

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part II: Pensions

Commentary on Sections

Chapter I: State Pensions

State second pension

Section 30: Earnings from which pension is derived

367. *Subsection (1)* inserts a new subsection (2A) into section 22 of the Social Security Contributions and Benefits Act 1992* (the “Contributions and Benefits Act”) which sets out the earnings on which Additional Pension (in the State Earnings-Related Pension Scheme or SERPS) is calculated. Under State Second Pension, Additional Pension is to be calculated on those earnings on which Class 1 employee National Insurance contributions have been paid or treated as paid.
368. From April 2000 employees earning below a new Primary Threshold no longer pay National Insurance contributions. Those employees with earnings between the prevailing Lower Earnings Limit (LEL) (£66 a week in 1999/00) and the new Primary Threshold* will be treated as if they had paid National Insurance contributions on those earnings. Provided their annual earnings are at least 52 times the weekly LEL (£3,432 in 1999/00), the year will qualify for contributory benefits such as basic Retirement Pension. If their earnings exceed this amount, employees will accrue entitlement to Additional Pension on the amount by which their earnings exceed 52 times the LEL.
369. The self-employed do not accrue entitlement to Additional Pension. Their flat-rate Class 2 National Insurance contributions entitle them to flat-rate contributory benefits, such as basic Retirement Pension. However, someone may be both an employed earner and a self-employed earner in the course of a year. In such a case, if they are a member of SERPS as an employed earner, their Class 2 contributions are currently taken into account when calculating the amount of surplus Class 1 contributions on which their entitlement to Additional Pension is based. But if they are contracted-out of SERPS into an occupational pension or personal pension scheme, they receive a rebate of National Insurance contributions which is based solely on their Class 1 employee contributions. This section has the effect of treating members of State Second Pension in a similar way as those contracted-out. Only Class 1 earnings will be taken into account when calculating the amount of their State Second Pension entitlement.

Subsection (2)(a) inserts new paragraph (za) into section 44(6) which sets out how earnings factors are to be determined for State Second Pension purposes. For State Second Pension the earnings factor will be the total of the earnings on which Class 1 employee National Insurance contributions have been paid or treated as paid, unless the person concerned is treated as having an earnings factor for one of the reasons set

out in section 44A of the Contributions and Benefits Act (inserted by subsection (3), see below).

Subsection 2(b) amends section 44(6)(a) to limit the current method of determining earnings factors for Additional Pension under SERPS to the period before “the first appointed year”, which is the year from which State Second Pension will take effect.

370. *Subsection (3)* inserts new section 44A into the Contributions and Benefits Act.

New section 44A: Deemed earnings factors

371. *New section 44A(1)* provides for a person to be deemed to have an earnings factor equal to the Low Earnings Threshold when calculating entitlement to Additional Pension under the State Second Pension if they qualify in any of the ways set out in *new section 44A(2)*. In 1999/00 terms the Low Earnings Threshold will be £9,500 (see *new section 44A(5)* below).

New section 44A(2)(a) provides for a person to be treated as if they had an earnings factor of £9,500 in a qualifying year when they had earnings at or above the level needed to make the year a qualifying one for basic pension (earnings at or above the annual LEL of £3,432 in 1999/00, which is 52 times the weekly LEL of £66 a week in 1999/00) but less than the Low Earnings Threshold (£9,500).

New section 44A(2)(b) provides for a person to be treated as if they had an earnings factor of £9,500 in a qualifying year if Invalid Care Allowance was paid to them throughout the year. A person can also qualify if they would have been entitled to receive Invalid Care Allowance were it not for the fact that they received another (higher) benefit, such as widows’ benefits* or Incapacity Benefit.

New section 44A(2)(c) provides for a person with no earnings, or earnings below the LEL, to be treated as if they had an earnings factor of £9,500 in a qualifying year when they were paid Child Benefit for a child under 6, or if they satisfied certain other conditions to be specified in regulations. It is intended that these other conditions will be the same as those specified in regulations 2(2)(b), 3 and 4 of the Social Security Pensions (Home Responsibilities) Regulations 1994 (S.I. 1994/704). These regulations provide for a person to be treated as being precluded from regular employment by responsibilities at home if:

- (i) they receive Income Support*, because they are caring for a sick or disabled person (and therefore are not required to be available for work); or
- (ii) they spend at least 35 hours a week caring for a person who receives Attendance Allowance* or the care component in Disability Living Allowance* at the middle or highest rate.

New section 44A(2)(d) provides for a person to be treated as if they had an earnings factor of £9,500 in a qualifying year if long-term Incapacity Benefit was paid to them throughout the tax year. A person can also qualify if they would have been entitled to receive long-term Incapacity Benefit but failed to satisfy the necessary contribution conditions for that benefit, or received another (higher) benefit, such as widows’ benefits*, or received an occupational or personal pension which reduced the amount of Incapacity Benefit to nil. Such a person would also need to satisfy the labour market attachment test set out in *new section 44A(3) and (4)* below.

372. *New section 44A(3) and (4)* detail the labour market attachment conditions for those who could qualify for State Second Pension on grounds of entitlement to long-term Incapacity Benefit. Such a person must have paid, or be treated as having paid, Class 1 employee National Insurance contributions for at least one tenth of their working life since 1978, when Additional Pension was introduced. (A full working life for state pension purposes is counted from the start of the tax year in which a person reaches 16 to the end of the tax year before the one in which they reach state pension age).

For instance, someone reaching state pension age in 2005/06 would have a working life of 27 years and would need to have worked and to have paid National Insurance contributions for 3 years ($1/10^{\text{th}}$ of 27 years rounded to the nearest whole year) in order to receive entitlement to State Second Pension on grounds of incapacity for work. Anyone reaching state pension age after April 2024 would need 5 years (working life of 46 years, up to a maximum working life of 49 years, $1/10^{\text{th}}$ rounded to the nearest whole year being 5 years). National Insurance credits* will not satisfy this condition. However, any year in which the person has worked but not actually paid Class 1 National Insurance contributions because their earnings, although above the annual LEL, were below the new Primary Threshold on which such contributions are paid, will be treated as if they had paid contributions on those earnings.

373. Any year when the disabled person has been a carer and qualifies for State Second Pension by virtue of subsections (2)(b) or (c) above will be excluded from the number of years in the working life when calculating whether they have met the labour market attachment condition. For instance, someone retiring on 6 April 2024 would have a working life of 46 years and would need 5 years ($1/10^{\text{th}}$ of 46 years rounded to nearest whole number) in which they had worked and paid Class 1 National Insurance contributions. But if they had received Child Benefit for a child under 6, and were treated as precluded from regular employment by responsibilities at home for those 5 years whilst the child was under that age, or if they were entitled to Invalid Care Allowance for 5 years, their working life would be reduced to 41 years and they will only need 4 years ($1/10^{\text{th}}$ of 41 years rounded to nearest whole number).
374. *New section 44A(5)* sets the Low Earnings Threshold in State Second Pension at £9,500. This is subject to new section 148A of the Social Security Administration Act 1992* (the “Administration Act”) which provides for the Low Earnings Threshold to be increased in line with rises in national average earnings (see the note to subsection (1) of section 33 below).
375. *New section 44A(6)* defines “occupational pension scheme” and “personal pension scheme” as used in the inserted new section 44A(2)(d)(ii).
376. *Subsection (4)* of section 30 provides for someone to be treated as if they had an earnings factor of £9,500 in a qualifying year if they are paid Severe Disablement Allowance (SDA) throughout the year and they meet the labour market attachment test set out in new section 44A(3) and (4). SDA is being withdrawn for new claimants from April 2001 but those already receiving the benefit will continue to do so.

Section 31: Calculation

377. *Subsections (1) and (2)* amend subsection (2) of, and insert subsection (3A) into, section 45 of the Contributions and Benefits Act, which sets out the way Additional Pension is calculated. They provide for Additional Pension to be the sum of entitlement accrued under SERPS and entitlement accrued under State Second Pension.
378. *Subsection (3)* introduces Schedule 4 which sets out a new Schedule 4A which is to be inserted into the Contributions and Benefits Act. It sets out the way in which State Second Pension is to be calculated for those contracted-in and those contracted-out.

New Schedule 4A: Additional pension

379. This Schedule sets out the way in which Additional Pension will be calculated under State Second Pension (“the final amount”). There are four Parts to the Schedule:
- Part I sets out the calculation of the final amount;
 - Part II sets out the calculation of the yearly amount for someone who is not contracted-out for any part of the year;

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

- Part III sets out the calculation of the yearly amount (if any) for someone in contracted-out employment for the whole of the year;
- Part IV provides for regulations to be made in particular to provide for the calculations where someone moves between contracted-in and contracted-out employment in the course of a year, and between different types of contracted-out provision within a year.

Part I: The amount

Paragraph 1(1) provides for the amount of Additional Pension under State Second Pension to be calculated by adding together the amounts (if any) for each year since the introduction of State Second Pension, and then dividing by the number of relevant years (that is, the number of years in the working life since 1978, when Additional Pension was introduced).

Sub-paragraphs (2) to (7) set out the method of calculating the number of years in the working life to be used in the calculation of any Additional Pension payable under State Second Pension to widows and widowers, based on their late spouse's contributions. This method is the same as that used under SERPS for those widowed from 6 April 1999 onwards.

Sub-paragraph (8) defines "relevant year" as the number of years in the working life since 1978 by reference to section 44(7) of the Contributions and Benefits Act.

Part II: Surplus earnings factors

Paragraph 2(1) provides for Part II of the Schedule to apply to any year in which a person has a surplus in his earnings factor for the year. There is a surplus where the earnings factor for the year exceeds the Qualifying Earnings Factor (QEF), which is 52 times the weekly Lower Earnings Limit for the year.

Sub-paragraphs (2), (3) and (4) set out how State Second Pension will be calculated for someone who is not contracted-out of the state scheme at any time during the year in question.

First, the surplus earnings factors for the years in question are to be divided into the bands shown in the appropriate table in sub-paragraph (3) or (4). Secondly, the surpluses in each of the bands are to be revalued for each year to ensure that they maintain their value in earnings terms. This revaluation is in line with the increase in national average earnings up to the year before the year in which state pension age is reached (under section 148 of the Administration Act). Thirdly, the revalued surpluses in each band are to be multiplied by the relevant percentage in the tables in sub-paragraphs (3) or (4). Finally, the totals for each band are added together to give the total for the year.

This calculation differs from that used for SERPS by the application of different accrual rates to the surplus in the earnings factor falling within different bands of surplus earnings factors. Under SERPS anyone retiring from 6 April 2009 onwards (Table 2) would have had one accrual rate of 20% on their surplus earnings factor. Under State Second Pension the same person will have an accrual rate of 40% on the surplus in their earnings factor falling within Band 1. Band 1 covers surpluses in the earnings factor which correspond to the amount of earnings between the Qualifying Earnings Factor and the Low Earnings Threshold of £9,500. This band will include those low earners, carers and disabled people with broken work records who are treated as if they had an earnings factor of £9,500 in a qualifying year under section 44A(2) of the Contributions and Benefits Act as inserted by subsection (3) of section 30 above.

Surpluses in a person's earnings factor falling within Band 2 will have an accrual rate of 10%. Band 2 covers twice the amount of surplus falling within Band 1, rounded to the nearest £100. So, if the Qualifying Earnings Factor is £3,432 (52 times the 1999/00 weekly Lower Earnings Limit) and the Low Earnings Threshold is £9,500, the amount of surplus falling within Band 1 will be £6,068. This means that the amount of surplus

falling within Band 2 will be £12,136 and the upper limit of Band 2 will be £9,500 + £12,136, rounded to the nearest £100, which is £21,600. Someone earning £21,600 will receive the same amount from State Second Pension as they would have done under SERPS, because the higher accrual rate on the surplus in their earnings factor falling within Band 1 will be entirely offset by the lower accrual rate on the surplus in their earnings factor falling within Band 2. Those earning less than £21,600 will receive more from State Second Pension than they would have done under SERPS.

Surpluses in a person's earnings factor falling within Band 3 will have an accrual rate of 20%, that is the same as under SERPS. Band 3 covers surpluses in the earnings factor which correspond to earnings which are above the surplus falling within Band 2 but not exceeding the Upper Earnings Limit.

Someone reaching state pension age before 6 April 2009 would have had an accrual rate higher than 20% under SERPS. This is because of the changes made in the Social Security Act 1986, which reduced the accrual rate in SERPS in stages from 25% to 20% for those retiring between 2000/01 and 2009/10 (in respect of accruals from 1988/89). There will be similar transitional arrangements in the State Second Pension and Table 1 shows the accrual rate for those retiring before 6 April 2009. Someone reaching state pension age before then will have accrual rates which give an extra 1% on the surplus in their earnings factor falling within Band 1, 0.25% on the surplus in their earnings factor falling within Band 2, and 0.5% on the surplus in their earnings factor falling within Band 3 for each year by which the year in which they reach state pension age is earlier than 2009/10. For instance, someone reaching state pension age in the year beginning 6 April 2008 would have accrual rates of: 41% on the surplus in their earnings factor falling within Band 1 (twice what it would have been under SERPS); 10.25% on any surplus falling within Band 2 (half what it would have been under SERPS); and 20.5% on any surplus falling within Band 3 (the same as it would have been under SERPS).

Sub-paragraph (5) will enable regulations to be made to bring in Stage 2 of the State Second Pension for people with a significant part of their working life ahead of them. All those coming within the scope of Stage 2 will earn entitlement to State Second Pension as if they had an earnings factor of £9,500, regardless of their actual earnings. This means that low earners, carers and long-term disabled people with broken work records will continue to be deemed to have an earnings factor of £9,500. However, those earning more than £9,500 will only earn entitlement to State Second Pension on the surplus in their earnings factor falling within Band 1, that is the amount between the prevailing annual Lower Earnings Limit (the Qualifying Earnings Factor) and the Low Earnings Threshold (the deemed earnings factor under new section 44A, which is £9,500 or the prevailing level at the time Stage 2 is introduced). This will only apply to entitlement accrued after the "second appointed year", which will be the year in which Stage 2 is introduced. Any entitlement accrued under Stage 1 will be preserved. It is intended that Stage 2 will not be brought in until stakeholder pension schemes have established themselves.

Sub-paragraphs (6), (7) and (8) define "the value of N", "LET", "QEF" and "2QEF", and also the "final relevant year".

Part III: Contracted-out employment etc

Paragraph 3: Introduction

380. *Paragraph 3* provides for Part III, and not Part II, of the Schedule to apply to any year throughout which the person is contracted-out of the state scheme and in an occupational or personal pension scheme.

Paragraph 4: The amount

381. This paragraph provides for calculation of the amount for that year (for the purposes of the calculation in paragraph 1) under State Second Pension for someone in contracted-

out employment (amount C) to be the amount of additional pension they would have received if they had not been contracted-out of State Second Pension (amount A) less the amount of pension they are deemed to receive in respect of their contracted-out National Insurance rebate (amount B).

Paragraph 5: Amount A

382. Amount A is the amount a person would have received from State Second Pension if they had not been contracted-out. The calculation is the same as that in Part II with one exception - there is no provision to move to a flat-rate scheme as in the second stage of State Second Pension. This is because those who are contracted-out will continue to receive earnings-related rebates, and their top-up (if any) will be based on the earnings-related first stage of State Second Pension.

Paragraph 6: Amount B (first case)

383. Amount B (first case) applies to those who are contracted-out by an occupational salary-related, or money purchase scheme, including an employer's occupational-based stakeholder pension scheme. It is the amount of contracted-out second pension which a person is treated as receiving in respect of their National Insurance rebate.
384. A person in a contracted-out occupational scheme receives a rebate which is calculated to reflect the cost of providing benefits of an actuarial value equivalent to that of the state benefit given up. Currently, under SERPS, the benefit given up is 20% of their lifetime earnings for someone who reaches state pension age on or after 6 April 2009. (Those reaching state pension age before 6 April 2009 have a higher accrual rate as described above, which is reflected in the amount of their rebate.)
385. Under State Second Pension a person in a contracted-out occupational scheme will continue to receive a rebate calculated on this basis.
386. Therefore, amount B (the amount to be deducted from what the person would have got if they had not been contracted-out of the state scheme) is 20% (or 20+N% for someone retiring before 6 April 2009) of the "assumed surplus" in their earnings factor for the year. The "assumed surplus" is defined in *sub-paragraph (2)* of paragraph 8 as the surplus there would have been if the person had not been contracted-out. In effect, this is their earnings between the Lower and Upper Earnings Limits for the year. The assumed surplus is then revalued in the same way as the surplus in amount A, to ensure that the amount B for each year also maintains its value relative to average earnings up to state pension age.
387. As *paragraph 8(3)* makes clear, there is to be no boost to the amount of the Low Earnings Threshold when calculating amount B. So where actual earnings are between the annual Lower Earnings Limit and the Low Earnings Threshold, the rebate will be calculated on the basis of the actual earnings.
388. For all those earning less than the upper limit of Band 2 (£21,600 in 1999/00 terms) there will be a surplus when amount B (first case) is deducted from amount A. This is because State Second Pension is more generous than SERPS for those earning less than the upper limit of Band 2. Those earning below the Low Earnings Threshold benefit from the boost to that threshold, and moderate earners continue to benefit from the increased accrual rate on their Band 1 earnings until earnings reach the upper limit of Band 2. The surplus of amount A over amount B represents the extra a person would have received if they had remained in an earnings-related State Second Pension scheme. The surplus will be paid as a top-up to the state pension when the person reaches state pension age.

Paragraph 7: Amount B (second case)

389. Amount B (second case) applies to those who are contracted-out by an appropriate personal pension, including a non-occupational stakeholder pension scheme. It is the amount of contracted-out second pension which a person is treated as receiving in respect of their National Insurance rebate.
390. For those contracted-out into appropriate personal pension schemes, including stakeholder personal pension schemes, the amount of rebate paid to their scheme will be increased when State Second Pension is introduced to reflect the 3 part accrual rate in State Second Pension itself. This is reflected in Table 5 (for those reaching state pension age before 6 April 2009) and in Table 6 (for those reaching state pension age on or after 6 April 2009).
391. This means that for all those earning at or above the Low Earnings Threshold, amount B (the revalued assumed surplus) will be the same as amount A (the revalued surplus calculated as if the person had been contracted-in). Where earnings are above the annual Lower Earnings Limit, but below the Low Earnings Threshold, for the year there will be a surplus when amount B (second case) is deducted from amount A. This surplus represents the extra a person would have received in State Second Pension from the low earner's boost. The surplus will be paid as a top-up to the state pension when the person reaches state pension age.

Paragraph 8: Interpretation

392. This paragraph defines “salary related contracted-out scheme”, “money purchase contracted-out scheme”, “appropriate personal pension scheme”, “assumed surplus”, “N”, “LET”, “QEF”, “2QEF” and “final relevant year”.

Part IV: Other cases

393. **Paragraph 9** provides for regulations to be made for calculating the amount of any State Second Pension in a year for those cases not covered by Parts II or III. In the main these will be cases where the person's circumstances change during the course of the year. For instance, a person may move between contracted-in and contracted-out employment during the year. Or they may move between different categories of contracted-out employment, such as from employment with a personal pension scheme to one with an occupational pension scheme.
394. In such cases it will be necessary to apportion the amounts calculated according to amounts of employment in each circumstance. The guiding principle for these regulations will be to provide a top-up from the state scheme if the person contracted-out would have received more from State Second Pension rebate than the amount they are treated as receiving in respect of their National Insurance rebate.
395. **Paragraph 9** also provides for regulations to be made in “such other cases as the Secretary of State thinks fit”. This provision will be used to prescribe how the provisions regarding the Contribution Equivalent Premium and the restoration of state scheme rights will operate under, and interact with, the State Second Pension provisions. These are the provisions which deal with the necessary calculations for those who are contracted back into the State scheme because, for instance, their contracted-out employment terminates after less than 2 years. As above, this power is to be used to ensure that no one loses out because they had a period in contracted-out, rather than contracted-in, employment.

Section 32: Calculation of Category B retirement pension

396. *Subsection (1)* inserts new section 46(3) in the Contributions and Benefits Act. It corrects the method of calculating SERPS Additional Pension which someone, who (at some point in the past) had received Widowed Parent's Allowance or Bereavement Allowance, can inherit from their deceased spouse when they reach state pension

age. The correction is necessary to restore the policy intention that no-one will receive less Additional Pension with their Category B pension (based on their late spouse's contributions) than they would have done before the introduction of the new Bereavement Benefits, which are due to come into effect in April 2001. There is a similar provision for State Second Pension in paragraph 1(5) – (7) of new Schedule 4A of the Contributions and Benefits Act as inserted by Schedule 4 of this Act.

397. *Subsections (2) and (3)* make consequential amendments to section 48BB(5) of the Contributions and Benefits Act and paragraph 5 of Schedule 8 to the Welfare Reform and Pensions Act 1999.

Section 33: Revaluation

398. *Subsection (1)* inserts new section 148A after section 148 of the Administration Act.

New section 148A: Revaluation of low earnings threshold

399. *New section 148A(1) to (8)* provides for the Secretary of State to make orders to increase the amount of the Low Earnings Threshold. The figure of £9,500 is in 1999/00 terms. It will be increased to take account of rises in national average earnings both before the beginning of the first appointed year and annually thereafter. This will be done by making an order in the year before State Second Pension is introduced which takes account of increases in average earnings. In order to ensure that full years are taken into account the increase will be measured over the period from 1 October 1998 to 30 September in the year before State Second Pension is introduced. This will allow time for the order to be made to take effect from the start of the first appointed year. Subsequently, orders will be made each year to take account of increases in national average earnings. The review period will normally begin from the end of the previous period unless a change of circumstances requires a different period to be used. In all cases amounts are to be rounded to the nearest £100.
400. *Subsection (2)* of section 32 sets out how section 148 of the Administration Act is to be applied to the revaluation of surpluses in a person's earnings factors under State Second Pension. Section 148 of the Administration Act provides for earnings factors to be revalued in line with increases in national average earnings. This is done to ensure that the value of a person's earnings over their working life is maintained in earnings terms up to state pension age when the amount of the Additional Pension is calculated. An annual order under section 148 of the Administration Act sets out the percentages to be used for this revaluation. In State Second Pension these percentages will be applied to the surpluses in a person's earnings factors falling into each of the three Bands as set out in the new Schedule 4A to the Contributions and Benefits Act.
401. *Subsections (3) and (4)* clarify how section 148 of the Administration Act applies where the surplus in earnings factors is to be revalued for SERPS. The way in which earnings factors are revalued for calculating the amount of Additional Pension (where the date of death of a spouse, or of reaching state pension age falls on or after 6 April 2000) was changed by section 128 of the Pensions Act 1995 which inserted section 44(5A) into the Contributions and Benefits Act. The purpose of this change was to require the surpluses in a person's earnings factors to be revalued rather than the earnings factors themselves. Subsections (3) and (4) make clear that where there is a requirement under section 44(5A) of the Contributions and Benefits Act to revalue the surplus in a person's earnings factors in order to calculate the amount of their Additional Pension under section 45 of that Act, there is no requirement also to revalue the earnings factors themselves.

Section 34: Report of Government Actuary: rebates etc.

402. This section amends the sections in the Pension Schemes Act dealing with the Government Actuary's report on National Insurance Contribution rebates and reduced contribution rates. The Government Actuary sets out what, in his opinion, is the cost

of providing benefits of an actuarial value equivalent to that of the State benefits given up. The Report is used when the Secretary of State decides what is the appropriate level of rebate or rate reduction. Unlike SERPS, not all of the State Second Pension will necessarily be given up, and the rebate calculations and the reduced contribution rates calculation need to reflect this fact. Section 34 therefore amends the sections to include a reference to the fact that, in some cases, only part of the State benefit will be given up.

Section 35: Supplementary

403. *Subsection (2)* extends to State Second Pension the provision in section 21(5A) of the Contributions and Benefits Act whereby National Insurance contributions paid or treated as paid have effect as if they had been paid on the whole of earnings up to the Upper Earnings Limit.
404. *Subsections (3) and (4)* insert references to the new Schedule 4A in sections 39 and 39C of the Contributions and Benefits Act, which concern the rate of widowed mother's allowance, widow's pension, widowed parent's allowance and bereavement allowance.
405. *Subsections (5), (6) and (8)* clarify the provisions in sections 44(5A) and 45 of the Contributions and Benefits Act on calculating Additional Pension entitlement, where the date of death or reaching state pension age falls on or after 6 April 2000. The calculation is to be based on the "adjusted", that is, revalued, amount of the surplus in the earnings factor. This has an effect on the calculations under new Schedule 4A. (See also the note to subsections (3) and (4) of section 33).
406. *Subsections (9), (10), (11), (12) and (13)* insert references to the new Schedule 4A in sections 48A, 48B, 48BB, 48C and 51 of the Contributions and Benefits Act, which deal with Category B retirement pensions.
407. *Subsection (14)* inserts definitions of "first appointed year" and "second appointed year" in section 122(1) of the Contributions and Benefits Act. State Second Pension is to begin from a date ("the first appointed year") to be appointed by order. The precise date will depend upon the necessary operational systems to deliver State Second Pension being in place. The earliest date for implementation will be April 2002. Additional Pension is accrued up to and including the year before the year in which state pension age is reached. So those reaching state pension age in the year beginning 6 April 2003 will be the first to have accrued any entitlement to State Second Pension.
408. The "second appointed year" will also be appointed by order. This will be the date from which the flat-rate Stage 2 of State Second Pension will be introduced for those with a significant part of their working life ahead of them. It is intended that Stage 2 will not be introduced until stakeholder pension schemes have become established.
409. *Subsection (15)* provides for the orders appointing the first or second appointed years to be made without being subject to Parliamentary control.

Report on pensions uprating

Section 36: Report on cost of pension uprating in line with general earnings level

410. **Section 36** provides that the Government Actuary (or his deputy) shall submit a report to the Secretary of State, giving his opinion as to the effect:
- on the balance in the National Insurance Fund, and
 - the rate of National Insurance contributions needed to keep the Fund in balance, if the basic state pension were to be increased each year in line with average earnings.
411. The report will provide figures for each year up to and including 2005/06, and the Secretary of State shall lay a copy of the report before Parliament.

412. The section does not stipulate when the report shall be published, but the Government's intention is that it shall be a sister document to the next uprating report which is expected to be produced in January 2001.

Earnings Factors

Section 37: Revaluation of earnings factors

413. Additional pension is the earnings-related benefit element of the state retirement pension. Contributions are made via the State Earnings-Related Pension Scheme (SERPS). It is calculated on the basis of earnings factors, which are those earnings between the Lower and Upper Earnings Limits on which a person pays National Insurance contributions.
414. Section 148 of the Social Security Administration Act 1992 requires the Secretary of State to ensure that the earnings factors, used for calculating additional pension under SERPS and Guaranteed Minimum Pensions in contracted-out schemes, maintain their value in relation to the general level of earnings. The annual "Revaluation of Earnings Factors Order" gives the amount by which earnings factors for each year will need to be uprated to keep them in line with increases in average earnings.
415. The annual revaluation of earnings factors currently covers movements in earnings over each twelve-month period from December to December. The data underlying the order comes from the Office of National Statistics' Average Earnings Index which is often not available in time for the start of the financial year. The intended purpose of this section, which follows consultation with representatives of the pensions industry, is to allow the Department to move the period covered by the order to September to September. This will give employers and pensions administrators access to revaluation figures at an earlier and more convenient time of year. It will also provide consistency with the annual revaluation of the low earnings threshold proposed in the State Second Pension.
416. [Section 37](#) amends section 148(2) to enable flexibility to be used in determining the period to be considered for the purposes of the revaluation of earnings factors.

Section 38: Modification of earnings factors

417. Section 48A of the Pension Schemes Act 1993 covers the situation of people who have earnings in a single tax year both from contracted-out employment and from contracted-in employment. Only their earnings from contracted-in employment in that year will count towards the State Earnings-Related Pension Scheme (SERPS). Section 48A(5) allows regulations to be made which modify the calculation of additional pension under SERPS (that is, the calculation under section 44(5) of the Social Security Contributions and Benefits Act 1992) to take account of the relevant employment taking up only part of the year. The present regulations are the Social Security (Contracting-out and Qualifying Earnings Factors) Regulations 1996 which came into force on 6 April 1997.
418. However, section 128 of the Pensions Act 1995 replaced section 44(5) with a new section 44(5A) which applies to people who reach pensionable age after 5 April 2000 (or, in the case of widows or widowers, whose spouse dies after that date). But the regulation-making power in section 48A(5) was not amended at the same time. As a result, there is no power at present to make an updated version of the 1996 regulations, which would refer to the new section 44(5A). The existing regulations will not be effective after 5 April 2000. This new section amends section 48A(5) so as to provide the power to make a new set of regulations that will enable the calculation of additional pension using the same part-years provision to continue. However, as these regulations cannot be made until after the Act receives Royal Assent it also authorises the continuing use of the existing regulations in the meantime (subsection (3)).

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

419. *Subsection (1)* provides the power to make regulations modifying the provisions of section 44(5A) of the Contributions and Benefits Act so that the SERPS calculation takes account of part-year earnings from employment which is not contracted-out.
420. *Subsection (2)* applies the modification to the calculation of additional pension payable in relation to Widowed Parent's Allowance, Category A Retirement Pension where the pensioner reaches pension age after 5 April 2000, and Category B Retirement Pension where the claimant has previously received Widowed Parent's Allowance or Bereavement Allowance or where the spouse dies after 5 April 2000.
421. *Subsection (3)* provides for the existing regulations to continue to have effect from 6 April 2000 until new regulations are made. To make subsection (3) workable, *subsection (4)* provides for references to section 44(5A) of the Contributions and Benefits Act to be treated as references to section 44(5).
422. *Subsection (5)* enables the new regulations to include provision for reviewing the calculations made under the old method and recalculating and paying pension in accordance with the new method.
423. *Subsection (6)* describes the circumstances in which persons will be affected because their pensions will be calculated using the old method after 5 April 2000.

Preservation of rights in respect of additional pensions

Section 39: Preservation of rights in respect of additional pensions

424. Currently, widows and, in certain circumstances, widowers, may receive the full amount of their deceased spouse's SERPS. However, changes originally enacted in the Social Security Act 1986 (but now consolidated in the Contributions and Benefits Act 1992) halved the amount of SERPS the surviving spouse could receive. The change was due to take effect in respect of married persons who died after 5 April 2000. This change was not fully publicised, and some people were incorrectly told that they, or their widow(er) could expect to "inherit" the full amount of SERPS.
425. The Government has now decided to postpone the reduction to 6 October 2002, and to set up an Inherited SERPS Scheme.
426. Section 52 of the Welfare Reform and Pensions Act 1999 enables the Secretary of State to make affirmative regulations to do one or more of the following:
- to provide for specified categories of widows and widowers to receive more than 50% of their spouse's SERPS;
 - to postpone the 50% reduction due to come into effect from 6 April 2000 to a later year;
 - to set up a scheme to determine who has been misled by incorrect or incomplete information about the 50% reduction and who, or whose spouses may, as a result, suffer financial loss in the future, so as to ensure that the reduction is not applied in their case.
427. Until provision for one of these options is in force, the section also ensures that widow(ers) continue to "inherit" the full amount of their spouse's SERPS.
428. **Section 39** amends section 52 of the Welfare Reform and Pensions Act to provide for the 50% reduction in inherited SERPS to come into effect in respect of deaths occurring on or after 6 October 2002, but also to provide that regulations may postpone the change to a later date. It clarifies the eligibility criteria for the Inherited SERPS Scheme to ensure that people who were denied the opportunity of considering taking relevant steps to protect their spouse's position because they received incorrect or incomplete information, can seek redress. It also allows for the regulations to make further specific provisions relating to the manner in which decisions under the scheme may be taken.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

429. *Subsections (1) and (2)* change the implementation date for the 50% reduction in SERPS from 6 April 2000 to 6 October 2002 where entitlement to additional pension in SERPS arises in Widowed Mother's Allowance, Widowed Parent's Allowance and Category B retirement pension, including where this is increased because of deferred retirement.
430. *Subsection (3)* provides that regulations may defer the implementation date of 6 October 2002 to a later date.
431. *Subsection (4)* allows for the regulations to provide that a person can be eligible for the scheme if, as a consequence of receiving incorrect or incomplete information, he did not consider either taking a step to safeguard the future financial position of his spouse that he might have taken, or refraining from taking such a step which he took but might not have taken had he received the right information.
432. *Subsection (5)* allows for the regulations to prescribe matters that may be relied on, or presumptions that may be made, in the making of decisions under the preserved rights scheme.

Other provisions

Section 40: Home responsibilities protection

433. **Section 40** inserts sub-paragraph (7A) into paragraph 5 of Schedule 3 to the Contributions and Benefits Act. It provides for regulations to be made for those precluded from regular employment by responsibilities at home to supply the necessary information for this to be taken into account when assessing their pension entitlement. This happens automatically for a person who receives Child Benefit for a child under 16 in any year in which they do not meet the Qualifying Earnings Factor. Those meeting the prescribed conditions for caring for a sick or disabled person have to supply the necessary information. Currently such notifications can be made at any time up to state pension age, and awards can be backdated to 1978.
434. The Government intends to bring in regulations which will require notifications to be made by the end of the third year following the year in which the qualifying caring activity took place. This requirement will only apply to qualifying periods following the introduction of State Second Pension. It is to ensure that entitlement to State Second Pension on the grounds of caring activity is established and recorded timeously. It will also determine any years to be excluded from the requisite number of years in the calculation of the basic Retirement Pension.

Section 41: Sharing of state scheme rights

435. Although the value of a pension can currently be taken into account by the courts in reaching a financial settlement on divorce or nullity of marriage, the pension itself can only be offset against other assets or "earmarked", ie the court can order part of a pension to be paid direct to a former spouse by a pension scheme when it comes into payment. "Earmarking" has been little used because it does not facilitate a clean break and the former spouse loses her or his intended retirement income if the ex-spouse whose pension has been "earmarked" dies first.
436. By contrast, pension sharing provides a former spouse with a pension in her own right, security of income throughout retirement, and a clean break. It will also enable more couples to reach a fair settlement where the pension to be shared is the most significant asset in the marriage.
437. However, pension sharing will not be compulsory: it will be an additional option for couples to consider alongside offsetting and earmarking and the Government expects that most couples will, as now, continue to offset their pension rights against other assets.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

438. The Government consulted on a draft Pension Sharing Bill in June 1998. The Social Security Select Committee conducted a detailed inquiry into the draft Bill. Many of the recommendations in the Committee's Report, published in October 1998, were subsequently adopted by the Government when legislation on pension sharing was included in the Welfare Reform and Pensions Act 1999.
439. The pension sharing provisions in the Act broadly provide for all second-tier pensions to be shared ie private and occupational pensions and SERPS (and, in due course, the State Second Pension).
440. **Section 41** contains sub-delegation powers to enable the Secretary of State to set out in regulations how the cash equivalent of SERPS rights is to be calculated. The regulations will give the Secretary of State the power to require that the cash equivalent shall be calculated and verified in such a manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose. The Secretary of State will also have the power to require cash equivalents to be calculated and verified by adopting methods and making assumptions which are consistent with guidance published by the Institute of Actuaries and Faculty of Actuaries.
441. *Subsection (1)* substitutes Section 49(4) of the Welfare Reform and Pensions Act 1999 to include the sub-delegation power. For consistency, *subsections (2) - (4)* of this section make equivalent changes to related provisions in sections 45B, 55A and 55B of the Social Security Contributions and Benefits Act 1992. Section 45B of that Act is concerned with the reduction in the additional pension of the member whose pension has been shared; section 55A deals with the calculation of the additional pension acquired by the former spouse who was the beneficiary of the pension share (who receives a "shared additional pension"); and section 55B makes provision for the reduction of a shared additional pension which has itself been the subject of a pension sharing order or agreement.
442. Similar provisions are already in place for other pension sharing provisions in the Welfare Reform and Pensions Act 1999 where a valuation of non-state pension rights is needed.

Section 42: Disclosure of state pension information

443. The Government indicated in the Pensions Green Paper (*A new contract for welfare: PARTNERSHIP IN PENSIONS* Cm 4179 December 1998) that it wished to work with employers and pension providers to develop integrated personal pension statements, combining state and private pension rights. The Government's aim is to include details of current and projected state pension rights in annual pension or financial statements provided by employers and pension providers. The intention is to provide individuals with better information on the sort of future income they might expect to help them plan for their retirement.
444. In order to comply with existing legal requirements, the Department of Social Security can only pass state pension details to employers and pension providers with the express consent of employees and scheme members.
445. Employers and pension scheme providers have expressed concern that continued adherence to an express consent process would lead to a low take-up by individuals and would impose a significant administrative burden which would discourage them from providing combined forecasts.
446. The measures in the Act are intended to address these concerns and the Government's wish to ensure that individual state pension details can be made available to other third parties such as organisations which provide financial planning services if an individual wishes this to be done.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

447. *Section 42* provides that state pension information can be passed to employers and pension scheme providers unless individuals have indicated that they do not want such information disclosed by “opting-out”. The intention is to improve significantly the take-up of combined pension statements by employees and reduce substantially the administrative burdens on employers and pension providers.
448. It also provides that state pension details can be passed to third parties such as organisations which provide financial information services to help individuals identify the most appropriate pension or other saving arrangements provided their express consent has been obtained. In due course, this will enable individuals to access their state pension details electronically through the comparative financial databases which are currently being developed.
449. *Subsection (1)* provides that the section is to apply to state pension information held by the Secretary of State or by those providing services to the Secretary of State which are concerned with his social security functions. State pension information is defined in *subsection (7)*.
450. *Subsection (2)* provides that regulations may allow the Secretary of State to disclose or permit the disclosure of state pension information to those specified in *subsection (3)* who have made an application for disclosure in the manner prescribed in regulations and in accordance with prescribed conditions.
451. *Subsection (3)* sets out the persons who can receive state pension information. These are the trustees and managers of occupational or personal pension schemes, employers, and appropriate third parties engaged in the provision of financial information services.
452. *Subsection (4)* sets out some of the conditions which must be included in regulations permitting the disclosure of state pension information. These conditions are that appropriate third parties engaged in the provision of financial information services obtain the consent to the disclosure of his state pension information by the individual concerned and in the case of the other persons referred to in subsection (3) (the trustees and managers of occupational or personal pension schemes and employers) that either the condition as to consent or the alternative condition referred in *subsection (5)* applies.
453. *Subsection (5)* sets out the alternative condition referred to in subsection (4) in relation to the trustees and managers of occupational or personal pension schemes and employers. It provides that steps are to be taken to ensure that individuals are made aware of their right to opt out of the procedures for the provision of state pension details. It also provides prescribed minimum times to ensure that individuals have adequate time to consider what is intended, and opt out if they wish to do so.
454. *Subsection (6)* provides that for the purpose of making an application for state pension information, the applicant may disclose to the Secretary of State such information relating to an individual as is prescribed in regulations.
455. *Subsection (7)* sets out what constitutes state pension information relating to an individual for the purposes of the section – namely, date of birth and age at which state pension age is reached; amounts of basic and additional state pension entitlement already accrued; and projected basic and additional state pension entitlement.
456. *Subsection (8)* provides that regulations made under this section shall be subject to the negative Parliamentary procedure.
457. *Subsection (9)* provides that section 189(4) - (6) of the Social Security Administration Act 1992 apply to regulations made under this section. The application of section 189(4) - (6) is in accordance with the general rules governing subordinate legislation made under powers in that Act and will thereby enable the regulations made under the section to, for example, make different provision for different groups covered by the regulations and to make provision for incidental, supplemental and consequential matters relating to the disclosure of state pension information.

*These notes refer to the Child Support, Pensions and Social Security
Act 2000 (c.19) which received Royal Assent on 28th July 2000*

458. *Subsection (10)* provides that information can be supplied to the Secretary of State by the Inland Revenue in relation to functions which are conferred on him by regulations under this section.
459. *Subsection (11)* provides definitions of terms used in this section.