
STATUTORY INSTRUMENTS

1995 No. No. 3213 (N.I. 22)

NORTHERN IRELAND

The Pensions (Northern Ireland) Order 1995

Made - - - - 13th December 1995

Laid before Parliament 14th December 1995

Coming into operation in accordance with Article 1

At the Court at Buckingham Palace, the 13th day of December 1995

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the Pensions Act 1995(1):
Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to
the Northern Ireland Act 1974(2) (as modified by section 179 of the Act of 1995) and of all other
powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order,
and it is hereby ordered, as follows:—

Part I

Introductory

Title and commencement

1.—(1) This Order may be cited as the Pensions (Northern Ireland) Order 1995.

(2) Subject to the following provisions, this Order comes into operation on such day or days as
the Department may by order appoint.

(3) The following provisions come into operation on the expiration of two days from the day
on which this Order is made—

- (a) Part III, subject to Schedule 2,
- (a) Article 163,

(1) 1995 c. 26.
(2) 1974 c. 28.

and any repeal in Schedule 5 for which there is a note comes into operation in accordance with that note.

(4) Article 162 and the repeal in Schedule 5, Part IV, in the Matrimonial Causes (Northern Ireland) Order 1978⁽³⁾ come into operation on such day or days as the Lord Chancellor may by order appoint.

(5) Without prejudice to Article 166(3), the power to make an order under this Article includes power—

(a) to make such transitional adaptations or modifications—

(i) of the provisions brought into operation by the order, or

(ii) in connection with those provisions, or any provision of this Order, or the Pension Schemes Act, then in force, or

(b) to make such savings for the effect of any of the repealed provisions of the Pension Schemes Act, or those provisions as adapted or modified by the order,

as appear to the Department expedient, including different adaptations or modifications for different periods.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽⁴⁾ applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992⁽⁵⁾;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁶⁾;

“the Department” means the Department of Health and Social Services;

“enactment” includes any statutory provision (as defined by section 1 of the Interpretation Act (Northern Ireland) 1954);

“occupational pension scheme” and “personal pension scheme” have the meaning given by section 1 of the Pension Schemes Act;

“the Pension Schemes Act” means the Pension Schemes (Northern Ireland) Act 1993⁽⁷⁾;

“regulations” means regulations made by the Department or any other Northern Ireland department, as the context may require.

(3) In the application of section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents by post by registering them) for the purposes of this Order, omit “registering”.

(4) Subject to the provisions of this Order, expressions used in this Order and in the Pension Schemes Act have the same meaning in this Order as in that Act.

(3) 1978 NI 15.

(4) 1954 c. 33 (N.I.).

(5) 1992 c. 8.

(6) 1992 c. 7.

(7) 1993 c. 49.

PART II

OCCUPATIONAL PENSIONS

Supervision by the Authority

Prohibition orders

3.—(1) The Authority may by order prohibit a person from being a trustee of a particular trust scheme in any of the following circumstances.

(2) The circumstances are—

- (a) that the Authority are satisfied that while being a trustee of the scheme the person has been in serious or persistent breach of any of his duties under—
 - (i) this Part, other than the following provisions: Articles 51 to 54, 62 to 65 and 108 to 110, or
 - (ii) the following provisions of the Pension Schemes Act: section 2 (registration), Chapter IV of Part IV (transfer values), section 109 (information) and section 170 (levy),
- (b) that the Authority are satisfied that, while being a trustee of the scheme, this Article has applied to the person by virtue of any other provision of this Part,
- (c) that the person is a company and any director of the company is prohibited under this Article from being a trustee of the scheme, or
- (d) that the person is a director of a company which, by reason of circumstances falling within sub-paragraph (a) or (b), is prohibited under this Article from being a trustee of the scheme and the Authority are satisfied that the acts or defaults giving rise to those circumstances were committed with the consent or connivance of, or attributable to any neglect on the part of, the director; or any other prescribed circumstances.

(3) The making of an order under paragraph (1) against a person who is a trustee of the scheme in question has the effect of removing him.

(4) The Authority may, on the application of any person against whom an order under paragraph (1) is in force, by order revoke the order, but a revocation made at any time cannot affect anything done before that time.

Suspension orders

4.—(1) The Authority may by order suspend a trustee of a trust scheme—

- (a) pending consideration being given to the making of an order against him under Article 3(1),
- (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
- (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
- (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
- (e) where an application has been made to the court for a disqualification order against him under Part II of the Companies (Northern Ireland) Order 1989(8) or for such an order under

any corresponding enactment for the time being in force in Great Britain and proceedings on the application have not been concluded, or

- (f) where the trustee is a company and, if any director were a trustee, the Authority would have power to suspend him under sub-paragraph (b), (c) or (e).

(2) An order under paragraph (1)—

- (a) if made by virtue of sub-paragraph (a), has effect for an initial period not exceeding twelve months, and
- (b) in any other case, has effect until the proceedings in question are concluded;

but the Authority may by order extend the initial period referred to in sub-paragraph (a) for a further period of twelve months, and any order suspending a person under paragraph (1) ceases to have effect if an order is made against that person under Article 3(1).

(3) An order under paragraph (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular class of trust schemes or trust schemes in general.

(4) An order under paragraph (1) may be made on one of the grounds in sub-paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into operation of that paragraph.

(5) The Authority may, on the application of any person suspended under paragraph (1), by order revoke the order, either generally or in relation to a particular scheme or a particular class of schemes; but a revocation made at any time cannot affect anything done before that time.

(6) An order under this Article may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

Removal of trustees: notices

5.—(1) Before the Authority make an order under Article 3 against a person without his consent, the Authority must, unless he cannot be found or has no known address, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.

(2) Where any such notice is given, the Authority must take into consideration any representations made to them about the proposals within the time specified in the notice.

(3) Before making an order under Article 3 against a person, the Authority must give notice of their intention to do so to each of the trustees of the scheme, except that person (if he is a trustee) and any trustee who cannot be found or has no known address.

(4) Where the Authority make an order under Article 4 against a person, they must—

- (a) immediately give notice of that fact to that person, and
- (b) as soon as reasonably practicable, give notice of that fact to the other trustees of any trust scheme to which the order applies, except any trustee who cannot be found or has no known address.

(5) For the purposes of section 24(1) of the Interpretation Act (Northern Ireland) 1954⁽⁹⁾ (service of documents by post) in its application to this Article, the last known address of any person is his latest address known to the Authority.

(9) 1954 c. 33 (N.I.)

Removal or suspension of trustees: consequences

6.—(1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 are not invalid merely because of that prohibition or suspension.

(4) Nothing in Article 3 or 4 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

Appointment of trustees

7.—(1) Where a trustee of a trust scheme is removed by an order under Article 3, or a trustee of such a scheme ceases to be a trustee by reason of his disqualification, the Authority may by order appoint another trustee in his place.

(2) Where a trustee appointed under paragraph (1) is appointed to replace a trustee appointed under Article 23(1)(b), Articles 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under Article 23(1)(b).

(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order—

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, or
- (c) to secure the proper use or application of the assets of the scheme.

(4) The Authority may also appoint a trustee of a trust scheme in prescribed circumstances.

(5) The power to appoint a trustee by an order under this Article includes power by such an order—

- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
- (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,
- (c) to provide for the removal or replacement of such a trustee.

(6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this Article.

Appointment of trustees: consequences

8.—(1) An order under Article 7 appointing a trustee may provide that an amount equal to the amount (if any) to which paragraph applies is to be treated for all purposes as a debt due from the employer to the trustees.

(2) This paragraph applies to any amount which has been paid to the trustee so appointed out of the resources of the scheme and has not been reimbursed by the employer.

(3) Subject to paragraph (4), a trustee appointed under Article 7 shall, unless he is the independent trustee and Article 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) An order under Article 7 may make provision—

- (a) for restricting the powers or duties of a trustee so appointed, or
- (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

Removal and appointment of trustees: property

9. Where the Authority have power under this Part to appoint or remove a trustee, they may exercise the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

Civil penalties

10.—(1) Where the Authority are satisfied that by reason of any act or omission this Article applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

(2) In this Article, “the maximum amount” means—

- (a) £5,000 in the case of an individual and £50,000 in any other case, or
- (b) such lower amount as may be prescribed in the case of an individual or in any other case,

and the Department may by order amend sub-paragraph (a) by substituting higher amounts for the amounts for the time being specified in that sub-paragraph.

(3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this Article not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in paragraph (2)(a).

(4) An order made under paragraph (2) or regulations made by virtue of paragraph (3) do not affect the amount of any penalty recoverable under this Article by reason of an act or omission occurring before the order or, as the case may be, regulations are made.

(5) Where—

- (a) apart from this paragraph, a penalty under this Article is recoverable from a body corporate by reason of any act or omission of the body as a trustee of a trust scheme, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (6),

this Article applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(6) The persons referred to in paragraph (5)(b) are—

- (a) any director, manager, secretary, or other similar officer of the body corporate, or a person purporting to act in any such capacity, and

- (b) where the affairs of the body corporate are managed by its members, any member in connection with his functions of management.
- (7) Where the Authority requires any person to pay a penalty by virtue of paragraph (5), they may not also require the body corporate in question to pay a penalty in respect of the same act or omission.
- (8) A penalty under this Article is recoverable by the Authority.
- (9) The Authority must pay to the Department any penalty recovered under this Article.

Powers to wind up schemes

11.—(1) Subject to paragraphs (2) to (7), the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
- (b) the scheme is no longer required, or
- (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this Article on either of the grounds referred to in paragraph (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

(3) An order made under this Article on either of the grounds referred to in paragraph (1)(a) or (b) may be made only on the application of—

- (a) the trustees or managers of the scheme,
- (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme, or
- (c) the employer.

(4) An order under this Article authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.

(5) The winding up of a scheme in pursuance of an order of the Authority under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this Article may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
- (b) except for the purpose of the Authority determining whether they are satisfied as mentioned in paragraph (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

(7) In the case of a public service pension scheme—

- (a) an order under paragraph (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in sub-paragraph (c), and

- (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

Powers to wind up public service schemes

12.—(1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
 (b) the scheme is no longer required.

(2) Paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.

(3) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(4) An order under this Article must include such directions with respect to the manner and timing of the winding up as the appropriate authority thinks appropriate.

(5) Such an order may, as the appropriate authority thinks appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

Injunctions

13. If, on the application of the Authority, the High Court is satisfied that—

- (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of an occupational pension scheme, or
 (b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,

the Court may grant an injunction restraining him from doing so.

Restitution

14. If, on the application of the Authority, the High Court is satisfied—

- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of Article 37, 76 or 77, or
 (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of Article 40,

the Court may order the employer and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

Directions

15.—(1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of Article 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

(2) The Authority may—

- (a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and

- (b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.
- (3) A direction under this Article must be given in writing.
- (4) Where a direction under this Article is not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

Member-nominated trustees and directors

Requirement for member-nominated trustees

- 16.—(1) The trustees of a trust scheme must (subject to Article 17) secure—
- (a) that such arrangements for persons selected by members of the scheme to be trustees of the scheme as are required by this Article are made, and
 - (b) that those arrangements, and the appropriate rules, are implemented.
- (2) Persons who become trustees under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated trustees”.
- (3) The arrangements must provide—
- (a) for any person who has been nominated and selected in accordance with the appropriate rules to become a trustee by virtue of his selection, and
 - (b) for the removal of such a person to require the agreement of all the other trustees.
- (4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with the appropriate rules.
- (5) The arrangements must provide for the selection of a person as a member-nominated trustee to have effect for a period of not less than three nor more than six years.
- (6) The arrangements must provide for the number of member-nominated trustees to be—
- (a) at least two or (if the scheme comprises less than 100 members) at least one, and
 - (b) at least one-third of the total number of trustees;
- but the arrangements must not provide for a greater number of member-nominated trustees than that required to satisfy that minimum unless the employer has given his approval to the greater number.
- (7) The arrangements must not provide for the functions of member-nominated trustees to differ from those of any other trustee but, for the purposes of this paragraph—
- (a) any provision made by an order under Article 8(4), and
 - (b) Article 25(2),
- shall be disregarded.
- (8) The arrangements must provide that, if a member-nominated trustee who was a member of the scheme when he was appointed ceases to be a member of the scheme, he ceases to be a trustee by virtue of that fact.

Exceptions

- 17.—(1) Article 16 does not apply to a trust scheme if—
- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the trustees of the scheme,

- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 16 does not apply to a trust scheme, and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the trustees shall secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the trustees of a scheme include all matters relating to the continuation in office of the existing trustees, the selection or appointment of new trustees and the terms of their appointments and any special rules for decisions to be made by particular trustees.

(4) Article 16 does not apply to a trust scheme if—

- (a) the trustees of the scheme consist of all the members, or
- (b) it falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

Corporate trustees: member-nominated directors

18.—(1) Where a company is a trustee of a trust scheme and the employer is connected with the company or prescribed conditions are satisfied, the company must, subject to Article 19 secure—

- (a) that such arrangements for persons selected by the members of the scheme to be directors of the company as are required by this Article are made, and
- (b) that those arrangements, and the appropriate rules, are implemented.

(2) Persons who become directors under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated directors”.

(3) The arrangements must provide—

- (a) for any person who has been nominated and selected in accordance with the appropriate rules to become a director by virtue of his selection, and
- (b) for the removal of such a person to require the agreement of all the other directors.

(4) Where a vacancy for a member-nominated director is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with the appropriate rules.

(5) The arrangements must provide for the selection of a person as a member-nominated director to have effect for a period of not less than three nor more than six years.

(6) The arrangements must provide for the number of member-nominated directors to be—

- (a) at least two or (if the scheme comprises less than 100 members) at least one, and
- (b) at least one-third of the total number of directors;

but the arrangements must not provide for a greater number of member-nominated directors than that required to satisfy that minimum unless the employer has given his approval to the greater number.

(7) The arrangements must provide that, if a member-nominated director who was a member of the scheme when he was appointed ceases to be a member of the scheme, he ceases to be a director by virtue of that fact.

(8) Where this Article applies to a company which is—

- (a) a trustee of two or more trust schemes, and
- (b) a wholly-owned subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986⁽¹⁰⁾) of a company which is the employer in relation to those schemes,

the following provisions apply as if those schemes were a single scheme and the members of each of the schemes were members of that scheme, that is: the preceding provisions of this Article, Article 20 and Article 21(7).

Corporate trustees: exceptions

19.—(1) Article 18 does not apply to a company which is a trustee of a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the directors of the company,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 18 does not apply to a company which is a trustee of a trust scheme; and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the company must secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the directors of a company include all matters relating to the continuation in office of the existing directors, the selection or appointment of new directors and the terms of their appointments and any special rules for decisions to be made by particular directors.

(4) Article 18 does not apply to a company which is a trustee of a trust scheme if the scheme falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

Selection, and eligibility, of member-nominated trustees and directors

20.—(1) For the purposes of Articles 16 to 21, the appropriate rules are rules which—

- (a) make the provision required or authorised by this Article, and no other provision, and
- (b) are for the time being approved under the statutory consultation procedure or, if no rules are for the time being so approved, are prescribed rules;

and the arrangements required by Article 16 or 18 to be made must not make any provision which is required or authorised to be made by the rules.

(2) The appropriate rules—

(10) 1986 NI 6.

- (a) must determine the procedure for the nomination and selection of a person to fill a vacancy as a member-nominated trustee, and
 - (b) may determine, or provide for the determination of, the conditions required of a person for filling such a vacancy.
- (3) The appropriate rules must provide for a member-nominated trustee to be eligible for re-selection at the end of his period of service.
- (4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the appropriate rules must provide for determining the next period in which persons may be nominated and selected in accordance with the rules, being a period ending at a prescribed time.
- (5) The appropriate rules must provide that, where the employer so requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee.
- (6) Where Article 18 applies to a trust scheme, references in this Article to a member-nominated trustee include a member-nominated director.

Member-nominated trustees and directors: supplementary

21.—(1) If, in the case of a trust scheme—

- (a) such arrangements as are required by Article 16(1) or 17(2) to be made have not been made, or
- (b) arrangements required by Article 16(1) or 17(2) to be implemented, or the appropriate rules, are not being implemented,

Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(2) If, in the case of a company which is a trustee of a trust scheme—

- (a) such arrangements as are required by Article 18(1) or 19(2) to be made have not been made, or
- (b) arrangements required by Article 18(1) or 19(2) to be implemented, or the appropriate rules, are not being implemented,

Articles 3 and 10 apply to the company.

(3) Regulations may make provision for determining the time by which—

- (a) such arrangements (or further arrangements) as are referred to in Article 16(1), 17(2), 18(1) or 19(2) are required to be made, and
- (b) trustees or directors are required to be selected in pursuance of the appropriate rules.

(4) Regulations may make provision for determining when any approval under the statutory consultation procedure—

- (a) of the appropriate rules, or
- (b) of arrangements for selecting the trustees of a scheme, or the directors of a company, given on a proposal by the employer

is to cease to have effect.

(5) The Department may by regulations modify Articles 16 to 20 and this Article in their application to prescribed cases.

(6) In Articles 17 to 20 and this Article, “the statutory consultation procedure” means the prescribed procedure for obtaining the views of members of schemes.

(7) For the purposes of this and those Articles—

- (a) approval of the appropriate rules, or of arrangements, under the statutory consultation procedure must be given by—
 - (i) the active and pensioner members of the scheme, and
 - (ii) if the trustees so determine, such deferred members of the scheme as the trustees may determine,taken as a whole, and
- (b) references to the approval of the appropriate rules, or of arrangements under Article 17 or 19, by any persons under the statutory consultation procedure are to prescribed conditions in respect of those rules or, as the case may be, arrangements being satisfied in the case of those persons in pursuance of the procedure, and those conditions may relate to the extent to which those persons have either endorsed, or not objected to, the rules or, as the case may be, arrangements.

Independent trustees

Circumstances in which following provisions apply

- 22.**—(1) This Article applies in relation to a trust scheme—
- (a) if a person (referred to in this Article and Articles 23 to 26 as “the practitioner”) begins to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer in relation to the scheme, or
 - (b) if the official receiver becomes—
 - (i) the liquidator or provisional liquidator of a company which is the employer in relation to the scheme, or
 - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer in relation to the scheme.
- (2) Where this Article applies in relation to a scheme, it ceases to do so—
- (a) if some person other than the employer mentioned in paragraph (1) becomes the employer, or
 - (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;

but this paragraph does not affect the application of this Article in relation to the scheme on any subsequent occasion when the conditions specified in paragraph (1)(a) or (b) are satisfied in relation to it.

- (3) In this Article and Articles 23 to 26—
- “acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with Articles 3 and 2 of the Insolvency (Northern Ireland) Order 1989, “bankrupt” has the meaning given by Article 9 of the Insolvency (Northern Ireland) Order 1989⁽¹¹⁾,
- “company” means a company within the meaning given by Article 3 of the Companies (Northern Ireland) Order 1986⁽¹²⁾ or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies).

(11) 1989 NI 19.

(12) 1986 NI 6.

Requirement for independent trustee

23.—(1) While Article 22 applies in relation to a scheme, the practitioner or official receiver must—

- (a) satisfy himself that at all times at least one of the trustees of the scheme is an independent person, and
- (b) if at any time he is not so satisfied, appoint under this sub-paragraph, or secure the appointment of, an independent person as a trustee of the scheme.

(2) The duty under paragraph (1)(b) must be performed as soon as reasonably practicable and, if a period is prescribed for the purposes of that paragraph, within that period.

(3) For the purposes of paragraph (1) a person is independent only if—

- (a) he has no interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme,
- (b) he is neither connected with, nor an associate of—
 - (i) the employer,
 - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
 - (iii) the official receiver, acting in any of the capacities mentioned in Article 22(1)(b) in relation to the employer, and
- (c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee shall be construed accordingly.

(4) Where, apart from this paragraph, the duties imposed by paragraph (1) in relation to a scheme would fall to be discharged at the same time by two or more persons acting in different capacities, those duties shall be discharged—

- (a) if the employer is a company, by the person or persons acting as the company's liquidator, provisional liquidator or administrator, or
- (b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy.

(5) References in this Article to an individual include, except where the context otherwise requires, references to a partnership.

Members' powers to apply to High Court to enforce duty

24. If—

- (a) Article 22 applies in relation to a trust scheme, but
- (b) the practitioner or official receiver neglects or refuses to discharge any duty imposed on him by Article 23(1) in relation to the scheme,

any member of the scheme may apply to the High Court for an order requiring him to discharge his duties under Article 23(1).

Appointment and powers of independent trustees: further provisions

25.—(1) If, immediately before the appointment of an independent trustee under Article 23(1) (b), there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.

(2) While Article 22 applies in relation to a scheme—

- (a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and

(b) any power—

(i) which the scheme confers on the employer (otherwise than as trustee of the scheme),
and

(ii) which is exercisable by him at his discretion but only as trustee of the power,
may be exercised only by the independent trustee,

but if, in either case, there is more than one independent trustee, the power may also be exercised with the consent of at least half of those trustees by any person who could exercise it apart from this paragraph.

(3) While Article 22 applies in relation to a scheme, no independent trustee of the scheme may be removed from being a trustee by virtue only of any provision of the scheme.

(4) If a trustee appointed under Article 23(1)(b) ceases to be an independent person, then—

(a) he must immediately give written notice of that fact to the practitioner or official receiver by whom the duties under that provision fall to be discharged, and

(b) subject to paragraph (5), he shall cease to be a trustee of the scheme.

(5) If, in a case where paragraph (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that paragraph to be a trustee until such time as another trustee is appointed.

(6) A trustee appointed under Article 23(1)(b) is entitled to be paid out of the scheme's resources his reasonable fees for acting in that capacity and any expenses reasonably incurred by him in doing so, and to be so paid in priority to all other claims falling to be met out of the scheme's resources.

Insolvency practitioner or official receiver to give information to trustees

26.—(1) Notwithstanding anything in Article 133 of the Insolvency (Northern Ireland) Order 1989⁽¹³⁾ (court orders for inspection, etc.), while Article 22 applies in relation to a scheme, the practitioner or official receiver must provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.

(2) Any expenses incurred by the practitioner or official receiver in complying with a request under paragraph (1) are recoverable by him as part of the expenses incurred by him in discharge of his duties.

(3) The practitioner or official receiver is not required under paragraph (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

Trustees: general

Trustee not to be auditor or actuary of the scheme

27.—(1) A trustee of a trust scheme, and any person who is connected with, or an associate of, such a trustee, is ineligible to act as an auditor or actuary of the scheme.

(2) Paragraph (1) does not make a person who is a director, partner or employee of a firm of actuaries ineligible to act as an actuary of a trust scheme merely because another director, partner or employee of the firm is a trustee of the scheme.

(3) Paragraph (1) does not make a person who falls within a prescribed class or description ineligible to act as an auditor or actuary of a trust scheme.

(13) 1989 NI 19.

(4) A person must not act as an auditor or actuary of a trust scheme if he is ineligible under this Article to do so.

(5) In this Article and Article 28 references to a trustee of a trust scheme do not include—

- (a) a trustee, or
- (b) a trustee of a scheme,

falling within a prescribed class or description.

Article 27: consequences

28.—(1) Any person who acts as an auditor or actuary of a trust scheme in contravention of Article 27(4) is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to imprisonment or a fine, or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Acts done as an auditor or actuary of a trust scheme by a person who is ineligible under Article 27 to do so are not invalid merely because of that fact.

(4) Where—

- (a) a trustee of a trust scheme acts as auditor or actuary of the scheme, or
- (b) a person acts as auditor or actuary of a trust scheme when he is ineligible under Article 27 to do so by reason of being connected with, or an associate of, a trustee of the scheme,

Article 3 applies to the trusted.

Persons disqualified for being trustees

29.—(1) Subject to paragraph (5), a person is disqualified for being a trustee of any trust scheme if—

- (a) he has been convicted of any offence involving dishonesty or deception,
- (b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
- (c) where the person is a company, if any director of the company is disqualified under this Article,
- (d) where the person is a Scottish partnership, if any partner is disqualified under this Article,
- (e) he has made an arrangement or a composition contract with, or granted a trust deed for the behoof of, his creditors and has not been discharged in respect of it, or
- (f) he is subject to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989⁽¹⁴⁾ or to such an order under any corresponding enactment for the time being in force in Great Britain.

(2) In paragraph (1)—

- (a) sub-paragraph (a) applies whether the conviction occurred before or after the coming into operation of that paragraph, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978⁽¹⁵⁾,

⁽¹⁴⁾ 1989 NI 18.

⁽¹⁵⁾ 1978 NI 27.

- (b) sub-paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the coming into operation of that paragraph,
- (c) sub-paragraph (e) applies whether the arrangement or composition contract was made, or the trust deed was granted, before or after the coming into operation of that paragraph, and
- (d) sub-paragraph (f) applies in relation to orders made before or after the coming into operation of that paragraph.

(3) Where a person—

- (a) is prohibited from being a trustee of a trust scheme by an order under Article 3, or
- (b) has been removed as a trustee of a trust scheme by an order made (whether before or after the coming into operation of this paragraph) by the High Court on the grounds of misconduct or mismanagement in the administration of the scheme for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated,

the Authority may, if in their opinion it is not desirable for him to be a trustee of any trust scheme, by order disqualify him for being a trustee of any trust scheme.

(4) The Authority may by order disqualify a person for being a trustee of any trust scheme where—

- (a) in their opinion he is incapable of acting as such a trustee by reason of mental disorder (within the meaning of the Mental Health (Northern Ireland) Order 1986⁽¹⁶⁾), or
- (b) the person is a company which has gone into liquidation (within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989⁽¹⁷⁾).

(5) The Authority may, on the application of any person disqualified under this Article—

- (a) give notice in writing to him waiving his disqualification,
- (b) in the case of a person disqualified under paragraph (3) or (4) by order revoke the order disqualifying him,

either generally or in relation to a particular scheme or particular class of schemes.

(6) A notice given or revocation made at any time by virtue of paragraph (5) cannot affect anything done before that time.

Persons disqualified: consequences

30.—(1) A trustee of a trust scheme who becomes disqualified under Article 29 shall, while he is so disqualified, cease to be a trustee.

(2) Where—

- (a) a trustee of a trust scheme becomes disqualified under Article 29, or
- (b) in the case of a trustee or a trust scheme who has become so disqualified, his disqualification is waived or the order disqualifying him is revoked or he otherwise ceases to be disqualified,

the Authority may exercise the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, the trustees.

(3) A person who purports to act as a trustee of a trust scheme while he is disqualified under Article 29 is guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, and

⁽¹⁶⁾ 1986 NI 4.

⁽¹⁷⁾ 1989 NI 19.

(b) on conviction on indictment, to a fine or imprisonment or both.

(4) An offence under paragraph (3) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(5) Things done by a person disqualified under Article 29 while purporting to act as trustee or a trust scheme are not invalid merely because of that disqualification.

(6) Nothing in Article 29 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

(7) The Authority must keep, in such manner as they think fit, a register of all persons who are disqualified under Article 29(3) or (4); and the Authority must, if requested to do so, disclose whether the name of a person specified in the request is included in the register in respect of a scheme so specified.

Trustees not to be indemnified for fines or civil penalties

31.—(1) No amount may be paid out of the assets of a trust scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee of the scheme in respect of—

- (a) a fine imposed by way of penalty for an offence of which he is convicted, or
- (b) a penalty which he is required to pay under Article 10 or under section 164(4) of the Pensions Schemes Act.

(2) For the purposes of paragraph (1), providing for the reimbursement of a trustee in respect of a fine or penalty includes (among other things) providing for the payment of premiums in respect of a policy of insurance where the risk is or includes the imposition of such a fine or the requirement to pay such a penalty.

(3) Where any amount is paid out of the assets of a trust scheme in contravention of this Article, Articles 3 and 10 apply to any trustee who fails to take all such steps as are reasonable to secure compliance.

(4) Where a trustee of a trust scheme—

- (a) is reimbursed, out of the assets of the scheme or in consequence of provision for his reimbursement made out of those assets, in respect of any of the matters referred to in paragraph (1)(a) or (b), and
- (b) knows, or has reasonable grounds to believe, that he has been reimbursed as mentioned in sub-paragraph (a),

then, unless he has taken all such steps as are reasonable to secure that he is not so reimbursed, he is guilty of an offence.

(5) A person guilty of an offence under paragraph (4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to imprisonment, or a fine, or both.

Functions of trustees

Decisions by majority

32.—(1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees.

(2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—

- (a) the trustees may, unless the scheme provides otherwise, by a determination under this paragraph require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
 - (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.
- (3) Notice under paragraph (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.
- (4) This Article is subject to Articles 8(4)(b), 16(3)(b) and 25(2).
- (5) If paragraph (2)(b) is not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

Investment powers: duty of care

33.—(1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable—

- (a) by a trustee of a trust scheme, or
 - (b) by a person to whom the function has been delegated under Article 34,
- cannot be excluded or restricted by an instrument or agreement.
- (2) In this Article, references to excluding or restricting liability include—
- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
 - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
 - (c) excluding or restricting rules of evidence or procedure.
- (3) This Article does not apply—
- (a) to a scheme falling within any prescribed class or description, or
 - (b) to any prescribed description of exclusion or restriction.

Power of investment and delegation

34.—(1) The trustees of a trust scheme have, subject to any restriction imposed by the scheme, the same power to make an investment of any kind as if they were absolutely entitled to the assets of the scheme.

- (2) Any discretion of the trustees of a trust scheme to make any decision about investments—
- (a) may be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) applies to be exercised in accordance with Article 36, but
 - (b) may not otherwise be delegated except under section 26 of the Trustee Act (Northern Ireland) 1958⁽¹⁸⁾ (delegation of trusts for period not exceeding 12 months) or paragraph (5).
- (3) This paragraph applies to a fund manager who, in relation to the decisions in question, falls, or is treated as falling, within any of paragraphs (a) to (c) of section 191(2) of the Financial Services Act 1986⁽¹⁹⁾ (occupational pension schemes: exemptions where decisions taken by authorised and other persons).

⁽¹⁸⁾ 1958 c. 23 (N.I.).

⁽¹⁹⁾ 1986 c. 60.

(4) The trustees are not responsible for the act or default of any fund manager in the exercise of any discretion delegated to him under paragraph (2)(a) if they have taken all such steps as are reasonable to satisfy themselves or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
- (b) that he is carrying out his work competently and complying with Article 36.

(5) Subject to any restriction imposed by a trust scheme—

- (a) the trustees may authorise two or more of their number to exercise on their behalf any discretion to make any decision about investments, and
- (b) any such discretion may, where giving effect to the decision would not constitute carrying on “investment business” in the United Kingdom (within the meaning of the Financial Services Act 1986(20)), be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) does not apply to be exercised in accordance with Article 36;

but in either case the trustees are liable for any acts or defaults in the exercise of the discretion if they would be so liable if they were the acts or defaults of the trustees as a whole.

(6) Article 33 does not prevent the exclusion or restriction of any liability of the trustees of a trust scheme for the acts or defaults of a fund manager in the exercise of a discretion delegated to him under paragraph (5)(b) where the trustees have taken all such steps as are reasonable to satisfy themselves, or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—

- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
- (b) that he is carrying out his work competently and complying with Article 36;

and paragraph (2) of Article 33 applies for the purposes of this paragraph as it applies for the purposes of that Article.

(7) The provisions of this Article override any restriction inconsistent with the provisions imposed by any rule of law or by or under any enactment, other than an enactment contained in, or made under, this Part or the Pension Schemes Act.

Investment principles

35.—(1) The trustees of a trust scheme must secure that there is prepared, maintained and revised a written statement of the principles governing decisions about investments for the purposes of the scheme.

(2) The statement must cover, among other things—

- (a) the trustees' policy for securing compliance with Articles 36 and 56, and
- (b) their policy about the following matters.

(3) Those matters are—

- (a) the kinds of investments to be held,
- (b) the balance between different kinds of investments,
- (c) risk,
- (d) the expected return on investments,
- (e) the realisation of investments, and

- (f) such other matters as may be prescribed.
- (4) Neither the trust scheme nor the statement may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.
- (5) The trustees of a trust scheme must, before a statement under this Article is prepared or revised—
 - (a) obtain and consider the written advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of such schemes, and
 - (b) consult the employer.
- (6) If in the case of any trust scheme—
 - (a) a statement under this Article has not been prepared or is not being maintained, or
 - (b) the trustees have not obtained and considered advice in accordance with paragraph (5),Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (7) This Article does not apply to any scheme which falls within a prescribed class or description.

Choosing investments

- 36.**—(1) The trustees of a trust scheme must exercise their powers of investment in accordance with paragraphs (2) to (4) and any fund manager to whom any discretion has been delegated under Article 34 must exercise the discretion in accordance with paragraph (2).
- (2) The trustees or fund manager must have regard—
 - (a) to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme, and
 - (b) to the suitability to the scheme of investments of the description of investment proposed and of the investment proposed as an investment of that description.
 - (3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961⁽²¹⁾) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in paragraph (2) and the principles contained in the statement under Article 35.
 - (4) Trustees relating any investment must—
 - (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in paragraph (3), and
 - (b) obtain and consider such advice accordingly.
 - (5) The trustees, or the fund manager to whom any discretion has been delegated under Article 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under Article 35, so far as reasonably practicable.
 - (6) For the purposes of this Article, “proper advice” means—
 - (a) where giving the advice constitutes carrying on investment business in the United Kingdom (within the meaning of the Financial Services Act 1986⁽²²⁾), advice—
 - (i) given by a person authorised under Chapter III of Part I of that Act,

(21) 1961 c. 62.

(22) 1986 c. 60.

- (ii) given by a person exempted under Chapter IV of that Part who, in giving the advice, is acting in the course of the business in respect of which he is exempt,
 - (iii) given by a person where, by virtue of paragraph 27 of Schedule 1 to that Act, paragraph 15 of that Schedule does not apply to giving the advice, or
 - (iv) given by a person who, by virtue of regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992⁽²³⁾, may give the advice though not authorised as mentioned in head (i), and
- (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.
- (7) Trustees shall not be treated as having complied with paragraph (3) or (4) unless the advice was given or has subsequently been confirmed in writing.
- (8) If the trustees of a trust scheme do not obtain and consider advice in accordance with this Article, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

Payment of surplus to employer

37.—(1) This Article applies to a trust scheme if—

- (a) apart from this Article, power is conferred on any person (including the employer) to make payments to the employer out of funds which are held for the purposes of the scheme.
- (b) the scheme is one to which Schedule 22 to the Taxes Act 1988⁽²⁴⁾ (reduction of pension fund surpluses in certain exempt approved schemes) applies, and
- (c) the scheme is not being wound up.

(2) Where the power referred to in paragraph (1)(a) is conferred by the scheme on a person other than the trustees, it cannot be exercised by that person but may be exercised instead by the trustees; and any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.

(3) The power referred to in paragraph (1)(a) cannot be exercised unless the requirements of paragraphs (4) and (in prescribed circumstances (5)), and any prescribed requirements, are satisfied.

(4) The requirements of this paragraph are that—

- (a) the power is exercised in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988,
- (b) the trustees are satisfied that it is in the interests of the members that the power be exercised in the manner so proposed,
- (c) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner so proposed,
- (d) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
- (e) notice has been given in accordance with prescribed requirements of the scheme of the proposal to exercise the power.

(5) The requirements of this paragraph are that the Authority are of the opinion that—

- (a) any requirements prescribed by virtue of paragraph (3) are satisfied, and

⁽²³⁾ S.I. 1992/3218

⁽²⁴⁾ 1988 c. 1.

(b) the requirements of paragraph (4) are satisfied.

(6) In paragraph (4)—

(a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and

(b) “pension” does not include—

(i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or

(ii) any money purchase benefit (as defined in section 176(1) of that Act).

(7) This Article does not apply to any payment to which, by virtue of section 601(3) of the Taxes Act 1988(25), section 601(2) of that Act does not apply.

(8) If, where this Article applies to any trust scheme, the trustees purport to exercise the power referred to in paragraph (1)(a) by making a payment to which this Article applies without complying with the requirements of this Article, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(9) If, where this Article applies to any trust scheme, any person, other than the trustees, purports to exercise the power referred to in paragraph (1)(a) by making a payment to which this Article applies, Article 10 applies to him.

(10) Regulations may provide that, in prescribed circumstances, this Article does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

Power to defer winding up

38.—(1) If, apart from this Article, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine that the scheme is not for the time being to be wound up but that no new members are to be admitted to the scheme.

(2) Where the trustees make a determination under paragraph (1), this may also determine—

(a) that no further contributions are to be paid towards the scheme, or

(b) that no new benefits are to accrue to, or in respect of, members of the scheme;

but this paragraph does not authorise the trustees to determine, where there are accrued rights to any benefit, that the benefit is not to be increased.

(3) This Article does not apply to—

(a) a money purchase scheme, or

(b) a scheme falling within a prescribed class or description.

Exercise of powers by member trustees

39. No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.

*Functions of trustees or managers***Restriction on employer-related investments**

40.—(1) The trustees or managers of an occupational pension scheme must secure that the scheme complies with any prescribed restrictions with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.

(2) In this Article—

“employer-related investments” means—

- (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer,
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person,
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person,
- (d) loans to the employer or any such person, and
- (e) other prescribed investments,

“securities” means any asset, right or interest falling within paragraph 1,2,4 or 5 of Schedule 1 to the Financial Services Act 1986(26).

(3) To the extent (if any) that sums due and payable by a person to the trustees or managers of an occupational pension scheme remain unpaid—

- (a) they shall be regarded for the purposes of this Article as loans made to that person by the trustees or managers, and
- (b) resources of the scheme shall be regarded as invested accordingly.

(4) If in the case of a trust scheme paragraph (1) is not complied with, Articles 3 and 10 apply to any trustee who fails to take all such steps as are reasonable to secure compliance.

(5) If any resources of an occupational pension scheme are invested in contravention of paragraph (1), any trustee or manager who agreed in the determination to make the investment is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment, or both.

Provision of documents for members

41.—(1) Regulations may require the trustees or managers of an occupational pension scheme—

- (a) to obtain at prescribed times the documents mentioned in paragraph (2), and
- (b) to make copies of them, and of the documents mentioned in paragraph (3), available to the persons mentioned in paragraph (4).

(2) The documents referred to in paragraph (1)(a) are—

- (a) the accounts audited by the auditor of the scheme,
- (b) the auditor’s statement about contributions under the scheme,
- (c) a valuation by the actuary of the assets and liabilities of the scheme, and a statement by the actuary concerning such aspects of the valuation as may be prescribed.

(3) The documents referred to in paragraph (1)(b) are—

- (a) any valuation, or certificate, prepared under Article 57 or 58 by the actuary of the scheme,
- (b) any report prepared by the trustees or managers under Article 59(3).
- (4) The persons referred to in paragraph (1)(b) are—
 - (a) members and prospective members of the scheme,
 - (b) spouses of members and of prospective members,
 - (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits,
 - (d) independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme.
- (5) Regulations may in the case of occupational pension schemes to which Article 47 does not apply—
 - (a) prescribe the persons who may act as auditors or actuaries for the purposes of paragraph (2), or
 - (b) provide that the persons who may so act shall be—
 - (i) persons with prescribed professional qualifications or experience, or
 - (ii) persons approved by the Department.
- (6) Regulations shall make provision for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in paragraph (4)(d) and may make provision as to the form and content of any such document as is referred to in paragraph (2).

Employee trustees

Time off for performance of duties and for training

- 42.**—(1) The employer in relation to a trust scheme must permit any employee of his who is a trustee of the scheme to take time off during his working hours for the purpose of—
- (a) performing any of his duties as such a trustee, or
 - (b) undergoing training relevant to the performance of those duties.
- (2) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard in particular to—
- (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or, as the case may be, for undergoing the particular training, and
 - (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (3) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this Article.
- (4) For the purposes of this Article, the working hours of an employee are any time when in accordance with his contract of employment he is required to be at work.

Payment for time off

- 43.**—(1) An employer who permits an employee to take time off under Article 42 must pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

(4) The average hourly earnings mentioned in paragraph (3) are those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under this Article does not affect any right of an employee in relation to remuneration under his contract of employment, but—

- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this Article applies shall go towards discharging any liability of the employer under this Article in respect of that period, and
- (b) any payment under this Article in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to an industrial tribunal that his employer has failed to pay him in accordance with this Article.

Time limit for proceedings

44. An industrial tribunal must not consider a complaint under Article 42 or 43 unless it is presented to the tribunal—

- (a) within three months of the date when the failure occurred, or
- (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

Remedies

45.—(1) Where the tribunal finds a complaint under Article 42 is well-founded, it must make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.

(2) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.

(3) Where on a complaint under Article 43 the tribunal finds that the employer has failed to pay the employee in accordance with that Article, it must order him to pay the amount which it finds to be due.

(4) The remedy of an employee for infringement of the rights conferred on him by Article 42 or 43 is by way of complaint to an industrial tribunal in accordance with this Part, and not otherwise.

Right not to suffer detriment in employment or be unfairly dismissed

46.—(1) Subject to paragraph (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) Paragraph (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal.

(3) Articles 13B and 13C of the No. 2 Order (which relate to proceedings brought by an employee on the ground that he has been subjected to a detriment in contravention of Article 13A of that Order) shall have effect as if the reference in Article 13B(1) to Article 13A included a reference to paragraph (1).

(4) In the following provisions—

Article 71 of, and Schedule 4 to, the No. 1 Order (death of employee or employer),

Article 49(2) (except sub-paragraph (b)) of the No. 2 Order (employee ordinarily working outside Northern Ireland), and

Article 56(1) of the No. 2 Order (remedy for infringement of rights conferred by the Order),

any reference to the No. 2 Order, or any provision of that Order, includes a reference to paragraph (1).

(5) The dismissal of an employee by an employer shall be regarded for the purposes of Part III of the No. 1 Order as unfair if the reason (or, if more than one, the principal reason) for it is that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(6) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph (5),

then, for the purposes of Part III of the No. 1 Order, the dismissal shall be regarded as unfair.

(7) Article 20 of the No. 1 Order (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of paragraph (5) or (6) regardless of the period for which the employee has been employed and of his age; and accordingly Article 24(1) of that Order (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.

(8) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Article, or

(b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Article.

(9) Paragraph (8) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

(a) a conciliation officer has taken action under Article 62(2), (3) or (5) of the No. 1 Order (conciliation), or

(b) the conditions regulating compromise agreements under the No. 2 Order (as set out in Article 59(3) of that Order) are satisfied in relation to the agreement.

(10) In this Article—

“dismissal” has the same meaning as in Part III of the No. 1 Order;

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976(27);

“the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976⁽²⁸⁾.

(11) Article 2 of the No. 1 Order and Article 2 of the No. 2 Order (general interpretation), have effect for the purposes of this Article as they have effect for the purposes of those Orders.

Advisers

Professional advisers

47.—(1) For every occupational pension scheme there shall be—

- (a) an individual, or a firm, appointed by the trustees or managers as auditor (referred to in this Part, in relation to the scheme, as “the auditor”), and
- (b) an individual appointed by the trustees or managers as actuary (referred to in this Part, in relation to the scheme, as “the actuary”).

(2) For every occupational pension scheme the assets of which consist of or include investments (within the meaning of the Financial Services Act 1986⁽²⁹⁾) there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager.

(3) If in the case of an occupational pension scheme any person—

- (a) is appointed otherwise than by the trustees or managers as legal adviser or to exercise any prescribed functions in relation to the scheme, or
- (b) is appointed otherwise than by or on behalf of the trustees or managers as a fund manager,

Articles 3 and 10 apply to any trustee, and Article 10 applies to any manager, who in exercising any of his functions places reliance on the skill or judgement of that person.

(4) In this Part, in relation to an occupational pension scheme—

- (a) the auditor, actuary and legal adviser appointed by the trustees or managers,
- (b) any fund manager appointed by or on behalf of the trustees or managers, and
- (c) any person appointed by the trustees or managers to exercise any of the functions referred to in paragraph (3)(a),

are referred to as “professional advisers”.

(5) This Article does not apply to an occupational pension scheme falling within a prescribed class or description and regulations may—

- (a) make exceptions to paragraphs (1) to (3),
- (b) specify the qualifications and experience, or approval, required for appointment as a professional adviser.

(6) Regulations may make provision as to—

- (a) the manner in which professional advisers may be appointed and removed,
- (b) the terms on which professional advisers may be appointed (including the manner in which the professional advisers may resign).

(7) Subject to regulations made by virtue of paragraph (6), professional advisers shall be appointed on such terms as the trustees or managers may determine.

(8) If in the case of an occupational pension scheme an auditor, actuary or fund manager is required under this Article to be appointed but the appointment has not been made, or not been made in accordance with any requirements imposed under this Article, Articles 3 and 10 apply to any

⁽²⁸⁾ 1976 NI 28.

⁽²⁹⁾ 1986 c. 60.

trustee, and Article 10 applies to any manager, who has failed to take all such steps as are reasonable to secure compliance.

(9) Regulations may in the case of occupational pension schemes—

- (a) impose duties on any person who is or has been the employer, and on any person who acts as auditor or actuary to such a person, to disclose information to the trustees or managers and to the scheme's professional advisers.
- (b) impose duties on the trustees or managers to disclose information to, and make documents available to, and make documents available to, the scheme's professional advisers.

(10) If in the case of an occupational pension scheme a person fails to comply with any duty imposed under paragraph (9)(a), Article 10 applies to him.

(11) If in the case of an occupational pension scheme any duty imposed under paragraph (9)(b) 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.

“Blowing the whistle”

48.—(1) If the auditor or actuary of any occupational pension scheme has reasonable cause to believe that—

- (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the trustees or managers, the employer, any professional adviser or any prescribed person acting in connection with the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of their functions,

he must immediately give a written report of the matter to the Authority.

(2) The auditor or actuary of any occupational pension scheme must, in any prescribed circumstances, immediately give a written report of any prescribed matter to the Authority.

(3) No duty to which the auditor or actuary of any occupational pension scheme is subject shall be regarded as contravened merely because of an information or opinion contained in a written report under this Article.

(4) If in the a case of any occupational pension scheme any professional adviser (other than the auditor or actuary), any trustee or manager or any person involved in the administration of the scheme has reasonable cause to believe as mentioned in paragraph (12)(a) and (b), he may give a report of the matter to the Authority.

(5) In the case of any such scheme, no duty to which any such adviser, trustee or manager or other person is subject shall be regarded as contravened merely because of any information or opinion contained in a report under this Article; but this paragraph does not apply to any information disclosed in such a report by the legal adviser of an occupational pension scheme if he would be entitled to refuse to produce a document containing the information in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

(6) Paragraphs (1) to (5) apply to any occupational pension scheme to which Article 47 applies.

(7) Article 10 applies to any auditor or actuary who fails to comply with paragraph (1) or (2).

(8) If it appears to the Authority that an auditor or actuary has failed to comply with paragraph (1) or (2), the Authority may by order disqualify him for being the auditor or, as the case may be, actuary of any occupational pension scheme specified in the order.

(9) An order under paragraph (8) may specify the scheme to which the failure relates, all schemes falling within any class or description of occupational pension scheme or all occupational pensions schemes.

(10) The Authority may, on the application of any person disqualified under this Article who satisfies the Authority that he will in future comply with paragraphs (1) and (2), by order revoke the order disqualifying him; but a revocation made at any time cannot affect anything done before that time.

(11) An auditor or actuary of an occupational pension scheme who becomes disqualified under this Article shall, while he is so disqualified, cease to be auditor or, as the case may be, actuary of any scheme specified in the order disqualifying him.

(12) A person who, while he is disqualified under this Article, purports to act as auditor or actuary of an occupational pension scheme specified in the order disqualifying him is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment, or both.

(13) An offence under paragraph (12) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

Receipts, payments and records

Other responsibilities of trustees, employers, etc.

49.—(1) The trustees of any trust scheme must, except in any prescribed circumstances, keep any money received by them in a separate account kept by them at an institution authorised under the Banking Act 1987⁽³⁰⁾.

(2) Regulations may require the trustees of any trust scheme to keep—

- (a) records of their meetings (including meetings of any of their number), and
- (b) books and records relating to any prescribed transaction.

(3) Regulations may, in the case of any trust scheme, require the employer, and any prescribed person acting in connection with the scheme, to keep books and records relating to any prescribed transaction.

(4) Regulations may require books or records kept under paragraph (2) or (3) to be kept in a prescribed form and manner and for a prescribed period.

(5) Regulations must, in cases where payments of benefit to members of trust schemes are made by the employer, require the employer to make into a separate account kept by him at an institution authorised under the Banking Act 1987⁽³¹⁾ and payments of benefit which have not been made to the members within any prescribed period.

(6) If in the case of any trust scheme any requirements imposed by or under paragraph (1) or (2) are not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) If in the case of any trust scheme any person fails to comply with any requirement imposed under paragraph (3) or (5), Article 10 applies to him.

(8) Where—

- (a) on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an active member of an occupational pension scheme, and

⁽³⁰⁾ 1987 c. 22.

⁽³¹⁾ 1987 c. 22.

(b) the amount deducted is not, within a prescribed period, paid to the trustees or managers of the scheme and there is not reasonable excuse for the failure to do so,
the employer is guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to imprisonment, or a fine, or both.

Resolution of disputes

Resolution of disputes

50.—(1) The trustees or managers of an occupational pension scheme must secure that such arrangements as are required by or under this Article for the resolution of disagreements between prescribed persons about matters in relation to the scheme are made and implemented.

(2) The arrangements must—

- (a) provide for a person, on the application of a complainant of a prescribed description, to give a decision on such a disagreement, and
- (b) require the trustees or managers, on the application of such a complainant following a decision given in accordance with sub-paragraph (a), to reconsider the matter in question and confirm the decision or give a new decision in its place.

(3) Regulations may make provision about—

- (a) applications for decisions under such arrangements, and
- (b) the procedure for reaching and giving such decisions,

including the times by which applications are to be made and decisions given.

(4) Applications and decisions under paragraph (2) must be in writing.

(5) Arrangements under paragraph (1) must, in the case of existing schemes, have effect as from the commencement of this Article.

(6) If, in the case of any occupational pension scheme, such arrangements as are required by this Article to be made have not been made, or are not being implemented, Article 10 applies to any of the trustees or managers who have failed to take all such steps as are reasonable to secure that such arrangements are made or implemented.

(7) This Article does not apply to a scheme of a prescribed description and paragraph (1) does not apply to prescribed matters in relation to the scheme.

Indexation

Annual increase in rate of pension

51.—(1) Subject to paragraph (6), this Article applies to a pension under an occupational pension scheme if—

(a) the scheme—

- (i) is an approved scheme, within the meaning of Chapter I of Part XIV of the Taxes Act 1988⁽³²⁾ (retirement benefit schemes approved by the Commissioners of Inland Revenue) or is a scheme for which such approval has been applied for under that Chapter and not refused, and
- (ii) is not a public service pension scheme, and

(32) 1988 c.1.

(b) apart from this Article, the annual rate of the pension would not be increased each year by at least the appropriate percentage of that rate.

(2) Subject to Article 52, where a pension to which this Article applies, or any part of it, is attributable to pensionable service on or after the appointed day or, in the case of money purchase benefits, to payments in respect of employment carried on or after the appointed day—

(a) the annual rate of the pension, or

(b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,

must be increased annually by at least the appropriate percentage.

(3) Paragraph (2) does not apply to a pension under an occupational pension scheme if the rules of the scheme require—

(a) the annual rate of the pension, or

(b) if only part of the pension is attributable to pensionable service or, as the case may be, to payments in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,

to be increased at intervals of not more than twelve months by at least the relevant percentage and the scheme complies with any prescribed requirements.

(4) For the purposes of paragraph (3) the relevant percentage is—

(a) the percentage increase in the retail prices index for the reference period, being a period determined, in relation to each periodical increase under the rules, or

(b) the percentage for that period which corresponds to 5 per cent. per annum,

whichever is the lesser.

(5) Regulations may provide that paragraphs (2) and (3) apply in relation to a pension as if so much of it as would not otherwise be attributable to pensionable service or to payments in respect of employment were attributable to pensionable service or, as the case may be, payments in respect of employment—

(a) before the appointed day,

(b) on or after that day, or

(c) partly before and partly on or after that day.

(6) This Article does not apply to any pension or part of a pension which, in the opinion of the trustees or managers, is derived from the payment by any member of the scheme of voluntary contributions.

Restriction on increase where member is under 55

52.—(1) Subject to paragraph (2), no increase under Article 51 is required to be paid to or for a member of a scheme whose pension is in payment but who has not attained the age of 55 at the time when the increase takes effect.

(2) Paragraph (1) does not apply if the member—

(a) is permanently incapacitated by mental or physical infirmity from engaging in regular full-time employment, or

(b) has retired on account of mental or physical infirmity from the employment in respect of which, or on retirement from which, the pension is payable.

(3) The rules of a scheme may provide that if, in a case where a pension has been paid to or for a member under the age of 55 at an increased rate in consequence of paragraph (2), the member—

- (a) ceases to suffer from the infirmity in question before he attains the age of 55, but
- (b) continues to be entitled to the pension,

any increases subsequently taking effect under Article 51 in the annual rate of the pension shall not be paid or shall not be paid in full.

(4) In any case where—

- (a) by virtue only of paragraph (1) or (3), increases are not paid to or for a member or are not paid in full, but
- (b) the member attains the age of 55 or, in a case falling within paragraph (3), again satisfies the condition set out in paragraph (2)(a) or (b),

his pension shall then become payable at the annual rate at which it would have been payable apart from paragraph (1) or (3).

Effect of increases above the statutory requirement

53.—(1) Where in any tax year the trustees or managers of an occupational pension scheme make an increase in a person's pension, not being an increase required by section 105 of the Pension Schemes Act or Article 51, they may deduct the amount of the increase from any increase which, but for this paragraph, they would be required to make under that section or Article in the next tax year.

(2) Where in any tax year the trustees or managers of such a scheme make an increase in a person's pension and part of the increase is not required by section 105 of the Pension Schemes Act or Article 51, they may deduct that part of the increase from any increase which, but for this paragraph, they would be required to make under that section or Article in the next tax year.

(3) Where by virtue of paragraph (1) or (2) any pensions are not required to be increased in pursuance of section 105 of the Pension Schemes Act or Article 51, or not by the full amount that they otherwise would be, their amount shall be calculated for any purpose as if they had been increased in pursuance of that section or Article or, as the case may be, by that full amount.

(4) In section 106 of the Pension Schemes Act (resources for annual increase of guaranteed minimum pension)—

- (a) subsections (2) to (4) are omitted, and
- (b) in subsection (1), for “subsection (2) or (3)” substitute “Article 53 of the Pensions (Northern Ireland) Order 1995”.

Articles 51 to 53: supplementary

54.—(1) The first increase required by Article 51 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than twelve months.

(2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than twelve months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this paragraph) for each complete month in that period.

(3) In Articles 51 to 53 and this Article—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under Article 51,

“the appointed day” means the day appointed under Article 1 for the commencement of Article 51,

“appropriate percentage”, in relation to an increase in the whole or part of the annual rate of a pension, means the revaluation percentage for the revaluation period the reference period for which ends with the last preceding 30th September before the increase is made,

“pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity,

“reference period” has the meaning given by paragraph 2 of Schedule 3 to the Pension Schemes Act 1993⁽³³⁾,

“revaluation order” means an order under paragraph 2(1) of Schedule 2 to the Pension Schemes Act,

“revaluation percentage” means a percentage specified for a revaluation period by a revaluation order;

“revaluation period” has the meaning given by paragraph 2(2) of Schedule 2 to the Pension Schemes Act.

Article 51: end of annual increase in GMP

55. In section 105 of the Pension Schemes Act (annual increase of guaranteed minimum pensions), in subsection (1) (increase in rate of that part of guaranteed minimum pension attributable to earnings factors for tax year 1988—89 and subsequent tax years) for “the tax year 1988—89 and subsequent tax years” substitute “the tax years in the relevant period as defined in that section”.

Minimum funding requirement

Minimum funding requirement

56.—(1) Every occupational pension scheme to which this Article applies is subject to a requirement (referred to in this Part as “the minimum funding requirement”) that the value of the assets of the scheme is not less than the amount of the liabilities of the scheme.

(2) This Article applies to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a scheme falling within a prescribed class or description.

(3) For the purposes of this Article and Articles 57 to 61, the liabilities and assets to be taken into account, and their amount or value, shall be determined, calculated and verified by a prescribed person and in the prescribed manner.

(4) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.

(5) In Articles 57 to 61, in relation to any occupational pension scheme to which this Article applies—

- (a) the amount of the liabilities referred to in paragraph (1) is referred to as “the amount of the scheme liabilities”,
- (b) the value of the assets referred to in that paragraph is referred to as “the value of the scheme assets”,
- (c) “an actuarial valuation” means a written valuation prepared and signed by the actuary of the scheme of the assets and liabilities referred to in paragraph (1), and
- (d) the “effective date” of an actuarial valuation is the date by reference to which the assets and liabilities are valued.

(33) 1993 c. 48.

Valuation and certification of assets and liabilities

57.—(1) The trustees or managers of an occupational pension scheme to which Article 56 applies must—

- (a) obtain, within a prescribed period, an actuarial valuation and afterwards obtain such a valuation before the end of prescribed intervals, and
- (b) on prescribed occasions or within prescribed periods, obtain a certificate prepared by the actuary of the scheme—
 - (i) stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing that the minimum funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, and
 - (ii) indicating any relevant changes that have occurred since the last actuarial valuation was prepared.

(2) Subject to paragraph (3), the trustees or managers must—

- (a) if the actuary states in such a certificate that in his opinion the contributions payable towards the scheme are not adequate for the purpose of securing that the minimum funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, will be met by the end of that period, or
- (b) in prescribed circumstances,

obtain an actuarial valuation within the period required by paragraph (4).

(3) In a case within paragraph (2)(a), the trustees or managers are not required to obtain an actuarial valuation if—

- (a) in the opinion of the actuary of the scheme, the value of the scheme assets is not less than 90 per cent. of the amount of the scheme liabilities, and
- (b) since the date on which the actuary signed the certificate referred to in that paragraph, the schedule of contributions for the scheme has been revised under Article 58(3)(b).

(4) If the trustees or managers obtain a valuation under paragraph (2) they must do so—

- (a) in the case of a valuation required by sub-paragraph (a), within the period of six months beginning with the date on which the certificate was signed, and
- (b) in any other case, within a prescribed period.

(5) A valuation or certificate obtained under paragraph (1) or (2) must be prepared in such manner, give such information and contain such statements as may be prescribed.

(6) The Trustees or managers must secure that any valuation or certificate obtained under this Article is made available to the employer within seven days of their receiving it.

(7) Where, in the case of an occupational pension scheme to which Article 56 applies, paragraph (1), (2) or (6) is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Schedules of contributions

58.—(1) The trustees or managers of an occupational pension scheme to which Article 56 applies must secure that there is prepared, maintained and revised a schedule (referred to in Articles 57 to 59 as a “schedule of contributions”) showing—

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
 - (b) the dates on or before which such contributions are to be paid.
- (2) The schedule of contributions for a scheme must satisfy prescribed requirements.
- (3) The schedule of contribution for a scheme—
- (a) must be prepared before the end of a prescribed period beginning the signing of the first actuarial valuation for the scheme,
 - (b) may be revised where the revisions are previously agreed by the trustees or managers and the employer and any revision in the rates of contributions is certified by the actuary of the scheme, and
 - (c) must be revised before the end of a prescribed period beginning with the signing of each subsequent actuarial valuation.
- (4) The matters shown in the schedule of contributions for a scheme—
- (a) must be matters previously agreed by the trustees or managers and the employer, or
 - (b) if no such agreement has been made as to all the matters shown in the schedule, must be—
 - (i) rates of contributions determined by the trustees or managers, being such rates as in their opinion are adequate for the purpose of securing that the minimum funding requirement will continue to be met throughout the prescribed period or, if it appears to them that it is not met, will be met by the end of that period, and
 - (ii) other matters determined by the trustees or managers;and the rates of contributions shown in the schedule must be certified by the actuary of the scheme.
- (5) An agreement for the purposes of paragraph (4)(a) is one which is made by the trustees or managers and the employer during the prescribed period beginning with the signing of the last preceding actuarial valuation for the scheme.
- (6) The actuary may not certify the rates of contributions shown in the schedule of contributions—
- (a) in the case where on the date he signs the certificate it appears to him that the minimum funding requirement is met, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will continue to be met throughout the prescribed period, and
 - (b) in any other case, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will be met by the end of that period.
- (7) The Authority may in prescribed circumstances extend (or further extend) the period referred to in paragraph (6).
- (8) Where, in the case of any occupational pension scheme to which Article 56 applies, this Article is not complied with—
- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Determination of contributions: supplementary

59.—(1) Except in prescribed circumstances, the trustees or managers of an occupational pension scheme to which Article 56 applies must, where any amounts payable by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions have not been

paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority and to the members of the scheme.

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated as such a debt.

(3) If, in the case of an occupational pension scheme to which Article 56 applies, it appears to the trustees or managers, at the end of any prescribed period that the minimum funding requirement is not met, they must prepare a report giving the prescribed information about the failure to meet that requirement.

(4) If, in the case of any such scheme, paragraph (1) or (3) is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Serious underprovision

60.—(1) Paragraph (2) applies where, in the case of an occupational pension scheme to which Article 56 applies, an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is less than 90 per cent. of the amount of the scheme liabilities (the difference shown in the valuation being referred to in this Article as “the shortfall”).

(2) The employer must—

- (a) by making an appropriate payment to the trustees or managers, or
- (b) by a prescribed method,

secure an increase in the value of the scheme assets which, taken with any contributions paid is not less than the shortfall.

(3) The required increase in that value must be secured—

- (a) before the end of a prescribed period beginning with the signing of the valuation, or
- (b) if the actuarial valuation was obtained by reason of such a statement in a certificate as is referred to in Article 57(2), before the end of a prescribed period beginning with the signing of the certificate.

(4) Except in prescribed circumstances, if the employer fails to secure the required increase in value before the end of the period applicable under paragraph (3), the trustees or managers must, within the period of fourteen days (or such longer period as is prescribed) beginning with the end of that period, give written notice of that fact to the Authority and to the members of the scheme.

(5) If the employer fails to secure the required increase in value before the end of the period applicable under paragraph (3), then so much of the shortfall as, at any subsequent time, has not been met by an increase in value under paragraph (2) made—

- (a) by making an appropriate payment to the trustees or managers,
- (b) by a prescribed method, or
- (c) by contributions made before the end of that period,

shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated at that time as such a debt.

(6) Where an increase in value is secured by a prescribed method, the increase is to be treated for the purpose of this Article as being of an amount determined in accordance with regulations.

(7) The Authority may in prescribed circumstances extend (or further extend) the period applicable under paragraph (3).

- (8) If paragraph (4) is not complied with—
- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Articles 56 to 60: supplementary

61. Regulations may modify Articles 56 to 60 as they apply in prescribed circumstances.

Equal treatment

The equal treatment rule

62.—(1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

- (2) An equal treatment rule is a rule which relates to the terms on which—
- (a) persons become members of the scheme, and
 - (b) members of the scheme are treated.
- (3) Subject to paragraph (6), an equal treatment rule has the effect that where—
- (a) a woman is employed on like work with a man in the same employment,
 - (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or
 - (c) a woman is employed on work which, not being work in relation to which sub-paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision) or equal value to that of a man in the same employment,

but (apart from the rule) any of the terms referred to in paragraph (2) is or becomes less favourable to the woman than it is to the man, the term shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in paragraph (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which—

- (a) is not the difference of sex, but
- (b) is a material difference between the woman's case and the man's case.

(5) References in paragraph (4) and Articles 63 to 65 to the terms referred to in paragraph (2), or the effect of any of those terms, include—

- (a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within any of sub-paragraphs (a) to (c) of paragraph (3)—
 - (i) may be exercised so as to affect the way in which persons become members of the scheme, or members of the scheme are treated, and
 - (ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man, and
- (b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within paragraph (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

Equal treatment rule: supplementary

63.—(1) The reference in Article 62(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in Article 62(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in Article 62(2) on persons of the same sex differs according to their family or marital status, the effect of the term is to be compared for the purposes of Article 62 with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule has effect subject to paragraphs 5 and 6 of Schedule 5 to the Social Security (Northern Ireland) Order 1989⁽³⁴⁾ (employment-related benefit schemes: maternity and family leave provisions).

(4) Article 62 shall be construed as one with section 1 of the Equal Pay Act (Northern Ireland) 1970⁽³⁵⁾ (requirement of equal treatment for men and women in the same employment); and sections 2 and 2A of that Act (disputes and enforcement) shall have effect for the purposes of Article 62 as if—

- (a) references to an equality clause were to an equal treatment rule,
- (b) references to employers and employees were to the trustees or managers of the scheme (on the one hand) and the members, or prospective members, of the scheme (on the other),
- (c) for section 2(4) there were substituted—

“(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.”, and

- (d) references to section 1(2)(c) were to Article 62(3)(c).

(5) Regulations may make provision for the Equal Pay Act (Northern Ireland) 1970⁽³⁶⁾ to have effect, in relation to an equal treatment rule, with prescribed modifications; and paragraph (4) shall have effect subject to any regulations made by virtue of this paragraph.

(6) Article 62, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.

Equal treatment rule: exceptions

64.—(1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in Article 62(2) if the variation is permitted by or under any of the provisions of this Article.

(2) Where a man and a woman are eligible, in prescribed circumstances, to receive different amounts by way of pension, the variation is permitted by this paragraph if, in prescribed circumstances, the differences are attributable only to differences between men and women in the benefits under sections 43 to 55 of the Contributions and Benefits Act (state retirement pensions) to which, in prescribed circumstances, they are or would be entitled.

⁽³⁴⁾ 1989 NI 13.

⁽³⁵⁾ 1970 c. 32 (N.I.).

⁽³⁶⁾ 1970 c. 32 (N.I.).

- (3) A variation is permitted by this paragraph if—
- (a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or
 - (b) the variation consists of the application of actuarial factors which differ for men and women to the determination benefits falling within a prescribed class or description;

and in this paragraph “benefits” include any payment or other benefit made to or in respect of a person as a member of the scheme.

- (4) Regulations may—
- (a) permit further variations, or
 - (b) amend or repeal paragraph (2) or (3);

and regulations made by virtue of this paragraph may have effect in relation to pensionable service on or after 17th May 1990 and before the date on which the regulations are made.

Equal treatment rule: consequential alteration of schemes

- 65.**—(1) The trustees or managers of an occupational pension scheme may, if—
- (a) they do not (apart from this Article) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or
 - (b) they have such power, but the procedure for doing so—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,
 by resolution make such alterations to the scheme.
- (2) The alterations may have effect in relation to a period before the alterations are made.

Equal treatment rule: effect on terms of employment, etc.

66.—(1) In section 6 of the Equal Pay Act (Northern Ireland) 1970(**37**) (exclusions), for subsections (1A) and (2) (exclusion for terms related to death or retirement) substitute—

“(1B) An equality clause shall not operate in relation to terms relating to a person’s membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(1C) In subsection (1B), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”.

(2) In Article 6(1) of the Sex Discrimination (Northern Ireland) Order 1976(**38**) (victimisation of complainants, etc.)—

- (a) in sub-paragraphs (a) to (c), after “Equal Pay Act” insert “or Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”, and
- (b) at the end of sub-paragraph (d) add “or under Articles 62 to 65 of the Pensions (Northern Ireland) Order 1995”.

(37) 1970 c. 32 (N.I.)

(38) 1976 NI 15.

(3) In Article 8 of the Sex Discrimination (Northern Ireland) Order 1976 (discrimination against applicants and employees), for paragraph (4) substitute—

“(4) Paragraphs (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under Articles 62 to 64 of the Pensions (Northern Ireland) Order 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(4A) In paragraph (4), “occupational pension scheme” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993 and “equal treatment rule” has the meaning given by Article 62 of the Pensions (Northern Ireland) Order 1995.”

(4) Regulations may make provision—

- (a) for the Equal Pay Act (Northern Ireland) 1970⁽³⁹⁾ to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and
- (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

(5) References in paragraph (4) to terms of employment include (where the context permits)—

- (a) any collective agreement or pay structure, and
- (b) an agricultural wages order within section 5 of the Equal Pay Act (Northern Ireland) 1970⁽⁴⁰⁾.

Modification of schemes

Restriction on powers to alter schemes

67.—(1) This Article applies to any power conferred on any person by an occupational pension scheme (other than a public service pension scheme) to modify the scheme.

(2) The power cannot be exercised on any occasion in a manner which would or might affect any entitlement or accrued right, of any member of the scheme acquired before the power is exercised unless the requirements under paragraph (3) are satisfied.

(3) Those requirements are that, in respect of the exercise of the power in that manner on that occasion—

- (a) the trustees have satisfied themselves that—
 - (i) the certification requirements, or
 - (ii) the consent requirements,are met in respect of that member, and
- (b) where the power is exercised by a person other than the trustees, the trustees have approved the exercise of the power in that manner on that occasion.

(4) In paragraph (3)—

- (a) “the certification requirements” means prescribed requirements for the purpose of securing that no power to which this Article applies is exercised in any manner which, in the opinion of an actuary, would adversely affect any member of the scheme (without his consent) in respect of his entitlement, or accrued rights, acquired before the power is exercised, and

⁽³⁹⁾ 1970 c. 32 (N.I.)

⁽⁴⁰⁾ 1970 c. 32 (N.I.)

- (b) “the consent requirements” means prescribed requirements for the purpose of obtaining the consent of members of a scheme to the exercise of a power to which this Article applies.
- (5) Paragraph (2) does not apply to the exercise of a power in a prescribed manner.
- (6) Where a power to which this Article applies may not (apart from this Article) be exercised without the consent of any person, regulations may make provision for treating such consent as given in prescribed circumstances.

Power of trustees to modify schemes by resolution

- 68.**—(1) The trustees of a trust scheme may by resolution modify the scheme with a view to achieving any of the purposes specified in paragraph (2).
- (2) The purposes referred to in paragraph (1) are—
 - (a) to extend the class of persons who may receive benefits under the scheme in respect of the death of a member of the scheme,
 - (b) to enable the scheme to conform with such arrangements as are required by Article 16(1) or 17(2),
 - (c) to enable the scheme to comply with such terms and conditions as may be imposed by the Compensation Board in relation to any payment made by them under Article 81 or 82,
 - (d) to enable the scheme to conform with Article 37(2), 76(2), 89 or 90, and
 - (e) prescribed purposes.
 - (3) No modification may be made by virtue of paragraph (2)(a) without the consent of the employer.
 - (4) Modifications made by virtue of paragraph (2)(b) may include in particular—
 - (a) modification of any limit on the number of, or of any category of, trustees, or
 - (b) provision for the transfer or vesting of property.
 - (5) Regulations may provide that this Article does not apply to trust schemes falling within a prescribed class or description.

Grounds for applying for modifications

- 69.**—(1) The Authority may, on an application made to them by persons competent to do so, make an order in respect of an occupational pension scheme (other than a public service pension scheme)—
- (a) authorising the modification of the scheme with a view to achieving any of the purposes mentioned in paragraph (3), or
 - (b) modifying the scheme with a view to achieving any such purpose.
- (2) Regulations may make provision about the manner of dealing with applications under this Article.
- (3) The purposes referred to in paragraph (1) are—
 - (a) in the case of a scheme to which Schedule 22 to the Taxes Act 1988⁽⁴¹⁾ (reduction of pension fund surpluses in certain exempt approved schemes) applies, to reduce or eliminate on any particular occasion any excess in accordance with any proposal submitted under paragraph 3(1) of that Schedule, where any requirements mentioned in Article 37(4), and any other prescribed requirements, will be satisfied in relation to the reduction or elimination,

(41) 1988 c. 1.

- (b) in the case of an exempt approved scheme (within the meaning given by section 592(1) of the Taxes Act 1988) which is being wound up, to enable assets remaining after the liabilities of the scheme have been fully discharged to be distributed to the employer, where prescribed requirements in relation to the distribution are satisfied, or
 - (c) to enable the scheme to be so treated during a prescribed period that an employment to which the scheme applies may be contracted-out employment by reference to it.
- (4) The persons competent to make an application under this Article are—
- (a) in the case of the purposes referred to in sub-paragraph (a) or (b) of paragraph (3), the trustees of the scheme, and
 - (b) in the case of the purposes referred to in sub-paragraph (c) of that paragraph—
 - (i) the trustees or managers of the scheme,
 - (ii) the employer, or
 - (iii) any person other than the trustees or managers who has power to alter the rules of the scheme.
- (5) An order under paragraph (1)(a) must be framed—
- (a) if made with a view to achieving either of the purposes referred to in paragraph (3)(a) or (b), so as to confer the power of modification on the trustees, and
 - (b) if made with a view to achieving the purposes referred to in paragraph (3)(c), so as to confer the power of modification on such persons (who may include persons who were not parties to the application made to the Authority) as the Authority think appropriate.
- (6) Regulations may provide that in prescribed circumstances this Article does not apply to occupational pension schemes falling within a prescribed class or description or applies to them with prescribed modifications.

Article 69: supplementary

- 70.**—(1) The Authority may not make an order under Article 69 unless they are satisfied that the purposes for which the application for the order was made—
- (a) cannot be achieved otherwise than by means of such an order, or
 - (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.
- (2) The extent of the Authority’s powers to make such an order is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.
- (3) The Authority may not make an order under Article 69 with a view to achieving the purpose referred to in paragraph (3)(c) of that Article unless they are satisfied that it is reasonable in all the circumstances to make it.

Effect of orders under Article 69

- 71.**—(1) An order under sub-paragraph (a) of paragraph (1) of Article 69 may enable those exercising any power conferred by the order to exercise it retrospectively (whether or not the power could otherwise be so exercised) and an order under sub-paragraph (b) of that paragraph may modify a scheme retrospectively.
- (2) Any modification of a scheme made in pursuance of an order of the Authority under Article 69 is as effective in law as if it had been made under powers conferred by or under the scheme.

- (3) An order under Article 69 may be made and complied with in relation to a scheme—
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the modification being made, or
 - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the modification.
- (4) In this Article, “retrospectively” means with effect from a date before that on which the power is exercised or, as the case may be, the order is made.

Modification of public service pension schemes

72.—(1) The appropriate authority may make such provision for the modification of a public service pension scheme as could be made in respect of a scheme, other than a public service pension scheme, by an order of the Authority under Article 69(1)(b).

(2) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(3) The powers of the appropriate authority under this Article are exercisable by means of an order—

- (a) directly modifying the scheme (without regard, in the case of a scheme contained in or made under powers conferred by an enactment, to the terms of the enactment or any of its restrictions), or
- (b) modifying an enactment under which the scheme was made or by virtue of which it has effect.

(4) Any such order may adapt, amend or repeal any such enactment as is referred to in paragraph (3)(a) or (b) as the appropriate authority thinks appropriate.

Winding up

Preferential liabilities on winding up

73.—(1) This Article applies, where a salary related occupational pension scheme to which Article 56 applies is being wound up, to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities in respect of pensions and other benefits (including increases in pensions).

(2) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in paragraph (3) and, if the assets are insufficient to satisfy those amounts in full, then—

- (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier sub-paragraphs of paragraph (3) before the amounts of the liabilities mentioned in later sub-paragraphs, and
- (b) where the amounts of the liabilities mentioned in one of those sub-paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.

(3) The liabilities referred to in paragraph (2) are—

- (a) any liability for pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions,
- (b) where a person’s entitlement to payment of pension or other benefits has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death (but excluding increases to pensions),

(c) any liability for—

- (i) pensions or other benefits which have accrued to or in respect of any members of the scheme (but excluding increases to pensions), or
- (ii) (in respect of members with less than two years pensionable service) the return of contributions,

(d) any liability for increases to pensions referred to in sub-paragraphs (b) and (c);

and, for the purposes of paragraph (2), the amounts of the liabilities mentioned in sub-paragraphs (b) to (d) are to be taken to be the amounts calculated and verified in the prescribed manner.

(4) To the extent that any liabilities, as calculated in accordance with the rules of the scheme, have not been satisfied under paragraph (2), any remaining assets of the scheme must then be applied towards satisfying those liabilities (as so calculated) in the order provided for in the rules of the scheme.

(5) If the scheme confers power on any person other than the trustees or managers to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions), it cannot be exercised by that person but may be exercised instead by the trustees or managers.

(6) If this Article is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

(7) Regulations may modify paragraph (3).

(8) This Article does not apply to an occupational pension scheme falling within a prescribed class or description.

(9) This Article has effect with prescribed modifications in cases where part of a salary related occupational pension scheme to which Article 56 applies is being wound up.

Discharge of liabilities by insurance, etc.

74.—(1) This Article applies where a salary related occupational pension scheme to which Article 56 applies, other than a scheme falling within a prescribed class or description, is being wound up.

(2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits (including increases in pensions) is to be treated as discharged (to the extent that it would not be so treated apart from this Article) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in paragraph (3).

(3) The ways referred to in paragraph (2) are—

- (a) by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,
- (b) by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights,
- (c) by purchasing one or more annuities which satisfy prescribed requirements from one or more insurance companies, being companies willing to accept payment in respect of the member from the trustees or managers,
- (d) by subscribing to other pension arrangements which satisfy prescribed requirements.

(4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the rules of the scheme, in respect of pensions and other benefits (including

increases in pensions), the reference in paragraph (2) to providing for the discharge of any liability in one or more of the ways mentioned in paragraph (3) is to applying any amount available, in accordance with Article 73, in one or more of those ways.

- (5) Regulations may provide for this Article—
- (a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations, or
 - (b) to have effect with prescribed modifications in relation to schemes falling within a prescribed class or description.

Deficiencies in the assets

75.—(1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

- (2) If in the case of an occupational pension scheme which is not a money purchase scheme—
- (a) a relevant insolvency event occurs in relation to the employer, and
 - (b) a debt due from the employer under paragraph (1) has not been discharged at the time that event occurs,

the debt in question shall be taken, for the purposes of the law relating to winding up or bankruptcy as it applies in relation to the employer, to arise immediately before that time.

- (3) In this Article, “the applicable time” means—
- (a) if the scheme is being wound up before a relevant insolvency event occurs in relation to the employer, any time when it is being wound up before such an event occurs, and
 - (b) otherwise, immediately before the relevant insolvency event occurs.

(4) For the purposes of this Article a relevant insolvency event occurs in relation to the employer—

- (a) where the employer is a company, when it goes into liquidation, within the meaning of Article 6(2) of the Insolvency (Northern Ireland) Order 1989⁽⁴²⁾, or
- (b) where the employer is an individual, at the commencement of his bankruptcy, within the meaning of Article 252 of that Order.

(5) For the purposes of paragraph (1), the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.

(6) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.

(7) This Article does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme’s assets.

(8) A debt due by virtue only of this Article shall not be regarded as a preferential debt for the purposes of the Insolvency (Northern Ireland) Order 1989⁽⁴³⁾.

(9) This Article does not apply to an occupational pension scheme falling within a prescribed class or description.

- (10) Regulations may modify this Article as it applies in prescribed circumstances.

⁽⁴²⁾ 1989 NI 19.

⁽⁴³⁾ 1989 NI 19.

Excess assets on winding up

- 76.—(1) This Article applies to a trust scheme in any circumstances if—
- (a) (a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988⁽⁴⁴⁾,
 - (b) the scheme is being wound up, and
 - (c) in those circumstances, power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.
- (2) The power referred to in paragraph (1)(c) cannot be exercised unless the requirements of paragraphs (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.
- (3) The requirements of this paragraph are that—
- (a) the liabilities of the scheme have been fully discharged,
 - (b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
 - (c) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
 - (d) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (4) The requirements of this paragraph are that the Authority are of the opinion that—
- (a) any requirements prescribed by virtue of paragraph (2) are satisfied, and
 - (b) the requirements of paragraph (3) are satisfied.
- (5) In paragraph (3)—
- (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
 - (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).
- (6) If, where this Article applies to any trust scheme, the trustees purport to exercise the power referred to in paragraph (1)(c) without complying with the requirements of this Article, Articles 3 and 10 apply to any of them who have failed to take all such steps as are reasonable to secure compliance.
- (7) If, where this Article applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in paragraph (1)(c) without complying with the requirements of this Article, Article 10 applies to him.
- (8) Regulations may provide that, in prescribed circumstances, this Article does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

Excess assets remaining after winding up: power to distribute

- 77.—(1) This Article applies to a trust scheme in any circumstances if—
- (a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988⁽⁴⁵⁾,

⁽⁴⁴⁾ 1988 c. 1.

⁽⁴⁵⁾ 1988 c. 1.

- (b) the scheme is being wound up,
 - (c) the liabilities of the scheme have been fully discharged,
 - (d) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
 - (e) any assets remain undistributed, and
 - (f) the scheme prohibits the distribution of assets to the employer in those circumstances.
- (2) The annual rates of the pensions under the scheme which commence or have commenced must be increased by the appropriate percentage, so far as the value of the undistributed assets allows.
- (3) In paragraph (2)—
- (a) “annual rate” and “appropriate percentage” have the same meaning as in Article 54, and
 - (b) “pension” does not include—
 - (i) any guaranteed minimum pension (as defined in section 4(2) of the Pension Schemes Act) or any increase in such a pension under section 105 of that Act, or
 - (ii) any money purchase benefit (as defined in section 176(1) of that Act).
- (4) Where any assets remain undistributed after the discharge of the trustees' duty under paragraph (2)—
- (a) the trustees must use those assets for the purpose of providing additional benefits or increasing the value of any benefits, but subject to prescribed limits, and
 - (b) the trustees may then distribute those assets (so far as undistributed) to the employer.
- (5) If, where this Article applies to a trust scheme, the requirements of this Article are not complied with, Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (6) Regulations may modify this Article as it applies in prescribed circumstances.

Decisions of Compensation Board

Review of Compensation Board’s decisions

- 78.**—(1) Subject to paragraphs (2) to (4), any determination by the Compensation Board of a question which it is within their functions to determine shall be final.
- (2) The Compensation Board may on the application of a person appearing to them to be interested—
- (a) at any time review any such determination of theirs as is mentioned in paragraph (1) (including a determination given by them on a previous review), if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact or was erroneous in point of law, and
 - (b) at any time within a period of three months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.
- (3) The Compensation Board’s powers on a review under this Article include power—
- (a) to vary or revoke any determination previously made,
 - (b) to substitute a different determination, and

- (c) generally to deal with the matters arising on the review as if they had arisen on the original determination;

and also include power to make savings and transitional provisions.

(4) Nothing in section 80(4) of the Pensions Act 1995(46) shall be taken to prevent a review under this Article being entered upon by the Compensation Board without an application being made.

The compensation provisions

Cases where compensation provisions apply

79.—(1) Subject to paragraph (2), this Article applies to an application for compensation under Article 80 in respect of an occupational pension scheme if all the following conditions are met—

- (a) the scheme is a trust scheme,
- (b) the employer is insolvent,
- (c) the value of the assets of the scheme has been reduced, and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
- (d) in the case of a salary related trust scheme, immediately before the date of the application the value of the assets of the scheme is less than 90 per cent. of the amount of the liabilities of the scheme, and
- (e) it is reasonable in all the circumstances that the members of the scheme should be assisted by the Compensation Board paying to the trustees of the scheme, out of funds for the time being held by them, an amount determined in accordance with the compensation provisions.

(2) Paragraph (1) does not apply in respect of a trust scheme falling within a prescribed class or description; and paragraph (1)(c) applies only to reductions in value since the appointed day.

(3) In this Part, “the compensation provisions” means the provisions of this Article and Articles 80 to 83; and in the compensation provisions as they relate to a trust scheme—

- (a) “the application date” means the date of the application for compensation under Article 80,
- (b) “the appointed day” means the day appointed under Article 1 for the commencement of this Article,
- (c) “the insolvency date” means the date on which the employer became insolvent,
- (d) “the settlement date” means the date determined by the Compensation Board, after consulting the trustees, to be the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time,
- (e) “the shortfall at the application date” means the amount of the reduction falling within paragraph (1)(c) or (if there was more than one such reduction) the aggregate of the reductions, being the amount or aggregate immediately before the application date,
- (f) “recovery of value” means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Compensation Board) by the trustees of the scheme in respect of any act or omission—
 - (i) which there are reasonable grounds for believing constituted a prescribed offence, and
 - (ii) to which any reduction in value falling within paragraph (1)(c) was attributable.

(4) It is for the Compensation Board to determine whether anything received by the trustees of the scheme is to be treated as a payment received for any such act or omission as is referred to in paragraph (3)(f); and in this Article “payment” includes any money or money’s worth.

(5) Where this Article applies to an application for compensation under Article 80, the trustees must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.

(6) If paragraph (5) is not complied with, Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(7) Article 56(3) and (4) applies for the purposes of the compensation provisions as it applies for the purposes of Articles 56 to 61.

(8) Section 119 of the Pension Schemes Act (meaning of insolvency) applies for the purposes of the compensation provisions as it applies for the purposes of Chapter II of Part VII of that Act (unpaid scheme contributions).

Applications for payments

80.—(1) Compensation may be paid under Article 81 only on an application to which Article 79 applies made within the qualifying period by a prescribed person.

(2) An application under this Article must be made in the manner, and give the information, required by the Compensation Board.

(3) For the purposes of this Article the “qualifying period”, subject to paragraph (5), is the period expiring with the period of twelve months mentioned in paragraph (4).

(4) The period of twelve months referred to in paragraph (3) is that beginning with the later of the following times—

- (a) the insolvency date,
- (b) when the auditor or actuary of the scheme, or the trustees, knew or ought reasonably to have known that a reduction of value falling within Article 79(1)(c) had occurred,

being, in each case, a time after the appointed day.

(5) The Compensation Board may extend, or further extend, the qualifying period.

Amount of compensation

81.—(1) Where, in the opinion of the Compensation Board, Article 79 applies to an application for compensation under Article 80 in respect of a trust scheme, and the Board have determined the settlement date, the Board may make a payment or payments to the trustees of the scheme in accordance with this Article.

(2) The amount of any payment must be determined in accordance with regulations and must take account of any payment already made under Article 82, and the Compensation Board must give written notice of their determination to the person who made the application under Article 80 and (if different) to the trustees.

(3) The amount of the payment or (if there is more than one) the aggregate—

- (a) must not exceed 90 per cent. of the shortfall at the application date, together with interest at the prescribed rate for the prescribed period on the shortfall or (if the shortfall comprises more than one reduction in value) on each of the reductions, and also,
- (b) in the case of a salary related scheme, must not exceed the amount which, on the settlement date, is required to be paid to the trustees of the scheme in order to secure that the value on that date of the assets of the scheme is equal to 90 per cent. of the amount on that date of the liabilities of the scheme.

Payments made in anticipation

82.—(1) The Compensation Board may, on an application for compensation under Article 80, make a payment or payments to the trustees of a trust scheme where in their opinion—

- (a) Article 79 applies, or may apply, to the application, and
- (b) the trustees would not otherwise be able to meet liabilities falling within a prescribed class,

but the Board have not determined the settlement date.

(2) Amounts payable under this Article must be determined in accordance with regulations.

(3) Where any payment is made under this Article, the Compensation Board may, except in prescribed circumstances—

- (a) if they subsequently form the opinion that Article 79 does not apply to the application for compensation in respect of the scheme, or
- (b) if they subsequently form the opinion that the amount of the payment was excessive,

recover so much of the payment as they consider appropriate.

Surplus funds

83.—(1) Section 85 of the Pensions Act 1995⁽⁴⁷⁾ (surplus funds) shall extend to Northern Ireland.

(2) In subsection (1) of that section (distribution of funds surplus to the Compensation Board's requirements for the purposes of Part I of that Act), after "Part" insert "or any corresponding provisions in force in Northern Ireland".

Modification of compensation provisions

84. Regulations may modify the compensation provisions in their application to trust schemes falling within a prescribed class or description.

Money purchase schemes

Schedules of payments to money purchase schemes

85.—(1) This Article applies to an occupational pension scheme which is a money purchase scheme, other than one falling within a prescribed class or description.

(2) The trustees or managers of every occupational pension scheme to which this Article applies must secure that there is prepared, maintained and revised a schedule (referred to in this Article and Article 86 as a "payment schedule") showing—

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme,
- (b) such other amounts payable towards the scheme as may be prescribed, and
- (c) the dates on or before which payments of such contributions or other amounts are to be made (referred to in those Articles as "due dates").

(3) The payment schedule for a scheme must satisfy prescribed requirements.

(4) The matters shown in the payment schedule for a scheme—

- (a) to the extent that the scheme makes provision for their determination, must be so determined, and

(47) 1995 c. 26.

- (b) otherwise—
 - (i) must be matters previously agreed between the employer and the trustees or managers of the scheme, or
 - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustees or managers of the scheme.
- (5) Where in the case of a scheme this Article is not complied with—
 - (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
 - (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Schedules of payments to money purchase schemes: supplementary

86.—(1) Except in prescribed circumstances, the trustees or managers of 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 and to the members of the scheme.

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this paragraph, be treated as such a debt.

(3) Where any amounts payable in accordance with the payment schedule by or on behalf of the employer have not been paid on or before the due date, Article 10 applies to the employer.

(4) If, in the case of an occupational pension scheme to which Article 85 applies, paragraph (1) is not complied with—

- (a) Article 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and
- (b) Article 10 applies to any trustee or manager who has failed to take all such steps.

Application of further provisions to money purchase schemes

87.—(1) In the case of money purchase schemes falling within a prescribed class or description, regulations may—

- (a) provide for any of the provisions of Articles 56 to 60 to apply, or apply with prescribed modifications (in spite of anything in those Articles), and
- (b) provide for any of the provisions of Articles 85 and 86 to apply with prescribed modifications or not to apply,

to such extent as may be prescribed.

(2) Regulations may provide for any of the provisions of Article 75 to apply, or apply with prescribed modifications, to money purchase schemes to such extent as may be prescribed (in spite of anything in that Article), and the power conferred by this paragraph includes power to apply Article 75 in circumstances other than those in which the scheme is being wound up or a relevant insolvency event occurs (within the meaning of that Article).

Unpaid contributions in cases of insolvency

88. In section 120 of the Pension Schemes Act (duty of Department to pay unpaid contributions to schemes), after subsection (3) insert—

“(3A) Where the scheme in question is a money purchase scheme, the sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection.”.

and, accordingly, at the beginning of subsection (3) insert “Subject to subsection (3A),”.

Assignment, forfeiture, bankruptcy, etc.,

Inalienability of occupational pension

89.—(1) Subject to paragraph (5), where a person is entitled, or has an accrued right, to a pension under an occupational pension scheme—

- (a) the entitlement or right cannot be assigned, commuted or surrendered,
- (b) the entitlement or right cannot be charged or a lien exercised in respect of it, and
- (c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things is unenforceable.

(2) Where by virtue of this Article a person’s entitlement, or accrued right, to a pension under an occupational pension scheme cannot, apart from paragraph (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.

(3) Where a bankruptcy order is made against a person, any entitlement or right of his which by virtue of this Article cannot, apart from paragraph (5), be assigned is excluded from his estate for the purposes of Parts VIII to X of the Insolvency (Northern Ireland) Order 1989⁽⁴⁸⁾.

(4) Paragraph (2) does not prevent the making of—

- (a) an attachment of earnings order under the Judgments Enforcement (Northern Ireland) Order 1981⁽⁴⁹⁾, or
- (b) an income payments order under the Insolvency (Northern Ireland) Order 1989⁽⁵⁰⁾.

(5) In the case of a person (“the person in question”) who is entitled, or has an accrued right, to a pension under an occupational pension scheme, paragraph (1) does not apply to any of the following, or any agreement to effect any of the following—

- (a) an assignment in favour of the person in question’s widow, widower or dependant,
- (b) a surrender, at the option of the person in question, for the purpose of—
 - (i) providing benefits for that person’s widow, widower or dependant, or
 - (ii) acquiring for the person in question entitlement to further benefits under the scheme,
- (c) a commutation—
 - (i) of the person in question’s benefit on or after retirement or in exceptional circumstances of serious ill health,
 - (ii) in prescribed circumstances, of any benefit for that person’s widow, widower or dependant, or
 - (iii) in other prescribed circumstances,
- (d) subject to paragraph (6), a charge or lien on, or set-off against, the person in question’s entitlement, or accrued right, to pension (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain

⁽⁴⁸⁾ 1989 NI 19.

⁽⁴⁹⁾ 1981 NI 6.

⁽⁵⁰⁾ 1989 NI 19.

the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him,

- (e) subject to paragraph (6), except in prescribed circumstances a charge or lien on, or set-off against, the person in question's entitlement, or accrued right, to pension, for the purpose of discharging some monetary obligation due from the person in question to the scheme and—

- (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
- (ii) in the case of a trust scheme of which the person in question is a trustee, arising out of a breach of trust by him.

- (6) Where a charge, lien or set-off is exercisable by virtue of paragraph (5)(d) or (e)—

- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question's entitlement or accrued right, and
- (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(7) This Article is subject to section 155 of the Pension Schemes Act (inalienability of guaranteed minimum pension and protected rights payments).

Forfeiture, etc.

90.—(1) Subject to paragraphs (2) to (6) and Article 91, an entitlement, or accrued right, to a pension under an occupational pension scheme cannot be forfeited.

- (2) Paragraph (1) does not prevent forfeiture by reference to—

- (a) a transaction or purported transaction which under Article 89 is of no effect, or
- (b) the bankruptcy of the person entitled to the pension or whose right to it has accrued,

whether or not that event occurred before or after the pension became payable.

(3) Where such forfeiture as is mentioned in paragraph (2) occurs, any pension which was, or would but for the forfeiture have become, payable may, if the trustees or managers of the scheme so determine, be paid to all or any of the following—

- (a) the member of the scheme to or in respect of whom the pension was, or would have become, payable,
- (b) the spouse, widow or widower of the member,
- (c) any dependant of the member, and
- (d) any other person falling within a prescribed class.

(4) Paragraph (1) does not prevent forfeiture by reference to the person entitled to the pension, or whose right to it has accrued, having been convicted of one or more offences—

- (a) which are committed before the pension becomes payable, and
- (b) which are—
 - (i) offences of treason,
 - (ii) offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or

(iii) prescribed offences.

(5) Paragraph (1) does not prevent forfeiture by reference to a failure by any person to make a claim for pension—

(a) where the forfeiture is in reliance on any enactment relating to the limitation of actions, or

(b) where the claim is not made within six years of the date on which the pension becomes due.

(6) Paragraph (1) does not prevent forfeiture in prescribed circumstances.

(7) In this Article and Article 91, references to forfeiture include any manner of deprivation or suspension.

Forfeiture by reference to obligation to employer

91.—(1) Subject to paragraph (2), Article 90(1) does not prevent forfeiture of a person's entitlement, or accrued right, to a pension under an occupational pension scheme by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person.

(2) A person's entitlement or accrued right to a pension may be forfeited by reason of paragraph (1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person's entitlement or accrued right to a pension under the scheme.

(3) Such forfeiture as is mentioned in paragraph (1) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator.

(4) Where a person's entitlement or accrued right to a pension is forfeited by reason of paragraph (1), the person must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits under the scheme.

(5) Where such forfeiture as is mentioned in paragraph (1) occurs, an amount not exceeding the amount forfeited may, if the trustees or managers of the scheme so determine, be paid to the employer.

Articles 89 to 91: supplementary

92.—(1) Regulations may—

(a) modify Articles 89 to 91 in their application to public service pension schemes or to other schemes falling within a prescribed class or description, or

(b) provide that those Articles do not apply in relation to schemes falling within a prescribed class or description.

(2) In those Articles, "pension" in relation to an occupational pension scheme, includes any benefit under the scheme and any part of a pension and any payment by way of pension.

Pension rights of individuals adjudged bankrupt, etc.

93. After Article 315 of the Insolvency (Northern Ireland) Order 1989(51) insert—

"Recovery of excessive pension contributions

315A.—(1) Where an individual is adjudged bankrupt and—

- (a) he has during the relevant period made contributions as a member of an occupational pension scheme, or
- (b) contributions have during the relevant period been made to such a scheme on his behalf,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If, on an application for an order under this Article, the High Court is satisfied that the making of any of the contributions ("the excessive contributions") has unfairly prejudiced the individual's creditors, the Court may make such order as it thinks fit for restoring the position to what it would have been if the excessive contributions had not been made.

(3) The High Court shall, in determining whether it is satisfied under paragraph (2), consider in particular—

- (a) whether any of the contributions were made by or on behalf of the individual for the purpose of putting assets beyond the reach of his creditors or any of them.
- (b) whether the total amount of contributions made by or on behalf of the individual (including contributions made to any other occupational pension scheme) during the relevant period was excessive in view of the individual's circumstances at the time when they were made, and
- (c) whether the level of benefits under the scheme, together with benefits under any other occupational pension scheme, to which the individual is entitled, or is likely to become entitled, is excessive in all the circumstances of the case.

Orders under Article 315A

315B.—(1) Without prejudice to the generality of Article 315A(2), an order under that Article may include provision—

- (a) requiring the trustees or managers of the scheme to pay an amount to the individual's trustee in bankruptcy,
- (b) reducing the amount of any benefit to which the individual (or his spouse, widow, widower or dependant) is entitled, or to which he has an accrued right, under the scheme,
- (c) reducing the amount of any benefit to which, by virtue of any assignment, commutation or surrender of the individual's entitlement (or that of his spouse, widow, widower or dependant) or accrued right under the scheme, another person is entitled or has an accrued right,
- (d) otherwise adjusting the liabilities of the scheme in respect of any such person as is mentioned in sub-paragraph (b) or (c).

(2) The maximum amount by which an order under Article 315A may require the assets of an occupational pension scheme to be reduced is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value (determined in the prescribed manner) of the assets of the scheme which represent contributions made by or on behalf of the individual.

(3) Subject to paragraphs (4) and (5), an order under Article 315A must reduce the amount of the liabilities of the scheme by an amount equal to the amount of the reduction made in the value of the assets of the scheme.

(4) Paragraph (3) does not apply where the individual's entitlement or accrued right to benefits under the scheme which he acquired by virtue of the excessive contributions (his "excessive entitlement") has been forfeited.

(5) Where part of the individual's excessive entitlement has been forfeited, the amount of the reduction in the liabilities of the scheme required by paragraph (3) is the value of the remaining part of his excessive entitlement.

(6) An order under Article 315A in respect of an occupational pension scheme shall be binding on the trustees or managers of the scheme.

Orders under Article 315A: supplementary

315C.—(1) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment, or orders being made restraining a person from receiving anything which he is prevented from assigning, and make provision in relation to a person's pension on bankruptcy),
- (b) any provision of any enactment (whether passed or made before or after the making of the Pensions (Northern Ireland) Order 1995) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the scheme in question corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 315A.

(2) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(3) Where contributions have been made during the relevant period to any occupational pension scheme and the entitlement or accrued right to benefits acquired thereby has been transferred to a second or subsequent occupational pension scheme ("the transferee scheme"), Articles 315A and 315B and this Article shall apply as though the contributions had been made to the transferee scheme.

(4) For the purposes of this Article and Articles 315A and 315B—

- (a) contributions are made during the relevant period if—
 - (i) they are made by or on behalf of the individual at any time during the period of 5 years ending with the day of presentation of the bankruptcy petition on which the individual is adjudged bankrupt, or
 - (ii) they are made on behalf of the individual at any time during the period between the presentation of the petition and the commencement of the bankruptcy, or

and

- (b) the accrued rights of an individual under an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme.

(5) In this Article and Articles 315A and 315B—

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993, and

"trustees or managers", in relation to an occupational pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme".

*Questioning the decisions of the Authority***Review of decisions**

94.—(1) Subject to the following provisions of this Article and to Article 95, any determination by the Authority of a question which it is within their functions to determine shall be final.

(2) The Authority must, on the application of any person (“the applicant”) at any time within the prescribed period, review any determination of theirs—

- (a) to make an order against the applicant under Article 3,
- (b) to require the applicant to pay a penalty under Article 10 or section 164(4) of the Pension Schemes Act, or
- (c) to disqualify the applicant for being a trustee of any trust scheme under Article 29(3) or (4).

(3) The Authority may on the application of a person appearing to them to be interested—

- (a) at any time review any other such determination of theirs as is mentioned in paragraph (1) (including a determination given by them on a previous review), if they are satisfied that there has been a relevant change of circumstances since the determination was made, or that the determination was made in ignorance of a material fact or based on a mistake as to a material fact or was erroneous in point of law,
- (b) at any time within a period of six months from the date of the determination, or within such longer period as they may allow in any particular case, review such a determination on any ground.

(4) The Authority’s powers on a review under paragraph (2) or (3) include power—

- (a) to vary or revoke any determination or order previously made,
- (b) to substitute a different determination or order, and
- (c) generally to deal with the matters arising on the review as if they had arisen on the original determination;

and also include power to make savings and transitional provisions.

(5) Subsection (5) of section 96 of the Pensions Act 1995⁽⁵²⁾ (regulations about procedure on reviews of decisions of the Authority) shall extend to Northern Ireland, but nothing in that subsection shall be taken to prevent a review under paragraph (2) or (3) being entered upon by the Authority without an application being made.

References and appeals from the Authority

95.—(1) Any question of law arising in connection with—

- (a) any matter arising under this Part for determination, or
- (b) any matter arising on an application to the Authority for a review of a determination, or on a review by them entered upon without an application,

may, if the Authority think fit, be referred for decision to the court.

(2) If the Authority determine in accordance with paragraph (1) to refer any question of law to the court, they must give notice in writing of their intention to do so—

- (a) in the case where the question arises on an application made to the Authority, to the applicant, and
- (b) in any case to such persons as appear to them to be concerned with the question.

(3) Any person who is aggrieved—

(52) 1995 c. 26.

- (a) by a determination of the Authority given on a review under Article 94, or
 - (b) by the refusal of the Authority to review a determination,
- where the determination involves a question of law and that question is not referred by the Authority to the court under paragraph (1), may on that question appeal from the determination to the court.
- (4) The Authority are entitled to appear and be heard on any reference or appeal under this Article.
 - (5) Rules of court must include provision for regulating references and appeals to the court under this Article and for limiting the time within which such appeals may be brought.
 - (6) The decision of the court on a reference or appeal under this Article is final, and this paragraph overrides any other enactment.
 - (7) On any such reference or appeal the court may order the Authority to pay the costs of any other person, whether or not the decision is in that other person's favour and whether or not the Authority appear on the reference or appeal.
 - (8) In this Article, "the court" means the High Court.

Gathering information: the Authority

Provision of information: the Authority

- 96.**—(1) In the case of any occupational pension scheme—
- (a) a trustee, manager, professional adviser or employer, and
 - (b) any other person appearing to the Authority to be a person who holds, or is likely to hold, information relevant to the discharge of the Authority's functions,
- must, if required to do so by them by notice in writing, produce any document relevant to the discharge of those functions.
- (2) To comply with paragraph (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.
 - (3) In this Article and Articles 97 to 99, "document" includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

Inspection of premises: the Authority

- 97.**—(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the regulatory provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection and, while there—
- (a) may make such examination and inquiry as may be necessary for such purposes,
 - (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with those provisions for his inspection, and
 - (c) may, as to any matter relevant to compliance with those provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.
- (2) In paragraph (1), "the regulatory provisions" means provisions made by or under—
 - (a) the provisions of this Part, other than the following provisions: Articles 51 to 54, 62 to 65 and 108 to 110,
 - (b) the following provisions of the Pension Schemes Act: section 2 (registration), Chapter IV of Part IV (transfer values), section 109 (information) or section 170 (levy), or

(c) any correspondence provisions in force in Great Britain.

(3) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that—

- (a) members of the scheme are employed there,
- (b) documents relevant to the administration of the scheme are being kept there, or
- (c) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(4) An inspector applying for admission to any premises for the purposes of this Article must, if so required, produce his certificate of appointment.

(5) In this Part, “inspector” means a person appointed by the Authority as an inspector.

Warrants

98.—(1) A justice of the peace may issue a warrant under this Article if satisfied on complaint on oath given by or on behalf of the Authority that there are reasonable grounds for believing—

- (a) that there are on any premises documents whose production has been required under Article 96(1) or 97(1)(b), or any corresponding provisions in force in Great Britain, and which have not been produced in compliance with the requirement.
- (b) that there are on any premises documents whose production could be so required and that if their production were so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed, or
- (c) that—
 - (i) an offence has been committed under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them,
 - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme
 - (iii) a person is liable to pay a penalty under Article 10 or section 164(4) of the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them, or
 - (iv) a person is liable to be prohibited from being a trustee of a trust scheme under Article 3,

and that there are on any premises documents which relate to whether the offence has been committed, whether the act will be done, or whether the person is so liable, and whose production could be required under Article 96(1) or 97(1)(b), or any corresponding provisions in force in Great Britain.

(2) A warrant under this Article authorises an inspector—

- (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose,
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1) or to take in relation to such documents any other steps which appear necessary for preserving them or preventing interference with them,
- (c) to take copies of any such documents, or

- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (3) A warrant under this Article continues in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Any documents of which possession is taken by virtue of a warrant under this Article may be retained—
 - (a) for a period of six months, or
 - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any offence under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them, until the conclusion of those proceedings.

Information and inspection: penalties

99.—(1) A person who, without reasonable excuse, neglects or refuses to produce a document when required to do so under Article 96 is guilty of an offence.

- (2) A person who, without reasonable excuse—
 - (a) intentionally delays or obstructs an inspector exercising any power under Article 97,
 - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that Article, or
 - (c) neglects or refuses to answer a question or to provide information when so required,is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) An offence under paragraph (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.

(5) Any person who knowingly or recklessly provides the Authority with information which is false or misleading in a material particular is guilty of an offence if the information—

- (a) is provided in purported compliance with a requirement under Article 97, or
- (b) is provided otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging their functions under this Order.

(6) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under Article 96 or 97 to produce to the Authority is guilty of an offence.

(7) Any person guilty of an offence under paragraph (5) or (6) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to imprisonment or a fine, or both.

Savings for certain privileges, etc.

100.—(1) Nothing in Articles 96 to 99 requires a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

(2) Nothing in those Articles requires any person to produce any document to the Authority, or to any person acting on their behalf, if he would be entitled to refuse to produce the document in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

(3) Where any person claims a lien on a document, its production under Article 96 or 97 is without prejudice to the lien.

Publishing reports: the Authority

101.—(1) The Authority may, if they consider it appropriate to do so in any particular case, publish in such form and manner as they think fit a report of any investigation under this Part and of the result of that investigation.

(2) For the purposes of the law of defamation, the publication of any matter by the Authority is absolutely privileged.

Disclosure of information: the Authority

Restricted information

102.—(1) Except as provided by Articles 104 to 106, restricted information must not be disclosed by the Authority or by any person who receives the information directly or indirectly from them, except with the consent of the person to whom it relates and (if different) the person from whom the Authority obtained it.

(2) For the purposes of this Article and Articles 103 to 106, “restricted information” means any information obtained by the Authority in the exercise of their functions which relates to the business or other affairs of any person, except for information—

- (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
- (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this Article is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

Information supplied to the Authority by corresponding overseas authorities

103.—(1) Subject to paragraph (2), for the purposes of Article 102 “restricted information” includes information which has been supplied to the Authority for the purposes of their functions by an authority which exercises functions corresponding to the functions of the Authority in a country or territory outside the United Kingdom.

(2) Articles 104 to 106 do not apply to such information as is mentioned in paragraph (1), and such information must not be disclosed except—

- (a) as provided in Article 102,
- (b) for the purpose of enabling or assisting the Authority to discharge their functions, or
- (c) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or otherwise.

Disclosure for facilitating discharge of functions by the Authority

104.—(1) Article 102 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge their functions.

(2) If, in order to enable or assist the Authority properly to discharge any of their functions, the Authority consider it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill, Article 102 does not preclude the disclosure by the Authority to that person of such information as appears to the Authority to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

Disclosure for facilitating discharge of functions by other supervisory authorities

105.—(1) Article 102 above does not preclude the disclosure by the Authority of restricted information to any person specified in the first column of the following Table if the Authority consider that the disclosure would enable or assist that person to discharge the functions specified in relation to him in the second column of that Table.

TABLE

Persons	Functions
The Department	Functions under the Charities Act (Northern Ireland) 1964 ⁽⁵³⁾ or Part III of the Pension Schemes Act.
The Department of Economic Development.	Functions under Part XV of the Companies (Northern Ireland) Order 1986 ⁽⁵⁴⁾ , the Insolvency (Northern Ireland) Order 1989 ⁽⁵⁵⁾ or Part II of the Companies (No.2) (Northern Ireland) Order 1990 ⁽⁵⁶⁾ .
The Secretary of State.	Functions under the Insurance Companies Act 1982 ⁽⁵⁷⁾ , Part XIV of the Companies Act 1985 ⁽⁵⁸⁾ , the Insolvency Act 1986 ⁽⁵⁹⁾ , the Financial Services Act 1986 ⁽⁶⁰⁾ , Part III of the Companies Act 1989 ⁽⁶¹⁾ or Part III of the Pension Schemes Act 1993 ⁽⁶²⁾ .
The Treasury.	Functions under the Financial Services Act 1986.
The Bank of England.	Functions under the Banking Act 1987 ⁽⁶³⁾ or any of the functions.
The Charity Commissioners.	Functions under the Charities Act 1993 ⁽⁶⁴⁾ .

⁽⁵³⁾ 1964 c. 33 (N.I.).

⁽⁵⁴⁾ 1986 NI 6.

⁽⁵⁵⁾ 1989 NI 19.

⁽⁵⁶⁾ 1990 NI 10.

⁽⁵⁷⁾ 1982 c. 50.

⁽⁵⁸⁾ 1985 c. 6.

⁽⁵⁹⁾ 1986 c. 45.

⁽⁶⁰⁾ 1986 c. 60.

⁽⁶¹⁾ 1989 c. 40.

⁽⁶²⁾ 1993 c. 48.

⁽⁶³⁾ 1987 c. 22.

⁽⁶⁴⁾ 1993 c. 10.

Persons	Functions
The Lord Advocate.	Functions under Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (65) .
The Pensions Ombudsman and the Registrar of Occupational and Personal Pension Schemes.	Functions under the Pension Schemes Act or the Pension Schemes Act 1993.
The Compensation Board.	Functions under this Order or any corresponding enactment in force in Great Britain.
The Policyholders Protection Board.	Functions under the Policyholders Protection Act 1975 (66) .
The Deposit Protection Board.	Functions under the Banking Act 1987.
The Investor Protection Board.	Functions under the Building Societies Act 1986 (67) .
The Friendly Societies Commission.	Functions under the enactments relating to friendly societies.
The Building Societies Commission.	Functions under the Building Societies Act 1986.
The Commissioners of Inland Revenue or their officers.	Functions under the Taxes Act 1988 (68) or the Taxation of Chargeable Gains Act 1992 (69) .
The Official Receiver for Northern Ireland or the Official Receiver in England and Wales.	Functions under the enactments relating to insolvency.
An inspector appointed by the Department of Economic Development.	Functions under Part XV of the Companies (Northern Ireland) Order 1986 (70) .
A recognised professional body (within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989 (71)).	Functions in its capacity as such a body under that Order.
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 (72)).	Functions in its capacity as such a body under that Act.
An inspector appointed by the Secretary of State.	Functions under Part XIV of the Companies Act 1985 (73) or section 94 or 177 of the Financial Services Act 1986 (74) .
A person authorised to exercise powers under section 43A or 44 of the Insurance Companies Act 1982 (75) , section 447 of the Companies	Functions under those sections or that Article.

(65) 1990 c. 40.**(66)** 1975 c. 75.**(67)** 1986 c. 53.**(68)** 1988 c. 1.**(69)** 1992 c. 12.**(70)** 1986 NI 6.**(71)** 1989 NI 19.**(72)** 1986 c. 45.**(73)** 1985 c. 6.**(74)** 1986 c. 60.**(75)** 1982 c. 50.

Persons	Functions
Act 1985, Article 440 of the Companies (Northern Ireland) Order 1986, section 106 of the Financial Services Act 1986, or section 84 of the Companies Act 1989(76).	
A designated agency or transferee body or the competent authority (within the meaning of the Financial Services Act 1986).	Functions under the Financial Services Act 1986.
A recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house (within the meaning of the Financial Services Act 1986).	Functions in its capacity as an organisation, body, exchange or clearing house recognised under the Financial Services Act 1986.
A person administering a scheme for compensating investors under section 54 of the Financial Services Act 1986.	Functions under that section.

(2) The Department may after consultation with the Authority—

- (a) by order amend the Table in paragraph (1) by—
 - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
 - (ii) removing any person for the time being specified in the Table, or
 - (iii) altering the functions for the time being specified in the Table in relation to any person, or
- (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure is permitted in the case of any person for the time being specified in the Table.

Other permitted disclosures

106.—(1) Article 102 does not preclude the disclosure by the Authority of restricted information to—

- (a) the Department, or
- (b) the Secretary of State,

if the disclosure appears to the Authority to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.

(2) Article 102 does not preclude the disclosure of restricted information—

- (a) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or otherwise,
- (b) in connection with any other proceedings arising out of—
 - (i) this Order, or
 - (ii) the Pension Schemes Act,
or any corresponding enactment in force in Great Britain or any proceedings for breach of trust in relation to an occupational pension scheme,

- (c) with a view to the institution of, or otherwise for the purposes of, proceedings under Article 10 or 11 of the Companies (Northern Ireland) Order 1989⁽⁷⁷⁾ or section 7 or 8 of the Company Directors Disqualification Act 1986⁽⁷⁸⁾,
- (d) in connection with any proceedings under the Insolvency (Northern Ireland) Order 1989⁽⁷⁹⁾ or the Insolvency Act 1986⁽⁸⁰⁾ which the Authority have instituted or in which they have a right to be heard,
- (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary or an accountant,
- (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the discharge by a public servant of his duties,
- (g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Authority under this Order, or
- (h) in pursuance of a Community obligation.

(3) Article 102 does not preclude the disclosure by the Authority of information to the Director of Public Prosecutions for Northern Ireland, the Director of Public Prosecutions, the Lord Advocate, a procurator fiscal or a constable.

(4) Article 102 does not preclude the disclosure by any person mentioned in paragraph (1) or (3) of information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Authority.

(5) Article 102 does not preclude the disclosure by any person specified in the first column of the Table in Article 105(1) of information obtained by the person by virtue of Article 102, if the disclosure is made—

- (a) with the consent of the Authority, and
- (b) for the purpose of enabling or assisting the person to discharge any functions specified in relation to him in the second column of the Table.

(6) The Authority must, before deciding whether to give their consent to such a disclosure as is mentioned in paragraph (4) or (5), take account of any representations made to them by the person seeking to make the disclosure as to the desirability of the disclosure or the necessity for it.

(7) In paragraph (2), “public servant” means an officer or servant of the Crown or of any prescribed authority.

Disclosure of information by the Inland Revenue

107.—(1) This Article applies to information held by any person in the exercise of tax functions about any matter relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this Article referred to as “tax information”).

(2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989⁽⁸¹⁾ or otherwise shall prevent the disclosure of tax information to the Authority for the purpose of enabling or assisting the Authority to discharge their functions.

(3) Where tax information is disclosed to the Authority by virtue of paragraph (2), it shall, subject to paragraph (4), be treated for the purposes of Article 102 as restricted information.

⁽⁷⁷⁾ 1989 NI 18.

⁽⁷⁸⁾ 1986 c. 46.

⁽⁷⁹⁾ 1989 NI 19.

⁽⁸⁰⁾ 1986 c. 45.

⁽⁸¹⁾ 1989 c. 26

(4) Articles 104 to 106 do not apply to tax information and such information must not be disclosed except—

- (a) to, or in accordance with authority duly given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or
- (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them.

(5) In this Article, “tax functions” has the same meaning as in section 182 of the Finance Act 1989.

Gathering information: the Compensation Board

Provision of information: the Compensation Board

108.—(1) In the case of any trust scheme—

- (a) a trustee, professional adviser or employer, and
- (b) any other person appearing to the Compensation Board to be a person who holds, or is likely to hold, information relevant to the discharge of the Board’s functions,

must, if required to do so by the Board by notice in writing, produce any document relevant to the discharge of those functions.

(2) To comply with paragraph (1) the document must be produced in such a manner, at such a place and within such a period as may be specified in the notice.

(3) In this Article and Article 109, “document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

Information: penalties

109.—(1) A person who without reasonable excuse neglects or refuses to produce a document when required to do so under Article 108 is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.

(4) Any person who knowingly or recklessly provides the Compensation Board with information which is false or misleading in a material particular is guilty of an offence if the information is provided in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Board for the purpose of discharging their functions under this Order or any corresponding enactment in force in Great Britain.

(5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required under Article 108 to produce to the Compensation Board is guilty of an offence.

(6) Any person guilty of an offence under paragraph (4) or (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to imprisonment or a fine, or both.

Savings for certain privileges: the Compensation Board

110. Nothing in Article 108 or 109 requires a person—

- (a) to answer any question or give any information if to do so would incriminate that person or that person's spouse, or
- (b) to produce any document if he would be entitled to refuse to produce the document in any proceedings in any court on the grounds that it was the subject of legal professional privilege.

Publishing reports: the Compensation Board

111.—(1) The Compensation Board may, if they consider it appropriate to do so in any particular case, publish in such form and manner as they think fit a report of any investigation under this Part and of the result of that investigation.

(2) For the purposes of the law of defamation, the publication of any matter by the Compensation Board shall be absolutely privileged.

Disclosure of information

112.—(1) A person to whom this Article applies may disclose to the Compensation Board any information received by him under or for the purposes of any enactment if the disclosure is made by him for the purpose of enabling or assisting the Board to discharge any of their functions.

(2) In the case of information which a person holds or has held in the exercise of functions—

- (a) of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or the officers of either of them, and
- (b) relating to any tax within the general responsibility of the Commissioners,

paragraph (1) does not authorise any disclosure unless made in accordance with an authorisation given by the Commissioners.

(3) Subject to paragraph (4), the Compensation Board may disclose to a person to whom this Article applies any information received by them under or for the purposes of any enactment, where the disclosure is made by the Board—

- (a) for any purpose connected with the discharge of their functions, or
- (b) for the purpose of enabling or assisting that person to discharge any of his functions.

(4) Where any information disclosed to the Compensation Board under this Article is so disclosed subject to any express restriction on the disclosure of the information by the Board, the Board's power of disclosure under paragraph (3) is, in relation to the information, exercisable by them subject to any such restriction.

(5) In the case of any such information as is mentioned in paragraph (2), paragraph (3) does not authorise any disclosure of that information by the Compensation Board unless made—

- (a) to, or in accordance with authority duly given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise or
- (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings under this Order or the Pension Schemes Act, or any enactment in force in Great Britain corresponding to either of them.

(6) Nothing in this Article shall be construed as affecting any power of disclosure exercisable apart from this Article.

(7) This Article applies to the following (and, accordingly, in this Article "person" shall be construed as including any of them)—

- (a) any government department,
- (b) the Director of Public Prosecutions for Northern Ireland,
- (c) the Director of Public Prosecutions,
- (d) the Lord Advocate,
- (e) any constable,
- (f) any designated agency or recognised self-regulating organisation (within the meaning of the Financial Services Act 1986⁽⁸²⁾),
- (g) a recognised professional body (within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989⁽⁸³⁾ or section 391 of the Insolvency Act 1986⁽⁸⁴⁾),
- (h) the Pensions Ombudsman,
- (i) the Policyholders Protection Board,
- (j) the Authority,
- (k) the Registrar of Occupational and Personal Pension Schemes,
- (l) the Official Receiver for Northern Ireland or the Official Receiver in England and Wales, and
- (m) such other persons as may be prescribed.

General

Breach of regulations

113.—(1) Regulations made by virtue of any provisions of this Part may provide for the contravention of any provision contained in any such regulations to be an offence under this Part and for the recovery on summary conviction for any such offence of a fine not exceeding level 5 on the standard scale.

(2) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.

(3) Where by reason of the contravention of any provision contained in regulations made by virtue of this Part—

- (a) a person is convicted of an offence under this Part, or
- (b) a person pays a penalty under Article 10,

then, in respect of that contravention, he shall not, in a case within sub-paragraph (a), be liable to pay such a penalty or, in a case within sub-paragraph (b), be convicted of such an offence.

Overriding requirements

114.—(1) Where any provision mentioned in paragraph (2) conflicts with the provisions of an occupational pension scheme—

- (a) the provision mentioned in paragraph (2), to the extent that it conflicts, overrides the provisions of the scheme, and
- (b) the scheme has effect with such modifications as may be required in consequence of sub-paragraph (a).

⁽⁸²⁾ 1986 c. 60.

⁽⁸³⁾ 1989 NI 19.

⁽⁸⁴⁾ 1986 c. 45.

- (2) The provisions referred to in paragraph (1) are those of—
- (a) this Part,
 - (b) any subordinate legislation made or having effect as if made under this Part, or
 - (c) any arrangements under Article 16(1) or 17(2).

Powers to modify this Part

- 115.**—(1) Regulations may modify any provisions of this Part, in their application—
- (a) to a trust scheme which applies to earners in employments under different employers,
 - (b) to a trust scheme of which there are no members who are in pensionable service under the scheme, or
 - (c) to any case where a partnership is the employer, or one of the employers, in relation to a trust scheme.

(2) Regulations may provide for Articles 22 to 26, and Article 114 (so far as it applies to those Articles), not to apply in relation to a trust scheme falling within a prescribed class or description.

Calculations, etc. under regulations: sub-delegation

116. Regulations made by virtue of Article 56(3), 73(3) or 75 may provide for the values of the assets and the amounts of the liabilities there mentioned to be calculated and verified in accordance with guidance—

- (a) prepared and revised by a prescribed body, and
- (b) approved by the Department.

Consultations about regulations

117.—(1) Before the Department makes any regulations by virtue of this Part, It must consult such persons as it considers appropriate.

- (2) Paragraph (1) does not apply—
- (a) to regulations made for the purpose only of consolidating other regulations revoked by them,
 - (b) to regulations in the case of which the Department considers consultation inexpedient because of urgency,
 - (c) to regulations made before the end of the period of six months beginning with the coming into operation of the provision of this Part by virtue of which the regulations are made,
 - (d) to regulations which—
 - (i) state that they are consequential upon a specified enactment, and
 - (ii) are made before the end of the period of six months beginning with the coming into operation of that enactment, or
 - (e) to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

Crown application

118.—(1) This Part applies to an occupational pension scheme managed by or on behalf of the Crown as it applies to other occupational pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(2) References in this Part to a person in his capacity as employer in relation to an occupational pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(3) This Article does not apply to any provision made by or under this Part under which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.

(4) This Article does not apply to Article 42 to 46 (but see the amendment of Article 79 (1) of the Industrial Relations (Northern Ireland) Order 1976⁽⁸⁵⁾ in Schedule 1).

(5) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947⁽⁸⁶⁾).

(6) Subject to paragraphs (1) to (5), this Part binds the Crown to the full extent authorised by the constitutional laws of Northern Ireland.

Consequential amendments

119. Schedule 1 (amendments consequential on this Part) has effect.

“Connected” and “associated” persons

120.—(1) Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989⁽⁸⁷⁾ (associated and connected persons) apply for the purposes of the provisions of this Order listed in paragraph (2) as they apply for the purposes of any provision of that Order.

(2) The provisions referred to in paragraph (1) are—

- (a) Article 23(3)(b)
- (b) Articles 27 and 28,
- (c) Article 40,

but in the case of Article 40 the provisions mentioned in paragraph (1) shall apply for those purposes with any prescribed modifications.

Interpretation of Part II

121.—(1) In this Part—

“active member”, in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme,

“the actuary” and “the auditor”, in relation to an occupational pension scheme, have the meanings given by Article 47,

“the Authority” means the Occupational Pensions Regulatory Authority;

“the Compensation Board” means the Pensions Compensation Board.

“the compensation provisions” has the meaning given by Article 79(3),

“the Crown” means the Crown in right of Her Majesty’s government in Northern Ireland or in right of Her Majesty’s government in the United Kingdom;

“deferred member”, in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,

⁽⁸⁵⁾ 1976 NI.16

⁽⁸⁶⁾ 1947 c. 44.

⁽⁸⁷⁾ 1989 NI 19.

“employer”, in relation to an occupational pension scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see Article 122(3)),

“equal treatment rule” has the meaning given by Article 62,

“firm” means a body corporate or a partnership,

“fund manager”, in relation to an occupational pension scheme, means a person who manages the investments held for the purposes of the scheme,

“government department” means a Northern Ireland department or a department of the government of the United Kingdom;

“independent trustee” has the meaning given by Article 23(3),

“managers”, in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme,

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member (but see Article 122(4)),

“member-nominated director” has the meaning given by Article 18(2),

“member-nominated trustee” has the meaning given by Article 16(2),

“the minimum funding requirement” has the meaning given by Article 56(1),

“normal pension age” has the meaning given by section 175 of the Pension Schemes Act,

“payment schedule” has the meaning given by Article 85(2),

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme,

“pensioner member”, in relation to an occupational pension scheme, means a person who, in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits, “prescribed” means prescribed by regulations,

“professional adviser”, in relation to a scheme, has the meaning given by Article 47,

“public service pension scheme” has the meaning given by section 1 of the Pension Schemes Act,

“resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme,

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988~~(88)~~,

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme),

“trustees or managers”, in relation to an occupational pension scheme, means—

- (a) in the case of a trust scheme, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme, “trust scheme” means an occupational pension scheme established under a trust

(2) For the purposes of this Part—

- (a) the accrued rights of a member of an occupational pension scheme at any time are the rights which have accrued to or in respect of him at that time to future benefits under the scheme, and
- (b) at any time when the pensionable service of a member of an occupational pension scheme is continuing, his accrued rights are to be determined as if he had opted, immediately before that time, to terminate that service,

and references to accrued pension or accrued benefits are to be interpreted accordingly.

- (3) In determining what is “pensionable service” for the purposes of this Part—
 - (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
 - (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

Article 121: supplementary

122.—(1) For the purposes of this Part, an occupational pension scheme is salary related if—

- (a) the scheme is not a money purchase scheme, and
- (b) the scheme does not fall within a prescribed class or description,

and “salary related trust scheme” is to be read accordingly.

(2) Regulations may apply this Part with prescribed modifications to occupational pension schemes—

- (a) which are not money purchase schemes, but
- (b) where some of the benefits that may be provided are money purchase benefits.

(3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.

(4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes—

- (a) extend or restrict the meaning of “member”,
- (b) determine who is to be treated as a prospective member, and
- (c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

PART III

STATE PENSIONS

Equalisation of pensionable age and of entitlement to certain benefits

123.—(1) Schedule 2, of which—

- (a) Part I has effect to equalise pensionable age for men and women progressively over a period of ten years beginning with (and including) 6th April 2010,
- (b) Part II makes provision for bringing equality for men and women to certain pension and other benefits, and
- (c) Part III makes consequential amendments of enactments, has effect.

Enhancement of additional pension, etc. where family credit or disability working allowance paid

124.—(1) After section 45 of the Contributions and Benefits Act (additional pension in a Category A retirement pension) insert—

““Effect of family credit and disability working allowance on earnings factor.”

45A.—(1) For the purpose of calculating additional pension under sections 44 and 45 above where, in the case of any relevant year, family credit is paid in respect of any employed earner, or disability working allowance is paid to any employed earner, section 44(6)(a)(i) above shall have effect as if—

- (a) where that person had earnings of not less than the qualifying earnings factor for the year, being earnings upon which primary Class 1 contributions were paid or treated as paid ('qualifying earnings') in respect of that year, the amount of those qualifying earnings were increased by the aggregate amount (call it 'AG') of family credit or, as the case may be, disability working allowance paid in respect of that year, and
- (b) in any other case, that person had qualifying earnings in respect of that year and the amount of those qualifying earnings were equal to AG plus the qualifying earnings factor for that year.

(2) The reference in subsection (1) above to the person in respect of whom family credit is paid—

- (a) where it is paid to one of a married or unmarried couple, is a reference to the prescribed member of the couple, and
- (b) in any other case, is a reference to the person to whom it is paid.

(3) A person's qualifying earnings in respect of any year cannot be treated by virtue of subsection (1) above as exceeding the upper earnings limit for that year multiplied by fifty-three.

(4) Subsection (1) above does not apply to any woman who has made, or is treated as having made, an election under regulations under section 19(4) above, which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.

(5) In this section—

“married couple” and “unmarried couple” (defined in section 133 below) have the same meaning as in Part VII, and

“relevant year” has the same meaning as in section 44 above.”

(2) Accordingly, in sections 39(1) to (3) and 51(2) and (3) of the Contributions and Benefits Act, for “sections 44 and 45” substitute “sections 44 to 45A”.

(3) Subject to paragraphs (4) and (5), this Article applies to a person (“the pensioner”) who attains pensionable age after 5th April 1999 and, in relation to such persons, has effect for 1995—96 and subsequent tax years.

(4) Where the pensioner is a woman, this Article has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Contributions and Benefits Act by virtue of section 39 of that Act (widowed mother's allowance and widow's pension), including Category B retirement pension payable under section 48B(4), if her husband—

- (a) dies after 5th April 1999, and
- (b) has not attained pensionable age on or before that date.

(5) This Article has effect where additional pension falls to be calculated under sections 44 and 45 of the Contributions and Benefits Act as applied by sections 48A or 48B(2) of that Act (other Category B retirement pension) if—

- (a) the pensioner attains pensionable age after 5th April 1999, and
- (b) the pensioner's spouse has not attained pensionable age on or before that date.

Additional pension: calculation of surpluses

125.—(1) In section 44 of the Contributions and Benefits Act (Category A retirement pension), for subsection (5) (surplus on which additional pension is calculated) substitute—

“(5A) For the purpose of this section and section 45 below—

- (a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for that year, and
- (b) the amount of the surplus is the amount of that excess, as increased by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.”.

(2) In subsection (6) of that section (calculation of earnings factors), for paragraphs (a)(ii) and (b) substitute—

“(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of that year, or, if less, the qualifying earnings factor for that year; and

(b) where the relevant year is an earlier tax year, to the aggregate of—

- (i) his earnings factors derived from Class 1 contributions actually paid by him in respect of that year; and
- (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid by him in respect of that year, or, if less, the qualifying earnings factor for that year.”.

(3) In section 130 of the Administration Act (revaluation of earnings factors in Northern Ireland) for from “directing” to the end substitute “(revaluation of earnings factors), the Department may make a corresponding order for Northern Ireland”.

(4) Subject to paragraphs (5) and (6), this Article has effect in relation to a person (“the pensioner”) who attains pensionable age after 5th April 2000.

(5) Where the pensioner is a woman, this Article has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Contributions and Benefits Act by virtue of section 39 of that Act (widowed mother's allowance and widow's pension), including Category B retirement pension payable under section 48B(4), if her husband—

- (a) dies after 5th April 2000, and
- (b) has not attained pensionable age on or before that date.

(6) This Article has effect where additional pension falls to be calculated under sections 44 and 45 of the Contributions and Benefits Act as applied by section 48A or 48B(2) of that Act (other Category B retirement pension) if—

- (a) the pensioner attains pensionable age after 5th April 2000, and
- (b) the pensioner's spouse has not attained pensionable age on or before that date.

Contribution conditions

126. In Schedule 3 to the Contributions and Benefits Act (contribution conditions), in paragraph 5(3)(a) (conditions for widowed mother's allowance, widow's pension and Category A and Category

B retirement pension), after “class” insert “or been credited (in the case of 1987—88 or any subsequent year) with earnings”.

Up-rating of pensions increased under section 52 of Contributions and Benefits Act

127. For section 136 of the Administration Act substitute—

“136 Up-rating under section 132 of pensions increased under section 52(3) of Contributions and Benefits Act.

(1) This section applies in any case where a person is entitled to a Category A retirement pension with an increase, under section 52(3) of the Contributions and Benefits Act, in the additional pension on account of the contributions of a spouse who has died.

(2) Where in the case of any up-rating order under section 132 above—

(a) the spouse’s final relevant year is the tax year preceding the tax year in which the up-rating order comes into force, but

(b) the person’s final relevant year was an earlier tax year,

then the up-rating order shall not have effect in relation to that part of the additional pension which is attributable to the spouse’s contributions.

(3) Where in the case of any up-rating order under section 132 above—

(a) the person’s final relevant year is the tax year preceding the tax year in which the up-rating order comes into force, but

(b) the spouse’s final relevant year was an earlier tax year,

then the up-rating order shall not have effect in relation to that part of the additional pension which is attributable to the person’s contributions.”.

Graduated retirement benefit

128. In section 62(1) of the Contributions and Benefits Act (graduated retirement benefit) after paragraph (a) insert—

“(aa) for amending section 35(7) of that Act (persons to be treated as receiving nominal retirement pension) so that where a person has claimed a Category A or Category B retirement pension but—

(i) because of an election under section 54(1) above, or

(ii) because he has withdrawn his claim for the pension,

he is not entitled to such a pension, he is not to be treated for the purposes of the preceding provisions of that section as receiving such a pension at a nominal weekly rate;”.

Extension of Christmas bonus for pensioners

129.—(1) Section 146 of the Contributions and Benefits Act (Christmas bonus: interpretation) is amended as follows.

(2) In subsection (1), after paragraph (k) insert—

“(l) a mobility supplement”.

(3) In subsection (2)—

(a) after the definition of “attendance allowance” insert—

““mobility supplement” means a supplement awarded in respect of disablement which affects a person’s ability to walk and for which the person is in receipt of war disablement pension;”,

- (b) in the definition of “retirement pension”, omit “, if paid periodically”,
- (c) in paragraph (b) of the definition of “unemployability supplement or allowance”, after sub-paragraph (iv) insert
“or
(v) under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939,”.

Contributions paid in error

130. After section 61 of the Contributions and Benefits Act insert—

“Contributions paid in error.

61A.—(1) This section applies in the case of any individual if—

- (a) the individual has paid amounts by way of primary Class 1 contributions which, because the individual was not an employed earner, were paid in error, and
- (b) prescribed conditions are satisfied.

(2) Regulations may, where—

- (a) this section applies in the case of any individual, and
- (b) the Department is of the opinion that it is appropriate for the regulations to apply to the individual,

provide for entitlement to, and the amount of, additional pension to be determined as if the individual had been an employed earner and, accordingly, those contributions had been properly paid.

(3) The reference in subsection (2) above to additional pension is to additional pension for the individual or the individual’s spouse falling to be calculated under section 45 above for the purposes of—

- (a) Category A retirement pension,
- (b) Category B retirement pension for widows or widowers,
- (c) widowed mother’s allowance and widow’s pension, and
- (d) incapacity benefit (except in transitional cases).

(4) Regulations may, where—

- (a) this section applies in the case of any individual, and
- (b) the Department is of the opinion that it is appropriate for regulations made by virtue of Article 6(8) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (provision during transition from invalidity benefit to incapacity benefit for incapacity benefit to include the additional pension element of invalidity pension) to have the following effect in the case of the individual,

provide for the regulations made by virtue of that Article to have effect as if, in relation to the provisions in force before the commencement of that Article with respect to that additional pension element, the individual had been an employed earner and, accordingly, the contributions had been properly paid.

(5) Where such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual, regulations under paragraph 8(1)(m) of

Schedule 1 to this Act may not require the amounts paid by way of primary Class 1 contributions to be repaid.

(6) Regulations may provide, where—

- (a) such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual,
- (b) prescribed conditions are satisfied, and
- (c) the amount calculated by reference to the contributions in question has been paid in respect of that individual by way of minimum contributions under section 39 of the Pensions Act (contributions to personal pension schemes),

for that individual to be treated for the purposes of that Act as if that individual had been an employed earner and, accordingly, the amount had been properly paid.”.

Minor amendments

131.—(1) In section 23(1) of the Contributions and Benefits Act (contribution conditions: supplemental), for “22(1)(a)” substitute “22(1)”.

(2) Omit section 54(4) of that Act (effect on advance claims for retirement pension of deferral of entitlement).

(3) For section 55 of that Act substitute—

“55 Increase of retirement pension where entitlement is deferred.

(1) Where a person’s entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of pension.

(2) For the purposes of this Act a person’s entitlement to a Category A or Category B retirement pension is deferred if and so long as that person—

- (a) does not become entitled to that pension by reason only—
 - (i) of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), or
 - (ii) in the case of a Category B retirement pension payable by virtue of a spouse’s contributions, of the spouse not satisfying those conditions with respect to his Category A retirement pension; or

(b) in consequence of an election under section 54(1) above, falls to be treated as not having become entitled to that pension;

and, in relation to any such pension, “period of deferment” shall be construed accordingly.”.

(4) In section 121(1) of that Act (interpretation of Parts I to VI), after the definition of “week” insert—

““working life” has the meaning given by paragraph 5(8) of Schedule 3 to this Act.”.

(5) In paragraph 5(8) of Schedule 3 to that Act (contribution conditions: meaning of “working life”) for “this paragraph” substitute “Parts I to VI of this Act”.

PART IV

CERTIFICATION OF PENSION SCHEMES AND EFFECTS ON MEMBERS' STATE SCHEME RIGHTS AND DUTIES

Introductory

The “principal appointed day” for Part IV

132. An order under Article 1 appointing a day for the coming into operation of any provisions of this Part, being 6th April in any year, may designate that day as the principal appointed day for the purposes of this Part.

New certification requirements applying as from the principal appointed day

New requirements for contracted-out schemes

133.—(1) In section 3 of the Pension Schemes Act (issue of contracting-out, etc. certificates), after subsection (2) insert—

“(2A) The regulations may provide, in the case of contracting-out certificates issued before the principal appointed day, for their cancellation by virtue of the regulations—

- (a) at the end of a prescribed period beginning with (and including) that day, or
- (b) if prescribed conditions are not satisfied at any time in that period.

but for them to continue to have effect until so cancelled; and the regulations may provide that a certificate having effect on and after that day by virtue of this subsection is to have effect, in relation to any earner’s service on or after that day, as if issued on or after that day.

(2B) In this Act “the principal appointed day” means the day designated by an order under Article 1 of the Pensions (Northern Ireland) Order 1995 as the principal appointed day for the purposes of Part IV of that Order.”

(2) In section 4 of that Act (definition of terms), for subsection (1)(a)(i) substitute—

“(i) his service in the employment is for the time being service which qualifies him for a pension provided by an occupational pension scheme contracted out by virtue of satisfying section 5(2) (in this Act referred to as “a salary related contracted-out scheme”),”

(3) In section 5 of that Act (requirements for certification of schemes: general), for subsection (2) (requirement for guaranteed minimum pension) substitute—

“(2) An occupational pension scheme satisfies this subsection only if—

- (a) in relation to any earner’s service before the principal appointed day, it satisfies the conditions of subsection (2A); and
- (b) in relation to any earner’s service on or after that day, it satisfies the conditions of subsection (2B).

(2A) The conditions of this subsection are that—

- (a) the scheme complies in all respects with sections 9 to 19 or, in such cases or classes of case as may be prescribed, with those sections as modified by regulations; and
- (b) the rules of the scheme applying to guaranteed minimum pensions are framed so as to comply with the relevant requirements.

(2B) The conditions of this subsection are that the Department is satisfied that—

- (a) the scheme complies with section 8A;

- (b) restrictions imposed under Article 40 of the Pensions (Northern Ireland) Order 1995 (restriction on employer-related investments) apply to the scheme and the scheme complies with those restrictions;
- (c) the scheme satisfies such other requirements as may be prescribed (which—
 - (i) must include requirements as to the amount of the resources of the scheme, and
 - (ii) may include a requirement that, if the only members of the scheme were those falling within any prescribed class or description, the scheme would comply with section 8A), and
- (d) the scheme does not fall within a prescribed class or description;

and is satisfied that the rules of the scheme are framed so as to comply with the relevant requirements.

(2C) Regulations may modify subsection (2B)(a) and (b) in their application to occupational pension schemes falling within a prescribed class or description.”.

(4) In subsection (3) of that section (requirement for protected rights, etc.), in paragraph (a), after “case;” insert—

“(aa) the Department is satisfied that the scheme does not fall within a prescribed class or description;”.

(5) After section 8 of that Act insert—

“Requirements for certification of occupational pension schemes applying from the principal appointed day

The statutory standard.

8A.—(1) Subject to the provisions of this Part, the scheme must, in relation to the provision of pensions for earners in employed earner’s employment, and for their widows or widowers, satisfy the statutory standard.

(2) Subject to regulations made by virtue of section 5(2B)(c)(ii), in applying this section regard must only be had to—

- (a) earners in employed earner’s employment, or
- (b) their widows or widowers,

collectively, and the pensions to be provided for persons falling within paragraph (a) or (b) must be considered as a whole.

(3) For the purposes of this section, a scheme satisfies the statutory standard if the pensions to be provided for such persons are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.

(4) Regulations may provided for the manner of, and criteria for, determining whether the pensions to be provided for such persons under a scheme are broadly equivalent to, or better than, the pensions which would be provided for such persons under a reference scheme.

(5) Regulations made by virtue of subsection (4) may provide for the determination to be made in accordance with guidance prepared by a prescribed body and approved by the Department.

(6) The pensions to be provided for such persons under a scheme are to be treated as broadly equivalent to or better than the pensions which would be provided for such persons under a reference scheme if and only if an actuary (who, except in prescribed circumstances, must be

the actuary appointed for the scheme in pursuance of Article 47 of the Pensions (Northern Ireland) Order 1995) so certifies.

Reference scheme.

8B.—(1) This section applies for the purposes of section 8A.

(2) A reference scheme is an occupational pension scheme which—

- (a) complies with each of subsections (3) and (4), and
- (b) complies with any prescribed requirements.

(3) In relation to earners employed in employed earner's employment, a reference scheme is one which provides—

- (a) for them to be entitled to a pension under the scheme commencing at a normal pension age of 65 and continuing for life, and
- (b) for the annual rate of the pension at that age to be—
 - (i) 1/80th of average qualifying earning in the last three tax years preceding the end of service,
multiplied by
 - (ii) the number of years service, not exceeding such number as would produce an annual rate equal to half the earnings on which it is calculated.

(4) In relation to widows or widowers, a reference scheme is one which provides—

- (a) for the widows or widowers of earners employed in employed earner's employment (whether the earners die before or after attaining the age of 65) to be entitled, except in prescribed circumstances, to pensions under the scheme; and
- (b) except in prescribed circumstances, for the annual rate of the pensions, at the time when the widows or widowers first become entitled to them, to be—
 - (i) in the case of widows or widowers of persons whose age when they died was, or was greater than, normal pension age, 50 per cent. of the annual rate which a reference scheme is required to provide for persons of that age, and
 - (ii) in the case of widows or widowers of other persons, 50 per cent. of the annual rate which a reference scheme would have been required to provide in respect of the persons' actual periods of service if those persons had attained that age.

(5) For the purposes of this section, an earner's qualifying earnings in any tax year are 90 per cent. of the amount by which the earner's earnings—

- (a) exceed the qualifying earnings factor for that year; and
- (b) do not exceed the upper earnings limit for that year multiplied by fifty-three.

(6) Regulations may modify subsections (2) to (5).

(7) In this section—

“normal pension age”, in relation to a scheme, means the age specified in the scheme as the earliest age at which pension becomes payable under the scheme (apart from any special provision as to early retirement on grounds of ill-health or otherwise),

“qualifying earnings factor”, in relation to a tax year, has the meaning given by section 121(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and

“upper earnings limit”, in relation to a tax year, means the amount specified for that year by regulations made by virtue of section 5(3) of that Act as the upper earnings limit for Class 1 contributions.

Transfer, commutation, etc.

8C.—(1) Regulations may prohibit or restrict—

- (a) the transfer of any liability—
 - (i) for the payment of pensions under a relevant scheme, or
 - (ii) in respect of accrued rights to such pensions,
- (b) the discharge of any liability to provide pensions under a relevant scheme, or
- (c) the payment of a lump sum instead of a pension payable under a relevant scheme,

except in prescribed circumstances or on prescribed conditions.

(2) In this section, “relevant scheme” means a scheme contracted out by virtue of section 5(2B) and references to pensions and accrued rights under the scheme are to such pensions and rights so far as attributable to an earner’s service on or after the principal appointed day.

(3) Regulations under subsection (1) may provide that any provision of this Part shall have effect subject to such modifications as may be specified in the regulations.

Entitlement to benefit.

8D. In the case of a scheme contracted out by virtue of section 5(2B), regulations may make provision as to the ages by reference to which benefits under the scheme are to be paid.”

*Reduction in State scheme contributions, payment
of rebates and reduction in State scheme benefits*

State scheme contributions and rebates

134.—(1) In section 36 of the Pension Schemes Act (scope of Chapter II of Part III), in paragraph (b), after “members of” insert “money purchase contracted-out schemes and members of”.

(2) For section 37(1) of that Act (reduced rates of Class 1 contributions for earners in contracted-out employment), including the sidenote and the preceding heading, substitute—

“Reduced rates of contributions for members of salary related contracted-out schemes

37 Reduced rates of Class 1 contributions.

(1) Where—

- (a) the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, and
- (b) the earners’s service in the employment is service which qualifies him for a pension provided by a salary related contracted-out scheme,

the amount of a Class 1 contribution in respect of so much of the earnings paid in that week as exceeds the current lower earnings limit but not the current upper earnings limit for that week (or the prescribed equivalents if he is paid otherwise than weekly) shall be reduced by the following amount.

(1A) The amount is—

- (a) in the case of a primary Class 1 contribution, an amount equal to 1.8 per cent. of that part of those earnings, and

(b) in the case of a secondary Class 1 contribution, an amount equal to 3 per cent. of that part of those earnings.”.

(3) For section 38(1) of the Pension Schemes Act (alteration of rates of contributions under section 37) substitute—

“(1) Whenever the Secretary of State makes an order under section 42 of the Pension Schemes Act 1993 (determination of reduced rates of Class 1 contributions for members of salary related contracted-out schemes), the Department may make a corresponding order for Northern Ireland.”.

(4) After that section insert—

“Reduced rates of contributions, and rebates, for members of money purchase contracted-out schemes

Reduced rates of Class 1 contributions and rebates.

38A.—(1) Subsections (2) and (3) apply where—

- (a) the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, and
- (b) the earner’s service in the employment is service which qualifies him for a pension provided by a money purchase contracted-out scheme.

(2) The amount of a Class 1 contribution in respect of so much of the earnings paid in that week in respect of that employment as exceeds the current lower earnings limit but not the current upper earnings limit for that week (or the prescribed equivalents if he is paid otherwise than weekly) shall be reduced by an amount equal to the appropriate flat-rate percentage of that part of those earnings.

(3) The Department shall, except in prescribed circumstances or in respect of prescribed periods, pay in respect of that earner and that tax week to the trustees or managers of the scheme or, in prescribed circumstances, to a prescribed person, the amount by which—

(a) the appropriate age-related percentage of that part of those earnings, exceeds

(b) the appropriate flat-rate percentage of that part of those earnings.

(4) Regulations may make provisions—

- (a) as to the manner in which and time at which or period within which payments under subsection (3) are to be made,
- (b) for the adjustment of the amount which would otherwise be payable under that subsection so as to avoid the payment of trivial or fractional amounts,
- (c) for earnings to be calculated or estimated in such manner and on such basis as may be prescribed for the purpose of determining whether any, and if so what, payments under subsection (3) are to be made.

(5) If the Department pays an amount under subsection (3) which it is not required to pay or is not required to pay to the person to whom, or in respect of whom, the Department pays it, the Department may recover it from any person to whom, or in respect of whom, the Department paid it.

(6) Where—

- (a) an earner has ceased to be employed in an employment, and

- (b) earnings are paid to him or for his benefit within the period of six weeks, or such other period as may be prescribed, from the day on which he so ceased, that employment shall be treated for the purposes of this section as contracted-out employment at the time when the earnings are paid if it was contracted-out employment in relation to the earner when he was last employed in it.

(7) Subsection (3) of section 37 applies for the purposes of this section as it applies for the purposes of that.

Determination and alteration of rates of contributions, and rebates, applicable under section 38A.

38B. Whenever the Secretary of State makes an order under section 42B of the Pension Schemes Act 1993, (determination and alteration of reduced rates of primary and secondary Class 1 contributions for members of money purchase contracted-out schemes), the Department may make a corresponding order for Northern Ireland.”

- (5) In Schedule 3 to that Act (priority in bankruptcy, etc), in paragraph 2(3)—
 - (a) in paragraph (a), for “4.8 per cent.” substitute “the percentage for non-contributing earners”,
 - (b) in paragraph (b), for “3 per cent.” substitute “the percentage for contributing earners”.
- (6) In paragraph 2(5) of that Schedule—
 - (a) before the definition of “employer” insert—
 - ““appropriate flat-rate percentage” means the appropriate flat rate percentage for the purposes of section 38A(2);” and
 - (b) after that definition insert—
 - ““the percentage for contributing earners”
 - (a) in relation to a salary related contracted-out scheme, 3 per cent, and
 - (b) in relation to a money purchase contracted-out scheme, the percentage which is the appropriate flat-rate percentage for secondary Class 1 contributions,
 “the percentage for non-contributing earners” means—
 - (a) in relation to a salary related contracted-out scheme, 4.8 per cent, and
 - (b) in relation to a money purchase contracted-out scheme, a percentage equal to the sum of the appropriate flat-rate percentages for primary and secondary Class 1 contributions;”.

Minimum contributions towards appropriate personal pension schemes

135.—(1) Section 41 of the Pension Schemes Act (minimum contribution to personal pension schemes) is amended as set out in paragraphs (2) to (4).

(2) For subsection (1) substitute—

“(1) In relation to any tax week falling within a period for which the Department is required to pay minimum contributions in respect of an earner, the amount of those contributions shall be an amount equal to the appropriate age-related percentage of so much of the earnings paid in that week (other than earnings in respect of contracted-out employment) as exceeds the current lower earnings limit but not the current upper earnings limit for that week (or the prescribed equivalents if he is paid otherwise than weekly).”.

(3) Subsection (2) is omitted.

(4) In subsection (3)(e), the words following “prescribed period” are omitted.

(5) After that section insert—

“Alteration of rates of minimum contributions under section 41.

41A. Whenever the Secretary of State makes an order under section 45A of the Pension Schemes Act 1993 (determination and alteration of rates of contributions to personal pension schemes) the Department may make a corresponding order for Northern Ireland.”

Money purchase and personal pension schemes: verification of ages.

136. After section 41A of the Pension Schemes Act (inserted by Article 135) insert—

“Money purchase and personal pension schemes: verification of ages

41B.—(1) Regulations may make provision for the manner in which an earner’s age is to be verified in determining the appropriate age-related percentages for the purposes of section 38A and 41(1).

(2) Information held by the Department as to the age of any individual may, whether or not it was obtained in pursuance of regulations under subsection (1), be disclosed by the Department—

- (a) to the trustees or managers of a money purchase contracted-out scheme or an appropriate personal pension scheme, and
- (b) to such other persons as may be prescribed,

in connection with the making of payments under section 38A(3) or the payment of minimum contributions.”

Reduction in benefits for members of certified schemes

137.—(1) After section 44 of the Pension Schemes Act insert—

“Effect of reduced contributions and rebates on social security benefits

Additional pension and other benefits.

44A.—(1) In relation to any tax week there—

- (a) the amount of a Class 1 contribution in respect of the earnings paid to or for the benefit of an earner in that week is reduced under section 37 or 38A, or
- (b) an amount is paid under section 41(1) in respect of the earnings paid to or for the benefit of an earner,

section 44(6) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (earnings factors for additional pension) shall have effect, except in prescribed circumstances, as if no primary Class 1 contributions had been paid or treated as paid upon those earnings for that week and section 45A of that Act did not apply (where it would, apart from this subsection, apply).

(2) Where the whole or part of a contributions equivalent premium has been paid or treated as paid in respect of the earner, the Department may make a determination reducing or eliminating the application of subsection (1).

(3) Subsection (1) is subject to regulations under paragraph 5(3A) to (3E) of Schedule 1.

(4) Regulations may, so far as is required for the purpose of providing entitlement to additional pension (such as is mentioned in section 44(3)(b) of the Social Security

Contributions and Benefits (Northern Ireland) Act 1992) but to the extent only that amount of additional pension is attributable to provision made by regulations under section 45(5) of that Act, disapply subsection (1).

(5) In relation to earners where, by virtue of subsection (1), section 44(6) of Social Security Contributions and Benefits (Northern Ireland) Act 1992 has effect, in any tax year, as mentioned in that subsection in relation to some but not all of their earnings, regulations may modify the application of section 44(5) of that Act.”

(2) In section 44 of the Pension Schemes Act (effect of membership of money purchase contracted-out scheme or appropriate scheme on payment of social security benefits), in subsection (2), paragraph (b) is omitted and, in paragraph (c), “if the earner dies before reaching pensionable age” is omitted.

(3) Section 44 of that Act shall cease to have effect in relation to minimum payments made, or minimum contributions paid, on or after the principal appointed day.

Premiums and return to State scheme

State scheme, etc. premiums and buyback into State scheme

138.—(1) In section 51 of the Pension Schemes Act (payment of state scheme premiums on termination of certified status), for subsection (2) substitute—

“(2) Where—

- (a) an earner is serving in employment which is contracted-out employment by reference to an occupational pension scheme (other than a money purchase contracted-out scheme),
- (b) paragraph (a) ceases to apply, by reason of any of the following circumstances, before the earner attains the scheme’s normal pension age or (if earlier) the end of the tax year preceding that in which the earner attains pensionable age, and
- (c) the earner has served for less than two years in the employment,

the prescribed person may elect to pay a premium under this subsection (referred to in this Act as a “contributions equivalent premium”).

(2A) The circumstances referred to in subsection (2) are that—

- (a) the earner’s service in the employment ceases otherwise than on the earner’s death,
- (b) the earner ceases to be a member of the scheme otherwise than on the earner’s death,
- (c) the earner’s service in the employment ceases on the earner’s death and the earner dies leaving a widow or widower,
- (d) the scheme is wound up,
- (e) the scheme ceases to be a contracted-out occupational pension scheme;

but paragraph (a), (b), (d) or (e) does not apply if the earner has an accrued right to short service benefit.”

(2) In Schedule 1 to that Act, in paragraph 5 (state scheme premiums)—

(a) in sub-paragraph (3)—

- (i) omit “, in relation to state scheme premiums,”,
- (ii) omit paragraph (b), and

- (iii) at the end add— “and in this sub-paragraph and the following provisions of this paragraph “premium” means a contributions equivalent premium”,
- (b) after sub-paragraph (3) insert—
 - “(3A) Sub-paragraph (3B) applies in relation to a member of a contracted-out occupational pension scheme which is being wound up if, in the opinion of the Department—
 - (a) the resources of the scheme are insufficient to meet the whole of the liability for the cash equivalent of the member’s rights under the scheme, and
 - (b) if the resources of the scheme are sufficient to meet a part of that liability, that part is less than the amount required for restoring his State scheme rights.
 - (3B) Where this sub-paragraph applies—
 - (a) regulations may provide for treating the member as if sections 42 to 44 or, as the case may be, section 44A(1) did not apply, or applied only to such extent as is determined in accordance with the regulations, and
 - (b) the amount required for restoring the member’s State scheme rights, or a prescribed part of that amount, shall be a debt due from the trustees or managers of the scheme to the Department.
 - (3C) Regulations may make provision—
 - (a) for determining the cash equivalent of a member’s rights under a scheme and the extent (if any) to which the resources of the scheme are insufficient to meet the liability for that cash equivalent,
 - (b) for the recovery of any debt due under sub-paragraph (3B)(b), and
 - (c) for determining the amount required for restoring a member’s State scheme rights including provision requiring the Department to apply whichever prescribed actuarial table in force at the appropriate time is applicable.
 - (3D) Section 151 shall apply as if sub-paragraphs (3A) and (3B), and regulations made by virtue of those sub-paragraphs, were included among the provisions there referred to.
 - (3E) In sub-paragraphs (3A) and (3B), “State scheme rights”, in relation to a member of a scheme, are the rights for which, if the scheme had not been a contracted-out scheme, the member would have been eligible by virtue of section 44(6) of Social Security Contributions and Benefits (Northern Ireland) Act 1992 (earnings factors for additional pension.”, and
- (c) omit sub-paragraph (5).

Protected rights

Interim arrangements for giving effect to protected rights

139.—(1) Section 24 of the Pension Schemes Act (ways of giving effect to protected rights) is amended as follows.

- (2) In subsection (1), after paragraph (a) insert—
 - “(aa) in any case where subsection (1A) so requires, by the making of such payments as are mentioned in that subsection.”.
- (3) After that subsection insert—
 - “(1A) In the case of a personal pension scheme, where the member so elects, effect shall be given to his protected rights—

- (a) during the interim period, by the making of payments under an interim arrangement which—
 - (i) complies with section 24A,
 - (ii) satisfies such conditions as may be prescribed, and
- (b) at the end of the interim period in such of the ways permitted by the following subsections as the rules of the scheme may specify.”.
- (4) In subsection (3)—
 - (a) in paragraph (b), after “the member” insert “or, where section 24A(2) applies, the member’s widow or widower”, and
 - (b) in the words following that paragraph, after “subsection” insert “(1A)(a) or”.
- (5) In subsection (4)(a), for the words from “65” to the end substitute—
 “65 or such later date as has been agreed by him, or
 - (ii) in the case of a personal pension scheme, where the member has elected to receive payments under an interim arrangement, the date by reference to which the member elects to terminate that arrangement, and otherwise such date as has been agreed by him and is not earlier than his 60th birthday nor later than his 75th birthday.”
- (6) In subsection (5), after “subsection” insert “(1A),”.
- (7) After subsection (7) add—
 - “(8) In this section and sections 24A, 24B and 25—
 - “the interim period” means the period beginning with (and including) the starting date in relation to the member in question and ending with the termination date;
 - “the starting date“ means the date, which must not be earlier than the member’s 60th birthday, by reference to which the member elects to begin to receive payments under the interim arrangement;”
 - “the termination date” means the date by reference to which the member (or, where section 24A(2) applies, the member’s widow or widower) elects to terminate the interim arrangement, and that date must be not later than—
 - (a) the member’s 75th birthday, or
 - (b) where section 24A(2) applies, the earlier of the member’s widow or widower’s 75th birthday and the 75th anniversary of the member’s birth.”

Requirements for interim arrangements

140. After section 24 of the Pension Schemes Act insert—

“Requirements for interim arrangements.

24A.—(1) An interim arrangement must provide for payments to be made to the member, and, where subsection (2) applies, to the member’s widow or widower, throughout the interim period, at intervals not exceeding twelve months.

(2) This subsection applies where the member dies during the interim period and is survived by a widow or widower who at the date of the member’s death has not yet attained the age of 75 years.

(3) The aggregate amount of payments made to a person under an interim arrangement in each successive period of twelve months must not be—

- (a) greater than the annual amount of the annuity which would have been purchasable by him on the relevant reference date, or
 - (b) less than the prescribed percentage of that amount
- (4) The percentage prescribed under subsection (3)(b) may be zero.
- (5) For the purposes of this section—
- (a) the annual amount of the annuity which would have been purchasable by a person on any date shall be calculated in the prescribed manner by reference to—
 - (i) the value on that date, determined by or on behalf of the trustees or managers of the scheme, of the person’s protected rights, and
 - (ii) the current published tables of rates of annuities prepared by the Government Actuary for the purposes of section 28A of the Pension Schemes Act 1993, and
 - (b) the relevant reference date is—
 - (i) in relation to payments made to the member during the three years beginning with (and including) the member’s starting date, that date, and in relation to such payments made during each succeeding period of three years, the first day of the period of three years in question, or
 - (ii) where subsection (2) applies, in relation to payments made to the member’s widow or widower during the three years beginning with (and including) the date of the member’s death, that date, and in relation to such payments made during each succeeding period of three years, the first day of the period of three years in question.

Information about interim arrangements.

24B.—(1) The trustees or managers of a personal pension scheme must, if required to do so by the Department, produce any document relevant to—

- (a) the level of payments made under any interim arrangement, or
- (b) the value of protected rights to which such an arrangement gives effect,

or otherwise connected with the making of payments under such an arrangement.

(2) In this section, “document” includes information recorded in any form, and the reference to the production of a document, in relation to information recorded otherwise than in legible form, is a reference to producing a copy of the information in legible form.”.

Interim arrangements: supplementary

141.—(1) Section 25 of the Pension Schemes Act (the pension and annuity requirements) is amended as follows.

(2) In subsection (1) for paragraph (a) substitute—

“(a) in the case of an occupational pension scheme it commences on a date—

- (i) not earlier than the member’s 60th birthday, and
- (ii) not later than his 65th birthday,

or on such later date as has been agreed by him, and continues until the date of his death, or

(aa) in the case of a personal pension scheme—

- (i) where the member has elected under section 24(1A) to receive payments under an interim arrangement, it commences on the termination date, and continues until the date of the member's death or, where section 24A(2) applies, until the death of the member's widow or widower, or
 - (ii) otherwise, it commences on such a date as had been agreed by the member and is not earlier than his 60th birthday nor later than his 75th birthday, and continues until the date of his death;".
- (3) In subsection (3)(b)(iii), after "member" insert "or, where section 24A(2) applies, the member's widow or widower."
- (4) In subsection (4), after "member" insert "(or a member's widow or widower)".

Extension of interim arrangements to occupational pension schemes

142. Regulations made by the Department may provide that Articles 139 to 141 shall have effect, subject to prescribed modifications, in relation to protected rights under an occupational pension scheme as they have effect in relation to protected rights under a personal pension scheme.

Discharge of protected rights on winding up: insurance policies

143.—(1) After section 28 of the Pension Schemes Act insert—

“Discharge of protected rights on winding up: insurance policies.

28A.—(1) Where an occupational pension scheme is being wound up and such conditions as may be prescribed are satisfied, effect may be given to the protected rights of a member of the scheme (in spite of section 24) by—

- (a) taking out an appropriate policy of insurance, or a number of such policies, under which the member is the beneficiary, or
 - (b) assuring the benefits of a policy of insurance, or a number of such policies, to the member, where the policy assured is an appropriate policy.
- (2) A policy of insurance is appropriate for the purposes of this section if—
- (a) the insurance company with which it is or was taken out or entered into—
 - (i) is, or was at the time when the policy was taken out or (as the case may be) the benefit of it was assured, carrying on ordinary long-term insurance business (within the meaning of the Insurance Companies Act 1982) in the United Kingdom or any other member State, and
 - (ii) satisfies, or at that time satisfied, prescribed requirements, and
 - (b) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed,
 - (c) it contains or is endorsed with terms whose effect is that the amount secured by it may not be commuted except on conditions which satisfy such requirements as may be prescribed, and
 - (d) it satisfies such other requirements as may be prescribed.”.
- (2) At the end of section 24 of that Act, as amended by this Order (ways of giving effect to protected rights), insert—
- “(2) This section is subject to section 28A.”.

Miscellaneous

Monitoring personal pension schemes

144. After section 29 of the Pension Schemes Act insert—

“Appropriate schemes: “Blowing the whistle”.

29A.—(1) If any person acting as an auditor or actuary of an appropriate scheme has reasonable cause to believe that—

- (a) any requirement which, in the case of the scheme, is required by section 5(5)(a) to be satisfied is not satisfied, and
- (b) the failure to satisfy the requirement is likely to be of material significance in the exercise by the Department of any of its functions relating to appropriate schemes,

that person must immediately give a written report of the matter to the Department.

(2) No duty to which a person acting as auditor or actuary of an appropriate scheme is subject shall be regarded as contravened merely because of any information or opinion contained in a written report under this section.”.

Earner employed in more than one employment

145.—(1) Paragraph 1 of Schedule 1 to the Contributions and Benefits Act (Class 1 contributions where earner in more than one employment) is amended as follows.

(2) For sub-paragraph (3) substitute—

“(3) The amount of the primary Class 1 contribution shall be the aggregate of the amounts determined under the following paragraphs (applying earlier paragraphs before later ones)

- (a) if the aggregated earnings are paid to or for the benefit of an earner in respect of whom minimum contributions are payable under section 39(1) of the Pensions Act (contributions to personal pension schemes), the amount obtained by applying the rate of primary Class 1 contributions that would apply if all the aggregated earnings were attributable to employments which are not contracted-out to such part of the aggregated earnings so attributable as does not exceed the current upper earnings limit (referred to in this paragraph as “the APPS earnings”);
- (b) if some of the aggregated earnings are attributable to COMPS service, the amount obtained by applying the rate of primary Class 1 contributions that would apply if all the aggregated earnings were attributable to COMPS service—
 - (i) to such part of the aggregated earnings attributable to COMPS service as does not exceed the current upper earnings limit; or
 - (ii) if paragraph (a) applies, to such part of the earnings attributable to COMPS service as, when added to the APPS earnings, does not exceed the current upper earnings limit;
- (c) if some of the aggregated earnings are attributable to COSRS service, the amount obtained by applying the rate of primary Class 1 contributions that would apply if all the aggregated earnings were attributable to COSRS service—
 - (i) to such part of the aggregated earnings attributable to COSRS service as does not exceed the current upper earnings limit; or
 - (ii) if paragraph (a) or (b) applies, to such part of the earnings attributable to COSRS service as, when added to the APPS earnings or the part attributable

to COMPS service (or both), does not exceed the current upper earnings limit;

- (d) the amount obtained by applying the rate of primary Class 1 contributions that would apply if all the aggregated earnings were attributable to employments which are not contracted-out to such part of the aggregated earnings as, when added to the part or parts attributable to COMPS or COSRS service, does not exceed the current upper earnings limit.”.

(3) For sub-paragraph (6) substitute—

“(6) The amount of the secondary Class 1 contribution shall be the aggregate of the amounts determined under the following paragraphs (applying earlier paragraphs before later ones)—

- (a) if the aggregated earnings are paid to or for the benefit of an earner in respect of whom minimum contributions are payable under section 39(1) of the Pensions Act, the amount obtained by applying the rate of secondary Class 1 contributions that would apply if all the aggregated earnings were attributable to employments which are not contracted-out to the APPS earnings;
- (b) if some of the aggregated earnings are attributable to COMPS service, the amount obtained by applying the rate of secondary Class 1 contributions that would apply if all the aggregated earnings were attributable to COMPS service to the part of the aggregated earnings attributable to such service;
- (c) if some of the aggregated earnings are attributable to COSRS service, the amount obtained by applying the rate of secondary Class 1 contributions that would apply if all the aggregated earnings were attributable to COSRS service to the part of the aggregated earnings attributable to such service;
- (d) the amount obtained by applying the rate of secondary Class 1 contributions that would apply if all the aggregated earnings were attributable to employments which are not contracted-out to the remainder of the aggregated earnings.”.

(4) At the end of that paragraph add—

“(9) In this paragraph—

“COMPS service” means service in employment in respect of which minimum payments are made to a money purchase contracted-out scheme;

“COSRS service” means service in employment which qualifies the earner for a pension provided by a salary related contracted-out scheme.”.

(5) Until the principal appointed day, that paragraph, as amended by this Article, shall have effect as if—

(a) for sub-paragraph (3)(b) there were substituted—

“(b) if some of the aggregated earnings are attributable to service in contracted-out employment, the amount obtained by applying the rate of primary Class 1 contributions that would apply if all the aggregated earnings were attributable to such service—

(i) to such part of the aggregated earnings attributable to such service as does not exceed the current upper earnings limit, or

(ii) if paragraph (a) applies, to such part of the earnings attributable to such service as, when added to the APPS earnings, does not exceed the current upper earnings limit;”.

(b) sub-paragraph (3)(c) were omitted,

- (c) in sub-paragraph (3)(d), for “COMPS or COSRS service” there were substituted “service in contracted-out employment”,
- (d) for sub-paragraph (6)(b) there were substituted—
 - “(b) if some of the aggregated earnings are attributable to service in contracted-out employment, the amount obtained by applying the rate on secondary Class 1 contributions that would apply if all the aggregated earnings were attributable to such service to the part of the aggregated earnings attributable to such service;”,
- (e) sub-paragraph (6)(c) were omitted, and
- (f) in sub-paragraph (9) the definitions of “COMPS service” and “COSRS service” were omitted.

Hybrid occupational pension schemes

146.—(1) In spite of anything in sections 5 and 8 of the Pension Schemes Act (requirements for certification and determination of basis on which scheme is contracted-out), the Department may by regulations provide, where the pensions provided by an occupational pension scheme include both—

- (a) such pensions that, if the scheme provided only those pensions, it would satisfy section 5(2) of that Act, and
- (b) such other pensions that, if the scheme provided only those other pensions, it would satisfy section 5(3) of that Act,

for Part III of that Act to have effect as if the scheme were two separate schemes providing, respectively, the pensions referred to in paragraphs (a) and (b).

(2) Regulations made by the Department may, in connection with any provision made by virtue of paragraph (1), make such modifications of the following enactments, and the instruments made or having effect as if made under them, as appear to the Department desirable—

- the Contributions and Benefits Act,
- the Pension Schemes Act, and
- Part II.

Minor and consequential amendments

Minor and consequential amendments related to Articles 133 to 146

147. Schedule 3 (which makes amendments related to Articles 133 to 146 and the dissolution of the Occupational Pensions Board) has effect.

PART V

MISCELLANEOUS AND GENERAL

Transfer values

Extension of scope of right to cash equivalent

148.—(1) Section 89 of the Pension Schemes Act (scope of provisions relating to transfer values) is amended as follows.

- (2) For subsection (1)(a) substitute—

- “(a) to any member of an occupational pension scheme—
- (i) whose pensionable service has terminated at least one year before normal pension age, and
 - (ii) who on the date on which his pensionable service terminated had accrued rights to benefit under the scheme,
- except a member of a salary related occupational pension scheme whose pensionable service terminated before 1st January 1986 and in respect of whom prescribed requirements are satisfied;”.
- (3) After subsection (1) insert—
- “(1A) For the purposes of this section and the following provisions of this Chapter, an occupational pension scheme is salary related if—
- (a) the scheme is not a money purchase scheme, and
 - (b) the scheme does not fall within a prescribed class.
- (1B) Regulations may—
- (a) provide for this Chapter not to apply in relation to a person of a prescribed description, or
 - (b) apply this Chapter with prescribed modifications to occupational pension schemes—
 - (i) which are not money purchase schemes, but
 - (ii) where some of the benefits that may be provided are money purchase benefits.”.

Right to guaranteed cash equivalent

- 149.** After section 89 of the Pension Schemes Act insert—

“Salary related schemes: right to statement of entitlement.

89A.—(1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a “statement of entitlement”) of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.

- (2) In this section—

“the applicable rules” has the same meaning as in section 90;

“the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—

- (a) within the prescribed period beginning with the date of the application, and
- (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.

(3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.

(4) If, in the case of any scheme, a statement of entitlement has not been provided under this section, Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager who has failed to take all such steps as are reasonable to secure compliance with this section.”.

Right to guaranteed cash equivalent: supplementary

- 150.**—(1) In paragraph (a) of section 90(1) of the Pension Schemes Act—
- (a) after “occupational pension scheme” insert “other than a salary related scheme”, and
 - (b) after “terminates” insert “(whether before or after 1st January 1986)”.
- (2) After that paragraph insert—
- “(aa) a member of a salary related occupational pension scheme who has received a statement of entitlement and has made a relevant application within three months beginning with the guarantee date in respect of that statement acquires a right to his guaranteed cash equivalent;”.
- (3) After that subsection insert—
- “(2A) For the purposes of subsection (1)(aa), a person’s “guaranteed cash equivalent” is the amount stated in the statement of entitlement mentioned in that subsection.”.
- (4) In subsection (2) of that section, after the definition of “the applicable rules” insert—
- ““the guarantee date” has the same meaning as in section 89A(2);”.
- (5) After that subsection insert—
- “(2) Regulations may provide that, in prescribed circumstances, subsection (1)(aa) does not apply to members of salary related occupational pension schemes or applies to them with prescribed modifications.”.

Penalties

Breach of regulations under the Pension Schemes Act

- 151.**—(1) For section 164 of the Pension Schemes Act substitute—

“164 Breach of regulations.

(1) Regulations under any provision of this Act (other than Chapter II of Part VII) may make such provision as is referred to in subsection (2) or (4) for the contravention of any provision contained in regulations made or having effect as if made under any provision of this Act.

(2) The regulations may provide for the contravention to be an offence under this Act and for the recovery on summary conviction of a fine not exceeding level 5 on the standard scale.

(3) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.

(4) The regulations may provide for a person who has contravened the provision to pay to the Regulatory Authority, within a prescribed period, a penalty not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in Article 10(2)(a) of the Pensions (Northern Ireland) Order 1995.

(5) Regulations made by virtue of subsection (4) do not affect the amount of any penalty recoverable under that subsection by reason of an act or omission occurring before the regulations are made.

(6) Where—

- (a) apart from this subsection, a penalty under subsection (4) is recoverable from a body corporate by reason of any act or omission of the body as a trustee of a trust scheme, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (7),

such a penalty is recoverable from each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(7) The persons referred to in subsection (6)(b) are—

- (a) any director, manager, secretary, or other similar officer of the body corporate, or a person purporting to act in any such capacity, and
- (b) where the affairs of the body corporate are managed by its members, any member in connection with his functions of management.

(8) Where the Regulatory Authority require any person to pay a penalty by virtue of subsection (6), they may not also require the body corporate in question to pay a penalty in respect of the same act or omission.

(9) A penalty under subsection (4) is recoverable by the Authority and any such penalty recovered by the Authority must be paid to the Department.

(10) Where by reason of the contravention of any provision contained in regulations made, or having effect as if made, under this Act—

- (a) a person is convicted of an offence under this Act, or
- (b) a person pays a penalty under subsection (4),

then, in respect of that contravention, he shall not, in a case within paragraph (a), be liable to pay such a penalty or, in a case within paragraph (a), be liable to pay such a penalty or, in a case within paragraph (b), be convicted of such an offence.

164A Offence in connection with the Registrar.

(1) Any person who knowingly or recklessly provides the Registrar with information which is false or misleading in a material particular is guilty of an offence if the information—

- (a) is provided in purported compliance with a requirement under section 2, or
- (b) is provided otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Registrar for the purpose of discharging his functions under this Act.

(2) Any person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to imprisonment or a fine, or both.”.

(2) In section 181 of the Pension Schemes Act (Assembly control of regulations), in subsection (2), before “and” insert “or 164(2)”.

Pensions Ombudsman

Employment of staff by the Pensions Ombudsman

152. For section 141(2) of the Pension Schemes Act, substitute—

“(2A) The Pensions Ombudsman may (with the approval of the Department as to numbers) appoint such persons to be employees of his as he thinks fit, on such terms and

conditions as to remuneration and other matters as the Pensions Ombudsman may with the approval of the Department determine.

(2B) The Department may, on such terms as to payment by the Pensions Ombudsman as the Department thinks fit, make available to the Pensions Ombudsman such additional staff and such other facilities as it thinks fit.

(2C) Any function of the Pensions Ombudsman, other than the determination of complaints made and disputes referred under this Part, may be performed by any—

- (a) employee appointed by the Pensions Ombudsman under subsection (2A) or any corresponding provision in force in Great Britain, or
- (b) member of staff made available to him under subsection (2B) or any corresponding provision in force in Great Britain,

who is authorised for that purpose by the Pensions Ombudsman.”.

Jurisdiction of Pensions Ombudsman

153.—(1) Sections 142 to 147 of the Pension Schemes Act are amended as shown in paragraphs (2) to (11).

(2) In section 142 (investigations concerning the trustees or managers of schemes), for subsection (1) to (4) substitute—

“(1) The Pensions Ombudsman may investigate and determine the following complaints and disputes—

- (a) a complaint made to him by or on behalf of an actual or potential beneficiary of an occupational or personal pension scheme who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of a person responsible for the management of the scheme,
- (b) a complaint made to him—
 - (i) by or on behalf of a person responsible for the management of an occupational pension scheme who in connection with any act or omission of another person responsible for the management of the scheme, alleges maladministration of the scheme, or
 - (ii) by or on behalf of the trustees or managers of an occupational pension scheme who in connection with any act or omission of any trustee or manager of another such scheme, allege maladministration of the other scheme,

and in any case falling within sub-paragraph (ii) references in this Part to the scheme to which the complaint relates is to the other scheme referred to in that sub-paragraph,

- (c) any dispute of fact or law which arises in relation to an occupational or personal pension scheme between—
 - (i) a person responsible for the management of the scheme, and
 - (ii) an actual or potential beneficiary,and which is referred to him by or on behalf of the actual or potential beneficiary, and
- (d) any dispute of fact or law which arises between the trustees or managers of an occupational pension scheme and—
 - (i) another person responsible for the management of the scheme, or
 - (ii) any trustee or manager of another such scheme,

and which is referred to him by or on behalf of the person, trustee or manager referred to in sub-paragraph (i) or (ii); and in any case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates is to the scheme first mentioned in this paragraph.

(2) Complaints and references made to the Pensions Ombudsman must be made to him in writing.

(3) For the purposes of this Part, the following persons (subject to subsection (4)) are responsible for the management of an occupational pension scheme—

- (a) the trustees or managers, and
- (b) the employer;

but, in relation to a person falling within one of those paragraphs, references in this Part to another person responsible for the management of the same scheme are to a person falling within the other paragraph.

(3A) For the purpose of this Part, a person is responsible for the management of a personal pension scheme if he is a trustee or manager of the scheme.

(4) Regulations may provide that, subject to any prescribed modification or exceptions, this Part shall apply in the case of an occupational or personal pension scheme in relation to any prescribed person or body of persons where the person or body—

- (a) is not a trustee or manager or employer, but
- (b) is concerned with the financing or administration of, or the provision of benefits under, the scheme,

as if for the purposes of this Part he were a person responsible for the management of the scheme.”.

(3) In subsection (7) of section 142, for ““authorised complainants”” substitute ““actual or potential beneficiaries””.

(4) In section 143 (death, insolvency, etc.), in subsections (1) and (2), for “authorised complainant” (wherever occurring) substitute “actual or potential beneficiary” and in subsection (2) for “the authorised complainant's” substitute “his”.

(5) In subsection (3) of that section, for “an authorised complainant” substitute “a person by whom, or on whose behalf, a complaint or reference has been made under this Part”.

(6) In section 144 (staying court proceedings), in subsection (4), for paragraphs (a) and (b) substitute—

- “(a) the person by whom, or on whose behalf, the complaint or reference has been made;
- (b) any person responsible for the management of the scheme to which the complaint or reference relates;”.

(7) In section 145 (procedure on investigation), in subsection (1)(a), for “the trustees and managers of the scheme concerned” substitute “any person (other than the person by whom, or on whose behalf, the complaint or reference was made) responsible for the management of the scheme to which the complaint or reference relates”.

(8) In section 146 (investigations: further provisions), in subsection (1)(a), for “any trustee or manager of the scheme concerned” substitute “any person responsible for the management of the scheme to which the complaint or reference relates”.

(9) In section 147 (determinations of Pensions Ombudsman), for subsection (1)(a) and (b) substitute—

- “(a) to the person by whom, or on whose behalf, the complaint or reference was made; and

(b) to any person (if different) responsible for the management of the scheme to which the complaint or reference relates;”.

(10) In subsection (2) of that section, for “the trustees or managers of the scheme concerned” substitute “any person responsible for the management of the scheme to which the complaint or reference relates”.

(11) In subsection (3) of that section, for paragraphs (a) to (c) substitute—

- “(a) the person by whom, or on whose behalf, the complaint or reference was made;
- (b) any person (if different) responsible for the management of the scheme to which the complaint or reference relates; and
- (c) any person claiming under a person falling within paragraph (a) or (b).”.

Allowances

54.—(1) In section 145 of the Pension Schemes Act—

(a) after subsection (3)(b) insert “and”

“(c) for the payment by the Pensions Ombudsman of such travelling and other allowances (including compensation for loss of remunerative time) as the Department may determine, to—

- (i) actual or potential beneficiaries of a scheme to which a complaint or reference relates, or
- (ii) persons appearing and being heard on behalf of such actual or potential beneficiaries, who attend at the request of the Pensions Ombudsman any oral hearing held in connection with an investigation into the complaint or dispute”, and

(b) at the end of subsection (3)(a), omit “and”.

Disclosing information

155.—(1) In section 145 of the Pension Schemes Act, after subsection (4) add—

“(5) The Pensions Ombudsman may disclose any information which he obtains for the purposes of an investigation under this Part to any person to whom subsection (6) applies, if the Ombudsman considers that the disclosure would enable or assist that person to discharge any of his functions.

(6) This subsection applies to the following—

- (a) the Regulatory Authority,
- (b) the Pensions Compensation Board,
- (c) the Registrar,
- (d) any Northern Ireland department or department of the Government of the United Kingdom,
- (e) the Bank of England,
- (f) the Friendly Societies Commission,
- (g) the Building Societies Commission,
- (h) an inspector appointed by the Department of Economic Development under Part XV of the Companies (Northern Ireland) Order 1986⁽⁸⁹⁾,

- (i) an inspector appointed by the Secretary of State under Part XIV of the Companies Act 1985⁽⁹⁰⁾ or section 94 or 177 of the Financial Services Act 1986⁽⁹¹⁾,
 - (j) a person authorised under section 106 of the Financial Services Act 1986 to exercise powers conferred by section 105 of that Act,
 - (k) a designated agency or transferee body or the competent authority, within the meaning of that Act, and
 - (l) a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house, within the meaning of that Act.
- (7) The Department may by order—
- (a) amend subsection (6) by adding any person or removing any person for the time being specified in that subsection, or
 - (b) restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in that subsection.”.
- (2) In section 147 of that Act, in subsection (7)(a), after “this section” insert—
- “(aa) in disclosing any information under section 145(5),”.

Interest on late payment of benefit

156. After section 147 of the Pension Schemes Act insert—

“Interest on late payment of benefit.

147a. Where under this Part the Pensions Ombudsman directs a person responsible for the management of an occupational or personal pension scheme to make any payment in respect of benefit under the scheme which, in his opinion, ought to have been paid earlier, his direction may also require the payment of interest at the prescribed rate.”.

Modification and winding up of schemes

Repeal of sections 132 to 139 of Pension Schemes Act

157. Sections 132 to 137 (modification) and 138 and 139 (winding up) of the Pension Schemes Act shall cease to have effect.

Personal pensions

Annual increase in rate of personal pension

158.—(1) This Article applies to any pension provided to give effect to protected rights of a member of a personal pension scheme if—

- (a) there is in force, or was in force at any time after the appointed day, an appropriate scheme certificate issued in accordance with Chapter I or Part III (certification) of the Pension Schemes Act, and

⁽⁹⁰⁾ 1985 c. 6.

⁽⁹¹⁾ 1986 c. 60.

- (b) apart from this Article, the annual rate of the pension would not be increased each year by at least the appropriate percentage of that rate.
- (2) Where a pension to which this Article applies, or any part of it, is attributable to contributions in respect of employment carried on on or after the appointed day—
 - (a) the annual rate of the pension, or
 - (b) if only part of the pension is attributable to contributions in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,must be increased annually by at least the appropriate percentage.

Article 158: supplementary

159.—(1) The first increase required by Article 158 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid, and subsequent increases must take effect at intervals of not more than 12 months.

(2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than 12 months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this paragraph) for each complete month in that period.

(3) In Article 158 and this Article—

“annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under Article 158,

“the appointed day” means the day appointed under Article 1 for the commencement of Article 158,

“appropriate percentage”, in relation to an increase in the whole or part of the annual rate of a pension, means the revaluation percentage for the revaluation period the reference period for which ends with the last preceding 30th September before the increase is made (expressions used in this definition having the same meaning as in Article 54(3)),

“pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity,

“protected rights” has the meaning given by section 6 of the Pension Schemes Act (money purchase benefits).

Power to reject notice choosing appropriate personal pension scheme

160. In section 40 of the Pension Schemes Act (earner’s chosen scheme)—

(a) in subsection (1), after paragraph (b) insert—

“then unless the Department rejects the notice on either or both of the grounds mentioned in subsection (1A)”, and

(b) after the subsection insert—

“(1A) The grounds referred to in subsection (1) are that the Department is of the opinion—

(a) that section 27(5) is not being complied with in respect of any members of the scheme,

(b) that, having regard to any other provisions of sections 22 to 28 and 39 to 41, it is inexpedient to allow the scheme to be the chosen scheme of any further earners.”.

*Levy***Levy**

161. For section 170 of the Pension Schemes Act substitute—

“170 Levies towards certain expenditure.

(1) For the purpose of meeting expenditure—

- (a) under section 2,
- (b) under Part X and section 169, or
- (c) of the Regulatory Authority (including the establishment of the authority and, if the authority are appointed as Registrar under section 6 of the Pension Schemes Act 1993, their expenditure as Registrar),

regulations may make provision for imposing levies in respect of prescribed occupational or prescribed personal pension schemes.

(2) Any levy imposed under subsection (1) is payable to the Department by or on behalf of—

- (a) the administrators of any prescribed public service pension scheme,
- (b) the trustees or managers of any other prescribed occupational or prescribed personal pension scheme, or
- (c) any other prescribed person,

at prescribed rates and at prescribed times.

(3) Regulations made by virtue of subsection (1)—

- (a) in determining the amount of any levy in respect of the Regulatory Authority, must take account (among other things) of any amounts paid to the Department under section 164(4) or Article 10 of the Pensions (Northern Ireland) Order 1995, and
- (b) in determining the amount of expenditure in respect of which any levy is to be imposed, may take one year with another and, accordingly, may have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods (including periods ending before the coming into operation of this subsection).

(4) Regulations may make provision for imposing a levy in respect of prescribed occupational pension schemes for the purpose of meeting expenditure of the Pensions Compensation Board (including the establishment of the Board).

(5) Any levy imposed under subsection (4) is payable to the Board by or on behalf of—

- (a) the trustees of any prescribed occupational pension scheme, or
- (b) any other prescribed person,

at prescribed times and at a rate not exceeding the prescribed rate, determined by the Board.

(6) In determining the amount of expenditure in respect of which any levy under subsection (4) is to be imposed, the Board, and regulations made by virtue of subsection (5), may take one year with another and, accordingly, may have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods (including periods ending before the coming into operation of this subsection).

(7) Notice of the rates determined by the Board under subsection (5) must be given to prescribed persons in the prescribed manner.

(8) An amount payable by a person on account of a levy imposed under this section shall be a debt due from him to the appropriate person, that is—

- (a) if the levy is imposed under subsection (1), the Department, and
- (b) if the levy is imposed under subsection (4), the Board,

and an amount so payable shall be recoverable by the appropriate person accordingly or, if the appropriate person so determines, be recoverable by the Registrar on behalf of the appropriate person.

(9) Without prejudice to the generality of subsections (1) and (4), regulations under this section may include provision relating to—

- (a) the collection and recovery of amounts payable by way of levy under this section, or
- (b) the circumstances in which any such amount may be waived.”.

Pensions on divorce, etc.

Pensions on divorce, etc.

162.—(1) In the Matrimonial Causes (Northern Ireland) Order 1978(92), after Article 27A insert—

“Pensions

27B.—(1) The matters to which the court is to have regard under Article 27(2) include—

- (a) in the case of sub-paragraph (a), any benefits under a pension scheme which a party to the marriage has or is likely to have; and
- (b) in the case of sub-paragraph (h), any benefits under a pension scheme which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,

and, accordingly, in relation to benefits under a pension scheme, Article 27(2)(a) shall have effect as if “in the foreseeable future” were omitted.

(2) In any proceedings for a financial provision order under Article 25 in a case where a party to the marriage has, or is likely to have, any benefit under a pension scheme, the court shall, in addition to considering any other matter which it is required to consider apart from this paragraph, consider—

- (a) whether having regard to any matter to which it is required to have regard in the proceedings by virtue of paragraph (1), such an order (whether deferred or not) should be made; and
- (b) where the court determines to make such an order, how the terms of the order should be affected, having regard to any such matter.

(3) The following provisions apply where, having regard to any benefits under a pension scheme, the court determines to make an order under Article 25.

(4) To the extent to which the order is made having regard to any benefits under a pension scheme, the order may require the trustees or managers of the pension scheme in question, if at any time any payment in respect of any benefits under the scheme becomes due to the party with pension rights, to make a payment for the benefit of the other party.

(5) The amount of any payment which, by virtue of paragraph (4), the trustees or managers are required to make under the order at any time shall not exceed the amount of the payment which is due at that time to the party with pension rights.

(6) Any such payment by the trustees or managers—

- (a) shall discharge so much of the trustees' or managers' liability to the party with pension rights as corresponds to the amount of the payment; and
- (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.

(7) Where the party with pension rights may require any benefits which he has or is likely to have under the scheme to be commuted, the order may require him to commute the whole or part of those benefits; and this Article applies to the payment of any amount commuted in pursuance of the order as it applies to other payments in respect of benefits under the scheme.

Pensions: lump sums

27C.—(1) The power of the court under Article 25 to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension scheme include any lump sum payable in respect of his death, power to make any of the following provision by the order.

(2) The court may—

- (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, require them to pay the whole or part of that sum, when it becomes due, to the other party;
- (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum;
- (c) in any other case, require the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.

(3) Any payment by the trustees or managers under an order made under Article 25 by virtue of this Article shall discharge so much of the trustees', or managers', liability in respect of the party with pension rights as corresponds to the amount of the payment.

Pensions: supplementary

27.—(1) Where—

- (a) an order made under Article 25 by virtue of Article 27B or 27C imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the party with pension rights acquires transfer credits under another pension scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme (including transfer credits allowed by that scheme); and
- (b) the trustees or managers of the new scheme have been given notice in accordance with regulations,

the order shall have effect as if it had been made in respect of the trustees or managers of the new scheme; and in this paragraph “transfer credits” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.

(2) Regulations may—

- (a) in relation to any provision of Article 27B or 27C which authorises the court making an order under Article 25 to require the trustees or managers of a pension scheme to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made;
 - (b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of Articles 27B and 27C;
 - (c) make provision for the trustees or managers of any pension scheme to provide, for the purposes of orders under Article 25, information as to the value of any benefits under the scheme;
 - (d) make provision for the recovery of the administrative expenses of—
 - (i) complying with such orders, so far as they include provision made by virtue of Articles 27B and 27C; and
 - (ii) providing such information, from the party with pension rights or the other party;
 - (e) make provision for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of orders under Article 25, in a prescribed manner;
- and regulations made by virtue of sub-paragraph (e) may provide for that value to be calculated and verified in accordance with guidance which is prepared and revised by a prescribed person and approved by the Department of Health and Social Services.

(3) In this Article and Articles 27B and 27C—

- (a) references to a pension scheme include—
 - (i) a retirement annuity contract; or
 - (ii) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme;
- (b) in relation to such a contract or annuity, references to the trustees or managers shall be read as references to the provider of the annuity;
- (c) in relation to such a policy, references to the trustees or managers shall be read as references to the insurer;

and in Article 27B(1) and (2), references to benefits under a pension scheme include any benefits by way of pension, whether under a pension scheme or not.

(4) In this Article and Articles 27B and 27C—

“the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension scheme and “the other party” means the other party to the marriage;

“pension scheme” means an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes (Northern Ireland) Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners);

“prescribed” means prescribed by regulations; and

“regulations” means regulations made by the Lord Chancellor;

and regulations made under this Article 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 shall apply accordingly.”

(2) In Article 27(2)(h) of that Order (loss of chance to acquire benefits), omit “(for example, a pension)”.

- (3) In Article 33 of that Order (variation, discharge, etc. of orders)—
- (a) in paragraph (2), after sub-paragraph (d) insert—
- “(dd) any deferred order made by virtue of Article 25(1)(c) (lump sums) which includes provision made by virtue of—
- (i) Article 27B(4), or
- (ii) Article 27C,
- (provision in respect of pension rights);”, and
- (b) after paragraph (2A) insert—
- “(2B) Where the court has made an order referred to in paragraph (2)(dd)(ii), this Article shall cease to apply to the order on the death of either of the parties to the marriage.”.
- (4) Nothing in the provisions mentioned in paragraph (5) applies to a court exercising its powers under Article 25 of that Order (financial provision orders in connection with divorce proceedings, etc.) in respect of any benefits under a pension scheme (within the meaning of Article 27B(1) of that Order) which a party to the marriage has or is likely to have.
- (5) The provisions referred to in paragraph (4) are—
- (a) section 203(1) and (2) of the Army Act 1955⁽⁹³⁾, 203(1) and (2) of the Air Force Act 1955⁽⁹⁴⁾, 128G(1) and (2) of the Naval Discipline Act 1957⁽⁹⁵⁾ or 155(4) and (4A) of the Pension Schemes Act (which prevent assignment, or orders being made restraining a person from receiving anything which he is prevented from assigning),
- (b) Article 89,
- (c) any provision of any enactment (whether passed or made before or after this Order is made) corresponding to any of the enactments mentioned in sub-paragraphs (a) and (b), and
- (d) any provision of the scheme in question corresponding to any of those enactments.
- (6) Article 27B(3) to (7) and Article 27C of the Matrimonial Causes (Northern Ireland) Order 1978⁽⁹⁶⁾, as inserted by this Article, do not affect the powers of the court under Article 33 of that Order (variation, discharge, etc.) in relation to any order made before the commencement of this Article.

Official and public service pensions

Equal treatment in relation to official pensions

- 163.**—(1) Section 3 of the Pensions (Increase) Act (Northern Ireland) 1971⁽⁹⁷⁾ (qualifying conditions for pensions increase) is amended as follows.
- (2) In subsection (2)(c), omit “is a woman who”.
- (3) In subsection (10)—
- (a) for “woman is in receipt of a pension” substitute “person is in receipt of a pension the whole or any part of”, and
- (b) for “woman and that pension” substitute “person and that pension and that pension or part”.
- (4) In subsection (11)—

⁽⁹³⁾ 1955 c. 18.

⁽⁹⁴⁾ 1955 c. 19.

⁽⁹⁵⁾ 1957 c. 53.

⁽⁹⁶⁾ 1978 NI 15.

⁽⁹⁷⁾ 1971 c. 35 (N.I.).

- (a) for “woman's” substitute “person's”, and
 - (b) for “woman” substitute “persons,”
- and accordingly for “she” substitute “he”.

(5) This Article has effect, and shall be deemed to have had effect, in relation to pensions commencing after 17th May 1990, and in relation to so much of any such pension as is referable to service on or after that date.

Information about public service schemes

164.—(1) In prescribed circumstances, the appropriate Department may provide information to any prescribed person in connection with the following questions—

- (a) whether an individual who during any period—
 - (i) has been eligible to be an active member of an occupational pension scheme under the Superannuation (Northern Ireland) Order 1972(98), but
 - (ii) has instead made contributions to a personal pension scheme,has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986(99) (actions for damages in respect of contravention of rules, etc. made under the Act), and
- (b) if so, what payment would need to be made to the occupational scheme in respect of the individual to restore the position to what it would have been if the individual had been an active member of the occupational scheme throughout the period in question,

and may impose on that person reasonable fees in respect of administrative expenses incurred in providing that information.

(2) Where—

- (a) such an individual as is mentioned in paragraph (1) is admitted or readmitted as an active member of an occupational pension scheme under the Superannuation (Northern Ireland) Order 1972, or
- (b) a payment is made to the appropriate Department in respect of such an individual for the purpose mentioned in paragraph (1)(b),

that Department may impose on any prescribed person reasonable fees in respect of administrative expenses incurred in connection with the admission, readmission or payment.

(3) References in paragraphs (1) and (2) to the appropriate Department shall be read—

- (a) in the case of an occupational pension scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972(100) (superannuation of civil servants), as references to the Department of Finance and Personnel, or such person as may be prescribed;
- (b) in the case of other occupational pension schemes, as references to such Northern Ireland department as may be designated by the Department of Finance and Personnel as having responsibility for the particular scheme.

(4) In the case of an occupational pension scheme under Article 9 of the Superannuation (Northern Ireland) Order 1972 (superannuation of persons employed in local government, etc.), the references in paragraphs (1) and (2) to the appropriate Department include references to a prescribed person.

(5) In this Article—

“prescribed” means—

(98) 1972 NI 10.

(99) 1986 c. 60.

(100) 1972 NI 10.

- (a) in the case of a scheme made under Article 3 of the Superannuation (Northern Ireland) Order 1972, prescribed by a scheme made by the Department of Finance and Personnel, or
- (b) in any other case, prescribed by regulations made by the appropriate Department, and “active member”, in relation to an occupational pension scheme, has the same meaning as in Part II.

General minor and consequential amendments

General minor and consequential amendments

165. Schedule 4, which makes general minor and consequential amendments, has effect.

Subordinate legislation, etc.

Orders and regulations (general provisions)

166.—(1) Where a power under this Order to make regulations or an order is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes.

(2) Any power to make regulations or an order for the purposes of any one provision of this Order is without prejudice to any power to make regulations or an order for the purposes of any other provision.

(3) Any power conferred by this Order to make regulations or an order includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient for the purposes of the regulations or order.

(4) Regulations made under this Order may, for the purposes of or in connection with the coming into operation of any provisions of this Order, make any such provision as could be made by virtue of Article 1(5)(a), by an order bringing those provisions into operation.

Assembly, etc. control of orders and regulations

167.—(1) Subject to paragraph (2)—

- (a) any orders (except orders under Article 1) made under this Order by a Northern Ireland department, and
- (b) any regulations made under this Order,

are subject to negative resolution.

(2) Orders and regulations to which this paragraph applies—

- (a) must be laid before the Assembly after being made, and
- (b) take effect on such date as may be specified in the order or regulations, but (without prejudice to the validity of anything done thereunder or to the making of a new order or 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 order or regulations are approved by a resolution of the Assembly.

(3) Paragraph (2) applies in relation in orders and regulations made by virtue of—

- (a) Article 10(2),
- (b) Article 64(4),

(c) Article 113(1), or
(d) Article 146,
(whether made alone or with other orders or regulations).

(4) Orders (except orders under Article 1) made under this Order by a Minister of the Crown are subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946(**101**) applies accordingly.

Repeals

168.—(1) The enactments set out in Schedule 5 are repealed to the extent specified in column 3.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 119

Amendments consequential on Part II

The Industrial Relations (Northern Ireland) Order (NI 16)

1. The Industrial Relations (Northern Ireland) Order 1976 is amended as follows.
2. In Article 22D(4) (dismissal on grounds of assertion of statutory right), after sub-paragraph (b) (ii) add—
“or
(iii) the rights conferred by Articles 42, 43, and 46 of the Pensions (Northern Ireland) Order 1995.”.
3. In Article 32(2A) (additional award for failure to comply with Article 31 not to be made), at the end add—
“or
(c) Article 46 of the Pensions (Northern Ireland) Order 1995.”.
4. In Article 33(2) (compensation for unfair dismissal), after “and (b)” insert “of this Order or Article 46 of the Pensions (Northern Ireland) Order 1995”.
5. In Article 34(6) (calculation of basic award), after “and (b)” insert “of this Order or Article 46 of the Pensions (Northern Ireland) Order 1995”.
6. In Article 39(1) (interim relief), in sub-paragraph (b), after “and (b)” insert “of this Order or Article 46 of the Pensions (Northern Ireland) Order 1995”.
7. In Article 39A(1) (procedure on hearing application, etc.), in sub-paragraph (b), after “and (b)” insert “of this Order or Article 46 of the Pensions (Northern Ireland) Order 1995”.
8. In Article 62(1) (conciliation officers), after sub-paragraph (ab) add—
“or
(ac) arising out of a contravention, or alleged contravention, of Article 42, 43 or 46 of the Pensions (Northern Ireland) Order 1995,”.
9. In Article 79 (application to the Crown), in paragraph (1), after “Part IV)” insert “and Articles 42 to 46 of the Pensions (Northern Ireland) Order 1995”.

The Companies (Northern Ireland) Order 1986 (NI 6)

10. In Article 442(1) of the Companies (Northern Ireland) Order 1986 (security of information obtained), after paragraph (df) insert—
“(dg) for the purpose of enabling or assisting the Occupational Pensions Regulatory Authority to discharge their functions under the Pension Schemes (Northern Ireland) Act 1993 or the Pensions (Northern Ireland) Order 1995 or any enactment in force in Great Britain corresponding to either of them,”.

The Insolvency (Northern Ireland) Order 1989 (NI 19)

- 11.** In Article 283 of the Insolvency (Northern Ireland) Order 1989 (income payments orders)—
- (a) in paragraph (2), after “income of the bankrupt” insert “when taken together with payments to which paragraph (8) applies”, and
 - (b) at the end of paragraph (7), add—
 - “and any payment under a pension scheme but excluding any payment to which paragraph (8) applies.
 - (8) This paragraph applies to—
 - (a) payments by way of guaranteed minimum pension; and
 - (b) payments giving effect to the bankrupt’s protected rights as a member of a pension scheme.
 - (9) In this Article “guaranteed minimum pension” and “protected rights” have the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.”.

The Pension Schemes (Northern Ireland) Act 1993 (c. 49)

- 12.** The Pension Schemes Act is amended as follows.
- 13.** In section 2 (registration), after subsection (2) insert—
 - “(2A) The regulations may make provision for information obtained by or furnished to the Registrar under or for the purposes of this Act to be disclosed to the Regulatory Authority or the Pensions Compensation Board.”.
- 14.** Sections 73 to 76 (assignment, forfeiture, etc. of short service benefit) are repealed.
- 15.** In section 78 (supplementary regulations), for “75” (in both places) substitute “72”.
- 16.** Section 98 to 104 (annual increase in pensions in payment) are repealed.
- 17.** Section 108 (restrictions on investment in employer-related assets) is repealed.
- 18.** Section 110 (documents for members, etc.) is repealed.
- 19.** In section 111(1), omit “or 110(1)(b)”.
- 20.** Section 112 (regulations as to auditors) is repealed.
- 21.** Section 114 (equal access) is repealed.
- 22.** Sections 115 to 118 (independent trustees) are repealed.
- 23.** In section 125 (overriding requirements)—
- (a) in subsection (1), omit “Chapter I of Part V”, “, sections 115 to 118”, “under Chapter I of Part V or” and from “or 110” to “118”,
 - (b) in subsection (2), for from “, Chapter III” to “section 104)” substitute “and Chapter III of that Part”, and
 - (c) omit subsection (3)(a).
- 24.** In section 128 (bringing schemes into conformity with indirectly-applying requirements), omit “, the equal access requirements”.
- 25.** In section 129(1) (advice of the Board), omit “, the equal access requirements”.
- 26.** In section 130 (determination of questions), omit—
- (a) in subsection (3), “, the equal access requirements”, and

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- (b) in subsection (4), “or the equal access requirements” and “or, as the case may be, section 114(1)”.
- 27.** In section 132(2)(e)(iv) (applications to modify schemes), omit “or the equal access requirements”.
- 28.** In section 135(2) (functions of the Board), omit “, the equal access requirements”.
- 29.** In section 136(4) (effect of orders), omit paragraph (c) and the “and” immediately preceding it.
- 30.** Section 140 (deficiencies in assets on winding up) is repealed.
- 31.** In section 149 (power to modify Act)—
- (a) in subsection (1), omit from “and Chapter I” to “section 104”, and
 - (b) omit subsections (3) to (7).
- 32.** In section 150(1) (application of provisions to personal pension schemes), after “provision of this Act” insert “or of Articles 22 to 26 and 40 of the Pensions (Northern Ireland) Order 1995”.
- 33.** In section 155 (inalienability of certain pensions), after subsection (4) insert—
- “(4A) Where a person—
 - (a) is entitled or prospectively entitled as is mentioned in subsection (1), or
 - (b) is entitled to such rights or to such a payment as is mentioned in subsection (4), - no order shall be made by any court or the Enforcement of Judgments Office the effect of which would be that he would be restrained from receiving anything the assignment of which is or would be made void by either of those subsections.
 - (4B) Subsection (4A) does not prevent the making of an attachment of earnings order under the Judgments Enforcement (Northern Ireland) Order 1981.”.
- 34.** In section 165 (determination of questions by the Department), omit subsections (5) and (6).
- 35.** In section 173 (meaning of “manager”), after “1992” insert “or of Articles 22 to 26 of the Pensions (Northern Ireland) Order 1995”, and omit “or” after “1991”.
- 36.** In section 176 (general interpretation)—
- (a) in subsection (1)—
 - (i) omit the definition of “equal access requirements”, and
 - (ii) after the definition of “regulations” insert—
 - ““the Regulatory Authority” means the Occupational Pension Regulatory Authority;” and
- (b) in subsection (2), for from “, 156” to “requirements” substitute “and 156”.
- 37.** In section 178 (sub-delegation), in subsection (3)—
- (a) for “, 93(1), 100(8) and 140(5)” substitute “and 93(1)”,
 - (b) omit from “or, in the case of” to “determined”, and
 - (c) omit the words following paragraph (b).
- 38.** In Schedule 6 (re-enactment or amendment of certain provisions not in force), omit paragraphs 1 and 3.
- 39.** In Schedule 7 (consequential amendments), omit paragraph 10.

SCHEDULE 2

Article 123.

EQUALISATION

PART I

PENSIONABLE AGES FOR MEN AND WOMEN

Rules for determining pensionable age

1. The following rules apply for the purposes of the enactments relating to social security, that is, the following Acts and the instruments (as defined in section 1 of the Interpretation Act (Northern Ireland) 1954⁽¹⁰²⁾) made, or having effect as if made, under them: the Contributions and Benefits Act, the Administration Act and the Pension Schemes Act.

Rules

- (1) A man attains pensionable age when he attains the age of 65 years.
- (2) A woman born before 6th April 1950 attains pensionable age when she attains the age of 60.
- (3) A woman born on any day in a period mentioned in column 1 of the following table attains pensionable age at the commencement of the day shown against that period in column 2.
- (4) A woman born after 5th April 1955 attains pensionable age when she attains the age of 65.
- (5) Any reference to a period in column 1 includes a reference to the first day of that period.

Table

(1) Period within which woman's birthday falls	(2) Day pensionable age attained
6th April 1950 to 5th May 1950	6th May 2010
6th May 1950 to 5th June 1950	6th July 2010
6th June 1950 to 5th July 1950	6th September 2010
6th July 1950 to 5th August 1950	6th November 2010
6th August 1950 to 5th September 1950	6th January 2011
6th September 1950 to 5th October 1950	6th March 2011
6th October 1950 to 5th November 1950	6th May 2011
6th November 1950 to 5th December 1950	6th July 2011
6th December 1950 to 5th January 1951	6th September 2011
6th January 1951 to 5th February 1951	6th November 2011
6th February 1951 to 5th March 1951	6th January 2012
6th March 1951 to 5th April 1951	6th March 2012
6th April 1951 to 5th May 1951	6th May 2012

⁽¹⁰²⁾1954 c. 33 (N.I.).

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(1) Period within which woman's birthday falls	(2) Day pensionable age attained
6th May 1951 to 5th June 1951	6th July 2012
6th June 1951 to 5th July 1951	6th September 2012
6th July 1951 to 5th August 1951	6th November 2012
6th August 1951 to 5th September 1951	6th January 2013
6th September 1951 to 5th October 1951	6th March 2013
6th October 1951 to 5th November 1951	6th May 2013
6th November 1951 to 5th December 1951	6th July 2013
6th December 1951 to 5th January 1952	6th September 2013
6th January 1952 to 5th February 1952	6th November 2013
6th February 1952 to 5th March 1952	6th January 2014
6th March 1952 to 5th April 1952	6th March 2014
6th April 1952 to 5th May 1952	6th May 2014
6th May 1952 to 5th June 1952	6th July 2014
6th June 1952 to 5th July 1952	6th September 2014
6th July 1952 to 5th August 1952	6th November 2014
6th August 1952 to 5th September 1952	6th January 2015
6th September 1952 to 5th October 1952	6th March 2015
6th October 1952 to 5th November 1952	6th May 2015
6th November 1952 to 5th December 1952	6th July 2015
6th December 1952 to 5th January 1953	6th September 2015
6th January 1953 to 5th February 1953	6th November 2015
6th February 1953 to 5th March 1953	6th January 2016
6th March 1953 to 5th April 1953	6th March 2016
6th April 1953 to 5th May 1953	6th May 2016
6th May 1953 to 5th June 1953	6th July 2016
6th June 1953 to 5th July 1953	6th September 2016
6th July 1953 to 5th August 1953	6th November 2016
6th August 1953 to 5th September 1953	6th January 2017
6th September 1953 to 5th October 1953	6th March 2017
6th October 1953 to 5th November 1953	6th May 2017
6th November 1953 to 5th December 1953	6th July 2017
6th December 1953 to 5th January 1954	6th September 2017
6th January 1954 to 5th February 1954	6th November 2017
6th February 1954 to 5th March 1954	6th January 2018

(1) Period within which woman's birthday falls	(2) Day pensionable age attained
6th March 1954 to 5th April 1954	6th March 2018
6th April 1954 to 5th May 1954	6th May 2018
6th May 1954 to 5th June 1954	6th July 2018
6th June 1954 to 5th July 1954	6th September 2018
6th July 1954 to 5th August 1954	6th November 2018
6th August 1954 to 5th September 1954	6th January 2019
6th September 1954 to 5th October 1954	6th March 2019
6th October 1954 to 5th November 1954	6th May 2019
6th November 1954 to 5th December 1954	6th July 2019
6th December 1954 to 5th January 1955	6th September 2019
6th January 1955 to 5th February 1955	6th November 2019
6th February 1955 to 5th March 1955	6th January 2020
6th March 1955 to 5th April 1955	6th March 2020

PART II

ENTITLEMENT TO CERTAIN PENSION AND OTHER BENEFITS

Pension increases for dependent spouses

2.—(1) For sections 83 and 84 of the Contributions and Benefits Act substitute—

“83A Pension increase for spouse.

(1) Subject to subsection (3) below, the weekly rate of a Category A or Category C retirement pension payable to a married pensioner shall, for any period mentioned in subsection (2) below, be increased by the amount specified in relation to the pension in Schedule 4, Part IV, column (3).

(2) The periods referred to in subsection (1) above are—

- (a) any period during which the pensioner is residing with the spouse, and
- (b) any period during which the pensioner is contributing to the maintenance of the spouse at a weekly rate not less than the amount so specified, and the spouse does not have weekly earnings which exceed that amount.

(3) Regulations may provide that for any period during which the pensioner is residing with the spouse and the spouse has earnings there shall be no increase of pension under this section.”.

(2) This paragraph has effect on 6th April 2010.

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

Category B retirement pensions

3.—(1) For sections 49 and 50 of the Contributions and Benefits Act substitute—

“48 Category B retirement pension for married person.

(1) A person who—

- (a) has attained pensionable age, and
- (b) on attaining that age was a married person or marries after attaining that age,

shall be entitled to a Category B retirement pension by virtue of the contributions of the other party to the marriage (“the spouse”) if the following requirement is met.

(2) The requirement is that the spouse—

- (a) has attained pensionable age and become entitled to a Category A retirement pension, and
- (b) satisfies the conditions specified in Schedule 3, Part I, paragraph 5.

(3) During any period when the spouse is alive, a Category B retirement pension payable by virtue of this section shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5.

(4) During any period after the spouse is dead, a Category B retirement pension payable by virtue of this section shall be payable at the weekly rate corresponding to—

- (a) the weekly rate of the basic pension, plus
- (b) half of the weekly rate of the additional pension, determined in accordance with the provisions of sections 44 to 45A above as they apply in relation to a Category A retirement pension but subject to section 46(2) above and the modification in section 48C(4) below.

(5) person’s Category B retirement pension payable by virtue of this section shall not be payable for any period falling before the day on which the spouse’s entitlement is to be regarded as beginning for that purpose by virtue of section 5(1)(1) of the Administration Act.

48B Category B retirement pension for widows and widowers.

(1) A person (“the pensioner” whose spouse died—

- (a) while they were married, and
- (b) after the pensioner attained pensionable age,

shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if the spouse satisfied the conditions specified in Schedule 3, Part I, paragraph 5.

(2) A Category B retirement pension payable by virtue of subsection (1) above shall be payable at a weekly rate corresponding to—

- (a) the weekly rate of the basic pension, plus
- (b) half of the weekly rate of the additional pension,

determined in accordance with the provision of sections 44 to 45A above as they apply in relation to a Category A retirement pension, but subject to section 46(2) above and the modifications in subsection (3) below and section 48C(4) below.

(3) Where the spouse died under pensionable age, references in the provisions of section 44 to 45A above as applied by subsection (2) above to the tax year in which the pensioner attained pensionable age shall be taken as references to the tax year in which the spouse died.

(4) A person who has attained pensionable age (“the pensioner”) whose spouse died before the pensioner attained that age shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if—

- (a) where the pensioner is a woman, the following condition is satisfied, and
- (b) where the pensioner is a man, the following condition would have been satisfied on the assumption mentioned in subsection (7) below.

(5) The condition is that the pensioner—

- (a) is entitled (or is treated by regulations as entitled) to a widow’s pension by virtue of section 38 above, and
- (b) became entitled to that pension in consequence of the spouse’s death.

(6) A Category B retirement pension payable by virtue of subsection (4) above shall be payable—

- (a) where the pensioner is a woman, at the same weekly rate as her widow’s pension and
- (b) where the pensioner is a man, at the same weekly rate as that of the pension to which he would have been entitled by virtue of section 38 above on the assumption mentioned in subsection (7) below.

(7) The assumption referred to in subsections (4) and (6) above is that a man is entitled to a pension by virtue of section 38 above on the same terms and conditions, and at the same rate, as a woman.

48C Category B retirement pension: general.

(1) Subject to the provisions of this Act, a person’s entitlement to a Category B retirement pension shall begin on the day on which the conditions of entitlement become satisfied and shall continue for life.

(2) In any case where—

- (a) a person would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
- (b) section 47(1) above would apply for the increase of the Category A retirement pension,

section 47(1) above shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 42(5) of the Pensions Act.

(3) In the case of a pensioner whose spouse died on or before 5th April 2000, sections 48A(4)(b) and 48B(2)(b) above shall have effect with the omission of the words “half of”.

(4) In the application of the provisions of section 44 to 45A above by virtue of sections 48A(4) or 48B(2) above, references in those provisions to the pensioner shall be taken as references to the spouse.”.

(2) Section 48A of that Act (as inserted by this paragraph) does not confer a right to a Category B retirement pension on a man by reason of his marriage to a woman who was born before 6 April 1950.

(3) Section 48B of that Act (as inserted by this paragraph) does not confer a right to a Category B retirement pension on a man who attains pensionable age before 6th April 2010; and section 51 of that Act does not confer a right to a Category B retirement pension on a man who attains pensionable age on or after that date.

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Home responsibilities protection

4.—(1) In paragraph 5 of Schedule 3 to the Contributions and Benefits Act (contribution conditions for entitlement to retirement pension), in sub-paragraph (7)(a) (condition that contributor must have paid or been credited with contributions of the relevant class for not less than the requisite number of years modified in the case of those precluded from regular employment by responsibilities at home), omit “(or at least 20 of them, if that is less than half)”.

(2) This paragraph has effect in relation to any person attaining pensionable age on or after 6th April 2010.

Additional pension

5. In section 46(2) of the Contributions and Benefits Act (benefits calculated by reference to Category A retirement pension), for the words following “45(4)(b) above—” substitute—

“N

(a) the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, or

(b) the number of tax years in the period—

(i) beginning with the tax year in which the deceased spouse (“S”) attained the age of 16 or if later 1978 79, and

(ii) ending immediately before the tax year in which S would have attained pensionable age if S had not died earlier.

whichever is the smaller number.”.

Increments

6.—(1) In section 54(1) of the Contributions and Benefits Act (election to defer right to pension), in paragraph (a), omit from “but” to “70”

(2) In Schedule 5 to that Act—

(a) in paragraph 2(2), omit the definition of “the period of enhancement” (and the preceding “and”), and

(b) for “period of enhancement” (in every other place in paragraph 2 and 3 where it appears) substitute “period of deferment”.

(3) In paragraph 2(3) of that Schedule, for “1/7th per cent.” substitute “1/5th per cent.”.

(4) In paragraph 8 of that schedule, omit sub-paragraphs (1) and (2).

(5) Sub-paragraph (1) comes into operation on 6th April 2010; and sub-paragraphs (2) to (4) have effect in relation to incremental periods beginning on or after that date.

Graduated retirement benefit

7. In section 62(1) of the Contributions and Benefits Act (graduated retirement benefit continued in force by regulations)—

(a) in paragraph (a), for “replacing section 35(4) of the National Insurance Act (Northern Ireland) 1966” substitute “amending section 35(2) of the National Insurance Act (Northern Ireland) 1966 (value of unit of graduated contributions) so that the value is the same for women as it is for men for replacing section 35(4) of that Act”, and

(b) at the end of paragraph (b) add “and for that section (except subsection (5) so to apply as it applies to women and their late husbands”.

Christmas bonus for pensioners

8. In section 145(4) of that Act (Christmas bonus: supplementary), for “70 in the case of a man or 65 in the case of a woman” substitute “65”.

Part III

Consequential amendments

9. In the Contributions and Benefits Act—

(a) in section 121(1) (interpretation of Parts I to VI), for the definition of “pensionable age” substitute—

““pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995; and”

(b) in section 146(2) (interpretation of Part X), for the definition of “pensionable age” substitute—

““pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995;”.

10. In section 167(1) of the Administration Act (interpretation), for the definition of “pensionable age” substitute—

““pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995;”.

11. In Article 25 of the Trade Union and Labour Relations (Northern Ireland) Order 1995(103) (exemption from requirement for election), in paragraph (3)(b), for the words following “pensionable age” substitute “(within the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995)”.

12. For section 45 of the Pension Schemes Act, including the cross heading preceding it, substitute—

“Women, married women and widows

45 Women, married women and widows.

45. The Department may make regulations modifying, in such manner as it thinks proper—

(a) this Chapter in its application to women born on or after 6th April 1950, and

(b) sections 37, 38, 42(1), 43(2) and (5) and 44, in their application to women who are or have been married.”.

13. In section 176(1) of that Act (interpretation), for the definition of “pensionable age” substitute—

““pensionable age”—

(a) so far as any provisions (other than sections 42 to 44) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and

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- (b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995;”.

Pension increases for dependent spouses

14. In the Contributions and Benefits Act—

- (a) in section 25(6)(c) (unemployment benefit), for “83” substitute “83A”,
- (b) in section 30B (incapacity benefit: rate), in paragraph (b) of the proviso to subsection (3), for “83” substitute “83A”,
- (c) in section 78(4)(d) (benefits for the aged), for “83” substitute “83A”,
- (d) in section 85(4) (pension increase: care of children), for “83(3)” substitute “83A(3)”,
- (e) in section 88 (pension increase: supplementary), for “83” substitute “83A”,
- (f) in section 114(4) (persons maintaining dependants, etc.) for “84” substitute “83A”, and
- (g) in section 145(3)(b) (Christmas bonus) for “83(2) or (3)” substitute “83A(2) or (3)”.

15. In the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**104**), in Schedule 1, paragraphs 20 and 21 are omitted.

16. In the Jobseekers (Northern Ireland) Order 1995(**105**), in Schedule 2, paragraph 8 is omitted.

17. Paragraphs 14 to 16 have effect on 6th April 2010.

Category B retirement pensions

18.—(1) In section 20(1)(f) of the Contributions and Benefits Act (general description of benefits), for sub-paragraph (ii) substitute—

“(ii) Category B, payable to a person by virtue of the contributions of a spouse (with increase for child dependants);”.

(2) In section 25(6) of that Act, in paragraph (b), for “(for married women) under section 53(2)” substitute “(for married people) under section 51A(2)”.

(3) In section 30B of that Act (incapacity benefit: rate), in paragraph (a) of the proviso to subsection (3), for “(for married women) under section 53(2)” substitute “(for married people) under section 51A(2)”.

(4) In section 41(5)(a) of that Act (long-term incapacity benefit for widowers), for “section 51 below” substitute “the contributions of his wife”.

(5) In section 46(2) of that Act (calculation of additional pension in certain benefits), for “50(3)” substitute “48A(4) or 48B(2)”.

(6) After section 51 of that Act insert—

“Special provision for married people.

51A.—(1) This section has effect where, apart from section 43(1) above, a married person would be entitled both—

- (a) to a Category A retirement pension, and
- (b) to a Category B retirement pension by virtue of the contributions of the other party to the marriage.

(104) 1994 NI 12.

(105) 1995 NI 15.

(2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the weekly rate specified in Schedule 4, Part I, paragraph 5, that basic pension shall be increased by the lesser of—

- (a) the amount of the shortfall, or
- (b) the amount of the weekly rate of the Category B retirement pension.

(3) This section does not apply in any case where both parties to the marriage attained pensionable age before 6th April 1979.”,

and omit section 53 of that Act (special provision for married women).

(7) In section 52 of that Act (special provision for surviving spouses), for subsection (1)(b) substitute—

“(b) to a Category B retirement pension by virtue of the contributions of a spouse who has died.”.

(8) In section 54 of that Act (supplemental provisions), for subsection (3) substitute—

“(3) Where both parties to a marriage (call them “P” and “S”) have become entitled to retirement pensions and—

- (a) P’s pension is Category A, and
- (b) S’s pension is—
 - (i) Category B by virtue of P’s contributions, or
 - (ii) Category A with an increase under section 51A(2) above by virtue of P’s contributions,

P shall not be entitled to make an election in accordance with regulations made under subsection (1) above without S’s consent, unless that consent is unreasonably withheld.”.

(9) In section 60 of that Act (partial satisfaction of contribution conditions)—

(a) in subsection (2), for “him” (in paragraph (b)) substitute “the employed earner” and for “his widow’s entitlement” substitute “the entitlement of the employed earner’s widow or widower”, and

(b) for subsection (3)(d) substitute—

“(d) a Category B retirement pension payable by virtue of section 48B above.”.

(10) In section 85 of that Act (pension increase for person with care of children), in subsection (3), for “man whose wife” substitute “person whose spouse”.

(11) In Schedule 4 to that act (rates of benefit, etc.), in paragraph 5 of Part I, for “50(1)(a)(i)” substitute “48A(3)”.

(12) In Schedule 5 to that Act (increased pension where entitlement deferred), in paragraph 2(5) (a), for “5 or 6” substitute “5, 5A or 6”.

(13) In paragraph 4 of that Schedule, for sub-paragraphs (1) and (2) substitute—

“(1) Subject to sub-paragraph (3) below, where—

(a) a widow or widower (call that person “W”) is entitled to a Category A or Category B retirement pension and was married to the other party to the marriage (call the person “S”) when S died, and

(b) either—

(i) was entitled to a Category A or Category B retirement pension with an increase under this Schedule, or

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(ii) would have been so entitled if S's period of deferment had ended on the day before S's death,

the rate of W's pension shall be increased by an amount equal to the increase to which S was or would have been entitled under this Schedule apart from paragraphs 5 to 6."

(14) Paragraph 4(1) of that Schedule (as inserted by sub-paragraph (13)) has effect where W is a man who attains pensionable age before 6th April 2010 as if paragraph (a) also required him to have been over pensionable age when S died.

(15) For paragraphs 5 and 6 of that Schedule substitute—

5A.—(1) Where—

- (a) a widow or widower (call that person "W") is entitled to a Category A or Category B retirement pension and was married to the other party to the marriage (call that person "S") when S dies, and
- (b) S either—
 - (i) was entitled to a guaranteed minimum pension with an increase under section 11(1) of the Pensions Act, or
 - (ii) would have been so entitled if S had retired on the date of S's death,the rate of W's pension shall be increased by the following amount.

(2) The amount is—

- (a) where W is a widow, an amount equal to the sum of the amounts set out in paragraph 5A(2) or (3) below (as the case may be), and
- (b) where W is a widower, an amount equal to the sum of the amounts set out in paragraph 6(2), (3) or (4) below (as the case may be).

5A.—(1) This paragraph applies where W (referred to in paragraph 5 above) is a widow.

(2) Where the husband dies before 6th April 2000, the amounts referred to in paragraph 5(2)(a) above are the following—

- (a) an amount equal to one-half of the increase mentioned in paragraph 5(1)(b) above,
- (b) the appropriate amount, and
- (c) an amount equal to any increase to which the husband had been entitled under paragraph 5 above.

(3) Where the husband dies after 5th April 2000, the amounts referred to in paragraph 5(2)(a) above are the following—

- (a) one-half of the appropriate amount after it has been reduced by the amount of any increases under section 105 of the Pensions Act, and
- (b) one-half of any increase to which the husband had been entitled under paragraph 5 above.

6.—(1) This paragraph applies where W (referred to in paragraph 5 above) is a widower.

(2) Where the wife dies before 6th April 1989, the amounts referred to in paragraph 5(2)(b) above are the following—

- (a) an amount equal to the increase mentioned in paragraph 5(1)(b) above,
- (b) the appropriate amount, and
- (c) an amount equal to any increase to which the wife had been entitled under paragraph 5 above.

(3) Where the wife dies after 5th April 1989 but before 6th April 2000, the amounts referred to in paragraph 5(2)(b) above are the following—

- (a) the increase mentioned in paragraph 5(1)(b) above, so far as attributable to employment before 6th April 1988,
- (b) one-half of that increase, so far as attributable to employment after 5th April 1988,
- (c) the appropriate amount reduced by the amount of any increases under section 105 of the Pension Act, and
- (d) any increase to which the wife had been entitled under paragraph 5 above.

(4) Where the wife dies after 5th April 2000, the amounts referred to in paragraph 5(2)(b) above are the following—

- (a) one-half of the increase mentioned in paragraph 5(1)(b) above, so far as attributable to employment before 6th April 1988,
- (b) one-half of the appropriate amount after it has been reduced by the amount of any increases under section 105 of the Pensions Act, and
- (c) one-half of any increase to which the wife had been entitled under paragraph 5 above.

(16) Paragraph 5(1) of that Schedule (inserted by sub-paragraph (15)) has effect, where W is a man who attained pensionable age before 6th April 2010, as if paragraph (a) also required him to have been over pensionable age when S died.

(17) In paragraph 7 of that Schedule—

- (a) in sub-paragraph (1), for “paragraphs 5 and 6” substitute “paragraphs 5 to 6”, and
- (b) in sub-paragraph (2), for “paragraph 5 or 6” substitute “paragraph 5, 5A or 6”.

(18) In paragraph 8 of that Schedule, for sub-paragraphs (3) and (4) substitute—

“(3) In the case of the following pensions (where “P” is a married person and “S” is the other party to the marriage), that is—

- (a) a Category B retirement pension to which P is entitled by virtue of the contributions of S, or
- (b) P’s Category A retirement pension with an increase under section 51A(2) above attributable to the contributions of S,

the reference in paragraph 2(3) above to the pension to which a person would have been entitled if that person’s entitlement had not been deferred shall be construed as a reference to the pension to which P would have been entitled if neither P’s nor S’s entitlement to a retirement pension had been deferred.

(4) Paragraph 4(1)(b) above shall not apply to a Category B retirement pension to which S was or would have been entitled by virtue of W’s contributions (“W” and “S” having the same meaning as in paragraph 4(1)); and where the Category A retirement pension to which S was or would have been entitled includes an increase under section 51A(2) above attributable to W’s contributions, the increase to which W is entitled under that paragraph shall be calculated as if there had been no increase under that section.”.

19. In section 42 of the Pension Schemes Act (effect of entitlement to guaranteed minimum pension on payment of benefits), in subsection (6)(b)(iii), for “section 49” substitute “section 48A or 48B”.

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

SCHEDULE 3

Article 147.

AMENDMENTS RELATING TO PART IV, ETC.

The Country Courts Act (Northern Ireland) 1959 (c. 25 (N.I.))

1. In section 116A(2) of the Country Courts Act (Northern Ireland) 1959, in the definition of “personal pension scheme”, for from “by the” onwards, substitute “in accordance with section 3 of the Pension Schemes (Northern Ireland) Act 1993”.

The Resident Magistrates' Pensions Act (Northern Ireland) 1960 (c. 2 (N.I.))

2. In section 2A(2) of the Resident Magistrates' Pensions Act (Northern Ireland) 1960, in the definition of “personal pension scheme”, for from “by the” onwards, substitute “in accordance with section 3 of the Pension Schemes (Northern Ireland) Act 1993”.

The Lands Tribunal and Compensation Act (Northern Ireland) 1964 (c. 29 (N.I.))

3. In section 2A(2) of the Lands Tribunal and Compensation Act (Northern Ireland) 1969, in the definition of “personal pension scheme”, for from “by the” onwards, substitute “in accordance with section 3 of the Pension Schemes (Northern Ireland) Act 1993”.

The Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969 (c. 7 (N.I.))

4. In section 2A(9) of the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969, in the definition of “personal pension scheme”, for from “by the” onwards, substitute “in accordance with section 3 of the Pension Schemes (Northern Ireland) Act 1993”.

The Social Security (Northern Ireland) Act 1975 (c. 15)

5. In Schedule 10 to the Social Security (Northern Ireland) Act 1975, in paragraph 7A(2), in the definition of “personal pension scheme”, for from “by the” onwards, substitute “in accordance with section 3 of the Pension Schemes (Northern Ireland) Act 1993”.

The Judicial Pensions Act 1981 (c. 20)

6. In section 14A(2) of the Judicial Pensions Act 1981 (modifications of that Act in relation to personal pensions), in the definition of “personal pension scheme” after “Act 1993” insert “or (in the case of judicial office held in Northern Ireland), in accordance with section 3 of the Pension Schemes (Northern Ireland) Act 1993”.

The Companies (Northern Ireland) Order 1986 (NI 6)

7. In Schedule 2 to the Companies (Northern Ireland) Order 1986 (interpretation of references to “beneficial interest”), in paragraphs 3(2)(b) and 7(2)(b), for “state scheme” substitute “contributions equivalent”.

The Income and Corporation Taxes Act 1988 (c. 1)

8. In section 649 of the Taxes Act 1988 (minimum contributions towards approved personal pensions schemes), after subsection (6)(b), insert—

“(bb) references to sections 45(1) and 41(1A)(a) of the Pension Schemes Act 1993 were references to sections 41(1) and 37(1A)(a) of the Pension Schemes (Northern Ireland) Act 1993, respectively.”

The Social Security (Northern Ireland) Order 1989 (NI 13)

9. In the Social Security (Northern Ireland) Order 1989, omit Article 30(7) (orders of the Occupational Pensions Board).

10. In Schedule 5 to that Order (equal treatment in employment-related schemes), omit paragraphs 4, 5(2)(c) and 6(3)(c).

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)

11. In Schedule 1 to the Contributions and Benefits Act (supplementary provisions), in paragraph 8(1)(g), for “state scheme” substitute “contributions equivalent”.

The Social Security Administration (Northern Ireland) Act 1992 (c. 8)

12.—(1) The Administration Act is amended as follows.

(2) In section 104 (appointment and powers of inspectors) in subsections (2)(c)(ii), (6)(a)(ii) and (7)(e)(i), for “state scheme” substitute “contributions equivalent”.

(3) In section 114 (proof of previous offences), in subsections (3) and (4), for “state scheme” substitute “contributions equivalent”.

(4) In Schedule 4 (persons employed in social security administration, etc.), omit the entries in Part I relating to the Occupational Pensions Board.

The Pension Schemes (Northern Ireland) Act 1993 (c. 49)

13. The Pension Schemes Act is amended as follows.

14. In the provisions listed in the first column of the table—

- (a) in each place where the word appears, for “Board” substitute “Department”, and
- (b) the additional amendment listed in the second column of the table in relation to those provisions have effect.

TABLE

Provision	Additional amendments
Section 4 (meaning of terms).	—
Section 5 (requirements for certification)	In subsection (4), for “they think” substitute “it thinks”.
Section 7 (employer’s right to elect as to contracting-out).	In subsection (4), for “consider” and “they” substitute, respectively, “considers” and “it”. In subsection (5)(d), for “they are” substitute “it is”.
Section 26 (protected rights).	—

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Provision	Additional amendments
Section 30 (cancellation, etc. of certificates)	In subsection (2)(a), for “they have” substitute “it has”. In subsections (4) and (5), for “they consider” and “they” substitute, respectively, “it considers” and “it”.
Section 46 (schemes ceasing to be certified).	In subsection (2), for “have” (in both places) and “their” substitute, respectively, “has” and “its”. In subsection (3), for “they subsequently approve” substitute “it subsequently approves”. In subsection (4), for the first “have” substitute “has”.
Section 53 (contribution equivalent premiums).	In subsection (4) for “consider” and “they” substitute, respectively, “considers” and “it”.
Section 159 (rule against perpetuities).	In subsection (6), for “consider” substitute “considers”.

15. In section 3 (issue of certificates)—
 - (a) in subsections (1) and (6), for “Board” substitute “Department”, and
 - (b) in subsection (4), omit “by the Board”.
16. In section 4 (definition of terms)—
 - (a) in subsection (2), for the words following the definition of “minimum payment” substitute—
“and for the purposes of this subsection “rebate percentage” means the appropriate flat rate percentage for the purposes of section 38A(2)”, and
 - (b) omit subsection (5).
17. In section 5 (requirements for certification), in subsection (3), omit “18 and”.
18. In section 6 (protected rights), in subsection (2)(a), after “minimum payments” insert “and payments under section 38A(3)”.
19. In section 9 (minimum pensions for earners), in subsection (2)(a), omit from “and does” to the end.
20. In section 10 (earner’s guaranteed minimum)—
 - (a) omit subsection (3),
 - (b) in subsection (8) after “1978-79” insert “or later than tax year ending immediately before the principal appointed day”.
21. In section 12 (revaluation of earnings factors)—
 - (a) in subsection (3), for the words following “at least” substitute “the prescribed percentage for each relevant year after the last service tax year; and the provisions included by virtue of this subsection may also conform with such additional requirements as may be prescribed”, and
 - (b) for the definition of “final relevant year” in subsection (5) substitute—

““final relevant year” means the last tax year in the earner’s working life.”

22. In section 13 (minimum pensions for widows and widowers), at the end of subsection (7) add “or widows”.

23. Section 18 (financing of benefits) is repealed.

24. In section 19 (securing of benefits)—

- (a) omit subsections (1) and (5),
- (b) in subsection (4), for “(1 to (3)” substitute “(2) and (3)”;

and subsection (2) and (3) of that section do not apply where the winding up is begun on or after the principal appointed day.

25. Section 20 (sufficiency of resources) is repealed.

26. In section 21 (conditions as to investments, etc.)—

- (a) omit subsection (1) and (3), and
- (b) for subsection (2) substitute—

“(2) A salary related contracted-out scheme must, in relation to any earner’s service before the principal appointed day, comply with any requirements prescribed for the purpose of securing that—

- (a) the Department is kept informed about any matters affecting the security of the minimum pensions guaranteed under the scheme, and
- (b) the resources of the scheme are brought to and are maintained at a level satisfactory to the Department.”.

27. In section 24 (ways of giving effect to protected rights)—

- (a) in subsection (3), for “subsections (5) and (7)” substitute “subsection (5)”,
- (b) in subsection (4)(d), for “a manner satisfactory to the Board” substitute “the prescribed manner”, and
- (c) omit subsection (7).

28. In section 25 (the pension and annuity requirements), in subsection (1)(b)(ii), for “a manner satisfactory to the Board” substitute “the prescribed manner”.

29. In section 27 (investment and resources of schemes)—

- (a) omit subsection (1),
- (b) in subsection (3)(a), after “minimum payments” insert “and payments under section 38A(3)”, and
- (c) at the end of that section add—

“(5) Any minimum contributions required by reason of this section to be applied so as to provide money purchase benefits for or in respect of a member of a scheme must be so applied in the prescribed manner and within the prescribed period.”.

30. In section 30 (cancellation, etc., of certificates)—

- (a) for subsection (1)(a) substitute—

“(a) in the case of a contracting-out certificate—

- (i) on any change of circumstances affecting the treatment of an employment as contracted-out employment or

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(ii) where the scheme is a salary related contracted-out scheme and the certificate was issued on or after the principal appointed day, if any employer of persons in the description or category of employment to which the scheme in question relates, or the actuary of the scheme, fails to provide the Department, at prescribed intervals, with such documents as may be prescribed for the purpose of verifying that the conditions of section 5(2B) are satisfied; and”

(b) omit subsection (6), and

(c) for subsection (7) substitute—

“(4) Without prejudice to the preceding provisions of this section, failure of a scheme to comply with any requirements prescribed by virtue of section 21(2) shall be a ground on which the Department may, in respect of any employment to which the scheme relates, cancel a contracting-out certificate.”.

31. Sections 31 (surrender, etc: issue of further certificates) and 32 (surrender, etc: cancellation of further certificates) are repealed.

32. For section 33 substitute—

“33 Alteration of rules of contracted-out schemes.

(1) Except in prescribed circumstances, the rules of a contracted-out scheme cannot be altered unless the alteration is of a prescribed description.

(2) Regulations made by virtue of subsection (1) may operate so as to validate with retrospective effect any alteration of the rules which would otherwise be void under this section.

(3) References in this section to a contracted-out scheme include a scheme which has ceased to be contracted-out so long as any person is entitled to receive, or has accrued rights to, any benefits under the scheme attributable to a period when the scheme was contracted-out.

(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person so entitled by virtue of being the widower of an earner only in such cases as may be prescribed.”.

33. In section 34 (alteration of rules of appropriate schemes)—

(a) in subsection (1), omit from “, unless” to the end,

(b) in subsection (3), omit from “if” to the end,

(c) in subsection (4), for the words from the beginning to “direct,” substitute “Regulations made by virtue of subsection (2) may”, and

(d) omit subsection (7).

34. In section 39 (payment of minimum contributions), in subsection (1), after “circumstances” insert “or in respect of such periods”.

35. In section 41 (minimum contributions towards personal pension schemes), omit subsection (3)(d).

36. In section 42(1) (effect of entitlement to guaranteed minimum pensions on payment of social security benefits), for paragraph (i) substitute—

“(i) to that part of its additional pension which is attributable to earnings factors for any tax years ending before the principal appointed day,”.

- 37.** In section 46 (powers to approve arrangements for scheme ceasing to be certified)—
- (a) in subsection (1)(a)—
 - (i) at the end of sub-paragraph (i), insert “or accrued rights to pensions under the scheme attributable to their service on or after the principal appointed day”, and
 - (ii) in sub-paragraph (ii), for “guaranteed minimum pensions under the scheme” substitute “such pensions”,
 - (b) after subsection (1), insert—
 - “(1A) The power of the Department to approve arrangements under this section—
 - (a) includes power to approve arrangements subject to conditions, and
 - (b) may be exercised either generally or in relation to a particular scheme.
 - (1B) Arrangements may not be approved under this section unless any prescribed conditions are met.”, and
 - (c) omit subsection (7).
- 38.** In section 47 (calculation of GMPs preserved under approved arrangements), in subsection (1)(a), for “are subject to approved arrangements” substitute “satisfy prescribed conditions”.
- 39.** In section 48 (supervision of schemes which have ceased to be certified)—
- (a) for subsection (2)(a) and (b) substitute—
 - “(a) the scheme has ceased to be a contracted-out scheme, and
 - (b) any persons remain who fall within any of the following categories.
 - (2A) Those categories are—
 - (a) any persons entitled to receive, or having accrued rights to—
 - (i) guaranteed minimum pensions, or
 - (ii) pensions under the scheme attributable to service on or after the principal appointed day but before the scheme ceased to be contracted-out,
 - (b) any persons who have protected rights under the scheme or are entitled to any benefit giving effect to protected rights under it.”,
 - (b) for subsection (3)(a) and (b) substitute—
 - “(a) the scheme has ceased to be an appropriate scheme, and
 - (b) any persons remain who have protected rights under the scheme or are entitled to any benefit giving effect to protected rights under it.”, and
 - (c) omit subsections (4) to (6).
- 40.** In section 49 (supervision: former contracted-out schemes)—
- (a) for subsection (1) substitute—
 - “(1) The Department may direct the trustees or managers of the scheme, or the employer, to take or refrain from taking such steps as the Department may specify in writing; and such a direction shall be final and binding on the person directed and any person claiming under him.
 - (1A) An appeal on a point of law shall lie to the High Court from a direction under subsection (1) at the instance of the trustees or managers or the employer, or any person claiming under them.
 - (1B) A direction under subsection (1) shall be enforceable as if it were an order of the county court.”,

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- (b) omit subsection (2),
 - (c) for subsection (3) substitute—
 - “(4) If a certificate has been issued under subsection (2) of section 46 and has not been cancelled under subsection (3) of that section, any liabilities in respect of such entitlement or rights as are referred to in section 48(2A)(a) or (b) must, except in prescribed circumstances, be discharged (subject to any directions under subsection (1)) in a prescribed manner and within a prescribed period or such longer period as the Department may allow.”, and
 - (d) omit subsections (4) and (5).
- 41.** In section 50 (supervision: former appropriate personal pension schemes)—
- (a) for subsections (1) and (2) substitute—
 - “(1) The Department may direct the trustees or managers of the scheme to take or refrain from taking such steps as the Department may specify in writing; and such a direction shall be final and binding on the person directed and any person claiming under him.
 - (1A) An appeal on a point of law shall lie to the High Court from a direction under subsection (1) at the instance of the trustees or managers or the employer, or any person claiming under them.
 - (1B) A direction under subsection (1) shall be enforceable as if it were an order of the county court.
 - (2) If a certificate has been issued under subsection (2) of section not been cancelled under subsection (3) of that section, any liabilities in respect of such entitlement or rights as are referred to in section 48(3)(b) must, except in prescribed circumstances, be discharged (subject to any directions under subsection (1)) in a prescribed manner and within a prescribed period or such longer period as the Department may allow.”,
 - (b) omit subsection (3).
- 42.** scheme premiums), omit subsections (1) and (3) to (6).
- 43.** In Section 52 (provisions supplementary to section 51)—
- (a) omit subsection (1), in subsection (2) the words following “the prescribed period” and subsection (3), and
 - (b) for subsections (5) and (b) substitute—
 - “(5) The reference in section 51(2A) to an accrued right to short service benefit includes an accrued right to any provision which, under the preservation requirements, is permitted as an alternative to short service benefit (other than provision for return of contributions or for benefit in the form of a lump sum).
 - (6) Subject to regulations under paragraph 1 of Schedule 1, service in any employment which ceases with the death of the employer shall be treated for the purposes of section 51(2A) as ceasing immediately before the death”.
- 44.** In section 54 (amount of premiums under section 51), omit subsections (1) to (3), (5) and (6).
- 45.** Section 55 (alternative basis for revaluation) is repealed.
- 46.** In section 56 (effect of payment of premiums on rights)—
- (a) omit subsections (1) to (3).
 - (b) in subsection (4)—
 - (i) for “51(2)(i)” substitute “51(2A)(a) and (b), (d) and (e)”, and

- (ii) at the end add “or (in relation to service on or after the principal appointed day(rights to pensions under the scheme so far as attributable to the amount of the premium”, and
 - (c) in subsection (5), for “51(2)(ii)” substitute “51(2A)(c)” and after “widow” add “or widower”, and
 - (d) omit subsections (6) to (10).
- 47.** In section 57 (deduction of contributions equivalent premium from refund of scheme contributions)—
- (a) for subsection (1)(a) substitute—
 - “(a) an earner’s service in contracted-out employment ceases or his employment ceases to be contracted-out employment, and”,
 - (b) in subsection (8)—
 - (i) for paragraph (a) substitute—
 - “(a) an earner’s service in contracted-out employment ceases or his employment ceases to be contracted-out employment,”,
 - (ii) for “termination” substitute “cessation”, and
 - (c) in subsection (9), for “termination” (in both places) substitute “cessation”.
- 48.** In section 58 (no recovery of premiums from earners)—
- (a) in subsection (1), for “state scheme” substitute “contributions equivalent”, and
 - (b) omit subsection (2).
- 49.** In section 59 (further provisions concerning calculations relating to premiums)—
- (a) in subsection (1)—
 - (i) omit paragraph (a).
 - (ii) in paragraph (b), for “subsection (4) of that section” substitute “section 54(4)”, and
 - (iii) omit paragraph (c),
 - (b) omit subsection (2),
 - (c) in subsection (3)—
 - (i) omit paragraph (a)
 - (ii) in paragraph (b), for “subsection (4) of that section” substitute “section 54(4)”, and
 - (iii) omit the words following paragraph (ii), and
 - (d) omit subsection (4).
- 50.** Sections 60 to 62 (actuarial tables, former and future earners and widowers) are repealed.
- 51.** In sections 63 and 64 (non-payment of state scheme premiums), for “state scheme” (in each place) substitute “contributions equivalent”.
- 52.** In section 80(5), omit paragraph (b) and the preceding “or”.
- 53.** In section 92 (right to cash equivalent: exercise of options)—
- (a) in subsection (2)(a), after “guaranteed minimum pensions” insert “his accrued rights so far as attributable to service in contracted-out employment on or after the principal appointed day”, and

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- (b) in subsection (3)(a), for “guaranteed minimum pensions” substitute “pensions, being guaranteed minimum pensions or pensions so far as attributable to service in contracted-out employment on or after the principal appointed day”.
- 54.** Sections 129 to 131 (advice and determinations as to conformity of schemes with requirements) are repealed.
- 55.** In section 151 (requirement to give information to the Department or the Board)—
- (a) omit “or the Board”.
 - (b) for “or they require” substitute “requires”, and
 - (c) for from “sections 3” to “premiums)” substitute “Part III”.
- 56.** In section 154 (disclosure of information between government departments)—
- (a) omit subsections (2) and (3),
 - (b) in subsection (5) for “Subsections (1) to (3) extend” substitute “Subsection (1) extends”;
 - (c) in subsection (6), omit “,(2) or (3)”, paragraph (d) and the preceding “or”,
 - (d) in subsection (7)—
 - (i) for “,the Inland Revenue and the Board”, substitute “and the Inland Revenue”,
 - (ii) after paragraph (a), insert “or”, and
 - (iii) omit paragraph (c) and the preceding “or”, and
 - (e) omit subsection (8).
- 57.** In section 160 (Crown employment)—
- (a) in subsection (1)(b)(i), omit “167, 168”
 - (b) in subsection (2), omit from “sections 51” to “premiums)”
- 58.** In section 161 (application of certain provisions to cases with foreign element), in subsection (2)(a), for from “sections 3” to “premiums)” substitute “Part III”.
- 59.** In section 162(5) (reciprocity with other countries), omit “167, 168”.
- 60.** In section 165 (determinations by the Department)—
- (a) in subsection (1)—
 - (i) in paragraph (b) for “state scheme” (in both places) substitute “contributions equivalent”,
 - (ii) omit “and” at the end of paragraph (c), and
 - (iii) for the words following paragraph (d) substitute—

“and

 - (e) any question whether an employment is, or is to be treated, for the purposes of this Act as contracted-out employment or as to the persons in relation to whom, or the period for which, an employment is, or is to be treated, for the purposes of this Act as such employment”,
 - (b) omit subsections (3) and (4), and
 - (c) at the end of that section add—

“(7) Sections 16 and 17 of the Social Security Administration (Northern Ireland) Act 1992 (appeals and reviews) shall have effect as if the questions mentioned in subsection (1) of section 15 of that Act included—

- (a) any question arising in connection with the issue, cancellation or variation of contracting-out certificates or appropriate scheme certificates, not being a question mentioned in subsection (1)(e) above, and
 - (b) any other question arising under this Act which falls to be determined by the Department, not being a question mentioned in that subsection.
- (8) Regulations may make provision with respect to the procedure to be adopted on any application for a review made under section 17 of that Act by virtue of subsection (7) above and generally with respect to such applications and reviews, but may not prevent such a review being entered upon without an application being made.”
- 61.** In section 166 (questions arising in proceedings), in subsection (1)(b), for “state scheme” substitute “contributions equivalent”.
- 62.** Sections 167 and 168 (reviews and appeals) are repealed.
- 63.** In section 169 (grants), for “Board” (in both places) substitute “Regulatory Authority”.
- 64.** In section 171 (fees), for “either by the Department or by the Board on its behalf” substitute “by the Department”.
- 65.** In section 172 (general financial arrangements)—
- (a) in subsection 2(b)—
 - (i) in sub-paragraph (i), omit “167, 168”, and
 - (ii) in sub-paragraph (ii), omit from “sections 51” to “premiums),”, and
 - (b) omit subsection (7)(b).
- 66.** In section 176 (general interpretation)—
- (a) in subsection (1)—
 - (i) omit the definitions of “accrued rights premium”, “the Board”, “contracted-out protected rights premium”, “limited revaluation premium”, “pensioners’s rights premium”, “personal pension protected rights premium”, “state scheme premium” and “transfer premium”,
 - (ii) in the definition of “contributions equivalent premium” for “51(6)(e)” substitute “51(2)”, and
 - (iii) insert the following after the definition of “the preservation requirements” —
““the principal appointed day” has the meaning assigned by section 3(2B);”,
and
 - (b) in subsection (3), omit “,167, 168”.
- 67.** In section 177 (orders and regulations)—
- (a) in subsection (1), omit “Board or”;
 - (b) in subsection (5)(a), omit “,167, 168”.
- 68.** In section 178 (sub-delegation), omit “,167, 168” in subsection (1), and subsection (2).
- 69.** Section 179 (consultation about regulations) is repealed.
- 70.** In Schedule 1 (certification regulations)—
- (a) in paragraph 2(1), for “Board” substitute “Department”.
 - (b) in paragraph 4(3), for from “does not cease” to the end substitute “which, apart from the regulations, would not be contracted-out employment is treated as contracted-out

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employment where any benefits provided under the scheme are attributable to a period when the scheme was contracted-out”,

- (c) in paragraph 5(1)—
 - (i) omit “or the Board” and “or, as the case may be, the Board”, and
 - (ii) for “61” substitute “59”,
- (d) in paragraph 5(2) omit “to 61” and
- (e) in paragraph 9(3) to (5) substitute— “(2A) Sub-paragraphs (3) and (4) shall be omitted.”.

71. In Schedule 3 (Priority in bankruptcy)—

- (a) in paragraph 3(1), for “state scheme” substitute “contributions equivalent”, and
- (b) in paragraph 4(2), for “, contracting-out employment and a state scheme premium” (where first occurring) substitute “and contracted-out employment” and for from “, contracted-out employment” (where next occurring) to “premium” substitute “and contracted-out employment”.

72. In Schedule 5 (transitional provisions and savings), omit paragraph 11.

The Pensions Act 1995 (c. 26)

73. In Schedule 5 to the Pensions Act 1995, omit paragraph 12(2) (amendment of section 649 of the Taxes Act 1988 not to extend to Northern Ireland).

SCHEDULE 4

Article 165

GENERAL MINOR AND CONSEQUENTIAL AMENDMENTS

The Judicial Pensions and Retirement Act 1993 (c. 8)

1. In section 13(9) of the Judicial Pensions and Retirement Act 1993, in the definition of “personal pension scheme”, for “1” substitute “3”.

The Social Security (Contributions and Benefits) (Northern Ireland) Act 1992 (c. 7)

2. In section 170 of the Contributions and Benefits Act, before the definition of “the Pensions Order”, insert—

““the Pensions Act” means the Pension Schemes (Northern Ireland) Act 1993;”.

The Social Security Administration (Northern Ireland) Act 1992 (c. 8)

3. In section 135 of the Social Security Administration (Northern Ireland) Act 1992 (effect of alteration of rates of benefit under Parts II to V of the Contributions and Benefits Act), after subsection (6) insert—

“(7) So long as sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966 (graduated retirement benefit) continue in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975 or under Schedule 3 to the Consequential Provisions Act, regulations may make provision for applying the provisions of this section—

- (a) to the amount of graduated retirement benefit payable for each unit of graduated contributions,
- (b) to increases of such benefit under any provisions made by virtue of Article 26(1) (a) of the Pensions Order or section 62(1)(a) of the Contributions and Benefits Act, and
- (c) to any addition under section 36(1) of the National Insurance Act (Northern Ireland) 1966 (addition to weekly rate of retirement pension for widows and widowers) to the amount of such benefit.”

The Pension Schemes (Northern Ireland) Act 1993 (c. 49)

4. The Pension Schemes Act is amended as follows.
5. In section 91(1) (ways of taking right to cash equivalent), for “this Chapter” substitute “paragraph (a), (aa) or (b) of section 90(1)”.
6. In section 93 (calculation of cash equivalents)—
 - (a) in subsection (2)(a) after “cash equivalents” insert “except guaranteed cash equivalents (as defined in section 90 (1A))”,
 - (b) in subsection (3)(b), for from “the date” to the end substitute “the appropriate date”, and
 - (c) after subsection (3) insert—

“(3A) For the purposes of subsection (3), the “appropriate date” —

 - (a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 89A), and
 - (b) in any other case, is the date on which the trustees receive an application from the member under section 91.”
7. In section 94 (variation and loss of rights to cash equivalents)—
 - (a) in subsection (1), after “occupational pension scheme” insert “other than a salary related scheme”,
 - (b) after that subsection insert—

“(1A) Regulations may provide that a member of a salary related occupational pension scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates—

 - (a) acquires a right to only part of his guaranteed cash equivalent, or
 - (b) acquires no right to his guaranteed cash equivalent;”,
 - (c) in subsection (2), after “(1)” insert “or (1A)”, and
 - (d) in subsection (3)—
 - (i) in paragraph (a), after “occupational pension scheme” insert “other than a salary related scheme”, and
 - (ii) for paragraph (b) and the “and” immediately preceding it substitute—

“or

 - (aa) by virtue of regulations under subsection (1A) or (2), a member of a salary related occupational pension scheme does not, on such termination, acquire a right to the whole or any part of his guaranteed cash equivalent,

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and his employment terminates at least one year before normal pension age”.

8. In section 95 (trustees' duties after exercise of an option under section 91)—
- (a) in subsection (2), for paragraphs (a) and (b) substitute—
 - “(a) in the case of a member of a salary related occupational pension scheme, within 6 months of the guarantee date, or (if earlier) by the date on which the member attains normal pension age,
 - (b) in the case of a member of any other occupational pension scheme, within 6 months of the date on which they receive the application, or (if earlier) by the date on which the member attains normal pension age, or
 - (c) in the case of a member of a personal pension scheme, within 6 months of the date on which they receive the application.”,
 - (b) after subsection (3) insert—
 - “(3A) In this section, “guarantee date” has the same meaning as in section 89A.”,
 - (c) for subsections (4) and (5) substitute—
 - “(4) The Regulatory Authority may, in prescribed circumstances, grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.
 - (4A) Regulations may make provision in relation to applications for extensions under subsection (4).”,
 - (d) in subsection (6), for “Board” substitute “Regulatory Authority”, and
 - (e) after that subsection add—
 - “(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within 6 months of the date mentioned in paragraph (a) or (b) of subsection (2)—
 - (a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
 - (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.
 - (8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.”.
9. After section 154, insert—

“Other disclosures by the Department.

154A.—(1) The Department may, in spite of any obligation as to secrecy or confidentiality imposed by statute or otherwise on the Department or on persons employed in it, disclose any information received by it in connection with its functions under this Act or the Pensions (Northern Ireland) Order 1995 to any person specified in the first column of the following Table if it considers that the disclosure would enable or assist the person to discharge the functions specified in relation to the person in the second column of the Table.

TABLE

Persons	Functions
The Treasury.	Functions under the Financial Services Act 1986.
The Bank of England.	Functions under the Banking Act 1987 or any other functions.
The Regulatory Authority.	Functions under this Act or the Pensions (Northern Ireland) Order 1995 or any enactment in force in Great Britain corresponding to either of them.
The Pensions Compensation Board.	Functions under the Pensions (Northern Ireland) Order 1995 or any corresponding enactment in force in Great Britain.
The Friendly Societies Commission.	Functions under the enactments relating to friendly societies.
The Building Societies Commission.	Functions under the Building Societies Act 1986.
An inspector appointed by the Secretary of State.	Functions under section 94 or 177 of the Financial Services Act 1986.
A person authorised to exercise powers under section 106 of the Financial Services Act 1986.	Functions under that section.
A designated agency or transferee body or the competent authority (within the meaning of the Financial Services Act 1986).	Functions under the Financial Services Act 1986.
A recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house (within the meaning of the Financial Services Act 1986).	Functions in its capacity as an organisation, body, exchange or clearing house recognised under the Financial Services Act 1986.

(2) The Department may by order—

(a) amend the Table in subsection (1) by—

- (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
- (ii) removing any person for the time being specified in the Table, or
- (iii) altering the functions for the time being specified in the Table in relation to any person, or

(b) restrict the circumstances in which, or impose conditions subject to which, disclosure is permitted in the case of any person for the time being specified in the Table.”.

10. In section 160(1)(b)(i) (Crown employment), omit from “132” to “139,”.

11. In section 162(5) (reciprocity with other countries), omit from “132” to “139,”.

12. In section 172(2)(b)(i) (general financial arrangements), omit from “132” to “139”.

13. In section 176 (general interpretation)—

(a) in subsection (1), for the definition of “money purchase scheme” substitute—

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““money purchase scheme” means a pension scheme under which all the benefits that may be provided are money purchase benefits;”, and

(b) in subsection (3), omit from “132” to “139.”

14. In section 178 (sub-delegation), in subsection (3)(b), after “prepared” insert “and revised”.

15. In Schedule 7, omit paragraph 35.

16.—(1) Schedule 8 (transitory modifications) is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1), in the Table, omit paragraphs (ii) to (v),

(b) in sub-paragraph (3), in the definition of “the appointed day”, in paragraph (a)(i), for “provisions mentioned in paragraphs (i) to (v)” substitute “provision mentioned in paragraph (i)”, and

(c) omit sub-paragraph (5).

(3) Omit paragraph 3 and 4.

SCHEDULE 5

Article 168.

Repeals

Part I

Occupational Pensions

Chapter or Number	Short title	Extent of repeal
1989 NI 13.	The Social Security (Northern Ireland) Order 1989.	In Schedule 5, paragraph 14.
1993 c. 49.	The Pension Schemes (Northern Ireland) Act 1993.	Sections 73 to 76. Sections 98 to 104. Section 106(2) to (4). Section 108. Section 110. In section 111(1), “or 110 (1) (b)”. Section 112. Section 114. Sections 115 to 118. In section 125, in subsection (1), “Chapter I of Part V;”, “, sections 115 to 118”, “under Chapter I of Part

Chapter or Number	Short title	Extent of repeal
		V or” and from “or 110” to “118”, and subsection (3)(a).
		In section 128, “, the equal access requirements”.
		In section 129(1), “, the equal access requirements”.
		In section 130, in subsection (3), “, the equal access requirements” and in subsection (4), “or the equal access requirements” and “or, as the case may be, section 114(1)”.
		In section 132(2)(e)(iv), “or the equal access requirements”.
		In section 135(2), “, the equal access requirements”.
		Section 136(4)(c) and the preceding “and”.
		Section 140.
		In section 149, in subsection (1), from “and Chapter I” to “section 104”, and subsections (3) to (7).
		Section 165(5) and (6).
		In section 173, the second “or”.
		In section 176(1), the definition of “equal access requirements”.
		In section 178, in subsection (3), from “or, in the case of” to “determined” and the words following paragraph (b).
		In Schedule 6, paragraphs 1 and 3.
		In Schedule 7, paragraph 10.

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Part II

State Pensions, Etc.

Chapter or Number	Short title	Extent of repeal
1992 c. 7.	The Social Security Contributions and Benefits (Northern Ireland) Act 1992.	Section 53. In section 54, in subsection (1) (a), from “but” to “70”, and subsection (4). In section 146(2), in the definition of “retirement pension”, “, if paid periodically” and in paragraph (b) of the definition of “unemployability supplement or allowance”, “or” at the end of subparagraph (iii). In Schedule 3, in paragraph 5(7)(a), “(or at least 20 of them, if that is less than half)”. In Schedule 5, in paragraph 2(2), the definition of “the period of enhancement” (and the preceding “and”), and paragraph 8(1) and (2).
1993 c. 49.	The Pension Schemes (Northern Ireland) Act 1993.	In Schedule 7, paragraphs 34 and 36(b) and (c).
1994 NI 12.	The Social Security (Incapacity for Work) (Northern Ireland) Order 1994.	In Schedule 1, paragraphs 20 and 21.
1995 NI 15.	The Jobseekers (Northern Ireland) Order 1995.	In Schedule 2, paragraph 8.
These repeals have effect in accordance with Schedule 2.		

Part III

Certification of Pension Schemes, etc.

Chapter or Number	Short title	Extent of repeal
1989 NI 13.	The Social Security (Northern Ireland) Order 1989.	Article 30(7). In Schedule 5, paragraph 4 and paragraphs 5(2)(c) and 6(3)(c).

Chapter or Number	Short title	Extent of repeal
1992 c. 5.	The Social Security Administration Act 1992.	In section 170(5), in the definition of “the relevant Northern Ireland enactments”, paragraph (c).
1992 c. 8.	The Social Security Administration (Northern Ireland) Act 1992.	In Schedule 4, the entries in Part I relating to the Occupational Pensions Board.
1993 c. 49.	The Pension Schemes (Northern Ireland) Act 1993.	In section 3(4), “by the Board”. Section 4(5). In section 5(3), “18 and”. In section 9(2)(a) from “and does” to the end. Section 10(3). Section 18. Section 19(1) and (5). Section 20. Section 21(1) and (3). Section 24(7). Section 27(1). Section 30(6). Sections 31 and 32. In section 34, in subsection (1), from “, unless” to the end, in subsection (3), from “if” to the end, and subsection (7). In section 41, subsection (2), and in subsection (3), paragraph (d) and, in paragraph (e), the words following “prescribed period”. In section 44(2), paragraph (b) and in paragraph (c), “if the earner dies before reaching pensionable age”. Section 46(7) Section 48(4) to (6). Section 49(2), (4) and (5). Section 50(3). Section 51(1) and (3) to (6).

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Chapter or Number	Short title	Extent of repeal
		In section 52, subsection (1), in subsection (2), the words following “the prescribed period”, and subsection (3).
		Section 54(1) to (3), (5) and (6).
		Section 55. Section 56(1) to (3) and (6) to (10).
		Section 58(2).
		In section 59, subsection (1) (a) and (c), subsection (2), in subsection (3), paragraph (a) (and the “or” at the end) and the words following paragraph (ii), and subsection (4).
		Sections 60 to 62.
		Section 80(5)(b) and the preceding “or”.
		Sections 129 to 131.
		In section 150(2), “section 62,”.
		In section 151, “or the Board”.
		In section 154, subsections (2) and (3), in subsection (6), “, (2) or (3)”, paragraph (d) (and the preceding “or”), in subsection(7), paragraph (c) and the preceding “or”), and subsection (8).
		In section 160, in subsection (1)(b)(i), “, 167, 168”, and in subsection (2), from “sections 51” to “premiums),”.
		In section 162(5), “, 167, 168”.
		In section 165, in subsection (1), “and” at the end of paragraph (c), and subsections (3) and (4).
		Sections 167 and 168.
		In section 172, in subsection (2)(b)(i), “, 167, 168”, in subsection (2)

Chapter or Number	Short title	Extent of repeal
		(b)(ii), from “sections 51” to “premiums),” and subsection (7)(b).
		In section 176, in subsection (1), the definitions of “accrued rights premium”, “the Board”, “contracted-out protected rights premium”, “limited revaluation premium”, “pensioner’s rights premium”, “personal pension protected rights premium”, “state scheme premium” and “transfer premium” and in subsection (3), “, 167, 168”.
		In section 177, in subsection (1), “the Board or” and in subsection (5)(a), “, 167, 168”.
		In section 178, in subsection (1), “, 167, 168”, subsection (2) and in subsection (3) “, 59(2),”.
		Section 179.
		In section 181(2), “60(1)”.
		In Schedule 1, in paragraph 4(1), “62 to”, in the heading to paragraph 5, “State scheme”, in paragraph 5, in sub-paragraph (1), “or the Board” and “or, as the case may be, the Board”, in sub-paragraph (2), “to 61”, in subparagraph (3), “, in relation to state scheme premiums,” and paragraph (b), and subparagraph (5), and in paragraph 6(1), “62 to”.
		In Schedule 5, paragraph 11.
		In Schedule 7, paragraph 26.
1995 c. 26.	The Pensions Act 1995.	In Schedule 5, paragraph 12(2).

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Part IV

Miscellaneous and General

Chapter or Number	Short title	Extent of repeal
1971 c. 35 (N.I.).	The Pensions (Increase) Act (Northern Ireland) 1971.	In section 3(2)(c), “is a woman who”.
1978 NI 15.	The Matrimonial Causes (Northern Ireland) Order 1978.	In Article 27(2)(h), “(for example, a pension)”.
1993 c. 49.	The Pension Schemes (Northern Ireland) Act 1993.	Sections 132 to 139. In section 145(3), “and” at the end of paragraph (a). In section 160(1)(b)(i), from “132” to “139,”. In section 162(5), from “132” to “139,”. Section 167(1)(b). In section 172(2)(b)(i), from “132” to “139,”. In section 176, in subsection (1), in the definition of, “rights”, “132”, and in subsection (3), from “132” to “139,”. In section 177(5)(a), from “132” to “139,”. In section 178(1), from “132” to “139,”. In Schedule 1, in paragraph 5(1), “135(1), 138(5) and (6)”. In Schedule 7, paragraphs 35 and 43(3). In Schedule 8, in paragraph 1, paragraphs (ii) to (v) in the Table in sub-paragraph (1), and sub-paragraph (5), and paragraphs 3 and 4.

The repeal in the Pensions (Increase) Act (Northern Ireland) 1971 comes into operation on the expiration of two days from the day on which this Order is made.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made only for purposes corresponding to those of the Pensions Act 1995, amends the law relating to occupational pensions, state pensions and personal pensions.