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STATUTORY INSTRUMENTS

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**2015 No. 173**

**SOCIAL SECURITY**

**The State Pension Regulations 2015**

*Made* - - - - *9th February 2015*

*Coming into force* - - *6th April 2016*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 55A(6) and 175(4) of the Social Security Contributions and Benefits Act 1992<sup>M1</sup>, sections 23(1)(a), (b)(ii) and (c)(i) and (2), 48(1)(f)(ii) and 49(4) and (4A) of the Welfare Reform and Pensions Act 1999<sup>M2</sup> and sections 2(3), 4(2), 8(3), (7) and (8), 16(1) and (6), 17(4) and (5), 18(1), 19(1) and (3), 22(1) and 54(5) and (6) of, and paragraph 4 of Schedule 8 and paragraph 4 of Schedule 10 to, the Pensions Act 2014<sup>M3</sup>.

The Social Security Advisory Committee has agreed that the proposals in respect of Part 5 of these Regulations should not be referred to it<sup>M4</sup>.

The remainder of these Regulations have not been referred to the Social Security Advisory Committee because they are made before the end of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2014 under which they are made<sup>M5</sup>.

In accordance with section 83(11) of the Welfare Reform and Pensions Act 1999, due to the exercise of powers to make regulations under Part 4 of that Act, the Secretary of State has consulted such persons as he considers appropriate about Part 5 of these Regulations<sup>M6</sup>.

A draft of these Regulations has been laid before Parliament in accordance with section 54(2)(a) of the Pensions Act 2014 and approved by a resolution of each House of Parliament.

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**Marginal Citations**

**M1** 1992 c.4. Section 55A was inserted by paragraph 3 of Schedule 6 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#). Subsection (6) was substituted by section 41(3) of the [Child Support, Pensions and Social Security Act 2000 \(c.19\)](#). There are relevant amendments to section 55A made by section 15 of, and paragraph 5 of Schedule 11 to, the [Pensions Act 2014 \(c.19\)](#). Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c.2\)](#).

**M2** 1999 c.30. Section 23(1)(a) and (b) was amended by section 261(1) of, and paragraphs 157(2) to (5) of Schedule 27 to, the [Civil Partnership Act 2004 \(c.33\)](#). It was also amended by section 261(4) of, and paragraph 1 of Schedule 30 to, that Act. Section 48(1)(f) was amended by paragraph 161(4)(a) and (b) of Schedule 27 to that Act. Section 49(4) and (4A) was substituted by section 41(1) of the Child

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Support, Pensions and Social Security Act 2000. There are relevant amendments to section 49 made by section 15 of, and paragraph 12 of Schedule 11 to, the Pensions Act 2014.

**M3** [2014 c.19](#). Section 22(1) is cited for the meaning it gives to “regulations”.

**M4** See sections 170, 172(1) and 173(1)(b) of the [Social Security Administration Act 1992 \(c.5\)](#). There are relevant amendments to section 170 made by paragraph 24 of Schedule 12 to the Pensions Act 2014.

**M5** See section 173(5) of the Social Security Administration Act 1992.

**M6** The requirement to consult under section 83(11) applies only to the provisions in paragraphs 1(5)(a) and 2 of the Schedule to these Regulations. The Secretary of State consulted about those provisions and all the other provisions on sharing state pension in regulation 14 of, and the Schedule to, these Regulations.

## PART 1

### General

#### Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the State Pension Regulations 2015.

(2) These Regulations come into force on 6th April 2016.

(3) These Regulations (except Part 5) do not apply to a person who reaches pensionable age<sup>M7</sup> before 6th April 2016.

[<sup>F1</sup>In these Regulations—

“the 1965 Act” means the National Insurance Act 1965;

“the 2014 Act” means the Pensions Act 2014;

“deferral period” means the period during which a person’s entitlement to a state pension under Part 1 of the 2014 Act is deferred;

“graduated retirement benefit” means any benefit under section 36 (graduated retirement benefit) or 37 (special provisions as to graduated retirement benefit for widows) of the 1965 Act.]

(5) For the purposes of these Regulations (except this paragraph), two people are to be treated as if they are not married to each other in relation to times when either of them is married to a third person.

#### Textual Amendments

**F1** Reg. 1(4) substituted (6.4.2016 immediately after S.I. 2015/173 comes into force) by [The State Pension and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/199\)](#), [reg. 2](#) (with [reg. 1\(5\)](#))

#### Marginal Citations

**M7** See section 22(1) of the Pensions Act 2014 for the meaning of “pensionable age”.

## [<sup>F2</sup>PART 1A

### Full rate of State Pension

#### Textual Amendments

- F2** Reg. 1A inserted (6.4.16 coming into force in accordance with art. 1(2)) by The State Pension (Amendment) Regulations 2016 (2016/227) reg. 1(2), 2

#### Full rate of state pension

**1A.** The full rate of the state pension for the purposes of section 3(1) of the 2014 Act (full rate of state pension) is [<sup>F3</sup>£175.20] per week.]

#### Textual Amendments

- F3** Sum in Reg. 1A substituted (with effect in accordance with arts. 1(4)(5), 7 of the amending S.I.) by The Social Security Benefits Up-rating Order 2020 (S.I. 2020/234), arts. 1(3)(c), 6(2)

## PART 2

### Prisoners

#### Prisoners who are not to be paid state pension

**2.—(1)** Subject to regulation 3, a person is not to be paid a state pension under Part 1 of the 2014 Act (state pension) for any period during which the person is a prisoner <sup>M8</sup> who is mentioned in paragraph (2).

(2) Except where paragraph (3) applies, a person is a prisoner for the purposes of paragraph (1) where the person is—

- (a) a prisoner in Great Britain or elsewhere who is imprisoned or detained in legal custody in connection with, or as a result of, criminal proceedings;
- (b) a prisoner in Great Britain or elsewhere who is unlawfully at large;
- (c) a prisoner in Great Britain who is being detained—
  - (i) under section 47 of the Mental Health Act 1983 (removal to hospital of persons serving sentences of imprisonment etc) <sup>M9</sup>; and
  - (ii) on or before the day which the Secretary of State certifies to be the person's release date (if any) within the meaning in section 50(3) of that Act <sup>M10</sup>;
- (d) a prisoner in Great Britain who is being detained under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder) <sup>M11</sup>.

(3) Where a person outside Great Britain is a prisoner within paragraph (2)(a) or (b) and, in similar circumstances in Great Britain, the person would not have been a prisoner, the person is not a prisoner within paragraph (2)(a) or (b).

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[<sup>F4</sup>(4) In determining a person's rights to relevant benefits for the purposes of this regulation, regulation 13 of the State Pension Regulations 2015 (minimum number of qualifying years), and any provisions in Northern Ireland which correspond to that regulation, shall not have effect.]

#### Textual Amendments

- F4** Reg. 13 excluded by S.I. 2007/1398, reg. 2(4) as inserted (6.4.2016 coming into force in accordance with art. 1(2)(b)) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **30(3)**

#### Marginal Citations

- M8** See section 19(2) of the Pensions Act 2014 for the meaning of "prisoner".
- M9** 1983 c.20. Section 47 was amended by section 49(3) of, and Schedule 6 to, the [Crime \(Sentences\) Act 1997 \(c.43\)](#), **paragraph 18** of Schedule 10 to the [Domestic Violence, Crime and Victims Act 2004 \(c.28\)](#), **paragraph 97** of Schedule 16 to the [Armed Forces Act 2006 \(c.52\)](#) and section 4(7) of, and paragraph 10 of Schedule 1 and Part 1 of Schedule 11 to, the [Mental Health Act 2007 \(c.12\)](#). S.I. 1999/672 transferred functions under section 47 to the National Assembly for Wales.
- M10** Section 50(3) was substituted by section 294(3) of the [Criminal Justice Act 2003 \(c.44\)](#).
- M11** 2003 asp.13.

### Paying state pension to persons who are remanded in custody

**3.—(1)** Where a person is remanded in custody for an offence, regulation 2(1) does not apply unless a sentence described in paragraph (2) is later imposed on the person for the offence.

- (2) Subject to paragraph (3), the described sentences for the purposes of paragraph (1) are—
- a sentence of imprisonment or detention in legal custody as a result of criminal proceedings;
  - a sentence of detention where the provisions mentioned in regulation 2(2)(c)(i) or (d) apply;
  - a suspended sentence within the meaning in [<sup>F5</sup>section 286 of the Sentencing Code] (suspended sentences of imprisonment).

(3) A sentence described in paragraph (2)(a) which is imposed outside Great Britain is not a described sentence for the purposes of paragraph (1) if, in similar circumstances in Great Britain, a sentence described in paragraph (2)(a) would not have been imposed.

#### Textual Amendments

- F5** Words in reg. 3(2)(c) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 427** (with [Sch. 27](#)); S.I. 2020/1236, reg. 2

## PART 3

### Deferral of State Pension

#### **When a choice of lump sum or survivor's pension may be made**

4.—(1) Where a person falls within section 8(1) of the 2014 Act (choice of lump sum or survivor's pension under section 9 in certain cases), paragraphs (2) and (3) set out the period within which that person is to make any choice under section 8(2) of that Act to be paid—

- (a) a lump sum under section 8 of that Act; or
- (b) a state pension under section 9 of that Act (survivor's pension based on inheritance of deferred old state pension).

(2) Where the Secretary of State has issued a notice which confirms that the person may make the choice, the period is three months starting on the date in that notice (or, where there is more than one notice which confirms that the person may make that choice, the date in the most recent such notice).

(3) Where the person makes the choice before the Secretary of State has issued any such notice, the period—

- (a) starts on the later of the date—
  - (i) the person claims a state pension; or
  - (ii) the person's spouse or civil partner died; and
- (b) ends on the date the person makes the choice.

(4) A person may make a late choice after the period set out in this regulation in circumstances where—

- (a) the Secretary of State considers it is reasonable in any particular case; and
- (b) any amount paid by way of (or on account of) a lump sum under section 8(4) of the 2014 Act has been repaid to the Secretary of State—
  - (i) in full; and
  - (ii) in the currency in which that amount was originally paid.

(5) The amount of any lump sum to be paid to the person under section 8(4) is reduced to nil where the person makes a late choice under paragraph (4) to be paid a state pension under section 9 of the 2014 Act.

#### **How a choice of lump sum or survivor's pension may be made**

5.—(1) Where a person falls within section 8(1) of the 2014 Act, this regulation sets out the manner in which that person is to make any choice under section 8(2) of that Act to be paid—

- (a) a lump sum under section 8 of that Act; or
- (b) a state pension under section 9 of that Act.

(2) The manner is—

- (a) in writing to an office which is specified to the person in writing by the Secretary of State as accepting any such choice; or
- (b) by telephone to a telephone number which is specified to the person in writing by the Secretary of State as accepting any such choice.

(3) The person must use the manner set out in paragraph (2)(a) where the Secretary of State directs in any particular case that that manner must be used.

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### Changing a choice of lump sum or survivor's pension

- 6.—(1) Any choice under section 8(2) of the 2014 Act to be paid—
- (a) a lump sum under section 8 of that Act; or
  - (b) a state pension under section 9 of that Act,
- may be altered in the circumstances specified in paragraph (2).
- (2) The circumstances referred to in paragraph (1) are—
- (a) the person who made the choice has not subsequently died;
  - (b) an application is made to alter the choice;
  - (c) the application is made within—
    - (i) the period of three months starting on the date in the notification issued by the Secretary of State which confirms the choice that has been made; or
    - (ii) such longer period as the Secretary of State considers reasonable in any particular case;
  - (d) the application is made in the manner set out in—
    - (i) regulation 5(2)(a), where the Secretary of State directs in any particular case that the manner in regulation 5(2)(a) must be used; or
    - (ii) regulation 5(2)(a) or (b), in all other cases;
  - (e) where the application is to alter the choice so that it becomes a choice to be paid a state pension under section 9 of the 2014 Act, any amount paid by way of (or on account of) a lump sum under section 8 of the 2014 Act has been repaid to the Secretary of State—
    - (i) in full;
    - (ii) within the period mentioned in sub-paragraph (c); and
    - (iii) in the currency in which that amount was originally paid;
  - (f) where the application is to alter the choice so that it becomes a choice to be paid a lump sum under section 8 of the 2014 Act, any amount paid by way of (or on account of) a state pension under section 9 of the 2014 Act would be less than the amount which would be paid as a lump sum under section 8 of the 2014 Act;
  - (g) no previous alteration has been made under this regulation in respect of the same deferral mentioned in section 8(1)(c) of the 2014 Act; and
  - (h) the choice has not been treated as made under regulation 30(5G) [<sup>F6</sup>or (5H)] of the Social Security (Claims and Payments) Regulations 1987 (payments on death) <sup>M12</sup>.
- (3) Where the circumstance in paragraph (2)(f) applies, any amount paid by way of (or on account of) a state pension under section 9 of the 2014 Act in respect of the deferral mentioned in section 8(1)(c) of the 2014 Act for which the choice was originally made is to be treated as having been paid on account of the lump sum to be paid under section 8 of the 2014 Act.

#### Textual Amendments

**F6** Words in reg. 6(2)(h) inserted (6.4.2016 coming into force in accordance with art. 1(2)(b)) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), 45

#### Marginal Citations

**M12** [S.I. 1987/1968](#). Regulation 30(5G) was inserted by [S.I. 2005/3078](#).

### **How entitlement to a state pension may be suspended**

7.—(1) A person who has become entitled to a state pension under Part 1 of the 2014 Act may opt to suspend their entitlement if they give notice to the Secretary of State.

(2) The manner in which the notice must be given is—

- (a) in writing to an office which is specified to the person in writing by the Secretary of State as accepting any such notice; or
- (b) by telephone to a telephone number which is specified to the person in writing by the Secretary of State as accepting any such notice.

(3) But the person must use the manner set out in paragraph (2)(a) where the Secretary of State directs in any particular case that that manner must be used.

### **Date from which a suspension of a state pension begins**

8.—(1) Where a person exercises their option to suspend their entitlement to a state pension under Part 1 of the 2014 Act, the suspension takes effect from the date set out in this regulation.

(2) The date is any date which the person specifies that is—

- (a) not before the date on which the option was exercised; and
- (b) not after 28 days starting with the date on which the option was exercised.

(3) Where the person does not specify a date in accordance with paragraph (2), the date is the date on which the option was exercised.

### **Cancelling a suspension of a state pension**

9.—(1) Where a person has opted to suspend their entitlement to a state pension under Part 1 of the 2014 Act, the person may cancel the exercise of that option in relation to the whole of, or part of, a past period referred to in paragraph (3).

(2) The person cancels the suspension by making a claim for their state pension whilst their state pension is suspended.

(3) The past period mentioned in paragraph (1) is any period of up to 12 months before the date on which the person cancels the suspension.

### **Percentage for the weekly rate of increases resulting from deferral of state pension**

10. For the purposes of section 17(4) of the 2014 Act (effect of pensioner postponing or suspending state pension), the specified percentage is one-ninth of 1%.

### **Days which are not included in determining the period of deferral**

11.—(1) In the circumstances set out in paragraph (2), a day does not count in determining a number of whole weeks for the purposes of section 17(3) of the 2014 Act.

(2) The circumstances mentioned in paragraph (1) are where the day is—

- (a) a day on which the person whose entitlement to a state pension under Part 1 of the 2014 Act is deferred has received any of the following benefits—
  - (i) state pension credit under section 1 of the State Pension Credit Act 2002 (entitlement to state pension credit) <sup>M13</sup>;
  - (ii) income support under section 124 of the Contributions and Benefits Act (income support) <sup>M14</sup>;

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- (iii) an income-related employment and support allowance (which means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance) <sup>M15</sup>);
  - (iv) an income-based jobseeker's allowance within the meaning in section 1(4) of the Jobseekers Act 1995 (the jobseeker's allowance) <sup>M16</sup>;
  - (v) universal credit under Part 1 of the Welfare Reform Act 2012 (universal credit) <sup>M17</sup>;
  - (vi) a carer's allowance under section 70 of the Contributions and Benefits Act (carer's allowance) <sup>M18</sup>;
  - (vii) an unemployability supplement within the meaning in regulation 2(1) of the Social Security (Overlapping Benefits) Regulations 1979 (interpretation) <sup>M19</sup>;
  - (viii) severe disablement allowance under section 68 of the Contributions and Benefits Act (entitlement and rate of severe disablement allowance) <sup>M20</sup>;
  - (ix) a widow's pension under section 39 of the Contributions and Benefits Act (rate of widowed mother's allowance and widow's pension) <sup>M21</sup>;
  - (x) a widowed mother's allowance under section 37 of the Contributions and Benefits Act (widowed mother's allowance) <sup>M22</sup>;
  - (xi) incapacity benefit under section 30A of the Contributions and Benefits Act (incapacity benefit: entitlement) <sup>M23</sup>;
- (b) a day on which a person—
- (i) has received an increase of any of the benefits mentioned in sub-paragraph (a) in respect of the person whose entitlement to a state pension under Part 1 of the 2014 Act is deferred; and
  - (ii) is married to, in a civil partnership with or residing with the person whose entitlement to a state pension under Part 1 of the 2014 Act is deferred; or
- (c) a day on which the person whose entitlement to a state pension under Part 1 of the 2014 Act is deferred would not, if their entitlement was not deferred, be paid that state pension because they were a prisoner (see section 19 of the 2014 Act (prisoners) and regulations 2 and 3).

#### **Marginal Citations**

**M13** 2002 c.16.

**M14** See section 22(1) of the Pensions Act 2014 for the definition of “the Contributions and Benefits Act”. Section 124 was amended by paragraph 30 of Schedule 2 and Schedule 3 to the [Jobseekers Act 1995 \(c.18\)](#), [paragraph 28](#) of Schedule 8 to the Welfare Reform and Pensions Act 1999, paragraph 2 of Schedule 2 and Schedule 3 to the [State Pension Credit Act 2002 \(c.16\)](#), [paragraph 42](#) of Schedule 24 to the Civil Partnership Act 2004, paragraph 9(9) and (10) of Schedule 3 and Schedule 8 to the [Welfare Reform Act 2007 \(c.5\)](#), [section 3](#) of the [Welfare Reform Act 2009 \(c.24\)](#) and section 58(2) of the [Welfare Reform Act 2012 \(c.5\)](#).

**M15** 2007 c.5. See in particular the definition of “income-related allowance” in section 1(7) of the Welfare Reform Act 2007.

**M16** 1995 c.18. The definition of “income-based jobseeker's allowance” was amended by paragraph 2(4)(a) of Schedule 7 to the Welfare Reform and Pensions Act 1999.

**M17** 2012 c.5.

**M18** Section 70 was amended by S.I.s 1994/2556, 2002/1457, 2011/2426 and 2013/388 and 796.

**M19** S.I. 1979/597.

**M20** Section 68 has effect by virtue of [S.I. 2000/2958](#).



- M21** Section 39 was amended by paragraph 17 of Schedule 12 to the Welfare Reform and Pensions Act 1999, paragraph 27 of Schedule 3 to the [Tax Credits Act 2002 \(c.21\)](#), [section 6\(5\)](#) of, and paragraph 3 of Schedule 2 and Schedule 7 to, the [Pensions Act 2007 \(c.22\)](#) and paragraph 3 of Schedule 4 to the [Pensions Act 2008 \(c.30\)](#).
- M22** Section 37 was amended by paragraph 2 of Schedule 1 to the [Child Benefit Act 2005 \(c.6\)](#), [section 50](#) of, and Schedule 8 to, the Welfare Reform Act 2007, paragraph 18 of Schedule 24 and Schedule 30 to the Civil Partnership Act 2004 and [S.I. 2014/560](#).
- M23** Section 30A was inserted by section 1 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and amended by section 64 of the Welfare Reform and Pensions Act 1999 and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004.

### **Part weeks treated as whole weeks in determining the amount of entitlement during deferral**

**12.**—(1) In the circumstances set out in paragraph (2), a part of a week is to be treated as a whole week for the purposes of section 17(3) of the 2014 Act.

(2) The circumstances mentioned in paragraph (1) are where there is a part of a week in the total period during which the person's entitlement to a state pension was deferred, after any days have been discounted under regulation 11.

### **[<sup>F7</sup>Modification of the amount of an increment for other cases during deferral**

**12A.**—(1) Subject to regulation 23, this regulation applies in cases where, at any time in the deferral period, the weekly rate of the person's state pension, had the person's entitlement not been deferred, would have changed otherwise than because of an up-rating increase ("a non-uprating change").

(2) Section 17(4) of the 2014 Act (amount of an increment for pensioner postponing or suspending state pension) is modified to provide that the amount of an increment for each modification period is equal to a percentage specified in regulations of the weekly rate of the state pension to which the person, if their entitlement had not been deferred, would have been entitled immediately before the end of the modification period.

(3) The first modification period begins at the start of the deferral period and ends immediately before the date of the first or only non-uprating change.

(4) Further modification periods begin on the date of the most recent or only non-uprating change and end—

- (a) immediately before the end of the deferral period, where there is no subsequent non-uprating change; or
- (b) immediately before the date of the subsequent non-uprating change, where there is a subsequent non-uprating change.]

#### **Textual Amendments**

- F7** Reg. 12A inserted (6.4.2016 immediately after S.I. 2015/173 comes into force) by [The State Pension and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/199\)](#), [reg. 3](#) (with [reg. 1\(5\)](#))

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## PART 4

### Minimum Qualifying Period

#### Minimum number of qualifying years

**13.**—(1) For the purposes of section 2(3) of the 2014 Act (entitlement to state pension at full or reduced rate), the minimum number of qualifying years <sup>M24</sup> for a state pension payable at the reduced rate is ten.

(2) For the purposes of section 4(2) of the 2014 Act (entitlement to a state pension at transitional rate), the minimum number of qualifying years for a state pension payable at the transitional rate is ten.

#### Marginal Citations

**M24** See section 2(4) of the Pensions Act 2014 for the definition of “qualifying year”.

## PART 5

### Amendments to other legislation

#### Sharing of state pension scheme rights

**14.** The Schedule to these Regulations (which makes amendments relating to the sharing of state pension rights) has effect.

## [<sup>F8</sup>PART 6

### Graduated Retirement Benefit

#### Textual Amendments

**F8** Pts. 6, 7 inserted (6.4.2016 immediately after S.I. 2015/173 comes into force) by [The State Pension and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/199\)](#), [reg. 4](#) (with [reg. 1\(5\)](#))

#### Survivor’s state pension based on inheritance of graduated retirement benefit

**15.**—(1) A person whose dead spouse or civil partner paid graduated contributions as an insured person is entitled to a state pension in accordance with this regulation.

(2) Such a person is entitled to a state pension if—

- (a) that person has reached pensionable age;
- (b) that person’s spouse died while they were married or that person’s civil partner died while they were civil partners of each other;
- (c) the marriage took place, or the civil partnership was formed, before 6th April 2016; and
- (d) that person is entitled to an inherited amount under regulation 16(1), (2) or (3).

(3) A state pension under this regulation is payable at a weekly rate equal to the inherited amount determined in accordance with regulation 16(4) to (6).

(4) The rate of the state pension for a person under this regulation is to be increased from time to time in accordance with regulation 17.

#### **Survivor's state pension under regulation 15: inherited amount**

**16.**—(1) For the purposes of regulation 15(2)(d), a person is entitled to an inherited amount if—

- (a) their spouse or civil partner died before 6th April 2016;
- (b) they were under pensionable age when their spouse or civil partner died; and
- (c) they have not married or formed a civil partnership after the death and before the time they reach pensionable age.

(2) For the purposes of regulation 15(2)(d), a person is entitled to an inherited amount if—

- (a) their spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016;
- (b) they were under pensionable age when their spouse or civil partner died; and
- (c) they have not married or formed a civil partnership after the death and before the time they reach pensionable age.

(3) For the purposes of regulation 15(2)(d), a person is entitled to an inherited amount if—

- (a) their spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016; and
- (b) they were over pensionable age when their spouse or civil partner died.

(4) The inherited amount is half of the weekly rate of the deceased spouse's or civil partner's graduated retirement benefit, determined in accordance with paragraph (5), on the date referred to in paragraph (6) (whether or not the deceased was receiving, or entitled to receive, any such benefit).

(5) The determination for the purposes of paragraph (4) is carried out by—

- (a) taking the weekly rate of graduated retirement benefit appropriate to the amount of graduated contributions paid by the deceased;
- (b) determining that weekly rate as if any provisions in orders under section 150 of the Administration Act (annual up-rating of benefits) which—
  - (i) increase that weekly rate; and
  - (ii) have come into force since the date of the deceased's death, had come into force before that date; and

(c) excluding any addition under—

- (i) section 36(4) of the 1965 Act; or
- (ii) section 37(1) of that Act.

(6) The date mentioned in paragraph (4) is—

- (a) where the person falls within paragraph (1) or (2), the date on which the person reaches pensionable age; or
- (b) where the person falls within paragraph (3), the date on which the person's spouse or civil partner died.

#### **Survivor's state pension under regulation 15: up-rating**

**17.**—(1) The rate of a person's state pension under regulation 15 is to be increased as follows.

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- (2) In this regulation, a reference to the rate of a person's state pension is to the rate—
  - (a) without any reduction under Regulations made under section 7(4) (survivor's pension based on inheritance of additional old state pension) of the 2014 Act (in the case of a state pension under section 7 of the 2014 Act);
  - (b) taking into account any reduction under section 14 (pension sharing: reduction in the sharer's section 4 pension) of the 2014 Act (in the case of a state pension under section 4 of the 2014 Act); and
  - (c) without any increase under section 17 of the 2014 Act.
- (3) The rate of the person's state pension is increased in accordance with paragraph (4) where—
  - (a) that rate, when added to the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act (entitlement to state pension at various rates), is equal to or less than the full rate of the state pension; and
  - (b) the full rate of the state pension is increased at any time.
- (4) Where paragraph (3) applies—
  - (a) the rate of the person's state pension is increased by the same percentage as the increase in the full rate; and
  - (b) that increase of the person's state pension is to be made at the same time as the increase in the full rate.
- (5) The rate of the person's state pension is increased in accordance with either or both of paragraphs (6) and (7) where—
  - (a) both—
    - (i) that rate, when added to the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act, exceeds the full rate of the state pension; and
    - (ii) the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act is less than the full rate of the state pension; and
  - (b) either or both of the following occurs at any time—
    - (i) the full rate of the state pension is increased;
    - (ii) an uprating order comes into force.
- (6) Where paragraph (5)(a) and (b)(i) applies, the rate of the person's state pension is increased—
  - (a) by an amount equal to the appropriate percentage of the shortfall immediately before the full rate of the state pension is increased ("the appropriate percentage" means the percentage by which the full rate is increased); and
  - (b) at the same time as paragraph (5)(b)(i) applies.
- (7) Where paragraph (5)(a) and (b)(ii) applies, the rate of the person's state pension is increased—
  - (a) by an amount equal to the appropriate percentage of the excess immediately before the uprating order mentioned in paragraph (5)(b)(ii) comes into force ("the appropriate percentage" means the percentage specified in that uprating order); and
  - (b) at the same time as that uprating order comes into force.
- (8) The rate of the person's state pension is increased in accordance with paragraph (9) where—
  - (a) the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act is equal to or higher than the full rate of the state pension; and
  - (b) an uprating order comes into force at any time.

- (9) Where paragraph (8) applies—
- (a) the rate of the person’s state pension is increased by the percentage specified in the uprating order mentioned in paragraph (8)(b); and
  - (b) that increase of the person’s state pension is to be made at the same time as that uprating order comes into force.
- (10) In this regulation—
- “the excess” means the amount by which the rate of the state pension, when added to the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act, exceeds the full rate;
- “the shortfall” means the amount by which the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act, is less than the full rate;
- “uprating order” means an order under section 151A of the Administration Act (up-rating of transitional state pensions under the 2014 Act).

**Choice of lump sum or state pension based on inheritance of deferred graduated retirement benefit**

- 18.—(1) Subject to paragraph (8), a person is entitled to a choice under this regulation if—
- (a) that person has reached pensionable age;
  - (b) that person’s spouse died while they were married or that person’s civil partner died while they were civil partners of each other;
  - (c) the spouse’s or civil partner’s entitlement to graduated retirement benefit was deferred at the time of death and throughout the period of 12 months ending with the day before the death; and
  - (d) either—
    - (i) that person was under pensionable age when the spouse or civil partner died and did not marry or form a civil partnership between the date of death and the date that person reached pensionable age; or
    - (ii) that person was over pensionable age when the spouse or civil partner died.
- (2) The person may choose to be paid—
- (a) a lump sum under regulation 19; or
  - (b) a state pension under regulation 20.
- (3) The manner in which that choice is to be made is the manner set out in regulation 5(2) and (3).
- (4) The period within which that choice is to be made is the period set out in regulation 4(2) and (3) and a person may make a late choice after that period where—
- (a) the Secretary of State considers it is reasonable in any particular case; and
  - (b) any amount paid by way of (or on account of) a lump sum under regulation 19 has been repaid to the Secretary of State—
    - (i) in full; and
    - (ii) in the currency in which that amount was originally paid.
- (5) Where the person fails to make a choice within the period set out in regulation 4(2) and (3), they are to be paid a lump sum under regulation 19.
- (6) The amount of any lump sum to be paid to the person under regulation 19 is reduced to nil where the person makes a late choice under paragraph (4) to be paid a state pension under regulation 20.

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(7) A choice under this regulation may be altered in the circumstances specified in regulation 6(2), and for that purpose—

- (a) regulation 6(3) applies where the circumstance in regulation 6(2)(f) applies;
- (b) any references in regulation 6(2) and (3) to section 8 of the 2014 Act are to be read as references to regulation 19; and
- (c) any references in regulation 6(2) and (3) to section 9 of the 2014 Act are to be read as references to regulation 20.

(8) A person is not entitled to a choice under this regulation if they are entitled to a choice under section 8(2) of the 2014 Act.

(9) Where paragraph (1) applies to a person and that person makes a choice under—

- (a) section 8(2)(a) of the 2014 Act, they are to be paid a lump sum under regulation 19 (subject to paragraph (10));
- (b) section 8(2)(b) of the 2014 Act, they are to be paid a state pension under regulation 20 (subject to paragraph (10)).

(10) Where paragraph (1) applies to a person and that person alters a choice under regulation 6—

- (a) they are to be paid a lump sum under regulation 19 where their new choice is to be paid a lump sum under section 8 of the 2014 Act;
- (b) they are to be paid a state pension under regulation 20 where their new choice is to be paid a state pension under section 9 of the 2014 Act.

(11) Where paragraph (1) applies to a person and that person fails to make a choice under section 8(2) of the 2014 Act, they are to be paid a lump sum under regulation 19.

#### **Survivor's lump sum based on inheritance of deferred graduated retirement benefit**

**19.**—(1) Where a person is to be paid a lump sum by virtue of regulation 18, they are entitled to a lump sum calculated in accordance with paragraph 10 or, where appropriate, paragraph 20 of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005.

(2) In paragraphs 10(6) and 20(6) of Schedule 1 to those Regulations as they apply for the purposes of this regulation, the references to the date on which the person becomes entitled to a Category A or Category B retirement pension or to graduated retirement benefit are to be read as a reference to the date on which the person becomes entitled to make a choice under regulation 18.

#### **Survivor's state pension based on inheritance of deferred graduated retirement benefit**

**20.**—(1) A person is entitled to a state pension under this regulation if—

- (a) that person has reached pensionable age;
- (b) that person's spouse died while they were married or that person's civil partner died while they were civil partners of each other;
- (c) either—
  - (i) that person was under pensionable age when the spouse or civil partner died and did not marry or form a civil partnership between the date of death and the date that person reached pensionable age; or
  - (ii) that person was over pensionable age when the spouse or civil partner died;
- (d) either—
  - (i) that person's spouse or civil partner was entitled to an increase in graduated retirement benefit; or

- (ii) that person's spouse's or civil partner's entitlement to graduated retirement benefit was deferred when the spouse or civil partner died;
  - (e) in the case of a person entitled to a choice under regulation 18, that person has chosen to be paid a state pension under this regulation; and
  - (f) in the case of a person who is not entitled to a choice under regulation 18 because regulation 18(8) applies to them, that person is to be paid a state pension under this regulation by virtue of regulation 18(9)(b) or (10)(b).
- (2) Subject to paragraph (3), a state pension under this regulation is payable at a weekly rate equal to half of the weekly rate of—
- (a) the deceased spouse's or civil partner's increase in graduated retirement benefit; or
  - (b) where the deceased spouse's or civil partner's entitlement to graduated retirement benefit was deferred when they died, the increase in graduated retirement benefit, determined in accordance with paragraph (4), that would have been payable if the deferral had ended immediately before their death.
- (3) For the purposes of paragraph (2), if at any time an order under section 151A of the Administration Act comes into force, the rate of the person's state pension under this regulation is increased (at that time) by the percentage specified in the order.
- (4) For the purposes of paragraph (2), the increase is to be determined as if—
- (a) any provisions in orders under section 150 of the Administration Act which—
    - (i) increase the weekly rate of the graduated retirement benefit; and
    - (ii) have come into force between the date of the deceased's death and the date on which the person reaches pensionable age, had come into force before the date of death; and
  - (b) the weekly rate of the deceased spouse's or civil partner's increase did not include any addition under section 37(1) of the 1965 Act.
- (5) In this regulation, "increase in graduated retirement benefit" means an increase determined in accordance with section 36(4) of the 1965 Act.]

## [F8]PART 7

### Overseas Residents

#### **Entitlement to state pension for overseas residents**

**21.**—(1) An overseas resident who is entitled to a state pension under Part 1 of the 2014 Act is not entitled to up-rating increases in accordance with this regulation.

- (2) This regulation—
  - (a) applies in relation to an up-rating increase if Regulations are made—
    - (i) in consequence of an order under section 150A (annual up-rating) or 151A of the Administration Act or in consequence of any other legislation; and
    - (ii) which provide that this regulation applies to that up-rating increase; and
  - (b) is subject to the Regulations made as mentioned in sub-paragraph (a).
- (3) Paragraph (4) applies in a case where—
  - (a) a person's entitlement to a state pension under Part 1 of the 2014 Act has been deferred for a period; and

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- (b) when the deferral period ends, that person is—
- (i) entitled to a state pension under Part 1 of the 2014 Act; and
  - (ii) an overseas resident.
- (4) Where this paragraph applies, the person mentioned in paragraph (3) is not entitled to any up-rating increases—
- (a) in respect of the deferral period if—
    - (i) the person was an overseas resident at the time of that increase; and
    - (ii) the person continued to be an overseas resident until the deferral period ended; and
  - (b) after the deferral period ended if the person is an overseas resident at the time of that increase.
- (5) In all other cases, a person is not entitled to up-rating increases where, immediately before the up-rating increase comes into force, they were—
- (a) entitled to a state pension under Part 1 of the 2014 Act; and
  - (b) an overseas resident.
- (6) For the purposes of sections 18(4) and 20(2) and (3) of the 2014 Act, the territory specified is any part of the Channel Islands which is not subject to an Order made under section 179 of the Administration Act.

**Modifications etc. (not altering text)**

- C1** Reg. 21 applied (9.4.2018) by [The Social Security Benefits Up-rating Regulations 2018 \(S.I. 2018/332\)](#), regs. 1(1), 3
- C2** Reg. 21 applied (8.4.2019) by [The Social Security Benefits Up-rating Regulations 2019 \(S.I. 2019/552\)](#), regs. 1(1), 3
- C3** Reg. 21 applied (6.4.2020) by [The Social Security Benefits Up-rating Regulations 2020 \(S.I. 2020/266\)](#), regs. 1(1), 3

**Modification of the amount of an increment for an overseas resident**

**22.**—(1) Subject to regulation 23, this regulation applies in cases where, during any part of the deferral period, a person has been an overseas resident.

(2) For any part of the deferral period during which the person was an overseas resident and was not in Great Britain or a territory specified in regulation 21(6), section 17(4) of the 2014 Act is modified to provide that the amount of an increment is equal to a percentage specified in regulations of the weekly rate of the state pension to which the person would have been entitled immediately before the start of that part of the deferral period if the person's entitlement had not been deferred.

(3) For any part of the deferral period during which the person was not an overseas resident, section 17(4) of the 2014 Act is modified to provide that the amount of an increment is equal to a specified percentage of the weekly rate of the state pension to which the person would have been entitled immediately before the end of that part of the deferral period if the person's entitlement had not been deferred.

**Modification of the amount of an increment where regulations 12A and 22 both apply**

**23.**—(1) This regulation applies in a case where section 17(4) of the 2014 Act falls to be modified under both regulations 12A and 22 at the same time.

(2) Section 17(4) of the 2014 Act is modified to provide that the amount of an increment is determined as set out in the following paragraphs.



(3) The amount of the increment is first determined in accordance with the modifications set out in regulation 22.

(4) The amount of the increment is then determined in accordance with the modifications set out in regulation 12A as if the reference in regulation 12A(2) to the weekly rate of the state pension were a reference to the weekly rate referred to in—

- (a) regulation 22(2), for any part of the deferral period during which the person was an overseas resident and was not in Great Britain or a territory specified in regulation 21(6); and
- (b) regulation 22(3), for any part of the deferral period during which the person was not an overseas resident.

(5) Any increase or decrease of the increment as determined in accordance with paragraph (4) is then added to, or subtracted from, the amount of the increment as determined in accordance with paragraph (3).]

## [<sup>F9</sup>PART 8

### National Insurance Credits

#### Textual Amendments

- F9** Pt. 8 inserted (6.4.2016 coming into force in accordance with reg. 1) by [The State Pension \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/240\)](#), regs. 1, 2

#### CHAPTER 1

##### General

#### Interpretation

**24.**—(1) In this Part—

“the 1975 Regulations” means the Social Security (Credits) Regulations 1975;

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

“the 2012 Act” means the Welfare Reform Act 2012;

“post-commencement qualifying year” and “pre-commencement qualifying year” have the same meaning as in section 4(4) of the 2014 Act;

“qualifying year” has the same meaning as in section 2(4) of the 2014 Act;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002;

“year” means a tax year.

(2) Nothing in Chapter 3 is to be construed as entitling any person to be credited with earnings or contributions for any day or in respect of any event occurring before 6th April 2016.

#### General provisions relating to the crediting of earnings or contributions

**25.**—(1) For the purposes of Part 1 of the 2014 Act—

- (a) Chapter 2 makes provision for crediting earnings or contributions in respect of a pre-commencement qualifying year;

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(b) Chapter 3 makes provision for crediting earnings or contributions in respect of a qualifying year or a post-commencement qualifying year.

(2) Where under this Part a person would, but for this paragraph, be entitled to be credited with any earnings or contributions for a year, or in respect of any week in a year, that person is only to be credited to the extent necessary to make that year a qualifying year.

(3) Where under this Part a person is entitled to be credited with earnings or a contribution in respect of a week that falls partly in one tax year and partly in another, that week is to be treated as falling in the year in which it begins and not in the following year.

## CHAPTER 2

Crediting earnings or contributions in respect of a pre-commencement qualifying year

### Credits under the 1975 Regulations

**26.** A person is to be credited with the earnings or contributions to which the person would have been entitled under the 1975 Regulations for the purposes of entitlement to a Category A retirement pension had—

- (a) the amendment made by paragraph 55 of Schedule 12 to the 2014 Act (which limits Category A retirement pensions to people who reach pensionable age before 6th April 2016) not come into force, and
- (b) the person attained pensionable age on 6th April 2016.

### Credits for parents and carers

**27.** A person is to be credited with a Class 3 contribution to which the person would have been entitled under section 23A of the 1992 Act (contributions credits for relevant parents and carers), or regulations made under that section, for the purposes of entitlement to a Category A retirement pension had—

- (a) the amendment made by paragraph 55 of Schedule 12 to the 2014 Act (which limits Category A retirement pensions to people who reach pensionable age before 6th April 2016) not come into force, and
- (b) the person attained pensionable age on 6th April 2016.

### Credits for spouses and civil partners of members of Her Majesty's forces

**28.—(1)** Subject to paragraph (5), a person who satisfies the conditions in paragraph (2) for any part of a week to which this regulation applies is to be credited with a Class 3 contribution in respect of that week.

(2) The conditions are that the person—

- (a) is a spouse or civil partner of a member of Her Majesty's forces, or is treated as such by the Secretary of State for the purposes of occupying accommodation, and
- (b) is accompanying the member of Her Majesty's forces on an assignment outside the United Kingdom, or is treated as such by the Secretary of State.

(3) This regulation applies to a week which falls within a year beginning on or after 6th April 1975 and ending before 6th April 2016 for which the earnings factors of the member of Her Majesty's forces exceed the qualifying earnings factor.

(4) Paragraph (1) does not apply to—

- (a) a person in respect of a week in which the person is entitled to be credited with earnings under—

- (i) regulation 7A (credits for carer’s allowance),
  - (ii) regulation 8A (credits for unemployment),
  - (iii) regulation 8B (credits for incapacity for work or limited capability for work), or
  - (iv) regulation 9E (credits for certain spouses and civil partners of members of Her Majesty’s forces),
- of the 1975 Regulations; or
- (b) a woman in respect of a week in any part of which an election made by her under regulations under section 19(4) of the 1992 Act (reduced rate election for married women) is in force.
- (5) A person is not entitled to be credited with a Class 3 contribution under paragraph (1) unless an application to be so credited is received by the Secretary of State in accordance with paragraph (6).
- (6) An application under paragraph (5) may only be made in respect of a past period and must—
- (a) be on a form approved by the Secretary of State, or made in such manner as the Secretary of State accepts as sufficient in the circumstances, and
  - (b) include such information as may be specified by the Secretary of State or the Commissioners for Her Majesty’s Revenue and Customs.

### CHAPTER 3

#### Crediting earnings or contributions in respect of a qualifying year or a post-commencement qualifying year

#### **Credits under the 1975 Regulations**

**29.**—(1) Where a person is credited with earnings or contributions under the provisions of the 1975 Regulations specified in paragraph (2), the person is also to be credited with those earnings or contributions for the purposes of Part 1 of the 2014 Act.

- (2) The provisions specified are—
- (a) regulation 7 (credits for approved training);
  - (b) regulation 7A (credits for carer’s allowance);
  - (c) regulation 7B (credits for disability element of working tax credit);
  - (d) regulation 8A (credits for unemployment);
  - (e) regulation 8B (credits for incapacity for work or limited capability for work);
  - (f) regulation 9B (credits for jury service);
  - (g) regulation 9C (credits for maternity pay etc.);
  - (h) regulation 9D (credits for certain periods of imprisonment or detention in legal custody);
  - (i) regulation 9E (credits for certain spouses and civil partners of members of Her Majesty’s forces).

#### **Credits for persons in receipt of working tax credit**

- 30.**—(1) Where working tax credit is paid to a person in respect of a week in which the person is—
- (a) an employed earner,
  - (b) a self-employed earner whose profits for the year are below the small profits threshold specified by section 11(4) of the 1992 Act, who would otherwise be liable to pay a Class 2 contribution, or

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- (c) excepted from liability to pay a Class 2 contribution by virtue of regulation 43 of the Social Security (Contributions) Regulations 2001,  
the person is to be credited with earnings equal to the lower earnings limit then in force in respect of that week.
- (2) Where working tax credit is paid in respect of a couple, the reference in paragraph (1) to the person in respect of whom working tax credit is paid is a reference to —
- (a) where only one member of the couple is assessed for the purposes of the award of working tax credit as having income consisting of earnings, that member, or
- (b) where the earnings of each member are assessed, the member of the couple to whom working tax credit is paid.
- (3) Paragraph (1) does not apply to—
- (a) a person in respect of a week in which the person is entitled to be credited with earnings under—
- (i) regulation 7B (credits for disability element of working tax credit),
- (ii) regulation 8A (credits for unemployment), or
- (iii) regulation 8B (credits for incapacity for work or limited capability for work),  
of the 1975 Regulations; or
- (b) a woman in respect of a week in any part of which an election made by her under regulations under section 19(4) of the 1992 Act (reduced rate election for married women) is in force.
- (4) In this regulation, “couple” has the same meaning as in section 3(5A) of the Tax Credits Act 2002.

### **Credits for persons entitled to universal credit**

**31.** A person is to be credited with a Class 3 contribution in respect of a week for any part of which the person is entitled to universal credit under Part 1 of the 2012 Act.

### **Credits for persons approaching pensionable age**

**32.—**(1) Subject to paragraph (4), a man born before 6th October 1953 is to be credited with earnings equal to the lower earnings limit then in force in respect of a week to which paragraph (2) applies.

- (2) This paragraph applies to a week which falls within—
- (a) the year in which the man attains the age which is pensionable age in the case of a woman born on the same day, and
- (b) a subsequent year prior to that in which he attains the age of 65.
- (3) Paragraph (2) does not apply to a week which falls within a year during which the man is absent from Great Britain for more than 182 days.
- (4) Paragraph (1) applies to a man who is a self-employed earner only if he—
- (a) would be liable to pay a Class 2 contribution but for the fact that his profits for the year are below the small profits threshold specified by section 11(4) of the 1992 Act, or
- (b) is excepted from liability to pay a Class 2 contribution by virtue of regulation 43 of the Social Security (Contributions) Regulations 2001 in respect of any week in a year to which this regulation applies.

### **Credits for spouses and civil partners of members of Her Majesty's forces**

**33.**—(1) Subject to paragraph (5), a person who satisfies the conditions in paragraph (2) for any part of a week to which this regulation applies is to be credited with a Class 3 contribution in respect of that week.

(2) The conditions are that the person—

- (a) is a spouse or civil partner of a member of Her Majesty's forces, or is treated as such by the Secretary of State for the purposes of occupying accommodation, and
- (b) is accompanying the member of Her Majesty's forces on an assignment outside the United Kingdom, or is treated as such by the Secretary of State.

(3) This regulation applies to a week which falls within a year beginning on or after 6th April 2016 for which the earnings factors of the member of Her Majesty's forces exceed the qualifying earnings factor.

(4) Paragraph (1) does not apply to—

- (a) a person in respect of a week in which the person is entitled to be credited with earnings under—
  - (i) regulation 7A (credits for carer's allowance),
  - (ii) regulation 8A (credits for unemployment),
  - (iii) regulation 8B (credits for incapacity for work or limited capability for work), or
  - (iv) regulation 9E (credits for certain spouses and civil partners of members of Her Majesty's forces),of the 1975 Regulations; or

- (b) a woman in respect of a week in any part of which an election made by her under regulations under section 19(4) of the 1992 Act (reduced rate election for married women) is in force.

(5) A person is not entitled to be credited with a Class 3 contribution under paragraph (1) unless an application to be so credited is received by the Secretary of State in accordance with paragraph (6).

(6) An application under paragraph (5) may only be made in respect of a past period and must—

- (a) be on a form approved by the Secretary of State, or made in such manner as the Secretary of State accepts as sufficient in the circumstances, and
- (b) include such information as may be specified by the Secretary of State or the Commissioners for Her Majesty's Revenue and Customs.

### **Credits in respect of an award of child benefit**

**34.**—(1) A person is entitled to be credited with a Class 3 contribution in respect of a week in which the person is—

- (a) awarded child benefit for any part of that week in respect of a child under the age of 12, or
- (b) in the circumstances specified by paragraph (2) and subject to paragraph (3), the partner of a person to whom child benefit is awarded.

(2) The circumstances are that the partner—

- (a) resides with the person to whom child benefit is awarded,
- (b) shares responsibility for the child in respect of whom child benefit is awarded with that person,
- (c) is ordinarily resident in Great Britain,
- (d) is not undergoing imprisonment or detention in legal custody, and

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(e) makes an application to the Commissioners for Her Majesty's Revenue and Customs to be so credited in accordance with regulation 39.

(3) Paragraph (1)(b) only applies in respect of a week that falls within a year for which the earnings factors of the person to whom child benefit is awarded exceed the qualifying earnings factor.

(4) In calculating the earnings factors for the purpose of paragraph (3), no account is to be taken of any earnings factors derived from contributions credited by virtue of that person being awarded child benefit.

### **Credits for persons providing care for a child under the age of 12**

**35.**—(1) Subject to paragraphs (3) and (4), a person is to be credited with a Class 3 contribution in respect of a week (“the relevant week”) in which the conditions in paragraph (2) are satisfied.

(2) The conditions are that in the relevant week the person—

- (a) provided care in respect of a child under the age of 12,
- (b) is, in relation to that child, a person specified in paragraph (6), and
- (c) was ordinarily resident in Great Britain.

[<sup>F10</sup>(3) The person (‘A’) referred to in paragraph (1) is not entitled to be credited with a Class 3 contribution unless—

- (a) child benefit was awarded to another person (‘B’) in respect of—
  - (i) the child, or each child, for whom A provided care, and
  - (ii) the week in which A provided that care,
- (b) B’s earnings factors, other than those derived from a Class 3 contribution credit awarded under regulation 34, exceed the qualifying earnings factor for the year in which the relevant week falls, and
- (c) A makes an application to the Secretary of State to be so credited in accordance with paragraph (5) and regulation 39.

(4) Where the requirements relating to the provision of care by A in paragraph (3)(a)(i) can be satisfied by more than one person in respect of a week in which B was awarded child benefit—

- (a) those persons shall elect, with the agreement of B, which of them is to be credited with a Class 3 contribution credit (and then only the elected person is to be so credited), or
- (b) the Secretary of State is to exercise his discretion to determine which of those persons is to be credited with that contribution, in default of the agreement referred to in subparagraph (a).]

(5) An application under paragraph [<sup>F11</sup>(3)(c)] must—

- (a) include the name and date of birth of the child [<sup>F12</sup>, or each child,] cared for,
- (b) where requested by the Secretary of State or the Commissioners for Her Majesty’s Revenue and Customs, include a declaration by B that the conditions in paragraph (2) are satisfied, and
- (c) specify the relevant week or weeks in which the child [<sup>F13</sup>, or each child,] was cared for.

(6) The person specified in paragraph (2)(b) is—

- (a) a non-resident parent;
- (b) a grandparent;
- (c) a great-grandparent;
- (d) a great-great-grandparent;

- (e) a sibling;
- (f) a parent's sibling;
- (g) a spouse or former spouse of any persons listed in sub-paragraphs (a) to (f);
- (h) a civil partner or former civil partner of any persons listed in sub-paragraphs (a) to (f);
- (i) a partner or former partner of any persons listed in sub-paragraphs (a) to (h);
- (j) a son or daughter of any persons listed in sub-paragraphs (e) to (i);
- (k) in respect of a son or daughter of a person listed in sub-paragraph (f), that person's—
  - (i) spouse or former spouse,
  - (ii) civil partner or former civil partner, or
  - (iii) partner or former partner.

(7) For the purposes of paragraph (6)(e) and (f), a sibling includes a sibling of the half blood, a step sibling and an adopted sibling.

(8) For the purposes of paragraph (6)(i) and (k)(iii), a partner is a person who is the other member of a couple who are not married to, or civil partners of, each other but are living together [<sup>F14</sup>as if they were a married couple or civil partners].

#### Textual Amendments

- F10** Reg. 35(3)(4) substituted (16.11.2017) by [The Social Security \(Miscellaneous Amendments No. 4\) Regulations 2017 \(S.I. 2017/1015\)](#), regs. 1(2), **17(2)**
- F11** Word in reg. 35(5) substituted (16.11.2017) by [The Social Security \(Miscellaneous Amendments No. 4\) Regulations 2017 \(S.I. 2017/1015\)](#), regs. 1(2), **17(3)(a)**
- F12** Words in reg. 35(5)(a) inserted (16.11.2017) by [The Social Security \(Miscellaneous Amendments No. 4\) Regulations 2017 \(S.I. 2017/1015\)](#), regs. 1(2), **17(3)(b)**
- F13** Words in reg. 35(5)(c) inserted (16.11.2017) by [The Social Security \(Miscellaneous Amendments No. 4\) Regulations 2017 \(S.I. 2017/1015\)](#), regs. 1(2), **17(3)(b)**
- F14** Words in reg. 35(8) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), **Sch. 3 para. 100**

#### Credits for being a foster parent

**36.**—(1) Subject to paragraph (3), a person is to be credited with a Class 3 contribution in respect of a week in which the person is a foster parent and is—

- (a) ordinarily resident in Great Britain, and
  - (b) not undergoing imprisonment or detention in legal custody.
- (2) For the purposes of this regulation, a foster parent is a person approved as—
- (a) a foster parent in accordance with Part 5 (approval of foster parents) of the Fostering Services (England) Regulations 2011,
  - (b) a kinship carer in accordance with Part 5 (kinship care) of the Looked After Children (Scotland) Regulations 2009,
  - (c) a foster carer in accordance with Part 7 (fostering) of those Regulations, or
  - (d) a foster parent in accordance with Part 2 (approvals and placements) of the Foster Placement (Children) Regulations (Northern Ireland) 1996.

(3) A person is not entitled to be credited with a Class 3 contribution under paragraph (1) unless an application to be so credited is received by the Commissioners for Her Majesty's Revenue and Customs in accordance with regulation 39.

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### **Credits for persons engaged in caring**

**37.**—(1) Subject to paragraph (5), a person is to be credited with a Class 3 contribution in respect of a week in which the person is engaged in caring.

(2) A person is engaged in caring in a week if the person is—

- (a) caring for another person or persons for a total of 20 or more hours in that week and—
  - (i) that other person is, or each of the persons cared for are, entitled to a relevant benefit for that week, or
  - (ii) the Secretary of State considers that level of care to be appropriate; or
- (b) a person to whom one or more of paragraphs 4 to 6 (persons caring for another person) of Schedule 1B (prescribed categories of person) to the Income Support (General) Regulations 1987 applies.

(3) A person is not engaged in caring for the purposes of this regulation during any period in respect of which the person is—

- (a) not ordinarily resident in Great Britain, or
- (b) undergoing imprisonment or detention in legal custody.

(4) For the purposes of paragraph (2)(a)(i), “relevant benefit” means—

- (a) attendance allowance in accordance with section 64 of the 1992 Act;
- (b) the care component of disability living allowance in accordance with section 72 of the 1992 Act, at the middle or highest rate prescribed in accordance with subsection (3) of that section;
- (c) an increase in the rate of disablement pension in accordance with section 104 of the 1992 Act;
- (d) any benefit which is payable as if an injury or disease were one in respect of which a disablement pension would for the time being be payable in respect of an assessment of 100 per cent., by virtue of—
  - (i) the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983; or
  - (ii) regulations made under section 64(3) of the 2012 Act (injuries arising before 5 July 1948);
- (e) a constant attendance allowance payable by virtue of—
  - (i) article 8 (constant attendance allowance) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006; or
  - (ii) article 14 (constant attendance allowance) of the Personal Injuries (Civilians) Scheme 1983;
- (f) the daily living component of personal independence payment in accordance with section 78 of the 2012 Act;
- (g) armed forces independence payment in accordance with the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011.

(5) Except in a case to which paragraph (8) applies, a person is not entitled to be credited with a Class 3 contribution under paragraph (2)(a) unless an application to be so credited is received by the Secretary of State in accordance with paragraph (6) and regulation 39.

(6) An application under paragraph (5) must include—

- (a) a declaration by the applicant that the applicant cares for a person or persons for 20 or more hours in a week,



- (b) the name and, where known, the national insurance number of each person cared for,
  - (c) where applicable, which relevant benefit each person cared for is entitled to, and
  - (d) where requested by the Secretary of State, a declaration signed by an appropriate person as to the level of care which is required for each person cared for.
- (7) For the purposes of paragraph (6)(d), an appropriate person is a person who is—
- (a) involved in the health care or social care of the person cared for, and
  - (b) considered by the Secretary of State as appropriate to make a declaration as to the level of care required.
- (8) This paragraph applies in the case of a woman in respect of a week in any part of which an election made by her under regulations under section 19(4) of the 1992 Act (reduced rate election for married women) is in force.

**Credits for an additional period in respect of entitlement to carer’s allowance and relevant benefits**

- 38.**—(1) A person is to be credited with a Class 3 contribution for a period of 12 weeks—
- (a) prior to the date on which that person becomes entitled to carer’s allowance by virtue of subsection (1) of section 70 of the 1992 Act;
  - (b) subject to paragraph (2), following the end of the week in which that person ceases to be entitled to carer’s allowance by virtue of that subsection;
  - (c) following the end of a week in which regulation 37(2)(a) ceases to be satisfied.
- (2) A person is not entitled to be credited with a Class 3 contribution under paragraph (1)(b) in a week in respect of which that person is entitled under regulation 7A of the 1975 Regulations to be credited with contributions by virtue of being entitled to an allowance under section 70 of the 1992 Act.

**Time limit for making an application under regulation 34(1)(b), 35, 36 or 37**

- 39.** An application must be received—
- (a) where the application is under regulation 34(1)(b), 36 or 37—
    - (i) before the end of the year following that in which a week, which is the subject of the application, falls, or
    - (ii) within such further time as the Secretary of State or the Commissioners for Her Majesty’s Revenue and Customs, as the case may be, consider reasonable in the circumstances, or
  - (b) where the application is under regulation 35, after the end of the year in which a week, which is the subject of the application, falls.]

Signed by authority of the Secretary of State for Work and Pensions.

Department for Work and Pensions

*Steve Webb*  
Minister of State,

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## SCHEDULE

Regulation 14

## Amendments to other legislation – sharing of state pension rights

**Amendment of the Sharing of State Scheme Rights (Provision of Information and Valuation) (No.2) Regulations 2000**

1.—(1) The Sharing of State Scheme Rights (Provision of Information and Valuation) (No.2) Regulations 2000 <sup>M25</sup> are amended in accordance with the following sub-paragraphs.

(2) In regulations 1(2), 2 and 3 <sup>M26</sup> in each reference to “shareable state scheme rights”, including in the heading of regulation 3, insert “ old ” after “shareable”.

(3) In regulation 1(2) (citation, commencement and interpretation) after the definition of “the 1999 Act”, insert—

““new state scheme pension credit” is a credit under section 49A(2)(b) of the 1999 Act <sup>M27</sup>;

“old state scheme pension credit” is a credit under section 49(1)(b) of the 1999 Act <sup>M28</sup>;

“relevant date” has the meaning given by section 10(3) of the Family Law (Scotland) Act 1985 <sup>M29</sup>;

“shareable new state scheme rights” has the meaning given by section 47(3) of the 1999 Act <sup>M30</sup>.”

(4) In regulation 2(3) (basic information about the sharing of state scheme rights and divorce or the dissolution of a civil partnership)—

(a) in sub-paragraph (a), for “state scheme rights which are shareable” substitute “ shareable old state scheme rights ”;

(b) in sub-paragraph (c), after “additional pension” insert “ because of an old state scheme pension credit ”.

(5) In regulation 4 (calculation and verification of cash equivalents for the purposes of the creation of state scheme pension debits and credits)—

(a) in paragraph (a), after “credits” insert “ : transferor in old state pension system or pension sharing activated before 6th April 2016 ” <sup>M31</sup> ;

(b) in paragraph (c), after “pension” insert “ because of an old state scheme pension credit ” <sup>M32</sup> ;

(c) after paragraph (d), insert—

“(e) paragraph 2 of Schedule 8 to the Pensions Act 2014; and

(f) paragraph 2 of Schedule 10 to the Pensions Act 2014.”;

(d) after “cash equivalents”, insert “ or notional rates ”.

(6) Regulation 1 becomes Part 1 of the Sharing of State Scheme Rights (Provision of Information and Valuation) (No.2) Regulations 2000.

(7) The title of that Part 1 is “General”.

(8) Regulations 2 to 5 become Part 2 of the Sharing of State Scheme Rights (Provision of Information and Valuation) (No.2) Regulations 2000.

(9) The title of that Part 2 is “Old State Scheme Pension Credits and Debits”.

(10) After Part 2, insert—

## “PART 3

### New State Scheme Pension Credits and Debits

#### **Basic information about the sharing of state scheme rights and divorce or the dissolution of a civil partnership**

6.—(1) The requirements imposed on the Secretary of State for the purposes of section 23(1)(a) of the 1999 Act (supply of pension information in connection with divorce etc.) are that he shall furnish—

- (a) the information specified in paragraphs (2) to (6)—
  - (i) to a person who has shareable new state scheme rights on request from that person; or
  - (ii) to the court, pursuant to an order of the court; or
- (b) the information specified in paragraph (6) to the spouse or civil partner of a person who has shareable new state scheme rights, on request from that spouse or civil partner.

(2) Except where paragraphs (3) or (4) apply, the information specified in this paragraph is a valuation of the person's shareable new state scheme rights as at the date of receipt of a request for such a valuation.

(3) The information specified in this paragraph is a valuation of the person's shareable new state scheme rights as at the relevant date, where the relevant date is on or after 6th April 2016.

(4) The information specified in this paragraph is a valuation of the person's previous shareable old state scheme rights as at the relevant date, where the relevant date is before 6th April 2016 and the request for a valuation is received on or after 6th April 2016.

(5) The information specified in this paragraph is the amount of the person's former entitlement to a category A retirement pension by virtue of section 44(3)(b) of the 1992 Act as at the relevant date and immediately before 6th April 2016, where the relevant date is before 6th April 2016 and the request for information about that amount is received on or after 6th April 2016.

(6) The information in this paragraph is an explanation of—

- (a) the shareable new state scheme rights;
- (b) how a pension sharing order or provision will affect a person's shareable new state scheme rights;
- (c) how a pension sharing order or provision in respect of a person's shareable new state scheme rights will result in the spouse or civil partner of the person who has shareable new state scheme rights becoming entitled to an amount because of a new state scheme pension credit; and
- (d) how any amount in sub-paragraph (c) differs from an amount of shared additional pension because of an old state scheme pension credit.

(7) The Secretary of State shall furnish the information specified in paragraphs (2) to (6) to the court, or, as the case may be, to the person who has shareable new state scheme rights within—

- (a) three months beginning with the date the Secretary of State receives the request or, as the case may be, the order for the provision of that information;
- (b) six weeks beginning with the date the Secretary of State receives the request or, as the case may be, the order for the provision of the information, if the person who has shareable new state scheme rights has notified the Secretary of State by the date

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the Secretary of State receives the request or order that the information is needed in connection with proceedings commenced under any of the provisions referred to in section 23(1)(a) of the 1999 Act; or

- (c) such shorter period specified by the court in an order requiring the Secretary of State to provide a valuation in accordance with paragraphs (2), (3) or (4) or an amount in accordance with paragraph (5).

(8) Where—

- (a) the request made by the person with shareable new state scheme rights for, or the court order requiring, the provision of information does not include a request or, as the case may be, an order for a valuation under paragraphs (2), (3) or (4) or an amount under paragraph (5); or
- (b) the spouse or civil partner of the person with shareable new state scheme rights requests the information specified in paragraph (6),

the Secretary of State shall furnish that information to the person who has shareable new state scheme rights, that person's spouse or civil partner, or the court, as the case may be, within one month beginning with the date the Secretary of State receives the request or the court order for the provision of that information.

#### **Information about the sharing of state scheme rights and divorce or dissolution of a civil partnership: valuation of shareable old or new state scheme rights**

7. Where an application for financial relief or financial provision under any of the provisions referred to in section 23(1)(a) of the 1999 Act has been made or is in contemplation, the valuation of shareable old or new state scheme rights shall be calculated and verified for the purposes of regulation 6(2) to (4) of these Regulations in accordance with guidance from time to time prepared by the Government Actuary.”.

#### **Marginal Citations**

**M25** [S.I. 2000/2914](#).

**M26** [Regulations 2](#) and [3](#) were amended by [S.I. 2005/2877](#).

**M27** [Section 49A](#) was inserted by paragraph 13 of Schedule 11 to the Pensions Act 2014.

**M28** [Section 49\(1\)](#) was substituted by paragraph 12 of Schedule 11 to the Pensions Act 2014.

**M29** [1985 c.37](#). Section 10(3) was amended by paragraph 16(4)(a) and (b) of Schedule 28 to the Civil Partnership Act 2004.

**M30** [Section 47\(3\)](#) was inserted by paragraph 10(4) of Schedule 11 to the Pensions Act 2014.

**M31** The heading to section 49 of the Welfare Reform and Pensions Act 1999 was amended by paragraph 12(7) of Schedule 11 to the Pensions Act 2014.

**M32** The heading to section 55A of the Welfare Reform and Pensions Act 1999 was amended by paragraph 5(5) of Schedule 11 to the Pensions Act 2014.

#### **Amendment of the Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000**

2.—(1) The Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 <sup>M33</sup> are amended in accordance with the following sub-paragraphs.

(2) In regulation 1(2) (citation, commencement and interpretation)—

- (a) after the definition of “the 1999 Act”, insert—

““excess amount” has the meaning given by section 47(4) of the 1999 Act;”;

- (b) after the definition of “qualifying arrangement”, insert—

““shareable old state scheme rights” has the meaning given by section 47(2) of the 1999 Act;”;

(c) in the definition of “transferee” and “transferor”, after “49(6)” insert “ or 49A(5) ”.

(3) In regulation 4(a)(v) (prescribed form of provision corresponding to provision in a pension sharing order under the 1985 Act)—

(a) before “details”, insert “ where section 49 of the 1999 Act applies, ”;

(b) for “relevant”, substitute “ shareable old ”;

(c) after “that day;”, insert “ or ”.

(4) After regulation 4(a)(v), insert—

“(vi) where section 49A of the 1999 Act applies, details of the specified percentage of the excess amount of the transferor's state pension under section 4 of the Pensions Act 2014 as at the transfer day;”.

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**Marginal Citations**

**M33** [S.I. 2000/1051](#).

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## EXPLANATORY NOTE

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

The Pensions Act 2014 (c.19) (“the 2014 Act”) creates a new state pension for people reaching pensionable age on or after 6th April 2016 (see Part 1 of that Act). It replaces the existing state pension. These Regulations set out some of the detailed rules relating to the new state pension. Part 2 contains provisions about prisoners. For these purposes, prisoners are people who are imprisoned, detained in legal custody or unlawfully at large. They can be a prisoner in Great Britain or abroad. These prisoners may not be entitled to be paid any state pension under the 2014 Act.

Regulation 2 lists the prisoners who are not entitled to be paid a state pension. It provides that some prisoners abroad can be paid their state pension if they would not have been imprisoned in Great Britain. Regulation 3 provides that prisoners on remand are not to be paid a state pension if they later receive certain types of sentence.

Part 3 contains provisions about deferral: where a person defers their new state pension and where a person inherits state pension after their deceased spouse or civil partner had deferred their old state pension. A person may defer by choosing not to claim their state pension when they are first entitled to it or by suspending receipt of their state pension after they first claim it. If they defer, they may receive more state pension when they later choose to claim it. Part 3 sets out a number of rules relating to how such deferrals work.

Regulation 4 sets out the period within which a person can choose a lump sum or periodical payment in respect of their deceased spouse or civil partner's deferred old state pension. It also allows a person to make a late choice (section 8 of the 2014 Act sets out what happens if the person does not make a choice with the period). Regulation 5 provides the manner in which such a choice must be made. Regulation 6 allows the person to alter their choice in certain circumstances. Regulation 7 sets out the manner in which a person can suspend their new state pension after it

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has been claimed. Regulation 8 specifies the date from which any suspension of state pension begins. Regulation 9 allows a person to cancel the suspension of their state pension by making a claim for it. Regulation 10 determines the amount of extra state pension a person who has deferred their state pension may be entitled to. Regulation 11 lists the days which are not included when calculating the length of time a person has deferred their state pension. Regulation 12 provides that some parts of weeks are to be treated as full weeks for the purposes of determining the period of deferral.

Part 4 specifies that the minimum number of qualifying years for the purposes of entitlement to state pension at the reduced and transitional rates is ten. State pension is payable at either a full, reduced or transitional rate. The reduced rate of state pension is payable where a person has reached pensionable age and has at least the specified minimum number of qualifying years. The transitional rate of state pension is payable where a person has reached pensionable age and has at least the specified minimum number of qualifying years, at least one of which is a “pre-commencement qualifying year” as defined in section 4(4) of the 2014 Act.

Part 5 and the Schedule contain provisions about pension sharing on divorce or dissolution of a civil partnership. They amend the Sharing of State Scheme Rights (Provision of Information and Valuation) (No.2) Regulations 2000 (“the No.2 Regulations”) (S.I. 2000/2914) and the Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 (“the Scotland Regulations”) (S.I. 2000/1051). Those Regulations set out the information the Secretary of State must supply to a person or the court in relation to the sharing of rights to an old state pension on divorce or dissolution of a civil partnership and set out the information that must be contained in an agreement entered into as an alternative to pension-sharing through the courts. The amendments are made in consequence of changes made by sections 13 to 15 of, and Schedules 8 to 11 to, the 2014 Act. Those provisions of the 2014 Act allow for the continuation of state pension sharing on divorce for people who reach state pension age on or after 6th April 2016 and are entitled to the new state pension at the transitional rate. The amendments distinguish rights to an old state pension which are shareable from rights to a new state pension which are shareable.

Paragraph 1(2) to (5) of the Schedule to these Regulations amends the No.2 Regulations. The amendments insert references to “new state scheme pension credit”, “shareable new state scheme rights” and other phrases relating to sharing new state pension. Paragraph 1(10) inserts a new Part which sets out the information the Secretary of State must supply to a person or the court in relation to the sharing of new state scheme rights. It also provides that the valuation of shareable old or new state scheme rights must be calculated and verified in accordance with guidance prepared by the Government Actuary. Paragraph 2 amends the Scotland Regulations in relation to the sharing of state scheme rights and agreements called qualifying agreements (or minutes of agreement) under the Family Law (Scotland) Act 1985 (c.37) which correspond to the provision which may be made in a pension sharing order. It also sets out the information that must be contained in certain qualifying agreements dealing with shareable new state scheme rights.

A full impact assessment has not been published for these Regulations as they have no impact on the private sector or civil society organisations. An assessment has been made of the impact of the introduction of the new state pension. Copies of that impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1 9NA or from the DWP website: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311316/pensions-act-ia-annex-a-single-tier-state-pension.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311316/pensions-act-ia-annex-a-single-tier-state-pension.pdf). (Annex A contains the assessment for new state pension.)

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