

*These notes refer to the Pensions Act (Northern Ireland)  
2008 (c.1) which received Royal Assent on 11 February 2008*

# Pensions Act (Northern Ireland) 2008

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## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 4 - Abolition of contracting-out for defined contribution pension schemes*

##### **Part 1**

The amendments in this Part of the Schedule will take effect from the date on which money purchase occupational pension schemes and appropriate scheme certificates (i.e. contracting-out certificates for personal pension schemes) are cancelled by virtue of *section 13(1)* (“the abolition date”).

The Pension Schemes Act

*Paragraph 2* amends section 3. As a result of the amendment of subsection (1) Her Majesty’s Revenue and Customs (HMRC) can no longer issue certificates stating that personal pension schemes are appropriate schemes. In addition, when read with the amendments to section 5, the effect is that HMRC can no longer issue a contracting-out certificate in respect of a money purchase occupational pension scheme. Subsections (4) to (6) are omitted to reflect the fact that appropriate scheme certificates can no longer be issued.

*Paragraph 3* amends the definition of “contracted-out employment” in section 4(1) to reflect the fact that from the abolition date a money purchase occupational pension scheme can no longer be contracted-out in relation to an earner’s employment.

*Paragraph 3(3)* inserts a new subsection (1A) into section 4 which includes an amended definition of contracted-out employment by reference to a money purchase scheme and will only relate to periods of “contracted-out employment” before the abolition date. This definition is required because, although after the abolition date it will no longer be possible for an earner to be in contracted-out employment by reference to COMPS, such periods will continue to be relevant for the calculation of a person’s additional pension. The definition will also be needed during the period immediately after the abolition date for dealing with matters relating to periods before that date which are still outstanding at the date of abolition e.g. contracted-out rebates.

*Paragraph 3(4)* amends section 4(2) to reflect the fact that section 38A is being repealed.

*Paragraph 4* omits section 5(3) and (5) and makes consequential amendments.

*Paragraph 5* amends section 6(3)(a) to reflect the fact that the definition of “minimum contributions” is being repealed.

*Paragraph 6* omits section 8 to reflect the fact that it will no longer be necessary for certificates to state whether a scheme is contracted-out by virtue of section 5(2) or (3), since it will only be possible for schemes to contract out by virtue of section 5(2).

*Paragraph 9* inserts a new section 21A which applies to money purchase occupational pension schemes which ceased to be contracted-out as a result of *section 13(1)*, as well as to personal pension schemes which cease to be appropriate schemes as a result of the same provision. For as long as people have protected rights under such schemes, or are entitled to any benefit giving effect to such rights, section 21A(3) requires such schemes to continue to comply with sections 22 to 28 (which such schemes would currently be required to comply with in order to be contracted-out) and prescribed requirements (i.e. the requirements which are currently imposed in relation to COMPS and APPS under section 5(3)). It also ensures that the new limited requirements relating to giving effect to protected rights apply to any pension scheme to which protected rights have been transferred.

*Paragraph 10* inserts a new section 23A to retain the rule which requires provision to be made from protected rights for a surviving spouse or civil partner and re-enacts (with some modifications) regulation-making powers under section 24 to make provision in relation to survivors’ benefits.

*Paragraph 11* omits sections 24 to 25 to remove the existing rules applying to protected rights which will be replaced by the provisions of the new section 23A.

*Paragraph 12* inserts a new section 28A to ensure that where the protected rights are being given effect to by an insurance policy, the policy must make the same provision as would a scheme to which sections 21A and 23A apply.

*Paragraph 13* amends section 29 to include references to new section 21A.

*Paragraph 14* amends section 29A so that it applies to personal pension schemes which cease to be contracted-out as a result of *section 13(1)*.

*Paragraph 15* amends section 30 so that after the abolition date it will only apply to schemes contracted-out by virtue of satisfying section 5(2).

*Paragraph 16* amends section 34 so that, rather than applying to appropriate schemes, it applies to personal pension schemes that were appropriate schemes. The prohibition on rule changes continues to apply for as long as there are people who have protected rights under the personal pension scheme or who are entitled to any benefit giving effect to such rights under the scheme.

*Paragraph 17* adds a new subsection (9) to section 38A which defines “appropriate flat-rate percentage” and “appropriate age-related percentage” in view of the fact that sections 38B and 41A are being repealed. Section 38A, which provides for the calculation of reduced rates of national insurance contributions, and rebates, for earners in COMPS, is retained during the period immediately after the abolition date so that HMRC can continue to deal with any matters in connection with reduced rates of national insurance contributions, and rebates, which are outstanding at the date of abolition.

*Paragraph 18* omits section 38B which provides that an order made by the Secretary of State for Work and Pensions under section 42B of the [Pension Schemes Act 1993 \(c. 48\)](#) may make corresponding provision for Northern Ireland specifying percentages for the purposes of section 38A.

*Paragraph 19* adds a new subsection (8) to section 39 to define “the earner’s chosen scheme”. This is necessary because the current definition is contained in section 40 which is being repealed.

*Paragraph 20* omits section 40 which provides a mechanism for an earner to choose that contracted-out rebates (minimum contributions) must be made by HMRC to the earner’s chosen APPS and is no longer needed after abolition date.

*Paragraph 21* adds a new subsection (5) to section 41 to define “appropriate age-related percentage”. This is necessary because the current definition is contained in section 41A which is being repealed.

*Paragraph 22* omits section 41A which provides that an order made by the Secretary of State for Work and Pensions under section 45A of the [Pension Schemes Act 1993 \(c. 48\)](#) may make corresponding provision for Northern Ireland altering the rates of minimum contributions under section 41.

*Paragraph 23* amends section 44A to reflect the fact that from the abolition date no further:

- contracted-out rebates in respect of COMPS will be made (although rebates resulting from pre-abolition periods of membership of a COMPS will continue to affect a person’s entitlement to additional pension); and
- national insurance rebates in respect of APPS will be made (although rebates resulting from pre-abolition periods of membership of an APPS will continue to affect a person’s entitlement to additional pension).

*Paragraph 24* amends section 46 to extend HMRC’s powers to schemes which cease to be COMPS or APPS as a result of [section 13\(1\)](#) and also makes various consequential amendments to reflect the fact that there will be no COMPS after the abolition date.

*Paragraph 25* amends section 48 which provides for the continued supervision by HMRC of occupational pension schemes which used to be contracted-out and personal pension schemes which used to be APPS. The effect of the amendments

is that the supervision requirements also apply to schemes which cease to be COMPS and APPS as a result of *section 13(1)*.

*Paragraph 26* amends section 51(2)(a) to reflect the fact that after the abolition date COMPS cease to exist.

*Paragraph 27* amends section 64A(5) by substituting a reference to a “money purchase contracted-out scheme” consequential upon the omission of section 5(3). The references in this subsection to rights under, or derived from, a COMPS or APPS are retained because safeguarded rights which arose pre-abolition and which are attributable to COMPS or APPS service will continue to include COMPS or APPS rights.

*Paragraph 28* amends section 83(1) to restate the present position that the section only applies to occupational pension schemes contracted-out by virtue of satisfying section 5(2) but without doing so by referring to COMPS, which will not exist after the abolition date.

*Paragraph 29* amends section 92(2) to reflect the fact that appropriate schemes will cease to exist from the abolition date. The effect of the amendment is that, where a transfer is made to a personal pension scheme which is unable or unwilling to accept a transfer payment for guaranteed minimum pensions or protected rights, the member will have a right to the balance of the cash equivalent after deduction of liabilities for guaranteed minimum pensions and/or protected rights.

*Paragraph 30* amends section 152 to allow the Department or HMRC to give information to a former APPS for the purposes of Part 3.

*Paragraph 31* amends section 159(2) to remove a reference to APPs that becomes redundant after the abolition date.

*Paragraphs 32 and 33* amend sections 160 and 172 respectively to update references and to remove references to provisions which are being repealed.

*Paragraph 34* amends section 176(1) to provide various new and amended definitions. Section 176(4) is amended to reflect the fact that section 40 is being repealed.

*Paragraph 35* inserts a new section 176A which deals with the interpretation of references to money purchase contracted-out schemes or appropriate schemes after the abolition date. The definitions apply in respect of periods before the abolition date, and mirror the existing definitions of the same expressions in the Act. These definitions are required because, although COMPS and APPS will cease to exist from the abolition date, the definitions used in this section will continue to be relevant for the calculation of a person’s additional pension, and, during the period immediately after the abolition date, for dealing with matters relating to periods before abolition which are still outstanding at the date of abolition (for example contracted-out rebates).

### **The 1995 Order**

*Paragraph 36* amends Article 146 to provide that schemes which provide both pensions capable of being contracted out by virtue of section 5(2) of the Pension Schemes Act and pensions satisfying the requirements mentioned in new section 21A(3) of that Act are to be treated as two separate schemes for the purposes of Part 3 of that Act.

### **The 1999 Order**

*Paragraph 37* omits Article 3(10) to remove the current condition that a stakeholder pension scheme which is a personal pension scheme must be an appropriate scheme and makes a consequential amendment. *Paragraph 38* makes a further consequential amendment.

*Paragraph 39* amends the definition of “contracted-out rights” in paragraph 7(6) of Schedule 5 to remove a reference to a provision which is being repealed and to insert a new paragraph (ab).

### **The 2005 Order**

*Paragraph 40* omits Article 234(7) which is no longer needed after the abolition date.

## **Part 2**

The intention is that the amendments in this Part are to be brought into operation at a date later than the abolition date to ensure that the existing statutory mechanisms for HMRC to deal with administrative matters concerning the contracted-out rebate and certification of schemes etc. can remain in place until any matters outstanding at the date of abolition of COMPS and APPS have been dealt with before the amendments are brought into operation.

### **The Contributions and Benefits Act**

*Paragraphs 41 and 44* amend section 4C and Schedule 1 respectively to reflect the abolition of COMPS and APPS.

*Paragraphs 42 and 43* amend sections 8 and 9 respectively to remove references to section 38A of the Pension Schemes Act which is being repealed.

#### **The Pension Schemes Act**

*Paragraph 46* omits section 4(3) which allows for regulations to be made in relation to the manner in which minimum payments are to be made etc. Minimum payments derive from the contracted-out rebate and are paid to a COMPS in respect of earners in contracted-out employment.

*Paragraph 47* amends section 16(3) to omit a reference to sections that are being repealed.

*Paragraph 48* omits section 27 which currently provides for the investment and resources of schemes.

*Paragraph 49* omits section 36(b), which currently provides for contributions to be paid by HMRC in respect of earners who are members of COMPS and APPS.

*Paragraph 50* omits section 38A, which provides for the calculation of national insurance rebates in respect of contracted-out employment in a COMP.

*Paragraph 51* omits section 39, which provides for HMRC to make minimum contributions to an APP which is an earner's chosen scheme.

*Paragraph 52* omits section 41, which provides for the calculation of minimum contributions.

*Paragraph 53* omits section 41B, which provides a power to make regulations dealing with the verification of ages for the purpose of determining "appropriate age-related percentages", and provides a power to disclose information in connection with contracted-out rebates.

*Paragraphs 54, 55 and 56* amend sections 46, 160 and 172 respectively to reflect the repeal of sections 38A, 39 and 41.

*Paragraph 57* omits the definition of "minimum contributions" in section 176(1) and a reference to section 39 in section 176(4). Minimum contributions are made to APPS, and will therefore no longer be required.

*Paragraph 59* amends Schedule 3 to reflect the fact that COMPS will no longer exist.

### **Part 3 - Savings**

This Part allows HMRC to continue to:

- deal with COMPS and APPS certificates which are still outstanding at the abolition date; and
- cancel, vary etc. COMPS and APPS certificates retrospectively after the abolition date.