



Pensions Act 1995

1995 CHAPTER 26

PART II

STATE PENSIONS

126 Equalisation of pensionable age and of entitlement to certain benefits [^{F1}and increase in pensionable age].

Schedule 4 to this Act, of which—

- (a) Part I has effect to equalise pensionable age for men and women [^{F2}and then to increase it],
 - (b) Part II makes provision for bringing equality for men and women to certain pension and other benefits, and
 - (c) Part III makes consequential amendments of enactments,
- shall have effect.

Textual Amendments

F1 Words in s. 126 sidenote inserted (26.9.2007) by [Pensions Act 2007 \(c. 22\)](#), s. 30(3), [Sch. 3 para. 1](#)

F2 Words in s. 126(a) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(3)(a), [Sch. 1 para. 6](#)

^{F3}127 Enhancement of additional pension, etc. where family credit or disability working allowance paid.

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Textual Amendments

F3 [S. 127](#) repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 6](#); S.I. 2003/962, art. 2(3)(e), [Sch. 1](#)

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128 Additional pension: calculation of surpluses.

- (1) In section 44 of the Social Security Contributions and Benefits Act 1992 (Category A retirement pension), for subsection (5) (surplus on which additional pension is calculated) there is substituted—
- “(5A) 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 that year, and
 - (b) the amount of the surplus is the amount of that excess, 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”.
- (2) In subsection (6) of that section (calculation of earnings factors), for paragraphs (a) (ii) and (b) there is substituted—
- “(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of that year, or, if less, the qualifying earnings factor for that year; and
- (b) where the relevant year is an earlier tax year, to the aggregate of—
- (i) his earnings factors derived from Class 1 contributions actually paid by him in respect of that year, and
 - (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid by him in respect of that year, or, if less, the qualifying earnings factor for that year.”
- (3) Section 148 of the ^{M1}Social Security Administration Act 1992 (reevaluation of earnings factors) shall have effect in relation to surpluses in a person’s earnings factors under section 44(5A) of the ^{M2}Social Security Contributions and Benefits Act 1992 [^{F4}for the purposes of section 45(1) and (2)(a) and (b) of that Act] as it has effect in relation to earnings factors.
- (4) Subject to subsections (5)[^{F5}, (5A)] and (6) below, this section has effect in relation to a person (“the pensioner”) who attains pensionable age after 5th April 2000.
- (5) Where the pensioner is a woman, this section has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the ^{M3}Social Security Contributions and Benefits Act 1992 by virtue of section 39 of that Act (widowed mother’s allowance and widow’s pension), including Category B retirement pension payable under section 48B(4), if her husband—
- (a) dies after 5th April 2000, and
 - (b) has not attained pensionable age on or before that date.
- [^{F6}(5A) This section has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Social Security Contributions and Benefits Act 1992 by virtue of section 39C(1) of that Act (widowed parent’s allowance), including Category B retirement pension payable under section 48BB(2), if the pensioner’s spouse—
- (a) dies after 5th April 2000, and
 - (b) has not attained pensionable age on or before that date.]
- (6) This section has effect where additional pension falls to be calculated under sections 44 and 45 of the ^{M4}Social Security Contributions and Benefits Act 1992 as applied by section ^{F7}... [^{F8}48B(2) or 48BB(5)] of that Act (other Category B retirement pension) if—
- (a) the pensioner attains pensionable age after 5th April 2000, and

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(b) the pensioner’s spouse has not attained pensionable age on or before that date.

Textual Amendments

- F4** Words in s. 128(3) inserted (8.1.2001 for specified purposes, 25.1.2001 in so far as not already in force) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 33\(4\)](#), [86\(1\)\(b\)\(2\)](#) (with [s. 83\(6\)](#)); [S.I. 2000/2950](#), art. 6; [S.I. 2001/153](#), art. 2(d)
- F5** Word in s. 128(4) inserted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 8 para. 19\(2\)](#); [S.I. 2000/1047](#), art. 2(2)(a) Sch. Pt. 1
- F6** S. 128(5A) inserted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 8 para. 19\(3\)](#); [S.I. 2000/1047](#), art. 2(2)(a) Sch. Pt. 1
- F7** Word in [s. 128\(6\)](#) omitted (6.4.2016) by virtue of [Pensions Act 2014 \(c. 19\)](#), s. 56(4), [Sch. 12 para. 72](#)
- F8** Words in s. 128(6) substituted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), s. 89(1), [Sch. 8 para. 19\(4\)](#); [S.I. 2000/1047](#), art. 2(2)(a) Sch. Pt. 1

Marginal Citations

- M1** [1992 c. 5](#).
- M2** [1992 c. 4](#).
- M3** [1992 c. 4](#).
- M4** [1992 c. 4](#).

129 Contribution conditions.

In Schedule 3 to the ^{M5}Social Security Contributions and Benefits Act 1992 (contribution conditions), in paragraph 5(3)(a) (conditions for widowed mother’s allowance, widow’s pension and Category A and Category B retirement pension), after “class” there is inserted “ or been credited (in the case of 1987-88 or any subsequent year) with earnings ”.

Marginal Citations

- M5** [1992 c. 4](#).

130 Up-rating of pensions increased under section 52 of the Social Security Contributions and Benefits Act.

(1) For section 156 of the ^{M6}Social Security Administration Act 1992 there is substituted—

“156 Up-rating under section 150 above of pensions increased under section 52(3) of the Contributions and Benefits Act.

(1) This section applies in any case where a person is entitled to a Category A retirement pension with an increase, under section 52(3) of the Contributions and Benefits Act, in the additional pension on account of the contributions of a spouse who has died.

(2) Where in the case of any up-rating order under section 150 above—

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- (a) the spouse’s final relevant year is the tax year preceding the tax year in which the up-rating order comes into force, but
 - (b) the person’s final relevant year was an earlier tax year,
- then the up-rating order shall not have effect in relation to that part of the additional pension which is attributable to the spouse’s contributions.
- (3) Where in the case of any up-rating order under section 150 above—
- (a) the person’s final relevant year is the tax year preceding the tax year in which the up-rating order comes into force, but
 - (b) the spouse’s final relevant year was an earlier tax year,
- then the up-rating order shall not have effect in relation to that part of the additional pension which is attributable to the person’s contributions.”
- (2) In section 151(1) of that Act (effect of up-rating orders on additional pensions), after “and shall apply” there is inserted “ subject to section 156 and ”.

Marginal Citations

M6 1992 c. 5.

131 Graduated retirement benefit.

- (1) In section 62(1) of the ^{M7}Social Security Contributions and Benefits Act 1992 (graduated retirement benefit), after paragraph (a) there is inserted—
- “(aa) for amending section 36(7) of that Act (persons to be treated as receiving nominal retirement pension) so that where a person has claimed a Category A or Category B retirement pension but—
- (i) because of an election under section 54(1) above, or
 - (ii) because he has withdrawn his claim for the pension,
- he is not entitled to such a pension, he is not to be treated for the purposes of the preceding provisions of that section as receiving such a pension at a nominal weekly rate;”.
- (2) In section 150(11) of the ^{M8}Social Security Administration Act 1992 (application of up-rating provisions to graduated retirement benefit) for the words following “provisions of this section” there is substituted—
- (a) to the amount of graduated retirement benefit payable for each unit of graduated contributions,
 - (b) to increases of such benefit under any provisions made by virtue of section 24(1)(b) of the Social Security Pensions Act 1975 or section 62(1)(a) of the Contributions and Benefits Act, and
 - (c) to any addition under section 37(1) of the National Insurance Act 1965 (addition to weekly rate of retirement pension for widows and widowers) to the amount of such benefit.”
- (3) In section 155(7) of that Act (effect of alteration of rates of graduated retirement benefit) for the words following “provisions of this section” there is substituted—
- (a) to the amount of graduated retirement benefit payable for each unit of graduated contributions,

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- (b) to increases of such benefit under any provisions made by virtue of section 24(1)(b) of the Social Security Pensions Act 1975 or section 62(1)(a) of the Contributions and Benefits Act, and
- (c) to any addition under section 37(1) of the National Insurance Act 1965 (addition to weekly rate of retirement pension for widows and widowers) to the amount of such benefit”.

Marginal Citations

- M7 1992 c. 4.
- M8 1992 c. 5.

132 Extension of Christmas bonus for pensioners.

- (1) Section 150 of the ^{M9}Social Security Contributions and Benefits Act 1992 (Christmas bonus: interpretation) is amended as follows.
- (2) In subsection (1), after paragraph (k) there is inserted—
 - “(l) a mobility supplement”.
- (3) In subsection (2)—
 - (a) after the definition of “attendance allowance” there is inserted—
 - ““mobility supplement” means a supplement awarded in respect of disablement which affects a person’s ability to walk and for which the person is in receipt of war disablement pension;”
 - (b) in the definition of “retirement pension”, “ if paid periodically ” is omitted,
 - (c) in paragraph (b) of the definition of “unemployability supplement or allowance”, after sub-paragraph (iv) there is inserted “or
 - (v) under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939.”and accordingly, the “or” immediately following sub-paragraph(iii) is omitted.

Marginal Citations

- M9 1992 c. 4.

133 Contributions paid in error.

After section 61 of the Social Security Contributions and Benefits Act 1992 there is inserted—

“61A Contributions paid in error.

- (1) This section applies in the case of any individual if—
 - (a) the individual has paid amounts by way of primary Class 1 contributions which, because the individual was not an employed earner, were paid in error, and
 - (b) prescribed conditions are satisfied.

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- (2) Regulations may, where—
- (a) this section applies in the case of any individual, and
 - (b) the Secretary of State is of the opinion that it is appropriate for the regulations to apply to the individual,
- provide for entitlement to, and the amount of, additional pension to be determined as if the individual had been an employed earner and, accordingly, those contributions had been properly paid.
- (3) The reference in subsection (2) above to additional pension is to additional pension for the individual or the individual’s spouse falling to be calculated under section 45 above for the purposes of—
- (a) Category A retirement pension,
 - (b) Category B retirement pension for widows or widowers,
 - (c) widowed mother’s allowance and widow’s pension, and
 - (d) incapacity benefit (except in transitional cases).
- (4) Regulations may, where—
- (a) this section applies in the case of any individual, and
 - (b) the Secretary of State is of the opinion that it is appropriate for regulations made by virtue of section 4(8) of the Social Security (Incapacity for Work) Act 1994 (provision during transition from invalidity benefit to incapacity benefit for incapacity benefit to include the additional pension element of invalidity pension) to have the following effect in the case of the individual,
- provide for the regulations made by virtue of that section to have effect as if, in relation to the provisions in force before the commencement of that section with respect to that additional pension element, the individual had been an employed earner and, accordingly, the contributions had been properly paid.
- (5) Where such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual, regulations under paragraph 8(1)(m) of Schedule 1 to this Act may not require the amounts paid by way of primary Class 1 contributions to be repaid.
- (6) Regulations may provide, where—
- (a) such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual,
 - (b) prescribed conditions are satisfied, and
 - (c) any amount calculated by reference to the contributions in question has been paid in respect of that individual by way of minimum contributions under section 43 of the Pension Schemes Act 1993 (contributions to personal pension schemes),
- for that individual to be treated for the purposes of that Act as if that individual had been an employed earner and, accordingly, the amount had been properly paid”.

134 Minor amendments.

- (1) In section 23(1) of the ^{M10}Social Security Contributions and Benefits Act 1992 (contribution conditions: supplemental), for “22(1)(a)” there is substituted “ 22(1) ”.

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(2) Section 54(4) of that Act (effect on advance claims for retirement pension of deferral of entitlement) is omitted.

^{F9}(3)

(4) In section 122(1) of that Act (interpretation of Parts I to VI), after the definition of “week” there is inserted—

““working life” has the meaning given by paragraph 5(8) of Schedule 3 to this Act”.

(5) In paragraph 5(8) of Schedule 3 to that Act (contribution conditions: meaning of “working life”) for “this paragraph” there is substituted “ Parts I to VI of this Act ”.

Textual Amendments

F9 S. 134(3) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(4), Sch. 13

Marginal Citations

M10 1992 c. 4.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 36](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 37(1A)(b) inserted by [2015 c. 8 Sch. 2 para. 7\(b\)](#)
- s. 51(5A)-(5C) inserted by [2015 c. 8 s. 43\(1\)](#)
- s. 51(7A) inserted by [2015 c. 8 s. 41\(1\)\(b\)](#)
- s. 51(9)(10) inserted by [2015 c. 8 s. 42\(3\)](#)
- s. 67A(3)(aa)-(ac) inserted by [2015 c. 8 s. 45\(3\)](#)
- s. 67A(9)(a)(viii)-(x) inserted by [2015 c. 8 s. 45\(6\)\(a\)](#)
- s. 67A(9)(b)(vi)-(viii) inserted by [2015 c. 8 s. 45\(6\)\(b\)](#)
- s. 73(2)(2A) substituted for s. 73(2) by [2015 c. 8 Sch. 2 para. 11](#)
- s. 75(1)-(1B) substituted for s. 75(1) by [2015 c. 8 Sch. 2 para. 12](#)
- s. 175(2)(ca) inserted by [2004 c. 35 s. 240\(2\)](#)
- s. 175(2)(za) inserted by [2015 c. 8 s. 43\(2\)](#)