

SCHEDULES

SCHEDULE 6

Section 120

PENSION COMPENSATION ON DIVORCE ETC: ENGLAND AND WALES

PART 1

AMENDMENTS OF THE MATRIMONIAL CAUSES ACT 1973

- 1 The Matrimonial Causes Act 1973 (c. 18) is amended as follows.
- 2 After section 21A (pension sharing orders) insert—

“21B Pension compensation sharing orders

- (1) For the purposes of this Act, a pension compensation sharing order is an order which—
 - (a) provides that one party’s shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
 - (b) specifies the percentage value to be transferred.
- (2) In subsection (1)—
 - (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions Act 2008 or under corresponding Northern Ireland legislation;
 - (b) “party” means a party to a marriage;
 - (c) “specified” means specified in the order.

21C Pension compensation: interpretation

In this Part—

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
 - (b) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation on divorce etc) and any regulations or order made under it, and
 - (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.”
- 3 After section 24D (pension sharing orders: apportionment of charges) insert—

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“24E Pension compensation sharing orders in connection with divorce proceedings

- (1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this section, make a pension compensation sharing order in relation to the marriage.
- (2) A pension compensation sharing order under this section is not to take effect unless the decree on or after which it is made has been made absolute.
- (3) A pension compensation sharing order under this section may not be made in relation to rights to PPF compensation that—
 - (a) are the subject of pension attachment,
 - (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
 - (c) are the subject of pension compensation attachment, or
 - (d) are or have been the subject of pension compensation sharing between the parties to the marriage.
- (4) For the purposes of subsection (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.
- (5) The first condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25B(4), and
 - (b) that order, as modified under section 25E(3), remains in force.
- (6) The second condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25B(7), and
 - (b) that order—
 - (i) has been complied with, or
 - (ii) has not been complied with and, as modified under section 25E(5), remains in force.
- (7) The third condition is that—
 - (a) the rights derive from rights under a pension scheme in relation to which an order was made under section 23 imposing a requirement by virtue of section 25C, and
 - (b) that order remains in force.
- (8) For the purposes of subsection (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties.

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- (9) For the purposes of subsection (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of section 25F relating to them.
- (10) For the purposes of subsection (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

24F Pension compensation sharing orders: duty to stay

- (1) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (2) 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.

24G Pension compensation sharing orders: apportionment of charges

The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 117 of the Pensions Act 2008 (charges in respect of pension compensation sharing costs), or under corresponding Northern Ireland legislation.”

- 4 (1) Section 25 (matters to which court is to have regard) is amended as follows.
- (2) In the heading, for “and 24A” substitute “, 24A, 24B and 24E”.
- (3) In subsections (1) and (2), for “or 24B” substitute “, 24B or 24E”.
- 5 In section 25A(1) (exercise of court’s powers in favour of party to marriage on decree of divorce or nullity of marriage), for “or 24B” substitute “, 24B or 24E”.
- 6 In section 25E(9) (the Pension Protection Fund), omit the definition of “PPF compensation”.
- 7 After section 25E insert—

“25F Attachment of pension compensation

- (1) This section applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under section 23.
- (2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.
- (3) The order must express the amount of any payment required to be made by virtue of subsection (2) as a percentage of the payment which becomes due to the party with compensation rights.

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- (4) Any such payment by the Board of the Pension Protection Fund—
 - (a) shall discharge so much of its liability to the party with compensation 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 compensation rights in or towards the discharge of that party's liability under the order.
- (5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this section applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.
- (6) The power conferred by subsection (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.
- (7) The power conferred by subsection (2) or (5) may not be exercised in relation to rights to PPF compensation that—
 - (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or
 - (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

25G Pension compensation: supplementary

- (1) The Lord Chancellor may by regulations—
 - (a) make provision, in relation to any provision of section 25F which authorises the court making an order under section 23 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
 - (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 25F in an order under section 23, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
 - (c) require notices to be given in respect of changes of circumstances relevant to orders under section 23 which include provision made by virtue of section 25F;
 - (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of section 25F;
 - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court's functions in connection with the exercise of any of its powers under this Part.
- (2) Regulations under subsection (1)(e) may include—

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- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
 - (b) provision by reference to regulations under section 112 of the Pensions Act 2008.
 - (3) Regulations under subsection (1) may make different provision for different cases.
 - (4) The power to make regulations under subsection (1) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (5) In this section and section 25F—
 - “the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and
 - “the other party” means the other party to the marriage;
 - “prescribed” means prescribed by regulations.”
- 8 (1) Section 31 (variation, discharge etc of certain orders for financial relief) is amended as follows.
- (2) In subsection (2)(dd)—
 - (a) omit “or” at the end of sub-paragraph (i);
 - (b) at the end of sub-paragraph (ii) add “or”;
 - (c) after that sub-paragraph insert—
 - “(iii) section 25F(2),”;
 - (d) in the closing words, after “pension rights” insert “or pension compensation rights”.
 - (3) In subsection (2)(g), after “a pension sharing order under section 24B above” insert “, or a pension compensation sharing order under section 24E above,”.
 - (4) In subsection (4B), after “pension sharing order” insert “, or a pension compensation sharing order,”.
 - (5) In subsection (4C), after “pension sharing order” insert “, or a pension compensation sharing order,”.
 - (6) In subsection (5), after “pension sharing order” insert “or pension compensation sharing order”.
 - (7) In subsection (7B), after paragraph (ba) insert
 - “(bb) a pension compensation sharing order;”.
 - (8) After subsection (7G) insert—
 - “(7H) Subsections (3) to (10) of section 24E above apply in relation to a pension compensation sharing order under subsection (7B) above as they apply in relation to a pension compensation sharing order under that section.”
- 9 After section 40A (appeals relating to pension sharing orders which have taken effect) insert—

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“40B Appeals relating to pension compensation sharing orders which have taken effect

- (1) This section applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.
- (2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—
 - (a) may not set aside or vary the order;
 - (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (3) In determining for the purposes of subsection (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant.
- (4) Section 24F (duty to stay) only applies to a pension compensation sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.”

PART 2

AMENDMENTS OF THE MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984

- 10 The Matrimonial and Family Proceedings Act 1984 (c. 42) is amended as follows.
- 11 In section 17 (orders for financial provision and property adjustment), at the end of subsection (1) add—
 - “ (c) if the marriage has been dissolved or annulled, make an order which would, within the meaning of that Part of that Act, be a pension compensation sharing order in relation to the marriage.”
- 12 In section 18(7) (matters to which court to have regard), for paragraph (c) substitute—
 - “ (c) “PPF compensation” means compensation payable under—
 - (i) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any regulations or order made under it,
 - (ii) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation sharing) or any regulations or order made under it, or
 - (iii) any provision corresponding to the provisions mentioned in sub-paragraph (i) or (ii) in force in Northern Ireland.”
- 13 (1) Section 21 (application of certain provisions of Part 2 of the Matrimonial Causes Act 1973) is amended as follows.
 - (2) After subsection (1)(bc) insert—
 - “ (bca) section 24E(3) to (10) (provisions about pension compensation orders in relation to divorce and nullity);
 - (bcb) section 24F (duty to stay pension compensation sharing orders);

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- (bcc) section 24G (apportionment of pension compensation sharing charges);”.
- (3) After subsection (1)(bf) insert—
“(bg) section 25F (power, by financial provision order, to attach pension compensation payments, or to require the exercise of a right of commutation of pension compensation);”.
- (4) After subsection (1)(l) add—
“(m) section 40B (appeals relating to pension compensation sharing orders which have taken effect).”
- (5) In subsection (2), for “and (be)” substitute “, (be) and (bg)”.
- (6) In subsection (4), at the end add “or under subsections (1) to (3) of section 25G of that Act”.

PART 3

AMENDMENTS OF THE CIVIL PARTNERSHIP ACT 2004

- 14 The Civil Partnership Act 2004 (c. 33) is amended as follows.
- 15 After Part 4 of Schedule 5 (pension sharing orders on or after dissolution or nullity order) insert—

“PART 4A

PENSION COMPENSATION SHARING ORDERS ON OR AFTER DISSOLUTION OR NULLITY ORDER

Circumstances in which pension compensation sharing orders may be made

- 19A (1) The court may make a pension compensation sharing order—
(a) on making a dissolution or nullity order, or
(b) at any time afterwards.
- (2) In this Schedule “pension compensation sharing order” means a pension compensation sharing order under this Part.

Pension compensation sharing orders

- 19B (1) A pension compensation sharing order is an order which—
(a) provides that one civil partner’s shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other civil partner, and
(b) specifies the percentage value to be transferred.
- (2) Shareable rights to PPF compensation are rights in relation to which pension compensation sharing is available under—
(a) Chapter 1 of Part 3 of the Pensions Act 2008, or

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- (b) corresponding Northern Ireland legislation.
- (3) In sub-paragraph (1) “specified” means specified in the order.

Pension compensation sharing orders: apportionment of charges

- 19C The court may include in a pension compensation sharing order provision about the apportionment between the civil partners of any charge under—
- (a) section 117 of the Pensions Act 2008 (charges in respect of pension compensation sharing costs), or
 - (b) corresponding Northern Ireland legislation.

Restrictions on making pension compensation sharing orders

- 19D (1) A pension compensation sharing order may not be made in relation to rights to PPF compensation that—
- (a) are the subject of pension attachment,
 - (b) derive from rights under a pension scheme that were the subject of pension sharing between the civil partners,
 - (c) are the subject of pension compensation attachment, or
 - (d) are or have been the subject of pension compensation sharing between the civil partners.
- (2) For the purposes of sub-paragraph (1)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.
- (3) The first condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Part 1 imposing a requirement by virtue of paragraph 25(2), and
 - (b) that order, as modified under paragraph 31, remains in force.
- (4) The second condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Part 1 imposing a requirement by virtue of paragraph 25(5), and
 - (b) that order—
 - (i) has been complied with, or
 - (ii) has not been complied with and, as modified under paragraph 32, remains in force.
- (5) The third condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Part 1 imposing a requirement by virtue of paragraph 26, and
 - (b) that order remains in force.
- (6) For the purposes of sub-paragraph (1)(b), rights under a pension scheme “were the subject of pension sharing between the civil partners” if the rights were at any time the subject of a pension sharing order in relation

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to the civil partnership or a previous civil partnership between the same parties.

- (7) For the purposes of sub-paragraph (1)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Part 6 relating to them.
- (8) For the purposes of sub-paragraph (1)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the civil partners” if they are or have ever been the subject of a pension compensation sharing order in relation to the civil partnership or a previous civil partnership between the same parties.

When pension compensation sharing orders may take effect

- 19E (1) A pension compensation sharing order is not to take effect unless the dissolution or nullity order on or after which it is made has been made final.
- (2) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor.
- (3) The power to make regulations under sub-paragraph (2) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

- 19F In this Schedule—
- “PPF compensation” means compensation payable under the pension compensation provisions;
- “the pension compensation provisions” means—
- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation sharing) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.”

- 16 (1) Part 5 of Schedule 5 (matters to which court is to have regard under Parts 1 to 4) is amended as follows.
- (2) In the heading of the Part for “4” substitute “4A”.
- (3) In paragraph 20—
- (a) omit “or” at the end of paragraph (a)(iii);
- (b) for “and” at the end of paragraph (a)(iv) substitute “or”;
- (c) after that provision insert—
- “(v) any provision of Part 4A (pension compensation sharing orders) other than paragraph 19C (apportionment of charges), and”.

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- (4) In paragraph 21(1)—
- (a) omit “or” at the end of paragraph (c);
 - (b) at the end of paragraph (d) insert “, or”;
 - (c) after that paragraph insert—
“ (e) Part 4A (pension compensation sharing orders).”
- (5) In paragraph 23(1)—
- (a) omit “or” at the end of paragraph (c);
 - (b) at the end of paragraph (d) insert “or”;
 - (c) after that paragraph insert—
“ (e) Part 4A (pension compensation sharing orders).”
- 17 (1) Part 7 of Schedule 5 (pension protection fund compensation etc) is amended as follows.
- (2) Omit paragraph 30(3) (definition of PPF compensation).
 - (3) After paragraph 34 insert—

“Attachment of PPF compensation

- 34A (1) This paragraph applies if, having regard to any PPF compensation to which a civil partner is or is likely to be entitled, the court decides to make an order under Part 1.
- (2) To the extent to which the Part 1 order is made having regard to such compensation, it may require the Board, if at any time any payment in respect of PPF compensation becomes due to the civil partner with compensation rights, to make a payment for the benefit of the other civil partner.
 - (3) The Part 1 order must express the amount of any payment required to be made by virtue of sub-paragraph (2) as a percentage of the payment which becomes due to the civil partner with compensation rights.
 - (4) Any such payment by the Board—
 - (a) discharges so much of its liability to the civil partner with compensation rights as corresponds to the amount of the payment, and
 - (b) is to be treated for all purposes as a payment made by the civil partner with compensation rights in or towards the discharge of that civil partner’s liability under the order.
 - (5) If the civil partner with compensation rights has a right to commute any PPF compensation, the Part 1 order may require that civil partner to exercise it to any extent.
 - (6) This paragraph applies to any payment due in consequence of commutation in pursuance of the Part 1 order as it applies to other payments in respect of PPF compensation.
 - (7) The power conferred by sub-paragraph (5) may not be exercised for the purpose of commuting a benefit payable to the civil partner with compensation rights to a benefit payable to the other civil partner.

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

(8) The powers conferred by sub-paragraphs (2) and (5) may not be exercised in relation to rights to PPF compensation that—

- (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the civil partnership or a previous civil partnership between the same parties, or
- (b) are or have ever been the subject of a pension compensation sharing order in relation to the civil partnership or a previous civil partnership between the same parties.”

(4) Before paragraph 35 insert—

“34B (1) Regulations may—

- (a) make provision, in relation to any provision of paragraph 34A which authorises the court making a Part 1 order to require the Board to make a payment for the benefit of the other civil partner, as to the person to whom, and the terms on which, the payment is to be made;
- (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of paragraph 34A in a Part 1 order, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;
- (c) require notices to be given in respect of changes of circumstances relevant to Part 1 orders which include provision made by virtue of paragraph 34A;
- (d) make provision for the Board to be discharged in prescribed circumstances from a requirement imposed by virtue of paragraph 34A;
- (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court’s functions in connection with the exercise of any of its powers under this Schedule.

(2) Regulations under sub-paragraph (1)(e) may include—

- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
- (b) provision by reference to regulations under section 112 of the Pensions Act 2008.”

(5) In paragraph 37(1) of that Schedule—

(a) after the definition of “the Board” insert—

““the civil partner with compensation rights” means the civil partner who is or is likely to be entitled to PPF compensation;”;

(b) after the definition of “occupational pension scheme” insert—

“prescribed” means prescribed by regulations;”.

18 (1) Part 11 of Schedule 5 (variation, discharge etc of certain orders for financial relief) is amended as follows.

(2) In paragraph 50(1)(f)—

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

- (a) omit “or” at the end of sub-paragraph (i);
 - (b) at the end of sub-paragraph (ii) insert “or”;
 - (c) after that sub-paragraph insert—
 - “(iii) paragraph 34A(2),”;
 - (d) in the closing words after “pension rights” insert “or pension compensation rights”.
- (3) In paragraph 50(1)(i) after “a pension sharing order” insert “, or a pension compensation sharing order,”.
- (4) After paragraph 53(2)(c) insert—
“(ca) a pension compensation sharing order;”.
- (5) After paragraph 54(5) insert—
“(6) Paragraph 19D (restrictions on making pension compensation sharing orders) applies in relation to a pension compensation sharing order under paragraph 53 as it applies in relation to any other pension compensation sharing order.”
- (6) In the italic heading before paragraph 56 for “and pension sharing orders” substitute “, pension sharing and pension compensation sharing orders”.
- (7) In the following provisions of paragraph 57, after “pension sharing order” insert “or pension compensation sharing order”—
 - (a) the opening words of sub-paragraph (1);
 - (b) sub-paragraph (1)(a)(i);
 - (c) sub-paragraph (1)(b);
 - (d) sub-paragraph (2);
 - (e) sub-paragraph (3).
- (8) In paragraph 58(2) for “or pension sharing order” substitute “, pension sharing order or pension compensation sharing order”.
- 19 In Part 14 of Schedule 5 (miscellaneous and supplementary) after paragraph 79 insert—

“Appeals relating to pension compensation sharing orders which have taken effect

- 79A (1) This paragraph applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.
- (2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—
 - (a) may not set aside or vary the order;
 - (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (3) In determining for the purposes of sub-paragraph (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant.

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

- (4) Paragraph 19E only applies to a pension compensation sharing order under this paragraph if the decision of the appeal court can itself be the subject of an appeal.”
- 20 (1) In Schedule 7 (financial relief in England and Wales after overseas dissolution etc of a civil partnership), in the italic heading before paragraph 9, for “and pension sharing” substitute “, pension sharing and pension compensation sharing”.
- (2) In paragraph 9(2) of that Schedule—
- (a) for “or 4” substitute “, 4 or 4A”;
 - (b) for “and pension sharing” substitute “, pension sharing and pension compensation sharing”.
- (3) In paragraph 10(9)(c) of that Schedule omit “Part 7 of”.
- (4) In paragraph 14 of that Schedule—
- (a) after sub-paragraph (1)(c) insert—
“(ca) paragraphs 19C, 19D and 19E(2) and (3) (pension compensation sharing);”;
 - (b) in sub-paragraph (1)(e) for “37” substitute “34 and 35 to 37”;
 - (c) after that provision insert—
“(ea) paragraph 34A (orders under Part 1 relating to pension compensation attachment);”;
 - (d) in sub-paragraph (1)(i) for “79” substitute “79A”;
 - (e) in that provision for “and pension-sharing appeals” substitute “, pension-sharing appeals and pension compensation-sharing appeals”;
 - (f) in sub-paragraph (2) after “Sub-paragraph (1)(d)” insert “and (ea)”;
 - (g) in sub-paragraph (4) at the end add “or under paragraphs 34B to 36 of that Schedule (supplementary provision about orders relating to pension compensation)”.