

## SCHEDULES

### SCHEDULE 1

Section 7

#### ABOLITION OF EARNINGS RULE ETC.

##### *Category A and Category B retirement pensions*

- 1 In section 27 of the principal Act, subsections (3), (4) and (5) (retirement from regular employment) shall cease to have effect.
- 2 (1) In section 30 of that Act, in subsection (3) (election to be treated as if entitlement to retirement pension had not commenced) the following shall cease to have effect—
- (a) in paragraph (a) the words “retired from regular employment or has otherwise”; and
  - (b) the words “retired or”.
- (2) For subsection (5) of that section (advance notice of retirement) there shall be substituted the following—
- “(5) In any case where—
- (a) a person claims a Category A or Category B retirement pension, and
  - (b) the date specified in the claim as the date on which entitlement to the pension is to commence falls after the date when the claim was made,
- such a pension may be awarded as from the date so specified but, if so awarded, shall be conditional on the person’s not ceasing to be entitled to the pension in consequence of any election under subsection (3) above.”
- (3) Subsection (6)(a) of that section (power to vary 5 year period in sections 27(5) and 30(1)) shall cease to have effect.

##### *Deferred entitlement to retirement pension*

- 3 (1) In Schedule 1 to the Pensions Act (deferred retirement) for the words from the beginning of the Schedule to “age” in paragraph 1 there shall be substituted—

#### “SCHEDULE 1

#### INCREASE OF PENSION WHERE ENTITLEMENT IS DEFERRED

##### *Increase of pension where pensioner’s entitlement is deferred*

- 1 Where a person’s entitlement to a Category A or Category B retirement pension is deferred,”
- (2) In paragraph 2 of that Schedule, in sub-paragraph (1), for the words “period of deferment” there shall be substituted the words “period of enhancement”.

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- (3) For sub-paragraph (2) of that paragraph (definitions) there shall be substituted—
- “(2) In this Schedule—
- “incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this Schedule in relation to the person and the pension in question; and
- “the period of enhancement”, in relation to that person and that pension, means the period which—
- (a) begins on the same day as the period of deferment in question; and
- (b) ends on the same day as that period or, if earlier, on the day before the fifth anniversary of the beginning of that period.”
- (4) In sub-paragraph (3) of that paragraph, for the words “if he had retired on attaining pensionable age” there shall be substituted the words “if his entitlement had not been deferred”.
- (5) In sub-paragraph (5) of that paragraph, for the words “period of deferment” in both places where they occur there shall be substituted the words “period of enhancement”.
- (6) In sub-paragraph (6) of that paragraph, for the words “if he had retired from regular employment” there shall be substituted the words “if his entitlement had not been deferred”.
- (7) In paragraph 3 of that Schedule—
- (a) for the words “period of deferment” there shall be substituted the words “period of enhancement”; and
- (b) for the words “if he had retired from regular employment” there shall be substituted the words “if his entitlement to the pension had commenced”.
- (8) In the heading preceding paragraph 4 of that Schedule, for the words “deferred retirement” there shall be substituted the words “deferred entitlement”; and in that paragraph—
- (a) in sub-paragraph (1)(b)(ii) for the words “if he had retired on the date of” there shall be substituted the words “if his period of deferment had ended on the day before”, and
- (b) in sub-paragraph (2)(c)(ii) for the words “if she had retired on the date of” there shall be substituted the words “if her period of deferment had ended on the day before”.
- (9) In paragraph 5 of that Schedule (married women) for sub-paragraphs (1) and (2) there shall be substituted—
- “5 (1) For the purposes of paragraphs 1 to 3 above in their application to a Category B retirement pension to which a married woman is entitled by virtue of her husband’s contributions, a married woman who would have become entitled to such a pension on an earlier day if her husband’s entitlement to his Category A retirement pension had not been deferred shall be treated as having (in addition to any other period of enhancement) a period of enhancement which begins on that earlier day and ends on the same day as her husband’s period of enhancement.

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- (2) The reference in sub-paragraph (1) above to the day on which the woman's husband's period of enhancement ends shall, where the marriage is terminated before that day, be construed as a reference to the day on which the marriage is terminated."
- (10) In sub-paragraph (3) of that paragraph—
- (a) for the words "if he had retired on attaining pensionable age" there shall be substituted the words "if his entitlement had not been deferred"; and
  - (b) for the words "if she and her husband had so retired" there shall be substituted the words "if neither her nor her husband's entitlement to a retirement pension had been deferred".
- (11) In Schedule 20 to the principal Act (glossary of expressions) there shall be inserted at the appropriate places—

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"“Deferred” and “period of deferment” (in relation to entitlement to a Category A or Category B retirement pension)	See section 12 of the Pensions Act.”
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"“Period of deferment” (in relation to a Category A or Category B retirement pension)	See “deferred” and “period of deferment” above.”
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#### *Unemployment and sickness benefit*

- 4 (1) In section 14 of the principal Act, in subsection (2) (conditions of entitlement for unemployment and sickness benefit) for paragraphs (b) and (c) there shall be substituted—
- “(b) on that day the person—
    - (i) is over pensionable age, but not more than five years over that age; and
    - (ii) would be entitled to a Category A retirement pension (section 28) if his entitlement had not been deferred or if he had not made an election under section 30(3) below; or
  - (c) on that day the person—
    - (i) is over pensionable age, but not more than five years over that age; and
    - (ii) would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.”
- (2) In subsection (6) of that section (rate of benefit: disregard of certain increases) the words following paragraph (c) shall cease to have effect.

#### *Invalidity pension*

- 5 (1) In section 15 of that Act (invalidity pension) in subsection (1)(b)(ii) for the words “and not having retired from regular employment” there shall be substituted the words “,but not more than five years over it,”.

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- (2) For subsection (2) of that section (additional conditions for those over pensionable age) there shall be substituted—

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

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

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

*Category C retirement pension*

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

*Increases for dependants*

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

*Industrial injuries benefit*

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

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

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

- (3) In subsection (3) of that section (duration of entitlement) for the words “Unless he makes an election in accordance with regulations under section 30(3) above” there shall be substituted the words “Unless he returns to regular employment”.

- (4) For subsection (4) of that section there shall be substituted—

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

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(5) In subsection (5) of that section (rate of benefit) for paragraph (a) there shall be substituted—

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

(6) After subsection (6) of that section there shall be inserted—

“(7) Regulations may—

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

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

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

(7) In section 2 of the Social Security Act 1988, for subsection (8) (which provides that no retired person over pensionable age shall be entitled to reduced earnings allowance except under subsection (4) of that section) there shall be substituted—

“(8) Subsection (4) above shall, in prescribed circumstances, cease to apply in the case of a person who is engaged in regular employment; and, subject to regulations, any subsequent entitlement of his to reduced earnings allowance or retirement allowance shall be determined as if that subsection had never been enacted.

(8A) In subsection (8) above, “regular employment” has the same meaning as it has in section 59B of the Social Security Act 1975 (retirement allowance) and regulations may prescribe circumstances in which a person is or is not to be regarded as engaged in such employment.”

(8) Subsection (9) of that section (definitions relating to retirement) shall cease to have effect.

*Category B retirement pension for widower*

- 9 (1) In section 8 of the Pensions Act, in subsection (1) (conditions of entitlement for widower’s Category B pension) the words “who has retired from regular employment” shall cease to have effect.

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(2) For subsection (3) of that section (period of entitlement) there shall be substituted—

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

*Invalidity pensions for widows and widowers*

10 (1) In section 15 of that Act, in subsection (5) (disentitlement to widow’s invalidity pension)—

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

(2) In section 16 of that Act, in subsection (5) (disentitlement to widower’s invalidity pension)—

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

*Occupational and personal pensions*

11 In section 29 of that Act (contracted-out rates of benefit) in subsection (2) (circumstances in which a person is treated as entitled to a guaranteed minimum pension) before the word “if” in each of the places where it occurs there shall be inserted respectively “(a)”, “(b)” and “(c)”; and at the end of that subsection there shall be inserted the words “or

- (d) if its commencement had not been postponed, as mentioned in section 33(3) below.”

SCHEDULE 2

Section 19.

PERSONS EMPLOYED IN SOCIAL SECURITY ADMINISTRATION OR ADJUDICATION

**PART I**

THE SPECIFIED PERSONS

*Government departments*

A civil servant in—

- (a) the Department of Social Security;
- (b) the Department of Employment;

- (c) the Lord Chancellor’s Department.

*The Inland Revenue*

A member or officer of the Commissioners of Inland Revenue.

*Adjudication officers*

The Chief Adjudication Officer.  
An adjudication officer.

*Adjudicating bodies*

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

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

*The Occupational Pensions Board*

The chairman or deputy chairman of the Occupational Pensions Board.  
A member of that Board.  
A member of the staff of that Board.

*The Social Fund*

The Social Fund Commissioner.  
A social fund officer.  
A social fund inspector.  
A member of any staff employed in connection with the Social Fund.

*Former statutory bodies and officers*

An officer or other member of the staff of—

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

A benefit officer.  
An insurance officer.

**PART II**

CONSTRUCTION OF REFERENCES TO GOVERNMENT DEPARTMENTS ETC

- 1 (1) The reference in Part I of this Schedule to the Department of Social Security includes a reference to—
  - (a) the former Department of Health and Social Security,
  - (b) the former Ministry of Pensions and National Insurance,
  - (c) the former Ministry of Social Security, and

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(d) any other former government department,  
but, in the case of paragraphs (a) and (d) above, only to the extent that the functions carried out in the former department related to social security or to occupational or personal pension schemes or to war pensions.

(2) In sub-paragraph (1) above—

“occupational pension scheme” has the meaning given by section 66(1) of the Pensions Act;

“personal pension scheme” has the meaning given by section 84(1) of the 1986 Act; and

“war pension” has the meaning given by section 25(4) of this Act.

2 The reference in Part I of this Schedule to the Department of Employment is a reference to that Department only to the extent that the functions carried out in it relate to unemployment benefit or income support or related to the former supplementary benefit.

3 The reference in Part I of this Schedule to the Lord Chancellor’s Department is a reference to that Department only to the extent that the functions carried out relate to functions of the Chief Social Security Commissioner or any other Social Security Commissioner.

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

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

(i) National Insurance contributions,

(ii) statutory sick pay,

(iii) statutory maternity pay, or

(b) the tax treatment of occupational or personal pension schemes, as defined in paragraph 1(2) above.

## SCHEDULE 3

Section 21.

### ADJUDICATION

#### *Questions arising for determination by the Secretary of State*

1 (1) In section 93 of the principal Act (questions for the Secretary of State) after subsection (2) there shall be inserted—

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

(2) In section 115 of that Act (power to make procedure regulations) in subsection (6) (declaration of extent of certain powers) after the word “declared” there shall be inserted “(a)” and at the end of that subsection there shall be added the words “and

(b) that the power to provide for the manner in which questions arising for determination by the Secretary of State are to be raised includes power to make provision with respect to the formulation of any such



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questions (whether arising on a reference under section 148 below or otherwise).”

*Procedure on determination of claims or questions*

2 At the end of section 99 of that Act (decision of adjudication officer) there shall be added—

“(4) Where—

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

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

3 (1) After section 115 of that Act there shall be inserted—

**“115A Power of adjudicating authorities to refer matters to experts**

- (1) An authority to which this section applies may refer any question of special difficulty arising for decision by the authority to one or more experts for examination and report.
- (2) The authorities to which this section applies are—
  - (a) an adjudication officer;
  - (b) an adjudicating medical practitioner, or two or more such practitioners acting together;
  - (c) a specially qualified adjudicating medical practitioner appointed by virtue of section 113 above, or two or more such practitioners acting together;
  - (d) a social security appeal tribunal;
  - (e) a medical appeal tribunal;
  - (f) the Attendance Allowance Board;
  - (g) a Commissioner;
  - (h) the Secretary of State.
- (3) Regulations may prescribe cases in which a Commissioner shall not exercise the power conferred by subsection (1) above.
- (4) In this section “expert” means a person appearing to the authority to have knowledge or experience which would be relevant in determining the question of special difficulty.

**115B Assessors**

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

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- (2) The authorities to which this section applies are—
- (a) two or more adjudicating medical practitioners acting together;
  - (b) two or more specially qualified adjudicating medical practitioners, appointed by virtue of section 113 above, acting together;
  - (c) a social security appeal tribunal;
  - (d) a medical appeal tribunal;
  - (e) the Attendance Allowance Board;
  - (f) a Commissioner;
  - (g) the Secretary of State.”

- (2) The following provisions of that Act (which enable certain adjudicating authorities to refer matters to medical practitioners or to have the assistance of assessors and which are superseded by sub-paragraph (1) above) shall cease to have effect—
- (a) section 101(6) and (7);
  - (b) paragraph 4 of Schedule 11;
  - (c) paragraphs 8 and 9 of Schedule 13.

- 4 In Schedule 13 to that Act, in paragraph 1 (procedure to be followed in connection with determination of claims and questions by Secretary of State etc) after the words “Secretary of State” there shall be inserted the words “, an adjudication officer”.

*Appeals and appellate bodies*

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

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

- (a) after the words “point of law” there shall be inserted the words “he shall set it aside and”; and
- (b) after paragraph (b) (Commissioner to refer case to tribunal with directions for determination) there shall be added the words—

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

- 7 In section 104 of that Act (review of decisions) after subsection (3A) there shall be inserted—

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

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

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

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- 8 In section 106 of that Act, for subsection (2) (regulations to make provision concerning appeals from decision of the Attendance Allowance Board on point of law etc) there shall be substituted—
- “(2) An appeal lies to a Commissioner, with his leave or that of another Commissioner, against a determination by the Board of any question of law arising either—
- (a) on a review under subsection (1) above, or
  - (b) in connection with a refusal by the Board to review a determination made by them under section 105(3) above or this section,
- at the instance of the claimant in question or the Secretary of State.
- (2A) Where the Commissioner holds that the Board’s determination was erroneous in point of law—
- (a) he shall set it aside and refer the case to the Board; and
  - (b) unless the Commissioner otherwise directs, the Board shall not delegate the determination of that case to the medical practitioner, or any of the medical practitioners, who gave the erroneous decision.
- (2B) The references to the Board in subsection (2) above, and the first such reference in subsection (2A) above, include a reference to a delegate appointed in pursuance of paragraph 5 of Schedule 11 to this Act.
- (2C) Regulations may make provision as to the manner in which, and the time within which, appeals under subsection (2) above are to be brought and applications for leave to appeal under that subsection are to be made.”
- 9 (1) In section 112 of that Act (appeals from medical appeal tribunal to Commissioner on point of law)—
- (a) subsection (4) (power of tribunal to refer question of law to a Commissioner) shall cease to have effect; and
  - (b) in subsection (5) (tribunal to revise decision on case in light of Commissioner’s decision on point of law) the words “or reference” and the words from “and the medical” onwards shall cease to have effect.
- (2) After subsection (5) there shall be added—
- “(6) Where the Commissioner holds that the decision was erroneous in point of law he shall set it aside and refer the case to a medical appeal tribunal with directions for its determination.
- (7) Subject to any direction of the Commissioner, the tribunal on a reference under subsection (6) above shall consist of persons who were not members of the tribunal which gave the erroneous decision.”
- 10 In Schedule 13 to that Act (provision which may be made by procedure regulations) after paragraph 7 there shall be inserted—
- “7A Provision empowering the chairman of a social security appeal tribunal or a medical appeal tribunal to give directions for the disposal of any purported appeal which he is satisfied that the tribunal does not have jurisdiction to entertain.”

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

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*Review of decisions*

- 11 (1) In section 104 of that Act (review of decisions) in subsection (1) after paragraph (b) there shall be inserted—
- “(bb) it is anticipated that a relevant change of circumstances will so occur; or”.
- (2) After that subsection there shall be inserted—
- “(1ZA) Where a decision is reviewed on the ground mentioned in subsection (1)(bb) above, the decision given on the review—
- (a) shall take effect on the day prescribed for that purpose by reference to the date on which the relevant change of circumstances is expected to occur; and
- (b) shall be reviewed again if the relevant change of circumstances either does not occur or occurs otherwise than on that date.”
- (3) In subsection (5) of that section (regulations) in paragraph (a) after the words “subsection (1)(b)” there shall be inserted the words “and (bb)”.
- (4) At the end of paragraph (b) of that subsection there shall be added the words “(whether that period falls wholly or partly before or after the making of the regulations)”.

*Disablement benefit etc.*

- 12 (1) In section 108 of that Act (disablement questions) at the end of subsection (1) there shall be added the words “(and accordingly fall to be determined by an adjudication officer).”
- (2) For subsection (4A) of that section there shall be substituted—
- “(4A) Where, in the case of a claimant for disablement benefit, the extent of any disablement of his resulting from an aggregable accident (that is to say, an accident other than the one which is the basis of the claim in question) has been assessed in accordance with paragraph 4(2) of Schedule 8 to this Act at less than 14 per cent., then—
- (a) the adjudication officer may refer the disablement questions relating to the aggregable accident to one or more adjudicating medical practitioners for fresh determination; and
- (b) on any such reference—
- (i) those questions shall be determined as at the first day of the common period; and
- (ii) the period to be taken into account shall be the period beginning with that day.
- (4B) In subsection (4A) above “the first day of the common period” means whichever is the later of—
- (a) the first day of the period taken into account by the assessment of the extent of the claimant’s disablement resulting from the accident which is the basis of the claim in question;
- (b) the first day of the period taken into account by the assessment of the extent of his disablement resulting from the aggregable accident.”

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- 13 (1) In Schedule 8 to that Act (assessment of extent of disablement) for paragraph 4(2) there shall be substituted—

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

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

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

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

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

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

- (a) for the words “section 57” there shall be substituted the words “sections 57 and 59A”; and
- (b) at the end there shall be added the words “and reduced earnings allowance (whether or not a claim has been made)”.

#### *Recovery of overpayments*

- 14 (1) In section 53 of the 1986 Act (overpayments) after subsection (1) there shall be inserted—

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

- (2) In subsection (4) after the word “unless” there shall be inserted “(a)” and at the end there shall be added the words “and

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

#### *Miscellaneous*

- 15 In section 103 of the principal Act (reference of special questions) in subsection (2) after the word “making” there shall be inserted the words “or directing”.

- 16 In section 167 of that Act (Parliamentary control of regulations and orders) there shall be added at the end—

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- “(4) All regulations made under this Act by the Lord Chancellor shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 17 In Schedule 10 to that Act (supplementary provision as to social security appeal tribunals etc) paragraphs 1(7) and 2(2) (which require, so far as practicable, tribunal panel members and chairmen to serve in turn) shall cease to have effect.
- 18 In paragraph 2(5) of Schedule 12 to that Act (chairmen of medical appeal tribunal to be barrister, advocate or solicitor of at least 7 years standing) for the words “7 years” there shall be substituted the words “5 years”.
- 19 In Schedule 20 to that Act (glossary of expressions) the definition of “local office” shall be omitted.

## SCHEDULE 4

Section 22.

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

#### PART I

##### INTERPRETATION

- 1 (1) In this Schedule—
- “the recoupment provisions” means the provisions of section 22 of this Act and this Schedule;
- “the relevant deduction” means the deduction required to be made from the compensation payment in question by virtue of the recoupment provisions;
- “the relevant payment” means the payment required to be made to the Secretary of State by virtue of the recoupment provisions;
- “the total benefit” means the gross amount referred to in section 22(1)(a) of this Act.
- (2) If, after making the relevant deduction from the compensation payment, there would be no balance remaining for payment to the intended recipient, any reference in this Schedule to the making of the compensation payment shall be construed in accordance with regulations.
- (3) Expressions used in this Schedule and in section 22 of this Act have the same meaning in this Schedule as they have in that section.

#### PART II

##### PAYMENTS, DEDUCTIONS AND CERTIFICATES

###### *Time for making payment to Secretary of State*

- 2 The compensator’s liability to make the relevant payment arises immediately before the making of the compensation payment, and he shall make the relevant payment

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before the end of the period of 14 days following the day on which the liability arises.

*The certificate of total benefit*

- 3 (1) It shall be for the compensator to apply to the Secretary of State for the certificate of total benefit and he may, subject to sub-paragraph (5) below, from time to time apply for fresh certificates.
- (2) The certificate of total benefit shall specify—
- (a) the amount which has been, or is likely to be, paid on or before a specified date by way of any relevant benefit which is capable of forming part of the total benefit;
  - (b) where applicable—
    - (i) the rate of any relevant benefit which is, has been, or is likely to be paid after the date so specified and which would be capable of forming part of the total benefit; and
    - (ii) the intervals at which any such benefit is paid and the period for which it is likely to be paid;
  - (c) the amounts (if any) which, by virtue of the recoupment provisions, are to be treated as increasing the total benefit; and
  - (d) the aggregate amount of any relevant payments made on or before a specified date (reduced by so much of that amount as has been paid by the Secretary of State to the intended recipient before that date in consequence of the recoupment provisions).
- (3) On issuing a certificate of total benefit, the Secretary of State shall be taken to have certified the total benefit as at every date for which it is possible to calculate an amount that would, on the basis of the information so provided, be the total benefit as at that date, on the assumption that payments of benefit are made on the days on which they first become payable.
- (4) The Secretary of State may estimate, in such manner as he thinks fit, any of the amounts, rates or periods specified in the certificate of total benefit.
- (5) A certificate of total benefit shall remain in force until such date as may be specified in the certificate for that purpose and no application for a fresh certificate shall be made before that date.
- (6) Where a certificate ceases to be in force, the Secretary of State may issue a fresh certificate, whether or not an application has been made to him for such a certificate.
- (7) The compensator shall not make the compensation payment at any time when there is no certificate of total benefit in force in respect of the victim, unless his liability to make the relevant deduction and the relevant payment has ceased to be enforceable by virtue of paragraph 15 below.

*Exemption from deduction in cases involving small payments*

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

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- (2) Regulations may make provision for cases where an amount has been deducted and paid to the Secretary of State which, by virtue of regulations under sub-paragraph (1) above, ought not to have been so deducted and paid, and any such regulations may, in particular, provide for him to pay that amount to the intended recipient or the compensator or to pay a prescribed part of it to each of them.
- (3) The reference in section 22(4)(a) of this Act to a “small payment” is a reference to a payment from which by virtue of this paragraph no relevant deduction falls to be made.
- (4) For the purposes of this paragraph—
  - (a) two or more compensation payments are “connected” if each is made to or in respect of the same victim and in respect of the same accident, injury or disease; and
  - (b) any reference to a compensation payment is a reference to a payment which would be such a payment apart from section 22(4)(a) of this Act.

*Multiple compensation payments*

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- (1) This paragraph applies where—
  - (a) a compensation payment has been made (an “earlier payment”) to or in respect of the victim; and
  - (b) subsequently another such payment (a “later payment”) falls to be made to or in respect of the same victim in respect of the same accident, injury or disease (whether by the same or another compensator).
- (2) In determining the amount of the relevant deduction and payment required to be made in connection with the later payment, the amount referred to in section 22(1)(a) of this Act shall be reduced by the amount of any relevant payment made in connection with the earlier payment, or, if more than one, the aggregate of those relevant payments.
- (3) In relation to the later payment, the compensator shall take the amount of the reduction required by sub-paragraph (2) above to be such as may be specified under paragraph 3(2)(d) above in the certificate of total benefit issued to him in connection with that later payment.
- (4) In any case where—
  - (a) the relevant payment made in connection with an earlier payment is not reflected in the certificate of total benefit in force in relation to a later payment, and
  - (b) in consequence, the aggregate of the relevant payments made in relation to the later payment and every earlier payment exceeds what it would have been had that relevant payment been so reflected,
 the Secretary of State shall pay the intended recipient an amount equal to the excess.
- (5) In determining any rights and liabilities in respect of contribution or indemnity, relevant payments shall be treated as damages paid to or for the intended recipient in respect of the accident, injury or disease in question.



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#### *Collaboration between compensators*

- 6 (1) This paragraph applies where compensation payments in respect of the same accident, injury or disease fall (or apart from the recoupment provisions would fall) to be made to or in respect of the same victim by two or more compensators.
- (2) Where this paragraph applies, any two or more of those compensators may give the Secretary of State notice that they are collaborators in respect of compensation payments in respect of that victim and that accident, injury or disease.
- (3) Where such a notice is given and any of the collaborators makes a relevant payment in connection with such a compensation payment, each of the other collaborators shall be treated as if the aggregate amount of relevant payments specified in his certificate of total benefit, as in force at the time of that relevant payment, or in a fresh certificate which does not purport to reflect the payment, were increased by the amount of that payment.

#### *Structured settlements*

- 7 (1) This paragraph applies where—
- (a) in final settlement of a person's claim, an agreement is entered into—
    - (i) for the making of periodical payments (whether of an income or capital nature) to or in respect of the victim; or
    - (ii) for the making of such payments and one or more lump sum payments; and
  - (b) apart from this paragraph, those payments would fall to be regarded for the purposes of the recoupment provisions as compensation payments.
- (2) Where this paragraph applies, the recoupment provisions (other than this paragraph) shall have effect on the following assumptions, that is to say—
- (a) the relevant period in the case of the compensator in question shall be taken to end (if it has not previously done so) on the day of settlement;
  - (b) the compensator in question shall be taken—
    - (i) to have been liable to make on that day a single compensation payment of the amount referred to in section 22(1)(a) of this Act (reduced or increased in accordance with such of the recoupment provisions as would have applied in the case of a payment on that day); and
    - (ii) to have made from that single payment a relevant deduction of an amount equal to it; and
  - (c) the payments under the agreement referred to in sub-paragraph (1) above shall be taken to be exempt payments.
- (3) The intended recipient shall not by virtue of anything in this paragraph become entitled to be paid any sum, whether by the compensator or the Secretary of State, and if on a review or appeal under paragraph 16 or 18 below it appears that the amount paid by a compensator in pursuance of this paragraph was either greater or less than it ought to have been, then—
- (a) any excess shall be repaid to the compensator instead of to the intended recipient; but
  - (b) any deficiency shall be paid to the Secretary of State by the intended recipient.

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- (4) Where any further compensation payment falls to be made to or in respect of the victim otherwise than under the agreement in question, sub-paragraph (2)(a) above shall be disregarded for the purpose of determining the end of the relevant period in relation to that further payment.
- (5) In any case where—
- (a) the person making the periodical payments (the “secondary party”) does so in pursuance of arrangements entered into with another (as in a case where an insurance company purchases an annuity for the victim from another such company), and
  - (b) apart from those arrangements, that other (“the primary party”) would have been regarded as the compensator,
- then for the purposes of the recoupment provisions, the primary party shall be regarded as the compensator and the secondary party shall not be so regarded.
- (6) In determining for the purposes of this paragraph whether any periodical payments would fall to be regarded as compensation payments, section 22(4)(a) of this Act shall be disregarded.
- (7) In this paragraph “the day of settlement” means—
- (a) if the agreement referred to in sub-paragraph (1) above is approved by a court, the day on which that approval is given; and
  - (b) in any other case, the day on which that agreement is entered into.

#### *Insolvency*

- 8 (1) Where the intended recipient is subject to a bankruptcy order, nothing in the Act 1986 shall affect the operation of the recoupment provisions.
- (2) Where the estate of the intended recipient is sequestrated, the relevant deduction from the compensation payment shall not form part of the whole estate of the debtor, within the meaning of section 31(8) of the Bankruptcy (Scotland) Act 1985.

#### *Protection of legal aid charges*

- 9 (1) In any case where—
- (a) the compensation payment is subject to any charge under the Legal Aid Act 1974 or the Legal Aid Act 1988, and
  - (b) after the making of the relevant deduction, the balance of the compensation payment is insufficient to satisfy that charge,
- the Secretary of State shall make such a payment as will secure that the deficiency is made good to the extent of the relevant payment.
- (2) Where the Secretary of State makes a payment under this paragraph, then, for the purposes of paragraph 3 above, the amount of the payment shall be treated as increasing the total benefit.
- (3) In the application of this paragraph to Scotland, references in sub-paragraph (1) to a charge under the Acts specified shall be construed as references to any provisions of the Legal Aid (Scotland) Act 1986 for the repayment to the Scottish Legal Aid Fund of sums paid by it on behalf of the intended recipient in respect of the proceedings in which the compensation payment is made.

*Overpaid benefits*

- 10 In any case where—
- (a) during the relevant period, there has, in respect of the accident, injury or disease, been paid to or for the victim any relevant benefit to which he was not entitled (“the overpaid benefit”), and
  - (b) the amount of the relevant payment is such that, after taking account of the rest of the total benefit, there remains an amount which represents the whole or any part of the overpaid benefit,
- then, notwithstanding anything in section 53 of the 1986 Act or any regulations under that section, the receipt by the Secretary of State of the relevant payment shall be treated as the recovery of the whole or, as the case may be, that part of the overpaid benefit.

*Death*

- 11 In the case of any compensation payment the whole or part of which is made—
- (a) in consequence of an action under the Fatal Accidents Act 1976, or
  - (b) in circumstances where, had an action been brought, it would have been brought under that Act, or
  - (c) in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976,
- regulations may make provision for estimating or calculating the portion of the payment which is to be regarded as so made for the purposes of section 22(4)(c) or (d) of this Act.

*Payments into court*

- 12 (1) Nothing in the recoupment provisions requires a court to make any relevant deduction or payment in connection with money in court.
- (2) Where a party to an action makes a payment into court which, had it been paid directly to the other party, would have constituted a compensation payment, the making of that payment shall be regarded for the purposes of the recoupment provisions as the making of a compensation payment, but the compensator—
- (a) may either—
    - (i) withhold from such a payment into court an amount equal to the relevant deduction; or
    - (ii) make such a payment into court before the certificate of total benefit has been issued to him; and
  - (b) shall not become liable to make the relevant payment, or to furnish a certificate of deduction, until he has been notified that the payment into court has been paid out of court to or for the other party.
- (3) Where a person making a payment into court withholds an amount in accordance with sub-paragraph (2)(a)(i) above—
- (a) he shall, at the time when he makes that payment, furnish the court with a certificate of the amount so withheld; and
  - (b) the amount paid into court shall be regarded as increased by the amount so certified;

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

- (4) Where a payment into court is made as mentioned in sub-paragraph (2)(a)(ii) above, the compensator—
- (a) shall apply for the certificate of total benefit no later than the day on which the payment into court is made; and
  - (b) shall become liable to make the relevant payment as mentioned in sub-paragraph (2)(b) above, notwithstanding that the relevant deduction has not been made.
- (5) Where any such payment into court as is mentioned in sub-paragraph (2) above is paid out of court to or for the other party to the action within the initial period, then, as respects the compensator in question, the relevant period shall be taken to have ended on the day on which the payment into court was made.
- (6) In sub-paragraph (5) above “the initial period” means the period of 21 days following the making of the payment into court, but rules of court may make provision varying the length of that period.
- (7) Rules of court may make provision regulating or prescribing the practice and procedure to be followed in relation to such payments into court as are mentioned in sub-paragraph (2) above.
- (8) This paragraph does not extend to Scotland.

### PART III

#### ADMINISTRATION AND ADJUDICATION

##### *Provision of information*

- 13 (1) Any person who is, or is alleged to be, liable in respect of an accident, injury or disease, or any person acting on his behalf, shall furnish the Secretary of State with the prescribed information relating to any person seeking compensation, or in respect of whom compensation is sought, in respect of that accident, injury or disease.
- (2) Any person who claims a relevant benefit or who has been in receipt of such a benefit or, if he has died, the personal representatives of such a person, shall furnish the Secretary of State with the prescribed information relating to any accident, injury or disease suffered by that person.
- (3) Any person—
- (a) who is the employer of a person who suffers or has suffered an accident, injury or disease, or
  - (b) who has been the employer of such a person at any time during the relevant period,
- shall furnish the Secretary of State with the prescribed information relating to the payment of statutory sick pay in respect of that person.
- (4) In sub-paragraph (3) above “employer” has the same meaning as it has in Part I of the 1982 Act.

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

*Applications for certificates of total benefit*

- 14 (1) If at any time before he makes the compensation payment in question the compensator applies to the Secretary of State in accordance with paragraph 3 above for a certificate of total benefit relating to the victim in question—
- (a) the Secretary of State shall furnish him with such a certificate before the end of the period of 4 weeks, or such other number of weeks as may be prescribed, following the day on which the application is, or is deemed in accordance with regulations to be, received; and
  - (b) any certificate so furnished shall, in particular, specify for the purposes of paragraph 3(2)(a) above a date not earlier than the date of the application.
- (2) Where the Secretary of State furnishes any person with a certificate of total benefit, he shall also provide the information contained in that certificate to the person who appears to him to be the victim in relation to the compensation payment in question.
- (3) The victim may apply to the Secretary of State for particulars of the manner in which any amount, rate or period specified in a certificate of total benefit has been determined.

*Liability of compensator unenforceable if certificate not issued within time limit*

- 15 (1) The liability of the compensator to make the relevant deduction and payment relating to the first compensation payment after the default date shall not be enforceable if—
- (a) he has made a request under paragraph 14(1) above which—
    - (i) accurately states the prescribed particulars relating to the victim and the accident, injury or disease in question; and
    - (ii) specifies the name and address of the person to whom the certificate is to be sent;
  - (b) he has in his possession a written acknowledgment, sent to him in accordance with regulations, of the receipt of the request; and
  - (c) the Secretary of State does not, within the time limit referred to in paragraph 14(1) above, send the certificate to the person specified in the request as the person to whom the certificate is to be sent, at the address so specified;
- and accordingly, where those liabilities cease to be enforceable, nothing in the recoupment provisions shall prevent the compensator from making that compensation payment.
- (2) In any case where—
- (a) the liability to make the relevant deduction and payment becomes unenforceable by virtue of this paragraph, but
  - (b) the compensator nevertheless makes that deduction and payment,
- he shall be treated for all purposes as if the liability had remained enforceable.
- (3) Where the compensator, in reliance on this paragraph, does not make the relevant deduction and payment, then—

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- (a) he shall within fourteen days of the default date give the Secretary of State notice of that fact together with such other particulars as may be prescribed; and
  - (b) in determining the amount of the relevant deduction and payment to be made in connection with any subsequent compensation payment made by the same or any other compensator, the amount which, apart from this paragraph, would have fallen to be deducted and paid by him shall continue to form part of the total benefit and shall not be treated as if it had been paid.
- (4) If, in the opinion of the Secretary of State, circumstances have arisen which adversely affect normal methods of communication—
- (a) he may by order provide that no liability shall become unenforceable by virtue of this paragraph during a specified period not exceeding three months; and
  - (b) he may continue any such order in force for further periods not exceeding three months at a time.
- (5) In this paragraph “the default date” means the date on which the time limit mentioned in sub-paragraph (1)(c) above expires.

#### *Review of certificates of total benefit*

- 16 (1) The Secretary of State may review any certificate of total benefit if he is satisfied that it was issued in ignorance of, or was based on a mistake as to, some material fact or that a mistake (whether in computation or otherwise) has occurred in its preparation.
- (2) On any such review the Secretary of State may either—
- (a) confirm the certificate, or
  - (b) issue a fresh certificate containing such variations as he considers appropriate,
- but he shall not so vary the certificate as to increase the total benefit.
- (3) In any case where—
- (a) one or more relevant payments have been made, and
  - (b) in consequence of a review under this paragraph, it appears that the aggregate amount so paid exceeds the amount that ought to have been paid,
- the Secretary of State shall pay the intended recipient an amount equal to the excess.

#### *Appeals*

- 17 (1) An appeal shall lie in accordance with this paragraph against any certificate of total benefit at the instance of the compensator, the victim or the intended recipient, on the ground—
- (a) that any amount, rate or period specified in the certificate is incorrect, or
  - (b) that benefit paid or payable otherwise than in consequence of the accident, injury or disease in question has been brought into account.
- (2) No appeal shall be brought under this paragraph until—
- (a) the claim giving rise to the compensation payment has been finally disposed of; and
  - (b) the relevant payment, or where more than one such payment may fall to be made, the final relevant payment, has been made.

- (3) Notwithstanding sub-paragraph (2) above, where—
- (a) an award of provisional damages has been made under section 32A of the Supreme Court Act 1981 or section 12 of the Administration of Justice Act 1982, and
  - (b) the relevant payment or, where more than one such payment falls to be made, the final relevant payment in relation to the provisional damages so awarded has been made,
- an appeal may be brought under this paragraph against any certificate of total benefit by reference to which the amount of that relevant payment, or any of those relevant payments, was made.
- (4) Regulations may—
- (a) make provision as to the manner in which, and the time within which, appeals under this paragraph are to be brought, and
  - (b) make provision for the purpose of enabling any such appeal to be treated as an application for review under paragraph 16 above,
- and regulations under paragraph (b) above may, in particular, provide that the circumstances in which such a review may be carried out shall not be restricted to those specified in paragraph 16 above.
- (5) If any of the medical questions arises for determination on an appeal under this paragraph, the Secretary of State shall refer that question to a medical appeal tribunal, whose determination shall be binding, for the purposes of the appeal, on any social security appeal tribunal to whom a question is referred under sub-paragraph (7) below.
- (6) A medical appeal tribunal, in determining any of the medical questions, shall take into account any decision of any court relating to the same, or any similar, issue arising in connection with the accident, injury or disease in question.
- (7) If any question concerning any amount, rate or period specified in the certificate of total benefit arises for determination on an appeal under this paragraph, the Secretary of State shall refer that question to a social security appeal tribunal, but where any medical questions arising on the appeal have been referred to a medical appeal tribunal—
- (a) he shall not refer any question to the social security appeal tribunal until he has received the determination of the medical appeal tribunal on the questions referred to them; and
  - (b) he shall notify the social security appeal tribunal of the determinations of the medical appeal tribunal.
- (8) On a reference under sub-paragraph (7) above a social security appeal tribunal may either—
- (a) confirm the amounts, rates and periods specified in the certificate of total benefit; or
  - (b) specify any increases, reductions or other variations which are to be made on the issue of the fresh certificate under sub-paragraph (9) below.
- (9) When the Secretary of State has received the determinations of the tribunals on the questions referred to them under sub-paragraphs (5) and (7) above, he shall in accordance with those determinations either—
- (a) confirm the certificate against which the appeal was brought, or

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- (b) issue a fresh certificate.
- (10) Regulations may make provision with respect to the procedure for the reference under this paragraph of questions to medical appeal tribunals or social security appeal tribunals.
- (11) An appeal shall lie to a Commissioner at the instance of the compensator, the victim or the intended recipient from a decision of a medical appeal tribunal or a social security appeal tribunal under this paragraph on the ground that the decision was erroneous in point of law; and for the purposes of appeals under this sub-paragraph—
  - (a) section 101(5), (5A) and (5B) of the principal Act shall apply in relation to an appeal from the decision of a social security appeal tribunal; and
  - (b) section 112(3) of that Act shall apply in relation to an appeal from the decision of a medical appeal tribunal.
- (12) In this paragraph “the medical questions” means—
  - (a) any question whether, as the result of a particular occurrence, a person suffered an injury, sickness or disease;
  - (b) any question as to the period for which a person suffered any injury, sickness or disease.

*Recovery in consequence of an appeal*

- 18 (1) Where it appears, in consequence of an appeal under paragraph 17 above, that the aggregate amount of the relevant payment or payments actually made exceeds the amount that ought to have been paid, the Secretary of State shall pay the intended recipient an amount equal to that excess.
- (2) Where it appears, in consequence of such an appeal, that the aggregate amount of the relevant payment or payments actually made is less than the amount that ought to have been paid, the intended recipient shall pay the Secretary of State an amount equal to the deficiency.
- (3) Without prejudice to any other method of enforcement, an amount payable under sub-paragraph (2) above may be recovered by deduction from any benefits which are prescribed benefits for the purposes of section 53 of the 1986 Act (recovery of overpayments).

*Recovery of relevant payment in cases of default*

- 19 (1) This paragraph applies in any case where the compensator has made a compensation payment but—
  - (a) has not requested a certificate of total benefit in respect of the victim, or
  - (b) if he has done so, has not made the relevant payment within the time limit imposed by paragraph 2 above.
- (2) Where this paragraph applies, the Secretary of State may—
  - (a) if no certificate of total benefit has been issued to the compensator, issue to him such a certificate and a demand for the relevant payment to be made forthwith, or
  - (b) if a certificate of total benefit has been issued to the compensator, issue to him a copy of that certificate and such a demand,



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

- (3) Any amount recoverable under this paragraph shall—
- (a) if the compensator resides or carries on business in England and Wales and a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court; or
  - (b) if the compensator resides or carries on business in Scotland, be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) A document bearing a certificate which—
- (a) is signed by a person authorised in that behalf by the Secretary of State, and
  - (b) states that the document, apart from the certificate, is a record of the amount recoverable under this paragraph,
- shall be conclusive evidence that that amount is so recoverable; and a certificate purporting to be signed as aforesaid shall be deemed to be so signed unless the contrary is proved.
- (5) Where this paragraph applies in relation to two or more connected compensators, the Secretary of State may proceed against them as if they were jointly and severally liable for an amount equal to the difference between—
- (a) the total benefit determined in accordance with the latest connected certificate of total benefit issued to any of them, and
  - (b) the aggregate amount of any connected relevant payments previously made.
- (6) Nothing in sub-paragraph (5) above authorises the recovery from any person of an amount in excess of the compensation payment by virtue of which this paragraph applies to him (or, if there are two or more such payments which are connected, the aggregate amount of those payments).
- (7) In sub-paragraphs (5) and (6) above, “connected” means relating to the same victim and the same accident, injury or disease.

#### *Inspection*

- 20 (1) Section 58 of the 1986 Act (inspection) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (powers of inspector to enter, examine and enquire), for sub-paragraph (ii) of paragraph (b) there shall be substituted—
- “(ii) for investigating the circumstances in which any accident, injury or disease which has given or may give rise to a claim for industrial injuries benefit, or for any benefit which is a relevant benefit for the purposes of the recoupment provisions, occurred or may have occurred, or was or may have been received or contracted;”.
- (3) In paragraph (c) of that subsection, after sub-paragraph (ii) there shall be inserted—
- “(iii) a compensation payment or a relevant payment, within the meaning of the recoupment provisions;”.

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- (4) In subsection (3) (premises which are liable to inspection) after paragraph (c) there shall be inserted—
- “(d) any person—
- (i) who is the compensator, within the meaning of the recoupment provisions, in relation to any such accident, injury or disease as is referred to in subsection (2)(b)(ii) above, or
- (ii) on whose behalf any such compensator has or may have made, or may make, a compensation payment, within the meaning of those provisions,
- carries on business or is to be found;”.
- (5) In subsection (6) (persons to furnish information required for ascertaining whether certain sums are or have been paid or payable) in paragraph (a), after subparagraph (ii), there shall be inserted—
- “(iii) any compensation payment or relevant payment, within the meaning of the recoupment provisions;”.
- (6) In subsection (7) (persons who are under a duty to provide information) at the end of paragraph (e) there shall be added the words “or to make any compensation payment or relevant payment, within the meaning of the recoupment provisions”.
- (7) After subsection (9) there shall be added—
- “(10) In this section “the recoupment provisions” means section 22 of, and Schedule 4 to, the Social Security Act 1989 (recovery from damages etc of sums equivalent to benefit paid).”

## PART IV

### MISCELLANEOUS

#### *Foreign compensators: duties of intended recipient*

- 21 (1) Where, immediately before the making of the compensation payment, the compensator is not resident and does not have a place of business in Great Britain, any deduction, payment or other thing which would, apart from this paragraph, fall to be made or done under the recoupment provisions by the compensator shall instead be made or done by the intended recipient and references to the compensator shall be construed accordingly.
- (2) The Secretary of State may by regulations make such provision as he considers expedient for the purpose of modifying the recoupment provisions in their application in such a case.

#### *Modification of Law Reform (Personal Injuries) Act 1948*

- 22 (1) In section 2 of the Law Reform (Personal Injuries) Act 1948, in subsection (1) (which requires that, in assessing damages, half of certain benefits shall be brought into account against loss of profits or earnings)—
- (a) after the word “contract),” there shall be inserted the words “where this section applies”;

- (b) for the words from “against any loss” to “from the injuries” there shall be substituted the words “against them”; and
- (c) for the words from “therefrom” onwards there shall be substituted the words “from the injuries in respect of—
  - (a) any of the relevant benefits, within the meaning of section 22 of the Social Security Act 1989, or
  - (b) any corresponding benefits payable in Northern Ireland,

for the five years beginning with the time when the cause of action accrued.”

- (2) After that subsection there shall be inserted—

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

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

*Modification of Bankruptcy (Scotland) Act 1985*

- 23 In section 31 of the Bankruptcy (Scotland) Act 1985 (vesting of debtor’s estate at date of sequestration) in subsection (8) after the words “subsection (9) below” there shall be inserted the words “and to paragraph 8(2) of Schedule 4 to the Social Security Act 1989.”

SCHEDULE 5

Section 23.

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

**PART I**

COMPLIANCE BY SCHEMES

*Schemes to comply with the principle of equal treatment*

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

*The principle*

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

- (2) Sub-paragraphs (3) to (6) below have effect, where applicable, for the purpose of determining whether a scheme complies with the principle of equal treatment.
- (3) Where any provision of the scheme imposes on both male and female members a requirement or condition—
- (a) which is such that the proportion of persons of the one sex (“the sex affected”) who can comply with it is considerably smaller than the proportion of persons of the other sex who can do so, and
  - (b) which is not justifiable irrespective of the sex of the members,
- the imposition of that requirement or condition shall be regarded as less favourable treatment of persons of the sex affected.
- (4) No account shall be taken of—
- (a) any difference, on the basis of the sex of members, in the levels of contributions—
    - (i) which members are required to make, to the extent that the difference is justifiable on actuarial grounds, or
    - (ii) which the employer makes, to the extent that the difference is for the purpose of removing or limiting differences, as between men and women, in the amount or value of money purchase benefits;
  - (b) any difference, on the basis of sex, in the amount or value of money purchase benefits, to the extent that the difference is justifiable on actuarial grounds;
  - (c) any special treatment for the benefit of women in connection with pregnancy or childbirth;
  - (d) any permitted age-related differences;
  - (e) any difference of treatment in relation to benefits for a deceased member’s surviving husband, wife or other dependants;
  - (f) any difference of treatment in relation to any optional provisions available; or
  - (g) any provisions of a scheme to the extent that they have been specially arranged for the benefit of one particular member of the scheme;
- but where the scheme includes any unfair maternity provisions, it shall to that extent be regarded as according less favourable treatment to women on the basis of sex.
- (5) Where the scheme treats persons of the one sex differently according to their marital or family status, that treatment is to be compared with the scheme’s treatment of persons of the other sex who have the same status.
- (6) The principle of equal treatment applies in relation to members’ dependants as it applies in relation to members.
- (7) If any question arises whether a condition or requirement falling within sub-paragraph (3)(a) above is or is not justifiable irrespective of the sex of the members, it shall be for those who assert that it is so justifiable to prove that fact.
- (8) In this paragraph—
- “money purchase benefits” has the meaning given by section 84(1) of the 1986 Act, but with the substitution for references to a personal or occupational pension scheme of references to an employment-related benefit scheme;
- “optional provisions available” means those provisions of a scheme—

- (a) which apply only in the case of members who elect for them to do so; and
  - (b) whose purpose is to secure for those members—
    - (i) benefits in addition to those otherwise provided under the scheme; or
    - (ii) a choice with respect to the date on which benefits under the scheme are to commence; or
    - (iii) a choice between any two or more benefits;
- “permitted age-related difference” means any difference, on the basis of sex, in the age—
- (a) at which a service-related benefit in respect of old age or retirement commences; or
  - (b) at which, in consequence of the commencement of such a benefit, any other service-related benefit either ceases to be payable or becomes payable at a reduced rate calculated by reference to the amount of the benefit so commencing.
- (9) For the purposes of this paragraph—
- (a) any reference to a person’s family status is a reference to his having an unmarried partner or any dependants; and
  - (b) a person “has an unmarried partner” if that person and some other person to whom he is not married live together as husband and wife.

*Non-compliance: compulsory levelling up*

- 3 (1) To the extent that any provision of an employment-related benefit scheme does not comply with the principle of equal treatment, it shall be overridden by this Schedule and the more favourable treatment accorded to persons of the one sex shall also be accorded to persons of the other sex.
- (2) Where more favourable treatment is accorded to any persons by virtue of sub-paragraph (1) above, that sub-paragraph requires them, in accordance with the principle of equal treatment—
- (a) to pay contributions at a level appropriate to the treatment so accorded; and
  - (b) to bear any other burden which is an incident of that treatment;
- but persons of either sex may instead elect to receive the less favourable treatment and, in accordance with the principle of equal treatment, pay contributions at the level appropriate to that treatment and bear the other burdens incidental to it.
- (3) Where any provision of a scheme is overridden by sub-paragraph (1) above, nothing in this Schedule shall affect any rights accrued or obligations incurred during the period before the date on which that provision is so overridden.
- (4) Sub-paragraph (1) above is without prejudice to the exercise, in compliance with the principle of equal treatment, of any power to amend the scheme.

*Modification of schemes by the Occupational Pensions Board*

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

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

*Unfair maternity provisions*

- 5 (1) In this Schedule “unfair maternity provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid maternity absence in the case of any woman who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a woman otherwise than in accordance with the normal employment requirement; or
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings during a period which included a period of paid maternity absence, to be determined otherwise than in accordance with the normal employment requirement.
- (2) In the case of any unfair maternity provision—

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- (a) the more favourable treatment required by paragraph 3(1) above is treatment no less favourable than would be accorded to the women in accordance with the normal employment requirement;
- (b) paragraph 3(2) above does not authorise the making of any such election as is there mentioned; and
- (c) paragraph 4(1)(a) above does not authorise the making of any modification which does not satisfy the requirements of paragraph (a) above;

but, in respect of a period of paid maternity absence, a woman shall only be required to pay contributions on the amount of contractual remuneration or statutory maternity pay actually paid to or for her in respect of that period.

(3) In this paragraph—

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

#### *Unfair family leave provisions*

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

- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
- (b) subject to sub-paragraph (3) below, this Schedule shall apply accordingly.

(2) In this Schedule “unfair family leave provisions” means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid family leave in the case of any member who is an employed earner and which treats such a member otherwise than in accordance with the normal leave requirement; or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member to the extent that it falls to be determined by reference to earnings during a period which included a period of paid family leave, to be determined otherwise than in accordance with the normal leave requirement.

(3) In the case of any unfair family leave provision—

- (a) the more favourable treatment required by paragraph 3(1) above is treatment no less favourable than would be accorded to the members in accordance with the normal leave requirement;
- (b) paragraph 3(2) above does not authorise the making of any such election as is there mentioned; and
- (c) paragraph 4(1)(a) above does not authorise the making of any modification which does not satisfy the requirements of paragraph (a) above;

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

(4) In this paragraph—

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

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

7

In this Schedule—

- (a) “employment-related benefit scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide service-related benefits to or in respect of employed or self-employed earners—
  - (i) who have qualifying service in an employment of any such description or category, or
  - (ii) who have made arrangements with the trustees or managers of the scheme to enable them to become members of the scheme,
 but does not include a limited scheme;
- (b) “limited scheme” means—
  - (i) any personal scheme for employed earners to which the employer does not contribute;
  - (ii) any scheme which has only one member, other than a personal scheme for an employed earner to which his employer contributes;
  - (iii) any contract of insurance which is made for the benefit of employed earners only and to which the employer is not a party;
- (c) “personal scheme” means any scheme or arrangement which falls within paragraph (a) above by virtue of sub-paragraph (ii) of that paragraph (or which would so fall apart from paragraph (b) above);
- (d) “public service scheme” has the meaning given by section 51(3)(b) of the 1973 Act;
- (e) “service-related benefits” means benefits, in the form of pensions or otherwise, payable in money or money’s worth in respect of—
  - (i) termination of service;
  - (ii) retirement, old age or death;
  - (iii) interruptions of service by reason of sickness or invalidity;
  - (iv) accidents, injuries or diseases connected with employment;
  - (v) unemployment; or
  - (vi) expenses incurred in connection with children or other dependants;



and includes, in the case of a member who is an employed earner, any other benefit so payable to or in respect of the member in consequence of his employment.

*Extension of ban on compulsory membership*

- 8 Section 15(1) of the 1986 Act (which renders void any provision making membership of a pension scheme compulsory for an employed earner) shall apply in relation to a self-employed earner as it applies in relation to an employed earner, but with the substitution for references to a personal pension scheme of references to an employment-related benefit scheme which would be such a pension scheme if self-employed earners were regarded as employed earners.

*Jurisdiction*

- 9 (1) The court, on the application of any person interested, shall have jurisdiction to determine any question arising as to—
- (a) whether any provision of an employment-related benefit scheme does or does not comply with the principle of equal treatment; or
  - (b) whether, and with what effect, any such provision is overridden by paragraph 3 above.
- (2) In sub-paragraph (1) above “the court” means—
- (a) in England and Wales, the High Court or a county court; and
  - (b) in Scotland, the Court of Session or the sheriff court.
- (3) An application under sub-paragraph (1) above may be commenced in a county court notwithstanding—
- (a) any financial limit otherwise imposed on the jurisdiction of such a court; or
  - (b) that the only relief claimed is a declaration or an injunction.

*Interpretation*

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

*Supplemental*

- 11 In consequence of the foregoing provisions of this Schedule—
- (a) sections 53 to 56 of the Pensions Act (equal access to schemes for men and women), and
  - (b) section 64(3)(dd) of the 1973 Act (functions of the Occupational Pensions Board relating to equal access),
- shall cease to have effect.

*Future repeal of actuarial provisions*

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

## PART II

### AMENDMENT OF ENACTMENTS RELATING TO EMPLOYMENT

#### *Equal Pay Act 1970 (c. 41)*

- 13 In section 6 of the Equal Pay Act 1970 (equality clauses and pensions etc) in subsection (1A)(a) for the words following “1975)” there shall be substituted the words “which is also an employment-related benefit scheme, within the meaning of Schedule 5 to the Social Security Act 1989, so far as those terms relate to any matter in respect of which the scheme has to comply with the principle of equal treatment in accordance with that Schedule; but”.

#### *Sex Discrimination Act 1975 (c. 65)*

- 14 (1) In section 4(1) of the Sex Discrimination Act 1975 (victimisation of complainants etc)—
- (a) in paragraphs (a), (b) and (c) after the words “Equal Pay Act 1970” there shall be inserted the words “or Part I of Schedule 5 to the Social Security Act 1989”; and
  - (b) at the end of paragraph (d) there shall be added the words “or proceedings under Part I of Schedule 5 to the Social Security Act 1989”.
- (2) In section 6 of that Act, in subsection (4) (disapplication of certain provisions in relation to death or retirement) for the words from “except” to “retirement, they” there shall be substituted the words “except as provided in subsections (4A) and (4B) below.
- (4A) Subsection (4) does not prevent the application of subsections (1)(b) and (2) to provision in relation to retirement in so far as those subsections”.
- (3) After subsection (4A) of that section there shall be inserted—
- “(4B) Subsection (4) does not prevent the application of subsections (1)(b) and (2) to provision in relation to death or retirement in so far as those subsections render it unlawful for a person to discriminate against a woman—
- (a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to any benefits, facilities or services under an occupational pension scheme; or
  - (b) in the way he affords her access to any such benefits, facilities or services; or
  - (c) by refusing or deliberately omitting to afford her access to any such benefits, facilities or services; or
  - (d) by subjecting her to any detriment in connection with any such scheme;
- but an act of discrimination is rendered unlawful by virtue of this subsection only to the extent that the act relates to a matter in respect of which an occupational pension scheme has to comply with the principle of equal treatment in accordance with Part I of Schedule 5 to the Social Security Act 1989.

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

(4) At the end of that section there shall be added—

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

*Employment Protection (Consolidation) Act 1978 (c. 44)*

15 In section 45 of the Employment Protection (Consolidation) Act 1978 at the end of subsection (2) (rights on return to work after maternity absence) there shall be added the words “but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security Act 1989 (credit for the period of absence in certain cases).”

SCHEDULE 6

Section 24.

OCCUPATIONAL AND PERSONAL PENSIONS

*Social Security Act 1973 (c. 38)*

1 Section 51(7) of the 1973 Act (which provides for regulations freeing earners from liability to join pension schemes of certain kinds and which is superseded by section 15 of the 1986 Act) shall cease to have effect.

2 (1) At the beginning of subsection (2) of section 58 of that Act (meaning of “linked qualifying service”) there shall be inserted the words “Subject to subsections (2A) and (2B) below” and after that subsection there shall be inserted—

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

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

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

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

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

(2) In section 99(1) of that Act (interpretation) in the definition of “linked qualifying service” for the words “section 58(2)” there shall be substituted the words “section 58(2), (2A) and (2B)”.

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- 3           In section 64 of that Act (modification of occupational pension schemes by order of the Occupational Pensions Board) after subsection (10) there shall be inserted—
- “(10A) Regulations may provide that in prescribed circumstances subsection (7) above shall not apply or shall apply with prescribed modifications.”
- 4           In Schedule 16 to that Act (preservation of benefit under occupational schemes)—
- (a)   in paragraph 2, for the words “his wife or widow” there shall be substituted the words “the member’s wife or husband, widow or widower”;
  - (b)   in paragraph 15(2) and (3)(a) for the words “member’s widow or a dependant of his” there shall be substituted the words “widow or widower or a dependant of the member”;
  - (c)   in paragraphs 15(4) and 16(3)(b), for the word “widow” there shall be substituted the words “widow or widower”; and
  - (d)   in paragraph 17(1), for the words “his widow or a dependant” there shall be substituted the words “a member’s widow or widower or dependant”.

*Social Security Pensions Act 1975 (c. 60)*

- 5           In section 35 of the Pensions Act (earner’s guaranteed minimum) after subsection (2) there shall be inserted—
- “(2A) Where the amount of a person’s earnings for any period is relevant for any purpose of subsection (1) or (2) above and the Secretary of State is satisfied that records of those earnings have not been maintained or retained or are otherwise unobtainable, he may for that purpose—
- (a)   compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of those earnings; or
  - (b)   take their amount to be such sum as he may specify in the particular case.”
- 6           (1) In section 41A of that Act (protection of earners’ pensions) in subsection (1C) (which defines the “relevant aggregate”) after paragraph (c) there shall be added the words “and
- (d)   in the case of an earner whose later earnings level is higher than his termination earnings level, the later earnings addition.”
- (2) After subsection (2) there shall be inserted—
- “(2A) In this section “the later earnings addition” means an amount equal to the difference between the relevant sum and what that sum would have been had the benefits in question been calculated by reference to the earner’s later earnings level.
- (2B) In this section—
- “later earnings level” means the level of earnings by reference to which the benefits which constitute the relevant sum would have been calculated had the termination of employment date fallen on the cessation date;
  - “termination earnings level” means the level of earnings by reference to which those benefits would have been calculated had the cessation date fallen on the termination of employment date; and
  - “the cessation date” means the earlier of—

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- (a) the date on which the earner ceased to be employed in relevant employment; and
    - (b) the relevant date, within the meaning of subsection (1) above.”
  - (3) In subsection (11) (definitions) for the words ““short service benefit” is” there shall be substituted the words ““relevant employment” and “short service benefit” are”.
- 7 (1) In section 41B of that Act (protection of widows' pensions) in subsection (1A) (which defines the “relevant aggregate”) after paragraph (c) there shall be added the words “and
  - (d) in a case where the earner’s later earnings level was higher than his termination earnings level, the later earnings addition.”
- (2) After subsection (3) there shall be inserted—
  - “(3A) In this section “the later earnings addition” means an amount equal to the difference between the relevant sum and what that sum would have been had the pension in question been calculated by reference to the earner’s later earnings level.
  - (3B) In this section—
    - “later earnings level” means the level of earnings by reference to which the pension which constitutes the relevant sum would have been calculated had the termination of employment date fallen on the cessation date;
    - “termination earnings level” means the level of earnings by reference to which that pension would have been calculated had the cessation date fallen on the termination of employment date; and
    - “the cessation date” means the earlier of—
      - (a) the date on which the earner ceased to be employed in relevant employment; and
      - (b) the date which, in relation to the earner, was the relevant date within the meaning of section 41A(1) above.”
- (3) After subsection (5) of that section there shall be inserted—
  - “(6) In this section “relevant employment” shall be construed in accordance with Schedule 16 to the Social Security Act 1973.”
- 8 (1) In section 41C of that Act (which, among other things, provides for sections 41A and 41B to override provisions of pension schemes) in subsection (3) (exceptions)—
  - (a) in paragraph (a)(ii) the words “or 39 above” shall be omitted; and
  - (b) after paragraph (c) there shall be added the words “and
    - (d) any provision of a scheme to the extent that it deals with commutation of the whole or part of a pension.”
- (2) Sub-paragraph (1) above shall be deemed to have come into force on 1st November 1986 (the date on which the repeal of section 39(2) and (3) of that Act took effect).
- 9 (1) In section 43 of that Act (which relates to the premium on termination of contracted-out employment) after subsection (1A) there shall be inserted—
  - “(1B) Where the amount of a person’s earnings for any period (whether before or after the passing of this Act) is relevant for any purpose of subsection (1) or (1A) above and the Secretary of State is satisfied that records of those

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earnings have not been maintained or retained or are otherwise unobtainable, he may for that purpose—

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

(1C) Where—

- (a) the Secretary of State subsequently ascertains the amount of those earnings, and
- (b) it appears to him that the amount of the premium would have been different if he had not made the calculation on the basis described in subsection (1A) above,

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

- (2) At the beginning of subsection (2A) of that section (meaning of “linked qualifying service”) there shall be inserted the words “Subject to subsection (2B) below” and after that subsection there shall be inserted—

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

- (3) In section 66(1) of that Act (interpretation) in the definition of “linked qualifying service” for the words “section 43(2A)” there shall be substituted the words “section 43(2A) and (2B)”.

- 10 (1) In section 44 of that Act (premium on termination of contracted-out scheme) for subsection (5A) (earnings deemed to equal upper earnings limit where their amount is not readily ascertainable) there shall be substituted—

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

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

and he may certify the costs accordingly.”

- (2) In subsection (5B) of that section (refund where true amount of earnings ascertained)

- (a) in paragraph (b) for the word “less” there shall be substituted the word “different”; and
- (b) at the end of that subsection there shall be added the words “or, as the case may be, the prescribed person shall pay to the Secretary of State the amount by which it would have been more.”

- 11 In section 44A(1) of that Act (circumstances in which transfer premiums may be paid) for paragraph (c) there shall be substituted—

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- “(c) the scheme to which his accrued rights are transferred is neither a contracted-out scheme nor one which was formerly contracted-out and in respect of which the Occupational Pensions Board have duties under section 49 below at the time of the transfer; and”.
- 12 In section 45(3) of that Act (election as to method of computation where guaranteed minimum pension excluded from full revaluation)—
- (a) the words “unless the person liable for the premium elects in the prescribed manner that this subsection shall not apply” shall cease to have effect; and
  - (b) after paragraph (b) of that subsection there shall be added the words—“but this subsection shall not apply in any case where its application would result in the amount of the premium being greater than it would have been apart from this subsection.”
- 13 (1) In section 52A of that Act (Secretary of State to specify revaluation percentage) in subsection (3) for the words from “, in the light” onwards there shall be substituted the words “to be the percentage increase in the general level of prices obtaining in Great Britain during the period which is the reference period in relation to that revaluation period, estimated in such manner as he thinks fit.”
- (2) For subsection (8) of that section (calculation of revaluation percentage where price increases exceed 5 per cent. per annum) there shall be substituted—
- “(8) Where, apart from this subsection, the revaluation percentage in relation to a revaluation period would exceed the maximum rate, the Secretary of State shall instead specify as the revaluation percentage for that period a percentage equal to the maximum rate.
- (9) For the purposes of subsection (8) above, “the maximum rate”, in relation to a revaluation period, is—
- (a) in the case of a revaluation period of 12 months, 5 per cent.; and
  - (b) in any other case, the percentage that would be the revaluation percentage had the general level of prices increased at the rate of 5 per cent. compound per annum during the reference period in question.”
- 14 In section 52C(1) of that Act (discharge of scheme’s liability to provide benefits etc) paragraph (b) shall have effect, and be deemed always to have had effect, with the words following sub-paragraph (i) set out as follows—
- “(ii) short service benefit, or an alternative to short service benefit,
- for or in respect of that person being appropriately secured; and”.

*Social Security (Miscellaneous Provisions) Act 1977 (c. 5)*

- 15 In section 21 of the Social Security (Miscellaneous Provisions) Act 1977 (election as to method of computation where guaranteed minimum pension preserved under approved arrangements) in subsection (1)—
- (a) the words “unless the prescribed person otherwise elects in the prescribed manner” shall cease to have effect; and
  - (b) after paragraph (b) there shall be added the words—

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“but this subsection shall not apply in any case where the application of those provisions would result in the amount of the guaranteed minimum being greater than it would have been apart from this subsection.”

*Social Security Act 1986 (c. 50)*

- 16 In section 9(4) of the 1986 Act (which specifies provisions of the Pensions Act relating to guaranteed minimum pensions which are to be construed as if “widow” included “widower”)—
- (a) in paragraph (f), after the words “section 41B(1)(c)” there shall be inserted “and (i)”; and
- (b) after paragraph (h) there shall be inserted—
- “(i) paragraphs 8(b) and 13(6) of Schedule 1A”.
- 17 The following section shall be inserted after section 17 of that Act—

**“17A Reciprocity with other countries**

- (1) Section 143 of the Social Security Act 1975 (Orders in Council providing for reciprocity) shall apply as if any reference to that Act included a reference to this Part of this Act.
- (2) An Order in Council made by virtue of subsection (1) above may, in particular, provide for the Secretary of State to make payments for any period beginning on or after 6th April 1987 and may make provision with respect to any matters relating to payments so made.”
- 18 In section 87(1) of that Act (provisions which extend to Northern Ireland) in paragraph (a) for the words “section 17(2)” there shall be substituted the words “section 17(1) and (2)”.
- 19 (1) In Schedule 1 to that Act (appropriate personal pension schemes) in sub-paragraphs (4) and (5) of paragraph 7 (calculation and verification of value of protected rights such as are mentioned in sub-paragraph (2) of that paragraph) the words “such as are mentioned in sub-paragraph (2) above” shall be omitted.
- (2) In paragraph (a) of sub-paragraph (4) of that paragraph, after the word “shall” there shall be inserted the words “in the case of any such protected rights as are mentioned in sub-paragraph (2) above”.
- 20 (1) For paragraph 8 of that Schedule there shall be substituted—
- “8 The rules shall provide for effect to be given to the protected rights of a member—
- (a) in any case where sub-paragraph (2) of paragraph 9 below so requires, by the purchase of such an annuity as is mentioned in that sub-paragraph, and
- (b) in any other case, in such of the ways permitted by that paragraph as the rules may specify,
- and they shall not provide for any part of a member’s protected rights to be discharged otherwise than in accordance with that paragraph.”
- (2) Sub-paragraph (2) of paragraph 9 of that Schedule (cases in which protected rights may be given effect by purchase of annuity) shall be amended as follows—



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- (a) at the beginning there shall be inserted the words “Subject to sub-paragraphs (4) and (6) below”; and
  - (b) for the words “effect may be given to protected rights” there shall be substituted the words “then, except to the extent that effect is given to protected rights in accordance with sub-paragraph (3) below, effect shall be given to those rights”.
- (3) After sub-paragraph (7) of that paragraph (half rate pension or annuity for earner’s widow or widower etc) there shall be inserted—
- “(7A) As respects the period of 5 years beginning with the commencement of the pension or annuity referred to in sub-paragraph (7) above, that sub-paragraph shall have effect in relation to that pension or annuity as if the words “at least” were inserted immediately before the words “one-half” in paragraph (b)(i).”

*The Occupational Pension Schemes (Contracting-out) Regulations 1984 (S.I.1984/380)*

- 21 (1) In regulation 22 of the Occupational Pension Schemes (Contracting-out) Regulations 1984 (additional requirement alternative to limited revaluation premium) in paragraphs (3A) and (7A) (which were inserted by regulation 2 of the Contracting-out (Miscellaneous Amendments) Regulations 1988 and which provide for the rate of increase to be 7½ per cent. in certain cases) for the words “and in relation to another scheme,” there shall be substituted the words “(and whether in relation to the same or another scheme)”.
- (2) The amendment by sub-paragraph (1) above of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision.
- (3) This paragraph shall be deemed to have come into force on 6th April 1988.

SCHEDULE 7

Section 26.

PRE-CONSOLIDATION AMENDMENTS

*Social Security Act 1973 (c. 38)*

- 1 In section 58(2) of the 1973 Act (linked qualifying service) the word “and” shall be inserted at the end of paragraph (a).

*Social Security Act 1975 (c. 14)*

- 2 (1) In section 4 of the principal Act, for subsection (3) (persons liable to pay Class 1 contributions) there shall be substituted the following—
- “(3) The primary and secondary contributions referred to in subsection (2) above are payable as follows—
- (a) the primary contribution shall be the liability of the earner; and
  - (b) the secondary contribution shall be the liability of the secondary contributor;

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

- (2) In subsection (6C) of that section (amount of secondary Class 1 contribution) for the words “the amount of a secondary Class 1 contribution” there shall be substituted the words “where a secondary Class 1 contribution is payable, the amount of that contribution”.
- 3 In section 7A(3) of that Act (late paid Class 2 contributions)—
- (a) the words “Class 2” shall be omitted in each place where they occur;
  - (b) for the words “from the week” there shall be substituted the words “beginning with the week”; and
  - (c) for the words “to the day” there shall be substituted the words “and ending with the day”.
- 4 In section 8(2C) of that Act (late paid Class 3 contributions) for the words “any amount” there shall be substituted the words “any other amount”.
- 5 In section 9 of that Act (Class 4 contributions recoverable under Tax Acts)—
- (a) in subsection (1), after “payable”, where first occurring, there shall be inserted the words “for any tax year”;
  - (b) in that subsection, for the words from “any year” to “1975” there shall be substituted the words “the year of assessment corresponding to that tax year”; and
  - (c) after that subsection there shall be inserted the following paragraph—
 

“For the purposes of this section the year of assessment which corresponds to a tax year is the year of assessment (within the meaning of the Tax Acts) which consists of the same period as that tax year.”
- 6 In section 12(1) of that Act (contributory benefits) for paragraph (d) there shall be substituted—
- “(d) maternity allowance (with increase for adult dependants)”.
- 7 In section 13(5) of that Act (earnings factors) as it has effect in relation to tax years before 1987-88, for the words “shall be derived” there shall be substituted the words “may be derived”.
- 8 In section 24 of that Act (widow’s payment), as substituted by the 1986 Act, the following subsection shall be added at the end—
- “(3) A widow’s payment is payable only in cases where the husband dies after the coming into force of section 36 of the Social Security Act 1986.”
- 9 In section 30(6)(b) of that Act (amendment of provisions relating to earnings after retirement age) for the words “36(5)” there shall be substituted the words “36(8)”.
- 10 In section 37(6) of that Act (invalid care allowance) for the words “so be so” there shall be substituted the words “to be so”.
- 11 In section 48(3)(a) of that Act (sequence in which certain reductions of Category A pensions are to be made) for the words “45(3)” there shall be substituted the words “45(2A)”.

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- 12 In section 57(4) of that Act (90 day waiting period for disablement benefit) for the words “Disablement benefit shall not be available to a person” there shall be substituted the words “A person shall not be entitled to disablement benefit”.
- 13 In section 59A(1) of that Act, at the end of paragraph (a), there shall be added the word “and”.
- 14 In section 106(1)(a) of that Act (review of decisions of Attendance Allowance Board), for the words “paragraph or paragraph (b) below” there shall be substituted the word “subsection”.
- 15 In section 134(2) of that Act (destination of contributions etc) for the words “section 9(4)” there shall be substituted the words “section 9(5)”.
- 16 In Schedule 3 to that Act (contribution conditions for entitlement to benefit) in paragraph 8 (satisfaction in early years) in sub-paragraph (1), after the words “short-term benefit” there shall be inserted the words “or a widow’s payment”.
- 17 In sub-paragraph (5) of paragraph 2 of Schedule 12 to that Act (constitution of medical appeal tribunals) for the words “to the panel mentioned in sub-paragraph (4)” there shall be substituted the words “chairman of a tribunal under sub-paragraph (4)(a)”.
- 18 In Schedule 20 to that Act (glossary of expressions) in the definition of “week” the words “midnight between Saturday and” shall be omitted.

*Social Security Pensions Act 1975 (c. 60)*

- 19 In section 6 of the Pensions Act (rate of Category A retirement pension) the word “References” shall be inserted at the beginning of subsection (5).
- 20 (1) In section 15 of the Pensions Act (invalidity pension for widows) after subsection (1) there shall be inserted the following subsection—
- “(1A) This section does not apply to a woman unless—
- (a) her husband died after 5th April 1979; or
- (b) she ceased to be entitled to a widowed mother’s allowance after that date (whenever her husband died).”
- (2) In consequence of sub-paragraph (1) above, paragraph 17 of Schedule 1 to the Social Security Act 1979 shall cease to have effect.
- 21 In section 43(2A) of that Act (linked qualifying service)—
- (a) the word “and” shall be inserted at the end of paragraph (a); and
- (b) in paragraph (b), for the words “transfer of” there shall be substituted the words “the transfer of”.

*Child Benefit Act 1975 (c. 61)*

- 22 In section 6(1) of the Child Benefit Act 1975 (necessity for claim) for the words following “claims it” there shall be substituted the words “in the manner, and within the time, prescribed in relation to child benefit by regulations under section 51 of the Social Security Act 1986”.

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*Social Security and Housing Benefits Act 1982 (c. 24)*

23 In section 27 of the 1982 Act (statutory sick pay: Crown employment) the following subsection shall be added at the end—

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

24 In section 44 of that Act (territorial waters) subsection (3) (which is spent) and subsection (4) (which is of no further practical utility) shall be omitted.

*Social Security Act 1986 (c. 50)*

25 In section 47(7)(b)(i) of the 1986 Act (the maternity pay period) for the words “between the 11th and 6th weeks before” there shall be substituted the words “during the period beginning with the 11th week, and ending with the 7th week, before”.

26 In section 50(1) of that Act (definitions relating to statutory maternity pay) in the definition of “week” the words “midnight between Saturday and” shall be omitted.

27 In section 61 of that Act (consultations about subordinate legislation) for subsection (3) there shall be substituted the following—

“(3) Where the Secretary of State has referred proposals to the Committee, the Council or the Board, he may make the proposed regulations before they have made their report, or, in the case of the Council, given their advice, only if after the reference it appears to him that by reason of the urgency of the matter it is expedient to do so.”

28 In paragraph 3(3) of Schedule 6 to that Act (Christmas bonus for pensioners) paragraph (c) shall be omitted.

SCHEDULE 8

Section 31(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*Earnings to include payments for restrictive undertakings*

1 In section 3 of the principal Act (meaning of “earnings”) after subsection (1C) there shall be inserted—

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

*Incapacity for work: work as councillor to be disregarded*

2 (1) In determining for the purposes of—

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- (a) any provisions of the principal Act which relate to sickness benefit or invalidity benefit, or
- (b) section 15 or 16 of the Pensions Act (invalidity pensions for widows and widowers),

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

- (2) Where the amount of councillor's allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.
- (3) In determining whether a person satisfies the conditions of entitlement for an incapacity benefit, he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
  - (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor, but
  - (b) would not have been so treated apart from this sub-paragraph.
- (4) In determining whether a person satisfies the conditions specified in subsections (2)(b) and (3)(b) of section 36 of the principal Act (severe disablement allowance) he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
  - (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor, but
  - (b) would not have been so treated apart from this sub-paragraph.
- (5) In subsection (7) of that section (regulations) the following paragraph shall be inserted after paragraph (c)—
  - “(cc) may provide that, where the amount of councillor's allowance (within the meaning of paragraph 2 of Schedule 8 to the Social Security Act 1989) to which a person is entitled in respect of any week exceeds a prescribed sum, then, except in prescribed cases, an amount equal to the excess shall be deducted from the amount of any severe disablement allowance to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable; and”.
- (6) In this paragraph—
  - “councillor” means—
    - (a) in relation to England and Wales, a member of a London borough council, a county council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and
    - (b) in relation to Scotland, a member of a regional, islands or district council;
  - “councillor's allowance” means an allowance under or by virtue of—

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- (a) section 173, 177 or 177A of the Local Government Act 1972, other than any such allowance as is mentioned in section 173(4) of that Act (financial loss); or
- (b) section 45, 49 or 49A of the Local Government (Scotland) Act 1973, other than any such allowance as is mentioned in section 45(4) of that Act (financial loss);

and where any such allowance is paid otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the allowance;

“incapacity benefit” means any of the following benefits—

- (a) sickness benefit;
- (b) invalidity benefit;
- (c) an invalidity pension under section 15 or 16 of the Pensions Act;

“permitted earnings limit” means the amount specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (work of certain kinds to be disregarded where earnings do not exceed £27 per week);

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

- (7) Any reference in this paragraph to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any of the bodies referred to in—
  - (a) section 177(1) of the Local Government Act 1972, or
  - (b) section 49(1) or (1A) of the Local Government (Scotland) Act 1973,
 of which he is a member by virtue of his being a councillor.

*Disallowance of days of unemployment by reference to termination payments*

- 3 In section 17 of the principal Act (determination of days for which benefit is payable) after the subsection (2B) inserted by section 10(4) of this Act there shall be inserted—

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

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

(2D) In subsection (2C) above “post-employment period” means a period following the termination of a person’s employment and falling to be determined in accordance with the regulations by reference to the amount or

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value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.”

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

- 4 (1) In section 25 of that Act (widowed mother’s allowance) for subsection (3) there shall be substituted—

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

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

- (a) for any period falling before the day on which the widow’s entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986; or
- (b) for any period during which she and a man to whom she is not married are living together as husband and wife.”

- (2) In section 26 of that Act (widow’s pension) for subsection (3) there shall be substituted—

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

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

- (a) for any period falling before the day on which the widow’s entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986;
- (b) for any period for which she is entitled to a widowed mother’s allowance; or
- (c) for any period during which she and a man to whom she is not married are living together as husband and wife.”

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

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

- (4) After that subsection there shall be inserted—

“(1A) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner’s entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986.”

- (5) In section 29 of that Act (Category B retirement pension) for subsection (9) there shall be substituted—

“(9) Subject to the provisions of this Act, a woman’s entitlement to a Category B retirement pension shall commence on the day on which the conditions

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of entitlement become satisfied in her case and shall continue throughout her life.

(9A) A woman's Category B retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986."

(6) In section 39 of that Act (Category C and D retirement pensions etc.) for subsection (3) there shall be substituted—

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

(3A) A Category C or Category D retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986.”

*Entitlement to, and right to payment of, attendance allowance*

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

(2) In subsection (2), for the words “an attendance allowance is payable to any person” there shall be substituted the words “a person is entitled to an attendance allowance”.

(3) In subsection (4)—

(a) for the words “An attendance allowance shall not be payable to a person” there shall be substituted the words “A person shall not be entitled to an attendance allowance”; and

(b) in paragraph (a)—

(i) for the words “the allowance is payable” there shall be substituted the words “the person to whom the claim relates is entitled to the allowance”; and

(ii) for the words “the person to whom the claim relates” there shall be substituted the words “that person”.

(4) In subsection (4A), for the words “an attendance allowance to be paid to a person” there shall be substituted the words “a person to be entitled to an attendance allowance”.

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

6 In section 36 of that Act (severe disablement allowance) after subsection (6) (weekly rate of benefit) there shall be inserted—

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

(6B) In any case where—

(a) a severe disablement allowance is payable to a woman in respect of one or more relevant days in a week, and

(b) an amount of statutory maternity pay becomes payable to her on any day in that week,



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

*Dependency increases: fluctuating earnings*

- 7 (1) In section 47 of that Act (invalidity pension: dependent relative) for paragraph (a) of subsection (1) there shall be substituted—
- “(a) for any period during which either—
- (i) the pensioner and her husband are residing together and he does not have earnings at a weekly rate in excess of the amount specified in paragraph 1(a) of Part I of Schedule 4; or
  - (ii) they are not residing together, he does not have earnings at a weekly rate in excess of the amount specified in Schedule 4, Part IV, column (3) and she is contributing to his maintenance at a weekly rate not less than the amount so specified.”
- (2) After section 84 of that Act (persons maintaining dependants etc.) there shall be inserted the following section—

**“84A Dependency increases: continuation of awards in cases of fluctuating earnings**

- (1) Where a beneficiary—
- (a) has been awarded a dependency increase, but
  - (b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person (“the relevant earner”) exceed the amount of the increase or, as the case may be, some specified amount,

then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.

- (2) In this section—
- (a) “dependency increase” means any of the increases in benefit provided for under Chapter III of Part II of this Act or section 64 or 66 above; and
  - (b) the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this section, would be taken into account in determining whether the beneficiary is entitled to the increase in question for that week.”

*Employment protection allocation*

- 8 (1) In section 122 of that Act (power to alter contribution rates for purposes relating to the Redundancy Fund) subsection (5) (which requires corresponding amendment of

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

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the definition of “employment protection allocation” in section 134(4)) shall cease to have effect.

- (2) In section 167(2)(a) of that Act (negative, instead of affirmative, procedure for regulations relating to mariners, airmen etc made under section 129 in consequence of certain specified provisions) for the words “or 123A” there shall be substituted the words “123A or 134”.

*Community charge benefit: miscellaneous amendments*

- 9 (1) In section 165A(1) of the principal Act (claim necessary for entitlement to benefit) for paragraphs (a) and (b) there shall be substituted the following—
- “(a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under section 51, 51A or 51B of the Social Security Act 1986; or
- (b) he is treated, by virtue of regulations under any of those sections, as making a claim for it.”
- (2) In section 20 of the 1986 Act, after subsection (8A) (entitlement to community charge benefit) there shall be inserted—
- “(8AA) A community charge benefit—
- (a) shall not be allowed to a person in respect of any day falling before the day on which his entitlement is to be regarded as commencing for that purpose by virtue of paragraph (kk) of section 51A(1) below; but
- (b) may be allowed to him in respect of not more than six days immediately following the day on which his period of entitlement would otherwise come to an end, if his entitlement is to be regarded by virtue of that paragraph as not having ended for that purpose.”
- (3) In section 22B of that Act (polygamous marriages) in subsection (1) (which provides that the section applies whether or not either party has an additional spouse) after the word “where” there shall be inserted “(a)” and for the words “this section applies whether or not” there shall be substituted “(b)”.
- (4) In section 31D of that Act, for paragraph (c) of subsection (3) and for paragraph (b) of subsection (5) (which provide for the recovery of excess benefits by deduction from certain other income-related benefits) there shall be substituted the following paragraph—
- “( ) deduction from prescribed benefits.”
- (5) In section 31F(3) of that Act (calculation of community charge benefit subsidy) in paragraph (a), for the words “for the year” there shall be substituted the words “during the year”.
- (6) In section 51A(1) of that Act (regulations relating to the administration of community charge benefit)—
- (a) after paragraph (k) there shall be inserted—
- “(kk) for the day on which entitlement to a benefit is to begin or end”; and
- (b) after paragraph (o) there shall be inserted—
- “(oo) in the case of any benefit (or part) which takes the form of a payment, for the circumstances and manner in which

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payment may be made to one person on behalf of another for any purpose, which may be to discharge, in whole or in part, an obligation of the person entitled to the benefit or any other person;”.

*Transitional and consequential provision in regulations*

10 (1) Section 166(3) of the principal Act and section 4(2) of the Old Cases Act (both of which contain general provisions about orders and regulations) shall have effect, and be taken always to have had effect, with the substitution for the words “or supplementary” of the words “, supplementary, consequential or transitional”.

(2) In section 89 of the 1986 Act (transitional regulations in connection with coming into force of provisions of that Act) after subsection (1) there shall be inserted—

“(1A) Without prejudice to any other powers conferred on him, the Secretary of State—

(a) may, for the purpose of making provision with respect to persons falling within subsection (1B) below, modify or revoke any regulations made under this section if he considers it necessary or expedient to do so in consequence of, or otherwise in connection with, provisions of Acts, schemes, arrangements or other instruments coming into force after the passing of this Act; and

(b) may, for the purpose of consolidation, revoke and re-enact, with any modifications which he considers necessary or desirable, any regulations under this section.

(1B) The persons referred to in subsection (1A)(a) above are any persons—

(a) to whom regulations under subsection (1) above apply; or

(b) to whom regulations made under Part II of this Act relating to income support applied at any time before the passing of the Social Security Act 1989.”

*Restriction on first up-rating of additional pension*

11 In section 23 of the Pensions Act (annual increase of additional pensions in long-term benefits) after subsection (2) there shall be inserted—

“(2A) Where a person is entitled to a Category A retirement pension with an increase under section 9(3) above in the additional pension and the circumstances are such that—

(a) the deceased spouse to whose contributions that increase is referable died during that part of the tax year which precedes the date on which the order under section 63 of the Social Security Act 1986 comes into force (“the initial up-rating order”), and

(b) the deceased spouse’s final relevant year for the purposes of section 6 above is the tax year immediately preceding that in which the death occurred,

then, in determining the amount of the additional pension which falls to be increased by the initial up-rating order, so much of that pension as is attributable to the increase under section 9(3) above shall be disregarded.”

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

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*Consultations about subordinate legislation*

- 12 (1) In section 61(2) of the Pensions Act—
- (a) after the words “purposes of” there shall be inserted “(a)”;
  - (b) for the words “or of Part I” there shall be substituted the words “(b) Part I”; and
  - (c) for the word “(other” there shall be substituted the words “or
    - (c) Schedule 5 to the Social Security Act 1989,
 (other”.
- (2) In section 9 of the Social Security Act 1980 (the Social Security Advisory Committee) in subsection (7) (meaning of “relevant enactments” etc) in the words following the definition of “the relevant Northern Ireland enactments”—
- (a) after the words “shall be construed” there shall be inserted “(a)”;
  - (b) for the words “and as excluding” there shall be substituted the words “(b) as excluding”; and
  - (c) at the end there shall be added the words “and
    - (c) as excluding Part I of the Social Security Act 1986 and Schedule 5 to the Social Security Act 1989.”
- (3) In section 61 of the 1986 Act (consultations about subordinate legislation) for subsections (5) and (6) there shall be substituted—
- “(5) Except to the extent that this subsection is excluded by any enactment passed after this Act, nothing in any enactment shall require the reference to the Committee, the Council or the Board of any regulations contained in either—
- (a) a statutory instrument made before the end of the period of 6 months beginning with the coming into force of the enactment under which those regulations are made, or
  - (b) a statutory instrument—
    - (i) which states that it contains only regulations made by virtue of, or consequential upon, a specified enactment, and
    - (ii) which is made before the end of the period of 6 months beginning with the coming into force of that specified enactment.”
- (4) In subsection (10) of that section (definitions) after the definition of “the Council” there shall be added—
- ““regulations” means regulations under this Act or under any other enactment, whenever passed.”
- (5) Section 10(2)(b) of the Social Security Act 1980 (which, in consequence of subparagraph (4) above, is superseded by section 61(1)(b) of the 1986 Act) shall cease to have effect.
- (6) In Schedule 3 to that Act, in Part II (regulations not requiring prior submission to the committee) after paragraph 15A (statutory sick pay) there shall be inserted—

*“Statutory maternity pay*

- 15AA Regulations under paragraphs 1 to 5 of Schedule 4 to the Social Security Act 1986 and corresponding regulations applying to Northern Ireland.”

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

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*Regulations relating to home responsibilities*

- 13 (1) Paragraph (a) of section 62(1) of the Pensions Act (affirmative, instead of negative, procedure for regulations under paragraph 5(6) of Schedule 3 to the principal Act relating to contributors who were precluded from regular employment by responsibilities at home) shall cease to have effect.
- (2) The following regulations, namely—
- (a) the Social Security Pensions (Home Responsibilities and Graduated Retirement Benefit) Amendment Regulations 1981, and
  - (b) the Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Amendment Regulations 1988,
- shall have effect, and be taken always to have had effect, as if sub-paragraph (1) above had come into force immediately after the passing of the Pensions Act.

*Statutory sick pay: trade disputes*

- 14 In paragraph 7 of Schedule 1 to the 1982 Act (no disqualification for statutory sick pay by virtue of stoppage of work where employee shows he did not participate in, or have a direct interest in, the trade dispute) the words “participate in, or” shall cease to have effect.

*Family credit: up-rating*

- 15 (1) In section 20 of the 1986 Act (income-related benefits) in subsection (6) (awards of family credit not to be affected by changes of circumstances) there shall be added at the end the words “or by any order under section 63 below.”
- (2) In section 63(13)(b) of that Act (transitional provision in connection with up-rating orders) for the word “shall” there shall be substituted the word “may”.

*Income support: return to work after trade dispute*

- 16 In section 23A of the 1986 Act (effect of person’s return to work after a trade dispute) in paragraph (c) (certain sums paid by way of income support to be recoverable in the prescribed manner) for the words “in the prescribed manner” there shall be substituted the words “in accordance with the regulations”.

*Personal representatives to give information about estate*

- 17 The following section shall be inserted after section 27 of the 1986 Act—

**“27A Personal representatives to give information about the estate of a deceased beneficiary**

- (1) The personal representatives of a person who was in receipt of income support or supplementary benefit at any time before his death shall provide the Secretary of State with such information as he may require relating to the assets and liabilities of that person’s estate.
- (2) If the personal representatives fail to supply any information within 28 days of being required to do so under subsection (1) above, then—

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

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- (a) the appropriate court may, on the application of the Secretary of State, make an order directing them to supply that information within such time as may be specified in the order; and
- (b) any such order may provide that all costs (or, in Scotland, expenses) of and incidental to the application shall be borne personally by any of the personal representatives.

(3) In this section “the appropriate court” means—

- (a) in England and Wales, a county court;
- (b) in Scotland, the sheriff;

and any application to the sheriff under this section shall be made by summary application.”

*Statutory maternity pay: employers to provide  
information relating to claims for certain other benefits*

18 In Schedule 4 to the 1986 Act (supplementary provisions relating to statutory maternity pay) after paragraph 8 there shall be inserted—

“8A (1) Regulations may make provision requiring an employer in prescribed circumstances to furnish information in connection with the making of a claim by a woman who is or has been his employee for—

- (a) a maternity allowance;
- (b) sickness benefit;
- (c) an invalidity pension; or
- (d) severe disablement allowance.

(2) Regulations under this paragraph shall prescribe—

- (a) the kind of information to be furnished in accordance with the regulations;
- (b) the person to whom information of the prescribed kind is to be furnished; and
- (c) the manner in which, and period within which, it is to be furnished.”

*Joint citations*

19 In the following enactments, for the words “the Social Security Acts 1975 to 1986” in each place where they occur there shall be substituted the words “the Social Security Acts 1975 to 1989”—

- (a) section 6(1) of the National Insurance Act 1974;
- (b) sections 9(7) and 18(1) of the Social Security Act 1980;
- (c) section 4(5) of the Forfeiture Act 1982;
- (d) section 5(1)(a) of the Social Security Act 1985;
- (e) paragraph (b) of the definition of “the benefit Acts” in section 84(1) of the 1986 Act.

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

SCHEDULE 9

Section 31(2).

REPEALS

Chapter	Short title	Extend of repeal
11 & 12 Geo.5 c. 49.	War Pensions Act 1921.	Sections 1 and 2.
11 & 12 Geo.6 c. 41.	Law Reform (Personal Injuries) Act 1948.	Section 2(2).
1970 c. 36.	Merchant Shipping Act 1970.	In section 17(10), the words from “but any application” onwards.
1973 c. 38.	Social Security Act 1973.	Section 51(7). Section 64(3)(dd).
1975 c. 14.	Social Security Act 1975.	In section 1, in subsection (1) the words from “together with” onwards, and subsections (5) and (5A). In section 4(6F), the words “primary or”. In section 7A(3), the words “Class 2” wherever occurring. In section 14(6), the words following paragraph (c). In section 15(6)(a), the words “but have not retired from regular employment”. In section 20(1A) the words “longer or”. Section 27(3), (4) and (5). In section 28(1)(a), the words “and has retired from regular employment”. Section 29(5)(a). In section 30, subsection (1), in subsection (3), in paragraph (a), the words “retired from regular employment or has

The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 134(3) of that Act, section 27 of the Pensions Act, section 2 of the Social Security (Contributions) Act 1981 and section 2 of the Social Security (Contributions) Act 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.

The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order 1988.

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

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Chapter	Short title	Extend of repeal
		otherwise” and the words “retired or” and subsection (6)(a).
		In section 36(7), the word “and” at the end of paragraph (c).
		In section 39(1)(b), the words “and has retired from regular employment”.
		In section 41(1), the words “section 30(1) of this Act and to”.
		Section 48(2) and (3).
		In section 100(3), the words from “without leave” onwards.
		Section 101(6) and (7).
		In section 112, subsection (4) and, in subsection (5), the words “or reference” and the words from “and the medical” onwards.
		Section 122(5).
		Section 134(3).
		In section 167(1)(b), the words “section 1(5A)”.
		In Schedule 10, paragraphs 1(7) and 2(2).
		In Schedule 11, paragraph 4.
		In Schedule 13, paragraphs 8 and 9.
		In Schedule 20, the definition of “local office” and, in the definition of “week”, the words “midnight between Saturday and” and “30(1)”.

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The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 134(3) of that Act, section 27 of the Pensions Act, section 2 of the Social Security (Contributions) Act 1981 and section 2 of the Social Security (Contributions) Act 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.

The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order 1988.

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

Chapter	Short title	Extend of repeal
1975 c. 60.	Social Security Pensions Act 1975.	In section 8(1), the words “who has retired from regular employment”. Section 11. Section 27(6). In section 41A(1C), the word “and” at the end of paragraph (b). In section 41B(1A), the word “and” at the end of paragraph (b). Section 41C(3)(a)(ii). In section 45(3), the words from “unless the person” to “shall not apply”. Sections 53 to 56. Section 62(1)(a). In Schedule 4, paragraph 39(a).
1977 c. 5.	Social Security (Miscellaneous Provisions) Act 1977.	In section 21(1), the words “unless the prescribed person otherwise elects in the prescribed manner”. In section 22(2) the words “25(3), 26(3)”.
1979 c. 18.	Social Security Act 1979.	In Schedule 1, paragraph 17.
1980 c. 30.	Social Security Act 1980.	Section 10(2)(b). Section 14(7).
1981 c. 1.	Social Security (Contributions) Act 1981.	Section 2(2). Section 4(5)(a).
1982 c. 2.	Social Security (Contributions) Act 1982.	Section 2. Section 4(4). In Schedule 1, paragraph 1(4).

The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 134(3) of that Act, section 27 of the Pensions Act, section 2 of the Social Security (Contributions) Act 1981 and section 2 of the Social Security (Contributions) Act 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.

The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order 1988.

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Chapter	Short title	Extend of repeal
1982 c. 24.	Social Security and Housing Benefits Act 1982.	Section 44(3) and (4).  In Schedule 1, in paragraph 7, the words “participate in, or”.  In Schedule 4, paragraph 11.
1985 c. 53.	Social Security Act 1985.	In Schedule 5, paragraph 32.
1986 c. 50.	Social Security Act 1986.	In section 26(3), the word “and” at the end of paragraph (b).  In section 30(2), the words following paragraph (b), other than those added by the Local Government and Housing Act 1989.  In section 50(1), in the definition of “week”, the words “midnight between Saturday and”.  Section 63(1)(a)(ii).  In Schedule 1, in paragraph 7(4) and (5) the words “such as are mentioned in sub-paragraph (2) above”.  In Schedule 3, paragraph 15(b).  In Schedule 6, in paragraph 3, in sub-paragraph (3) (b), the words “30(1)”, sub-paragraph (3)(c), sub-paragraph (4)(b) and the word “or” immediately preceding it.  In Schedule 9, paragraph 11(b).  In Schedule 10, paragraph 96.
1988 c. 7.	Social Security Act 1988.	Section 2(9).
1988 c. 43.	Housing (Scotland) Act 1988.	Section 70(4).
1988 c. 50.	Housing Act 1988.	Section 121(5).

The repeal in section 1(1) of the principal Act and the repeal of sections 1(5) and (5A) and 134(3) of that Act, section 27 of the Pensions Act, section 2 of the Social Security (Contributions) Act 1981 and section 2 of the Social Security (Contributions) Act 1982 have effect in relation to payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act in respect of any contributions whether paid before, on or after 31st March 1989.

The repeal in section 20(1A) of the principal Act does not affect the continuing operation of the Unemployment Benefit (Disqualification Period) Order 1988.