

*Status: Point in time view as at 21/02/2009.*

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## SCHEDULES

### SCHEDULE 4

Section 128.

#### PRIORITY IN BANKRUPTCY ETC

##### Modifications etc. (not altering text)

- C1** Sch. 4 applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1) (with s. 247); [S.I. 2009/296](#), [art. 3](#), [Sch. para. 2](#)
- C2** Sch. 4 applied (with modifications) (21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1) (with s. 247); [S.I. 2009/296](#), [art. 3](#), [Sch. para. 3](#)

##### Commencement Information

- II** [Schs. 1-4](#) in force at 7.2.1994 by [S.I. 1994/86](#), [art. 2](#)

##### *Earners' contributions to occupational pension scheme*

- 1 This Schedule applies to any sum owed on account of an earner's contributions to an occupational pension scheme being contributions deducted from earnings paid in the period of four months immediately preceding the relevant date or otherwise due in respect of earnings paid or payable in that period.

##### *Employer's contributions to occupational pension scheme*

- 2 (1) <sup>[F1]</sup>This Schedule applies to any sum owed on account of an employer's contributions to a salary related contracted-out scheme which were payable in the period of 12 months immediately preceding the relevant date.
- (1A) The amount of the debt having priority by virtue of sub-paragraph (1) shall be taken to be an amount equal to the appropriate amount.]
- (2) <sup>[F1]</sup>This Schedule applies to any sum owed on account of an employer's minimum payments to a money purchase contracted-out scheme falling to be made in the period of 12 months immediately preceding the relevant date.]
- (3) <sup>[F1]</sup>In so far as payments cannot from the terms of the scheme be identified as falling within sub-paragraph (2), the amount of the debt having priority by virtue of that sub-paragraph shall be taken to be an amount equal to the appropriate amount.
- (3A) In sub-paragraph (1A) or (3) "the appropriate amount" means the aggregate of—
- (a) the percentage for non-contributing earners of the total reckonable earnings paid or payable, in the period of 12 months referred to in sub-paragraph (1) or (2) (as the case may be), to or for the benefit of non-contributing earners; and
- (b) the percentage for contributing earners of the total reckonable earnings paid or payable, in that period, to or for the benefit of contributing earners.]
- (4) For the purposes of <sup>[F2]</sup>sub-paragraph (3A)—

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- (a) the earnings to be taken into account as reckonable earnings are those paid or payable to or for the benefit of earners in employment which is contracted-out by reference to the scheme in the whole or any part of the period of 12 months there mentioned; and
- (b) earners are to be identified as contributing or non-contributing in relation to service of theirs in employment which is contracted-out by reference to the scheme according to whether or not in the period in question they were liable under the terms of the scheme to contribute in respect of that service towards the provision of pensions under the scheme.

(5) In this paragraph—

[<sup>F3</sup>“appropriate flat-rate percentage” has the same meaning as in section 42A]

“employer” shall be construed in accordance with regulations made under section 181(2); and

[<sup>F4</sup>“the percentage for contributing earners” means—

- (a) in relation to a salary related contracted-out scheme, 3 per cent, and
- (b) in relation to a money purchase contracted-out scheme, the percentage which is the appropriate flat-rate percentage for secondary Class 1 contributions.]

[<sup>F4</sup>“the percentage for non-contributing earners” means—

- (a) in relation to a salary related contracted-out scheme, 4.8 per cent, and
- (b) in relation to a money purchase contracted-out scheme, a percentage equal to the sum of the appropriate flat-rate percentages for primary and secondary Class 1 contributions]

“reckonable earnings”, in relation to any employment, means the earner’s earnings from that employment so far as those earnings—

- (a) were comprised in any payment of earnings made to him or for his benefit at a time when the employment was contracted-out employment; and
- (b) exceeded the current lower earnings limit but not [<sup>F5</sup>the upper accrual point].

<sup>F6</sup>(6) .....

#### Textual Amendments

- F1** Sch. 4 para. 2(1)-(3A) substituted for Sch. 4, para. 2(1)-(3) (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 2 para. 8\(2\)](#); S.I. 2000/1047, art. 2(2)(b), Sch. Pt. 2
- F2** Words in Sch. 4 para. 2(4) substituted (11.11.1999 for specified purposes, 25.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(5)(a), [Sch. 2 para. 8\(3\)](#); S.I. 2000/1047, art. 2(2)(b), Sch. Pt. 2
- F3** Words in Sch. 4 para. 2(5) inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), ss. [137\(7\)\(a\)](#), 180(1); S.I. 1996/778, art. 2(5)(a), [Sch. Pt. 5](#); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)
- F4** Words in Sch. 4 para. 2(5) inserted (6.4.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), ss. [137\(7\)\(b\)](#), 180(1); S.I. 1996/778, art. 2(5)(a), [Sch. Pt. 5](#); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)

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- F5** Words in Sch. 4 para. 2(5) substituted (21.9.2008 with effect in relation to payments made in a tax week falling in 2009-10 or any subsequent tax year) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), [Sch. 1 para. 13\(2\)](#) (with [Sch. 1 para. 13\(4\)](#))
- F6** Sch. 4 para. 2(6) repealed (21.9.2008 with effect in relation to payments made in a tax week falling in 2009-10 or any subsequent tax year) by [National Insurance Contributions Act 2008 \(c. 16\)](#), s. 6(1), [Sch. 1 para. 13\(3\)](#), [Sch. 2](#) (with [Sch. 1 para. 13\(4\)](#))

### *State scheme premiums*

- 3 (1) This Schedule applies to any sum owed on account of a [<sup>F7</sup>contributions equivalent premium] payable at any time before, or in consequence of, a person going into liquidation or being adjudged bankrupt, or in Scotland, the sequestration of a debtor's estate, or (in the case of a company not in liquidation)—
- (a) the appointment of a receiver as mentioned in section 40 of the <sup>M1</sup>Insolvency Act 1986 (debenture-holders secured by floating charge), or
  - (b) the appointment of a receiver under section 53(6) or 54(5) of that Act (Scottish company with property subject to floating charge), or
  - (c) the taking of possession by debenture-holders (so secured) as mentioned in [<sup>F8</sup>section 754 of the Companies Act 2006].
- (2) Where any such premium is payable in respect of a period of service of more than 12 months (taking into account any previous linked qualifying service), the amount to be paid in priority by virtue of this paragraph shall be limited to the amount of the premium that would have been payable if the service had been confined to the last 12 months taken into account in fixing the actual amount of the premium.
- (3) Where—
- (a) by virtue of this paragraph the whole or part of a premium is required to be paid in priority to other debts of the debtor or his estate; and
  - (b) the person liable for the payment would be entitled to recover the whole or part of any sum paid on account of it from another person either under section 61 or under any provision made by the relevant scheme for the purposes of that section or otherwise,
- then, subject to sub-paragraph (4), that other person shall be liable for any part of the premium for the time being unpaid.
- (4) No person shall be liable by virtue of sub-paragraph (3) for an amount in excess of the sum which might be so recovered from him if the premium had been paid in full by the person liable for it, after deducting from that sum any amount which has been or may be recovered from him in respect of any part of that payment paid otherwise than under that sub-paragraph.
- (5) The payment under sub-paragraph (3) of any amount in respect of a premium shall have the same effect on the rights and liabilities of the person making it (other than his liabilities under that sub-paragraph) as if it had been a payment of that amount on account of the sum recoverable from him in respect of a premium as mentioned in sub-paragraph (3)(b).

#### **Textual Amendments**

- F7** Words in [Sch. 4 para. 3\(1\)](#) substituted (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), s. 180(1), [Sch. 5 para. 85](#); S.I. 1997/664, art. 2(3), [Sch. Pt. 2](#)

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**F8** Words in Sch. 4 para. 3(1)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 194(3)(a)** (with arts. 6, 11, 12)

**Marginal Citations**

**M1** [1986 c. 45.](#)

*Interpretation*

- 4 (1) In this Schedule—
- (a) in its application in England and Wales, [<sup>F9</sup>section 754(3) of the Companies Act 2006] and section 387 of the Insolvency Act 1986 apply as regards the meaning of the expression “the relevant date”; and
  - (b) in its application in Scotland, that expression has the same meaning as in Part I of Schedule 3 to the <sup>M2</sup>Bankruptcy (Scotland) Act 1985.
- (2) In this Schedule references to a contracted-out scheme, contracted-out employment and a state scheme premium include references to a contracted-out scheme, contracted-out employment and a state scheme premium (other than a personal pension protected rights premium) within the meaning of any provisions in force in Northern Ireland and corresponding to the provisions of this Act.

**Textual Amendments**

**F9** Words in Sch. 4 para. 4(1)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 194(3)(b)** (with arts. 6, 11, 12)

**Marginal Citations**

**M2** [1985 c. 66.](#)

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