his, under an occupational pension scheme or a public service pension scheme;
- (b) a payment of any specified description, being a payment made under an insurance policy providing benefits in connection with physical or mental illness, disability, infirmity or defect; or

(c) a payment of any other specified description;  
and “specified” means prescribed by or determined in accordance with regulations under this section.

(6) For the purposes of subsection (5) above

“occupational pension scheme”, “personal pension scheme” and “public service pension scheme” each has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993, except that

“personal pension scheme” includes a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 (retirement annuities).”.

### **Incapacity benefit: persons incapacitated in youth**

**61.**—(1) In subsection (1) of section 30A of the Contributions and Benefits Act (incapacity benefit: entitlement)—

(a) for “either of the following conditions” there shall be substituted—

“(a) either of the conditions mentioned in subsection (2) below; or

(b) if he satisfies neither of those conditions, each of the conditions mentioned in subsection (2A) below;”;

(b) after “any day of incapacity for work” there shall be inserted

“(“the relevant day”)”.

(2) In subsection (2) of that section—

(a) after “conditions” in the first place where that word occurs, there shall be inserted “mentioned in subsection (1)(a) above”; and

(b) in paragraph (a), for “the day in question” there shall be substituted “the relevant day”.

(3) After that subsection there shall be inserted—

“(2A) The conditions mentioned in subsection (1)(b) above are that—

(a) he is aged 16 or over on the relevant day;

(b) he is under the age of 20 or, in prescribed cases, 25 on a day which forms part of the period of incapacity for work;

(c) he was incapable of work throughout a period of 196 consecutive days immediately preceding the relevant day, or an earlier day in the period of incapacity for work on which he was aged 16 or over;

(d) on the relevant day he satisfies the prescribed conditions as to residence in Northern Ireland, or as to presence there; and

(e) he is not, on that day, a person who is receiving full-time education.”.

(4) In subsection (3) of that section, after “benefit” there shall be inserted “under subsection (1)(a) above”.

(5) After subsection (5) of that section there shall be added—

“(6) Regulations may provide that persons who have previously been entitled to incapacity benefit shall, in prescribed circumstances, be entitled to short-term incapacity benefit under subsection (1)(b) above notwithstanding that they do not satisfy the condition set out in paragraph (b) of subsection (2A) above.

(7) Regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time education for the purposes of paragraph (e) of subsection (2A) above.”.

### **Abolition of severe disablement allowance**

**62.** Sections 68 and 69 of the Contributions and Benefits Act (severe disablement allowance) shall cease to have effect.

### *Disability benefits*

#### **Attendance allowance**

**63.**—(1) After subsection (3) of section 64 of the Contributions and Benefits Act (entitlement to attendance allowance) there shall be added—

“(4) Circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsections (2) and (3) above as may be prescribed.”.

(2) In subsection (1) of section 66 of that Act (attendance allowance for the terminally ill)—

- (a) in paragraph (a)(i), for the words from “for the remainder of his life” to “terminally ill” there shall be substituted “for so much of the period for which he is terminally ill as does not fall before the date of the claim”;
- (b) in paragraph (a)(ii), for “that date”, in the first place where those words occur, there shall be substituted “the date of the claim or, if later, the first date on which he is terminally ill”; and
- (c) in paragraph (b), for “the remainder of the person’s life, beginning with that date” there shall be substituted “so much of the period for which he is terminally ill as does not fall before the date of the claim”.

#### **Disability living allowance**

**64.**—(1) In subsection (3) of section 71 of the Contributions and Benefits Act (disability living allowance), for the words “for life” there shall be substituted “for an indefinite period”.

(2) In subsection (5)(b) of section 72 of that Act (the care component), for the words “for the remainder of his life beginning with that date” there shall be substituted “for so much of the period for which he is terminally ill as does not fall before the date of the claim”.

(3) In subsection (1) of section 73 of that Act (the mobility component), for the words “the age of 5” there shall be substituted

“the relevant age” and after that subsection there shall be inserted—

“(1A) In subsection (1) above “the relevant age” means—

- (a) in relation to the conditions mentioned in paragraph (a),
- (b) or (c) of that subsection, the age of 3;
- (b) in relation to the conditions mentioned in paragraph (d) of that subsection, the age of 5.”.

(4) Paragraph (3) does not affect awards made before the day on which that paragraph comes into operation.

*Miscellaneous***Certain overpayments of benefit not to be recoverable**

**65.**—(1) An overpayment to which this Article applies shall not be recoverable from the payee under any provision made by or under Part III of the Administration Act (overpayments and adjustments of benefit).

(2) This Article applies to an overpayment if—

- (a) it is in respect of a qualifying benefit;
- (b) it is referable to a decision given on a review that there has been an alteration in the relevant person's condition, being a decision to which effect is required to be given as from a date earlier than that on which it was given;
- (c) the decision was given before 1st June 1999; and
- (d) the overpayment is not excluded by virtue of paragraph (6).

(3) In paragraph (2)(b) the reference to a decision on a review that there has been an alteration in the relevant person's condition is a reference to a decision so given that that person's physical or mental condition either was at the time when the original decision was given, or has subsequently become, different from that on which that decision was based, with the result—

- (a) that he did not at that time, or (as the case may be) has subsequently ceased to, meet any of the conditions contained in the following provisions of the Contributions and Benefits Act, namely—
  - (i) section 64 (attendance allowance),
  - (ii) section 72(1) or (2) (care component of disability living allowance), and
  - (iii) section 73(1) or (2) (mobility component of that allowance); or
- (b) that he was at that time, or (as the case may be) has subsequently become, capable of work in accordance with regulations made under section 167C(2) of that Act (the all work test).

(4) For the purposes of this Article “qualifying benefit” means—

- (a) attendance allowance;
- (b) disability living allowance;
- (c) any benefit awarded wholly or partly by reason of a person being (or being treated as being) in receipt of a component (at any rate) of disability living allowance or in receipt of attendance allowance;
- (d) incapacity benefit;
- (e) any benefit (other than incapacity benefit) awarded wholly or partly by reason of a person being (or being treated as being) incapable of work; or
- (f) any benefit awarded wholly or partly by reason of a person being (or being treated as being) in receipt of any benefit falling within sub-paragraph (c), (d) or (e).

(5) For the purposes of this Article—

- (a) “review” means a review taking place by virtue of section 23(1)(a) or (b), 28(2)(a) or (b) or 33(1)(a) or (b) of the Administration Act;
- (b) “the relevant person”, in relation to a review, means the person to whose entitlement to a qualifying benefit or to whose incapacity for work the review related; and
- (c) “the original decision”, in relation to a review, means the decision as to any such entitlement or incapacity to which the review related.

(6) An overpayment is excluded by virtue of this paragraph if (before or after the making of this Order)—

- (a) the payee has agreed to pay a penalty in respect of the overpayment under section 109A of the Administration Act,
- (b) the payee has been convicted of any offence (under section 105A or 106(1) or (1A) of that Act or otherwise) in connection with the overpayment, or
- (c) proceedings have been instituted against the payee for such an offence and the proceedings have not been determined or abandoned.

(7) Nothing in this Article applies to an overpayment to the extent that it was recovered from the payee (by any means) before 26th February 1999.

(8) In this Article—

“benefit” includes any amount included in—

- (a) the applicable amount in relation to an income-related benefit (as defined by section 131(1) of the Contributions and Benefits Act), or
- (b) the applicable amount in relation to a jobseeker’s allowance (as defined by Article 6(5) of the Jobseekers (Northern Ireland) Order 1995);

“income-related benefit” has the meaning given by section 122(1) of the Contributions and Benefits Act;

“overpayment” means an amount of benefit paid in excess of entitlement;

“the payee”, in relation to an overpayment, means the person to whom that amount was paid.

#### **Child benefit: claimant to state national insurance number**

66. In section 11 of the Administration Act (entitlement to child benefit dependent on claim), after subsection (1) there shall be inserted—

“(1A) No person shall be entitled to child benefit unless subsection (1B) below is satisfied in relation to him.

(1B) This subsection is satisfied in relation to a person if—

- (a) his claim for child benefit is accompanied by—
  - (i) a statement of his national insurance number and information or evidence establishing that that number has been allocated to him; or
  - (ii) information or evidence enabling the national insurance number that has been allocated to him to be ascertained; or
- (b) he makes an application for a national insurance number to be allocated to him which is accompanied by information or evidence enabling such a number to be so allocated.

(1C) Regulations may make provision disapplying subsection (1A) above in the case of—

- (a) prescribed descriptions of persons making claims, or
- (b) prescribed descriptions of children in respect of whom child benefit is claimed, or in other prescribed circumstances.”.

#### **Welfare benefits: miscellaneous amendments**

67. Schedule 8 (which makes minor and consequential amendments of provisions relating to welfare benefits) shall have effect.

*Supplementary*

**Sharing of functions as regards claims and information**

68. After section 5 of the Administration Act there shall be inserted—

*“Sharing of functions as regards certain claims and information*

**Sharing of functions as regards certain claims and information.**

5A.—(1) Regulations may, for the purpose of supplementing the persons or bodies to whom claims for relevant benefits may be made, make provision as regards any relevant benefit, for claims for that benefit to be made to any relevant authority (if such claims could not otherwise be made to that authority).

(2) Regulations may make provision for or in connection with—

(a) the forwarding by a relevant authority of—

(i) claims received by virtue of any provision authorised by subsection (1) above, and

(ii) information or evidence supplied in connection with making such claims (whether supplied by persons making the claims or by other persons);

(b) the receiving and forwarding by a relevant authority of information or evidence relating to social security matters supplied by, or the obtaining by a relevant authority of such information or evidence from—

(i) persons making, or who have made, claims for a relevant benefit, or

(ii) other persons in connection with such claims,

including information or evidence not relating to the claims or benefit in question;

(c) the recording by a relevant authority of information or evidence relating to social security matters supplied to, or obtained by, the authority and the holding by the authority of such information or evidence (whether as supplied or obtained or as recorded);

(d) the giving of information or advice with respect to social security matters by a relevant authority to persons making, or who have made, claims for a relevant benefit.

(3) In paragraphs (b) and (d) of subsection (2) above—

(a) references to claims for a relevant benefit are to such claims whether made as mentioned in subsection (1) above or not; and

(b) references to persons who have made such claims include persons to whom awards of benefit have been made on the claims.

(4) Regulations under this section may make different provision for different areas.

(5) Regulations under any other statutory provision may make such different provision for different areas as appears to the Department expedient in connection with any exercise by regulations under this section of the power conferred by subsection (4) above.

(6) In this section—

(a) “benefit” includes child support (any reference to a claim being read, in relation to child support, as a reference to an application under the Child Support (Northern Ireland) Order 1991 for a maintenance assessment);

(b) “relevant authority” means—

- (i) a Northern Ireland department,
  - (ii) a person providing services to a Northern Ireland department,
  - (iii) any other body established by or under a statutory provision, or
  - (iv) a person providing services to, or authorised to exercise any function of, such a body;
- (c) “relevant benefit” means housing benefit or any other benefit prescribed for the purposes of this section;
- (d) “social security matters” means matters relating to social security, child support or war pensions and in this paragraph “war pension” means a war pension within the meaning of section 25 of the Social Security Act 1989 (establishment and functions of war pensions committees).”.

### **Supply of information for certain purposes**

**69.**—(1) The Department may by regulations make such provision for or in connection with any of the following matters, namely—

- (a) the use by a person within paragraph (2) of social security information held by that person,
- (b) the supply (whether to a person within paragraph (2) or otherwise) of social security information held by a person within that paragraph,
- (c) the relevant purposes for which a person to whom such information is supplied under the regulations may use it, and
- (d) the circumstances and extent (if any) in and to which a person to whom such information is supplied under the regulations may supply it to any other person (whether within paragraph (2) or not),

as the Department considers appropriate in connection with any provision to which paragraph (3) applies or in connection with any scheme or arrangements to which paragraph (4) applies.

(2) The persons within this paragraph are—

- (a) a Northern Ireland department;
- (b) a person providing services to, or designated for the purposes of this Article by an order of, a Northern Ireland department;
- (c) any other body established by or under a statutory provision; and
- (d) a person providing services to, or authorised to exercise any function of, such a body.

(3) This paragraph applies to any provision made by or under—

- (a) any of the sections of the Administration Act inserted by Article 54, 55 or 68,
- (b) Article 57, or
- (c) the Jobseekers (Northern Ireland) Order 1995.

(4) This paragraph applies to—

- (a) any scheme designated by regulations under paragraph (1), being a scheme operated by a Northern Ireland department (whether under arrangements with any other person or not) for any purposes connected with employment or training in the case of persons of a particular category or description;
- (b) any arrangements of a description specified in such regulations, being arrangements made by a Northern Ireland department for any such purposes.

(5) Regulations under paragraph (1) may, in particular, authorise information supplied to a person under the regulations—

- (a) to be used for the purpose of amending or supplementing other information held by that person; and
  - (b) if it is so used, to be supplied to any other person, and used for any purpose, to whom or for which that other information could be supplied or used.
- (6) In this Article—
- “relevant purposes” means purposes connected with—
- (a) social security or child support, or
  - (b) employment or training;
- “social security information” means information relating to social security, child support or war pensions and in this paragraph “war pensions” means war pensions within the meaning of section 25 of the Social Security Act 1989 (establishment and functions of war pensions committees).
- (7) Any reference in this Article to purposes connected with employment or training includes purposes connected with the existing or future employment or training prospects or needs of persons, and (in particular) assisting or encouraging persons to enhance their employment prospects.

## CHAPTER II

### OTHER WELFARE PROVISIONS

#### **Measures to reduce under-occupation by housing benefit claimants**

**70.**—(1) The Department may by regulations make a scheme providing for a housing benefit claimant, where he moves from an under-occupied dwelling in the public or social rented sector to a qualifying dwelling, to be entitled to be paid an amount calculated by reference to the difference between—

- (a) the prescribed payments he was liable to make in respect of his former dwelling, and
- (b) those he is liable to make in respect of his new dwelling.

(2) In paragraph (1) the reference to a qualifying dwelling is to a dwelling (whether in the public or social rented sector or not) which, in relation to the claimant, either—

- (a) is not under-occupied, or
- (b) is under-occupied to a lesser extent than the claimant’s former dwelling.

(3) Regulations under this Article may, in particular, make provision—

- (a) as to the circumstances in which, in relation to a housing benefit claimant, a dwelling is or is not to be regarded for the purposes of the scheme as under-occupied or under-occupied to a lesser extent than another dwelling;
- (b) as to the manner in which an amount payable to such a claimant under the scheme is to be calculated.

(4) Regulations made in pursuance of paragraph (3)(b) may provide for the amount payable to a housing benefit claimant under the scheme (“the relevant amount”) to be reduced on account of—

- (a) any arrears of rent payable by him, or
- (b) any amount paid to him by way of housing benefit which constitutes an overpayment for housing benefit purposes;

but regulations under this Article shall not otherwise provide for the making of any reduction in the relevant amount on account of any sum due to or recoverable by the Housing Executive.

(5) A person aggrieved by a determination of any prescribed description made under regulations under this Article may appeal to such court or tribunal as may be prescribed; and the regulations may make provision as to the procedure to be followed in connection with appeals under this paragraph.

(6) Regulations under this Article may provide that the scheme is to apply only in relation to one or more prescribed areas; and, if they do so, they may also—

- (a) provide that (unless continued in operation by subsequent regulations under this Article) the scheme is to remain in operation there only for a prescribed period;
- (b) include such transitional, consequential or saving provisions as the Department considers appropriate in connection with the scheme ceasing to be in operation in relation to the area or areas at the end of that period.

(7) Where the Housing Executive makes any payment under the scheme it shall be reimbursed by the Department in respect of that payment in such manner and subject to such conditions as to claims, records, certificates or other information or evidence as may be prescribed (any reduction made by virtue of paragraph (4) being disregarded for the purposes of this paragraph).

(8) Subject to any prescribed exceptions or modifications, the provisions of the Administration Act shall have effect in relation to payments under the scheme as they have effect in relation to housing benefit.

(9) For the purposes of this Article a dwelling occupied by a housing benefit claimant is in the public or social rented sector if the payments which the claimant is liable to make in respect of the dwelling (and on account of which he is entitled to housing benefit) are to be made to—

- (a) the Housing Executive, or
- (b) a registered housing association within the meaning of the Housing (Northern Ireland) Order 1992.

(10) In this Article—

“dwelling” has the same meaning as in Part VII of the Contributions and Benefits Act (income-related benefits);

“housing benefit claimant”, in relation to a dwelling, means a person entitled to housing benefit by virtue of being liable to make payments in respect of the dwelling;

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

### **Supply of information for child support purposes**

71.—(1) Paragraph 1A of Schedule 2 to the Child Support Act 1991 shall be amended as follows.

(2) In sub-paragraphs (1), (2) and (4), after the word “Act” there shall be added “or any corresponding Northern Ireland legislation”.

(3) In sub-paragraph (5), at the end there shall be added “or, in relation to Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992”.

## PART VII

## GENERAL

*Miscellaneous***Authorisation of certain expenditure**

72.—(1) Where—

- (a) a Northern Ireland department or Minister of the Crown is proposing that or considering whether any statutory provision should change the law as from a specified date, or a date to be determined; and
- (b) the Department is of the opinion that the change is such that, unless expenditure for preparing for the change is incurred during the period before the making of that statutory provision, it will not be possible for a service for which it has or will have responsibility to be effectively provided as from that date,

the Department may, subject to paragraphs (2) and (3), incur such expenditure during that period.

(2) Expenditure is not authorised by virtue of paragraph (1) unless—

- (a) the Department has with the consent of the Department of Finance and Personnel laid before the Assembly a report which states—
  - (i) the change in the law which the Northern Ireland department or Minister of the Crown is proposing or considering; and
  - (ii) the amount of the expenditure which the Department proposes to incur and the purposes for which it proposes to incur it; and
- (b) the report has been approved by a resolution of the Assembly.

(3) Expenditure is not authorised by virtue of paragraph (1) at any time after the end of the period of two years beginning with (and including) the day on which the resolution under paragraph (2) (b) is passed.

(4) Paragraph (1) is without prejudice to any power of the Department to incur expenditure otherwise than by virtue of that paragraph.

(5) There shall be made out of the Northern Ireland National Insurance Fund into the Consolidated Fund such payments as the Department determines (in accordance with any directions of the Department of Finance and Personnel) to be appropriate in consequence of the operation of this Article.

(6) Any payments falling to be made by virtue of paragraph (5) shall be made at such times and in such manner as may be determined by the Department of Finance and Personnel.

*Supplementary***Regulations and orders**

73.—(1) Regulations or orders (except orders under Article 1 or 69(2) or regulations under Article 49) made under this Order by a Northern Ireland department shall be subject to negative resolution.

(2) Regulations or orders (except orders under Article 1) made under this Order by a Minister of the Crown or a department of the government of the United Kingdom shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(3) Where a power under this Order to make regulations or an order is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.

(4) Any such power includes power—

(a) to make such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking statutory provisions) as appears to the authority making the regulations or order to be expedient; and

(b) to provide for a person to exercise a discretion in dealing with any matter.

(5) Any power to make regulations or an order for the purposes of any provision of this Order is without prejudice to any power to make regulations or an order for the purposes of any other statutory provision.

(6) Without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954, any power conferred by this Order to make regulations or orders relating to housing benefit includes power to make different provision for different areas; and regulations under Article 57 or 70 may make different provision for different areas.

(7) Without prejudice to the generality of any of the preceding provisions of this Article, regulations under Article 57 or 69 may provide for all or any of the provisions of the regulations to apply only in relation to any area or areas so specified in the regulations.

(8) Subject to paragraph (10), any power to make regulations under Part V shall, if the Department of Finance and Personnel so directs, be exercisable only in conjunction with it.

(9) Subject to paragraph (11), before exercising any power to make regulations under Part V, the authority on whom the power is conferred, or, if the power is the subject of a direction under paragraph (8), that authority and the Department of Finance and Personnel acting jointly, shall consult such persons as the authority, or the authority and that Department, may consider appropriate, but that duty to consult shall not apply to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

(10) Any power of the Lord Chancellor to make regulations under Article 40 shall, if the Treasury so directs, be exercisable only in conjunction with them.

(11) Before exercising any power to make regulations under Article 40, the Lord Chancellor or, if the power is the subject of a direction under paragraph (10), the Lord Chancellor and the Treasury acting jointly, shall consult such persons as he, or they, may consider appropriate.

#### **Consequential amendments etc.**

74.—(1) The consequential amendments specified in Schedule 9 shall have effect.

(2) The Department may by regulations make such amendments or revocations of any statutory provision as it thinks necessary or expedient in consequence of the coming into operation of any of the provisions specified in paragraph (4).

(3) The Department may, for the purposes of or in connection with the coming into operation of any of the provisions specified in paragraph (4), make by regulations any provision which could be made by an order bringing the provision into operation.

(4) The provisions mentioned in paragraphs (2) and (3) are—

(a) Part V;

(b) paragraph (1) so far as relating to paragraphs 4 to 51 of Schedule 9; and

(c) Article 76 so far as relating to Part III of Schedule 10.

### **Transitional provisions**

75.—(1) The Department may, for the purposes of or in connection with the coming into operation of any provisions of Parts II and III, by regulations make such transitional adaptations or modifications—

- (a) of those provisions, or
  - (b) in connection with those provisions, of any provisions of—
    - (i) this Order,
    - (ii) the Pension Schemes Act, or
    - (iii) the Pensions Order,
- then in operation,

as it considers necessary or expedient.

(2) For the purposes of paragraph (1), Article 76 so far as relating to Part I of Schedule 10, together with that Part of that Schedule, shall be taken to be comprised in Part III of this Order.

(3) No pension sharing order may be made under Article 26A of the Matrimonial Causes Order if the proceedings in which the decree is granted were begun before the day on which Article 18 comes into operation.

(4) Paragraph 4 of Schedule 3 does not have effect if the proceedings in which the decree is granted were begun before the day on which Article 18 comes into operation.

(5) The Department may by regulations make such transitional or consequential provision, or such savings, as it considers necessary or expedient for the purposes of or in connection with—

- (a) the coming into operation of any provision of Part VI, or
- (b) the operation of any statutory provision repealed or amended by a provision of Part VI during any period when the repeal or amendment is not wholly in operation.

(6) For the purposes of paragraph (5), Article 76 so far as relating to Parts IV and V of Schedule 10, together with those Parts of that Schedule, shall be taken to be comprised in Part VI of this Order.

### **Repeals**

76. The statutory provisions specified in Schedule 10 (which include certain statutory provisions no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

*A.K. Galloway*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 8.

#### APPLICATION OF THE PENSION SCHEMES ACT AND THE PENSIONS ORDER TO REGISTERED SCHEMES

1.—(1) The provisions specified in sub-paragraph (2) shall apply as if any pension scheme established under a trust which—

- (a) is not an occupational pension scheme; but
- (b) is or has been registered under Article 4,

were an occupational pension scheme.

(2) The provisions are—

- (a) subsections (4) to (9) of section 170 of the Pensions Schemes Act (levies towards certain expenditure), and

(b) the following provisions of Part II of the Pensions Order—

- (i) Articles 3 to 11, 13 and 15 (supervision by the Authority) except Articles 8(1) and (2), 11(3)(c) and 15(1);
- (ii) Articles 27 to 31 (trustees: general);
- (iii) Articles 32 to 36 and 39 (functions of trustees) except the reference to Articles 16(3)(b) and 25(2) in Article 32(4), the reference to Article 56 in Article 35(2) and Article 35(5)(b);
- (iv) Article 41 (functions of trustees or managers);
- (v) Articles 47 and 48 (advisers);
- (vi) Article 49 (receipts, payment and records) except paragraphs (5) and (8) to (13);
- (vii) Article 50 (resolution of disputes);
- (viii) Article 68 (power of trustees to modify scheme by resolution) except paragraph (3);
- (ix) Articles 79 to 84 (the compensation payments) except Article 79(1)(b);
- (x) Articles 89, 90 and 92 (assignment and forfeiture etc.) except Article 89(5)(d);
- (xi) Article 94(2)(c) (review of decisions of the Authority);
- (xii) Article 106 (other permitted disclosures);
- (xiii) Article 108 (provision of information to Compensation Board);
- (xiv) Article 114 (overriding requirements); and
- (xv) Articles 121 and 122 (interpretation).

(3) Article 47(9) of the Pensions Order (as applied by sub-paragraph (1)) shall have effect as if the reference to any person who is or has been the employer were a reference to any person who, in pursuance of Article 5(5), is or has been required—

- (a) to deduct an employee's contributions to the scheme from his remuneration; and
- (b) to pay them to the trustees or managers of the scheme or to a prescribed person.

(4) Article 68 of the Pensions Order (as so applied) shall have effect as if the purposes specified in paragraph (2) of that Article included enabling the conditions set out in Article 3 to be fulfilled in relation to the scheme.

(5) Article 121(1) of the Pensions Order (as so applied) shall have effect as if the definition of “member” were omitted.

**2.—**(1) Articles 96 to 98 of the Pensions Order (gathering information: the Authority) shall apply as if any pension scheme which—

- (a) is not an occupational pension scheme; but
- (b) is or has been registered under Article 4,

were an occupational pension scheme.

(2) Article 97 of the Pensions Order (as applied by sub-paragraph (1)) shall have effect as if the regulatory provisions, for the purposes of paragraph (1) of that Article, were—

- (a) provisions made by or under the provisions specified in paragraph 1(2), other than Article 108 of the Pensions Order;
- (b) Articles 109 and 113 of that Order;
- (c) section 115 of the Pensions Act 1995 and any other provisions in force in Great Britain corresponding to the provisions mentioned in heads (a) and (b); and
- (d) Articles 3 and 4(4) and (5).

(3) Article 98 of the Pensions Order (as so applied) shall have effect as if the references in paragraphs (1)(c)(i) and (4)(b) to that Order included references to Article 4(5).

(4) Any reference in this paragraph or paragraph 3 which is or includes a reference to, or to any paragraph of, Article 3 or 4 includes a reference to any provision in force in Great Britain corresponding to that Article or (as the case may be) that paragraph; and the reference in sub-paragraph (1) to any pension scheme includes a personal pension scheme (as well as an occupational scheme) within the meaning of the Pension Schemes Act 1993.

**3.—**(1) Article 97 of the Pensions Order shall have effect in relation to any occupational pension scheme which is or has been registered under Article 4 as if the regulatory provisions for the purposes of paragraph (1) of Article 97 included Articles 3 and 4(4) and (5).

(2) Article 98 of the Pensions Order shall have effect in relation to any occupational pension scheme which is or has been registered under Article 4 as if the references in paragraphs (1)(c)(i) and (4)(b) to that Order included references to Article 4(5).

## SCHEDULE 2

Article 17.

### PENSIONS: MISCELLANEOUS AMENDMENTS

#### *Income payments orders against pension payments*

**1.** In Article 283(7) of the Insolvency (Northern Ireland) Order 1989 (bankrupt’s income against which income payments orders may be made includes certain payments under pension schemes), after “employment and” insert “(despite anything in Article 12 or 13 of the Welfare Reform and Pensions (Northern Ireland) Order 1999)”.

*Extended meaning of “personal pension scheme”*

- 2.—(1) In the Pension Schemes Act—
- (a) in section 1 (categories of pension schemes), in the definition of “personal pension scheme”, for “employed earners” substitute “earners (whether employed or self-employed)”; and
  - (b) in section 176(1) (general interpretation), for the definition of “employed earner” substitute—
    - ““employed earner” and “self-employed earner” have the meanings given by section 2 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;”.
- (2) In consequence of sub-paragraph (1), the following provisions of that Act shall cease to have effect, namely—
- (a) in section 69(2)(a)(ii) (short service benefit), the words “or a self-employed pension arrangement” and “or arrangement”;
  - (b) in section 92(2)(a) (exercise of option under section 91), sub-paragraph (iii) and the word “or” immediately preceding that sub-paragraph; and
  - (c) in section 176(1) (general interpretation), the definition of “self-employed pension arrangement”.

*Revaluation of earnings factors: meaning of “relevant year”*

3. In section 12(5) of the Pension Schemes Act (revaluation of earnings factors for purposes of section 10: early leavers etc.), for the definition of “relevant year” substitute—
- ““relevant year” means any tax year in the earner’s working life.”.

*Interim arrangements*

- 4.—(1) Section 24 of the Pension Schemes Act (ways of giving effect to protected rights) is amended as follows.
- (2) In subsection (1)—
- (a) omit paragraph (aa) (but not the final “and”); and
  - (b) in paragraph (b), for “permitted” substitute “provided for”.
- (3) For subsection (1A) substitute—
- “(1A) Where the scheme is a personal pension scheme which provides for the member to elect to receive payments in accordance with this subsection, and the member so elects, effect shall be given to his protected rights during the interim period by the making of payments under an interim arrangement which—
    - (a) complies with section 24A, and
    - (b) satisfies such conditions as may be prescribed;and in such a case subsections (2) to (4) accordingly apply as regards giving effect to his protected rights as from the end of that period.”.
- (4) In subsection (3) for “(1A)(a) or” substitute “(1A) or”.

*Effect of certain orders on guaranteed minimum pensions*

**5.** In section 43 of the Pension Schemes Act (entitlement to guaranteed minimum pension for the purposes of the relationship with social security benefits), after subsection (6) (which is added by Article 29(4) of this Order) add—

“(7) For the purposes of section 42, a person shall be treated as entitled to any guaranteed minimum pension to which he would have been entitled but for any order under Article 315A of the Insolvency (Northern Ireland) Order 1989 (recovery of excessive pension contributions).”.

*Payment by the Department of unpaid pension contributions*

**6.—(1)** Paragraph 2 of Schedule 3 to the Pension Schemes Act (priority in bankruptcy for amounts paid by the Department in respect of unpaid pension contributions) is amended as follows.

(2) For sub-paragraphs (1) to (3) substitute—

“(1) This Schedule applies to any sum owed on account of an employer’s contributions to a salary related contracted-out scheme which were payable in the period of 12 months immediately preceding the relevant date.

(1A) The amount of the debt having priority by virtue of sub-paragraph (1) shall be taken to be an amount equal to the appropriate amount.

(2) This Schedule applies to any sum owed on account of an employer’s minimum payments to a money purchase contracted-out scheme falling to be made in the period of 12 months immediately preceding the relevant date.

(3) In so far as payments cannot from the terms of the scheme be identified as falling within sub-paragraph (2), the amount of the debt having priority by virtue of that sub-paragraph shall be taken to be an amount equal to the appropriate amount.

(3A) In sub-paragraph (1A) or (3) “the appropriate amount” means the aggregate of—

- (a) the percentage for non-contributing earners of the total reckonable earnings paid or payable, in the period of 12 months referred to in sub-paragraph (1) or (2) (as the case may be), to or for the benefit of non-contributing earners; and
- (b) the percentage for contributing earners of the total reckonable earnings paid or payable, in that period, to or for the benefit of contributing earners.”.

(3) In sub-paragraph (4), for “sub-paragraph (3)” substitute “sub-paragraph (3A)”.

*Supervision by the Occupational Pensions Regulatory Authority*

**7.** In Article 3(2)(b) of the Pensions Order (power of Authority to remove pension scheme trustee to whom Article 3 applies by virtue of any other provision of Part II of the Order), for “any other provision of this Part” substitute “this Order or any other statutory provision”.

**8.** In Article 8(4) of the Pensions Order (provision which may be contained in orders made by the Authority appointing pension scheme trustees), omit the word “or” at the end of sub-paragraph (a).

**9.** In Article 10 of the Pensions Order (imposition of civil penalties by the Authority), after paragraph (8) insert—

“(8A) Any penalty recoverable under this Article shall, if a county court so orders, be enforceable as if it were payable under an order of that court.”.

*Occupational pension schemes: institutions who may hold money deposited by trustees etc.*

**10.**—(1) Article 49 of the Pensions Order (other responsibilities of trustees, employers, etc.) is amended as follows.

(2) In each of paragraphs (1) and (5) (money to be kept by trustees or employers in accounts with institutions authorised under the Banking Act 1987), for “an institution authorised under the Banking Act 1987” substitute “a relevant institution”.

(3) After paragraph (1) insert—

“(1A) In this Article “relevant institution” means—

- (a) an institution authorised under the Banking Act 1987;
- (b) an institution within any of paragraphs 1 to 6 of Schedule 2 to that Act (institutions not requiring authorisation); or
- (c) a European authorised institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992 which may lawfully accept deposits in the United Kingdom in accordance with those regulations.”.

*Annual increase in rate of pension*

**11.** In Article 54(3) of the Pensions Order (supplementary provisions about annual increases in pensions), in the definition of “appropriate percentage”, for the words from “the revaluation period” onwards substitute

“the latest revaluation period specified in the order under paragraph 2 of Schedule 2 to the Pension Schemes Act (revaluation of accrued pension benefits) which is in force at the time of the increase (expressions used in this definition having the same meaning as in that paragraph),”.

*Occupational pension schemes: certificates etc. relating to minimum funding requirement*

**12.**—(1) In Article 58 of the Pensions Order (schedules of contributions), in paragraph (6) (a) (certification by actuary of adequacy of rates of contributions to meet minimum funding requirement)—

- (a) for the words Form “on the date” to “is met,” substitute “it appears to him that the minimum funding requirement was met on the prescribed date,”; and
- (b) omit the words “continue to”.

(2) In Article 59 of that Order (determination of contributions: supplementary), in paragraph (3) (duty of trustees etc. to prepare report of failure to meet minimum funding requirement), after “they must” insert “, within such further period as may be prescribed,”.

*Excess assets of wound-up schemes*

**13.** In Article 77(5) of the Pensions Order (penalties for trustees who deal improperly with excess assets of wound-up occupational pension schemes), for “Article 3 applies” substitute “Articles 3 and 10 apply”.

*Pensionable service*

**14.** In Article 121(3) of the Pensions Order (matters to be disregarded in determining “pensionable service”), at the end add—

“but, in its application for the purposes of Article 51, sub-paragraph (b) does not affect the operation of any rules of the scheme by virtue of which a period of service is to be rounded up or down by a period of less than a month.”

*Occupational pension schemes: rights of employee who is director of corporate trustee*

15.—(1) The Employment Rights (Northern Ireland) Order 1996 is amended as follows.

(2) In Article 69 (employee who is a trustee of a pension scheme not to be subject to detriment referable to his carrying out his functions as such a trustee), after paragraph (2) insert—

“(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).”

(3) In Article 86 (right to time off for pension scheme trustees), after paragraph (2) insert—

“(2A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).”

(4) In Article 133 (unfair dismissal of pension scheme trustees), after paragraph (1) insert—

“(1A) This Article applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).”

## SCHEDULE 3

Article 18.

### PENSION SHARING ORDERS

1. The Matrimonial Causes Order is amended as follows.

2. In Article 2 (interpretation), in paragraph (3), for “and” at the end of sub-paragraph (a) there shall be substituted—

“(aa) references to pension sharing orders shall be construed in accordance with Article 23A; and”.

3. After Article 23 there is inserted—

#### “Pension sharing orders

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

(a) provides that one party's—

(i) shareable rights under a specified pension arrangement, or

(ii) shareable state scheme rights,

be subject to pension sharing for the benefit of the other party, and

(b) specifies the percentage value to be transferred.

(2) In paragraph (1)—

- (a) the reference to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under Chapter I of Part IV of the Welfare Reform and Pensions Act 1999, and
- (b) the reference to shareable state scheme rights is to rights in relation to which pension sharing is available under Chapter II of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999, or under Chapter II of Part IV of the Welfare Reform and Pensions Act 1999, and
- (c) “party” means a party to a marriage.”

4. In Article 26 (property adjustment orders in connection with divorce proceedings, etc.), in subparagraphs (c) and (d) of paragraph (1), there is added at the end “, other than one in the form of a pension arrangement (within the meaning of Article 27D)”.

5. After Article 26 there is inserted—

**“Pension sharing orders in connection with divorce proceedings, etc.**

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

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

(3) A pension sharing order under this Article may not be made in relation to a pension arrangement which—

- (a) is the subject of a pension sharing order in relation to the marriage, or
- (b) has been the subject of pension sharing between the parties to the marriage.

(4) A pension sharing order under this Article may not be made in relation to shareable state scheme rights if—

- (a) such rights are the subject of a pension sharing order in relation to the marriage, or
- (b) such rights have been the subject of pension sharing between the parties to the marriage.

(5) A pension sharing order under this Article may not be made in relation to the rights of a person under a pension arrangement if there is in force a requirement imposed by virtue of Article 27B or 27C which relates to benefits or future benefits to which he is entitled under the pension arrangement.

**Pension sharing orders: duty to stay**

**26B.**—(1) No pension sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.

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

*Pension sharing orders: apportionment of charges 26C. If a pension sharing order relates to rights under a pension arrangement, the court may include in the order provision about the apportionment between the parties of any charge under Article 38 of the Welfare*

*Reform and Pensions (Northern Ireland) Order 1999 (charges in respect of pension sharing costs), or under section 41 of the Welfare Reform and Pensions Act 1999.”.*

6. In Article 27 (matters to which the court is to have regard in deciding how to exercise its powers with respect to financial relief)—

(a) in paragraph (1), for “Article 25 or 26” there is substituted

“Article 25, 26 or 26A”, and

(b) in paragraph (2), for “or 26” there is substituted “, 26 or 26A”.

7. In Article 27A(1) (court’s duty to consider desirability of exercising power to achieve clean break), for “or 26” there is substituted “, 26 or 26A”.

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

(2) In paragraph (2), at the end there is added—

“(f) a pension sharing order under Article 26A which is made at a time before the decree has been made absolute.”.

(3) After paragraph (4) there is inserted—

“(4A) In relation to an order which falls within sub-paragraph (f) of paragraph (2) (“the paragraph (2) order”)—

(a) the powers conferred by this Article may be exercised—

(i) only on an application made before the paragraph (2) order has or, but for sub-paragraph (b), would have taken effect; and

(ii) only if, at the time when the application is made, the decree has not been made absolute; and

(b) an application made in accordance with sub-paragraph (a) prevents the paragraph (2) order from taking effect before the application has been dealt with.

(4B) No variation of a pension sharing order shall be made so as to take effect before the decree is made absolute.

(4C) The variation of a pension sharing order prevents the order taking effect before the end of such period after the making of the variation as may be prescribed by regulations made by the Lord Chancellor.

(4D) Regulations under paragraph (4C) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.

(4) In paragraph (5) after “property adjustment order” there is inserted

“or pension sharing order”.

9. In Article 35A (consent orders), in paragraph (3), in the definition of

“order for financial relief”, after “26” there is inserted “, 26A”.

10. In Article 39 (avoidance of transactions intended to prevent or reduce financial relief), in paragraph (1), after “26,” there is inserted

“26A,”.

11. After Article 42 there is inserted—

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

**42A.**—(1) Paragraphs (2) and (3) apply where an appeal against a pension sharing order is begun on or after the day on which the order takes effect.

(2) If the pension sharing order relates to a person’s rights under a pension arrangement, the appeal court may not set aside or vary the order if the person responsible for the pension arrangement has acted to his detriment in reliance on the taking effect of the order.

(3) If the pension sharing order relates to a person’s shareable state scheme rights, the appeal court may not set aside or vary the order if the Department of Health and Social Services has acted to its detriment in reliance on the taking effect of the order.

(4) In determining for the purposes of paragraph (2) or (3) whether a person or the Department has acted to his or its detriment in reliance on the taking effect of the order, the appeal court may disregard any detriment which in its opinion is insignificant.

(5) Where paragraph (2) or (3) applies, the appeal court may make such further orders (including one or more pension sharing orders) as it thinks fit, for the purpose of putting the parties in the position it considers appropriate.

(6) Article 26B only applies to a pension sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.

(7) In paragraph (2), the reference to the person responsible for the pension arrangement is to be read in accordance with Article 27D(4).”.

SCHEDULE 4

Article 19.

AMENDMENTS OF ARTICLES 27B TO 27D OF THE MATRIMONIAL CAUSES ORDER

**1.**—(1) Article 27B of the Matrimonial Causes Order is amended as follows.

(2) In paragraph (1), for “scheme”, wherever occurring, there is substituted “arrangement”.

(3) Paragraph (2) ceases to have effect.

(4) In paragraph (3), for “scheme” there is substituted “arrangement”.

(5) In paragraph (4)—

(a) for “scheme”, wherever occurring, there is substituted “arrangement”, and

(b) for “trustees or managers of” there is substituted “person responsible for”.

(6) For paragraph (5) there is substituted—

“(5) The order must express the amount of any payment required to be made by virtue of paragraph (4) as a percentage of the payment which becomes due to the party with pension rights.”.

(7) In paragraph (6)—

(a) for “trustees or managers”, in the first place where those words occur, there is substituted “person responsible for the arrangement”, and

(b) for “the trustees or managers”, in the second place where those words occur, there is substituted “his”.

(8) In paragraph (7)—

- (a) for the words from “may require any” to “those benefits” there is substituted “has a right of commutation under the arrangement, the order may require him to exercise it to any extent”,
  - (b) for “the payment of any amount commuted” there is substituted “any payment due in consequence of commutation”, and
  - (c) for “scheme” there is substituted “arrangement”.
- (9) After that paragraph there is added—
- “(8) The power conferred by paragraph (7) may not be exercised for the purpose of commuting a benefit payable to the party with pension rights to a benefit payable to the other party.
  - (9) The power conferred by paragraph (4) or (7) may not be exercised in relation to a pension arrangement which—
    - (a) is the subject of a pension sharing order in relation to the marriage, or
    - (b) has been the subject of pension sharing between the parties to the marriage.
  - (10) In paragraph (1), references to benefits under a pension arrangement include any benefits by way of pension, whether under a pension arrangement or not.”.

**2.—**(1) Article 27C of that Order is amended as follows.

- (2) In paragraph (1), for “scheme” there is substituted “arrangement”.
- (3) In paragraph (2)—
  - (a) in sub-paragraph (a)—
    - (i) for the words from “trustees” to “have” there is substituted “person responsible for the pension arrangement in question has”, and
    - (ii) for “them” there is substituted “him”, and
  - (b) in sub-paragraph (c), for “trustees or managers of the pension scheme” there is substituted “person responsible for the pension arrangement”.
- (4) In paragraph (3)—
  - (a) for “trustees or managers” there is substituted “person responsible for the arrangement”, and
  - (b) for “the trustees, or managers,” there is substituted “his”.
- (5) At the end there is added—
  - “(4) The powers conferred by this Article may not be exercised in relation to a pension arrangement which—
    - (a) is the subject of a pension sharing order in relation to the marriage, or
    - (b) has been the subject of pension sharing between the parties to the marriage.”.

**3.—**(1) Article 27D of that Order is amended as follows.

- (2) For paragraph (1) there is substituted—
  - “(1) Where—
    - (a) an order made under Article 25 by virtue of Article 27B or 27C imposes any requirement on the person responsible for a pension arrangement (“the first arrangement”) and the party with pension rights acquires rights under another pension arrangement (“the new arrangement”) which are derived (directly or indirectly) from the whole of his rights under the first arrangement, and

- (b) the person responsible for the new arrangement has been given notice in accordance with regulations made by the Lord Chancellor,  
the order shall have effect as if it had been made instead in respect of the person responsible for the new arrangement.”.
- (3) In paragraph (2)—
- (a) for “Regulations may” there is substituted “The Lord Chancellor may by regulations”,
- (b) in sub-paragraph (a) for “trustees or managers of a pension scheme” there is substituted “person responsible for a pension arrangement”,
- (c) after that sub-paragraph there is inserted—
- “(aa) make, in relation to payment under a mistaken belief as to the continuation in operation of a provision included by virtue of Article 27B or 27C in an order under Article 25, provision about the rights or liabilities of the payer, the payee or the person to whom the payment was due;”,
- (d) after sub-paragraph (b) there is inserted—
- “(ba) make provision for the person responsible for a pension arrangement to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27B or 27C;”,
- (e) sub-paragraphs (c) and (d) are omitted,
- (f) for sub-paragraph (e) there is substituted—
- “(e) make provision about calculation and verification in relation to the valuation of—
- (i) benefits under a pension arrangement, or
- (ii) shareable state scheme rights,
- for the purposes of the court’s functions in connection with the exercise of any of its powers under this Part.”, and
- (g) the words after sub-paragraph (e) are omitted.
- (4) After that paragraph there is inserted—
- “(2A) Regulations under paragraph (2)(e) may include—
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person, and
- (b) provision by reference to regulations under Article 27 or 46(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.
- (2B) Regulations under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.”.
- (5) For paragraphs (3) and (4) there is substituted—
- “(3) In this Article and Articles 27B and 27C—
- “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;
- “the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension arrangement and
- “the other party” means the other party to the marriage;
- “pension arrangement” means—
- (a) an occupational pension scheme,

- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“personal pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;

“prescribed” means prescribed by regulations;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“shareable state scheme rights” has the same meaning as in Article 23A(1); and

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(4) In this Article and Articles 27B and 27C, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement”, the provider of the annuity, and
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.”.

## SCHEDULE 5

Article 32.

### PENSION CREDITS: MODE OF DISCHARGE

#### *Funded pension schemes*

1.—(1) This paragraph applies to a pension credit which derives from—

- (a) a funded occupational pension scheme, or
- (b) a personal pension scheme.

(2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit—

- (a) with his consent, or
- (b) in accordance with regulations made by the Department.

(3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Department.

(4) For the purposes of sub-paragraph (2), no account is to be taken of the consent of the person entitled to the pension credit unless—

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under sub-paragraph (3), or
- (b) it is not withdrawn within 7 days of receipt of such notice.

#### *Unfunded public service pension schemes*

**2.—**(1) This paragraph applies to a pension credit which derives from an occupational pension scheme which is—

- (a) not funded, and
- (b) a public service pension scheme.

(2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit.

(3) If such a scheme as is mentioned in sub-paragraph (1) is closed to new members, the appropriate authority in relation to that scheme may by regulations specify another public service pension scheme as an alternative to it for the purposes of this paragraph.

(4) Where the trustees or managers of a scheme in relation to which an alternative is specified under sub-paragraph (3) are subject to liability in respect of a pension credit, they may—

- (a) discharge their liability in respect of the credit by securing that appropriate rights are conferred on the person entitled to the credit by the trustees or managers of the alternative scheme, and
- (b) for the purpose of so discharging their liability, require the trustees or managers of the alternative scheme to take such steps as may be required.

(5) In sub-paragraph (3), “the appropriate authority”, in relation to a public service pension scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the scheme.

#### *Other unfunded occupational pension schemes*

**3.—**(1) This paragraph applies to a pension credit which derives from an occupational pension scheme which is—

- (a) not funded, and
- (b) not a public service pension scheme.

(2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit.

(3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Department.

#### *Other pension arrangements*

4.—(1) This paragraph applies to a pension credit which derives from—

- (a) a retirement annuity contract,
- (b) an annuity or insurance policy purchased or transferred for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, or
- (c) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit.

(2) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may discharge his liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Department.

(3) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may discharge his liability in respect of the credit by entering into an annuity contract with the person entitled to the credit if the contract is not disqualified as a destination for the credit.

(4) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may, in such circumstances as the Department may prescribe by regulations, discharge his liability in respect of the credit by assuming an obligation to provide an annuity for the person entitled to the credit.

(5) In sub-paragraph (1)(c), “pension credit” includes a credit under section 29(1)(b) of the Welfare Reform Act.

#### *Appropriate rights*

5. For the purposes of this Schedule, rights conferred on the person entitled to a pension credit are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the order, or provision, under which the credit arises takes effect, and

- (b) their value, when calculated in accordance with regulations made by the Department, equals the amount of the credit.

*Qualifying arrangements*

- 6.—(1) The following are qualifying arrangements for the purposes of this Schedule—
- (a) an occupational pension scheme,
  - (b) a personal pension scheme,
  - (c) an appropriate annuity contract,
  - (d) an appropriate policy of insurance, and
  - (e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern S.R. 1996/618. Ireland) 1996.
- (2) An annuity contract or policy of insurance is appropriate for the purposes of sub-paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—
- (a) is carrying on ordinary long-term insurance business in the United Kingdom or any other member State, and
  - (b) satisfies such requirements as the Department may prescribe by regulations.
- (3) In this paragraph “ordinary long-term insurance business” has the same meaning as in the Insurance Companies Act 1982.

*Disqualification as destination for pension credit*

- 7.—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988, an arrangement is disqualified as a destination for the credit unless—
- (a) it is also approved for those purposes, or
  - (b) it satisfies such requirements as the Department may prescribe by regulations.
- (2) If the rights by reference to which the amount of a pension credit is determined are or include contracted-out rights or safeguarded rights, an arrangement is disqualified as a destination for the credit unless—
- (a) it is of a description prescribed by the Department by regulations, and
  - (b) it satisfies such requirements as the Department may so prescribe.
- (3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Department, equals the credit.
- (4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Department may prescribe by regulations.
- (5) The requirements which may be prescribed under sub-paragraph (1)(b) include, in particular, requirements of the Inland Revenue.
- (6) In sub-paragraph (2)—
- “contracted-out rights” means such rights under, or derived from—
- (a) an occupational pension scheme contracted-out by virtue of section 5(2) or (3) of the Pension Schemes Act, or

- (b) a personal pension scheme which is an appropriate scheme for the purposes of that Act, as the Department may prescribe by regulations;  
 “safeguarded rights” has the meaning given by section 64A of the Pension Schemes Act.

*Adjustments to amount of pension credit*

**8.—(1)** If—

- (a) a pension credit derives from an occupational pension scheme,  
 (b) the scheme is one to which Article 56 of the Pensions Order (minimum funding requirement for funded salary related schemes) applies,  
 (c) the scheme is underfunded on the valuation day, and  
 (d) such circumstances as the Department may prescribe by regulations apply,

paragraph 1(3) shall have effect in relation to the credit as if the reference to the amount of the credit were to such lesser amount as may be determined in accordance with regulations made by the Department.

(2) Whether a scheme is underfunded for the purposes of sub-paragraph (1)(c) shall be determined in accordance with regulations made by the Department.

(3) For the purposes of that provision, the valuation day is the day by reference to which the cash equivalent on which the amount of the pension credit depends falls to be calculated.

**9.** If—

- (a) a person’s shareable rights under a pension arrangement have become subject to a pension debit, and  
 (b) the person responsible for the arrangement makes a payment which is referable to those rights without knowing of the pension debit,

this Schedule shall have effect as if the amount of the corresponding pension credit were such lesser amount as may be determined in accordance with regulations made by the Department.

**10.** The Department may by regulations make provision for paragraph 1(3), 3(3) or 4(2) to have effect, where payment is made after the end of the implementation period for the pension credit, as if the reference to the amount of the credit were to such larger amount as may be determined in accordance with the regulations.

*General*

**11.** Liability in respect of a pension credit shall be treated as discharged if the effect of paragraph 8(1) or 9 is to reduce it to zero.

**12.** Liability in respect of a pension credit may not be discharged otherwise than in accordance with this Schedule.

**13.** Regulations under paragraph 5(b) or 7(3) may provide for calculation of the value of rights in accordance with guidance from time to time prepared by a person specified in the regulations.

**14.** In this Schedule—

- “funded”, in relation to an occupational pension scheme, means that the scheme meets its liabilities out of a fund accumulated for the purpose during the life of the scheme;  
 “public service pension scheme” has the same meaning as in the Pension Schemes Act.

SCHEDULE 6

Article 47.

EFFECT OF STATE SCHEME PENSION DEBITS AND CREDITS

1. The Contributions and Benefits Act is amended as follows.
2. After section 45A there is inserted—

**“Reduction of additional pension in Category A retirement pension: pension sharing.**

**45B.**—(1) The weekly rate of the additional pension in a Category A retirement pension shall be reduced as follows in any case where—

- (a) the pensioner has become subject to a state scheme pension debit, and
- (b) the debit is to any extent referable to the additional pension.

(2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount.

(3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.

(4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the additional pension.

(5) The pension referred to above is a notional pension for the pensioner by virtue of section 44(3)(b) above which becomes payable on the later of—

- (a) his attaining pensionable age, and
- (b) the valuation day.

(6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.

(7) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.

(8) In this section—

“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;

“state scheme pension debit” means a debit under Article 46(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (debit for the purposes of this Part of this Act);

“valuation day” means the day on which the pensioner became subject to the state scheme pension debit.”.

3. After section 55 there is inserted—

*“Shared additional pension***Shared additional pension.**

**55A.**—(1) A person shall be entitled to a shared additional pension if he is—

- (a) over pensionable age, and
- (b) entitled to a state scheme pension credit.

(2) A person’s entitlement to a shared additional pension shall continue throughout his life.

(3) The weekly rate of a shared additional pension shall be the appropriate weekly amount, unless the pensioner’s entitlement to the state scheme pension credit arose before the final relevant year, in which case it shall be that amount multiplied by the relevant revaluation percentage.

(4) The appropriate weekly amount for the purposes of subsection (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pensioner’s entitlement, or prospective entitlement, to the shared additional pension is equal to the state scheme pension credit.

(5) The relevant revaluation percentage for the purposes of that subsection is the percentage specified, in relation to earnings factors for the tax year in which the entitlement to the state scheme pension credit arose, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.

(6) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.

(7) In this section—

“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;

“state scheme pension credit” means a credit under Article 46(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (credit for the purposes of this Part of this Act);

“valuation day” means the day on which the pensioner becomes entitled to the state scheme pension credit.

**Reduction of shared additional pension: pension sharing.**

**55B.**—(1) The weekly rate of a shared additional pension shall be reduced as follows in any case where—

- (a) the pensioner has become subject to a state scheme pension debit, and
- (b) the debit is to any extent referable to the pension.

(2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the pension shall be reduced by the appropriate weekly amount.

(3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.

(4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the shared additional pension.

(5) The pension referred to above is a notional pension for the pensioner by virtue of section 55A above which becomes payable on the later of—

- (a) his attaining pensionable age, and
- (b) the valuation day.

(6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.

(7) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.

(8) In this section—

“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;

“state scheme pension debit”, means a debit under Article 46(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (debit for the purposes of this Part of this Act);

“valuation day” means the day on which the pensioner became subject to the state scheme pension debit.

#### **Increase of shared additional pension where entitlement is deferred.**

**55C.**—(1) For the purposes of this section, a person’s entitlement to a shared additional pension is deferred—

- (a) where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement to such a pension is deferred, if and so long as his entitlement to such a pension is deferred, and
- (b) otherwise, if and so long as he does not become entitled to the shared additional pension by reason only of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim),

and, in relation to a shared additional pension, “period of deferment” shall be construed accordingly.

(2) Where a person’s entitlement to a shared additional pension is deferred, the rate of his shared additional pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under subsection (3) below, but only if that amount is enough to increase the rate of the pension by at least one per cent.

(3) A person is entitled to an increment under this subsection for each complete incremental period in his period of enhancement.

(4) The amount of the increment for an incremental period shall be 1/7th per cent. of the weekly rate of the shared additional pension to which the person would have been entitled for the period if his entitlement had not been deferred.

(5) Amounts under subsection (4) above shall be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny.

(6) Where an amount under subsection (4) above would, apart from this subsection, be a sum less than 1/2p, the amount shall be taken to be zero, notwithstanding any other provision of this Act, the Pensions (Northern Ireland) Order 1995 or the Administration Act.

(7) Where one or more orders have come into operation under section 132 of the Administration Act during the period of enhancement, the rate for any incremental period

shall be determined as if the order or orders had come into operation before the beginning of the period of enhancement.

(8) The sums which are the increases in the rates of shared additional pensions under this section are subject to alteration by order made by the Department under section 132 of the Administration Act.

(9) In this section—

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

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

- (a) begins on the same day as the period of deferment in question, and
- (b) ends on the same day as that period or, if earlier, on the day before the 5th anniversary of the beginning of that period.”.

## SCHEDULE 7

Article 56.

### JOINT CLAIMS FOR JOBSEEKER'S ALLOWANCE

#### *Jobseekers (Northern Ireland) Order 1995 (NI 15)*

1. The Jobseekers (Northern Ireland) Order 1995 has effect subject to the following amendments.

2.—(1) Article 2 (interpretation) is amended as follows.

(2) In the definition of “claimant”, at the end insert “except that in relation to a joint-claim couple claiming a joint-claim jobseeker’s allowance it means the couple, or each member of the couple, as the context requires;”.

(3) After the definition of “jobseeking period” insert—

““joint-claim couple” and “joint-claim jobseeker’s allowance” have the meanings given by Article 3(4);”.

(4) After the definition of “National Insurance Fund” insert—

““the nominated member”, in relation to a joint-claim couple, shall be construed in accordance with Article 5B(4);”.

3.—(1) Article 3 (entitlement to jobseeker’s allowance) is amended as follows.

(2) In paragraph (2) (conditions of entitlement), for sub-paragraph (d) (claimant must satisfy conditions set out in Article 4 or 5) substitute—

“(d) satisfies the conditions set out in Article 4;”.

(3) After paragraph (2) insert—

“(2A) Subject to the provisions of this Order, a claimant who is not a member of a joint-claim couple is entitled to a jobseeker’s allowance if he satisfies—

- (a) the conditions set out in sub-paragraphs (a) to (c) and (e) to (i) of paragraph (2); and
- (b) the conditions set out in Article 5.

(2B) Subject to the provisions of this Order, a joint-claim couple are entitled to a jobseeker's allowance if—

- (a) a claim for the allowance is made jointly by the couple;
- (b) each member of the couple satisfies the conditions set out in sub-paragraphs (a) to (c) and (e) to (i) of paragraph (2); and
- (c) the conditions set out in Article 5A are satisfied in relation to the couple.

(2C) Regulations may prescribe circumstances in which paragraph (2A) is to apply to a claimant who is a member of a joint-claim couple.

(2D) Regulations may, in respect of cases where a person would (but for the regulations) be a member of two or more joint-claim couples, make provision for only one of those couples to be a joint-claim couple; and the provision which may be so made includes provision for the couple which is to be the joint-claim couple to be nominated—

- (a) by the persons who are the members of the couples, or
- (b) in default of one of the couples being so nominated, by the Department.”.

(4) In paragraph (4)—

- (a) in the definition of “an income-based jobseeker's allowance”, at the end insert “or a joint-claim jobseeker's allowance;” and
- (b) after that definition insert—

““a joint-claim couple” means a married or unmarried couple who—

- (a) are not members of any family whose members include a person in respect of whom a member of the couple is entitled to child benefit, and
- (b) are of a prescribed description;

“a joint-claim jobseeker's allowance” means a jobseeker's allowance entitlement to which arises by virtue of paragraph (2B).”.

4. In Article 4(1) (the contribution-based conditions), for “Article 3(2)(d)(i)” substitute “Article 3(2)(d)”.

5.—(1) In paragraph (1) of Article 5 (the income-based conditions), for “Article 3(2)(d)(ii)” substitute “Article 3(2A)(b)”.

(2) After that Article insert—

**“The conditions for claims by joint-claim couples**

5A.—(1) The conditions referred to in Article 3(2B)(c) are—

- (a) that the income of the joint-claim couple does not exceed the applicable amount (determined in accordance with regulations under Article 6) or the couple have no income;
- (b) that no member of a family of which the couple are members is entitled to income support;
- (c) that no member of any such family (other than the couple) is entitled to an income-based jobseeker's allowance;
- (d) that at least one member of the couple has reached the age of 18; and
- (e) that if only one member of the couple has reached the age of 18, the other member of the couple is a person—
  - (i) in respect of whom a direction under Article 18 is in force; or

(ii) who has, in prescribed circumstances to be taken into account for a prescribed period, reached the age of 16.

(2) Paragraphs (2) and (4) of Article 5 shall apply in relation to a member of the couple to whom paragraph (1)(e)(i) or (ii) applies as they apply in relation to a claimant to whom paragraph (1)(f)(ii) or (iii) of that Article applies.

(3) In paragraph (1)(e)(ii) “period” shall be construed in accordance with Article 5(3).

**Joint-claim couples: the nominated member**

**5B.**—(1) Where a joint-claim couple make a claim for a joint-claim jobseeker’s allowance, they may nominate one of them as the member of the couple to whom the allowance is to be payable.

(2) In default of one of them being so nominated, the allowance shall be payable to whichever of them is nominated by the Department.

(3) Paragraphs (1) and (2) have effect subject to Article 6A(4) and (7).

(4) In this Order references to the nominated member of a joint-claim couple are, except where Article 22A(7) applies, to the member of the couple nominated under paragraph (1) or (2); and where Article 22A(7) applies, references to the nominated member of such a couple are to the member of the couple to whom Article 22A(7) provides for the allowance to be payable.

(5) Nothing in this Article or Article 22A(7) affects the operation of any statutory provision by virtue of which any amount of the allowance is required or authorised to be paid to someone other than the nominated member of the couple.”.

**6.**—(1) Article 6 (amount of jobseeker’s allowance) is amended as follows.

(2) In paragraph (3) (amount payable in respect of an income-based jobseeker’s allowance), after “allowance” insert “(other than a joint-claim jobseeker’s allowance)”.

(3) After paragraph (3) insert—

“(3A) In the case of a joint-claim jobseeker’s allowance, the amount payable in respect of a joint-claim couple shall be—

- (a) if the couple have no income, the applicable amount;
- (b) if the couple have an income, the amount by which the applicable amount exceeds the couple’s income.”.

(4) After paragraph (11) insert—

“(11A) In paragraphs (6) to (11) “claimant” does not include—

- (a) a joint-claim couple, or
- (b) a member of such a couple (other than a person to whom regulations under Article 3(2C) apply);

but Article 6A, which contains corresponding provisions relating to joint-claim couples, applies instead.”.

**7.** After Article 6 insert—

**“Amount payable in respect of joint-claim couple**

**6A.**—(1) This Article applies where—

- (a) a joint-claim couple are entitled to a joint-claim jobseeker’s allowance, and

- (b) one or each of the members of the couple is in addition entitled to a contribution-based jobseeker's allowance;

and in such a case the provisions of this Article have effect in relation to the couple in place of Article 6(3A).

(2) If a joint-claim couple falling within paragraph (1) have no income, the amount payable in respect of the couple by way of a jobseeker's allowance shall be—

- (a) the applicable amount, if that is greater than the couple's personal rate; and
- (b) the couple's personal rate, if it is not.

(3) Where the amount payable in accordance with paragraph (2) is the applicable amount, the amount payable in respect of the couple by way of a jobseeker's allowance shall be taken to consist of two elements—

- (a) one being an amount equal to the couple's personal rate; and
- (b) the other being an amount equal to the excess of the applicable amount over the couple's personal rate.

(4) Where the amount payable in accordance with paragraph (2) is the couple's personal rate, then—

- (a) if each member of the couple is entitled to a contribution-based jobseeker's allowance, an amount equal to the member's own personal rate shall be payable in respect of the member by way of such an allowance;
- (b) if only one of them is so entitled, an amount equal to that member's personal rate shall be payable in respect of the member by way of such an allowance;

and in either case nothing shall be payable in respect of the couple by way of a joint-claim jobseeker's allowance.

(5) If a joint-claim couple falling within paragraph (1) have an income, the amount payable in respect of the couple by way of a jobseeker's allowance shall be—

- (a) the amount by which the applicable amount exceeds the couple's income, if the amount of that excess is greater than the couple's personal rate; and
- (b) the couple's personal rate, if it is not.

(6) Where the amount payable in accordance with paragraph (5) is the amount by which the applicable amount exceeds the couple's income, the amount payable in respect of the couple by way of a jobseeker's allowance shall be taken to consist of two elements—

- (a) one being an amount equal to the couple's personal rate; and
- (b) the other being an amount equal to the amount by which the difference between the applicable amount and the couple's income exceeds the couple's personal rate.

(7) Where the amount payable in accordance with paragraph (5) is the couple's personal rate, paragraph (4) shall apply as it applies in a case where the amount payable in accordance with paragraph (2) is that rate.

(8) The element of a jobseeker's allowance mentioned in paragraph (3)(a) and that mentioned in paragraph (6)(a) shall be treated, for the purpose of identifying the source of the allowance, as attributable—

- (a) in a case where only one member of the joint-claim couple is entitled to a contribution-based jobseeker's allowance, to that member's entitlement to such an allowance; and
- (b) in a case where each member of the couple is entitled to a contribution-based jobseeker's allowance, rateably according to their individual entitlements to such an allowance.

(9) The element of a jobseeker's allowance mentioned in paragraph (3)(b) and that mentioned in paragraph (6)(b) shall be treated, for the purpose of identifying the source of the allowance, as attributable to the couple's entitlement to a joint-claim jobseeker's allowance.

(10) In this Article "the couple's personal rate", in relation to a joint-claim couple, means

- (a) where only one member of the couple is entitled to a contribution-based jobseeker's allowance, that member's personal rate;
- (b) where each member of the couple is entitled to such an allowance, the aggregate of their personal rates."

**8.—**(1) Article 10 (power to make regulations requiring attendance etc.) is amended as follows.

(2) In paragraph (1), after "claimant" insert "(other than a joint-claim couple claiming a joint-claim jobseeker's allowance)".

(3) After paragraph (1) insert—

"(1A) Regulations may make provision—

- (a) for requiring each member of a joint-claim couple claiming a joint-claim jobseeker's allowance to attend at such place and such time as the Department, or any other Department, may specify;
- (b) for requiring a member of such a couple to provide information and such evidence as may be prescribed as to his circumstances, his availability for employment and the extent to which he is actively seeking employment;
- (c) for requiring such a couple to jointly provide information and such evidence as may be prescribed as to the circumstances of each or either member of the couple, the availability for employment of each or either member of the couple and the extent to which each or either member of the couple is actively seeking employment;
- (d) where any requirement to provide information or evidence is imposed on such a couple by virtue of sub-paragraph (c), for the joint obligation of the couple to be capable of being discharged by the provision of the information or evidence by one member of the couple."

(4) In paragraph (2), after "Regulations under paragraph (1)" insert "or (1A)".

(5) In paragraph (2)(a) (cases where entitlement to allowance may cease on account of non-compliance), after "in the case of a claimant who" insert ", or (as the case may be) a joint-claim couple claiming a joint-claim jobseeker's allowance a member of which,".

(6) In paragraph (2)(b) (cases where entitlement to allowance may cease by reference to the time expired since the claimant's last attendance)—

- (a) after "he" insert "or, as the case may be, a member of the joint-claim couple"; and
- (b) after "paragraph (1)(a)" insert "or (1A)(a)".

(7) For sub-paragraph (c) of paragraph (2) (provision for entitlement not to cease where good cause shown) substitute—

- "(c) provide for entitlement not to cease if the claimant or (as the case may be) either member of the joint-claim couple shows, within a prescribed period of the failure to comply on the part of the claimant or (as the case may be) a member of the couple, that the claimant or (as the case may be) the defaulting member of the couple had good cause for that failure; and"

9. In Article 11(12) (jobseeker's agreement ends when allowance ends), at the end insert "or to a joint-claim couple of which he is a member."

10.—(1) Article 15 (income and capital for the purposes of an income-based allowance) is amended as follows.

(2) After paragraph (2) insert—

"(2A) Paragraphs (1) and (2) do not apply as regards a joint-claim jobseeker's allowance; but a joint-claim couple shall not be entitled to a joint-claim jobseeker's allowance if the couple's capital, or a prescribed part of it, exceeds the prescribed amount.

(2B) Where a joint-claim couple claim a joint-claim jobseeker's allowance—

- (a) the couple's income and capital includes the separate income and capital of each of them; and
- (b) the income and capital of any other person who is a member of any family of which the couple are members shall, except in prescribed circumstances, be treated as income and capital of the couple."

(3) In paragraph (3) (treating capital as income), after "paragraph (1)" insert "or (2A)".

11. After Article 17 (effect on family of one member being involved in a trade dispute) insert—

**"Trade disputes: joint-claim couples**

17A.—(1) Articles 16 and 17 shall, in relation to a joint-claim couple claiming a joint-claim jobseeker's allowance, apply in accordance with this Article.

(2) Where each member of the couple is prevented by Article 16 from being entitled to a jobseeker's allowance, the couple are not entitled to a joint-claim jobseeker's allowance.

(3) But where only one member of the couple is prevented by that Article from being entitled to a jobseeker's allowance, the couple are not for that reason alone prevented from being entitled to a joint-claim jobseeker's allowance.

(4) Article 17(1) does not have effect in relation to the couple but, except in prescribed circumstances, Article 17(2) applies for the purposes of calculating the couple's entitlement to a joint-claim jobseeker's allowance where—

- (a) a member of the couple, or
- (b) any other person who is a member of any family of which the couple are members, is, or would be, prevented by Article 16 from being entitled to a jobseeker's allowance.

(5) Where Article 17(2) applies in relation to the couple by virtue of paragraph (4), that provision and Article 17(4) apply with the following modifications—

- (a) references to the claimant are to be taken as references to the couple;
- (b) references to "A" are to the person mentioned in paragraph (4)(a) or (b);
- (c) Article 17(2)(b) has effect as if for "where the claimant and A are a married or unmarried couple," there were substituted "where A is a member of the couple,"; and
- (d) Article 17(2)(c)(ii) has effect as if for "of his family" there were substituted "of any family of which the couple are members".

12. In Article 19 (reduction of allowance payable to young persons), after paragraph (1) insert—

"(1A) Regulations may provide for the amount of a joint-claim jobseeker's allowance payable in respect of any joint-claim couple where a member of the couple is a young person to whom this Article applies to be reduced—

- (a) in such circumstances,
- (b) by such a percentage, and
- (c) for such a period,

as may be prescribed.”.

13. In Article 21 (allowance not payable though conditions for entitlement are satisfied), after paragraph (1) insert—

“(1A) Subject to Article 22A(9), this Article does not apply as regards a joint-claim jobseeker’s allowance (but Articles 22A and 22B make, in relation to such an allowance, provision corresponding to that made by this Article and Article 22).”.

14. After Article 22 insert—

**“Denial or reduction of joint-claim jobseeker’s allowance**

**22A.—**(1) Where this Article applies to a member of a joint-claim couple, that member of the couple shall be subject to sanctions for the purposes of this Article.

(2) This Article applies to a member of a joint-claim couple if that member of the couple

- (a) has, without good cause, refused or failed to carry out any jobseeker’s direction which was reasonable, having regard to his circumstances;
- (b) has, without good cause—
  - (i) neglected to avail himself of a reasonable opportunity of a place on a training scheme or employment programme;
  - (ii) after a place on such a scheme or programme has been notified to him by an employment officer as vacant or about to become vacant, refused or failed to apply for it or to accept it when offered to him;
  - (iii) given up a place on such a scheme or programme; or
  - (iv) failed to attend such a scheme or programme on which he has been given a place;
- (c) has lost his place on such a scheme or programme through misconduct;
- (d) has lost his employment as an employed earner through misconduct;
- (e) has voluntarily left such employment without just cause;
- (f) has, without good cause, after a situation in any employment has been notified to him by an employment officer as vacant or about to become vacant, refused or failed to apply for it or to accept it when offered to him; or
- (g) has, without good cause, neglected to avail himself of a reasonable opportunity of employment.

(3) Where this Article applies to a member of a joint-claim couple by virtue of any of sub-paragraphs (a) to (c) of paragraph (2), the period for which he is to be subject to sanctions shall be such period (of at least one week but not more than 26 weeks) as may be prescribed.

(4) Where this Article applies to a member of a joint-claim couple by virtue only of any of sub-paragraphs (d) to (g) of paragraph (2), the period for which he is to be subject to sanctions shall be such period (of at least one week but not more than 26 weeks) as may be determined by the Department.

(5) Even though the conditions for entitlement to a joint-claim jobseeker’s allowance are satisfied in relation to a joint-claim couple—

- (a) the allowance shall not be payable for any period during which both members of the couple are subject to sanctions; and
  - (b) the amount of the allowance payable in respect of the couple for any period during which only one member of the couple is subject to sanctions shall be reduced to an amount calculated by the prescribed method (“the reduced amount”).
- (6) The method prescribed for calculating the reduced amount may, in particular, involve—
- (a) deducting amounts from, or making percentage reductions of, the amount which would be the amount of the allowance if neither member of the couple were subject to sanctions;
  - (b) disregarding portions of the applicable amount;
  - (c) treating amounts as being income or capital of the couple.
- (7) During any period for which the amount of a joint-claim jobseeker’s allowance payable in respect of a joint-claim couple is the reduced amount, the allowance shall be payable to the member of the couple who is not subject to sanctions.
- (8) Regulations may prescribe—
- (a) circumstances which the Department is to take into account, and
  - (b) circumstances which it is not to take into account,
- in determining a period under paragraph (4).
- (9) Paragraphs (7) to (10) of Article 21 apply for the purposes of this Article as for those of that Article but as if references in paragraph (10)(b) of that Article to the claimant were to the member of the joint-claim couple to whom paragraph (2)(a) applies.

### **Exemptions from Article 22A**

- 22B.**—(1) Article 22A shall not be taken to apply to a member of a joint-claim couple merely because he has refused to seek or accept employment in a situation which is vacant in consequence of a stoppage of work due to a trade dispute.
- (2) Article 22A does not apply to a member of a joint-claim couple by virtue of any of sub-paragraphs (a) to (c) of paragraph (2) of that Article if—
- (a) a direction is in force under Article 18 with respect to that member of the couple; and
  - (b) he has acted in such a way as to risk—
    - (i) having that direction revoked under paragraph (3)(b) of Article 18, or
    - (ii) having the amount of the couple’s entitlement to a joint-claim jobseeker’s allowance reduced by virtue of Article 19 because the condition in Article 19(3)(b) or (c) is established.
- (3) Regulations shall make provision for the purpose of enabling any person of a prescribed description to accept any employed earner’s employment without Article 22A applying to him by virtue of sub-paragraph (e) or (g) of paragraph (2) of that Article should he leave that employment voluntarily and without just cause at any time during a trial period.
- (4) In such circumstances as may be prescribed, a joint-claim jobseeker’s allowance shall be payable in respect of a joint-claim couple even though Article 22A(5)(a) prevents payment of such a jobseeker’s allowance to the couple.
- (5) A jobseeker’s allowance shall be payable by virtue of paragraph (4) only if the couple have complied with such requirements as to the provision of information as may be prescribed for the purposes of this paragraph.

(6) Regulations under paragraph (4) may, in particular, provide for a jobseeker's allowance payable by virtue of that paragraph to be—

- (a) payable at a prescribed rate;
- (b) payable for a prescribed period (which may differ from the period during which both members of the couple are subject to sanctions for the purposes of Article 22A).

(7) In paragraph (3), “trial period” has such meaning as may be prescribed.

(8) Regulations may make provision for determining, for the purposes of this Article, the day on which a person's employment is to be regarded as commencing.”.

**15.**—(1) Article 32 (termination of awards where another entitlement exists) is amended as follows.

(2) In paragraph (1) (termination of award of income support where there will be an entitlement to a jobseeker's allowance), after “or where he is a member of a married or unmarried couple his partner” insert “or the couple”.

(3) In paragraph (2) (termination of award of a jobseeker's allowance where there will be an entitlement to income support), after “or where he is a member of a married or unmarried couple his partner,” insert “or where the award was made to a couple a member of the couple,”.

**16.**—(1) Schedule 1 (jobseeker's allowance: supplementary provisions) is amended as follows.

(2) After paragraph 8 (entitlement without satisfying conditions) insert—

“**8A.**—(1) Regulations may prescribe circumstances in which a joint-claim couple may be entitled to a joint-claim jobseeker's allowance without each member of the couple satisfying all the conditions referred to in Article 3(2B)(b).

(2) Regulations may prescribe circumstances in which, and a period for which, a transitional case couple may be entitled to a joint-claim jobseeker's allowance without having jointly made a claim for it.

(3) In sub-paragraph (2)—

- (a) “a transitional case couple” means a joint-claim couple a member of which is entitled to an income-based jobseeker's allowance on the coming into operation of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999; and
- (b) “period” shall be construed in accordance with Article 5(3).”.

(3) In paragraph 9(a) (rate of allowance payable under paragraph 8), after “paragraph 8” insert “or 8A”.

(4) After paragraph 9 insert—

*“Continuity of claims and awards: persons ceasing to be a joint-claim couple*

**9A.**—(1) Regulations may make provision about the entitlement to a jobseeker's allowance of persons (“ex-members”) who cease to be members of a joint-claim couple.

(2) Regulations under this paragraph may, in particular, provide—

- (a) for treating each or either of the ex-members as having made any claim made by the couple or, alternatively, for any such claim to lapse;

- (b) for any award made in respect of the couple to be replaced by an award (a “replacement award”) in respect of each or either of the ex-members of the couple or, alternatively, for any such award to lapse.

*Continuity of claims and awards: persons again becoming a joint-claim couple*

**9B.**—(1) Regulations may make provision about the entitlement to a jobseeker’s allowance of persons (“ex-members”) who, having ceased to be members of a joint-claim couple, again become the members of a joint-claim couple.

- (2) Regulations under this paragraph may, in particular, provide—
  - (a) for any claim made by the ex-members when they were previously a joint-claim couple to be revived or otherwise given effect as a claim made by the couple;
  - (b) for any award made in respect of the ex-members when they were previously a joint-claim couple to be restored;
  - (c) for any such award, or any replacement award (within the meaning of paragraph 9A) made in respect of either of them, to be replaced by an award (a “new award”) in respect of the couple.

*Continuity of claims and awards: couple becoming a joint-claim couple*

**9C.**—(1) Regulations may make provision about the entitlement to a jobseeker’s allowance of persons who become members of a joint-claim couple as a result of the married or unmarried couple of which they are members becoming a joint-claim couple.

- (2) Regulations under this paragraph may, in particular, provide—
  - (a) for any claim made by either member of the couple before the couple became a joint-claim couple to be given effect as a claim made by the couple;
  - (b) for any award, or any replacement award (within the meaning of paragraph 9A), made in respect of either member of the couple before the couple became a joint-claim couple to be replaced by an award (a “new award”) in respect of the couple.

*Paragraphs 9A to 9C: supplementary*

**9D.**—(1) Regulations may provide, in relation to any replacement award (within the meaning of paragraph 9A) or new award (within the meaning of paragraph 9B or 9C)—

- (a) for the award to be of an amount determined in a prescribed manner;
- (b) for entitlement to the award to be subject to compliance with prescribed requirements as to the provision of information and evidence.

- (2) In paragraphs 9A to 9C and this paragraph—
  - “award” means an award of a jobseeker’s allowance;
  - “claim” means a claim for a jobseeker’s allowance.”.

- (5) For paragraph 10(1) (entitlement before claim determined) substitute—

- “(1) In such circumstances as may be prescribed—
  - (a) a claimant for a jobseeker’s allowance other than a joint-claim jobseeker’s allowance,
  - (b) a joint-claim couple claiming a joint-claim jobseeker’s allowance, or
  - (c) a member of such a couple,

may be treated as being entitled to an income-based jobseeker's allowance before his or (as the case may be) the couple's claim for the allowance has been determined.”.

(6) In paragraph 10(2) (allowance where payment suspended), for “to a claimant even though payment to him” substitute

“to—

- (a) a claimant of a jobseeker's allowance other than a joint-claim jobseeker's allowance,
- (b) a joint-claim couple claiming a joint-claim jobseeker's allowance, or
- (c) a member of such a couple,

even though payment to him or (as the case may be) the couple”.

(7) In paragraph 10(3) (information to be supplied to obtain payments under sub-paragraph (1) or (2)), after “the claimant” insert “or (as the case may be) the couple or the member of the couple”.

#### *Social Security (Northern Ireland) Order 1998 (NI 10)*

17. In Article 39(1) of the Social Security (Northern Ireland) Order 1998 (interpretation of Chapter II of Part II), after the definition of “appeal tribunal” insert—

““claimant”, in relation to a joint-claim couple claiming a joint-claim jobseeker's allowance (within the meaning of the Jobseekers Order), means the couple or either member of the couple;”.

## SCHEDULE 8

Article 67.

### WELFARE BENEFITS: MINOR AND CONSEQUENTIAL AMENDMENTS

## PART I

### BEREAVEMENT BENEFITS

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

1. The Contributions and Benefits Act has effect subject to the following amendments.

2.—(1) Section 20 (descriptions of contributory benefits) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (e), omit sub-paragraph (i); and
- (b) after that paragraph insert—

“(ea) bereavement benefits, comprising—

- (i) bereavement payment;
- (ii) widowed parent's allowance (with increase for child dependants);
- (iii) bereavement allowance;”.

(3) In subsection (2), in the definition of “long-term benefit”, after paragraph (b) insert—

- “(ba) a widowed parent's allowance;
- (bb) a bereavement allowance;”.

**3.**—(1) Section 21 (contribution conditions) is amended as follows.

(2) In subsection (2)—

- (a) for “Widow’s payment” substitute “Bereavement payment”; and
- (b) after the entry relating to widowed mother’s allowance insert—

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“Widowed parent’s allowance	Class 1, 2 or 3
Bereavement allowance	Class 1, 2 or 3”.

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(3) In subsection (4), for “widow’s payment” substitute “bereavement payment”.

**4.** In section 46(2) (modifications of s. 45 for calculating additional pension in certain benefits)—

- (a) after “section 39(1)” insert “or 39C(1)”; and
- (b) for “or 48B(2)” substitute “, 48B(2) or 48BB(5)”.

**5.** In section 48B (Category B retirement pension for widows and widowers), at the end add—

“(8) Nothing in subsections (4) to (7) above applies in a case where the spouse dies on or after the appointed day (as defined by section 36A(3)).”.

**6.** In section 48C(4) (Category B retirement pension: general), for “or 48B(2)” substitute “, 48B(2) or 48BB(5)”.

**7.**—(1) Section 60 (partial failure to satisfy contribution conditions) is amended as follows.

(2) In subsection (1), after paragraph (a) insert—

- “(aa) a widowed parent’s allowance,
- (ab) a bereavement allowance,”.

(3) In subsection (3)—

- (a) for paragraph (a) substitute—
  - “(a) a bereavement payment;”;
- (b) after paragraph (b) insert—
  - “(ba) a widowed parent’s allowance,
  - (bb) a bereavement allowance;”;
- (c) in paragraph (d), after “48B” insert “or 48BB”.

**8.** In section 61(1) (exclusion of increase of benefit for failure to satisfy contribution conditions), after “widowed mother’s allowance” insert “or widowed parent’s allowance”.

**9.** In section 61A(3) (contributions paid in error)—

- (a) at the end of paragraph (b) insert “(payment by virtue of section 48B or 48BB above)”; and
- (b) after “widow’s pension,” insert—
  - “(ca) widowed parent’s allowance,”.

**10.** In section 80(5) (beneficiary’s dependent children)—

- (a) for “payable by virtue of subsection (1)(a) of section 37” substitute “or a widowed parent’s allowance payable by virtue of section 37(1)(a) or (as the case may be) section 39A(2)(a)”; and
- (b) for “subsection (2)(a), (b) or (c) of that section” substitute “section 37(2)(a), (b) or (c) or (as the case may be) section 39A(3)(a), (b) or (c)”.

11. In section 146 (interpretation of provisions relating to Christmas bonus), in subsection (1)(c), after “allowance” insert “, widowed parent’s allowance”.

12.—(1) Schedule 3 (contribution conditions for entitlement to benefit) is amended as follows.

(2) In paragraph 4(1) (contribution condition for widow’s payment) and in the cross-heading preceding paragraph 4, for “widow’s payment” and

“Widow’s payment” substitute “bereavement payment” and “Bereavement payment” respectively.

(3) In paragraph 5(1) (contribution conditions for widowed mother’s allowance, widow’s pension etc.), after “allowance,” insert “a widowed parent’s allowance, a bereavement allowance,”; and in the cross-heading preceding paragraph 5, after “allowance” insert “, widowed parent’s allowance, bereavement allowance”.

(4) In paragraph 7(1) and (3) (satisfaction of conditions in early years of contribution), for “widow’s payment” substitute “bereavement payment”.

(5) In paragraph 9 (satisfaction of condition where condition for short-term benefit satisfied)—

(a) for “a woman claims a widow’s payment” substitute “a claim is made for a bereavement payment”; and

(b) for “widow’s payment” (in the second place where it occurs) substitute “bereavement payment”.

13. In Part IV of Schedule 4 (increases for dependants) after the entry relating to widowed mother’s allowance insert—

“4A. Widowed parent’s allowance	11.35	—”.
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*Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

14. The Administration Act is amended as follows.

15. In section 1(2)(a) (entitlement to benefit dependent on claim), for

“widow’s payment, she” substitute “bereavement payment, the person”.

16. For section 3 (and the cross-heading preceding it) substitute—

*“Bereavement benefits*

**Late claims for bereavement benefit where death is difficult to establish.**

3.—(1) This section applies where a person’s spouse has died or maybe presumed to have died on or after the appointed day and the circumstances are such that—

(a) more than 12 months have elapsed since the date of death; and

(b) either—

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

(ii) less than 12 months have elapsed since the surviving spouse first knew of the discovery and identification of the body.

(2) Where this section applies, notwithstanding that any time prescribed for making a claim for a bereavement 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 decided under Article 9 of the Social Security (Northern Ireland) Order 1998 that the spouse 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 12 months before the surviving spouse 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 12 months beginning with the date on which that decision was made or, as the case may be, the date on which the surviving spouse first knew of the discovery and identification.

(3) If, in a case where a claim for a bereavement benefit is made or treated as made by virtue of this section, the claimant would, apart from subsection (2) of section 1 above, be entitled to—

- (a) a bereavement payment in respect of the spouse's death more than 12 months before the date on which the claim is made or treated as made; or
- (b) any other bereavement benefit in respect of his or her death for a period more than 12 months before that date,

then, notwithstanding anything in that section, the surviving spouse shall be entitled to that payment or, as the case may be, to that other benefit (together with any increase under section 80(5) of the Contributions and Benefits Act).

(4) In subsection (1) above “the appointed day” means the day appointed for the coming into operation of Articles 51 to 53 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.”.

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

**17.**—(1) Section 42 of the Pension Schemes Act (effect of entitlement to guaranteed minimum pensions on payment of social security benefit) is amended as follows.

(2) In subsection (1), after “widowed mother's allowance” insert “, a widowed parent's allowance”.

(3) In subsection (6)(b)(iii), for “or 48B” substitute “, 48B or 48BB”.

#### *Pensions (Northern Ireland) Order 1995 (NI 22)*

**18.**—(1) Article 125 of the Pensions Order (additional pension: calculation of surpluses) is amended as follows.

(2) In paragraph (4), after “paragraphs (5)” insert “, (5A)”.

(3) After paragraph (5) insert—

“(5A) This Article has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Contributions and Benefits Act by virtue of section 39C(1) of that Act (widowed parent's allowance), including Category B retirement pension payable under section 48BB(2), if the pensioner's spouse—

- (a) dies after 5th April 2000, and
- (b) has not attained pensionable age on or before that date.”.

(4) In paragraph (6), for “or 48B(2)” substitute “, 48B(2) or 48BB(5)”.

## PART II

### INCAPACITY

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

- 19.** The Contributions and Benefits Act has effect subject to the following amendments.
- 20.** In section 21 (contribution conditions)—
- (a) in subsection (1), after “other than” insert “short-term incapacity benefit under subsection (1)(b) of section 30A below,” and for “30A below” substitute “subsection (5) of that section”; and
  - (b) in subsection (2), for “30A” substitute “30A(1)(a)”.
- 21.** In section 30B (incapacity benefit: rate), at the end add—
- “(8) This section has effect subject to sections 30DD (reduction for pension payments) and 30E (reduction for councillor’s allowance) below.”.
- 22.**—(1) Section 167A (test of incapacity for work) is amended as follows.
- (2) After subsection (2) insert—
 

“(2A) In subsection (2)(a) above the reference to such information or evidence as is there mentioned includes information or evidence capable of being used for assisting or encouraging the person in question to obtain work or enhance his prospects of obtaining it.”.
  - (3) In subsection (3) (requirement to have medical examination), for “a question arises as to” substitute “it falls to be determined”.
  - (4) After subsection (4) add—
 

“(5) All information supplied in pursuance of this section shall be taken for all purposes to be information relating to social security.”.
- 23.** In section 167B(1) (the “own occupation test”), for “the test applicable is the own occupation test” substitute “the own occupation test is applicable in his case.”.
- 24.** In section 172 (Assembly, etc. control of regulations and orders), in subsection (2)(a), after “28(3),” insert “30DD(5)(b) or (c),”.

## PART III

### ABOLITION OF SEVERE DISABLEMENT ALLOWANCE

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

- 25.** In section 90 of the Contributions and Benefits Act (beneficiaries under sections 68 and 70)—
- (a) for the words from “rates” to “allowance, and” substitute “rate”; and
  - (b) for “the allowance in question” substitute “the allowance”.

## PART IV

### INCOME SUPPORT

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

26. In section 123(1)(f) of the Contributions and Benefits Act (entitlement to income support conditional on claimant and any partner not being entitled to an income-based jobseeker's allowance), after "the other member of the couple is not" insert ", and the couple are not,".

## PART V

### JOBSEEKER'S ALLOWANCE

#### *Jobseekers (Northern Ireland) Order 1995 (NI 15)*

27.—(1) The Jobseekers (Northern Ireland) Order 1995 is amended as follows.

(2) In Article 6 (amount payable by way of a jobseeker's allowance), in each of paragraphs (6) and (8) (amount payable where claimant satisfies the contribution-based, and the income-based, conditions)—

(a) for "satisfies both the contribution-based conditions and the income-based conditions" substitute "is entitled to both a contribution-based jobseeker's allowance and an income-based jobseeker's allowance"; and

(b) after "the amount payable" insert "by way of a jobseeker's allowance".

(3) In Article 10 (attendance, information and evidence)—

(a) in paragraph (1)(a) (power of Department to specify place and time for claimant to attend), for "the Department" substitute "an employment officer"; and

(b) at the end add—

"(3) In paragraph (1) "employment officer" means an officer of the Department, an officer of any other Department, or such other person as may be designated for the purposes of that paragraph by an order made by the Department."

(4) In Article 19(1) (reduction of allowance payable to young persons), for "payable to" substitute "payable in respect of".

(5) In Article 22(4) (allowance payable to claimant even though Article 21 prevents payment to him), for "payable to" substitute "payable in respect of".

(6) In Article 37(3) (which specifies orders which are not subject to negative resolution), after "1(2)," insert "10(3),".

(7) In paragraph 10(2) of Schedule 1 (allowance payable to claimant even though payment to him has been suspended), for "payable to" substitute "payable in respect of".

## PART VI

### MATERNITY ALLOWANCE

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

- 28.** The Contributions and Benefits Act has effect subject to the following amendments.
- 29.**—(1) Section 21 (contribution conditions) is amended as follows.
- (2) In subsection (1), after “30A below” insert “, maternity allowance under section 35 below”.
- (3) In subsection (2), omit the entry relating to maternity allowance.
- (4) In subsection (4), omit “, other than maternity allowance,”.
- 30.** In section 172(2)(c) (Assembly, etc. control of regulations and orders) after “section 28(2),” insert “35A(7),”.

## PART VII

### RETIREMENT PENSIONS

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

- 31.** In section 48A of the Contributions and Benefits Act (Category B retirement pension for married person), after subsection (4) insert—
- “(4A) Subsection (4) above shall have effect with the omission of the words from “plus” to the end if the pensioner is not the widow or widower of the person by virtue of whose contributions the pension is payable.”.

## PART VIII

### ADMINISTRATION OF BENEFITS

- 32.**—(1) In each of the provisions of the Administration Act to which this paragraph applies—
- (a) any reference to a person authorised to exercise any function of the Housing Executive relating to housing benefit shall include a reference to a person providing services to the Housing Executive which relate to that benefit; and
- (b) any reference to the exercise of any function relating to such a benefit shall include a reference to the provision of any services so relating.
- (2) This paragraph applies to the following provisions of the Administration Act—
- (a) section 104A (appointment of inspectors by the Housing Executive);
- (b) sections 116C and 116D (supply of information in connection with administration of housing benefit);
- (c) section 119A (power to require information from landlords etc. in connection with claims for housing benefit);
- (d) section 158B (information about redirection of post); and
- (e) Schedule 4 (persons covered by offence relating to unauthorised disclosures).
- (3) In section 158B of the Administration Act—

- (a) any reference to a person authorised to exercise any function of a local or other authority relating to housing benefit or council tax benefit shall include a reference to a person providing services to that authority which relate to such a benefit; and
- (b) any reference to the exercise of any function relating to such a benefit shall include a reference to the provision of any services so relating.

## SCHEDULE 9

Article 74.

### CONSEQUENTIAL AMENDMENTS

#### PART I

#### AMENDMENTS CONSEQUENTIAL ON PARTS IV AND V

##### *Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (NI 4)*

1. The Matrimonial and Family Proceedings (Northern Ireland) Order 1989 is amended as follows.

2. For Article 21 there is substituted—

“**21.** Subject to Article 24, on an application by a party to a marriage for an order for financial relief under this Article, the court may—

(a) make any one or more of the orders which it could make under Part III of the principal Order if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in Northern Ireland, that is to say—

(i) any order mentioned in Article 25(1) of the principal Order (financial provision orders);

(ii) any order mentioned in Article 26(1) of that Order (property adjustment orders); and

(b) if the marriage has been dissolved or annulled, make one or more orders each of which would, within the meaning of that Part, be a pension sharing order in relation to the marriage.”.

3. In Article 25—

(a) after paragraph (b) there is inserted—

“(ba) Article 26A(3) to (5) (provisions about pension sharing orders in relation to divorce and nullity);

(bb) Article 26B (duty to stay pension sharing orders);

(bc) Article 26C (apportionment of pension sharing charges);” and

(b) at the end there is added—

“(l) Article 42A (appeals relating to pension sharing orders which have taken effect).”.

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

4. The Contributions and Benefits Act has effect subject to the following amendments.

- 5.—(1) Section 20 is amended as follows.
- (2) In subsection (1), after (f) there is inserted—
- “(fa) shared additional pensions;”.
- (3) In subsection (2), in the definition of “long-term benefit”, after paragraph (d) there is inserted—
- “(e) a shared additional pension;”.
6. In section 21(1), after “41 below” there is inserted “or a shared additional pension under section 55A below”.
7. In section 39(1), (2) and (3), for “45A” there is substituted “45B”.
8. In section 43, at the end there is added—
- “(6) For the purposes of this section, a pension under section 55A below is not a retirement pension.”.
9. In section 48A(4), for “45A” there is substituted “45B”.
10. In section 48B(2) and (3), for “45A” there is substituted “45B”.
11. In section 48C(4), for “45A” there is substituted “45B”.
12. In section 54(1), at the end there is inserted “or to a shared additional pension”.

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

13. The Administration Act has effect subject to the following amendments.
- 14.—(1) Section 135A is amended as follows.
- (2) In subsection (1)(a)(i) after “retirement pension” there is inserted “or shared additional pension”.
- (3) In subsection (2) after “retirement pension” there is inserted “, a shared additional pension”.
15. In section 143(2) after paragraph (a) there is inserted—
- “(aa) any administrative expenses of the Department in supplying information about benefits under Part II of that Act in accordance with regulations under Article 21 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.”.
16. In section 145(5)(b), after “section 143(2)(a)” there is inserted “or (aa)”.

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

17. The Pension Schemes Act has effect subject to the following amendments.
18. In section 46(1)—
- (a) in paragraph (a), at the end there is inserted—
- “(iii) of safeguarded rights under the scheme;”.
- (b) in paragraph (b), after “protected” there is inserted “, or safeguarded.”.
- 19.—(1) Section 48 is amended as follows.
- (2) In subsection (2A), at the end there is inserted—
- “(c) any persons who have safeguarded rights under the scheme or are entitled to any benefit giving effect to safeguarded rights under it.”.

(3) In subsection (3)(b), after “protected”, in both places where that word occurs, there is inserted “, or safeguarded.”.

**20.**—(1) Section 79 is amended as follows.

(2) In subsection (1), before “benefits”, in both places, there is inserted “relevant”.

(3) After that subsection there is inserted—

“(1A) The following are relevant benefits for the purposes of subsection (1)—

- (a) any benefits payable otherwise than by virtue of rights which are attributable (directly or indirectly) to a pension credit, and
- (b) in the case of a salary related occupational pension scheme, any benefits payable by virtue of such rights, to the extent that the rights involve the member being credited by the scheme with notional pensionable service.”.

(4) At the end there is added—

“(4) For the purposes of this section, an occupational pension scheme is salary related if—

- (a) it is not a money purchase scheme, and
- (b) it does not fall within a prescribed class.”.

**21.** In section 81, after “69(2)(b)” there is inserted “or 97D(2)(b)”.

**22.** In section 89, after subsection (1) there is inserted—

“(1ZA) In subsection (1), references to accrued rights to benefit do not include rights which are attributable (directly or indirectly) to a pension credit.”.

**23.** In section 89A, after subsection (1) there is inserted—

“(1A) In subsection (1), the reference to benefits which have accrued does not include benefits which are attributable (directly or indirectly) to a pension credit.”.

**24.** In section 90, after subsection (1A) there is inserted—

“(1B) In subsection (1), references to benefits which have accrued do not include benefits which are attributable (directly or indirectly) to a pension credit.”.

**25.** In section 92, there is added at the end—

“(4) Where a member of an occupational pension scheme or a personal pension scheme

—

- (a) is entitled to give a notice under section 97F(1) to the trustees or managers of the scheme, or
- (b) would be entitled to do so, but for section 97G(1),

he may not, if the scheme so provides, make an application to them under section 91 unless he also gives them a notice under section 97F(1).”.

**26.**—(1) Section 94 is amended as follows.

(2) In subsection (5)—

- (a) after “part of the” there is inserted “relevant”, and
- (b) for “any of the benefits mentioned in that section” there is substituted “benefits”.

(3) In subsection (8), after “this section” there is inserted—

““relevant benefits” means any benefits not attributable (directly or indirectly) to a pension credit; and”.

**27.**—(1) Section 96 is amended as follows.

(2) In subsection (1), for “subsection (2)” there is substituted “subsections (2) and (2A)”.

(3) After subsection (2) there is inserted—

“(2A) If the making of the application depended on the giving of a notice under section 97F(1), the application may only be withdrawn if the notice is also withdrawn.”.

**28.**—(1) Section 125 is amended as follows.

(2) In subsection (1), after “Part IV,” there is inserted “Chapters I and II of Part IVA,”.

(3) In subsection (2), for “does” there is substituted “and Chapter II of Part IVA do”.

**29.**—(1) Section 173 is amended as follows.

(2) The words “or of” are omitted.

(3) At the end there is inserted “, Article 27D of the Matrimonial Causes (Northern Ireland) Order 1978 or Part IV or V of the Welfare Reform and Pensions (Northern Ireland) Order 1999”.

**30.** In section 176(1)—

(a) after the definition of “occupational pension scheme” there is inserted—

““pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;”,

(b) after the definition of “rights” there is inserted—

““safeguarded rights” has the meaning given in section 64A,”.

**31.** In section 178(3), for “and 93(1)” there is substituted “93(1) and 97I”.

#### *Pensions (Northern Ireland) Order 1995 (NI 22)*

**32.** The Pensions Order has effect subject to the following amendments.

**33.** In Article 3(2)(a)—

(a) in head (ii), after “values,” there is inserted “Chapter II of Part IVA (pension credit benefit transfer values)”, and

(b) after that head there is inserted

“or

(iii) the following provisions of the Welfare Reform and Pensions (Northern Ireland) Order 1999: Article 30 (time for discharge of pension credit liability) and Article 42 (information),”.

**34.**—(1) Article 16 is amended as follows.

(2) In paragraphs (1)(a) and (6)(a), before “members” there is inserted “qualifying”.

(3) In paragraph (8)—

(a) after “a”, in the second place where that word occurs, there is inserted “qualifying”,

- (b) for “a member of the scheme”, in the second place where those words occur, there is substituted “such a member”.
- 35.** In Article 17(4)(a), before “members” there is inserted “qualifying”.
- 36.—**(1) Article 18 is amended as follows.
- (2) In paragraphs (1)(a) and (6)(a), before “members” there is inserted “qualifying”.
- (3) In paragraph (7)—
- (a) after “a”, in the second place where that word occurs, there is inserted “qualifying”,
- (b) for “a member of the scheme”, in the second place where those words occur, there is substituted “such a member”.
- 37.** In Article 20(5), after “a”, in the second place where that word occurs, there is inserted “qualifying”.
- 38.** In Article 21(6)—
- (a) after “Article” there is inserted—
- “(a) “qualifying member”, in relation to a trust scheme, means a person who is an active, deferred or pensioner member of the scheme, and
- (b)”,
- and
- (b) before “members” there is inserted “qualifying”.
- 39.—**(1) Article 38 is amended as follows.
- (2) In paragraph (1), for the words from “that the scheme” to the end there is substituted—
- “(a) that the scheme is not for the time being to be wound up but that no new members are to be admitted to it, or
- (b) that the scheme is not for the time being to be wound up but that no new members, except pension credit members, are to be admitted to it.”.
- (3) In paragraph (2), the words from “but” to the end are omitted.
- (4) After that paragraph there is inserted—
- “(2A) Paragraph (2) does not authorise the trustees to determine—
- (a) where there are accrued rights or pension credit rights to any benefit, that the benefit is not to be increased, or
- (b) where the power conferred by that paragraph is exercisable by virtue of a determination under paragraph (1)(b), that members of the scheme may not acquire pension credit rights under it.”.
- 40.** In Article 51(6), after “a pension” there is inserted “which is attributable (directly or indirectly) to a pension credit or”.
- 41.** In Article 53, after paragraph (3) there is inserted—
- “(3A) In paragraphs (1) and (2), the references to a person’s pension do not include any pension which is attributable (directly or indirectly) to a pension credit.”.
- 42.—**(1) Article 67 is amended as follows.
- (2) In paragraph (2), for “or accrued right,” there is substituted “accrued right or pension credit right”.

- (3) In paragraph (4)(a), for “or accrued rights,” there is substituted “accrued rights or pension credit rights”.
- (4) For paragraph (5) there is substituted—
- “(5) Paragraph (2) does not apply to the exercise of a power—
- (a) for a purpose connected with debits under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, or
- (b) in a prescribed manner.”.
- 43.** In Article 68(2), for “and” at the end of sub-paragraph (d) there is substituted—
- “(da) to enable the scheme to accommodate persons with pension credits or pension credit rights, and”.
- 44.** In Article 73, after paragraph (3) there is inserted—
- “(3A) No pension or other benefit which is attributable (directly or indirectly) to a pension credit may be regarded for the purposes of paragraph (3)(a) as derived from the payment of voluntary contributions.”.
- 45.** In Article 74(3)(b), at the end there is inserted “or pension credit rights”.
- 46.**—(1) Article 89 is amended as follows.
- (2) In paragraph (1), for the words from “, or has” to “occupational pension scheme” there is substituted “to a pension under an occupational pension scheme or has a right to a future pension under such a scheme”.
- (3) In paragraph (2), for the words from “, or” to “scheme” there is substituted “to a pension under an occupational pension scheme, or right to a future pension under such a scheme,”.
- (4) In paragraph (5)—
- (a) for the words from “, or has” to “scheme” there is substituted “to a pension under an occupational pension scheme, or has a right to a future pension under such a scheme”,
- (b) in sub-paragraph (d), for “accrued right, to pension” there is substituted “right,”, and
- (c) in sub-paragraph (e), for “accrued right, to pension” there is substituted “right”.
- 47.**—(1) Article 90 is amended as follows.
- (2) In paragraph (1), for the words from “, or” to “scheme” there is substituted “to a pension under an occupational pension scheme or a right to a future pension under such a scheme”.
- (3) In paragraph (4), for the words from “person entitled” to “accrued” there is substituted “pensioner, or prospective pensioner”.
- 48.**—(1) Article 91 is amended as follows.
- (2) In paragraph (1), for the words from “, or” to “scheme” there is substituted “to a pension under an occupational pension scheme or right to a future pension under such a scheme”.
- (3) In paragraph (2)—
- (a) for “accrued right to a pension” there is substituted “right”, and
- (b) for “accrued right to a pension under the scheme” there is substituted “right”.
- (4) In paragraph (4), for “accrued right to a pension” there is substituted “right”.
- 49.** In Article 97(2)—

- (a) in sub-paragraph (b), after “values),” there is inserted “Chapter II of Part IVA (pension credit benefit transfer values),”, and
- (b) at the end of that sub-paragraph there is inserted—
  - “(ba) Article 30 (time for discharge of pension credit liability) or 42 (information) of the Welfare Reform and Pensions (Northern Ireland) Order 1999,”.

**50.**—(1) Article 121 is amended as follows.

- (2) In paragraph (1), in the definition of “member”, for “or pensioner” there is substituted “, pensioner or pension credit”.
- (3) In that paragraph, after the definition of “payment schedule” there is inserted—
  - ““pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999,
  - “pension credit member”, in relation to an occupational pension scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit,
  - “pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit,”.
- (4) After paragraph (2) there is inserted—
  - “(2A) In paragraph(2)(a), the reference to rights which have accrued to or in respect of the member does not include any rights which are pension credit rights.”.

**51.**—(1) Article 162 is amended as follows.

- (2) In paragraph (4), for “scheme” there is substituted “arrangement”.
- (3) In paragraph (5)(d), for “scheme” there is substituted “arrangement”.

*Welfare Reform and Pensions (Northern Ireland) Order 1999*

**52.** In Article 22 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (charges by pension arrangements in relation to earmarking orders), for “section 23” substitute “section 22A or 23”.

## PART II

### OTHER CONSEQUENTIAL AMENDMENTS

*Insolvency (Northern Ireland) Order 1989 (NI 19)*

**53.** The Insolvency (Northern Ireland) Order 1989 is amended as follows.

**54.** After Article 315C there is inserted—

**“Recovery of excessive contributions in pension-sharing cases**

**315D.**—(1) For the purposes of Articles 312, 314 and 315, a pension-sharing transaction shall be taken—

- (a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and

- (b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (2) For the purposes of Articles 313 to 315, a pension-sharing transaction shall be taken
- (a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and
- (b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) If on an application under Article 312 or 313 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with paragraphs (4) to (8).
- (4) The High Court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ("personal contributions")—
- (a) which the transferor has at any time made on his own behalf, or
- (b) which have at any time been made on the transferor's behalf,
- to the shared arrangement or any other pension arrangement.
- (5) Where it appears that those rights were to any extent the fruits of personal contributions, the High Court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").
- (6) If it appears to the High Court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.
- (7) If it appears to the High Court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the Court that the transfer could not have been so made.
- (8) In making the determination mentioned in paragraph (5) the High Court shall consider in particular—
- (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and
- (b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.
- (9) In this Article and Articles 315E and 315F—
- "appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of Article 26(1) of the Welfare Reform Order (creation of pension credits and debits);
- "pension-sharing transaction" means an order or provision falling within Article 25(1) of the Welfare Reform Order (orders and agreements which activate pension-sharing);
- "shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;
- "transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

“transferor”, in relation to a pension-sharing transaction, means the person to whose rights the transaction relates;

“the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.

### **Orders under Article 312 or 313 in respect of pension-sharing transactions**

**315E.**—(1) This Article and Article 315F apply if the High Court is making an order under Article 312 or 313 in a case where—

- (a) the transaction or preference is, or is any part of, a pension-sharing transaction, and
- (b) the transferee has rights under a pension arrangement (“the destination arrangement”, which maybe the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of Article 312(2) or 313(2), or of Article 315, the order may include provision—

- (a) requiring the person responsible for the destination arrangement to pay an amount to the transferor’s trustee in bankruptcy,
- (b) adjusting the liabilities of the destination arrangement in respect of the transferee,
- (c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,
- (d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor’s case with any requirement under Article 315F(1) or in giving effect to the order,
- (e) for the recovery, from the transferor’s trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor’s case with any requirement under Article 315F(2) or (3).

(3) In paragraph (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

- (a) so much of the appropriate amount as, in accordance with Article 315D is recoverable,
- (b) so much (if any) of the amount of the unfair contributions (within the meaning given by Article 315D(5)) as is not recoverable by way of an order under Article 315A containing provision such as is mentioned in Article 315B(1)(a), and
- (c) the value of the transferee’s rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount (“the restoration amount”) to the transferor’s trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

- (a) the amount of the liabilities immediately before the reduction, and
- (b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) The order—

- (a) shall be binding on the person responsible for the destination arrangement, and
- (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

### **Orders under Article 312 or 313 in pension-sharing cases: supplementary**

**315F.**—(1) On the transferor’s trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement,
- (b) the transferee’s rights under it, and
- (c) where the destination arrangement is the shared arrangement, the transferor’s rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor’s trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferor’s rights under it, as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(3) On the transferor’s trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferee’s rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(4) In paragraph (3) “intermediate arrangement” means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

- (a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and
- (b) the transferee’s rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in sub-paragraph (a).

(5) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),

- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the destination arrangement corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 312 or 313.

(6) Regulations may, for the purposes of Articles 312 to 315, Articles 315D and 315E and this Article, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315E(4)(c);
- (b) any such amounts as are mentioned in Article 315E(6)(a) and (b).

(7) The power conferred by paragraph (6) includes power to provide for calculation or verification—

- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
- (b) in accordance with guidance—
  - (i) from time to time prepared by a prescribed person, and
  - (ii) approved by the Department.

(8) In Article 315E and this Article, references to the person responsible for a pension arrangement are to—

- (a) the trustees, managers or provider of the arrangement, or
- (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(9) In this Article—

“the Department” means the Department of Health and Social Services;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

(10) Regulations under this Article may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

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

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

**55.** The Administration Act has effect subject to the following amendments.

**56.** After section 128E insert—

**“Financing of other expenditure.**

**128EE.**—(1) The Department may make to any relevant authority such payments as it thinks fit in respect of expenses incurred by that authority in connection with the carrying out of any relevant function—

- (a) by that authority,
- (b) by any person providing services to that authority, or
- (c) by any person authorised by that authority to carry out that function.

(2) In subsection (1)—

“relevant authority” means any authority (other than a government department) for the purposes of section 2A, 2C or 5A above;

“relevant function” means any function conferred by virtue of section 2A, 2C or 5A above.”.

**57.** In section 149(5) (enactments conferring functions in respect of which the Social Security Advisory Committee is to advise etc.), in the definition of “relevant enactments”, after paragraph (ad) insert—

“(ae) Articles 57, 69 and 70 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, and”.

**58.** In section 165 (regulations and orders -general), after subsection (7) insert—

“(7A) Without prejudice to the generality of any of the preceding provisions of this section, regulations under any of sections 2A to 2C and 5A above may provide for all or any of the provisions of the regulations to apply only in relation to any area or areas specified in the regulations.”.

**59.** In section 166 (Assembly, etc. control of orders and regulations), in subsection (2), before the “and” at the end of paragraph (a) insert—

“(aa) the first regulations to be made under section 2A;”.

#### *Deregulation and Contracting Out (Northern Ireland) Order 1996 (NI 11)*

**60.** At the end of Article 17(2) of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (social security: amendments following certain orders) there shall be added the words “the Welfare Reform and Pensions Act 1999”.

#### *Social Security (Northern Ireland) Order 1998 (NI 10)*

**61.** In Schedule 2 to the Social Security (Northern Ireland) Order 1998 (decisions against which no appeal lies), after paragraph 5 insert—

*“Work-focused interviews 5A. A decision terminating or reducing the amount of a person’s benefit made in consequence of any decision made under regulations under section 2A of the Administration Act (work-focused interviews).”.*

## SCHEDULE 10

Article 76.

### REPEALS

### PART I

#### PENSIONS: MISCELLANEOUS

Chapter or Number	Short title	Extent of repeal
1993 c. 49.	Pension Schemes (Northern Ireland) Act 1993.	In section 24(1), paragraph (aa) (but not the final “and”).

Chapter or Number	Short title	Extent of repeal
1995 NI 22.	Pensions (Northern Ireland) Order 1995.	<p>In section 69(2)(a)(ii), the words “or a self-employed pension arrangement” and “or arrangement”.</p> <p>In section 92(2)(a), sub-paragraph (iii) and the word “or” preceding it.</p> <p>Section 155(5).</p> <p>In section 176(1), the definition of “self-employed pension arrangement”.</p> <p>In Article 8(4), the word “or” at the end of sub-paragraph (a).</p> <p>In Article 58(6)(a), the words “continue to”.</p> <p>In Article 81(3)(a), “90 per cent. of”.</p> <p>Article 89(3).</p> <p>In Article 90(2), sub-paragraph (b) and the word “or” preceding it.</p> <p>Article 93.</p> <p>In Article 139, paragraphs (2) and (3), and in paragraph (4), sub-paragraph (b) and the word “and” preceding it.</p>

## PART II

### PENSIONS ON DIVORCE ETC.

Chapter or Number	Short title	Extent of repeal
1978 NI 15.	Matrimonial Causes (Northern Ireland) Order 1978.	<p>Article 27B(2).</p> <p>In Article 27D(2), sub-paragraphs (c) and (d) and the words after sub-paragraph (e).</p>
1989 NI 4.	Matrimonial and Family Proceedings (Northern Ireland) Order 1989.	In Article 25, the word “made”, in both places.

**PART III**  
**PENSION SHARING**

Chapter or Number	Short title	Extent of repeal
1971 c. 35 (N.I.).	Pensions (Increase) Act (Northern Ireland) 1971.	In section 8(1)(a), the words from “(either” to “person)”.
1993 c. 49.	Pension Schemes (Northern Ireland) Act 1993.	In section 173, the words “or of”.
1995 NI 22.	Pensions (Northern Ireland) Order 1995.	In Article 3(2)(a), the word “or” at the end of head (i).  In Article 38(2), the words from “but” to the end. In Schedule 1, paragraph 37(a).

**PART IV**  
**ABOLITION OF SEVERE DISABLEMENT ALLOWANCE**

Chapter or Number	Short title	Extent of repeal
1992 c. 7.	Social Security Contributions and Benefits (Northern Act 1992.	Section 63(b).  Sections 68 and 69.  In section 93(a), sub-Ireland) paragraph (ii) and the word “or” preceding it.  In section 93(b), the words “or allowance” in each place they occur.  In section 121(1), in the definition of “relevant loss of faculty”, paragraph (a).  Section 128(2)(a)(ii) and (2B) (a)(iii).  Section 146(1)(d).  In Schedule 4, in Part III, paragraphs 2 and 3, and in Part IV, paragraph 8.  In Schedule 6, in paragraph 1, the words “68 or”, and in sub-paragraph (b), the words from “except” to “68

Chapter or Number	Short title	Extent of repeal
		above,” and paragraphs 4 and 5.
		In Schedule 9, paragraph 5.
		In Schedule 11, in paragraph 2, sub-paragraph (d)(iii) and the word “or” preceding it.
1992 c. 8.	Social Security Administration (Northern Ireland) Act 1992.	In section 43(1), the words “and severe disablement allowance”.
		In section 43(1)(a), the words “in relation to industrial injuries benefit”.
		In section 43(1)(b), the words “in relation to both benefits”.
		In section 43(2), paragraph (d) and the word “or” preceding it.
		In section 44(1), the words “or severe disablement allowance”.
		In section 45(9), the words “or severe disablement allowance, as the case may be”.
		In section 46(1)(c), the words “or, in a case relating to severe disablement allowance, at the prescribed time”.
		In section 122(1), paragraph (e) and the word “or” preceding it.
		In section 124(1), paragraph (d) and the word “or” preceding it.
1994 NI 12.	Social Security (Incapacity for Work) (Northern Ireland) Order 1994.	Article 11.
		In Schedule 1, paragraph 18.
		In Schedule 2, in the third column, the entry relating to section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
1998 NI 10.	Social Security (Northern Ireland) Order 1998.	In Article 73(8), sub-paragraph (c).

Chapter or Number	Short title	Extent of repeal
1999 c. 10.	Tax Credits Act 1999.	In Schedule 1, paragraph 4(d).

## PART V

### BENEFITS: MISCELLANEOUS

Chapter or Number	Short title	Extent of repeal
1992 c. 7.	Social Security Contributions and Benefits (Northern Ireland) Act 1992.	Section 20(1)(e)(i).  In section 21, in subsection (2) the entry relating to maternity allowance, and in subsection (4) the words “, other than maternity allowance,”.  In Schedule 3, in Part I, paragraph 3.  In Schedule 4, in Part I, the entry relating to maternity allowance.
S.R. 1994 No. 176.	Maternity Allowance and Statutory Maternity Pay Regulations (Northern Ireland) 1994.	Regulations 2(1), (2) and (4) and 6(2).
1995 NI 15.	Jobseekers (Northern Ireland) Order 1995.	In Article 3(4), the word “and” at the end of the definition of “a contribution-based jobseeker’s allowance”.
1998 NI 10.	Social Security (Northern Ireland) Order 1998.	In Schedule 6, paragraph 59.

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which is made only for purposes corresponding to the Welfare Reform and Pensions Act 1999 makes provision about pensions and social security, makes provision for reducing under-occupation of dwellings by housing benefit claimants, authorises certain expenditure by the Department of Health and Social Services and makes other connected provisions.