These notes refer to the Pensions Act 2007 (c.22)
which received Royal Assent on 26 July 2007

PENSIONS ACT 2007

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

State Pensions Measures

Category A and B retirement pensions: single contribution condition

Current position

18. Two contribution conditions are required to be satisfied for entitlement to the following benefits:

- Category A and B basic state pension;
- Widowed mother's allowance;
- Widowed parent's allowance;
- Bereavement allowance; and
- Widow's pension.

19. In the case of a Category A pension, the contribution conditions apply to the claimant. For the other benefits listed the conditions apply with respect to the claimant's spouse or civil partner (or deceased spouse or civil partner).

20. The first contribution condition is that the relevant insured person must, in any tax year since 6 April 1975, have actually paid Class 1 contributions on earnings of at least 50 times the weekly lower earnings limit for the tax year in question in respect of tax years 1975/76 – 77/78 or 52 times the weekly lower earnings limit for the tax year in question in respect of tax years from 1978/79 onwards. Equivalent number of Class 2 or Class 3 contributions will also suffice. Alternatively a claimant must have paid 50 flat-rate contributions at any time before 6 April 1975.

21. The second contribution condition is that that person must have achieved a minimum number of "qualifying years" during his working life to be entitled to the full rate of benefit. The minimum number of qualifying years required for a full rate Category A or B basic state pension is currently 44 years for a man and 39 years for a woman. A "qualifying year" is one in which a person's earnings factor for the year is not less than the qualifying earnings factor for that year.

Changes

22. For people reaching state pension age (a term interchangeable with 'pensionable age') from 6 April 2010, the existing contribution conditions for Category A and B pensions will be replaced with a single contribution condition. The same new condition will apply to the spouse or civil partner of a claimant of a Category B pension where the spouse or civil partner reaches state pension age on or after 6 April 2010 (or dies on or after that date without having reached that age).

23. For people reaching state pension age before 6 April 2010, and for those claiming bereavement benefits (whether before or after 6 April 2010), existing contribution conditions will continue to apply.

24. For those reaching state pension age from 6 April 2010, the number of years needed to qualify for a full Category A or B pension is to be reduced from 44 years for a man and 39 years for a woman to 30 qualifying years for men and women alike. A person who has less than 30 qualifying years will be entitled to a proportion of the full basic state pension for each qualifying year they have built up.

Category B retirement pension – removal of restriction on entitlement

Current position

25. Currently, in order for a married woman to qualify for a Category B pension based on her husband's contributions:

- both she and her husband must have reached state pension age;
- her husband must have satisfied the contribution conditions for a Category A pension; and
- her husband must have made a claim for his Category A pension.

26. A wife cannot receive her Category B pension until such time as her husband makes a claim for his Category A pension.

27. Where a husband chooses to defer his Category A pension, increments may be added to his wife's Category B pension. She may also have the option of taking a lump sum payment if her Category B pension has been deferred for at least 12 months. However, both of these are contingent on her not receiving any Category A pension during the period her Category B pension is deferred (if she does receive Category A pension in this period, she can later receive her Category B pension, but without the increments or lump sum). Thus, a situation may arise in which a wife is required to relinquish entitlement to her Category A pension in order to avoid losing increments or a lump sum payment in respect of her deferred Category B pension.

28. From 2010, Category B pensions will become available to married men and people in civil partnerships on the same basis as they are currently available to married women, where their spouse or civil partner was born on or after 6 April 1950.

Changes

29. The Act removes the restriction on a person's entitlement to a Category B pension that their spouse or civil partner must have made a claim for their Category A pension. The change will have effect from 6 April 2010. As a result, where one member of a married couple or civil partnership has deferred his or her Category A pension and the other member has reached pension age, the other member will have the choice of claiming a Category B pension (and where applicable any Category A pension based on their own contributions) or deferring their Category B pension (and any Category A pension to which they are also entitled) in order to accrue either increments or a lump sum.

30. As a consequence of other changes made by the Act, the extent to which people will be reliant on Category B pensions derived from their spouse's or civil partner's contributions will be significantly reduced.

Contributions credits for relevant parents and carers

Current position

31. Home responsibilities protection has been available for complete tax years since 1978. It helps to protect the basic state pension and certain bereavement benefits[1] of someone precluded from regular employment because they are caring for a child or a sick or disabled person. Home responsibilities protection is not a 'credit'. Instead it works by reducing the number of qualifying years needed for a full basic state pension by up to half of the working life. Home responsibilities protection cannot reduce the number of qualifying years to below 20 for either men or women. From 2010, home responsibilities protection will not be able to reduce the number of qualifying years to below 22 for men. As state pension age equalises for men and women between 2010 and 2020, the limit on the number of qualifying years which can be reduced by home responsibilities protection will increase for women from 20 to 22.

32. Home responsibilities protection is available for complete tax years throughout which someone has been:

- awarded child benefit for a child aged under 16;
- regularly engaged for at least 35 hours a week in caring for someone who receives, for a minimum of 48 weeks a year, attendance allowance, or the higher or middle rate of the care component of disability living allowance, or constant attendance allowance. A similar provision exists, with slightly different rules, for income support recipients who are substantially engaged in caring for a disabled person who has claimed or is receiving one of the qualifying benefits;
- from 2003, an approved foster parent or carer; or
- covered by certain combinations of these conditions (*Regulation 2* of the *Social Security Pension (Home Responsibilities) Regulations 1994 (S.I. 1994/702* refers).

33. For example, someone who is awarded home responsibilities protection for 13 years of caring would, as a result, only have to satisfy the second contribution condition (described at paragraph 21 above) for 31 years instead of the 44 normally required for a full basic state pension.

Changes

34. The new crediting arrangements will allow a parent, a registered foster parent or a carer (i.e. those engaged in caring as defined by regulations) reaching state pension age from 6 April 2010 to build up, in certain circumstances, entitlement to a Category A basic state pension, and for their spouse or civil partner to build up entitlement to an associated Category B pension. In addition, bereavement allowance and widowed parents' allowance[2], payable to a surviving spouse or civil partner, will be calculated by reference to the new credits in circumstances where the contributor dies on or after 6 April 2010.

35. For those people reaching state pension age on or after 6 April 2010, each complete year (subject to specified upper limits) of home responsibilities protection awarded under the existing rules of the scheme will be converted into a qualifying year for basic state pension and relevant bereavement benefits.

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1 Widowed parent's allowance and bereavement allowance.
2 Bereavement benefits were introduced on 9 April 2001, replacing the previous system of widow's benefits which were only payable to women.

Category A and C retirement pensions: abolition of adult dependency increases

Current position

36. Adult dependency increases are payable in respect of a 'dependant' who:

a) does not have earnings or an occupational or personal pension of more than a prescribed amount (generally £59.15 per week, but different rules apply where the dependant does not live with the pensioner); and

b) is not receiving pension or benefit in his or her own right at a rate equal to or greater than that of the adult dependency increase (generally £52.30 per week, but a lower rate is payable where the pensioner does not fully satisfy the contribution conditions for basic state pension).

37. Adult dependency increases of state pension are currently payable in respect of the following, providing they meet the criteria set out above:

- A wife;
- A husband – providing his wife was receiving an adult dependency increase of incapacity benefit in respect of him immediately before she reached state pension age; and
- A person having care of the pensioner's child or children.

38. As an adult dependency increase in respect of a wife is payable at the same rate as a Category B pension there is no financial advantage in a man continuing to claim an adult dependency increase in respect of his wife once she has attained state pension age.

39. The PA1995 and the CPA2004 provide for women and people in civil partnerships to be eligible for adult dependency increases from 6 April 2010 under the rules which currently apply to men. The PA1995 also provides for the state pension age for women to increase from 60 to 65 between 2010 and 2020.

Changes

40. The changes will abolish adult dependency increases with effect from 6 April 2010 and make provision for entitlements up to this date to be protected to 5 April 2020.

Up-rating of basic state pension and other benefits

Current position

41. Currently, the basic state pension is required to be uprated annually in line with prices. The Secretary of State is required to consider how this movement should be measured. For contributory benefits, including the basic state pension, up-rating has, in practice, taken place according to the Retail Prices Index. However, in recent years, the Government has given a commitment to uprate by the greater of 2.5 per cent or the Retail Prices Index. Since giving this commitment the Retail Prices Index has always been higher.

42. From the time state pension credit was introduced in October 2003, the Secretary of State has uprated the standard minimum guarantee annually in line with earnings, in reliance on a discretionary power in the existing legislation. There is currently no mandatory requirement to uprate the standard minimum guarantee in state pension credit.

43. The lower earnings limit, currently £87 per week (equating to an annual qualifying earnings factor of £4,524), is the earnings point at which employees start to build up entitlement to contributory working age and pension benefits, by treating an individual as if they have paid National Insurance contributions. National Insurance contributions

do not actually become payable until an individual has earnings at or above the primary threshold, currently £100 a week, (£5,200 per annum). At present, the amount of the lower earnings limit increases in line with prices, because it is linked to the weekly rate of Category A basic state pension.

44. Similarly, the rate of the basic allowance in widowed mother's allowance, widow's pension, widowed parent's allowance and bereavement allowance also increases in line with prices because they are linked to the rate of Category A basic state pension. The higher permanent rate of the widow's pension and widower's pension in Industrial Death Benefit has also historically been the same as the rate of Category A basic state pension.

Changes

45. The changes will require the basic state pension to be uprated annually in line with earnings rather than prices, and will cover the up-rating of Category A, Category B, Category C and Category D pensions.

46. The Government stated in the White Paper:

> ""our objective, subject to affordability and the fiscal position, is to do this in 2012 but in any event at the latest by the end of the next Parliament. We will make a statement on the precise date at the beginning of the next Parliament".

47. The changes will also require the standard minimum guarantee in state pension credit to be uprated annually in line with earnings.

48. In addition, the link between the amount of the lower earnings limit and the weekly rate of the basic state pension in a Category A pension will be broken. This will mean that the amount of the lower earnings limit will not automatically increase in line with earnings in the future. Instead, any future increase in the lower earnings limit will be at the discretion of the Treasury.

49. The provisions of the Act will ensure that the rate of the basic allowance in widowed mother's allowance, widow's pension, widowed parent's allowance and bereavement allowance will continue to be uprated in line with prices, like other pre-retirement benefits. However, the proposals will ensure that the rate of widow's pension and widower's pension in industrial death benefit will be uprated in line with earnings in order to maintain the link with the rate of Category A pensions.

Deemed earnings factors for purposes of additional pension

Current position

50. The state second pension was introduced in 2002. It replaced the state earnings related pension scheme to provide a more generous additional state pension for:

- employed earners with earnings equal to the lower earnings limit for a full tax year;
- carers who have no earnings or earnings below the annual lower earnings limit, in any year throughout which:
  - they are awarded child benefit for a child under 6;
  - they are entitled to carer's allowance; or
  - they receive home responsibilities protection (paragraph 31 refers);
- disabled people with broken work records in any year throughout which they:
  - receive severe disablement allowance; or
  - are entitled to long-term incapacity benefit.

51. In addition, those entitled to severe disablement allowance or long-term incapacity benefit must satisfy a labour market attachment condition when they reach state pension age. This condition requires that they have worked and paid Class 1 National Insurance contributions for at least one-tenth of their working life since 1978.

52. Carers and disabled people in these groups are treated as if they have earnings at the qualifying earnings factor (52 times the lower earnings limit) and, along with employed earners who have earnings at the lower earnings limit but below the low earnings threshold, are also boosted to (i.e. deemed to be earning at) the low earnings threshold[3]. In other words, these groups are treated as having Band 1 earnings (see paragraph 59) for the purposes of calculating entitlement to state second pension for a given tax year.

53. Employed earners with earnings above the low earnings threshold would accrue state second pension according to their band of earnings (see paragraphs 58-63).

Changes

54. The provisions of this Act will increase the number of people who are deemed to be earning at the low earnings threshold, and so accruing state second pension as if they had Band 1 earnings until the proposed new simplified state second pension is introduced.

55. The changes allow persons to be deemed to be earning at the low earnings threshold for a tax year starting with that commencing 6 April 2010, if they satisfy any of three conditions:

- the first is that the person has earnings equal to or greater than the qualifying earnings factor for the year but less than the low earning threshold;
- the second is that the person has earnings less than the qualifying earnings factor but is entitled to enough new earnings factor credits to bring his earnings factor up to the qualifying earnings factor;
- the third is that a person has no earnings but is entitled to 52 of the new credits for the year.

56. The new earnings credits, of 1/52 of the qualifying earnings factor for the year, are available in respect of each week in which a person was:

- awarded child benefit for a child under 12;
- a foster parent;
- caring for someone with a qualifying disability benefit for at least 20 hours a week; or
- entitled to carer's allowance;
- entitled to severe disablement allowance or long-term incapacity benefit. The labour market attachment test would no longer apply to disabled people from 6 April 2010.

57. People earning at or above the low earnings threshold will continue to accrue state second pension according to the band of earnings they are in until the new simplified state second pension is introduced (see paragraphs 58 – 63 below).

Additional pension: simplification of accrual rates

Current position

58. Paragraphs 60 – 63 detail how state second pension is to be accrued. In broad terms, for any given tax year, state second pension accrues on the portion of an employee's annual

3 £13,000 per annum in 2007/2008

earnings between the annual value of the lower earnings limit and the upper earnings limit for Class 1 National Insurance contributions – called the “surplus earnings factor”. This amount is revalued in line with growth in average earnings up to the last full tax year of a contributor’s working life. The accumulated surplus earnings factors are then divided by the number of years in the person’s working life to produce a “lifetime average” which is multiplied by the relevant accrual rate and divided by 52 to produce a weekly rate of additional pension.

59. People earning, or treated as earning, between the lower earnings limit and the upper earnings limit accrue state second pension on a cumulative basis depending on the level of their earnings. Earnings above the upper earnings limit do not accrue state second pension. The table below sets out the current earnings accrual bands for state second pension that will apply from 2009/2010.

Earnings		***Percentage***
Band 1	Not exceeding low earnings threshold	40
Band 2	Exceeding low earnings threshold but not exceeding upper earnings threshold	10
Band 3	Exceeding upper earnings threshold but not exceeding upper earnings limit	20

Changes

60. Under the provisions of this Act, state second pension will be restructured.

61. The first step will be to merge Bands 2 and 3, so that all earnings exceeding the low earnings threshold (but not exceeding the upper earnings limit) will fall into Band 2 and accrue additional pension at a rate of 10%. This change will have effect for the tax year 2010-11 onwards.

62. In addition, from a date to be determined by the Secretary of State by order, the current 40% accrual band (Band 1) for earnings between the lower earnings limit and the low earnings threshold will be replaced with a weekly flat rate accrual amount of £1.50 (giving an equivalent annual amount of £78.00). This will be accrued by all contributors and people credited into state second pension in respect of each year of contribution. For a time, the additional earnings-related component of state second pension (accruing at 10%) will remain in place. This component will ultimately be withdrawn by around 2030, leaving a flat-rate benefit.

63. These changes will have an effect on the contracted-out rebate for defined benefit schemes. If a pension scheme member is opted out of state second pension they receive a “rebate” from the Government, delivered through reduced-rate National Insurance contributions, which is based on the amount of state second pension foregone. Therefore changes to state second pension need to be taken into account when calculating the rebate.

Increase in state pension age

Current position

64. For men, state pension age is currently 65. For women this has been 60 but, by virtue of the PA1995, this is only maintained for those women born before 6 April 1950. The changes in that Act were designed to remove inequalities within the State Pension scheme between men and women, including the five-year differential in state pension age which has existed since 1940. Over the period from April 2010 to April 2020, state pension age for women will therefore be gradually increased to 65, affecting all women

born in the period between 6 April 1950 and 5 April 1955. For women born on or after 6 April 1955, state pension age will be 65, the same as for men.

Changes

65. In the White Paper, the Government proposed raising the state pension age in the context of a growing pensioner population resulting from increasing longevity and falling birth rates.

66. The Act provides for state pension age to increase by one year per decade between 2020 and 2050, with each change phased in over two consecutive years in each decade.

67. The first increase, from 65 to 66, will be phased in between April 2024 and April 2026; the second, from 66 to 67, will be phased in between April 2034 and April 2036; and the third, from 67 to 68, between April 2044 and April 2046. These changes will therefore affect anyone born after 5 April 1959 – that is anyone below the age of 47 on 5 April 2006 (who will therefore reach the age of 65 on or after 6 April 2024).

68. A number of social security benefits either become payable or cease to be payable when state pension age is reached. The Act provides for these age thresholds to rise in line with rising state pension age. The benefits to which this applies include jobseeker's allowance, incapacity benefit (and the new employment and support allowance which is intended to replace incapacity benefit[4]), bereavement benefits and state pension credit.

69. In the case of attendance allowance and disability living allowance, the age threshold is currently set at 65. By 2020, it will therefore have become aligned with pensionable age for both women and men. The Act replaces the reference to age 65 with pensionable age with effect from 6 April 2024, so that the minimum age for entitlement to attendance allowance and the upper age at which a person may qualify for disability living allowance will increase in line with rising state pension age.

4 See section 1 of the Welfare Reform Act 2007.