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## SCHEDULES

### SCHEDULE 5

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

##### PART I

##### MISCELLANEOUS AMENDMENTS

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

- 1 (1) In section 17 of the 1993 Act (guaranteed minimum for widow or widower), after subsection (4) there shall be inserted—
- “(4A) The scheme must provide for the widow or widower’s pension to be payable to the widow or widower—
- (a) for any period for which a Category B retirement pension is payable to the widow or widower by virtue of the earner’s contributions or would be so payable but for section 43(1) of the <sup>M1</sup>Social Security Contributions and Benefits Act 1992 (persons entitled to more than one retirement pension);
  - (b) for any period for which widowed parent’s allowance or bereavement allowance is payable to the widow or widower by virtue of the earner’s contributions; and
  - (c) in the case of a widow or widower whose entitlement by virtue of the earner’s contributions to a widowed parent’s allowance or bereavement allowance has come to an end at a time after the widow or widower attained the age of 45, for so much of the period beginning with the time when the entitlement came to an end as neither—
    - (i) comprises a period during which the widow or widower and a person of the opposite sex are living together as husband and wife; nor
    - (ii) falls after the time of any remarriage by the widow or widower.”
- (2) In subsection (5) of that section—
- (a) for “must provide” there shall be substituted “must also make provision”;
  - (b) the words “Category B retirement pension,” in the first place where they occur, and the words from “or for which” onwards shall be omitted.
- (3) In subsection (6) of that section, for “must provide” there shall be substituted “must also make provision”.

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### Marginal Citations

M1 1992 c. 4.

### *Transfer of rights to overseas personal pension schemes*

- 2 (1) In section 20(1) of the 1993 Act (power to make provision for transfer of rights relating to guaranteed minimum pensions to an occupational or a personal pension scheme)—
- (a) in paragraph (a), for “or to a personal pension scheme” there shall be substituted “, to a personal pension scheme or to an overseas arrangement”;
  - and
  - (b) in paragraph (b), for “or a personal pension scheme” there shall be substituted “, a personal pension scheme or an overseas arrangement”.
- (2) In section 28(2)(b) of that Act (effect may be given to protected rights by a transfer to an occupational or personal pension scheme)—
- (a) in sub-paragraph (i), for “or to a personal pension scheme” there shall be substituted “, to a personal pension scheme or to an overseas arrangement”;
  - and
  - (b) in sub-paragraph (ii), for “or to an occupational pension scheme” there shall be substituted “, to an occupational pension scheme or to an overseas arrangement”.
- (3) In section 181(1) of that Act (interpretation), there shall be inserted, at the appropriate place in the alphabetical order—
- ““overseas arrangement” means a scheme or arrangement which—
- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
  - (b) is administered wholly or primarily outside Great Britain;
  - (c) is not an appropriate scheme; and
  - (d) is not an occupational pension scheme;”.

### *Protected rights*

- 3 (1) Section 28 of the 1993 Act (ways of giving effect to protected rights) shall be amended as follows.
- (2) In subsection (4) (giving effect to protected rights at or after retirement age), for paragraph (d) there shall be substituted—
- “(d) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.”
- (3) After that subsection there shall be inserted—
- “(4A) Subject to subsection (4B), in the case of an occupational pension scheme, effect may be given to protected rights by the provision of a lump sum if—

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- (a) the trustees or managers of the scheme are satisfied that the member is terminally ill and likely to die within the period of twelve months beginning with the date on which the lump sum becomes payable; and
  - (b) the amount of the lump sum is equal to the value on that date of the protected rights to which effect is being given.
- (4B) The value of the protected rights to which effect may be given under subsection (4A) in a case in which the member is a married person on the date on which the lump sum becomes payable shall not exceed one half of the value on that date of all the member's protected rights."
- (4) In subsections (3) and (5), for "or (4)", in each case, there shall be substituted " , (4) or (4A)".

#### *Review and alteration of rates of contribution*

- 4 In section 42(1)(a)(i) and (3) of the 1993 Act (review of percentages mentioned in section 41), for "41(1A)(a) and (b)" there shall be substituted "41(1A) and (1B)".

#### *Contributions equivalent premiums: Great Britain*

- 5 (1) For subsection (4) of section 58 of the 1993 Act (calculation of contributions equivalent premiums) there shall be substituted—
- "(4) Subject to subsection (4A), the amount of the contributions equivalent premium shall be equal to the sum of the following amounts—
- (a) the amount of every reduction made under section 41 (as from time to time in force) in the amount of Class 1 contributions payable in respect of the earner's employment in employment which was contracted-out by reference to the scheme; and
  - (b) the total amount by which the reductions falling within paragraph (a) would have been larger if the amount of the contributions falling to be reduced had in each case been at least equal to the amount of the reduction of those contributions provided for by section 41.
- (4A) The amounts brought into account in accordance with subsection (4)(b) shall not include any amount which, by virtue of regulations made under section 41(1D) so as to avoid the payment of trivial or fractional amounts, is an amount that was not payable by the Inland Revenue to the secondary contributor."
- (2) In section 61(2) of that Act (recovery of amount of premium attributable to primary Class 1 contributions), after "attributable to" there shall be inserted "any actual reductions of".
- (3) In section 63(1) of that Act (amounts to be certified by the Inland Revenue), for paragraph (b) there shall be substituted—
- "(b) the sum of the amounts specified in section 58(4);".
- (4) This paragraph shall have effect, and be deemed to have had effect, in relation to any contributions equivalent premium payable on or after 6th April 1999.

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*Contributions equivalent premiums: Northern Ireland*

- 6 (1) For subsection (4) of section 54 of the <sup>M2</sup>Pension Schemes (Northern Ireland) Act 1993 (calculation of contributions equivalent premiums) there shall be substituted—
- “(4) Subject to subsection (4A), the amount of the contributions equivalent premium shall be equal to the sum of the following amounts—
- (a) the amount of every reduction made under section 37 (as from time to time in force) in the amount of Class 1 contributions payable in respect of the earner’s employment in employment which was contracted-out by reference to the scheme; and
- (b) the total amount by which the reductions falling within paragraph (a) would have been larger if the amount of the contributions falling to be reduced had in each case been at least equal to the amount of the reduction of those contributions provided for by section 37.
- (4A) The amounts brought into account in accordance with subsection (4)(b) shall not include any amount which, by virtue of regulations made under section 37(1D) so as to avoid the payment of trivial or fractional amounts, is an amount that was not payable by the Inland Revenue to the secondary contributor.”
- (2) In section 57(2) of that Act (recovery of amount of premium attributable to primary Class 1 contributions), after “attributable to” there shall be inserted “any actual reductions of”.
- (3) In section 59(1) of that Act (amounts to be certified by the Inland Revenue), for paragraph (b) there shall be substituted—
- “(b) the sum of the amounts specified in section 54(4);”.
- (4) This paragraph shall have effect, and be deemed to have had effect, in relation to any contributions equivalent premium payable on or after 6th April 1999.

**Marginal Citations**

M2 1993 c. 49.

*Use of cash equivalent for annuity*

- 7 Section 95(4) of the 1993 Act (cash equivalent of rights under a money purchase contracted-out scheme not to be used for purchase of annuity) shall cease to have effect.

*Transfer values where pension in payment*

- 8 (1) In section 97(2) of the 1993 Act (regulations about calculation of cash equivalents), for the “and” at the end of paragraph (a) there shall be substituted—
- “(aa) for a cash equivalent, including a guaranteed cash equivalent, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—
- (i) any pension; or
- (ii) any benefit in lieu of pension;

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and”.

- (2) In section 98(7) of that Act (loss of right to cash equivalent)—
  - (a) after “right” there shall be inserted “if”; and
  - (b) paragraph (a) (loss of right on the whole or any part of a pension becoming payable) shall cease to have effect.
- (3) In section 124(1) of the 1995 Act (interpretation), in the definition of “pensioner member”, after “other benefits” there shall be inserted “and who is not an active member of the scheme”.
- (4) Sub-paragraph (2) has effect in relation to any case in which the whole or any part of a pension or other benefit becomes payable on or after the coming into force of that sub-paragraph.

#### Commencement Information

- II** Sch. 5 wholly in force at 1.1.2001; Sch. 5 para. 8(1)(3)(4) in force at 28.7.2000 see s. 86(1)(b); Sch. 5 para. 8(2) in force at 1.1.2001 by S.I. 2000/3166, art. 2(3)(v)

PROSPECTIVE

#### *Information about contracting-out*

- 9 For section 156 of the 1993 Act (provision of information as to guaranteed minimum pensions) there shall be substituted—

#### **“156 Information for purposes of contracting-out.**

- (1) The Secretary of State or the Inland Revenue may give to the trustees or managers of an occupational pension scheme or appropriate scheme such information as appears to the Secretary of State or Inland Revenue appropriate to give to them for the purpose of enabling them to comply with their obligations under Part III.
- (2) The Secretary of State or Inland Revenue may also give to such persons as may be prescribed any information that they could give under subsection (1) to trustees or managers of a scheme.”

#### *Register of disqualified trustees*

- 10 (1) In subsection (7) of section 30 of the 1995 Act (disclosure of contents of register of disqualified trustees), for the words from “and” onwards there shall be substituted “but the arrangements made by the Authority for the register must secure that the contents of the register are not disclosed or otherwise made available to members of the public except in accordance with section 30A.”
- (2) After that subsection there shall be inserted—

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“(8) Nothing in subsection (7) requires the Authority to exclude any matter from a report published under section 103.”

(3) After that section there shall be inserted—

**“30A Accessibility of register of disqualified trustees.**

(1) The Authority shall make arrangements that secure that the disqualification register is open, during the normal working hours of the Authority, for inspection in person and without notice at—

- (a) the principal office used by them for the carrying out of their functions under this Act; and
- (b) such other offices (if any) of theirs as they consider to be places where it would be reasonable for a copy of the register to be kept open for inspection.

(2) If a request is made to the Authority—

- (a) to state whether a particular person identified in the request is a person appearing in the disqualification register as disqualified in respect of a scheme specified in the request, or
- (b) to state whether a particular person identified in the request is a person appearing in that register as disqualified in respect of all trust schemes,

it shall be the duty of the Authority promptly to comply with the request in such manner as they consider reasonable.

(3) The Authority may, in such manner as they think fit, publish a summary of the disqualification register if (subject to subsections (6) to (8)) the summary—

- (a) contains all the information described in subsection (4);
- (b) arranges that information in the manner described in subsection (5);
- (c) does not (except by identifying a person as disqualified in respect of all trust schemes) identify any of the schemes in respect of which persons named in the summary are disqualified; and
- (d) does not disclose any other information contained in the register.

(4) That information is—

- (a) the full names and titles, so far as the Authority have a record of them, of all the persons appearing in the register as persons who are disqualified;
- (b) the dates of birth of such of those persons as are persons whose dates of birth are matters of which the Authority have a record; and
- (c) in the case of each person whose name is included in the published summary, whether that person appears in the register—
  - (i) as disqualified in respect of only one scheme;
  - (ii) as disqualified in respect of two or more schemes but not in respect of all trust schemes; or
  - (iii) as disqualified in respect of all trust schemes.

(5) For the purposes of paragraph (c) of subsection (4), the information contained in the published summary must be arranged in three separate lists,

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one for each of the descriptions of disqualification specified in the three subparagraphs of that paragraph.

- (6) The Authority shall ensure, in the case of any published summary, that a person is not identified in the summary as a disqualified person if it appears to them that the determination by virtue of which that person appears in the register—
- (a) is the subject of any pending review, appeal or legal proceedings which could result in that person's removal from the register; or
  - (b) is a determination which might still become the subject of any such review, appeal or proceedings.
- (7) The Authority shall ensure, in the case of any published summary, that the particulars relating to a person do not appear in a particular list mentioned in subsection (5) if it appears to them that a determination by virtue of which that person's particulars would appear in that list—
- (a) is the subject of any pending review, appeal or legal proceedings which could result in such a revocation or other overturning of a disqualification of that person as would require his particulars to appear in a different list; or
  - (b) is a determination which might still become the subject of any such review, appeal or proceedings.
- (8) Where subsection (7) prevents a person's particulars from being included in a particular list in the published summary, they shall be included, instead, in the list in which they would have been included if the disqualification to which the review, appeal or proceedings relate had already been revoked or otherwise overturned.
- (9) For the purposes of this section a determination is one which might still become the subject of a review, appeal or proceedings if, and only if, in the case of that determination—
- (a) the time for the making of an application for a review, or for the bringing of an appeal or other proceedings, has not expired; and
  - (b) there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought.
- (10) In this section—
- “the disqualification register” means the register kept by the Authority under section 30(7); and
- “name”, in relation to a person any of whose names is recorded by the Authority as an initial, means that initial.”

VALID FROM 02/04/2001

*Conditions of payment of surplus to employer*

- 11 (1) Section 37 of the 1995 Act (payment of surplus to employer) shall be amended as follows.

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(2) For paragraph (d) of subsection (4) (conditions of payment of surplus) there shall be substituted—

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

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

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

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

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

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

and

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

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

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

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

“(6) In this section—

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

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

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

12 (1) In section 41 of the 1995 Act (provision of documents for members), for subsection (5) there shall be substituted—

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

(a) prescribed persons,

(b) persons with prescribed qualifications or experience, or

(c) persons approved by the Secretary of State,

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

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



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

(2) In section 49 of that Act, in subsection (9) (duties in event of employer’s failure to pay contributions in prescribed period), after paragraph (b) there shall be inserted “; and

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

(3) In that section, there shall be inserted after subsection (10)—

“(10A) Section 10 applies to a person who fails to comply with subsection (9)(c).”

(4) In section 88 of that Act (payment schedule to money purchase schemes: supplementary), after subsection (4) there shall be inserted—

“(5) Except in prescribed circumstances, any person acting instead of an auditor for the purposes of section 41(2)(b) in relation to an occupational pension scheme to which section 87 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority.

(6) Section 10 applies to a person so acting who fails to comply with subsection (5).”

#### Commencement Information

**I2** Sch. 5 para. 12 partly in force; Sch. 5 para. 12 not in force at Royal Assent see s. 86(2); Sch. 5 para. 12(1) in force at 1.1.2001 by S.I. 2000/3166, art. 2(3)(vii)

#### Interpretation of Part I

13 In this Part of this Schedule—

“the 1993 Act” means the <sup>M3</sup>Pension Schemes Act 1993; and

“the 1995 Act” means the <sup>M4</sup>Pensions Act 1995.

#### Marginal Citations

**M3** 1993 c. 48.

**M4** 1995 c. 26.

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