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**Changes to legislation:** There are currently no known outstanding effects for the Marriage (Same Sex Couples) Act 2013, PART 5. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 4

#### EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION

#### PART 5

##### STATE PENSIONS

###### *Category B retirement pension for married person*

- 11 (1) Section 48A of the 1992 Act (Category B retirement pension for married person) does not confer a right to a Category B retirement pension on a person by reason of the person being married to a person of the same sex who was born before 6th April 1950.
- (2) But that does not prevent section 48A from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—
- (a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage subsisted before the time when that certificate was issued.
- (3) In section 48A of the 1992 Act—
- (a) in subsection (2ZA)—
    - (i) in paragraph (a) for “married man who” substitute “man married to a woman and the spouse”;
    - (ii) after paragraph (b) insert—
      - “(c) in a case where the spouse is a woman born before 6th April 1945 who is married to a woman and subsection (2ZB) applies, the conditions specified in Schedule 3, Part 1, paragraph 5;
      - (d) in a case where the spouse is a woman born on or after 6th April 1945 but before 6th April 1950 who is married to a woman and subsection (2ZB) applies, the condition specified in Schedule 3, Part 1, paragraph 5A.”;
  - (b) after subsection (2ZA) insert—
    - “(2ZB) This subsection applies where—
      - (a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
      - (b) the marriage subsisted before the time when that certificate was issued.”

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- (4) In paragraph 5A of Schedule 3 to the 1992 Act, at the end of sub-paragraph (1)(b) insert “ or in a case of the kind mentioned in subsection (2ZA)(d) of that section ”.
- (5) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

#### **Commencement Information**

**II** Sch. 4 para. 11 in force at 13.3.2014 for specified purposes by S.I. 2014/93, art. 3(j)(ii)

#### *Category B retirement pension for widows and widowers*

- 12 (1) Section 48B of the 1992 Act (Category B retirement pension for widows and widowers) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6th April 2010 by reason of her marriage to another woman.
- (2) But that does not prevent section 48B from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—
- (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage subsisted before the time when that certificate was issued.
- (3) In section 48B of the 1992 Act—
- (a) in subsection (1ZA), in paragraph (a)(ii) after “date” (in the second place where it appears) insert “ and the case does not fall within paragraph (c) ”;
  - (b) in subsection (1ZA), after paragraph (b) insert—
    - “(c) in a case where—
      - (i) the spouse died on or after 6th April 2010,
      - (ii) the spouse was born on or after 6th April 1945 but before 6th April 1950,
      - (iii) the spouse was, at the time of her death, a woman and the pensioner in question is a woman, and
      - (iv) subsection (1ZB) applies,
 the condition specified in Schedule 3, Part 1, paragraph 5A.”;
  - (c) after subsection (1ZA) insert—
 

“(1ZB) This subsection applies where—

    - (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
    - (b) the marriage subsisted before the time when that certificate was issued.”
- (4) In paragraph 5A of Schedule 3 to the 1992 Act, at the end of sub-paragraph (1)(c) insert “ or in a case of the kind mentioned in subsection (1ZA)(c) of that section ”.
- (5) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

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#### Commencement Information

**I2** Sch. 4 para. 12 in force at 13.3.2014 for specified purposes by S.I. 2014/93, art. 3(j)(ii)

#### *Category B retirement pension for widowers*

- 13 (1) Section 51 of the 1992 Act (Category B retirement pension for widowers) is amended in accordance with sub-paragraphs (2) to (4).
- (2) After subsection (1) insert—
- “(1ZA) A party to a marriage of a same sex couple shall be entitled to a Category B retirement pension if—
- (a) the other party has died and they were married to each other at the time of that death,
  - (b) they were both over pensionable age at the time of that death, and
  - (c) before that death the deceased party satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part 1, paragraph 5.”.
- (3) Subsection (2): after “wife” insert “, husband ”.
- (4) Subsection (3): after “2002” insert “, surviving party to a same sex marriage ”.
- (5) Section 51(1ZA) of the 1992 Act does not confer a right to a Category B retirement pension on a person if the person attains pensionable age on or after 6th April 2010.
- (6) Section 51(1ZA) of the 1992 Act does not confer a right to a Category B retirement pension on a woman by reason of her marriage to another woman (“the spouse”) if—
- (a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage subsisted before the time when that certificate was issued.
- (7) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

#### Commencement Information

**I3** Sch. 4 para. 13 in force at 13.3.2014 for specified purposes by S.I. 2014/93, art. 3(j)(ii)

#### *Graduated retirement benefit*

- 14 (1) Section 62 of the Social Security Contributions and Benefits Act 1992 (graduated retirement benefit) is amended as follows.
- (2) Subsection (1): after paragraph (ac) insert—
- “(ad) for extending section 37 of that Act (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to—
- (i) men and their late husbands, and
  - (ii) women and their late wives,

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- and for that section (except subsection (5)) so to apply as it applies to women and their late husbands;
- (ae) for extending section 37 of that Act (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to—
- (i) men and their late husbands, and
- (ii) women and their late wives,
- who attained pensionable age before 6th April 2010 and for that section (except subsection (5)) so to apply as it applies to men and their late wives;”.
- (3) After subsection (2) insert—
- “(3) In relevant gender change cases, women and their late wives are to be treated for the purposes of sections 36 and 37 of the National Insurance Act 1965 in the same way as women and their late husbands.
- (4) For that purpose “relevant gender change case”, in relation to a woman (“the pensioner”) and her late wife, means a case where—
- (a) the late wife was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage of the pensioner and her late wife subsisted before the time when the certificate was issued.”

#### **Commencement Information**

- I4** Sch. 4 para. 14 in force at 31.10.2013 for specified purposes by S.I. 2013/2789, art. 2(b)
- I5** Sch. 4 para. 14 in force at 13.3.2014 for specified purposes by S.I. 2014/93, art. 3(j)(ii)

VALID FROM 10/12/2014

#### *Adult dependency increases*

- 15 (1) In a case where a full gender recognition certificate is issued to a person under the Gender Recognition Act 2004—
- (a) section 83 of the 1992 Act (pension increase (wife)) does not cease to apply by virtue of the change of gender; and
- (b) in the continued application of section 83 in such a case, references to a pension payable to a man, or references to his wife, are to be construed accordingly.
- (2) In a case where a full gender recognition certificate is issued to a person under the Gender Recognition Act 2004—
- (a) section 84 of the 1992 Act (pension increase (husband)) does not cease to apply by virtue of the change of gender; and
- (b) in the continued application of section 84 in such a case, references to a pension payable to a woman, or references to her husband, are to be construed accordingly.

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- (3) In this paragraph “the 1992 Act” means the Social Security Contributions and Benefits Act 1992.

VALID FROM 10/12/2014

*Converted civil partnerships*

- 16 (1) This paragraph applies where a civil partnership is converted into a marriage under section 9.
- (2) For the purposes of section 48A of, and paragraph 5A(1)(b) of Schedule 3 to, the Social Security Contributions and Benefits Act 1992—
- (a) the civil partnership is to be treated as having subsisted during the period that begins with the day when it was formed and ends with the day before the conversion day, and
  - (b) the marriage is to be treated as subsisting only from the conversion day.
- (3) In this paragraph “conversion day” means the day when the civil partnership is converted into a marriage.

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