

*Status: Point in time view as at 26/09/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Welfare Reform and Pensions Act 1999, SCHEDULE 5. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

Section 35.

#### PENSION CREDITS: MODE OF DISCHARGE

##### *Funded pension schemes*

- 1 (1) This paragraph applies to a pension credit which derives from—
- (a) a funded occupational pension scheme, or
  - (b) a personal pension scheme.
- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit—
- (a) with his consent, or
  - (b) in accordance with regulations made by the Secretary of State.
- (3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—
- (a) the qualifying arrangement is not disqualified as a destination for the credit,
  - (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
  - (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.
- (4) For the purposes of sub-paragraph (2), no account is to be taken of consent of the person entitled to the pension credit unless—
- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under sub-paragraph (3), or
  - (b) it is not withdrawn within 7 days of receipt of such notice.

##### **Commencement Information**

- II** [Sch. 5 para. 1](#) wholly in force at 1.12.2000; [Sch. 5 para. 1](#) in force for certain purposes at Royal Assent see [s. 89\(1\)\(5\)](#); [Sch. 5 para. 1](#) in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), [art. 2\(2\)\(d\)](#), [Sch. Pt. IV](#)

##### *Unfunded public service pension schemes*

- 2 (1) This paragraph applies to a pension credit which derives from an occupational pension scheme which is—
- (a) not funded, and

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- (b) a public service pension scheme.
- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit.
- (3) If such a scheme as is mentioned in sub-paragraph (1) is closed to new members, the appropriate authority in relation to that scheme may by regulations specify another public service pension scheme as an alternative to it for the purposes of this paragraph.
- (4) Where the trustees or managers of a scheme in relation to which an alternative is specified under sub-paragraph (3) are subject to liability in respect of a pension credit, they may—
- (a) discharge their liability in respect of the credit by securing that appropriate rights are conferred on the person entitled to the credit by the trustees or managers of the alternative scheme, and
- (b) for the purpose of so discharging their liability, require the trustees or managers of the alternative scheme to take such steps as may be required.
- (5) In sub-paragraph (3), “the appropriate authority”, in relation to a public service pension scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the scheme.

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

- C1** Sch. 5 para. 2(3)-(5) applied (S.) (5.10.2001 with effect from 1.12.2000) by S.I. 1992/129, Sch. 2 para. N7(2) (as inserted (S.) (5.10.2001 with effect from 1.12.2000) by S.S.I. 2001/310, art. 3)

**Commencement Information**

- I2** Sch. 5 para. 2 wholly in force at 1.12.2000; Sch. 5 para. 2 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 2 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

*Other unfunded occupational pension schemes*

- 3 (1) This paragraph applies to a pension credit which derives from an occupational pension scheme which is—
- (a) not funded, and
- (b) not a public service pension scheme.
- (2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit.
- (3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—
- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and

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- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.

#### Commencement Information

- I3** Sch. 5 para. 3 wholly in force at 1.12.2000; Sch. 5 para. 3 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 3 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

#### *Other pension arrangements*

- 4 (1) This paragraph applies to a pension credit which derives from—
- (a) a retirement annuity contract,
  - (b) an annuity or insurance policy purchased or transferred for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme, or
  - (c) an annuity purchased, or entered into, for the purpose of discharging liability in respect of a pension credit.
- (2) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may discharge his liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—
- (a) the qualifying arrangement is not disqualified as a destination for the credit,
  - (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
  - (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.
- (3) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may discharge his liability in respect of the credit by entering into an annuity contract with the person entitled to the credit if the contract is not disqualified as a destination for the credit.
- (4) The person responsible for the pension arrangement from which a pension credit to which this paragraph applies derives may, in such circumstances as the Secretary of State may prescribe by regulations, discharge his liability in respect of the credit by assuming an obligation to provide an annuity for the person entitled to the credit.
- (5) In sub-paragraph (1)(c), “pension credit” includes a credit under Northern Ireland legislation corresponding to section 29(1)(b).

#### Commencement Information

- I4** Sch. 5 para. 4 wholly in force at 1.12.2000; Sch. 5 para. 4 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 4 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

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### *Appropriate rights*

- 5 For the purposes of this Schedule, rights conferred on the person entitled to a pension credit are appropriate if—
- (a) they are conferred with effect from, and including, the day on which the order, or provision, under which the credit arises takes effect, and
  - (b) their value, when calculated in accordance with regulations made by the Secretary of State, equals the amount of the credit.

#### **Commencement Information**

- I5** Sch. 5 para. 5 wholly in force at 1.12.2000; Sch. 5 para. 5 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 5 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

### *Qualifying arrangements*

- 6 (1) The following are qualifying arrangements for the purposes of this Schedule—
- (a) an occupational pension scheme,
  - (b) a personal pension scheme,
  - (c) an appropriate annuity contract,
  - (d) an appropriate policy of insurance, and
  - (e) an overseas arrangement within the meaning of the <sup>M1</sup>Contracting-out (Transfer and Transfer Payment) Regulations 1996.
- (2) An annuity contract or policy of insurance is appropriate for the purposes of subparagraph (1) if, at the time it is entered into or taken out, the [<sup>F1</sup>insurer] with which it is entered into or taken out—
- (a) is carrying on <sup>F2</sup>. . . long-term insurance business in the United Kingdom or any other member State, and
  - (b) satisfies such requirements as the Secretary of State may prescribe by regulations.

[<sup>F3</sup>(3) “Insurer” and “long-term insurance business” have the meaning given in section 180A of the Pension Schemes Act 1993.]

#### **Textual Amendments**

- F1** Word in Sch. 5 para. 6(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 159(2)(a)  
**F2** Word in Sch. 5 para. 6(2)(a) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 159(2)(b)  
**F3** Sch. 5 para. 6(3) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 159(3)

#### **Commencement Information**

- I6** Sch. 5 para. 6 wholly in force at 1.12.2000; Sch. 5 para. 6 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 6 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

#### **Marginal Citations**

- M1** S.I. 1996/1462.

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*Disqualification as destination for pension credit*

- 7 (1) If a pension credit derives from a pension arrangement which is [<sup>F4</sup>a registered pension scheme under section 153 of the Finance Act 2004,] an arrangement is disqualified as a destination for the credit unless—
- (a) it is also [<sup>F5</sup>registered] for those purposes, or
  - (b) it satisfies such requirements as the Secretary of State may prescribe by regulations.
- (2) If the rights by reference to which the amount of a pension credit is determined are or include contracted-out rights or safeguarded rights, an arrangement is disqualified as a destination for the credit unless—
- (a) it is of a description prescribed by the Secretary of State by regulations, and
  - (b) it satisfies such requirements as he may so prescribe.
- (3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Secretary of State, equals the credit.
- (4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Secretary of State may prescribe by regulations.
- (5) The requirements which may be prescribed under sub-paragraph (1)(b) include, in particular, requirements of the Inland Revenue.
- (6) In sub-paragraph (2)—
- “contracted-out rights” means such rights under, or derived from—
    - (a) an occupational pension scheme contracted-out by virtue of section 9(2) or (3) of the <sup>M2</sup>Pension Schemes Act 1993, or
    - (ab) [<sup>F6</sup>an occupational pension scheme constituting a money purchase contracted-out scheme for the purposes of that Act, or]
    - (b) a personal pension scheme [<sup>F7</sup>which is [<sup>F7</sup>constituting]] an appropriate scheme for the purposes of that Act,
- as the Secretary of State may prescribe by regulations;
- “safeguarded rights” has the meaning given by section 68A of the Pension Schemes Act 1993.

**Textual Amendments**

- F4** Words in Sch. 5 para. 7(1) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **15(5)(a)**
- F5** Word in Sch. 5 para. 7(1)(a) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **15(5)(b)**
- F6** Sch. 5 para. 7(6)(ab) inserted (26.9.2007 for specified purposes) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b), (3), **Sch. 4 para. 40(b)** (with [Sch. 4 Pt. 3](#))
- F7** Word in Sch. 5 para. 7(6)(b) substituted (26.9.2007 for specified purposes) by [Pensions Act 2007 \(c. 22\)](#), ss. 15(4), 30(2)(b), (3), **Sch. 4 para. 40(c)** (with [Sch. 4 Pt. 3](#))

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#### Commencement Information

- I7** Sch. 5 para. 7 wholly in force at 1.12.2000; Sch. 5 para. 7 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 7 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

#### Marginal Citations

- M2** 1993 c. 48.

#### *Adjustments to amount of pension credit*

- 8 (1) If—
- (a) a pension credit derives from an occupational pension scheme,
  - (b) the scheme is one to which [<sup>F8</sup>Part 3 of the Pensions Act 2004 (scheme funding)] applies,
  - (c) the scheme is underfunded on the valuation day, and
  - (d) such circumstances as the Secretary of State may prescribe by regulations apply,
- paragraph 1(3) shall have effect in relation to the credit as if the reference to the amount of the credit were to such lesser amount as may be determined in accordance with regulations made by the Secretary of State.
- (2) Whether a scheme is underfunded for the purposes of sub-paragraph (1)(c) shall be determined in accordance with regulations made by the Secretary of State.
- (3) For the purposes of that provision, the valuation day is the day by reference to which the cash equivalent on which the amount of the pension credit depends falls to be calculated.

#### Textual Amendments

- F8** Words in [Sch. 5 para. 8\(1\)\(b\)](#) substituted (4.12.2005 for specified purposes, 30.12.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 77\(2\)](#); [S.I. 2005/3331](#), art. 2(1)(a)(b), [Sch. Pt. 1](#)

#### Commencement Information

- I8** Sch. 5 para. 8 wholly in force at 1.12.2000; Sch. 5 para. 8 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 8 in force at 1.12.2000 insofar as not already in force by [S.I. 2000/1047](#), art. 2(2)(d), [Sch. Pt. IV](#)

- 9 If—
- (a) a person's shareable rights under a pension arrangement have become subject to a pension debit, and
  - (b) the person responsible for the arrangement makes a payment which is referable to those rights without knowing of the pension debit,
- this Schedule shall have effect as if the amount of the corresponding pension credit were such lesser amount as may be determined in accordance with regulations made by the Secretary of State.

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**Commencement Information**

**I9** Sch. 5 para. 9 wholly in force at 1.12.2000; Sch. 5 para. 9 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 9 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

10 The Secretary of State may by regulations make provision for paragraph 1(3), 3(3) or 4(2) to have effect, where payment is made after the end of the implementation period for the pension credit, as if the reference to the amount of the credit were to such larger amount as may be determined in accordance with the regulations.

**Commencement Information**

**I10** Sch. 5 para. 10 wholly in force at 1.12.2000; Sch. 5 para. 10 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 10 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

*General*

11 Liability in respect of a pension credit shall be treated as discharged if the effect of paragraph 8(1) or 9 is to reduce it to zero.

**Commencement Information**

**I11** Sch. 5 para. 11 wholly in force at 1.12.2000; Sch. 5 para. 11 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 11 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

12 Liability in respect of a pension credit may not be discharged otherwise than in accordance with this Schedule.

**Commencement Information**

**I12** Sch. 5 para. 12 wholly in force at 1.12.2000; Sch. 5 para. 12 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 12 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

13 Regulations under paragraph 5(b) or 7(3) may provide for calculation of the value of rights in accordance with guidance from time to time prepared by a person specified in the regulations.

**Commencement Information**

**I13** Sch. 5 para. 13 wholly in force at 1.12.2000; Sch. 5 para. 13 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 13 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

[<sup>F9</sup>13A The provisions of this Schedule are subject to—

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- (a) section 73A(3) and (6) of the Pensions Act 1995 (prohibition on new members during winding up of scheme: exception for discharge of pension credit derived from the scheme), and
- (b) section 133(2) and (8) of the Pensions Act 2004 (prohibition on new members during an assessment period in relation to a scheme: exception for discharge of pension credit derived from the scheme).]

#### Textual Amendments

**F9** Sch. 5 para. 13A inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 77(3)**; S.I. 2005/695, art. 2(7), Sch. 1

14 In this Schedule—

“funded”, in relation to an occupational pension scheme, means that the scheme meets its liabilities out of a fund accumulated for the purpose during the life of the scheme;

“public service pension scheme” has the same meaning as in the <sup>M3</sup>Pension Schemes Act 1993.

#### Commencement Information

**I14** Sch. 5 para. 14 wholly in force at 1.12.2000; Sch. 5 para. 14 in force for certain purposes at Royal Assent see s. 89(1)(5); Sch. 5 para. 14 in force at 1.12.2000 insofar as not already in force by S.I. 2000/1047, art. 2(2)(d), **Sch. Pt. IV**

#### Marginal Citations

**M3** 1993 c. 48.



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