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STATUTORY INSTRUMENTS

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**2009 No. 2206**

**The Social Security (State Pension and National Insurance Credits) Regulations 2009**

**PART 3**

State pension reform - amendment of secondary legislation

**Amendment of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979**

5. The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979(1) are amended as follows.

6.—(1) Regulation 1 (citation, commencement and interpretation) is amended in accordance with this regulation.

(2) In paragraph (2), omit the definitions of “home responsibilities year” and “qualifying year”.

(3) The amendment in paragraph (2) does not apply where the person concerned attained pensionable age or died before 6th April 2010.

7.—(1) Regulation 2 (election to be treated as not having retired) is amended in accordance with this regulation.

(2) For paragraph (2) substitute—

“(2) Paragraph (1) shall not apply to a person who has previously made such an election.”.

(3) In paragraph (3), omit “or consent”.

(4) In paragraph (4), for “paragraphs (5) and (6)” substitute “paragraph (6)”.

(5) Omit paragraph (5).

8.—(1) Regulation 3 (provisions applying after election) is amended in accordance with this regulation.

(2) In paragraph (a), omit the words from “and no Category B retirement pension” to “his contributions”.

(3) At the end of paragraph (b), omit “and”.

(4) Omit paragraph (c).

9. In paragraph (1)(a) of regulation 4 (days to be treated as days of increment), omit the words from “or, in the case of a married woman” to “a Category B retirement pension,”.

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(1) S.I. 1979/642. Relevant amending instruments are S.I. 1989/1642, S.I. 1990/2642, S.I. 1991/2742, S.I. 1996/1345, S.I. 1999/2422, S.I. 2000/1483, S.I. 2003/937, S.I. 2005/453, S.I. 2005/1551, S.I. 2005/2877, S.I. 2005/2878 and S.I. 2006/516.

10. For the heading to regulation 6 (benefit at reduced rates for those who do not satisfy the contribution conditions in full) substitute—

*“Rate of benefit where the second contribution condition in paragraph 5 of Schedule 3 to the Social Security Contributions and Benefits Act 1992 is not satisfied”.*

11.—(1) Regulation 6 is amended in accordance with this regulation.

(2) In paragraph (3B), for “Subject to paragraph (4) of this regulation, the” substitute “The”.

(3) Omit paragraph (4).

(4) After paragraph (5) insert—

“(6) For the purposes of this regulation, “qualifying year” means a year for which a person’s earnings factor is sufficient to satisfy paragraph 5(3)(b) of Schedule 3 to the Social Security Contributions and Benefits Act 1992 and includes a year which is treated as such a year by virtue of regulation 8(4).”.

(5) The amendments in paragraphs (2) to (4) do not apply where the contributor concerned attained pensionable age or died before 6th April 2010.

12. After regulation 6 insert—

**“Proportion of retirement pension where the contribution condition in paragraph 5A of Schedule 3 to the Social Security Contributions and Benefits Act 1992 is not satisfied**

6A.—(1) This regulation applies where the contribution condition in paragraph 5A of Schedule 3 (contribution conditions for entitlement to benefit) to the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) is not satisfied in relation to a benefit to which that paragraph applies.

(2) The amount of such a benefit to which a person is nevertheless entitled shall be—

(a) 1/30th of the weekly rate of basic pension in that benefit for each year in the contributor’s working life in relation to which the requirements of paragraph 5A(2)(a) and (b) of Schedule 3 to the 1992 Act are satisfied; and

(b) any additional pension in that benefit arising from one or more surpluses in the contributor’s earnings factors for the relevant years.

(3) For the purposes of paragraph (2)(a), satisfaction of the requirements of paragraph 5A(2)(a) and (b) of Schedule 3 to the 1992 Act in relation to a year includes satisfaction of those requirements by virtue of regulation 8.

(4) Paragraph (5) of regulation 6 applies to entitlement to a Category A retirement pension by virtue of this regulation as it does to such entitlement by virtue of that regulation.

**Regulations 6 and 6A: supplemental**

6B. In regulations 6 and 6A, “basic pension” includes the weekly rate of Category B retirement pension specified in paragraph 5 of Part 1 (contributory periodical benefits) of Schedule 4 (rates of benefit, etc) to the Social Security Contributions and Benefits Act 1992.”.

13.—(1) Regulation 8 (substitution of former spouse’s or former civil partner’s contribution record to give entitlement to a Category A retirement pension) is amended in accordance with this regulation.

(2) In paragraph (1)(c), after “any person” insert “, other than one to whom regulation 8A applies.”.

(3) In paragraph (2), for “to the Act” substitute “to the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) or the contribution condition for such a pension specified in paragraph 5A of that Schedule to that Act”.

(4) For paragraph (3), substitute—

“(3) The beneficiary shall be treated as satisfying the first contribution condition specified in paragraph 5 of Schedule 3 to the 1992 Act if his former spouse or former civil partner—

- (a) had satisfied that condition; or
- (b) would have satisfied that condition had paragraph 5A of Schedule 3 not been applicable,

as respects any year of his working life up to (inclusive) the year in which the marriage or civil partnership terminated.”.

(5) In paragraph (4), after “the second contribution condition” insert “specified in paragraph 5 of Schedule 3 to the 1992 Act or the contribution condition specified in paragraph 5A of that Schedule to that Act”.

(6) In paragraph (5), after “regulation 6” insert “or 6A”.

(7) Omit paragraph (6).

(8) The amendment in paragraph (7) does not apply where the person concerned attained pensionable age before 6th April 2010.

**14.** After regulation 8 insert—

“**8A.**—(1) This regulation applies to a person—

- (a) whose marriage or civil partnership terminated otherwise than by the death of that person’s spouse or civil partner;
- (b) whose marriage or civil partnership terminated after—
  - (i) that person; and
  - (ii) that person’s former spouse or former civil partner, attained pensionable age;
- (c) who attained pensionable age on or after 6th April 2010;
- (d) whose former spouse or former civil partner attained pensionable age on or after 6th April 2010; and
- (e) whose former spouse or former civil partner satisfied the contribution condition specified in paragraph 5A(2) of Schedule 3 (contribution conditions for entitlement to benefit) to the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”).

(2) Where a person to whom this regulation applies does not satisfy the contribution condition specified in paragraph 5A(2) of Schedule 3 to the 1992 Act, that person shall be treated as having satisfied that condition by virtue of the contributions of the former spouse or civil partner.”.

**15.**—(1) Schedule 1 (method of treating former spouse’s or former civil partner’s contributions as those of the beneficiary so as to entitle him to a Category A retirement pension) is amended in accordance with this regulation.

(2) At the end of sub-paragraph (b) of paragraph 1 insert—

“; and

(c) “qualifying year” means a year for which the former spouse’s or former civil partner’s earnings factor is sufficient to satisfy—

(i) paragraph 5(3)(b); or

(ii) paragraph 5A(2)(b),

of Schedule 3 to the Social Security Contributions and Benefits Act 1992 and does not include a year which is treated as such a year by virtue of regulation 8(4).”.

(3) The amendment in paragraph (2) does not apply so as to include in the definition of “qualifying year” any years credited by virtue of section 23A(5) of the Social Security Contributions and Benefits Act 1992(2) where the marriage or civil partnership terminated before 6th April 2010.

### **Amendment of the Social Security (Widow’s Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979**

16. The Social Security (Widow’s Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979(3) are amended as follows.

17. In paragraph (1) of regulation 2 (interpretation), before the definition of “the Act” insert—

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

18. In the heading to regulation 3 (modifications of the Act and the Pensions Act in their application to pre-1975 beneficiaries and pre-1975 contributors), for “the Act and the Pensions Act in their” substitute “pensions legislation in its”.

19. In regulation 3, for “the Act and the Pensions Act” substitute “the Act, the Pensions Act and the 1992 Act”.

20. In the heading to regulation 7 (modifications relating to the second contribution condition for widowed mother’s allowance, widow’s pension and Category A and B retirement pension), at the end insert “and to the contribution condition for Category A and B retirement pension for those attaining pensionable age on or after 6th April 2010”.

21. In paragraph (1) of regulation 7, for the words from “only for the purposes” to the end substitute—

“for the purposes of—

(a) the second contribution condition for a widowed mother’s allowance, a widow’s pension or a Category A or Category B retirement pension specified in paragraph 5(3) of Schedule 3 to the 1992 Act; and

(b) the contribution condition for a Category A or Category B retirement pension specified in paragraph 5A(2) of that Schedule.”.

22.—(1) Regulation 13 (provision relating to treatment of reckonable years) is amended in accordance with this regulation.

(2) In paragraph (1), for “paragraphs 5(2)(b) and 5(3)(b) of Schedule 3 to the Act” substitute “paragraph 5(2)(b) and (3)(b) and paragraph 5A(2)(b) of Schedule 3 to the 1992 Act”.

(3) In paragraph (2), for “to the Act” substitute “to the 1992 Act or paragraph (b) of the contribution condition specified in paragraph 5A(2) of that Schedule”.

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(2) 1992 c. 4. Section 23A was inserted by section 3 of the Pensions Act 2007 (c. 22).

(3) S.I. 1979/643. Relevant amending instruments are S.I. 1981/1627 and S.I. 1999/2422.

## **Amendment of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001**

**23.** The Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001(4) are amended as follows.

**24.**—(1) Paragraph (2) of regulation 1 (citation, commencement and interpretation) is amended in accordance with this regulation.

(2) Before the definition of “the Administration Act” insert—

““the 2007 Act” means the Welfare Reform Act 2007(5);”.

(3) In the definition of “contracted-out employment”, after “means” insert “, subject to regulation 3(5),”.

**25.**—(1) Regulation 2 (calculation of additional pension where contributions equivalent premium paid or treated as paid) is amended in accordance with this regulation.

(2) For “section 45(2)(c) of the 1992 Act” substitute “section 45(2)(c) or (d) of the Contributions and Benefits Act”.

(3) For “Schedule 4A to the 1992 Act” substitute “Schedule 4A to the Contributions and Benefits Act or, as the case may be, Parts 1 and 2 of Schedule 4B to that Act(6)”.

**26.**—(1) Regulation 3 (calculation of additional pension: earnings partly from employment with contracted-out scheme membership) is amended in accordance with this regulation.

(2) In paragraph (2), after “Schedule 4A” insert “or, as the case may be, in paragraph 1(1) of Schedule 4B”.

(3) In paragraph (3), after “Schedule 4A” insert “or, as the case may be, in paragraphs 8 and 9 of Schedule 4B”.

(4) In paragraph (4)(d), after “Schedule 4A” insert “or, as the case may be, in paragraph 10(1) (c) of Schedule 4B”.

(5) After paragraph (4) insert—

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

**27.** After regulation 5 insert—

### **“Earnings factor credits eligibility for pensioners to whom employment and support allowance was payable**

**5A.**—(1) For the purposes of subsection (3) of section 44C (earnings factor credits) of the Contributions and Benefits Act(7), a pensioner is eligible for earnings factor enhancement in respect of a week if that pensioner satisfies one or more of the conditions in paragraph (2) and was—

(a) a person to whom employment and support allowance was payable for any part of that week;

(4) [S.I. 2001/1323](#).

(5) [2007 c. 5](#).

(6) Section 45(2)(d) was inserted by section 11(2) of the Pensions Act 2007 ([c. 22](#)) and Schedule 4B was inserted by Schedule 2 to that Act.

(7) Section 44C was inserted by section 9 of the Pensions Act 2007 ([c. 22](#)).

- (b) a person to whom that allowance would have been payable but for the fact that that person did not satisfy the contribution condition in paragraph 1 or paragraph 2 of Schedule 1 to the 2007 Act; or
  - (c) a person to whom that allowance would have been payable but for the fact that under regulations the amount was reduced to nil because of—
    - (i) receipt of other benefits; or
    - (ii) receipt of payments from an occupational pension scheme or personal pension scheme.
- (2) The conditions are—
- (a) immediately prior to that week, employment and support allowance was payable or would have been payable for—
    - (i) a continuous period of 52 weeks; or
    - (ii) a period of 52 weeks treated as continuous by virtue of regulations made under paragraph 4 of Schedule 2 to the 2007 Act;
  - (b) that allowance included or would have included the support component under section 2(2) of the 2007 Act; or
  - (c) immediately prior to that week, in the case of—
    - (i) a man born in the period beginning with 6th April 1946 and ending with 5th April 1947; or
    - (ii) a woman born in the period beginning with 6th October 1950 and ending with 5th April 1951,that allowance was payable or would have been payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.
- (3) In this regulation, “employment and support allowance” means an employment and support allowance under Part 1 (employment and support allowance) of the 2007 Act.”.