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## SCHEDULES

*Schedule 1—Amendments*

*Schedule 2—Amendments*

*Schedule 3—Amendments*

*Schedule 4—Amendments*

### 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—

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- (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

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(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.” .

*Sub-paras. (3)(4) rep. by 2005 NI 1*

#### *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.

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(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—

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

**152.**—(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 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.” .

*Para. 8 rep. by 2005 NI 1*

#### *Conditions of payment of surplus to employer*

**F19.**—(1) Article 37 of the Pensions Order (payment of surplus to employer) shall be amended as follows.

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- (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.

**F1** prosp. rep. by [2005 NI 1](#)

#### *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,

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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.” .

<sup>F2</sup>(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.” .

<sup>F2</sup>(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).” .

<sup>F2</sup>(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 s cheme 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).” .

**F2** prosp. rep. by [2005 NI 1](#)

### *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.

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## 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.

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### *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.

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### *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

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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”.

### *Schedule 6—Amendments*

## SCHEDULE 7

Section 59.

### HOUSING BENEFIT: REVISIONS AND APPEALS

#### **Modifications etc. (not altering text)**

- C1** Sch. 7 applied (with modifications) (1.4.2007) by [Rate Relief \(Qualifying Age\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/203\)](#), **reg. 40**
- C2** Sch. 7 applied (with modifications) (1.4.2007) by [Rate Relief \(General\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/204\)](#), **reg. 41**

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### *Introductory*

1.—(1) In this Schedule relevant authority means the Housing Executive or the Department of Finance and Personnel, as the case may be.

(2) In this Schedule relevant decision means any of the following—

- (a) a decision of a relevant authority on a claim for housing benefit;
- (b) any decision under paragraph 4 which supersedes a decision falling within head (a), within this paragraph or within head (b) of sub-paragraph (1) of that paragraph,

but references in this Schedule to a relevant decision do not include references to a decision under paragraph 3 to revise a relevant decision.

### *Decisions on claims for benefit*

2. Where at any time a claim for housing benefit is decided by a relevant authority—

- (a) the claim shall not be regarded as subsisting after that time; and
- (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.

### *Revision of decisions*

3.—(1) Any relevant decision may be revised or further revised by the relevant authority which made the decision—

- (a) either within the prescribed period or in prescribed cases or circumstances; and
- (b) either on an application made for the purpose by a person affected by the decision or on its own initiative,

and regulations may prescribe the procedure by which a decision of a relevant authority may be so revised.

(2) In making a decision under sub-paragraph (1), the relevant authority need not consider any issue that is not raised by the application or, as the case may be, did not cause it to act on its own initiative.

(3) Subject to sub-paragraphs (4) and (5) and paragraph 18, a revision under this paragraph shall take effect from the date on which the original decision took (or was to take) effect.

(4) Regulations may provide that, in prescribed cases or circumstances, a revision under this paragraph shall take effect from such other date as may be prescribed.

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(5) Where a decision is revised under this paragraph, for the purposes of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.

(6) Except in prescribed circumstances, an appeal against a decision of the relevant authority shall lapse if the decision is revised under this paragraph before the appeal is determined.

#### *Decisions superseding earlier decisions*

4.—(1) Subject to sub-paragraph (4), the following, namely—

(a) any relevant decision (whether as originally made or as revised under paragraph 3); and

(b) any decision under this Schedule of an appeal tribunal or a Commissioner, may be superseded by a decision made by the appropriate relevant authority, either on an application made for the purpose by a person affected by the decision or on its own initiative.

(2) In making a decision under sub-paragraph (1), the appropriate relevant authority need not consider any issue that is not raised by the application or, as the case may be, did not cause it to act on its own initiative.

(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this paragraph.

(4) Subject to sub-paragraph (5) and paragraph 18, a decision under this paragraph shall take effect from the date on which it is made or, where applicable, the date on which the application was made.

(5) Regulations may provide that, in prescribed cases or circumstances, a decision under this paragraph shall take effect from such other date as may be prescribed.

(6) In this paragraph the appropriate relevant authority means the authority which made the decision being superseded, the decision appealed against to the tribunal or, as the case may be, the decision to which the decision being appealed against to the Commissioner relates.

#### *Use of experts by relevant authorities*

5. Where it appears to a relevant authority that a matter in relation to which a relevant decision falls to be made by it involves a question of fact requiring special expertise, it may direct that, in dealing with that matter, it shall have the assistance of one or more persons appearing to it to have knowledge or experience which would be relevant in determining that question.

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### *Appeal to appeal tribunal*

6.—(1) Subject to sub-paragraph (2), this paragraph applies to any relevant decision (whether as originally made or as revised under paragraph 3) of a relevant authority which—

- (a) is made on a claim for, or on an award of, housing benefit; or
- (b) does not fall within head (a) but is of a prescribed description.

(2) This paragraph does not apply to—

- (a) any decision terminating or reducing the amount of a person's housing benefit that is made in consequence of any decision made under regulations under section 2A of the Administration Act (work-focused interviews);
- (b) any decision of a relevant authority as to the amount of benefit to which a person is entitled in a case in which the amount is determined by the rate of benefit provided for by law; or
- (c) any such other decision as may be prescribed.

(3) In the case of a decision to which this paragraph applies, any person affected by the decision shall have a right of appeal to an appeal tribunal.

(4) Nothing in sub-paragraph (3) shall confer a right of appeal in relation to—

- (a) a prescribed decision; or
- (b) a prescribed determination embodied in or necessary to a decision.

(5) Regulations under sub-paragraph (4) shall not prescribe any decision or determination that relates to the conditions of entitlement to housing benefit for which a claim has been validly made.

(6) Where any amount of housing benefit is determined to be recoverable under section 73 of the Administration Act (overpayments of housing benefit), any person from whom it has been determined that it is so recoverable shall have a right of appeal to an appeal tribunal.

(7) A person with a right of appeal under this paragraph shall be given such notice of the decision in respect of which he has that right, and of that right, as may be prescribed.

(8) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.

(9) In deciding an appeal under this paragraph, an appeal tribunal—

- (a) need not consider any issue that is not raised by the appeal; and
- (b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

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### *Redetermination, etc. of appeals by tribunal*

7.—(1) This paragraph applies where an application is made to a person for leave under paragraph 8(7)(a) or (c) to appeal from a decision of an appeal tribunal.

(2) If the person considers that the decision was erroneous in point of law, he may set aside the decision and refer the case either for redetermination by the tribunal or for determination by a differently constituted tribunal.

(3) If each of the principal parties to the case expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted tribunal.

(4) In this paragraph and paragraph 8 principal parties means—

- (a) where it is the applicant for leave to appeal or the circumstances are otherwise such as may be prescribed, the Department;
- (b) the relevant authority against whose decision the appeal to the appeal tribunal was brought; and
- (c) the person affected by the decision against which the appeal to the appeal tribunal was brought or by the tribunal's decision on that appeal.

### *Appeal from tribunal to Commissioner*

8.—(1) Subject to the provisions of this paragraph, an appeal lies to a Commissioner from any decision of an appeal tribunal under paragraph 6 or 7 on the ground that the decision of the tribunal was erroneous in point of law.

(2) An appeal lies under this paragraph at the instance of any of the following—

- (a) the Department;
- (b) the relevant authority against whose decision the appeal to the appeal tribunal was brought;
- (c) any person affected by the decision against which the appeal to the appeal tribunal was brought or by the tribunal's decision on that appeal.

(3) If each of the principal parties to the appeal expresses the view that the decision appealed against was erroneous in point of law, the Commissioner may set aside the decision and refer the case to a tribunal with directions for its determination.

(4) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside.

(5) Where under sub-paragraph (4) the Commissioner sets aside a decision—

- (a) he shall have power, if he can do so without making fresh or further findings of fact, to give the decision which he considers the tribunal should have given;

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- (b) he shall also have power, if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; and
  - (c) if he does not exercise the power in head (a) or (b), he shall refer the case to a tribunal with directions for its determination.
- (6) Subject to any direction of the Commissioner, a reference under sub-paragraph (3) or (5)(c) shall be to a differently constituted tribunal.
- (7) No appeal lies under this paragraph without leave; and leave for the purposes of this sub-paragraph may be given—
- (a) by the person who constituted, or was the chairman of, the tribunal when the decision to be appealed against was given;
  - (b) subject to and in accordance with regulations, by a Commissioner; or
  - (c) in a prescribed case, by such person not falling within head (a) or (b) as may be prescribed.
- (8) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought and applications made for leave to appeal.

*Appeal from Commissioner on point of law*

- 9.—(1) Subject to sub-paragraphs (2) and (3), an appeal on a question of law shall lie to the Court of Appeal from any decision of a Commissioner.
- (2) No appeal under this paragraph shall lie from a decision except—
- (a) with the leave of the Commissioner who gave the decision or, in a prescribed case, with the leave of a Commissioner selected in accordance with regulations; or
  - (b) if he refuses leave, with the leave of the Court of Appeal.
- (3) An application for leave under this paragraph in respect of a Commissioner's decision may only be made by—
- (a) a person who, before the proceedings before the Commissioner were begun, was entitled to appeal to the Commissioner from the decision to which the Commissioner's decision relates;
  - (b) any other person who was a party to the proceedings in which the decision to which the Commissioner's decision relates was given;
  - (c) any other person who is authorised by regulations to apply for leave,
- and regulations may make provision with respect to the manner in which, and the time within which, applications must be made to a Commissioner for leave under this paragraph, and with respect to the procedure for dealing with such applications.



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### *Procedure*

**10.**—(1) Regulations may make for the purposes of this Schedule any such provision as is specified in Schedule 4 to the 1998 Order, or as would be so specified if the references to the Department in paragraph 1 of that Schedule were references to a relevant authority.

(2) Regulations prescribing the procedure to be followed in cases before a Commissioner shall provide that any hearing shall be in public except in so far as the Commissioner for special reasons otherwise directs.

(3) The power by regulations to prescribe procedure includes power—

(a) to make provision as to the representation of one person, at any hearing of a case, by another person whether having professional qualifications or not; and

(b) to confer on the Department a right to be represented and heard in any proceedings before a Commissioner to which it is not already a party.

(4) If it appears to a Commissioner that a matter before him involves a question of fact of special difficulty, he may direct that in dealing with that matter he shall have the assistance of one or more persons appearing to him to have knowledge or experience which would be relevant in determining that question.

(5) If it appears to the Chief Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that—

(a) an application for leave under paragraph 8(7)(b); or

(b) an appeal,

falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the application or appeal be dealt with, not by that Commissioner alone, but by a tribunal consisting of any two or more of the Commissioners.

(6) If the decision of such a tribunal is not unanimous, the decision of the majority shall be the decision of the tribunal; and the presiding Commissioner shall have a casting vote if the votes (including his first vote) are equally divided.

(7) Where a direction is given under sub-paragraph (5)(a), paragraph 8(7)(b) shall have effect as if the reference to a Commissioner were a reference to such a tribunal as is mentioned in sub-paragraph (5).

(8) Except so far as it may be applied by regulations, Part I of the Arbitration Act 1996 (c. 23) shall not apply to any proceedings under this Schedule.

### *Finality of decisions*

**11.** Subject to the provisions of this Schedule, any decision made in accordance with the preceding provisions of this Schedule shall be final.

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*Matters arising as respects decisions*

12. Regulations may make provision as respects matters arising—
- (a) pending any decision under this Schedule of a relevant authority, an appeal tribunal or a Commissioner which relates to—
    - (i) any claim for housing benefit;
    - (ii) any person's entitlement to that benefit or its receipt; or
  - (b) out of the revision under paragraph 3, or on appeal, of any such decision.

*Suspension in prescribed circumstances*

- 13.—(1) Regulations may provide for—
- (a) suspending, in whole or in part, any payments of housing benefit;
  - (b) the subsequent making, or restoring, in prescribed circumstances of any or all of the payments so suspended.
- (2) Regulations made under sub-paragraph (1) may, in particular, make provision for any case where, in relation to a claim for housing benefit—
- (a) it appears to the relevant authority that an issue arises whether the conditions for entitlement to such a benefit are or were fulfilled;
  - (b) it appears to the relevant authority that an issue arises whether a decision as to an award of such a benefit should be revised (under paragraph 3) or superseded (under paragraph 4);
  - (c) an appeal is pending against a decision of an appeal tribunal, a Commissioner or a court; or
  - (d) it appears to the relevant authority, where an appeal is pending against the decision given by a Commissioner or a court in a different case, that if the appeal were to be determined in a particular way an issue would arise whether the award of housing benefit in the case itself ought to be revised or superseded.
- (3) For the purposes of sub-paragraph (2), an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
  - (b) an application for leave to appeal against the decision has been made but not determined; or
  - (c) the time within which—
    - (i) an application for leave to appeal may be made; or
    - (ii) an appeal against the decision may be brought,has not expired and the circumstances are such as may be prescribed.
- (4) In sub-paragraph (2)(d) the reference to a different case—

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- (a) includes a reference to a case involving a different relevant authority; but
- (b) does not include a reference to a case relating to a different benefit.

*Suspension for failure to furnish information, etc.*

**14.**—(1) The powers conferred by this paragraph are exercisable in relation to persons who fail to comply with information requirements.

(2) Regulations may provide for—

- (a) suspending, in whole or in part, any payments of housing benefit;
- (b) the subsequent making, or restoring, in prescribed circumstances of any or all of the payments so suspended.

(3) In this paragraph and paragraph 15 information requirement means a requirement in pursuance of regulations made by virtue of section 5(1)(hh) of the Administration Act to furnish information or evidence needed for a determination whether a decision on an award of that benefit should be revised under paragraph 3 or superseded under paragraph 4.

*Termination in cases of a failure to furnish information, etc.*

**15.** Regulations may provide that, except in prescribed cases or circumstances, a person who—

- (a) is a person whose benefit has been suspended in accordance with regulations under paragraph 13 and who subsequently fails to comply with an information requirement; or
- (b) is a person whose benefit has been suspended in accordance with regulations under paragraph 14 for failing to comply with such a requirement,

shall cease to be entitled to the benefit from a date not earlier than the date on which payments were suspended.

*Decisions involving issues that arise on appeal in other cases*

**16.**—(1) This paragraph applies where—

- (a) a relevant decision, or a decision under paragraph 3 about the revision of an earlier decision, falls to be made in any particular case; and
- (b) an appeal is pending against the decision given in another case by a Commissioner or a court.

(2) A relevant authority need not make the decision while the appeal is pending if it considers it possible that the result of the appeal will be such that, if it were already determined, there would be no entitlement to benefit.

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(3) If a relevant authority considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some other way—

- (a) it need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
- (b) it may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.

(4) Where—

- (a) a relevant authority acts in accordance with sub-paragraph (3)(b); and
- (b) following the making of the determination it is appropriate for its decision to be revised,

it shall then revise its decision (under paragraph 3) in accordance with that determination.

(5) For the purposes of this paragraph, an appeal against a decision is pending if—

- (a) an appeal against the decision has been brought but not determined;
- (b) an application for leave to appeal against the decision has been made but not determined; or
- (c) the time within which—
  - (i) an application for leave to appeal may be made; or
  - (ii) an appeal against the decision may be brought,has not expired and the circumstances are such as may be prescribed.

(6) In heads (a), (b) and (c) of sub-paragraph (5), any reference to an appeal against a decision, or to an application for leave to appeal against a decision, includes a reference to an application for judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978 (c. 23) or for leave to apply for judicial review.

(7) In sub-paragraph (1)(b) the reference to another case—

- (a) includes a reference to a case involving a decision made, or falling to be made, by a different relevant authority; but
- (b) does not include a reference to a case relating to another benefit.

*Appeals involving issues that arise on appeal in other cases*

17.—(1) This paragraph applies where—

- (a) an appeal ( appeal A) in relation to a relevant decision (whether as originally made or as revised under paragraph 3) is made to an appeal tribunal, or from an appeal tribunal to a Commissioner; and

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(b) an appeal ( appeal B) is pending against a decision given in a different case by a Commissioner or a court.

(2) If the relevant authority whose decision gave rise to appeal A considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, it may serve notice requiring the tribunal or Commissioner—

(a) not to determine appeal A but to refer it to that authority; or

(b) to deal with the appeal in accordance with sub-paragraph (4).

(3) Where appeal A is referred to the relevant authority under sub-paragraph (2) (a), following the determination of appeal B and in accordance with that determination, it shall if appropriate—

(a) in a case where appeal A has not been determined by the tribunal, revise (under paragraph 3) its decision which gave rise to that appeal; or

(b) in a case where appeal A has been determined by the tribunal, make a decision (under paragraph 4) superseding the tribunal's decision.

(4) Where appeal A is to be dealt with in accordance with this sub-paragraph, the appeal tribunal or Commissioner shall either—

(a) stay appeal A until appeal B is determined; or

(b) if the tribunal or Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—

(i) appeal B had already been determined; and

(ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

(5) Where the appeal tribunal or Commissioner acts in accordance with sub-paragraph (4)(b), following the determination of appeal B the relevant authority whose decision gave rise to appeal A shall, if appropriate, make a decision (under paragraph 4) superseding the decision of the tribunal or Commissioner in accordance with that determination.

(6) For the purposes of this paragraph, an appeal against a decision is pending if—

(a) an appeal against the decision has been brought but not determined;

(b) an application for leave to appeal against the decision has been made but not determined; or

(c) the time within which—

(i) an application for leave to appeal may be made; or

(ii) an appeal against the decision may be brought,

has not expired and the circumstances are such as may be prescribed.

(7) In this paragraph—

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- (a) the reference in sub-paragraph (1)(a) to an appeal to a Commissioner includes a reference to an application for leave to appeal to a Commissioner;
  - (b) the reference in sub-paragraph (1)(b) to a different case—
    - (i) includes a reference to a case involving a different relevant authority; but
    - (ii) does not include a reference to a case relating to a different benefit; and
  - (c) any reference in head (a), (b) or (c) of sub-paragraph (6) to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978 (c. 23) or for leave to apply for judicial review.
- (8) In sub-paragraph (4) the appellant means the person who appealed or, as the case may be, first appealed against the decision mentioned in sub-paragraph (1)(a).
- (9) Regulations may make provision supplementing the provision made by this paragraph.

*Restrictions on entitlement to benefit in certain cases of error*

- 18.—**(1) Subject to sub-paragraph (2), this paragraph applies where—
- (a) the effect of the determination, whenever made, of an appeal by virtue of this Schedule to a Commissioner or the court ( the relevant determination) is that the relevant authority's decision out of which the appeal arose was erroneous in point of law; and
  - (b) after the date of the relevant determination a decision falls to be made by a relevant authority in accordance with that determination (or would, apart from this paragraph, fall to be so made)—
    - (i) in relation to a claim for housing benefit;
    - (ii) as to whether to revise, under paragraph 3, a decision as to a person's entitlement to that benefit; or
    - (iii) on an application made under paragraph 4 for a decision as to a person's entitlement to that benefit to be superseded.
- (2) This paragraph does not apply where the decision mentioned in sub-paragraph (1)(b)—
- (a) is one which, but for paragraph 16(2) or (3)(a), would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of paragraph 17(3) or (5).

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(3) In so far as the decision relates to a person's entitlement to benefit in respect of a period before the date of the relevant determination, it shall be made as if the relevant authority's decision had been found by the Commissioner or court not to have been erroneous in point of law.

(4) Sub-paragraph (1)(a) shall be read as including a case where—

- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
- (b) the error of law made by the relevant authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.

(5) It is immaterial for the purposes of sub-paragraph (1)—

- (a) where such a decision as is mentioned in head (b)(i) falls to be made, whether the claim was made before or after the date of the relevant determination;
- (b) where such a decision as is mentioned in head (b)(ii) or (iii) falls to be made on an application under paragraph 3 or (as the case may be) 4, whether the application was made before or after that date.

(6) In this paragraph the court means—

- (a) the High Court;
- (b) the Court of Appeal;
- <sup>F3</sup>(c) the House of Lords; or
- (d) the Court of Justice of the European Community.

(7) For the purposes of this paragraph, any reference to entitlement to benefit includes a reference to entitlement—

- (a) to any increase in the rate of a benefit; or
- (b) to a benefit, or increase of benefit, at a particular rate.

(8) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this paragraph in accordance with any regulations made for that purpose.

(9) Regulations made under sub-paragraph (8) may include provision—

- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination by a lower court or by a Commissioner; or
- (b) for a determination of a lower court or of a Commissioner to be treated as if it had been made on the date of a determination by a higher court.

**F3** prosp. subst. by 2005 (c. 4)

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### *Correction of errors and setting aside of decisions*

- 19.—(1) Regulations may make provision with respect to—
- (a) the correction of accidental errors in any decision or record of a decision made under any relevant provision; and
  - (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
    - (i) a document relating to the proceedings in which the decision was made was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative, or was not received at an appropriate time by the body or person who made the decision; or
    - (ii) a party to the proceedings or a party's representative was not present at a hearing related to the proceedings.
- (2) Nothing in sub-paragraph (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that sub-paragraph.
- (3) In this paragraph relevant provision means—
- (a) any of the provisions of this Schedule;
  - (b) any of the provisions of Part VII of the Contributions and Benefits Act so far as they relate to housing benefit; or
  - (c) any of the provisions of Part VIII of the Administration Act or of any regulations under section 2A of that Act, so far as the provisions or regulations relate to, or to arrangements for, housing benefit.

### *Regulations*

- 20.—(1) The power to make regulations under this Schedule shall be exercisable—
- (a) in the case of regulations with respect to proceedings before the Commissioners, by the Lord Chancellor; and
  - (b) in any other case, by the Department.
- (2) Any power conferred by this Schedule to make regulations shall include power to make different provision for different areas or different relevant authorities.
- (3) Article 74(3) to (6) of the 1998 Order (regulations and orders) shall apply to any power to make regulations under this Schedule as it applies to any power to make regulations under that Order.



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(4) A statutory rule containing (whether alone or with other provisions) regulations under paragraph 6(2)(c) or (4) shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(5) Regulations made under this Schedule by the Department, and which are not subject to the procedure specified in sub-paragraph (4) shall be subject to negative resolution.

(6) Regulations made under this Schedule by the Lord Chancellor shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

(7) In this paragraph the reference to regulations with respect to proceedings before the Commissioners includes a reference to regulations with respect to any such proceedings for the determination of any matter, or for leave to appeal to or from the Commissioners.

#### *Consequential amendment of the Administration Act*

**21.** In section 5(1)(hh) of the Administration Act (regulations about claims for and payments of benefit)—

- (a) in sub-paragraph (i), after 1998 there shall be inserted “or, as the case may be, under paragraph 3 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000”; and
- (b) in sub-paragraph (ii), after Order there shall be inserted “or, as the case may be, paragraph 4 of that Schedule”.

#### *Consequential amendments of the 1998 Order*

**22.—(1)** In Article 15(12) of the 1998 Order (appeal from tribunal to Commissioner), after this Article there shall be inserted “or under paragraph 8 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000”.

(2) Articles 34(4) and (5) and 35 of that Order (regulations for the determination of claims and reviews of housing benefit and for the suspension of that benefit) shall cease to have effect.

(3) In Schedule 1 to that Order (appeal tribunals: supplementary provisions), in paragraph 4(1)(a) for or Article 22 of the Child Support Order there shall be substituted “, Article 22 of the Child Support Order or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000”.

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### *Interpretation*

**23.—(1)** In this Schedule—

affected shall be construed subject to any regulations under sub-paragraph (2);  
appeal tribunal means an appeal tribunal constituted under Chapter I of Part II of the 1998 Order;

the Chief Commissioner means the Chief Social Security Commissioner;

Commissioner means the Chief Commissioner or any other Social Security Commissioner, and includes a tribunal of two or more Commissioners constituted under paragraph 10(5);

prescribed means prescribed by regulations under this Schedule;

relevant authority has the meaning given by paragraph 1(1);

relevant decision has the meaning given by paragraph 1(2).

(2) Regulations may make provision specifying the circumstances in which a person is or is not to be treated for the purposes of this Schedule as a person who is affected by any decision of a relevant authority.

(3) For the purposes of this Schedule any decision that is made or falls to be made—

(a) by a person authorised to carry out any function of a relevant authority relating to housing benefit; or

(b) by a person providing services relating to housing benefit directly or indirectly to a relevant authority,

shall be treated as a decision of the relevant authority on whose behalf the function is carried out or, as the case may be, to whom those services are provided.

### *Schedule 8—Amendments*

### *Schedule 9—Repeals*

**Status:**

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

**Changes to legislation:**

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