



2000 CHAPTER 4

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 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”.

(3) For Part I of Schedule 1 to the Child Support Order, there shall be substituted the Part I set out in Schedule 1.

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”.

(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 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—

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- (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—

“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
- (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.

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(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—

- (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
 - (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.”.

Applications for a variation: further provisions

6.—(1) For Schedule 4A to the Child Support Order there shall be substituted the Schedule 4A set out in Part I of Schedule 2.

(2) For Schedule 4B to that Order there shall be substituted the Schedule 4B set out in Part II of Schedule 2.

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.

(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.
- (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.”.

*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,”.

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.

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(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.

(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,

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.

(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—

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- (a) in a paragraph (1)(a) case, if the Department were to do what is mentioned in Article 9(3);
 - (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

“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.

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(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.

(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.

(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.

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)”.

Amendments

25. Schedule 3 (amendment of statutory provisions relating to child support) shall have effect.

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) 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).

(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.

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 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.

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—

“(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—

“44A Deemed earnings factors

(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—
 - (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.

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”;

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- (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.”.
- (3) After Schedule 4 to that Act there shall be inserted the Schedule set out in Schedule 4.

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)”.

(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), subparagraph (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—

“130A 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”.

(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)”.

(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.

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

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(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
- (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—

“(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
- (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) Regulations may confer a power on the Department to disclose, or to 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.
- (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—
- (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—

Status: This is the original version (as it was originally enacted).

- (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; and
- (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.

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

(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—

“basic retirement pension” and “additional retirement pension” mean any basic or, as the case may be, additional 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;

“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;

“trustee” and “manager”, in relation to an occupational pension scheme, have the same meanings as in Part II of the Pensions Order.

CHAPTER II

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

Selection of trustees and of directors of corporate trustees

Member-nominated trustees

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—

(a) must”; and

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

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

Status: This is the original version (as it was originally enacted).

- (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.

Corporate trustees

- 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”.
- (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.

(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.

Employer’s proposals for selection of trustees or directors

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,
- (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
 - (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)”.

Non-compliance in relation to arrangements or proposals

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

(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).”.

Winding-up of schemes

Information to be given to the Authority

43.—(1) In Article 22(1)(a) and (3) of the Pensions Order (circumstances in which following provisions apply), for “26” there shall be substituted “26A”.

(2) After Article 26 of that Order there shall be inserted—

“Information to be given to the Authority in relation to a scheme to which Article 22 applies

26A.—(1) If at any time while Article 22 applies in relation to a scheme—

- (a) the trustees of the scheme do not include at least one person who the practitioner or official receiver has informed them is a person about whose independent status he is satisfied, and
- (b) the trustees have no other reasonable grounds for believing that their number includes at least one person about whose independent status the practitioner or official receiver is satisfied,

it shall be the duty of the trustees, as soon as reasonably practicable after it first appears to any one or more of them as mentioned in sub-paragraphs (a) and (b), to give notice to the Authority that the scheme appears not to have an independent trustee.

(2) If a trust scheme is without trustees at any time while Article 22 applies to it, it shall be the duty of every person involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him that the scheme is without trustees, to give notice to the Authority that the scheme has no trustees.

(3) No person shall be required to give a notice under paragraph (1) or (2) at any time when it appears to him, on reasonable grounds—

- (a) that it is the intention of the practitioner or official receiver, for the purpose of complying with his duty under Article 23(1)(b), to make or secure the appointment of any person as a trustee of the scheme, and
- (b) that the appointment will be made within the period specified by or under Article 23(2) for the performance of that duty.

(4) No person shall be required to give a notice under paragraph (2) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the scheme has no trustees.

(5) Where the practitioner or official receiver at any time informs the trustees of a trust scheme that he is not, or is no longer, satisfied about a person's independent status, no account shall be taken for the purposes of paragraph (1)(a) of any information that he was so satisfied which was given by the practitioner or official receiver to the trustees before that time.

(6) References in this Article to the practitioner or official receiver being satisfied about a person's independent status are references to his being satisfied for the purposes of Article 23 that that person is an independent person.

(7) If paragraph (1) is not complied with, Article 10 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(8) Article 10 applies to any person who fails to comply with a duty imposed on him by paragraph (2).

Information to be given in cases where Article 22 disapplied

26B.—(1) Where, at any time—

- (a) Article 22 would apply in relation to a trust scheme but for regulations under Article 115,
- (b) the employer in relation to the scheme is the sole trustee of the scheme,
- (c) there are persons involved in the administration of the scheme, and
- (d) none of those persons has received an employer's assurance relating to the scheme,

it shall be the duty of every person who is involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him as mentioned in sub-paragraphs (a) and (b), to give notice to the Authority that the case is one falling within sub-paragraphs (a) to (d).

(2) For the purposes of this Article a person has received an employer's assurance relating to a scheme if during the period while Article 22 would have applied in relation to the scheme but for regulations under Article 115—

- (a) he has been informed by the person who is the employer in relation to the scheme that there is no reason why the employer should not continue to act as a trustee of the scheme,
- (b) he has not subsequently been informed by the person who is the employer in relation to the scheme that that has ceased to be the case, and
- (c) the trustees of the scheme have not changed since he was informed as mentioned in sub-paragraph (a).

(3) No person shall be required to give a notice under paragraph (1)—

- (a) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the case is one falling within sub-paragraphs (a) to (d) of that paragraph,
 - (b) if a period is prescribed for the purposes of this sub-paragraph, at any time in the prescribed period after the event by virtue of which the scheme became a scheme in relation to which Article 22 would apply but for regulations under Article 115, or
 - (c) at any other time that is prescribed for the purposes of this paragraph.
- (4) Article 10 applies to any person who fails to comply with any duty imposed on him by paragraph (1).

Construction of Articles 26A and 26B

26C.—(1) In Articles 26A and 26B, references in relation to a scheme, to a person involved in the administration of the scheme are (subject to paragraph (2)) references to any person who is so involved otherwise than as—

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

(2) 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.

(3) If regulations so provide in relation to any provision of Article 26A or 26B, so much of that provision as requires any notice to be given as soon as reasonably practicable after a particular time shall have effect as a requirement to give that notice within such period after that time as may be prescribed.”.

(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”.

(4) After that paragraph there shall be added—

“(3) Regulations may modify Articles 26A and 26B for the purpose of requiring prescribed persons, in addition to or instead of the persons who (apart from the regulations) would be required to provide information to the Authority under those Articles, to be subject to the duties imposed by those Articles.”.

(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 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—
 - (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.

(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.”.

(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 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,

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- (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.
- (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,
- (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.”.

*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.

(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,
- (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—

- (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;”;
 - (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;”.
- (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.

Investigations by the Pensions Ombudsman

50.—(1) The Pension Schemes Act shall be amended as follows.

(2) In section 144 (staying court proceedings where a complaint is made or a dispute is referred), in subsection (4), after paragraph (b) there shall be inserted—

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- “(ba) any actual or potential beneficiary of the scheme whose interests are or may be affected by the matters to which the complaint or dispute relates;
- (bb) any actual or potential beneficiary of the scheme whose interests it is reasonable to suppose might be affected by—
- (i) the Pensions Ombudsman’s determination of the complaint or dispute; or
 - (ii) directions that may be given by the Ombudsman in consequence of that determination;”.

(3) For subsection (1) of section 145 (procedure on an investigation) there shall be substituted—

“(1) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall—

 - (a) give every person against whom allegations are made in the complaint or reference an opportunity to comment on those allegations,
 - (b) give every person responsible for the management of the scheme to which the complaint or reference relates an opportunity to make representations to him about the matters to which the complaint or dispute relates, and
 - (c) give every actual or potential beneficiary of that scheme whose interests are or may be affected by the matters to which the complaint or dispute relates, an opportunity to make representations about those matters.

(1A) Subject to subsection (1B), subsection (1) shall not require an opportunity to make comments or representations to be given to any person if the Pensions Ombudsman is satisfied that that person is—

 - (a) a person who, as the person or one of the persons making the complaint or reference, has had his opportunity to make comments or representations about the matters in question; or
 - (b) a person whose interests in relation to the matters to which the complaint or dispute relates are being represented, in accordance with rules under this section, by a person who has been given an appropriate opportunity to make comments or representations.

(1B) The Pensions Ombudsman shall, under subsection (1), give an opportunity to make comments and representations to a person falling within subsection (1A)(a) in any case in which that person is a person who, in accordance with rules, is appointed or otherwise determined, after the

making of the complaint or reference, to represent the interests of other persons in relation to the matters to which the complaint or dispute relates.”.

(4) In subsection (3) of section 145, for “and” at the end of paragraph (b) there shall be substituted—

- “(ba) for the interests of all of a number of persons who—
- (i) are actual or potential beneficiaries of the scheme to which the complaint or reference relates; and
 - (ii) appear to have the same interest in relation to any of the matters to which the complaint or dispute relates,
- to be represented for the purposes of the investigation by such one or more of them, or such other person, as may be appointed by the Ombudsman or otherwise determined in accordance with the rules.”.

(5) In that subsection, after paragraph (c), there shall be added “and

- (d) for the payment of legal expenses incurred by a party to an investigation (as defined in section 144(4)) out of funds held for the purposes of the scheme to which the complaint or reference relates.”.

(6) After subsection (7) of section 145 there shall be added—

“(8) References in this section to the matters to which a complaint or dispute relates include references to any matter which it is reasonable to suppose might form the subject of—

- (a) the Pensions Ombudsman’s determination of the complaint or dispute, or
- (b) any directions that may be given by the Ombudsman in consequence of that determination.”.

(7) In subsection (1) of section 147 (determinations of the Pensions Ombudsman), after paragraph (b) there shall be added “and

- (c) to every other person who was required under section 145 to be given an opportunity—
- (i) to comment on an allegation in the complaint or reference; or
 - (ii) to make representations about matters to which the complaint or reference relates.”.

(8) In subsection (3) of section 147, for “and” at the end of paragraph (b) there shall be substituted—

- “(ba) any person who under section 145 was given such an opportunity to make any such comment or representation as is mentioned in subsection (1)(c) of this section;
- (bb) any person whose interests were represented by a person falling within any of the preceding paragraphs; and”;

and, in paragraph (c) of that subsection for “paragraph (a) or (b)” there shall be substituted “any of paragraphs (a) to (bb)”.

- (9) Nothing in any provision made by this section shall—
- (a) apply in relation to any complaint or reference made to the Pensions Ombudsman before the day on which this section comes into operation; or
 - (b) authorise the making of any provision applying in relation to any such complaint or reference.

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;
- (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—

- (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
- (b) that restriction would so apply in the case of one of the members of the couple and the other member of the couple is subject to sanctions for the purposes of Article 22A of the Jobseekers Order (denial or reduction of joint-claim jobseeker’s allowance).

(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.

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
- (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
- (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) Article 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

Investigation powers

58. Schedule 6 (which amends the enforcement provisions contained in Part VI of the Administration Act) shall have effect.

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—
- (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;

Status: This is the original version (as it was originally enacted).

- (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.

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)—

- (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
- (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), subparagraph (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.”.

(5) Schedule 8 (which makes amendments consequential on subsection (1)) shall have effect.

(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.

Supplemental

Repeals

67.—(1) The statutory provisions mentioned in Schedule 9 (which include some spent provisions) are hereby repealed to the extent specified in the second column of that Schedule.

(2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained, or referred to, in the notes set out in that Schedule.

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.

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 \(c. 33\)](#).