Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART II

CONTRIBUTORY BENEFITS

Retirement pensions (Categories A and B)

43 Persons entitled to more than one retirement pension

(1) A person shall not be entitled for the same period to more than one retirement pension under this Part of this Act except as provided by subsection (2) below.

(2) A person who, apart from subsection (1) above, would be entitled for the same period to both—

(a) a Category A or a Category B retirement pension under this Part; and

(b) a Category C or a Category D retirement pension under Part III below,

shall be entitled to both of those pensions for that period, subject to any adjustment of them in pursuance of regulations under section 73 of the Administration Act.

(3) A person who, apart from subsection (1) above, would be entitled—

(a) to both a Category A and a Category B retirement pension under this Part for the same period, or

(b) to both a Category C and a Category D retirement pension under Part III below for the same period,

may from time to time give notice in writing to the Secretary of State specifying which of the pensions referred to in paragraph (a) or, as the case may be, paragraph (b) above he wishes to receive.

(4) If a person gives such a notice, the pension so specified shall be the one to which he is entitled in respect of any week commencing after the date of the notice.

(5) If no such notice is given, the person shall be entitled to whichever of the pensions is from time to time the most favourable to him (whether it is the pension which he claimed or not).

44 Category A retirement pension

(1) A person shall be entitled to a Category A retirement pension if—
  (a) he is over pensionable age; and
  (b) he satisfies the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5;

and, subject to the provisions of this Act, he shall become so entitled on the day on which he attains pensionable age and his entitlement shall continue throughout his life.

(2) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

(3) A Category A retirement pension shall consist of—
  (a) a basic pension payable at a weekly rate; and
  (b) an additional pension payable where there are one or more surpluses in the pensioner's earnings factors for the relevant years.

(4) The weekly rate of the basic pension shall be £54.15 except that, so far as the sum is relevant for the purpose of calculating the rate of sickness benefit under section 31(6) above, it shall be £51.95.

(5) For the purposes of this section and section 45 below—
  (a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for the final relevant year; and
  (b) the amount of the surplus is the amount of that excess;

and for the purposes of paragraph (a) above the pensioner's earnings factor for any relevant year shall be taken to be that factor as increased by the last order under section 148 of the Administration Act to come into force before the end of the final relevant year.

(6) Any reference in this section or section 45 below to the pensioner's earnings factor for any relevant year is a reference—
  (a) where the relevant year is 1987-88 or any subsequent tax year, to the aggregate of—
    (i) his earnings factors derived from earnings upon which primary Class 1 contributions were paid or treated as paid in respect of that year, and
    (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of it; and
  (b) where the relevant year is an earlier tax year, to the aggregate of his earnings factors derived from contributions actually paid by him in respect of that year.

(7) In this section—
  (a) "relevant year" means 1978-79 or any subsequent tax year in the period between—
    (i) (inclusive) the tax year in which the pensioner attained the age of 16, and

(ii) (exclusive) the tax year in which he attained pensionable age;

(b) "final relevant year" means the last tax year which is a relevant year in relation to the pensioner.

(8) For the purposes of this section any order under section 21 of the Pensions Act (which made provision corresponding to section 148 of the Administration Act) shall be treated as an order under section 148 (but without prejudice to sections 16 and 17 of the Interpretation Act 1978).

45 The additional pension in a Category A retirement pension

(1) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year before 6th April 1999 shall be the weekly equivalent of 1 1/4 per cent. of the amount of the surpluses mentioned in section 44(3)(b) above.

(2) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year after 5th April 1999 shall be—

(a) in relation to any surpluses in the pensioner's earnings factors for the tax years in the period beginning with 1978-79 and ending with 1987-88, the weekly equivalent of 25/N per cent. of the amount of those surpluses; and

(b) in relation to any surpluses in the pensioner's earnings factors in a tax year after 1987-88, the weekly equivalent of the relevant percentage of the amount of those surpluses.

(3) In subsection (2)(b) above, "relevant percentage" means—

(a) 20/N per cent., where the pensioner attained pensionable age in 2009-10 or any subsequent tax year;

(b) (20+X)/N per cent., where the pensioner attained pensionable age in a tax year falling within the period commencing with 1999-2000 and ending with 2008-9.

(4) In this section—

(a) X = 0.5 for each tax year by which the tax year in which the pensioner attained pensionable age precedes 2009-10; and

(b) N = the number of tax years in the pensioner's working life which fall after 5th April 1978;

but paragraph (b) above is subject, in particular, to subsection (5) and, where applicable, section 46 below.

(5) Regulations may direct that in prescribed cases or classes of cases any tax year shall be disregarded for the purpose of calculating N under subsection (4)(b) above, if it is a tax year after 5th April 1978 in which the pensioner—

(a) was credited with contributions or earnings under this Act by virtue of regulations under section 22(5) above, or

(b) was precluded from regular employment by responsibilities at home, or

(c) in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,

but not so as to reduce the number of years below 20.

(6) For the purposes of subsections (1) and (2) above, the weekly equivalent of the amount of any surpluses shall be calculated by dividing that amount by 52 and rounding the result to the nearest whole penny, taking any 1/2p as nearest to the next whole penny.

(7) Where the amount falling to be rounded under subsection (6) above is a sum less than 1/2p, the amount calculated under that subsection shall be taken to be zero, notwithstanding any other provision of this Act or the Administration Act.

(8) The sums which are the weekly rate of the additional pension in a Category A retirement pension are subject to alteration by orders made by the Secretary of State under section 150 of the Administration Act.

46 Modifications of section 45 for calculating the additional pension in certain benefits

(1) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 33(3) above, the following definition shall be substituted for the definition of "N" in section 45(4)(b) above—

> "N = the number of tax years which begin after 5th April 1978 and end before the first day of entitlement to the additional pension in the period of interruption of employment in which that day falls, except that if—
>
> (i) in a case where the person entitled to the pension is a man, that number would be greater than 49; or
>
> (ii) in a case where the person so entitled is a woman, that number would be greater than 44,
>
> N = 49 or 44, as the case may be".

(2) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 39(1) or 41(4) above or section 50(3) below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of "N" in section 45(4)(b) above—

> "N = the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, except that if—
>
> (i) in a case where the deceased spouse was a man, that number would be greater than 49, or
>
> (ii) in a case where the deceased spouse was a woman, that number would be greater than 44,
>
> N = 49 or 44, as the case may be".

47 Increase of Category A retirement pension for invalidity

(1) Subject to section 61 below, the weekly rate of a Category A retirement pension shall be increased if the pensioner was entitled to an invalidity allowance in respect of—

(a) any day falling within the period of 8 weeks ending immediately before the day on which he attains pensionable age; or

(b) the last day before the beginning of that period;

and the increase shall, subject to subsection (2) below, be of an amount equal to the appropriate weekly rate of the invalidity allowance on that day.

(2) Where for any period the weekly rate of a Category A retirement pension includes an additional pension, for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under subsection (1) above and the pensioner shall be entitled to an increase under that subsection only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.

(3) In subsection (2) above the "relevant amount" means an amount equal to the additional pension, reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of section 29 of the Pensions Act.

(4) In this section any reference to an additional pension is a reference to that pension after any increase under section 52(3) below but without any increase under paragraphs 1 and 2 of Schedule 5 to this Act.

(5) In ascertaining for the purposes of subsection (1) above the rate of a pensioner's invalidity allowance, regard shall be had to the rates in force from time to time.

(6) Regulations may provide that subsection (1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations.

48 Use of former spouse's contributions

(1) Where a person—
  (a) has been married, and
  (b) in respect of the tax year in which the marriage terminated or any previous tax year, does not with his own contributions satisfy the contribution conditions for a Category A retirement pension,

then, for the purpose of enabling him to satisfy those conditions (but only in respect of any claim for a Category A retirement pension), the contributions of his former spouse may to the prescribed extent be treated as if they were his own contributions.

(2) Subsection (1) above shall not apply in relation to any person who attained pensionable age before 6th April 1979 if the termination of his marriage also occurred before that date.

(3) Where a person has been married more than once this section applies only to the last marriage and the references to his marriage and his former spouse shall be construed accordingly.

49 Category B retirement pension for women

(1) A woman who is or has been married, and has attained pensionable age, shall be entitled to a Category B retirement pension by virtue of the contributions of her husband; and the cases in which a woman is so entitled are those specified in subsections (2) to (5) below.

(2) The first case of entitlement is where the woman is married to that husband at the time when she attains pensionable age and—
  (a) he also has attained pensionable age and has become entitled to a Category A retirement pension; and
  (b) he satisfies the relevant contribution conditions.

(3) The second case of entitlement is where the woman marries after attaining pensionable age and—
   (a) her husband has also attained pensionable age and has become entitled to a Category A retirement pension; and
   (b) he satisfies the relevant contribution conditions.

(4) The third case of entitlement is where the woman's husband is dead and his death was after she attained pensionable age, and—
   (a) she was married to him when he died; and
   (b) before his death he satisfied the relevant contribution conditions.

(5) The fourth case of entitlement is where the woman's husband is dead and his death was before she attained pensionable age, and—
   (a) she was a widow immediately before attaining pensionable age and is entitled (or is treated by regulations as entitled) to a widow's pension; and
   (b) she became entitled to the pension in consequence of the husband's death.

(6) The relevant contribution conditions for the purposes of the first, second and third cases of entitlement are those specified in Schedule 3, Part I, paragraph 5.

(7) Subject to the provisions of this Act, a woman's entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.

(8) A woman's Category B retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

50 Rate of Category B retirement pension for women

(1) A woman's Category B retirement pension—
   (a) in the first and second cases of entitlement under section 49 above, shall—
      (i) during any period in which the husband is alive, be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5, and
      (ii) during any period after he is dead, be payable at a weekly rate ascertained in accordance with subsection (3) below;
   (b) in the third case of entitlement under that section, shall be payable at a weekly rate ascertained in accordance with subsection (3) below; and
   (c) in the fourth case of entitlement under that section, shall be payable at the same weekly rate as her widow's pension.

(2) In any case where—
   (a) a woman would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
   (b) subsection (1) of section 47 above would apply for the increase of the Category A retirement pension,

   that subsection shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 29B(2) of the Pensions Act.

(3) The weekly rate referred to in paragraphs (a)(ii) and (b) of subsection (1) above for a woman's Category B retirement pension shall be determined in accordance with the

provisions of sections 44 and 45 above as they apply in the case of a Category A retirement pension, but subject, in particular—

(a) to section 46(2) above; and

(b) to subsections (4) and (5) below.

(4) In the application of sections 44 and 45 above by virtue of subsection (3) above—

(a) references in those sections to the pensioner shall be taken as references to the husband, and

(b) where, in the third case of entitlement under section 49 above, the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.

(5) In the case of a widow whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (3) above shall be one half of the amount which it would be apart from this subsection.

51 Category B retirement pension for widowers

(1) A man shall be entitled to a Category B retirement pension if—

(a) he has had a wife and she has died on or after 6th April 1979, and he was married to her when she died; and

(b) they were both over pensionable age when she died; and

(c) before her death she satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part I, paragraph 5.

(2) The weekly rate of a man's Category B retirement pension under this section shall, subject to subsection (3) below, be determined in accordance with the provisions of sections 44 and 45 above as they apply in the case of a Category A retirement pension, taking references in those sections to the pensioner as references to the wife.

(3) In the case of a widower whose wife dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (2) above shall be one half of the amount which it would be apart from this subsection.

(4) Subject to the provisions of this Act, a man shall become entitled to a Category B retirement pension on the day on which the conditions of entitlement become satisfied in his case and his entitlement shall continue throughout his life.

52 Special provision for surviving spouses

(1) This section has effect where, apart from section 43(1) above, a person would be entitled both—

(a) to a Category A retirement pension; and

(b) to a Category B retirement pension—

(i) under section 49 above by virtue of the contributions of a husband who has died; or

(ii) under section 51 above.

(2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the full amount, that basic pension shall be increased by the lesser of—

(a) the amount of the shortfall, or
(b) the amount of the basic pension in the rate of the Category B retirement pension,

"full amount" meaning for this purpose the sum specified in section 44(4) above as the weekly rate of the basic pension in a Category A retirement pension.

(3) If the additional pension in the Category A retirement pension falls short of the prescribed maximum, that additional pension shall be increased by the lesser of—
(a) the amount of the shortfall, or
(b) the amount of the additional pension in the Category B retirement pension.

(4) This section does not apply in any case where the death of the wife or husband, as the case may be, occurred before 6th April 1979 and the surviving spouse had attained pensionable age before that date.

53 Special provision for married women

(1) This section has effect where, apart from section 43(1) above, a married woman would be entitled both—
(a) to a Category A retirement pension; and
(b) to a Category B retirement pension by virtue of the contributions of her husband.

(2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the weekly rate specified in Schedule 4, Part I, paragraph 5, that basic pension shall be increased by the lesser of—
(a) the amount of the shortfall, or
(b) the amount of the weekly rate of the Category B retirement pension.

(3) This section does not apply in any case where both the husband and wife attained pensionable age before 6th April 1979.

54 Category A and Category B retirement pensions: supplemental provisions

(1) Regulations may provide that in the case of a person of any prescribed description who—
(a) has become entitled to a Category A or Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and
(b) elects in such manner and in accordance with such conditions as may be prescribed that the regulations shall apply in his case,

this Part of this Act shall have effect as if that person had not become entitled to such a retirement pension.

(2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act, or of those of Part II of the Administration Act as those provisions apply in a case where a person makes an election under the regulations, as may appear to the Secretary of State necessary or expedient.

(3) Where a husband and wife have both become entitled to retirement pensions and—
(a) the husband's pension is Category A; and
(b) the wife's pension is—

(i) Category B by virtue of that husband's contributions, or

(ii) Category A with an increase under section 53(2) above by virtue of that husband's contributions,

the husband shall not be entitled to make an election in accordance with regulations made under subsection (1) above without the consent of the wife, unless that consent is unreasonably withheld.

(4) In any case where—

(a) a person claims a Category A or Category B retirement pension; and

(b) the date specified in the claim as the date on which entitlement to the pension is to commence falls after the date when the claim was made,

such a pension may be awarded as from the date so specified but, if so awarded, shall be conditional on the person's not ceasing to be entitled to the pension in consequence of any election under subsection (1) above.

55 Increase of retirement pension where entitlement is deferred

(1) Where a person's entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of his pension.

(2) For the purposes of this Act a person's entitlement to a Category A or Category B retirement pension is "deferred" if and so long as he does not become entitled to that pension by reason only—

(a) that he has not satisfied the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim); or

(b) that, in the case of a woman's Category B retirement pension by virtue of her husband's contributions, her husband has not satisfied those conditions with respect to his Category A retirement pension;

and, in relation to any such pension, "period of deferment" shall be construed accordingly.