



# Pensions Act 1995

## 1995 CHAPTER 26

### PART IV

#### MISCELLANEOUS AND GENERAL

##### *Transfer values*

#### **152 Extension of scope of right to cash equivalent**

- (1) Section 93 of the Pension Schemes Act 1993 (scope of provisions relating to transfer values) is amended as follows.
- (2) For subsection (1)(a) there is substituted—
  - “(a) to any member of an occupational pension scheme—
    - (i) whose pensionable service has terminated at least one year before normal pension age, and
    - (ii) who on the date on which his pensionable service terminated had accrued rights to benefit under the scheme,except a member of a salary related occupational pension scheme whose pensionable service terminated before 1st January 1986 and in respect of whom prescribed requirements are satisfied”.
- (3) After subsection (1) there is inserted—
  - “(1A) For the purposes of this section and the following provisions of this Chapter, an occupational pension scheme is salary related if—
    - (a) the scheme is not a money purchase scheme, and
    - (b) the scheme does not fall within a prescribed class.
  - (1B) Regulations may—
    - (a) provide for this Chapter not to apply in relation to a person of a prescribed description, or

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- (b) apply this Chapter with prescribed modifications to occupational pension schemes—
  - (i) which are not money purchase schemes, but
  - (ii) where some of the benefits that may be provided are money purchase benefits.”

### **153 Right to guaranteed cash equivalent**

After section 93 of the Pension Schemes Act 1993 there is inserted—

#### **“93A Salary related schemes: right to statement of entitlement**

- (1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a “statement of entitlement”) of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.
- (2) In this section—
  - “the applicable rules” has the same meaning as in section 94;
  - “the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—
    - (a) within the prescribed period beginning with the date of the application, and
    - (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.
- (3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.
- (4) If, in the case of any scheme, a statement of entitlement has not been provided under this section, section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager who has failed to take all such steps as are reasonable to secure compliance with this section.”

### **154 Right to guaranteed cash equivalent: supplementary**

- (1) In paragraph (a) of section 94(1) of the Pension Schemes Act 1993—
  - (a) after “occupational pension scheme” there is inserted “other than a salary related scheme”, and
  - (b) after “terminates” there is inserted “(whether before or after 1st January 1986)”.
- (2) After that paragraph there is inserted—
  - “(aa) a member of a salary related occupational pension scheme who has received a statement of entitlement and has made a relevant application within three months beginning with the guarantee date in respect of that statement acquires a right to his guaranteed cash equivalent”.

(3) After that subsection there is inserted—

“(1A) For the purposes of subsection (1)(aa), a person’s “guaranteed cash equivalent” is the amount stated in the statement of entitlement mentioned in that subsection.”

(4) In subsection (2) of that section, after the definition of “the applicable rules” there is inserted—

““the guarantee date” has the same meaning as in section 93A(2)”.

(5) After that subsection there is inserted—

“(3) Regulations may provide that, in prescribed circumstances, subsection (1)(aa) does not apply to members of salary related occupational pension schemes or applies to them with prescribed modifications.”

### *Penalties*

## **155 Breach of regulations under the Pension Schemes Act 1993**

(1) For section 168 of the Pension Schemes Act 1993 (penalties for breach of regulations) there is substituted—

### **“168 Breach of regulations**

- (1) Regulations under any provision of this Act (other than Chapter II of Part VII) may make such provision as is referred to in subsection (2) or (4) for the contravention of any provision contained in regulations made or having effect as if made under any provision of this Act.
- (2) The regulations may provide for the contravention to be an offence under this Act and for the recovery on summary conviction of a fine not exceeding level 5 on the standard scale.
- (3) An offence under any provision of the regulations may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under such a provision by reference to any period of time following the preceding conviction of the offence.
- (4) The regulations may provide for a person who has contravened the provision to pay to the Regulatory Authority, within a prescribed period, a penalty not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in section 10(2)(a) of the Pensions Act 1995.
- (5) Regulations made by virtue of subsection (4) do not affect the amount of any penalty recoverable under that subsection by reason of an act or omission occurring before the regulations are made.
- (6) Where—

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- (a) apart from this subsection, a penalty under subsection (4) is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership as a trustee of a trust scheme, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (7),

such a penalty is recoverable from each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

- (7) The persons referred to in subsection (6)(b)—
  - (a) in relation to a body corporate, are—
    - (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
    - (ii) where the affairs of a body corporate are managed by its members, any member in connection with his functions of management, and
  - (b) in relation to a Scottish partnership, are the partners.
- (8) Where the Regulatory Authority requires any person to pay a penalty by virtue of subsection (6), they may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission.
- (9) A penalty under subsection (4) is recoverable by the Authority and any such penalty recovered by the Authority must be paid to the Secretary of State.
- (10) Where by reason of the contravention of any provision contained in regulations made, or having effect as if made, under this Act—
  - (a) a person is convicted of an offence under this Act, or
  - (b) a person pays a penalty under subsection (4),
 then, in respect of that contravention, he shall not, in a case within paragraph (a), be liable to pay such a penalty or, in a case within paragraph (b), be convicted of such an offence.
- (11) In this section “contravention” includes failure to comply, and “Scottish partnership” means a partnership constituted under the law of Scotland.

#### **168A Offence in connection with the Registrar**

- (1) Any person who knowingly or recklessly provides the Registrar with information which is false or misleading in a material particular is guilty of an offence if the information—
  - (a) is provided in purported compliance with a requirement under section 6, or
  - (b) is provided otherwise than as mentioned in paragraph (a) above but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Registrar for the purpose of discharging his functions under this Act.
- (2) Any person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to imprisonment or a fine, or both”.
- (2) In section 186 of that Act (Parliamentary control of orders and regulations), in subsection (3), after paragraph (c) there is inserted “or
- (d) regulations made by virtue of section 168(2)”.

### *Pensions Ombudsman*

#### **156 Employment of staff by the Pensions Ombudsman**

For section 145(4) of the Pension Schemes Act 1993 (staff of the Pensions Ombudsman), there is substituted—

“(4A) The Pensions Ombudsman may (with the approval of the Secretary of State as to numbers) appoint such persons to be employees of his as he thinks fit, on such terms and conditions as to remuneration and other matters as the Pensions Ombudsman may with the approval of the Secretary of State determine.

(4B) The Secretary of State may, on such terms as to payment by the Pensions Ombudsman as the Secretary of State thinks fit, make available to the Pensions Ombudsman such additional staff and such other facilities as he thinks fit.

(4C) Any function of the Pensions Ombudsman, other than the determination of complaints made and disputes referred under this Part, may be performed by any—

- (a) employee appointed by the Pensions Ombudsman under subsection (4A), or
- (b) member of staff made available to him by the Secretary of State under subsection (4B),

who is authorised for that purpose by the Pensions Ombudsman.”

#### **157 Jurisdiction of Pensions Ombudsman**

(1) Sections 146 to 151 of the Pension Schemes Act 1993 are amended as shown in subsections (2) to (11).

(2) In section 146 (investigations concerning the trustees or managers of schemes), for subsections (1) to (4) there is substituted—

“(1) The Pensions Ombudsman may investigate and determine the following complaints and disputes—

- (a) a complaint made to him by or on behalf of an actual or potential beneficiary of an occupational or personal pension scheme who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of a person responsible for the management of the scheme,
- (b) a complaint made to him—
  - (i) by or on behalf of a person responsible for the management of an occupational pension scheme who in connection with any act or omission of another person responsible for the

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- management of the scheme, alleges maladministration of the scheme, or
- (ii) by or on behalf of the trustees or managers of an occupational pension scheme who in connection with any act or omission of any trustee or manager of another such scheme, allege maladministration of the other scheme,
- and in any case falling within sub-paragraph (ii) references in this Part to the scheme to which the complaint relates is to the other scheme referred to in that paragraph,
- (c) any dispute of fact or law which arises in relation to an occupational or personal pension scheme between—
- (i) a person responsible for the management of the scheme, and
- (ii) an actual or potential beneficiary,
- and which is referred to him by or on behalf of the actual or potential beneficiary, and
- (d) any dispute of fact or law which arises between the trustees or managers of an occupational pension scheme and—
- (i) another person responsible for the management of the scheme, or
- (ii) any trustee or manager of another such scheme,
- and which is referred to him by or on behalf of the person referred to in sub-paragraph (i) or (ii); and in any case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates is to the scheme first mentioned in that paragraph.
- (2) Complaints and references made to the Pensions Ombudsman must be made to him in writing.
- (3) For the purposes of this Part, the following persons (subject to subsection (4)) are responsible for the management of an occupational pension scheme—
- (a) the trustees or managers, and
- (b) the employer;
- but, in relation to a person falling within one of those paragraphs, references in this Part to another person responsible for the management of the same scheme are to a person falling within the other paragraph.
- (3A) For the purposes of this Part, a person is responsible for the management of a personal pension scheme if he is a trustee or manager of the scheme.
- (4) Regulations may provide that, subject to any prescribed modifications or exceptions, this Part shall apply in the case of an occupational or personal pension scheme in relation to any prescribed person or body of persons where the person or body—
- (a) is not a trustee or manager or employer, but
- (b) is concerned with the financing or administration of, or the provision of benefits under, the scheme,
- as if for the purposes of this Part he were a person responsible for the management of the scheme”.
- (3) In subsection (7) of that section, for ““authorised complainants”” there is substituted ““actual or potential beneficiaries””.

- (4) In section 147 (death, insolvency etc.), in subsections (1) and (2), for “authorised complainant” there is substituted “actual or potential beneficiary” and for “the authorised complainant's” there is substituted “his”.
- (5) In subsection (3) of that section, for “an authorised complainant” there is substituted “a person by whom, or on whose behalf, a complaint or reference has been made under this Part”.
- (6) In section 148 (staying court proceedings), in subsection (5), for paragraphs (a) and (b) there is substituted—
  - “(a) the person by whom, or on whose behalf, the complaint or reference has been made,
  - (b) any person responsible for the management of the scheme to which the complaint or reference relates”.
- (7) In section 149 (procedure on investigation), in subsection (1)(a), for “the trustees and managers of the scheme concerned” there is substituted “any person (other than the person by whom, or on whose behalf, the complaint or reference was made) responsible for the management of the scheme to which the complaint or reference relates”.
- (8) In section 150 (investigations: further provisions), in subsection (1)(a), for “any trustee or manager of the scheme concerned” there is substituted “any person responsible for the management of the scheme to which the complaint or reference relates”.
- (9) In section 151 (determinations of Pensions Ombudsman), for subsection (1)(a) and (b) there is substituted—
  - “(a) to the person by whom, or on whose behalf, the complaint or reference was made, and
  - (b) to any person (if different) responsible for the management of the scheme to which the complaint or reference relates”.
- (10) In subsection (2) of that section, for “the trustees or managers of the scheme concerned” there is substituted “any person responsible for the management of the scheme to which the complaint or reference relates”.
- (11) In subsection (3) of that section, for paragraphs (a) to (c) there is substituted—
  - “(a) the person by whom, or on whose behalf, the complaint or reference was made,
  - (b) any person (if different) responsible for the management of the scheme to which the complaint or reference relates, and
  - (c) any person claiming under a person falling within paragraph (a) or (b)”.
- (12) In Part I of Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the direct supervision of the Council on Tribunals), in paragraph 35(e), for “section 146(2)” there is substituted “section 146(1)(c) and (d)”.

## **158 Costs and expenses**

- In section 149 of the Pension Schemes Act 1993—
- (a) after subsection (3)(b) there is inserted “and

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- (c) for the payment by the Ombudsman of such travelling and other allowances (including compensation for loss of remunerative time) as the Secretary of State may determine, to—
  - (i) actual or potential beneficiaries of a scheme to which a complaint or reference relates, or
  - (ii) persons appearing and being heard on behalf of such actual or potential beneficiaries,
 who attend at the request of the Ombudsman any oral hearing held in connection with an investigation into the complaint or dispute.”, and
- (b) at the end of subsection (3)(a), “and” is omitted.

## 159 Disclosing information

- (1) In section 149 of the Pension Schemes Act 1993, after subsection (4) there is added—
  - “(5) The Pensions Ombudsman may disclose any information which he obtains for the purposes of an investigation under this Part to any person to whom subsection (6) applies, if the Ombudsman considers that the disclosure would enable or assist that person to discharge any of his functions.
  - (6) This subsection applies to the following—
    - (a) the Regulatory Authority,
    - (b) the Pensions Compensation Board,
    - (c) the Registrar,
    - (d) any department of the Government (including the government of Northern Ireland),
    - (e) the Bank of England,
    - (f) the Friendly Societies Commission,
    - (g) the Building Societies Commission,
    - (h) an inspector appointed by the Secretary of State under Part XIV of the Companies Act 1985 or section 94 or 177 of the Financial Services Act 1986,
    - (j) an inspector appointed by the Department of Economic Development in Northern Ireland under Part XV of the Companies (Northern Ireland) Order 1986,
    - (k) a person authorised under section 106 of the Financial Services Act 1986 to exercise powers conferred by section 105 of that Act,
    - (l) a designated agency or transferee body or the competent authority within the meaning of that Act, and
    - (m) a recognised self-regulating organisation, recognised professional body, recognised investment exchange or recognised clearing house, within the meaning of that Act.
  - (7) The Secretary of State may by order—
    - (a) amend subsection (6) by adding any person or removing any person for the time being specified in that subsection, or

- (b) restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in that subsection.”
- (2) In section 151 of that Act, in subsection (7)(a), after “this section” there is inserted—
  - “(aa) in disclosing any information under section 149(5)”.

## **160 Interest on late payment of benefit**

After section 151 of the Pension Schemes Act 1993 there is inserted—

### **“151A Interest on late payment of benefit**

Where under this Part the Pensions Ombudsman directs a person responsible for the management of an occupational or personal pension scheme to make any payment in respect of benefit under the scheme which, in his opinion, ought to have been paid earlier, his direction may also require the payment of interest at the prescribed rate”.

### *Modification and winding up of schemes*

## **161 Repeal of sections 136 to 143 of the Pension Schemes Act 1993**

Sections 136 to 141 (modification) and 142 and 143 (winding up) of the Pension Schemes Act 1993 are repealed.

### *Personal pensions*

## **162 Annual increase in rate of personal pension**

- (1) This section applies to any pension provided to give effect to protected rights of a member of a personal pension scheme if—
  - (a) there is in force, or was in force at any time after the appointed day, an appropriate scheme certificate issued in accordance with Chapter I of Part III (certification) of the Pension Schemes Act 1993, and
  - (b) apart from this section, the annual rate of the pension would not be increased each year by at least the appropriate percentage of that rate.
- (2) Where a pension to which this section applies, or any part of it, is attributable to contributions in respect of employment carried on on or after the appointed day—
  - (a) the annual rate of the pension, or
  - (b) if only part of the pension is attributable to contributions in respect of employment carried on on or after the appointed day, so much of the annual rate as is attributable to that part,must be increased annually by at least the appropriate percentage.

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### **163 Section 162: supplementary**

- (1) The first increase required by section 162 in the rate of a pension must take effect not later than the first anniversary of the date on which the pension is first paid; and subsequent increases must take effect at intervals of not more than twelve months.
- (2) Where the first such increase is to take effect on a date when the pension has been in payment for a period of less than 12 months, the increase must be of an amount at least equal to one twelfth of the amount of the increase so required (apart from this subsection) for each complete month in that period.
- (3) In section 162 and this section—
  - “annual rate”, in relation to a pension, means the annual rate of the pension, as previously increased under the rules of the scheme or under section 162,
  - “the appointed day” means the day appointed under section 180 for the commencement of section 162,
  - “appropriate percentage”, in relation to an increase in the whole or part of the annual rate of a pension, means the revaluation percentage for the revaluation period the reference period for which ends with the last preceding 30th September before the increase is made (expressions used in this definition having the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993 (methods of revaluing accrued pension benefits)),
  - “pension”, in relation to a scheme, means any pension in payment under the scheme and includes an annuity,
  - “protected rights” has the meaning given by section 10 of the Pension Schemes Act 1993 (money purchase benefits).

### **164 Power to reject notice choosing appropriate personal pension scheme**

In section 44 of the Pension Schemes Act 1993 (earner’s chosen scheme)—

- (a) in subsection (1), after paragraph (b) there is inserted—
  - “then, unless the Secretary of State rejects the notice on either or both of the grounds mentioned in subsection (1A)”, and
- (b) after that subsection there is inserted—
  - “(1A) The grounds referred to in subsection (1) are that the Secretary of State is of the opinion—
    - (a) that section 31(5) is not being complied with in respect of any members of the scheme,
    - (b) that, having regard to any other provisions of sections 26 to 32 and 43 to 45, it is inexpedient to allow the scheme to be the chosen scheme of any further earners”.

*Levy*

### **165 Levy**

For section 175 of the Pension Schemes Act 1993 (levies towards meeting certain costs and grants) there is substituted—

**“175 Levies towards certain expenditure**

- (1) For the purpose of meeting expenditure—
  - (a) under section 6,
  - (b) under Part X and section 174, or
  - (c) of the Regulatory Authority (including the establishment of the authority and, if the authority are appointed as Registrar under section 6 of this Act, their expenditure as Registrar),regulations may make provision for imposing levies in respect of prescribed occupational or prescribed personal pension schemes.
- (2) Any levy imposed under subsection (1) is payable to the Secretary of State by or on behalf of—
  - (a) the administrators of any prescribed public service pension scheme,
  - (b) the trustees or managers of any other prescribed occupational or prescribed personal pension scheme, or
  - (c) any other prescribed person,at prescribed rates and at prescribed times.
- (3) Regulations made by virtue of subsection (1)—
  - (a) in determining the amount of any levy in respect of the Regulatory Authority, must take account (among other things) of any amounts paid to the Secretary of State under section 168(4) of this Act or section 10 of the Pensions Act 1995, and
  - (b) in determining the amount of expenditure in respect of which any levy is to be imposed, may take one year with another and, accordingly, may have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods (including periods ending before the coming into force of this subsection).
- (4) Regulations may make provision for imposing a levy in respect of prescribed occupational pension schemes for the purpose of meeting expenditure of the Pensions Compensation Board (including the establishment of the Board).
- (5) Any levy imposed under subsection (4) is payable to the Board by or on behalf of—
  - (a) the trustees of any prescribed occupational pension scheme, or
  - (b) any other prescribed person,at prescribed times and at a rate, not exceeding the prescribed rate, determined by the Board.
- (6) In determining the amount of expenditure in respect of which any levy under subsection (4) is to be imposed, the Board, and regulations made by virtue of subsection (5), may take one year with another and, accordingly, may have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods (including periods ending before the coming into force of this subsection).
- (7) Notice of the rates determined by the Board under subsection (5) must be given to prescribed persons in the prescribed manner.

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- (8) An amount payable by a person on account of a levy imposed under this section shall be a debt due from him to the appropriate person, that is—
- (a) if the levy is imposed under subsection (1), the Secretary of State, and
  - (b) if the levy is imposed under subsection (4), the Board,
- and an amount so payable shall be recoverable by the appropriate person accordingly or, if the appropriate person so determines, be recoverable by the Registrar on behalf of the appropriate person.
- (9) Without prejudice to the generality of subsections (1) and (4), regulations under this section may include provision relating to—
- (a) the collection and recovery of amounts payable by way of levy under this section, or
  - (b) the circumstances in which any such amount may be waived.”

*Pensions on divorce, etc.*

## 166 Pensions on divorce etc

- (1) In the Matrimonial Causes Act 1973, after section 25A there is inserted—

### “25B Pensions

- (1) The matters to which the court is to have regard under section 25(2) above include—
- (a) in the case of paragraph (a), any benefits under a pension scheme which a party to the marriage has or is likely to have, and
  - (b) in the case of paragraph (h), any benefits under a pension scheme which, by reason of the dissolution or annulment of the marriage, a party to the marriage will lose the chance of acquiring,
- and, accordingly, in relation to benefits under a pension scheme, section 25(2) (a) above shall have effect as if “in the foreseeable future” were omitted.
- (2) In any proceedings for a financial provision order under section 23 above in a case where a party to the marriage has, or is likely to have, any benefit under a pension scheme, the court shall, in addition to considering any other matter which it is required to consider apart from this subsection, consider—
- (a) whether, having regard to any matter to which it is required to have regard in the proceedings by virtue of subsection (1) above, such an order (whether deferred or not) should be made, and
  - (b) where the court determines to make such an order, how the terms of the order should be affected, having regard to any such matter.
- (3) The following provisions apply where, having regard to any benefits under a pension scheme, the court determines to make an order under section 23 above.
- (4) To the extent to which the order is made having regard to any benefits under a pension scheme, the order may require the trustees or managers of the pension scheme in question, if at any time any payment in respect of any benefits under the scheme becomes due to the party with pension rights, to make a payment for the benefit of the other party.

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- (5) The amount of any payment which, by virtue of subsection (4) above, the trustees or managers are required to make under the order at any time shall not exceed the amount of the payment which is due at that time to the party with pension rights.
- (6) Any such payment by the trustees or managers—
  - (a) shall discharge so much of the trustees or managers liability to the party with pension rights as corresponds to the amount of the payment, and
  - (b) shall be treated for all purposes as a payment made by the party with pension rights in or towards the discharge of his liability under the order.
- (7) Where the party with pension rights may require any benefits which he has or is likely to have under the scheme to be commuted, the order may require him to commute the whole or part of those benefits; and this section applies to the payment of any amount commuted in pursuance of the order as it applies to other payments in respect of benefits under the scheme.

#### **25C Pensions: lump sums**

- (1) The power of the court under section 23 above to order a party to a marriage to pay a lump sum to the other party includes, where the benefits which the party with pension rights has or is likely to have under a pension scheme include any lump sum payable in respect of his death, power to make any of the following provision by the order.
- (2) The court may—
  - (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, require them to pay the whole or part of that sum, when it becomes due, to the other party,
  - (b) if the party with pension rights has power to nominate the person to whom the sum, or any part of it, is to be paid, require the party with pension rights to nominate the other party in respect of the whole or part of that sum,
  - (c) in any other case, require the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, for the benefit of the other party instead of to the person to whom, apart from the order, it would be paid.
- (3) Any payment by the trustees or managers under an order made under section 23 above by virtue of this section shall discharge so much of the trustees, or managers, liability in respect of the party with pension rights as corresponds to the amount of the payment.

#### **25D Pensions: supplementary**

- (1) Where—
  - (a) an order made under section 23 above by virtue of section 25B or 25C above imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the party with pension rights

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acquires transfer credits under another pension scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme (including transfer credits allowed by that scheme), and

- (b) the trustees or managers of the new scheme have been given notice in accordance with regulations,

the order shall have effect as if it has been made instead in respect of the trustees or managers of the new scheme; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.

(2) Regulations may—

- (a) in relation to any provision of sections 25B or 25C above which authorises the court making an order under section 23 above to require the trustees or managers of a pension scheme to make a payment for the benefit of the other party, make provision as to the person to whom, and the terms on which, the payment is to be made,
- (b) require notices to be given in respect of changes of circumstances relevant to such orders which include provision made by virtue of sections 25B and 25C above,
- (c) make provision for the trustees or managers of any pension scheme to provide, for the purposes of orders under section 23 above, information as to the value of any benefits under the scheme,
- (d) make provision for the recovery of the administrative expenses of—
  - (i) complying with such orders, so far as they include provision made by virtue of sections 25B and 25C above, and
  - (ii) providing such information,
 from the party with pension rights or the other party,
- (e) make provision for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of orders under section 23 above, in a prescribed manner,

and regulations made by virtue of paragraph (e) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed person and approved by the Secretary of State.

(3) In this section and sections 25B and 25C above—

- (a) references to a pension scheme include—
  - (i) a retirement annuity contract, or
  - (ii) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme,
- (b) in relation to such a contract or annuity, references to the trustees or managers shall be read as references to the provider of the annuity,
- (c) in relation to such a policy, references to the trustees or managers shall be read as references to the insurer,

and in section 25B(1) and (2) above, references to benefits under a pension scheme include any benefits by way of pension, whether under a pension scheme or not.

(4) In this section and sections 25B and 25C above—

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“the party with pension rights” means the party to the marriage who has or is likely to have benefits under a pension scheme and “the other party” means the other party to the marriage,

“pension scheme” means an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners),

“prescribed” means prescribed by regulations, and

“regulations” means regulations made by the Lord Chancellor;

and the power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

- (2) In section 25(2)(h) of that Act (loss of chance to acquire benefits), “(for example, a pension)” is omitted.
- (3) In section 31 of that Act (variation, discharge, etc. of orders)—
  - (a) in subsection (2), after paragraph (d) there is inserted—
    - “(dd) any deferred order made by virtue of section 23(1)(c) (lump sums) which includes provision made by virtue of—
      - (i) section 25B(4), or
      - (ii) section 25C,
  - (b) after subsection (2A) there is inserted—
    - “(2B) Where the court has made an order referred to in subsection (2)(dd) (ii) above, this section shall cease to apply to the order on the death of either of the parties to the marriage”.
- (4) Nothing in the provisions mentioned in subsection (5) applies to a court exercising its powers under section 23 of the Matrimonial Causes Act 1973 (financial provision in connection with divorce proceedings, etc.) in respect of any benefits under a pension scheme (within the meaning of section 25B(1) of the Matrimonial Causes Act 1973) which a party to the marriage has or is likely to have.
- (5) The provisions referred to in subsection (4) are —
  - (a) section 203(1) and (2) of the Army Act 1955, 203(1) and (2) of the Air Force Act 1955, 128G(1) and (2) of the Naval Discipline Act 1957 or 159(4) and (4A) of the Pension Schemes Act 1993 (which prevent assignment, or orders being made restraining a person from receiving anything which he is prevented from assigning),
  - (b) section 91 of this Act,
  - (c) any provision of any enactment (whether passed or made before or after this Act is passed) corresponding to any of the enactments mentioned in paragraphs (a) and (b), and
  - (d) any provision of the scheme in question corresponding to any of those enactments.
- (6) Subsections (3) to (7) of section 25B, and section 25C of the Matrimonial Causes Act 1973, as inserted by this section, do not affect the powers of the court under

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

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section 31 of that Act (variation, discharge, etc.) in relation to any order made before the commencement of this section.

## **167 Pensions on divorce, etc.: Scotland**

(1) In section 8(1) (orders for financial provision) of the Family Law (Scotland) Act 1985 (“the 1985 Act”), after paragraph (b) there is inserted—

“(ba) an order under section 12A(2) or (3) of this Act;”.

(2) In section 10 of the 1985 Act (sharing of value of matrimonial property)—

(a) in subsection (5)—

(i) after “party” there is inserted “(a)”; and

(ii) for “or occupational pension scheme or similar arrangement” there is substituted—

“or similar arrangement; and

(b) in any benefits under a pension scheme which either party has or may have (including such benefits payable in respect of the death of either party),

which is”; and

(b) after subsection (7) there is inserted—

“(8) The Secretary of State may by regulations make provision—

(a) for the value of any benefits under a pension scheme to be calculated and verified, for the purposes of this Act, in a prescribed manner;

(b) for the trustees or managers of any pension scheme to provide, for the purposes of this Act, information as to that value, and for the recovery of the administrative expenses of providing such information from either party,

and regulations made by virtue of paragraph (a) above may provide for that value to be calculated and verified in accordance with guidance which is prepared and from time to time revised by a prescribed body and approved by the Secretary of State.

(9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this section—

“benefits under a pension scheme” includes any benefits by way of pension, whether under a pension scheme or not;

“pension scheme” means—

(a) an occupational pension scheme or a personal pension scheme (applying the definitions in section 1 of the Pension Schemes Act 1993, but as if the reference to employed earners in the definition of “personal pension scheme” were to any earners);

(b) a retirement annuity contract; or

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(c) an annuity, or insurance policy, purchased or transferred for the purpose of giving effect to rights under a pension scheme falling within paragraph (a) above; and  
“prescribed” means prescribed by regulations.

(11) In this section, references to the trustees or managers of a pension scheme—

- (a) in relation to a contract or annuity referred to in paragraph (b) or (c) of the definition of “pension scheme” in subsection (10) above, shall be read as references to the provider of the annuity;
- (b) in relation to an insurance policy referred to in paragraph (c) of that definition, shall be read as a reference to the insurer.”.

(3) After section 12 of the 1985 Act there is inserted—

**“12A Orders for payment of capital sum: pensions lump sums**

(1) This section applies where the court makes an order under section 8(2) of this Act for payment of a capital sum (a “capital sum order”) by a party to the marriage (“the liable party”) in circumstances where—

- (a) the matrimonial property within the meaning of section 10 of this Act includes any rights or interests in benefits under a pension scheme which the liable party has or may have (whether such benefits are payable to him or in respect of his death); and
- (b) those benefits include a lump sum payable to him or in respect of his death.

(2) Where the benefits referred to in subsection (1) above include a lump sum payable to the liable party, the court, on making the capital sum order, may make an order requiring the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, to the other party to the marriage (“the other party”).

(3) Where the benefits referred to in subsection (1) above include a lump sum payable in respect of the death of the liable party, the court, on making the capital sum order, may make an order—

- (a) if the trustees or managers of the pension scheme in question have power to determine the person to whom the sum, or any part of it, is to be paid, requiring them to pay the whole or part of that sum, when it becomes due, to the other party;
- (b) if the liable party has power to nominate the person to whom the sum, or any part of it, is to be paid, requiring the liable party to nominate the other party in respect of the whole or part of that sum;
- (c) in any other case, requiring the trustees or managers of the pension scheme in question to pay the whole or part of that sum, when it becomes due, to the other party instead of to the person to whom, apart from the order, it would be paid.

(4) Any payment by the trustees or managers under an order under subsection (2) or (3) above—

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- (a) shall discharge so much of the trustees' or managers' liability to or in respect of the liable party as corresponds to the amount of the payment; and
    - (b) shall be treated for all purposes as a payment made by the liable party in or towards the discharge of his liability under the capital sum order.
  - (5) Where the liability of the liable party under the capital sum order has been discharged in whole or in part, other than by a payment by the trustees or managers under an order under subsection (2) or (3) above, the court may, on an application by any person having an interest, recall any order under either of those subsections or vary the amount specified in such an order, as appears to the court appropriate in the circumstances.
  - (6) Where—
    - (a) an order under subsection (2) or (3) above imposes any requirement on the trustees or managers of a pension scheme (“the first scheme”) and the liable party acquires transfer credits under another scheme (“the new scheme”) which are derived (directly or indirectly) from a transfer from the first scheme of all his accrued rights under that scheme; and
    - (b) the trustees or managers of the new scheme have been given notice in accordance with regulations under subsection (8) below,
 the order shall have effect as if it had been made instead in respect of the trustees or managers of the new scheme; and in this subsection “transfer credits” has the same meaning as in the Pension Schemes Act 1993.
  - (7) Without prejudice to subsection (6) above, the court may, on an application by any person having an interest, vary an order under subsection (2) or (3) above by substituting for the trustees or managers specified in the order the trustees or managers of any other pension scheme under which any lump sum referred to in subsection (1) above is payable to the liable party or in respect of his death.
  - (8) The Secretary of State may by regulations—
    - (a) require notices to be given in respect of changes of circumstances relevant to orders under subsection (2) or (3) above;
    - (b) make provision for the recovery of the administrative expenses of complying with such orders from the liable party or the other party.
  - (9) Regulations under subsection (8) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (10) Subsection (10) (other than the definition of “benefits under a pension scheme”) and subsection (11) of section 10 of this Act shall apply for the purposes of this section as those subsections apply for the purposes of that section.”.
- (4) Nothing in the provisions mentioned in section 166(5) above applies to a court exercising its powers under section 8 (orders for financial provision on divorce, etc.) or 12A (orders for payment of capital sum: pensions lump sums) of the 1985 Act in respect of any benefits under a pension scheme which fall within subsection (5)(b) of section 10 of that Act (“pension scheme” having the meaning given in subsection (10) of that section).

### *War Pensions*

#### **168 War pensions for widows: effect of remarriage**

- (1) In determining whether a pension is payable to a person as a widow under any of the enactments mentioned in subsection (3) in respect of any period beginning on or after the commencement of this section, no account may be taken of the fact that the widow has married another if, before the beginning of that period, the marriage has been terminated or the parties have been judicially separated.
- (2) For the purposes of this section—
  - (a) the reference to the termination of a marriage is to the termination of the marriage by death, dissolution or annulment, and
  - (b) the reference to judicial separation includes any legal separation obtained in a country or territory outside the British Islands and recognised in the United Kingdom;and for those purposes a divorce, annulment or legal separation obtained in a country or territory outside the British Islands must, if the Secretary of State so determines, be treated as recognised in the United Kingdom even though no declaration as to its validity has been made by any court in the United Kingdom.
- (3) The enactments referred to in subsection (1) are—
  - (a) The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983, and any order re-enacting the provisions of that order,
  - (b) The Personal Injuries (Civilians) Scheme 1983, and any subsequent scheme made under the Personal Injuries (Emergency Provisions) Act 1939,
  - (c) any scheme made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 or the Polish Resettlement Act 1947 applying the provisions of any such order as is referred to in paragraph (a),
  - (d) the order made under section 1(5) of the Ulster Defence Regiment Act 1969 concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment.

#### **169 Extensions of Pensions Appeal Tribunals Act 1943**

- (1) The Pensions Appeal Tribunals Act 1943 is amended as follows.
- (2) In section 1 (appeals against rejection of war pension claims made in respect of members of armed forces)—
  - (a) in subsection (1), after “administered by the Minister” there is inserted “or under a scheme made under section 1 of the Polish Resettlement Act 1947”, and
  - (b) in subsections (3) and (3A), for “or Order of His Majesty” there is substituted “, Order of Her Majesty or scheme”.
- (3) In section 7 (application of Act to past decisions and assessments)—
  - (a) in subsection (2), at the beginning there is inserted “Subject to subsection (2A) of this section,”, and
  - (b) after that subsection, there is inserted—

“(2A) Subsection (2) of this section shall not apply in relation to any decision given by the Minister before the passing of this Act which

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corresponds, apart from any difference of the kind referred to in that subsection, with such a decision as is referred to in section 1 of this Act in respect of claims made under the scheme referred to in that section.”

- (4) In section 10 (power to modify sections 1 to 4 by Order in Council), in subsections (1) and (2), for “or Order of His Majesty” there is substituted “, Order of Her Majesty or scheme”.
- (5) In section 12 (interpretation), in the definition of “relevant service”—
- (a) for “or Order of His Majesty” there is substituted “, Order of Her Majesty or scheme”, and
  - (b) for “or Order” there is substituted “, Order or scheme”.
- (6) In the Schedule (constitution, jurisdiction and procedure of Pensions Appeal Tribunals), in paragraph 3(2), after paragraph (b) there is inserted—
- “(ba) if the claim was made under the scheme referred to in section 1 of this Act in respect of a person who is treated under the scheme as an officer, shall be a retired or demobilised officer of Her Majesty’s naval, military or air forces;
  - (bb) if the claim was made under the aforesaid scheme in respect of a person who is treated under the scheme as a soldier, shall be a discharged or demobilised member of any of the said forces who was not at the time of his discharge or demobilisation an officer;”.

### *Official and public service pensions*

#### **170 Pensions for dependants of the Prime Minister etc**

- (1) Section 27 of the Parliamentary and Other Pensions Act 1972 (application of certain provisions with modifications in relation to the Prime Minister and the Speaker) is amended as follows.
- (2) For subsection (1)(b) (amount by reference to which dependant’s pension calculated) there is substituted—
- “(b) for the purposes of that scheme, that person’s basic or prospective pension were of an amount equal to his section 26 entitlement”.
- (3) After subsection (1) there is inserted—
- “(1A) For the purposes of subsection (1)(b), the amount of a person’s section 26 entitlement—
    - (a) where at the time of his death he was entitled to receive a pension under section 26 of this Act (whether or not, by virtue of subsection (2) of that section, the pension was payable), is the annual amount of the pension to which he was entitled under that section at the time when he ceased to hold that office or (if later) on 28th February 1991, and
    - (b) where at the time of his death he held office as Prime Minister and First Lord of the Treasury or as Speaker of the House of Commons, is the annual amount of the pension to which he would have been entitled under that section if he had ceased to hold office immediately before his death,

but in either case, any provision which deems such a pension to have begun on a day earlier than the day referred to in section 8(2) of the Pensions (Increase) Act 1971 shall be disregarded.”

- (4) For the purposes of the Pensions (Increase) Act 1971, a pension payable under section 27 of the Parliamentary and Other Pensions Act 1972 in respect of a person who ceased to hold the office of Prime Minister and First Lord of the Treasury or Speaker of the House of Commons before 28th February 1991 shall be deemed to have begun on that date.
- (5) Where a person—
  - (a) is entitled to receive a pension under that section by reason of the death of a person who, at any time before the commencement of this section, held the office of Prime Minister and First Lord of the Treasury or Speaker of the House of Commons, and
  - (b) the amount of that pension determined in accordance with subsection (6) is greater than the amount of the pension determined in accordance with subsections (1) to (4),it shall be determined in accordance with subsection (6).
- (6) The annual amount of the pension shall be determined as if—
  - (a) subsections (1) to (3) had not been enacted, and
  - (b) for the purposes of the Pensions (Increase) Act 1971, the pension had begun on the day following the date of the death.
- (7) This section has effect, and shall be treated as having had effect, in relation to any person who becomes entitled to a pension payable under section 27 of the Parliamentary and Other Pensions Act 1972 on or after 15th December 1994.

## **171 Equal treatment in relation to official pensions**

- (1) Section 3 of the Pensions (Increase) Act 1971 (qualifying conditions for pensions increase) is amended as follows.
- (2) In subsection (2)(c), “is a woman who” is omitted.
- (3) In subsection (10)—
  - (a) for “woman is in receipt of a pension” there is substituted “person is in receipt of a pension the whole or any part”, and
  - (b) for “woman and that pension” there is substituted “person and that pension or part”.
- (4) In subsection (11)—
  - (a) for “woman's” there is substituted “person's”, and
  - (b) for “woman” there is substituted “person”,  
and accordingly for “she” there is substituted “he”.
- (5) This section shall have effect, and shall be deemed to have had effect, in relation to pensions commencing after 17th May 1990, and in relation to so much of any such pension as is referable to service on or after that date.

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## 172 Information about public service schemes

- (1) In prescribed circumstances, the Secretary of State may provide information to any prescribed person in connection with the following questions—
- (a) whether an individual who during any period—
    - (i) has been eligible to be an active member of an occupational pension scheme under the Superannuation Act 1972, but
    - (ii) has instead made contributions to a personal pension scheme,
 has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986 (actions for damages in respect of contravention of rules etc. made under the Act), and
  - (b) if so, what payment would need to be made to the occupational scheme in respect of the individual to restore the position to what it would have been if the individual had been an active member of the occupational scheme throughout the period in question,
- and may impose on that person reasonable fees in respect of administrative expenses incurred in providing that information.
- (2) Where—
- (a) such an individual as is mentioned in subsection (1) is admitted or readmitted as an active member of an occupational pension scheme under the Superannuation Act 1972, or
  - (b) a payment is made to the Secretary of State in respect of such an individual for the purpose mentioned in paragraph (b) of that subsection,
- the Secretary of State may impose on any prescribed person reasonable fees in respect of administrative expenses incurred in connection with the admission, readmission or payment.
- (3) In the case of an occupational pension scheme under section 1 of the Superannuation Act 1972 (superannuation of civil servants), the references in subsections (1) and (2) to the Secretary of State shall be read as references to the Minister for the Civil Service, or such person as may be prescribed.
- (4) In the case of an occupational pension scheme under section 7 of the Superannuation Act 1972 (superannuation of persons employed in local government etc.), the references in subsections (1) and (2) to the Secretary of State shall be read as references to a prescribed person.
- (5) In this section—
- “prescribed” means—
- (i) in the case of a scheme made under section 1 of the Superannuation Act 1972, prescribed by a scheme made by the Minister for the Civil Service, or
  - (ii) in any other case, prescribed by regulations made by the Secretary of State, and
- “active member”, in relation to an occupational pension scheme, has the same meaning as in Part I.

### *General minor and consequential amendments*

#### **173 General minor and consequential amendments**

Schedule 6, which makes general minor and consequential amendments, shall have effect.

*Subordinate legislation etc.*

#### **174 Orders and regulations (general provisions)**

- (1) Any power under this Act to make regulations or orders (except a power of the court or the Authority to make orders) shall be exercisable by statutory instrument.
- (2) Except in so far as this Act provides otherwise, any power conferred by it to make regulations or an order may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,
  - (b) so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act, or
    - (iii) any such provision either unconditionally or subject to any specified condition,

and where such a power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes; and any power to make regulations or an order for the purposes of any one provision of this Act shall be without prejudice to any power to make regulations or an order for the purposes of any other provision.

- (3) Any power conferred by this Act to make regulations or an order includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient for the purposes of the regulations or order.
- (4) Regulations made by the Secretary of State may, for the purposes of or in connection with the coming into force of any provisions of this Act, make any such provision as could be made, by virtue of subsection (4)(a) of section 180, by an order bringing those provisions into force.

#### **175 Parliamentary control of orders and regulations**

- (1) Subject to subsections (2) and (3), a statutory instrument which contains any regulations or order made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) A statutory instrument which contains any regulations made by virtue of—
  - (a) section 64(4),

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- (b) section 78(6),
- (c) section 116(1), or
- (d) section 149

or order under section 10(2) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (3) Subsection (1) does not apply to an order under section 180.

### *General*

#### **176 Interpretation**

In this Act—

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978),

“occupational pension scheme” and “personal pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993,

and the definition of “enactment” shall apply for the purposes of section 114 as if “Act” in section 21(1) of the Interpretation Act 1978 included any enactment.

#### **177 Repeals**

The enactments shown in Schedule 7 are repealed to the extent specified in the third column.

#### **178 Extent**

- (1) Subject to the following provisions, this Act does not extend to Northern Ireland.
- (2) Sections 1, 2, 21(3), 68(5), 78, 79, 80(4), 150, 168, 170(4) to (7), 172 and 179 extend to Northern Ireland.
- (3) The amendment by this Act of an enactment which extends to Northern Ireland extends also to Northern Ireland.

#### **179 Northern Ireland**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

#### **180 Commencement**

- (1) Subject to the following provisions, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different purposes.
- (2) The following provisions shall come into force on the day this Act is passed—

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- (a) subject to the provisions of Schedule 4, Part II,
- (b) section 168,
- (c) sections 170 and 171,
- (d) section 179,

and any repeal in Schedule 7 for which there is a note shall come into force in accordance with that note.

- (3) Section 166 shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint and different days may be appointed for different purposes.
- (4) Without prejudice to section 174(3), the power to make an order under this section includes power—
  - (a) to make transitional adaptations or modifications—
    - (i) of the provisions brought into force by the order, or
    - (ii) in connection with those provisions, of any provisions of this Act, or the Pension Schemes Act 1993, then in force, or
  - (b) to save the effect of any of the repealed provisions of that Act, or those provisions as adapted or modified by the order,

as it appears to the Secretary of State expedient, including different adaptations or modifications for different periods.

## **181 Short title**

This Act may be cited as the Pensions Act 1995.