

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Pension debits

Section 31: Reduction of benefit

This section provides for effect to be given to a pension debit by reducing a member's pension rights by the percentage specified in the court order or agreement, or, if the order or agreement is in terms of a specified amount rather than a percentage, by the percentage which that amount represents of the current cash equivalent of the member's pension rights. If that amount is greater than the current cash equivalent, the member's rights will be reduced by 100%.

For a member of a money purchase scheme, the debit will normally take the form of a once and for all reduction of a percentage of the money in the pension "pot".

Example: If the effect of the order or agreement is that the member's pension rights are subject to a debit of 40% of the cash equivalent, and the cash equivalent is £100,000, then £40,000 will be taken from the pot.

In the case of a salary related scheme, the way in which the member's benefit will be reduced is more complicated. The following example shows how the process is intended to work in practice. It is based on active member of a salary related occupational pension scheme with 20 years' membership at the date of divorce who earns £30,000 a year at that date. The scheme provides 1/60th of final salary for each year of service. For simplicity, the example assumes that the whole of the pension debit will be subject to statutory revaluation although if the debit includes some GMP rights then that part of the debit will be subject to GMP revaluation in the normal way.

Deferred pension at the date of divorce: $20/60 \times \text{£}30,000 = \text{£}10,000$

Cash equivalent for pension sharing calculated by scheme actuary: **£100,000**

Pension debit ordered by the court (40% of the cash equivalent): **£40,000**

(The former spouse's pension credit of £40,000 is invested separately for her).

This process is similar to that for a money purchase scheme, but, at retirement, the adjustment to the member's salary related benefit will be as follows:

The member retires at age 60 after 30 years' service with a salary of: **£48,000**

Full pension entitlement (ignoring the debit): $30/60 \times \text{£}48,000 = \text{£}24,000$

Using the statutory Revaluation Order in force at the date of retirement, the scheme actuary calculates that the deferred pension of £4,000 (40% of the deferred pension of £10,000) given up at the date of divorce is equivalent to a pension of £6,000 a year at retirement. This is known as the "negative deferred pension."

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The member's actual pension will be: **£24,000 - £6,000 = £18,000**

This provision prevents a scheme actuary calculating the pension as if the member had given up 40% (8 years' worth) of the rights to 20 years' pensionable service at the time of the divorce. This is because on retirement, the member's full pension would be reduced by 8 years of his pensionable service.

So, the member's pension would be reduced by: **8/60 x £48,000 = £6,400**

and the final pension would be: **£24,000 - £6,400 = £17,600**

This would give the scheme a windfall gain at the member's expense equivalent to payment of a pension of £400 a year for each year until the member dies. This kind of windfall would be particularly marked in schemes which have faster accrual rates in the final years of service.

In the case of a deferred member of a salary-related scheme, the method of revaluation will depend on the date of leaving and the type of benefit accrued. For example, in the case of an early leaver whose pensionable service terminated before 1 January 1986, whose deferred pension is "frozen" (ie not protected against inflation), then similarly there would be no requirement to revalue the pension debit either.

If the former spouse is given a pension before normal benefit age then the intention is that an actuarial adjustment broadly similar to that when a normal member takes early retirement should apply.

Subsection (1) provides for the reduction in benefit in respect of members of the scheme. The provision requires each qualifying benefit (defined in subsection (3)) to be reduced in the same proportion.

For example, if a deferred member of a contracted-out salary related (COSR) scheme had both GMP rights and excess of GMP rights, and 40% of the member's cash equivalent was debited on the implementation of the order, then both the GMP rights and the excess of GMP rights would be reduced by 40%;

Subsection (2) deals with the case of an active member of an occupational pension scheme who is in pensionable service on the day the order or agreement takes effect. In this case, his benefit is not reduced by the appropriate percentage. Rather, it is reduced by an amount representing the appropriate percentage of the benefit that was taken for the purposes of calculating the cash equivalent. In this case, that calculation is done by reference to the hypothetical deferred pension to which he would have been entitled had he retired (section 26(4)). The benefits which are reduced are those which correspond to the benefits to which the member would have been entitled under the hypothetical pension. So, for example, death in service benefit is not reduced because such benefit does not form part of the hypothetical pension.

Subsection (3) defines a qualifying benefit for the purposes of subsections (1) and (2). In practice, most cash equivalents will be made up of several different benefits, particularly if the member's scheme is contracted-out.

Section 32: Effect on contracted-out rights

This section amends the Pension Schemes Act 1993 to take account of the effect of a pension debit on a scheme member's guaranteed minimum pension (GMP) or protected rights. The section provides for reduction of GMPs or protected rights as a result of a pension debit. Entitlement to state benefits will be calculated as if the pension share had not taken place.

Before 6 April 1997, contracted-out occupational salary related (COSR) schemes had to provide a GMP roughly equivalent to the state earnings related pension scheme (SERPS). Following changes introduced in the Pensions Act 1995, such schemes are no longer required to pay a GMP for pensionable service from 6 April 1997. Instead, they

must meet an overall quality test and a minimum funding requirement, and pensions in payment derived from post 6 April 1997 service must also rise by at least 5% a year, or in line with prices, whichever is the less.

Protected rights are the rights in a contracted-out occupational money purchase (COMP) scheme and appropriate personal pension (APP) scheme that derive from the rebate of National Insurance contributions, and in APP schemes only, tax relief on the employee's share of the rebate.

Subsection (2) amends section 10 of the Act. It provides for the reduction of any protected rights in a COMP or an APP, which are subject to a pension debit, by the percentage specified in the pension sharing order or agreement or, where the order is expressed in monetary terms (that is in Scotland) by the amount specified (up to the limit of the cash equivalent of the member's rights) expressed as a percentage of the cash equivalent of the member's rights.

Subsection (3) inserts section 15A into the Pension Schemes Act, which provides for the reduction of a GMP payable by a contracted-out salary related scheme where it is subject to a pension debit. For example, if the cash equivalent has been reduced by 40%, the GMP accrued at the date the order or agreement takes effect (which forms part of the cash equivalent) shall be reduced by 40%. Again where the order or agreement is expressed in monetary terms, the appropriate percentage is the amount specified (up to the limit of the cash equivalent of the member's rights) expressed as a percentage of the cash equivalent mentioned above.

However, where the member is in pensionable service on the day the order or arrangement takes effect, the reduction is by reference to the appropriate percentage of the hypothetical GMP to which he would have been entitled had he ceased to be in pensionable service immediately before that day (see section 31(2)).

Subsection (4) amends section 47 of the Pension Schemes Act to ensure that a member of a contracted-out occupational scheme (whether salary related or money purchase) or APP scheme, will be treated as entitled to a full GMP for the purposes of calculating entitlement to relevant social security benefits (for example, the state additional pension). This is needed to ensure that the state does not become liable to make up the resultant shortfall in the GMP or protected rights paid by the scheme directly caused by pension sharing.

For example, the member might have been entitled to an additional pension of £12 per week but this is reduced to just £2 per week to offset the £10 GMP paid by the scheme to which he would have been entitled had the pension sharing order not been implemented. Under these provisions he will continue to be treated as entitled to a GMP of £10 per week and hence continue to receive an additional pension of just £2 per week, even though as a result of the pension debit his GMP has been reduced by 40% (that is by £4) to £6 per week.

Section 33: Time for discharge of liability

Section 34: "Implementation period"

Section 35: Mode of discharge of liability

These sections (and Schedule 5) focus on the discharge of liability in respect of a pension credit.

Section 33: Time for discharge of liability

Subsection (1) requires the person responsible for a pension arrangement to discharge his liability for a pension credit before the end of the period allowed for implementation, defined in section 34;

Subsection (2) makes provisions similar to those in section 99(7) of the Pension Schemes Act 1993 (inserted by paragraph 6(e) of Schedule 6 to the Pensions Act 1995) concerning the late payment of an early leaver's cash equivalent by an occupational scheme. An individual trustee or manager who fails to discharge their liability for the pension credit within the implementation period will be required, except in prescribed cases, to notify the Occupational Pensions Regulatory Authority (OPRA) of that fact. We intend that where all such steps as are reasonable have not been taken to discharge the liability for the pension credit timeously, then the trustee or manager concerned may be subject to a fine of up to £1,000 by OPRA, and that a fine of up to £10,000 for a corporate offence may be imposed. These fines will be consistent with the penalties for failing to pay an early leaver transfer value on time.

Subsection (3): the purpose of this subsection is to enable OPRA to fine the trustees or managers of an occupational pension scheme if they fail to notify OPRA of their failure to discharge their liability for the pension credit within the implementation period (as required under subsection (2)). We intend that the fines should be consistent with those outlined in subsection (2).

Subsection (4) makes provisions similar to those in section 99(4) of the Pension Schemes Act (as amended by paragraph 6(c) of Schedule 6 to the Pensions Act 1995).

We intend that the circumstances in which OPRA may extend the implementation period for an occupational scheme to discharge its liability for a pension credit should be similar to those set out in regulation 13 of the Occupational Pension Schemes (Transfer Values) Regulations, for example, if the scheme is being wound up, or about to be wound up, or where the interests of the other members would be prejudiced if the liability is discharged, or the trustees have insufficient information to discharge the liability properly.

Section 34: "Implementation period"

Subsection (1) provides that the implementation period will be 4 months beginning on the date on which the order takes effect or, if later, the date on which the pension arrangement receives the relevant matrimonial documents (defined in subsection (2)) and any other information prescribed by regulations made under subsection (1)(b).

We intend to use the regulation-making power to secure that the implementation period will not start until the pension arrangement has the information needed to carry out the pension share. This may include items such as the couple's full names, addresses, ages and National Insurance numbers, as well as for Scotland such documentary evidence as may be prescribed under section 25(3) that the negotiated agreement has been entered in such a way as to be regarded as a 'qualifying agreement'.

Subsection (3) provides that subsection (1) is subject to regulations made under section 41(2)(a). We intend to use the regulation-making power under the latter provision to allow the person responsible for a pension arrangement to postpone the start of the implementation period, where he has made payment of a pension sharing charge a pre-condition to implementing the pension share, until payment of the charge.

Subsection (4)(a) provides a regulation-making power to provide that a scheme must inform both the scheme member and former spouse of the day on which the implementation period begins;

Subsection (4)(b) provides a regulation-making power which we intend to use to allow the implementation period to be suspended where a scheme is being wound up, and is unable to meet its liability to the former spouse in full, and the former spouse has consented to the suspension;

Subsection (4)(c) provides a regulation-making power to provide that implementation of the pension share may be suspended if the pension sharing order is subject to an application for leave to appeal out of time.

Section 35: Mode of discharge of liability

Subsection (1) gives effect to Schedule 5 which is concerned with the way in which liability in respect of a pension credit can be discharged.

Subsection (2) provides a regulation-making power where a former spouse dies after a pension sharing order has taken effect but before it is implemented. We intend to use this power to provide that where a former spouse dies before an order is implemented, the deceased former spouse should be treated as if they had become a member of the arrangement in question. For example, where the pension credit had been derived from the member's personal pension scheme, the personal pension provider would be required to pay the amount of the pension credit to the deceased former spouse's estate.

Section 36: Safeguarded rights

The section inserts a new Part IIIA (sections 68A to 68D) into the Pension Schemes Act 1993. The new sections make special provision for the pension credit rights of a former spouse deriving from membership of a contracted-out occupational pension scheme or an appropriate personal pension (APP) scheme. These rights will be called "safeguarded rights" to distinguish them from the contracted-out rights built up by members of contracted-out occupational pension schemes and APP schemes.

The intention is that the requirements for safeguarded rights should broadly reflect those for contracted-out rights. In particular, we wish to ensure that safeguarded rights (which are wholly or in part financed by rebates of National Insurance contributions, and in the case of APP schemes, tax relief on the employee's share of the rebate) are securely protected and used for the purpose for which they are intended – to provide an income in retirement.

Section 68A

Subsection (1) defines safeguarded rights as rights from a pension share, derived either in total or in part from contracted-out rights or safeguarded rights, subject to subsection (2).

Subsection (2) mirrors the existing protected rights provisions so as to permit the scheme rules to identify safeguarded rights more narrowly. In the case of rights that are directly attributable to a pension share, the safeguarded rights element will reflect the proportion of the member's rights that were contracted-out rights or safeguarded rights. In the case of rights arising from an ordinary transfer, the safeguarded rights element will reflect the proportion of the rights under the transferring scheme which were contracted-out rights or safeguarded rights.

Subsections (3) and (4) define the "safeguarded percentage" of rights as the percentage of the rights from which they derive which are contracted-out or safeguarded.

Subsection (5) defines certain terms used in earlier subsections.

Section 68B provides a general regulation-making power to prescribe requirements in respect of safeguarded rights.

We intend to use this power to prescribe requirements in respect of safeguarded rights that broadly mirror those for contracted-out rights built up since April 1997 in an occupational pension scheme or an appropriate personal pension scheme. For example, where the safeguarded rights are used to provide money purchase benefits for the former spouse, the requirements will be similar to those for post-April 97 protected rights as set out in the [Personal and Occupational Pension Schemes \(Protected Rights\) Regulations 1996 \(SI 1996 No. 1537\)](#).

Section 68C: this subsection anticipates the transfer of the Contributions Agency from the DSS to the Inland Revenue. Subject to Parliamentary approval, the intention is to complete the transfer by April 1999. It will give the Agency that will be responsible for

the supervision of safeguarded rights, the power to intervene if a scheme fails to comply with a requirement prescribed under section 68B.

Section 68D provides for regulations to prohibit or restrict the transfer or discharge of liability for safeguarded rights under a contracted-out occupational or personal pension scheme.

The provision is similar to the existing power at section 12C of the Pension Schemes Act 1993. We intend to use the regulation-making powers in this section to lay regulations in respect of the discharge of liability that will be comparable to Part III of the Occupational Pensions Schemes (Discharge of Liability) Regulations 1996. Regulations about the transfer of safeguarded rights will be comparable to Part III of the Contracting-out (Transfer and Transfer Payment) Regulations 1996, the Protected Rights (Transfer Payment) Regulations 1996 and the Personal and Occupational Schemes (Protected Rights) Regulations 1996.

Section 37: Requirements relating to pension credit benefit

This section inserts a new Part IVA into the Pension Schemes Act 1993.

Chapter I requires rights in an occupational pension scheme derived (directly or indirectly) from a pension credit to be treated in a way broadly similar to the way in which the rights of a deferred members are required to be treated under Chapter I of Part IV of the Act.

Chapter II gives members of funded occupational and personal pension schemes with rights derived from a pension credit the right to transfer those rights to another pension scheme or arrangement.

Chapter I

Section 101A which defines the scope of the Chapter, reflects section 69(3) of the Pension Schemes Act 1993 and effectively embraces all types of occupational pension scheme.

Section 101B contains the definition of some terms used in this Chapter. Note: – the definition “normal benefit age” parallels “normal pension age” used elsewhere in the Act, the distinction being that “normal pension age” relies on an individual having been in an employment to which the scheme applies, which is not relevant in relation to pension credit rights.

Section 101C

Subsection (1) is self-explanatory. Early payment of pension may be permissible as an alternative to pension credit benefit in prescribed circumstances under section 101D(2) (b).

Subsection (2) provides that a payment of pension credit in lump sum form (that is a separate lump sum benefit payable in addition to any pension) cannot be made before normal benefit age, except in prescribed circumstances.

We intend to use the regulation-making power to permit lump sum payments in circumstances similar to those set out in Regulation 5 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991: for example, where the former spouse’s earning capacity is destroyed or seriously impaired by physical or mental infirmity or when the former spouse has reached the age of 50.

Section 101D provides for pension credit rights to be treated in broadly the same way as rights for deferred members.

Subsection (1): we intend to use the regulation-making power to permit pension credit benefit to be assured by the purchase of an insurance policy or annuity contract entered into with an appropriate insurance company or friendly society.

Subsection (2) permits pension credit benefit to be transferred from one pension scheme or arrangement to another.

We intend to use the regulation-making power at (2)(b) in much the same way that section 73(2) of the Pension Schemes Act 1993 is used to prescribe alternatives to short service benefit and allow for early and deferred retirements. Regulations would allow benefits to be bought-out by insurance policies or annuity contracts. These would largely mirror regulations 7 and 11 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

Subsection (4) mirrors the provisions to protect early leavers in section 73(4) of the Pension Schemes Act 1993. We intend to use the regulation-making power to prescribe conditions similar to those set out in regulation 12(3) of the Preservation of Benefit Regulations, which rely on actuarial certification to ensure that pension credit benefits are adequately protected and secure if transferred without the consent of the former spouse.

Section 101E broadly corresponds to the provisions in section 81 of the Pension Schemes Act 1993. It sets out conditions which, if complied with by the trustees or managers of a scheme, will result in their being statutorily discharged from their liability to provide pension credit benefit. A discharge of liability can be secured by the purchase of an insurance policy or annuity contract that meets prescribed requirements.

We intend to use the regulation-making power in subsection (1)(c) to parallel those in Part II of The Occupational Pension Schemes (Discharge of Liability) Regulations. For example, the regulations will set out the conditions on which insurance policies and annuities may be assigned, surrendered, and commuted and set out special provisions in relation to safeguarded rights.

Chapter II

Section 101F gives a former spouse with pension credit rights a right to transfer the cash equivalent of those rights similar to the right which an early leaver has to transfer his accrued rights to another pension scheme or arrangement. However, the right to transfer pension credit benefit does not extend to former spouse members of unfunded schemes.

Subsection (1) requires a transfer notice to be given in writing. This mirrors the requirement in section 95(1) of the Pension Schemes Act 1993;

Subsections (2) and (3) mirror the provisions in section 95(2) and (3) of the Pension Schemes Act 1993. The regulation-making powers in subsections (2)(b) and (c) and 3(c) permit the Secretary of State to prescribe requirements as to the type of annuity which can be purchased, and as to the type of arrangement other than an occupational or personal pension scheme in which rights can be bought, with the cash equivalent of pension credit rights.

We intend to use these powers to prescribe that the cash equivalent of such rights may be used on transfer in similar ways to the ways in which an early leaver's cash equivalent may be used.

Subsection (4) distinguishes between salary related occupational pension schemes and other schemes when determining the amount of the cash equivalent. This is consistent with section 93A of the Pension Schemes Act 1993 (inserted by section 153 of the Pensions Act 1995) which introduced separate procedures for applications for early leaver cash equivalents by members of salary related schemes. Further details of these changes are provided under 101H below.

Subsection (6)(b) we intend to use the regulation-making power to impose additional requirements as to the eligibility of receiving schemes (for example, where the cash equivalent includes a transfer of safeguarded rights).

Section 101G imposes restrictions on the rights of former spouse members to transfer pension credit benefits which broadly correspond to the procedures to be followed by early leavers from salary related occupational pension schemes who wish to exercise their right to a cash equivalent.

Subsection (1) reflects the principle underlying the process that once a statement of entitlement of the amount of the cash equivalent has been provided, the former spouse must make a written transfer request within 3 months.

Subsection (2)(a) limits the right to a cash equivalent to a former spouse who has at least one year to go before reaching the scheme's normal benefit age; this limitation broadly corresponds to the provision in section 93 of the Pension Schemes Act 1993 for deferred members which limits the right to a transfer value to those at least one year before normal pension age.

Subsection (2)(b) provides that the right to transfer a pension credit benefit is also lost if any pension or benefit derived from pension credit rights has become payable.

Subsection (3) is designed to simplify administration for schemes by requiring former spouses who wish to exercise their right to transfer pension credit rights to submit an application to transfer other rights accrued in the scheme, if the scheme so provides.

Section 101H corresponds to the existing provisions in section 93A of the Pension Schemes Act 1993 which is concerned with statements of entitlement of the amount of early leaver cash equivalents for members of salary related schemes – see also section 101F.

Subsection (1) corresponds to section 93A(1) of the Pension Schemes Act 1993.

Subsection (2) contains regulation-making powers similar to those in section 93A(2) of the Pension Schemes Act 1993. We intend to use these powers to prescribe requirements broadly analogous to regulation 6(1) and 6(2) respectively of the Occupational Pension Schemes (Transfer Values) Regulations 1996. So, schemes will normally be required to calculate the cash equivalent within 3 months of the date of the former spouse's application and having calculated it, provide it to the former spouse within 10 days of the calculation date.

Subsection (3) corresponds to section 93A(3) of the Pension Schemes Act 1993. We intend to use the regulation-making power to mirror the provisions in regulation 6(3) of The Occupational Pension Schemes (Transfer Values) Regulations 1996. The regulations will limit the former spouse to one transfer request in a 12 month period unless the rules of the scheme, or the trustees or managers permit a further application to be made earlier.

Subsection (4) corresponds to section 93A(4) of the Act. We intend that the Occupational Pensions Regulatory Authority (OPRA) should have the power to impose a penalty, in the case of an individual of up to £1,000 and in other cases up to £10,000, for a breach of the requirements mentioned in this subsection.

Section 101I corresponds to section 97(1) of the Pension Schemes Act. We intend to use the regulation-making power to prescribe requirements similar to those in regulation 7 of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

Section 101J: the time limits for trustees to comply with a transfer notice for pension credit benefit correspond to those for the exercise of the right to a cash equivalent under Part IV, Chapter IV of the Pension Schemes Act 1993.

Subsection (1): the 6 month time limit is consistent with section 99(2) of the Pension Schemes Act 1993 (as amended by paragraph 6(a) of Schedule 6 to the Pensions Act 1995).

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Subsections (2), (3) and (6)(a): the regulation-making powers are similar to those in section 99(4) and 99(4A) Pension Schemes Act 1993 (as amended by Schedule 6 paragraph 6(c) to the Pensions Act 1995). We intend to use the regulation-making power to allow OPRA to grant an extension of the time allowed for making a transfer in the same way as provided for in regulation 13 of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

Subsections (4) and (6)(b) make provisions similar to those in section 99(7) of the Pension Schemes Act 1993 (inserted by paragraph 6(e) of Schedule 6 to the Pensions Act 1995) concerning the late payment of an early leaver's cash equivalent by an occupational scheme. An individual trustee or manager who fails to discharge their liability for the pension credit within the implementation period will be required, except in prescribed cases, to notify OPRA of that fact. We intend that where all such steps as are reasonable have not been taken to discharge the liability for the pension credit timeously, then the trustee or manager concerned may be subject to a fine by OPRA of up to £1,000, and up to £10,000 for a corporate offence. These fines will be consistent with the penalties for failing to pay an early leaver transfer value on time.

Subsection (5): the purpose of this subsection is to enable OPRA to fine the trustees or managers of an occupational pension scheme if the latter fail to notify OPRA of their failure to discharge their liability for the pension credit within the implementation period (as required under subsection (4)). We intend that the fines should be consistent with those outlined in subsection (4).

Subsection (7): the meaning of the valuation date defined here takes account of the different procedures in the case of a transfer of pension credit benefit from a salary related occupational pension scheme or a money purchase scheme.

Subsection (7)(a): the valuation date for a member of a salary related scheme will be determined in a similar way to the "guarantee date" under section 93A(2) of the Pension Schemes Act 1993 and regulation 6(1) and (2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

Subsection (7)(b): the valuation date for a former spouse member of a money purchase occupational pension scheme or a personal pension scheme is consistent with the "relevant date" as defined in section 94 of the Pension Schemes Act 1993.

Section 101K

Subsections (1) and (2) are similar to the provision for withdrawing a transfer request under sections 100(1) and (2) of the Pension Schemes Act 1993.

Subsection (3) complements the new section 101G(3) (see above). If the scheme requires former spouse members to exercise their rights to a transfer of pension credit benefit and other accrued rights at the same time, then a transfer notice under Part IVA may only be withdrawn if a transfer notice under section 95 of the Pensions Act 1995 is also withdrawn.

Section 101L: this section provides a power to increase or reduce cash equivalents in respect of pension credit benefits.

Subsections (1) and (2) are consistent with the power to increase or reduce cash equivalents under section 97(2)(b) and (3)(b) and (c) of Part IV of Chapter IV of the Pension Schemes Act 1993.

We intend to lay regulations broadly similar to regulations 8 and 9 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 and regulation 4(1) of the Personal Pension Schemes (Transfer Values) Regulations 1987. We intend to use the regulation-making power at (2)(a) to provide for a cash equivalent to be increased on late payment. The proposed regulations will mirror the provisions set out in regulation 10 of the Occupational Pension Schemes (Transfer Values) Regulations 1996

and regulation 4(2) of the Personal Pension Schemes (Transfer Values) Regulations 1987. For example, an occupational pension scheme will be required to pay either the cash equivalent recalculated at the current date, or the original transfer value increased by 1% above the bank base rate over the period from the date of the original calculation until the current date.

Where a scheme is underfunded at the time the transfer payment of pension credit benefit is to be made, we intend to use the regulation-making power at (2)(b) to enable the trustees to reduce the cash equivalent if the circumstances set out in regulation 8(4) or (6) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 are met, for example where the last valuation showed the scheme was underfunded on the basis of a minimum funding requirement. Where a cash equivalent is reduced in these circumstances, the former spouse will be notified of that fact. One of the options open to the former spouse will be to withdraw the notice (see section 101K above) and to leave her rights in the scheme until the funding position improves.

Section 101M provides trustees or managers who comply with their obligations in respect of a transfer of pension credit benefit with a statutory discharge of liability in the same way that section 99 (1)(a) provides a discharge of liability for trustees who comply with their obligations under Part IV, Chapter IV of the Pension Schemes Act 1993.

Section 101N mirrors section 101 of the Pension Schemes Act 1993 and provides that any charge or lien on or set-off against the pension will be disregarded in calculating the cash equivalent.

Section 101O mirrors section 100(4) of the Pension Schemes Act 1993.

Section 101P defines some terms used in the Chapter.

Subsection (1): the definition of “qualifying scheme” excludes unfunded schemes;

Subsection (2) mirrors section 93(1A) of the Pension Schemes Act 1993 (inserted by section 152(3) of the Pensions Act 1995). The definition reflects the special procedures introduced by that Act in respect of cash equivalents in salary related schemes. These have been carried forward in this Act for cash equivalents in respect of salary related pension credit benefits for consistency and ease of administration.

Section 101Q provides a power similar to that in section 93(1B) (b) of the Pension Schemes Act 1993 (inserted by section 153(3) of the Pensions Act 1995). We intend to use this power to deal with those cases where the pension credit benefit includes a mixture of salary-related and money purchase benefits.

Section 38: Treatment in winding up

This section deals with the priority to be awarded to pension credit rights on the winding up of an occupational pension scheme.

Subsection (1) provides for pension credit benefit to be included in the preferential liabilities on the winding up of a scheme to which section 56 of the Pensions Act 1995 applies (that is a salary related scheme subject to the minimum funding requirement (MFR)).

Subsection (2) concerns schemes to which section 56 of the 1995 Act does not apply (that is schemes not subject to the MFR). It gives pensions in payment derived from pension credits the same priority as other pensions in payment. Rights that have not come into payment are accorded the same priority as the rights of deferred members (early leavers). The order of priority is consistent with that for salary related schemes.

Subsection (3) provides that the provisions of subsection (2) override scheme rules.