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2002 CHAPTER 14

Retirement provision

Duty to specify assessed income period

6.—(1) In any case falling within subsection (3) or (4), the Department shall, on the making of the relevant decision, specify a period as the assessed income period, unless prevented by subsection (2).

(2) The Department is prevented from specifying a period as the assessed income period under subsection (1)—

- (a) if the relevant decision takes effect at a time when an assessed income period is in force in the case of the claimant by virtue of a previous application of this section; or
- (b) in such other circumstances as may be prescribed.

(3) The first case is where—

- (a) the Department determines the amount of a claimant's income for the purposes of a decision relating to state pension credit;
- (b) the decision is a decision under Article 9(1), 10 or 11 of the 1998 Order (decisions by the Department and decisions revising or superseding decisions);
- (c) the decision takes effect on or after—
 - (i) the day on which the claimant attains the age of 65; or
 - (ii) if earlier, in a case where the claimant is a member of a^[F1] couple], the day on which the other member of the couple attains that age; and
- (d) the decision is not to the effect that the claimant is not entitled to state pension credit.

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- (4) The second case is where—
- (a) the amount of the claimant's income is determined on, or for the purposes of, an appeal against a decision that the claimant is not entitled to state pension credit;
 - (b) on the appeal, it is decided that the claimant is entitled to state pension credit; and
 - (c) the decision takes effect as mentioned in subsection (3)(c).
- (5) In this section “the relevant decision” means—
- (a) so far as relating to the first case, the decision mentioned in subsection (3)(a);
 - (b) so far as relating to the second case, the decision on appeal mentioned in subsection (4)(b).
- (6) This section is subject to section 9.
- (7) This section and sections 7 to 10 shall be construed as one.

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Fixing of claimant's retirement provision for assessed income period

7.—(1) This section applies where, pursuant to section 6(1), the Department on the making of the relevant decision specifies a period as the assessed income period.

(2) This section has effect for the purpose of determining, as at any time in the assessed income period,—

- (a) the claimant's entitlement to state pension credit; or
- (b) the amount of state pension credit to which the claimant is entitled.

(3) Where the claimant's income, as determined for the purposes of the relevant decision, includes an amount (the “assessed amount”) in respect of an element of the claimant's retirement provision, the amount of that element as at any time in the assessed income period shall be taken to be the assessed amount as for the time being varied in accordance with regulations under subsection (4).

(4) The assessed amount shall be deemed, except in prescribed circumstances, —

- (a) to increase; or
- (b) in the case of income from capital, to increase or decrease,

on such date or dates and by such amounts as may be prescribed.

(5) Where it is determined for the purposes of the relevant decision that the claimant's income does not include any, or any further, elements of retirement

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provision, the claimant's income throughout the assessed income period shall be taken not to include those elements.

(6) For the purposes of this Act “retirement provision” means income of any of the following descriptions—

- (a) retirement pension income, other than benefit under the Contributions and Benefits Act;
- (b) income from annuity contracts (other than retirement pension income);
- (c) income from capital,

and an “element” of a person's retirement provision is income of any of those descriptions from a particular source.

(7) For the purposes of this section, regulations may make provision—

- (a) for treating income of any particular description as income of another description; or
- (b) for treating income from different sources as income from the same source.

(8) Nothing in subsections (3) to (5) prevents the revision under Article 10 of the 1998 Order of the relevant decision or of any earlier or later decision under Article 11 of that Order.

(9) This section is subject to section 8.

Fresh determination increasing claimant's entitlement

8.—(1) Subsections (3) to (5) of section 7 do not prevent the making of a fresh determination as to the elements, or any of the elements, or the amount of any of the elements, of the claimant's retirement provision as at any time during the assessed income period, if—

- (a) the fresh determination is for the purpose of making a decision under Article 11 of the 1998 Order (“the new decision”);
- (b) the new decision increases the amount of state pension credit to which the claimant is entitled; and
- (c) the increase is in whole or in part the result of any fresh determination.

(2) The conditions in paragraphs (b) and (c) of subsection (1) shall be taken to be satisfied if—

- (a) the new decision reduces the amount of state pension credit to which the claimant is entitled; but
- (b) the reduction is less than it would have been apart from any fresh determination.

(3) Where a fresh determination is made by virtue of subsection (1), then, as respects the part of the assessed income period that begins with (and includes) the day on which the new decision takes effect, subsections (3) to (5) of section 7

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shall have effect in accordance with the fresh determination, instead of the determination which it replaces, but as if—

- (a) the fresh determination were (and the determination which it replaces were not) a determination for the purposes of the relevant decision;
- (b) any assessed amount resulting from the fresh determination were not subject to variation under subsection (4) of that section at any time before the day on which the new decision takes effect; and
- (c) the claimant's income, as determined for the purposes of the relevant decision, were constituted accordingly.

Duration of assessed income period

9.—(1) Subject to subsections (2) to (4), an assessed income period shall be the period of 5 years beginning with (and including) the day on which the relevant decision takes effect.

(2) If the Department considers that the particulars of the claimant's retirement provision, as determined for the purposes of the relevant decision, are not likely, after taking account of any assumed variations under subsection (3), to be typical of the claimant's retirement provision throughout the period of 12 months beginning with (and including) the day on which that decision takes effect—

- (a) it need not specify a period under section 6(1); and
- (b) if it does so, it may specify a period shorter than 5 years (but beginning as mentioned in subsection (1)).

(3) It shall be assumed for the purposes of subsection (2) that the same variations fall to be made in relation to the amount of an element of the claimant's retirement provision as determined for the purposes of the relevant decision as would fall to be made under section 7(4) if an assessed income period were to be specified in accordance with subsection (1).

(4) An assessed income period shall, except in prescribed circumstances, end at any time at which—

- (a) the claimant becomes a member of a^{F2} couple];
- (b) the claimant ceases to be a member of a^{F2} couple];
- (c) the claimant attains the age of 65; or
- (d) in a case where the claimant is a member of a^{F2} couple], the other member of the couple attains the age of 65.

(5) Regulations may prescribe further times at which, or circumstances in which, an assessed income period shall end.

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Effect of variations under section 7(4)

10.—(1) This section applies where—

- (a) an assessed income period is in force; and
- (b) there is an alteration in an element of the claimant's retirement provision which affects the computation of the amount of state pension credit to which the claimant is entitled.

(2) Where, as a result of the alteration, the amount of state pension credit to which the claimant is entitled is increased or reduced, then, as from the commencing date, the amount of state pension credit payable in the case of the claimant shall be the increased or reduced amount, without any further decision of the Department (and the award of state pension credit shall have effect accordingly).

(3) Where, notwithstanding the alteration, the claimant continues on and after the commencing date to be entitled to the same amount of state pension credit as before, the award shall continue in force accordingly.

(4) In this section—

“alteration” means a variation in the amount of an element of the claimant's retirement provision in accordance with regulations under section 7(4);

“commencing date”, in relation to an alteration, means the date on which the alteration comes into force.

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