

SCHEDULES

SCHEDULE 3

Section 5.

TRANSITIONAL PROVISIONS AND SAVINGS (INCLUDING SOME TRANSITIONAL PROVISIONS RETAINED FROM PREVIOUS ACTS)

PART I

GENERAL AND MISCELLANEOUS

Questions relating to contributions and benefits

- 1 (1) A question other than a question arising under any of sections 1 to 3 of the Administration Act—
- (a) whether a person is entitled to benefit in respect of a time before 1st July 1992;
 - (b) whether a person is liable to pay contributions in respect of such a time, and any other question not arising under any of those sections with respect to benefit or contributions in respect of such a time is to be determined, subject to section 68 of the Administration Act, in accordance with provisions in force or deemed to be in force at that time.
- (2) Subject to sub-paragraph (1) above, the consolidating Acts apply to matters arising before their commencement as to matters arising after it.

General saving for old savings

- 2 The repeal by this Act of an enactment previously repealed subject to savings (whether or not in the repealing enactment) does not affect the continued operation of those savings.

Documents referring to repealed enactments

- 3 Any document made, served or issued after this Act comes into force which contains a reference to any of the repealed enactments shall be construed, except so far as a contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of the consolidating Acts.

Provisions relating to the coming into force of other provisions

- 4 The repeal by this Act of a provision providing for or relating to the coming into force of a provision reproduced in the consolidating Acts does not affect the operation of the first provision, in so far as it remains capable of having effect, in relation to the enactment reproducing the second provision.

Continuing powers to make transitional etc. regulations

- 5 Where immediately before 1st July 1992 the Secretary of State has power under any provision of the Social Security Acts 1975 to 1991 not reproduced in the consolidating Acts by regulations to make provision or savings in preparation for or in connection with the coming into force of a provision repealed by this Act but reproduced in the consolidating Acts, the power shall be construed as having effect in relation to the provision reproducing the repealed provision.

Powers to make preparatory regulations

- 6 The repeal by this Act of a power by regulations to make provision or savings in preparation for or in connection with the coming into force of a provision reproduced in the consolidating Acts does not affect the power, in so far as it remains capable of having effect, in relation to the enactment reproducing the second provision.

Provisions contained in enactments by virtue of orders or regulations

- 7 (1) Without prejudice to any express provision in the consolidating Acts, where this Act repeals any provision contained in any enactment by virtue of any order or regulations and the provision is reproduced in the consolidating Acts, the Secretary of State shall have the like power to make orders or regulations repealing or amending the provision of the consolidating Acts which reproduces the effect of the repealed provision as he had in relation to that provision.
- (2) Sub-paragraph (1) above applies to a repealed provision which was amended by Schedule 7 to the Social Security Act 1989 as it applies to a provision not so amended.

Amending orders made after passing of Act

- 8 An order which is made under any of the repealed enactments after the passing of this Act and which amends any of the repealed enactments shall have the effect also of making a corresponding amendment of the consolidating Acts.

PART II

SPECIFIC TRANSITIONAL PROVISIONS AND SAVINGS (INCLUDING SOME DERIVED FROM PREVIOUS ACTS)

Interpretation

- 9 In this Part of this Schedule -
- “the 1965 Act” means the National Insurance Act 1965;
 - “the 1973 Act” means the Social Security Act 1973;
 - “the 1975 Act” means the Social Security Act 1975;
 - “the former Consequential Provisions Act” means the Social Security (Consequential Provisions) Act 1975; and
 - “the 1986 Act” means the Social Security Act 1986.

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Social Security Pensions Act 1975

- 10 The repeal by this Act of any provision contained in the 1975 Act or any enactment amending such a provision does not affect the operation of that provision by virtue of section 66(2) of the Social Security Pensions Act 1975.

Additional pensions

- 11 The repeal by this Act of section 18(1) of the 1986 Act (which substituted in any enactment or instrument made under an enactment a reference to a basic pension for any reference to the basic component of a long-term benefit and a reference to an additional pension for any reference to an additional component of such a benefit) does not affect the construction of any enactment or instrument amended by that subsection.

Supersession of National Insurance Acts - provisions derived from Schedule 3 to former Consequential Provisions Act

- 12 Regulations may provide that, in relation to—
- (a) persons who ceased by virtue of paragraph 2 of Schedule 3 to the former Consequential Provisions Act to be insured under the 1965 Act,
 - (b) persons to or in respect of whom benefit under that Act was, or but for a disqualification or forfeiture would have been, payable immediately before 6th April 1975, and
 - (c) persons who had a prospective right to, or expectation of, any benefit under that Act immediately before that day,

the Contributions and Benefits Act and the Administration Act (so far as they represent provisions of the 1973 Act) shall have effect subject to such modifications as may be prescribed with a view to securing continuity of the law.

- 13 Without prejudice to the generality of the powers conferred by paragraph 12 above, regulations under that paragraph may in particular provide for the taking into account, for such purposes and in such manner and subject to such conditions as may be prescribed, of contributions paid or credited or deemed to be, or treated as, paid or credited under the 1965 Act or the National Insurance Act 1946 or any enactment repealed by that Act.
- 14 Regulations may provide that the Contributions and Benefits Act and the Administration Act (so far as they represent the 1973 Act) and this Part of this Schedule (except this paragraph) shall have effect subject to prescribed modifications in relation to persons who attained the age of 16 before 6th April 1975 and who, immediately before that day, were not insured under the 1965 Act.
- 15 Notwithstanding any repeal effected by the 1973 Act, provision may be made by regulations for continuing in force, with or without prescribed modifications, such provisions of the 1965 Act or any other enactments specified in the third column of Schedule 28 to the 1973 Act (repeals) as the Secretary of State considers appropriate for the purpose of preserving rights to benefit under that Act or those enactments in those cases (if any) in which in his opinion adequate alternative rights to benefit under the Contributions and Benefits Act are not conferred in pursuance of paragraph 12 above, or for temporarily retaining the effect of those provisions for transitional purposes.
- 16 In the foregoing provisions of this Part of this Schedule, any reference to benefit under the 1965 Act includes a reference to such other benefit, pension or allowance

as is mentioned in paragraph 17(2)(b) of Schedule 11 to that Act (pre-1948 beneficiaries).

- 17 (1) Any instrument (except regulations, an Order in Council or another order) and any appointment which is in force immediately before 1st July 1992 and was made or has effect as if made under an enactment repealed by the 1973 Act shall, in so far as a corresponding instrument or appointment is capable of being made under any provision of the Contributions and Benefits Act or the Administration Act representing a provision in the 1973 Act, be deemed to be so made except to the extent that regulations otherwise provide.
- (2) A reference in any document to an enactment repealed and re-enacted by the 1973 Act with or without modifications shall, in so far as the context permits, be construed as a reference to the Contributions and Benefits Act or, as the case may be, the Administration Act or to the corresponding enactment therein.

Housing benefit - provision derived from section 30(11) of 1986 Act

- 18 (1) The Secretary of State may by order make provision for the modification or termination of rights to subsidy under Part II of the Social Security and Housing Benefits Act 1982 in respect of benefit paid in excess of entitlement.
- (2) Any expenses of the Secretary of State under this paragraph shall be paid out of money provided by Parliament.
- (3) The power conferred by this paragraph includes power to make different provision for different areas.

Industrial injuries - provision derived from paragraph 12 of Schedule 3 to 1986 Act

- 19 (1) The Secretary of State may by regulations provide for the payment of prescribed amounts in prescribed circumstances to persons who immediately before the repeal of sections 71 to 73 of the 1975 Act were entitled to any benefit by virtue of any of those sections, but in determining the amount which is to be payable in any case or class of cases the Secretary of State may take into account—
- (a) the extent to which the weekly rate of industrial death benefit has been modified in that case or class of cases by virtue of section 74;
 - (b) the age of the beneficiary and of any person or persons formerly maintained by the deceased; and
 - (c) the length of time that entitlement to the benefit would have been likely to continue if those sections had not been repealed.
- (2) In this paragraph “prescribed” means specified in or determined in accordance with regulations.
- (3) Any expenses of the Secretary of State under this paragraph shall be paid out of money provided by Parliament.

Attendance allowance - provision derived from section 1 of Social Security Act 1988.

- 20 For the purposes—
- (a) of any determination following a claim made before 15th March 1988 (the date of the passing of the Social Security Act 1988);
 - (b) of any review following an application made before that date; and

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(c) of any review following a decision to conduct a review made before that date,
section 64 of the Contributions and Benefits Act shall have effect as if the following subsection were substituted for subsection (3)—

- “(3) A person satisfies the night attendance condition if he is so severely disabled physically or mentally that, at night, he requires from another person either—
- (a) prolonged or repeated attention during the night in connection with his bodily functions; or
 - (b) continual supervision throughout the night in order to avoid substantial danger to himself or others.”

*Supplementary benefit and former housing-related benefits -
provision derived from section 16 of Social Security Act 1989*

- 21 (1) Any expenses of the Secretary of State in making payments to persons falling within sub-paragraph (2) or (3) below may be paid out of money provided by Parliament.
- (2) A person falls within this sub-paragraph if—
- (a) he was entitled to supplementary benefit immediately before 11th April 1988, but
 - (b) he did not become entitled to income support in respect of the week beginning with that day.
- (3) A person falls within this sub-paragraph if he was entitled to any one or more of the former housing-related benefits in respect of a qualifying week but either—
- (a) he did not become entitled to housing benefit under Part II of the 1986 Act in respect of the commencement week, or
 - (b) the amount of any such housing benefit to which he became entitled in respect of that week was less than the amount of the former housing-related benefits to which he had been entitled in respect of the qualifying week.
- (4) In this paragraph—
- “commencement day” means the day on which the new provisions came into force in the case of the person in question (1st or 4th April 1988, according to the circumstances);
- “commencement week”, in relation to any person, means the week beginning with the commencement day in his case;
- “the former housing-related benefits” means—
- (a) rent rebates, rate rebates and rent allowances, within the meaning of Part II of the Social Security and Housing Benefits Act 1982; and
 - (b) housing benefit supplement;
- “the new provisions” means the following provisions of Part II of the 1986 Act, so far as relating to housing benefit, that is to say, sections 20 to 22, 28 and 29;
- “qualifying week”, in relation to any person, means any week beginning on or after 21st March 1988 and ending before the commencement day in his case;
- “week” means a period of 7 days.
- (5) For the purposes of this paragraph—

- (a) a person shall be regarded as having been entitled to housing benefit supplement in respect of a week if an amount was applicable in respect of him under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983 in respect of that week; and
- (b) the amount of housing benefit supplement to which he was entitled in respect of that week shall be taken to be an amount equal to the amount so applicable.

Substitution of disability living allowance for attendance allowance and mobility allowance and dissolution of Attendance Allowance Board - provision derived from section 5 of Disability Living Allowance and Disability Working Allowance Act 1991

- 22 (1) The Secretary of State may make such regulations as appear to him necessary or expedient in relation to the substitution of disability living allowance for attendance allowance and mobility allowance and the dissolution of the Attendance Allowance Board.
- (2) Without prejudice to the generality of this paragraph, regulations under this paragraph —
- (a) may provide for the termination or cancellation of awards of attendance allowance and awards of mobility allowance;
 - (b) may direct that a person whose award of either allowance has been terminated or cancelled by virtue of the regulations or who is a child of such a person shall by virtue of the regulations be treated as having been awarded one or more disability living allowances;
 - (c) may direct that a disability living allowance so treated as having been awarded shall consist of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded either component at such weekly rate and for such period as the regulations may specify;
 - (d) may provide for the termination in specified circumstances of an award of disability living allowance;
 - (e) may direct that in specified circumstances a person whose award of disability living allowance has been terminated by virtue of the regulations shall by virtue of the regulations be treated as having been granted a further award of a disability living allowance consisting of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded on the further award either component at such weekly rate and for such period as the regulations may specify;
 - (f) may provide for the review of awards made by virtue of paragraph (b) or (e) above and for the treatment of claims for disability living allowance in respect of beneficiaries with such awards;
 - (g) may direct that for specified purposes certificates issued by the Attendance Allowance Board shall be treated as evidence of such matters as may be specified in the regulations;
 - (h) may direct that for specified purposes the replacement of attendance allowance and mobility allowance by disability living allowance shall be disregarded;
 - (i) may direct that a claim for attendance allowance or mobility allowance shall be treated in specified circumstances and for specified purposes as a claim for disability living allowance or that a claim for disability living allowance

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- shall be treated in specified circumstances and for specified purposes as a claim for attendance allowance or mobility allowance or both;
- (j) may direct that in specified circumstances and for specified purposes a claim for a disability living allowance shall be treated as having been made when no such claim was in fact made;
 - (k) may direct that in specified circumstances a claim for attendance allowance, mobility allowance or disability living allowance shall be treated as not having been made;
 - (l) may direct that in specified circumstances where a person claims attendance allowance or mobility allowance or both, and also claims disability living allowance, his claims may be treated as a single claim for such allowances for such periods as the regulations may specify;
 - (m) may direct that cases relating to mobility allowance shall be subject to adjudication in accordance with the provisions of Part II of the Administration Act relating to disability living allowance; and
 - (n) may direct that, at a time before the Attendance Allowance Board is dissolved, in specified circumstances cases relating to attendance allowance shall be subject to adjudication under the system of adjudication for such cases introduced by the Disability Living Allowance and Disability Working Allowance Act 1991.
- (3) Regulations under this paragraph may provide that any provision to which this sub-paragraph applies—
- (a) shall have effect subject to modifications, additions or amendments; or
 - (b) shall not have effect.
- (4) Sub-paragraph (3) above applies—
- (a) to any provision of the 1975 Act which relates to mobility allowance, so far as it so relates;
 - (b) to any provision of Part VI of the 1986 Act which is relevant to mobility allowance;
 - (c) to any provision of the Contributions and Benefits Act which relates to disability living allowance or attendance allowance, so far as it so relates; and
 - (d) to any provision of the Administration Act which is relevant to disability living allowance or attendance allowance.

Regulations and orders - supplementary

- 23 (1) Regulations under this Part of this Schedule shall be made by the Secretary of State.
- (2) Powers under this Part of this Schedule to make regulations or orders are exercisable by statutory instrument.
- (3) Any power conferred by this Part of this Schedule to make regulations or orders may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case;
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

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- (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Part of this Schedule;
 - (iii) any such provision either unconditionally or subject to any specified condition.
- (4) The powers to make regulations or orders conferred by any provision of this Part of this Schedule other than paragraph 22 above include powers to make thereby such incidental, supplementary, consequential or transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations.
- (5) A power conferred by this Part of this Schedule to make regulations or an order includes power to provide for a person to exercise a discretion in dealing with any matter.
- (6) If the Treasury so direct, regulations or orders under this Part of this Schedule shall be made only in conjunction with them.
- (7) A statutory instrument—
 - (a) which contains (whether alone or with other provisions) orders or regulations made under this Part of this Schedule, and
 - (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,shall be subject to annulment in pursuance of a resolution of either House of Parliament.