

*Draft Order laid before Parliament under section 143(4) of the Pensions Act 2008, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2011 No. 000**

**PENSIONS**

**The Pensions Act 2008 (Abolition of Protected Rights)  
(Consequential Amendments) (No.2) Order 2011**

*Made - - - - 000*

*Coming into force in accordance with article 1(2)*

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 145(1) and (2) of the Pensions Act 2008<sup>(1)</sup>.

A draft of this Order has been laid before Parliament in accordance with section 143(4) of that Act and has been approved by a resolution of each House of Parliament.

**PART 1**

**General**

**Citation and commencement**

1.—(1) This Order may be cited as the Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No. 2) Order 2011.

(2) This Order comes into force—

- (a) for the purposes of this article and article 8, immediately before 6th April 2012, and
- (b) for the purposes of the other provisions in Part 2, on 6th April 2012, and
- (c) for the purposes of Part 3, on 6th April 2015.

## PART 2

Amendments coming into force immediately before, or on, 6th April 2012

### Amendments to the Bankruptcy (Scotland) Act 1985

2. In section 32(2A) of the Bankruptcy (Scotland) Act 1985(2) (vesting of estate, and dealings of debtor, after sequestration)—

- (a) omit paragraph (b) and the word “and” immediately preceding it, and
- (b) for “and “protected rights” having the same meanings” substitute “having the same meaning”.

### Amendments to the Insolvency Act 1986

3. For section 310(9) of the Insolvency Act 1986(3) (income payments orders) substitute—

“(9) In this section—

“guaranteed minimum pension” has the meaning given in section 8(2) of the Pension Schemes Act 1993;

“protected rights” has the meaning given in section 10 of the Pension Schemes Act 1993, as it had effect before the commencement of section 15(1) of the Pensions Act 2007.”.

### Amendments to the Judicial Pensions and Retirement Act 1993

4. In Schedule 2 to the Judicial Pensions and Retirement Act 1993(4) (transfer of accrued benefits), in paragraph 1(1) (interpretation), for the definition of “protected rights”(5), substitute—

““protected rights” has the same meaning as in the Pension Schemes (Northern Ireland) Act 1993;”.

### Amendments to the Pension Schemes Act 1993

5.—(1) The Pension Schemes Act 1993(6) is amended as follows.

(2) In section 20(3) (transfer of accrued rights), for “sections 26 to 33” substitute “sections 31 and 33”.

(3) In section 31(2) (investment and resources of schemes), for “The scheme” substitute “A scheme which was an appropriate scheme or a money purchase contracted-out scheme immediately before the abolition date”.

(4) In section 33 (tax requirements to prevail over certification requirements)(7)—

- (a) in the sidenote, for “certification requirements” substitute “requirements of section 31”, and
- (b) for “sections 26 to 32” substitute “section 31”.

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(2) 1985 c.66. Section 32(2A) was inserted by section 122 of, and paragraph 14 of Schedule 3 to, the Pensions Act 1995 (c. 26).

(3) 1986 c.45. Subsections (8) and (9) were inserted by section 122 of, and paragraph 15(b) of Schedule 3 to, the Pensions Act 1995 (c. 26).

(4) 1993 c.8.

(5) The definition of “protected rights” was amended by section 190 of, and paragraph 46(5) of Schedule 8 to, the Pension Schemes Act 1993 (c.48), and by section 184 of, and paragraph 43(5) of Schedule 7 to, the Pension Schemes (Northern Ireland) Act 1993 (c.49).

(6) 1993 c.48.

(7) Section 33 was amended by S.I. 2006/745.

- (5) In section 37 (alteration of rules of contracted-out schemes)(8)—
- (a) in subsection (1), after “rules of a” insert “salary related”, and
  - (b) in subsection (3), after “section to a” insert “salary related”.
- (6) Omit section 38 (alteration of rules of appropriate schemes).
- (7) In section 39 (general power to make regulations), omit “, and Part II of that Schedule as respects personal pension schemes”.
- (8) In section 42A (reduced rates of Class 1 contributions, and rebates)(9)—
- (a) in subsection (3), at the beginning insert “Subject to subsection (5A),”, and
  - (b) after subsection (5) insert—
    - “(5A) Where—
    - (a) a payment under subsection (3) is due in respect of an earner, and
    - (b) apart from this subsection, the payment would under regulations under subsection (3) be made to the earner,HMRC are not required to make the payment if they determine that the cost to them of administering the payment would exceed the amount of the payment.”.
- (9) In section 43 (payment of minimum contributions to personal pension schemes), after subsection (6) insert—
- “(6A) Where—
  - (a) a payment under subsection (1) is due in respect of an earner, and
  - (b) apart from this subsection, the payment would under regulations under subsection (3) be made to the earner,
- HMRC are not required to make the payment if they determine that the cost to them of administering the payment would exceed the amount of the payment.”.
- (10) In section 50 (powers of Inland Revenue to approve arrangements for scheme ceasing to be certified)(10)—
- (a) in subsection (1)(11)—
    - (i) omit “or a personal pension scheme”,
    - (ii) for the words from “contracted-out” to “appropriate” substitute “salary related contracted-out”, and
    - (iii) for paragraphs (a) and (b) substitute—
      - “(a) of earners’ accrued rights to guaranteed minimum pensions under the scheme or accrued rights to pensions under the scheme attributable to their service on or after the principal appointed day; and
      - (b) of the liability for the payment of such pensions in respect of persons who have then become entitled to receive them.”,
  - (b) in subsection (2), for the words from “contracted-out” to “appropriate” substitute “salary related contracted-out”,
  - (c) in subsection (4)—

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(8) Section 37 was substituted by section 151 of, and paragraph 39 of Schedule 5 to, the Pensions Act 1995 (c. 26).

(9) Section 42A was inserted by section 137 of the Pensions Act 1995 (c.26) and subsections (3) and (5) were amended by section 1 of, and paragraph 46 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(10) Section 50 was amended by section 1 of, and paragraph 51 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(11) Subsection (1) was amended by section 151 of, and paragraph 45 of Schedule 5 to, the Pensions Act 1995 (c.26).

- (i) omit “(other than a money purchase scheme)”;
  - (ii) for “26 to 33” substitute “31 and 33”, and
  - (iii) for “43 to 45” substitute “43 and 45”, and
  - (d) in subsection (6), for “which is not a money purchase contracted-out scheme”, substitute “to which subsection (1) applies”.
- (11) In section 52 (supervision of schemes which have ceased to be certified)—
- (a) in subsection (1)—
    - (i) after “supervision of” insert “salary related”, and
    - (ii) omit the words from “and section 54 shall apply” to the end,
  - (b) in subsection (2), after “as respects any” insert “salary related”, and
  - (c) omit subsections (2A)(b)(**12**) and (3).
- (12) In section 53(3) (supervision: former contracted-out schemes)(**13**), omit “or (b)”.
- (13) Omit section 54 (supervision: former appropriate personal pension schemes).
- (14) In section 96 (further provisions concerning exercise of option under section 95)—
- (a) in subsection (2)(**14**)—
    - (i) in paragraph (a) omit “or his protected rights”, and
    - (ii) in paragraph (b) omit “or protected”, and
  - (b) in subsection (3)(**15**)—
    - (i) in paragraph (a), omit “or the member’s protected rights; and”, and
    - (ii) omit paragraph (b).
- (15) In section 99(1) (trustees’ duties after exercise of option), omit “or give effect to such protected rights”.
- (16) In section 156(1) (information for purposes of contracting-out)(**16**), for “or appropriate scheme”, substitute “or a personal pension scheme which was an appropriate scheme before the abolition date”.
- (17) In section 159 (inalienability of guaranteed minimum pension and protected rights payments) —
- (a) in subsection (1)(a), after “scheme or” insert “entitled”,
  - (b) in subsection (4), for the words from “protected rights”, in the first place they occur, to “protected rights”, in the second place they occur, substitute “payments giving effect to protected rights under a personal pension scheme”, and
  - (c) in subsection (4A)(b)(**17**), omit “such rights or to”.
- (18) In section 164 (Crown employment), for subsection (2) substitute—

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(12) Subsection (2A) was inserted by section 151 of, and paragraph 47(a) of Schedule 5 to, the Pensions Act 1995 (c.26).

(13) Subsection (3) was substituted by section 151 of, and paragraph 48 of Schedule 5 to, the Pensions Act 1995, and subsequently amended by section 1 of, and paragraph 52 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(14) Subsection (2) was amended by section 151 of, and paragraph 63 of Schedule 5 to, the Pensions Act 1995, by sections 18 and 88 of, and paragraph 3 of Schedule 2 to, and Part 1 of Schedule 13 to, the Welfare Reform and Pensions Act 1999 (c. 30).

(15) Subsection (3) was amended by section 151 of, and paragraph 63 of Schedule 5 to, the Pensions Act 1995 (c.26), and by S.I. 2005/2053.

(16) Section 156 was substituted by section 56 of, and paragraph 9 of Schedule 5 to, the Child Support, Pensions and Social Security Act 2000 (c.19).

(17) Subsection (4A) was inserted by section 122 of, and paragraph 41 of Schedule 3 to, the Pensions Act 1995 (c.26).

“(2) A person who is employed by or under the Crown shall be treated as an employed earner for the purposes of—

- (a) sections 31 and 33, so far as they relate to personal pension schemes;
- (b) sections 43 and 45;
- (c) section 48, so far as it relates to minimum contributions;
- (d) sections 117, 154 and 155;
- (e) section 159, so far as it relates to protected rights payments; and
- (f) sections 160 and 166.”.

(19) In section 170 (decisions and appeals), as substituted by paragraph 131 of Schedule 7 to the Social Security Act 1998(18), in subsection (3), omit “or 54”.

(20) In section 170 (determination of questions by Secretary of State), as remaining in force for purposes other than those specified in article 2(1)(b) of the Social Security Act 1998 (Commencement No. 8, and Savings and Consequential and Transitional Provisions) Order 1999(19), in subsection (7)(a)(20), omit “or appropriate scheme certificates”.

(21) In section 177 (general financial arrangements), in subsection (3)(b), for sub-paragraph (ii) substitute—

- “(ii) sections 31, 33, 117, 154 and 155;
- (iii) section 159, so far as it relates to protected rights payments; and
- (iv) sections 160 and 166.”.

(22) In section 181 (general interpretation)—

- (a) in subsection (1), in the definition of “protected rights”, at the end add “, as it had effect immediately prior to the abolition date”, and
- (b) in subsection (4)(21), omit “27, 28, 29,” and “32.”.

(23) In section 183(3) (sub-delegation)(22) omit “27(3).”.

(24) In Schedule 2 (certification regulations), omit Part 2 (personal pension schemes).

## Amendments to the Pensions Act 1995

6.—(1) The Pensions Act 1995(23) is amended as follows.

(2) In section 51A (restriction on increase where annuity tied to investments)(24), in subsection (1)—

- (a) at the end of paragraph (a), add “and”, and
- (b) omit paragraph (b).

(3) Omit section 149 (hybrid occupational pension schemes), section 162 (annual increase in rate of personal pension) and section 163 (section 162: supplementary).

(4) In section 175 (Parliamentary control of orders and regulations), in subsection (2), omit paragraph (d) and the word “or” immediately preceding it.

(18) 1998 c.14. This substitution was brought into force for certain purposes only by S.I. 1999/1958. Subsections (2) to (4) were subsequently substituted by section 16 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(19) S.I.1999/1958.

(20) Subsection (7) was inserted by section 151 of, and paragraph 70(c) of Schedule 5 to, the Pensions Act 1995 (c.26).

(21) Subsection (4) was amended by section 320 of, and Part 1 of Schedule 13 to, the Pensions Act 2004 (c.35).

(22) Subsection (3) was amended by sections 122 and 173 of, and paragraph 45 of Schedule 3 to, and paragraph 15(b) of Schedule 6 to, the Pensions Act 1995 (c.26), by section 84 of, and paragraphs 28 and 42 of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c.30), and by section 319 of, and paragraphs 9 and 32 of Schedule 12 to, the Pensions Act 2004 (c.35).

(23) 1995 c.26.

(24) Section 51A was inserted by section 51(2) of the Child Support, Pensions and Social Security Act 2000 (c.19).

### Amendments to the Pensions Act 2004

7. In section 170 (discharge of liabilities in respect of money purchase benefits) of the Pensions Act 2004(25)—

- (a) omit subsection (3), and
- (b) in subsection (4), omit the definition of “protected rights”.

### Repeal and amendment of certain amending provisions of the Pensions Act 2007 before their commencement

8.—(1) Paragraphs 7, 16, 24, 25, 30, 32, 33 and 36 of Schedule 4 to the Pensions Act 2007 (abolition of contracting-out for defined contribution pension schemes) are omitted, and are not to have any effect from the contracting-out abolition date (within the meaning of section 106(4) of the Pensions Act 2008) (in spite of section 15(4) of the Pensions Act 2007).

(2) In Part 2 (further amendments) of Schedule 4 to the Pensions Act 2007 (which is not yet in force)—

- (a) omit paragraph 55 (which would have amended section 50 of the Pension Schemes Act 1993),
- (b) in paragraph 56 (which amends section 164 of the Pension Schemes Act 1993), for the words from “in paragraph (b)” to the end, substitute “omit paragraph (b)”,and
- (c) in paragraph 59(3), in the text to be inserted in paragraph 5(1) of Schedule 2 to the Pension Schemes Act 1993, omit “38,” and “(except as they apply to personal pension schemes, the members of such schemes or rights in respect of them)”.

## PART 3

Amendments coming into force on 6th April 2015

### Amendments to the Pension Schemes Act 1993

9.—(1) The Pension Schemes Act 1993 is amended as follows.

- (2) In section 20(3) (transfer of accrued rights)(26), omit “and sections 31 and 33”.
- (3) Omit section 33 (tax requirements to prevail over requirements of section 31)(27).
- (4) In section 42A (reduced rates of Class 1 contributions, and rebates)(28)—
  - (a) in subsection (3)(29), for “trustees or managers of the scheme” substitute “earner”, and
  - (b) for subsection (5A)(30), substitute—
 

“(5A) Where a payment under subsection (3) is due in respect of an earner, HMRC are not required to make the payment if they determine that the cost to them of administering the payment would exceed the amount of the payment.”.
- (5) In section 43 (payment of minimum contributions to personal pension schemes)—

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(25) 2004 c.35.

(26) Section 20(3) was amended by article 5(2) of this instrument.

(27) Section 33 was amended by article 5(4) of this instrument.

(28) Section 42A was inserted by section 137 of the Pensions Act 1995 (c.26) and subsections (3) and (5) were amended by section 1 of, and paragraph 46 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(29) Subsection (3) was amended by article 5(8)(a) of this instrument.

(30) Subsection (5A) was inserted by article 5(8)(b) of this instrument.

- (a) in subsection (2), for “trustees or managers of the earner’s chosen scheme” substitute “earner”, and
- (b) for subsection (6A)(31), substitute—
  - “(6A) Where a payment under subsection (1) is due in respect of an earner, HMRC are not required to make the payment if they determine that the cost to them of administering the payment would exceed the amount of the payment.”.
- (6) In section 164(2) (Crown employment)(32), omit paragraph (a).
- (7) In section 181(4) (general interpretation)(33), omit “31,”.

Signed by authority of the Secretary of State for Work and Pensions.

Address  
Date

*Name*  
Minister of State  
Department for Work and Pensions

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(31) Subsection (6A) was inserted by article 5(9) of this instrument.  
(32) Subsection (2) was substituted by article 5(18) of this instrument.  
(33) Subsection (4) was amended by section 320 of, and Part 1 of Schedule 13 to, the Pensions Act 2004 (c.35), and by article 5(22)(b) of this instrument.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 145 of the Pensions Act 2008 (c.30), which provides for amendments to be made in consequence of section 106 of that Act. Section 106 abolishes the protected rights of members of pension schemes contracted-out on a defined contributions basis, from the contracting-out abolition date (the date for the coming into force of section 15(1) of the Pensions Act 2007 (c.22)).

This Order makes consequential amendments to primary legislation and provides for transitional provisions for the 3 years following abolition. The majority of amendments come into force on 6th April 2012.

References to, and provisions which relate to, protected rights are either omitted, or where appropriate, replaced with references to protected rights as they existed prior to the abolition date.

Article 5 amends the Pension Schemes Act 1993 (c.48) with effect from 6th April 2012. Articles 5(8) and (9) provide that HMRC can set a minimum level below which they will not pay an age-related payment or minimum contributions to an individual, where it would cost more to administer than the payment is worth.

Article 8 repeals and amends certain amending provisions of the Pensions Act 2007 before their commencement.

Article 9 amends the Pension Schemes Act 1993 with effect from 6th April 2015. Article 9(4) and (5) provide for payments of age-related payments or minimum contributions to be made to individuals in all cases, rather than the trustees or managers of the scheme, and substitutes the provisions inserted by article 5(8) and (9) of this instrument to provide for the minimum level below which such payments are not made to apply in all cases.

This legislation reduces the costs of administrative burdens on the private sector and civil society organisations. An assessment of the impact has been made; a copy is available in the libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).