

SCHEDULE 4

Article 5(3)

CONSEQUENTIAL MODIFICATION OF THE SOCIAL SECURITY PENSIONS ACT 1975 AND THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

Social Security Pensions Act 1975

1.—(1) Section 59 of the Social Security Pensions Act 1975(1) (increase of official pensions) is amended as follows.

(2) In subsection (5ZA)(2)—

(a) in the opening words, for the words “widow’s, widower’s” substitute “surviving spouse’s”; and

(b) in paragraph (c), for the words “widow’s, widower’s” substitute “surviving spouse’s”.

(3) In subsection (5ZB)(3)—

(a) for paragraph (a) substitute—

“(a) in the case of a pension payable to a woman in respect of the services—

(i) of her deceased male spouse; or

(ii) of her deceased female spouse in a relevant gender change case;

one half of the rate of the deceased spouse’s guaranteed minimum pension at the relevant time;”,

(b) in paragraph (b)—

(i) for “a widower’s” substitute “any other surviving spouse’s”; and

(ii) for “wife’s” substitute “spouse’s”.

(4) In subsection (5ZC)(4)—

(a) for paragraph (a) substitute—

“(a) does not apply to—

(i) a pension payable to a woman in respect of the services of her deceased male spouse;

(ii) a pension payable to a man in respect of the services of his deceased female spouse;

(iii) a pension payable to a woman in respect of the services of her deceased female spouse in a relevant gender change case; or

(iv) a pension payable to a man in respect of the services of his deceased male spouse in a relevant gender change case,

in respect of any service of the deceased spouse if that deceased spouse’s pension in respect of that service became payable before 24th July 1990;”, and

(b) in paragraph (b), before “surviving civil partner’s” insert “pension due to a surviving spouse who was married to someone of the same sex (other than a pension within paragraph (a)(iii) or (iv)) and a”.

(1) 1975 c.60.

(2) Subsection (5ZA) was inserted by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 5(1), it was subsequently amended by the Pensions Act 2008 (c.30), section 137(1) to (7) and Schedule 11, Part 6 and in relation to England and Wales, S.I. 2014/560.

(3) Subsection (5ZB) was inserted by the Pensions Act 2008 (c.30), section 137(1) and (8), and, in relation to England and Wales, amended by S.I. 2014/560.

(4) Subsection (5ZC) was inserted by the Pensions Act 2008, section 137(1) and (8), and in relation to England and Wales, amended by S.I. 2014/560.

- (5) In subsection (7)(5)—
- (a) after the definition of “lump sum” insert—
- ““relevant gender change case” means a case where—
- (a) the deceased spouse was a man or 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 deceased spouse and the surviving spouse (that ends with the deceased spouse’s death) subsisted before the time when the certificate was issued.”; and
- (b) omit the definition of “widower’s pension”.

Social Security Contributions and Benefits Act 1992

- 2.—(1) The 1992 Act(6) is amended as follows.
- (2) For section 36(2)(7) (bereavement payment) substitute—
- “(2) A bereavement payment shall not be payable to a person if that person and a person whom that person was not married to, or in a civil partnership with, were living together as a married couple at the time of the spouse’s or civil partner’s death.”.
- (3) In section 37(4)(8) (widowed mother’s allowance)—
- (a) after paragraph (a) insert “or”; and
- (b) for paragraphs (b) and (c) substitute—
- “(b) for any period during which she and a person whom she is not married to, or in a civil partnership with, are living together as a married couple.”.
- (4) In section 38(3)(9) (widow’s pension)—
- (a) after paragraph (b) insert “or”; and
- (b) for paragraphs (c) and (d) substitute—
- “(c) for any period during which she and a person whom she is not married to, or in a civil partnership with, are living together as a married couple.”.
- (5) In section 39A(5)(10) (widowed parent’s allowance)—
- (a) after paragraph (a) insert “or”; and
- (b) for paragraphs (b) and (c) substitute—
- “(b) for any period during which the surviving spouse or civil partner and a person whom she or he is not married to, or in a civil partnership with, are living together as a married couple.”.
- (6) In section 39B(5)(11) (bereavement allowance where no dependent children)—

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- (5) Subsection (7) was amended by the Social Security Act 1979 (c.18), Schedule 3, paragraph 20, the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 9(1)(b) and the Pensions Miscellaneous Provisions Act 1990 (c.7), section 5(2) and by S.I. 2014/560.
- (6) 1992 c.4.
- (7) Section 36 was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 54(1); subsection (2) was substituted by the Civil Partnership Act 2004, Schedule 24, paragraph 16(1) and (3), and substituted by S.I. 2014/560.
- (8) Section 37(4) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 18(1) and (3) and Schedule 30; and amended by S.I. 2014/560.
- (9) Section 38(3) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 19(1) and (3) and Schedule 30; and amended by S.I. 2014/560.
- (10) Section 39A was inserted by the Welfare Reform and Pensions Act 1999, section 55(2); subsection (5) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 20(1) to (3) and (7) and Schedule 30; and amended by S.I. 2014/560.
- (11) Section 39B was inserted by the Welfare Reform and Pensions Act 1999, section 55(2); subsection (5) was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 21(1), (2) and (6) and Schedule 30 and by S.I. 2014/560.

- (a) after paragraph (a) insert “or”; and
 - (b) for paragraphs (b) and (c) substitute—
 - “(b) for any period during which the surviving spouse or civil partner and a person whom she or he is not married to, or in a civil partnership with, are living together as a married couple.”.
- (7) In section 48 (Use of former spouse’s contributions), after subsection (4) insert—
- “(5) For the purposes of this section, a civil partnership is not to be treated as having terminated by reason of its having been—
 - (a) converted into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013;
 - (b) changed into a marriage under the Marriage (Scotland) Act 1977;
 - (c) changed into a marriage in accordance with provision made under section 10 of the Marriage and Civil Partnership (Scotland) Act 2014; or
 - (d) changed into a marriage under Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014.”.
- (8) In section 48A (Category B retirement pension for married person)(**12**)—
- (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.”.
- (9) In section 48B(1ZA) (category B retirement pension for widows and widowers)(**13**)—
- (a) in paragraph (a)(ii), after “date” in the second place where it occurs insert “and the case does not fall within paragraph (c)”;
 - (b) 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;

(12) Section 48A was, in relation to England and Wales, amended by the 2013 Act, Schedule 4, paragraph 11. Section 48A is prospectively amended by paragraph 60 of the Pensions Act 2014 (c.19).

(13) Section 48B(1ZA) was inserted by the Pensions Act 2007 Schedule 1, paragraph 3(3), and, in relation to England and Wales was amended by the 2013 Act, Schedule 4, paragraph 12. Section 48B is prospectively amended by paragraph 61 of the Pensions Act 2014 (c.19).

- (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.”; and
 - (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.”.
- (10) In section 51(14)(category B retirement pension for widowers)—
- (a) 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.”; and
 - (b) in subsection (2), after “wife” insert “, husband”; and
 - (c) in subsection (3), after “2002” insert “, surviving party to a same sex marriage.”.
- (11) In section 62(15)(graduated retirement benefit)—
- (a) in 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,
- 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;”;
- (b) 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—

(14) Section 51 was amended in relation to England and Wales by the 2013 Act, Schedule 4, paragraph 13.

(15) Section 62 was amended by the 2013 Act, Schedule 4, paragraph 14.

- (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.”.
- (12) In section 122(16) (interpretation of Parts 1 to 6 and supplementary provisions), omit subsection (1A).
- (13) In section 137(17) (interpretation of Part 7 and supplementary provisions)—
- (a) in subsection (1), for the definition of “couple” substitute—
 - ““couple” means—
 - (a) two people who are married to, or civil partners of, each other and are members of the same household; or
 - (b) two people who are not married to, or civil partners of, each other but are living together as a married couple otherwise than in prescribed circumstances;”;
 - (b) omit subsection (1A).
- (14) In paragraph 5A of Schedule 3(18)—
- (a) at the end of sub-paragraph (1)(b) insert “or in a case of the kind mentioned in subsection (2ZA)(d) of that section”; and
 - (b) at the end of sub-paragraph (1)(c) insert “or in a case of the kind mentioned in subsection (1ZA)(c) of that section”.
- (15) In paragraph 5(2) of Schedule 5 (pension increase or lump sum where entitlement to retirement pension is deferred)(19)—
- (a) for paragraph (a), substitute—
 - “(a) where W is a woman—
 - (i) whose deceased spouse was a man; or
 - (ii) who falls within paragraph 7(3) below,an amount equal to the sum of the amounts set out in paragraph 5A(2) or (3) below (as the case may be);”;
 - (b) in paragraph (b), for “widower” substitute “man whose deceased spouse was a woman”; and
 - (c) for paragraph (c), substitute—
 - “(c) where W is—
 - (i) a woman who does not fall within paragraph 7(3) below and whose deceased spouse was a woman;
 - (ii) a man whose deceased spouse was a man; or

(16) Section 122(1A) was inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 41(1) and (3) and amended by [S.I. 2014/560](#) in relation to England and Wales.

(17) The definition of “couple” in section 137(1) and (1A) were inserted by the Civil Partnership Act 2004, Schedule 24, paragraph 46(1), (3) and (5) and was amended by [S.I. 2014/560](#). Section 137 has been repealed by the Welfare Reform Act 2012 (c.5) for certain purposes. That repeal is not fully in force.

(18) Paragraph 5A of Schedule 3 was amended by the 2013 Act, Schedule 4, paragraphs 11 and 12.

(19) Paragraph 5 was amended by [S.I. 2005/2053](#) and in relation to England and Wales [S.I. 2014/560](#). Paragraphs 5, 5A and 6 were substituted for paragraphs 5 and 6 as originally enacted by the Pensions Act 1995 (c.26), Schedule 4, paragraph 21(15). Paragraphs 5 to 6A of Schedule 5 to the 1992 Act were repealed by the Pensions Act 2011 (c.19), section 2(5). That repeal was brought into force in respect of certain specified provisions by [S.I. 2011/3034](#) but has yet to be brought into force in respect of the remaining provisions.

- (iii) a surviving civil partner,
an amount equal to the sum of the amounts set out in paragraph (6A)(2) below.”.
- (16) In paragraph 5A(20)—
- (a) for sub-paragraph (1) substitute—
- “(1) This paragraph applies where W (referred to in paragraph 5 above) is a woman—
- (a) whose deceased spouse was a man; or
- (b) who falls within paragraph 7(3) below.”, and
- (b) in sub-paragraphs (2) and (3), for “husband” in each place it appears substitute “spouse”.
- (17) In paragraph 6(1)(21), for “widower” substitute “man whose deceased spouse was a woman”.
- (18) In paragraph 6A(22)—
- (a) For sub-paragraph (1) substitute—
- “(1) This paragraph applies where W (referred to in paragraph 5 above) is—
- (a) a woman who does not fall within paragraph 7(3) below and whose deceased spouse was a woman;
- (b) a man whose deceased spouse was a man; or
- (c) a surviving civil partner.”, and
- (b) in sub-paragraph (2)(c), before “civil partner” insert “spouse or”.
- (19) In paragraph 7(23), after sub-paragraph (2) insert—
- “(3) For the purposes of paragraphs 5, 5A and 6A above, a woman falls within this sub-paragraph if—
- (a) she was married to another woman who, at the time of her death, was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) that marriage subsisted before the time when that certificate was issued.”.
- (20) In Schedule 7(24) (industrial injuries benefits)—
- (a) in paragraph 4(3)(a) (increase for beneficiary’s dependent children and qualifying young persons)—
- (i) after sub-paragraph (i) insert “or”; and
- (ii) for sub-paragraphs (ii) and (iii) substitute—
- “(ii) two people who are not married to, or civil partners of, each other but are living together as a married couple, and”, and;
- (b) in paragraph 15(3) (widow’s benefit (entitlement)), for the words from “husband and wife” to the end substitute “a married couple with a person whom she is not married to or in a civil partnership with.”.

(20) Paragraph 5A was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 39 and the Pensions Act 2007 (c. 22), Schedule 1, paragraph 20 and Schedule 7, Part 3 and in relation to England and Wales, S.I. 2014/560.

(21) Paragraph 6 was amended by the Child Support, Pensions and Social Security Act 2000 (c.19), section 39 and the Pensions Act 2007 (c.22), Schedule 1, paragraph 20 and Schedule 7, Part 3.

(22) Paragraph 6A was inserted by S.I. 2005/2053 and was amended by the Pensions Act 2007, Schedule 1, paragraph 20 and Schedule 7, Part 3 and in relation to England and Wales, S.I. 2014/560.

(23) Paragraph 7 was amended by the Social Security (Incapacity for Work) Act 1994 (c. 18) and S.I. 2005/2053. It was repealed by the Pensions Act 2011, section 2(5), subject to savings made by section 2(7), but that repeal is not yet fully in force.

(24) Paragraph 4(3)(a) of Schedule 7 was substituted by the Civil Partnership Act 2004, Schedule 24, paragraph 52(1) and (2) and amended by S.I. 2014/560. Paragraph 15(3) of Schedule 7 was amended by the Civil Partnership Act 2004, Schedule 24, paragraph 52(5)(b), and, in relation to England and Wales, was substituted by S.I. 2014/560, Schedule 1 paragraph 22(9)(b).

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