

## SCHEDULES

### SCHEDULE 5

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

#### PART II

##### ALTERNATIVE TO ANTI-FRANKING RULES

###### *Cases in which alternative applies*

- 14 (1) Subject to the following provisions of this paragraph, this Part of this Schedule applies, instead of Chapter III of Part IV of the 1993 Act (anti-franking rules), in the case of a person (“the pensioner”) who is entitled to benefits under any occupational pension scheme if the benefits to which he is entitled under the scheme include a guaranteed minimum pension.
- (2) This Part of this Schedule does not apply in the pensioner’s case, instead of Chapter III of Part IV of the 1993 Act, unless—
- (a) the pensioner is a member of the scheme who, in relation to that scheme, left pensionable service after the coming into force of this Part of this Schedule;
  - (b) the pensioner is the widow or widower of a member of the scheme whose pensionable service ended (by death or otherwise) after the coming into force of this Part of this Schedule; or
  - (c) sub-paragraph (3) applies to the benefits to which the pensioner is entitled under the scheme.
- (3) This sub-paragraph applies to the benefits to which the pensioner is entitled under the scheme if—
- (a) the time at which the benefits first become payable is after the coming into force of this Part of this Schedule;
  - (b) the benefits do not first become payable in respect of the death of a member of the scheme to whom benefits had already become payable under the scheme before the coming into force of this Part of this Schedule; and
  - (c) the trustees or managers of the scheme have elected, in the prescribed manner, that this Part of this Schedule should apply to benefits first becoming payable under the scheme after the coming into force of this Part of this Schedule.
- (4) This Part of this Schedule does not apply in the pensioner’s case (and, accordingly, Chapter III of Part IV of the 1993 Act does) if the scheme is a scheme of a prescribed description, unless the trustees or managers of the scheme have elected, in the prescribed manner, that this Part of this Schedule should apply in the case of the scheme.
- (5) An election for the purposes of any provision of this paragraph—

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- (a) shall not be exercisable differently in relation to different members of the scheme; and
- (b) once exercised, shall be irrevocable.

*Alternative rules*

- 15 (1) Where this Part of this Schedule applies in the pensioner's case, the amount of the benefits to which he is entitled under the scheme shall not be less than the amount of the benefits to which he would have been entitled under the scheme if his entitlement fell to be calculated by the method set out in sub-paragraph (2).
- (2) That method is as follows—
- Step 1: compute the amount of any benefits consisting in the guaranteed minimum pension to which the pensioner is entitled;
  - Step 2: compute what would have been the amount of those benefits on the assumptions set out in sub-paragraph (3);
  - Step 3: determine the extent (if any) to which attributing an amount of benefits equal to the amount computed in accordance with Step 2 to rights accruing before 6th April 1997 would leave any such rights unused;
  - Step 4: compute, in accordance with sub-paragraph (4), the amount of such of the benefits to which the pensioner is entitled under the scheme as are attributable to rights accruing before 6th April 1997 (if any) which, applying the determination in Step 3, would be left unused after the attribution of the amount mentioned in that Step to rights so accruing;
  - Step 5: compute the amount resulting, on the required assumption, from the application of the statutory revaluations and increases in the case of the benefits computed in accordance with Step 4;
  - Step 6: compute, in accordance with sub-paragraph (4), the amount of such of the benefits to which the pensioner is entitled under the scheme as are attributable to rights accruing on or after 6th April 1997;
  - Step 7: compute the amount resulting, on the required assumption, from the application of the statutory revaluations and increases in the case of the benefits computed in accordance with Step 6;
  - Step 8: aggregate the results of Steps 1, 5 and 7 to give the minimum benefits required by sub-paragraph (1).
- (3) The assumptions referred to in Step 2 in sub-paragraph (2) are—
- (a) that no increases are required to be made in accordance with section 15 or 109 of the 1993 Act (deferment increases and indexation);
  - (b) that increases in accordance with section 16(1) of that Act (revaluation of earnings factors for early leavers) of any earner's earnings factors are to be calculated as if references to the final relevant year were references to whichever is the earlier of—
    - (i) the final relevant tax year; and
    - (ii) the tax year immediately preceding that in which the member in question left service that qualified him for salary-related benefits under the scheme; and
  - (c) that no increases in accordance with any provision included in the scheme by virtue of section 16(3) of that Act (increases of weekly equivalent for person leaving contracted-out service before final relevant year) are to be made for any year after the tax year immediately preceding that in which the

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member in question left service that qualified him for salary-related benefits under the scheme.

- (4) For the purposes of Steps 4 and 6 in sub-paragraph (2)—
  - (a) if (apart from this sub-paragraph) there would be a difference between the two Steps in the level of salary taken as the level by reference to which any salary-related benefits are to be computed, the level used for Step 4 must be no lower than that used for Step 6; and
  - (b) statutory revaluations and increases shall not be attributed to rights accruing at any time.
- (5) For the purposes of Steps 5 and 7 in sub-paragraph (2), the required assumption is that the benefits in whose case the statutory revaluations and increases are applied comprise a whole pension deriving from the rights to which they are taken to be attributable for the purposes of Step 4 or, as the case may be, Step 6.
- (6) Subject to sub-paragraph (7), references in this paragraph to the statutory revaluations and increases are references to—
  - (a) the revaluations required to be made in accordance with Chapter II of Part IV of the 1993 Act (revaluation of accrued benefits); and
  - (b) the increases required to be made by virtue of section 51 of the 1995 Act (indexation).
- (7) For the purpose of applying the statutory revaluations and increases for the purposes of Steps 5 and 7 in sub-paragraph (2)—
  - (a) money may be used in a way allowed by section 110(1) of the 1993 Act (use of money to pay guaranteed minimum pension increase for subsequent year); and
  - (b) any deductions authorised by section 53(1) or (2) of the 1995 Act (permitted deductions from statutory increases) may be made.
- (8) In this paragraph “the pensioner” has the meaning given by paragraph 14.
- (9) Any reference in this paragraph to a provision of the 1993 Act includes a reference to any enactment re-enacted in that provision.

*Relationship between alternative rules and other rules*

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- (1) Paragraph 15 shall not apply to benefits consisting in an alternative to a short service benefit provided for under section 73(2)(b) of the 1993 Act, except to the extent that—
    - (a) that paragraph would apply for the computation of the short service benefit to which those benefits are an alternative; and
    - (b) the amount of any of the alternative benefits falls to be computed wholly or partly by reference to the value of what would have been the short service benefit.
  - (2) Section 94 of the 1993 Act (right to cash equivalent) shall have effect as if the provisions of this Part of this Schedule were included for the purposes of that section in the applicable rules.
  - (3) Subject to sub-paragraph (4), the preceding provisions of this Part of this Schedule override any provision of an occupational pension scheme with which they are

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inconsistent except a provision which, under subsection (3) of section 129 of the 1993 Act, is a protected provision for the purposes of subsection (2) of that section.

- (4) The preceding provisions of this Part of this Schedule shall be without prejudice to any person's entitlement to exercise—
- (a) any right of commutation, forfeiture or surrender of the whole or any part of any benefits computed in accordance with this Part of this Schedule;
  - (b) any charge or lien on the whole or any part of any such benefits; or
  - (c) any right of set-off against the whole or any part of any such benefits;
- and, accordingly, the computations to be done under paragraph 15 shall be done disregarding anything falling within any of paragraphs (a) to (c).

*Supplemental*

- 17 (1) In this Part of this Schedule references to rights accruing to a member of a scheme before 6th April 1997 include references—
- (a) in relation to salary-related benefits, to rights accruing at any time in respect of service before that date; and
  - (b) in relation to benefits of any description, to rights that derive from any transfer of accrued rights or transfer payment and represent rights accruing under any other scheme before that date;
- and a reference in this Part of this Schedule to rights accruing on or after that date shall be construed accordingly.
- (2) For the purposes of this Part of this Schedule rights to money purchase benefits that are attributable to payments in respect of employment are rights accruing before 6th April 1997 in so far only as that employment was employment carried on before that date; and a reference in this Part of this Schedule to rights accruing on or after that date shall be construed accordingly.
- (3) In this Part of this Schedule—
- “the 1993 Act” means the Pension Schemes Act 1993;
  - “the 1995 Act” means the Pensions Act 1995; and
  - “salary-related benefits” means benefits that are not money purchase benefits.
- (4) Expressions defined for the purposes of the 1993 Act have the same meanings in this Part of this Schedule as they have in that Act.
- (5) Any power of the Secretary of State to make regulations under this Part of this Schedule shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The Secretary of State may by order make such modifications of paragraphs 14 to 16 as he considers appropriate.
- (7) An order under sub-paragraph (6) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Subsections (2) to (5) of section 182 of the 1993 Act (supplemental provision in connection with powers to make subordinate legislation under that Act) shall apply—
- (a) to any power of the Secretary of State to make regulations under this Part of this Schedule, and

(b) to the power of the Secretary of State to make an order under subparagraph (6),

as they apply to his powers to make regulations and orders under that Act.

(9) In section 178(a) of the 1993 Act (regulations providing for who is to be treated as a manager of a scheme), for the words from “or Part III” to “1999” there shall be substituted “, Part III or IV of the Welfare Reform and Pensions Act 1999 or Part II of Schedule 5 to the Child Support, Pensions and Social Security Act 2000”.