

Pensions Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Work and Pensions, will be published separately as HL Bill 50 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord McKenzie of Luton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Pensions Bill are compatible with the Convention rights.

Pensions Bill

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Make provision relating to pensions; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 1

EMPLOYERS’ DUTIES

Jobholders 5

1 Jobholders

- (1) For the purposes of this Part a jobholder is an employee or worker –
 - (a) who is working or ordinarily works in Great Britain under a contract,
 - (b) who is aged at least 16 and under 75, and
 - (c) to whom qualifying earnings (defined in section 12) are payable by the employer. 10
- (2) Where a jobholder has more than one employer, or a succession of employers, this Chapter applies separately in relation to each employment.
- (3) Accordingly –
 - (a) references to the employer are references to the employer concerned; 15
 - (b) references to membership of a pension scheme are references to membership in relation to the employment concerned.

Employers’ duties

2 Continuity of scheme membership

- (1) If a jobholder is an active member of a qualifying scheme, the employer must not take any action, or make any omission, by which the jobholder, without ceasing to be employed by the employer, ceases to be an active member of the scheme. 5
- (2) Subsection (1) is not contravened if the jobholder remains an active member of another qualifying scheme.
- (3) Subsection (1) is not contravened if the jobholder becomes an active member of another qualifying scheme within the prescribed period. 10
- (4) Subsection (1) is not contravened if the action or omission is at the jobholder’s request.
- (5) In this Part as it applies in the case of any jobholder, references to a qualifying scheme are references to a pension scheme which is a qualifying scheme in relation to that jobholder (see section 15). 15

3 Automatic enrolment

- (1) This section applies to a jobholder who—
 (a) is aged at least 22, and
 (b) has not reached pensionable age.
- (2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date. 20
- (3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic enrolment date.
- (4) Subsection (2) does not apply if, within the prescribed period before the automatic enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder. 25
- (5) The Secretary of State may by regulations provide that subsection (2) does not apply if there are prescribed arrangements under which the jobholder is entitled to become an active member, with effect from the automatic enrolment date, of a qualifying scheme which is a personal pension scheme of a prescribed description. 30
- (6) The automatic enrolment date, in relation to any person, is the first day on which this section applies to the person as a jobholder of the employer.
- (7) In this Part as it applies in the case of any jobholder, references to an automatic enrolment scheme are references to a pension scheme which is an automatic enrolment scheme in relation to that jobholder (see section 16). 35

4 Postponement of automatic enrolment

- (1) The Secretary of State may by regulations provide that, for the purposes of arrangements of a prescribed description that are made in accordance with section 3(2) or with regulations under section 3(5), the automatic enrolment 40

date is a date, determined in accordance with regulations under this section, which is later than the date specified in section 3(6).

- (2) Where a person becomes an active member of a scheme in accordance with regulations under this section, the employer must not take any action, or make any omission, by which the person ceases to be an active member of the scheme within the minimum period. 5
- (3) The minimum period is so much of a prescribed period as the person remains a jobholder of the employer.
- (4) Subsection (2) does not apply to any action or omission at the member's request. 10

5 Automatic re-enrolment

- (1) This section applies to a jobholder who –
 - (a) is aged at least 22, and
 - (b) has not reached pensionable age.
- (2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic re-enrolment date. 15
- (3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic re-enrolment date.
- (4) Subsection (2) does not apply if, within the prescribed period before the automatic re-enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder. 20
- (5) The Secretary of State may by regulations provide that subsection (2) does not apply if there are prescribed arrangements under which the jobholder is entitled to become an active member, with effect from the automatic re-enrolment date, of a qualifying scheme which is a personal pension scheme of a prescribed description. 25
- (6) Automatic re-enrolment dates are dates, after the automatic enrolment date, that are to be determined in accordance with regulations made by the Secretary of State. 30
- (7) Regulations under subsection (6) must secure in the case of each employer, or secure in the case of each jobholder of an employer, that there is not more than one automatic re-enrolment date in any period of three years.

6 Jobholder's right to opt in

- (1) This section applies to a jobholder who is not an active member of a qualifying scheme. 35
- (2) But it does not apply at a time when –
 - (a) arrangements are required to be made under section 3 or 5 in respect of the jobholder, or
 - (b) the jobholder's automatic enrolment date is postponed under section 4. 40
- (3) The jobholder may by notice require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.

- (4) The Secretary of State may by regulations make provision –
- (a) about the form and content of the notice;
 - (b) about the arrangements that the employer is required to make;
 - (c) for determining the date with effect from which the jobholder is to become an active member under the arrangements. 5
- (5) The Secretary of State may by regulations provide that an employer may comply with a notice by making prescribed arrangements under which the jobholder is entitled to become an active member of a qualifying scheme which is a personal pension scheme of a prescribed description, with effect from a date determined in accordance with the regulations. 10
- (6) Subsections (7) and (8) apply where a jobholder becomes an active member of an automatic enrolment scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given –
- (a) ceases to be an active member of that scheme, and 15
 - (b) gives the employer a further notice under this section.
- (7) The further notice does not have effect to require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.
- (8) But any arrangements the employer makes for the jobholder to become, within that period, an active member of such a scheme must be made in accordance with regulations under this section. 20
- 7 Jobholder’s right to opt out**
- (1) This section applies to a jobholder to whom arrangements under section 3(2), 5(2) or 6(3) apply (arrangements for the jobholder to become an active member of an automatic enrolment scheme). 25
- (2) If the jobholder gives notice in the prescribed period in accordance with this section, the jobholder is to be treated for all purposes as not having become a member of the scheme.
- (3) Any contributions paid by the jobholder must be refunded in accordance with prescribed requirements. 30
- (4) Any contributions paid by the employer, on behalf of the jobholder, must be refunded in accordance with prescribed requirements.
- (5) Regulations under subsection (3) or (4) may, in particular, make provision about –
- (a) the time within which contributions must be refunded; 35
 - (b) how the amount to be refunded is calculated;
 - (c) the procedure for refunding contributions.
- (6) The Secretary of State may by regulations make provision about the form and content of a notice under this section.
- (7) The regulations must provide for the notice – 40
- (a) to include information about the effect in relation to jobholders of giving notice under this section, and
 - (b) to be signed by the jobholder.

Duty in relation to workers without qualifying earnings

8 Workers without qualifying earnings

- (1) This section applies to a worker –
 - (a) to whom paragraphs (a) and (b) of section 1(1) apply (working in Great Britain and aged between 16 and 75), 5
 - (b) to whom paragraph (c) of section 1(1) does not apply (qualifying earnings), and
 - (c) who is not an active member of a pension scheme that satisfies the requirements of this section.
- (2) The worker may by notice require the employer to arrange for the worker to become an active member of a pension scheme that satisfies the requirements of this section. 10
- (3) The Secretary of State may by regulations make provision –
 - (a) about the form and content of the notice;
 - (b) about the arrangements that the employer is required to make; 15
 - (c) for determining the date with effect from which the worker is (subject to compliance with any requirements of the scheme rules) to become an active member under the arrangements.
- (4) Subsections (5) and (6) apply where a worker becomes an active member of a pension scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given –
 - (a) ceases to be an active member of that scheme because of any action or omission by the worker, and
 - (b) gives the employer a further notice under this section. 20
- (5) The further notice does not have effect to require the employer to arrange for the worker to become an active member of a pension scheme. 25
- (6) But any arrangements the employer makes for the worker to become, within that period, an active member of a pension scheme that satisfies the requirements of this section must be made in accordance with regulations under this section. 30
- (7) A pension scheme satisfies the requirements of this section if –
 - (a) it is an occupational pension scheme or a personal pension scheme,
 - (b) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
 - (c) in the case of a personal pension scheme, there are, in relation to the worker concerned, direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the worker and the employer. 35

Supplementary provision about the duties

9 Information to be given to jobholders

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- (1) The Secretary of State must make provision by regulations –
 - (a) for all jobholders to be given information about the effect of sections 2 to 7 in relation to them;

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- (b) for all workers to whom section 8 applies to be given information about the effect of that section in relation to them;
 - (c) for a prescribed person to be required to provide the information.
- (2) Regulations under this section must state—
- (a) what information must be given; 5
 - (b) in what circumstances it must be given;
 - (c) how and when it must be given.
- 10 Information to be given to the Pensions Regulator**
- (1) The Secretary of State may make regulations requiring employers to provide the Pensions Regulator with information about action they have taken or intend to take for the purposes of any provision of, or of regulations under, sections 2 to 9. 10
- (2) The regulations may in particular—
- (a) require an employer to provide information about pension schemes to which any action relates; 15
 - (b) require an employer to identify which of any prescribed descriptions a scheme falls within;
 - (c) require an employer to provide information that appears to the Secretary of State to be required for the performance by the Pensions Regulator of its functions under Chapter 2 of this Part; 20
 - (d) make provision about how and in what form any information is to be provided.
- 11 Introduction of employers’ duties**
- The Secretary of State may by regulations provide that sections 2 to 8 do not apply in the case of an employer of any description until such date after the commencement of those sections as is prescribed in relation to employers of that description. 25
- Qualifying earnings*
- 12 Qualifying earnings**
- (1) A person’s qualifying earnings at any time in a pay reference period are the part (if any) of the gross earnings payable to that person in that period that is— 30
- (a) more than £5,035, and
 - (b) not more than £33,540.
- (2) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amounts in paragraphs (a) and (b) were proportionately less or more. 35
- (3) In this section, “earnings”, in relation to a person, means sums of any of the following descriptions that are payable to the person in connection with the person’s employment—
- (a) salary, wages, commission, bonuses and overtime; 40
 - (b) statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992 (c. 4);

- (c) statutory maternity pay under Part 12 of that Act;
- (d) ordinary statutory paternity pay or additional statutory paternity pay under Part 12ZA of that Act;
- (e) statutory adoption pay under Part 12ZB of that Act;
- (f) sums prescribed for the purposes of this section. 5

13 Review of qualifying earnings band

- (1) The Secretary of State must in each tax year determine whether the amounts in section 12(1)(a) and (b) have maintained their value.
- (2) Changes in their value are to be assessed in any way that the Secretary of State considers appropriate. 10
- (3) The Secretary of State may in particular make a determination under subsection (1) by reference to a review under section 148 of the Social Security Administration Act 1992 (review of general level of earnings for revaluation of earnings factors).
- (4) If the Secretary of State determines under this section that the amounts in section 12(1)(a) and (b) have not maintained their value, the Secretary of State may make an order substituting in those provisions the amounts that the Secretary of State considers appropriate for maintaining their value. 15

14 Pay reference period

- (1) In relation to any person a pay reference period is – 20
 - (a) the period prescribed;
 - (b) if no period is prescribed, twelve months.
- (2) The Secretary of State may by regulations –
 - (a) make provision for determining a person’s earnings in any pay reference period; 25
 - (b) make provision for determining the first date of each pay reference period in relation to a person.

Qualifying schemes and automatic enrolment schemes

15 Qualifying schemes

- (1) A pension scheme is a qualifying scheme in relation to a jobholder (J) if – 30
 - (a) the scheme is an occupational pension scheme or a personal pension scheme,
 - (b) the scheme is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
 - (c) while J is an active member, the scheme satisfies the quality requirement in relation to J. 35
- (2) The Secretary of State may by regulations provide that a scheme is not a qualifying scheme in relation to J if –
 - (a) while J is an active member, the payments that must be made to the scheme by, or on behalf or in respect of, J for purposes other than the provision of benefits exceed a prescribed amount, 40

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- (b) while J is an active member, the contributions that must be paid to the scheme by, or on behalf or in respect of, J exceed a prescribed amount, or
- (c) the scheme provides for average salary benefits to be provided to or in respect of J and contains prescribed features. 5
- 16 Automatic enrolment schemes**
- (1) A pension scheme is an automatic enrolment scheme in relation to a jobholder (J) if—
- (a) the scheme is an occupational pension scheme which is a qualifying scheme in relation to J, and 10
- (b) the scheme satisfies the conditions in subsection (2).
- (2) The conditions are that—
- (a) no provision of the scheme prevents the employer from making arrangements prescribed by regulations under section 3(2), 5(2) or 6(4) for J to become an active member of the scheme; 15
- (b) no provision of the scheme requires J to express a choice in relation to any matter, or to provide any information, in order to remain an active member.
- 17 Occupational pension schemes**
- For the purposes of this Part, each of these is an occupational pension scheme— 20
- (a) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 (c. 48) that has its main administration in the United Kingdom;
- (b) an institution for occupational retirement provision within the meaning of Article 6(a) of the IORP Directive, that has its main administration in an EEA State other than the United Kingdom; 25
- (c) a pension scheme that is prescribed or is of a prescribed description and that has its main administration elsewhere than in an EEA State.
- 18 Personal pension schemes** 30
- For the purposes of this Part, a personal pension scheme is a pension scheme that—
- (a) is not an occupational pension scheme, and
- (b) is established by a person within section 154(1)(b) of the Finance Act 2004 (c. 12). 35

Quality requirements

- 19 Quality requirement: UK money purchase schemes**
- (1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme rules— 40
- (a) the jobholder’s employer must pay contributions in respect of the jobholder;

- (b) the employer's contribution must be at least 3% of the amount of the jobholder's qualifying earnings in the pay reference period;
 - (c) the total amount of contributions paid by the jobholder and the employer must be at least 8% of the amount of the jobholder's qualifying earnings in the pay reference period. 5
 - (2) The Secretary of State may by regulations provide that, where a certificate has been issued under section 7(1) of the Pension Schemes Act 1993 (c. 48) stating that the employment of the jobholder is contracted-out employment by reference to the scheme, paragraphs (b) and (c) of subsection (1) have effect with prescribed modifications. 10
 - (3) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.
- 20 Quality requirement: UK defined benefits schemes 15**
- (1) Subject to subsection (3), a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment.
 - (2) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder. 20
 - (3) The Secretary of State may by order provide that a scheme does not satisfy the quality requirement in relation to a jobholder who is in contracted-out employment unless it satisfies the test scheme standard in relation to that jobholder, with the substitution of a higher fraction, not exceeding 1/80th, for the fraction of 1/120th in section 22(3)(a). 25
 - (4) In relation to any scheme, a jobholder is in contracted-out employment for the purposes of this section and section 21 if a certificate has been issued in respect of the jobholder under section 7(1) of the Pension Schemes Act 1993 stating that the employment of the jobholder is contracted-out employment by reference to the scheme. 30
- 21 Test scheme standard**
- (1) A scheme satisfies the test scheme standard in relation to a jobholder (J) if the pensions to be provided for the relevant members of the scheme are broadly equivalent to, or better than, the pensions which would be provided for such persons under a test scheme. 35
 - (2) Subject to subsection (3), the relevant members are –
 - (a) if J is not in contracted-out employment, all active members who are not in contracted-out employment and are jobholders of the same employer as J; 40
 - (b) if J is in contracted-out employment, all active members who are in contracted-out employment and are jobholders of the same employer as J.
 - (3) In applying this section the pensions to be provided for relevant members must be considered as a whole. 45

- (4) The Secretary of State may by regulations make provision for the manner of, and criteria for, determining whether the pensions to be provided for the relevant members under a scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.
- (5) Regulations under subsection (4) may provide for the determination to be made in accordance with guidance issued from time to time by the Secretary of State. 5
- (6) The Secretary of State may by regulations provide that a scheme only satisfies the test scheme standard if the scheme actuary certifies that it does.
- (7) Except in prescribed circumstances, the scheme actuary is the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme. 10

22 Test scheme

- (1) A test scheme is an occupational pension scheme which satisfies – 15
- (a) the requirements of subsections (2) and (3), and
- (b) any prescribed requirements.
- (2) The scheme must provide for a member to be entitled to a pension commencing at the age of 65 and continuing for life.
- (3) The annual rate of the pension at that age must be – 20
- (a) 1/120th of average qualifying earnings in the last three tax years preceding the end of pensionable service, multiplied by
- (b) the number of years of pensionable service, up to a maximum of 40.

23 Quality requirement: UK hybrid schemes

- (1) An occupational pension scheme which is a hybrid scheme and has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the requirements mentioned in whichever of these is the appropriate paragraph – 25
- (a) the requirements for a money purchase scheme under section 19;
- (b) the requirements for a defined benefits scheme under section 20. 30
- (2) Which paragraph of subsection (1) is appropriate for any hybrid scheme is to be determined by rules made by the Secretary of State.
- (3) The rules may provide for different paragraphs to be appropriate for different provisions of a scheme.
- (4) The rules may provide for the paragraphs to be appropriate as alternatives, for any scheme or any provisions of a scheme. 35

24 Quality requirement: non-UK occupational pension schemes

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of an occupational pension scheme within section 17(b) or (c). 40

25 Quality requirement: personal pension schemes

- (1) A personal pension scheme satisfies the quality requirement in relation to a jobholder if the following conditions are satisfied.
- (2) The first condition is that all of the benefits that may be provided to the jobholder under the scheme are money purchase benefits. 5
- (3) The second condition is that, in relation to the jobholder, there is an agreement between the scheme and the employer under which –
 - (a) the employer must pay contributions in respect of the jobholder;
 - (b) the employer’s contribution must be at least 3% of the amount of the jobholder’s qualifying earnings in the pay reference period. 10
- (4) In subsection (5), “shortfall” means the difference (if any) between –
 - (a) the employer’s contribution in respect of the jobholder, and
 - (b) 8% of the amount of the jobholder’s qualifying earnings in the pay reference period.
- (5) The third condition is that if there is a shortfall there is an agreement between the scheme and the jobholder under which the jobholder must pay contributions which at least equal the shortfall. 15
- (6) The fourth condition is that, in relation to the jobholder, there are direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the jobholder and the employer. 20
- (7) The Secretary of State may by regulations provide that, where the scheme is an appropriate scheme within the meaning of section 7(5) of the Pension Schemes Act 1993, subsections (3)(b) and (4)(b) have effect with prescribed modifications.
- (8) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount. 25

Transitional

26 Transitional periods for money purchase and personal pension schemes 30

- (1) During the first transitional period for money purchase and personal pension schemes –
 - (a) sections 19(1)(b) and 25(3)(b) have effect as if for “3%” there were substituted “1%”;
 - (b) sections 19(1)(c) and 25(4)(b) have effect as if for “8%” there were substituted “2%”. 35
- (2) The first transitional period is a prescribed period of at least one year, beginning with the coming into force of section 19.
- (3) During the second transitional period for money purchase and personal pension schemes – 40
 - (a) sections 19(1)(b) and 25(3)(b) have effect as if for “3%” there were substituted “2%”;

(b) sections 19(1)(c) and 25(4)(b) have effect as if for “8%” there were substituted “5%”.

(4) The second transitional period is a prescribed period of at least one year, beginning with the end of the first transitional period.

27 Transitional period for defined benefits and hybrid schemes 5

(1) Subsection (3) applies if, in relation to a person who on the employer’s first enrolment date is a jobholder to whom section 3 applies, the conditions in subsection (2) are satisfied, and continue to be satisfied during the transitional period for defined benefits and hybrid schemes.

(2) The conditions are that— 10

(a) the jobholder has been employed by the employer for a continuous period beginning before the employer’s first enrolment date,

(b) at a time in that period before the employer’s first enrolment date, the jobholder became entitled to become an active member of a defined benefits scheme or a hybrid scheme, 15

(c) the jobholder is, and has always since that time been, entitled to become an active member of a defined benefits scheme or a hybrid scheme, and

(d) the scheme to which that entitlement relates is a qualifying scheme, and any scheme to which it has related on or after the employer’s first enrolment date has been a qualifying scheme. 20

(3) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

“(2) The employer must make prescribed arrangements by which the jobholder becomes an active member, with effect from the end of the transitional period for defined benefits and hybrid schemes, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme.” 25

(4) If at any time in the transitional period for defined benefits and hybrid schemes the condition in subsection (2)(c) or (d) of this section ceases to be satisfied, subsection (5) applies instead of subsection (3) (and the day after the last day on which that condition is satisfied is referred to as “the closure date”). 30

(5) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

“(2) The employer must make prescribed arrangements by which the jobholder either— 35

(a) becomes an active member, with effect from the closure date, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, or

(b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a money purchase scheme.” 40

(6) If the jobholder becomes a member of a scheme under arrangements made under subsection (2)(b) of that section (as substituted by subsection (5))—

(a) the employer’s contributions are payable with effect from the automatic enrolment date; 45

- (b) any requirement of the scheme rules (in accordance with section 19(1)) for contributions to be payable by the jobholder does not apply in respect of the period of the jobholder’s membership before the closure date;
 - (c) regulations made for the purposes of section 3(2)(b) must secure that the jobholder may pay, within a period prescribed by the regulations, any contributions which would have been payable by the jobholder but for paragraph (b) of this subsection. 5
- (7) Where subsection (3) or (5) of this section applies, section 3(3) and (4) apply as if references to the automatic enrolment date were references to the day on which arrangements would by virtue of this section fall to be made in respect of the jobholder. 10
- (8) The transitional period for defined benefits and hybrid schemes is a prescribed period beginning with the day on which section 3 comes into force.
- (9) In this section the “employer’s first enrolment date” means the first day on which section 3 applies in the case of the employer (where that day falls within the transitional period for defined benefits and hybrid schemes). 15

Miscellaneous

28 Power of trustees to modify by resolution

- (1) The trustees of an occupational pension scheme may by resolution modify the scheme with a view to enabling the scheme to comply with the conditions in section 16(2). 20
- (2) No modification may be made by virtue of subsection (1) without the consent of the employer in relation to the scheme.
- (3) In the application of subsection (2) to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the rules of the scheme, to act as the employers’ representative for the purposes of this section or, if no such nomination is made, to all of the employers. 25
- (4) Regulations may provide that this section does not apply to occupational pension schemes within a prescribed class or description. 30

29 Deduction of contributions

An employer who arranges for a person to become a member of an occupational pension scheme in accordance with section 3(2), 5(2), 6(3) or 8(2) may deduct the person’s contributions to the scheme from the person’s remuneration and pay them to the trustees or managers of the scheme. 35

CHAPTER 2

COMPLIANCE

Effect of failure to comply

30 Effect of failure to comply

- | | |
|---|----|
| (1) Contravention of any of the employer duty provisions does not give rise to a right of action for breach of statutory duty. | 5 |
| | |
| (2) But nothing in the employer duty provisions or this Chapter affects any right of action arising apart from those provisions. | |
| (3) In this Chapter, references to the employer duty provisions are references to any provision of sections 2 to 10 or of regulations under those sections. | 10 |
| (4) In relation to section 8 this Chapter applies as if references to a jobholder included references to a worker to whom that section applies. | |

Compliance notices and unpaid contributions notices

31 Compliance notices

- | | |
|---|----|
| (1) The Pensions Regulator (referred to in this Chapter as the “Regulator”) may issue a compliance notice to an employer if the Regulator is of the opinion that the employer has contravened one or more of the employer duty provisions. | 15 |
| (2) A compliance notice is a notice directing the employer to take, or refrain from taking, the steps specified in the notice in order to remedy the contravention. | |
| (3) A compliance notice may, in particular – | 20 |
| (a) state the period within which any step must be taken or must cease to be taken; | |
| (b) require the employer to provide within a specified period specified information relating to the contravention; | |
| (c) require the employer to inform the Regulator, within a specified period, how the employer has complied or is complying with the notice; | 25 |
| (d) state that, if the employer fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 35. | |
| (4) The steps specified in the notice may, in particular, include such steps as the Regulator thinks appropriate for placing the jobholder in the same position (as nearly as possible) as if the contravention had not occurred. | 30 |
| (5) If the compliance notice is issued in respect of a failure to comply with an enrolment duty and the specified steps relate to membership of a defined benefits scheme, the notice may, in particular, require the employer to ensure that the jobholder is entitled to the same benefits under the scheme as if the employer had complied with that duty. | 35 |
| (6) The Secretary of State may by regulations make provision about the application of sections 2 to 9 in relation to an employer to whom a compliance notice is issued in respect of a failure to comply with an enrolment duty. | |

32 Third party compliance notices

- (1) The Regulator may issue a third party compliance notice if it is of the opinion that –
 - (a) an employer has contravened one or more of the employer duty provisions, 5
 - (b) the contravention is or was, wholly or partly, a result of a failure of another person (the “third party”) to do any thing, and
 - (c) that failure is not itself a contravention of any of the employer duty provisions.
- (2) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice in order to remedy the contravention or prevent a recurrence of the failure. 10
- (3) A third party notice may, in particular –
 - (a) state the period within which any step must be taken;
 - (b) require the third party to inform the Regulator, within a specified period, how the third party has complied or is complying with the notice. 15
- (4) A third party notice may give the third party a choice between different ways of remedying or preventing the recurrence of the third party’s failure.

33 Unpaid contributions notices

- (1) The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date.
- (2) An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of unpaid relevant contributions. 25
- (3) Relevant contributions are contributions payable to a pension scheme by or on behalf of an employer –
 - (a) on the employer’s own account (but in respect of the jobholder), or
 - (b) on behalf of the jobholder out of deductions from the jobholder’s earnings. 30
- (4) “Due date” has the meaning prescribed.
- (5) An unpaid contributions notice may, in particular –
 - (a) specify the scheme to which the contributions are due;
 - (b) specify the jobholders, or category of jobholders, in respect of whom the contributions are due; 35
 - (c) state the period in respect of which the contributions are due;
 - (d) state the due date in respect of the contributions;
 - (e) require the employer to take such other steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate; 40
 - (f) state that if the employer fails to comply with the notice, the Regulator may issue a fixed penalty notice under section 35.

34 Calculation and payment of contributions

- (1) This section applies to—
- (a) a compliance notice issued to an employer in respect of a failure to comply with an enrolment duty;
 - (b) an unpaid contributions notice. 5
- (2) The notice may, in particular, include—
- (a) a requirement to calculate the amount of relevant contributions that have not been paid to the scheme;
 - (b) if the contributions are being paid within the prescribed period after the due date, a requirement to pay an amount equal to the amount of unpaid relevant contributions within section 33(3)(a); 10
 - (c) if the contributions are not being paid within the prescribed period after the due date, a requirement to pay (on the employer’s own account) an amount equal to the amount of unpaid relevant contributions; 15
 - (d) if paragraph (b) applies, a requirement to ensure—
 - (i) that the jobholder is not required to pay an amount equal to the balance of the unpaid relevant contributions during the prescribed period, and
 - (ii) that, if the jobholder chooses to pay that amount, it may be paid in instalments. 20
- (3) The Secretary of State may by regulations make provision about the way in which the Regulator may (without prejudice to subsection (2)(a)) estimate the amount of contributions that an employer has failed to pay in respect of a jobholder. 25
- (4) Regulations under subsection (3) may include, in particular, provision about the sources of information that the Regulator may use in estimating that amount, other than information provided by the employer.

Penalty notices

- ### **35 Fixed penalty notices** 30
- (1) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has failed to comply with—
- (a) a compliance notice under section 31,
 - (b) a third party compliance notice under section 32,
 - (c) an unpaid contributions notice under section 33, or 35
 - (d) a notice issued under section 72 of the Pensions Act 2004 (c. 35) (provision of information).
- (2) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has contravened—
- (a) any provision of regulations under section 3(2) or 5(2) (prescribed arrangements for automatic enrolment or re-enrolment), 40
 - (b) any provision of regulations under section 6(4) (prescribed arrangements: jobholder’s right to opt in),
 - (c) section 7(3) and (4) (refund of contributions if jobholder opts out of scheme membership), and any provision of regulations under those subsections, 45

- (d) section 9 (requirement to give information to jobholders), and any provision of regulations under that section, or
 - (e) any provision of regulations under section 43 (requirement to keep records).
 - (3) A fixed penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice. 5
 - (4) The penalty –
 - (a) is to be determined in accordance with regulations, and
 - (b) must not exceed £50,000.
 - (5) A fixed penalty notice must – 10
 - (a) state the amount of the penalty;
 - (b) state the date, which must be at least 4 weeks after the date on which the notice is issued, by which the penalty must be paid;
 - (c) state the period to which the penalty relates;
 - (d) if the notice is issued under subsection (1), specify the failure to which the notice relates; 15
 - (e) if the notice is issued under subsection (2), specify the provision or provisions that have been contravened;
 - (f) if the notice is issued under subsection (1), state that, if the failure to comply continues, the Regulator may issue an escalating penalty notice under section 36; 20
 - (g) notify the employer of the review process under section 38 and the right of appeal under section 39.
- 36 Escalating penalty notices**
- (1) The Regulator may issue an escalating penalty notice to a person if it is of the opinion that the person has failed to comply with – 25
 - (a) a compliance notice under section 31,
 - (b) a third party compliance notice under section 32,
 - (c) an unpaid contributions notice under section 33, or
 - (d) a notice under section 72 of the Pensions Act 2004 (c. 35) (provision of information). 30
 - (2) But the Regulator may not issue an escalating penalty notice if –
 - (a) it relates to failure to comply with a notice within subsection (1)(a), (b) or (c), the person to whom that notice was issued has applied for a review of it under section 38, and any review has not been completed; 35
 - (b) it relates to failure to comply with any notice within subsection (1), the person has exercised the right of appeal under section 39 against a fixed penalty notice issued in relation to that notice, and the appeal has not been determined.
 - (3) An escalating penalty notice is a notice requiring a person to pay an escalating penalty if the person fails to comply with a notice referred to in subsection (1) before a specified date. 40
 - (4) An escalating penalty is a penalty which is calculated by reference to a prescribed daily rate.
 - (5) The prescribed daily rate – 45

-
- (a) is to be determined in accordance with regulations, and
 - (b) must not exceed £10,000.
- (6) An escalating penalty notice must –
- (a) specify the failure to which the notice relates;
 - (b) state that, if the person fails to comply with the notice referred to in subsection (1) before a specified date, the person will be liable to pay an escalating penalty; 5
 - (c) state the daily rate of the escalating penalty and the way in which the penalty is calculated;
 - (d) state the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under section 35(5)(b); 10
 - (e) state that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice referred to in subsection (1) or such earlier date as the Regulator may determine; 15
 - (f) notify the person of the review process under section 38 and the right of appeal under section 39.
- 37 Penalty notices: recovery**
- (1) Any penalty payable under section 35 or section 36 is recoverable by the Regulator. 20
 - (2) In England and Wales, any such penalty is, if a county court so orders, recoverable under section 85 of the County Courts Act 1984 (c. 28) or otherwise as if it were payable under an order of that court.
 - (3) In Scotland, a fixed penalty notice or escalating penalty notice is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland. 25
 - (4) The Regulator must pay into the Consolidated Fund any penalty recovered under this section.
- Reviews and references* 30
- 38 Review of notices**
- (1) The Regulator may review a notice to which this section applies –
 - (a) on the written application of the person to whom the notice was issued, or
 - (b) if the Regulator otherwise considers it appropriate. 35
 - (2) This section applies to –
 - (a) a compliance notice issued under section 31;
 - (b) a third party compliance notice issued under section 32;
 - (c) an unpaid contributions notice issued under section 33;
 - (d) a fixed penalty notice issued under section 35; 40
 - (e) an escalating penalty notice issued under section 36.
 - (3) Regulations may prescribe the period within which –
 - (a) an application to review a notice may be made under subsection (1)(a);

- (b) a notice may be reviewed under subsection (1)(b).
- (4) The Regulator may suspend the effect of a notice until any review of that notice is completed.
- (5) In carrying out a review, the Regulator must consider any representations made by the person to whom the notice was issued. 5
- (6) The Regulator’s powers on a review include power to –
 - (a) confirm, vary or revoke the notice;
 - (b) substitute a different notice.

39 References to the Pensions Regulator Tribunal

- (1) A person to whom a notice is issued under section 35 or section 36 may make a reference to the Pensions Regulator Tribunal in respect of – 10
 - (a) the issue of the notice;
 - (b) the amount of the penalty payable under the notice.
- (2) The Secretary of State may by regulations make provision – 15
 - (a) as to the manner in which, and the time within which, a reference under subsection (1) may be made;
 - (b) as to the procedure which is to be followed if such a reference is made;
 - (c) as to the powers of the Pensions Regulator Tribunal in relation to such a reference.
- (3) In section 102(2) of the Pensions Act 2004 (c. 35) (functions of the Pensions Regulator Tribunal) – 20
 - (a) the words from “by this Act” to the end become paragraph (a);
 - (b) at the end insert –
 - “(b) by section 39 of the Pensions Act 2008 or any provision in force in Northern Ireland corresponding to that section.” 25

Offences

40 Offences of failing to comply

- (1) An offence is committed by an employer who wilfully fails to comply with – 30
 - (a) the duty under section 3(2) (automatic enrolment),
 - (b) the duty under section 5(2) (automatic re-enrolment), or
 - (c) the duty under section 6(3) (jobholder’s right to opt in).
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both; 35
 - (b) on summary conviction to a fine not exceeding level 5 on the standard scale.

41 Offences of providing false or misleading information

In section 80(1)(a) of the Pensions Act 2004 (offences of providing false or

misleading information) at the end of sub-paragraph (iv) insert “or
“(v) regulations under section 10 of the Pensions Act 2008,”.

42 Monitoring of employers’ payments to personal pension schemes

In section 111A of the Pension Schemes Act 1993 (c. 48), at the end insert –

“(18) In this section, “employee” includes a jobholder within the meaning of section 1 of the Pensions Act 2008 and “employer” is to be read accordingly.” 5

Records and information

43 Requirement to keep records

- (1) For the purposes of Chapter 1 of this Part, or this Chapter, the Secretary of State may by regulations make provision requiring any person – 10
- (a) to keep, in such form and manner as may be prescribed, such records as may be prescribed;
 - (b) to preserve those records for such period, not exceeding 6 years, as may be prescribed; 15
 - (c) to provide those records, on request, to the Regulator.
- (2) Regulations under subsection (1) may provide that section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a person who fails to comply with those requirements.

44 Powers to require information and to enter premises 20

- (1) The Pensions Act 2004 (c. 35) is amended as follows.
- (2) In section 72, after subsection (1) insert –
- “(1A) If the Regulator requires information which is relevant to the exercise of its functions under Chapter 2 of Part 1 of the Pensions Act 2008, the Regulator may, by notice in writing, require a person to whom subsection (2) applies – 25
- (a) to furnish the Regulator with an explanation of any document or information required under subsection (1);
 - (b) to attend before the Regulator at such time and place as may be specified in the notice under that subsection to furnish any such explanation. 30
- (1B) The Regulator may not require a person to answer any question or furnish any information which might incriminate the person or, if that person is married or a civil partner, the person’s spouse or civil partner.” 35
- (3) In section 74, before subsection (1) insert –
- “(A1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under Chapter 1 of Part 1 of the Pensions Act 2008, at any reasonable time enter premises liable to inspection. 40

- (B1) Premises are liable to inspection for the purposes of subsection (A1) if the inspector has reasonable grounds to believe that –
- (a) employees of the employer are employed there,
 - (b) documents relevant to any of the following are being kept there –
 - (i) the administration of the employer’s business,
 - (ii) the duties of the employer under Chapter 1 of Part 1 of the Pensions Act 2008,
 - (iii) the administration of a qualifying scheme, or
 - (c) the administration of the employer’s business, or work connected with that administration, is being carried out there.
- (C1) In subsections (A1) and (B1) –
- “employer” and “employee” have the meaning given by section 77 of the Pensions Act 2008;
 - “qualifying scheme” has the meaning given by section 15 of that Act.”
- (4) In section 75(1), after “subsection” (in the third place where it occurs) insert “(A1),”.
- (5) In section 76(9), after “subsection” (in the second place where it occurs) insert “(A1),”.

45 Disclosure of tax information etc

- (1) In the Pensions Act 2004 (c. 35) for section 88 (tax information) substitute –
- “88 Tax information etc**
- (1) This section applies to information held by the Revenue and Customs if it is held by them in connection with a function of the Revenue and Customs that relates to any of these matters –
- (a) tax or duty;
 - (b) national insurance contributions;
 - (c) the national minimum wage.
- (2) An officer of Revenue and Customs may disclose to the Regulator information to which this section applies, if the disclosure is made for the purpose of enabling or assisting the Regulator to discharge its functions.
- (3) Where information to which this section applies is disclosed to the Regulator by virtue of subsection (2) above or section 19 of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to subsections (4) and (5), be treated for the purposes of section 82 as restricted information.
- (4) Information to which this section applies which is disclosed to the Regulator as mentioned in subsection (3) may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except –
- (a) to, or in accordance with authority given by, the Commissioners for Her Majesty’s Revenue and Customs,

-
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,
- (c) with a view to the institution of any other proceedings by the Regulator, or for the purposes of any such proceedings instituted by the Regulator, 5
- (d) in accordance with section 84, otherwise than for the purposes of any proceedings, or
- (e) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it. 10
- (5) Accordingly sections 82(3), 83, 85 to 87 and 235, and paragraph 4 of Schedule 10, do not apply to such information, and section 84 applies subject to subsection (4)(d).
- (6) In subsection (4)(c) and (d), “proceedings” includes the issue of notices or any other enforcement action taken by the Regulator under Chapter 2 of Part 1 of the Pensions Act 2008 or any other enactment. 15
- (7) In this section “the Revenue and Customs” and a “function of the Revenue and Customs” have the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).”
- (2) In section 82 of that Act (restricted information) in subsection (3) for “88(4)” substitute “88(4)(d)”. 20
- 46 Information for private pensions policy and retirement planning**
- (1) In Schedule 10 to the Pensions Act 2004 (c. 35) (use and supply of information for purposes relating to private pensions policy and retirement planning) after paragraph 3 insert – 25
- “Supply of information held by the Regulator*
- 4 (1) This paragraph applies to information which is held –
- (a) by the Pensions Regulator;
- (b) by a person providing services to the Pensions Regulator, in connection with the provision of those services. 30
- (2) Information to which this paragraph applies may be supplied –
- (a) to the Secretary of State or the Northern Ireland Department, or
- (b) to a person providing services to the Secretary of State or the Northern Ireland Department, 35
- for use for the purposes of functions relating to private pensions policy or retirement planning.
- (3) In this paragraph –
- “private pensions policy” means policy relating to schemes which are occupational pension schemes or personal pension schemes within the meaning of Part 1 of the Pensions Act 2008; 40
- “retirement” and “the Northern Ireland Department” have the same meaning as in paragraph 2.”
- (2) Section 323 of the Pensions Act 2004 (extent) is amended as follows. 45

- (3) In subsection (2)(c) (provisions extending to Northern Ireland) –
 - (a) for “paragraph 2” substitute “paragraphs 2 and 4”;
 - (b) for “that paragraph” substitute “those paragraphs”.
- (4) In subsection (4), for “paragraph 2” substitute “paragraphs 2 and 4”.
- (5) Section 3 of the Social Security Act 1998 (c. 14) (use of information) is amended 5
as follows.
- (6) In subsection (5), in the definition of “private pensions policy” –
 - (a) the words from “occupational” to the end become paragraph (a), and
 - (b) after that paragraph insert “or
 - (b) occupational pension schemes or private 10
pension schemes within the meaning of Part 1 of
the Pensions Act 2008, if they do not fall within
paragraph (a);”.

47 Penalty for disclosure

- (1) In section 82(5)(a) of the Pensions Act 2004 (penalty for disclosure of restricted 15
information, on summary conviction) at the end insert “, or imprisonment for
a term not exceeding 12 months, or both”.
- (2) After subsection (5) insert –
 - “(6) In relation to an offence under subsection (5) committed before the 20
commencement of section 282 of the Criminal Justice Act 2003 (short
sentences) the reference in subsection (5)(a) to 12 months has effect as if
it were a reference to six months.
 - (7) Subsection (6) does not extend to Scotland.”

Objectives of the Regulator

48 Objectives of the Regulator 25

In section 5(1) of the Pensions Act 2004 (c. 35), before “and” at the end of
paragraph (c) insert –

- “(ca) to maximise compliance with the duties under Chapter 1 of Part
1 of the Pensions Act 2008,”.

CHAPTER 3 30

EMPLOYMENT AND PRE-EMPLOYMENT PROTECTION

Prohibited recruitment conduct

49 Prohibited recruitment conduct

- (1) An employer contravenes this section if any statement made or question asked 35
by or on behalf of the employer for the purposes of recruitment indicates
(expressly or impliedly) that an application for employment with the employer
may be determined by reference to whether or not an applicant might opt out
of automatic enrolment.

- (2) The reference in subsection (1) to a statement made or a question asked for the purposes of recruitment is a reference to one made or asked in the course of any of the following –
- (a) inviting applications for employment;
 - (b) requesting information from an applicant, referee or other person in connection with an application for employment; 5
 - (c) providing information about employment;
 - (d) proposing terms or conditions of employment.
- (3) The reference in subsection (1) to an applicant opting out of automatic enrolment is a reference to the applicant, if becoming at any time in the course of the employment a jobholder to whom section 3 or 5 applies – 10
- (a) giving notice in accordance with section 7 in relation to arrangements made by the employer under the relevant section, or
 - (b) where the employer makes arrangements under regulations under section 3(5) or 5(5), declining to become an active member of the scheme to which the arrangements relate. 15
- (4) In this section and sections 50 and 51, “employer” means the prospective employer in relation to any employment.

50 Compliance notices

- (1) The Pensions Regulator (referred to in this Chapter as the “Regulator”) may issue a compliance notice to an employer if the Regulator is of the opinion that the employer has contravened section 49. 20
- (2) A compliance notice is a notice directing the employer to take, or refrain from taking, the steps specified in the notice in order to –
- (a) remedy the contravention, or
 - (b) prevent the contravention being repeated. 25
- (3) A compliance notice may, in particular –
- (a) state the period within which any step must be taken or must cease to be taken;
 - (b) require the employer to provide within a specified period specified information relating to the contravention; 30
 - (c) require the employer to inform the Regulator, within a specified period, how the employer has complied or is complying with the notice;
 - (d) state that, if the employer fails to comply with the requirements of the notice, the Regulator may issue a penalty notice under section 51. 35
- (4) A compliance notice must specify the contravention to which the notice relates.

51 Penalty notices

- (1) The Regulator may issue a penalty notice to an employer if the Regulator is of the opinion that the employer –
- (a) has contravened section 49, or
 - (b) has failed to comply with a compliance notice under section 50. 40
- (2) A penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.
- (3) The penalty –

- (a) is to be determined in accordance with regulations, and
 - (b) must not exceed £50,000.
- (4) A penalty notice must –
 - (a) state the amount of the penalty;
 - (b) state the date, which must be at least 4 weeks after the date on which the notice is issued, by which the penalty must be paid; 5
 - (c) specify the contravention or failure to which the notice relates;
 - (d) notify the employer of the review process under section 38 and the right to make a reference under section 39 (as applied by section 52).
- (5) Section 37 (penalty notices: recovery) applies to a penalty payable under this section, and to a notice under this section, as it applies to a penalty payable under section 35, and to a notice under that section. 10

52 Review of notices and references to Pensions Regulator Tribunal

- (1) Section 38 (review of notices) also applies to a compliance notice issued under section 50 and to a penalty notice issued under section 51. 15
- (2) Section 39 (references to the Pensions Regulator Tribunal) applies in relation to a penalty notice issued under section 51 as it applies in relation to a notice issued under section 35 or 36.

Protection of employment rights

53 The right not to suffer detriment 20

- (1) A worker has the right not to be subjected to any detriment by an act, or a deliberate failure to act, by the worker's employer, done on the ground that –
 - (a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the worker a requirement to which this section applies, 25
 - (b) the employer was prosecuted for an offence under section 40 as a result of action taken for the purpose of enforcing in favour of the worker a requirement to which this section applies, or
 - (c) any provision of Chapter 1 of this Part applies to the worker, or will or might apply. 30
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) –
 - (a) whether or not the requirement applies in favour of the worker, or
 - (b) whether or not the requirement has been contravened,but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith. 35
- (3) This section applies to any requirement imposed on the employer by or under any provision of Chapter 1 of this Part.
- (4) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 10 of the Employment Rights Act 1996 (c. 18) (unfair dismissal). 40
- (5) In this section references to enforcing a requirement include references to securing its benefit in any way.

54 Enforcement of the right

- (1) A worker may present a complaint to an employment tribunal that the worker has been subjected to a detriment in contravention of section 53.
- (2) Subject to the following provisions of this section, the provisions of sections 48(2) to (4) and 49 of the Employment Rights Act 1996 (c. 18) (complaints to employment tribunals and remedies), apply in relation to a complaint under this section as they apply in relation to a complaint under section 48 of that Act, but taking references in those provisions to the employer as references to the employer within the meaning of section 53(1). 5
- (3) Where – 10
- (a) the detriment to which the worker is subjected is the termination of the worker's contract, but
- (b) that contract is a worker's contract and not a contract of employment, any compensation awarded under section 49 of the Employment Rights Act 1996 by virtue of subsection (2) must not exceed the limit specified in subsection (4). 15
- (4) The limit is the total of –
- (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with section 119 of the Employment Rights Act 1996, if the worker had been an employee and the contract terminated had been a contract of employment, and 20
- (b) the sum for the time being specified in section 124(1) of that Act which is the limit for a compensatory award to a person calculated in accordance with section 123 of that Act.
- (5) Where the worker has been working under arrangements which do not fall to be regarded as a worker's contract for the purposes of the Employment Rights Act 1996, the worker is to be treated for the purposes of subsections (3) and (4) as if any arrangements under which the worker has been working constituted a worker's contract falling within section 230(3)(b) of that Act. 25
- (6) In section 18(1) of the Employment Tribunals Act 1996 (c. 17) (proceedings where conciliation is available), after paragraph (s) insert “, or 30
- (t) under section 54 of the Pensions Act 2008.”

55 Right of employee not to be unfairly dismissed

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 104C (flexible working) insert – 35
- “104D Pension enrolment rights**
- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that –
- (a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this section applies; 40
- (b) the employer was prosecuted for an offence under section 40 of the Pensions Act 2008 as a result of action taken for the purpose of enforcing in favour of the employee a requirement to which this section applies; or 45

- (c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above –
 - (a) whether or not the requirement applies in favour of the employee, or 5
 - (b) whether or not the requirement has been contravened, but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith. 10
- (3) This section applies to any right conferred by, or by virtue of, any provision of Chapter 1 of Part 1 of the Pensions Act 2008.”
- (3) In section 105 (redundancy as unfair dismissal), in subsection (1)(c) (which refers to any of subsections (2A) to (7J) of that section applying) for “(7J)” substitute “(7K)”. 15
- (4) After subsection (7J) of that section insert –
 - “(7K) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104D (read with subsection (2) of that section).” 20
- (5) In section 108 (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period is required) after paragraph (gi) insert –
 - “(gj) subsection (1) of section 104D (read with subsection (2) of that section) applies,”. 25
- (6) In section 237(1A) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action), in paragraph (a) –
 - (a) for “, 103A or 104C” substitute “, 103A, 104C or 104D”;
 - (b) for “protected disclosure and flexible working” substitute “protected employment, flexible working and pension scheme membership”. 30
- (7) In section 238(2A)(a) of that Act (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section) –
 - (a) for “, 103 or 104C” substitute “, 103, 104C or 104D”;
 - (b) for “, employee representative and flexible working” substitute “, employee representative, flexible working and pension scheme membership”. 35

56 Restrictions on agreements to limit operation of this Part

- (1) Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports – 40
 - (a) to exclude or limit the operation of any provision of this Part, or
 - (b) to preclude a person from bringing proceedings under section 54 before an employment tribunal.

- (2) The fact that an agreement is to any extent void under subsection (1) does not entitle the employer to recover any property transferred, or the value of any benefit conferred, as an inducement to enter into, or otherwise in connection with, the agreement.
- (3) Subsection (1) above does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (c. 17) (conciliation). 5
- (4) Subsection (1) above does not apply to any agreement to refrain from instituting or continuing before an employment tribunal any proceedings within section 18(1)(t) of the Employment Tribunals Act 1996 (proceedings under this Act where conciliation is available) if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement. 10
- (5) For the purposes of subsection (4) above the conditions regulating compromise agreements under this Act are that – 15
- (a) the agreement must be in writing,
 - (b) the agreement must relate to the particular proceedings,
 - (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal, 20
 - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice, 25
 - (e) the agreement must identify the adviser, and
 - (f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.
- (6) A person is a relevant independent adviser for the purposes of subsection (5)(c) above if that person – 30
- (a) is a qualified lawyer,
 - (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, 35
 - (c) works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
 - (d) is a person of a description specified in an order made by the Secretary of State. 40
- (7) But a person is not a relevant independent adviser for the purposes of subsection (5)(c) above in relation to the worker – 45
- (a) if the person is employed by, or is acting in the matter for, the employer or an associated employer,
 - (b) in the case of a person within subsection (6)(b) or (c) above, if the trade union or advice centre is the employer or an associated employer,
 - (c) in the case of a person within subsection (6)(c) above, if the worker makes a payment for the advice received from the person, or

- (d) in the case of a person of a description specified in an order under subsection (6)(d) above, if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (8) In this section “qualified lawyer” means – 5
- (a) as respects England and Wales –
- (i) a barrister (whether in practice as such or employed to give legal advice),
- (ii) a solicitor who holds a practising certificate, or
- (iii) a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990); 10
- (b) as respects Scotland –
- (i) an advocate (whether in practice as such or employed to give legal advice), or 15
- (ii) a solicitor who holds a practising certificate.
- (9) For the purposes of this section any two employers are associated if –
- (a) one is a company of which the other (directly or indirectly) has control, or
- (b) both are companies of which a third person (directly or indirectly) has control; 20
- and “associated employer” is to be read accordingly.

Employment Appeal Tribunal

57 Employment Appeal Tribunal

In section 21(1) of the Employment Tribunals Act 1996 (c. 17) (jurisdiction of appeal tribunal) after paragraph (gc) insert – 25

“(gd) the Pensions Act 2008,”.

CHAPTER 4

POWER TO ESTABLISH A PENSION SCHEME

Pension scheme 30

58 Power to establish a pension scheme

- (1) The Secretary of State may establish a pension scheme and make provision for its administration and management.
- (2) A scheme established under this section is to be treated for all purposes as established under an irrevocable trust. 35
- (3) It must be a scheme that is able to be registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12).
- (4) It must when registered under that Chapter be a scheme such that a jobholder’s employer, if a participating employer, may comply with an enrolment duty by arranging for the jobholder to become an active member of the scheme. 40

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- (5) It must be a scheme that complies with any provision of Northern Ireland legislation corresponding to subsection (4).
- (6) The scheme administrator must ensure that the scheme is and remains registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12).
- (7) “Scheme administrator” has the same meaning here as in that Part. 5
- (8) The powers conferred by subsection (1) are exercisable by order.
- (9) If an order establishes a scheme, any further provision that may be made by order in relation to the scheme may also be made by rules (and rules may be made so as to come into force at the same time as the establishing order).
- (10) That is subject to subsections (11) and (12). 10
- (11) Rules are subject to any provision made by order.
- (12) No provision may be made by rules about –
- (a) the purpose or object of the scheme;
 - (b) the appointment or removal of trustees;
 - (c) (as regards trustees, or members of any corporate trustee) meetings, committees or delegation of functions; 15
 - (d) any exclusion of liability on the part of trustees, or the provision of any indemnity or insurance out of the funds of the scheme.
- (13) Except as expressly provided, nothing in this Act limits the generality of the powers conferred by this section. 20
- 59 Scheme orders: general**
- (1) An order establishing a scheme must provide for the trustee corporation (the body established by section 65) to be a trustee on the coming into force of the scheme.
- (2) An order may provide for any provision of the Trustee Act 2000 (c. 29) to apply as if an order or rules under section 58 were a trust instrument. 25
- (3) An order may provide for the trustees to have power to make rules under section 58.
- (4) Where the trustees have power to make rules, an order may provide –
- (a) that they may not exercise the power in specified circumstances; 30
 - (b) that they may exercise it subject to conditions;
 - (c) that they must comply with requirements for consultation or publication or other procedural requirements when exercising the power.
- (5) An order may make provision for the exclusion of, or indemnity against, liability of a trustee, or an officer or employee of a trustee, arising out of the administration or management of a scheme. 35
- 60 Consultation of members and employers**
- (1) If an order under section 58 establishes a scheme, the Secretary of State must by order under that section require the trustees to make and maintain arrangements for consulting the members of the scheme and participating employers about the operation, development and amendment of the scheme. 40

- (2) The arrangements must include establishment and maintenance of—
 - (a) a panel of persons to represent members (“the members’ panel”), and
 - (b) a panel of persons to represent employers (“the employers’ panel”).
 - (3) The composition and functions of the panels are to be determined by order under section 58, or by the trustees under an order. 5
 - (4) The functions of the members’ panel may include nominating individuals to be members of the trustee corporation.
 - (5) An order under section 58 may provide for payments to panel members out of scheme funds.
- 61 Contribution limits** 10
- (1) An order under section 58 must prescribe the maximum amount of contributions that may be made by or in respect of a member in any tax year.
 - (2) For the purposes of provision under subsection (1) an order may in particular make provision as to—
 - (a) what is a contribution; 15
 - (b) when a contribution is to be treated as made;
 - (c) how contributions are to be treated if the maximum is exceeded;
 - (d) circumstances in which a payment is to be made to any person in respect of an excess contribution;
 - (e) who is to make any such payment and how it is to be calculated. 20
 - (3) An order may prescribe a maximum amount for payments that may be made by a member and that are not contributions for the purposes of provision under subsection (1).
 - (4) In this section “tax year” has the same meaning as in Parts 1 to 6 of the Social Security Contributions and Benefits Act 1992 (c. 4). 25
 - (5) The Secretary of State may by order repeal this section.
- 62 Procedure for scheme orders**
- (1) Subsection (2) applies to any order under section 58 relating to a scheme, except the order establishing the scheme and an order taking effect at the same time as that order. 30
 - (2) The Secretary of State may not make the order without the consent of the trustees.
 - (3) But the trustees may not withhold their consent without giving reasons.
 - (4) The trustees must consult the members’ panel and the employers’ panel before deciding whether to give consent. 35
- 63 Procedure for rules**
- (1) A person who proposes to make rules under section 58 must publish a draft of the rules and invite comments.
 - (2) They must have regard to any comments made in accordance with the invitation. 40

-
- (3) If they make the rules they must publish an account in general terms of those comments and their response to them.
- (4) If the rules they make differ from the draft published under subsection (1), they must publish details of any differences that they think are significant.
- (5) Subsection (6) applies to any rules made by the Secretary of State under section 58 relating to a scheme, except rules taking effect at the same time as the order establishing the scheme. 5
- (6) The Secretary of State may not make the rules without the consent of the trustees.
- (7) But the trustees may not withhold their consent without giving reasons. 10
- (8) The trustees must consult the members' panel and the employers' panel—
 (a) before making rules under section 58;
 (b) before deciding whether to give consent under subsection (6).
- (9) If the Secretary of State or the trustees make rules under section 58 they must publish them. 15
- (10) Anything published under this section must be published in a way designed to bring it to the attention of the persons likely to be interested or affected.
- (11) The publication must not be limited to electronic publication.
- 64 Application of enactments**
- (1) The Interpretation Act 1978 (c. 30) applies in relation to rules under section 58 as if they were contained in a deed not made under an enactment. 20
- (2) A scheme established under section 58 is not to be treated as a public service pension scheme for the purposes of any enactment.
- Trustee corporation*
- 65 Trustee corporation** 25
- (1) There is to be a body corporate, referred to in this Chapter as the trustee corporation.
- (2) The name of the body is to be determined by order made by the Secretary of State.
- (3) The trustee corporation is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown. 30
- (4) Property held by the corporation is not to be regarded as property of, or property held on behalf of, the Crown.
- (5) Schedule 1 makes provision about the trustee corporation.
- 66 Functions** 35
- (1) The functions of the trustee corporation are—
 (a) to act as a trustee of any scheme established under section 58, and

- (b) any other functions it is given by or under an enactment in connection with the scheme.
- (2) The corporation may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.
- (3) In particular the corporation may – 5
 - (a) enter into agreements;
 - (b) borrow money;
 - (c) invest money.
- (4) The corporation’s powers within subsection (3)(b) and (c) are exercisable only with the consent of the Secretary of State. 10
- (5) Subsections (3) and (4) are without prejudice to the exercise by the trustee corporation of any power vested in it as a trustee of a scheme established under section 58.

67 Application of pension trustee legislation

- (1) The Secretary of State may by regulations provide that legislation applying in relation to a person as trustee of a pension scheme, or as director of a company which is a trustee of a pension scheme, applies in relation to the trustee corporation, or its members, with any modifications prescribed in the regulations. 15
- (2) In this section “legislation” means any provision of an Act or subordinate legislation (and “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30)). 20

Interpretation

68 Interpretation of Chapter

- In this Chapter – 25
 - “employers’ panel” has the meaning given by section 60(2)(b);
 - “members’ panel” has the meaning given by section 60(2)(a);
 - “trustees”, in relation to a scheme established under section 58, means the trustee or trustees of the scheme.

CHAPTER 5

30

PERSONAL ACCOUNTS DELIVERY AUTHORITY

Functions of the Authority

69 Functions

- (1) Section 21 of the Pensions Act 2007 (c. 22) (initial function of the Authority) ceases to have effect. 35
- (2) The Personal Accounts Delivery Authority (referred to in this Chapter as the “Authority”) has the following functions –

- (a) to give any assistance and advice that the Secretary of State may require, and any advice that the Authority considers expedient, for or in connection with the establishment and operation of a scheme under section 58(1);
- (b) to give any assistance and advice that the Secretary of State or the Pensions Regulator may require, and any advice that the Authority considers expedient, for or in connection with arrangements to enable requirements imposed by or under Chapter 1 of this Part to be complied with and enforced. 5
- (3) Assistance or advice required by the Secretary of State under subsection (2)(a) may include assistance or advice to the trustees of the scheme. 10
- (4) The Authority’s functions under subsection (2) are in addition to any functions that may be conferred on it by or under this Act or any other enactment.
- (5) The Authority may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions. 15
- (6) In particular, the Authority may –
 - (a) enter into agreements;
 - (b) borrow money.
- (7) The corporation’s powers within subsection (6)(b) are exercisable only with the consent of the Secretary of State. 20

70 Principles

- (1) In carrying out its functions under section 69(2) the Authority must have regard to the principles in subsection (2).
- (2) The principles are that –
 - (a) participation in qualifying schemes should be encouraged and facilitated; 25
 - (b) the burdens imposed on employers as a result of this Part should be minimised;
 - (c) any adverse effects on qualifying pension schemes, and members and future members of those schemes, as a result of implementation of Chapter 4 of this Part should be minimised; 30
 - (d) the cost of membership of a scheme established under section 58 should be minimised;
 - (e) the preferences of members and future members should, so far as practicable, be taken into account in making any provision about investment choice in such a scheme; 35
 - (f) diversity among members and future members of such a scheme should be respected.
- (3) The Authority must take any steps it considers appropriate to promote and engage in discussion with relevant public authorities and others about its functions under section 69(2) and how it carries them out. 40

71 Directions and guidance

- (1) The Secretary of State may give the Authority guidance or directions about the discharge of its functions.

- (2) In discharging its functions, the Authority must have regard to any guidance, and comply with any directions, under this section.
- (3) Guidance or directions under this section may vary or revoke earlier guidance or directions under this section.
- (4) Directions under this section must be in writing. 5
- (5) The Secretary of State must publish any direction given under this section.

72 Finance

In Schedule 6 to the Pensions Act 2007 (c. 22), for paragraph 18 and the italic cross-heading immediately before it, substitute –

“Finance” 10

18 (1) The Secretary of State may give financial assistance to the Authority.

(2) The assistance –

(a) may take the form of grants, loans, guarantees or indemnities;

(b) may be given on conditions (which may include conditions about repayment with or without interest).” 15

73 Disclosure of information by the Pensions Regulator

In section 84 of the Pensions Act 2004 (disclosure for facilitating exercise of functions by the Pensions Regulator) after subsection (3) insert –

“(4) Section 82 does not preclude the disclosure by the Regulator to the Personal Accounts Delivery Authority of such information as appears to the Regulator to be necessary to enable the Authority to provide assistance or advice to the Regulator under section 69(2) of the Pensions Act 2008.” 20

Non-executive committee 25

74 Non-executive committee

- (1) Schedule 6 to the Pensions Act 2007 is amended as follows.
- (2) In paragraph 6(3) and (5), for “the chairman and other non-executive members” substitute “the non-executive committee”.
- (3) In paragraph 7(2) and (3), for “the chairman and other non-executive members” substitute “the non-executive committee”. 30
- (4) At the beginning of Part 2 insert –

“Non-executive committee

8A (1) There is to be a committee of the Authority consisting of the chairman and every other non-executive member of the Authority (referred to in this Schedule as the “non-executive committee”). 35

(2) The non-executive committee must –

-
- 5
- (a) keep under review the question whether the Authority’s internal financial controls secure the proper conduct of its financial affairs, and
- (b) discharge the other functions conferred on it by this Schedule.
- (3) The non-executive committee must prepare a report on the discharge of the functions mentioned in sub-paragraph (2) for inclusion in the annual report of the Authority under paragraph 17.
- (4) The report under sub-paragraph (3) must relate to the same period as the Authority’s report. 10
- (5) The non-executive committee may establish a sub-committee.
- (6) The members of a sub-committee under sub-paragraph (5)–
- (a) must include at least one non-executive member of the Authority, and
- (b) must not include persons who are executive members or employees of the Authority. 15
- (7) A sub-committee under sub-paragraph (5) may include persons who are not members of the non-executive committee or the Authority.
- (8) Paragraphs 9 and 10 do not apply to the non-executive committee.”
- (5) In the italic cross-heading immediately before paragraph 9, for “Committees” substitute “Other committees”. 20
- (6) In paragraph 11, in sub-paragraph (1)(b), at the beginning insert “subject to sub-paragraph (1A),”.
- (7) In that paragraph, after sub-paragraph (1) insert–
- “(1A) The non-executive committee may, subject to this Schedule–
- (a) regulate its own procedure;
- (b) regulate the procedure of its sub-committees;
- (c) enable its sub-committees to regulate their own procedure subject to any provision it makes.” 25
- (8) In that paragraph, in sub-paragraph (2)–
- (a) for “the chairman and non-executive members of the Authority” substitute “the non-executive committee”;
- (b) for “the non-executive members” substitute “the members of that committee”. 30
- (9) In that paragraph, in sub-paragraph (3), for “the chairman and non-executive members” substitute “the non-executive committee”. 35
- (10) In paragraph 17(2), before “and” at the end of paragraph (a) insert–
- “(aa) the report prepared by the non-executive committee under paragraph 8A(3),”.

Winding up

75 Winding up of the Authority

- (1) Section 23 of the Pensions Act 2007 (c. 22) (winding up of the Authority) is amended as follows.
- (2) For subsection (1) substitute – 5
 “(1) The Secretary of State may by order provide for the winding up and dissolution of the Authority.”
- (3) Subsections (2) to (4) are omitted.
- (4) In subsection (5)(a), after “Secretary of State” insert “or any other person”.
- (5) In subsection (7) – 10
 - (a) the words after “provision of” become paragraph (a) of that subsection; and
 - (b) at the end of that paragraph insert –
 “;
 (b) sections 69 to 74 of the Pensions Act 2008.” 15

CHAPTER 6

STAKEHOLDER PENSION SCHEMES

76 Stakeholder pension schemes

- (1) The Welfare Reform and Pensions Act 1999 (c. 30) is amended as follows.
- (2) Section 3 (duty of employers to facilitate access to stakeholder pension schemes) is amended as follows. 20
- (3) In subsection (1), for “the requirements set out below” substitute “the requirement in subsection (5)”.
- (4) After subsection (1) insert –
 “(1A) A relevant employee, in relation to an employer, is an employee of the employer who, on the relevant date, satisfies the conditions in subsection (1B). 25
 (1B) The conditions are that –
 - (a) the employee is a member of a stakeholder pension scheme;
 - (b) the employee made a request under subsection (5) before the relevant date and that request has not been withdrawn; 30
 - (c) the employee pays contributions (which are deducted in accordance with that request) to the scheme at regular intervals;
 - (d) at least one deduction has been made before the relevant date in accordance with that request. 35
- (1C) A person ceases to be a relevant employee –
 - (a) on ceasing to be employed by the employer;
 - (b) on withdrawing a request under subsection (5);
 - (c) on ceasing to pay contributions at regular intervals.”

-
- (5) Omit subsections (2) to (4).
- (6) In subsection (5) –
- (a) omit the word “fourth”;
 - (b) omit the words from “of his” to “qualifying scheme”;
 - (c) in paragraph (a), for “scheme” substitute “stakeholder pension scheme”. 5
- (7) After subsection (5) insert –
- “(5A) That requirement only applies in relation to a request to make deductions made before the relevant date (whether or not that request is varied after that date).” 10
- (8) Omit subsection (6).
- (9) In subsection (7), for “any of the requirements” substitute “the requirement”.
- (10) In subsection (8) –
- (a) for the words from “whether before” to “those purposes” substitute “while subject to the requirement in subsection (5)”;
 - (b) omit paragraph (a)(ii) and (iii). 15
- (11) In subsection (9), after the definition of “employer” insert –
- ““relevant date” means the date on which section 76 of the Pensions Act 2008 comes into force.”
- (12) In that subsection – 20
- (a) omit the definition of “qualifying scheme”;
 - (b) omit the definition of “relevant employees”.
- (13) In section 6 (application of certain enactments) –
- (a) omit subsection (1);
 - (b) in subsection (2), for “designated scheme” substitute “stakeholder pension scheme”. 25
- (14) In section 8 (interpretation), in subsection (1), omit the definition of “designated scheme”.

CHAPTER 7

INTERPRETATION 30

“Employee”, “worker” etc

77 “Employee”, “worker” and related expressions

- (1) This section applies for the purposes of this Part.
- (2) “Employee” means an individual who has entered into or works under a contract of employment. 35
- (3) “Contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (4) “Worker” means an individual who has entered into or works under –

- (a) a contract of employment, or
 - (b) any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.
- (5) But a contract is not within subsection (4)(b) if the status of the other party is by virtue of the contract that of a client or customer of a profession or business undertaking carried on by the individual concerned. 5
- (6) For the purposes of subsection (4)(b), it does not matter whether the contract is express or implied or (if it is express) whether it is oral or in writing.
- (7) Any reference to a worker’s contract is to be read in accordance with subsections (4) to (6). 10
- (8) “Employer”, in relation to an employee or worker, means the person by whom the employee or worker is employed.
- (9) “Employment” –
- (a) in relation to an employee, means employment under a contract of employment; 15
 - (b) in relation to a worker, means employment under the worker’s contract.

78 Agency workers

- (1) This section applies to an individual (“the agency worker”) –
- (a) who is supplied by a person (“the agent”) to do work for another person (“the principal”) under a contract or other arrangements made between the agent and the principal, 20
 - (b) who is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal, and 25
 - (c) who is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of a profession or business undertaking carried on by the individual.
- (2) Where this section applies, the other provisions of this Part have effect –
- (a) as if there were a worker’s contract for the doing of the work by the agency worker, made between the agency worker and the relevant person under subsection (3), and 30
 - (b) as if that person were the agency worker’s employer.
- (3) The relevant person is – 35
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
 - (b) if neither the agent nor the principal is responsible for doing so, whichever of them pays the agency worker in respect of the work.

79 Crown employment

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- (1) This Part has effect in relation to employment by or under the Crown as it has effect in relation to other employment.
- (2) For the purposes of the application of the provisions of this Part in accordance with subsection (1) –

-
- (a) references to a worker are to be construed as references to a person employed by or under the Crown;
- (b) references to a worker’s contract are to be construed as references to the terms of employment of a person employed by or under the Crown.
- (3) This section does not impose criminal liability on the Crown. 5
- (4) But on the application of the Pensions Regulator the High Court or the Court of Session may declare unlawful a failure by the Crown to comply with any of the duties mentioned in section 40(1).
- 80 Armed forces**
- (1) A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of that service, a worker for the purposes of this Part. 10
- (2) A member of any of the forces specified in subsection (3) who assists the activities of any of those forces is not, by virtue of anything done in assisting those activities, a worker for the purposes of this Part.
- (3) The forces are – 15
- (a) the Combined Cadet Force;
- (b) the Sea Cadet Corps;
- (c) the Army Cadet Force;
- (d) the Air Training Corps.
- 81 House of Lords staff** 20
- (1) This Part has effect in relation to employment as a relevant member of the House of Lords staff as it has effect in relation to other employment.
- (2) In this section, “relevant member of the House of Lords staff” means any person who is employed under a worker’s contract with the Corporate Officer of the House of Lords. 25
- 82 House of Commons staff**
- (1) This Part has effect in relation to employment as a relevant member of the House of Commons staff as it has effect in relation to other employment.
- (2) In this section, “relevant member of the House of Commons staff” means any person – 30
- (a) who was appointed by the House of Commons Commission, or
- (b) who is a member of the Speaker’s personal staff.
- (3) For the purposes of the application of the provisions of this Part in relation to a relevant member of the House of Commons staff –
- (a) references to a worker are to be read as references to a relevant member of the House of Commons staff, and 35
- (b) references to a worker’s contract are to be read as references to the terms of employment of a relevant member of the House of Commons staff.

83 Police

- (1) This Part has effect in relation to a person who—
- (a) holds the office of constable or an appointment as a police cadet, and
 - (b) does not hold that office or appointment under a contract of employment,
- 5
- as if the person were employed by the relevant police authority under a worker’s contract.
- (2) A police authority that maintains a police force is the relevant police authority—
- (a) in relation to a constable, if the constable is a member of that police force;
 - (b) in relation to a police cadet, if the cadet is undergoing training with a view to becoming a member of that police force.
- 10

84 Share fishermen

- (1) A person to whom subsection (2) applies is not a worker for the purposes of this Part. 15
- (2) This subsection applies to a person who—
- (a) is employed as a master, or as a member of a crew, of a fishing vessel, and
 - (b) is remunerated, in respect of that employment, only by a share of the profits or gross earnings of the vessel.
- 20

85 Extension of definition of worker

The Secretary of State may by regulations make provision for this Part to apply with or without modifications—

- (a) as if any individual of a prescribed description (who would not otherwise be a worker) were a worker, 25
- (b) as if there were in the case of any such individual a worker’s contract of a prescribed description under which the individual works, and
- (c) as if a person of a prescribed description were the employer under that contract. 30

General

86 Interpretation of Part

In this Part—

“active member”—

- (a) in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme; 35
- (b) in relation to a personal pension scheme, means a jobholder in relation to whom there is an agreement within section 25(3) between the scheme and the employer;

“automatic enrolment scheme” is to be read in accordance with section 3(7); 40

- “average salary benefits” means benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefits are based;
- “contract of employment” has the meaning given by section 77;
- “defined benefits”, in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision); 5
- “defined benefits scheme” means an occupational pension scheme under which all the benefits that may be provided are defined benefits; 10
- “employee”, “employer” and “employment” have the meaning given by section 77;
- “enrolment duty” means a duty under section 3(2), 5(2), 6(3) or 8(2);
- “hybrid scheme” means an occupational pension scheme – 15
- (a) which is not a money purchase scheme, but
 - (b) where some of the benefits that may be provided are money purchase benefits attributable to voluntary contributions of the members, or other money purchase benefits;
- the “IORP Directive” means Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupations retirement provision; 20
- “jobholder” has the meaning given by section 1(1);
- “money purchase benefits”, in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits; 25
- “money purchase scheme” means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits; 30
- “occupational pension scheme” has the meaning given by section 17;
- “pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993 (c. 48);
- “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26); 35
- “pensionable service”, in relation to a member of an occupational pension scheme, means service in any description 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; 40
- “personal pension scheme” has the meaning given by section 18;
- “prescribed” means prescribed by regulations;
- “qualifying earnings” has the meaning given by section 12;
- “qualifying scheme” is to be read in accordance with section 2(5);
- “regulations” means regulations made by the Secretary of State; 45
- “trustee or manager” –
- (a) in relation to England and Wales or Scotland, is to be construed in accordance with section 178 of the Pension Schemes Act 1993 (trustees and managers of schemes: interpretation);

- (b) in relation to Northern Ireland, is to be construed in accordance with section 173 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (trustees or managers of schemes);
“worker” has the meaning given by section 77.

PART 2

5

SIMPLIFICATION ETC

Private pensions

87 Abolition of safeguarded rights

Part 3A of the Pension Schemes Act 1993 (c. 48) (safeguarded rights) ceases to have effect.

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88 Revaluation of accrued benefits etc

- (1) Schedule 2, which –
- (a) amends Schedule 3 to the Pension Schemes Act 1993 (methods of revaluing accrued pension benefits),
 - (b) amends Schedule 7 to the Pensions Act 2004 (c. 35) (pension compensation provisions), and
 - (c) makes consequential amendments,
- has effect.
- (2) The amendments made by Parts 1 and 3 of Schedule 2 do not apply in relation to a revaluation period ending before this section comes into force.
- (3) In subsection (2) “revaluation period” has the same meaning as in paragraph 2 of Schedule 3 to the Pension Schemes Act 1993.

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State pensions etc

89 Additional State Pension consolidation: Category A and graduated retirement benefit

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- (1) The Social Security Contributions and Benefits Act 1992 (c. 4) (the 1992 Act) is amended as follows.
- (2) Section 45 (the additional pension in a Category A retirement pension) is amended as follows.
- (3) In subsection (2) after “1999” insert “but before 6th April 2020”.
- (4) After subsection (2) insert –
- “(2A) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year after 5th April 2020 shall be the sum of the following –
- (a) in relation to any tax year before the flat rate introduction year, the uprated consolidated amount, calculated in accordance with Schedule 4C to this Act; and

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- (b) in relation to the flat rate introduction year and subsequent years, the weekly equivalent of the amount calculated in accordance with Schedule 4B to this Act.”
- (5) In subsection (6), for “and (2)” substitute “(2) and (2A)”.
- (6) Schedule 3, which inserts Schedule 4C to the 1992 Act, has effect. 5
- (7) In section 47 (increase of Category A retirement pension for invalidity), after subsection (4) insert –
- “(4A) Any part of an additional pension resulting from an amount calculated under paragraph 3 of Schedule 4C to this Act is to be disregarded for the purposes of this section.” 10
- (8) Section 36 of the National Insurance Act 1965 (c. 51) (graduated retirement benefit), as it continues in force as mentioned in section 62 of the 1992 Act, has effect in relation to a person over pensionable age only if the person attained pensionable age before 6th April 2020.
- 90 State pension credit: extension of assessed income period for those aged 75 or over** 15
- (1) Section 9 of the State Pension Credit Act 2002 (c. 16) (duration of assessed income period) is amended as set out in subsections (2) to (4).
- (2) For subsection (1) substitute –
- “(1) An assessed income period shall (subject to the following subsections) be –
- (a) in the case of a claimant who is under the age of 75 on the day on which the relevant decision takes effect, the period of 5 years beginning with that day;
- (b) in the case of a claimant who is aged 75 or over on that day, an indefinite period beginning with that day.” 20
- (3) In paragraph (b) of subsection (2), for the words from “may” to “years” substitute “shall specify a period that is shorter than 5 years”.
- (4) After subsection (5) insert –
- “(6) Where –
- (a) an assessed income period is brought to an end by the expiry of a period of 5 years or more, and
- (b) the claimant is aged 80 or over at that time,
- the assessed income period shall be treated as not ending at that time but, subject to subsection (4) and provision made under subsection (5), as continuing indefinitely.” 30
- (5) The amendments made by subsections (2) and (3) apply only where the relevant decision (within the meaning given by section 6(5) of the State Pension Credit Act 2002) takes effect on or after 6 April 2009.
- (6) The subsection inserted by subsection (4) ceases to have effect on 6 April 2014. 40

PART 3

PENSION COMPENSATION

CHAPTER 1

PENSION COMPENSATION ON DIVORCE ETC

- 91 Scope of mechanism** 5
- (1) Pension compensation sharing is available under this Chapter in relation to a person’s shareable rights to PPF compensation.
- (2) For the purposes of this Chapter, a right of a person to PPF compensation is “shareable” unless it is of a description specified by regulations made by the Secretary of State. 10
- 92 Interpretation**
- In this Chapter –
- “the Board” means the Board of the Pension Protection Fund;
- “PPF compensation” means compensation payable under the pension compensation provisions; 15
- “the pension compensation provisions” means –
- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
- (b) this Chapter and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland; 20
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “the relevant order or provision” means the pension compensation sharing order, or provision contained in a qualifying agreement, which gives rise to the pension compensation sharing; 25
- “the transfer day” means the day on which the relevant order or provision takes effect;
- “the transferee” means the person for whose benefit the relevant order or provision is made; 30
- “the transferor” means the person to whose rights the relevant order or provision relates.
- 93 Activation of pension compensation sharing**
- (1) Section 94 applies on the taking effect of any of the following relating to a person’s shareable rights to PPF compensation – 35
- (a) a pension compensation sharing order under the Matrimonial Causes Act 1973 (c. 18);
- (b) a pension compensation sharing order under Schedule 5 to the Civil Partnership Act 2004 (c. 33);
- (c) an order under Part 3 of the Matrimonial and Family Proceedings Act 1984 (c. 42) (financial relief in England and Wales in relation to overseas divorce etc) corresponding to such an order as is mentioned in paragraph (a); 40

-
- (d) an order under Schedule 7 to the Civil Partnership Act 2004 (c. 33) (financial relief in England and Wales after overseas dissolution etc of a civil partnership) corresponding to such an order as is mentioned in paragraph (b);
- (e) an order under any provision corresponding to a provision mentioned in any of paragraphs (a) to (d) in force in Northern Ireland. 5
- (f) a pension compensation sharing order under section 8 of the Family Law (Scotland) Act 1985 (c. 37) (orders for financial provision);
- (g) any provision corresponding to provision which may be made by such an order, and which – 10
- (i) is contained in a qualifying agreement between the parties to a marriage or the partners in a civil partnership,
- (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 or a declarator or nullity or (as the case may be) on the grant, in relation to the civil partnership, of decree of dissolution or of declarator of nullity, 15
- except where the provision relates to the same rights to PPF compensation as are the subject of an order made under section 12B(2) of the Family Law (Scotland) Act 1985 (order for payment of capital sum: pension compensation). 20
- (2) For the purposes of this Chapter, a qualifying agreement is an agreement which –
- (a) has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and 25
- (b) is registered in the Books of Council and Session.
- 94 Creation of pension compensation debits and credits**
- (1) On the application of this section –
- (a) the transferor’s shareable rights to PPF compensation become subject to a debit of the appropriate amount, and 30
- (b) the transferee becomes entitled to a credit of that amount as against the Board.
- (2) For the purposes of subsection (1) “the appropriate amount” means the percentage specified in the relevant order or provision of the cash equivalent of the relevant compensation on the valuation day. 35
- (3) For the purposes of subsection (2) “the relevant compensation” means the payments or future payments to which, immediately before the transfer day, the transferor is entitled under the pension compensation provisions by virtue of the transferor’s shareable rights under those provisions. 40
- (4) The Secretary of State may by regulations provide for any description of payment to be disregarded for the purposes of subsection (3).
- (5) For the purposes of this section “the valuation day” means such day within the implementation period for the credit under subsection (1)(b) as the Board may specify by notice in writing to the transferor and transferee. 45
- (6) The credit to which the transferee becomes entitled under subsection (1)(b) is referred to in this Chapter as a “pension compensation credit”.

95 Cash equivalents

- (1) The Secretary of State may by regulations make provision about the calculation and verification of cash equivalents for the purposes of section 94.
- (2) Regulations under this section may include provision for calculation and verification in a manner approved by the Board. 5

96 Reduction of compensation

- (1) Where a person’s shareable rights to PPF compensation are subject to a pension compensation debit, each payment or future payment –
 - (a) to which the person is entitled under the pension compensation provisions by virtue of those rights, and 10
 - (b) which is a qualifying payment,
is reduced by the appropriate percentage.
- (2) For the purposes of subsection (1) a payment is “qualifying payment” if the cash equivalent by reference to which the amount of the pension compensation debit is determined includes an amount in respect of it. 15
- (3) In this section “the appropriate percentage”, in relation to a pension compensation debit, means the percentage specified in the pension compensation sharing order or provision on which the debit depends.

97 Time for discharge of liability

- (1) This section applies where the Board is subject to a liability in respect of a pension compensation credit. 20
- (2) The Board must discharge the liability before the end of the implementation period for the credit.
- (3) The Secretary of State may make provision by regulations as to circumstances in which the implementation period for the credit is extended for the purposes of this section. 25

98 “Implementation period”

- (1) For the purposes of this Chapter, the implementation period for a pension compensation credit is the period of 4 months beginning with the later of –
 - (a) the transfer day, and 30
 - (b) the first day on which the Board is in receipt of –
 - (i) the relevant documents, and
 - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.
- (2) In subsection (1)(b)(i) “the relevant documents” means copies of – 35
 - (a) the relevant order or provision, and
 - (b) the order or decree responsible for the divorce, dissolution or annulment to which it relates.
- (3) Subsection (1) is subject to any provision made by regulations under section 100(2)(a). 40
- (4) The Secretary of State may by regulations –

- (a) make provision requiring the Board 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 credit depends on a pension compensation sharing order and the order is the subject of an application for leave to appeal out of time. 5

99 Discharge of liability

- (1) This section applies where the Board is subject to a liability in respect of a pension compensation credit.
- (2) The Board must discharge the liability by sending a notice to the transferee. 10
- (3) On the sending of the notice the transferee becomes entitled, with effect from (and including) the transfer day, to compensation calculated in accordance with Schedule 4.
- (4) For the purposes of that calculation, the initial annual rate of compensation is an amount determined by the Board. 15
- (5) The Board must determine that amount in such a way as to secure that the cash equivalent value of the compensation to which the transferee becomes entitled under subsection (3) equals the amount of the credit.
- (6) The Secretary of State may by regulations make provision about the calculation of cash equivalents for the purposes of subsection (5). 20
- (7) The notice sent under this section must—
 - (a) state that the transferee is entitled to periodic pension compensation calculated under Schedule 4, and
 - (b) specify the amount determined under subsection (4).
- (8) Where the transferee dies before liability in respect of the credit has been discharged— 25
 - (a) subsections (2) to (7) do not have effect in relation to the discharge of liability in respect of the credit, and
 - (b) liability in respect of the credit must be discharged in accordance with regulations made by the Secretary of State. 30

100 Charges in respect of pension compensation sharing costs

- (1) The Secretary of State may by regulations make provision for the purpose of enabling the Board to recover from the parties to pension compensation sharing prescribed charges in respect of prescribed descriptions of pension compensation sharing activity. 35
- (2) Regulations under subsection (1) may include—
 - (a) provision for the start of the implementation period for a pension compensation 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 compensation sharing. 40
- (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 compensation sharing is to be determined as follows—

- (a) where the relevant order or provision includes provision (“provision for apportionment”) about the apportionment of charges under this section, there is attributable to the party so much of the charge as is apportioned to that party by that provision for apportionment;
 - (b) where the relevant order or provision does not include provision for apportionment, the charge is attributable to the transferor. 5
- (4) In subsection (1) the reference to pension compensation sharing activity is to activity attributable directly or indirectly to the application of section 94 by virtue of the relevant order or provision.

101 Supply of information about pension compensation in relation to divorce etc 10

- (1) The Secretary of State may by regulations –
- (a) make provision imposing on the Board requirements with respect to the supply of information relevant to any power with respect to –
 - (i) financial relief under Part 2 of the Matrimonial Causes Act 1973 (c. 18) or Part 3 of the Matrimonial and Family Proceedings Act 1984 (c. 42) (England and Wales powers in relation to domestic and overseas divorce etc), 15
 - (ii) financial relief under Schedule 5 or 7 to the Civil Partnership Act 2004 (c. 33) (England and Wales powers in relation to domestic and overseas dissolution of civil partnerships etc), 20
 - (iii) financial relief under any provision corresponding to a provision mentioned in sub-paragraph (i) or (ii) in force in Northern Ireland,
 - (iv) orders for financial provision under section 8 of the Family Law (Scotland) Act 1985 (c. 37) (orders for financial provision), or 25
 - (v) provision as to pension sharing, or pension compensation sharing, that is contained in an agreement that is a qualifying agreement for the purposes of section 28(1)(b) and (c) of the Welfare Reform and Pensions Act 1999 (c. 30) (activation of pension sharing) or this Chapter; 30
 - (b) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of regulations under paragraph (a);
 - (c) make provision for the purpose of enabling the Board to recover prescribed charges in respect of providing information in accordance with regulations under paragraph (a). 35
- (2) Regulations under subsection (1)(b) may include provision for calculation and verification in a manner approved by the Board.
- (3) Regulations under subsection (1)(c) may include provision for the application in prescribed circumstances, with or without modification, of any provision made by virtue of section 100(2). 40

102 Supply of information about pension compensation sharing

The Secretary of State may by regulations require the Board to supply, to such persons as the Secretary of State may specify in the regulations, such information relating to anything which follows from the application of section 94 as the Secretary of State may so specify. 45

103 Pension compensation sharing and attachment on divorce etc

Schedule 5 (which amends matrimonial and civil partnership legislation for the purpose of enabling the court to make pension compensation sharing orders, and orders for the attachment of pension compensation, in connection with proceedings in England and Wales) and Schedule 6 (which amends in relation to pension compensation sharing orders similar legislation applying in Scotland) have effect. 5

104 Consequential amendment

In section 173(3)(b) of the Pensions Act 2004 (c. 35) (sums paid out of Pension Protection Fund) after “the pension compensation provisions” insert “or Chapter 1 of Part 3 of the Pensions Act 2008”. 10

CHAPTER 2

OTHER PROVISION ABOUT PENSION COMPENSATION

105 Amendments of Schedule 7 to the Pensions Act 2004

Schedule 7 (amendments of Schedule 7 to the Pensions Act 2004) has effect. 15

PART 4

FINANCIAL ASSISTANCE SCHEME

106 Financial assistance scheme

- (1) Subsection (2) of section 286 of the Pensions Act 2004 (financial assistance scheme for members of certain pension schemes) is amended as follows. 20
- (2) In the definition of “qualifying member”, for the words from “a person” to the end of paragraph (b) substitute “a person who, at such time as may be prescribed, is a member of the scheme or has ceased to be a member of the scheme,”.
- (3) In the definition of “qualifying pension scheme” after paragraph (b) insert— 25
 “(ba) the assets of which, at such time as may be prescribed, are insufficient to satisfy in full the liabilities of the scheme calculated in the prescribed manner,”.
- (4) Omit the definition of “scheme’s pension liabilities” and the words from “and a qualifying pension scheme” to the end. 30

PART 5

MISCELLANEOUS

107 Pension sharing: power of Court of Session to extend time limits

- (1) The Welfare Reform and Pensions Act 1999 (c. 30) is amended as follows.

- (2) In section 28(10) (pension arrangements: time limit for activation of pension sharing in Scotland), for “The sheriff” there is substituted “The Court of Session or the sheriff”.
- (3) In section 48(9) (state scheme rights: time limit for activation of benefit sharing in Scotland), for “The sheriff” there is substituted “The Court of Session or the sheriff”. 5

108 Interest on late payment of levies

Schedule 8 (which makes provision about payment of interest on late payment of levies) has effect.

109 Appointment of trustees

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- (1) In section 7 of the Pensions Act 1995 (c. 26) (appointment of trustees), in subsection (3) –
 - (a) for “necessary”, in the first place where it occurs, substitute “reasonable”;
 - (b) omit “or” at the end of paragraph (b); 15
 - (c) at the end insert “, or
 - (d) otherwise to protect the interests of the generality of the members of the scheme.”
- (2) In paragraph 9(b) of Schedule 2 to the Pensions Act 2004 (c. 35) (reserved regulatory functions), for “or (c)” substitute “, (c) or (d)”. 20

110 Intervention by Regulator where scheme’s technical provisions improperly determined

In section 231 of the Pensions Act 2004 (powers of the Regulator), before paragraph (a) of subsection (1) insert –

- “(za) that the trustees or managers, when determining the methods and assumptions to be used in calculating the scheme’s technical provisions, have failed to comply with a requirement imposed under section 222(4)(c);”.

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111 Exclusion of transfers out in certain cases

- (1) The Pension Schemes Act 1993 (c. 48) is amended as follows. 30
- (2) In section 93(1B) (regulations as to the application of provisions relating to transfers for early leavers) after paragraph (a) insert –
 - “(aa) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;”. 35
- (3) In section 101F (transfer notice in respect of pension credit benefit) after subsection (6) insert –
 - “(6A) Regulations may provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description.” 40

112 Official pensions: adjustment of increases in survivors' pensions

- (1) Section 59 of the Social Security Pensions Act 1975 (c. 60) (increase of official pensions) is amended as follows.
- (2) Subsection (5ZA) is amended as follows.
- (3) In the words before paragraph (a) – 5
 - (a) for “or widower’s” substitute “, widower’s or surviving civil partner’s”;
 - (b) after “spouse” insert “or civil partner”.
- (4) In paragraph (a), after “spouse” insert “or civil partner”.
- (5) In paragraph (b) – 10
 - (a) after “period” insert “(“the relevant time”);
 - (b) for the words from “one half” to the end substitute “the rate provided for in subsection (5ZB);”.
- (6) In paragraph (c), for “or widower’s” substitute “, widower’s or surviving civil partner’s”. 15
- (7) Omit the words from “but this subsection” to the end.
- (8) After subsection (5ZA) insert –

“(5ZB) The rate referred to in subsection (5ZA)(b) is –

 - (a) in the case of a widow’s pension, one half of the rate of the deceased husband’s guaranteed minimum pension at the relevant time; 20
 - (b) in the case of a widower’s pension, one half of so much of the rate of the deceased wife’s guaranteed minimum pension at the relevant time as is attributable to earnings factors for the tax year 1988-89 and subsequent tax years; 25
 - (c) in the case of a surviving civil partner’s pension, one half of so much of the rate of the deceased civil partner’s guaranteed minimum pension at the relevant time as is attributable to earnings factors for the tax year 1988-89 and subsequent tax years. 30

(5ZC) Subsection (5ZA) –

 - (a) does not apply to a widow’s or widower’s pension in respect of any service of the deceased spouse if the deceased spouse’s pension in respect of that service became payable before 24 July 1990; 35
 - (b) applies to a surviving civil partner’s pension only in respect of amounts payable after the coming into force of this subsection.”

113 War pensions: effect of later marriage or civil partnership

- (1) Section 168 of the Pensions Act 1995 (c. 26) (war pensions for widows: effect of remarriage) is amended as follows. 40
- (2) For subsection (1) substitute –

“(1) In determining whether a pension is payable to a person as a widow, widower or surviving civil partner under any of the enactments

- mentioned in subsection (3) in respect of any period beginning on or after the commencement date, no account may be taken of the fact that the person has married or formed a civil partnership with another person if, before the beginning of that period –
- (a) the marriage or civil partnership has been terminated, 5
 - (b) the parties to it have been judicially separated, or
 - (c) in the case of a civil partnership, a separation order has been made in respect of the parties.
- (1A) The commencement date is –
- (a) for the purpose of determining whether a pension is payable to a person as a widow or widower, 19 July 1995; 10
 - (b) for the purpose of determining whether a pension is payable to a person as a surviving civil partner, 5 December 2005.”
- (3) In subsection (2), in paragraph (a) –
- (a) after “a marriage” insert “or civil partnership”; 15
 - (b) for “the termination of the marriage” substitute “its termination”.
- (4) In that subsection, after “divorce” insert “, dissolution”.
- (5) In subsection (3)(a), for “The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983” substitute “The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006”. 20

114 Polish Resettlement Act 1947: effect of residence in Poland

- (1) In section 1(3) of the Polish Resettlement Act 1947 (c. 19) (power to apply Royal Warrant as to pensions etc to certain Polish forces) for “, and the scheme shall contain provision for securing that no payment shall be made thereunder to or in respect of any person as to whom the Secretary of State is satisfied that he is resident in Poland” substitute “(including exceptions applying by virtue of a person’s residence in Poland at any time prior to 1 May 2004)”. 25
- (2) Subsection (3) below applies where –
- (a) a person (“A”) was resident in Poland at any time in the relevant period, and 30
 - (b) but for that fact, an amount would have been payable to or in respect of A under the scheme made under section 1 of the Polish Resettlement Act 1947.
- (3) The power to make the scheme includes power to make provision for payments to or in respect of A in relation to any part of the relevant period. 35
- (4) In this section “the relevant period” means the period beginning with 1 May 2004 and ending with the coming into force of this section.

PART 6

GENERAL

115 Orders and regulations 40

- (1) Any power to make an order or regulations under this Act is exercisable by statutory instrument.

- (2) A statutory instrument containing an order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Subsection (2) does not apply to an order under section 120 or an order to which subsection (4) or (5) applies. 5
- (4) No order may be made under section 58 or 61(5) unless a draft of the order has been laid before and approved by resolution of each House of Parliament.
- (5) No order amending or repealing any provision of an Act may be made under section 117 unless a draft of the order has been laid before and approved by resolution of each House of Parliament. 10

116 Orders and regulations: supplementary

- (1) An order or regulations under this Act may include –
- (a) such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be expedient;
 - (b) provision conferring a discretion on any person. 15
- (2) An order under section 58 may include provision for anything that may be prescribed by the order to be determined under it, and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed. 20
- (3) The power to make an order or regulations under this Act may be exercised –
- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,
 - (b) so as to make, as respects the cases in relation to which it is exercised – 25
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act, or 30
 - (iii) any such provision either unconditionally or subject to any specified condition. 30

117 Power to make further provision

- (1) The Secretary of State may by order make – 35
- (a) such supplemental, incidental or consequential provision, or
 - (b) such transitory, transitional or saving provision,
- as the Secretary of State thinks appropriate for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision. 40
- (2) An order under this section may, for purposes of or in consequence of or for giving full effect to any provision of or made under Chapter 4 of Part 1, make provision for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session. 45

- (3) Amendments made under this section are in addition, and without prejudice, to those made by or under any other provision of this Act.
- (4) No other provision of this Act restricts the powers conferred by this section.

118 General financial provisions

- There is to be paid out of money provided by Parliament – 5
- (a) any expenditure incurred by the Secretary of State or a government department in consequence of this Act, and
 - (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

119 Repeals 10

Schedule 9 (repeals) has effect.

120 Commencement

- (1) Subject to the following provisions, this Act comes into force in accordance with provision made by order by the Secretary of State.
- (2) Subsection (1) does not apply to – 15
 - (a) sections 58 to 64;
 - (b) sections 68 to 75;
 - (c) section 90;
 - (d) section 109;
 - (e) this Part, except section 119 and Schedule 9. 20
- (3) Section 90 comes into force on 6 April 2009.
- (4) Section 109 comes into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (5) An order under subsection (1) may appoint different days for different purposes. 25

121 Extent

- (1) Subject to the following provisions, this Act extends to England and Wales and Scotland.
- (2) The following provisions extend also to Northern Ireland – 30
 - (a) in Part 1, Chapters 4 and 5;
 - (b) sections 115 to 117;
 - (c) section 120, this section and section 122.
- (3) An amendment or repeal by this Act has the same extent as the enactment amended or repealed.

122 Short title 35

This Act may be cited as the Pensions Act 2008.

SCHEDULES

SCHEDULE 1

Section 65

THE TRUSTEE CORPORATION

PART 1

MEMBERS AND EMPLOYEES

5

Members

- 1 (1) Appointments of members of the corporation, and of a member as chair of the corporation, are to be made –
 - (a) by the Secretary of State, if they take effect on the commencement of section 65(1) or in the initial period; 10
 - (b) by the corporation, if they take effect after the initial period.
- (2) The Secretary of State and the corporation must aim to ensure that, from the end of the initial period, there are not fewer than 9 and not more than 15 members at any time.
- (3) It is for the Secretary of State to determine the length of the initial period. 15
- (4) An order under section 58 may provide for section 242 of the Pensions Act 2004 (c. 35) (member-nominated directors of corporate trustees) to apply to the members of the corporation as it applies to the directors of a company, subject to any modifications specified in the order.

Conflicts of interest

20

- 2 (1) The Secretary of State and, under paragraph 1(1)(b), the corporation must satisfy themselves that a person to be appointed as a member does not have a conflict of interest.
- (2) The Secretary of State and the corporation must also satisfy themselves from time to time that none of the members has a conflict of interest. 25
- (3) A member of the corporation, or a person the Secretary of State or the corporation proposes to appoint as a member, must provide the Secretary of State on request with any information the Secretary of State considers necessary for the purposes of sub-paragraph (1) or (2).
- (4) A member of the corporation, or a person the corporation proposes to appoint as a member, must provide the corporation on request with any information the corporation considers necessary for the purposes of sub-paragraph (1) or (2). 30

- (5) In this paragraph and paragraph 3 “conflict of interest”, in relation to a person, means a financial or other interest which is likely to affect prejudicially that person’s discharge of functions as a member of the trustee corporation.
- (6) But for the purposes of this paragraph and paragraph 3 a person is not to be taken to have a conflict of interest for these reasons alone –
- (a) being or having previously been engaged, on behalf of the relevant authority, in activities connected with the discharge of the authority’s functions relating to occupational pension schemes or personal pension schemes;
 - (b) having previously been a trustee or manager of such a scheme or an employee of such a trustee or manager.

Disqualification and removal

- 3 (1) A person is disqualified for appointment as a member if –
- (a) prohibited by an order under section 3 of the Pensions Act 1995 (c. 26) or Article 3 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) from being a trustee of trust schemes in general, or
 - (b) suspended by an order under section 4 of that Act or Article 4 of that Order as a trustee of any scheme.
- (2) While the trustee corporation is a trustee of a scheme established under section 58, section 3 of that Act applies in relation to being a member of the trustee corporation as it applies in relation to being a trustee of the scheme.
- (3) The Pensions Regulator may also make an order under section 3 of that Act as applied by sub-paragraph (2) at any time when it would have power to make an order under section 4 of that Act (suspension) if the person were a trustee of the scheme.
- 4 (1) A person is disqualified for appointment as a member if disqualified under section 29 of the Pensions Act 1995 or Article 29 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) for being a trustee of a trust scheme.
- (2) A person is not disqualified under this paragraph if the Pensions Regulator has given the person a general waiver under section 29(5) of that Act or Article 29(5) of that Order.
- (3) The Pensions Regulator may, on the application of a person disqualified under this paragraph, give the person notice in writing waiving the disqualification.
- (4) A member who becomes disqualified under sub-paragraph (1) ceases to be a member.
- 5 The Secretary of State may remove a member from office if satisfied that the member –
- (a) has a conflict of interest,
 - (b) is unfit for office by reason of misconduct,
 - (c) has failed to comply with the terms of appointment,
 - (d) has without reasonable excuse failed to discharge the functions of the office, or

- (e) is otherwise incapable of discharging, or unfit or unwilling to discharge, the functions of the office.

Tenure of office

- 6 (1) A person holds and vacates office as a member or as chair in accordance with the terms of the appointment (subject to this Schedule). 5
- (2) A person's appointment as a member or as chair must state the period for which the appointment is made.
- (3) The period must not be more than four years.
- (4) At the end of the period the person is eligible for re-appointment, but may not be re-appointed more than once. 10
- (5) A person may resign as a member by notice in writing to the chair.
- (6) A person may resign as chair by notice in writing to the Secretary of State.
- (7) A person's appointment as chair ceases if the person ceases to be a member.

Remuneration etc

- 7 (1) The trustee corporation may – 15
- (a) pay to the members such remuneration, and
- (b) pay to or in respect of them such sums by way of or in respect of allowances and gratuities,
- as the Secretary of State may determine.
- (2) Where – 20
- (a) a person whose term of office as member or chair has not expired ceases to hold that office, and
- (b) the Secretary of State thinks there are special circumstances that make it right for the person to receive compensation,
- the trustee corporation may make a payment to the person of such amount 25
- as the Secretary of State may determine.

Employees

- 8 (1) The trustee corporation may appoint employees and make any other arrangements for its staffing that it thinks fit.
- (2) Employees are appointed and hold their employment on terms and conditions, including remuneration, determined by the trustee corporation. 30
- (3) The trustee corporation must –
- (a) pay to or in respect of employees such pensions, allowances or gratuities as it may determine, or
- (b) provide and maintain for them such pension schemes (whether contributory or not) as it may determine. 35

PART 2

PROCEEDINGS ETC

Committees and advisory committees

- 9 (1) The trustee corporation may –
- (a) establish a committee for the purpose of discharging any of its functions; 5
 - (b) establish a committee for the purpose of giving the corporation advice about matters relating to the discharge of its functions.
- (2) A committee may include persons (including persons constituting a majority, but not the whole, of the committee) who are neither members nor employees of the trustee corporation. 10
- (3) Where a person who is neither a member nor an employee of the trustee corporation is a member of a committee, the trustee corporation may pay to that person such remuneration and expenses as it may determine.
- 10 (1) A committee of the trustee corporation may establish a sub-committee. 15
- (2) Every member of a sub-committee must be a member of the committee which established it.

Proceedings

- 11 (1) The trustee corporation may, subject to this Schedule –
- (a) regulate its own procedure; 20
 - (b) regulate the procedure of its committees or sub-committees;
 - (c) enable committees or sub-committees to regulate their own procedure subject to any provision made by the corporation.
- (2) The trustee corporation must publish, in such manner as it thinks fit, its own procedures and those of its committees and sub-committees. 25
- (3) This paragraph has effect subject to paragraph 13 (disqualification for acting in relation to certain matters).
- 12 The trustee corporation must make arrangements for the keeping of proper records –
- (a) of its proceedings, 30
 - (b) of the proceedings of its committees and sub-committees,
 - (c) of anything done by an employee or member of the corporation under paragraph 14(a) or (b) (delegation to member or employee).

Disqualification for acting in relation to certain matters

- 13 (1) This paragraph applies if at any meeting of – 35
- (a) the trustee corporation, or
 - (b) any committee or sub-committee,
- a member of the trustee corporation or, as the case may be, of the committee or sub-committee has a direct or indirect interest in any matter falling to be considered at the meeting. 40

-
- (2) The person with the interest must declare it and the declaration must be recorded in the minutes of the meeting.
- (3) The person with the interest may not take part in any discussion or decision relating to the matter in which he has an interest, unless –
- (a) in the case of a meeting of the trustee corporation the other members who are present when the discussion or decision falls to take place or is made have resolved unanimously that the interest is to be disregarded, or 5
 - (b) in the case of a meeting of a committee or sub-committee, the other members of the committee or sub-committee who are present when the discussion or decision falls to take place or is made have resolved in the manner authorised by the trustee corporation that the interest is to be disregarded. 10
- (4) In granting authorisations for the purposes of sub-paragraph (3)(b), the trustee corporation must secure that a resolution for those purposes does not allow a person to take part in a discussion or decision at a meeting of a committee established by virtue of paragraph 9(1)(a) or of a sub-committee of such a committee unless at least the following requirements are met – 15
- (a) the number of other members of the committee or sub-committee in favour of the resolution is not less than two-thirds of those who are both present and entitled to vote on the resolution, and 20
 - (b) the number of other members of the committee or sub-committee in favour of the resolution is not less than its quorum.
- (5) For the purposes of this paragraph a general notification given at or sent to a relevant meeting that – 25
- (a) a person –
 - (i) has an interest (as member, officer, employee or otherwise) in a specified body corporate or firm, or
 - (ii) is connected with a specified person (other than a body corporate or firm), and 30
 - (b) the person is to be regarded as interested in any matter involving that body corporate or firm or, as the case may be, person, is to be regarded as compliance with sub-paragraph (2) in relation to any such matter for the purposes of that meeting and any subsequent relevant meeting of the same type which is held while the notification is in force. 35
- (6) Section 252 of the Companies Act 2006 (c. 46) (persons connected with a director) applies for determining whether a person is connected with another person for the purposes of sub-paragraph (5) as it applies for determining whether a person is connected with a director of a company.
- (7) A notification for the purposes of sub-paragraph (5) remains in force until it is withdrawn. 40
- (8) For the purposes of sub-paragraph (5) each of the following is a “relevant meeting” –
- (a) a meeting of the trustee corporation,
 - (b) a meeting of a committee, 45
 - (c) a meeting of a sub-committee,
- and a relevant meeting is of the same type as another relevant meeting if both meetings are relevant meetings by virtue of falling within the same paragraph of this sub-paragraph.

- (9) A person required to make a declaration for the purposes of this paragraph in relation to any meeting –
- (a) is not required to attend the meeting, but
 - (b) is to be taken to have complied with the requirements of this paragraph if he takes reasonable steps to secure that notice of his interest is read out at, and taken into consideration at, the meeting. 5
- (10) For the purposes of this paragraph a person is not to be taken to have an interest in any matter for these reasons only –
- (a) being or having previously been engaged, on behalf of the relevant authority, in activities connected with the discharge of the authority's functions relating to occupational pension schemes or personal pension schemes, or 10
 - (b) having previously been a trustee or manager of such a scheme or an employee of such a trustee or manager.

Delegation 15

- 14 The trustee corporation may, subject to an order or rules under section 58, delegate any function conferred on it to –
- (a) a member,
 - (b) an employee, or
 - (c) a committee. 20

Validity of proceedings

- 15 The validity of proceedings of the trustee corporation, a committee or a sub-committee is not affected by a vacancy among the members or a defect in appointment.

Authentication of the trustee corporation's seal 25

- 16 (1) The application of the trustee corporation's seal must be authenticated by the signature of –
- (a) a member, or
 - (b) any other person authorised by the trustee corporation (whether generally or specially) for the purpose. 30
- (2) A document purporting to be duly executed under the seal of the trustee corporation, or to be signed on behalf of the trustee corporation, is to be received in evidence and, except to the extent that the contrary is shown, taken to be duly so executed or signed.
- (3) This paragraph does not apply to Scotland. 35

Annual report

- 17 (1) As soon as is reasonably practicable after the end of each financial year, the trustee corporation must send to the Secretary of State a report on the exercise of the trustee corporation's functions during that year.
- (2) The report must include – 40
- (a) a report on the trustee corporation's proceedings during the year, and

- (b) any information the Secretary of State directs, relating to the financial position of the trustee corporation or any other matter.
- (3) The Secretary of State must lay before Parliament a copy of each report received under this paragraph.

PART 3

5

MONEY

Finance

- 18 (1) The Secretary of State may give financial assistance to the trustee corporation.
- (2) The assistance – 10
- (a) may take the form of grants, loans, guarantees or indemnities;
- (b) may be given on conditions (which may include conditions about repayment with or without interest).
- 19 The trustee corporation may make charges in connection with the exercise of its functions. 15

Accounts

- 20 (1) The trustee corporation must –
- (a) keep proper accounting records, and
- (b) prepare a statement of accounts in respect of each financial year.
- (2) A statement under sub-paragraph (1)(b) must be prepared by the trustee corporation in such form as the Secretary of State may direct. 20
- (3) The trustee corporation must send a copy of a statement under sub-paragraph (1)(b) –
- (a) to the Secretary of State, and
- (b) to the Comptroller and Auditor General. 25
- (4) A copy of a statement must be sent under sub-paragraph (3) within such period, beginning with the end of the financial year to which the statement relates, as the Secretary of State may direct.
- (5) The Comptroller and Auditor General must –
- (a) examine, certify and report on a statement received under this paragraph, and
- (b) send a copy of the certified statement and of the report on it to the Secretary of State as soon as possible. 30
- (6) The Secretary of State must lay before Parliament a copy of the statement and report sent under sub-paragraph (5)(b). 35

PART 4

SUPPLEMENTARY

Disqualification

- 21 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) insert at the appropriate place – 5
“The trustee corporation established by section 65 of the Pensions Act 2008.”
- 22 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) insert at the appropriate place – 10
“The trustee corporation established by section 65 of the Pensions Act 2008.”

Records and freedom of information

- 23 In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) in paragraph 3, insert at the appropriate place in Part 2 of the Table (other establishments and organisations) – 15
“The trustee corporation established by section 65 of the Pensions Act 2008.”
- 24 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities: miscellaneous) insert at the appropriate place – 20
“The trustee corporation established by section 65 of the Pensions Act 2008.”

Equality

- 25 In Schedule 1A to the Race Relations Act 1976 (c. 74) (bodies subject to general duty), in Part 2, under “Other Bodies, Etc” insert at the appropriate place – 25
“The trustee corporation established by section 65 of the Pensions Act 2008.”

Interpretation

- 26 (1) In this Schedule – 30
“financial year” means such period as the Secretary of State may by order prescribe;
“occupational pension scheme” and “personal pension scheme” –
(a) in relation to England and Wales or Scotland, have the same meanings as in the Pension Schemes Act 1993 (c. 48) (see section 1 of that Act); 35
(b) in relation to Northern Ireland, have the same meanings as in the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (see section 1 of that Act); 40
“the relevant authority” means –
(a) in relation to England and Wales or Scotland, the Secretary of State;

- (b) in relation to Northern Ireland, the Department for Social Development in Northern Ireland.
- (2) In this Schedule references to the relevant authority’s functions relating to occupational pension schemes or personal pension schemes include such functions conferred at any time after the passing of this Act. 5

SCHEDULE 2

Section 88

REVALUATION OF ACCRUED BENEFITS ETC

PART 1

REVALUATION OF ACCRUED PENSION BENEFITS

- Amendments to Schedule 3 to the 1993 Act* 10
- 1 This Part makes amendments to Schedule 3 to the Pension Schemes Act 1993 (c. 48) (methods of revaluing accrued pension benefits).
- 2 In paragraph 1 (the final salary method), for sub-paragraphs (1) to (3) substitute –
- “(1) The final salary method is to add to the amount that would be payable but for Chapter 2 of Part 4, or regulations made under it, the additional amount specified in sub-paragraph (1A), (1B), (1C) or (1D) (whichever applies). 15
- (1A) Where –
- (a) the termination of pensionable service occurs before 1st January 1991, and 20
- (b) the whole of the member’s pensionable service falls on or after 1st January 1985,
- the additional amount is the appropriate higher revaluation percentage of the accrued benefit. 25
- (1B) Where –
- (a) the termination of pensionable service occurs before 1st January 1991, and
- (b) some of the member’s pensionable service falls before 1st January 1985, 30
- the additional amount is such proportion of the appropriate higher revaluation percentage of the accrued benefit as the member’s pensionable service falling on or after 1st January 1985 bears to the member’s total pensionable service.
- (1C) Where the termination of pensionable service occurs – 35
- (a) on or after 1st January 1991, but
- (b) before the day on which section 88 of the Pensions Act 2008 comes into force (“the 2008 Act commencement day”),
- the additional amount is the appropriate higher revaluation percentage of the accrued benefit. 40

- (1D) Where the termination of pensionable service occurs on or after the 2008 Act commencement day, the additional amount is the aggregate of –
- (a) the appropriate higher revaluation percentage of so much of the accrued benefit as is attributable to the member’s pensionable service falling before the 2008 Act commencement day, and 5
 - (b) the appropriate lower revaluation percentage of so much of the accrued benefit as is attributable to the member’s pensionable service falling on or after that day. 10
- (1E) In this paragraph “the accrued benefit” means the amount of the pension or other benefit which on the termination date has accrued to the member or to any other person in respect of the member (excluding any part of that amount which consists of –
- (a) the member’s guaranteed minimum, or 15
 - (b) the guaranteed minimum of the member’s widow, widower or surviving civil partner).
- (2) For the purposes of this paragraph, a member’s pensionable service includes any notional pensionable service which is credited to the member by the scheme (“notional service”). 20
But notional service shall not be taken into account in determining which of sub-paragraphs (1A), (1B), (1C) and (1D) applies.
- (3) For the purposes of determining the additional amount where sub-paragraph (1B) applies, any notional service shall be taken to have ended immediately before the member’s actual pensionable service began. 25
- (3A) For the purposes of determining the additional amount where sub-paragraph (1D) applies, any notional service shall be treated as falling on or after the 2008 Act commencement day only if, or to the extent that, it is so treated for the purposes of the scheme.” 30
- 3 (1) Paragraph 2 (the revaluation percentage and the appropriate revaluation percentage) is amended as follows.
- (2) In sub-paragraph (1), for “specify a relevant percentage for each period” substitute “specify (so far as it is necessary to do so) –
- (a) a higher revaluation percentage, and 35
 - (b) a lower revaluation percentage,
- for each period”.
- (3) For sub-paragraph (3) substitute –
- “(3) The higher revaluation percentage which the Secretary of State is to specify in relation to a revaluation period is the lesser of – 40
- (a) the percentage which appears to the Secretary of State to be the percentage increase in the general level of prices in Great Britain during the period which is the reference period in relation to the revaluation period (“the inflation percentage”), and 45
 - (b) the higher maximum rate.

- (3A) The lower revaluation percentage which the Secretary of State is to specify in relation to a revaluation period is the lesser of –
- (a) the percentage which appears to the Secretary of State to be the inflation percentage, and
 - (b) the lower maximum rate.” 5
- (4) For sub-paragraphs (6) and (7) substitute –
- “(6) For the purposes of sub-paragraph (3)(b) and (3A)(b) –
- “the higher maximum rate”, in relation to a revaluation period, is –
- (a) in the case of a revaluation period of 12 months, 5 per cent; and 10
 - (b) in any other case, the percentage that would be the inflation percentage had the general level of prices increased at the rate of 5 per cent compound per annum during the reference period in question; 15
- “the lower maximum rate”, in relation to a revaluation period, is –
- (a) in the case of a revaluation period of 12 months, 2.5 per cent; and
 - (b) in any other case, the percentage that would be the inflation percentage had the general level of prices increased at the rate of 2.5 per cent compound per annum during the reference period in question. 20
- (7) In paragraph 1 –
- “the appropriate higher revaluation percentage” means the higher revaluation percentage specified in the last calendar year before the date on which the member attains normal pension age as the higher revaluation percentage for the revaluation period which is of the same length as the number of complete years in the pre-pension period; 25
- “the appropriate lower revaluation percentage” has a corresponding meaning.” 30

PART 2

REVALUATION OF ACCRUED AMOUNTS ETC

- Amendments to Schedule 7 to the 2004 Act* 35
- 4 This Part makes amendments to Schedule 7 to the Pensions Act 2004 (c. 35) (pension compensation provisions).
- 5 (1) Paragraph 12 (active members who have not attained normal pension age at assessment date: the revaluation amount for the revaluation period) is amended as follows. 40
- (2) In sub-paragraph (3), for paragraph (b) substitute –
- “(b) in any other case, the aggregate of –
 - (i) the higher revaluation percentage of so much of the accrued amount as is attributable to the active member’s pensionable service falling before the day on which section 88 of the Pensions Act 2008 45

- comes into force (“the 2008 Act commencement day”), and
- (ii) the lower revaluation percentage of so much of the accrued amount as is attributable to the active member’s pensionable service falling on or after that day.” 5
- (3) After sub-paragraph (3) insert –
- “(3A) For the purposes of sub-paragraph (3)(b) –
- (a) any service within paragraph 36(4)(b) (notional pensionable service) is to be treated as falling on or after the 2008 Act commencement day if, or to the extent that, it is so treated for the purposes of the scheme; 10
- (b) regulations may make provision in relation to cases where it is unclear whether or not any particular pensionable service (either actual or notional) falls, or is to be treated as falling, on or after that day.” 15
- (4) For sub-paragraphs (4) and (5) substitute –
- “(4) In sub-paragraph (3)(b) –
- “the higher revaluation percentage” means the lesser of –
- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in the prescribed manner (“the inflation percentage”), and 20
- (b) the higher maximum revaluation rate;
- “the lower revaluation percentage” means the lesser of – 25
- (a) the inflation percentage, and
- (b) the lower maximum revaluation rate.
- (5) For the purposes of sub-paragraph (4) –
- “the higher maximum revaluation rate”, in relation to the revaluation period, is – 30
- (a) if that period is a period of 12 months, 5%, and
- (b) in any other case, the percentage that would be the inflation percentage had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period; 35
- “the lower maximum revaluation rate”, in relation to the revaluation period, is –
- (a) if that period is a period of 12 months, 2.5%, and
- (b) in any other case, the percentage that would be the inflation percentage had the general level of prices in Great Britain increased at the rate of 2.5% compound per annum during that period. 40
- This is subject to paragraph 29 (power of Board to determine maximum revaluation rates etc).”
- 6 (1) Paragraph 17 (deferred members who have not attained normal pension age at assessment date: the revaluation amount for the second revaluation period) is amended as follows. 45

- (2) In sub-paragraph (3), for paragraph (b) substitute –
- “(b) in any other case, the aggregate of –
- (i) the higher revaluation percentage of so much of the relevant amount as is attributable to the deferred member’s pensionable service falling before the day on which section 88 of the Pensions Act 2008 comes into force (“the 2008 Act commencement day”), and 5
- (ii) the lower revaluation percentage of so much of the relevant amount as is attributable to the deferred member’s pensionable service falling on or after that day.” 10
- (3) After sub-paragraph (3) insert –
- “(3A) For the purposes of sub-paragraph (3)(b) –
- (a) any service within paragraph 36(4)(b) (notional pensionable service) is to be treated as falling on or after the 2008 Act commencement day if, or to the extent that, it is so treated for the purposes of the scheme; 15
- (b) regulations may make provision in relation to cases where it is unclear whether or not any particular pensionable service (either actual or notional) falls, or is to be treated as falling, on or after that day.” 20
- (4) For sub-paragraphs (4) and (5) substitute –
- “(4) In sub-paragraph (3) –
- “the higher revaluation percentage” means the lesser of – 25
- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in the prescribed manner (“the inflation percentage”), and
- (b) the higher maximum revaluation rate; 30
- “the lower revaluation percentage” means the lesser of –
- (a) the inflation percentage, and
- (b) the lower maximum revaluation rate;
- “the relevant amount” means the aggregate of –
- (a) the accrued amount, and 35
- (b) the revaluation amount for the first revaluation period (see paragraph 16).
- (5) For the purposes of sub-paragraph (3) –
- “the higher maximum revaluation rate”, in relation to the second revaluation period, is – 40
- (a) if that period is a period of 12 months, 5%, and
- (b) in any other case, the percentage that would be the inflation percentage had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period; 45
- “the lower maximum revaluation rate”, in relation to the second revaluation period, is –
- (a) if that period is a period of 12 months, 2.5%, and

- (b) in any other case, the percentage that would be the inflation percentage had the general level of prices in Great Britain increased at the rate of 2.5% compound per annum during that period.
- This is subject to paragraph 29 (power of Board to determine maximum revaluation rates etc).” 5
- 7 In paragraph 29 (Board’s powers to alter rates of revaluation etc), for subparagraph (1) substitute –
- “(1) The Board may determine what is to be the higher maximum revaluation rate or the lower maximum revaluation rate for the purposes of paragraphs 12(4) and 17(4), and where it does so the relevant definitions in paragraphs 12(5) and 17(5) do not apply.” 10

PART 3

CONSEQUENTIAL AMENDMENTS

- 8 (1) Section 51ZA of the Pensions Act 1995 (c. 26) (meaning of “the appropriate percentage”) is amended as follows. 15
- (2) In subsection (1) –
- (a) in paragraph (a), for “revaluation percentage” substitute “higher revaluation percentage”;
- (b) for paragraph (b) substitute – 20
- “(b) in the case of a category Y pension, means the lower revaluation percentage for that period.”
- (3) In subsection (2), for ““the revaluation percentage”” substitute ““the higher revaluation percentage”, “the lower revaluation percentage””.

SCHEDULE 3

Section 89 25

ADDITIONAL PENSION CONSOLIDATION

After Schedule 4B to the Social Security Contributions and Benefits Act 1992 (c. 4) insert –

“SCHEDULE 4C

Section 45

ADDITIONAL PENSION: CONSOLIDATED AMOUNT FOR THE PURPOSES OF SECTION 45(2A) 30

- 1 For the purposes of this Schedule, the “consolidation date” in relation to a pensioner means such date in the flat rate introduction year, or in a later tax year before that in which the pensioner attains pensionable age, as the Secretary of State may determine. 35
- 2 The consolidated amount is the sum of –
- (a) the GRB amount, and
- (b) the section 45(2)(a), (b) and (c) amounts.

- | | | |
|---|--|----|
| 3 | The GRB amount is the amount that would, on the pensioner attaining pensionable age, be the increase in the weekly rate of retirement benefit calculated under section 36(1) of the National Insurance Act 1965 (c. 51) (graduated retirement benefit) if that provision applied in the case of a pensioner attaining pensionable age on or after 6th April 2020. | 5 |
| 4 | (1) The section 45(2)(a), (b) and (c) amounts are the amounts that would, on the pensioner attaining pensionable age, be the weekly equivalents calculated under section 45(2)(a), (b) and (c) of this Act if section 45(2) applied in the case of a pensioner attaining pensionable age on or after 6th April 2020, but applying the provisions of this Act with the following modifications. | 10 |
| | (2) The following provisions apply as if a reference to the end of the final relevant year were a reference to the consolidation date – | |
| | (a) section 44(5A)(c); | 15 |
| | (b) in Schedule 4A, paragraphs 2(2)(b), 6(2)(a) and 7(2)(b). | |
| 5 | (1) This paragraph applies to any calculation under paragraph 3 or 4 above. | |
| | (2) The calculation is to be made in accordance with all relevant provisions as they have effect on the consolidation date. | 20 |
| | (3) For the purposes of the calculation, it is to be assumed that any entitlement of the pensioner to graduated retirement benefit or to a retirement pension is not deferred. | |
| 6 | The uprated consolidated amount for the purposes of section 45(2A)(a) is the consolidated amount revalued annually under the Administration Act.” | 25 |

SCHEDULE 4

Section 99

PENSION COMPENSATION PAYABLE ON DISCHARGE OF PENSION COMPENSATION CREDIT

PART 1

INTRODUCTORY

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Introductory

- | | |
|---|---|
| 1 | This Schedule applies for the purposes of determining the compensation payable to or in respect of a person entitled to compensation on the discharge of a pension compensation credit in accordance with this Chapter. |
|---|---|

Interpretation

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- | | |
|---|--|
| 2 | In this Schedule – |
| | “the initial annual rate of compensation” is the amount determined by the Board under section 99(4); |
| | “the pension compensation age” of the transferee is the age determined in accordance with paragraph 3. |

40

Pension compensation age

- 3 (1) This paragraph applies for the purpose of determining the transferee’s “pension compensation age”.
- (2) Sub-paragraphs (3) and (4) apply where the transferor’s PPF compensation, or any of it, is determined under Schedule 7 to the Pensions Act 2004 (c. 35). 5
- (3) Where the transferor’s right to PPF compensation arises by virtue of his or her status as a member of a pension scheme for which the Board assumed responsibility in accordance with Chapter 3 of Part 2 of that Act, the transferee’s pension compensation age is the same as – 10
- (a) the normal pension age of the transferor, or
- (b) where the transferor was a pension credit member, the normal benefit age of the transferor.
- (4) Where the transferor’s right to PPF compensation arises by virtue of his or her status as a widower, widow or dependant of a member of a scheme for which the Board assumed responsibility in accordance with Chapter 3 of Part 2 of that Act, the transferee’s pension compensation age is the same as – 15
- (a) the normal pension age of that member, or
- (b) where that member was a pension credit member, the normal benefit age of that member.
- (5) Sub-paragraph (6) applies where the transferor’s PPF compensation is determined only under this Schedule. 20
- (6) The transferee’s pension compensation age is the same as the pension compensation age of the transferor.
- (7) In this paragraph, “normal benefit age”, “normal pension age” and “pension credit member” have the same meanings as in Schedule 7 to the Pensions Act 2004. 25

PART 2

TRANSFEEE ATTAINS PENSION COMPENSATION AGE BEFORE OR ON TRANSFER DAY

Compensation payable to transferee

- 4 (1) Compensation is payable in accordance with this paragraph where the transferee attains pension compensation age before or on the transfer day. 30
- (2) The transferee is entitled to periodic compensation commencing on the transfer day and continuing for life.
- (3) The annual rate of the periodic compensation is the appropriate percentage of the aggregate of – 35
- (a) the initial annual rate of compensation, and
- (b) any increases under paragraph 12 (annual increases in periodic compensation).
- (4) In sub-paragraph (3) “the appropriate percentage” means – 40
- (a) in a case in which, on the transfer day, the transferor is not entitled to present payment of PPF compensation, 90%;
- (b) in any other case, 100%.

(5) This paragraph is subject to paragraph 13 (compensation cap).

Compensation payable to widow or widower

- 5 (1) This paragraph applies where –
- (a) the transferee dies after liability in respect of the pension compensation credit has been discharged under section 99, 5
 - (b) the transferee was before death entitled under paragraph 4 to periodic compensation commencing on the transfer day, and
 - (c) the transferee is survived by a widow or widower.
- (2) Subject to sub-paragraph (4), the widow or widower is entitled to periodic compensation commencing on the day following the transferee’s death and continuing for life. 10
- (3) The annual rate of the periodic compensation at any time is half of the annual rate of the periodic compensation (including any increases under paragraph 12) to which the transferee would at that time have been entitled under paragraph 4 had the transferee not died. 15
- (4) The widow or widower is not entitled to periodic compensation under this paragraph in such circumstances as may be prescribed.

PART 3

TRANSFEREE ATTAINS PENSION COMPENSATION AGE AFTER TRANSFER DAY

Compensation payable to transferee 20

- 6 (1) Compensation is payable in accordance with this paragraph where the transferee attains pension compensation age after the transfer day.
- (2) The transferee is entitled to periodic compensation commencing at that age and continuing for life.
- (3) The annual rate of the periodic compensation is the appropriate percentage of the aggregate of – 25
- (a) the initial annual rate of compensation,
 - (b) the revaluation amount (see paragraph 8), and
 - (c) any increases under paragraph 12 (annual increases in periodic compensation). 30
- (4) In sub-paragraph (3) “the appropriate percentage” means –
- (a) in a case in which, on the transfer day, the transferor is not entitled to present payment of PPF compensation, 90%;
 - (b) in any other case, 100%.
- (5) This paragraph is subject to – 35
- paragraph 9 (commutation),
 - paragraph 10 (early payment),
 - paragraph 11 (deferred payment), and
 - paragraph 13 (compensation cap).

Compensation payable to widower or widow

- 7 (1) This paragraph applies where –
- (a) the transferee dies after liability in respect of the pension compensation credit has been discharged under section 99,
 - (b) the transferee – 5
 - (i) was, before death, entitled under paragraph 6 to periodic compensation commencing at pension compensation age, or
 - (ii) would have become so entitled had he or she not died, and
 - (c) the transferee is survived by a widow or widower.
- (2) Subject to sub-paragraph (4), the widow or widower is entitled to periodic compensation commencing on the day following the transferee’s death and continuing for life. 10
- (3) The annual rate of the periodic compensation at any time is –
- (a) where the transferee dies after attaining pension compensation age, half of the annual rate of the periodic compensation (including the revaluation amount (see paragraph 8) and any increases under paragraph 12) to which the transferee would at that time have been entitled under paragraph 6 had the transferee not died; 15
 - (b) where the transferee dies before attaining pension compensation age, half of the annual rate of the periodic compensation (including the revaluation amount (see paragraph 8) and any increases under paragraph 12) to which the transferee would at that time have been entitled under paragraph 6 if – 20
 - (i) the transferee’s pension compensation age had been the transferee’s actual age immediately before the date of the transferee’s death, and 25
 - (ii) the transferee had not died.
- (4) The widow or widower is not entitled to periodic compensation under this paragraph in such circumstances as may be prescribed.

Revaluation 30

- 8 (1) This paragraph applies for the purpose of calculating the revaluation amount mentioned in paragraph 6(3)(b).
- (2) In this paragraph “the revaluation period” means the period –
- (a) beginning with the transfer day, and
 - (b) ending with the day before the transferee attains pension compensation age. 35
- (3) The revaluation amount is –
- (a) in a case in which the revaluation period is less than a month, nil;
 - (b) in any other case, the revaluation percentage of the initial annual rate of compensation. 40
- (4) For the purposes of sub-paragraph (3)(b) “the revaluation percentage” means the lesser of –
- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period, determined in the prescribed manner, and 45
 - (b) the maximum revaluation rate.

- (5) For the purposes of sub-paragraph (4)(b) “the maximum revaluation rate” is –
- (a) in a case in which the revaluation period is a period of 12 months, 2.5%, and
 - (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (4)(a) had the general level of prices in Great Britain increased at the rate of 2.5% compound per annum during that period. 5
- This is subject to paragraph 15 (power of Board to alter rates of revaluation and indexation). 10

Commutation of periodic compensation

- 9 (1) A transferee who is entitled to periodic compensation under paragraph 6 may, in prescribed circumstances, opt to commute for a lump sum a portion of the periodic compensation with effect from the time it becomes payable.
- (2) Except in such circumstances as may be prescribed, the portion commuted under sub-paragraph (1) must not exceed 25%. 15
- (3) Any reduction required to be made by virtue of paragraph 13 (compensation cap) must be made before determining the amount of the transferee’s periodic compensation which may be commuted under this paragraph.
- (4) Where the transferee opts to commute any part of his or her periodic compensation under this paragraph, the lump sum payable under sub-paragraph (1) is the actuarial equivalent of the commuted portion of the periodic compensation calculated from tables designated for this purpose by the Board. 20
- (5) The Board must publish in such manner as it considers appropriate the tables designated by it for the purposes of sub-paragraph (4). 25
- (6) Regulations may prescribe the manner in which an option to commute periodic compensation under this paragraph may be exercised.
- (7) The Secretary of State may, by order, amend sub-paragraph (2) so as to substitute a different percentage for that for the time being specified there. 30

Early payment of compensation

- 10 (1) Regulations may prescribe circumstances in which, and conditions subject to which, the transferee may become entitled to periodic compensation under paragraph 6 before attaining pension compensation age.
- (2) The Board must determine the amount of the actuarial reduction to be applied to compensation to which the transferee is entitled by virtue of this paragraph. 35
- (3) Where, by virtue of this paragraph, periodic compensation is payable to the transferee before he or she attains pension compensation age, paragraph 8(2)(b) (end of revaluation period) applies as if the reference to the day before the transferee attains pension compensation age were to the day on which compensation is payable by virtue of this paragraph. 40

Deferral of compensation

- 11 (1) Regulations may prescribe circumstances in which, and conditions subject to which, the transferee may opt to defer entitlement to periodic compensation under paragraph 6 until some time after attaining pension compensation age. 5
- (2) The Board must determine the amount of the actuarial increase to be applied to compensation to which the transferee is entitled by virtue of this paragraph.
- (3) Where, by virtue of this paragraph, periodic compensation is payable to the transferee after he or she attains pension compensation age, paragraph 8(2)(b) (end of revaluation period) applies as if the reference to the day before the transferee attains pension compensation age were to the day on which compensation is payable by virtue of this paragraph. 10

PART 4

PROVISIONS APPLICABLE IRRESPECTIVE OF AGE OF TRANSFEE ON TRANSFER DAY 15

Annual increase in periodic compensation

- 12 (1) This paragraph provides for annual increases to compensation payable to the transferee.
- (2) The transferee is entitled, on each indexation date, to an increase of the appropriate percentage of the underlying rate. 20
- (3) The increase to which the transferee is entitled on the first indexation date is restricted to 1/12 of the amount calculated under sub-paragraph (2) for each full month in the period beginning with the transfer day and ending with that indexation date.
- (4) For the purposes of sub-paragraph (2)– 25
 “the appropriate percentage”, as at an indexation date, is the lesser of –
 (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31 May last falling before that date, and
 (b) 2.5%; 30
 “the indexation date” means –
 (a) the 1 January next falling after the transferee first becomes entitled to the periodic compensation, and
 (b) each subsequent 1 January during the transferee’s lifetime;
 “the underlying rate”, as at an indexation date, is the aggregate of – 35
 (a) the indexed proportion (as determined under sub-paragraph (5) or (6) below) of the aggregate of the initial annual rate of compensation and (in the case of compensation payable under paragraph 6) the revaluation amount, and
 (b) any annual increase to which the transferee is entitled under this paragraph in respect of earlier indexation dates. 40
- (5) Where the transferor’s PPF compensation is payable in accordance with paragraph 3, 5, 8, 11, 15 or 22 of Schedule 7 to the Pensions Act 2004 (c. 35) (“the relevant paragraph of Schedule 7”), “the indexed proportion” is the proportion of the amount mentioned in sub-paragraph (3)(a) of the relevant 45

- paragraph of Schedule 7 that is attributable to the transferor’s post-1997 service.
- Paragraph 28(4) of that Schedule applies for the purpose of attributing amounts to the transferor’s post-1997 service under this sub-paragraph.
- (6) Where the transferor’s PPF compensation is payable otherwise than as mentioned in sub-paragraph (5), “the indexed proportion” is such proportion as is determined in accordance with regulations made by the Secretary of State. 5
- (7) Where the compensation payable to the transferee is— 10
- (a) reduced as a result of the commutation of periodic compensation under paragraph 9, or
- (b) restricted under regulations under paragraph 13 (compensation cap),
- the references in the definition of “the underlying rate” in sub-paragraph (4) above to the initial annual compensation rate and the revaluation amount are to that rate and that amount as so restricted or reduced. 15
- (8) The definition of “the appropriate percentage” in sub-paragraph (4) is subject to paragraph 15 (power of Board to alter rates of revaluation and indexation).
- (9) In this paragraph— 20
- “post-1997 service” has the same meaning as in paragraph 28 of Schedule 7 to the Pensions Act 2004 (c. 35) (annual increase in periodic pension compensation);
- “the commutation percentage”, in relation to periodic compensation, means the percentage of that compensation commuted under paragraph 9. 25

Compensation cap

- 13 (1) The Secretary of State may by regulations make provision for restricting the amount of periodic compensation payable under this Schedule in a case in which, on the transfer day, the transferor is not entitled to present payment of PPF compensation. 30
- (2) Without prejudice to the generality of sub-paragraph (1), the regulations may restrict an amount payable to a person in any period by reference to the compensation cap specified by the Secretary of State by order under paragraph 26(7) of Schedule 7 to the Pensions Act 2004 (compensation cap). 35

Compensation in form of dependant’s benefits

- 14 (1) The Secretary of State may by regulations make provision for compensation to be payable to— 40
- (a) prescribed descriptions of partners, or
- (b) prescribed descriptions of dependants,
- of prescribed descriptions of transferees.
- (2) The regulations may, in particular—
- (a) provide for compensation in the form of periodic or lump sum payments;

- (b) provide for periodic compensation to be payable for a prescribed period;
- (c) apply paragraph 12 (annual increases in respect of periodic compensation), with or without modifications, in respect of compensation in the form of periodic payments.

5

Board's power to alter rates of revaluation and indexation

- 15 (1) The Board may determine the percentage that is to be –
- (a) the maximum revaluation rate for the purposes of paragraph 8(4)(b);
 - (b) the appropriate percentage for the purposes of paragraph 12(2).
- (2) Before making a determination under this paragraph the Board must – 10
- (a) consult such persons as it considers appropriate, and
 - (b) publish details of the proposed determination in such manner as it considers appropriate and consider any representations made in respect of it.
- (3) The rate determined under this paragraph may be nil. 15
- (4) A determination under this paragraph may be expressed so as to have effect for a limited period.
- (5) A determination under sub-paragraph (1)(b) –
- (a) has effect in relation to future increases under paragraph 12 only, and 20
 - (b) may be expressed to have effect –
 - (i) in all cases (whether the entitlement to the periodic compensation first arose before or after the date the determination is made), or
 - (ii) only in cases where entitlement to the periodic compensation first arose on or after a date determined by the Board. 25
- (6) Notice of any determination under this paragraph must be published in such manner as the Board considers appropriate.

SCHEDULE 5

Section 103

PENSION COMPENSATION ON DIVORCE ETC: ENGLAND AND WALES 30

PART 1

AMENDMENTS OF THE MATRIMONIAL CAUSES ACT 1973

- 1 The Matrimonial Causes Act 1973 (c. 18) is amended as follows.
- 2 After section 21A (pension sharing orders) insert –
- “21B Pension compensation sharing orders 35**
- (1) For the purposes of this Act, a pension compensation sharing order is an order which –

-
- (a) provides that one party’s shareable rights to PPF compensation be subject to pension compensation sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.
- (2) In subsection (1) – 5
- (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions Act 2008 or under corresponding Northern Ireland legislation;
- (b) “party” means a party to a marriage. 10
- 21C Pension compensation: interpretation**
- In this Part –
- “PPF compensation” means compensation payable under the pension compensation provisions;
- “the pension compensation provisions” means – 15
- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation on divorce etc) and any regulations or order made under it, and 20
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.”
- 3 After section 24D (pension sharing orders: apportionment of charges) insert – 25
- “24E Pension compensation sharing orders in connection with divorce proceedings**
- (1) On granting a decree of divorce or a decree of nullity of marriage or at any time thereafter (whether before or after the decree is made absolute), the court may, on an application made under this section, make a pension compensation sharing order in relation to the marriage. 30
- (2) A pension compensation sharing order under this section is not to take effect unless the decree on or after which it is made has been made absolute. 35
- (3) A pension compensation sharing order under this section may not be made in relation to rights to PPF compensation that –
- (a) derive from rights under a pension scheme that were the subject of pension attachment, 40
- (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
- (c) are the subject of pension compensation attachment, or
- (d) are or have been the subject of pension compensation sharing between the parties to the marriage. 45

- (4) For the purposes of subsection (3)(a), rights under a pension scheme “were the subject of pension attachment” if, at the time the Board of the Pension Protection Fund assumed responsibility for the scheme under Chapter 3 of Part 2 of the Pensions Act 2004 or under corresponding Northern Ireland legislation, there was in force a requirement imposed by virtue of section 25B or 25C below relating to those rights. 5
- (5) For the purposes of subsection (3)(b), rights under a pension scheme “were the subject of pension sharing between the parties to the marriage” if the rights were at any time the subject of a pension sharing order in relation to the marriage or a previous marriage between the same parties. 10
- (6) For the purposes of subsection (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of section 25F relating to them. 15
- (7) For the purposes of subsection (3)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the parties to the marriage” if they are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties. 20
- 24F Pension compensation sharing orders: duty to stay**
- (1) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor. 25
- (2) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 24G Pension compensation sharing orders: apportionment of charges** 30
- The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 100 of the Pensions Act 2008 (charges in respect of pension compensation sharing costs), or under corresponding Northern Ireland legislation.” 35
- 4 (1) Section 25 (matters to which court is to have regard) is amended as follows.
- (2) In the heading, for “and 24A” substitute “, 24A, 24B and 24E”.
- (3) In subsections (1) and (2) for “or 24B” substitute “, 24B or 24E”.
- 5 In section 25A(1) (exercise of court’s powers in favour of party to marriage on decree of divorce or nullity of marriage) for “or 24B” substitute “, 24B or 24E”. 40
- 6 In section 25E(9) (the Pension Protection Fund) omit the definition of “PPF compensation”.

7 After section 25E insert –

“25F Attachment of pension compensation

- (1) This section applies where, having regard to any PPF compensation to which a party to the marriage is or is likely to be entitled, the court determines to make an order under section 23. 5
- (2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party. 10
- (3) The order must express the amount of any payment required to be made by virtue of subsection (2) as a percentage of the payment which becomes due to the party with compensation rights.
- (4) Any such payment by the Board of the Pension Protection Fund – 15
- (a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and
- (b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party’s liability under the order. 20
- (5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this section applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation. 25
- (6) The power conferred by subsection (5) may not be exercised for the purpose of commuting compensation payable to the party with compensation rights to compensation payable to the other party.
- (7) The power conferred by subsection (2) or (5) may not be exercised in relation to rights to PPF compensation that – 30
- (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or
- (b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties. 35

25G Pension compensation: supplementary

- (1) The Lord Chancellor may by regulations – 40
- (a) make provision, in relation to any provision of section 25F which authorises the court making an order under section 23 to require the Board of the Pension Protection Fund to make a payment for the benefit of the other party, as to the person to whom, and the terms on which, the payment is to be made;
- (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of section 25F in an order under section 23, about 45

- the rights or liabilities of the payer, the payee or the person to whom the payment was due;
- (c) require notices to be given in respect of changes of circumstances relevant to orders under section 23 which include provision made by virtue of section 25F; 5
 - (d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of section 25F;
 - (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court’s functions in connection with the exercise of any of its powers under this Part. 10
- (2) Regulations under subsection (1)(e) may include –
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person; 15
 - (b) provision by reference to regulations under section 95 of the Pensions Act 2008.
- (3) Regulations under subsection (1) may make different provision for different cases.
- (4) The power to make regulations under subsection (1) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (5) In this section and section 25F –
- “the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and “the other party” means the other party to the marriage; 25
 - “prescribed” means prescribed by regulations.”
- 8 (1) Section 31 (variation, discharge etc of certain orders for financial relief) is amended as follows. 30
- (2) In subsection (2)(dd) –
- (a) omit “or” at the end of sub-paragraph (i);
 - (b) at the end of sub-paragraph (ii) add “or”;
 - (c) after that sub-paragraph insert – 35
 - “(iii) section 25F(2),”;
 - (d) in the closing words, after “pension rights” insert “or pension compensation rights”.
- (3) In subsection (2)(g) after “a pension sharing order under section 24B above” insert “, or a pension compensation sharing order under section 24E above,”.
- (4) In subsection (4B) after “pension sharing order” insert “, or a pension compensation sharing order,”. 40
- (5) In subsection (4C) after “pension sharing order” insert “, or a pension compensation sharing order,”.
- (6) In subsection (5) after “pension sharing order” insert “or pension compensation sharing order”. 45

- (7) In subsection (7B) after paragraph (ba) insert
“(bb) a pension compensation sharing order;”.
- (8) After subsection (7G) insert –
“(7H) Subsections (3) to (8) of section 24E above apply in relation to a pension compensation sharing order under subsection (7B) above as they apply in relation to a pension compensation sharing order under that section.” 5
- 9 After section 40A (appeals relating to pension sharing orders which have taken effect) insert –
- “40B Appeals relating to pension compensation sharing orders which have taken effect 10**
- (1) This section applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.
- (2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court – 15
(a) may not set aside or vary the order;
(b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate. 20
- (3) In determining for the purposes of subsection (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant.
- (4) Section 24F (duty to stay) only applies to a pension compensation sharing order under this section if the decision of the appeal court can itself be the subject of an appeal.” 25

PART 2

AMENDMENTS OF THE MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984

- 10 The Matrimonial and Family Proceedings Act 1984 (c. 42) is amended as follows. 30
- 11 In section 17 (orders for financial provision and property adjustment) at the end of subsection (1) add –
“(c) if the marriage has been dissolved or annulled, make an order which would, within the meaning of that Part of that Act, be a pension compensation sharing order in relation to the marriage.” 35
- 12 In section 18(7) (matters to which court to have regard) for paragraph (c) substitute –
“(c) “PPF compensation” means compensation payable under – 40
(i) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) or any regulations or order made under it,
(ii) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation sharing) or any regulations or order made under it, or

- (iii) any provision corresponding to the provisions mentioned in sub-paragraph (i) or (ii) in force in Northern Ireland.”
- 13 (1) Section 21 (application of certain provisions of Part 2 of the Matrimonial Causes Act 1973) is amended as follows. 5
- (2) After subsection (1)(bc) insert –
- “(bca) section 24E(3) to (8) (provisions about pension compensation orders in relation to divorce and nullity);
 - (bcb) section 24F (duty to stay pension compensation sharing orders); 10
 - (bcc) section 24G (apportionment of pension compensation sharing charges);”.
- (3) After subsection (1)(bf) insert –
- “(bg) section 25F (power, by financial provision order, to attach pension compensation payments, or to require the exercise of a right of commutation of pension compensation);” 15
- (4) After subsection (1)(l) add –
- “(m) section 40B (appeals relating to pension compensation sharing orders which have taken effect).”
- (5) In subsection (2) for “and (be)” substitute “, (be) and (bg)”. 20
- (6) In subsection (4) at the end add “or under subsections (1) to (3) of section 25G of that Act”.

PART 3

AMENDMENTS OF THE CIVIL PARTNERSHIP ACT 2004

- 14 The Civil Partnership Act 2004 (c. 33) is amended as follows. 25
- 15 After Part 4 of Schedule 5 (pension sharing orders on or after dissolution or nullity order) insert –

“PART 4A

PENSION COMPENSATION SHARING ORDERS ON OR AFTER DISSOLUTION OR NULLITY ORDER 30

Circumstances in which pension compensation sharing orders may be made

- 19A (1) The court may make a pension compensation sharing order –
- (a) on making a dissolution or nullity order, or
 - (b) at any time afterwards.
- (2) In this Schedule “pension compensation sharing order” means a pension compensation sharing order under this Part. 35

Pension compensation sharing orders

- 19B (1) A pension compensation sharing order is an order which –

- (a) provides that one civil partner’s shareable rights to PPF compensation be subject to pension compensation sharing for the benefit of the other civil partner, and
 - (b) specifies the percentage value to be transferred.
- (2) Shareable rights to PPF compensation are rights in relation to which pension compensation sharing is available under – 5
- (a) Chapter 1 of Part 3 of the Pensions Act 2008, or
 - (b) corresponding Northern Ireland legislation.

Pension compensation sharing orders: apportionment of charges

- 19C The court may include in a pension compensation sharing order provision about the apportionment between the civil partners of any charge under – 10
- (a) section 100 of the Pensions Act 2008 (charges in respect of pension compensation sharing costs), or
 - (b) corresponding Northern Ireland legislation. 15

Restrictions on making pension compensation sharing orders

- 19D (1) A pension compensation sharing order may not be made in relation to rights to PPF compensation that –
- (a) derive from rights under a pension scheme that were the subject of pension attachment, 20
 - (b) derive from rights under a pension scheme that were the subject of pension sharing between the civil partners,
 - (c) are the subject of pension compensation attachment, or
 - (d) are or have been the subject of pension compensation sharing between the civil partners. 25
- (2) For the purposes of sub-paragraph (1)(a), rights under a pension scheme “were the subject of pension attachment” if, at the time the Board of the Pension Protection Fund assumed responsibility for the scheme under Chapter 3 of Part 2 of the Pensions Act 2004 or under corresponding Northern Ireland legislation, there was in force a requirement imposed by virtue of Part 6 relating to those rights. 30
- (3) For the purposes of sub-paragraph (1)(b), rights under a pension scheme “were the subject of pension sharing between the civil partners” if the rights were at any time the subject of a pension sharing order in relation to the civil partnership or a previous civil partnership between the same parties. 35
- (4) For the purposes of sub-paragraph (1)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Part 6 relating to them. 40
- (5) For the purposes of sub-paragraph (1)(d), rights to PPF compensation “are or have been the subject of pension compensation sharing between the civil partners” if they are or have ever been the subject of a pension compensation sharing 45

order in relation to the civil partnership or a previous civil partnership between the same parties.

When pension compensation sharing orders may take effect

- 19E (1) A pension compensation sharing order is not to take effect unless the dissolution or nullity order on or after which it is made has been made final. 5
- (2) No pension compensation sharing order may be made so as to take effect before the end of such period after the making of the order as may be prescribed by regulations made by the Lord Chancellor. 10
- (3) The power to make regulations under sub-paragraph (2) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

- 19F In this Schedule – 15
- “PPF compensation” means compensation payable under the pension compensation provisions;
- “the pension compensation provisions” means –
- (a) Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection) and any regulations or order made under it, 20
- (b) Chapter 1 of Part 3 of the Pensions Act 2008 (pension compensation sharing) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.” 25
- 16 (1) Part 5 of Schedule 5 (matters to which court is to have regard under Parts 1 to 4) is amended as follows.
- (2) In the heading of the Part for “4” substitute “4A”. 30
- (3) In paragraph 20 –
- (a) omit “or” at the end of paragraph (a)(iii);
- (b) for “and” at the end of paragraph (a)(iv) substitute “or”;
- (c) after that provision insert –
- “(v) any provision of Part 4A (pension compensation sharing orders) other than paragraph 3 (apportionment of charges), and”. 35
- (4) In paragraph 21(1) –
- (a) omit “or” at the end of paragraph (c); 40
- (b) at the end of paragraph (d) insert “, or”;
- (c) after that paragraph insert –
- “(e) Part 4A (pension compensation sharing orders).”
- (5) In paragraph 23(1) –

-
- (a) omit “or” at the end of paragraph (c);
 (b) at the end of paragraph (d) insert “or”;
 (c) after that paragraph insert –
 “(e) Part 4A (pension compensation sharing orders),”.
- 17 (1) Part 7 of Schedule 5 (pension protection fund compensation etc) is amended as follows. 5
- (2) Omit paragraph 30(3) (definition of PPF compensation).
- (3) After paragraph 34 insert –
- “Attachment of PPF compensation*
- 34A (1) This paragraph applies if, having regard to any PPF compensation to which a civil partner is or is likely to be entitled, the court decides to make an order under Part 1. 10
- (2) To the extent to which the Part 1 order is made having regard to such compensation, it may require the Board, if at any time any payment in respect of PPF compensation becomes due to the civil partner with compensation rights, to make a payment for the benefit of the other civil partner. 15
- (3) The Part 1 order must express the amount of any payment required to be made by virtue of sub-paragraph (2) as a percentage of the payment which becomes due to the civil partner with compensation rights. 20
- (4) Any such payment by the Board – 25
- (a) discharges so much of its liability to the civil partner with compensation rights as corresponds to the amount of the payment, and
- (b) is to be treated for all purposes as a payment made by the civil partner with compensation rights in or towards the discharge of that civil partner’s liability under the order.
- (5) If the civil partner with compensation rights has a right to commute any PPF compensation, the Part 1 order may require that civil partner to exercise it to any extent. 30
- (6) This paragraph applies to any payment due in consequence of commutation in pursuance of the Part 1 order as it applies to other payments in respect of PPF compensation.
- (7) The power conferred by sub-paragraph (5) may not be exercised for the purpose of commuting a benefit payable to the civil partner with compensation rights to a benefit payable to the other civil partner. 35
- (8) The powers conferred by sub-paragraphs (2) and (5) may not be exercised in relation to rights to PPF compensation that – 40
- (a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the civil partnership or a previous civil partnership between the same parties, or

- (b) are or have ever been the subject of a pension compensation sharing order in relation to the civil partnership or a previous civil partnership between the same parties.”
- (4) Before paragraph 35 insert – 5
- “34B(1) Regulations may –
- (a) make provision, in relation to any provision of paragraph 34A which authorises the court making a Part 1 order to require the Board to make a payment for the benefit of the other civil partner, as to the person to whom, and the terms on which, the payment is to be made; 10
- (b) make provision, in relation to payment under a mistaken belief as to the continuation in force of a provision included by virtue of paragraph 34A in a Part 1 order, about the rights or liabilities of the payer, the payee or the person to whom the payment was due; 15
- (c) require notices to be given in respect of changes of circumstances relevant to Part 1 orders which include provision made by virtue of paragraph 34A;
- (d) make provision for the Board to be discharged in prescribed circumstances from a requirement imposed by virtue of paragraph 34A; 20
- (e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the court’s functions in connection with the exercise of any of its powers under this Schedule. 25
- (2) Regulations under sub-paragraph (1)(e) may include –
- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person; 30
- (b) provision by reference to regulations under regulations under section 95 of the Pensions Act 2008.”
- (5) In paragraph 37(1) of that Schedule –
- (a) after the definition of “the Board” insert –
- ““the civil partner with compensation rights” means the civil partner who is or is likely to be entitled to PPF compensation;” 35
- (b) after the definition of “occupational pension scheme” insert –
- “prescribed” means prescribed by regulations;”.
- 18 (1) Part 11 of Schedule 5 (variation, discharge etc of certain orders for financial relief) is amended as follows. 40
- (2) In paragraph 50(1)(f) –
- (a) omit “or” at the end of sub-paragraph (i);
- (b) at the end of sub-paragraph (ii) insert “or”;
- (c) after that sub-paragraph insert – 45
- “(iii) paragraph 34A(2),”;
- (d) in the closing words after “pension rights” insert “or pension compensation rights”.

-
- (3) In paragraph 50(1)(i) after “a pension sharing order” insert “, or a pension compensation sharing order;”.
- (4) After paragraph 53(2)(c) insert –
 “(ca) a pension compensation sharing order;”.
- (5) After paragraph 54(5) insert – 5
 “(6) Paragraph 19D (restrictions on making pension compensation sharing orders) applies in relation to a pension compensation sharing order under paragraph 53 as it applies in relation to any other pension compensation sharing order.”
- (6) In the italic heading before paragraph 56 for “and pension sharing orders” substitute “, pension sharing and pension compensation sharing orders”. 10
- (7) In the following provisions of paragraph 57, after “pension sharing order” insert “or pension compensation sharing order” –
 (a) the opening words of sub-paragraph (1);
 (b) sub-paragraph (1)(a)(i); 15
 (c) sub-paragraph (1)(b);
 (d) sub-paragraph (2);
 (e) sub-paragraph (3).
- (8) In paragraph 58(2) for “or pension sharing order” substitute “, pension sharing order or pension compensation sharing order”. 20
- 19 In Part 14 of Schedule 5 (miscellaneous and supplementary) after paragraph 79 insert –
“Appeals relating to pension compensation sharing orders which have taken effect
- 79A (1) This paragraph applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect. 25
- (2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court –
 (a) may not set aside or vary the order; 30
 (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.
- (3) In determining for the purposes of sub-paragraph (2) whether the Board has acted to its detriment the appeal court may disregard any detriment which in the court’s opinion is insignificant. 35
- (4) Paragraph 19E only applies to a pension compensation sharing order under this paragraph if the decision of the appeal court can itself be the subject of an appeal.” 40
- 20 (1) In Schedule 7 (financial relief in England and Wales after overseas dissolution etc of a civil partnership), in the italic heading before paragraph 9, for “and pension sharing” substitute “, pension sharing and pension compensation sharing”.

- (2) In paragraph 9(2) of that Schedule –
(a) for “or 4” substitute “, 4 or 4A”;
(b) for “and pension sharing” substitute “, pension sharing and pension compensation sharing”.
- (3) In paragraph 10(9)(c) of that Schedule omit “Part 7 of”. 5
- (4) In paragraph 14 of that Schedule –
(a) after sub-paragraph (1)(c) insert –
 “(ca) paragraphs 19C, 19D and 19E(2) and (3) (pension compensation sharing);”;
(b) in sub-paragraph (1)(e) for “37” substitute “34 and 35 to 37”; 10
(c) after that provision insert –
 “(ea) paragraph 34A (orders under Part 1 relating to pension compensation attachment);”;
(d) in sub-paragraph (1)(i) for “79” substitute “79A”;
(e) in that provision for “and pension-sharing appeals” substitute “, pension-sharing appeals and pension compensation-sharing appeals”; 15
(f) in sub-paragraph (2) after “Sub-paragraph (1)(d)” insert “and (ea)”;
(g) in sub-paragraph (4) at the end add “or under paragraphs 34B to 36 of that Schedule (supplementary provision about orders relating to pension compensation)”. 20

SCHEDULE 6

Section 103

PENSION COMPENSATION ON DIVORCE ETC: SCOTLAND

- 1 The Family Law (Scotland) Act 1985 (c. 37) is amended as follows.
- 2 In section 8 (orders for financial provision) – 25
(a) in subsection (1) –
(i) after paragraph (baa) insert –
 “(bab) a pension compensation sharing order;”,
(ii) after paragraph (ba) insert –
 “(bb) an order under section 12B(2);”, 30
(b) subsection (4A) is repealed,
(c) after subsection (7) add –
 “(8) The court shall not, in the same proceedings, make both a pension compensation sharing order and an order under section 12B(2) in relation to the same PPF compensation. 35
(9) The court shall not make a pension compensation sharing order in relation to rights to PPF compensation that –
(a) derive from rights under a pension scheme which, at the time the Board of the Pension Protection Fund assumed responsibility for the scheme, was subject to an order made under section 12A(2) or (3) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons, 40

- (b) derive from rights under a pension scheme which were at any time the subject of a pension sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,
- (c) are or have been the subject of a pension compensation sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons, or 5
- (d) are or have been the subject of an order made under section 12B(2) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons. 10
- (10) Where, as regards PPF compensation, the parties to a marriage or the partners in a civil partnership have in effect a qualifying agreement which contains a term relating to pension compensation sharing, the court shall not – 15
- (a) make an order under section 12B(2); or
- (b) make a pension compensation sharing order, relating to the compensation unless it also sets aside the agreement or term under section 16(1)(b) of this Act. 20
- (11) For the purposes of subsection (10) –
- (a) the expression “term relating to pension compensation sharing” is to be construed by reference to section 16(2AA) of this Act; and
- (b) a qualifying agreement is one to which section 93(2) of the Pensions Act 2008 relates.” 25
- 3 After section 8A insert –
- “8B Pension compensation sharing orders: apportionment of charges**
- The court may include in a pension compensation sharing order provision about apportionment between the parties of any charge under section 100 of the Pensions Act 2008 or under corresponding Northern Ireland legislation.” 30
- 4 In section 10 (sharing of value of matrimonial property or partnership property) –
- (a) in subsection (5A), for the words from “compensation payable” to “that Chapter” substitute “PPF compensation”, 35
- (b) for subsection (8B) substitute –
- “(8B) The Scottish Ministers may by regulations make provision for the purposes of this Act about –
- (a) calculation and verification of PPF compensation, 40
- (b) apportionment of PPF compensation.
- (8C) Regulations under subsection (8B) may include provision –
- (a) for calculation or verification in a manner approved by a prescribed person,
- (b) by reference to regulations under section 95 of the Pensions Act 2008.” 45

5 In section 12A (orders for payment of capital sum: pensions lump sums), in subsection (7ZC), for the words “Notwithstanding the provisions of section 8(4A), for” substitute “For”.

6 After section 12A insert –

“12B Order for payment of capital sum: pension compensation

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(1) This section applies where the court makes an order under section 8(2) for payment of a capital sum (a “capital sum order”) by a party to a marriage or a partner in a civil partnership (“the liable person”) in circumstances where the matrimonial or (as the case may be) partnership property within the meaning of section 10 includes any rights to PPF compensation.

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(2) On making the capital sum order, the court may make an additional order requiring the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the liable person, to pay the whole or part of that payment to the other party or (as the case may be) other partner (“the other person”).

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(3) Any such payment by the Board of the Pension Protection Fund –
(a) shall discharge so much of its liability to the liable person as corresponds to the amount of the payment, and
(b) shall be treated for all purposes as a payment made by the liable person in or towards the discharge of the person’s liability under the capital sum order.

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(4) Where the liability of the liable person under the capital sum order has been discharged in whole or in part, other than by a payment by the Board of the Pension Protection Fund, the court may, on an application by any person having an interest, recall the order or vary the amount specified in such an order as appears to the court appropriate in the circumstances.

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(5) The court may not make an additional order under subsection (2) in relation to rights to PPF compensation that –

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(a) derive from rights under a pension scheme which, at the time the Board of the Pension Protection Fund assumed responsibility for the scheme, was subject to an order made under section 12A(2) or (3) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,

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(b) derive from rights under a pension scheme which were at any time the subject of a pension sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons,

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(c) are or have been the subject of a pension compensation sharing order in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons, or

(d) are or have been the subject of an order made under subsection (2) in relation to the marriage or (as the case may be) civil partnership or a previous one between the same persons.”

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- 7 In section 13 (order for periodical allowance), in subsection (2)(b), after the words “pension sharing order” insert “or pension compensation sharing order”.
- 8 In section 16 (agreements on financial provision) –
- (a) in subsection (2)(b), for the words “does not contain a term relating to pension sharing” substitute “contains neither a term relating to pension sharing nor a term relating to pension compensation sharing”, 5
 - (b) in subsection (2)(c), after the word “sharing” in the first place where it occurs insert “or pension compensation sharing”, 10
 - (c) in subsection (2)(c)(i), after the word “sharing” insert “or (as the case may be) the term relating to pension compensation sharing”,
 - (d) after subsection (2A), insert –
 - “(2AA) For the purpose of subsection (2), a term relating to pension compensation sharing is a term corresponding to provision which may be made in a pension compensation sharing order and satisfying the requirements set out in section 93(1)(g) of the Pensions Act 2008.” 15
- 9 In section 27 (interpretation) –
- (a) in subsection (1), before the definition of “pension sharing order” insert – 20
 - ““pension compensation sharing order” is an order which –
 - (a) provides that one party’s shareable rights to PPF compensation be subject to pension compensation sharing for the benefit of the other party, and 25
 - (b) specifies the percentage value to be transferred;”,
 - (b) after subsection (1A) insert – 30
 - “(1B) In subsection (1), in the definition of “pension compensation sharing order”, the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions Act 2008 or under corresponding Northern Ireland legislation. 35
 - (1C) In this Act –
 - “PPF compensation” means compensation payable under the pension compensation provisions,
 - “the pension compensation provisions” means – 40
 - (a) Chapter 3 of Part 2 of the Pensions Act 2004 and any regulations or order made under it,
 - (b) Chapter 1 of Part 3 of the Pensions Act 2008 and any regulations or order made under it,
 - (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Northern Ireland.” 45

SCHEDULE 7

Section 105

AMENDMENTS OF SCHEDULE 7 TO THE PENSIONS ACT 2004

- 1 Schedule 7 to the Pensions Act 2004 (c. 35) (pension compensation provisions) is amended as follows.
- 2 In paragraph 3(6), at the end, add “to the scheme”. 5
- 3 In paragraph 5(5), at the end, add “to the scheme”.
- 4 In paragraph 21(1) for “15, 18 and 19” substitute “15 to 19”.
- 5 For paragraph 21(2)(b) and (c) substitute –
 “(c) for paragraph 15(5) substitute –
 “(5) Subject to sub-paragraph (5A), for the purposes of this paragraph and paragraphs 16 and 17, “the accrued amount” means the amount equal to the initial annual rate of the pension which, under the admissible rules, the deferred member is entitled to receive at normal benefit age by virtue of his pension credit rights. 10
 (5A) For the purposes of calculating the amounts mentioned in sub-paragraph (4)(b) and (c), the accrued amount is to be treated as reduced by such amount as is not attributable to rights of the deferred member that involve the member being credited by the scheme with notional pensionable service.” 15
 (ca) in paragraph 16(2)(a) before “pensionable service” insert “notional”,
 (cb) in paragraph 17(2)(b) the reference to normal pension age is to be read as a reference to normal benefit age, 20
 (cc) in paragraph 17(6) omit “, “the accrued amount”.” 25
- 6 In paragraph 25(3), after “before that person attains normal pension age” insert “(or, in a case to which paragraph 21 applies, normal benefit age)”.
- 7 After paragraph 25 insert –

 “*Deferral of compensation* 30
25A (1) Regulations may prescribe circumstances in which, and conditions subject to which, a person may elect to defer entitlement to any relevant compensation until some time after attaining normal pension age (or, in a case to which paragraph 21 applies, normal benefit age). 35
(2) For this purpose “any relevant compensation” means any compensation to which a person is or will be entitled under the pension compensation provisions, except for compensation payable in accordance with paragraph 3 (pensions in payment at assessment date). 40
(3) The Board must determine the amount of the actuarial increase to be applied to compensation to which a person is entitled by virtue of this paragraph.

- (4) Where, by virtue of this paragraph, periodic compensation is payable to a person under paragraph 11 or 15 after that person attains normal pension age (or, in a case to which paragraph 21 applies, normal benefit age) –
- (a) paragraph 12(2) applies as if the reference to the date on which the active member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph, and 5
 - (b) paragraph 17(2)(b) applies as if the reference to the date on which the deferred member attains normal pension age were a reference to the date on which the compensation is payable by virtue of this paragraph.” 10
- 8 In paragraph 33 make the existing provision sub-paragraph (1) and at the end add –
- “(2) Where the scheme is a variable-rate scheme, regulations under this paragraph may have the effect that the amount of periodic compensation payable to a person is, from a specified time, to be different from the amount that would otherwise be payable under this Schedule. 15
 - (3) A “variable-rate scheme” is a scheme under which the annual rate of pension to which a person is entitled would have increased (otherwise than by way of revaluation) or decreased at any time after the assessment date, had the scheme continued in existence until that time (and had the scheme rules remained unchanged). 20
 - (4) Where the scheme is a fixed-term scheme, regulations under this paragraph may have the effect that no periodic compensation is to be payable to a person from a specified time. 25
 - (5) A “fixed-term scheme” is a scheme under which a person’s entitlement to benefits would have ceased at any time after the assessment date, had the scheme continued in existence until that time (and had the scheme rules remained unchanged). 30
 - (6) In this paragraph “a specified time” means a time determined in accordance with regulations under this paragraph.”
- 9 In paragraph 34(1) after “ill health” insert “or otherwise”.
- 10 For paragraph 35(2)(a) substitute – 35
- “(a) in the case of a scheme to which sub-paragraph (3) applies, any recent rule changes, and”.
- 11 For paragraph 35(3) substitute –
- “(3) This sub-paragraph applies to a scheme if, in calculating the protected liabilities in relation to the scheme at the relevant time, the effect of taking into account – 40
 - (a) any recent rule changes, and
 - (b) any recent discretionary increases,
- is that those liabilities are greater than they otherwise would be.”

SCHEDULE 8

Section 108

INTEREST ON LATE PAYMENT OF LEVIES

Pension Schemes Act 1993 (c. 48)

- 1 After section 175 of the Pension Schemes Act 1993 (levies towards certain expenditure) insert – 5
- “175A Levies: interest for late payment**
- (1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a levy imposed under section 175(1).
- (2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable. 10
- (3) Interest payable by a person by virtue of this section is a debt due from the person to the Secretary of State.
- (4) Interest is recoverable by the Secretary of State or, if the Secretary of State so determines, by the Regulatory Authority on the Secretary of State’s behalf. 15
- (5) Without prejudice to the generality of subsection (1), regulations under this section may include provision relating to –
- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.” 20

Pensions Act 2004 (c. 35)

- 2 The Pensions Act 2004 is amended as follows.
- 3 After section 117 (PPF administration levy) insert –
- “117A Administration levy: interest for late payment**
- (1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of an administration levy. 25
- (2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.
- (3) Interest payable by a person by virtue of this section is a debt due from the person to the Secretary of State. 30
- (4) Interest is recoverable by the Secretary of State or, if the Secretary of State so determines, by the Regulator on the Secretary of State’s behalf.
- (5) Without prejudice to the generality of subsection (1), regulations under this section may include provision relating to – 35
- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.”
- 4 In section 173 (Pension Protection Fund) after subsection (1)(b) insert –
- “(ba) interest paid by virtue of section 181A (interest for late payment of pension protection levy),”.
- 40

- 5 After section 181 (calculation, collection and recovery of levies) insert –
- “181A Pension protection levy: interest for late payment**
- (1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a pension protection levy. 5
- (2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable.
- (3) Interest payable by a person by virtue of this section is a debt due from the person to the Board.
- (4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf. 10
- (5) Without prejudice to the generality of subsection (1), regulations under this section may include provision relating to –
- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.” 15
- 6 In section 188 (Fraud Compensation Fund) after subsection (1)(b) insert –
- “(ba) interest paid by virtue of section 189A (interest for late payment of fraud compensation levy),”.
- 7 After section 189 (fraud compensation levy) insert –
- “189A Fraud compensation levy: interest for late payment** 20
- (1) Regulations may make provision for interest to be charged at the prescribed rate in the case of late payment of a fraud compensation levy.
- (2) Interest is payable by or on behalf of the person or persons by or on behalf of whom the levy is payable. 25
- (3) Interest payable by a person by virtue of this section is a debt due from the person to the Board.
- (4) Interest is recoverable by the Board or, if the Board so determines, by the Regulator on its behalf.
- (5) Without prejudice to the generality of subsection (1), regulations under this section may include provision relating to –
- (a) the collection and recovery of interest;
- (b) the circumstances in which interest may be waived.” 30
- 8 In section 209 (Ombudsman for the Board of the Pension Protection Fund) at the end add – 35
- “(9) Where regulations make provision under subsection (7), section 117A (interest for late payment of administration levy) applies in relation to the levy as it applies in relation to an administration levy.”
- 9 In section 323(2)(b)(i) (provisions extending to Northern Ireland) for “subsections (7) and (8)” substitute “subsections (7) to (9)”. 40

SCHEDULE 9

Section 119

REPEALS

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

<i>Title</i>	<i>Extent of repeal</i>	
Welfare Reform and Pensions Act 1999 (c. 30)	In section 3 – (a) subsections (2) to (4); (b) in subsection (5), “fourth” and the words from “of his” to “qualifying scheme”; (c) subsection (6); (d) subsection (8)(a)(ii) and (iii); (e) in subsection (9), the definitions of “qualifying scheme” and “relevant employees”.	5 10
	Section 6(1). In section 8(1), the definition of “designated scheme”.	15
Employment Relations Act 2004 (c. 24)	Section 41(1) and (2).	
Pensions Act 2004 (c. 35)	In section 80(1)(a)(iii), “or”.	20
Pensions Act 2007 (c. 22)	Section 21.	

PART 2

SAFEGUARDED RIGHTS

<i>Title</i>	<i>Extent of repeal</i>	
Pension Schemes Act 1993 (c. 48)	In section 50(1) – (a) paragraph (a)(iii); (b) in paragraph (b), the words “, or safeguarded,”. In section 52 – (a) subsection (2A)(c); (b) in subsection (3)(b), the words “, or safeguarded,” (in both places).	25 30
	Sections 68A to 68D. In section 181(1), the definition of “safeguarded rights”.	35
Welfare Reform and Pensions Act 1999	Section 36.	

<i>Title</i>	<i>Extent of repeal</i>	
Welfare Reform and Pensions Act 1999 – <i>cont.</i>	In section 40 – (a) subsection (2)(b) and the word “and” preceding it; (b) in subsection (3), in the definition of “relevant pension credit”, the words “or, as the case may be, the safeguarded rights”; (c) in that subsection, the definition of “safeguarded rights”.	5 10
Proceeds of Crime Act 2002 (c. 29)	In Schedule 5, paragraph 7(2) and (6). In Schedule 12 – (a) paragraphs 29 and 30; (b) paragraph 41(b).	
Pensions Act 2007 (c. 22)	In Schedule 11, paragraph 22(5). In Schedule 4 – (a) paragraph 27; (b) paragraph 40.	15

PART 3

20

FINANCIAL ASSISTANCE SCHEME

<i>Title</i>	<i>Extent of repeal</i>	
Pensions Act 2004 (c. 35)	In section 286(2) the definition of “scheme’s pension liabilities” and the words from “and a qualifying pension scheme” to the end.	25

PART 4

PENSION COMPENSATION

<i>Title</i>	<i>Extent of repeal</i>	
Matrimonial Causes Act 1973 (c. 18)	In section 25E(9), the definition of “PPF compensation”.	30
Family Law (Scotland) Act 1985 (c. 37)	In section 31(2)(dd), at the end of sub-paragraph (i), the word “or”. Section 8(4A).	

<i>Title</i>	<i>Extent of repeal</i>	
Civil Partnership Act 2004 (c. 33)	In Schedule 5— (a) at the end of paragraph 20(a)(iii), the word “or”; (b) at the end of paragraph 21(1)(c), the word “or”; (c) at the end of paragraph 23(1)(c), the word “or”; (d) paragraph 30(3); (e) at the end of paragraph 50(1)(f)(i), the word “or”. In Schedule 7, in paragraph 10(9)(c), the words “Part 7 of”.	5 10

PART 5

MISCELLANEOUS

15

<i>Title</i>	<i>Extent of repeal</i>	
Social Security Pensions Act 1975 (c. 60)	In section 59(5ZA) the words from “but this subsection” to the end.	
Pensions Act 1995 (c. 26)	In section 7(3), at the end of paragraph (b), the word “or”.	20

Pensions Bill

A

B I L L

To make provision relating to pensions; and for connected purposes.

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