

*Status: Point in time view as at 26/01/2009. This version of this part contains provisions that are not valid for this point in time.  
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## SCHEDULES

VALID FROM 06/04/2011

### SCHEDULE 5

#### PENSION COMPENSATION ON DIVORCE ETC.

#### PART 1

#### AMENDMENTS OF THE MATRIMONIAL CAUSES (NORTHERN IRELAND) ORDER 1978

1 The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) is amended as follows.

2 After Article 23A (pension sharing orders) insert—

##### “Pension compensation sharing orders

**23B.**—(1) For the purposes of this Order, a pension compensation sharing order is an order which—

- (a) provides that one party's shareable rights to PPF compensation that derive from rights under a specified pension scheme are to be subject to pension compensation sharing for the benefit of the other party, and
- (b) specifies the percentage value to be transferred.

(2) In paragraph (1)—

- (a) the reference to shareable rights to PPF compensation is to rights in relation to which pension compensation sharing is available under Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 or under Chapter 1 of Part 3 of the Pensions Act 2008;
- (b) “party” means a party to a marriage;
- (c) “specified” means specified in the order.

##### **Pension compensation: interpretation**

**23C** In this Part—

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

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 3 of the Pensions (Northern Ireland) Order 2005 (pension protection) and any regulations or order made under it,
- (b) Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation on divorce etc.) and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Great Britain.”.

**3** After Article 26C (pension sharing orders: apportionment of charges) insert—

**“Pension compensation sharing orders in connection with divorce proceedings**

**26D.**—(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 Article, make a pension compensation sharing order in relation to the marriage.

(2) A pension compensation sharing order under this Article is not to take effect unless the decree on or after which it is made has been made absolute.

(3) A pension compensation sharing order under this Article may not be made in relation to rights to PPF compensation that—

- (a) are the subject of pension attachment,
- (b) derive from rights under a pension scheme that were the subject of pension sharing between the parties to the marriage,
- (c) are the subject of pension compensation attachment, or
- (d) are or have been the subject of pension compensation sharing between the parties to the marriage.

(4) For the purposes of paragraph (3)(a), rights to PPF compensation “are the subject of pension attachment” if any of the following three conditions is met.

(5) The first condition is that—

- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(4), and
- (b) that order, as modified under Article 27E(3), remains in force.

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- (6) The second condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27B(7), and
  - (b) that order—
    - (i) has been complied with, or
    - (ii) has not been complied with and, as modified under Article 27E(5), remains in force.
- (7) The third condition is that—
- (a) the rights derive from rights under a pension scheme in relation to which an order was made under Article 25 imposing a requirement by virtue of Article 27C, and
  - (b) that order remains in force.
- (8) For the purposes of paragraph (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.
- (9) For the purposes of paragraph (3)(c), rights to PPF compensation “are the subject of pension compensation attachment” if there is in force a requirement imposed by virtue of Article 27F relating to them.
- (10) For the purposes of paragraph (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.

#### **Pension compensation sharing orders: duty to stay**

**26E.**—(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 [<sup>F1</sup> Department of Justice] .

(2) Regulations under this Article shall be subject to [<sup>F2</sup> negative resolution] .

#### **Pension compensation sharing orders: apportionment of charges**

**26F** The court may include in a pension compensation sharing order provision about the apportionment between the parties of any charge under section 95 of the Pensions (No. 2) Act (Northern Ireland) 2008

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(charges in respect of pension compensation sharing costs), or under section 117 of the Pensions Act 2008.”.

#### Textual Amendments

- F1** Words in Sch. 5 para. 3 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 173(a) (with arts. 28-31); S.I. 2010/977, art. 1(2)
- F2** Words in Sch. 5 para. 3 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 173(b) (with arts. 28-31); S.I. 2010/977, art. 1(2)

**4.—(1)** Article 27 (matters to which court is to have regard) is amended as follows.

(2) In the heading, for “and 26” substitute “, 26, 26A and 26D”.

(3) In paragraphs (1) and (2) for “or 26A” substitute “, 26A or 26D”.

**5** In Article 27A(1) (exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage) for “or 26A” substitute “, 26A or 26D”.

**6** In Article 27E(9) (the Pension Protection Fund) omit the definition of “PPF compensation”.

**7** After Article 27E insert—

#### “Attachment of pension compensation

**27F.—(1)** This Article 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 Article 25.

(2) To the extent to which the order is made having regard to such compensation, the order may require the Board of the Pension Protection Fund, if at any time any payment in respect of PPF compensation becomes due to the party with compensation rights, to make a payment for the benefit of the other party.

(3) The order must express the amount of any payment required to be made by virtue of paragraph (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—

- (a) shall discharge so much of its liability to the party with compensation rights as corresponds to the amount of the payment, and

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(b) shall be treated for all purposes as a payment made by the party with compensation rights in or towards the discharge of that party's liability under the order.

(5) Where the party with compensation rights has a right to commute any PPF compensation, the order may require that party to exercise it to any extent; and this Article applies to any payment due in consequence of commutation in pursuance of the order as it applies to other payments in respect of PPF compensation.

(6) The power conferred by paragraph (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 paragraph (2) or (5) may not be exercised in relation to rights to PPF compensation that—

(a) derive from rights under a pension scheme that were at any time the subject of a pension sharing order in relation to the marriage, or a previous marriage between the same parties, or

(b) are or have ever been the subject of a pension compensation sharing order in relation to the marriage or a previous marriage between the same parties.

### **Pension compensation: supplementary**

**27G.**—(1) The [<sup>F3</sup>Department of Justice] may by regulations—

(a) make provision, in relation to any provision of Article 27F which authorises the court making an order under Article 25 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 Article 27F in an order under Article 25, about the rights or liabilities of the payer, the payee or the person to whom the payment was due;

(c) require notices to be given in respect of changes of circumstances relevant to orders under Article 25 which include provision made by virtue of Article 27F;

(d) make provision for the Board of the Pension Protection Fund to be discharged in prescribed circumstances from a requirement imposed by virtue of Article 27F;

(e) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of the

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court's functions in connection with the exercise of any of its powers under this Part.

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

- (a) provision for calculation or verification in accordance with guidance from time to time prepared by a prescribed person;
- (b) provision by reference to regulations under section 90 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(3) Regulations under this Article shall be subject to [F<sup>4</sup> negative resolution] .

(4) In this Article and Article 27F—

- “the party with compensation rights” means the party to the marriage who is or is likely to be entitled to PPF compensation, and
- “the other party” means the other party to the marriage;
- “prescribed” means prescribed by regulations.”.

#### Textual Amendments

- F3** Words in Sch. 5 para. 7 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 174(a) (with arts. 28-31); S.I. 2010/977, art. 1(2)
- F4** Words in Sch. 5 para. 7 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 174(b) (with arts. 28-31); S.I. 2010/977, art. 1(2)

**8.—**(1) Article 33 (variation, discharge etc. of certain orders for financial relief) is amended as follows.

(2) In paragraph (2)(dd)—

- (a) omit “or” at the end of head (i);
- (b) at the end of head (ii) add “ or ”;
- (c) after that head insert—
  - “(iii) Article 27F(2),”;
- (d) in the closing words, after “pension rights” insert “ or pension compensation rights ”.

(3) In paragraph (2)(f) after “a pension sharing order under Article 26A” insert “ , or a pension compensation sharing order under Article 26D, ”.

(4) In paragraph (4B) after “pension sharing order” insert “ , or a pension compensation sharing order, ”.

(5) In paragraph (4C) after “pension sharing order” insert “ , or a pension compensation sharing order, ”.

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(6) In paragraph (5) after “pension sharing order” insert “ or pension compensation sharing order ”.

9 After Article 42A (appeals relating to pension sharing orders which have taken effect) insert—

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

**42B.**—(1) This Article applies where an appeal against a pension compensation sharing order is begun on or after the day on which the order takes effect.

(2) If the Board of the Pension Protection Fund has acted to its detriment in reliance on the taking effect of the order the appeal court—

- (a) may not set aside or vary the order;
- (b) may make such further orders (including a pension compensation sharing order) as it thinks fit for the purpose of putting the parties in the position it considers appropriate.

(3) In determining for the purposes of 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.

(4) Article 26E (duty to stay) only applies to a pension compensation sharing order under this Article if the decision of the appeal court can itself be the subject of an appeal.”.

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