

## 2001 No. 1323

# SOCIAL SECURITY

## PENSIONS

### The Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001

<i>Made - - - -</i>	<i>31st March 2001</i>
<i>Laid before Parliament</i>	<i>9th April 2001</i>
<i>Coming into force</i>	<i>6th April 2002</i>

The Secretary of State for Social Security, in exercise of powers conferred by sections 44A(2)(c)(ii), 122(1) and 175(1) and (5) of, and paragraph 5(7A) of Schedule 3 to and paragraph 9 of Schedule 4A to, the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made before the end of the period of 6 months beginning with the coming into force of sections 30(3) and 40 of, and Schedule 4 to, the Child Support, Pensions and Social Security Act 2000(b), makes the following Regulations:

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001 and shall come into force on 6th April 2002.

(2) In these Regulations—

▶“the 2007 Act” means the Welfare Reform Act 2007(c); ◀

“the Administration Act” means the Social Security Administration Act 1992(d);

“appropriate table” means—

(a) in the case of a person attaining pensionable age after the end of the year 2002-2003 but before 6th April 2009, Table 5 of paragraph 7(3) of Schedule 4A to the Contributions and Benefits Act,

(b) in the case of a person attaining pensionable age on or after 6th April 2009, Table 6 of paragraph 7(4) of that Schedule;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“the 1994 Regulations” means the Social Security Pensions (Home Responsibilities) Regulations 1994(e);

<sup>1</sup>Defn. of “the 2007 Act” inserted in reg. 1(2) by reg. 24(2) of S.I. 2009/2206. For details of commencement date see reg. 1(2) *ibid*.

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(a) 1992 c. 4. Section 44A was inserted by section 30(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”). Section 122(1) is cited because of the meaning ascribed to the word “prescribe”. Section 175(1) was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the 1999 Act”). Sub-paragraph (7A) was inserted in Schedule 3 by section 40 of the 2000 Act and Schedule 4A was inserted by section 31(3) of, and Schedule 4 to, that Act.

(b) *See* section 173(5)(b) of the Social Security Administration Act 1992 (c. 5).

(c) 2007 c. 5.

(d) 1992 c. 5.

(e) S.I. 1994/704.

**Regs. 1-3**

<sup>1</sup>Words inserted in reg. 1(2) defn. of “contracted-out employment”, words substituted in reg. 2 & inserted in reg. 3(2) by reg. 25(2) of S.I. 2009/2206. For details of commencement date see reg. 1(2) *ibid*.

“contracted-out employment” means ►<sup>1</sup>, subject to regulation 3(5),◄ employed earner’s employment qualifying a person for a pension provided by a salary related contracted-out scheme or a money purchase contracted-out scheme or an appropriate personal pension scheme, as the case may be;

“contributions equivalent premium” means the premium referred to in section 55(2) of the Pension Schemes Act 1993(a);

“non-contracted-out employment” means employed earner’s employment which is not contracted-out employment;

“year” means a tax year.

**Calculation of additional pension where contributions equivalent premium paid or treated as paid****2. Where a contributions equivalent premium—**

- (a) is paid in accordance with the provisions of sections 55 to 61 of the Pension Schemes Act 1993(b)(which deal with the payment of a contributions equivalent premium in respect of specified periods of contracted-out employment) and regulations made thereunder; or
- (b) is treated as having been paid in accordance with the provisions of paragraph 5(3) to (3E) of Schedule 2 to that Act(c)(which provide for a contributions equivalent premium to be treated as paid in respect of contracted-out employment in certain circumstances) and regulations made thereunder,

the amount referred to in ►<sup>1</sup>section 45(2)(c) or (d) of the Contributions and Benefits Act◄ (which provides for the calculation of the amount of additional pension in a Category A retirement pension in relation to the 2002-2003 tax year and subsequent tax years) is to be calculated in accordance with Parts I and II of ►<sup>1</sup>Schedule 4A to the Contributions and Benefits Acts or, as the case may be, Parts 1 and 2 of Schedule 4B to that Act(d)◄ (additional pension) as if the employment in respect of which a premium is paid, or treated as paid, had not been contracted-out employment.

**Calculation of additional pension: earnings partly from employment with contracted-out scheme membership**

**3.—(1)** This regulation applies in relation to any year where earnings are paid to or for the benefit of an earner—

- (a) partly in respect of non-contracted-out employment; and
- (b) partly in respect of employment qualifying him for a pension provided by a salary related contracted-out scheme or a money purchase contracted-out scheme, or both.

(2) For any year in relation to which this regulation applies, the amount referred to in paragraph 1(1)(a) of Schedule 4A ►<sup>1</sup>or, as the case may be, in paragraph 1(1) of Schedule 4B◄ to the Contributions and Benefits Act shall be amount C where—

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- (a) 1993 c. 48. Section 55(2) was substituted by section 141(1) of the Pensions Act 1995 (c. 26) (“the 1995 Act”).
  - (b) Section 55 was amended by section 141(1) of, and by paragraph 50 of Schedule 5 and Part III of Schedule 7 to, the 1995 Act. Section 56 was amended by paragraph 51 of Schedule 5 and Part III of Schedule 7, to the 1995 Act and paragraphs 54 and 55 of Schedule 1 to the 1999 Act. Section 57 was amended by paragraph 21 of Schedule 5 to the 1995 Act. Section 58 was amended by paragraph 52 of Schedule 5 and Part III of Schedule 7 to, the 1995 Act and by paragraph 55 of Schedule 1 to the 1999 Act. Section 59 was repealed by paragraph 53 of Schedule 5, and Part III of Schedule 7, to the 1995 Act. Section 60 was amended by paragraph 54 of Schedule 5, and Part III of Schedule 7, to the 1995 Act and section 61 was amended by paragraph 55 of Schedule 5 to that Act.
  - (c) Paragraph 5(3) was amended by section 141(2)(a) of, and Part III of Schedule 7 to, the 1995 Act and paragraphs (3A) to (3E) were inserted by section 141(2)(b) of that Act. Sub-paragraphs (3) to (3C) were amended by paragraph 62 of Schedule 1 to the 1999 Act.
  - (d) Section 45(2)(c)(d) was inserted by section 11(2) of the Pensions Act 2007 (c. 22) and Schedule 4B was inserted by Schedule 2 to that Act.

- (a) amount C is equal to amount A minus amount B; and
- (b) amounts A and B are calculated in accordance with the following paragraphs.

(3) Amount A is to be calculated in accordance with paragraph 5 of Schedule 4A ►<sup>1</sup>or, as the case may be, in paragraphs 8 and 9 of Schedule 4B◀ to the Contributions and Benefits Act.

<sup>1</sup>Words inserted in reg. 3(3) & (4)(d), and para. (5) added by reg. 26 of S.I. 2006/2206. For details of commencement date see reg. 1(2) *ibid.*

(4) Amount B is to be calculated as follows:–

- (a) find the earnings factor derived from the aggregate of the amounts of weekly earnings paid in that year in respect of the employment referred to in paragraph (1)(b) above;
- (b) deduct from that earnings factor an amount equal to the weekly lower earnings limit for the year multiplied by the number of tax weeks in which earnings were paid in respect of weeks of that employment;
- (c) multiply the amount found under sub-paragraph (b) above in accordance with the last order under section 148 of the Administration Act<sup>(a)</sup> to come into force before the end of the final relevant year;
- (d) multiply the amount found under sub-paragraph (c) above by the percentage specified in paragraph 6(3) of Schedule 4A ►<sup>1</sup>or, as the case may be, in paragraph 10(1)(c) or of Schedule 4B◀ to the Contributions and Benefits Act which is applicable in the case of the earner.

►<sup>1</sup>(5) In so far as paragraphs (1) to (4) apply in respect of the calculation of additional pension under Schedule 4B to the Contributions and Benefits Act, the definition of “contracted-out employment” has effect as if the words from “or a money purchase contracted-out scheme” to the end were omitted.◀

#### **Calculation of additional pension: earnings partly from employment with scheme membership**

**4.—**(1) This regulation applies in relation to any year where earnings are paid to or for the benefit of an earner–

- (a) partly in respect of non-contracted-out employment; and
- (b) partly in respect of employment qualifying him for a pension provided by an appropriate personal pension scheme.

(2) For any year in relation to which this regulation applies, the amount referred to in paragraph 1(1)(a) of Schedule 4A to the Contributions and Benefits Act shall be amount C where–

- (a) amount C is equal to amount A minus amount B; and
- (b) amounts A and B are calculated in accordance with the following paragraphs.

(3) Amount A is to be calculated in accordance with paragraph 5 of Schedule 4A to the Contributions and Benefits Act.

(4) Amount B is to be calculated as follows:–

- (a) find the earnings factor derived from the aggregate of the amounts of weekly earnings paid in that year in respect of employment qualifying the earner for a pension provided by an appropriate personal pension scheme;
- (b) deduct from that earnings factor an amount equal to the qualifying earnings factor for that year;
- (c) calculate the part of the amount found under sub-paragraph (b) above falling into each of the bands specified in the appropriate table;
- (d) multiply the amount of each such part in accordance with the last order under section 148 of the Administration Act to come into force before the end of the final relevant year;

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(a) Section 148 was amended by paragraph 27 of Schedule 8 to the Pension Schemes Act 1993 and section 37 of the 2000 Act.

- (e) multiply each amount found under sub-paragraph (d) above by such percentage specified in the appropriate table in relation to the appropriate band as is applicable in the case of the earner;
- (f) add together the amounts calculated under sub-paragraph (e) above.

**Calculation of additional pension: other cases of mixed forms of contracted-out employment**

**5.—**(1) This regulation applies in relation to any year where earnings are paid to or for the benefit of an earner—

- (a) partly in respect of—
  - (i) employment qualifying him for a pension provided by a salary related contracted-out scheme or a money purchase contracted-out scheme, or both, and
  - (ii) employment qualifying him for a pension provided by an appropriate personal pension scheme; or
- (b) partly in respect of—
  - (i) non-contracted-out employment,
  - (ii) employment qualifying him for a pension provided by a salary related contracted-out scheme or a money purchase contracted-out scheme, or both, and
  - (iii) employment qualifying him for a pension provided by an appropriate personal pension scheme.

(2) For any year in relation to which this regulation applies, the amount referred to in paragraph 1(1)(a) of Schedule 4A to the Contributions and Benefits Act shall be amount C where—

- (a) amount C is equal to amount A minus amount B; and
- (b) amounts A and B are calculated in accordance with the following paragraphs.

(3) Amount A is to be determined in accordance with paragraph 5 of Schedule 4A to the Contributions and Benefits Act.

(4) Amount B is the sum of amount D and amount E and—

- (a) amount D is to be found as follows:—
  - (i) find the earnings factor derived from the aggregate of the amounts of weekly earnings paid in that year in respect of the employment referred to in paragraph 1(1)(a)(i) or, as the case may be, 1(1)(b)(ii) above,
  - (ii) deduct from that earnings factor an amount equal to the weekly lower earnings limit for the year multiplied by the number of tax weeks in which earnings were paid in respect of that employment,
  - (iii) multiply the amount found under head (ii) above in accordance with the last order under section 148 of the Administration Act to come into force before the end of the final relevant year,
  - (iv) multiply the amount found under head (iii) above by the percentage specified in paragraph 6(3) of Schedule 4A to the Contributions and Benefits Act which is applicable in the case of the earner;
- (b) amount E is to be found as follows:—
  - (i) find the earnings factor derived from the aggregate of the amounts of weekly earnings paid in the year in which this regulation applies in respect of the employment referred to in paragraph 1(1)(a)(ii) or, as the case may be, 1(1)(b)(iii) above,
  - (ii) add to that earnings factor an amount equal to the weekly lower earnings limit for the year multiplied by the number of tax weeks in which earnings were paid in respect of the employment referred to in paragraph 1(1)(a)(i) or, as the case may be, 1(1)(b)(ii) above,

- (iii) deduct from the amount found under head (ii) above an amount equal to the qualifying earnings factor for that year,
- (iv) calculate the part of the amount found under head (iii) above falling into each of the bands specified in the appropriate table,
- (v) multiply the amount of each such part in accordance with the last order under section 148 of the Administration Act to come into force before the end of the final relevant year,
- (vi) multiply each amount found under head (v) above by such percentage specified in the appropriate table in relation to the appropriate band as is applicable in the case of the earner;
- (vii) add together the amounts calculated under head (vi) above.

►<sup>1</sup>Earnings factor credits eligibility for pensioners to whom employment and support allowance was payable

<sup>1</sup>Reg. 5A inserted by reg. 27 of S.I. 2009/2206 as from 6.4.10.

**5A.**—(1) For the purposes of subsection (3) of section 44C (earnings factor credits) of the Contributions and Benefits Act(**a**), a pensioner is eligible for earnings factor enhancement in respect of a week if that pensioner satisfies one or more of the conditions in paragraph (2) and was—

- (a) a person to whom employment and support allowance was payable for any part of that week;
- (b) a person to whom that allowance would have been payable but for the fact that that person did not satisfy the contribution condition in paragraph 1 or paragraph 2 of Schedule 1 to the 2007 Act; or
- (c) a person to whom that allowance would have been payable but for the fact that under regulations the amount was reduced to nil because of—
  - (i) receipt of other benefits; or
  - (ii) receipt of payments from an occupational pension scheme or personal pension scheme.

(2) The conditions are—

- (a) immediately prior to that week, employment and support allowance was payable or would have been payable for—
  - (i) a continuous period of 52 weeks; or
  - (ii) a period of 52 weeks treated as continuous by virtue of regulations made under paragraph 4 of Schedule 2 to the 2007 Act;
- (b) that allowance included or would have included the support component under section 2(2) of the 2007 Act; or
- (c) immediately prior to that week, in the case of—
  - (i) a man born in the period beginning with 6th April 1946 and ending with 5th April 1947; or
  - (ii) a woman born in the period beginning with 6th October 1950 and ending with 5th April 1951,

that allowance was payable or would have been payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.

(3) In this regulation, ►<sup>2</sup>and regulation 5C◀ “employment and support allowance” means an employment and support allowance under Part 1 (employment and support allowance) of the 2007 Act.◀

<sup>2</sup>Words in reg. 5A(3) inserted by reg. 6(2) of S.I. 2014/591 as from 28.4.14.

*See Sch. 2, para. 26 of S.I. 2010/1907 at page 13.9431 for details of modifications to reg. 5A(2) as from 1.10.10.*

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(a) Section 44C was inserted by section 9 of the Pensions Act 2007 (c. 22).

**Regs. 5B-5C**

<sup>1</sup>Reg. 5B inserted by reg. 73 of S.I. 2013/630 as from 29.4.13.

**►<sup>1</sup>Earnings factor credits eligibility for certain persons entitled to universal credit**

**5B.**—(1) For the purposes of subsection (3) of section 44C (earnings factor credits) of the Contributions and Benefits Act, a pensioner is eligible for earnings factor enhancement in respect of a week if that pensioner was a person entitled to an award of universal credit under Part 1 of the Welfare Reform Act 2012 in respect of any part of that week which includes—

- (a) if the person satisfies the condition in paragraph (2), an amount under regulation 27(1)(a) of the Universal Credit Regulations 2013 in respect of the fact that the person has limited capability for work;
- (b) an amount under regulation 27(1)(b) of those Regulations in respect of the fact that the person has limited capability for work and work-related activity; or
- (c) an amount under regulation 29(1) of those Regulations where the person has regular and substantial caring responsibilities for a severely disabled person,

or would include any of those amounts but for regulation 27(4) or 29(4) of those Regulations.

(2) The condition referred to in paragraph (1)(a) is that for each of the 52 weeks immediately prior to that week—

- (a) the person was entitled to universal credit in respect of the fact that the person had limited capability for work or would have included an amount in respect of the fact that the person had limited capability for work but for regulation 27(4) or 29(4) of the Universal Credit Regulations 2013; or
- (b) employment and support allowance under Part 1 (employment and support allowance) of the Welfare Reform Act 2007 (“the 2007 Act”)—
  - (i) was payable to the person;
  - (ii) would have been payable to the person but for the fact that the person did not satisfy the contribution condition in paragraph 1 or paragraph 2 of Schedule 1 to the 2007 Act;
  - (iii) would have been payable to the person but for the fact that the person had been entitled to it for the relevant maximum number of days under section 1A of the 2007 Act; or
  - (iv) would have been payable to the person but for the fact that under regulations the amount was reduced to nil because of—
    - (aa) receipt of other benefits; or
    - (bb) receipt of payments from an occupational pension scheme or personal pension scheme.

(3) Paragraph (2)(b) of this regulation is satisfied in respect of a week which falls between periods which are linked by virtue of regulations under paragraph 4 (linking periods) of Schedule 2 to the 2007 Act. ◀

<sup>2</sup>Reg. 5C inserted by reg. 6(3) of S.I. 2014/591 as from 28.4.14.

**►<sup>2</sup>Earnings factor credit eligibility for pensioners to whom section 1A of the 2007 Act applied.**

**5C.**—(1) For the purposes of section 44C(3) (earnings factor credits) of the Contributions and Benefits Act, a pensioner is eligible for earnings factor enhancement in respect of a week to which paragraph (2) applies.

(2) This paragraph applies to a week in which, in relation to the pensioner concerned, each of the days would have been—

- (a) a day of limited capability for work; or
- (b) a day on which that pensioner would have been treated as having limited capability for work,

for the purposes of Part 1 of the 2007 Act (limited capability for work) where that pensioner would have been entitled to an employment and support allowance but for the application of section 1A of the 2007 Act. ◀

**Preclusion from regular employment**

6. The condition referred to in section 44A(2)(c)(ii) of the Contributions and Benefits Act (which relates to the condition to be satisfied for a person to be taken to be precluded from regular employment by responsibilities at home throughout a year for the purposes of paragraph 5(7)(b) of Schedule 3 to that Act) is that specified in regulation 2(2)(b) or (3) of the 1994 Regulations (which refer respectively to a person to whom income support is payable and a person regularly engaged in caring for at least 35 hours a week for someone in receipt of certain benefits).

[Regulation 7 amends regulation 2(5) of S.I. 1994/704.]

Signed by authority of the Secretary of State for Social Security

31st March 2001

*Jeff Rooker*  
Minister of State,  
Department of Social Security

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The regulations contained in this instrument are made before the end of the period of six months beginning with the coming into force of sections 30(3) and 40 of, and Schedule 4 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) on 8th January 2001 and are made by virtue of those provisions. They are accordingly exempt from the requirement to refer them to the Social Security Advisory Committee.

These Regulations make additional provision for the calculation of the state second pension (the additional pension element of a state retirement pension from 6th April 2002), and for conditions to be satisfied, in certain circumstances, in order for a person to be treated as precluded from regular employment due to responsibilities at home and therefore entitled to additional pension by virtue of section 44A of the Social Security Contributions and Benefits Act 1992 (c. 4) (“the Contributions and Benefits Act”). These Regulations also amend the Social Security Pensions (Home Responsibilities) Regulations 1994 (S.I. 1994/704) (“the 1994 Regulations”) to specify a time limit for providing the Secretary of State with information where a person is to be treated as precluded from regular employment after 5th April 2002 due to responsibilities at home.

Regulation 1 defines certain terms used in the Regulations.

Regulation 2 provides for the calculation of the additional pension where a contributions equivalent premium is paid or treated as paid.

Regulation 3 provides for the calculation of the additional pension where an earner has earnings in a year derived partly from non-contracted-out employment and partly from employment qualifying him for a pension provided by a contracted-out scheme

Regulation 4 provides for the calculation of the additional pension where an earner has earnings in a year derived partly from non-contracted-out employment and partly from employment qualifying him for a pension provided by an appropriate personal pension scheme.

Regulation 5 provides for the calculation of the additional pension where an earner has earnings in a year derived partly from employment qualifying him for a pension provided by a contracted-out scheme and partly employment qualifying him for a pension provided by an appropriate personal pension scheme or, partly from such employments together with earnings derived partly from non-contracted-out employment.

Regulation 6 specifies the conditions one of which must be satisfied in order for a person to be treated as precluded from regular employment due to responsibilities at home (and therefore entitled to additional pension by virtue of section 44A of the Contributions and Benefits Act).

Regulation 7 amends paragraph (5) of regulation 2 of the 1994 Regulations to provide that, in relation to the year 2002-2003 and any subsequent year, where, within a period of three years following the end of the year in question the individual fails to provide the Secretary of State with such information as he may require for the purpose of determining whether in that year the individual was precluded from regular employment due to responsibilities at home, that individual is not to be treated as having been so precluded in that year.

These Regulations do not impose any costs on business.