

SCHEDULES

SCHEDULE 4

Section 128.

PRIORITY IN BANKRUPTCY ETC

Earners' contributions to occupational pension scheme

- 1 This Schedule applies to any sum owed on account of an earner's contributions to an occupational pension scheme being contributions deducted from earnings paid in the period of four months immediately preceding the relevant date or otherwise due in respect of earnings paid or payable in that period.

Employer's contributions to occupational pension scheme

- 2 (1) This Schedule applies to any sum owed on account of an employer's contributions to a contracted-out scheme, being contributions payable—
- (a) in the period of 12 months immediately preceding the relevant date; and
 - (b) in respect of earners in employment which is contracted-out by reference to the scheme towards the provision for those earners of guaranteed minimum pensions under the scheme.
- (2) This Schedule applies to any sum owed on account of an employer's minimum payments to a contracted-out scheme falling to be made in the period of 12 months immediately preceding the relevant date.
- (3) In so far as contributions or payments cannot from the terms of the scheme be identified as falling within sub-paragraph (1) or (2), the amount of the debt having priority by virtue of that sub-paragraph shall be deemed to be an amount equal to—
- (a) 4.8 per cent. of the total reckonable earnings paid or payable, in the period of 12 months referred to in that sub-paragraph, to or for the benefit of non-contributing earners; and
 - (b) 3 per cent. of the total reckonable earnings paid or payable in that period to or for the benefit of contributing earners.
- (4) For the purposes of sub-paragraph (3)—
- (a) the earnings to be taken into account as reckonable earnings are those paid or payable to or for the benefit of earners in employment which is contracted-out by reference to the scheme in the whole or any part of the period of 12 months there mentioned; and
 - (b) earners are to be identified as contributing or non-contributing in relation to service of theirs in employment which is contracted-out by reference to the scheme according to whether or not in the period in question they were liable under the terms of the scheme to contribute in respect of that service towards the provision of pensions under the scheme.
- (5) In this paragraph—

Status: This is the original version (as it was originally enacted).

“employer” shall be construed in accordance with regulations made under section 181(2); and

“reckonable earnings”, in relation to any employment, means the earner’s earnings from that employment so far as those earnings—

- (a) were comprised in any payment of earnings made to him or for his benefit at a time when the employment was contracted-out employment; and
- (b) exceeded the current lower earnings limit but not the current upper earnings limit.

State scheme premiums

- 3 (1) This Schedule applies to any sum owed on account of a state scheme premium payable at any time before, or in consequence of, a person going into liquidation or being adjudged bankrupt, or in Scotland, the sequestration of a debtor’s estate, or (in the case of a company not in liquidation)—
- (a) the appointment of a receiver as mentioned in section 40 of the Insolvency Act 1986 (debenture-holders secured by floating charge), or
 - (b) the appointment of a receiver under section 53(6) or 54(5) of that Act (Scottish company with property subject to floating charge), or
 - (c) the taking of possession by debenture-holders (so secured) as mentioned in section 196 of the Companies Act 1985.
- (2) Where any such premium is payable in respect of a period of service of more than 12 months (taking into account any previous linked qualifying service), the amount to be paid in priority by virtue of this paragraph shall be limited to the amount of the premium that would have been payable if the service had been confined to the last 12 months taken into account in fixing the actual amount of the premium.
- (3) Where—
- (a) by virtue of this paragraph the whole or part of a premium is required to be paid in priority to other debts of the debtor or his estate; and
 - (b) the person liable for the payment would be entitled to recover the whole or part of any sum paid on account of it from another person either under section 61 or under any provision made by the relevant scheme for the purposes of that section or otherwise,
- then, subject to sub-paragraph (4), that other person shall be liable for any part of the premium for the time being unpaid.
- (4) No person shall be liable by virtue of sub-paragraph (3) for an amount in excess of the sum which might be so recovered from him if the premium had been paid in full by the person liable for it, after deducting from that sum any amount which has been or may be recovered from him in respect of any part of that payment paid otherwise than under that sub-paragraph.
- (5) The payment under sub-paragraph (3) of any amount in respect of a premium shall have the same effect on the rights and liabilities of the person making it (other than his liabilities under that sub-paragraph) as if it had been a payment of that amount on account of the sum recoverable from him in respect of a premium as mentioned in sub-paragraph (3)(b).

Interpretation

- 4 (1) In this Schedule—
- (a) in its application in England and Wales, section 196(3) of the Companies Act 1985 and section 387 of the Insolvency Act 1986 apply as regards the meaning of the expression “the relevant date”; and
 - (b) in its application in Scotland, that expression has the same meaning as in Part I of Schedule 3 to the Bankruptcy (Scotland) Act 1985.
- (2) In this Schedule references to a contracted-out scheme, contracted-out employment and a state scheme premium include references to a contracted-out scheme, contracted-out employment and a state scheme premium (other than a personal pension protected rights premium) within the meaning of any provisions in force in Northern Ireland and corresponding to the provisions of this Act.