

STATUTORY INSTRUMENTS

1986 No. 1888 (N.I.18)

The Social Security (Northern Ireland) Order 1986 ^{F1}

F2

5th November 1986

F1 functions transf. by SR 1999/481

F2 mod. by SR 1989/427

PART I

INTRODUCTORY

Title, citation and commencement

1.—(1) This Order may be cited as the Social Security (Northern Ireland) Order 1986.

(2) This Order may be cited together with the Social Security (Northern Ireland) Acts 1975 to 1985 as the Social Security (Northern Ireland) Acts 1975 to 1986.

(3) Subject to the following provisions of this Article, this Order shall come into operation on such day or days as the Head of the Department may by order appoint^{F3}.

(4) Article 53 (adjudication) (including Schedule 5) shall come into operation on such day or days as the Head of the Department with the consent of the Lord Chancellor may by order appoint^{F3}.

(5) Without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954, if different days are appointed under paragraph (3) for the purposes of Part IV in relation to different descriptions of persons, those descriptions of persons may be determined by any criteria that appear to the Head of the Department to be appropriate.

(6) If an order under paragraph (3) brings paragraph 8 of Schedule 3 into operation on the same day as Article 37, the former shall be deemed to have come into operation immediately before the latter.

(7) The following provisions of this Order shall come into operation on the fourteenth day after the day on which this Order is made—

this Article and Article 2;

Article 31(3) and (4) (housing benefit finance);

Article 38 (invalid care allowance for women);

Article 39(4) (abolition of maternity grant);

Article 46 (guardian's allowance—adoption);

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- Article 62 (consultations on subordinate legislation);
- Article 64 (annual up-rating of benefits);
- Article 65 (effect of alteration of rates of benefit);
- Article 71 (child benefit in respect of children education otherwise than at educational establishments);
- Article 72(4) and (5) (entitlement to mobility allowance—general);
- Article 73 (entitlement of certain women to mobility allowance);
- Article 75 (National Insurance contributions);
- Article 77 (amendments relating to forfeiture of benefits);
- Article 81 (orders and regulations (general provisions));
- Article 82 (financial provision);
- Article 83(1) (minor and consequential amendments) so far as it relates to paragraphs 13, 14(3), 17(1) and (2), 18, 24(b), (c) and (d)(ii) 64, 73 and 74 of Schedule 9;
- Article 83(2) (repeals) so far as it relates to—
 - (a) section 37(3) of the principal Act and the reference to paragraph (b) of that subsection in Article 18(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977;
 - (b) Article 53D(2) and (3) of, and paragraph 12 of Schedule 1A to, the Pensions Order;
 - (c) section 10 of the Social Security Act 1980; and
 - (d) Article 4 of the Housing Benefits (Northern Ireland) Order 1983; and
- Article 84 (transitional).

F3 partly exercised by SR 1986/339, 1987/20,21,121,161,184,299,449, 1988/116

Interpretation

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

(2) In this Order—

Definition rep. by 1992 c.9

Definition rep. by 1993 c.49

“the benefit Acts” means—

- (a) the Social Security Act 1973;
 - (b) [F4the Social Security (Northern Ireland) Acts 1975 to 1991];
- Sub.#paras. (c),(d) rep. by 1992 c. 9*

Definition rep. by 1993 c.49

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

Definition rep. by 1992 c.9

Definitions rep. by 1993 c.49

Definitions rep. by 1992 c.9

Definition rep. by 1993 c.49

Definition rep. by 1992 c.9

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Definition rep. by 1993 c.49

“modifications” includes additions, omissions and amendments, and related expressions shall be construed accordingly;

Definitions rep. by 1993 c.49

“prescribed” means specified in or determined in accordance with regulations;

Definition rep. by 1992 c.9

“the principal Act” means the Social Security (Northern Ireland) Act 1975;

Definition rep. by 1993 c.49

Definition rep. by 1992 c.9

“rate rebate”, “rent rebate” and “rent allowance” shall be construed in accordance with Article 29;

“rates” has the same meaning as in the Rates (Northern Ireland) Order 1977;

“regulations” means regulations made by the Department under this Order;

Definition rep. by 1988 NI 2

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

Definitions rep. by 1993 c.49

Definition rep. by 1992 c.9

Paras. (3),(4)—rep. by 1993 c.49

F4 1991 NI 9

PART II

PENSIONS

Personal pension schemes

Arts. 3#10 rep. by 1993 c.49

Guaranteed minimum pensions

Sub.#paras. (1)#(7) rep. by 1993 c.49

(8) In Article 69 of the Pensions Order (increase of official pensions) the following paragraph shall be inserted after paragraph (5)—

“(5A) Nothing in Article 39A(8), (9) or (10) authorises any deduction from an increase in the rate of an official pension under this Article.”

(9) In Article 69A of the Pensions Order (modification of effect of Article 69(5)) the following paragraph shall be inserted after paragraph (2)—

“(2A) Where in any tax year—

- (a) an increase is calculated in accordance with a direction under this Article; and
- (b) the amount by reference to which the increase is calculated, or any part of it, is increased in that tax year under Article 39A.

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the increase calculated in accordance with the direction shall be reduced by the amount of the increase under Article 39A.”

Arts. 12#18A rep. by 1993 c.49

Arts. 19#25B— rep. (with saving for Art. 19(1)) by 1992 c.9

Art. 26 rep. by 1995 NI 2

Arts. 27#36 rep. by 1992 c.9

PART V

BENEFITS UNDER THE PRINCIPAL ACT

Art. 37 rep. by 1992 c.9

Invalid care allowance for women

Para. (1) rep. by 1992 c. 9

(2) The Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977 shall have effect, and shall be treated as having had effect from 22nd December 1984, as if the following subparagraphs were substituted for subparagraphs (a) and (b) of paragraph 7 of Schedule 2 (increases of invalid care allowance)—

- “(a) a spouse who is not engaged in any one or more employments from which the spouse's weekly earnings exceed that amount; or
- (b) some person (not being a child) who—
 - (i) has the care of a child or children in respect of whom the beneficiary is entitled to child benefit, being a child or children in respect of whom the beneficiary is entitled to an increase of an invalid care allowance or would be so entitled but for the provisions of any regulations for the time being in force under the Act relating to overlapping benefits;
 - (ii) is not undergoing imprisonment or detention in legal custody;
 - (iii) is not engaged in any one or more employments (other than employment by the beneficiary in caring for a child or children in respect of whom the beneficiary is entitled to child benefit) from which the person's weekly earnings exceed that amount;
 - (iv) is not absent from Northern Ireland, except for any period during which the person is residing with the beneficiary outside Northern Ireland and for which the beneficiary is entitled to an invalid care allowance.”.

Art. 39 rep. by 1992 c.9

Industrial injuries and diseases

40. Schedule 3 shall have effect in relation to Chapters IV and V of Part II of the principal Act and associated enactments.

Arts. 41#51 rep. by 1992 c.9

PART VII

COMMON PROVISIONS

Administration

Art. 52 rep. by 1992 c.9

[^{F5}Payment out of benefit of sums in respect of mortgage interest, etc.

52A.—(1) This Article applies in relation to cases where—

- (a) mortgage interest is payable to a qualifying lender by a person (“the borrower”) who is entitled, or whose partner, former partner or qualifying associate is entitled, to income support; and
- (b) a sum in respect of that mortgage interest is or was brought into account in determining the applicable amount for the purposes of income support in the case of the borrower or the partner, former partner or qualifying associate;

and any reference in this Article to “the relevant beneficiary” is a reference to the person whose applicable amount for the purposes of income support is or was determined as mentioned in sub-paragraph (b).

(2) Without prejudice to sub-paragraphs (j) and (q) of Article 52(1), regulations may, in relation to cases where this Article applies, make provision—

- (a) requiring that, in prescribed circumstances, a prescribed part of any relevant benefits to which the relevant beneficiary is entitled shall be paid by the Department directly to the qualifying lender and applied by that lender towards the discharge of the liability in respect of the mortgage interest;
- (b) for the expenses of the Department in administering the making of payments under the regulations to be defrayed, in whole or in part, at the expense of qualifying lenders, whether by requiring them to pay prescribed fees or by deducting and retaining a prescribed part of the payments that would otherwise be made to them under the regulations or by such other method as may be prescribed;
- (c) for requiring a qualifying lender, in a case where by virtue of sub-paragraph (b) the amount of the payment made to him under the regulations is less than it would otherwise have been, to credit against the liability in respect of the mortgage interest (in addition to the payment actually made) an amount equal to the difference between—
 - (i) the payment that would have been so made, apart from sub-paragraph (b); and
 - (ii) the payment actually made;and, in any such case, for treating the amount so credited as properly paid on account of benefit due to the relevant beneficiary;
- (d) for enabling a body which, or person who, would otherwise be a qualifying lender to elect not to be regarded as such for the purposes of this Article, other than this sub-paragraph;
- (e) for the recovery from any body or person—
 - (i) of any sums paid to that body or person by way of payment under the regulations that ought not to have been so paid; or
 - (ii) of any fees or other sums due from that body or person by virtue of sub-paragraph (b);
- (f) for cases where the same person is the borrower in relation to mortgage interest payable in respect of two or more different loans; and

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- (g) for any person of a prescribed class or description who would otherwise be regarded for the purposes of this Article as the borrower in relation to any mortgage interest not to be so regarded, except for the purposes of this sub-paragraph;

but the Department shall not make any regulations under sub-paragraph (b) unless it has consulted with such organisations representing qualifying lenders likely to be affected by the regulations as it considers appropriate.

(3) The bodies and persons who are “qualifying lenders” for the purposes of this Article are—

- (a) any authorised institution, within the meaning of the Banking Act 1987, to which section 67 of that Act applies (companies and partnerships which may describe themselves as banks, etc.),
- (b) any building society incorporated under the Building Societies Act 1986,
- (c) any body or person carrying on insurance business, within the meaning of the Insurance Companies Act 1982,
- (d) any district council,
- (e) the Northern Ireland Housing Executive,

and such bodies or persons not falling within sub-paragraphs (a) to (e) as may be prescribed.

(4) In this Article—

“mortgage interest” means interest on a loan which is secured by a mortgage of or charge over land and which has been taken out to defray money applied for any of the following purposes, that is to say—

- (a) acquiring any residential land which was intended, at the time of the acquisition, for occupation by the borrower as his home;
- (b) carrying out repairs or improvements to any residential land which was intended, at the time of taking out the loan, for occupation by the borrower as his home;
- (c) paying off another loan; or
- (d) any prescribed purpose not falling within sub-paragraphs (a) to (c);

but interest shall be regarded as mortgage interest by virtue of sub-paragraph (c) only to the extent that interest on that other loan would have been regarded as mortgage interest for the purposes of this Article had the loan not been paid off;

“partner” means—

- (a) any person to whom the borrower is married and who is a member of the same household as the borrower; or
- (b) any person to whom the borrower is not married but who lives together with the borrower as husband and wife, otherwise than in prescribed circumstances;

and “former partner” means a person who has at some time been, but no longer is, the borrower's partner;

“qualifying associate”, in relation to the borrower, means a person who, for the purposes of income support, falls to be treated by regulations under Part III as responsible for so much of the expenditure which relates to housing costs (within the meaning of those regulations) as consists of any of the mortgage interest payable by the borrower, and who falls to be so treated because—

- (a) the borrower is not meeting those costs, so that the person has to meet them if he is to continue to live in the dwelling occupied as his home; and
- (b) the person is one whom it is reasonable, in the circumstances, to treat as liable to meet those costs;

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“relevant benefits” means such of the following benefits as may be prescribed, namely—

- (a) benefits under the principal Act;
- (b) income support;

“residential land” means any land which consists of or includes a dwelling.

(5) For the purposes of this Article, regulations may make provision—

- (a) as to circumstances in which residential land is or is not to be treated as intended for occupation by the borrower as his home; or
- (b) as to circumstances in which persons are to be treated as being or not being members of the same household.]

F5 1992 NI 9

Adjudication

Paras. (1),(2) rep. by 1993 c.49

Paras. (3)#(10) rep. by 1992 c.9

Art. 54 rep. by 1992 c.9

Breach of regulations

Regulations under any of the benefit Acts may provide for contravention of, or failure to comply with, any provision contained in regulations made under that Act or Order to be an offence under that Act or Order and for the recovery, on summary conviction of any such offence, of penalties not exceeding—

- (a) for any one offence, level 3 on the standard scale; or
- (b) for an offence of continuing any such contravention or failure after conviction, £40 for each day on which it is so continued.

F6 mod. by SR 1988/137

Art. 56 rep. by 1992 c.9

Legal proceedings

57 ^{F7}.—(1) Any person authorised by the Department^{F8}. . . in that behalf may conduct any proceedings under the benefit Acts before a magistrates' court although not a barrister or solicitor.

(2) Notwithstanding anything in any statutory provision—

- (a) proceedings for an offence under the benefit Acts^{F8}. . . may be begun at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Department to justify a prosecution for the offence, comes to its knowledge or within a period of twelve months from the commission of the offence, whichever period last expires;^{F8}. . .

Sub.#para. (b) rep. by 1992 c. 9

(3) For the purposes of paragraph (2)—

- (a) ^{F9} a certificate purporting to be signed by the Head or a secretary, under secretary or assistant secretary of the Department^{F8}. . . as to the date on which such evidence as is mentioned

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in sub-paragraph (a) or (b) of that paragraph came to its knowledge shall be conclusive evidence of that date;^{F8} . . .

Sub#para. (b) rep. by 1992 c. 9

Para. (3A) rep. by 1992 c. 9

Paras. (4), (5) rep. by 1989 NI 12

F7 mod. (exc. (2)(b),(3)(b)) by SR 1988/137

F8 [1992 c. 9](#)

F9 mod. by SR 1988/137

Offences by bodies corporate

58^{F10}. Section 20(2) and (3) of the Interpretation Act (Northern Ireland) 1954 (offences by bodies corporate) shall apply to the benefit Acts, whether or not any provision of those Acts is an enactment within the meaning of section 1(b) of the said Act of 1954.

F10 mod. by SR 1988/137

Art. 59 rep. by 1992 c.9

Art. 60 rep. by 1993 c.49

Regulations as to notification of deaths

61.—(1) Regulations may provide that it shall be the duty of the Registrar General or any registrar to furnish the Department, for the purpose of its functions under any of the benefit Acts and the functions of the Secretary of State under any corresponding enactment applying in Great Britain, with the prescribed particulars of such deaths as may be prescribed.

(2) The regulations may make provision as to the manner in which and times at which the particulars are to be furnished.

(3) In paragraph (1), “Registrar General” and “registrar” have the meanings assigned to them in the Births and Deaths Registration (Northern Ireland) Order 1976.

Arts. 62#66 rep. by 1992 c. 9

PART VIII

MISCELLANEOUS, GENERAL AND SUPPLEMENTARY

Miscellaneous

Arts. 67#70 rep. by 1992 c. 9

Child benefit in respect of children educated otherwise than at educational establishments

Para. (1) rep. by 1992 c.9

(2) Regulations purporting to be made under Article 2(2) of that Order and made before the making of this Order shall be treated as validly made.

Arts. 72, 73 rep. by 1991 NI 17

Arts. 74, 75 rep. by 1992 c. 9

Art. 76 rep. by 1993 c. 49

Amendments relating to forfeiture of benefits

77.—(1) The following paragraphs shall be inserted after paragraph (1) of Article 6 of the Forfeiture (Northern Ireland) Order 1982 (Social Security Commissioner to determine whether forfeiture rule applies to social security benefits)—

“(1A) Where a Commissioner determines that the forfeiture rule has precluded a person (in this Article referred to as “the offender”) who has unlawfully killed another from receiving the whole or part of such benefit or advantage, the Commissioner may make a decision under this paragraph modifying the effect of that rule and may do so whether the unlawful killing occurred before or after the coming into operation of this paragraph.

(1B) The Commissioner shall not make a decision under paragraph (1A) modifying the effect of the forfeiture rule in any case unless he is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the Commissioner to be material, the justice of the case requires the effect of the rule to be so modified in that case.

(1C) Subject to paragraph (1D), a decision under paragraph (1A) may modify the effect of the forfeiture rule in either or both of the following ways—

- (a) so that it applies only in respect of a specified proportion of the benefit or advantage;
- (b) so that it applies in respect of the benefit or advantage only for specified period of time.

(1D) Such a decision may not modify the effect of the forfeiture rule so as to allow any person to receive the whole or any part of a benefit or advantage in respect of any period before the commencement of this paragraph.

(1E) If the Commissioner thinks it expedient to do so, he may direct that his decision shall apply to any future claim for a benefit or advantage under a relevant enactment, on which a question such as is mentioned in paragraph (1) arises by reason of the same unlawful killing.

(1F) It is immaterial for the purposes of paragraph (1E) whether the claim is in respect of the same or different benefit or advantage.

(1G) For the purpose of obtaining a decision whether the forfeiture rule should be modified the Department of Health and Social Services may refer to a Commissioner for review any determination of a question such as is mentioned in paragraph (1) that was made before the commencement of paragraphs (1A) to (1F) (whether by a Commissioner or not) and shall do so if the offender requests that Department to refer such a determination.

(1H) Paragraphs (1A) and (1F) shall have effect on a reference under paragraph (1G) as if in paragraph (1A) the words “ it has been determined ” were substituted for the words “a Commissioner determines”.”.

(2) In paragraph (2) of that Article, after the words “that paragraph” there shall be inserted the words “ or any decision under paragraph (1A) ”.

(3) In Article 7 (exclusion of murderers) after “Article 5(1)” insert “ or on any decision made under Article 6(1A) ”.

Travelling expenses

78. The Department may pay such travelling expenses as, with the consent of the Department of Finance and Personnel, the Department may determine—

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- (a) to persons required by the Department to attend an interview in connection with the operation of any of the benefit Acts;
- (b) to persons attending social security offices of the Department in connection with the operation—
 - (i) of any of the benefit Acts; or
 - (ii) of any prescribed statutory provision.

General

Crown employment

Paras. (1), (2) rep. by 1993 c. 49

Paras. (3), (4) rep. by 1992 c. 9

Para. (5) rep. by 1990 NI 15

Para. (6) rep. by 1993 c. 49

Art. 80 rep. by 1993 c. 49

Supplementary

Orders and regulations (general provisions)

81.—(1) [^{F11}Article 71B(1) to (4) of the Pensions Order] (extent of powers) shall apply to powers conferred by this Order to make regulations or orders as they apply to any power to make regulations or orders conferred by that Act but as if for references to that Act there were substituted references to this Order.

Para. (2) rep. by 1992 c. 9

Para. (3) rep. by 1993 c. 49

[^{F11}(4) Regulations and orders made by the Department under this Order, other than^{F12} . . . orders under Article 1, shall be subject to negative resolution.]

Paras. (5), (6) rep. by 1992 c. 9

(7) A power conferred on the Department by this Order to make any regulations or order, where the power is not expressed to be exercisable with the consent of the Department of Finance and Personnel, shall if that Department so directs be exercisable only in conjunction with it,

Para. (8) rep. by 1993 c. 49

F11 1992 c. 9

F12 1993 c. 49

Financial provision

82.—(1) There shall be paid out of the Northern Ireland Fund—

Sub#paras. (a), (b) rep. by 1993 c. 49

Sub#paras. (c), (d) rep. by 1992 c. 9

Para. (2) rep. by 1992 c. 9

Paras. (3), (4) rep. by 1993 c. 49

Para. (5) rep. by 1992 c. 9

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(6) There shall also be paid into the National Insurance Fund sums recovered under Article 3(6) or 3(7) or 9(8) or 9(9) any personal pension protected rights premium^{F13}

[^{F14}(6A) There shall be paid out of the National Insurance Fund into the Consolidated Fund, at such times and in such manner as the Department of Finance and Personnel may direct, such sums as the Department may estimate (in accordance with any directions given by the Department of Finance and Personnel) to be the amount of the administrative expenses incurred by the Department in exercising its functions relating to—

(a) minimum contributions paid by it under Part II; and

(b) payments by it under Article 9.]

Paras. (7)(10) rep. by 1992 c. 9

(11) In this Article “the National Insurance Fund” means the Northern Ireland National Insurance Fund.

F13 1992 c. 9

F14 1993 NI 2

Article—83 Amendments and repeals

Transitional

84.—(1) Regulations may make such transitional and consequential provision (including provision modifying any statutory provision (including this Order)) or saving as the Department considers necessary or expedient in preparation for or in connection with the coming into operation of any provision of this Order or the operation of any statutory provision which is repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

[^{F15}(1A) Without prejudice to any other powers conferred on it, the Department—

(a) may, for the purpose of making provision with respect to persons falling within paragraph (1B), modify or revoke any regulations made under this Article if the Department considers it necessary or expedient to do so in consequence of, or otherwise in connection with, any statutory provisions or provisions of schemes, arrangements or other instruments coming into operation after the making of this Order; and

(b) may, for the purpose of consolidation, revoke and re#enact, with any modifications which the Department considers necessary or desirable, any regulations under this Article.

(1B) The persons referred to in paragraph (1A)(a) are any persons—

(a) to whom regulations under paragraph (1) apply; or

(b) to whom regulations made under Part III relating to income support applied at any time before the making of the Social Security (Northern Ireland) Order 1989.]

(2) Without prejudice to paragraph (1), the Lord Chancellor may by regulations make such transitional and consequential provision (including provision modifying any statutory provision (including this Order)) or saving as he considers necessary or expedient in preparation for or in connection with the coming into operation of Article 53 (including Schedule 5) or the operation or any statutory provision which is repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

(3) Regulations made by the Lord Chancellor under paragraph (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

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F15 [1989 NI 13](#)

SCHEDULES

Schedules 1, 2 rep. by 1993 c. 49

SCHEDULE 3

Article 40.

INDUSTRIAL INJURIES AND DISEASES

Paras. 1#16 rep. by 1992 c. 9

Para. 17—Amendments

Schedule 4 rep. by 1992 c. 9

SCHEDULE 5

Article 53.

ADJUDICATION

PART I

Amendments

Paras. 1#17 rep. by 1992 c. 9

Para. 18 rep. by 1993 c. 49

PART II

Questions for determination by the department

The questions referred to in Article 53(2) are—

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Para. (a) rep. by 1993 c. 49

Paras. (b), (c) rep. by 1992 c. 9

Schedules 6, 7 rep. by 1992 c. 9

SCHEDULE 8

Article 76.

EARNINGS FACTORS

Paras. 1#5 rep. by 1992 c. 9

Paras. 6#9 rep. by 1993 c. 49

Schedule 9—Amendments

Schedule 10—Repeals

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Changes and effects yet to be applied to :

- art.82 amended by [S.I. 1999/671](#) art.3(1). Sch.1, para.2

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 9 para. 36 repealed by [S.I. 2003/435 \(N.I.\)](#) [art. 49\(2\)](#)[Sch. 5](#) (Sch. 9 of this Order is an amending Schedule which is not available on [legislation.gov.uk](#))
- art.9 amended by [S.I. 1999/671](#) [art.3\(1\)](#)[Sch.1](#) [para.1](#)