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*Changes to legislation: Child Support, Pensions and Social Security Act (Northern Ireland) 2000 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Child Support, Pensions and Social Security Act (Northern Ireland) 2000

## 2000 CHAPTER 4

An Act to amend the law relating to child support; to amend the law relating to occupational and personal pensions; to amend the law relating to social security benefits and social security administration; to amend Part III of the Family Law Reform (Northern Ireland) Order 1977 and Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989; and for connected purposes.

[20th November 2000]

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

- C1** Act: certain provisions applied (with modifications) (1.10.2010) [Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\)](#), regs. 1, 16, Sch. 2

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## PART I

### CHILD SUPPORT

#### *Maintenance calculations and default and interim maintenance decisions*

#### **Maintenance calculations and terminology**

1.—(1) In the Child Support (Northern Ireland) Order 1991 (NI 23) (in this Act referred to as the Child Support Order), for Article 13 (maintenance assessments) there shall be substituted—

##### **“Maintenance calculations**

13.—(1) An application for a maintenance calculation made to the Department shall be dealt with by it in accordance with the provision made by or under this Order.

(2) The Department shall (unless it decides not to make a maintenance calculation in response to the application, or makes a decision under Article 14) determine the application by making a decision under this Article about whether any child support maintenance is payable and, if so, how much.

(3) Where—

(a) a parent is treated under Article 9(3) as having applied for a maintenance calculation; but

(b) the Department becomes aware before determining the application that the parent has ceased to fall within Article 9(1),

it shall, subject to paragraph (4), cease to treat that parent as having applied for a maintenance calculation.

(4) If it appears to the Department that paragraph (10) of Article 7 would not have prevented the parent with care concerned from making an application for a maintenance calculation under that Article it shall—

(a) notify that parent of the effect of this paragraph; and

(b) if, before the end of the period of one month beginning with and including the day on which notice was sent to the parent with care, that parent asks the Department to do so, treat that parent as having applied not under Article 9 but under Article 7.

(5) Where paragraph (3) applies but paragraph (4) does not, the Department shall notify—

(a) the parent with care concerned; and

(b) the non-resident parent (or alleged non-resident parent), where it appears to the Department that that person is aware that the parent

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with care has been treated as having applied for a maintenance calculation.

(6) The amount of child support maintenance to be fixed by a maintenance calculation shall be determined in accordance with Part I of Schedule 1 unless an application for a variation has been made and agreed.

(7) If the Department has agreed to a variation, the amount of child support maintenance to be fixed shall be determined on the basis it determines under Article 28F(4).

(8) Part II of Schedule 1 makes further provision with respect to maintenance calculations.”.

(2) In the Child Support Order—

(a) for maintenance assessment, wherever it occurs, there shall be substituted “maintenance calculation”; and

(b) for assessment (or any variant of that term), wherever it occurs, there shall be substituted “calculation” (or the corresponding variant) preceded, where appropriate, by a instead of an.

*Subs. (3)—Amendments*

### **Applications under Article 7 of the Child Support Order**

**2.—**(1) Article 7(10) of the Child Support Order (child support maintenance) shall be amended as follows.

(2) In sub-paragraph (a), after maintenance order there shall be inserted “made before a prescribed date”.

(3) After sub-paragraph (a), there shall be inserted—

“(aa) a maintenance order made on or after the date prescribed for the purposes of sub-paragraph (a) is in force in respect of them, but has been so for less than the period of one year beginning with and including the date on which it was made; or” .

### **Applications by persons claiming or receiving benefit**

**3.** For Article 9 of the Child Support Order (applications by those receiving benefit) there shall be substituted—

#### **“Applications by those claiming or receiving benefit**

**9.—**(1) This Article applies where income support, an income-based jobseeker's allowance or any other benefit of a prescribed kind is claimed by or in respect of, or paid to or in respect of, the parent of a qualifying child who is also a person with care of the child.

(2) In this Article, that person is referred to as the parent.

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(3) The Department may—

- (a) treat the parent as having applied for a maintenance calculation with respect to the qualifying child and all other children of the non-resident parent in relation to whom the parent is also a person with care; and
- (b) take action under this Order to recover from the non-resident parent, on the parent's behalf, the child support maintenance so determined.

(4) Before doing what is mentioned in paragraph (3), the Department shall notify the parent in writing of the effect of paragraphs (3) and (5) and Article 43.

(5) The Department may not act under paragraph (3) if the parent asks it not to (a request which need not be in writing).

(6) Paragraph (1) has effect regardless of whether any of the benefits mentioned there is payable with respect to any qualifying child.

(7) Unless the parent has made a request under paragraph (5), that parent shall, so far as that parent reasonably can, comply with such regulations as may be made by the Department with a view to its being provided with the information which is required to enable—

- (a) the non-resident parent to be identified or traced;
- (b) the amount of child support maintenance payable by the non-resident parent to be calculated; and
- (c) that amount to be recovered from the non-resident parent.

(8) The obligation to provide information which is imposed by paragraph (7)—

- (a) does not apply in such circumstances as may be prescribed; and
- (b) may, in such circumstances as may be prescribed, be waived by the Department.

(9) If the parent ceases to fall within paragraph (1), that parent may ask the Department to cease acting under this Article, but until then it may continue to do so.

(10) The Department shall comply with any request under paragraph (9) (but subject to any regulations made under paragraph (11)).

(11) The Department may by regulations make such incidental or transitional provision as it thinks appropriate with respect to cases in which it is asked under paragraph (9) to cease acting under this Article.

(12) The fact that a maintenance calculation is in force with respect to a person with care does not prevent the making of a new maintenance

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calculation with respect to that person as a result of the Department acting under paragraph (3).”.

### **Default and interim maintenance decisions**

4. For Article 14 of the Child Support Order (interim maintenance assessments) there shall be substituted—

#### **“Default and interim maintenance decisions**

14.—(1) Where the Department—

- (a) is required to make a maintenance calculation; or
- (b) is proposing to make a decision under Article 18 or 19,

and it appears to the Department that it does not have sufficient information to enable it to do so, it may make a default maintenance decision.

(2) Where an application for a variation has been made under Article 28A(1) in connection with an application for a maintenance calculation (or in connection with such an application which is treated as having been made), the Department may make an interim maintenance decision.

(3) The amount of child support maintenance fixed by an interim maintenance decision shall be determined in accordance with Part I of Schedule 1.

(4) The Department may by regulations make provision as to default and interim maintenance decisions.

(5) The regulations may, in particular, make provision as to—

- (a) the procedure to be followed in making a default or an interim maintenance decision; and
- (b) a default rate of child support maintenance to apply where a default maintenance decision is made.”.

#### *Applications for a variation*

### **Departure from usual rules for calculating maintenance**

5.—(1) The Child Support Order shall be amended as follows.

(2) For Articles 28A to 28C (application for a departure direction, preliminary consideration of applications and the imposition of a regular payments condition) there shall be substituted—

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### *“Variations*

#### **Application for variation of usual rules for calculating maintenance**

**28A.**—(1) Where an application for a maintenance calculation is made under Article 7, or treated as made under Article 9, the person with care or the non-resident parent may apply to the Department for the rules by which the calculation is made to be varied in accordance with this Order.

(2) Such an application is referred to in this Order as an application for a variation.

(3) An application for a variation may be made at any time before the Department has made a decision (under Article 13 or 14(1)) on the application for a maintenance calculation (or the application treated as having been made under Article 9).

(4) A person who applies for a variation—

(a) need not make the application in writing unless the Department directs in any case that he must; and

(b) shall say upon what grounds the application is made.

(5) In other respects an application for a variation shall be made in such manner as may be prescribed.

(6) Schedule 4A shall have effect in relation to applications for a variation.

#### **Preliminary consideration of applications**

**28B.**—(1) Where an application for a variation has been duly made to the Department, it may give it a preliminary consideration.

(2) Where the Department does so it may, on completing the preliminary consideration, reject the application (and proceed to make its decision on the application for a maintenance calculation without any variation) if it appears to it—

(a) that there are no grounds on which it could agree to a variation;

(b) that it has insufficient information to make a decision on the application for the maintenance calculation under Article 13 (apart from any information needed in relation to the application for a variation), and therefore that its decision would be made under Article 14(1); or

(c) that other prescribed circumstances apply.

#### **Imposition of regular payments condition**

**28C.**—(1) Where—

(a) an application for a variation is made by the non-resident parent; and

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(b) the Department makes an interim maintenance decision, it may also, if it has completed its preliminary consideration (under Article 28B) of the application for a variation and has not rejected it under that Article, impose on the non-resident parent one of the conditions mentioned in paragraph (2) (a regular payments condition).

(2) The conditions are that—

- (a) the non-resident parent shall make the payments of child support maintenance specified in the interim maintenance decision;
- (b) the non-resident parent shall make such lesser payments of child support maintenance as may be determined in accordance with regulations made by the Department.

(3) Where the Department imposes a regular payments condition, it shall give written notice of the imposition of the condition and of the effect of failure to comply with it to—

- (a) the non-resident parent; and
- (b) all the persons with care concerned.

(4) A regular payments condition shall cease to have effect—

- (a) when the Department has made a decision on the application for a maintenance calculation under Article 13 (whether it agrees to a variation or not);
- (b) on the withdrawal of the application for a variation.

(5) Where a non-resident parent has failed to comply with a regular payments condition, the Department may in prescribed circumstances refuse to consider the application for a variation, and instead make its decision under Article 13 as if no such application had been made.

(6) The question whether a non-resident parent has failed to comply with a regular payments condition shall be determined by the Department.

(7) Where the Department determines that a non-resident parent has failed to comply with a regular payments condition it shall give written notice of its determination to—

- (a) that parent; and
- (b) all the persons with care concerned.”.

(3) In Article 28D (determination of applications)—

(a) for paragraph (1) there shall be substituted—

“(1) Where an application for a variation has not failed, the Department shall, in accordance with the relevant provisions of, or made under, this Order—

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- (a) either agree or not agree to a variation, and make a decision under Article 13 or 14(1); or
- (b) refer the application to an appeal tribunal for the tribunal to determine what variation, if any, is to be made.” ;
- (b) in paragraphs (2) and (3), for departure direction there shall be substituted “variation”; and
- (c) in paragraph (2), in sub-paragraph (a) lapsed or shall cease to have effect, at the end of sub-paragraph (b) “or” shall be inserted, and after that sub-paragraph there shall be added—
  - “(c) the Department has refused to consider it under Article 28C(5).” .
- (4) In Article 28E (matters to be taken into account)—
  - (a) in paragraphs (1), (3) and (4), for any application for a departure direction there shall be substituted “whether to agree to a variation”; and
  - (b) in paragraph (4)(a), for a departure direction were made there shall be substituted “the Department agreed to a variation”.
- (5) For Article 28F (departure directions) there shall be substituted—

**“Agreement to a variation**

**28F.—**(1) The Department may agree to a variation if—

- (a) it is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
- (b) it is the opinion of the Department that, in all the circumstances of the case, it would be just and equitable to agree to a variation.
- (2) In considering whether it would be just and equitable in any case to agree to a variation, the Department—
  - (a) shall have regard, in particular, to the welfare of any child likely to be affected if it did agree to a variation; and
  - (b) shall, or as the case may be shall not, take any prescribed factors into account, or shall take them into account (or not) in prescribed circumstances.
- (3) The Department shall not agree to a variation (and shall proceed to make its decision on the application for a maintenance calculation without any variation) if it is satisfied that—
  - (a) it has insufficient information to make a decision on the application for the maintenance calculation under Article 13, and therefore that its decision would be made under Article 14(1); or



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(b) other prescribed circumstances apply.

(4) Where the Department agrees to a variation, it shall—

(a) determine the basis on which the amount of child support maintenance shall be calculated in response to the application for a maintenance calculation (including an application treated as having been made); and

(b) make a decision under Article 13 on that basis.

(5) If the Department has made an interim maintenance decision, that decision shall be treated as having been replaced by the Department's decision under Article 13, and except in prescribed circumstances any appeal connected with it (under Article 22) shall lapse.

(6) In determining whether or not to agree to a variation, the Department shall comply with regulations made under Part II of Schedule 4B.”

#### *Section 6—Amendments*

#### **Variations: revision and supersession**

7. For Article 28G of the Child Support Order (effect and duration of departure directions) there shall be substituted—

#### **“Variations: revision and supersession**

**28G.**—(1) An application for a variation may also be made when a maintenance calculation is in force.

(2) The Department may by regulations provide for—

(a) Articles 18, 19 and 22; and

(b) Articles 28A to 28F and Schedules 4A and 4B,

to apply with prescribed modifications in relation to such applications.

(3) The Department may by regulations provide that, in prescribed cases (or except in prescribed cases), a decision under Article 19 made otherwise than pursuant to an application for a variation may be made on the basis of a variation agreed to for the purposes of an earlier decision without a new application for a variation having to be made.”

#### *Revision and supersession of decisions*

#### **Revision of decisions**

8.—(1) Article 18 of the Child Support Order (revision of decisions) shall be amended as follows.

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(2) In paragraph (1), for of the Department under Article 13, 14 or 19 there shall be substituted “to which paragraph (1A) applies”.

(3) After paragraph (1), there shall be inserted—

“(1A) This paragraph applies to—

- (a) a decision of the Department under Article 13, 14 or 19;
- (b) a reduced benefit decision under Article 43;
- (c) a decision of an appeal tribunal on a referral under Article 28D(1)(b).

(1B) Where the Department revises a decision under Article 14(1)—

- (a) it may (if appropriate) do so as if it were revising a decision under Article 13; and
- (b) if it does that, its decision, as revised, shall be treated as a decision under Article 13 instead of Article 14(1) (and, in particular, shall be so treated for the purposes of an appeal against it under Article 22).” .

### **Decisions superseding earlier decisions**

**9.—**(1) Article 19 of the Child Support Order (decisions superseding earlier decisions) shall be amended as follows.

(2) In paragraph (1), for sub-paragraph (c) there shall be substituted—

- “(c) any reduced benefit decision under Article 43;
- (d) any decision of an appeal tribunal on a referral under Article 28D(1)(b); and
- (e) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in sub-paragraph (b) or (d),” .

(3) For paragraph (4) there shall be substituted—

“(4) Subject to paragraph (5) and Article 28ZC, a decision under this Article shall take effect as from the beginning of the maintenance period in which it is made or, where applicable, the beginning of the maintenance period in which the application was made.

(4A) In paragraph (4), a maintenance period is (except where a different meaning is prescribed for prescribed cases) a period of seven days, the first one beginning on and including the effective date of the first decision made by the Department under Article 13 or (if earlier) the Department's first default or interim maintenance decision (under Article 14) in relation to the non-resident parent in question, and each subsequent one beginning on and including the day after the last day of the previous one.” .

## *Appeals*

### **Appeals to appeal tribunals**

**10.** For Article 22 of the Child Support Order (appeals to appeal tribunals) there shall be substituted—

#### **“Appeals to appeal tribunals**

**22.—(1)** A qualifying person has a right of appeal to an appeal tribunal against—

- (a) a decision of the Department under Article 13, 14 or 19 (whether as originally made or as revised under Article 18);
- (b) a decision of the Department not to make a maintenance calculation under Article 13 or not to supersede a decision under Article 19;
- (c) a reduced benefit decision under Article 43;
- (d) the imposition (by virtue of Article 38A) of a requirement to make penalty payments, or their amount;
- (e) the imposition (by virtue of Article 44) of a requirement to pay fees.

(2) In paragraph (1), qualifying person means—

- (a) in relation to sub-paragraphs (a) and (b), the person with care, or non-resident parent, with respect to whom the Department made the decision;
- (b) in relation to sub-paragraph (c), the person in respect of whom the benefits are payable;
- (c) in relation to sub-paragraph (d), the parent who has been required to make penalty payments; and
- (d) in relation to sub-paragraph (e), the person required to pay fees.

(3) A person with a right of appeal under this Article shall be given such notice as may be prescribed of—

- (a) that right; and
- (b) the relevant decision, or the imposition of the requirement.

(4) Regulations may make—

- (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
- (b) such provision with respect to proceedings before appeal tribunals as the Department considers appropriate.

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(5) The regulations may in particular make any provision of a kind mentioned in Schedule 4 to the Social Security (Northern Ireland) Order 1998.

(6) No appeal lies by virtue of paragraph (1)(c) unless the amount of the person's benefit is reduced in accordance with the reduced benefit decision; and the time within which such an appeal may be brought runs from the date of notification of the reduction.

(7) In deciding an appeal under this Article, an appeal tribunal—

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

(8) If an appeal under this Article is allowed, the appeal tribunal may—

- (a) itself make such decision as it considers appropriate; or
- (b) remit the case to the Department, together with such directions (if any) as it considers appropriate.”.

### **Redetermination of appeals**

**11.** After Article 24 of the Child Support Order there shall be inserted—

#### **“Redetermination of appeals**

**24A.**—(1) This Article applies where an application is made to a person under Article 25(6)(a) for leave to appeal from a decision of an appeal tribunal.

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

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

(4) The principal parties are—

- (a) the Department; and
- (b) those who are qualifying persons for the purposes of Article 22(2) in relation to the decision in question.”.

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## Information

### Information required by the Department

12. In Article 16(1) of the Child Support Order (information required by the Department), after such an application, there shall be inserted “ (or application treated as made), or needed for the making of any decision or in connection with the imposition of any condition or requirement under this Order,”.

#### Commencement Information

- II S. 12 wholly in operation at 3.10.2008; s. 12 not in operation at Royal Assent see s. 68(2); s. 12 in operation for certain purposes at 3.3.2003 by S.R. 2003/53, art. 3, Sch.; s. 12 in operation at 3.10.2008 in so far as not already in operation by S.R. 2008/402, art. 2(a)

### Information - offences

13. After Article 16 of the Child Support Order there shall be inserted—

#### “Information - offences

16A.—(1) This Article applies to—

- (a) persons who are required to comply with regulations under Article 7(4); and
- (b) persons specified in regulations under Article 16(1)(a).

(2) Such a person is guilty of an offence if, pursuant to a request for information under or by virtue of those regulations—

- (a) he makes a statement or representation which he knows to be false; or
- (b) he provides, or knowingly causes or knowingly allows to be provided, a document or other information which he knows to be false in a material particular.

(3) Such a person is guilty of an offence if, following such a request, he fails to comply with it.

(4) It is a defence for a person charged with an offence under paragraph (3) to prove that he had a reasonable excuse for failing to comply.

(5) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

### Inspectors

14.—(1) Article 17 of the Child Support Order (powers of inspectors) shall be amended as follows.

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(2) For paragraphs (1) to (4) there shall be substituted—

“(1) The Department may appoint, on such terms as it thinks fit, persons to act as inspectors under this Article.

(2) The function of inspectors shall be to acquire information which the Department needs for any of the purposes of this Order.

(3) Every inspector shall be given a certificate of his appointment.

(4) An inspector shall have power, at any reasonable time and either alone or accompanied by such other persons as he thinks fit, to enter any premises which—

(a) are liable to inspection under this Article; and

(b) are premises to which it is reasonable for him to require entry in order that he may exercise his functions under this Article,

and may there make such examination and inquiry as he considers appropriate.

(4A) Premises liable to inspection under this Article are those which are not used wholly as a dwelling house and which the inspector has reasonable grounds for suspecting are—

(a) premises at which a non-resident parent is or has been employed;

(b) premises at which a non-resident parent carries out, or has carried out, a trade, profession, vocation or business;

(c) premises at which there is information held by a person ( A ) whom the inspector has reasonable grounds for suspecting has information about a non-resident parent acquired in the course of A's own trade, profession, vocation or business.”.

(3) In paragraph (6), for the words from any person who to the end of subparagraph (d) there shall be substituted “any such person”.

(4) After paragraph (10) there shall be added—

“(11) In this Article, premises includes—

(a) moveable structures and vehicles, vessels, aircraft and hovercraft;

(b) installations that are offshore installations for the purposes of the Mineral Workings (Offshore Installations) Act 1971; and

(c) places of all other descriptions whether or not occupied as land or otherwise,

and references in this Article to the occupier of premises shall be construed, in relation to premises that are not occupied as land, as references to any person for the time being present at the place in question.”.

## *Parentage*

### **Presumption of parentage in child support cases**

**15.—(1)** In Article 27(2) of the Child Support Order (disputes about parentage), before Case A there shall be inserted—

#### “CASE A1

Where—

- (a) the child is habitually resident in Northern Ireland;
- (b) the Department is satisfied that the alleged parent was married to the child's mother at some time in the period beginning with the conception and ending with the birth of the child; and
- (c) the child has not been adopted.

#### CASE A2

Where—

- (a) the child is habitually resident in Northern Ireland;
- (b) the alleged parent has been registered as the father of the child under Article 14 or 18(1)(b)(ii) of the Births and Deaths Registration (Northern Ireland) Order 1976, or under section 10 or 10A of the Births and Deaths Registration Act 1953, or in any register kept under section 13 or 44 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and
- (c) the child has not subsequently been adopted.

#### CASE A3

Where the result of a scientific test (within the meaning of Article 27A) taken by the alleged parent would be relevant to determining the child's parentage, and the alleged parent—

- (a) refuses to take such a test; or
  - (b) has submitted to such a test, and it shows that there is no reasonable doubt that the alleged parent is a parent of the child.”.
- (2) In that provision, after Case B there shall be inserted—

## “CASE B1

Where the Department is satisfied that the alleged parent is a parent of the child in question by virtue of section 27 or 28 of that Act (meaning of mother and of father respectively).”.

### *Disqualification from driving*

#### **Disqualification from driving**

16.—(1) After Article 36 of the Child Support Order there shall be inserted—

#### **“Commitment to prison and disqualification from driving**

**36A.**—(1) Where the Department has sought to recover an amount by virtue of Article 35 and that amount, or any portion of it, remains unpaid, the Department may apply to the court under this Article.

(2) An application under this Article is for whichever the court considers appropriate in all the circumstances of—

- (a) the issue of a warrant committing the liable person to prison; or
- (b) an order for him to be disqualified for holding or obtaining a driving licence.

(3) On any such application the court shall (in the presence of the liable person) inquire as to—

- (a) whether he needs a driving licence to earn his living;
- (b) his means; and
- (c) whether there has been wilful refusal or culpable neglect on his part.

(4) The Department may make representations to the court as to whether the Department thinks it more appropriate to commit the liable person to prison or to disqualify him for holding or obtaining a driving licence; and the liable person may reply to those representations.

(5) In this Article and Article 37A, driving licence means a licence to drive a motor vehicle granted under Part II of the Road Traffic (Northern Ireland) Order 1981.

(6) In this Article and Articles 37 and 37A, the court means a court of summary jurisdiction.”.

(2) In Article 37 of the Child Support Order (commitment to prison), paragraphs (1) and (2) shall cease to have effect.

(3) After Article 37 of the Child Support Order there shall be inserted—



**“Disqualification from driving: further provision**

**37A.**—(1) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person, it may—

- (a) order him to be disqualified, for such period specified in the order but not exceeding two years as it thinks fit, for holding or obtaining a driving licence (a disqualification order); or
- (b) make a disqualification order but suspend its operation until such time and on such conditions (if any) as it thinks just.

(2) The court may not take action under both Article 37 and this Article.

(3) A disqualification order shall state the amount in respect of which it is made, which shall be the aggregate of—

- (a) the amount in respect of which the liability order was made or so much of that amount as remains outstanding; and
- (b) an amount (determined in accordance with regulations made by the Department) in respect of the costs of the application under Article 36A.

(4) A court which makes a disqualification order shall require the person to whom it relates to produce any driving licence held by him, and its counterpart (within the meaning of Part II of the Road Traffic (Northern Ireland) Order 1981).

(5) On an application by the Department or the liable person, the court—

- (a) may make an order substituting a shorter period of disqualification, or make an order revoking the disqualification order, if part of the amount referred to in paragraph (3) (the amount due) is paid to any person authorised to receive it; and
- (b) shall make an order revoking the disqualification order if all of the amount due is so paid.

(6) The Department may make representations to the court as to the amount which should be paid before it would be appropriate to make an order revoking the disqualification order under paragraph (5)(a), and the liable person may reply to those representations.

(7) The Department may make a further application under Article 36A if the amount due has not been paid in full when the period of disqualification specified in the disqualification order expires.

(8) Where a court—

- (a) makes a disqualification order;
- (b) makes an order under paragraph (5); or
- (c) allows an appeal against a disqualification order,

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it shall send notice of that fact to the Department; and the notice shall contain such particulars and be sent in such manner and to such address as the Department may determine.

(9) Where a court makes a disqualification order, it shall also send the driving licence and its counterpart, on their being produced to the court, to the Department at such address as the Department may determine.

(10) Article 110 of the Magistrates' Courts (Northern Ireland) Order 1981 (application of sums found upon defaulter) shall apply in relation to a disqualification order under this Article in relation to a liable person as it applies in relation to the enforcement of a sum mentioned in paragraph (1) of that Article.

(11) The Department may by regulations make provision in relation to disqualification orders corresponding to the provision it may make under Article 37(11).”.

(4) In Article 180(3B) of the Road Traffic (Northern Ireland) Order 1981 (NI 1) (enforcement powers of constable), after required under there shall be inserted “Article 37A of the Child Support (Northern Ireland) Order 1991 or”.

(5) In Article 29(2) of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (offence of failing to produce a licence), for the word then there shall be substituted “or if the holder of the licence does not produce it and its counterpart as required by Article 37A of the Child Support (Northern Ireland) Order 1991, then,”.

### *Financial penalties*

#### **Financial penalties**

**17.—**(1) In Article 38 of the Child Support Order (arrears of child support maintenance), paragraphs (3) to (5) shall cease to have effect.

(2) For Article 38A of the Child Support Order (arrears: alternative to interest payments) there shall be substituted—

#### **“Penalty payments**

**38A.—**(1) The Department may by regulations make provision for the payment to it by non-resident parents who are in arrears with payments of child support maintenance of penalty payments determined in accordance with the regulations.

(2) The amount of a penalty payment in respect of any week may not exceed 25 per cent. of the amount of child support maintenance payable for that week, but otherwise is to be determined by the Department.

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- (3) The liability of a non-resident parent to make a penalty payment does not affect his liability to pay the arrears of child support maintenance concerned.
- (4) Regulations under paragraph (1) may, in particular, make provision—
- (a) as to the time at which a penalty payment shall be payable;
  - (b) for the Department to waive a penalty payment, or part of it.
- (5) The provisions of this Order with respect to—
- (a) the collection of child support maintenance;
  - (b) the enforcement of an obligation to pay child support maintenance,
- apply equally (with any necessary modifications) to penalty payments payable by virtue of regulations under this Article.
- (6) The Department shall pay penalty payments received by it into the Consolidated Fund.”.

### Reduced benefit decisions

**18.** For Article 43 of the Child Support Order (failure to comply with obligations imposed by Article 9) there shall be substituted—

#### “Reduced benefit decisions

- 43.—**(1) This Article applies where any person ( the parent)—
- (a) has made a request under Article 9(5);
  - (b) fails to comply with any regulation made under Article 9(7); or
  - (c) having been treated as having applied for a maintenance calculation under Article 9, refuses to take a scientific test (within the meaning of Article 27A).
- (2) The Department may serve written notice on the parent requiring that parent, before the end of a specified period—
- (a) in a paragraph (1)(a) case, to give the Department that parent's reasons for making the request;
  - (b) in a paragraph (1)(b) case, to give the Department that parent's reasons for failing to do so; or
  - (c) in a paragraph (1)(c) case, to give the Department that parent's reasons for the refusal.
- (3) When the specified period has expired, the Department shall consider whether, having regard to any reasons given by the parent, there are reasonable grounds for believing that—
- (a) in a paragraph (1)(a) case, if the Department were to do what is mentioned in Article 9(3);

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(b) in a paragraph (1)(b) case, if that parent were to be required to comply; or

(c) in a paragraph (1)(c) case, if that parent took the scientific test, there would be a risk of that parent, or of any children living with that parent, suffering harm or undue distress as a result of the Department's taking such action, or that parent complying or taking the test.

(4) If the Department considers that there are such reasonable grounds, it shall—

(a) take no further action under this Article in relation to the request, the failure or the refusal in question; and

(b) notify the parent, in writing, accordingly.

(5) If the Department considers that there are no such reasonable grounds, it may, except in prescribed circumstances, make a reduced benefit decision with respect to the parent.

(6) In a paragraph (1)(a) case, the Department may from time to time serve written notice on the parent requiring that parent, before the end of a specified period—

(a) to state whether the request under Article 9(5) still stands; and

(b) if so, to give the Department that parent's reasons for maintaining the request,

and paragraphs (3) to (5) have effect in relation to such a notice and any response to it as they have effect in relation to a notice under paragraph (2) (a) and any response to it.

(7) Where the Department makes a reduced benefit decision it shall send a copy of it to the parent.

(8) A reduced benefit decision shall take effect on such date as may be specified in the decision.

(9) Reasons given in response to a notice under paragraph (2) or (6) need not be given in writing unless the Department directs in any case that they shall.

(10) In this Article—

comply means to comply with the requirement or with the regulation in question;

reduced benefit decision means a decision that the amount payable by way of any relevant benefit to, or in respect of, the parent concerned be reduced by such amount, and for such period, as may be prescribed;

relevant benefit means income support or an income-based jobseeker's allowance or any other benefit of a kind prescribed for the purposes of Article 9; and

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specified, in relation to a notice served under this Article, means specified in the notice; and the period to be specified is to be determined in accordance with regulations made by the Department.”.

### *Miscellaneous*

#### **Voluntary payments**

**19.—**(1) After Article 28I of the Child Support Order there shall be inserted—

#### *“Voluntary payments*

#### **Voluntary payments**

**28J.—**(1) This Article applies where—

- (a) a person has applied for a maintenance calculation under Article 7(1), or is treated as having applied for one by virtue of Article 9;
- (b) the Department has neither made a decision under Article 13 or 14 on the application, nor decided not to make a maintenance calculation; and
- (c) the non-resident parent makes a voluntary payment.

(2) A voluntary payment is a payment—

- (a) on account of child support maintenance which the non-resident parent expects to become liable to pay following the determination of the application (whether or not the amount of the payment is based on any estimate of his potential liability which the Department has agreed to give); and
- (b) made before the maintenance calculation has been notified to the non-resident parent or (as the case may be) before the Department has notified the non-resident parent that it has decided not to make a maintenance calculation.

(3) In such circumstances and to such extent as may be prescribed—

- (a) the voluntary payment may be set off against arrears of child support maintenance which accrued by virtue of the maintenance calculation taking effect on a date earlier than that on which it was notified to the non-resident parent;
- (b) the amount payable under a maintenance calculation may be adjusted to take account of the voluntary payment.

(4) A voluntary payment shall be made to the Department unless it agrees, on such conditions as it may specify, that that payment may be made to the person with care, or to or through another person.

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(5) The Department may by regulations make provision as to voluntary payments, and the regulations may in particular—

- (a) prescribe what payments or descriptions of payment are, or are not, to count as voluntary payments;
- (b) prescribe the extent to which and circumstances in which a payment, or a payment of a prescribed description, counts.”.

(2) Article 38B of the Child Support Order (repayment of overpaid child support maintenance) shall be amended as follows.

(3) After paragraph (1) there shall be inserted—

“(1A) This Article also applies where the non-resident parent has made a voluntary payment and it appears to the Department—

- (a) that he is not liable to pay child support maintenance; or
- (b) that he is liable, but some or all of the payment amounts to an overpayment,

and, in a case falling within sub-paragraph (b), it also appears to the Department that paragraph (1)(a) or (b) applies.”.

(4) For paragraph (7) there shall be substituted—

“(7) For the purposes of this Article—

- (a) a payment made by a person under a maintenance calculation which was not validly made; and
- (b) a voluntary payment made in the circumstances set out in paragraph (1A)(a),

shall be treated as overpayments of child support maintenance made by a non-resident parent.”.

### **Recovery of child support maintenance by deduction from benefit**

**20.** For Article 40 of the Child Support Order (contribution to maintenance by deduction from benefit) there shall be substituted—

#### **“Recovery of child support maintenance by deduction from benefit**

**40.—(1)** This Article applies where—

- (a) a non-resident parent is liable to pay a flat rate of child support maintenance (or would be so liable but for a variation having been agreed to), and that rate applies (or would have applied) because he falls within paragraph 4(1)(b) or (c) or 4(2) of Schedule 1; and
- (b) such conditions as may be prescribed for the purposes of this Article are satisfied.

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(2) The power of the Department to make regulations under section 5 of the Social Security Administration (Northern Ireland) Act 1992 by virtue of subsection (1)(q) (deductions from benefits) may be exercised in relation to cases to which this Article applies with a view to securing that payments in respect of child support maintenance are made or that arrears of child support maintenance are recovered.

(3) For the purposes of this Article, the benefits to which section 5 of that Act applies shall be taken as including war disablement pensions and war widows' pensions (within the meaning of section 146(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (interpretation)).”.

### Jurisdiction

**21.—**(1) Article 41 of the Child Support Order (jurisdiction) shall be amended as follows.

(2) In paragraph (1), after United Kingdom there shall be added “, except in the case of a non-resident parent who falls within paragraph (2A)”.

(3) After paragraph (2) there shall be inserted—

“(2A) A non-resident parent falls within this paragraph if he is not habitually resident in the United Kingdom, but is—

- (a) employed in the civil service of the Crown, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
- (b) a member of the naval, military or air forces of the Crown, including any person employed by an association established for the purposes of Part XI of the Reserve Forces Act 1996;
- (c) employed by a company of a prescribed description registered under the Companies (Northern Ireland) Order 1986 or under the Companies Act 1985 in England and Wales or in Scotland; or
- (d) employed by a body of a prescribed description.” .

(4) Paragraph (3) shall cease to have effect.

### Abolition of the child maintenance bonus

**22.** Article 4 of the Child Support (Northern Ireland) Order 1995 (NI 13) (the child maintenance bonus) shall cease to have effect.

#### Commencement Information

- I2** [S. 22](#) wholly in operation at 27.10.2008; [s. 22](#) not in operation at Royal Assent see [s. 68\(2\)](#); [s. 22](#) in operation for certain purposes at different dates by [S.R. 2003/53](#), [art. 6](#) (as

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substituted by [S.R. 2003/92, art. 2](#)); [s. 22](#) in operation at 27.10.2008 in so far as not already in operation by [S.R. 2008/402, art. 2\(c\)](#)

### Periodical reviews

**23.** Article 3(3) of the Social Security (1998 Order) (Commencement No. 2) Order (Northern Ireland) 1998 (No. 395 (C. 19)) (which saved Article 18 of the Child Support Order for certain purposes) is revoked; and accordingly Article 18 shall cease to have effect for all purposes.

### Regulations

**24.—**(1) In Article 48 of the Child Support Order (regulations and orders), for paragraph (2) there shall be substituted—

“(2) A statutory rule containing (whether alone or with other provisions) regulations made under—

- (a) Article 9(1), 14(4) (so far as the regulations make provision for the default rate of child support maintenance mentioned in Article 14(5)(b)), 28C(2)(b), 28F(2)(b), 30(4A), 38(2), 38A, 38B(6), 40(1), 41(2A)(d), 43 or 44;
- (b) paragraph 3(2) or 10A(1) of Part I of Schedule 1; or
- (c) Schedule 4B,

shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(2A) A statutory rule containing (whether alone or with other provisions) the first set of regulations made under paragraph 10(1) of Part I of Schedule 1 (as substituted by section 1(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000) shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.”

(2) In Article 48(3)(a) of that Order after paragraph (2) there shall be inserted “or (2A)”.

### *Section 25—Amendments*



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### Temporary compensation payment scheme

26.—(1) This section applies where—

- (a) a maintenance assessment is made before a prescribed date following an application for one under Article 7 or 9 of the Child Support Order; or
- (b) a fresh maintenance assessment has been made following either a periodic review under Article 18 of the Child Support Order or a review under Article 19 of that Order (as they had effect before their substitution by Article 40 or 41 respectively of the Social Security (Northern Ireland) Order 1998 (NI 10)) (in this Act referred to as the 1998 Order),

and the effective date of the assessment is earlier than the date on which the assessment was made, with the result that arrears of child support maintenance have become due under the assessment.

(2) The Department may by regulations provide for this section to have effect as if it were modified so as—

- (a) to apply to cases of arrears of child support maintenance having become due additional to those referred to in subsection (1);
- (b) not to apply to any such case as is referred to in subsection (1).

(3) If this section applies, the Department may in prescribed circumstances agree with the absent parent, on terms specified in the agreement, that—

- (a) the absent parent shall not be required to pay the whole of the arrears, but only some lesser amount; and
- (b) the Department shall not, while the agreement is complied with, take action to recover any of the arrears.

(4) The terms which may be specified shall be prescribed by or determined in accordance with regulations made by the Department.

(5) <sup>F1</sup> An agreement may be entered into only if it is made before 1st April 2002 and expires before 1st April 2003.

(6) If the absent parent enters into such an agreement, the Department may, while the absent parent complies with it, refrain from taking action under the Child Support Order to recover the arrears.

(7) On the expiry of the agreement, if the absent parent has complied with it—

- (a) he ceases to be liable to pay the arrears; and
- (b) the Department may make payments of such amounts and at such times as it may determine to the person with care.

(8) If the absent parent fails to comply with the agreement he shall become liable to pay the full amount of any outstanding arrears (as well as any other amount payable in accordance with the assessment).

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(9) The Department may by regulations provide for this section to have effect as if there were substituted for the dates in subsection (5) such later dates as shall be prescribed.

(10) In this section, prescribed means prescribed by regulations made by the Department.

(11) Regulations under subsection (9) shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly; but otherwise regulations under this section shall be subject to negative resolution.

F1 mod. by SR 2002/247

### **Pilot schemes**

**27.—**(1) Any regulations made under—

- (a) provisions inserted or substituted in the Child Support Order by this Part (or Schedule 1, 2 or 3); and
- (b) in so far as they are consequential on or supplementary to any such regulations, regulations made under any other provisions in that Order,

may be made so as to have effect for a specified period not exceeding 12 months.

(2) Any regulations which, by virtue of subsection (1), are to have effect for a limited period are referred to in this section as a pilot scheme.

(3) A pilot scheme may provide that its provisions are to apply only in relation to—

- (a) one or more specified areas or localities;
- (b) one or more specified classes of person;
- (c) persons selected by reference to prescribed criteria, or on a sampling basis.

(4) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiration of the specified period.

(5) A pilot scheme (the previous scheme) may be replaced by a further pilot scheme making the same provision as that made by the previous scheme (apart from the specified period), or similar provision.

(6) A statutory rule containing (whether alone or with other provisions) a pilot scheme shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the pilot scheme, but shall (without prejudice to the validity of anything done thereunder or to the making of a new

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pilot scheme) 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 pilot scheme has been approved by a resolution of the Assembly.

**Commencement Information**

**I3** S. 27 not yet in operation

**Transitional provisions, savings, etc.**

**28.—(1)** The Department may by regulations make such transitional and transitory provisions, and such incidental, supplementary, savings and consequential provisions, as it considers necessary or expedient in connection with the coming into operation of this Part or any provision of it.

(2) The regulations may, in particular—

- (a) provide for the amount of child support maintenance payable by or to any person to be at a transitional rate (or more than one such rate successively) resulting from the phasing-in by way of prescribed steps of any increase or decrease in the amount payable following the coming into operation of this Part or any provision of it;
- (b) provide for a departure direction or any finding in relation to a previous determination of child support maintenance to be taken into account in a decision as to the amount of child support maintenance payable by or to any person.

(3) Article 74(3), (4) and (6) of the 1998 Order (regulations and orders) shall apply to any power to make regulations under this section as it applies to any power to make regulations under that Order.

(4) Regulations under this section shall be subject to negative resolution.

**PART II**

**PENSIONS**

**CHAPTER I**

**STATE PENSIONS**

*State second pension*

**Earnings from which pension derived**

**29.—(1)** In section 22 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (in this Act referred to as the Contributions and Benefits Act) (earnings factors), after subsection (2) there shall be inserted—

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“(2A) For the purpose specified in subsection (2)(b) above, in the case of the first appointed year or any subsequent tax year a person's earnings factor shall be treated as derived only from those of his earnings on which primary Class 1 contributions have been paid or treated as paid.” .

(2) In section 44 of that Act (Category A retirement pension), in subsection (6)

(a) before paragraph (a) there shall be inserted—

“(za) where the relevant year is the first appointed year or any subsequent year, to the aggregate of his earnings factors derived from those of his earnings upon which primary Class 1 contributions have been paid or treated as paid in respect of that year;” ; and

(b) in paragraph (a), after subsequent tax year there shall be inserted “before the first appointed year”.

(3) After that section there shall be inserted—

**“Deemed earnings factors**

**44A.—**(1) For the purposes of section 44(6)(za) above, if any of the conditions in subsection (2) below is satisfied for a relevant year, a pensioner is deemed to have an earnings factor for that year which—

(a) is derived from earnings on which primary Class 1 contributions were paid; and

(b) is equal to the amount which, when added to any other earnings factors taken into account under that provision, produces an aggregate of earnings factors equal to the low earnings threshold.

(2) The conditions referred to in subsection (1) above are that—

(a) the pensioner would, apart from this section, have an earnings factor for the year—

(i) equal to or greater than the qualifying earnings factor for the year; but

(ii) less than the low earnings threshold for the year;

(b) invalid care allowance—

(i) was payable to the pensioner throughout the year; or

(ii) would have been so payable but for the fact that under regulations the amount payable to him was reduced to nil because of his receipt of other benefits;

(c) for the purposes of paragraph 5(7)(b) of Schedule 3, the pensioner is taken to be precluded from regular employment by responsibilities at home throughout the year by virtue of—

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- (i) the fact that child benefit was payable to him in respect of a child under the age of six; or
- (ii) his satisfying such other condition as may be prescribed; or
- (d) the pensioner is a person satisfying the requirement in subsection (3) below to whom long-term incapacity benefit was payable throughout the year, or would have been so payable but for the fact that—
  - (i) he did not satisfy the contribution conditions specified in paragraph 2 of Schedule 3; or
  - (ii) under regulations the amount payable to him was reduced to nil because of his receipt of other benefits or of payments from an occupational pension scheme or personal pension scheme.
- (3) The requirement referred to in subsection (2)(d) above is that—
  - (a) for one or more relevant years the pensioner has paid, or (apart from this section) is treated as having paid, primary Class 1 contributions on earnings equal to or greater than the qualifying earnings factor; and
  - (b) the years for which he has such a factor constitute at least one tenth of his working life.
- (4) For the purposes of subsection (3)(b) above—
  - (a) a pensioner's working life shall not include—
    - (i) any tax year before 1978-79; or
    - (ii) any year in which he is deemed under subsection (1) above to have an earnings factor by virtue of fulfilling the condition in subsection (2)(b) or (c) above; and
  - (b) the figure calculated by dividing his working life by ten shall be rounded to the nearest whole year (and any half year shall be rounded down).
- (5) The low earnings threshold for the first appointed year and subsequent tax years shall be £9,500 (but subject to section 130A of the Administration Act).
- (6) In subsection (2)(d)(ii) above, occupational pension scheme and personal pension scheme have the same meanings as in subsection (6) of section 30DD above for the purposes of subsection (5) of that section.”.
- (4) For the purposes of subsection (1) of section 44A of the Contributions and Benefits Act, a pensioner is deemed to have an earnings factor in relation to any relevant year as specified in that subsection if—
  - (a) severe disablement allowance was payable to him throughout the year; and
  - (b) he satisfies the requirement in subsection (3) of that section.

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### Calculation

**30.**—(1) In section 45 of the Contributions and Benefits Act (the additional pension in a Category A retirement pension), in subsection (2)—

- (a) after shall be there shall be inserted “the sum of the following”;
- (b) in paragraph (b), after after 1987-88 there shall be inserted “but before the first appointed year”; and
- (c) after that paragraph there shall be added “; and
  - (c) in relation to any tax years falling within subsection (3A) below, the weekly equivalent of the amount calculated in accordance with Schedule 4A to this Act.”.

(2) In that section after subsection (3) there shall be inserted—

- “(3A) The following tax years fall within this subsection—
- (a) the first appointed year;
  - (b) subsequent tax years.”.

*Subs. (3)—Amendments*

### Calculation of Category B retirement pension

**31.**—(1) In section 46 of the Contributions and Benefits Act (modifications of section 45 for calculating the additional pension in certain benefits), after subsection (2) there shall be added—

“(3) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 48BB below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of N in section 45(4)(b) above— “

N =

- (a) the number of tax years which begin after 5th April 1978 and end before the date when the deceased spouse dies, 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. ”””.

(2) In section 48BB of that Act (Category B retirement pension: entitlement by reference to benefits under section 39A or 39B), in subsection (5) for section 46(2) there shall be substituted “section 46(3)”.

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(3) In paragraph 4 of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11) (in this Act referred to as the 1999 Order) (welfare benefits: minor and consequential amendments), sub-paragraph (b), and the word and immediately preceding it, shall cease to have effect.

## Revaluation

**32.** After section 130 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (in this Act referred to as the Administration Act) there shall be inserted—

### “Revaluation of low earnings threshold

**130A.** Whenever the Secretary of State makes an order under section 148A of the Great Britain Administration Act (revaluation of low earnings threshold), the Department may make a corresponding order for Northern Ireland.”.

## Supplementary

**33.—**(1) The Contributions and Benefits Act shall be amended as follows.

(2) In section 21(5A)(b) (contribution conditions)—

(a) after 22(1)(a) there shall be inserted “, (2A)”;

(b) for 44(6)(a) there shall be substituted “44(6)(za) and (a)”.

(3) In section 39 (rate of widowed mother's allowance and widow's pension), in subsections (1), (2) and (3), after sections 44 to 45B below there shall be inserted “and Schedule 4A to this Act”.

(4) In section 39C (rate of widowed parent's allowance and bereavement allowance)—

(a) in subsections (1) and (4), after sections 44 to 45A below there shall be inserted “and Schedule 4A to this Act”; and

(b) in subsection (3), after 45A there shall be inserted “below and Schedule 4A to this Act”.

(5) In section 44 (Category A retirement pension), in subsection (5A), after section 45 below there shall be inserted “and Schedule 4A to this Act”.

(6) In that subsection, for the words from that year, to surplus there shall be substituted “that year,

(b) the amount of the surplus is the amount of that excess, and

(c) for the purposes of section 45(1) and (2)(a) and (b) below, the adjusted amount of the surplus”.

(7) In subsection (6) of that section, after section 45 below there shall be inserted “or Schedule 4A to this Act”.

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(8) In section 45 (the additional pension in a Category A retirement pension)

- (a) in subsections (1) and (2)(a) and (b), before amount there shall be inserted “adjusted”; and
- (b) in subsection (6), for the amount of any surpluses there shall be substituted “any amount”.

(9) In section 48A(4) (Category B retirement pension for married person), after sections 44 to 45B above there shall be inserted “and Schedule 4A to this Act”.

(10) In section 48B (Category B retirement pension for widows and widowers), in subsections (2) and (3), after sections 44 to 45B above there shall be inserted “and Schedule 4A to this Act”.

(11) In section 48BB (Category B retirement pension: entitlement by reference to benefits under section 39A or 39B), in subsections (5) and (6), after sections 44 to 45A above there shall be inserted “and Schedule 4A to this Act”.

(12) In section 48C(4) (Category B retirement pension: general), after sections 44 to 45B above there shall be inserted “and Schedule 4A to this Act”.

(13) In section 51 (Category B retirement pension for widowers), in subsections (2) and (3), after sections 44 to 45A above there shall be inserted “and Schedule 4A to this Act”.

(14) In section 121(1) (interpretation of Parts I to VI and supplementary provisions), after the definition of entitled there shall be inserted—

“first appointed year means such tax year, no earlier than 2002-03, as may be appointed by order, and second appointed year means such subsequent tax year as may be so appointed;” .

(15) In section 172 (Assembly, etc. control of regulations and orders)—

- (a) in subsection (4), for subsection (7) there shall be substituted “subsections (4A) and (7)”; and
- (b) after subsection (4) there shall be inserted—
  - “(4A) Subsection (4) above does not apply to a statutory rule which contains an order appointing the first or second appointed year (within the meaning of section 121(1) above).” .

### *Earnings factors*

#### **Modification of earnings factors**

**34.—**(1) In section 44A(5) of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (in this Act referred to as the Pension Schemes Act) (additional pension and other benefits), after 44(5) there shall be inserted “or (5A)”.



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- (2) Subsection (1) shall have effect—
- (a) in relation to the application of section 44(5A) of the Contributions and Benefits Act by virtue of sections 39C(1) and 48BB(5) of that Act;
  - (b) in relation to the application of section 44(5A) of the Contributions and Benefits Act in the circumstances described in Article 125(4) to (6) of the Pensions (Northern Ireland) Order 1995 (NI 22) (in this Act referred to as the Pensions Order).
- (3) In relation to the period—
- (a) beginning with and including 6th April 2000; and
  - (b) ending with the day before the first regulations under section 44A(5) of the Pension Schemes Act (as amended by subsection (1)) come into operation,
- the Department shall be taken to have, and to have had, power to calculate and pay relevant pensions by reference to section 44(5) of the Contributions and Benefits Act as modified by regulations under section 44A(5) of the Pension Schemes Act.
- (4) For the purposes of applying subsection (3)—
- (a) the substitution made by Article 125(1) of the Pensions Order shall be ignored; and
  - (b) references in statutory provisions to section 44(5A) of the Contributions and Benefits Act shall (so far as necessary) be treated as references to section 44(5) of that Act.
- (5) The first regulations under section 44A(5) of the Pension Schemes Act (as amended by subsection (1)) may include provision in relation to—
- (a) revising the calculation of a relevant pension;
  - (b) paying a relevant pension in accordance with a revised calculation.
- (6) For the purposes of this section, relevant pensions are pensions which fall to be calculated—
- (a) in the circumstances described in Article 125(4) to (6) of the Pensions Order; and
  - (b) in relation to persons where, by virtue of section 44A(1) of the Pension Schemes Act, section 44(6) of the Contributions and Benefits Act has effect in any tax year as mentioned in section 44A(1) of the Pension Schemes Act in relation to some but not all of a person's earnings.

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*Preservation of rights in respect of additional pensions*

**Preservation of rights in respect of additional pensions**

**35.—**(1) In the provisions of the Contributions and Benefits Act set out in subsection (2) (provisions relating to additional pensions for surviving spouses)

- (a) references to 5th April 2000 (wherever occurring) shall have effect, and be deemed always to have had effect, as references to 5th October 2002; and
- (b) references to 6th April 2000 (wherever occurring) shall have effect, and be deemed always to have had effect, as references to 6th October 2002.

(2) Those provisions are—

- (a) sections 39(3) and 39C(4) (widowed mother's allowance and widowed parent's allowance);
- (b) sections 48BB(7), 48C(3) and 51(3) (Category B retirement pensions); and
- (c) paragraphs 4(3), 5A(2) and (3) and 6(3) and (4) of Schedule 5 (deferred pensions).

(3) For Article 49(3) of the 1999 Order (power to substitute a later year for references to year 2000 in prescribed provisions of the Contributions and Benefits Act) there shall be substituted—

“(3) The regulations may amend (or further amend) any prescribed provision set out in section 35(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (which sets out provisions falling within paragraph (2)) so as to substitute a reference to a later date for—

- (a) any reference in that provision to 5th October 2002 or 6th October 2002; or
- (b) any reference to a date inserted in that provision by a substitution made by virtue of this paragraph.”

(4) In Article 49 of the 1999 Order —

- (a) in paragraph (1), for (4) there shall be substituted “(4A)”; and
- (b) after paragraph (4) there shall be inserted—

“(4A) The regulations may provide, for the purposes of any provision made by virtue of paragraph (4), for a case in which a person who, as a consequence of receiving incorrect or incomplete information, did not give any consideration to—

- (a) the taking of a step which is a step he might have taken had he considered the matter on the basis of correct and complete information, or

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- (b) refraining from taking a step which is a step he did take but might have refrained from taking had he considered the matter on that basis,

to be treated as a case in which his failure to take the step, or his taking of the step he did take, was in reliance on the incorrect or incomplete information and as a case in which that step is one which he would have taken, or (as the case may be) would not have taken, had the information been correct and complete.” .

(5) In Article 49(6) of the 1999 Order (supplemental provisions of regulations relating to the scheme), after sub-paragraph (e) there shall be inserted—

- “(ea) prescribing the matters that may be relied on, and the presumptions that may be made, in the determination of whether or not the prescribed conditions have been satisfied;” .

#### *Other provisions*

### **Home responsibilities protection**

**36.** In paragraph 5 of Schedule 3 to the Contributions and Benefits Act (widowed mother's allowance and widow's pension; retirement pensions (Categories A and B)), after sub-paragraph (7) there shall be inserted—

“(7A) Regulations may provide that a person is not to be taken for the purposes of sub-paragraph (7)(b) above as precluded from regular employment by responsibilities at home unless he meets the prescribed requirements as to the provision of information to the Department.” .

### **Sharing of state scheme rights**

**37.—(1)** In Article 46 of the 1999 Order (creation of state scheme pension debits and credits), for paragraph (4) there shall be substituted—

“(4) The Department may by regulations make provision for the calculation and verification of cash equivalents for the purposes of this Article.

(4A) The power conferred by paragraph (4) includes power to provide—

- (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
- (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.” .

(2) In section 45B of the Contributions and Benefits Act (reduction of additional pension in Category A retirement pension: pension sharing), for subsection (7) there shall be substituted—

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“(7) The Department may by regulations make provision for the calculation and verification of cash equivalents for the purposes of this section.

(7A) The power conferred by subsection (7) above includes power to provide—

- (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
- (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.” .

(3) In section 55A of that Act (shared additional pension), for subsection (6) there shall be substituted—

“(6) The Department may by regulations make provision for the calculation and verification of cash equivalents for the purposes of this section.

(6A) The power conferred by subsection (6) above includes power to provide—

- (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
- (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.” .

(4) In section 55B of that Act (reduction of shared additional pension: pension sharing), for subsection (7) there shall be substituted—

“(7) The Department may by regulations make provision for the calculation and verification of cash equivalents for the purposes of this section.

(7A) The power conferred by subsection (7) above includes power to provide—

- (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
- (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.” .

### **Disclosure of state pension information**

**38.—**(1) This section applies to any state pension information which is held in relation to any individual—

- (a) by the Department; or

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(b) in connection with the provision of any services provided to the Department for purposes connected with its functions relating to social security, by the person providing those services.

(2) [<sup>F2</sup>The Department may, in the prescribed manner, disclose or authorise the disclosure of any information] to which this section applies in any case in which—

- (a) the person to whom the disclosure is made is a person falling within subsection (3) who has, in the prescribed manner, applied to the Department for the disclosure of the information; and
- (b) it appears to the Department that the prescribed conditions for the making of a disclosure of the information in question to that person have been satisfied.

(3) A person falls within this subsection if—

- (a) he is the trustee or manager of an occupational pension scheme of which the individual to whom the information relates is a member;
- (b) he is the trustee or manager of a personal pension scheme of which that individual is a member;
- (c) he is the employer in relation to an occupational pension scheme of which that individual is a member;
- (d) he is the employer in relation to any employed earner's employment of that individual which is not contracted-out employment; or
- (e) he is proposing to provide services to that individual in circumstances in which the provision of the services, or the proposal to do so, may involve the giving of advice or forecasts to which the information to which this section applies may be relevant.

[<sup>F3</sup>(3A) For the purposes of this section and of any regulations made under it, anything done by or in relation to a person who—

- (a) provides, or proposes to provide, relevant services to a person falling within subsection (3) (“the qualifying person”), and
- (b) is authorised in writing by the qualifying person to act for the purposes of this section,

is treated as done by or in relation to the qualifying person.

In paragraph (a) “relevant services” means services that may involve the giving of advice or forecasts to which information to which this section applies may be relevant.]

(4) The Department shall secure that its powers under this section are exercised so that at least the following is prescribed for the purposes of subsection (2)(b), namely—

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- (a) in the case of an application for information made by a person falling within paragraph (e) of subsection (3), a condition that the individual to whom the information relates has consented to the making of the application and to the disclosure; and
  - (b) in any other case, either that condition or the alternative condition set out in subsection (5).
- (5) The alternative condition is—
- (a) that such steps as may be prescribed have been taken for the purpose of ascertaining whether the individual to whom the information relates objects to the making of the application for the disclosure of information relating to him; and
  - (b) that the prescribed time has elapsed without any objection by that individual.
- (6) A person applying to the Department, in accordance with regulations under this section, for the disclosure of any information relating to an individual shall be entitled, for the purpose of making the application, to make such disclosures of information relating to that individual as may be authorised by the regulations.
- (7) In this section the reference, in relation to an individual, to state pension information is a reference to the following information about that individual—
- (a) his date of birth, and the age at which and date on which he attains pensionable age—
    - (i) for the purposes of the Pension Schemes Act, in relation to any guaranteed minimum pension to which he is entitled; and
    - (ii) in accordance with the rules in paragraph 1 of Schedule 2 to the Pensions Order;
  - (b) the amount of any basic retirement pension a present or future entitlement to which has already accrued to that individual, and the amount of any additional retirement pension such an entitlement to which has already accrued to that individual;
  - (c) a projection of the amount of the basic retirement pension to which that individual is likely to become entitled, or might become entitled in particular circumstances;<sup>F4</sup> . . .
  - (d) a projection of the amount of the additional retirement pension to which that individual is likely to become entitled, or might become entitled in particular circumstances.<sup>F4</sup> and]
  - <sup>F4</sup>(e) a projection of the amount of any lump sum to which that individual is likely to become entitled, or might become entitled in particular circumstances.]
- (8) Regulations under this section shall be subject to negative resolution.

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(9) Article 74(3) to (6) of the 1998 Order (regulations and orders) shall apply to any power to make regulations under this section as it applies to the powers to make regulations under that Order.

(10) For the purposes of section 115D of the Administration Act (supply of contributions, etc. information held by Inland Revenue), the Department's functions relating to social security shall be taken to include any power conferred on it by regulations under this section.

(11) In this section—

[<sup>F5</sup>“additional retirement pension” means any additional pension or shared additional pension under the Contributions and Benefits Act, or any graduated retirement benefit under sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966;

“basic retirement pension” means any basic pension under the Contributions and Benefits Act;]

contracted-out employment has the same meaning as in the Pension Schemes Act;

employed earner has the same meaning as in Parts I to V of the Contributions and Benefits Act (by virtue of section 2(1) of that Act);

employer

(a) in relation to any occupational pension scheme, has the same meaning as in Part II of the Pensions Order; and

(b) in relation to employed earner's employment, has the same meaning as in the Pension Schemes Act;

[<sup>F4</sup>lump sum means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act;]

member, in relation to an occupational pension scheme, has the same meaning as in Part II of the Pensions Order;

occupational pension scheme and personal pension scheme have the same meanings as in the Pension Schemes Act;

prescribed means prescribed by or determined in accordance with regulations;

regulations means regulations made by the Department;

[<sup>F6</sup>“trustee or manager”, in relation to an occupational or personal pension scheme, means—

(a) in the case of a scheme established under a trust, the trustee or trustees of the scheme, and

(b) in any other case, the person or persons responsible for the management of the scheme.]

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F3 [2005 NI 1](#)  
 F4 [2005 NI 1](#)  
 F5 [2005 NI 1](#)  
 F6 [2005 NI 1](#)

## CHAPTER II

### OCCUPATIONAL AND PERSONAL PENSION SCHEMES

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

- C2 [Pt. II Ch. II](#) (ss. 39-52) power to modify conferred (6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), 294(e); S.R. 2006/95, [art. 2\(c\)](#), Sch. Pt. 3
- C3 [Pt. II Ch. II](#) (ss. 39-52) power to modify conferred (15.12.2008) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), [ss. 115\(2\)\(d\)](#), [118\(2\)\(g\)](#)

#### *Selection of trustees and of directors of corporate trustees*

#### **Member-nominated trustees**

<sup>F7</sup>**39.**—(1) Article 16 of the Pensions Order (requirement for member-nominated trustees) shall be amended in accordance with subsections (2) to (8).

(2) In paragraph (1)—

- (a) the words (subject to Article 17) and in sub-paragraph (b), the words, and the appropriate rules, shall cease to have effect; and
- (b) in sub-paragraph (a), for persons selected there shall be substituted “the selection of persons nominated”.

(3) In paragraph (3)(a), for in accordance with the appropriate rules there shall be substituted “as a member-nominated trustee”.

(4) In paragraph (4), for the appropriate rules there shall be substituted “regulations”.

(5) In paragraph (5), after six years there shall be inserted “but for a member-nominated trustee to be eligible for selection again at the end of any period of service as such a trustee”.

(6) After paragraph (6) there shall be inserted—

“(6A) The arrangements must provide that, where the employer so requires, a person who is not a qualifying member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee.”.

(7) In paragraph (8)—

- (a) for The arrangements must there shall be substituted “The arrangements—



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- (a) must” ; and
- (b) after that fact there shall be inserted “; and
  - (b) may provide for a member-nominated trustee who—
    - (i) is a qualifying member of one of the following descriptions, that is to say, an active, deferred or pensioner member, and
    - (ii) ceases (without ceasing to be a qualifying member) to be a qualifying member of that description, to cease, by virtue of that fact, to be a trustee” .
- (8) After paragraph (8) there shall be added—
  - “(9) Regulations may make provision in relation to arrangements under this Article—
    - (a) supplementing the requirements of this Article as to the matters to be contained in the arrangements, and
    - (b) providing for the manner in which, and the time within which, persons are, for the purposes of the arrangements, to be nominated and selected as member-nominated trustees.
  - (10) This Article does not apply in the case of a trust scheme if—
    - (a) every member of the scheme is a trustee of the scheme and no other person is such a trustee,
    - (b) every trustee of the scheme is a company, or
    - (c) the scheme is of a prescribed description.” .
- (9) Article 17 of that Order (exceptions) shall cease to have effect.

F7 prosp. rep. by 2005 NI 1

### Corporate trustees

<sup>F8</sup>**40.**—(1) Article 18 of the Pensions Order (corporate trustees: member-nominated directors) shall be amended in accordance with subsections (2) to (9).

- (2) In paragraph (1)—
  - (a) for the words from and the employer to satisfied there shall be substituted “and there is no trustee of the scheme who is not a company”;
  - (b) the words, subject to Article 19 and in sub-paragraph (b), the words, and the appropriate rules, shall cease to have effect; and
  - (c) in sub-paragraph (a), for persons selected there shall be substituted “the selection of persons nominated”.
- (3) In paragraph (3)(a), for in accordance with the appropriate rules there shall be substituted “as a member-nominated director”.

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(4) In paragraph (4), for the appropriate rules there shall be substituted “regulations”.

(5) In paragraph (5), after six years there shall be inserted “but for a member-nominated director to be eligible for selection again at the end of any period of service as such a director”.

(6) After paragraph (6) there shall be inserted—

“(6A) The arrangements must provide that, where the employer so requires, a person who is not a qualifying member of the scheme must have the employer's approval to qualify for selection as a member-nominated director.” .

(7) In paragraph (7)—

(a) for The arrangements must there shall be substituted “The arrangements—

(a) must” ; and

(b) after that fact there shall be inserted “; and

(b) may provide for a member-nominated director who—

(i) is a qualifying member of one of the following descriptions, that is to say, an active, deferred or pensioner member, and

(ii) ceases (without ceasing to be a qualifying member) to be a qualifying member of that description,

to cease, by virtue of that fact, to be a director” .

(8) For paragraph (8) there shall be substituted—

“(8) Where—

(a) the same company is a trustee of two or more schemes by reference to each of which this Article applies to the company, and

(b) the company does not, in the prescribed manner, elect that this paragraph should not apply,

the preceding provisions of this Article and Article 21(7) shall have effect as if those schemes were a single scheme and the members of each of the schemes were members of that single scheme.” .

(9) After paragraph (8) there shall be added—

“(9) Regulations may make provision in relation to arrangements under this Article—

(a) supplementing the requirements of this Article as to the matters to be contained in the arrangements, and

(b) providing for the manner in which, and the time within which, persons are, for the purposes of the arrangements, to be nominated and selected as member-nominated directors.

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(10) This Article does not apply in the case of a trust scheme if the scheme is of a prescribed description.”.

(10) Articles 19 and 20 of that Order (corporate trustees: exceptions and selection, and eligibility, of member-nominated trustees and directors) shall cease to have effect.

F8 prosp. rep. by 2005 NI 1

### Employer's proposals for selection of trustees or directors

<sup>F9</sup>41.—(1) After Article 18 of the Pensions Order there shall be inserted—

*“Further provisions about the selection of trustees and directors*

### Employer's proposals for selection of trustees or directors

18A.—(1) Where, in the case of any trust scheme—

- (a) the employer makes proposals for the adoption of arrangements for the nomination and selection of the trustees of the scheme,
- (b) the proposed arrangements comply with all the requirements of Article 16 and do not contain anything inconsistent with those requirements,
- (c) the proposed arrangements comply with such other requirements as may be prescribed,
- (d) the proposed arrangements are approved under such procedure for obtaining the views of members of the scheme as may be prescribed, and
- (e) such other conditions are satisfied as may be prescribed,

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

(2) Where, in the case of any company which is trustee of a trust scheme of which there is no trustee who is not a company—

- (a) the employer makes proposals for the adoption of arrangements for the nomination and selection of the directors of the company,
- (b) the proposed arrangements comply with all the requirements of Article 18 and do not contain anything inconsistent with those requirements,
- (c) the proposed arrangements comply with such other requirements as may be prescribed,

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(d) the proposed arrangements are approved under such procedure for obtaining the views of members of the scheme as may be prescribed, and

(e) such other conditions are satisfied as may be prescribed,

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

(3) Arrangements made and implemented under this Article may include provision that is different from that for which provision is made by regulations under Article 16(9) or 18(9).

(4) Regulations may make provision—

(a) as to the manner in which, and the time within which, arrangements proposed and approved for the purposes of this Article are to be implemented by the trustees of a trust scheme or by a company which is a trustee of a trust scheme, and

(b) as to what is to happen where an approval for the purposes of this Article of any arrangements ceases, in accordance with regulations, to have effect.

(5) Regulations about the manner in which anything is approved for the purposes of this Article may provide—

(a) for it to be treated as approved in accordance with the prescribed procedure where the Authority determine that prescribed conditions have been satisfied in relation to any departures from that procedure that have occurred, and

(b) for persons who do not object to it to be treated as having approved it.

(6) Regulations may provide that, for the purposes of this Article and any arrangements under this Article, arrangements are to be taken as complying with the requirements of Article 16 or 18, and as being consistent with those requirements, notwithstanding that nominations made for the purposes of the arrangements by a person or organisation which—

(a) represents for any particular purposes the interests of persons who are comprised in the membership of the scheme in question, and

(b) is of such a description as is specified in the regulations,

are to be treated under the arrangements as nominations, or as the only nominations, made by qualifying members of the scheme.

(7) Provision made by or under the preceding provisions of this Article with respect to member-nominated trustees does not apply in the case of a trust scheme if—

(a) every member of the scheme is a trustee of the scheme and no other person is such a trustee, or

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(b) every trustee of the scheme is a company.

(8) Provision made by or under the preceding provisions of this Article does not apply if the scheme is of a prescribed description.”.

(2) In Article 68(2)(b) of that Order (power of trustees to modify schemes by resolution), for 17(2) there shall be substituted “18A(1)”.

(3) In Article 114(2)(c) of that Order (overriding requirements), for 17(2) there shall be substituted “18A(1)”.

F9 prosp. rep. by 2005 NI 1

### Non-compliance in relation to arrangements or proposals

<sup>F10</sup>42.—(1) In Article 21 of the Pensions Order (member-nominated trustees and directors: supplementary)—

(a) in paragraph (1), for 17(2), in both places, there shall be substituted “18A(1)”;

(b) in paragraphs (1) and (2), the words, or the appropriate rules, shall cease to have effect;

(c) in paragraph (2), for 19(2), in both places, there shall be substituted “18A(2)”;

(d) in paragraph (3), for 17(2), 18(1) or 19(2) there shall be substituted “18(1) or 18A(1) or (2)” and the words (or further arrangements) in sub-paragraph (a), sub-paragraph (b) and the word and immediately preceding it shall cease to have effect;

(e) paragraph (4) shall cease to have effect;

(f) in paragraph (5), for 20 there shall be substituted “18A”;

(g) in paragraph (6), for 17 to 20 there shall be substituted “16 and 18” and the words and this Article, sub-paragraph (b) and the word and immediately preceding it shall cease to have effect;

(h) in paragraph (7)(a), for the words from of the appropriate to given there shall be substituted “for the purposes of Article 18A of proposed arrangements must be given, in accordance with regulations under that Article,”; and

(i) in paragraph (7), sub-paragraph (b) and the word and immediately preceding it shall cease to have effect.

(2) In paragraph (1) of that Article, after sub-paragraph (b) there shall be inserted “or

(c) regulations under Article 16(9)(b) have not been complied with,” .

(3) In paragraph (2) of that Article, after sub-paragraph (b) there shall be inserted “or

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(c) regulations under Article 18(9)(b) have not been complied with,” .

(4) After paragraph (2) of that Article there shall be inserted—

“(2A) Article 10 applies to an employer who has made a proposal for the purposes of Article 18A but who contravenes any requirements of any regulations under Article 18A relating to the submission of that proposal for approval.” .

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

“(5A) In Articles 16 to 18A company means a company within the meaning given by Article 3(1) of the Companies (Northern Ireland) Order 1986 or a company which may be wound up under Part VI of the Insolvency (Northern Ireland) Order 1989 (unregistered companies).” .

**F10** prosp. rep. by [2005 NI 1](#)

### *Winding-up of schemes*

#### **Information to be given to the Authority**

*Subs. (1)(2) rep. by 2005 NI 1*

(3) In paragraph (2) of Article 115 of that Order (powers to provide for Articles 22 to 26 not to apply in the case of certain schemes), for Articles 22 to 26 there shall be substituted “some or all of the provisions of Articles 22 to 26C”.

*Subs. (4) rep. by 2005 NI 1*

(5) In section 173(b) of the Pension Schemes Act (managers of schemes), at the end there shall be added “or Articles 22 to 26C of the Pensions (Northern Ireland) Order 1995”.

#### **Modification of scheme to secure winding-up**

**44.** After Article 71 of the Pensions Order there shall be inserted—

##### **“Modification by Authority to secure winding-up**

**71A.—**(1) The Authority may at any time while—

- (a) an occupational pension scheme is being wound up, and
- (b) the employer in relation to the scheme is subject to an insolvency procedure,

make an order modifying that scheme with a view to ensuring that it is properly wound up.

(2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in paragraph (1), by the trustees or managers of the scheme.

- (3) Except in so far as regulations otherwise provide, an application for the purposes of this Article must be made in writing.
- (4) Regulations may make provision—
  - (a) for the form and manner in which an application for the purposes of this Article is to be made to the Authority,
  - (b) for the matters which are to be contained in such an application,
  - (c) for the documents which must be attached to an application for the purposes of this Article or which must otherwise be delivered to the Authority with or in connection with any such application,
  - (d) for persons to be required, before such time as may be prescribed, to give such notifications of the making of an application for the purposes of this Article as may be prescribed,
  - (e) for the matters which are to be contained in a notification of such an application,
  - (f) for persons to have the opportunity, for a prescribed period, to make representations to the Authority about the matters to which such an application relates,
  - (g) for the manner in which the Authority are to deal with any such application.
- (5) The power of the Authority to make an order under this Article—
  - (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up, and
  - (b) shall not include power to make any modification that would have a significant adverse effect on—
    - (i) the accrued rights of any member of the scheme, or
    - (ii) any person's entitlement under the scheme to receive any benefit.
- (6) A modification of an occupational pension scheme by an order of the Authority under this Article shall be as effective in law as if—
  - (a) it had been made under powers conferred by or under the scheme,
  - (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification, and
  - (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or

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the obtaining of any consent in connection with the making of a modification.

(7) Regulations may provide that, in prescribed circumstances, this Article—

(a) does not apply in the case of occupational pension schemes of a prescribed class or description, or

(b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.

(8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this Article to be subject to an insolvency procedure are—

(a) in the case of a trust scheme, while Article 22 applies in relation to the scheme, and

(b) in the case of a scheme that is not a trust scheme, while Article 22 would apply in relation to the scheme if it were a trust scheme,

and for the purposes of this paragraph no account shall be taken of modifications or exclusions contained in any regulations under Article 115.

(9) The Authority shall not be entitled to make an order under this Article in relation to a public service pension scheme.”.

### **Reports about winding-up**

**45.—**(1) After Article 72 of the Pensions Order there shall be inserted—

*“Supervision of winding-up*

#### **Reports to Authority about winding-up**

**72A.—**(1) Where—

(a) an occupational pension scheme is being wound up, and

(b) the winding-up is one beginning at a time (whether before or after the making of this Order) by reference to which regulations provide that it is to be a winding-up to which this Article applies,

it shall be the duty of the trustees or managers, in accordance with this Article, to make periodic reports in writing to the Authority about the progress of the winding-up.

(2) In the case of each winding-up, the first report to be made under this Article shall be made—

(a) except in a case to which sub-paragraph (b) applies—



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- (i) after the end of the prescribed period beginning with the day on which the winding-up began, and
  - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of head (i), and
- (b) in a case where the winding-up began before the coming into operation of the regulations which (for the purposes of paragraph (1) (b)) prescribe the time by reference to which the winding-up is one to which this Article applies, before such date as may be prescribed by those regulations.
- (3) Subject to paragraph (4), each subsequent report made under this Article in the case of a winding-up shall be made no more than twelve months after the date which (apart from any postponement under paragraph (4)) was the latest date for the making of the previous report required to be made in the case of that winding-up.
- (4) If, in the case of any report required to be made under paragraph (3), the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may, at any time before the latest time for the making of that report, postpone that latest time by such period as they think fit.
- (5) The latest time for making a report shall not be postponed under paragraph (4) by more than twelve months.
- (6) Subject to the application of the limit specified in paragraph (5) to the cumulative period of the postponements, more than one postponement may be made under paragraph (4) in the case of the same report.
- (7) A report under this Article—
- (a) shall contain such information and statements as may be prescribed, and
  - (b) shall be made in accordance with the prescribed requirements.
- (8) Regulations may—
- (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this Article,
  - (b) make provision for the period within which, and the manner in which, applications may be made for a postponement under paragraph (4), and
  - (c) modify paragraphs (3) and (5) by substituting periods of different lengths for the periods for the time being specified in those paragraphs.

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(9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this Article—

(a) Article 3 applies, if the scheme is a trust scheme, to any trustee who has failed to take all such steps as are reasonable to secure compliance, and

(b) Article 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.”.

(2) In Article 121 of that Order (interpretation of Part II), after paragraph (3) there shall be added—

“(4) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under Article 11 or of an order of a court, the winding-up shall (subject to paragraph (8)) be taken for the purposes of this Part to begin—

(a) if the order provides for a time to be the time when the winding-up begins, at that time, and

(b) in any other case, at the time when the order comes into force.

(5) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to paragraphs (6) to (8)) be taken for the purposes of this Part to begin—

(a) at the time (if any) which under those rules is the time when the winding-up begins, and

(b) if sub-paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.

(6) Paragraph (5) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—

(a) to a determination under Article 38 that the scheme is not for the time being to be wound up, or

(b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.

(7) In paragraph (5)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.

(8) Paragraphs (4) to (7) do not apply for such purposes as may be prescribed.”.

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(3) After Article 49 of that Order there shall be inserted—

**“Record of winding-up decisions**

**49A.**—(1) Except in so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of—

- (a) any determination for the winding-up of the scheme in accordance with its rules,
- (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken,
- (c) determinations under Article 38,
- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.

(2) For the purpose of this Article—

- (a) the determinations and decisions of which written records must be kept under this Article include determinations and decisions by persons who—
  - (i) are not trustees or managers of a scheme, but
  - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up, and
- (b) regulations may, in relation to such determinations or decisions as are mentioned in sub-paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).

(3) Regulations may provide for the form and content of any records that are required to be kept under this Article.

(4) Article 3 applies to any trustee of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees of that scheme with the obligations imposed on them by this Article.

(5) Article 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.”.

**Directions for facilitating winding-up**

**46.** After the Article 72A inserted in the Pensions Order by section 45(1) there shall be inserted—

**“Directions by Authority for facilitating winding-up**

**72B.**—(1) Subject to the following provisions of this Article, the Authority shall have power, at any time after the winding-up of an

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occupational pension scheme has begun, to give directions under this Article if they consider that the giving of the direction is appropriate on any of the grounds set out in paragraph (2).

(2) Those grounds are—

- (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the Authority consider would be being taken if the trustees or managers were acting reasonably,
- (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the Authority consider to be unreasonable delay,
- (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
  - (i) to provide information to the trustees or managers,
  - (ii) to provide information to a person involved in the administration of the scheme,
  - (iii) to provide information to a person of a prescribed description, or
  - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers,
- (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps,
- (e) that in any prescribed circumstances not falling within subparagraphs (a) to (d)—
  - (i) the provision by any person of any information to the trustees or managers or to any other person, or
  - (ii) the taking of any other step by any person,would be likely to facilitate or accelerate the progress of the winding-up.

(3) Except in prescribed circumstances, the power of the Authority to give a direction under this Article in the case of a winding-up shall be exercisable only where—

- (a) periodic reports about the progress of the winding-up are required to be made under Article 72A, and
- (b) the first report that has to be made for the purposes of that Article in the case of that winding-up either has been made or should have been made.

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(4) Regulations may provide that, in prescribed circumstances, the Authority shall not give a direction on the ground set out in paragraph (2) (e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.

(5) A direction under this Article is a direction in writing given to and imposing requirements on—

- (a) any or all of the trustees or managers of the scheme,
- (b) a person who is involved in its administration, or
- (c) a person of a prescribed description.

(6) The requirements that may be imposed by a direction under this Article are any requirement for the person to whom it is given, within such period specified in the direction as the Authority may consider reasonable—

- (a) to provide the trustees or managers with all such information as may be specified or described in the direction,
- (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described,
- (c) to provide a person who is of a prescribed description with all such information as may be so specified or described,
- (d) to take such steps (other than the provision of information) as may be so specified or described.

(7) If, at any time before the end of a period within which any step is required by a direction under this Article to be taken by any person, the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may extend (or further extend) that period until such time as they think fit.

(8) Regulations may—

- (a) impose limitations on the steps that a person may be required to take by a direction under this Article,
- (b) make provision for the period within which, and the manner in which, applications may be made for a period to be extended (or further extended) under paragraph (7).

(9) In this Article references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to paragraph (10)) references to any person who is so involved otherwise than as—

- (a) the employer in relation to that scheme,
- (b) a trustee or manager of the scheme,
- (c) the auditor of the scheme or its actuary,
- (d) a legal adviser of the trustees or managers of the scheme,

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- (e) a fund manager for the scheme,
- (f) a person acting on behalf of a person who is involved in the administration of the scheme,
- (g) a person providing services to a person so involved,
- (h) a person acting in his capacity as an employee of a person so involved,
- (i) a person who would fall within any of sub-paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding sub-paragraphs were treated as involved in the administration of a scheme.

(10) In this Article references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

#### **Duty to comply with directions under Article 72B**

**72C.—**(1) It shall be the duty of any person to whom a direction is given under Article 72B to comply with it.

(2) Where a direction is given under Article 72B to the trustees of a trust scheme, Article 3 applies to any trustee who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance with it.

(3) Article 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under Article 72B.

(4) Article 10 applies to any person who—

- (a) is a person to whom a direction under Article 72B is given otherwise than in the capacity of a trustee or manager, and
- (b) without reasonable excuse, fails to comply with that direction.

(5) For the purposes of this Article it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under Article 72B that the provision of that information would (but for the duty imposed by paragraph (1) of this Article) involve a breach by any person of a duty owed to another not to disclose that information.”

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### *Other provisions*

#### **Restriction on index-linking where annuity tied to investments**

**47.**—(1) In Article 51(2) of the Pensions Order (annual increase in rate of pension), for Subject to Article 52 there shall be substituted “Subject to Articles 51A and 52”.

(2) After Article 51 of that Order there shall be inserted—

#### **“Restriction on increase where annuity tied to investments**

**51A.**—(1) No increase under Article 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a money purchase scheme as—

- (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments,
- (b) does not represent benefits payable in respect of the protected rights of any member of the scheme, and
- (c) satisfies such other conditions (if any) as may be prescribed.

(2) For the purposes of this Article it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.

(3) In this Article the relevant date means the date appointed for the coming into operation of section 47 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.”.

#### **Information for members of schemes, etc.**

**48.**—(1) In section 109(1) of the Pension Schemes Act (disclosure of information about schemes to members, etc.), for and at the end of paragraph (c) there shall be substituted—

“(ca) of the pensions and other benefits an entitlement to which would be likely to accrue to the member, or be capable of being secured by him, in respect of the rights that may arise under it; and” .

(2) After subsection (3) of that section there shall be inserted—

“(3A) The regulations may provide for the information that must be given to be determined, in whole or part, by reference to guidance which—

- (a) is prepared and from time to time revised by a prescribed body; and
- (b) is for the time being approved by the Department.

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(3B) The regulations may, in relation to cases where a scheme is being wound up, contain—

- (a) provision conferring power on the Regulatory Authority, at times before the period expires, to extend any period specified in the regulations as the period within which a requirement imposed by the regulations must be complied with; and
- (b) provision as to the contents of any application for the exercise of such a power and as to the form and manner in which, and the time within which, any such application must be made.” .

### **Jurisdiction of the Pensions Ombudsman**

**49.—**(1) Section 142 of the Pension Schemes Act (functions of the Pensions Ombudsman) shall be amended as follows.

(2) In subsection (1), after paragraph (b) there shall be inserted—

“(ba) a complaint made to him by or on behalf of an independent trustee of a trust scheme who, in connection with any act or omission which is an act or omission either—

- (i) of trustees of the scheme who are not independent trustees, or
- (ii) of former trustees of the scheme who were not independent trustees, alleges maladministration of the scheme,” .

(3) In that subsection, for the words after sub-paragraph (ii) of paragraph (d) there shall be substituted—

“and in a case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates are references to each of the schemes,

- (e) any dispute not falling within paragraph (f) between different trustees of the same occupational pension scheme,
- (f) any dispute, in relation to a time while Article 22 of the Pensions (Northern Ireland) Order 1995 (schemes subject to insolvency procedures) applies in relation to an occupational pension scheme, between an independent trustee of the scheme and either—
  - (i) trustees of the scheme who are not independent trustees, or
  - (ii) former trustees of the scheme who were not independent trustees, and
- (g) any question relating, in the case of an occupational pension scheme with a sole trustee, to the carrying out of the functions of that trustee.” .

(4) After that subsection there shall be inserted—

“(1A) The Pensions Ombudsman shall not investigate or determine any dispute or question falling within subsection (1)(c) to (g) unless it is referred to him—



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- (a) in the case of a dispute falling within subsection (1)(c), by or on behalf of the actual or potential beneficiary who is a party to the dispute,
- (b) in the case of a dispute falling within subsection (1)(d), by or on behalf of any of the parties to the dispute,
- (c) in the case of a dispute falling within subsection (1)(e), by or on behalf of at least half the trustees of the scheme,
- (d) in the case of a dispute falling within subsection (1)(f), by or on behalf of the independent trustee who is a party to the dispute,
- (e) in the case of a question falling within subsection (1)(g), by or on behalf of the sole trustee.

(1B) For the purposes of this Part any reference to or determination by the Pensions Ombudsman of a question falling within subsection (1)(g) shall be taken to be the reference or determination of a dispute.” .

(5) In subsection (3), after occupational pension scheme there shall be inserted “or a personal pension scheme”.

(6) In subsection (6) for paragraph (a) there shall be substituted—

- “(a) if, before the making of the complaint or the reference of the dispute—
  - (i) proceedings in respect of the matters which would be the subject of the investigation have been begun in any court or industrial tribunal, and
  - (ii) those proceedings are proceedings which have not been discontinued or which have been discontinued on the basis of a settlement or compromise binding all the persons by or on whose behalf the complaint or reference is made;” .

(7) In subsection (7)—

(a) after paragraph (b) there shall be inserted—

“(ba) a person who is entitled to a pension credit as against the trustees or managers of the scheme;” ; and

(b) in paragraph (c)(i), for paragraph (a) or (b) there shall be substituted “paragraph (a), (b) or (ba)”.

(8) In subsection (8) after the definition of employer there shall be inserted—

“independent trustee, in relation to a scheme, means—

- (a) a trustee of the scheme appointed under Article 23(1)(b) of the Pensions (Northern Ireland) Order 1995 (appointment of independent trustee by insolvency practitioner or official receiver),
- (b) a person appointed under Article 7(1) of that Order to replace a trustee falling within paragraph (a) or this paragraph;” .

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(9) In subsection (1)—

- (a) for complaints and disputes there shall be substituted “matters”;
- (b) in paragraph (b), for the words from is to to the end of the paragraph there shall be substituted “are references to the other scheme referred to in that sub-paragraph”; and
- (c) in paragraphs (c) and (d), the words which arises shall cease to have effect.

(10) Subsection (6) shall not have effect in relation to proceedings begun before the day appointed under section 68 for the coming into operation of this section.

*S. 50 rep. by 2005 NI 1*

**Prohibition on different rules for overseas residents, etc.**

51. After Article 66 of the Pensions Order there shall be inserted—

*“Treatment of overseas residents, etc.*

**Prohibition on different rules for overseas residents, etc.**

**66A.**—(1) This Article applies where an occupational pension scheme contains provisions contravening paragraph (2) or (3).

(2) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this paragraph to the extent that they would (apart from this Article) have an effect with respect to—

- (a) the entitlement of any person to benefits under the scheme, or
- (b) the payment to any person of benefits under the scheme,

which would be different according to whether or not a place outside the United Kingdom is specified by that person as the place to which he requires payments of benefits under the scheme to be made to him.

(3) Except so far as regulations otherwise provide, provisions of an occupational pension scheme contravene this paragraph to the extent that they would (apart from this Article) have an effect with respect to—

- (a) the entitlement of any person to remain a member of the scheme,
- (b) the eligibility of any person to remain a person by or in respect of whom contributions are made towards or under the scheme, or
- (c) the making by or in respect of any person who is a member of the scheme of any contributions towards or under the scheme,

which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.

(4) Provisions contravening paragraph (2) shall have effect, in relation to all times after the coming into operation of section 51 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as if they made the same provision in relation to a person who requires payments of benefits to be made to a place outside the United Kingdom as they make in relation to a person in whose case all payments of benefits fall to be made to a place in the United Kingdom.

(5) Provisions contravening paragraph (3) shall have effect, in relation to all times after the coming into operation of section 51 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, as if they made the same provision in relation to persons working wholly or partly outside the United Kingdom as they make in relation to persons working wholly in the United Kingdom.

(6) This Article—

- (a) shall be without prejudice to any statutory provision under which any amount is to be or may be deducted, or treated as deducted, from amounts payable by way of benefits under the scheme or treated as so payable; and
- (b) shall not apply in relation to so much of any provision of a scheme as is required for securing compliance with the conditions of any approval, exemption or relief given or available under the Tax Acts.”.

### **Miscellaneous amendments and alternative to anti-franking rules**

**52.** Schedule 5 (which contains miscellaneous amendments of the Pension Schemes Act and the Pensions Order and makes provision for an alternative to the anti-franking rules in Part III of that Act) shall have effect.

## **PART III**

### **SOCIAL SECURITY**

#### *Loss of benefit*

### **Loss of benefit for breach of community order**

**53.—**(1) If—

- (a) a court makes a determination that a person ( the offender) has failed without reasonable excuse to comply with the requirements of a relevant community order made in respect of him;

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(b) the Department or, as the case may be, the Department of Higher and Further Education, Training and Employment is notified in accordance with regulations under section 55 of the determination; and

(c) the offender is a person with respect to whom the conditions for any entitlement to a relevant benefit are or become satisfied,

then, even though those conditions are satisfied, the following restrictions shall apply in relation to the payment of that benefit in the offender's case.

(2) Subject to subsections (3) to (5), the relevant benefit shall not be payable in the offender's case for the prescribed period.

(3) Where the relevant benefit is income support, the benefit shall be payable in the offender's case for the prescribed period as if the applicable amount used for the determination under section 123(4) of the Contributions and Benefits Act of the amount of the offender's entitlement for that period were reduced in such manner as may be prescribed.

(4) The Department may by regulations provide that, where the relevant benefit is jobseeker's allowance, any income-based jobseeker's allowance shall be payable, during the whole or a part of the prescribed period, as if one or more of the following applied—

(a) the rate of the allowance were such reduced rate as may be prescribed;

(b) the allowance were payable only if there is compliance by the offender with such obligations with respect to the provision of information as may be imposed by the regulations;

(c) the allowance were payable only if the circumstances are otherwise such as may be prescribed.

(5) Where the relevant benefit is a payment under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29) (under which training allowances are payable), that benefit shall not be payable for the prescribed period except to such extent (if any) as may be prescribed.

(6) Where the determination by a court that was made in the offender's case is quashed or otherwise set aside by the decision of that or any other court, all such payments and other adjustments shall be made in his case as would be necessary if the restrictions imposed by or under this section in respect of that determination had not been imposed.

(7) The length of any period prescribed for the purposes of any of subsections (2) to (5) shall not exceed twenty-six weeks.

(8) In this section—

income-based jobseeker's allowance and joint-claim jobseeker's allowance have the same meanings as in the Jobseekers (Northern Ireland) Order 1995 (NI 15) (in this Act referred to as the Jobseekers Order);

relevant benefit means—

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- (a) income support;
- (b) any jobseeker's allowance other than joint-claim jobseeker's allowance;
- (c) any benefit under the Contributions and Benefits Act (other than income support) which is prescribed for the purposes of this section; or
- (d) any prescribed payment under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29);

relevant community order means—

- (a) a community service order;
- (b) a probation order;
- (c) a combination order;
- (d) such other description of community order within the meaning of the Criminal Justice (Northern Ireland) Order 1996 (NI 24) as may be prescribed for the purposes of this section; or
- (e) any order falling in Northern Ireland to be treated as an order specified in paragraphs (a) to (d).

(9) In relation to a relevant benefit falling within paragraph (d) of the definition of that expression in subsection (8), references in this section to the conditions for entitlement to that benefit being or becoming satisfied with respect to any person are references to there having been or, as the case may be, the taking of a decision to make a payment of such benefit to that person.

#### **Loss of joint-claim jobseeker's allowance**

**54.—**(1) Subsections (2) and (3) shall have effect, subject to the other provisions of this section, where—

- (a) the conditions for the entitlement of any joint-claim couple to a joint-claim jobseeker's allowance are or become satisfied at any time; and
- (b) the restriction in subsection (2) of section 53 would apply in the case of at least one of the members of the couple if the entitlement were an entitlement of that member to a relevant benefit.

(2) The allowance shall not be payable in the couple's case for so much of the prescribed period as is a period for which—

- (a) in the case of each of the members of the couple, the restriction in subsection (2) of section 53 would apply if the entitlement were an entitlement of that member to a relevant benefit; or
- <sup>[F11]</sup>(b) that restriction would apply in the case of one of the members of the couple and the other member of the couple—

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- (i) is subject to sanctions for the purposes of Article 22A of the Jobseekers Order (denial or reduction of joint-claim jobseeker's allowance); or
  - (ii) is a person in whose case the restriction in subsection (2) of section 7 of the Social Security Fraud Act (Northern Ireland) 2001 (loss of benefit for offenders) would apply if the entitlement were an entitlement to a sanctionable benefit (within the meaning of that section).]
- (3) For any part of the period for which subsection (2) does not apply, the allowance—
- (a) shall be payable in the couple's case as if the amount of the allowance were reduced to an amount calculated using the method prescribed for the purposes of this subsection; but
  - (b) shall be payable only to the member of the couple who is not the person in relation to whom the court has made a determination.
- (4) The Department may by regulations provide in relation to cases to which subsection (2) would otherwise apply that joint-claim jobseeker's allowance shall be payable in a couple's case, during the whole or a part of so much of the prescribed period as falls within paragraph (a) or (b) of that subsection, as if one or more of the following applied—
- (a) the rate of the allowance were such reduced rate as may be prescribed;
  - (b) the allowance were payable only if there is compliance by each of the members of the couple with such obligations with respect to the provision of information as may be imposed by the regulations;
  - (c) the allowance were payable only if the circumstances are otherwise such as may be prescribed.
- (5) Paragraph (6) of Article 22A of the Jobseekers Order shall apply for the purposes of subsection (3) as it applies for the purposes of paragraph (5) of that Article.
- (6) Subsection (6) of section 53 shall apply for the purposes of this section in relation to any determination relating to one or both members of the joint-claim couple as it applies for the purposes of that section in relation to the determination relating to the offender.
- (7) The length of any period prescribed for the purposes of subsection (2) or (3) shall not exceed twenty-six weeks.
- (8) In this section—
- joint-claim couple and joint-claim jobseeker's allowance have the same meanings as in the Jobseekers Order;
  - relevant benefit has the same meaning as in section 53.

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F11 2001 c. 17 (NI)

### Information provision

**55.—(1)** A court in Northern Ireland shall, before making a relevant community order in relation to any person, explain to that person in ordinary language the consequences by virtue of sections 53 and 54 of a failure to comply with the order.

(2) The Department may by regulations require the Chief Probation Officer for Northern Ireland, or such other person as may be prescribed, to notify the Department or, as the case may be, the Department of Higher and Further Education, Training and Employment, at the prescribed time and in the prescribed manner—

- (a) of the making by a member of the staff of the Probation Board of a complaint that a person has failed to comply with the requirements of a relevant community order;
- (b) of any such determination as is mentioned in section 53(1);
- (c) of such information about the offender, and in the possession of the person giving the notification, as may be prescribed; and
- (d) of any circumstances by virtue of which any payment or adjustment might fall to be made by virtue of section 53(6) or 54(6).

(3) Where it appears to the Department or, as the case may be, the Department of Higher and Further Education, Training and Employment, that the making of any complaint could result in a determination the making of which would result in the imposition by or under one or both of sections 53 and 54 of any restrictions, it shall be the duty of that Department to notify the person in whose case those restrictions would be imposed, or (as the case may be) the members of any joint-claim couple in whose case they would be imposed, of the consequences under those sections of such a determination in the case of that person, or couple.

(4) A notification required to be given by the Department or, as the case may be, the Department of Higher and Further Education, Training and Employment, under subsection (3) must be given as soon as reasonably practicable after it first appears to that Department as mentioned in that subsection.

(5) The Department may by regulations make such provision as it thinks fit for the purposes of sections 53 to 56 about—

- (a) the use by a person within subsection (6) of information relating to community orders or social security;
- (b) the supply of such information by a person within that subsection to any other person (whether or not within that subsection); and

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- (c) the purposes for which a person to whom such information is supplied under the regulations may use it.
- (6) The persons within this subsection are—
  - (a) the Department or, as the case may be, the Department of Higher and Further Education, Training and Employment;
  - (b) a person providing services to either of those Departments;
  - (c) a member of the staff of the Probation Board.
- (7) Regulations under subsection (5) may, in particular, authorise information supplied to a person under the regulations—
  - (a) to be used for the purpose of amending or supplementing other information held by that person; and
  - (b) where so used, to be supplied to any other person to whom, and used for any purpose for which, the information amended or supplemented could be supplied or used.
- (8) In this section—
  - member of the staff of the Probation Board has the same meaning as in the Probation Board (Northern Ireland) Order 1982 (NI 10);
  - the Probation Board means the Probation Board for Northern Ireland;
  - relevant community order has the same meaning as in section 53.

### **Loss of benefit regulations**

**56.—(1)** In the loss of benefit provisions prescribed means prescribed by or determined in accordance with regulations made by the Department.

(2) Regulations prescribing a period for the purposes of any of the loss of benefit provisions may contain provision for determining the time from which the period is to run.

(3) Subject to subsection (4), regulations under any of the loss of benefit provisions shall be subject to negative resolution.

(4) Regulations containing (whether alone or with other provisions) a provision—

- (a) prescribing the manner in which the applicable amount is to be reduced for the purposes of section 53(3);
- (b) prescribing the manner in which an amount of joint-claim jobseeker's allowance is to be reduced for the purposes of section 54(3)(a);
- (c) the making of which is authorised by section 53(4) or 54(4);
- (d) prescribing benefits under the Contributions and Benefits Act as benefits that are to be relevant benefits for the purposes of section 53; or



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- (e) that any description of order is to be a relevant community order for the purposes of that section,

shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(5) 74(3) to (6) of the 1998 Order (regulations and orders) shall apply to any power to make regulations under the loss of benefit provisions as it applies to any power to make regulations under that Order.

(6) In this section the loss of benefit provisions means sections 53 to 55.

### **Appeals relating to loss of benefit**

**57.** In paragraph 3 of Schedule 3 to the 1998 Order (decisions against which an appeal lies), after sub-paragraph (d) there shall be added “; or

- (e) section 53 or 54 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.” .

### **Investigation powers**

#### *Section 58—Amendments*

#### *Housing benefit*

### **Housing benefit: revisions and appeals**

**59.** Schedule 7 (which makes provision for the revision of decisions made in connection with claims for housing benefit and for appeals against such decisions) shall have effect.

### **Discretionary financial assistance with housing**

**60.—**(1) The Department may by regulations make provision conferring a power on relevant authorities to make payments by way of financial assistance (discretionary housing payments) to persons who—

- (a) are entitled to housing benefit; and  
(b) appear to such an authority to require some further financial assistance (in addition to the benefit to which they are entitled) in order to meet housing costs.

(2) Regulations under this section may include provision—

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- (a) prescribing the circumstances in which discretionary housing payments may be made under the regulations;
  - (b) conferring (subject to any provision made by virtue of paragraph (c) or (d)) a discretion on a relevant authority—
    - (i) as to whether or not to make discretionary housing payments in a particular case; and
    - (ii) as to the amount of the payments and the period for or in respect of which they are made;
  - (c) imposing a limit on the amount of the discretionary housing payment that may be made in any particular case;
  - (d) restricting the period for or in respect of which discretionary housing payments may be made;
  - (e) about the form and manner in which claims for discretionary housing payments are to be made and about the procedure to be followed by relevant authorities in dealing with and disposing of such claims;
  - (f) imposing conditions on persons claiming or receiving discretionary housing payments requiring them to provide a relevant authority with such information as may be prescribed;
  - (g) entitling a relevant authority that is making or has made a discretionary housing payment, in such circumstances as may be prescribed, to cancel the making of further such payments or to recover a payment already made; or
  - (h) requiring or authorising a relevant authority to review decisions made by the authority with respect to the making, cancellation or recovery of discretionary housing payments.
- (3) Regulations under this section shall be subject to negative resolution.
- (4) Article 74(3) to (6) of the 1998 Order (regulations and orders) shall apply to any power to make regulations under this section as it applies to any power to make regulations under that Order.
- (5) Any power to make regulations under this section shall include power to make different provision for different areas or different relevant authorities.
- (6) In this section—
- prescribed means prescribed by or determined in accordance with regulations made by the Department;
- relevant authority means the Housing Executive or the Department of Finance and Personnel, as the case may be.

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### **Grants towards cost of discretionary housing payments**

**61.**—(1) The Department may make to the Housing Executive payments in respect of—

- (a) the cost to the Housing Executive of the making of discretionary housing payments; and
- (b) the expenses involved in the administration by the Housing Executive of any scheme for the making of discretionary housing payments.

(2) Section 127(2) and (3) of the Administration Act shall apply in relation to payments under this section as it applies in relation to grants under that section.

(3) In this section discretionary housing payment means any payment made by virtue of regulations under section 60.

### **Recovery of housing benefit**

**62.** For subsection (3) of section 73 of the Administration Act (overpayments of housing benefit) there shall be substituted—

“(3) An amount recoverable under this section shall be recoverable—

- (a) except in such circumstances as may be prescribed, from the person to whom it was paid; and
- (b) where regulations so provide, from such other person (as well as, or instead of, the person to whom it was paid) as may be prescribed.”.

### *Child benefit*

### **Child benefit disregards**

**63.** In section 139(3)(c) of the Contributions and Benefits Act (meaning of person responsible for child) for Article 7 there shall be substituted “Article 15 or 36”.

### *Social Security Advisory Committee*

### **Social Security Advisory Committee**

**64.** In section 149(5) of the Administration Act (functions of Social Security Advisory Committee in relation to legislation and regulations), in the definition of the relevant enactments, after paragraph (ae) there shall be inserted—

“(af) sections 38, 53 to 56 and 59 to 61 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 7 to that Act; and” .

## PART IV

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous*

#### **Tests for determining paternity**

**65.**—(1) Part III of the Family Law Reform (Northern Ireland) Order 1977 (NI 17) (provisions for use of blood tests in determining paternity) shall be amended as follows.

(2) In Article 8 (power of court to require use of blood tests)—

(a) for paragraphs (1A) and (1B) there shall be substituted—

“(1A) Tests required by a direction under this Article may only be carried out by a body which has been accredited for the purposes of this Article by—

(a) the Lord Chancellor; or

(b) a body appointed by him for the purpose.” ;

(b) in paragraph (2)—

(i) for person responsible for there shall be substituted “individual”; and

(ii) after this Article there shall be inserted “(the tester)”;

(c) in paragraph (4), for the person who made the report there shall be substituted “the tester”; and

(d) in paragraph (5)—

(i) for the person responsible for carrying out the tests taken for the purpose of giving effect to the direction, or any there shall be substituted “the tester, or any other”;

(ii) for that person there shall be substituted “the tester or that other person”; and

(iii) after and where there shall be inserted “the tester or”.

(3) In Article 9 (consents, etc., required for the taking of blood samples), in paragraph (3), for, if the person who has the care and control of him consents. there shall be substituted—

“(a) if the person who has the care and control of him consents; or

(b) where that person does not consent, if the court considers that it would be in his best interests for the sample to be taken.” .

(4) In Article 10(1) (power to provide for the manner of giving effect to direction for use of blood tests)—

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- (a) in sub-paragraph (a), for the words from such medical practitioners to the end there shall be substituted “registered medical practitioners or members of such professional bodies as may be prescribed by the regulations;”, and
- (b) for sub-paragraph (e) there shall be substituted—
  - “(e) prescribe conditions which a body must meet in order to be eligible for accreditation for the purposes of Article 8;” .

(5) The amendments made by this section shall not have effect in relation to any proceedings pending at the coming into operation of this section.

### **Declarations of status**

**66.—(1)** Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (NI 4) (declarations of status) shall be amended as follows.

(2) After Article 31A there shall be inserted—

#### **“Declarations of parentage**

**31B.—(1)** Subject to the provisions of this Article, any person may apply to the High Court, a county court or a court of summary jurisdiction for a declaration as to whether or not a person named in the application is or was the parent of another person so named.

(2) A court shall have jurisdiction to entertain an application under paragraph (1) if, and only if, either of the persons named in it for the purposes of that paragraph—

- (a) is domiciled in Northern Ireland on the date of the application, or
- (b) has been habitually resident in Northern Ireland throughout the period of one year ending with that date, or
- (c) died before that date and either—
  - (i) was at death domiciled in Northern Ireland, or
  - (ii) had been habitually resident in Northern Ireland throughout the period of one year ending with the date of death.

(3) Except in a case falling within paragraph (4), the court shall refuse to hear an application under paragraph (1) unless it considers that the applicant has a sufficient personal interest in the determination of the application (but this is subject to Article 28 of the Child Support (Northern Ireland) Order 1991).

(4) The excepted cases are where the declaration sought is as to whether or not—

- (a) the applicant is the parent of a named person;
- (b) a named person is the parent of the applicant; or

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(c) a named person is the other parent of a named child of the applicant.

(5) Where an application under paragraph (1) is made and one of the persons named in it for the purposes of that paragraph is a child, the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.

(6) Where a court refuses to hear an application under paragraph (1) it may order that the applicant may not apply again for the same declaration without leave of the court.

(7) Where a declaration is made by a court on an application under paragraph (1), the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration.

(8) In this Article—

prescribed means prescribed by rules of court;

Registrar General has the same meaning as in the Births and Deaths Registration (Northern Ireland) Order 1976;

rules of court has the same meaning as in Article 36(5), but in relation to an application made to, or a declaration made by, a court of summary jurisdiction, means magistrates' courts rules.”.

(3) In Article 34(5) (prohibition of declarations of illegitimacy), sub-paragraph (b) shall cease to have effect.

(4) After Article 36(5) there shall be added—

“(6) An appeal shall lie to the county court against—

(a) the making by a court of summary jurisdiction of a declaration under Article 31B,

(b) any refusal by a court of summary jurisdiction to make such a declaration, or

(c) any order under paragraph (6) of that Article made on such a refusal.”.

*Subs. (5)—Amendments*

(6) Nothing in this Act shall affect any proceedings pursuant to an application under—

(a) Article 32(1)(a) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (NI 4), or

(b) Article 28 of the Child Support Order,

which are pending immediately before the coming into operation of this section.

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## Supplemental

### Section 67—Repeals

#### Commencement and transitional provisions

**68.—**(1) This section applies to the following provisions—

- (a) Part I (other than section 23);
- (b) Part II (other than sections 34 and 35 and paragraph 5(1), (3) and (4) of Schedule 5);
- (c) Part III;
- (d) sections 65 and 66 and Schedule 8;
- (e) section 67 and Schedule 9.

(2) The provisions of this Act to which this section applies shall come into operation on such day or days as may be appointed by order made—

- (a) except in a case falling within paragraph (b), by the Department; and
- (b) in the case of an order bringing into operation any of the provisions of sections 65 and 66, Schedule 8 or Part VII of Schedule 9, by the Lord Chancellor.

(3) The Department may by regulations make such transitional provision as it considers necessary or expedient in connection with the bringing into operation of any of the following provisions—

- (a) sections 39 to 42 and section (1) of Part III of Schedule 9;
- (b) sections 59 to 61 and Schedule 7 and Part VI of Schedule 9.

(4) Regulations under subsection (3) shall be subject to negative resolution.

(5) Article 166 of the Pensions Order (supplementary provisions in relation to powers to make regulations or orders under that Order) shall apply to the power to make regulations under subsection (3) as it applies to any power to make regulations under that Order.

#### Subordinate Legislation Made

- P1** [S. 68\(2\)](#) power partly exercised: different dates appointed for specified provisions by [S.R. 2000/358, art. 2, Sch.](#) (as amended by [S.R. 2000/374, art. 3](#))
- [S. 68\(2\)](#) power partly exercised: different dates appointed for specified provisions by [S.R. 2000/374, art. 2, Sch.](#) (as amended by [S.R. 2001/141, art. 3](#))
- [S. 68\(2\)](#) power partly exercised: different dates appointed for specified provisions by [S.R. 2000/406, art. 2, Sch.](#)
- [S. 68\(2\)](#) power partly exercised: different dates appointed for specified provisions by [S.R. 2001/34, art. 2](#)

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S. 68(2) power partly exercised: different dates appointed for specified provisions by S.R. 2001/141, art. 2, Sch.

S. 68(2) power partly exercised: different dates appointed for specified provisions by S.R. 2001/249, art. 2 (as amended by S.R. 2002/68, art. 3)

S. 68(2) power partly exercised: different dates appointed for specified provisions by S.R. 2002/68, art. 2

S. 68(2) power partly exercised: different dates appointed for specified provisions by S.R. 2002/118, art. 2

S. 68(2) power partly exercised: different dates appointed for specified provisions by S.R. 2003/53, arts. 2-7, Sch. (as amended by S.R. 2003/92, art. 2)

S. 68(2) power partly exercised: different dates appointed for specified provisions by S.R. 2008/402, art. 2

### Short title and interpretation

**69.—**(1) This Act may be cited as the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.

(2) In this Act—

the 1998 Order means the Social Security (Northern Ireland) Order 1998 (NI 10);

the 1999 Order means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11);

the Administration Act means the Social Security Administration (Northern Ireland) Act 1992 (c. 8);

the Child Support Order means the Child Support (Northern Ireland) Order 1991 (NI 23);

the Contributions and Benefits Act means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

the Department means the Department for Social Development;

the Housing Executive means the Northern Ireland Housing Executive;

the Jobseekers Order means the Jobseekers (Northern Ireland) Order 1995 (NI 15);

the Pension Schemes Act means the Pension Schemes (Northern Ireland) Act 1993 (c. 49);

the Pensions Order means the Pensions (Northern Ireland) Order 1995 (NI 22);

statutory provision has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).



## SCHEDULES

*Schedule 1—Amendments*

*Schedule 2—Amendments*

*Schedule 3—Amendments*

*Schedule 4—Amendments*

### SCHEDULE 5

Section 52.

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

#### PART I

#### MISCELLANEOUS AMENDMENTS

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

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

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

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- (a) for any period for which a Category B retirement pension is payable to the widow or widower by virtue of the earner's contributions or would be so payable but for section 43(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (persons entitled to more than one retirement pension);
  - (b) for any period for which widowed parent's allowance or bereavement allowance is payable to the widow or widower by virtue of the earner's contributions; and
  - (c) in the case of a widow or widower whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the widow or widower attained the age of 45, for so much of the period beginning with the time when the entitlement came to an end as neither—
    - (i) comprises a period during which the widow or widower and a person of the opposite sex are living together as husband and wife; nor
    - (ii) falls after the time of any remarriage by the widow or widower.” .
- (2) In subsection (5) of that section—
- (a) for must provide there shall be substituted “must also make provision”; and
  - (b) the words Category B retirement pension,, in the first place where they occur, and the words from or for which to the end shall cease to have effect.
- (3) In subsection (6) of that section, for must provide there shall be substituted “must also make provision”.

*Transfer of rights to overseas personal pension schemes*

2.—(1) In section 16(1) of the Pension Schemes Act (transfer of accrued rights)

- (a) in paragraph (a), for or to a personal pension scheme there shall be substituted “, to a personal pension scheme or to an overseas arrangement”; and
  - (b) in paragraph (b), for or a personal pension scheme there shall be substituted “, a personal pension scheme or an overseas arrangement”.
- (2) In section 24(2)(b) of that Act (ways of giving effect to protected rights)—
- (a) in sub-paragraph (i), for or to a personal pension scheme there shall be substituted “, to a personal pension scheme or to an overseas arrangement”; and

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(b) in sub-paragraph (ii), for or to an occupational pension scheme there shall be substituted “, to an occupational pension scheme or to an overseas arrangement”.

(3) In section 176(1) of that Act (general interpretation), after the definition of occupational pension scheme, there shall be inserted—

“overseas arrangement means a scheme or arrangement which—

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- (b) is administered wholly or primarily outside Northern Ireland;
- (c) is not an appropriate scheme; and
- (d) is not an occupational pension scheme;” .

#### *Protected rights*

3.—(1) Section 24 of the Pension Schemes Act shall be amended as follows.

(2) In subsection (4), for paragraph (d) there shall be substituted—

“(d) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.” .

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

#### *Use of cash equivalent for annuity*

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

#### *Transfer values where pension in payment*

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

“(aa) for a cash equivalent, including a guaranteed cash equivalent, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

- (i) any pension; or
- (ii) any benefit in lieu of pension; and” .

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

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

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

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

*Information about contracting-out*

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

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

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

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

*Trustees of schemes*

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

(a) for provide who is to be treated there shall be substituted “provide—

(a) who is to be treated” ; and

(b) at the end there shall be added—

“or

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

*Para. 8 rep. by 2005 NI 1*

*Conditions of payment of surplus to employer*

**F129.**—(1) Article 37 of the Pensions Order (payment of surplus to employer) shall be amended as follows.

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

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

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

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

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

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

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

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

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

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

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

“(6) In this Article—

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

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

F12 prosp. rep. by 2005 NI 1

#### *Duties relating to statements of contributions*

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

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

(a) prescribed persons,

(b) persons with prescribed qualifications or experience, or

(c) persons approved by the Department,

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

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

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

<sup>F13</sup>(2) In Article 49 of that Order (other responsibilities of trustees, employers, etc.), in paragraph (9), after sub-paragraph (b) there shall be added “; and

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

<sup>F13</sup>(3) In that Article, after paragraph (10) there shall be inserted—

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

<sup>F13</sup>(4) In Article 86 of that Order (schedules of payments to money purchase schemes: supplementary), after paragraph (4) there shall be added—

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

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

<b>F13</b> prosp. rep. by <a href="#">2005 NI 1</a>
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### *Orders and regulations*

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

## PART II

### ALTERNATIVE TO ANTI-FRANKING RULES

#### *Cases in which alternative applies*

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

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

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

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

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

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

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

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

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*Alternative rules*

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

(2) That method is as follows—

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

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

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

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

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

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

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

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

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

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

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

(i) the final relevant tax year, and



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

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*Relationship between alternative rules and other rules*

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

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

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

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

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

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

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

*Supplemental*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Schedule 6—Amendments

## SCHEDULE 7

Section 59.

### HOUSING BENEFIT: REVISIONS AND APPEALS

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

- C4** Sch. 7 applied (with modifications) (1.4.2007) by [Rate Relief \(Qualifying Age\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/203\)](#), **reg. 40**
- C5** Sch. 7 applied (with modifications) (1.4.2007) by [Rate Relief \(General\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007/204\)](#), **reg. 41**

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### *Introductory*

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

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

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

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

### *Decisions on claims for benefit*

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

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

### *Revision of decisions*

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

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

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

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

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

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

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

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

#### *Decisions superseding earlier decisions*

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

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

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

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

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

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

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

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

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

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

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*Appeal to appeal tribunal*

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

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

(2) This paragraph does not apply to—

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

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

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

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

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

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

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

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

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

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

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*Redetermination, etc. of appeals by tribunal*

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

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

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

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

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

*Appeal from tribunal to Commissioner*

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

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

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

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

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

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

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

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

*Appeal from Commissioner on point of law*

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



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### *Procedure*

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

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

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

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

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

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

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

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

(b) an appeal,

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

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

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

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

### *Finality of decisions*

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

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*Matters arising as respects decisions*

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

*Suspension in prescribed circumstances*

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

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

*Suspension for failure to furnish information, etc.*

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

(2) Regulations may provide for—

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

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

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

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

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

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

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

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

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

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

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

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

(4) Where—

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

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

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

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

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

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

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

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

17.—(1) This paragraph applies where—

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

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

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

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

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

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

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

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

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

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

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

(i) appeal B had already been determined; and

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

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

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

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

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

(c) the time within which—

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

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

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

(7) In this paragraph—

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

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

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

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

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

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

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

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

(6) In this paragraph the court means—

- (a) the High Court;
- (b) the Court of Appeal;
- <sup>F14</sup>(c) the House of Lords; or
- (d) the Court of Justice of the European Community.

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

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

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

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

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

**F14** prosp. subst. by 2005 (c. 4)

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*Correction of errors and setting aside of decisions*

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

*Regulations*

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



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

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

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

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

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

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

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

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

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

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

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

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### *Interpretation*

**23.—(1)** In this Schedule—

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

the Chief Commissioner means the Chief Social Security Commissioner;

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

prescribed means prescribed by regulations under this Schedule;

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

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

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

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

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

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

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

### *Schedule 8—Amendments*

### *Schedule 9—Repeals*

**Status:**

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

**Changes to legislation:**

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