

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Supplementary

Part V: Welfare

Chapter I: Social Security Benefits

Section 52: Preservation of rights in respect of additional pension

This section enables the Secretary of State to postpone, or to modify or disapply in certain cases, a reduction of 50% in the amount of additional pension under the State Earnings-Related Pension Scheme (“SERPS”) which a widow or widower can “inherit” from a spouse who dies after 5th April 2000.

Currently, widows and, in certain circumstances, widowers may receive the full amount of their deceased spouse’s SERPS. However, as a result of changes originally enacted in the Social Security Act 1986 (but now consolidated in the Social Security Contributions and Benefits Act 1992), where a married person dies after 5th April 2000 the surviving spouse will be able to receive only 50% of the deceased’s SERPS.

This change was not fully publicised, and some people were incorrectly told that they or their widower could expect to “inherit” the full amount of SERPS.

This section enables the Secretary of State to make regulations, subject to the affirmative resolution procedure, to do one or more of the following:

- to provide for specified categories of widows and widowers to receive more than 50% of their spouse’s SERPS;
- to postpone the 50% reduction from 6th April 2000 to a later year;
- to set up a scheme to determine who has been misled by incorrect or incomplete information about the 50% reduction, so as to ensure that the reduction is not applied in their, or their widow(er)’s, case.

Until provision for one of these options is in force, widow(er)s will continue to “inherit” the full amount of their spouse’s SERPS.

An earlier version of this provision was first added to the Bill at Lords Report stage (11th October 1999; Hansard Vol 605, col 26) and this section was substituted at Commons consideration of Lords Amendments (3rd November 1999; Hansard Vol 337, col 363).

Commentary

The three options for provision in regulations are set out in subsection (2), subsection (3) and subsections (4) to (6) respectively.

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Subsection (2) enables regulations to increase above 50% the proportion of SERPS “inherited” by specified categories of widow(er)s.

Subsection (3) enables regulations to provide for the postponement of the reduction to some year later than the year 2000.

Subsections (4) and (5) enable regulations to provide for a scheme, to be in operation for a specified period, under which claims would be made by people who, in reliance on incorrect or incomplete information provided by a government department about the SERPS reduction, have not safeguarded their own or their spouse’s financial position in the event of widowhood after 5th April 2000. Those, or the spouses of those, who claimed successfully under the scheme would not, in the event of their being widowed after 5th April 2000, be affected by the reduction in SERPS payable as part of Widow’s Benefit, Bereavement Benefits or Category B Retirement Pension.

Subsection (6) enables those regulations to provide also for procedural and other matters regarding the scheme, such as the time and manner in which claims must be made, the information to be provided, the conditions for success, the decision-making process, and appeals.

Subsection (7) prevents the reduction in SERPS from taking effect until regulations are in force to provide for at least one of the three options described above.

Subsection (8) requires a draft of any regulations under this section to be approved by each House of Parliament before the regulations can be made.

Section 53: Extension of entitlement to state Maternity Allowance

In the 1999 Budget, the Chancellor announced a reform of Maternity Allowance so that women earning below the lower earnings limit for NI contributions, and at least £30 a week, would be entitled to the benefit for the first time. Section 53, which was added to the Bill at Commons Report (Hansard vol. 331, col. 643), makes the necessary changes to the legislation.

Background

There are two maternity benefits for pregnant working women. Statutory Maternity Pay (SMP) is administered and paid by employers; Maternity Allowance (MA) is paid by the DSS.

Statutory Maternity Pay is paid to employees who satisfy two basic tests. A woman must have been employed continuously by her employer for at least 26 weeks by the 15th week before her baby is expected; and she must earn on average at or above the Lower Earnings Limit (LEL: the starting point for paying National Insurance contributions, currently £66 a week).

Maternity Allowance is paid to women who do not qualify for Statutory Maternity Pay, to the self-employed, and to recently employed women. To qualify, they must have worked and paid National Insurance contributions for at least 26 of the 66 weeks ending with the week before the expected week of childbirth.

Both SMP and MA provide a basic weekly benefit for employees of £59.55 (the same as Statutory Sick Pay) for up to 18 weeks. SMP beneficiaries, however, receive 90% of their average earnings for the first 6 weeks, if this is higher. The self-employed and recently employed receive a lower rate of Maternity Allowance of £51.70.

Summary of changes

Section 53 extends Maternity Allowance to women who earn below the LEL. The changes:

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allow women who earn at least £30 a week, but below the LEL, to get Maternity Allowance worth 90% of their average weekly earnings;

allow women with several low paid jobs to add together their earnings, and get MA for the first time;

allow self-employed women who hold a Small Earnings Exception from paying National Insurance contributions to get Maternity Allowance of £27 a week (90% of £30);

remove the lower rate of MA, so that the self-employed and recently employed receive the same basic rate of benefit as employed women.

The section gives the power to set out the details (e.g. how average weekly earnings should be calculated) in regulations.

Commentary

The section amends section 35 of the Contributions and Benefits Act which contains the rules for Maternity Allowance, and adds a new section 35A.

Subsection (1) replaces section 35(1) of the Act, which sets out the qualifying conditions for Maternity Allowance.

The only substantial change here is in the *inserted subsection (1)(c)*. Currently subsection (1)(c) says that a woman must meet National Insurance contribution conditions to qualify for MA. The new subsection says instead that she must earn above the “Maternity Allowance threshold” (defined in new section 35A(6) – described below – as £30).

There is a minor change in the *inserted subsection (1)(b)*. This makes clear that if a woman works for part of a week, this counts as a whole week for the test of recent employment.

Subsection (2) makes some consequential amendments.

Subsection (3) adds a new section 35A to the Contributions and Benefits Act. This sets out the rates at which Maternity Allowance will be paid, and gives the power to make the detailed arrangements of the earning test through regulations.

Any woman who earns on average at or above the Lower Earnings Limit will get the standard rate of MA (i.e. £59.55 a week) – *inserted subsection (2)*. There is no distinction between employed and self-employed women: self-employed and recently employed women will no longer get a lower rate of benefit.

Any woman whose average earnings are at least equal to the qualifying Maternity Allowance threshold (to be set at £30), but less than the LEL, will get a rate of MA equal to 90% of her average earnings – *inserted subsection (3)*.

The *inserted subsections (4)* and *(5)* of new section 35A contain powers to make regulations. It is intended to use the regulations to:

define “earnings”.

For employed earners, the same definition will be used as for Statutory Maternity Pay (i.e. gross earnings of a type that would qualify for National Insurance contributions).

For the self-employed, it is intended to base the calculation on notional earnings. For every week that a woman pays a Class 2 contribution, she will be treated as having earnings equal to the LEL in force for that week. To help the low paid self-employed, a self-employed woman who holds a certificate of Small Earnings Exception will be treated as having earnings equal to the Maternity Allowance Threshold applicable in that week (*subsections 4(b)* and *5(c)*).

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define the period and the method to be used for calculating earnings.

The exact period has yet to be decided, but it is intended to take an average of at least 13 and at most 26 weeks' earnings from the 66 week period used in the employment test. Women will be able to take account of their best weeks' earnings when choosing which weeks to use (*subsection (5)(a) and (b)*).

provide that the total earnings in any one week may come from a number of different jobs and/or self-employed earnings.

The aim is to ensure, for example, that a woman with three jobs earning £20 a week can add those earnings together to make total weekly earnings of £60. Or, a self-employed woman with a small earnings exception, who is also employed at £20 a week, could add together her notional earnings from self-employment (£30) to the £20 she earns as an employee. This would give her total earnings for that week of £50 (*subsection (5)(d)*).

Subsection (6) of new section 35A provides that the "Maternity Allowance threshold" is to be £30. *Subsections (7) and (8)* provide that the Secretary of State may increase this amount for any tax year after 1999/2000 by order.

The amendment made by paragraph 32 of Schedule 8 to the Act makes such orders would be subject to affirmative resolution: i.e. approval in draft by both Houses of Parliament. This is in line with the current procedure for uprating benefits.

Subsection (4) of section 53 provides that the new arrangements for Maternity Allowance will apply to woman whose expected date of confinement begins on or after 20 August 2000, with the first payments possible under the new rules being payable from April 2000.

Maternity Allowance, like Statutory Maternity Pay, may be paid from the 11th week before the week in which the baby is due. It is also payable where the baby is born prematurely. This can be as early as 19 weeks before the expected week of birth. So, women expecting a baby during the week commencing 20 August 2000 could receive Maternity Allowance as early as April 2000 if their baby arrives prematurely.

Schedule 8 Part VI contains some minor consequential amendments, and Schedule 13 some consequential repeals.

Sections 54-56: Benefits for Widows and Widowers

These sections replace the benefits currently paid to widows with a new set of bereavement benefits, which may be paid to both men and women. A consultation document, *A new contract for welfare: SUPPORT IN BEREAVEMENT* (Cm 4104), was published in November 1998 setting out the Government's proposals. Those proposals have subsequently been carried forward into the new legislation, although some elements of these reforms are due to be introduced through secondary legislation.