

Welfare Reform and Pensions Act 1999

1999 Chapter ch. 30

Note: The material reproduced below is limited to what is relevant to this volume. However, even where sections are relevant to Volume 5 but they only contain consequential amendments, the text will not be reproduced. See Volume 2 for the full Act.

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1.—(1) A pension scheme is a stakeholder pension scheme for the purposes of this Part if it is registered as such a scheme under section 2 and each of the following is fulfilled, namely—

Meaning of “stakeholder pension scheme”.

- (a) the conditions set out in subsections (2) [¹to [²(9)]]; and
- (b) such other conditions as may be prescribed.

(2) The first condition is that the scheme is established under a trust or in such other way as may be prescribed.

(3) The second condition is that the provisions made by the instruments establishing the scheme comply with such requirements as may be prescribed.

(4) The third condition is that, subject to such exceptions as may be prescribed, the benefits provided by the scheme are money purchase benefits within the meaning given by section 181 of the Pension Schemes Act 1993 (“the 1993 Act”).

(5) The fourth condition is that the scheme complies with such requirements as may be prescribed as regards the extent to which, and the circumstances in which—

- (a) any payment made to the scheme [¹by, or on behalf or in respect of,] a member of the scheme,
- (b) any income or capital gain arising from the investment of such a payment, or
- (c) the value of rights under the scheme,

may be used to defray the administrative expenses of the scheme, to pay commission or in any other way which does not result in the provision of benefits for or in respect of members.

(6) The fifth condition is that the scheme complies with such of the requirements of regulations under section 113 of the 1993 Act (disclosure of information about schemes to members etc.) as are applicable to it.

(7) The sixth condition is that, subject to such minimum contribution levels and other restrictions as may be prescribed, members of the scheme may make such contributions to the scheme as they think appropriate.

(8) The seventh condition is that, except in so far as is necessary to ensure that the scheme has tax-exemption or tax-approval (within the meaning of the 1993 Act), the scheme accepts transfer payments in respect of members’ rights under—

- (a) other pension schemes;

¹ Words in s. 1(1)(a) & (5)(a) substituted (6.4.05) by s. 285(2) & (3) of the Pensions Act 2004 (c. 35).

² Ref. in s. 1(1)(a) substituted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 4, para. 37.

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- (b) contracts and schemes approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 (retirement annuity contracts);
- (c) annuities and insurance policies purchased or transferred for the purpose of giving effect to rights under pension schemes; and
- (d) annuities purchased or entered into for the purpose of discharging liability in respect of pension credits under section 29(1)(b) or under corresponding Northern Ireland legislation.

(9) The eighth condition is that the scheme has such exemption or approval as is mentioned in subsection (8).

[...¹]

Registration of stakeholder pension schemes.

2.—(1) The [²Authority] shall keep a register of stakeholder pension schemes.

(2) Subject to subsection (3), the Authority shall register a pension scheme under this section if the trustees of the scheme, or any person or persons prescribed in relation to the scheme—

- (a) make an application for the purpose and pay such fee as the Authority may determine; and
- (b) declare that each of the following is fulfilled in relation to the scheme, namely—
 - (i) the conditions set out in subsections (2) [¹to (9)] of section 1; and
 - (ii) such other conditions as may be prescribed under subsection (1) of that section.

(3) Where the Authority are satisfied on reasonable grounds that any of those conditions is not fulfilled in relation to a pension scheme, the Authority may [² by direction]—

- (a) refuse to register the scheme; or
- (b) where the scheme is registered under this section, remove it from the register.

(4) [²Section 10 of the Pensions Act 1995 (“the 1995 Act”) (civil penalties) applies to any trustee of a pension scheme which is or has been registered under this section, and] to any person prescribed in relation to such a scheme, if—

- (a) he fails to take all such steps as are reasonable to secure that each of those conditions is fulfilled in relation to the scheme or (as the case may be) while the scheme was so registered he failed to take all such steps as were reasonable to secure that each of those conditions was so fulfilled; or
- (b) where the scheme was registered on his application, an{ of those conditions was not fulfilled in relation to the scheme at the time of the application.

(5) - (6) [...²]

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

- (a) for the register, or extracts from the register, or for copies of the register or of extracts from the register, to be open to inspection by, and
- (b) for copies of the register, or of extracts from it, to be supplied to,

such persons, in such manner, at such times, on payment of such fees, and subject to such other terms and conditions, as may be prescribed.

¹ S. 1(10) omitted & ref. substituted in s. 2(2)(b)(i) (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 4, paras. 37 & 38.

² In s. 2, words substituted & inserted in subsections (1), (2), (3) & (4) & subsections (5) & (6) repealed (6.4.05) by para. 73 of Sch. 12 & Sch. 13 of the Pensions Act 2004 (c. 35).

3.—(1) Except in so far as regulations otherwise provide, it shall be the duty of an employer of relevant employees to comply with the requirements set out below.

Duty of employers to facilitate access to stakeholder pension schemes.

(2) The first requirement is that the employer shall ensure that at all times there is at least one scheme designated by him for the purposes of this subsection which is registered under section 2 and offers membership to all his relevant employees (whether or not any other scheme registered under that section which does not offer membership to all those employees is for the time being designated by him for those purposes).

Before designating a scheme for the purposes of this subsection the employer shall consult with his relevant employees and any organisations representing them.

(3) The second requirement is that the employer shall supply his relevant employees with—

- (a) the name and address of the designated scheme or, as the case may be, of each of the designated schemes; and
- (b) such other information as may be prescribed.

(4) The third requirement is that the employer shall allow representatives of the designated scheme or schemes reasonable access to his relevant employees for the purpose of supplying them with information about the scheme or schemes.

(5) The fourth requirement is that, subject to such exceptions and qualifications as may be prescribed, the employer shall, if he is requested to do so by a relevant employee of his who is a member of a qualifying scheme—

- (a) deduct the employee's contributions to the scheme from his remuneration; and
- (b) pay them to the trustees or managers of the scheme or, if regulations so provide, to a prescribed person.

(6) The fifth requirement is that the employer shall, if any scheme designated by him for the purposes of subsection (2) ceases to be registered under section 2, withdraw his designation of the scheme (but this requirement is not to be taken as implying that he cannot withdraw his designation of a scheme in other circumstances).

(7) Section 10 of the 1995 Act (civil penalties) applies to an employer who fails to comply with any of the requirements set out above.

(8) An employer is not, whether before designating a scheme for the purposes of subsection (2) or at any time while a scheme is designated by him for those purposes, under any duty—

- (a) to make any enquiries, or act on any information, about the scheme for any purpose not connected with—
 - (i) ascertaining whether the scheme is for the time being registered under section 2,
 - (ii) ascertaining the persons to whom it offers membership, or
 - (iii) enabling him to comply with subsection (3), or
- (b) in particular, to investigate or monitor, or make any judgment as to, the past, present or future performance of the scheme.

(9) In this section—

“employer” means any employer, whether or not resident or incorporated in any part of the United Kingdom;

“qualifying scheme”, in relation to an employer, means—

- (a) the designated scheme or one of the designated schemes; or
- (b) if regulations so provide, any other stakeholder pension scheme;

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“relevant employees”, in relation to an employer, means all employees of his employed in Great Britain and also, in the case of an employer resident or incorporated in any part of Great Britain, all employees of his employed outside the United Kingdom, but with the exception, in the case of any employer, of any employees of his—

- (a) whose employment qualifies them for membership of an occupational pension scheme of the employer;
- (b) whose earnings fall below the lower earnings limit as defined in section 181 of the 1993 Act; or
- (c) who are of such other description as may be prescribed.

4-5. [...¹]

¹ Ss. 4 & 5 repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

6.—(1) Sections 46 and 102 of the Employment Rights Act 1996 (occupational pension scheme trustees: protection from unfair dismissal and other detriment) shall apply in relation to an employee who is (or is a director of a company which is) a trustee of a scheme designated by his employer under section 3(2) as they apply in relation to an employee who is (or is a director of a company which is) a trustee of a relevant occupational pension scheme which relates to his employment.

Application of certain enactments.

(2) Section 58 of that Act (occupational pension scheme trustees: time off) shall apply to the employer in relation to a designated scheme as it applies to the employer in relation to a relevant occupational pension scheme.

(3) Schedule 1 (application of the 1993 and 1995 Acts to registered schemes) shall have effect.

(4) In this section “relevant occupational pension scheme” has the meaning given by section 46 of the Employment Rights Act 1996.

[...¹]

8.—(1) In this Part—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

[²“the Authority” means the Pensions Regulator;]

“designated scheme”, in relation to an employer, means a scheme designated by him for the purposes of section 3(2);

“occupational pension scheme” and “personal pension scheme” have the meanings given by section 1 of the 1993 Act;

“pension scheme” means an occupational pension scheme or a personal pension scheme;

“prescribed” means prescribed by regulations made by the Secretary of State;

“stakeholder pension scheme” shall be construed in accordance with section 1.

Interpretation and application of Part I.

(2) The Secretary of State may by regulations make provision for a stakeholder pension scheme which—

(a) is [³ prescribed or is] of a prescribed description, and

(b) would (apart from the regulations) be an occupational pension scheme,

to be treated for all purposes, or for such purposes as may be prescribed, as if it were a personal pension scheme and not an occupational pension scheme.

(3) This Part applies to a pension scheme managed by or on behalf of the Crown as it applies to other pension schemes; and, accordingly, references in this Part to a person in his capacity as a trustee or manager of, or person prescribed in relation to, a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.

(4) This Part applies to persons employed by or under the Crown in like manner as if such persons were employed by a private person; and references in this Part to a person in his capacity as an employer include the Crown, or a person acting on behalf of the Crown, in that capacity.

(5) Subsections (3) and (4) do not apply to any provision of this Part under or by virtue of which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.

¹ S. 7 omitted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 4, para. 39.

² Defn. of “the Authority” substituted (6.4.05) by s. 7(2)(c) of the Pensions Act 2004 (c. 35).

³ Words inserted in s. 8(2)(a) (22.9.05) by para. 74 of Sch. 12 to the Pensions Act 2004 (c. 35).

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(6) Nothing in this Part applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

Ss. 9 - 10. not reproduced in this volume, see Volume 2

PART II

PENSION: GENERAL

Pensions and bankruptcy

Effect of bankruptcy on pension rights: approved arrangements.

11.—(1) Where a bankruptcy order is made against a person on a petition presented after the coming into force of this section, any rights of his under an approved pension arrangement are excluded from his estate.

(2) In this section “approved pension arrangement” means—

- (a) an exempt approved scheme;
- (b) a relevant statutory scheme;
- (c) a retirement benefits scheme set up by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees;
- (d) a retirement benefits scheme which is being considered for approval under Chapter I of Part XIV of the Taxes Act;
- (e) a contract or scheme which is approved under Chapter III of that Part (retirement annuities);
- (f) a personal pension scheme which is approved under Chapter IV of that Part;
- (g) an annuity purchased for the purpose of giving effect to rights under a scheme falling within any of paragraphs (a) to (c) and (f);
- (h) any pension arrangements of any description which may be prescribed by regulations made by the Secretary of State.

(3) The reference in subsection (1) to rights under an approved pension arrangement does not include rights under a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act unless those rights arise by virtue of approved personal pension arrangements.

(4) Subsection (5) applies if—

- (a) at the time when a bankruptcy order is made against a person a retirement benefits scheme is being considered for approval under Chapter I of Part XIV of the Taxes Act, and
- (b) the decision of the Commissioners of Inland Revenue is that approval is not to be given to the scheme.

(5) Any rights of that person under the scheme shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—

- (a) the Commissioners' decision being made, or
- (b) (if later) the trustee's appointment taking effect or, in the case of the official receiver, his becoming trustee.

(6) Subsection (7) applies if, at any time after a bankruptcy order is made against a person, the Commissioners of Inland Revenue give notice—

- (a) withdrawing their approval under Chapter I of Part XIV of the Taxes Act from a retirement benefits scheme, or
- (b) withdrawing their approval under Chapter IV of that Part from a personal pension scheme or from any approved personal pension arrangements,

and the date specified as being that from which the approval is withdrawn ("the withdrawal date") is a date not later than that on which the bankruptcy order is made.

(7) Any rights of that person under the scheme or arising by virtue of the arrangements, and any rights of his under any related annuity, shall (without any conveyance, assignment or transfer) vest in his trustee in bankruptcy, as part of his estate, immediately on—

- (a) the giving of the notice, or
- (b) (if later) the trustee's appointment taking effect or, in the case of the official receiver, his becoming trustee.

(8) In subsection (7) "related annuity" means an annuity purchased on or after the withdrawal date for the purpose of giving effect to rights under the scheme or (as the case may be) to rights arising by virtue of the arrangements.

(9) Where under subsection (5) or (7) any rights vest in a person's trustee in bankruptcy, the trustee's title to them has relation back to the commencement of the person's bankruptcy; but where any transaction is entered into by the trustees or managers of the scheme in question—

- (a) in good faith, and
- (b) without notice of the making of the decision mentioned in subsection (4)(b) or (as the case may be) the giving of the notice mentioned in subsection (6),

the trustee in bankruptcy is not in respect of that transaction entitled by virtue of this subsection to any remedy against them or any person whose title to any property derives from them.

(10) Without prejudice to section 83, regulations under subsection (2)(h) may, in the case of any description of arrangements prescribed by the regulations, make provision corresponding to any provision made by subsections (4) to (9).

(11) In this section—

- (a) "exempt approved scheme", "relevant statutory scheme" and "retirement benefits scheme" have the same meaning as in Chapter I of Part XIV of the Taxes Act;
- (b) "approved personal pension arrangements" and "personal pension scheme" have the same meaning as in Chapter IV of that Part;
- (c) "estate", in relation to a person against whom a bankruptcy order is made, means his estate for the purposes of Parts VIII to XI of the Insolvency Act 1986;
- (d) "the Taxes Act" means the Income and Corporation Taxes Act 1988.

(12) For the purposes of this section a person shall be treated as having a right under an approved pension arrangement where—

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- (a) he is entitled to a credit under section 29(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part IV), and
- (b) the person so responsible has not discharged his liability in respect of the credit.

Effect of bankruptcy on pension rights: unapproved arrangements.

12.—(1) The Secretary of State may by regulations make provision for or in connection with enabling rights of a person under an unapproved pension arrangement to be excluded, in the event of a bankruptcy order being made against that person, from his estate for the purposes of Parts VIII to XI of the Insolvency Act 1986.

- (2) Regulations under this section may, in particular, make provision—
 - (a) for rights under an unapproved pension arrangement to be excluded from a person's estate—
 - (i) by an order made on his application by a prescribed court, or
 - (ii) in accordance with a qualifying agreement made between him and his trustee in bankruptcy;
 - (b) for the court's decision whether to make such an order in relation to a person to be made by reference to—
 - (i) future likely needs of him and his family, and
 - (ii) whether any benefits (by way of a pension or otherwise) are likely to be received by virtue of rights of his under other pension arrangements and (if so) the extent to which they appear likely to be adequate for meeting any such needs;
 - (c) for the prescribed persons in the case of any pension arrangement to provide a person or his trustee in bankruptcy on request with information reasonably required by that person or trustee for or in connection with the making of such applications and agreements as are mentioned in paragraph (a).

- (3) In this section—
 - “prescribed” means prescribed by regulations under this section;
 - “qualifying agreement” means an agreement entered into in such circumstances, and satisfying such requirements, as may be prescribed;
 - “unapproved pension arrangement” means a pension arrangement which—
 - (a) is not an approved pension arrangement within the meaning of section 11, and
 - (b) is of a prescribed description.

(4) For the purposes of this section a person shall be treated as having a right under an unapproved pension arrangement where—

- (a) he is entitled to a credit under section 29(1)(b) as against the person responsible for the arrangement (within the meaning of Chapter I of Part IV), and
- (b) the person so responsible has not discharged his liability in respect of the credit.

Sections 11 and 12: application to Scotland.

13.—(1) This section shall have effect for the purposes of the application of sections 11 and 12 to Scotland.

- (2) A reference to—
 - (a) the making of a bankruptcy order against a person is a reference to the award of sequestration on his estate or the making of the appointment on his estate of a judicial factor under section 41 of the Solicitors (Scotland) Act 1980;
 - (b) the estate of a person is a reference to his estate for the purposes of the Bankruptcy (Scotland) Act 1985 or of the Solicitors (Scotland) Act 1980, as the case may be;
 - (c) assignment is a reference to assignation;

- (d) a person's trustee in bankruptcy is a reference to his permanent trustee or judicial factor, as the case may be;
- (e) the commencement of a person's bankruptcy is a reference to the date of sequestration (within the meaning of section 12(4) of the Bankruptcy (Scotland) Act 1985) or of the judicial factor's appointment taking effect, as the case may be.

(3) For paragraph (b) of each of subsections (5) and (7) of section 11 there shall be substituted—

“(b) if later, the date of sequestration (within the meaning of section 12(4) of the Bankruptcy (Scotland) Act 1985) or of the judicial factor's appointment taking effect, as the case may be.”

14.—(1) – (2)

No forfeiture on bankruptcy of rights under pension schemes.

(3) In section 92(2) of the Pensions Act 1995 (exceptions to the rule preventing forfeiture of rights under occupational pension schemes), paragraph (b) (which allows forfeiture of such rights by reference to a scheme member's bankruptcy) shall cease to have effect.

15. - 17. *not reproduced in this volume, see Volume 2.*

18. Schedule 2 (which contains amendments of the law relating to pensions) shall have effect.

Miscellaneous amendments.

PART III

PENSIONS ON DIVORCE ETC.

Pension sharing orders

19. Schedule 3 (which amends the Matrimonial Causes Act 1973 for the purpose of enabling the court to make pension sharing orders in connection with proceedings in England and Wales for divorce or nullity of marriage, and for supplementary purposes) shall have effect.

20. *not reproduced in this volume, see Volume 2.*

Sections 25B to 25D of the Matrimonial Causes Act 1973

21. Schedule 4 (which amends the sections about pensions inserted in the Matrimonial Causes Act 1973 by section 166 of the Pensions Act 1995) shall have effect.

Amendments.

22. *not reproduced in this volume, see Volume 2.*

Miscellaneous

23.—(1) The Secretary of State may by regulations—

- (a) make provision imposing on the person responsible for a pension arrangement, or on the Secretary of State, requirements with respect to the supply of information relevant to any power with respect to—
 - (i) financial relief under Part II of the Matrimonial Causes Act 1973 or Part III of the Matrimonial and Family Proceedings Act 1984 (England and Wales powers in relation to domestic and overseas divorce etc.),

Supply of pension information in connection with divorce etc.

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- [¹(ia) financial relief under Schedule 5 or 7 to the Civil Partnership Act 2004 (England and Wales powers in relation to domestic and overseas dissolution of civil partnerships etc),]
- (ii) financial provision under the Family Law (Scotland) Act 1985 or Part IV of the Matrimonial and Family Proceedings Act 1984 [²or Schedule 11 to the 2004 Act] (corresponding Scottish powers), [...²]
- (iii) financial relief under Part III of the Matrimonial Causes (Northern Ireland) Order 1978 or Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 [²(Northern Ireland powers corresponding to those mentioned in sub-paragraph (ia)), or
- (iv) financial relief under Schedule 15 or 17 to the 2004 Act (Northern Ireland powers corresponding to those mentioned in sub-paragraph (ia));]
- (b) make provision about calculation and verification in relation to the valuation of—
 - (i) benefits under a pension arrangement, or
 - (ii) shareable state scheme rights,for the purposes of regulations under paragraph (a)(i) [²(ia), (iii) or (iv)];
- (c) make provision about calculation and verification in relation to—
 - (i) the valuation of shareable rights under a pension arrangement or shareable state scheme rights for the purposes of regulations under paragraph (a)(ii), so far as relating to the making of orders for financial provision (within the meaning of the Family Law (Scotland) Act 1985), or
 - (ii) the valuation of benefits under a pension arrangement for the purposes of such regulations, so far as relating to the making of orders under section 12A of that Act;
- (d) make provision for the purpose of enabling the person responsible for a pension arrangement to recover prescribed charges in respect of providing information in accordance with regulations under paragraph (a).

(2) Regulations under subsection (1)(b) or (c) may include provision for calculation or verification in accordance with guidance from time to time prepared by a person prescribed by the regulations.

(3) Regulations under subsection (1)(d) may include provision for the application in prescribed circumstances, with or without modification, of any provision made by virtue of section 41(2).

(4) In subsection (1)—

- (a) the reference in paragraph (c)(i) to shareable rights under a pension arrangement is to rights in relation to which pension sharing is available under Chapter I of Part IV, or under corresponding Northern Ireland legislation, and
- (b) the references to shareable state scheme rights are to rights in relation to which pension sharing is available under Chapter II of Part IV, or under corresponding Northern Ireland legislation.

Charges by pension arrangements in relation to earmarking orders.

24. The Secretary of State may by regulations make provision for the purpose of enabling the person responsible for a pension arrangement to recover prescribed charges in respect of complying with—

- (a) an order under section 23 of the Matrimonial Causes Act 1973 (financial provision orders in connection with divorce etc.), so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions),

¹ S. 23(1)(a)(ia) inserted (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 27, para. 157.

² Words inserted, substituted & deleted in s. 23 (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 27, para. 157.

- [¹(aa) an order under Part 1 of Schedule 5 to the Civil Partnership Act 2004 (financial provision orders in connection with dissolution of civil partnerships etc.) so far as it includes provision made by virtue of Part 6 of that Schedule (powers to include provision about pensions),]
- (b) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (powers in relation to pensions lump sums when making a capital sum order), [...¹]
- (c) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978, so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in paragraph (a), or
- [¹(d) an order under Part 1 of Schedule 15 to the 2004 Act so far as it includes provision made by virtue of Part 5 of that Schedule (Northern Ireland powers corresponding to those mentioned in paragraph (aa)).].]

Supplementary

25.—(1) If any amendment by the Family Law Act 1996 of Part II or IV of the Matrimonial Causes Act 1973 comes into force before the day on which any provision of this Part comes into force, the Lord Chancellor may by order make such consequential amendment of that provision as he thinks fit.

Power to make consequential amendments of Part III.

(2) No order under this section may be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

26.—(1) In this Part—

“occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;

“pension arrangement” means

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit under section 29(1)(b) or under corresponding Northern Ireland legislation;

“personal pension scheme” has the same meaning as in the Pension Schemes Act 1993;

“prescribed” means prescribed by regulations made by the Secretary of State;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme, means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(2) References to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement” above, the provider of the annuity, and

¹ Words inserted, substituted & deleted in s. 24 (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 27, para. 158.

- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, the insurer.

PART IV

PENSION SHARING

CHAPTER I

SHARING OF RIGHTS UNDER PENSION ARRANGEMENTS

Pension sharing mechanism

Scope of mechanism.

27.—(1) Pension sharing is available under this Chapter in relation to a person's shareable rights under any pension arrangement other than an excepted public service pension scheme.

(2) For the purposes of this Chapter, a person's shareable rights under a pension arrangement are any rights of his under the arrangement, other than rights of a description specified by regulations made by the Secretary of State.

(3) For the purposes of subsection (1), a public service pension scheme is excepted if it is specified by order made by such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the scheme.

Activation of pension sharing.

28.—(1) Section 29 applies on the taking effect of any of the following relating to a person's shareable rights under a pension arrangement—

- (a) a pension sharing order under the Matrimonial Causes Act 1973,
- [¹(aa) a pension sharing order under Schedule 5 to the Civil Partnership Act 2004,]
- (b) provision which corresponds to the provision which may be made by such an order and which—
 - (i) is contained in a qualifying agreement between the parties to a marriage, and
 - (ii) takes effect on the dissolution of the marriage under the Family Law Act 1996,
- (c) provision which corresponds to the provision which may be made by such an order and which—
 - (i) is contained in a qualifying agreement between the parties to a marriage or former marriage, and
 - (ii) takes effect after the dissolution of the marriage under the Family Law Act 1996,
- (d) an order under Part III of the Matrimonial and Family Proceedings Act 1984 (financial relief in England and Wales in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (a),
- [¹(da) an order under Schedule 7 to the 2004 Act (financial relief in England and Wales after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (aa),]
- (e) a pension sharing order under the Family Law (Scotland) Act 1985,
- (f) provision which corresponds to the provision which may be made by such an order and which—
 - (i) is contained in a qualifying agreement between the parties to a marriage [¹or between persons who are civil partners of each other],
 - (ii) is in such form as the Secretary of State may prescribe by regulations, and

¹ In s. 28(1) words inserted & substituted and subsections (aa) & (da) added (5.12.06), Sch. 27, para. 159.

- (iii) takes effect on the grant, in relation to the marriage, of decree of divorce under the Divorce (Scotland) Act 1976 or of declarator of nullity, [¹or (as the case may be) on the grant, in relation to the civil partnership, of decree of dissolution or of declarator of nullity]
 - (g) an order under Part IV of the Matrimonial and Family Proceedings Act 1984 (financial relief in Scotland in relation to overseas divorce etc.) [¹or under Schedule 11 to the 2004 Act (financial provision in Scotland after overseas proceedings)] corresponding to such an order as is mentioned in paragraph (e),
 - (h) a pension sharing order under [¹the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)),
 - (i) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (h).
 - [¹(j) a pension sharing order under Schedule 15 to the 2004 Act, and
 - (k) an order under Schedule 17 to the 2004 Act (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (j).]
- (2) For the purposes of subsection (1)(b) and (c), a qualifying agreement is one which—
- (a) has been entered into in such circumstances as the Lord Chancellor may prescribe by regulations, and
 - (b) satisfies such requirements as the Lord Chancellor may so prescribe.
- (3) For the purposes of subsection (1)(f), a qualifying agreement is one which—
- (a) has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and
 - (b) is registered in the Books of Council and Session.
- (4) Subsection (1)(b) does not apply if—
- (a) the pension arrangement to which the provision relates is the subject of a pension sharing order under the Matrimonial Causes Act 1973 in relation to the marriage, or
 - (b) there is in force a requirement imposed by virtue of section 25B or 25C of that Act (powers to include in financial provision orders requirements relating to benefits under pension arrangements) which relates to benefits or future benefits to which the party who is the transferor is entitled under the pension arrangement to which the provision relates.
- (5) Subsection (1)(c) does not apply if—
- (a) the marriage was dissolved by an order under section 3 of the Family Law Act 1996 (divorce not preceded by separation) and the satisfaction of the requirements of section 9(2) of that Act (settlement of future financial arrangements) was a precondition to the making of the order,
 - (b) the pension arrangement to which the provision relates—
 - (i) is the subject of a pension sharing order under the Matrimonial Causes Act 1973 in relation to the marriage, or
 - (ii) has already been the subject of pension sharing between the parties, or
 - (c) there is in force a requirement imposed by virtue of section 25B or 25C of that Act which relates to benefits or future benefits to which the party who is the transferor is entitled under the pension arrangement to which the provision relates.

¹ In s. 28(1) words inserted & substituted and subsections (j) & (k) added (5.12.06), Sch. 27, para. 159.

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(6) Subsection (1)(f) does not apply if there is in force an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 which relates to benefits or future benefits to which the party who is the transferor is entitled under the pension arrangement to which the provision relates.

(7) For the purposes of this section, an order or provision falling within subsection (1)(e), (f) or (g) shall be deemed never to have taken effect if the person responsible for the arrangement to which the order or provision relates does not receive before the end of the period of 2 months beginning with the relevant date—

- (a) copies of the relevant [...] documents, and
- (b) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations under section 34(1)(b)(ii).

(8) The relevant date for the purposes of subsection (7) is—

- (a) in the case of an order or provision falling within subsection (1)(e) or (f), the date of the extract of the decree or declarator responsible for the divorce [¹, dissolution] or annulment to which the order or provision relates, and
- (b) in the case of an order falling within subsection (1)(g), the date of disposal of the application under section 28 of the Matrimonial and Family Proceedings Act 1984 [¹or, where the order is under Schedule 11 to the 2004 Act, the date of disposal of the application under paragraph 2 of that Schedule].

(9) The reference in subsection (7)(a) to the relevant [...] documents is—

- (a) in the case of an order falling within subsection (1)(e) or (g), to copies of the order and the order, decree or declarator responsible for the divorce [¹, dissolution] or annulment to which it relates, and
- (b) in the case of provision falling within subsection (1)(f), to—
 - (i) copies of the provision and the order, decree or declarator responsible for the divorce [¹, dissolution] or annulment to which it relates, and
 - (ii) documentary evidence that the agreement containing the provision is one to which subsection (3)(a) applies.

(10) The sheriff may, on the application of any person having an interest, make an order—

- (a) extending the period of 2 months referred to in subsection (7), and
- (b) if that period has already expired, providing that, if the person responsible for the arrangement receives the documents and information concerned before the end of the period specified in the order, subsection (7) is to be treated as never having applied.

(11) In subsections (4)(b), (5)(c) and (6), the reference to the party who is the transferor is to the party to whose rights the provision relates.

Creation of pension debits and credits.

29.—(1) On the application of this section—

- (a) the transferor's shareable rights under the relevant arrangement become subject to a debit of the appropriate amount, and
- (b) the transferee becomes entitled to a credit of that amount as against the person responsible for that arrangement.

(2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of subsection (1) is the lesser of—

- (a) the specified amount, and

¹ Words deleted & inserted in s. 28(7), (8) & (9) (5.12.05) by the Civil Partnership Act 2004, Sch. 27, para. 159.

(b) the cash equivalent of the relevant benefits on the valuation day.

(4) Where the relevant arrangement is an occupational pension scheme and the transferor is in pensionable service under the scheme on the transfer day, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which he would be entitled under the scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(5) Otherwise, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the relevant arrangement by virtue of his shareable rights under it.

(6) The Secretary of State may by regulations provide for any description of benefit to be disregarded for the purposes of subsection (4) or (5).

(7) For the purposes of this section, the valuation day is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.

(8) In this section—

“relevant arrangement” means the arrangement to which the relevant order or provision relates;

“relevant order or provision” means the order or provision by virtue of which this section applies;

“transfer day” means the day on which the relevant order or provision takes effect;

“transferor” means the person to whose rights the relevant order or provision relates;

“transferee” means the person for whose benefit the relevant order or provision is made.

30.—(1) The Secretary of State may by regulations make provision about the calculation and verification of cash equivalents for the purposes of section 29. Cash equivalents.

(2) The power conferred by subsection (1) includes power to provide for calculation or verification—

(a) in such manner as may, in the particular case, be approved by a person prescribed by the regulations, or

(b) in accordance with guidance from time to time prepared by a person so prescribed.

Pension debits

31.—(1) Subject to subsection (2), where a person’s shareable rights under a pension arrangement are subject to a pension debit, each benefit or future benefit— Reduction of benefit.

(a) to which he is entitled under the arrangement by virtue of those rights, and

(b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under an occupational pension scheme of a person who is in pensionable service under the scheme on the transfer day, each benefit or future benefit—

(a) to which the person is entitled under the scheme by virtue of those rights, and

(b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

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(3) A benefit is a qualifying benefit for the purposes of subsections (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) The provisions of this section override any provision of a pension arrangement to which they apply to the extent that the provision conflicts with them.

(5) In this section—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order or provision on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

32. not reproduced in this volume, see Volume 2.

Pension credits

Time for discharge of liability.

33.—(1) A person subject to liability in respect of a pension credit shall discharge his liability before the end of the implementation period for the credit.

(2) Where the trustees or managers of an occupational pension scheme have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) they shall, except in such cases as the Secretary of State may prescribe by regulations, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
- (b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(3) If trustees or managers to whom subsection (2)(a) applies fail to perform the obligation imposed by that provision, section 10 of the Pensions Act 1995 shall apply to any trustee or manager who has failed to take all reasonable steps to ensure that the obligation was performed.

(4) On the application of the trustees or managers of an occupational pension scheme who are subject to liability in respect of a pension credit, the Regulatory Authority may extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations.

(5) In this section “the Regulatory Authority” means [¹the Pensions Regulator]

“Implementation period”.

34.—(1) For the purposes of this Chapter, the implementation period for a pension credit is the period of 4 months beginning with the later of—

- (a) the day on which the relevant order or provision takes effect, and
- (b) the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of—

¹ In s. 33(5) words substituted (6.4.05) by s. 7(2)(d) of the Pensions Act 2004 (c. 35).

- (i) the relevant [...] documents, and
- (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.

(2) The reference in subsection (1)(b)(i) to the relevant [...] documents is to copies of—

- (a) the relevant order or provision, and
- (b) the order, decree or declarator responsible for the divorce [², dissolution] or annulment to which it relates,

and, if the pension credit depends on provision falling within subsection (1)(f) of section 28, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.

(3) Subsection (1) is subject to any provision made by regulations under section 41(2)(a).

(4) The Secretary of State may by regulations—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for this section to have effect with modifications where the pension arrangement to which the relevant order or provision relates is being wound up;
- (c) provide for this section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.

(5) In this section—

“relevant order or provision”, in relation to a pension credit, means the pension sharing order or provision on which the pension credit depends;

“transferor” means the person to whose rights the relevant order or provision relates;

“transferee” means the person for whose benefit the relevant order or provision is made.

¹ Words omitted & inserted in s. 34(1) & (2) (5.12.05) by the Civil Partnership Act 2004, Sch. 27, para. 160.

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35.—(1) Schedule 5 (which makes provision about how liability in respect of a pension credit may be discharged) shall have effect. Mode of discharge of liability.

(2) Where the person entitled to a pension credit dies before liability in respect of the credit has been discharged—

- (a) Schedule 5 shall cease to have effect in relation to the discharge of liability in respect of the credit, and
- (b) liability in respect of the credit shall be discharged in accordance with regulations made by the Secretary of State.

36 - 37.not reproduced in this volume, see Volume 2.

38.—(2) In the case of an occupational pension scheme which is not a scheme to which [¹ this section] applies, rights attributable (directly or indirectly) to a pension credit are to be accorded in a winding up the same treatment— Treatment in winding up.

- (a) if they have come into payment, as the rights of a pensioner member, and
- (b) if they have not come into payment, as the rights of a deferred member.

[¹(2A) This section applies to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.]

(3) Subsection (2) overrides the provisions of a scheme to the extent that it conflicts with them, and the scheme has effect with such modifications as may be required in consequence.

(4) In subsection (2)—

- (a) “deferred member” and “pensioner member” have the same meanings as in Part I of the Pensions Act 1995,
- (b) “pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b), and
- (c) references to rights attributable to a pension credit having come into payment are to the person to whom the rights belong having become entitled by virtue of the rights to the present payment of pension or other benefits.

39.not reproduced in this volume, see Volume 2.

40.—(1) The Secretary of State may by regulations make provision for a pension to which subsection (2) applies to be increased, as a minimum, by reference to increases in the retail prices index, so far as not exceeding [²the maximum percentage] per annum. Other pension schemes.

(2) [²Subject to subsection (2A), this] subsection applies to—

- (a) a pension provided to give effect to eligible pension credit rights of a member under a qualifying occupational pension scheme, and
- (b) a pension provided to give effect to safeguarded rights of a member under a personal pension scheme.

¹ In s. 38, words substituted in subsection (2) & subsection (2A) inserted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch. 12, para. 75.

² In s. 40, words substituted and subsections (2A) & (2B) inserted (6.4.05) by s. 280 of the Pensions Act 2004 (c. 35).

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[²(2A) Subsection (2) does not apply to pensions which—

- (a) are money purchase benefits, and
- (b) become pensions in payment on or after the commencement day.

(2B) For the purposes of subsection (1) the “maximum percentage” means—

- (a) 5%; in a case where—
 - (i) the pension is in payment before the commencement day, or
 - (ii) the pension is not in payment before the commencement day but the entitlement to the relevant pension credit arose before that day, and
- (b) 2.5%; in a case where the entitlement to the relevant pension credit arises on or after the commencement day.]

(3) In this section—

[¹“commencement day” means the day appointed for the coming into force of section 280 of the Pensions Act 2004 (amendments to section 40);]

“eligible”, in relation to pension credit rights, means of a description prescribed by regulations made by the Secretary of State;

[¹“money purchase benefit” has the meaning given by section 181(1) of the Pension Schemes Act 1993;]

“pension credit rights”, in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a credit under section 29(1)(b) or under corresponding Northern Ireland legislation;

“qualifying occupational pension scheme” means an occupational pension scheme which is not a public service pension scheme;

[²“relevant pension credit” means the pension credit to which the eligible pension credit rights or, as the case may be, the safeguard rights are (directly or indirectly) attributable;]

“safeguarded rights” has the meaning given in section 68A of the Pension Schemes Act 1993.

Charges by pension arrangements

Charges in respect of pension sharing costs.

41.—(1) The Secretary of State may by regulations make provision for the purpose of enabling the person responsible for a pension arrangement involved in pension sharing to recover from the parties to pension sharing prescribed charges in respect of prescribed descriptions of pension sharing activity.

(2) Regulations under subsection (1) may include—

- (a) provision for the start of the implementation period for a pension credit to be postponed in prescribed circumstances;
- (b) provision, in relation to payments in respect of charges recoverable under the regulations, for reimbursement as between the parties to pension sharing;
- (c) provision, in relation to the recovery of charges by deduction from a pension credit, for the modification of Schedule 5;
- (d) provision for the recovery in prescribed circumstances of such additional amounts as may be determined in accordance with the regulations.

(3) For the purposes of regulations under subsection (1), the question of how much of a charge recoverable under the regulations is attributable to a party to pension sharing is to be determined as follows—

- (a) where the relevant order or provision includes provision about the apportionment of charges under this section, there is attributable to the party so much of the charge as is apportioned to him by that provision;
- (b) where the relevant order or provision does not include such provision, the charge is attributable to the transferor.

¹ In s. 40 Defns inserted in section (3) (6.4.05) by s. 280 of the Pensions Act 2004 (c. 35).

² Defn. of “relevant pension credit” inserted (6.4.05) by s. 280(5) of the Pensions Act 2004 (c. 35).

(4) For the purposes of subsection (1), a pension arrangement is involved in pension sharing if section 29 applies by virtue of an order or provision which relates to the arrangement.

(5) In that subsection, the reference to pension sharing activity is to activity attributable (directly or indirectly) to the involvement in pension sharing.

(6) In subsection (3)–

- (a) the reference to the relevant order or provision is to the order or provision which gives rise to the pension sharing, and
- (b) the reference to the transferor is to the person to whose rights that order or provision relates.

(7) In this section “prescribed” means prescribed in regulations under subsection (1).

Adaptation of statutory schemes

42.—(1) Power under an Act to establish a pension scheme shall include power to make provision for the provision, by reference to pension credits which derive from rights under–

Extension of scheme-making powers.

- (a) the scheme, or
- (b) a scheme in relation to which the scheme is specified as an alternative for the purposes of paragraph 2 of Schedule 5,

of benefits to or in respect of those entitled to the credits.

(2) Subsection (1) is without prejudice to any other power.

(3) Subsection (1) shall apply in relation to Acts whenever passed.

(4) No obligation to consult shall apply in relation to the making, in exercise of a power under an Act to establish a pension scheme, of provision of a kind authorised by subsection (1).

(5) Any provision of, or under, an Act which makes benefits under a pension scheme established under an Act a charge on, or payable out of–

- (a) the Consolidated Fund,
- (b) the Scottish Consolidated Fund, or
- (c) the Consolidated Fund of Northern Ireland,

shall be treated as including any benefits under the scheme which are attributable (directly or indirectly) to a pension credit which derives from rights to benefits charged on, or payable out of, that fund.

(6) In this section–

“pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b);

“pension scheme” means a scheme or arrangement providing benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of persons to whom the scheme or arrangement applies.

43.—(1) The appropriate minister may by regulations amend the Sheriffs’ Pensions (Scotland) Act 1961, the Judicial Pensions Act 1981 or the Judicial Pensions and Retirement Act 1993 for the purpose of–

Power to extend judicial pension schemes.

- (a) extending a pension scheme under the Act to include the provision, by reference to pension credits which derive from rights under–
 - (i) the scheme, or
 - (ii) a scheme in relation to which the scheme is specified as an alternative for the purposes of paragraph 2 of Schedule 5,

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of benefits to or in respect of those entitled to the credits, or

- (b) restricting the power of the appropriate minister to accept payments into a pension scheme under the Act, where the payments represent the cash equivalent of rights under another pension scheme which are attributable (directly or indirectly) to a pension credit.

(2) Regulations under subsection (1)–

- (a) may make benefits provided by virtue of paragraph (a) of that subsection a charge on, and payable out of, the Consolidated Fund;
- (b) may confer power to make subordinate legislation, including subordinate legislation which provides for calculation of the value of rights in accordance with guidance from time to time prepared by a person specified in the subordinate legislation.

(3) The appropriate minister for the purposes of subsection (1) is–

- (a) in relation to a pension scheme whose ordinary members are limited to those who hold judicial office whose jurisdiction is exercised exclusively in relation to Scotland, the Secretary of State, and
- (b) in relation to any other pension scheme, the Lord Chancellor.

(4) In this section–

“pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b);

“pension scheme” means a scheme or arrangement providing benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of persons to whom the scheme or arrangement applies.

Supplementary

Disapplication of restrictions on alienation.

44.—(1) Nothing in any of the following provisions (restrictions on alienation of pension rights) applies in relation to any order or provision falling within section 28(1)–

- (a) section 203(1) and (2) of the Army Act 1955, section 203(1) and (2) of the Air Force Act 1955, section 128G(1) and (2) of the Naval Discipline Act 1957 and section 159(4) and (4A) of the Pension Schemes Act 1993,
- (b) section 91 of the Pensions Act 1995,
- (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 a pension arrangement corresponding to any of those enactments.

(2) In this section, “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978).

Information.

45.—(1) The Secretary of State may by regulations require the person responsible for a pension arrangement involved in pension sharing to supply to such persons as he may specify in the regulations such information relating to anything which follows from the application of section 29 as he may so specify.

(2) Section 168 of the Pension Schemes Act 1993 (breach of regulations) shall apply as if this section were contained in that Act (otherwise than in Chapter II of Part VII).

(3) For the purposes of this section, a pension arrangement is involved in pension sharing if section 29 applies by virtue of an order or provision which relates to the arrangement.

Interpretation of Chapter I.

46.—(1) In this Chapter—

“implementation period”, in relation to a pension credit, has the meaning given by section 34;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pension arrangement” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) a retirement annuity contract,
- (d) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, and
- (e) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a credit under section 29(1)(b) or under corresponding Northern Ireland legislation;

“pension credit” means a credit under section 29(1)(b);

“pension debit” means a debit under section 29(1)(a);

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“retirement annuity contract” means a contract or scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“shareable rights” has the meaning given by section 27(2);

“trustees or managers”, in relation to an occupational pension scheme or a personal pension scheme means—

- (a) in the case of a scheme established under a trust, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme.

(2) In this Chapter, references to the person responsible for a pension arrangement are—

- (a) in the case of an occupational pension scheme or a personal pension scheme, to the trustees or managers of the scheme,
- (b) in the case of a retirement annuity contract or an annuity falling within paragraph (d) or (e) of the definition of “pension arrangement” in subsection (1), to the provider of the annuity, and
- (c) in the case of an insurance policy falling within paragraph (d) of the definition of that expression, to the insurer.

(3) In determining what is “pensionable service” for the purposes of this Chapter—

- (a) service notionally attributable for any purpose of the scheme is to be disregarded, and
- (b) no account is to be taken of any rules of the scheme by which a period of service can be treated for any purpose as being longer or shorter than it actually is.

CHAPTER II

SHARING OF STATE SCHEME RIGHTS

Shareable state scheme rights.

47.—(1) Pension sharing is available under this Chapter in relation to a person’s shareable state scheme rights.

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- (2) For the purposes of this Chapter, a person's shareable state scheme rights are—
- (a) his entitlement, or prospective entitlement, to a Category A retirement pension by virtue of section 44(3)(b) of the Contributions and Benefits Act (earnings-related additional pension), and
 - (b) his entitlement, or prospective entitlement, to a pension under section 55A of that Act (shared additional pension).

48.—(1) Section 49 applies on the taking effect of any of the following relating to a person's shareable state scheme rights—

- (a) a pension sharing order under the Matrimonial Causes Act 1973,
- [¹(aa) a pension sharing order under Schedule 5 to the Civil Partnership Act 2004,]
- (b) provision which corresponds to the provision which may be made by such an order and which—
 - (i) is contained in a qualifying agreement between the parties to a marriage, and
 - (ii) takes effect on the dissolution of the marriage under the Family Law Act 1996,
- (c) provision which corresponds to the provision which may be made by such an order and which—
 - (i) is contained in a qualifying agreement between the parties to a marriage or former marriage, and
 - (ii) takes effect after the dissolution of the marriage under the Family Law Act 1996,
- (d) an order under Part III of the Matrimonial and Family Proceedings Act 1984 (financial relief in England and Wales in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (a),
- [¹(da) an order under Schedule 7 to the 2004 Act (financial relief in England and Wales after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (aa),]
- (e) a pension sharing order under the Family Law (Scotland) Act 1985,
- (f) provision which corresponds to the provision which may be made by such an order and which—
 - (i) is contained in a qualifying agreement between the parties to a marriage [¹or between persons who are civil partners of each other],
 - (ii) is in such form as the Secretary of State may prescribe by regulations, and
 - (iii) takes effect on the grant, in relation to the marriage, of decree of divorce under the Divorce (Scotland) Act 1976 or of declarator of nullity [¹or (as the case may be) on the grant, in relation to the civil partnership of decree of dissolution or of declarator of nullity],
- (g) an order under Part IV of the Matrimonial and Family Proceedings Act 1984 (financial relief in Scotland in relation to overseas divorce etc.) [¹or under Schedule 11 to the 2004 Act (financial provisions in Scotland after overseas proceedings)] corresponding to such an order as is mentioned in paragraph (e),
- (h) a pension sharing order under [¹the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)),]
- (i) an order under Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (h).
- [¹(j) a pension sharing order under Schedule 15 to the 2004 Act, and
- (k) an order under Schedule 17 to the 2004 Act (financial relief in Northern

¹ In s. 48(1) words inserted & substituted and subparas. (aa), (da), (j) & (k) added (5.12.06) by the Civil Partnership Act 2004, Sch. 27, para. 161.

Ireland after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (j).]

(2) For the purposes of subsection (1)(b) and (c), a qualifying agreement is one which—

- (a) has been entered into in such circumstances as the Lord Chancellor may prescribe by regulations, and
- (b) satisfies such requirements as the Lord Chancellor may so prescribe.

(3) For the purposes of subsection (1)(f), a qualifying agreement is one which—

- (a) has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and
- (b) is registered in the Books of Council and Session.

(4) Subsection (1)(b) does not apply if the provision relates to rights which are the subject of a pension sharing order under the Matrimonial Causes Act 1973 in relation to the marriage.

(5) Subsection (1)(c) does not apply if—

- (a) the marriage was dissolved by an order under section 3 of the Family Law Act 1996 (divorce not preceded by separation) and the satisfaction of the requirements of section 9(2) of that Act (settlement of future financial arrangements) was a precondition to the making of the order,
- (b) the provision relates to rights which are the subject of a pension sharing order under the Matrimonial Causes Act 1973 in relation to the marriage, or
- (c) shareable state scheme rights have already been the subject of pension sharing between the parties.

(6) For the purposes of this section, an order or provision falling within subsection (1)(e), (f) or (g) shall be deemed never to have taken effect if the Secretary of State does not receive before the end of the period of 2 months beginning with the relevant date—

- (a) copies of the relevant [...] documents, and
- (b) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations under section 34(1)(b)(ii).

(7) The relevant date for the purposes of subsection (6) is—

- (a) in the case of an order or provision falling within subsection (1)(e) or (f), the date of the extract of the decree or declarator responsible for the divorce [¹, dissolution] or annulment to which the order or provision relates, and
- (b) in the case of an order falling within subsection (1)(g), the date of disposal of the application under section 28 of the Matrimonial and Family Proceedings Act 1984 [¹or, where the order is under Schedule 11 to the 2004 Act, the date of disposal of the application under paragraph 2 of that Schedule].

(8) The reference in subsection (6)(a) to the relevant [...] documents is—

- (a) in the case of an order falling within subsection (1)(e) or (g), to copies of the order and the order, decree or declarator responsible for the divorce [¹, dissolution] or annulment to which it relates, and
- (b) in the case of provision falling within subsection (1)(f), to—
 - (i) copies of the provision and the order, decree or declarator responsible for the divorce [¹, dissolution] or annulment to which it relates, and
 - (ii) documentary evidence that the agreement containing the provision is one to which subsection (3)(a) applies.

(9) The sheriff may, on the application of any person having an interest, make an order—

¹ Words deleted and inserted in s. 48(6), (7) & (8) (5.12.05) by the Civil Partnership Act 2004, Sch. 27, para. 161.

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- (a) extending the period of 2 months referred to in subsection (6), and
- (b) if that period has already expired, providing that, if the Secretary of State receives the documents and information concerned before the end of the period specified in the order, subsection (6) is to be treated as never having applied.

Creation of state scheme pension debits and credits.

49.—(1) On the application of this section—

- (a) the transferor becomes subject, for the purposes of Part II of the Contributions and Benefits Act (contributory benefits), to a debit of the appropriate amount, and
- (b) the transferee becomes entitled, for those purposes, to a credit of that amount.

(2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) is the specified percentage of the cash equivalent on the transfer day of the transferor’s shareable state scheme rights immediately before that day.

(3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of subsection (1) is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent on the transfer day of the transferor’s relevant state scheme rights immediately before that day.

(4) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations made by the Secretary of State.

(5) In determining prospective entitlement to a Category A retirement pension for the purposes of this section, only tax years before that in which the transfer day falls shall be taken into account.

(6) In this section—

“relevant order or provision” means the order or provision by virtue of which this section applies;
“transfer day” means the day on which the relevant order or provision takes effect;
“transferor” means the person to whose rights the relevant order or provision relates;
“transferee” means the person for whose benefit the relevant order or provision is made.

Effect of state scheme pension debits and credits.

50.—(1) Schedule 6 (which amends the Contributions and Benefits Act for the purpose of giving effect to debits and credits under section 49(1)) shall have effect.

(2) Section 55C of that Act (which is inserted by that Schedule) shall have effect, in relation to incremental periods (within the meaning of that section) beginning on or after 6th April 2010, with the following amendments—

- (a) in subsection (3), for “period of enhancement” there is substituted “period of deferment”,
- (b) in subsection (4), for “1/7th per cent.” there is substituted “1/5th per cent.”,
- (c) in subsection (7), for “period of enhancement”, in both places, there is substituted “period of deferment”, and
- (d) in subsection (9), the definition of “period of enhancement” (and the preceding “and”) are omitted.

Interpretation of Chapter II.

51. In this Chapter—

“shareable state scheme rights” has the meaning given by section 47(2); and
“tax year” has the meaning given by section 122(1) of the Contributions and Benefits Act.

52 - 80. *not reproduced in this volume, see Volume 2*

PART VI

GENERAL

Miscellaneous

81. Schedule 11 (which contains amendments dealing with administrative matters relating to contributions and pensions) shall have effect. Contributions and pensions administration.

82 - 83. not reproduced in this volume, see Volume 2

84.—(1) The consequential amendments specified in Schedule 12 shall have effect. Consequential amendments etc.

(2) The Secretary of State may by regulations make such amendments or revocations of any instrument made under an Act as he thinks necessary or expedient in consequence of the coming into force of any of the provisions specified in subsection (4).

(3) The Secretary of State may, for the purposes of or in connection with the coming into force of any of the provisions specified in subsection (4), make by regulations any provision which could be made by an order bringing the provision into force.

(4) The provisions mentioned in subsections (2) and (3) are—

- (a) Part IV;
- (b) subsection (1) above so far as relating to paragraphs 14 to 63 of Schedule 12; and
- (c) section 88 so far as relating to Part III of Schedule 13.

85.—(1) The Secretary of State may, for the purposes of or in connection with the coming into force of any provisions of Parts I and II, by regulations make such transitional adaptations or modifications— Transitional provisions.

- (a) of those provisions, or
- (b) in connection with those provisions, of any provisions of—
 - (i) this Act,
 - (ii) the Pension Schemes Act 1993, or
 - (iii) the Pensions Act 1995,

then in force, as he considers necessary or expedient.

(2) For the purposes of subsection (1), section 88 so far as relating to Part I of Schedule 13, together with that Part of that Schedule, shall be taken to be comprised in Part II of this Act.

(3) *No pension sharing order may be made—*

- (a) *under section 24B of the Matrimonial Causes Act 1973 if the proceedings in which the decree is granted were begun before the day on which section 19 comes into force, or*
- (b) *under section 31(7B) of that Act if the marriage was dissolved by a decree granted in proceedings so begun.*

(4) *Paragraph 3 of Schedule 3 does not have effect if the proceedings in which the decree is granted were begun before the day on which section 19 comes into force.*

(5) *Where an action of divorce or an action for declarator of nullity has been brought before the day on which section 20 comes into force—*

- (a) *no pension-sharing order may be made under section 8(1) of the Family Law (Scotland) Act 1985, and*
- (b) *neither paragraph (f) of section 28(1) nor paragraph (f) of section 48(1) shall apply,*

in relation to that divorce or declarator.

(6) - (7)

86 - 91. not reproduced in this volume, see Volume 2

SCHEDULES

SCHEDULE 1

APPLICATION OF 1993 AND 1995 ACTS TO REGISTERED SCHEMES

1.—(1) The provisions specified in sub-paragraph (2) shall apply as if any pension scheme established under a trust which—

- (a) is not an occupational pension scheme, but
- (b) is or has been registered under section 2,

were an occupational pension scheme.

(2) The provisions are—

- (a) [...¹]
- (b) the following provisions of Part I of the 1995 Act—
 - (i) sections 3 to 11 [...²] and 15 (supervision by the Authority) [³except sections 7(5A)(b), 8(1)(a) and (c) and (2), 11(3A) and (3B) and 15(1)];
 - (ii) sections 27 to [⁴30] (trustees: general);
 - (iii) sections 32 to 36 and 39 (functions of trustees) [...⁵]
 - (iv) section 41 (functions of trustees or managers);
 - (v) section 47 and 48 (advisers);
 - (vi) section 49 (receipts, payment and records) except subsections (5) and (8) to (13);
 - (vii) section 50 (resolution of disputes);
 - (viii) section 68 (power of trustees to modify scheme by resolution) except subsection (3);
 - (ix) sections 81 to 86 (the compensation payments) except section 81(1)(b);
 - (x) sections 91, 92 and 94 (assignment and forfeiture etc.) except section 91(5)(d);
 - (xi) - (xiii) [...²]
 - (xiv) section 117 (overriding requirements); and
 - (xv) sections 124 and 125 (interpretation) [⁶; and
- (c) the following provisions of the Pension Act 2004—
 - (i) section 67 (accessibility of register of prohibited trustees);
 - (ii) chapters 4 and 5 of Part 2 (fraud compensation and information gathering);
 - (iii) sections 247 to 249 (requirements for knowledge and understanding); and
 - (iv) section 318 (interpretation).]

(3) Section 47(9) of the 1995 Act (as applied by sub-paragraph (1)) shall have effect as if the reference to any person who is or has been the employer were a reference to any person who, in pursuance of section 3(5), is or has been required—

- (a) to deduct an employee's contributions to the scheme from his remuneration; and

¹ Para. 1(2)(a) repealed (1.4.05) by Sch. 13 to the Pensions Act 2004 (c. 35).

² In para. 1(2)(b)(i) word repealed & (xi)-(xiii) repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

³ In para. 1(2)(b)(i) words substituted (6.4.05) by para. 76(2)(a) of Sch. 12 to the Pensions Act 2004 (c. 35).

⁴ In para. 1(2)(b)(ii), number substituted (9.12.05) by the Pensions Act 2004 (c. 35), Sch. 12, para. 76(2)(b).

⁵ Words in para. 1(2)(b)(iii) omitted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch. 12, para. 76(2)(c).

⁶ In para. 1(2), para (c) inserted (30.6.05) by para. 76(3) of Sch. 12 to the Pensions Act 2004 (c. 35).

(b) to pay them to the trustees or managers of the scheme or to a prescribed person.

(4) Section 68 of the 1995 Act (as so applied) shall have effect as if the purposes specified in subsection (2) included enabling the conditions set out in section 1 to be fulfilled in relation to the scheme.

(5) Section 124(1) of the 1995 Act [¹, and section 318(1) of the Pensions Act 2004,] (as so applied) shall have effect as if the definition of “member” were omitted.

[²(6) Chapters 4 and 5 of Part 2 of the Pensions Act 2004 (as applied by subparagraph (1)) shall have effect with such modifications as the Secretary of State may prescribe by regulations.]

2 - 3. [...³]

Schs. 2 - 4. *not reproduced in this volume, see Volume 2*

¹ In para. (5) words inserted (6.4.05) by para. 76(4) of Sch. 12 to the Pensions Act 2004 (c. 35).

² Sub-para. (6) inserted (12.7.05 for reg. making purposes, 1.9.05 all other purposes) by para. 76(5) of Sch. 12 to the Pensions Act 2004 (c. 35).

³ Paras. 2 & 3 of Sch. 1 are repealed (6.4.05) by Sch. 13 of the Pensions Act 2004 (c. 35).

SCHEDULE 5

PENSION CREDITS: MODE OF DISCHARGE

Funded pension schemes

- 1.—(1) This paragraph applies to a pension credit which derives from—
- (a) a funded occupational pension scheme, or
 - (b) a personal pension scheme.
- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit—
- (a) with his consent, or
 - (b) in accordance with regulations made by the Secretary of State.
- (3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—
- (a) the qualifying arrangement is not disqualified as a destination for the credit,
 - (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
 - (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.
- (4) For the purposes of sub-paragraph (2), no account is to be taken of consent of the person entitled to the pension credit unless—
- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under sub-paragraph (3), or
 - (b) it is not withdrawn within 7 days of receipt of such notice.

Unfunded public service pension schemes

- 2.—(1) This paragraph applies to a pension credit which derives from an occupational pension scheme which is—
- (a) not funded, and
 - (b) a public service pension scheme.
- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit.
- (3) If such a scheme as is mentioned in sub-paragraph (1) is closed to new members, the appropriate authority in relation to that scheme may by regulations specify another public service pension scheme as an alternative to it for the purposes of this paragraph.
- (4) Where the trustees or managers of a scheme in relation to which an alternative is specified under sub-paragraph (3) are subject to liability in respect of a pension credit, they may—
- (a) discharge their liability in respect of the credit by securing that appropriate rights are conferred on the person entitled to the credit by the trustees or managers of the alternative scheme, and
 - (b) for the purpose of so discharging their liability, require the trustees or managers of the alternative scheme to take such steps as may be required.

(5) In sub-paragraph (3), “the appropriate authority”, in relation to a public service pension scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the scheme.

Other unfunded occupational pension schemes

3.—(1) This paragraph applies to a pension credit which derives from an occupational pension scheme which is—

- (a) not funded, and
- (b) not a public service pension scheme.

(2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit.

(3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.

Other pension arrangements

4.—(1) This paragraph applies to a pension credit which derives from—

- (a) a retirement annuity contract,
- (b) an annuity or insurance policy purchased or transferred for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, or
- (c) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit.

(2) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may discharge his liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.

(3) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may discharge his liability in respect of the credit by entering into an annuity contract with the person entitled to the credit if the contract is not disqualified as a destination for the credit.

(4) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may, in such circumstances as the Secretary of State may prescribe by regulations, discharge his liability in respect of the credit by assuming an obligation to provide an annuity for the person entitled to the credit.

Sch. 5

(5) In sub-paragraph (1)(c), “pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b).

Appropriate rights

5. For the purposes of this Schedule, rights conferred on the person entitled to a pension credit are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the order, or provision, under which the credit arises takes effect, and
- b) their value, when calculated in accordance with regulations made by the Secretary of State, equals the amount of the credit.

Qualifying arrangements

6.—(1) The following are qualifying arrangements for the purposes of this Schedule—

- (a) an occupational pension scheme,
- (b) a personal pension scheme,
- (c) an appropriate annuity contract,
- (d) an appropriate policy of insurance, and
- (e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

(2) An annuity contract or policy of insurance is appropriate for the purposes of sub-paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—

- (a) is carrying on ordinary long-term insurance business in the United Kingdom or any other member State, and
- (b) satisfies such requirements as the Secretary of State may prescribe by regulations.

(3) In this paragraph, “ordinary long-term insurance business” has the same meaning as in the Insurance Companies Act 1982.

Disqualification as destination for pension credit

7.—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988, an arrangement is disqualified as a destination for the credit unless—

- (a) it is also approved for those purposes, or
- (b) it satisfies such requirements as the Secretary of State may prescribe by regulations.

(2) If the rights by reference to which the amount of a pension credit is determined are or include contracted-out rights or safeguarded rights, an arrangement is disqualified as a destination for the credit unless—

- (a) it is of a description prescribed by the Secretary of State by regulations, and
- (b) it satisfies such requirements as he may so prescribe.

(3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Secretary of State, equals the credit.

(4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Secretary of State may prescribe by regulations.

(5) The requirements which may be prescribed under sub-paragraph (1)(b) include, in particular, requirements of the Inland Revenue.

(6) In sub-paragraph (2)–

“contracted-out rights” means such rights under, or derived from–

- (a) an occupational pension scheme contracted-out by virtue of section 9(2) [...] of the Pension Schemes Act 1993, or
- [¹(ab) an occupational pension scheme constituting a money purchase contracted-out scheme for the purpose of that Act, or]
- (b) a personal pension scheme [¹constituting] an appropriate scheme for the purposes of that Act,

as the Secretary of State may prescribe by regulations;

“safeguarded rights” has the meaning given by section 68A of the Pension Schemes Act 1993.

Adjustments to amount of pension credit

8.—(1) If–

- (a) a pension credit derives from an occupational pension scheme,
- (b) the scheme is one to which [²Part 3 of the Pensions Act 2004 (scheme fundings)] applies,
- (c) the scheme is underfunded on the valuation day, and
- (d) such circumstances as the Secretary of State may prescribe by regulations apply,

paragraph 1(3) shall have effect in relation to the credit as if the reference to the amount of the credit were to such lesser amount as may be determined in accordance with regulations made by the Secretary of State.

(2) Whether a scheme is underfunded for the purposes of sub-paragraph (1)(c) shall be determined in accordance with regulations made by the Secretary of State.

(3) For the purposes of that provision, the valuation day is the day by reference to which the cash equivalent on which the amount of the pension credit depends falls to be calculated.

9. If–

- (a) a person’s shareable rights under a pension arrangement have become subject to a pension debit, and
- (b) the person responsible for the arrangement makes a payment which is referable to those rights without knowing of the pension debit,

this Schedule shall have effect as if the amount of the corresponding pension credit were such lesser amount as may be determined in accordance with regulations made by the Secretary of State.

10. The Secretary of State may by regulations make provision for paragraph 1(3), 3(3) or 4(2) to have effect, where payment is made after the end of the implementation period for the pension credit, as if the reference to the amount of the credit were to such larger amount as may be determined in accordance with the regulations.

¹ In para. 7(6) words omitted in (a); (ab) inserted; words substituted in (b) (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 4, para. 40.

² Words in para. 8(1)(b) substituted (4.12.05 for reg. making purposes, 30.12.05 for all other purposes) by the Pensions Act 2004 (c. 35), Sch.12, para. 77(2).

General

11. Liability in respect of a pension credit shall be treated as discharged if the effect of paragraph 8(1) or 9 is to reduce it to zero.

12. Liability in respect of a pension credit may not be discharged otherwise than in accordance with this Schedule.

13. Regulations under paragraph 5(b) or 7(3) may provide for calculation of the value of rights in accordance with guidance from time to time prepared by a person specified in the regulations.

[¹**13A.** The provisions of this Schedule are subject to—

- (a) section 73A(3) and (6) of the Pensions Act 1995 (prohibition on new members during winding up of scheme: exception for discharge of pension credit derived from the scheme), and
- (b) section 133(2) and (8) of the Pensions Act 2004 (prohibition on new members during an assessment period in relation to a scheme: exception for discharge of pension credit derived from the scheme).]

14. In this Schedule—

“funded”, in relation to an occupational pension scheme, means that the scheme meets its liabilities out of a fund accumulated for the purpose during the life of the scheme;

“public service pension scheme” has the same meaning as in the Pension Schemes Act 1993.

Schs. 6 - 10. *not reproduced in this volume, see Volume 2.*

SCHEDULE 11

CONTRIBUTIONS AND PENSIONS ADMINISTRATION

Note: only para 35 of Sch 11 is reproduced here

Transfer of certain functions under subordinate legislation: Great Britain

35. *There are hereby transferred to the Commissioners of Inland Revenue—*

- (a) *all functions of the Secretary of State under the Social Security (Contributions) Regulations 1979 which are not transferred to the Commissioners of Inland Revenue by virtue of section 1(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999, except his functions under regulation 44 of those regulations,*

¹ Para. 13A inserted (6.4.05) by para. 77(3) of Sch. 12 to the Pensions Act 2004 (c. 35).

- (b) *the functions of the Secretary of State under those provisions of the Occupational Pension Schemes (Contracting-out) Regulations 1984 ("the 1984 regulations") which remain in force by virtue of regulation 77(a) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 ("the 1996 regulations"), including his functions under the modifications of section 60(4) and (5) of the Pension Schemes Act 1993 made by regulation 23(10)(a)(iii) of the 1984 regulations, but excluding-*
- (i) his functions under paragraph (2) of regulation 20 of the 1984 regulations so far as relating to any extension of the period first referred to in that paragraph by more than six months, and*
 - (ii) his functions under regulations 23(4) and 23A(4) of the 1984 regulations,*
- (c) *the functions of the Secretary of State under regulation 2 of the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations 1987 (so far as remaining in force by virtue of regulation 77(b) of the 1996 regulations), and*
- (d) *the functions of the Secretary of State under the Personal Pension Schemes (Personal Pension Protected Rights Premiums) Regulations 1987 ("the 1987 regulations") (so far as remaining in force by virtue of regulation 4(2) of the Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997), except-*
- (i) his functions under paragraph (3) of regulation 5 of the 1987 regulations so far as relating to any extension of the period first referred to in that paragraph by more than six months, and*
 - (ii) his functions under regulation 6(4) of the 1987 regulations.*

Schs 12 - 13 *not reproduced in this volume, see Volume 2.*

