STATUTORY INSTRUMENTS

1999 No. 3147

The Welfare Reform and Pensions (Northern Ireland) Order 1999

PART V

PENSION SHARING

Modifications etc. (not altering text)

C1 Pt. V (arts. 24-48) power to modify conferred (6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 294(d); S.R. 2006/95, **art. 2(c)**, Sch. Pt. 3

C2 Pt. V (arts. 24-48) power to modify conferred (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 115(2)(c)**, 118(2)(g)

CHAPTER I

SHARING OF RIGHTS UNDER PENSION ARRANGEMENTS

Modifications etc. (not altering text)

C3 Pt. V Ch. I (arts. 24-43) modified (1.8.2006) by Pension Protection Fund (Pension Sharing) Regulations (Northern Ireland) 2006 (S.R. 2006/282), **reg. 2(2)(a)-(c)**

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;

[[F1](aa) a pension sharing order under Schedule 15 to the Civil Partnership Act 2004,**]**

(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);

[[F1](ba) an order under Schedule 17 to the 2004 Act (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (aa),**]**

(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.

F1 2004 c.33

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**[**[F2] the Pensions Regulator**]**.

F2 2005 NI 1

"Implementation period"

31 [F3]**.**—(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[F4]. . . 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[F4]. . . documents is to copies of—

(a) the relevant order or provision, and

(b) the order, decree or declarator responsible for the divorce**[**[F4], dissolution**]** 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.

F3 mod. by SR 2000/145
F4 2004 c.33

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

Para. (1) rep. by 2005 NI 1

(2) In the case of an occupational pension scheme which is not a scheme to which**[**[F5] this Article**]** 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.

[[F5](2A) This Article applies to an occupational pension scheme other than—

(a) a money purchase scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.**]**

(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.

F5 2005 NI 1

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**[**[F6] the maximum percentage**]** per annum.

(2) **[**[F6]Subject to paragraph (2A), 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.

[[F6](2A) Paragraph (2) does not apply to pensions which—

(a) are money purchase benefits, and

(b) become pensions in payment on or after the commencement day.

(2B) For the purposes of paragraph (1) the "maximum percentage" means—

(a) 5 per cent. in a case where—

(i) the pension is in payment before the commencement day, or

(ii) the pension is not in payment before the commencement day but the entitlement to the relevant pension credit arose before that day, and

(b) 2.5 per cent. in a case where the entitlement to the relevant pension credit arises on or after the commencement day.**]**

(3) In this Article—

[[F6]"commencement day" means the day appointed for the coming into operation of Article 257 of the Pensions (Northern Ireland) Order 2005 (amendments to Article 37);**]**

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

[[F6]"money purchase benefit" has the meaning given by section 176(1) of the Pension Schemes Act;**]**

"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;

[[F6]"relevant pension credit" means the pension credit to which the eligible pension credit rights or, as the case may be, the safeguarded rights are (directly or indirectly) attributable;**]**

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

F6 2005 NI 1

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) the Judicial Pensions Act (Northern Ireland) 1951;

(b) the County Courts Act (Northern Ireland) 1959;

(c) the Resident Magistrates' Pensions Act (Northern Ireland) 1960;

(d) the Lands Tribunal and Compensation Act (Northern Ireland) 1964;

(e) the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969;

(f) the Social Security (Northern Ireland) Act 1975;[F7]. . .

(g) the Judicature (Northern Ireland) Act 1978.

[[F7](h) the Judicial Pensions Act 1981 (c. 20); and

(i) the Judicial Pensions and Retirement Act 1993 (c. 8).**]**

(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**[**[F7] (2)(d) or (e)**]** applies or the Consolidated Fund of the United Kingdom in the case of pension schemes to which paragraph**[**[F7] (2)(a), (b), (c), (f), (g), (h) or (i)**]** 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**[**[F7] (2)(a), (b), (c), (f), (g), (h) or (i)**]**, 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.

F7 2002 c. 26

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[F8] 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.

F8 prosp. rep. by 2005 NI 1

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;

[[F9](aa) a pension sharing order under Schedule 15 to the Civil Partnership Act 2004,**]**

(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);

[[F9](ba) an order under Schedule 17 to the 2004 Act (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (aa),**]**

(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.

F9 2004 c.33

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.

[[F10](4) The Department may by regulations make provision for the calculation and verification of cash equivalents for the purposes of this Article.

(4A) The power conferred by paragraph (4) includes power to provide—

(a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and

(b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.**]**

(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.

F10 2000 c. 4 (NI)

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) [F11] . . . . . .

F11 Art. 47(2) repealed (17.2.2005) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), **arts. 1(3)**, 291, Sch. 9 para. 19, Sch. 11

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.

Status:
Point in time view as at 01/01/2006.

Changes to legislation:
There are currently no known outstanding effects for the The Welfare Reform and Pensions (Northern Ireland) Order 1999, PART V.