



Statutory Document No. 69/05

THE PENSION SCHEMES ACT 1995

THE PENSIONS ACT 2004 (APPLICATION) (No. 2) ORDER 2005

*Approved by Tynwald*

*16<sup>th</sup> March 2005*

*Coming into operation in accordance with Article 1*

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pensions Schemes Act 1995 (c.11), and of all other enabling powers, the following Order is hereby made: -

**Citation and commencement**

1. (1) This Order may be cited as the Pensions Act 2004 (Application) (No. 2) Order 2005 and shall, subject to section 1(4) of the Pensions Schemes Act 1995, come into force as provided for in paragraphs (2) and (3).

(2) This Article and Articles 2 and 3 shall come into force forthwith.

(3) The provisions of the applied legislation shall come into force (or be deemed to have done so (as the case may be)) as follows -

- (a) section 297(3) (commencement of amendments of state pension deferment provisions made by the Pensions Act 1995 (c.26)) shall be deemed to have come into force on the day the Pensions Act 2004 (c.35) was passed;
- (b) section 297(4) and Schedule 11 (deferral of shared additional pensions) -
  - (i) shall be deemed to have come into force on the day the Pensions Act 2004 was passed so far as is necessary for enabling the making of any regulations for which they provide, and
  - (ii) otherwise, shall come into force on 6<sup>th</sup> April 2005;
- (c) section 315 (other than subsection (6)), 316, 318, 322 and 325 (all miscellaneous and general provisions) shall be deemed to have come into force on the day the Pensions Act 2004 (c.35) was passed;

- (d) section 315(6) shall come into force (or shall be deemed to have done so) on the day that section comes (or came) into force in Great Britain;
- (e) section 320 and Schedule 13 (repeals) shall come into force (or shall be deemed to have done so) on the day that section or Schedule (as the case may be) comes (or came) into force in Great Britain;
- (f) the repeal of section 50(2) of the Welfare Reform and Pensions Act 1999 shall be deemed to have come into force on the day the Pensions Act 2004 was passed; and
- (g) the repeal of section 134(3) of, and paragraph 21(14) of Schedule 4 to, the Pensions Act 1995 (c.26) shall come into force on 6<sup>th</sup> April 2005.

### **Interpretation**

2. (1) In this Order “the applied legislation” means -

- (a) sections 297(3) and (4), 315, 316, 318, 320, 322 and 325 of; and
- (b) Schedules 11 and 13 to,

the Pensions Act 2004 (an Act of Parliament) (c.35).

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 2000 (c.5) or section 1 of the Pension Schemes Act 1995 shall be construed as a reference to that legislation as it has effect in the Island.

### **Application to the Island of the applied legislation**

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

## SCHEDULE

This Schedule sets out the text of sections 297(3) and (4), 315, 316, 318, 320, 322 and 325 of, and Schedules 11 and 13 to, the Pensions Act 2004 (c.35), with such exceptions, adaptations and modifications made where necessary.

Note: modifications subject to which the legislation is applied to the Island are in *bold italic* type.

# Pensions Act 2004

## 2004 CHAPTER 35.

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**PART 8****STATE PENSIONS***Deferral of state pension***Deferral of retirement pensions and shared additional pensions**

297. (1) and (2) *Omitted.*

(3) In paragraph 6 of Schedule 4 to the Pensions Act 1995 (c.26) (which, with effect from 6<sup>th</sup> April 2010, amends the existing law regarding the deferment of pensions), for sub-paragraph (5) (commencement) substitute -

“(5) The preceding sub-paragraphs shall come into force as follows -

- (a) sub-paragraphs (1) and (4) shall come into force on 6<sup>th</sup> April 2005;
- (b) sub-paragraphs (2) and (3) shall have effect in relation to incremental periods (within the meaning of Schedule 5 to the Social Security Contributions and Benefits Act 1992) beginning on or after that date.”

(4) Schedule 11 (which contains further amendments relating to the deferral of shared additional pensions) has effect.

**PART 9****MISCELLANEOUS AND SUPPLEMENTARY***Regulations and orders***Subordinate legislation (general provisions)**

315. (1) *Omitted.*

(2) Any power conferred by this Act to make subordinate legislation may be exercised -

- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or descriptions of case;
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends or any lesser provision (whether by way of exceptions or otherwise),
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different descriptions of case or different provision as respects the same case or description of case for different purposes of this Act, or
  - (iii) any such provision either unconditionally or subject to any specified condition.

(3) Any power conferred by this Act to make subordinate legislation -

- (a) if it is expressed to be exercisable for alternative purposes, may be exercised in relation to the same case for any or all of those purposes, and
- (b) if it is conferred for the purposes of any one provision of this Act, is without prejudice to any power to make subordinate legislation for the purposes of any other provision.

(4) A power conferred by this Act to make subordinate legislation includes power to provide for a person to exercise a discretion in dealing with any matter.

(5) Any power conferred by this Act to make subordinate legislation also includes power to make such incidental, supplementary, consequential or transitional provision as appears to the *Department* to be expedient.

(6) Regulations may, for the purposes of or in connection with the coming into force of any provisions of this Act, make any such provision as could be made by virtue of section 322(5) by an order bringing those provisions into force.

### ***Tynwald control of subordinate legislation***

316. *Any* regulations or order under this Act *are* subject to *the approval* of *Tynwald*.

### *Interpretation*

#### **General interpretation**

318. (1) In this Act, unless the context otherwise requires -

“modifications” includes additions, omissions and amendments, and related expressions are to be construed accordingly;

“prescribed” means prescribed by regulations;

“regulations” means regulations made, *or applied to the Isle of Man by an order made*, by the *Department*.

(2) to (5) *Omitted*.

#### **Repeals**

320. The enactments mentioned in Schedule 13 are repealed to the extent specified.

### *Miscellaneous and supplementary*

#### **Commencement**

322. (1) Subject to subsections (2) to (4), the provisions of this Act *shall* come into force *(or shall be deemed to have done so) on the same day as they come (or came) into force in Great Britain* in accordance with provision made by *the Secretary of State* by order.

(2) The following provisions *shall be deemed to have* come into force on the day this Act *was* passed -

(a) and (b) *omitted*;

(c) in Part 8 -

- (i) *omitted*,
- (ii) section 297(3) (commencement of amendments of state pension deferment provisions made by Pensions Act 1995),
- (iii) and (iv) *omitted*;
- (d) in this Part (miscellaneous and general *provisions of the Act*) -
  - (i) *omitted*,
  - (ii) this section and section 315 (other than subsection (6)), 316, 318 and 325;
- (e) the repeal by this Act of section 50(2) of the Welfare Reform and Pensions Act 1999.

(3) Section 297(4) (and Schedule 11) (deferral of shared additional pensions) -

- (a) *shall be deemed to have* come into force on the day this Act *was* passed so far as is necessary for enabling the making of any regulations for which they provide, and
- (b) otherwise, *shall* come into force on 6<sup>th</sup> April 2005.

(4) The repeals by this Act of section 134(3) of, and paragraph 21(14) of Schedule 4 to, the Pensions Act 1995 (c.26) *shall* come into force on 6<sup>th</sup> April 2005.

(5) Without prejudice to section 315(5), the power to make an order under this section includes power -

- (a) to make transitional adaptations or modifications -
  - (i) of the provisions brought into force by the order, or
  - (ii) in connection with those provisions, of any provisions of the Pensions Act 1995 (c.26) and Parts 3 *and* 4 of the Welfare Reform and Pensions Act 1999 (c.30), or
- (b) to save the effect of any of the repealed provisions of those Acts, or those provisions as adapted or modified by the order,

as it appears to the *Department* expedient, including different adaptations or modifications for different periods.

#### Short title

325. This Act may be cited as the Pensions Act 2004.

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## SCHEDULES

### SCHEDULE 11

Section 297(4)

#### DEFERRAL OF RETIREMENT PENSIONS AND SHARED ADDITIONAL PENSIONS

##### PART 2

##### CONSEQUENTIAL AMENDMENTS

###### *Welfare Reform and Pensions Act 1999*

23. The Welfare Reform and Pensions Act 1999 is amended as follows.
24. In section 50, omit subsection (2) (which amends provisions relating to the deferment of shared additional pensions).

##### PART 3

##### TRANSITIONAL PROVISIONS

###### *Transitional provision*

- 27.
- (1) The *Department* may by regulations make such transitional provision as *it* thinks fit in connection with the coming into force of this Schedule.
- (2) Regulations under this paragraph may, in particular, modify the preceding provisions of this Schedule in relation to cases where the retirement pension or shared additional pension of a person is deferred and the period of deferment begins before 6<sup>th</sup> April 2005 and continues on or after that day.
- (3) In this paragraph “deferred” and “period of deferment” are to be read in accordance with section 55 or 55C of the Social Security Contributions and Benefits Act 1992, as the case requires.

**SCHEDULE 13**

Section 320

**REPEALS**

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Pensions Act 1995 (c.26)	Section 134(3).  In Schedule 4, paragraph 21(13) and (14).
Welfare Reform and Pensions Act 1999 (c.30)	Section 50(2).

Made                      9th February 2005



Minister for Health and Social Security

**Explanatory note**

(This note is not part of the Order)

- 1.1 Section 1 of the Pension Schemes Act 1995 (of Tynwald) allows the Department by Order to apply to the Isle of Man, as part of the law of the Isle of Man and incorporating exceptions, adaptations and modifications, any legislation to which that Act applies.
- 1.2 *Inter alia*, the Act applies to the Pensions Act 2004 (of the United Kingdom Parliament) and to any statutory instrument made (or having effect as if made) under that Act.

- 1.3 This Order applies to the Isle of Man the provisions of the Pensions Act 2004 referred to in article 2(1) of the Order, including, in particular, its section 297(3). The effect of that section will be to improve the position of those persons who defer taking their State Retirement Pension by bringing forward to April 2005 the introduction of an increase in the benefits from doing so, which were originally planned for April 2010.
- 1.4 Each provision of the legislation applied by the order shall come into force when it does so in Great Britain or shall be deemed to have come into force when it did so there. Where necessary the provisions have been applied in the Isle of Man administratively pending their application by order.
- 2. Section 297 of the Pensions Act 2004 - Deferral of retirement pensions and shared additional pensions**
- 2.1 *Deferment of pensions - an introduction*
- 2.1.1 A person who satisfies the other conditions for a State retirement pension (i.e., they have reached State pensionable age and they satisfy the relevant contribution conditions) must also make a claim for their pension in order to become entitled to it.
- 2.1.2 Once they make their claim however, they will qualify for an increase in the rate of their weekly pension.
- 2.1.3 The amount of the increase will be equal to the sum of the increases (called "increments") of  $1/7^{\text{th}}$  of 1% of their weekly pension when they finally claim it for each week they deferred doing so. So a person's rate of pension will be increased by about 7.5% if they defer claiming their pension for a full year.
- 2.1.4 A person may also qualify for increments by electing to cancel their entitlement to their pension (called "deretiring"), e.g., a man who drew his pension at age 65 then chooses to cancel his entitlement at age 66. However, a person may deretire only once.
- 2.1.5 Increments may be earned for a maximum of five years, and may be accrued on all components of the state retirement pension (i.e., its basic and additional (earnings-related) elements).
- 2.2 *Married couples and pension deferment*
- 2.2.1 If a married man defers his Category A pension (i.e., a pension based on his own contribution record), his wife cannot claim a Category B pension (i.e., a pension based on her husband's contribution record) until he claims his pension. However, increments will accrue on both pensions. Similarly, if he claims his pension but later decides to give it up to earn increments, his wife's entitlement to a Category B pension will end (subject to her consent) and increments will then be earned on it.
- 2.3 *Widows and widowers and pension deferment*
- 2.3.1 A woman who has reached state pension age and claimed her pension will be entitled to increments earned by her late husband. The amount "inherited" will depend on which pension component the increments relate to (i.e., the basic Category A pension, additional (earnings-related) pension or any Graduated Retirement Benefit).

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- 2.3.2 Until April 2010, when equalisation of state pension age for men and women begins to be phased in, only widowed men can qualify for a Category B pension on the basis of their late wife's contributions; married men cannot do so on the basis of their wife's contributions. Similarly, a widower may inherit increments earned by his late wife where he was over pension age at the time of her death.
- 2.4 *Deferment and shared additional pensions*
- 2.4.1 People who are entitled to a share of their former spouse's State additional pension as part of their divorce settlement may also defer their entitlement to that pension.
- 2.5 *Changes to the existing deferment provisions introduced by the Pensions Act 1995 and the Pensions Act 2004 (both Acts of the United Kingdom Parliament)*
- 2.5.1 The Pensions Act 1995 (as applied to the Isle of Man) provided that from April 2010 -
- people would be able to defer their pension for as long as they wished (rather than for 5 years at the most); and
  - the weekly rate at which pension increments would accrue would be made more generous, by increasing it from 1/7<sup>th</sup> of 1% to 1/5<sup>th</sup> of 1% (equivalent to an annual rate of 10.4%).
- 2.5.2 Section 297(3) of the Pensions Act 2004 (applied to the Isle of Man by this order) now brings forward those changes to April 2005.
3. **Sections 297(4), 315, 316, 318, 320, 322 and 325 of, and Schedules 11 and 13 to, the Pensions Act 2004 (the Act's miscellaneous and general provisions)**
- 3.1 The remaining provisions of the Pensions Act 2004 applied by this Order are miscellaneous formalities (containing provisions relating to subordinate legislation made under the Act, its interpretation, commencement and title and the repeals it makes).