

## SCHEDULES

### SCHEDULE 5

Section 52.

#### PENSIONS: MISCELLANEOUS AMENDMENTS AND ALTERNATIVE TO ANTI-FRANKING RULES

#### PART I

#### MISCELLANEOUS AMENDMENTS

##### *Guaranteed minimum for widows and widowers*

1.—(1) In section 13 of the Pension Schemes Act (minimum pensions for widows and widowers), after subsection (4) there shall be inserted—

“(4A) The scheme must provide for the widow or widower’s pension to be payable to the widow or widower—

- (a) for any period for which a Category B retirement pension is payable to the widow or widower by virtue of the earner’s contributions or would be so payable but for section 43(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (persons entitled to more than one retirement pension);
- (b) for any period for which widowed parent’s allowance or bereavement allowance is payable to the widow or widower by virtue of the earner’s contributions; and
- (c) in the case of a widow or widower whose entitlement by virtue of the earner’s contributions to a widowed parent’s allowance or bereavement allowance has come to an end at a time after the widow or widower attained the age of 45, for so much of the period beginning with the time when the entitlement came to an end as neither—
  - (i) comprises a period during which the widow or widower and a person of the opposite sex are living together as husband and wife; nor
  - (ii) falls after the time of any remarriage by the widow or widower.”.

(2) In subsection (5) of that section—

- (a) for “must provide” there shall be substituted “must also make provision”; and
  - (b) the words “Category B retirement pension,”, in the first place where they occur, and the words from “or for which” to the end shall cease to have effect.
- (3) In subsection (6) of that section, for “must provide” there shall be substituted “must also make provision”.

*Transfer of rights to overseas personal pension schemes*

- 2.—(1) In section 16(1) of the Pension Schemes Act (transfer of accrued rights)
- (a) in paragraph (a), for “or to a personal pension scheme” there shall be substituted “, to a personal pension scheme or to an overseas arrangement”; and
  - (b) in paragraph (b), for “or a personal pension scheme” there shall be substituted “, a personal pension scheme or an overseas arrangement”.
- (2) In section 24(2)(b) of that Act (ways of giving effect to protected rights)—
- (a) in sub-paragraph (i), for “or to a personal pension scheme” there shall be substituted “, to a personal pension scheme or to an overseas arrangement”; and
  - (b) in sub-paragraph (ii), for “or to an occupational pension scheme” there shall be substituted “, to an occupational pension scheme or to an overseas arrangement”.
- (3) In section 176(1) of that Act (general interpretation), after the definition of “occupational pension scheme”, there shall be inserted—
- ““overseas arrangement” means a scheme or arrangement which—
- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
  - (b) is administered wholly or primarily outside Northern Ireland;
  - (c) is not an appropriate scheme; and
  - (d) is not an occupational pension scheme;”.

*Protected rights*

- 3.—(1) Section 24 of the Pension Schemes Act shall be amended as follows.
- (2) In subsection (4), for paragraph (d) there shall be substituted—
- “(d) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.”.

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(3) After that subsection there shall be inserted—

“(4A) Subject to subsection (4B), in the case of an occupational pension scheme, effect may be given to protected rights by the provision of a lump sum if—

- (a) the trustees or managers of the scheme are satisfied that the member is terminally ill and likely to die within the period of twelve months beginning with the date on which the lump sum becomes payable; and
- (b) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.

(4B) The value of the protected rights to which effect may be given under subsection (4A) in a case in which the member is a married person on the date on which the lump sum becomes payable shall not exceed one half of the value on that date of all the member’s protected rights.”.

(4) In subsections (3) and (5), for “or (4)” there shall be substituted “, (4) or (4A)”.

*Use of cash equivalent for annuity*

4. In section 91 of the Pension Schemes Act (ways of taking right to cash equivalent), subsection (4) shall cease to have effect.

*Transfer values where pension in payment*

5.—(1) In section 93(2) of the Pension Schemes Act (calculation of cash equivalents), for “and” at the end of paragraph (a) there shall be substituted—

- “(aa) for a cash equivalent, including a guaranteed cash equivalent, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—
- (i) any pension; or
  - (ii) any benefit in lieu of pension; and”.

(2) In section 94(7) of that Act (variation and loss of rights under section 90)—

- (a) after “right” there shall be inserted “if”; and
- (b) paragraph (a) shall cease to have effect.

(3) In Article 121(1) of the Pensions Order (interpretation of Part II), in the definition of “pensioner member”, after “other benefits” there shall be inserted “and who is not an active member of the scheme”.

(4) Sub-paragraph (2) has effect in relation to any case in which the whole or any part of a pension or other benefit becomes payable on or after the coming into operation of that sub-paragraph.

*Information about contracting-out*

6. For section 152 of the Pension Schemes Act (information as to guaranteed minimum pensions) there shall be substituted—

**“152 Information for purposes of contracting-out**

(1) The Department or the Inland Revenue may give to the trustees or managers of an occupational pension scheme or appropriate scheme such information as appears to the Department or Inland Revenue appropriate to give to them for the purpose of enabling them to comply with their obligations under Part III.

(2) The Department or Inland Revenue may also give to such persons as may be prescribed any information that they could give under subsection (1) to trustees or managers of a scheme.”.

*Trustees of schemes*

7. In section 173 of the Pension Schemes Act (managers of schemes)—

- (a) for “provide who is to be treated” there shall be substituted “provide—
  - (a) who is to be treated”; and
- (b) at the end there shall be added—

“or

- (b) who is to be treated as a trustee of a scheme for the purposes of Chapter I of Part IV, Chapter I of Part IVA, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 149(2), 154(1) to (5), 158, 159 and 171.”.

*Register of disqualified trustees*

8.—(1) In Article 30(7) of the Pensions Order (persons disqualified: consequences), for the words from “and” to the end there shall be substituted “but the arrangements made by the Authority for the register shall secure that the contents of the register are not disclosed or otherwise made available to members of the public except in accordance with Article 30A.”.

(2) After that paragraph there shall be added—

“(8) Nothing in paragraph (7) requires the Authority to exclude any matter from a report published under Article 101.”.

(3) After that Article there shall be inserted—

**“Accessibility of register of disqualified trustees**

**30A.—**(1) The Authority shall make arrangements that secure that the disqualification register is open, during the normal working hours of the Authority, for inspection in person and without notice at—

- (a) the principal office used by them for the carrying out of their functions under this Order, and
- (b) such other offices (if any) of theirs or of the Department as they consider to be places where it would be reasonable for a copy of the register to be kept open for inspection.

(2) If a request is made to the Authority—

- (a) to state whether a particular person identified in the request is a person appearing in the disqualification register as disqualified in respect of a scheme specified in the request, or
- (b) to state whether a particular person identified in the request is a person appearing in that register as disqualified in respect of all trust schemes,

it shall be the duty of the Authority promptly to comply with the request in such manner as they consider reasonable.

(3) The Authority may, in such manner as they think fit, publish a summary of the disqualification register if (subject to paragraphs (6) to (8)) the summary—

- (a) contains all the information described in paragraph (4),
- (b) arranges that information in the manner described in paragraph (5),
- (c) does not (except by identifying a person as disqualified in respect of all trust schemes) identify any of the schemes in respect of which persons named in the summary are disqualified, and
- (d) does not disclose any other information contained in the register.

(4) That information is—

- (a) the full names and titles, so far as the Authority have a record of them, of all the persons appearing in the register as persons who are disqualified,
- (b) the dates of birth of such of those persons as are persons whose dates of birth are matters of which the Authority have a record, and
- (c) in the case of each person whose name is included in the published summary, whether that person appears in the register—
  - (i) as disqualified in respect of only one scheme,

(ii) as disqualified in respect of two or more schemes but not in respect of all trust schemes, or

(iii) as disqualified in respect of all trust schemes.

(5) For the purposes of sub-paragraph (c) of paragraph (4), the information contained in the published summary shall be arranged in three separate lists, one for each of the descriptions of disqualification specified in the three heads of that sub-paragraph.

(6) The Authority shall ensure, in the case of any published summary, that a person is not identified in the summary as a disqualified person if it appears to them that the determination by virtue of which that person appears in the register—

(a) is the subject of any pending review, appeal or legal proceedings which could result in that person's removal from the register, or

(b) is a determination which might still become the subject of any such review, appeal or proceedings.

(7) The Authority shall ensure, in the case of any published summary, that the particulars relating to a person do not appear in a particular list mentioned in paragraph (5) if it appears to them that a determination by virtue of which that person's particulars would appear in that list—

(a) is the subject of any pending review, appeal or legal proceedings which could result in such a revocation or other overturning of a disqualification of that person as would require his particulars to appear in a different list, or

(b) is a determination which might still become the subject of any such review, appeal or proceedings.

(8) Where paragraph (7) prevents a person's particulars from being included in a particular list in the published summary, they shall be included, instead, in the list in which they would have been included if the disqualification to which the review, appeal or proceedings relate had already been revoked or otherwise overturned.

(9) For the purposes of this Article a determination is one which might still become the subject of a review, appeal or proceedings if, and only if, in the case of that determination—

(a) the time for the making of an application for a review, or for the bringing of an appeal or other proceedings, has not expired, and

(b) there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought.

(10) In this Article—

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“the disqualification register” means the register kept by the Authority under Article 30(7),

“name”, in relation to a person any of whose names is recorded by the Authority as an initial, means that initial.”.

*Conditions of payment of surplus to employer*

9.—(1) Article 37 of the Pensions Order (payment of surplus to employer) shall be amended as follows.

(2) In paragraph (4) for sub-paragraph (d) there shall be substituted—

“(d) the annual rates of the pensions under the scheme are increased, at intervals of not more than twelve months, by at least the relevant percentage, and”.

(3) After paragraph (5) there shall be inserted—

“(5A) For the purposes of paragraph (4)(d), the relevant percentage is the percentage which, for the purposes of the increases of the annual rates of the pensions under the scheme—

(a) falls to be computed by reference to a period which, except in the case of the first increase—

(i) begins with the end of the period by reference to which the last preceding increase was made, and

(ii) ends with a date which falls after the date of the last preceding increase, and

(b) is equal to whichever is the lesser of—

(i) the percentage increase in the retail prices index over the period by reference to which the increase is made, and

(ii) the equivalent over that period of 5 per cent. per annum.”.

(4) In paragraph (6), for the words from the beginning to the end of sub-paragraph (a) there shall be substituted—

“(6) In this Article—

(a) “annual rate” has the same meaning as in Article 54, and”.

(5) The preceding provisions of this paragraph have effect in relation to payments made to an employer at any time after the coming into operation of this paragraph.

*Duties relating to statements of contributions*

10.—(1) In Article 41 of the Pensions Order (provision of documents for members), for paragraph (5) there shall be substituted—

“(5) Regulations may in the case of occupational pension schemes provide for—

- (a) prescribed persons,
- (b) persons with prescribed qualifications or experience, or
- (c) persons approved by the Department,

to act for the purposes of paragraph (2) instead of scheme auditors or actuaries.

(5A) Regulations may impose duties on the trustees or managers of an occupational pension scheme to disclose information to, and make documents available to, a person acting under paragraph (5).

(5B) If any duty imposed under paragraph (5A) is not complied with, Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.”.

(2) In Article 49 of that Order (other responsibilities of trustees, employers, etc.), in paragraph (9), after sub-paragraph (b) there shall be added “; and

- (c) except in prescribed circumstances, any person acting instead of an auditor for the purposes of Article 41(2)(b) in relation to the scheme must give notice of the failure, within the prescribed period, to the Authority.”.

(3) In that Article, after paragraph (10) there shall be inserted—

“(10A) Article 10 applies to a person who fails to comply with paragraph (9)(c).”.

(4) In Article 86 of that Order (schedules of payments to money purchase schemes: supplementary), after paragraph (4) there shall be added—

“(5) Except in prescribed circumstances, any person acting instead of an auditor for the purpose of Article 41(2)(b) in relation to an occupational pension scheme to which Article 85 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority.

(6) Article 10 applies to a person so acting who fails to comply with paragraph (5).”.

#### *Orders and regulations*

**11.** In Article 167(3) of the Pensions Order (Assembly, etc. control of orders and regulations), after “orders” in the first place where it occurs, there shall be inserted “made by virtue of Article 10(2)” and sub-paragraph (a) shall cease to have effect.



## PART II

### ALTERNATIVE TO ANTI-FRANKING RULES

#### *Cases in which alternative applies*

**12.—**(1) Subject to the following provisions of this paragraph, this Part applies, instead of Chapter III of Part IV of the Pension Schemes Act (anti-franking rules), in the case of a person (“the pensioner”) who is entitled to benefits under any occupational pension scheme if the benefits to which he is entitled under the scheme include a guaranteed minimum pension.

(2) This Part does not apply in the pensioner’s case, instead of Chapter III of Part IV of the Pension Schemes Act, unless—

- (a) the pensioner is a member of the scheme who, in relation to that scheme, left pensionable service after the coming into operation of this Part;
- (b) the pensioner is the widow or widower of a member of the scheme whose pensionable service ended (by death or otherwise) after the coming into operation of this Part; or
- (c) sub-paragraph (3) applies to the benefits to which the pensioner is entitled under the scheme.

(3) This sub-paragraph applies to the benefits to which the pensioner is entitled under the scheme if—

- (a) the time at which the benefits first become payable is after the coming into operation of this Part;
- (b) the benefits do not first become payable in respect of the death of a member of the scheme to whom benefits had already become payable under the scheme before the coming into operation of this Part; and
- (c) the trustees or managers of the scheme have elected, in the prescribed manner, that this Part should apply to benefits first becoming payable under the scheme after the coming into operation of this Part.

(4) This Part does not apply in the pensioner’s case (and, accordingly, Chapter III of Part IV of the Pension Schemes Act does) if the scheme is a scheme of a prescribed description, unless the trustees or managers of the scheme have elected, in the prescribed manner, that this Part should apply in the case of the scheme.

(5) An election for the purposes of any provision of this paragraph—

- (a) shall not be exercisable differently in relation to different members of the scheme; and
- (b) once exercised, shall be irrevocable.

*Alternative rules*

**13.—(1)** Where this Part applies in the pensioner's case, the amount of the benefits to which he is entitled under the scheme shall not be less than the amount of the benefits to which he would have been entitled under the scheme if his entitlement fell to be calculated by the method set out in sub-paragraph (2).

(2) That method is as follows—

Step 1: compute the amount of any benefits consisting in the guaranteed minimum pension to which the pensioner is entitled;

Step 2: compute what would have been the amount of those benefits on the assumptions set out in sub-paragraph (3);

Step 3: determine the extent (if any) to which attributing an amount of benefits equal to the amount computed in accordance with Step 2 to rights accruing before 6th April 1997 would leave any such rights unused;

Step 4: compute, in accordance with sub-paragraph (4), the amount of such of the benefits to which the pensioner is entitled under the scheme as are attributable to rights accruing before 6th April 1997 (if any) which, applying the determination in Step 3, would be left unused after the attribution of the amount mentioned in that Step to rights so accruing;

Step 5: compute the amount resulting, on the required assumption, from the application of the statutory revaluations and increases in the case of the benefits computed in accordance with Step 4;

Step 6: compute, in accordance with sub-paragraph (4), the amount of such of the benefits to which the pensioner is entitled under the scheme as are attributable to rights accruing on or after 6th April 1997;

Step 7: compute the amount resulting, on the required assumption, from the application of the statutory revaluations and increases in the case of the benefits computed in accordance with Step 6;

Step 8: aggregate the results of Steps 1, 5 and 7 to give the minimum benefits required by sub-paragraph (1).

(3) The assumptions referred to in Step 2 in sub-paragraph (2) are—

(a) that no increases are required to be made in accordance with section 11 or 105 of the Pension Schemes Act (deferment increases and indexation);

(b) that increases in accordance with section 12(1) of that Act (revaluation of earnings factors for early leavers) of any earner's earnings factors are to be calculated as if references to the final relevant year were references to whichever is the earlier of—

(i) the final relevant tax year, and

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- (ii) the tax year immediately preceding that in which the member in question left service that qualified him for salary-related benefits under the scheme; and
  - (c) that no increases in accordance with any provision included in the scheme by virtue of section 12(3) of that Act (increases of weekly equivalent for person leaving contracted-out service before final relevant year) are to be made for any year after the tax year immediately preceding that in which the member in question left service that qualified him for salary-related benefits under the scheme.
- (4) For the purposes of Steps 4 and 6 in sub-paragraph (2)—
  - (a) if (apart from this sub-paragraph) there would be a difference between the two Steps in the level of salary taken as the level by reference to which any salary-related benefits are to be computed, the level used for Step 4 shall be no lower than that used for Step 6; and
  - (b) statutory revaluations and increases shall not be attributed to rights accruing at any time.
- (5) For the purposes of Steps 5 and 7 in sub-paragraph (2), the required assumption is that the benefits in whose case the statutory revaluations and increases are applied comprise a whole pension deriving from the rights to which they are taken to be attributable for the purposes of Step 4 or, as the case may be, Step 6.
- (6) Subject to sub-paragraph (7), references in this paragraph to the statutory revaluations and increases are references to—
  - (a) the revaluations required to be made in accordance with Chapter II of Part IV of the Pension Schemes Act (revaluation of accrued benefits); and
  - (b) the increases required to be made by virtue of Article 51 of the Pensions Order (indexation).
- (7) For the purposes of applying the statutory revaluations and increases for the purposes of Steps 5 and 7 in sub-paragraph (2)—
  - (a) money may be used in a way allowed by section 106(1) of the Pension Schemes Act (use of money to pay guaranteed minimum pension increase for subsequent year); and
  - (b) any deductions authorised by Article 53(1) or (2) of the Pensions Order (permitted deductions from statutory increases) may be made.
- (8) In this paragraph “the pensioner” has the meaning given by paragraph 12.
- (9) Any reference in this paragraph to a provision of the Pension Schemes Act includes a reference to any statutory provision re-enacted in that provision.

*Relationship between alternative rules and other rules*

**14.—**(1) Paragraph 13 shall not apply to benefits consisting in an alternative to a short service benefit provided for under section 69(2)(b) of the Pension Schemes Act, except to the extent that—

- (a) that paragraph would apply for the computation of the short service benefit to which those benefits are an alternative; and
- (b) the amount of any of the alternative benefits falls to be computed wholly or partly by reference to the value of what would have been the short service benefit.

(2) Section 90 of the Pension Schemes Act (right to cash equivalent) shall have effect as if the provisions of this Part were included for the purposes of that section in the applicable rules.

(3) Subject to sub-paragraph (4), the preceding provisions of this Part override any provision of an occupational pension scheme with which they are inconsistent except a provision which, under subsection (3) of section 125 of the Pension Schemes Act, is a protected provision for the purposes of subsection (2) of that section.

(4) The preceding provisions of this Part shall be without prejudice to any person's entitlement to exercise—

- (a) any right of commutation, forfeiture or surrender of the whole or any part of any benefits computed in accordance with this Part;
- (b) any charge or lien on the whole or any part of any such benefits; or
- (c) any right of set-off against the whole or any part of any such benefits,

and, accordingly, the computations to be done under paragraph 13 shall be done disregarding anything falling within any of heads (a) to (c).

*Supplemental*

**15.—**(1) In this Part references to rights accruing to a member of a scheme before 6th April 1997 include references—

- (a) in relation to salary-related benefits, to rights accruing at any time in respect of service before that date; and
- (b) in relation to benefits of any description, to rights that derive from any transfer of accrued rights or transfer payment and represent rights accruing under any other scheme before that date;

and a reference in this Part to rights accruing on or after that date shall be construed accordingly.

(2) For the purposes of this Part rights to money purchase benefits that are attributable to payments in respect of employment are rights accruing before 6th

April 1997 in so far only as that employment was employment carried on before that date; and a reference in this Part to rights accruing on or after that date shall be construed accordingly.

(3) In this Part “salary-related benefits” means benefits that are not money purchase benefits.

(4) Expressions defined for the purposes of the Pension Schemes Act have the same meanings in this Part as they have in that Act.

(5) Regulations made by the Department under this Part shall be subject to negative resolution.

(6) The Department may by order make such modifications of paragraphs 12 to 14 as it considers appropriate.

(7) An order under sub-paragraph (6) shall be subject to negative resolution.

(8) Section 177(2) to (4) and (6) of the Pension Schemes Act (orders and regulations (general provisions)) shall apply—

(a) to any power of the Department to make regulations under this Part, and

(b) to the power of the Department to make an order under sub-paragraph (6), as it applies to its powers to make regulations and orders under that Act.

(9) In section 173(a) of the Pension Schemes Act (managers of schemes), for the words from “or Part IV” to “1999” there shall be substituted “, Part IV or V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or Part II of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000”.