

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 12

Amendment 34 – June 2016

1. This letter provides details on Amendment 34; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/dmg%20amendment%20packages/index.asp#>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 34 affects list of abbreviations & chapters 74, 75 & 76. The changes
 - Incorporates memo 11/16 in Chapter 74.
 - incorporate memo DMG 11/16 in chapter 75.
 - incorporate memo DMG 11/16 in chapter 76
4. The last two amendment packages amending Volume 12 were
Amendment 33 [February 2016]
Amendment 32 [October 2015]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Chapter 76

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76001 – 76999 (2 pages)

LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MDB	Miscellaneous Diseases Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidation Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage

NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHLs	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period

QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme

WC (Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

Rebate-derived amount

74029 A rebate-derived amount is an amount reflecting any period of contracting-out for AP purposes between 6.4.78 and 5.4.16. People contracted-out paid a lower rate of NI contributions and received a GMP. The rebate-derived amount is calculated by

1. splitting periods of contracting-out into the periods
 - 1.1 6.4.78 to 5.4.97
 - 1.2 6.4.97 to 5.4.02 **and**
 - 1.3 6.4.02 to 5.4.16
2. working out the net weekly AP for each period under the legislation before 6.4.16
3. working out the gross weekly AP for each period (i.e. the amount as if there had not been contracting- out
4. deducting the amount at 2. from the amount at 3. to get a rebate-derived amount for each of the periods at 1.
5. adding together the amounts at 4. to give an overall weekly value for the period 6.4.78 to 5.4.16.

Note: Each amount is rounded to the nearest penny throughout the calculation.

74030 – 74035

Credits

74036 A person may be entitled to be credited with contributions or earnings. However, this is only to the extent necessary to make a year a qualifying year. Where a week falls in two tax years, the earnings or contributions are credited for the earlier tax year.

74037 – 74040

Marriage

74041 Throughout this Chapter, unless the context otherwise requires, references to

1. marriage includes marriage of a same sex couple
2. a married couple includes a married same sex couple
3. a person who is married includes a person who is married to a person of the same sex¹, including a person who is married by virtue of converting or changing their civil partnership to marriage and in such cases, the marriage is treated as having subsisted from the date the civil partnership was formed.

This also applies, for example, to a marriage that has ended or a person whose marriage has ended². However, two people are treated as being not married to each other if either of them is married polygamously³.

Note: See DMG Chapter 10 for full guidance on marriage.

1 Marr (SSC) Act 13, Sch 3, Part 1, para 1(1); 2 Sch 3, Part 1, para 1(2); 3 Pensions Act 14, s 22(2)

74042 For the purpose of DMG 74041, unless the context otherwise requires, it does not matter how a reference is expressed¹. Therefore, for example, a reference to

1. husband includes a man who is married to another man
2. wife includes a woman who is married to another woman
3. spouse includes a person who is married to another person of the same sex
4. widower includes a man whose marriage to another man ended when the other man died
5. widow includes a woman whose marriage to another woman ended when the other woman died.

Note: For the avoidance of doubt, in a marriage between a man and a woman, the terms husband and wife are to be applied as appropriate to the sex.

1 Marr (SSC) Act 13, Sch 3, Part 1, para 1(3)

Civil partnerships

74043 Legislation¹ provides a legal framework that enables recognition of same sex relationships through the status of civil partner and the legal relationship of civil partnership. This legislation took effect on 5.12.05. A civil partnership is a relationship between two people of the same sex which is formed when they register as civil partners. Also, a person can be treated as having formed a civil partnership by virtue of having registered certain overseas relationships. A civil partnership ends only on death, dissolution or annulment or, where the civil partnership is converted or changed into a marriage (see DMG 74041), the date of that conversion or change (in such cases the marriage is treated as having subsisted since the civil partnership was formed except where 75104 applies).

Note: See DMG Chapter 10 for full guidance on civil partnerships.

1 CP Act 04

People who have changed gender

Gender recognition certificate received on or after female pensionable age but before age 65: male to female transgender person

74044 Where a male to female transgender person receives a full GRC on or after female pensionable age but before male pensionable age, any NI contributions paid

1. on or after female pensionable age **and**
2. before the date the GRC is issued

are not refundable¹. Therefore, those NI contributions will continue to be taken into account in the calculation of the amount of SP.

1 GR Act 04, Sch 5, Part 2, para 6A(4)

74045 Once notified of the issue of a GRC to a male to female transgender person, DMs should decide entitlement to SP on the basis that pensionable age is the date of the GRC¹. The claimant is not to be taken to have deferred for any period ending before the GRC is issued².

1 GR Act 04, Sch 5, Part 2, para 6A; 2 Sch 5, Part 2, para 10(1)(za); R(P) 2/09; MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13

Gender recognition certificate received on or after female pensionable age but before age 65: female to male transgender person

74046 Where a female to male transsexual receives a full GRC on or after female pensionable age but before age 65, DMs should decide entitlement to SP on the basis that pensionable age is 65. If immediately before a full GRC is issued a female to male transgender person

1. is entitled to SP **and**
2. has not reached age 65

entitlement will cease once a full GRC is issued¹. A new claim for SP can be made as the person approaches age 65.

1 GR Act 04, Sch 5, Part 2, para 1 & 6A(2)

Example

Person A defers her SP for three years. When she is 63 she makes a claim for, and receives, SP including Incs for the deferral. Six months later Person A is issued with a full GRC and SP and Incs for deferral cease. There will be no entitlement to those Incs when a further claim for SP is made. There will have to be deferral after reaching age 65 for there to be entitlement to Incs in the acquired gender.

Gender recognition certificate received on or after age 65: male to female transgender person - state pension awarded

74047 Where a male to female transgender person receives a full GRC on or after male pensionable age, then any NI contributions paid

1. on or after female pensionable age **and**
2. before the date the GRC is issued

are not refundable¹. Therefore, those NI contributions will continue to be taken into account in the calculation of the amount of SP.

1 GR Act 04, Sch 5, Part 2, para 6A(4)

Gender recognition certificate received on or after age 65: male to female transgender person - state pension not awarded

74048 Where a male to female transgender person receives a GRC on or after age 65, DMs should decide entitlement to SP on the basis that pensionable age is male pensionable age. The person is not to be taken to have deferred for any period ending before the certificate is issued¹ unless the entitlement

1. was actually deferred during the period **and**
2. would have been capable of being so deferred had the person's gender been the acquired gender.

1 GR Act 04, Sch 5, Part 2, para 10(2); R(P) 2/09; MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13

Gender recognition certificate received on or after age 65: female to male transgender person - state pension awarded

74049 Where a female to male transgender person receives a GRC on or after age 65, the DM should not revise entitlement to SP. This is because as a female there is no liability to make NI contributions after female pensionable age. The person should not be deemed to have made contributions until male pensionable age¹.

1 GR Act 04, Sch 5, Part 2, para 6A(1) & (4)

Gender recognition certificate received on or after age 65: female to male transgender person - state pension not awarded

74050 Where a female to male transgender person receives a GRC on or after age 65, DMs should decide entitlement to SP on the basis that pensionable age is 65. The person should not be treated as having made contributions until male pensionable age¹.

1 GR Act 04, Sch 5, Part 2, para 6A(1) & (4)

74051 – 74100

- 2.1 reached pensionable age before 6.4.16 **and**
- 2.2 died on or after that date **and**
- 3. they were under pensionable age when their spouse or civil partner died **and**
- 4. they would, on reaching pensionable, have been entitled to a Cat B RP².

Note 1: To be entitled to a Cat B RP there is a requirement that a person has to reach pensionable age before 6.4.16. However, for the purposes of 4., that requirement does not apply³.

Note 2: See DMG Chapter 75 for full guidance on Cat B RP.

1 Pensions Act 14, Sch 3, para 3(1); 2 SS CB Act 92, s 48BB; 3 Pensions Act 14, Sch 3, para 3(1)(d)

74319 Where DMG 74318 applies, the inherited amount is the weekly amount of Cat B RP which would have been payable on the day the person reached pensionable age ignoring any basic RP in the Cat B RP¹. DMG 74318 applies where the spouse or civil partner died

- 1. on or after 6.4.16 while under pensionable age² **and**
- 2. before the day on which bereavement is introduced³.

1 Pensions Act 14, Sch 3, para 3(2); 2 Pensions Act 14 (Transitional and Transitory Provisions) Order 2016, art 3(1)(a); 3 art 3(1)(b)

74320 A person whose spouse or civil partner has died is entitled to an inherited amount¹ if

- 1. their
 - 1.1 marriage took place **or**
 - 1.2 civil partnership was formed
 before 6.4.16 **and**
- 2. their spouse or civil partner
 - 2.1 reached pensionable age before 6.4.16 **and**
 - 2.2 died on or after that date **and**
- 3. they were over pensionable age when their spouse or civil partner died **and**
- 4. they would, on reaching pensionable, have been entitled to a Cat B RP².

Note 1: To be entitled to a Cat B RP there is a requirement that a person has to reach pensionable age before 6.4.16. However, for the purposes of 4., that requirement does not apply³.

Note 2: See DMG Chapter 75 for full guidance on Cat B RP.

1 Pensions Act 14, Sch 3, para 4(1); 2 SS CB Act 92, s 48B(1) & (1A); 3 Pensions Act 14, Sch 3, para 4(1)(d)

74321 Where DMG 74320 applies, the inherited amount is the weekly amount of Cat B RP, less the amount of BP, which would have been payable on the day the spouse or civil partner died¹.

1 Pensions Act 14, Sch 3, para 4(2)

74322 – 74325

Deceased spouse or civil partner reached pensionable age, or died under that age, on or after 6.4.16

74326 A person whose spouse or civil partner has died is entitled to an inherited amount¹ if

1. their
 - 1.1 marriage took place **or**
 - 1.2 civil partnership was formedbefore 6.4.16 **and**
2. they were over pensionable age when their spouse or civil partner died **and**
3. their spouse or civil partner was, immediately before their death, entitled to SP payable at the transitional rate **and**
4. that transitional rate exceeded the full rate of SP.

Note: See DMG 74201 et seq for guidance on entitlement to SP at the transitional rate.

1 Pensions Act 14, Sch 3, para 5(1)

74327 Where DMG 74326 applies, the inherited amount is half the amount by which the late spouse's or civil partner's transitional amount of SP exceeded the full amount immediately before their death¹.

1 Pensions Act 14, Sch 3, para 5(2)

74328 A person whose spouse or civil partner has died is entitled to an inherited amount¹ if

1. their
 - 1.1 marriage took place **or**
 - 1.2 civil partnership was formedbefore 6.4.16 **and**
2. they were under pensionable age when their spouse or civil partner died **and**
3. their spouse or civil partner was, immediately before their death, entitled to SP payable at the transitional rate **and**
4. that transitional rate exceeded the full rate of SP **and**
5. they did not marry or form a civil partnership
 - 5.1 after their spouse or civil partner died **and**

5.2 before they reached pensionable age.

Note: See DMG 74201 et seq for guidance on entitlement to SP at the transitional rate.

1 Pensions Act 14, Sch 3, para 6(1)

74329 Where DMG 74328 applies, the inherited amount is half the amount by which the late spouse's or civil partner's transitional amount of SP exceeded the full amount if they had been alive when the person reached pensionable age¹.

1 Pensions Act 14, Sch 3, para 6(2)

74330 A person whose spouse or civil partner has died is entitled to an inherited amount¹ if

1. their
 - 1.1 marriage took place **or**
 - 1.2 civil partnership was formedbefore 6.4.16 **and**
2. they were over pensionable age when their spouse or civil partner died **and**
3. their spouse or civil partner
 - 3.1 was under pensionable age when they died **and**
 - 3.2 would have been entitled to SP payable at the transitional rate if they had reached pensionable age on the day they died **and**
4. that transitional rate would have exceeded the full rate of SP.

Note: See DMG 74201 et seq for guidance on entitlement to SP at the transitional rate.

1 Pensions Act 14, Sch 3, para 7(1)

74331 Where DMG 74330 applies, the inherited amount is half the amount by which the late spouse's or civil partner's transitional amount of SP would have exceeded the full amount if they had reached pensionable age on the day they died¹.

1 Pensions Act 14, Sch 3, para 7(2)

74332 A person whose spouse or civil partner has died is entitled to an inherited amount¹ if

1. their
 - 1.1 marriage took place **or**
 - 1.2 civil partnership was formedbefore 6.4.16 **and**
2. they were under pensionable age when their spouse or civil partner died **and**
3. their spouse or civil partner died on or after 6.4.16 **and**
4. their spouse or civil partner was under pensionable age when they died **and**

5. their spouse or civil partner would have been entitled to SP payable at the transitional rate if they had reached pensionable age on the same day as the person **and**
6. that transitional rate would have exceeded the full rate of SP **and**
7. they did not marry or form a civil partnership
 - 7.1 after their spouse or civil partner died **and**
 - 7.2 before they reached pensionable age.

Note: See DMG 74201 et seq for guidance on entitlement to SP at the transitional rate.

1 Pensions Act 14, Sch 3, para 8(1)

74333 Where DMG 74332 applies, the inherited amount is half the amount by which the late spouse's or civil partner's transitional amount of SP would have exceeded the full amount if they had reached pensionable age on the same day as the person¹.

Note: For up-rating purposes, the inherited amount is added to any other SP the survivor is entitled to excluding any increase from deferring SP, or inherited deferral increase (see DMG 74501 et seq and 74341 et seq). Amounts up to the full rate of SP are increased at least in line with the increase in average earnings. Amounts in excess of the full rate are up-rated in line with price inflation².

1 Pensions Act 14, Sch 3, para 8(2); 2 Sch 4

Example

Person A is entitled to SP of £150 per week based on their own NI contributions. Following the death of their spouse, Person A becomes entitled to an inherited amount of £30. The full rate of SP is £155.65. At the next uprating, £150 plus the first £5.65 of the inherited amount is increased in line with the increase in the full rate. The balance of £24.35 inherited amount is uprated by price inflation.

74334 – 74340

Inheritance of deferred retirement pension

Introduction

74341 For RP purposes, people who defer their entitlement can choose to receive Incs or a lump sum payment. Where a late spouse or civil partner

1. reached pensionable age before 6.4.16 **and**
2. deferred their entitlement to RP

the survivor can inherit a proportion of the deceased's deferral benefit. This applies even if the survivor reached pensionable age on or after 6.4.16.

Note 1: See DMG 74501 et seq for guidance on deferral of SP.

Note 2: See DMG Chapter 75 for guidance on deferral of RP.

Survivor's choice of inherited lump sum or state pension

74342 Where DMG 74343 applies, a person may choose¹ to be paid

1. a lump sum in accordance with DMG 74354 **or**
2. a SP in accordance with DMG 74361 et seq.

Note: See DMG 74346 – 74353 for guidance on the period within which a choice is to be made².

1 Pensions Act 14, s 8(2); 2 SP Regs, reg 4(1)

74343 A person is entitled to make a choice¹ as in DMG 74342 if

1. they have reached pensionable age **and**
 2. their
 - 2.1 spouse died while they were married **or**
 - 2.2 civil partner died while they were civil partners of each other **and**
 3. their spouse or civil partner had deferred entitlement to RP
 - 3.1 at the time of death **and**
 - 3.2 throughout the period of 12 months ending the day before the death **and**
 4. they were
 - 4.1 under pensionable age when their spouse or civil partner died and they did not marry or form a civil partnership
 - 4.1.a after the death **and**
 - 4.1.b before reaching pensionable age **or**
 - 4.2 over pensionable age when their spouse or civil partner died **and**
 5. they would
 - 5.1 on reaching pensionable age **or**
 - 5.2 on the death of their spouse or civil partner
- have been entitled to RP if RP had not ceased to apply to people reaching state pension age on or after 6.4.16².

Note 1: For the purposes of **5.** any requirement to make a claim is ignored³.

Note 2: See DMG Chapter 75 for full guidance on Cat A and Cat B RP.

Note 3: See DMG 74022 for the meaning of pensionable age.

1 Pensions Act 14, s 8(1); 2 SS CB Act 92, s 44(1)(a), 48(1), 48A(1) & (3), 48B(1), (1A), (4) & (4A), & 48BB(1) & (3); Pensions Act 14, s 8(1)(e); 3 s 8(9)(c)

74344 – 74345

Making a choice

74346 When a notice has been issued confirming that a person may make a choice as in DMG 74342, they have a period of three months starting on the date in

1. that notice **or**
 2. the most recent notice, if more than one has been issued
- to make that choice¹.

Note: If a choice is not made, a person is entitled to a lump sum² (see DMG 74354).

1 SP Regs, reg 4(2); 2 Pensions Act 14, s 8(4)

74347 If a person makes the choice before a notice has been issued, the period of three months

1. starts on the later of the date on which
 - 1.1 they claim SP **or**
 - 1.2 their spouse or civil partner died **and**
2. ends on the day they make the choice¹.

1 SP Regs, reg 4(3)

Making a late choice

74348 A person may make a choice after the period of three months where

1. the DM considers it is reasonable **and**
2. any lump sum paid has been repaid
 - 2.1 in full **and**
 - 2.2 in the currency in which it was originally paid¹.

1 SP Regs, reg 4(4)

74349 Where a late choice is made for a SP in accordance with DMG 74348, the amount of any lump sum to be paid is reduced to nil¹.

1 SP Regs, reg 4(5)

How a choice is made

74350 A person makes a choice for a lump sum or SP¹

1. in writing to an office **or**
2. by telephone to a number

which is specified in writing by the Secretary of State as accepting a notice². A person must make a choice in writing when directed to do so by the Secretary of State³.

1 SP Regs, reg 5(1); 2 reg 5(2); 3 reg 5(3)

Chapter 75 - Retirement Pension

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Chapter 75 - Retirement pension

Introduction

Scope of this Chapter

75001 This Chapter gives guidance on RP. RP is the legislative term for “old state pension” whereas the legislative term for “new state pension” is SP. To be entitled to RP, a person must reach pensionable age before 6.4.16¹. A person who reached pensionable age on or after 6.4.16 may be entitled to SP².

Note: See DMG Chapter 74 for guidance on SP.

1 SS CB Act 92; 2 Pensions Act 14

Differences between state pension and retirement pension

Components

75002 RP which can consist of BP and AP and other components such as GRB or age addition. However, once the transition to the new SP is complete it will be a single-component pension.

Contributions of others

75003 People may have entitlement to RP which is based on the NI contributions of others. However, with certain exceptions, entitlement to SP is based only on the person’s own NI contributions.

Note: See DMG Chapter 74 for guidance on those exceptions.

Non-contributory pensions

75004 People reaching pensionable age on or after 6.4.16 will not be able to claim Cat C (with one exception) or Cat D RP.

Note: See DMG 75201 for guidance on Cat C RP and DMG 75221 for guidance on Cat D RP.

Age addition

75005 People over age 80 are entitled to an age addition if they are entitled to RP of any category. However, this age addition will not be paid to people in receipt of SP.

Note: See DMG 75281 for guidance on age addition.

Payability

75006 Unlike RP, SP will always be payable from the date of entitlement to the date of the claimant's death¹. Therefore, there could be part-week payments at the beginning and end of awards.

Note: See DMG Chapter 08 for full guidance on paydays and the day from which benefit will be paid.

1 SS (C&P) Regs, reg 16(5)

75007 – 75010

Categories of retirement pensions

Introduction

75011 There are four categories of RP. These consist of

1. contributory pensions **and**
2. non-contributory pensions.

Note: This applies only to people whose pensionable age is before 6.4.16.

Contributory pensions

75012 Contributory pensions are

1. Cat A RP¹ (see DMG 75021 et seq) **and**
2. Cat B RP² (see DMG 75101 et seq).

1 SS CB Act 92, s 44; 2 s 48A, 48B, 48BB & 51

Non-contributory pensions

75013 Non-contributory pensions are

1. Cat C RP¹ (see DMG 75201 et seq) **and**
2. Cat D RP² (see DMG 75221 et seq).

1 SS CB Act 92, s 78(1); 2 s 78(3)

Increases of retirement pension

75014 The rate of RP may be increased on account of

1. incapacity age addition (see DMG 75271 et seq)
2. age addition (see DMG 75281 et seq)
3. deferment or cancellation (see DMG 75291 et seq)
4. GRB (see DMG 75471 et seq)
5. a dependency increase for
 - 5.1 children (see DMG 75526) **or**
 - 5.2 adults (see DMG 75527 - 75531).

Pensionable age

75015 To be entitled to Cat A, Cat B or Cat C RP a person must have reached pensionable age before 6.4.16¹. Pensionable age² is

1. the 60th birthday for a woman born before 6.4.50
2. the 65th birthday for a man.

Note: See Appendix 1 to this Chapter for pensionable age for a woman born from 6.4.50 to 5.4.53 inclusive.

1 SS CB Act 92, s 44(1), 48A(1), 48B(1), 48BB(1), 51(1) & 78(1); 2 Pensions Act 1995, Sch 4, Part I, para 1

75016 However, to be entitled to Cat D RP a person must have reached

1. the age of 80 **and**
2. pensionable age before 6.4.16¹.

1 SS CB Act 92, s 78(3)

Marriage

75017 Throughout this Chapter, unless the context otherwise requires (for example inheritance provisions), references to

1. marriage includes marriage of a same sex couple
2. a married couple includes a married same sex couple
3. a person who is married includes a person who is married to a person of the same sex¹.

This also applies, for example, to a marriage that has ended or a person whose marriage has ended².

1 Marr (SSC) Act 13, Sch 3, Part 1, para 1(1); 2 Sch 3, Part 1, para 1(2)

75018 For the purpose of DMG 75017, unless the context otherwise requires (for example inheritance provisions), it does not matter how a reference is expressed¹. Therefore, for example, a reference to

1. husband includes a man who is married to another man
2. wife includes a woman who is married to another woman
3. widower includes a man whose marriage to another man ended when the other man died
4. widow includes a woman whose marriage to another woman ended when the other woman died.

Note: For the avoidance of doubt, in a marriage between a man and a woman, the terms husband and wife are to be applied as appropriate to the sex.

1 Marr (SSC) Act 13, Sch 3, Part 1, para 1(3)

75019 Same sex couples can marry

1. in England and Wales from 29.3.14¹ **and**
2. in Scotland from 16.12.14².

In Scotland, before 16.12.14, a marriage of a same sex couple under the law of England and Wales was treated as a civil partnership formed under the law of England and Wales. Therefore, the spouses were treated as civil partners.

1 Marr (SSC) Act 13; 2 Marr & CP (Scot) Act 14

75020

Category A retirement pension

Conditions of entitlement

75021 The conditions of entitlement to Cat A RP¹ are that the claimant

1. has reached pensionable age² before 6.4.16³ (see DMG 75015) **and**
2. satisfies the contribution conditions⁴ (see DMG 75026 et seq) **and**
3. makes a claim⁵ (unless it is not required⁶).

Note: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 44(1); 2 Pensions Act 1995, Sch 4, Part I, para 1; 3 SS CB Act 92, s 44(1)(a); 4 s 44(1)(b), s 44(1A) & Sch 3, Part I, para 5 & 5A; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(ca); reg 3(d) & reg 3A

75022 Cat A RP may consist of a BP and an AP¹.

1 SS CB Act 92, s 44(3)

Date of entitlement for the purpose of payability

75023 If a part-week payment of Cat A RP is due, entitlement for the purpose of payability begins when pensionable age is reached¹. Otherwise entitlement to Cat A RP for the purpose of payability begins

1. on reaching pensionable age if that day is the first day of the benefit week **or**
2. on the first day of the benefit week next following if pensionable age is reached on a day which is not the first day of the benefit week².

However a claimant may elect to defer their entitlement³ (see DMG 75291 et seq).

Note 1: See DMG Chapter 02 for guidance on when entitlement to RP begins where a claimant is in receipt of IB while over pensionable age.

Note 2: See DMG Chapter 08 for guidance on RP paydays and the day from which RP will be paid.

1 SS CB Act 92, s 44(1) & (2); SS A Act 92, s 5(1)(k); SS (C&P) Regs, reg 22D; 2 SS CB Act 92, s 44(1) & (2); SS A Act 92, s 5(1)(k); SS (C&P) Regs, reg 16(1) & (1D); 3 SS CB Act 92, s 55(3)

Period of entitlement

75024 Entitlement to Cat A RP continues throughout a claimant's life¹. However, see DMG Chapter 07 for guidance on the effect of absence from GB², DMG Chapter 12 for guidance on the effect of imprisonment³ on Cat A RP and DMG Chapter 04 for guidance on suspension and termination of benefit⁴.

Note: Entitlement to RP will end where a female to male transgender person receives a GRC before age 65 (see DMG 75065).

1 SS CB Act 92, s 44(1); 2 s 113(1)(a); 3 s 113(1)(b); 4 SS CS (D&A) Regs, regs 16-18

75025

Basic pension

75026 People who reach pensionable age

1. on or after 6.4.10 **and**
2. before 6.4.16¹

are entitled to a standard rate BP if they satisfy a single contribution condition² (see DMG 75027 et seq)

Note: See Appendix 2 to the Chapter for guidance on the contribution conditions for people who reached pensionable age before 6.4.10.

1 SS CB Act 92, s 44(1)(a); 2 s 44(1)(b), s 44(1A)(b) & Sch 3, Part I, para 5A

75027 The single contribution condition is satisfied by

1. the
 - 1.1 payment of, or being credited with, class 1, 2 or 3 contributions **or**
 - 1.2 crediting of earnings from 6.4.87for 30 years¹ **and**
2. having an earnings factor equal to, or greater than, the QEF for each of those years².

1 SS CB Act 92, Sch 3, Part I, para 5A(2)(a); 2 Sch 3, Part I, para 5A(2)(b) & (3)

75028 Pre-1975 contributions can be used towards satisfying the single contribution condition¹.

1 SS (WB, RP & OB) (Trans) Regs, reg 7(1)

75029 Also, a person who is

1. awarded CHB for a child under the age of 12¹ **or**
2. a foster parent² **or**
3. engaged in caring³

can receive a class 3 credit⁴ towards satisfying the single contribution condition.

This class 3 credit replaces HRP from 6.4.10⁵. For periods before 6.4.10 people will receive 52 class 3 credits for each tax year they are entitled to HRP where certain conditions are met⁶.

Note: See DMG 75547 et seq for guidance on these class 3 credits.

1 SS CB Act 92, s 23A(3)(a); 2 s 23A(3)(b); 3 s 23A(3)(c); 4 s 23A(2); 5 Sch 3, Part I, para 5(7); 6 s 23A(5)

75030 If the single contribution condition is not fully satisfied, there may be entitlement to a BP at a reduced rate of 1/30 for each year the conditions at DMG 75027 are satisfied¹.

1 SS CB Act 92, s 60A(2); SS (WB & RP) Regs, reg 6A & 6B

75031 Where

1. class 1 contributions have been paid or treated as paid in any tax year from 1987/88 **and**
2. the amount paid, plus any class 2 or class 3 contributions paid or credited, is not enough to make the year a qualifying year by £50 or less

the earnings factor is increased by the amount required to make the year a qualifying year¹.

1 Social Security (Earnings Factor) Regulations 1979, Sch 1, para 4

Reference to HMRC

75032 Entitlement to Cat A RP depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute about the record, the matter must be referred by the DM to HMRC for a formal decision¹. That referral should be made² to:

HMRC

National Insurance Contributions Office

NE98 1ZZ

Note 1: See DMG Chapters 03, 04 and 06 for guidance on how decisions and appeals are handled after a reference to HMRC.

Note 2: See DMG Chapter 01 where the dispute is about whether credits should be awarded.

1 SS CS (D&A) Regs, reg 11A and 38A; 2 Secretary of State for Work and Pensions v TB v HMRC (RP) [2010] UKUT 88 (AAC) [2010] AACR 38

Additional pension

75033 AP may be payable in addition to BP¹. This includes reduced rate BP² (see DMG 75030).

Note: See DMG 75532 et seq for full guidance on AP, including units of AP where a person has paid a Class 3A contribution.

1 SS CB Act 92, s 44(3); 2 SS (WB & RP) Regs, reg 6A(2)(b)

Incapacitated widows and widowers

75034 A widow or widower who is incapable of work may be entitled to IBLT until they reach pensionable age under special rules¹ (see DMG Chapter 56). A widow or widower over pensionable age is not entitled to IBLT but they will have entitlement to Cat A RP² as long as

1. they are a
 - 1.1 widow who is not already entitled to Cat A RP **or**

- 1.2 widower who is not already entitled to a
 - 1.2.a Cat A RP **or**
 - 1.2.b Cat B RP based on his late wife's contributions **and**
- 2. they
 - 2.1 are over pensionable age **and**
 - 2.2 have claimed RP **and**
- 3. their period of incapacity for work (see DMG Chapter 56) does not end before they reach pensionable age.

1 SS CB Act 92, s 40 & 41; 2 s 40(6) & 41(5)

75035 Where DMG 75034 applies, taking into account the special rules for surviving spouses, the rate of Cat A RP payable will be the higher of the

- 1. weekly rate of IBLT in payment immediately before the claimant reached pensionable age **or**
- 2. rate of Cat A RP the claimant would have been entitled to¹.

1 SS CB Act 92, s 52; SS (W & W IVP) Regs, reg 3

75036 – 75040

Transgender claimants

75041 On 4.4.05 legislation¹ came into force preventing discrimination against people whose gender has changed. Therefore from 4.4.05 entitlement to RP for transgender claimants is based on their acquired gender if they have a full GRC. For periods before 4.4.05 entitlement to RP for male to female transgender claimants is based upon their acquired gender if they have

- 1. reached female pensionable age **and**
- 2. had gender reassignment surgery before that date.

Note: See DMG Chapter 10 for guidance on gender change under the laws of a country other than the UK.

1 GR Act 04

Gender re-assignment surgery

75042 A person is to be treated as if they have had “gender re-assignment surgery” if the surgical procedure they have undergone is any of

- 1. orchidectomy **or**
- 2. penectomy **or**
- 3. vaginoplasty **or**
- 4. clitoroplasty **or**
- 5. labioplasty.

Note: An orchidectomy may also be referred to as an orchiectomy.

75043 A person may have had surgery for the purposes of acquiring a new gender, but not any of the procedures at DMG 75042 1. - 5.. Where that is the case, and the person asserts that they have undergone gender re-assignment surgery, the DM should refer the case to DMA Leeds for advice. DMs should also refer any case where the claimant is a female to male transgender person who does not have a full GRC to DMA Leeds for advice.

Period before gender recognition legislation came into force

Male to female transgender person

75044 Where a male to female transgender person reaches female pensionable age before 4.4.05, DMs should have regard to a Court of Appeal decision¹ (see DMG 75045 - 75049).

1 Timbrell v SSWP [2010] EWCA Civ 701 [2011] AACR 13

75045 The Court of Appeal decided¹ that reliance on gender recognition legislation² to determine entitlement to RP for periods before it came into force on 4.4.05 was incorrect. Instead, there would be discrimination under the equal treatment directive³ where a male to female transgender person had

1. undergone gender re-assignment surgery **and**
2. reached female pensionable age before that date

but was not treated as a natal woman for pensionable age purposes.

1 Timbrell v SSWP [2010] EWCA Civ 701 [2011] AACR 13; 2 GR Act 04; 3 Directive 79/7 EEC

Claims

75046 As a result of the Court of Appeal's decision¹ a male to female transgender person who

1. reached female pensionable age **and**
2. had gender reassignment surgery

before 4.4.05 may now wish to make a claim for RP for a past period before that date. However, the DM should apply the normal rules on the time for claiming RP² which is any day on which the claimant is entitled to RP and the period of 12 months immediately following it³.

Note: See DMG Chapter 02 for full guidance on claims.

1 Timbrell v SSWP [2010] EWCA Civ 701 [2011] AACR 13; 2 R(P) 1/09; 3 SS (C&P) Regs, reg 19(1) & Sch 4, para 13

75047 Where

1. a decision has been made awarding RP **and**
2. a further claim is then made for a past period before gender recognition legislation came into force

that further claim should be treated as an application for supersession of the earlier decision on the grounds of error of law¹. The claimant's pensionable age will be determined in accordance with DMG 75050.

Note: See DMG 75052 - 75061 for further guidance.

1 R(P) 2/09

75048 A claimant who has deferred their entitlement to RP¹ may then make a claim in respect of which their period of deferment² falls partly before gender recognition legislation came into force. The claimant's pensionable age, for the purposes of determining the period of deferment, will be determined in accordance with DMG 75050.

Note: See DMG 75054 – 75061 for further guidance.

1 SS CB Act 92, s 55(3) & Sch 5; 2 s 55(3)

75049 There may be cases where a claim for RP made before gender recognition legislation came into force remains undecided. The claimant's pensionable age will be determined in accordance with DMG 75050.

Note: See DMG 75054 - 75061 for further guidance.

75050 Where DMG 75047, DMG 75048 or DMG 75049 apply, a claimant will reach pensionable age for the purposes of the conditions of entitlement to RP¹ upon the date

1. they reach female pensionable age² **or**
2. of the gender reassignment surgery

whichever is later.

Note: See DMG 75021 for guidance on the conditions of entitlement to RP.

1 SS CB Act 92, s 44(1); 2 Pensions Act 1995, Sch 4, Part 1, para 1

Revision and supersession

75051 A person may apply for a decision on a claim, relating to a period before gender recognition legislation¹ came into force, to be looked at again. A decision cannot be subject to an anytime revision, for official error, where it was only shown to contain an error of law as a result of a later decision of

1. the UT **or**
2. a Court.

Note: See DMG 75054 – 75061 for further guidance.

1 GR Act 04

75052 DMs can supersede a decision on an application made for the purpose or on their own initiative¹. However, DMs should make a decision not to supersede where the outcome is not changed. When considering whether or not the outcome is changed, DMs should note that

1. there is no discrimination under the equal treatment directive² where a male to female transgender claimant reaches pensionable age after the date gender recognition legislation³ came into force **and**
2. such a claimant will reach pensionable age for the purposes of the conditions of entitlement to RP⁴ in accordance with DMG 75050.

Note: See DMG Chapter 03 for full guidance on revision and DMG Chapter 04 for full guidance on supersession.

1 SS Act 98, s 10(1); 2 Directive 79/7 EEC; 3 GR Act 04; 4 SS CB Act 92, s 44(1)

75053 A claimant may argue that the fact they have had gender reassignment surgery since the date of a decision constitutes a relevant change of circumstances¹ for the purposes of a supersession. However, a decision disallowing RP cannot be superseded if there is a change of circumstances, such as gender reassignment surgery, from a date after the decision had effect. The claimant **must** make a fresh claim².

1 SS CS (D&A) Regs, reg 6(2); 2 SS Act 98, s 8(2)(b); R(A) 4/81

Effect of claim, supersession or revision on retirement pension

75054 Following a claim, supersession or revision, where it is decided that a male to female transgender person is entitled to recognition of their acquired gender (see DMG 75041 - 75045), the DM must then decide what action to take in respect of the claimant's RP award.

75055 As a result of the claimant's pensionable age changing following recognition of their acquired female gender

1. the length of their working life¹ **and**
2. the requisite number of years² for the purpose of the second contribution condition³

will be reduced. The DM should recalculate entitlement to RP accordingly and change it if necessary.

Note: See Appendix 2 to the Chapter for guidance on the second contribution condition.

1 SS CB Act 92, Sch 3, Part 1, para 5(8); 2 Sch 3, Part 1, para 5(5); 3 Sch 3, Part 1, para 5(3)

75056 A claimant should be treated as having deferred their entitlement to RP where it was not awarded to them on the date they attained pensionable age in accordance with DMG 75050. Where entitlement to RP was, or is treated as having been, deferred, then the award of RP should include

1. Incs **or**
2. where appropriate, a lump sum payment

in respect of the period of deferment commencing upon the claimant reaching pensionable age in accordance with DMG 75050 and ending upon the date of their award.

- 75057 Where a claimant has the full number of requisite years to meet the second contribution condition then BP should be increased in respect of the period of deferment. With regard to AP, the claimant should be given the option of
1. an increase for deferment in respect of the period of deferment commencing upon the claimant reaching pensionable age in accordance with DMG 75050
or
 2. extra RP attributable to any NI Contributions paid during the period of deferment

whichever is the most advantageous¹. Where the claimant chooses 1. they will be entitled to a refund of NI contributions, paid during the period after they reached pensionable age, from HMRC.

1 R(P) 2/09; MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13

- 75058 Where a claimant has less than the full number of requisite years to meet the second contribution condition then with regard to both BP and AP the claimant should be given the option of
1. an increase for deferment in respect of the period of deferment commencing upon the claimant reaching pensionable age in accordance with DMG 75050
or
 2. extra RP attributable to any NI Contributions paid during the period of deferment

whichever is the most advantageous¹. Where the claimant chooses 1. with regard to both BP and AP they will be entitled to a refund of NI Contributions, paid during the period after they reached pensionable age, from HMRC.

Note: See DMG 75297 where the period of deferment spans 6.4.05.

1 R(P) 2/09; MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13

- 75059 Where a claimant has been in receipt of SPC during a period for which Incs for deferral or RP are awarded following reassessment of pensionable age, then DMs should proceed as if those benefits had not been in payment at the time.

Reinterpretation of the law

- 75060 Sometimes UTs and higher courts give decisions that change a previously held interpretation of the law. Such a decision is known as a relevant determination. The decision of the ECJ¹ dated 27.4.06, which held that the equal treatment directive² precluded legislation which denied a person who had undergone male-female gender reassignment surgery RP until male pensionable age, is a relevant determination³.

Note: See DMG Chapter 04 for full guidance on relevant determination.

1 Richards v Secretary of State for Work and Pensions, R(P) 1/07; 2 Directive 79/7 EEC; 3 SS Act 98, s 27

75061 Therefore, where a decision falls to be made after 27.4.06

1. in relation to a claim **or**
2. as to whether to revise **or**
3. on an application for a decision as to a person's entitlement to be superseded

then, in so far as that decision relates to a period before 27.4.06, the claimant's acquired gender will not be recognised for pensionable age purposes¹. However, this does not apply to a decision as to an award of increments for a period of deferment². Any supersession decision awarding Incs made after the date of the relevant determination will take effect as from that date, namely 27.4.06³ (see DMG 75060). Any supersession decision made before the date of the relevant determination will take effect from the date it is made, or the date of the application, as appropriate⁴.

*1 SS Act 98, s 27; 2 MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13;
3 SS CS (D&A) Regs, reg 7(6); 4 SS Act 98, s 10(5)*

Example 1

Karla is a male to female transgender person. Her date of birth is 5.2.40. She claimed, and was awarded, RP from her 65th birthday. On 1.9.10 Karla makes another claim to RP from 5.2.00. The DM treats that claim as an application for supersession. The DM decides that Karla had undergone gender re-assignment surgery before 5.2.00, and therefore the equal treatment directive applies. The DM decides that Karla has deferred RP for the period before her 65th birthday and calculates her entitlement to Incs. The supersession decision takes effect from 27.4.06, the date of the relevant determination (see DMG 75060); it is from this date that she receives the new rate of RP, taking into account Incs in respect of deferral (see DMG 75291 et seq for guidance on deferral).

Example 2

Andrea is a male to female transgender person. Her date of birth is 1.8.42. She claimed RP on her 60th birthday but was refused on 10.8.02 on the grounds that she had not attained male pensionable age. She claimed again, and was awarded, RP from her 65th birthday. As a result of the Court of Appeal's decision, on 2.3.11 Andrea applies for supersession of the decision of 10.8.02. The DM decides that Andrea had undergone gender re-assignment surgery before 1.8.02, and therefore the equal treatment directive applies. The DM decides that Andrea has deferred RP for the period before her 65th birthday and, as she chose not to take a lump sum payment, calculates her entitlement to Incs. The supersession decision takes effect from 27.4.06, the date of the relevant determination (see DMG 75060); it is from this date that she receives the new rate of RP, taking into account Incs in respect of deferral.

Female to male transgender person

75062 DMs should **not** revise or supersede decisions awarding a Cat A RP to female to male transgender people from female pensionable age in respect of periods prior to gender recognition legislation¹ coming into force. This is because the equal treatment directive² was not implemented to recognise their change of gender before 4.4.05.

1 GR Act 04; 2 Directive 79/7 EEC

Period after gender recognition legislation came into force: GRC received on or after female pensionable age but before age 65

Male to female transgender person

75063 Where a male to female transgender person receives a full GRC on or after female pensionable age but before male pensionable age, any NI contributions paid

1. on or after female pensionable age **and**
2. before the date the GRC is issued

are not refundable¹. Therefore, those NI contributions will continue to be taken into account in the calculation of the amount of a Cat A RP. This applies to BP and AP.

Note: See DMG 75532 et seq for full guidance on AP.

1 GR Act 04, Sch 5, Part 2, para 7(4)

75064 Once notified of the issue of a GRC to a claimant, DMs should decide entitlement to a Cat A RP on the basis that pensionable age is the date of the GRC¹. The claimant is not to be taken to have deferred for any period ending before the GRC is issued².

1 GR Act 04, Sch 5, Part 2, para 7; 2 Sch 5, Part 2, para 10; R(P) 2/09; MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13

Female to male transgender person

75065 Where a female to male transgender person receives a full GRC on or after female pensionable age but before age 65, DMs should decide entitlement to a Cat A RP on the basis that pensionable age is 65. If immediately before a full GRC is issued a female to male transgender person

1. is entitled to Cat A RP **and**
2. has not reached age 65

entitlement will cease once a full GRC is issued¹. A new claim for a Cat A RP can be made as the claimant approaches age 65.

1 GR Act 04, Sch 5, Part 2, para 1 & 7(2)

Example 1

Freda defers her Cat A RP for three years. When she is 63 she makes a claim for, and receives, a Cat A RP including Incs for the deferral. Six months later Freda is issued with a full GRC, is known as Fred and the Cat A RP and Incs for deferral cease. There will be no entitlement to those Incs when Fred makes a further claim for a Cat A RP. There will have to be deferment after Fred reached age 65 for there to be entitlement to Incs in his acquired gender.

Example 2

Justine defers her Cat A RP for two years. When she is 62 she makes a claim for, and receives, a Cat A RP. She elects to take a lump sum rather than Incs for deferral. Six months later Justine is issued with a full GRC, is known as Justin and the Cat A RP ceases. The lump sum payment for deferral is not affected because the claimant was properly entitled to it at the time of the claim.

Period after gender recognition legislation came into force: GRC received on or after age 65

Male to female transgender person - retirement pension awarded

75066 Where a male to female transgender person receives a full GRC on or after male pensionable age, then any NI contributions paid:

1. on or after female pensionable age **and**
2. before the date the GRC is issued

are not refundable¹. Therefore, those NI contributions will continue to be taken into account in the calculation of the amount of a Cat A RP. This applies to BP and AP.

1 GR Act 04, Sch 5, Part 2, para 7(4)

Male to female transgender person - retirement pension not awarded

75067 Where a male to female transgender person receives a GRC on or after age 65, DMs should decide entitlement to a Cat A RP on the basis that pensionable age is male pensionable age. The claimant is not to be taken to have deferred for any period ending before the certificate is issued¹ unless the entitlement

1. was actually deferred during the period **and**
2. would have been capable of being so deferred had the person's gender been the acquired gender.

1 GR Act 04, Sch 5, Part 2, para 10(2); R(P) 2/09; MP v SSWP (RP) [2009] UKUT 205(AAC) [2010] AACR 13

Female to male transgender person - retirement pension awarded

75068 Where a female to male transgender person receives a GRC on or after age 65, the DM should not revise entitlement to a Cat A RP. This is because as a female there

is no liability to make NI contributions after female pensionable age. The claimant should not be deemed to have made contributions until male pensionable age¹.

1 GR Act 04, Sch 5, Part 2, para 7(1) & 7(4)

Female to male transgender person - retirement pension not awarded

75069 Where a female to male transgender person receives a GRC on or after age 65, DMs should decide entitlement to a Cat A RP on the basis that pensionable age is 65. The claimant should not be treated as having made contributions until male pensionable age¹.

1 GR Act 04, Sch 5, Part 2, para 7(1) & 7(4)

75070

Composite pension

75071 A married person's or civil partner's RP is described as composite when its rate is based on

1. their own Cat A entitlement **and**
2. any Cat B to which they would be entitled¹ but for the provisions preventing dual entitlement² (see DMG 75241 et seq).

Note 1: Before 6.5.10 this applies only to married women. From 6.5.10 it also applies to married men and female civil partners and from 6.4.15 it will also apply to male civil partners because those are the earliest dates such people are entitled to Cat B RP (see DMG 75131 and DMG 75134).

Note 2: This does **not** apply³ where a claimant is treated as entitled to a Cat A RP in accordance with DMG 75608.

1 SS CB Act 92, s 51A(1); 2 s 43(1); 3 s 61ZC(3)(b)

75072 If both parties to a marriage reach pensionable age on or after 6.4.79¹, or both parties to a civil partnership do so on or after 5.12.05, and the Cat A BP is less than the standard lower rate of a Cat B RP², it is increased by the lesser of the amount

1. needed to raise the Cat A BP to the standard lower rate of a Cat B RP **or**
2. of the Cat B RP to which the claimant is entitled³.

The result is a composite Cat A RP.

1 SS CB Act 92, s 51A(3); 2 Sch 4, part 1; 3 s 51A(2)

75073 If the person has been a widow, widower or surviving civil partner their Cat A BP may include an increase based on the contributions of their previous spouse or civil partner¹ (see DMG 75081 et seq). Their Cat A entitlement includes this increase when the calculation in DMG 75072 is made.

1 SS CB Act 92, s 52(2)

75074 A person who is entitled on their own contributions only to an AP is still entitled to a Cat A RP and the provision in DMG 75072 will therefore apply¹.
1 SS (WB & RP) Regs, reg 6(2)

75075 A person who is entitled to **both** a

1. Cat A RP

1.1 without a BP **or**

1.2 with a BP at less than the lower Cat B rate **and**

2. Cat B RP

will receive the increase to their BP as part of their Cat A entitlement. Any choice of pension entitlement is between the Cat A with the increase and the Cat B RP¹.

1 SS CB Act 92, s 43

75076 A married person or civil partner who is entitled to an AP is entitled to that AP as well as the composite Cat A RP basic component¹.

1 SS CB Act 92, s 44(3)

75077 The composite Cat A payable may consist of any or all of

1. a person's own Cat A entitlement¹

2. an increase² calculated as in DMG 75072 (see also DMG 75074)

3. an AP³ (see DMG 75661 - 75662 if GMP is payable)

4. Incs

5. GRB (including Incs)⁴.

1 SS CB Act 92, s 44; 2 s 51A; 3 s 45(1); 4 SS (GRB) No. 2 Regs, Sch 1

75078 – 75080

Substitution - marriages or civil partnerships ended by divorce, dissolution or annulment

75081 The guidance at DMG 75082 - 75083 applies to both men and women whose marriage or, from 5.12.05, civil partnership has ended by divorce, dissolution or annulment. Where the claimant has been in more than one marriage or civil partnership, the guidance applies only in respect of their last marriage or civil partnership¹. However, from 16.12.14, a civil partnership is not to be treated as having ended if it is converted into a marriage²

1 SS CB Act 92, s 48(3); 2 s 48(5); Marr (SSC) act 13, s 9; Marriage (Scotland) Act 1977; Marr & CP (Scot) Act 14, s 10

75082 To satisfy the contribution conditions for a Cat A RP, claimants, who reached pensionable age before 6.4.16, are entitled to substitute their former spouse's or civil partner's contributions for their own¹. This includes pre-1975 contributions². However, this does not apply to claimants who reached pensionable age before 6.4.79 if their marriage ended before that date³.

1 SS CB Act 92, s 48(1), SS (WB & RP) Regs, reg 8(2); 2 SS (WB, RP & OB) (Trans) Regs, reg 7(10); 3 SS CB Act 92, s 48(2)

- 75083 DMG 75082 applies to men and women whose last marriage or civil partnership ended
1. before the date on which they reached pensionable age and they did not marry, re-marry or form a civil partnership before that date¹ **or**
 2. on or after the date on which they reached pensionable age otherwise than by the death of the spouse or civil partner².

Note: From 6.4.10, 2. will only apply where DMG 75092 is **not** satisfied³.

1 SS (WB & RP) Regs, reg 8(1)(a) & 8(1)(aa); 2 reg 8(1)(c); 3 reg 8(1)(c)

Marriage or civil partnership ended on or after reaching pensionable age

- 75084 When a claimant's marriage or civil partnership ends on or after reaching pensionable age, if they are already entitled to a Cat B RP on their former spouse's or civil partner's contributions
1. that award would have been for life¹ **and**
 2. they do not cease to be entitled to the pension because the marriage or civil partnership has ended.

If the substitution provisions enable them to obtain a Cat A RP they can only be entitled to one of those pensions because of the dual entitlement provisions (see DMG 75241 et seq).

Note: This applies to claimants who reach pensionable age before 6.4.16.

1 SS CB Act 92, s 48C(1)

- 75085 Where a claimant's marriage or civil partnership ends on or after reaching pensionable age, the Cat A RP entitlement must be at a higher rate than any Cat B RP entitlement. Unless they choose otherwise, claimants will be entitled to a
1. Cat B RP up to the day before the marriage or civil partnership ended **and**
 2. Cat A RP thereafter.

- 75086 Claimants who have a reduced rate Cat A RP of their own are entitled to an increase in the BP up to the level of a Cat B RP¹. When their marriage or civil partnership ends they cease to be a married person or civil partner and so cannot continue to benefit from this rule. Claimants lose any increase to their Cat A RP. The rate of their Cat A RP may be improved using the substitution provisions.

Note: See DMG 75101 et seq for guidance on Cat B RP.

1 SS CB Act 92, s 51A

Extent of substitution

- 75087 A claimant may substitute a former spouse's or civil partner's contribution record for the

1. whole of the claimant's working life up to the end of the marriage or civil partnership **or**
2. period of the marriage or civil partnership¹.

The claimant can benefit from whichever calculation is the more advantageous.

Note: Before 6.4.10 this applies to the first and second contribution condition (see Appendix 2 to this Chapter). From 6.4.10 it also applies to the single contribution condition² (see DMG 75027 et seq).

1 SS CB Act 92, s 48(1); SS (WB & RP) Regs, reg 8 & Sch 1; 2 reg 8(2)

75088 For the purposes of DMG 75087, people who reach pensionable age before 6.4.10 will be treated as satisfying the first contribution condition¹ if their former spouse or civil partner

1. had satisfied that condition² **or**
2. would have satisfied that condition if the single contribution condition³ had not applied⁴

for any year of the working life of people who reach pensionable age before 6.4.10, up to and including the year in which the marriage or civil partnership ended⁵.

*1 SS CB Act 92, Sch 3, Part 1, para 5(2); 2 SS (WB & RP) Regs, reg 8(3)(a);
3 SS CB Act 92, Sch 3, Part 1, para 5A; 4 SS (WB & RP) Regs, reg 8(3)(b); 5 reg 8(3)*

75089 Also, for the purposes of DMG 75087, people will be treated as satisfying the first contribution condition¹ if SP not applied for any year of the working life up to and including the year ending 5.4.16².

1 SS CB Act 92, Sch 3, Part 1, para 5(2); 2 SS (WB & RP) Regs, reg 8(3A)

75090 Additionally, for the purposes of DMG 75087, people will be treated as satisfying

1. the second contribution condition¹ **or**
2. the single contribution condition²

for the number of years calculated in accordance with the prescribed method³ (see DMG 75091).

1 SS CB Act 92, Sch 3, Part 1, para 5(3); 2 Sch 3, Part 1, para 5A; 3 SS (WB & RP) Regs, reg 8(4) & Sch 1

75091 When considering the prescribed method, DMs should note that a qualifying year¹ is a year for which the former spouse's or former civil partner's earnings factor is sufficient to satisfy

1. the second contribution condition² **or**
2. the single contribution condition³.

Qualifying year does not include a year where the former spouse or former civil partner is treated as satisfying those contribution conditions by virtue of the substitution provisions⁴. In addition, a year cannot be a qualifying year after 5.4.16⁵. Also, a year where people receive 52 class 3 credits for being entitled to HRP

before 6.4.10⁶ is not a qualifying year where their marriage or civil partnership ended before that date⁷.

*1 SS (WB & RP) Regs, Sch 1, para 1(c); 2 SS CB Act 92, Sch 3, Part 1, para 5(3)(b);
3 Sch 3, Part 1, para 5A(2)(b); 4 SS (WB & RP) Regs, Sch 1, para 1(c);
5 Sch 1, para 1(a); 6 SS CB Act 92, s 23A(5); 7 SS (SP & NIC) Regs, reg 15(3)*

- 75092 Where people do not satisfy the single contribution condition¹ they are treated as satisfying it by virtue of their former spouse's or civil partner's contributions² if
1. their marriage or civil partnership ended by divorce, dissolution or annulment³
and
 2. their marriage or civil partnership ended after both of them reached pensionable age⁴ **and**
 3. both of them reached pensionable age on or after 6.4.10⁵ **and**
 4. the former spouse or civil partner
 - 4.1 fully satisfied the single contribution condition by having 30 qualifying years⁶ (see DMG 75027 et seq) **or**
 - 4.2 would have satisfied that condition, if they had reached pensionable age before 6.4.16, in respect of NI contributions paid before 6.4.16⁷.

*1 SS CB Act 92, Sch 3, Part 1, para 5A(2); 2 SS (WB & RP) Regs, reg 8A(2);
3 reg 8A(1)(a); 4 reg 8A(1)(b); 5 reg 8A(1)(c) & (1)(d); 6 reg 8A(1)(e)(i) &
SS CB Act 92, Sch 3, Part 1, para 5A(2); 7 SS (WB & RP) Regs, reg 8A(1)(e)(ii)*

Additional pension

- 75093 The contributions of a former spouse or civil partner may only be used to satisfy the contribution conditions for a BP. A person whose marriage or civil partnership has ended cannot be entitled to any AP based on the contributions of a former spouse or civil partner.

Void and voidable marriages or civil partnerships

- 75094 Guidance on the difference between a **void** and a **voidable** marriage or civil partnership is in DMG Chapter 10. For RP purposes a voidable marriage that has been annulled is treated as if it had been a valid marriage that ended at the date of annulment.

Presumption of death

- 75095 Guidance on death and the presumption of death is in DMG Chapter 10.
- 75096 The guidance in DMG 75081 - 75093 applies where a person obtains a decree absolute of
1. presumption of death **and**
 2. dissolution of marriage¹.

1 Mat Causes Act 73

75097 A marriage is treated as having ended on the date of the decree absolute. The surviving partner has the status of a divorced person. However, if the DM is satisfied as to the date of death, the surviving spouse is treated not as a divorcee but as a widow or widower¹.

1 SS (WB & RP) Regs, reg 1(3)

Substitution - widows, widowers and surviving civil partners

75098 To satisfy the contribution conditions for a Cat A RP, a surviving spouse or, from 5.12.05, a civil partner may substitute the late spouse's or civil partner's contribution record for his or her own. This includes pre-1975 contributions¹. This is the same for widows, widowers and surviving civil partners where the

1. last marriage or civil partnership terminated before the surviving

1.1 spouse **or**

1.2 civil partner

reached pensionable age and did not marry, remarry or form a civil partnership before that date² **or**

2. surviving spouse or civil partner was

2.1 widowed **or**

2.2 left as a surviving civil partner

on or after reaching pensionable age, the late spouse or civil partner being under that age at date of death³.

1 SS (WB, RP & OB) (Trans) Regs, reg 7(10); 2 SS (WB & RP) Regs, reg 8(1)(a) & 8(1)(aa); 3 reg 8(1)(b)

Effect of substitution

75099 Where the BP entitlement is based partially or wholly on a substituted record, the claimant cannot receive an increase based on the contributions of their previous spouse or civil partner to that BP¹. They **can** receive an increase to their AP² (see DMG 75532 et seq).

1 SS (WB & RP) Regs, reg 8(5); 2 SS CB Act 92, s 52(3)

75100

Category B retirement pension

Conditions of entitlement

75101 People can be entitled to Cat B RP if they reached pensionable age before 6.4.16¹ and

1. are married² or
2. are civil partners³ or
3. are widows⁴ or
4. are widowers⁵ or
5. are surviving civil partners⁶ or
6. are divorcees⁷ or
7. are former civil partners⁸ or
8. were entitled to
 - 8.1 WPA⁹ or
 - 8.2 BA¹⁰ or
 - 8.3 WP¹¹

before pensionable age was reached.

Note: Where DMG 75181 or DMG 75186 apply, the person must reach pensionable age before 6.4.10¹².

*1 SS CB Act 92, s 48A(1)(a), s 48AA(1)(a)(i) & (3)(a)(i), s 48B(1)(a)(i) & (4)(a), s 48BB(1) & (3);
2 s 48A(1); 3 s 48A(3); 4 s 48B(1) & 51(1); 5 s 48B(1) & 51(1); 6 s 48B(1A) & 51(4);
7 s 48AA(1); 8 s 48AA(3); 9 s 48BB(1); 10 s 48BB(3); 11 s 48B(4); 12 s 51(1)(b)*

75102 Cat B RP is payable by virtue of the contribution record of a person's

1. spouse¹ or
2. late spouse² or
3. former spouse³ or
4. civil partner⁴ or
5. late⁵ civil partner or
6. former civil partner⁶.

Note: Contributions made for tax years from 6.4.16 onwards are excluded from the calculation of Cat B RP.

*1 SS CB Act 92, s 48A(1)(b)(ii); 2 s 48B(1)(b) & 51(1)(c); 3 s 48AA(1)(b)(ii);
4 s 48A(3)(b)(ii); 5 s 48B(1A)(b) & 51(1)(c); 6 s 48AA(3)(b)(iii)*

75103 Cat B RP for widows, widowers and surviving civil partners may consist of a BP and an AP¹.

1 SS CB Act 92, s 48B(2) & 51(6) & (7)

Conversion of civil partnership to marriage

75104 In England and Wales a civil partnership may be converted into a marriage¹. When this happens, the marriage is treated as subsisting from the date the civil partnership was formed². In Scotland, a civil partnership may be changed into a marriage. People in Scotland also have the option to have a marriage ceremony. In either case the marriage is treated as subsisting from the date the civil partnership was formed. However, for the purposes **only** of determining entitlement to a Cat B RP³

1. the civil partnership is treated as existing up to the day before it is converted into a marriage **and**
2. the marriage is treated as existing from the day the civil partnership is converted into a marriage⁴.

1 Marr (SSC) Act 13, s 9; Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014; 2 Marr (SSC) Act 13, s 9(6); 3 SS CB Act 92, s 48A & Sch 3, Part 1, para 5A(1)(b); 4 Marr (SSC) Act, Sch 4, Part 5, para 16

Removal of restriction on entitlement

75105 Before 6.4.10 a married woman's entitlement to Cat B RP is restricted to a period when

1. her husband reached pensionable age and became entitled to Cat A RP¹ **and**
2. her husband satisfied the contribution conditions for Cat A RP² **and**
3. her husband's entitlement to RP began³.

1 SS CB Act 92, s 48A(2)(a); 2 s 48A(2)(b); 3 s 48A(5)

75106 From 6.4.10¹ the requirement that

1. the spouse or civil partner must be entitled to Cat A RP² **and**
2. Cat B RP is not payable for any period before the spouse's or civil partner's entitlement to Cat A RP begins³

do not apply. If the spouse or civil partner has reached pensionable age⁴ and has satisfied the applicable contribution condition it means that a person can be entitled to Cat B RP even if their spouse or civil partner has not made a claim for Cat A RP⁵.

Note: See DMG 75295 for guidance on deferring entitlement to RP by not making a claim for it.

1 Pensions Act 07, s 2(5); 2 s 2(2); 3 s 2(3); 4 s 2(6); 5 Sch 1, Part 2, para 7

Example 1

Tanya reaches pensionable age on 6.9.10 and claims Cat B RP. Her husband Kevin reached pensionable age on 1.2.09. Kevin has deferred entitlement to Cat A RP by not making a claim for it. He continues to defer that entitlement when Tanya makes her claim for Cat B RP. The DM decides Tanya's claim for Cat B RP by virtue of Kevin's contribution record.

Example 2

Caroline reached pensionable age on 27.2.09. She has no entitlement to Cat A RP. Her husband Charles reached pensionable age on 1.4.09. Charles has deferred entitlement to Cat A RP by not claiming it. He continues to defer that entitlement. As Charles has deferred his entitlement to Cat A RP, Caroline's entitlement to Cat B RP is also deferred. However, from 6.4.10 she can make an independent choice between claiming her Cat B RP or continuing to defer it. She decides to claim her Cat B RP from 6.4.10 and, after discussing the deferral options, elects to receive Incs for the period her Cat B was deferred between 1.4.09 and 5.4.10. The DM decides Caroline's entitlement to Cat B RP from 6.4.10 by virtue of Charles's contribution record.

75107 Where, before 6.4.10, a claim for Cat B RP was made by a woman whose husband had deferred entitlement, that claim would have been disallowed. However, that decision **cannot** be

1. revised as it was not an official error (see DMG Chapter 03) **or**
2. superseded for change of circumstances (see DMG Chapter 04).

Therefore a fresh claim would be needed.

Example

Bridget reached pensionable age on 15.9.09. Her husband Ivan reached pensionable age on 16.10.09. Ivan deferred his entitlement to Cat A RP by not claiming it. However, Bridget claimed Cat A and Cat B RP from 16.10.09. She is not entitled to Cat A RP and the DM decides that she is not entitled to Cat B RP because Ivan is deferring his entitlement to Cat A RP. Bridget wants to receive Cat B RP from 6.4.10 and has to make a fresh claim.

75108 Also, where before 6.4.10 a woman has

1. entitlement to
 - 1.1 Cat A RP **or**
 - 1.2 GRB onlybased on her own contributions **and**
2. no entitlement to Cat B RP because her husband has deferred entitlement she will have to make a claim for Cat B RP from 6.4.10.

Date of entitlement

75109 A claimant's entitlement to Cat B RP begins on the day on which the conditions of entitlement are satisfied¹.

Note: See DMG Chapter 08 for guidance on RP paydays and the day from which RP will be paid.

Period of entitlement

75110 Entitlement to Cat B RP continues throughout a claimant's life¹. However, see DMG Chapter 07 for guidance on the effect of absence from GB², DMG Chapter 12 for guidance on the effect of imprisonment³ on Cat B RP, DMG 75151 et seq for guidance on change of marital or civil partnership status and DMG Chapter 04 for guidance on suspensions and termination of benefit⁴.

1 SS CB Act 92, s 48C(1) & 51(9); 2 s 113(1)(a); 3 s 113(1)(b); 4 SS CS (D&A) Regs, regs 16-18

Basic pension

75111 To be entitled to a BP a person's

1. spouse **or**
2. late spouse **or**
3. former spouse **or**
4. civil partner **or**
5. late civil partner **or**
6. former civil partner

must satisfy the single contribution condition for a Cat A RP¹ (see DMG 75026 et seq). This includes a person who is married to a person of the same sex if their spouse was born on or after 6.4.50².

*1 SS CB Act 92, s 48A(3)(b)(iii) & (6)(b), s 48AA(3)(b)(iii) & (6)(b), s 48B(1ZA)(b) & (1A), s 51(3)(b) & (5)(b) & Sch 3, Part I, para 5A;
2 Marr (SSC) Act 13, Sch 4, Part 5, para 11(1); SS CB Act 92, s 48A(2)*

75112 DMG 75111 will apply where

1. a person has reached pensionable age before 6.4.16¹ **and**
 - 1.1 they are married or in a civil partnership² **and**
 - 1.2 their spouse or civil partner reached pensionable age³ **and**
 - 1.3 in the case of a
 - 1.3.a man, their spouse⁴ **or**
 - 1.3.b woman, their same sex spouse⁵ **or**
 - 1.3.c civil partner, their civil partner⁶was born on or after 6.4.50⁷ **or**
2. a person is bereaved over pensionable age, where pensionable age is before 6.4.16⁸, and their spouse died
 - 2.1 while they were married⁹ **and**
 - 2.2 on or after 6.4.10 without having reached pensionable age before that date **or**

3. a person has reached pensionable age after 6.4.10, but before 6.4.16¹⁰, and their civil partner died
 - 3.1 while they were civil partners of each other **and**
 - 3.2 after the person reached pensionable age¹¹ **or**
4. unless DMG 75113 applies, a person is a widow who was married to a woman if she reached pensionable age
 - 4.1 on or after 6.4.10 **or**
 - 4.2 before 6.4.10 and the woman to whom she was married died after reaching pensionable age on or after that date¹² **or**
5. from 10.12.14
 - 5.1 a person's spouse is a woman who legally changed gender from male to female¹³ **and**
 - 5.2 the marriage existed immediately before the spouse obtained a full GRC¹⁴ **or**
6. from 10.12.14
 - 6.1 a person's late spouse
 - 6.1.a was born on after 6.4.45¹⁵ **and**
 - 6.1.b was, at the time of her death, a woman who legally changed gender from male to female¹⁶ **and**
 - 6.2 the marriage existed immediately before the spouse obtained a full GRC¹⁷ **and**
 - 6.3 the person is a woman¹⁸ **or**
7. has been +in a marriage or a civil partnership which has been dissolved and the person reached pensionable age before
 - 7.1 6.4.16¹⁹ **and**
 - 7.2 the marriage²⁰ or civil partnership²¹ was dissolved.

Note 1: Unless DMG 75114 applies, a person who is married to a person of the same sex will be entitled to a Cat B RP as in 1. if their spouse was born on or after 6.4.50²².

Note 2: For the purposes of 1. the contributing civil partner is the partner on whose contribution record the Cat B RP is based. It will apply to female civil partners no earlier than 6.5.10 and to male civil partners no earlier than 6.4.15.

Note 3: See Appendix 2 to the Chapter for guidance on the contribution conditions where pensionable age is reached, or the deceased died, before 6.4.10.

1 SS CB Act 92, s 48A(1)(a) & 48A(3)(a); 2 s 48A(1) & 48A(3); 3 s 48A(1)(b)(i) & 48A(3)(b)(ii); 4 s 48A(2)(a); 5 s 48A(2)(b); 6 s 48A(3)(b)(i); 7 CP Act 04, Sch 24, Part 3, para 25(6); 8 SSCB Act 92, s 48B(1)(a)(i); 9 SS CB Act 92, s 48B(1); 10 s 48B(1A)(a)(i); 11 s 48B(1A)(a); 12 Marr (SSC) Act 13, Sch 4, Part 5, para 12(1); SS CB Act 92, s 48B; 13 s 51ZA(1)(a); 14 s 51ZA(1)(b); 15 s 51ZA(3); 16 s 51ZA(3)(a); 17 s 51ZA(3); 18 s 51ZA(3)(b); 19 s 48AA(1)(a)(i) & (3)(a)(i); 20 s 48AA(1)(a)(ii); 21 s 48AA(3)(a)(ii); 22 Marr (SSC) Act 13, Sch 4, Part 5, para 11(1); SS CB Act 92, s 48A

75113 DMG 75112 4. does not apply where

1. a woman was married to another woman who legally changed gender from male to female **and**
2. the marriage existed immediately before the spouse obtained a full GRC¹.

1 Marr (SSC) Act 13, Sch 4, Part 5, para 12(2)

75114 From 10.12.14 there is an exception to a same spouse having to be born on or after 6.4.50 for there to be entitlement to a Cat B RP. This is where

1. a woman is married to another woman who legally changed gender from male to female **and**
2. the marriage existed immediately before the spouse obtained a full GRC¹.

1 Marr (SSC) Act 13, Sch 4, Part 5, para 11(2)

Example

Harry and Brenda are married. Harry reaches pensionable age on 3.11.14 and Brenda is entitled to a Cat B RP based on his contributions. On 2.3.15 Harry receives a full GRC and becomes known as Harriet. Harriet and Brenda remain married. Although Harriet was born before 6.4.50, Brenda continues to be entitled to a Cat B RP based on Harriet's contributions.

Additional pension

75115 For widows, widowers and surviving civil partners, AP may be payable in addition to BP¹. This includes reduced rate BP² (see DMG 75111).

Note: See DMG 75532 et seq for full guidance on AP, including units of AP where a person has paid a Class 3A contribution.

1 SS CB Act 92, s 48B(2) & 51(6) & (7); 2 SS (WB & RP) Regs, reg 6A(2)(b)

75116 - 75120

Gender recognition certificate issued

75121 From 4.4.05 once a full GRC has been issued, entitlement to, and the rate of, Cat B RP or to a composite pension (see DMG 75071 et seq) will be decided as if the claimant's gender was the acquired gender¹.

Note: See DMG 75476 for guidance on the effect of a full GRC on GRB.

1 GR Act 04, Sch 5, para 1 & 8(1)

- 75122 If, immediately before a full GRC is issued, the claimant is a woman entitled to
1. Cat B RP **or**
 2. a composite Cat A RP under certain legislation¹
- entitlement may cease once a full GRC is issued².

1 SS CB Act 92, s 51A & 52; 2 GR Act 04, Sch 5, para 1 & 8(2)

- 75123 If, immediately before a full GRC is issued, the claimant was a man
1. whose date of birth means that pensionable age for a woman has been reached **and**
 2. who has not reached age 65
- then, for the purposes of Cat B RP for categories of people at DMG 75101, the claimant should be treated as reaching pensionable age when the full GRC is issued¹.

1 GR Act 04, Sch 5, para 1 & 8(3)

- 75124 However, a claimant, who immediately before the issue of a GRC is a man, is not entitled to Cat B RP after the GRC is issued¹ on the grounds of being widowed² if that claimant

1. reaches age 65 before 6.4.10 **and**
2. would not have been entitled to Cat B RP under relevant legislation³.

1 GR Act 04, Sch 5, para 1 & 8(4); 2 SS CB Act 92, s 48B; 3 s 51

Married person whose spouse changed gender

- 75125 A woman is not prevented from being entitled to a Cat B RP in accordance with DMG 75132 where

1. her spouse is a woman who has been issued with a GRC¹ **and**
2. she and her spouse were married before the GRC was issued².

1 SS CB Act 92, s 51ZA(1)(a); GR Act 04; 2 SS CB Act 92, s 51ZA(1)(b)

- 75126 A woman is not prevented from being entitled to a Cat B RP in accordance with DMG 75143 where

1. her former spouse was, at the time the marriage was dissolved, a woman who has been issued with a GRC¹ **and**
2. she and her spouse were married before the GRC was issued².

1 SS CB Act 92, s 51ZA(2)(a); GR Act 04; 2 SS CB Act 92, s 51ZA(2)(b)

- 75127 A woman is not prevented from being entitled to a Cat B RP in accordance with DMG 75154 where

1. her deceased spouse was, when she died, a woman who has been issued with a GRC¹ **and**
2. she and her spouse were married before the GRC was issued².

Where this applies, the guidance at DMG 75153 is changed to the spouse was born before 6.4.45³.

1 SS CB Act 92, s 51ZA(3)(a); GR Act 04; 2 SS CB Act 92, s 51ZA(3)(b); 3 s 51ZA(3) & 48B(1ZB)(a)(ii)

75128 A woman is not entitled to a Cat B in accordance with DMG 75181 if

1. her deceased spouse was, when she died, a woman who has been issued with a GRC¹ **and**
2. she and her spouse were married before the GRC was issued².

1 SS CB Act 92, s 51ZA(4)(a); GR Act 04; 2 SS CB Act 92, s 51ZA(4)(b)

75129 – 75130

Married person

75131 A married person is entitled to a Cat B RP by virtue of the contribution record of their spouse if

1. they reached pensionable age before 6.4.16¹ **and**
2. their spouse
 - 2.1 has reached pensionable age² **and**
 - 2.2 satisfies
 - 2.2.a the first and second contribution conditions if they were born before 6.4.45³ **or**
 - 2.2.b the single contribution condition if they were born on or after 6.4.45⁴ **and**
3. they make a claim⁵ (unless it is not required⁶).

Note 1: For the purposes of 2.2 earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included⁷.

Note 2: See DMG 75125 – 75128 for guidance on transgender cases, DMG 75141 – 75147 for guidance where a marriage or civil partnership is dissolved and DMG 75153 – 75163 for guidance where a person's spouse or civil partner has died.

Note 3: See DMG 75015 for guidance on pensionable age, Appendix 2 to this Chapter for guidance on the first and second contribution conditions and DMG 75027 et seq for guidance on the single contribution condition.

Note 4: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 48A(1)(a); 2 s 48A(1)(b)(i); 3 s 48A(1)(b)(ii) & (6) & Sch 3, para 5; 4 s 48A(1)(b)(ii) & 48A(6) & Sch 3, para 5A; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 7 SS CB Act 92, s 48A(7)

75132 However, a person is not entitled to a Cat B RP in accordance with DMG 75131 if they are

1. a man whose spouse **or**

2. a woman whose wife

was born before 6.4.50¹.

Note: See DMG 75125 for guidance where a woman's late female spouse had changed gender.

1 SS CB Act 92, s 48A(2)

75133 Where DMG 75131 applies, the weekly rate of Cat B RP is that stated in legislation¹. However, this may be reduced if

1. the second contribution condition **or**

2. the single contribution condition

is not fully satisfied².

1 SS CB Act 92, s 48A(4) & Sch 1, Part 4, para 5; 2 s 60A(2); SS (WB & RP) Regs, reg 6, 6A & 6B

Civil partner

75134 A claimant is entitled to a Cat B RP by virtue of the contribution record of their civil partner if

1. they reached pensionable age before 6.4.16¹ **and**

2. their civil partner

2.1 was born on or after 6.4.50² **and**

2.2 has reached pensionable age³ **and**

2.3 satisfies the single contribution condition⁴ **and**

3. they make a claim⁵ (unless it is not required⁶).

Note 1: For the purposes of 2.3 earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included⁷.

Note 2: See DMG 75141 – 75147 for guidance where a person's civil partnership is dissolved and DMG 75153 – 75163 for guidance where a person's civil partner has died.

Note 3: See DMG 75015 for guidance on pensionable age and DMG 75027 et seq for guidance on the single contribution condition.

Note 4: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 48A(3)(a); 2 s 48A(3)(b)(i); 3 s 48A(3)(b)(ii); 4 s 48A(3)(b)(iii) & Sch 5, para 3A; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 7 SS CB Act 92, s 48A(7)

75135 Where DMG 75134 applies, the weekly rate of Cat B RP is that stated in legislation¹. However, this may be reduced if the single contribution condition is not fully satisfied².

1 SS CB Act 92, s 48A(4) & Sch 4, Part 1, para 5; 2 s 60(1) & 60A(2); SS (WB & RP) Regs, reg 6A & 6B

75136 – 75140

Divorcee

75141 A person who has been in a marriage which has been dissolved is entitled to a Cat B RP by virtue of the contribution record of their former spouse if

1. they reached pensionable age before
 - 1.1 6.4.16¹ **and**
 - 1.2 the marriage was dissolved² **and**
2. their former spouse
 - 2.1 reached pensionable age before the marriage was dissolved³ **and**
 - 2.2 satisfied
 - 2.2.a the first and second contribution conditions if they were born before 6.4.45⁴ **or**
 - 2.2.b the single contribution condition if they were born on or after 6.4.45⁵ **and**
3. they make a claim⁶ (unless it is not required⁷).

Note 1: Before 6.4.16, a divorced person could qualify for Cat B RP⁸. However, this is rare as substituted Cat A RP⁹ will normally be more beneficial.

Note 2: For the purposes of 2.2 earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included¹⁰.

Note 3: See DMG 75125 – 75128 for guidance on transgender cases.

Note 4: See DMG 75015 for guidance on pensionable age, Appendix 2 to this Chapter for guidance on the first and second contribution conditions and DMG 75027 et seq for guidance on the single contribution condition.

Note 5: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 48AA(1)(a)(i); 2 s 48AA(1)(a)(ii); 3 s 48AA(1)(b)(i); 4 s 48AA(1)(b)(ii) & 48AA(6) & Sch 3, para 5; 5 s 48AA(1)(b)(ii) & 48AA(6) & Sch 3, para 5A; 6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 8 SS CB Act 92, s 48AA; 9 s 48; 10 s 48AA(7)

75142 For the purposes of DMG 75141, a voidable marriage which has been annulled is treated as a valid marriage which was dissolved on the day it was annulled¹.

1 SS CB Act 92, s 48AA(8)

75143 However, a person is not entitled to a Cat B RP in accordance with DMG 75141 if they are

1. a man whose former spouse **or**
 2. a woman whose former wife
- was born before 6.4.50¹.

Note: See DMG 75126 for guidance where a woman's late female spouse had changed gender.

1 SS CB Act 92, s 48AA(2)

- 75144 Where DMG 75141 applies, the weekly rate of Cat B RP is that stated in legislation¹ if the former spouse is alive. Where the former spouse is deceased, the weekly rate of Cat B RP is equivalent to Cat A BP². However, those amounts may be reduced if
1. the second contribution condition **or**
 2. the single contribution condition
- is not fully satisfied³.

*1 SS CB Act 92, s 48AA(4) & Sch 1, Part 4, para 5; 2 s 44(4) & 48AA(5);
3 s 60(1) & 60A(2); SS (WB & RP) Regs, reg 6, 6A & 6B*

Former civil partner

- 75145 A person who has been in a civil partnership which has been dissolved is entitled to a Cat B RP by virtue of the contribution record of their former civil partner if
1. they reached pensionable age before
 - 1.1 6.4.16¹ **and**
 - 1.2 the civil partnership was dissolved² **and**
 2. their former civil partner
 - 2.1 was born on or after 6.4.50³ **and**
 - 2.2 reached pensionable age before the marriage was dissolved⁴ **and**
 - 2.3 satisfied the single contribution condition⁵ **and**
 3. they make a claim⁶ (unless it is not required⁷).

Note 1: Before 6.4.16, a former civil partner could qualify for Cat B RP⁸. However, this is rare as substituted Cat A RP⁹ will normally be more beneficial.

Note 2: For the purposes of 2.3 earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included¹⁰.

Note 3: See DMG 75125 – 75128 for guidance on transgender cases.

Note 4: See DMG 75015 for guidance on pensionable age and DMG 75027 et seq for guidance on the single contribution condition.

Note 5: See DMG Chapter 02 for guidance on when a claim is not required.

*1 SS CB Act 92, s 48AA(3)(a)(i); 2 s 48AA(3)(a)(ii); 3 s 48AA(3)(b)(i);
4 s 48AA(3)(b)(ii); 5 s 48AA(3)(b)(iii) & 48AA(6) & Sch 3, para 5A;
6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A;
8 SS CB Act 92, s 48AA; 7 s 48; 8 s 48AA(7)*

- 75146 For the purposes of DMG 75145, a voidable marriage which has been annulled is treated as a valid marriage which was dissolved on the day it was annulled¹.

1 SS CB Act 92, s 48AA(8)

75147 Where DMG 75145 applies, the weekly rate of Cat B RP is that stated in legislation¹ if the former civil partner is alive. Where the former civil partner is deceased, the weekly rate of Cat B RP is equivalent to Cat A BP². However, those amounts may be reduced if

1. the second contribution condition **or**
2. the single contribution condition

is not fully satisfied³.

*1 SS CB Act 92, s 48AA(4) & Sch 1, Part 4, para 5; 2 s 44(4) & 48AA(5);
3 s 60A(2); SS (WB & RP) Regs, reg 6A & 6B*

75148 – 75150

Widows, widowers and surviving civil partners

75151 Entitlement to Cat B RP for widows, widowers and surviving civil partners depends on

1. whether a person became a widow, widower or surviving civil partner before or after reaching pensionable age
2. the date on which a person became a widower or surviving civil partner
3. the date on which a spouse died.

The guidance at DMG 75153 - 75191 explains the differences.

75152 Where a widow, widower or surviving civil partner whose spouse or civil partner died on or after 6.4.10 as a result of an IA or PD, the single contribution condition is treated as fully satisfied for the purpose of entitlement to Cat B RP¹.

Note: See DMG 75027 et seq for guidance on the single contribution condition.

1 SS CB Act 92, s 60A(5)

People widowed after reaching pensionable age

75153 A person whose spouse died while they were married is entitled to a Cat B RP by virtue of the contributions of the deceased¹ if

1. the widow or widower reached pensionable age before
 - 1.1 6.4.16 **and**
 - 1.2 their spouse died² **and**
2. the deceased satisfied³
 - 2.1 the first and second contribution conditions⁴ if they died
 - 2.1.a before 6.4.10 **or**
 - 2.1.b on or after 6.4.10 if they had reached pensionable age before that date⁵ **or**
 - 2.2 the single contribution condition⁶ if 2.1 does not apply⁷ **and**

3. the person makes a claim⁸ (unless it is not required⁹).

Note 1: For the purposes of 2. earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included¹⁰.

Note 2: See DMG 75125 – 75128 for guidance on transgender cases.

Note 3: See DMG 75015 for guidance on pensionable age, Appendix 2 to this Chapter for guidance on the first and second contribution conditions and DMG 75027 et seq for guidance on the single contribution condition.

Note 4: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 48B(1); 2 s 48B(1)(a); 3 s 48B(1)(b); 4 Sch 3, Part 1, para 5; 5 s48B(1ZB)(a); 6 Sch 3, Part 1, para 5A; 7 s 48B(1ZB)(b); 8 SS A Act 92, s 1; 9 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 10 SS CB Act 92, s 48B(3A)

75154 However

1. a man who reached pensionable age before 6.4.10 **or**
2. a woman who reached pensionable age before 6.4.10 and whose spouse was a woman

is not entitled to a Cat B RP¹ in accordance with DMG 75153.

Note 1: However, there would be entitlement to a Cat B RP in accordance with DMG 75186 et seq if the deceased spouse or civil partner died when over pensionable age².

Note 2: See DMG 75127 for guidance where a woman's late female spouse had changed gender.

1 SS CB Act 92, s 48B(1ZA); 2 s 51

75155 Where DMG 75153 applies, the weekly rate of a person's Cat B RP is the amount of Cat A RP¹ (see DMG 75027 et seq). However, see DMG 75532 et seq for guidance on the amount of AP.

1 SS CB Act 92, s 48B(2)

People becoming surviving civil partners after reaching pensionable age

75156 A person whose civil partner died while they were civil partners of each other is entitled to a Cat B RP by virtue of the contributions of the deceased¹ if

1. the surviving civil partner reached pensionable age
 - 1.1 on or after 6.4.10 but before 6.4.16 **and**
 - 1.2 before their civil partner died² **and**
2. the deceased satisfied³
 - 2.1 the first and second contribution conditions⁴ if they reached pensionable age before 6.4.10⁵ **or**
 - 2.2 the single contribution condition⁶ if 2.1 does not apply⁷ **and**

3. the person makes a claim⁸ (unless it is not required⁹).

Note 1: For the purposes of 2. earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included¹⁰.

Note 2: See DMG 75125 – 75128 for guidance on transgender cases.

Note 3: See DMG 75015 for guidance on pensionable age, Appendix 2 to this Chapter for guidance on the first and second contribution conditions and DMG 75027 et seq for guidance on the single contribution condition.

Note 4: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 48B(1A); 2 s 48B(1A)(a); 3 s 48B(1A)(b); 4 Sch 3, Part 1, para 5; 5 s 48B(1B)(a); 6 Sch 3, Part 1, para 5A; 7 s 48B(1B)(b); 8 SS A Act 92, s 1; 9 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 10 SS CB Act 92, s 48B(3A)

75157 Where DMG 75156 applies, the weekly rate of a person's Cat B RP is the amount of Cat A RP¹ (see DMG 75026 et seq). However, see DMG 75532 et seq for guidance on AP.

1 SS CB Act 92, s 48B(2)

75158 – 75160

Women widowed before reaching pensionable age

75161 A woman who has reached pensionable age before 6.4.16¹ but whose husband died before 9.4.01² and before she reached pensionable age³ is entitled to a Cat B RP based on her late spouse's contributions if she

1. is entitled, or is treated as entitled, to WP⁴ **and**
2. became entitled to WP following the death of her spouse⁵ **and**
3. makes a claim⁶ (unless it is not required⁷).

Note 1: See DMG 75171 - 75191 for guidance where a woman was widowed on or after 9.4.01.

Note 2: See DMG Chapter 58 for guidance on WP and DMG 75166 for guidance on being treated as entitled to WP.

Note 3: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 48B(4)(a); 2 s 48B(8) & WRP Act 99 (Commencement No. 4) Order 2000, art 2(2)(a)(ii); 3 SS CB Act 92, s 48B(4); 4 s 48B(4)(a) & 48B(5)(a); 5 s 48B(4)(a) & 48B(5)(b); 6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75162 Where DMG 75161 applies, the woman's Cat B RP is payable at the same weekly rate of her WP¹.

1 SS CB Act 92, s 48B(6)(a)

Men widowed before reaching pensionable age

75163 A man who reaches pensionable age on or after 6.4.10¹ and before 6.4.16² but whose wife died before 9.4.01³ is entitled to a Cat B RP based on his late spouse's contributions⁴ if he would have been entitled to WP⁵ in accordance with DMG 75166

1. on the same terms and conditions **and**
2. at the same rate

as a woman⁶ and he makes a claim⁷ unless it is not required⁸).

Note: See DMG Chapter 02 for guidance on when a claim is not required.

*1 Pensions Act 1995, Sch 4, Part II, para 3(3); 2 SS CB Act 92, s 48B(4A)(a);
3 s 48B(8) & WRP Act 99 (Commencement No. 4) Order 2000, art 2(2)(a)(ii);
4 SS CB Act 92, s 48B(4)(b); 5 s 48B(5); 6 s 48B(7); 7 SS A Act 92, s 1;
8 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A*

75164 Where DMG 75163 applies, the man's Cat B RP is payable at weekly rate of WP to which he would have been entitled

1. on the same terms and conditions **and**
2. at the same rate

as a woman¹.

1 SS CB Act 92, s 48B(6)(b) & (7)

75165

Women treated as receiving widow's pension before 9.4.01

75166 For the purposes of entitlement to Cat B RP a widow is treated as entitled to WP¹ if there would have been entitlement or payability² but for

1. failure or delay in making a claim for WP **or**
2. being entitled to WMA (see DMG Chapter 58) **or**
3. being disqualified or suspended from receiving WP because of
 - 3.1 LTAMC (see DMG Chapter 11) **or**
 - 3.2 receipt of an overlapping benefit (see DMG Chapter 17) **or**
 - 3.3 imprisonment (see DMG Chapter 12) **or**
4. having reached age 65 **or**
5. remarrying after 4.4.71.

1 SS (WB & RP) Regs, reg 7; 2 SS (OB) Regs, reg 16

Entitled to widowed parent's allowance at pensionable age

75167 A person widowed on or after 9.4.01¹, or a person who becomes a surviving civil partner on or after 5.12.05, who has reached pensionable age before 6.4.16² is entitled to a Cat B RP based on the contributions of their late spouse or civil partner³ where

1. immediately before reaching pensionable age the person was entitled to WPA (see DMG Chapter 63) because of the death of their late spouse or civil partner⁴ **and**

2. following the death of the spouse or civil partner the person has not remarried or formed a civil partnership⁵ **and**
3. the person makes a claim⁶ (unless it is not required⁷).

Note: See DMG Chapter 02 for guidance on when a claim is not required.

1 WRP Act 99 (Commencement No. 4) Order 2000, art 2(2)(a)(ii); 2 SS CB Act 92, s 48BB(1); 3 s 48BB(2); 4 s 48BB(1)(a); 5 s 48BB(1)(b); 6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75168 DMG 75167 also applies where a man is entitled to WPA because he

1. was widowed before 9.4.01
2. did not remarry before that date **and**
3. was under pensionable age on that date¹.

1 SS CB Act 92, s 39A(1)(b) & s 48BB

75169 Where DMG 75167 and 75168 apply the person's Cat B RP is payable at the same weekly rate as their WPA¹.

1 SS CB Act 92, s 48BB(2)

75170

Entitled to widowed parent's allowance or bereavement allowance before reaching pensionable age

75171 A person widowed on or after 9.4.01¹, or a person who becomes a surviving civil partner on or after 5.12.05, who has reached pensionable age before 6.4.16² is entitled to a Cat B RP based on the contributions of their late spouse or civil partner³ where

1. because of the death of the late spouse or civil partner the person is entitled to
 - 1.1 BA (see DMG Chapter 63) at any time before reaching pensionable age⁴ **or**
 - 1.2 WPA (see DMG Chapter 63) at any time over age 45 but **not** immediately before reaching pensionable age⁵ **and**
2. following the death of the spouse or civil partner the person has not remarried or formed a civil partnership⁶ **and**
3. the person makes a claim⁷ (unless it is not required⁸).

Note: See DMG Chapter 02 for guidance on when a claim is not required.

1 WRP Act 99 (Commencement No. 4) Order, art 2(2)(a)(ii); 2 SS CB Act 92, s 48BB(3); 3 s48BB(4); 4 s 48BB(3)(a)(i); 5 s 48BB(3)(a)(ii); 6 s 48BB(3)(b); 7 SS A Act 92, s 1; 8 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75172 Where DMG 75171 applies the person's Cat B RP is payable at the weekly rate of AP (see DMG 75532 et seq) only¹.

1 SS CB Act 92, s 48BB(5)

75173 If a person to whom DMG 75171 applies was under age 55 at the time

1. when entitlement to WPA ended¹ **or**

2. of the death of the spouse or civil partner when 1. does not apply²
the weekly rate of Cat B RP is reduced³.

1 SS CB Act 92, s 48BB(9)(a); 2 s 48BB(9)(b); 3 s 48BB(8)

75174 The reduction for the purposes of DMG 75173 is 7% multiplied by

1. the number of years by which the person's age at the time
 - 1.1 entitlement to WPA ended **or**
 - 1.2 the late spouse diedwas less than 55¹ **or**
2. 10 if the number of years exceeds 10².

Note: Where 1. applies, any part year is counted as a year³.

1 SS CB Act 92, s 48BB(8)(a); 2 s 48BB(8)(b); 3 s 48BB(8)(a)

Treated as entitled to widowed parent's allowance or bereavement allowance

75175 For the purposes of entitlement to Cat B RP a surviving spouse or civil partner is treated as entitled to a WPA or BA¹ if there would have been entitlement or payability² but for

1. failure or delay in making a claim for WPA or BA **or**
2. being disqualified or suspended from receiving WPA or BA because of
 - 1.1 LTAMC (see DMG Chapter 11) **or**
 - 1.2 receipt of an overlapping benefit (see DMG Chapter 17) **or**
 - 1.3 imprisonment (see DMG Chapter 12)
3. having reached pensionable age **or**
4. marrying, remarrying or forming a civil partnership.

1 SS (WB & RP) Regs, reg 7A; 2 SS (OB) Regs, reg 16

75176 – 75180

Widows and widowers who reached pensionable age before 6.4.10

75181 A person whose spouse died while they were married is entitled to a Cat B RP if

1. they and their spouse were both over pensionable age when their spouse died¹ **and**
2. they reached pensionable age before 6.4.10² **and**
3. their spouse satisfied³
 - 3.1 the first and second contribution conditions⁴ if they reached pensionable age before 6.4.10⁵ **or**

3.2 the single contribution condition⁶ if they reached pensionable age on or after 6.4.10⁷ **and**

4. they make a claim⁸ (unless it is not required⁹).

Entitlement to a Cat B RP begins on the day the conditions of entitlement are satisfied and continue throughout the person's life¹⁰.

Note 1: For the purposes of **3.** earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included¹¹.

Note 2: See DMG 75128 for guidance where a woman's late female spouse had changed gender.

Note 3: See DMG 75015 for guidance on pensionable age, Appendix 2 to this Chapter for guidance on the first and second contribution conditions and DMG 75027 et seq for guidance on the single contribution condition.

Note 4: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 51(1)(a); 2 s 51(1)(b); 3 s 51(1)(c); 4 Sch 3, Part 1, para 5; 5 s 51(3)(a); 6 Sch 3, Part 1, para 5A; 7 s 51(3)(b); 8 SS A Act 92, s 1; 9 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 10 SS CB Act 92, s 51(9); 11 s 51(8)

75182 However, a person is not entitled to a Cat B RP¹ in accordance with DMG 75181 if they are

- 1.** a woman whose husband has died **or**
- 2.** a man whose wife died before 6.4.79.

Note: Where **1.** applies, DMG 75156 will apply instead.

1 SS CB Act 92, s 51(2)

75183 Where DMG 75181 applies, the weekly rate of Cat B RP is that stated in legislation¹. However, that amount may be reduced if

- 1.** the second contribution condition **or**
- 2.** the single contribution condition

is not fully satisfied².

Note: DMG 75581 et seq applies for the calculation of AP³.

1 SS CB Act 92, s 51(6), 44 – 45AA & Sch 4A; 2 s 60(1) & 60A(2); SS (WB & RP) Regs, reg 6, 6A & 6B; 3 SS CB Act 92, s 51(7)

75184 – 75185

Surviving civil partner who reached pensionable age before 6.4.10

75186 A person whose civil partner died while they were civil partners of each other is entitled to a Cat B RP if

- 1.** they and their civil partner were both over pensionable age when their civil partner died¹ **and**

2. they reached pensionable age before 6.4.10² **and**
3. their civil partner satisfied³
 - 3.1 the first and second contribution conditions⁴ if they reached pensionable age before 6.4.10⁵ **or**
 - 3.2 the single contribution condition⁶ if they reached pensionable age on or after 6.4.10⁷ **and**
4. they make a claim⁸ (unless it is not required⁹).

Entitlement to a Cat B RP begins on the day the conditions of entitlement are satisfied and continue throughout the person's life¹⁰.

Note 1: For the purposes of 3. earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included¹¹.

Note 2: See DMG 75015 for guidance on pensionable age, Appendix 2 to this Chapter for guidance on the first and second contribution conditions and DMG 75027 et seq for guidance on the single contribution condition.

Note 3: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 51(4)(a); 2 s 51(4)(b); 3 s 51(4)(c); 4 Sch 3, Part 1, para 5; 5 s 51(5)(a); 6 Sch 3, Part 1, para 5A; 7 s 51(5)(b); 8 SS A Act 92, s 1; 9 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A; 10 SS CB Act 92, s 51(9); 11 s 51(8)

75187 Where DMG 75186 applies, the weekly rate of Cat B RP is that stated in legislation¹. However, that amount may be reduced if

1. the second contribution condition **or**
2. the single contribution condition

is not fully satisfied².

Note: DMG 75581 et seq applies for the calculation of AP³.

1 SS CB Act 92, s 51(6), 44 – 45AA & Sch 4A; 2 s 60(1) & 60A(2); SS (WB & RP) Regs, reg 6, 6A & 6B; 3 SS CB Act 92, s 51(7)

75188 – 75190

Meaning of late spouse or civil partner

75191 Where a widow or widower has been married more than once, or a surviving civil partner has been in more than one civil partnerships, late spouse or civil partner means¹ for the purposes of

1. DMG 75167 the
 - 1.1 spouse to whom they were last married **or**
 - 1.2 civil partner with whom they were last in a civil partnership **and**
2. DMG 75171 the
 - 2.1 spouse to whom they were last married **or**

2.2 civil partner with whom they were last in a civil partnership
before reaching pensionable age.

1 SS (WB & RP) Regs, reg 1(2)

Increments and a lump sum payment

75192 A widow, widower or surviving civil partner who is entitled to a Cat B RP may be entitled to a lump sum payment or an increased RP where certain conditions are met¹ (see DMG 75331 et seq).

1 SS CB Act 92, Sch 5, para 3C, 4 & 5

Effect of the forfeiture rule

75193 The forfeiture rule means that in certain circumstances a person who has unlawfully killed another cannot benefit from that killing¹. A widow's, widower's or surviving civil partner's entitlement to Cat B RP may have to be considered under this rule (see DMG Chapter 76).

1 Forfeiture Act 1982

75194 - 75200

Category C retirement pension

Introduction

75201 Cat C RP is a non-contributory pension¹. There is no entitlement to it for people who reach pensionable age on or after 6.4.16².

Note: Guidance on Cat C RP for people who reach pensionable age before 6.4.16 is retained at Appendix 4 to this Chapter for historical purposes.

1 SS CB Act 92, s 63(f)(i); 2 Pensions Act 14, Sch 12, Part 2, para 80

75202 Therefore, only

1. a widow whose husband was over pensionable age on 5.7.48 **or**
2. a woman whose marriage to a man, who was over pensionable age on 5.7.48, ended otherwise than by his death

can have entitlement to Cat C RP¹.

1 SS CB Act 92, s 63(f)(i)

75203 - 75205

Widows and former wives

75206 A widow¹ or former wife² of a man who was over pensionable age on 5.7.48 may have entitlement to Cat C RP.

1 SS CB Act 92, s 78(9)(a); SS (WB & RP) Regs, reg 11; 2 SS CB Act 92, s 78(9)(b); SS (WB & RP) Regs, reg 12

Widows

75207 A widow whose late husband was over pensionable age on 5.7.48 is entitled to a Cat C RP if

1. she is over pensionable age **and**
2. she was over age 45
 - 2.1 when her husband died **or**
 - 2.2 when she ceased to be entitled to WMA(C) **and**
3. her husband
 - 3.1 was entitled to Cat C RP (see DMG 75211) **or**
 - 3.2 died before 2.11.70 **and**
 - 3.2.a she was resident in GB for a period of at least ten years (see DMG 75210) between 5.7.48 and 1.11.70 (both dates included) **and**
 - 3.2.b she was ordinarily resident in GB on 2.11.70 or the date of her claim to Cat C RP **and**

3.2.c her husband was ordinarily resident in GB on the date of his death¹ **and**

4. she makes a claim² (unless it is not required³).

Note 1: Before 11.4.88, for the purposes of **2.** a widow had to be over age 40.

Note 2: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS CB Act 92, s 78(9)(a); SS (WB & RP) Regs, reg 11(1); 2 SS A Act 92, s 1; 3 SS (C&P) Regs, reg 3(a)

75208 Cat C RP is payable at a reduced rate¹ where the widow was under age 55

1. when her entitlement to WMA(C) ceased **or**

2. if she has not been entitled to WMA(C), when her late husband died².

Note: Before 11.4.88, a widow had to be under age 50.

1 SS CB Act 92, s 39(4); 2 SS (WB & RP) Regs, reg 11(3)(a)

Former wives

75209 Where a woman's marriage ends by divorce or annulment she is entitled to a Cat C RP if

1. her husband was over pensionable age on 5.7.48 **and**

2. she has reached pensionable age before the end of the marriage **and**

3. where the marriage ended

3.1 on or after 2.11.70¹, her husband was entitled to Cat C RP (see DMG 75211) **or**

3.2 before 2.11.70²

3.2.a she has been resident in GB for a period of at least 10 years (see DMG 75210) between 5.7.48 and 1.11.70 (both dates included) **and**

3.2.b she was ordinarily resident in GB on 2.11.70 or on the date of her claim to Cat C RP **and**

3.2.c her husband was ordinarily resident in GB when the marriage ended **and**

3.2.d she did not remarry between the date the marriage ended and 2.11.70 **and**

4. she makes a claim³ (unless it is not required⁴).

Note 1: See DMG 75094 for guidance on voidable marriages that have been annulled.

Note 2: See DMG Chapter 02 for guidance on when a claim is not required.

1 SS (WB & RP) Regs, reg 12(1) & (3); 2 reg 12(1) & (2); 3 SS A Act 92, s 1; 4 SS (C&P) Regs, reg 3(a)

Residence

75210 For the purposes of DMG a period of at least ten years means

1. a period of **or**
2. periods amounting to
3652 days¹.

Note: See DMG Chapter 07 for guidance on resident in GB and ordinarily resident.

1 SS (WB & RP) Regs, reg 1(2)

Meaning of “entitled to Category C retirement pension”

75211 For the purposes of DMG 75207 **3.1** and DMG 75209 **3.1** a husband is treated as entitled to Cat C RP if the absence of a claim, where one is required, is all that prevents entitlement¹.

1 SS (WB & RP) Regs, reg 1(4)

75212 – 75215

Weekly rate of Category C retirement pension

75216 The weekly rate of a Cat C RP is stated in legislation¹.

1 SS (WB & RP) Regs, reg 11(3)

Effect of the forfeiture rule

75217 The forfeiture rule means that in certain circumstances a person who has unlawfully killed another cannot benefit from that killing¹. A widow's entitlement to Cat C RP may have to be considered under this provision (see DMG Chapter 76).

1 Forfeiture Act 1982

75218 - 75220

Category D retirement pension

Conditions of entitlement

- 75221 Cat D RP is a non-contributory pension payable to people who
1. reached pensionable age before 6.4.16¹ **and**
 2. are over age 80² **and**
 3. are either
 - 3.1 not entitled to a Cat A, B or C RP³ **or**
 - 3.2 entitled to a Cat A, B or C RP which, after disregarding certain elements (see DMG 75222), is payable at a weekly rate less than the rate of Cat D stated in legislation⁴ **and**
 4. were resident in GB for a period of at least ten years in any continuous period of 20 years which includes the day before their 80th birthday or any day after⁵ **and**
 5. were ordinarily resident in GB on the
 - 5.1 day they reached age 80 **or**
 - 5.2 date of claim for the pension if later⁶ **and**
 6. make a claim unless they are in receipt of Cat A, B or C RP⁷ (see DMG Chapter 02).

Note 1: See DMG Chapter 07 for the meaning of resident and ordinarily resident

Note 2: In the event of a delayed claim, **5.2** is deemed to be satisfied on the date that the person became ordinarily resident in GB.

1 SS CB Act 92, s 78(3); 2 s 78(3); 3 s 78(3)(a); 4 s 78(3)(b) & (4); 5 SS (WB & RP) Regs, reg 10(a); 6 reg 10(b); 7 SS A Act 92, s 1; SS (C&P) Regs, reg 3(b)(ii)

- 75222 For the purposes of DMG 75221 **3.2** the elements to be disregarded¹ are any
1. AP **and**
 2. increase due to
 - 2.1 AP **or**
 - 2.2 an increase in GMP **and**
 3. GRB **and**
 4. increase for dependants (see DMG 75223).

1 SS CB Act 92, s 78(4)

75223 DMG 75222 **4.** will not apply¹ from

1. 6.4.10² **or**
2. the earliest date in DMG 75528 if DMG 75527 applies³.

1 Pensions Act 07, Sch 1, Part 4, para 13; 2 s 4(4); 3 s 4(5)

Residence

75224 For the purposes of DMG 75221 4. a period of at least ten years means

1. a period of **or**
2. periods amount to
3652 days¹.

Note: See DMG Chapter 07 for guidance on resident in GB and ordinarily resident.

1 SS (WB & RP) Regs, reg 1(2)

Period of entitlement

75225 Entitlement to Cat D RP continues throughout a person's life¹. However, see DMG Chapter 07 for guidance on the effect of absence from GB², DMG Chapter 12 for guidance on the effect of imprisonment³ on Cat D RP and DMG Chapter 04 for guidance on suspension and termination of benefit⁴.

1 SS CB Act 92, s 78(7); 2 s 113(1)(a); 3 s 113(1)(b); 4 SS CS (D&A) Regs, regs 16-18

Weekly rate of Category D retirement pension

75226 The weekly rate of Cat D RP is that stated in legislation¹. However, see DMG 75241 et seq for guidance on when a person is entitled to both a Cat D RP and either a Cat A or a Cat B RP.

1 SS CB Act 92, s 78(6) & Sch 4, Part III, para 7

Treated as entitled to retirement pension

75227 People are treated as entitled to RP if they would be entitled but for the overlapping benefit provisions. Therefore, people will not be entitled to a Cat D RP if their entitlement to another Cat RP is higher than the weekly rate of Cat D but is not payable.

75228 - 75240

Dual entitlement

75241 People may satisfy the conditions for an award of more than one RP. However, unless DMG 75244 or DMG 75246 apply, there can be no entitlement for the same period to more than one RP¹.

Note: This can apply where a person has been married more than once.

1 SS CB Act 92, s 43(1)

75242 Unless DMG 75243 applies, where, apart from the dual entitlement provisions, there would be entitlement to

1. a Cat A RP and one or more Cat B RPs **or**
2. more than one Cat B RP but not a Cat A RP **or**
3. a Cat C RP and a Cat D RP

for the same period, people may notify the DM in writing which RP, whether of the same or a different category, they wish to receive¹. If there is no written notification, a person is entitled to the most favourable RP² providing all the conditions of entitlement, including making a claim where one is required, have been met³.

1 SS CB Act 92, s 43(3); 2 s 43(5); 3 R(P) 2/03, R(P) 1/05

Example 1

Audrey is a widow who is entitled to a Cat B RP based on her deceased husband's contributions. She then marries Arthur and becomes entitled to another Cat B RP based on his contributions at a higher rate than the Cat B she is receiving. Audrey notifies the DM in writing that she wishes to receive the Cat B RP based on Arthur's contributions and she makes a new claim. The DM awards the new Cat B from the week following the date of notification and claim.

Example 2

Barbara is married to Reggie. She receives a Cat A RP based on her own contributions. When Reggie reaches pensionable age, Barbara would be entitled to a Cat B RP based on his contributions. However, Barbara does not notify the DM in writing about which RP she wishes to receive or make a claim for Cat B RP. Therefore, Barbara continues to receive CAT A RP based on her own contributions.

75243 DMG 75242 does not apply where a person is treated as entitled to

1. a Cat A RP¹ in accordance with DMG 75608 **or**
2. a Cat B RP² in accordance with DMG 75609.

1 SS CB Act 92, s 61ZC(3)(b); 2 s 61ZC(3)(c)

75244 A claimant may be entitled to both

1. Cat A or Cat B RP **and**
2. Cat C or Cat D RP

for the same period. However, despite the dual entitlement provisions, entitlement to both pensions remains. The amount paid is adjusted under the overlapping benefits provisions¹ (see DMG Chapter 17).

1 SS CB Act 92, s 43(2); SS A Act 92, s 73; SS (OB) Regs, reg 4(5)

75245 In addition, a claimant may be entitled to both

1. Cat A RP only because of AP attributable to units of AP and one Cat B RP¹
or
2. Cat A RP and one Cat B RP only because of AP attributable to units of AP²
for the same period.

Note 1: If there is more than one Cat B, for the purposes of **2**, it is the Cat B which is most favourable³.

Note 2: See DMG 75601 for the meaning of units of AP.

1 SS CB Act 92, s 43(2)(a), s 61ZC(1) & s 61ZC(3)(a); 2 s 43(2)(a), s 61ZC(2) & s 61ZC(3)(a); 3 s 61ZC(2)(b)

75246 There are special provisions for

1. married people or civil partners (see DMG 75071 et seq) **and**
 2. widows, widowers or surviving civil partners (see DMG 75081 et seq)
- who are entitled to both Cat A and Cat B RP.

75247 The provisions in DMG 75246 do not

1. establish entitlement for the same period to more than one pension **or**
2. permit an award of the Cat B RP in isolation.

However, they do allow Cat A RP to be increased by specified amounts derived from the potential Cat B RP entitlement. No change in the category of RP occurs, simply a change in the rate at which the existing Cat A RP is paid. This change to a composite Cat A RP is achieved by superseding the existing award of Cat A RP. Where both decisions are given at the same time no change is necessary.

75248 The category of RP in payment will change where a fresh claim is needed to establish entitlement to the second category of RP.

Example

Emily is receiving a Cat B RP and is divorced. She is able to substitute her former husband's contribution record for her own to establish entitlement to a Cat A RP (see DMG 75026 et seq). The award of the Cat A RP will result from the fresh claim and that award provides ground for superseding the award of Cat B.

75249 A further claim will also be required where entitlement arises to a second RP of the same category as an existing award but based upon a different contribution record.

Age addition

Entitlement to age addition

- 75281 A person who
1. reached pensionable age before 6.4.16 **and**
 2. is over age 80 **and**
 3. is entitled to a RP of any category
- is entitled to an increase known as an age addition¹.

1 SS CB Act 92, s 79(1)

- 75282 People are also entitled to an age addition if they
1. are over age 80¹ **and**
 2. are not in receipt of RP of any category² **and**
 3. are receiving³
 - 3.1 IIDB **or**
 - 3.2 a war pension **or**
 - 3.3 SDA **or**
 - 3.4 CA **or**
 - 3.5 GRB **and**
 4. satisfy the additional conditions that they
 - 4.1 are in receipt of a benefit at 3.1 - 3.4 which would extinguish the amount of RP if it was payable⁴ **and**
 - 4.2 would have been entitled to RP of any category if they had made a claim⁵.

Note: The additional conditions at 4. do **not** apply to people who are in receipt of GRB⁶.

*1 SS CB Act 92, s 79(2); 2 SS (WB & RP) Regs, reg 17; 3 reg 17(1); 4 reg 17(2)(a); SS (OB) Regs, reg 6 & Sch 1;
5 SS (WB & RP) Regs, reg 17(2)(b); 6 reg 17(3)*

- 75283 Where DMG 75282 applies, people are entitled to an age addition as an increase to a benefit at DMG 75282 3.¹.

1 SS CB Act 92, s 79(2)

Period of entitlement of age addition

- 75284 Entitlement to age addition continues throughout a person's life¹. However, see DMG Chapter 04 for guidance on suspension and termination of benefit².

1 SS CB Act 92, s 79(3); 2 SS CS (D&A) Regs, regs 16-18

Weekly rate of age addition

75285 The weekly amount of age addition is that stated in legislation¹.

1 SS CB Act 92, s 79(3) & Sch 4, Part III, para 8

75286 - 75290

Deferred or cancelled entitlement to retirement pension

Introduction

75291 Entitlement to RP starts on the day all the conditions for

1. pensionable age **and**
2. contributions **and**
3. claims

are satisfied. However, people may defer¹ or cancel² their entitlement to a Cat A or a Cat B RP.

1 SS CB Act 92, s 55; 2 s 54; SS (WB & RP) Regs, reg 2

75292 Before 6.4.05 people who deferred their entitlement could only receive Incs to their Cat A or Cat B RP. However, from and including 6.4.05¹ people who defer their entitlement to a Cat A or Cat B RP for at least twelve months can elect to receive a lump sum payment as an alternative to Incs².

Note: People who cancel entitlement to a Cat A or a Cat B RP can also elect to receive a lump sum payment as an alternative to Incs in the same way as people who defer their entitlement (see DMG 75295 3.).

1 Pensions Act 2004, s 322(3)(b); 2 s 297(1); SS CB Act 92, s 55 & Sch 5, para A1(1)

75293 To be able to choose a lump sum payment the period of deferment must be at least twelve months starting on or after 6.4.05¹. To be entitled to Incs the period of deferment may be less than twelve months² but must be sufficient to satisfy the 1% rule (see DMG 75370).

1 SS CB Act 92, Sch 5, para A1(1); 2 Sch 5, para 1

Meaning of period of deferment

75294 A period of deferment is a period from and including pensionable age during which entitlement to RP is deferred because of the failure of a claimant to make a claim or because a claim is cancelled or withdrawn¹.

1 SS CB Act 92, s 55(3)

Deferring entitlement

75295 People defer entitlement to a Cat A or a Cat B RP

1. if they have not made a claim for their pension but otherwise would meet the conditions of entitlement¹ **or**

2. where entitlement to their pension has been cancelled² **or**
3. by withdrawing a claim at any time before an award has been made³.

Note: Before 6.4.10 a married woman will have deferred entitlement to Cat B RP where her entitlement is based on her husband's contributions and he has not claimed Cat A RP.

1 SS CB Act 92, s 55(3)(a); 2 s 54(1) & 55(3)(b); 3 SS (C&P) Regs, reg 5(2)

75296 However, once an award has been made, the claim cannot be withdrawn. A claimant not wishing to accept RP at this stage must cancel entitlement by making an election¹ (see DMG 75301 et seq.). Where a claim for RP is made before pensionable age has been reached (see DMG 75015) an election cannot be made until entitlement starts.

1 SS CB Act 92, s 54

Deferment spans 6.4.05

75297 Before 6.4.05 claimants could only accrue Incs for a maximum of 5 years even if they had deferred entitlement to RP for a longer period. If entitlement to RP is deferred for a period which spans 6.4.05, DMs should use the aggregate of the periods

1. before 6.4.05 **and**
2. on or after 6.4.05

to decide the total period of deferment. This applies even if the 5 year maximum period had been reached before 6.4.05.

Example

Mabel was age 60 on 17.1.00. She deferred entitlement to Cat A RP until she claimed it on 14.9.09. Mabel is entitled to Incs for the period from 17.1.00 to 5.4.05 plus either Incs or a lump sum payment for the period from 6.4.05 to 13.9.09.

Deferment when gender recognition certificate issued

75298 From 4.4.05 once a full GRC has been issued, a person's entitlement to a Cat A or a Cat B RP cannot be taken to have been deferred for any period ending immediately before the full GRC is issued¹ unless the entitlement

1. was actually deferred during the period **and**
2. would have been capable of being deferred if the person's gender had been the acquired gender during that period².

1 GR Act 04, Sch 5, para 1 & 10(1); 2 Sch 5, para 10(2)

75299 - 75300

75308 Where the wife has refused their consent, written statements of the objection and the claimant's observations should be obtained. In deciding whether the refusal is unreasonable, the DM should consider

1. the financial circumstances of the wife **and**
2. whether the wife would suffer hardship as a result of cancellation of entitlement **and**
3. the
 - 3.1 length of separation **and**
 - 3.2 arrangements for maintenancewhere the claimant and his wife are separated.

75309 It should not be accepted that refusal is reasonable where

1. there has been a separation over a substantial period **and**
2. the wife would be in no worse financial position after cancellation than they were before the claimant became entitled to RP.

Effective date of election

75310 Unless DMG 75306 applies, the date an election takes effect is the date

1. on which it is given if no date is specified¹ **or**
2. specified by the person making the election as long as that date is no
 - 2.1 earlier than the date on which it is given **and**
 - 2.2 later than 28 days after the date on which it is given².

Note: Although it is a valid notice, a notice of an election specifying a date before that on which it is given cannot be implemented because there are no backdating rules.

1 SS (WB & RP) Regs, reg 2(4)(a); 2 reg 2(4)(b)

Termination of retirement pension

75311 Where an election has been accepted and the effective date is a pension pay day, RP will cease to be payable from that date. Where the effective date is a day other than a pension pay day RP will continue in payment until the end of that pay week. No RP will then be payable until the person

1. claims RP **or**
2. revokes the election **or**
3. dies¹.

1 SS (WB & RP) Regs, reg 3(a)

Reinstatement of retirement pension

75312 Cancellation removes entitlement to RP. A claimant seeking reinstatement of RP must make a fresh claim. Before 6.4.10 a claim from a married man may be treated as including a claim by their wife for their

1. Cat B RP **or**
2. increase based on the contributions of the claimant¹.

1 SS (WB & RP) Regs, reg 3(c)

75313 - 75320

Making an election for increments or a lump sum payment

75321 An election¹ to receive Incs or a lump sum payment may be made²

1. in writing to an office specified by the Secretary of State for accepting elections **or**
2. by telephone call to the telephone number specified by the Secretary of State, unless the DM directs that an election must be made in writing.

1 SS CB Act 92, Sch 5, para A1(1) & 3C(2); 2 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 4

75322 When RP is claimed following a period of deferment and no election¹ for Incs or a lump sum is made, the claimant will be given a notice explaining the available options. Unless DMG 75325 applies, the claimant must then choose to receive either Incs or a lump sum payment within three months of the date of the notice confirming that this election must be made².

1 SS CB Act 92, Sch 5, para A1(1); 2 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 3(1)

75323 An election for Incs or a lump sum payment has to be made by a widow, widower or surviving civil partner of a deceased spouse or civil partner who had deferred entitlement to RP¹ (see DMG 75331 et seq). Unless DMG 75325 applies, the period of 3 months for making the election begins on the date

1. shown on the notice issued following the claim for a
 - 1.1 Cat A RP **or**
 - 1.2 Cat B RPmade by the widow, widower or surviving civil partner **or**
2. of death of the spouse or civil partner if later².

1 SS CB Act 92, Sch 5, para 3C(2); 2 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 3(2)

75324 If more than one notice has been issued as in DMG 75322 - 75323, the period of three months begins on the date shown on the latest notice¹. However, a claimant can make an election at any time after claiming RP and does not have to wait for a notice to be issued before doing so².

1 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 3(3); 2 reg 3(5)

75325 If an election has not been made within the period of three months as in DMG 75322 - 75323 the DM may extend this period where it is considered reasonable¹.

1 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 3(4)

Example

Hanif makes a claim for RP after deferring his entitlement to a Cat A RP. On 11.9.06 the DM sends Hanif a notice confirming that he must make an election for Incs or a lump sum payment. On 7.10.06, before he had made an election, Hanif has a heart attack and is admitted to hospital. He is still an in-patient on 10.12.06. The DM decides it is reasonable to extend the period for Hanif to make an election.

75326 - 75330

Widows, widowers and surviving civil partners

75331 Widowers and surviving civil partners who reach pensionable age before 6.4.10 are **not** entitled to Incs or a lump sum payment based on the deferred entitlement of their deceased spouse or civil partner unless they were over pensionable age when their wife or civil partner died¹. However, where a widower or surviving civil partner

1. reaches pensionable age after 5.4.10 **or**
2. was over pensionable age when their spouse or civil partner died

DMG 75332 will apply in the same way as for a widow.

1 Pensions Act 2004, Sch 11, para 26

75332 A widow, or a widower and surviving civil partner to whom DMG 75331 **1.** or **2.** applies, who is entitled to a Cat A or Cat B RP¹ may elect to receive Incs or a lump sum payment based on the deferred entitlement of their deceased spouse or civil partner if

1. they were married or in a civil partnership when their spouse or civil partner died² **and**
2. the deceased spouse or civil partner had deferred their entitlement to a Cat A or Cat B RP at the time of their death³ (unless DMG 75333 applies) **and**
3. the period of deferment
 - 3.1 exceeded twelve months prior to the date of the death of the spouse or civil partner **and**
 - 3.2 began on or after 6.4.05⁴.

Note: Where **3.** is not satisfied a person may still receive Incs⁵ (see DMG 75374 et seq).

*1 SS CB Act 92, Sch 5, para 3C(1)(a); 2 Sch 5, para 3C(1)(b);
3 Sch 5, para 3C(1)(c); 4 Sch 5, para 3C(1)(d); 5 Sch 5, para 4(1)(c)*

75333 A widow, widower or surviving civil partner cannot make an election as in DMG 75332 **2.** if their deceased spouse or civil partner was entitled to a Cat B RP based on their contributions¹.

1 SS CB Act 92, Sch 5, para 8(4)

75334 Where DMG 75332 applies, the claimant may elect, within the three month period, to receive either Incs or a lump sum payment¹.

1 SS CB Act 92, Sch 5, para 3C(2)

75335 - 75340

Failure to make election

75341 People who do not make an election for Incs or a lump sum payment within

1. a period of three months after making their claim (see DMG 75322 - 75323)
or
2. any period in excess of three months after making their claim where an extension is considered reasonable (see DMG 75325)

are treated as having made an election for a lump sum payment¹.

1 SS CB Act 92, Sch 5, para A1(2) & 3C(3)

Change of election

75342 People may change¹ an election they have made² or are treated as having made³. Unless DMG 75343 applies, an application has to be made within a period of three months of the date of the notification confirming the election which people have made or are treated as having made⁴. The application may be made⁵

1. in writing to an office specified by the Secretary of State **or**
2. by telephone call to the telephone number specified by the Secretary of State, unless the DM directs that an election must be made in writing.

1 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 5(3); 2 reg 5(1)(a); 3 reg 5(1)(b); 4 reg 5(4); 5 reg 5(9)

75343 If an application has not been made within the period of three months as in DMG 75342 the DM may extend this period where it is considered reasonable¹.

1 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 5(5)

3.2 whose period of deferment began before 6.4.05

her husband had not received an increase of any of the benefits at **2.** in respect of her⁷ **and**

4. where the period of deferment begins on or after 6.4.05, a person would have been entitled to a Cat A or Cat B RP **and**

4.1 no other person has received an increase of any benefit at **2.** in respect of them **or**

4.2 another person has received an increase of any benefit at **2.** but that person is not

4.2.a married to **or**

4.2.b in a civil partnership on or after 5.12.05 with **or**

4.2.c residing with

them⁸ **and**

5. except for any deferral benefits accrued before 6.4.11⁹ where a person is a member of a couple (see DMG 75352), the other member of the couple was not in receipt of¹⁰

5.1 IS **or**

5.2 JSA(IB) **or**

5.3 SPC **or**

5.4 ESA(IR) **or**

6. where a person is a member of a couple (see DMG 75352), the other member of the couple was not in receipt of UC¹¹.

1 SS (WB & RP) Regs, reg 4(1); 2 reg 4(1)(a); 3 reg 4(1)(b); 4 Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations 1992, reg 1; 5 SS (WB & RP) Regs, reg 4(1)(b)(ii); 6 Social Security (Deferral of Retirement Pensions) Regulations 2011, reg 2(6); 7 SS (WB & RP) Regs, reg 4(1)(c); 8 reg 4(1)(d); 9 Social Security (Deferral of Retirement Pensions) Regulations 2011, reg 2(6); 10 SS (WB & RP) Regs, reg 4(1)(e)(i) – (iv); 11 reg 4(1)(e)(v)

75352 For the purpose of DMG 75351 **5.** and **6.** couple means¹

1. two people who are married to, or civil partners of each other and are members of the same household **or**

2. two people who are not married to, or civil partners of each other but are LTAMC

1 SS (WB & RP) Regs, reg 4(5)(a) SS CB Act 92, s 137(1); WR Act 12, s 39

75353

75354 Before 6.4.10 DMG 75351 **1.1** also applied where a person would have been entitled to Cat B RP or composite Cat A RP if the person is a married woman and both she and her husband had not deferred their respective RP entitlement. This

does **not** apply from 6.4.10¹ because a married woman can defer entitlement to CatB RP based on the contributions of her husband even if her husband has not deferred entitlement to Cat A RP².

1 SS (SP & NIC) Regs, reg 9; 2 SS CB Act 92, s 55(3)

Example

Cecilia reaches pensionable age on 6.5.10. She has no entitlement to Cat A RP. Her husband Tony reaches pensionable age on 28.8.10 and claims Cat A RP. However, Cecilia does not claim Cat B RP, though she would be entitled to it based on Tony's contributions. Until she makes a claim for Cat B RP, all days from 28.8.10, other than Sundays and other excluded days, will be days of increment or lump sum accrual for Cecilia.

75355 The DM should decide whether a day in a period of deferment is a day of increment. Once determined, the DM must then be satisfied that the claimant received payment of a benefit at DMG 75351 **2.** or an increase of one of those benefits at DMG 75351 **3.** The DM should accept that the benefit has been received where a payment has been issued to the claimant and retained.

75356 Any day on which

1. a person has received
 - 1.1 a benefit at DMG 75351 **2.** **or**
 - 1.2 an increase at DMG 75351 **3.** **and**
2. the DM later decides that the person was **not** entitled to it **and**
3. the **whole** of the benefit, or sum on account of the benefit, is repaid before the date at DMG 75357

is treated as a day in respect of which the person did not receive the benefit¹. It does not matter whether or not the claimant was required to repay the benefit.

1 SS (WB & RP) Regs, reg 4(2)

75357 For the purposes of DMG 75356 **3.** the date is the

1. last day of the period of deferment¹ **or**
2. date of death of a spouse or civil partner where the entitlement to Incs is because a deceased spouse or civil partner had deferred entitlement².

1 SS (WB & RP) Regs, reg 4(2)(c)(i); 2 reg 4(2)(c)(ii)

75358 Where benefit for any day is repaid on or after the date at DMG 75357, that day cannot count for Incs until the whole of the overpaid benefit has been repaid¹. When repayment is completed, the number of days of increment should be recalculated. From the date of completion of the repayment Incs should be recalculated. The date of completion of the repayment is the date of the relevant change of circumstances².

1 SS (WB & RP) Regs, reg 4(3); 2 SS CS (D&A) Regs, reg 7

75359 Where appropriate the DM should consider evidence of periods of imprisonment and obtain sufficient information to decide whether or not the claimant would have been disqualified from receiving RP.

75360 If the contribution conditions are satisfied only from a date after pensionable age has been reached because of late payment of contributions, there can be no entitlement to RP before that date (see DMG 75713). Days falling before that date will **not** be days of increment¹.

1 SS (WB & RP) Regs, reg 4(1)

75361 Where a claim for RP has been disallowed because of delay in claiming, extra pension can be earned by way of Incs for the days for which benefit has been disallowed.

75362 Where the claimant appeals, and the DM cannot revise the decision to the claimant's advantage, the DM should include in the submission to the FtT an explanation of the

1. method by which Incs are calculated **and**
2. days which cannot be treated as days of increment.

75363 The DM should

1. explain the effect of accepting an earlier date of claim **and**
2. request the FtT to direct that sums retained by the claimant for increments be treated as paid for arrears of RP to be awarded.

75364 - 75365

Value of each increment

75366 For periods of deferment beginning on or after 6.4.05, the rate of RP is increased by 1/5% of the weekly rate of RP that would have been payable for every incremental period had entitlement not been deferred¹. However, for periods of deferment before 6.4.05 the rate of increase was 1/7%.

Note: See DMG 75350 for the meaning of incremental period and DMG 75431 et seq for guidance on transitional provisions for periods of deferment which span 6.4.05.

1 SS CB Act 92, Sch 5, para 2(3)

75367 The amount of each increment calculated under DMG 75366 is rounded to the nearest penny¹. An amount of 1/2p is rounded up².

1 SS CB Act 92, Sch 5, para 2(4); 2 Sch 5, para 2(4)(a)

75368 For the purposes of DMG 75366 the weekly rate of RP includes any

1. incapacity age addition¹ disregarding² the reductions in DMG 75274 **and**
2. Incs inherited on the death of a spouse or, from 5.12.05, civil partner³ **and**

3. uprating increases of RP⁴.

1 SS CB Act 92, Sch 5, para 2(5)(a); 2 Sch 5, para 2(6); 3 Sch 5, para 2(5)(a); 4 Sch 5, para 2(7)

75369 However, for the purposes of DMG 75366 the weekly rate of RP does **not** include¹ any

1. dependency increase **or**
2. GRB.

Note: See DMG 75511 et seq for guidance on deferred entitlement to GRB.

1 SS CB Act 92, Sch 5, para 2(5)(b)

The 1% rule

75370 A person will not be entitled to Incs unless the length of the period of deferment is sufficient to earn an increase in RP of at least 1%¹. This is known as the 1% rule. This means that for periods of deferment beginning on or after 6.4.05 RP will not be increased unless there are at least 30 days of increment. Before 6.4.05 the period was at least 42 days.

1 SS CB Act 92, Sch 5, para 1(2)

75371 - 75373

Inherited increments

75374 Unless DMG 75376 applies, widows, widowers and, from 5.12.05, surviving civil partners are entitled¹ to Incs as calculated in DMG 75377 - 75379 when

1. their deceased spouse or civil partner was entitled to a Cat A or Cat B RP with Incs **or**
2. they have elected to receive Incs (see DMG 75331 et seq) **or**
3. the period of deferment was less than twelve months but sufficient to satisfy the 1% rule at the date of death of the late spouse or civil partner.

Note 1: The amount at 1. - 3. does **not** include any amount of GMP Incs to which the deceased spouse was entitled or would have been entitled if they had retired on the date of their death².

Note 2: Members of a same sex married couple are treated as civil partners for the purpose of inherited Incs³.

1 SS CB Act 92, Sch 5, para 4(1); 2 Sch 5, para 5, 6 & 6A; 3 Sch 5, para 6A(2)(c)

75375 Where

1. a widow's late spouse was a woman who legally changed gender from male to female **and**
 2. the marriage existed immediately before the spouse obtained a full GRC
- her inherited Incs are calculated on the basis that her spouse had not changed gender¹.

1 SS CB Act 92, Sch 5, para 5(2)(a) & (c)(i), para 5A(1), para 6A(1)(a) & para 7(3)

75376 The rules for inherited Incs are modified¹ where

1. a widow, widower or surviving civil partner became entitled to a Cat A or Cat B RP before 6.4.12² **and**
2. the deceased spouse or civil partner died before 6.4.12³.

Note: For the purposes of 1., becoming entitled to a Cat A or Cat B RP before 6.4.12 includes becoming entitled on or after that day to a payment in respect of a period before that day⁴.

1 SS CB Act 92, Sch 5, paras 7ZA(2) – (5); 2 Sch 5, para 7ZA(1)(a); 3 Sch 5, para 7ZA(1)(b); 4 Sch 5, para 7ZA(6)

75377 Where a spouse dies after 5.10.02 or a civil partner dies on or after 5.12.05 their widow, widower or surviving civil partner will be entitled¹ to Incs calculated on the basis of

1. any increase in the BP to which the deceased spouse or civil partner was entitled **and**
2. half of any increase in the AP (however, see DMG 75378 - 75381 for guidance on when this can be increased).

1 SS CB Act 92, Sch 5, para 4(3)

75378 In relation to a person

1. who becomes a
 - 1.1 widow or widower on or after 6.10.02 **or**
 - 1.2 surviving civil partner on or after 5.12.05 **and**
2. whose deceased spouse or civil partner had reached pensionable age before 6.10.02

the amount in DMG 75377 2. will be increased by 100%¹. This means that Incs are calculated on the basis of the full amount of the AP received by the deceased.

1 SS (Inherited SERPS) Regs, reg 2(1)

75379 In relation to a person

1. who becomes a
 - 1.1 widow or widower on or after 6.10.02 **or**
 - 1.2 surviving civil partner on or after 5.12.05 **and**
2. whose deceased spouse or civil partner
 - 2.1 reached **or**
 - 2.2 would have reached if they had not diedpensionable age on or after 6.10.02 but before 6.10.10

Incs are calculated on the basis of the amount in DMG 75377 2. increased in accordance with DMG 75380.

75380 Where DMG 75379 applies, the increase in the amount in DMG 75377 2. is¹

1. 80% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.02 but before 6.10.04
2. 60% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.04 but before 6.10.06
3. 40% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.06 but before 6.10.08
4. 20% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.08 but before 6.10.10.

1 SS (Inherited SERPS) reg 2(2) & Schedule

75381 This means that where

1. DMG 75380 1. applies Incs are calculated on the basis of 90% of the deceased's weekly rate of AP
2. DMG 75380 2. applies Incs are calculated on the basis of 80% of the deceased's weekly rate of AP
3. DMG 75380 3. applies Incs are calculated on the basis of 70% of the deceased's weekly rate of AP
4. DMG 75380 4. applies Incs are calculated on the basis of 60% of the deceased's weekly rate of AP.

75382 Where a spouse died on or before 5.10.02 their widow or widower will be entitled¹ to Incs equivalent to the total of

1. any increase in the BP to which the deceased spouse or civil partner was entitled **and**
2. the whole of any increase in the AP.

1 SS CB Act 92, Sch 5, para 4(3)

75383 The inherited Incs will include the uprated amount¹ where there has been an uprating between the date

1. on which the Incs are inherited **and**
2. from which they are payable.

1 SS CB Act 92, Sch 5, para 4(4)

75384 - 75385

Ending of marriage or civil partnership

75386 A person whose marriage or civil partnership has ended on or after reaching pensionable age may retain some of the Incs that have been earned before the end of the marriage or civil partnership. The rules differ for

1. women with entitlement to a Cat B RP whose marriage has ended (see DMG 75387 - 75390)
2. women with entitlement to a Cat A RP, including entitlement to a composite pension, whose marriage has ended (see DMG 75391 - 75395)
3. men whose marriage has ended and all civil partners whose civil partnership has ended (see DMG 75396 - 75397).

75387 Where the marriage of a woman who has entitlement to a Cat B RP ends and both she and her former husband were receiving RP, she does not retain entitlement to her Cat B Incs which she had earned by deferring her entitlement to RP. Cat B Incs do not become part of the Cat A RP to which the woman becomes entitled under the substitution rules following a divorce (see DMG 75081 et seq).

75388 Where the marriage of a woman who has entitlement to a Cat B RP ends and only her former husband was receiving RP, she will earn Incs on the Cat B RP up to the day before the marriage ended. After the date the woman's entitlement will normally be a Cat A RP based on the substitution rules (see DMG 75081 et seq). Incs will therefore accrue on the Cat A RP up to

1. the day before entitlement begins **or**
2. age 65 if that age was reached before 6.4.05.

75389 Where the marriage of a woman who has entitlement to a Cat B RP ends and her former husband has not claimed RP, the date the marriage ended is the date of his entitlement for the purposes of calculating the woman's Cat B Incs¹. If she has already claimed RP when the marriage ends, the woman's Incs are calculated on the Cat B RP up to the date before the marriage ended and are payable with the new Cat A RP. However, if she has **not** claimed RP, the woman earns Incs to her Cat A RP from the date the marriage ended. The amount equivalent to the Cat B Incs is payable with her Cat A RP when she eventually makes a claim. Although their calculation is based on deferred Cat B RP entitlement, they are **not** Cat B Incs.

1 SS CB Act 92, Sch 5, para 8(2)

75390 However, a woman

1. who before 6.4.79
 - 1.1 was entitled to an increase of Cat B RP because her former husband had deferred his retirement **or**
 - 1.2 would have been entitled if she and her former husband retired immediately before that date **and**
2. whose marriage ended on or after 6.4.79

will have an increase to which she was entitled payable¹ with any Cat A RP to which she subsequently becomes entitled even though they are Incs earned on deferment of a Cat B RP.

1 SS (WB, RP & OB) (Trans) Regs, reg 12A

75391 Where the marriage of a woman who has entitlement to a composite Cat A RP ends and both she and her former husband were receiving RP, the Incs to her Cat A RP that included an increase up to the Cat B rate to which she may be entitled¹ are included in her revised Cat A entitlement when the marriage ends.

1 SS CB Act 92, s 52(2)

75392 Where the marriage of a woman who has entitlement to a Cat A RP ends and only her former husband was receiving RP, Incs are calculated on her Cat A RP throughout the period of her deferred entitlement. This may include an increase up to the Cat B rate to which she may be entitled¹.

1 SS CB Act 92, s 52(2)

75393 Where DMG 75392 applies, when her marriage ends a woman will no longer be entitled to an increase up to the level of a Cat B RP (see DMG 75086). However, this will **not** change the basis on which she will earn Incs on her Cat A RP until the time she claims RP. This is because Incs are based on the rate of RP at pensionable age and subsequent increases in the rate. Until she claims and receives RP she will earn Incs on her Cat A RP including the increase.

75394 Also where DMG 75392 applies, the basis of entitlement to Cat A RP changes when the marriage ends (see DMG 75084 - 75085). Where this produces a further increase in the weekly rate of RP, Incs will also be earned on that increase¹. However, the DM should take no account of a new Cat A RP which is at a lower rate than that before the marriage ended. A woman will continue to earn Incs on her entitlement before her marriage ended.

1 SS CB Act 92, Sch 5, para 2(1), 2(2) & 2(3); SS (WB & RP) Regs, reg 5

75395 Where the marriage of a woman who has entitlement to a Cat A RP ends and her former husband has not claimed RP, the date the marriage ended is treated as the date of his entitlement to RP. Where a woman is already receiving a Cat A RP the Incs on the increase earned by her up to her date of entitlement become payable on the day the marriage ends. However, a woman who has not already claimed RP will earn Incs on the rate of her Cat A RP from the date her marriage ended.

75396 Men or civil partners will earn Incs on their own Cat A RP up to the day before the end of the marriage or civil partnerships if

1. the marriage or civil partnership ended on or after they reached pensionable age **and**
2. at the date on which the marriage or civil partnership ended they had not claimed RP.

75397 After the date the marriage or civil partnership ended, men or civil partners will earn Incs on their Cat A RP entitlement, including that derived from the substitution rules (see DMG 75081 et seq) up to the day they claim RP.

75398 - 75404

Lump sum payment

75405 A person who has elected¹, or treated as having elected to receive², a lump sum payment will receive³ the accrued amount for the last accrual period (see DMG 75406 et seq) beginning during the period of deferment.

1 SS CB Act 92, Sch 5, para A1(1)(b) & para 3A; 2 Sch 5, para A1(2); 3 Sch 5, para 3B(1)

Accrued amount

75406 The accrued amount is the amount calculated¹ as in DMG 75408 et seq for each accrual period (see DMG 75407) in the period of deferment (see DMG 75294).

1 SS CB Act 92, Sch 5, para 3B(2)

Accrual period

75407 The accrual period is a period of seven days beginning with

1. the day of the week on which RP would have been payable had it not been deferred¹ where the person
 - 1.1 reaches pensionable age before 6.4.10² **or**
 - 1.2 is a man who reaches pensionable age on or after 6.4.10 and who was in
 - 1.2.a receipt of SPC in respect of any day in the period beginning with the day four months and four days before the day on which he reaches pensionable age and ending on 5.4.10 **or**
 - 1.2.b continuous receipt of SPC from 5.4.10 until a day no earlier than the day four months and four days before the day on which he reaches pensionable age³ **or**
2. the first day of the benefit week in relation to which RP would have been payable had it not been deferred⁴ where the person
 - 2.1 reaches pensionable age on or after 6.4.10 **and**
 - 2.2 1.2 does **not** apply⁵.

Note: For the purpose of 2. benefit week means the period of seven days which ends on the day on which RP is payable⁶ (see DMG Chapter 08).

1 SS CB Act 92, Sch 5, para 3B(2); SS (Def RP) Regs, reg 2(2); 2 SS (C&P) Regs, reg 22; 3 reg 22C(7); 4 SS CB Act 92, Sch 5, para 3B(2), SS (Def RP) Regs, reg 2(3); 5 SS (C&P) Regs, reg 22C; 6 SS (Def RP) Regs, reg 2(4); SS (C&P) Regs, reg 22D(5)

Calculation of the accrued amount

75408 The accrued amount is calculated by adding the amount for the previous accrual period, if there is one, to the amount of a Cat A or Cat B RP to which a claimant would have been entitled had it not been deferred¹. This amount is then multiplied by a weekly index factor (see DMG 75411).

1 SS CB Act 92, Sch 5, para 3B(3)

- 75409 For the purposes of DMG 75408 the amount of RP includes any
1. incapacity age addition¹ disregarding² the reduction in DMG 75274 **and**
 2. increases where a deceased spouse or, from 5.12.05, civil partner had deferred entitlement³ (see DMG 75331 et seq).

1 SS CB Act 92, Sch 5, para 3B(5)(a); 2 Sch 5, para 3B(6); 3 Sch 5, para 3B(5)(a)

- 75410 However, for the purposes of DMG 75408 the amount of RP does **not** include any
1. increase for an adult dependant¹ (see DMG 75527 - 75531)
 2. increase of RP as a result of GMP inherited from a deceased spouse or civil partner²
 3. GRB³
 4. other amount of a Cat A or Cat B RP as may be set⁴.

Note: See DMG 75511 et seq for guidance on deferred entitlement to GRB.

*1 SS CB Act 92, Sch 5, para 3B(5)(b)(i); 2 Sch 5, para 3B(5)(b)(i), 5, 6 & 6A;
3 Sch 5, para 3B(5)(b)(ii); 4 Sch 5, para 3B(5)(b)(iii)*

Weekly increase factor

- 75411 The weekly increase factor is calculated by the equation $^{52}\sqrt{1 + R/100}$. In this equation R is an amount 2% higher than the Bank of England's base rate. However, the law allows the Secretary of State to set a higher amount¹.

1 SS CB Act 92, Sch 5, para 3B(3)

Example

Gordon defers his entitlement to a Cat A RP on 11.4.05. He elects to receive a lump sum. If he had not deferred his entitlement, Gordon would have received £100.00 a week. The Bank of England base rate is 8% (this is for illustrative purposes only and **not** the actual rate at the time). The increase factor therefore amounts to $^{52}\sqrt{1 + 10/100} = 1.0018$.

For the first week of deferral, because Gordon has no earlier accrued amount to be considered, the amount of £100.00 is multiplied by the weekly factor to give an accrued amount of $(£0.00 + £100.00) \times 1.0018 = \mathbf{£100.18}$.

For the second week of deferral Gordon has an accrued amount of £100.18 to be added to £100.00 and the total is then multiplied by the weekly increase factor to give a new accrued amount of $(£100.18 + £100) \times 1.0018 = \mathbf{£200.54}$.

For the third week of deferral Gordon has an accrued amount of £200.54 to be added to £100.00 and the total is then multiplied by the weekly increase factor to give a new accrued amount of $(£200.54 + £100) \times 1.0018 = \mathbf{£301.08}$.

That pattern continues until the fifty-second week of deferral when Gordon has an accrued amount of £5,346.00 which is then added to £100.00 and the total is then multiplied by the weekly increase factor to give a new accrued amount of $(£5,346.00 + £100.00) \times 1.0018 = \mathbf{£5,455.80}$.

Gordon may now elect to receive a lump sum payment of £5,455.80 or continue to defer.

Increases to the Bank of England Base Rate

- 75412 Any change to the Bank of England Base Rate is treated as occurring¹
1. on the first day of the accrual period immediately following the date of change
or
 2. any other time as set.

1 SS CB Act 92, Sch 5, para 3B(4)

Example

Beryl has an accrual period of seven days from Monday to Sunday. The Bank of England base rate changes on 12.7.06. This change will be used in Beryl's accrued amount calculations from 17.7.06.

Rounding

- 75413 Any lump sum calculated in accordance with DMG 75405 et seq will be rounded to the nearest penny. An amount of 1/2p is rounded up¹.

1 SS CB Act 92, Sch 5, para 7C(1)

Calculation of the amount of retirement pension that would have been payable during the period of deferment

- 75414 For the purposes of DMG 75408 the amount of RP which would have been payable had it not been deferred does **not** include any pension where, for all the accrual period (see DMG 75407)
1. the claimant has received¹
 - 1.1 IB **or**
 - 1.2 MA **or**
 - 1.3 CA **or**
 - 1.4 BB **or**
 - 1.5 WMA **or**
 - 1.6 WP **or**
 - 1.7 RP of any category **or**
 - 1.8 GRB **or**
 - 1.9 SDA **or**
 - 1.10 US **or**
 - 1.11 SPC (except for any deferral benefits accrued before 6.4.11²) **or**

2. except for any deferral benefits accrued before 6.4.11³, the claimant is a member of a couple (see DMG 75415) and the other member of the couple was in receipt of⁴
 - 2.1 IS **or**
 - 2.2 JSA(IB) **or**
 - 2.3 SPC **or**
 - 2.4 ESA(IR) **or**
3. the claimant is a member of a couple (see DMG 75415) and the other member of the couple was in receipt of UC⁵ **or**
4. an increase of any of the benefits at 1. is being paid to a married man in respect of his wife where she⁶
 - 4.1 has deferred entitlement to RP **and**
 - 4.2 has a period of deferment which began before 6.4.05 **and**
 - 4.3 would have been entitled to a
 - 4.3.a Cat B RP **or**
 - 4.3.b composite Cat A RP⁷ **or**
5. an increase of any of the benefits at 1. is being paid to a person in respect of a claimant whose period of deferment began on or after 6.4.05 and they are⁸
 - 5.1 a married couple **or**
 - 5.2 in a civil partnership from 5.12.05 **or**
 - 5.3 residing with each other **or**
6. the claimant would have been disqualified from receiving RP because of imprisonment or detention in legal custody⁹.

1 SS (Def RP) Regs, reg 3(1)(a); 2 Social Security (Deferral of Retirement Pensions) Regulations 2011, reg 3(6) 3 reg 3(6); 4 SS (Def RP) Regs, reg 3(1)(aa)(i) - (iv); 5 reg 3(1)(aa)(v); 6 reg 3(1)(b); 7 SS CB Act 92, s 51A(2); 8 SS (Def RP) Regs, reg 3(1)(c); 9 reg 3(1)(d)

75415 For the purpose of DMG 75414 2. and 3. couple means¹

1. two people who are married to, or civil partners of, each other and are members of the same household **or**
2. two people who are not married to, or civil partners of, each other but are LTAMC.

1 SS (Def RP) Regs, reg 3(5A); SS CB Act 92, s 137(1); WR Act 12, s 39

75416

75417 Where

1. any
 - 1.1 of the benefits at DMG 75414 1. **or**

1.2 increase of those benefits as in DMG 75414 **4.** and **5.**

have been received for only part of the accrual period¹ **or**

- 2.** the claimant would have been disqualified under DMG 75414 **6.** for only part of the accrual period²

the amount of RP not included is reduced by 1/7th for each day of the accrual period in respect of which the benefit or increase has not been received or for which the claimant would have been disqualified³.

1 SS (Def RP) Regs, reg 3(2); 2 reg 3(3); 3 reg 3(2) & 3(3)

75418 The DM should decide whether a day in a period of deferment is a day of lump sum calculation. Once determined, the DM must then be satisfied that the claimant received payment of a benefit at DMG 75414 **1.** or an increase of one of those benefits at DMG 75414 **4.** or **5.**. The DM should accept that the benefit has been received where a payment has been issued to the claimant and retained.

75419 Any day on which

- 1.** a person has received
 - 1.1** a benefit at DMG 75414 **1.** **or**
 - 1.2** an increase at DMG 75414 **4.** or **5.** **and**
- 2.** the DM later decides that the person was **not** entitled to it **and**
- 3.** the **whole** of the benefit, or sum on account of the benefit, is repaid before the date at DMG 75420

is treated as a day in respect of which the person did not receive the benefit¹. It does not matter whether or not the claimant was required to repay the benefit.

1 SS (Def RP) Regs, reg 3(4)

75420 For the purposes of DMG 75419 **3.** the date is the

- 1.** last day of the period of deferment¹ **or**
- 2.** date of death or a spouse or civil partner where the entitlement to Incs is because a deceased spouse or civil partner had deferred entitlement².

1 SS (Def RP) Regs, reg 3(7)(a); 2 reg 3(7)(b)

75421 Where benefit for any day is repaid on or after the date at DMG 75420, that day cannot count for calculation of the lump sum until the whole of the overpaid benefit has been repaid¹.

1 SS (Def RP) Regs, reg 3(5)

75422 Where appropriate the DM should consider evidence of periods of imprisonment and obtain sufficient information to decide whether or not the claimant would have been disqualified from receiving RP. For the purposes of DMG 75414 **6.** the requirement is that a person would have been **entitled** to RP if it had been claimed.

75423 If the contribution conditions are satisfied only from a date after pensionable age has been reached because of late payment of contributions, there can be no entitlement to RP before that date (see DMG 75713). Days falling before that date will **not** be days of lump sum calculation.

75424 Any amount of RP not included in the calculation of the lump sum in accordance with DMG 75414 et seq will be rounded to the nearest penny. An amount of 1/2p is rounded up¹.

1 SS (Def RP) Regs, reg 3(8)

Lump sum payment for widows, widowers and surviving civil partners

75425 A widow, widower or, from 5.12.05, surviving civil partner may elect to receive a lump sum (see DMG 75332) or be treated as having elected to receive a lump sum (see DMG 75334). The amount to which a widow, widower or surviving civil partner is entitled is known as a widowed person's or surviving civil partner's lump sum¹.

1 SS CB Act 92, Sch 5, para 7A

75426 The widowed person's or surviving civil partner's lump sum¹ is the accrued amount for the last accrual period beginning during the period which

1. began at the beginning of the deceased's period of deferment **and**
2. ended on the day before the spouse or civil partner died.

Note 1: The accrued amount has the same meaning² as at DMG 75406.

Note 2: The accrual period has the same meaning³ as at DMG 75407.

1 SS CB Act 92, Sch 5, para 7B(1); 2 Sch 5, para 7B(2); 3 Sch 5, para 7B(2); SS (Def RP) Regs, reg 2

75427 The widowed person's or surviving civil partner's lump sum is calculated in the same way¹ as at DMG 75408 et seq with the **exception** that the accrued amount is calculated by adding the amount for the previous accrual period, if there is one, to the amount of

1. the BP **or**
2. half the AP

to which the deceased would have been entitled had entitlement not been deferred². However, see DMG 75428 - 75430 for guidance on when, in the calculation of the accrued amount, the amount at **2.** can be increased.

1 SS CB Act 92, Sch 5, para 5, 6, 6A, 7B(3) 7B(4),7B(5), 7B(6), 7C(1) & 7C(2); 2 Sch 5, para 7B(3)

75428 In relation to a person

1. who becomes a widow, widower or surviving civil partner on or after 6.4.06 **and**
2. whose deceased spouse or civil partner
 - 2.1 reached **or**
 - 2.2 would have reached if they had not died

pensionable age on or after 6.10.02 but before 6.10.10

the calculation of their accrued amount will include an increase in the amount in DMG 75427 2. in accordance with DMG 75429.

75429 Where DMG 75428 applies, the increase in the amount in DMG 75427 2. is¹

1. 80% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.02 but before 6.10.04
2. 60% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.04 but before 6.10.06
3. 40% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.06 but before 6.10.08
4. 20% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.08 but before 6.10.10.

1 SS (Inherited SERPS) Regs, reg 2(4) & Schedule

75430 This means that where

1. DMG 75429 1. applies survivors will include, in the calculation of their accrued amount, 90% of the AP
2. DMG 75429 2. applies survivors will include, in the calculation of their accrued amount, 80% of the AP
3. DMG 75429 3. applies survivors will include, in the calculation of their accrued amount, 70% of the AP
4. DMG 75429 4. applies survivors will include, in the calculation of their accrued amount, 60% of the AP.

Transitional cases

75431 A transitional case is where a person's entitlement to a Cat A or Cat B RP has been deferred and the period of deferment begins before 6.4.05 and ends on or after that day¹. In transitional cases the modifications in DMG 75432 - 75438 apply.

1 SS (RP etc.) (Trans Provs) Regs, reg 1(2)

Making an election for increments or a lump sum payment

75432 In transitional cases, DMG 75321 et seq is modified

1. where RP entitlement is deferred for at least twelve months spanning 6.4.05
and
2. at least twelve months of the period of deferment is after 5.4.05¹.

1 SS CB Act 92, Sch 5, para A1(1); SS (RP etc.) (Trans Provs) Regs, reg 2(2)(a)

75433 Where DMG 75432 applies a person can elect to receive¹

1. Incs for the whole period of deferment **or**
2. a combination of
 - 2.1 Incs for the part of the period of deferment that is before the first day of the first accrual period that begins on or after 6.4.05 **and**
 - 2.2 a lump sum payment for the rest of the period of deferment.

1 SS CB Act 92, Sch 5, para A1(1)(b); SS (RP etc.) (Trans Provs) Regs, reg 2(2)(b)

Making an election for increments or a lump sum payment - widows, widowers and surviving civil partners

75434 In transitional cases, DMG 75332 is modified where

1. a person's deceased spouse or civil partner had deferred entitlement to RP for at least twelve months ending with the day before their death **and**
2. at least twelve months of the period of deferment is after 5.4.05¹.

1 SS CB Act 92, Sch 5, para 3C(1)(d); SS (RP etc.) (Trans Provs) Regs, reg 2(5)(a)

75435 Where DMG 75434 applies a widow, widower or surviving civil partner can choose to receive¹

1. Incs for the whole period of deferment **or**
2. a combination of
 - 2.1 Incs for the part of the period of deferment that falls before the first day of the first accrual period that begins on or after 6.4.05 **and**
 - 2.2 a lump sum payment for the rest of the period of deferment.

1 SS CB Act 92, Sch 5, para 3C(2)(b); SS (RP etc.) (Trans Provs) Regs, reg 2(5)(b)

Increments - the 1% rule

75436 In transitional cases, the 1% rule at DMG 75370 is modified so that people will only receive Incs if¹

1. there are at least seven incremental periods in the period of deferment **or**
2. there are at least five incremental periods in the period of deferment and the amount of the increase for at least one of them is
 - 2.1 on or after 6.4.05 **and**
 - 2.2 calculated using the rate of 1/5% **or**
3. they have made or are treated as having made an election as in DMG 75432
 2. and there is at least one incremental period before the first day of the first accrual period beginning on or after 6.4.05.

1 SS CB Act 92, Sch 5, para 1(2); SS (RP etc) (Trans Provs) Regs, reg 2(3)

Graduated retirement benefit

Conditions of entitlement

75471 Payment of graduated contributions ceased on 5.4.75. However, any entitlement to GRB under previous legislation¹ is preserved² for people who reached pensionable age before 6.4.16³, including for

1. men and their late husbands **and**
2. women in their late wives⁴.

1 NI Act 65, s 36 & 37; 2 SS CB Act 92, s 62(1); SS (GRB) (No. 2) Regs, reg 3 & Sch 1; 3 Sch 1; NI Act 65, s 36(7) & (8); 4 SS (GRB) (No. 2) Regs, reg 3(2)(e)

75472 GRB is paid as an increase in the weekly or nominal weekly rate (see DMG 75473) of RP¹ to a person who

1. is over pensionable age **and**
2. has made a claim for RP.

1 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(1)

Entitlement to graduated retirement benefit only

75473 People who have reached pensionable age can receive GRB even if they are not entitled to RP. For this purpose they are treated as receiving RP at a nominal weekly rate¹. A person can defer entitlement to GRB only² (see DMG 75511 et seq). However, where there would be entitlement to RP but for disqualification (for example, imprisonment) there is no right to GRB only³.

1 SS (GRB) (No. 2) Regs, Sch 1, NI Act 65, s 36(7); 2 SS (GRB) (No. 2) Regs, Sch 1, NI Act 65, s 36(4A)(b); 3 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(7)(a)

Rate of graduated retirement benefit

75474 GRB is a fixed amount for each unit of graduated contributions paid¹. From 6.4.10 a unit is £7.50 for men and women². The DM should decide and award the amount of GRB based upon the number of units paid. GRB is rounded to the nearest penny. An amount of 1/2p is rounded up³. Where the amount of graduated contributions paid does not produce an exact number of units, the incomplete fraction of a unit is treated as a complete unit if it is one-half or more of £7.50⁴.

1 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(1); 2 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(2); 3 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(1); 4 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(3)

75475 Before 6.4.10 a unit was £9.00 for a woman¹. That will continue to apply to

1. women who reach pensionable age before 6.4.10² **and**
2. the calculation of inheritable GRB where the deceased was a woman who would have reached pensionable age before 6.4.10³.

1 SS (GRB) Regs, Sch 1; NI Act 65, s 36(2); 2 SS (SP & NIC) Regs, reg 3(2)(a); 3 reg 3(2)(b)

Gender recognition certificate issued

- 75476 The issue of a full GRC does not affect entitlement to GRB. This is because the legislation¹ which allows for recalculation has not been used. However, DMs should refer cases to DMA Leeds for advice where, before 4.4.05, transgender claimants have entitlement to RP based on their acquired gender (see DMG 75041).

1 GR Act 04, Sch 5, para 12

75477 - 75479

Inherited graduated retirement benefit – widows

- 75480 A widow is entitled to receive some of her late spouse's GRB as an increase to her RP if, at the date of his or her death, she is

1. over pensionable age **or**
2. under pensionable age and remains his or her widow until she reaches that age¹.

1 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 37(1) & 37(2)

- 75481 A widow inherits half her late spouse's GRB including any Incs (see DMG 75503) he or she have earned¹. She cannot receive any GRB that her late spouse inherited, but she can receive one half of any Incs earned by him or her on it.

1 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 37(1) & 37(2)

- 75482 Where a widow's late spouse had not claimed RP by the date of his or her death, his or her GRB entitlement is calculated as if he or she had claimed and received RP on the date of his or her death¹.

1 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 37(1) & (2)

Late female spouse legally changed gender from male to female

- 75483 DMG 75480 et seq will apply where
1. a widow's late female spouse was a woman who legally changed gender from male to female **and**
 2. the marriage existed immediately before the spouse obtained a full GRC¹.

1 SS CB Act 92, s 62(3) & (4); SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36 & 37

Inherited graduated retirement benefit - widowers and surviving civil partners who reach pensionable age on or after 6.4.10

- 75484 Widowers and surviving civil partners who reach pensionable age on or after 6.4.10 will inherit half their spouse's or civil partner's GRB on the same basis that a widow inherits half her late spouse's GRB¹ (see DMG 75480 - 75482).

Additional pensions

Introduction

75532 A person who receives a Cat A or Cat B RP may also be entitled to one or more additional pensions. These additional pensions are

1. AP (see DMG 75534 et seq) **and**
2. SAP (see DMG 75611 et seq)

These additional pensions may also be payable if there is a reduced rate BP.

75533 The amount of a person's AP is reduced if there is entitlement to GMP¹. See DMG 75651 et seq for guidance on GMP.

1 PS Act 93, s 46(1)

Additional pension

Background

75534 AP is earnings related. It may be payable if there is a reduced rate BP¹ (see DMG 75031 and DMG 75111). It can also be paid in addition to Cat A RP² or, for widows, widowers and surviving civil partners, Cat B RP³. It is calculated by using surpluses in earnings or deemed earnings factors in S2P for the tax years from 1978/79 and ending with the last complete tax year before a person reaches pensionable age⁴ (see DMG 75015). However, earnings factors for the tax year beginning 6.4.16 and subsequent tax years are **not** included. An AP can be made up of

1. SERPS (see DMG 75535) **or**
2. S2P (see DMG 75536) **or**
3. a combination of SERPS and S2P **or**
4. units of AP (see DMG 75601).

1 SS (WB & RP) Regs, reg 6A(2)(b); 2 SS CB Act 92, s 44(3); 3 s 48B(2) & 51(6) & (7); 4 s 44(7)

State earnings related pension scheme

75535 SERPS is based on earnings during the period from 6.4.78 to 5.4.02. From and including 6.4.97 people had to be contracted-in¹. Before 6.4.97 a person who was contracted out could continue to receive an AP but it was subject to the normal GMP reduction² (see DMG 75651 et seq). However, the GMP reduction is **not** restricted to periods during which a person was contracted out³.

1 PS Act 93, s 48A; 2 s 46, R(P)1/04; 3 Wilkinson v Secretary of State for Work and Pensions [2010] AACR 7

State second pension

75536 S2P replaced SERPS from 6.4.02¹. S2P is based on

1. earnings **or**
2. deemed earnings factors².

Note: From 6.4.09 the changes that replace the upper earnings limit with the applicable limit (see DMG 75577 et seq) apply equally to deemed earnings factors³.

1 Child Support, Pensions and Social Security Act 2000, s 30; 2 SS CB Act 92, s 44A; 3 s 44A(1)(a)

Tax years before 2010/11

75537 For the purposes of DMG 75536 **2.**, for any tax year before 2010/11¹ people have deemed earnings factors if

1. CA

- 1.1 was payable **or**
- 1.2 would have been payable but for it being reduced to nil under the overlapping benefit provisions² **or**
- 2. CHB was payable in respect of a child under the age of six³ **or**
- 3. IBLT or qualifying ESA (see DMG 75539)
 - 3.1 was payable **or**
 - 3.2 would have been payable but for
 - 3.2.a the contribution conditions not being satisfied **or**
 - 3.2.b it being reduced to nil under the overlapping benefit provisions or payments from an occupational pension scheme or a personal pension scheme⁴ **or**
- 4. they are entitled to HRP because they are caring for a seriously ill or disabled person who is in receipt of
 - 4.1 AA **or**
 - 4.2 CAA **or**
 - 4.3 DLA at the middle or highest rate of the care component

for complete tax years.

Note 1: See DMG Chapter 17 for guidance on the overlapping benefit provisions.

Note 2: See DMG Chapter 56 for guidance on the meaning of occupational pension scheme and personal pension scheme for IBLT purposes, DMG Chapter 44 for guidance on the meaning of occupational pension scheme and personal pension scheme for ESA(Cont) purposes.

1 SS CB Act 92, s 44A(A1); 2 s 44A(2)(b); 3 s 44A(2)(c); 4 s 44A(2)(d)

75538 In order to satisfy DMG 75537 **3.** a claimant must for one or more relevant years have paid or been treated as having paid class 1 contributions on earnings equal to or greater than the qualifying earnings factor. Also, the years for which a claimant has such a factor must constitute at least one tenth of their working life¹. In addition, that guidance will not apply to a person reaching pensionable age on or after 6.4.10².

1 SS CB Act 92, s 44A(3); 2 s 44A(4A)

Meaning of qualifying ESA

75539 For the purposes of DMG 75537 **3.** qualifying ESA¹ is ESA(Cont) which

- 1. was payable for a continuous period of 52 weeks **or**
- 2. includes the support component² **or**
- 3. for

3.1 a man born between 6.4.44 and 5.4.47 **or**

3.2 a woman born between 6.4.49 and 5.4.51

was payable for a continuous period of 13 weeks immediately following a period throughout which SSP was payable.

Note: ESA(Cont) includes new style ESA³.

1 SS CB Act 92, s 44A(7); 2 WR Act 07, s 2(2); 3 WR Act 12

Tax years from 2010/11

75540 In any tax year from 2010/11¹ people have deemed earnings factors² if any of the three Conditions A - C at DMG 75541 - 75543 are satisfied. Also, for tax years from 2010/11 the upper accrual point will continue to apply³.

Note: See DMG 75580 for guidance on the upper accrual point.

1 SS CB Act 92, s 44B(1); 2 s 44B(2); 3 s 44B(2)(a)

75541 Condition A is satisfied if people have earnings which are

1. at or above the QEF¹ **and**
2. less than the low earnings threshold²

for a tax year.

Note 1: This Condition will not apply for any tax year from the FRIY³. The FRIY is the tax year beginning 6.4.12⁴.

Note 2: The QEF is an earnings factor equal to the LEL for a tax year multiplied by 52⁵.

Note 3: The low earnings threshold is the amount specified⁶ which is subject to revision⁷.

1 SS CB Act 92, s 44B(3)(a); 2 s 44B(3)(b); 3 s 44B(6)(b); 4 s 122(1); Social Security Pensions (Flat Rate Introduction Year) Order 2011, art 2; 5 SS CB Act 92, s 122(1); 6 s 44B(7)(b) & s 44A(5); 7 SS A Act 92, s 148A

75542 Condition B is satisfied if people have

1. earnings at less than the QEF¹ **and**
 2. some EFC² (see DMG 75544) which enable their earnings to reach the QEF³
- for a tax year.

1 SS CB Act 92, s 44B(4)(a); 2 s 44C; 3 s 44B(4)(b)

75543 Condition C is satisfied if people are entitled to 52 EFC¹ for a tax year. This is the same as the QEF. This Condition is satisfied in the tax year where

1. SDA or IBLT is payable or IBLT would be payable but for
 - 1.1 a failure to satisfy the contribution conditions **or**
 - 1.2 the overlapping benefit provisions or payments from an occupational pension scheme or a personal pension scheme² **and**

2. an award of SDA or IBLT was converted to an award of ESA³ **and**
 - 2.1 IBLT or SDA was payable before conversion **or**
 - 2.2 ESA includes or would have included the support component⁴.

1 SS CB Act 92, s 44B(5) & s 44C; 2 s 44B(5A)(a), s 44C(3)(c) & s 44C(3)(d); 3 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 2, Part 2, para 6; 4 SS CB Act 92, s 44B(5A)(b), ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 2, Part 2, para 6, AP & SS Pens (HR) (Amdt) Regs, reg 5A(2)(ba);

Earnings factor credits

75544 In any tax year from 2010/11¹ people are entitled to EFC in respect of any week in that year² if

1. they are relevant carers³ (see DMG 75547) **or**
2. CA
 - 2.1 is payable **or**
 - 2.2 would be payable but for the overlapping benefit provisions⁴ **or**
3. SDA is payable⁵ **or**
4. IBLT
 - 4.1 is payable **or**
 - 4.2 would be payable but for
 - 4.2.a a failure to satisfy the contribution conditions⁶ **or**
 - 4.2.b the overlapping benefit provisions or payments from an occupational pension scheme or a personal pension scheme⁷ **or**
5. ESA
 - 5.1 is payable⁸ **or**
 - 5.2 would be payable but for
 - 5.2.a a failure to satisfy the contribution conditions⁹ **or**
 - 5.2.b the overlapping benefit provisions or payments from an occupational pension scheme or a personal pension scheme¹⁰

and DMG 75545 applies **or**
6. they are entitled to UC for any part of that week and their UC award
 - 6.1 includes, with respect to the person
 - 6.1.a the LCW element and DMG 75546 is satisfied **or**
 - 6.1.b the LCWRA element **or**
 - 6.1.c the carer element **or**

6.2 would have included the LCW element with respect to that person but for the fact that the LCWRA element was included with respect to the person's partner¹¹

7. they

7.1 have LCW every day of that week **and**

7.2 would have been entitled to ESA(Cont) if it had not been limited to 365 days¹².

Note 1: See DMG Chapter 17 for guidance on the overlapping benefit provisions.

Note 2: See DMG Chapter 56 for guidance on the meaning of occupational pension scheme and personal pension scheme for IBLT purposes, DMG Chapter 44 for guidance on the meaning of occupational pension scheme and personal pension scheme for ESA(Cont) purposes.

1 SS CB Act 92, s 44C(1); 2 s 44C(2); 3 s 44C(3)(a) & s 23A(3); 4 s 44C(3)(b); 5 s 44C(3)(c); 6 s 44C(3)(d)(i) & Sch 3, Part 1, para 2; 7 s 44C(3)(d)(ii); 8 AP & SS Pens (HR) (Amdt) Regs, reg 5A(1)(a); 9 reg 5A(1)(b); WR Act 07, Sch 1, Part 1, para 1 & 2; 10 AP & SS Pens (HR) (Amdt) Regs, reg 5A(1)(c); 11 reg 5B; 12 reg 5C

75545 DMG 75544 **5.** applies when ESA

1. was payable or would have been payable for a continuous period of 52 weeks¹ or a period of 52 weeks treated as continuous under linking rules² **or**

2. includes or would have included the support component³ **or**

3. was awarded following conversion⁴ and either

3.1 IBLT or SDA was payable before conversion **or**

3.2 includes or would have included the support component⁵ **or**

4. for

4.1 a man born between 6.4.46 and 5.4.47 **or**

4.2 a woman born between 6.10.50 and 5.4.51

was payable or would have been payable for a continuous period of 13 weeks immediately following a period throughout which SSP was payable⁶.

1 AP & SS Pens (HR) (Amdt) Regs, reg 5A(2)(a)(i); 2 reg 5A(2)(a)(ii); ESA Regs, regs 145, 149 & 150; 3 AP & SS Pens (HR) (Amdt) Regs, reg 5A(2)(b); WR Act 07, s 2(2); 4 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 2, Part 4, para 26; 5 Sch 2, Part 4, para 26, AP & SS Pens (HR) (Amdt) Regs, reg 5A(2)(ba); 6 reg 5A(2)(c)

75546 DMG 75544 **6.** is satisfied if, for each of the 52 weeks immediately before that week

1. UC was payable and the award

1.1 included the LCW element **or**

1.2 would have done but for the fact that the award included

1.2.a the LCWRA element in respect of the person's partner **or**

1.2.b the carer's element with respect to the person¹ **or**

2. ESA

2.1 was payable² or

2.2 would be payable but for

2.2.a a failure to satisfy the contribution conditions³ or

2.2.b there having been entitlement for the maximum number of days⁴ or

2.2.c receipt of other benefits or receipt of payments from an occupational pension scheme or a personal pension scheme⁵.

Note: For the purpose of 2. the linking rules⁶ may apply to treat a period of 52 weeks as continuous⁷.

1 AP & SS (HR) (Amdt) Regs, reg 5B(2)(a); 2 reg 5B(2)(b)(i); 3 reg 5B(2)(b)(ii); 4 reg 5B(2)(b)(iii); 5 reg 5B(2)(b)(iv); 6 ESA Regs, reg 145; 7 AA & SS (HR) (Amdt) Regs, reg 5B(3)

Credits for Parents and carers

Relevant carers

75547 DMG 75544 1. gives guidance that, in any tax year from 2010/11, people are entitled to class 3 NI and EFC¹ in respect of any week in that year if they are relevant carers. Unless DMG 75553 applies, people are relevant carers in a week in which they are

1. awarded CHB for a child under the age of 12 for any part of that week² or
2. a foster parent for any part of that week³ (see DMG 75548) or
3. engaged in caring in that week⁴ (see DMG 75549 et seq).

Note: A week is a period of 7 days beginning with Sunday⁵.

1 SS CB Act 92, s 44C; 2 s 23A(3)(a); 3 s 23A(3)(b); 4 s 23A(3)(c); 5 s 122(1)

Foster parents

75548 DMG 75030 2. gives guidance that a person who is a foster parent¹ can receive a class 3 credit² towards satisfying the single contribution condition. DMG 75547 2. also gives guidance that people are relevant carers if they are a foster parent. DMG 75547 2. is for the purposes of

1. BP³
2. an earnings factor credit for AP⁴

For the purposes of both DMG 75030 2. and DMG 75547 2., a foster parent is a person approved as a foster parent under prescribed legislation⁵. However, a person is **not** a foster parent where DMG 75553 applies⁶.

Note: Applications for credits from foster parents are made to HMRC⁷.

1 SS CB Act 92, s 23A(3)(b); 2 s 23A(2); 3 s 23A; 4 s 44C; 5 SS (CC P & C) Regs, reg 4(1); Fostering Services Regulations 2002, Part 4; Looked After Children (Scotland) Regulations 2009, Part 7; 6 SS (CC P & C) Regs, reg 4(2) & reg 8; 7 reg 9(a)

Engaged in caring

75549 DMG 75030 **3.** gives guidance that a person who is engaged in caring¹ can receive a class 3 credit² towards satisfying the single contribution condition. DMG 75547 **3.** also gives guidance that people are relevant carers if they are engaged in caring. DMG 75547 **3.** is for the purposes of

1. BP³
2. an earnings factor credit for AP⁴.

1 SS CB Act 92, s 23A(3)(c); 2 s 23A(2); 3 s 23A; 4 s 44C

75550 For the purposes of DMG 75030 **3.** and DMG 75547 **3.**, people are engaged in caring

1. if
 - 1.1 they are the partner (see DMG 75554 **1.**) of a person who has been awarded CHB for a child under the age of 12¹ **and**
 - 1.2 DMG 75554 **2.** applies **or**
2. if they are caring for one or more disabled persons for a total of 20 or more hours a week (see DMG 75552) **and**
 - 2.1 the person or persons being cared for are entitled to a relevant benefit² (see DMG 75555) **or**
 - 2.2 the DM considers that level of care to be appropriate³ **or**
3. if they are entitled to IS because they are regular carers⁴.

People are also engaged in caring DMG 75551 applies⁵. However, people are **not** engaged in caring where DMG 75553 applies⁶.

Note: See DMG Chapter 20 for guidance on people entitled to IS because they are regular carers.

1 SS (CC P & C) Regs, reg 5(1)(a); 2 reg 5(1)(b)(i); 3 reg 5(1)(b)(ii); 4 reg 5(1)(c); IS (Gen) Regs, Sch 1B, para 4 - 6; 5 SS (CC P & C) Regs, reg 7; 6 reg 8

75551 People are also engaged in caring for a period of up to 12 weeks

1. before they become entitled to CA¹
2. after they cease to be entitled to CA²
3. after a person ceases to satisfy DMG 75550 **2.**³.

However, **2.** does not apply if a claimant continues to be entitled to a credit after entitlement to CA ends⁴.

Note 1: Where **1.** applies there is a special rule that applies for the period of 12 weeks from 6.4.10. That special rule is that the period of up to 12 weeks can only be for complete weeks since 6.4.10⁵ (see DMG 75547 for the meaning of week).

Note 2: People continue to be engaged in caring during a break in care of up to 12 weeks.

1 SS (CC P & C) Regs, reg 7(1)(a); 2 reg 7(1)(b); 3 reg 7(1)(c); 4 reg 7(2); 5 reg 3

Example

Karen cares for her father Michael who is entitled to AA. Karen is entitled to CA. Michael dies and Karen remains entitled to CA for 8 weeks after his death. As Karen remains entitled to CA, she receives a class 1 credit for those 8 weeks. Therefore, Karen receives a class 3 credit for a further 4 weeks to make a total of 12 weeks.

75552 When considering whether DMG 75550 **2.** applies, the claimant must provide

1. a declaration that they care for one or more disabled persons for a total of 20 or more hours a week¹ **and**
2. the name and, where known, the NINO of each person cared for² **and**
3. either
 - 3.1 details of the relevant benefit where DMG 75550 **2.1** above applies³ **or**
 - 3.2 a declaration that the level of care being provided is required for each person cared for which is signed by a person who is
 - 3.2.a involved in the health or social care of the person cared for⁴ **and**
 - 3.2.b considered by the DM to be an appropriate person to make a declaration as to the level of care required⁵where this is requested by the DM⁶.

Note 1: For the purposes of **1.** there does not have to be a signed declaration.

Note 2: The DM should accept **3.2** as being satisfied where there is a signed declaration from an appropriate Health or Social Care Professional.

1 SS (CC P & C) Regs, reg 11(1)(a); 2 reg 11(1)(b); 3 reg 11(1)(c); 4 reg 11(2)(a); 5 reg 11(2)(b); 6 reg 11(1)(d)

Person not a foster parent or engaged in caring

75553 However, a person is **not** a foster parent or engaged in caring in accordance with DMG 75547, DMG 75548 and DMG 75550 if that person is

1. not ordinarily resident in GB **or**
2. in prison **or**
3. detained in legal custody¹.

Note: See DMG Chapter 07 for guidance on ordinarily resident and DMG Chapter 12 for guidance on imprisonment and detention in legal custody.

1 SS (CC P & C) Regs, reg 8

Calculating additional pension

75571 The calculation of AP depends on whether a person reaches pensionable age before 6.4.99 or after 5.4.99¹. There are changes to the calculation of AP from 6.4.09² (see DMG 75577 et seq).

Note: There is a prescribed maximum amount of AP (see DMG 75592 et seq)

1 SS CB Act 92, s 45(1) & (2); 2 NIC Act 08, s 3

Pensionable age reached before 6.4.99

75572 Where pensionable age is reached before 6.4.99 a person's AP is the weekly equivalent of 1¼%¹ of the adjusted amounts of the earnings factors calculated² in accordance with DMG 75560 et seq. The weekly amount of AP is calculated by dividing the amount of the earnings factors by 52³ and rounding the amount to the nearest 1p (½p or more is rounded up⁴).

1 SS CB Act 92, s 45(1); 2 s 44(3)(b), s 48B(2) & 51(6) & (7); 3 s 45(6); 4 s 45(7)

Pensionable age reached after 5.4.99

75573 Where pensionable age is reached after 5.4.99 a person's AP is the sum of the weekly amounts calculated in DMG 75574 - 75576. Each amount calculated is rounded to the nearest 1p¹ (½p or more is rounded up²).

Note: Earnings factors for the tax year beginning 6.4.16 and subsequent tax years are not included

1 SS CB Act 92, s 45(6); 2 s 45(7)

75574 For the tax years from 1978/79 to 1987/88 the AP is the weekly equivalent of 25/N% of the adjusted amount of the surpluses in the earnings factors¹. In this calculation N is the number of tax years in a person's working life after 5.4.78².

1 SS CB Act 92, s 45(2)(a); 2 s 45(4)(b)

75575 For the tax years from 1988/89 to 2001/02 the calculation of AP depends on whether a person reaches pensionable age

1. on or after 6.4.99 but on or before 5.4.09 **or**
2. after 5.4.09¹.

Where **1.** applies the AP is the weekly equivalent of (20 + X)/N% of the adjusted amount of the surpluses in the earnings factors for those tax years². Where **2.** applies the AP is the weekly equivalent of 20/N% of the adjusted amount of the surpluses in the earnings factors for those tax years³. In these calculations X is 0.5 for each tax year by which the tax year in which a person reaches pensionable age is before 2009/10⁴ and N is the number of tax years in a person's working life after 5.4.78⁵.

1 SS CB Act 92, s 45(2)(b) & 45(3)(a); 2 s 45(3)(a); 3 s 45(3)(b); 4 s 45(4)(a); 5 s 45(4)(b)

75576 For the tax years from 2002/03 the AP is the weekly equivalent of all the amounts calculated¹ in accordance with DMG 75564 - 75565.

1 SS CB Act 92, s 45(2)(a), s 45(3A) & Sch 4A

Changes to the calculation of additional pension

75577 DMG 75578 - 75580 gives guidance on changes to AP from 6.4.09. There are two other changes. Firstly, for tax years from 2010/11 the accrual bands which are used to calculate AP are reduced from three to two¹. Secondly, from the FRIY, the first accrual band will be replaced by a flat-rate amount². That amount will be updated³. The second accrual band will remain. However, the upper accrual point will not be updated.

Note 1: The FRIY is the tax year beginning 6.4.12⁴.

Note 2: The flat-rate amount could be nil⁵.

1 SS CB Act 92, Sch 4A, Part 2, para 2(4A) & Part 3, para 5(4A) & 7(4A); 2 s 45(2)(d) & s 45(3A) & Sch 4B; 3 SS A Act 92, s 148AA; 4 SS CB Act 92, s 122(1); Social Security Pensions (Flat Rate Introduction Year) Order 2011, art 2; 5 SS CB Act 92, Sch 4B, para 1(2)

Upper earnings limit replaced with the applicable limit

75578 The upper earnings limit is replaced with the applicable limit¹ with regard to the amount over which earnings do not accrue for the calculation of AP.

1 SS CB Act 92, s 44(6)(za)

Meaning of applicable limit

75579 For any tax year

1. before 2009/10 the applicable limit is the upper earnings limit¹ **and**
2. from and including 2009/10 the applicable limit is the upper accrual point².

1 SS CB Act 92, s 44(7)(c)(i); 2 s 44(7)(c)(ii)

Meaning of upper accrual point

75580 The upper accrual point is £770 a week¹ and is set at the same amount as the upper earnings limit for 2008/09. That amount will not increase.

1 SS CB Act 92, s 122(1)

Amount of additional pension payable

75581 For Cat B RP purposes any AP will be payable in full¹ where the spouse dies on or before 5.10.02².

1 SS CB Act 92, s 48C(3); 2 Child Support, Pensions and Social Security Act 2000, s 39(1) & (2)

75582 Where the death of the spouse or, from 5.12.05, civil partner occurs thereafter, only half the weekly rate of AP is payable¹. However, see DMG 75583 - 75586 for guidance on when there can be an increase to the amount of half the weekly rate of AP.

1 SS CB Act 92, s 48B(2)(b) & 51(6) & (7)

75583 In relation to a person

1. who becomes a
 - 1.1 widow or widower on or after 6.10.02 **or**
 - 1.2 surviving civil partner on or after 5.12.05 **and**
2. whose deceased spouse or civil partner had reached pensionable age before 6.10.02

the amount of AP in DMG 75582 will be increased by 100%¹. This means that the additional allowance for such a person is paid in full.

1 SS (Inherited SERPS) Regs, reg 2(1)

75584 In relation to a person

1. who becomes a
 - 1.1 widow or widower on or after 6.10.02 **or**
 - 1.2 surviving civil partner on or after 5.12.05 **and**
 2. whose deceased spouse or civil partner
 - 2.1 reached **or**
 - 2.2 would have reached if they had not died
- pensionable age on or after 6.10.02 but before 6.10.10

the amount of AP in DMG 75582 will be increased in accordance with DMG 75585.

75585 Where DMG 75584 applies, the increase in the amount in DMG 75582 is¹

1. 80% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.02 but before 6.10.04
2. 60% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.04 but before 6.10.06
3. 40% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.06 but before 6.10.08
4. 20% where the deceased spouse or civil partner reached or, if they had not died, would have reached pensionable age on or after 6.10.08 but before 6.10.10.

1 SS (Inherited SERPS) Regs, reg 2(2) & Schedule

75586 This means that where

1. DMG 75585 1. applies survivors will receive 90% of the weekly rate of AP
2. DMG 75585 2. applies survivors will receive 80% of the weekly rate of AP

3. DMG 75585 3. applies survivors will receive 70% of the weekly rate of AP
4. DMG 75585 4. applies survivors will receive 60% of the weekly rate of AP.

Additional pension uprating

75587 Where a spouse or civil partner

1. reached pensionable age on or after 6.4.16¹ **and**
2. died after reaching pensionable age²

the claimant's AP is revalued in line with earnings for the period before the deceased reached pensionable age and uprated in line with inflation for the period after they reached pensionable age³.

*1 SS CB Act 92, s 48B(10)(a) & s 51(11)(a); 2 s 48B(10)(b) & s 51(11)(b);
3 s 48B(11), s 51(12) & Sch 4B; SS A Act, s 148A(1) & s 148AA(1)*

75588 When the spouse or civil partner dies under pensionable age on or after 6.4.16 the AP will be revalued by earnings for the period before the date of death.

State scheme pension debits

75589 Where a pension sharing order is made by a Court in connection with AP, a state scheme pension debit¹ applies to the person whose AP is to be shared. A state scheme pension debit will reduce a person's AP². Where a person becomes subject to a state scheme pension debit in or after the tax year immediately before the one in which they reach pensionable age, their AP is reduced by the appropriate amount³. However, where a person becomes subject to a state scheme pension debit before the tax year immediately before the one in which they reach pensionable age, their AP is reduced by the appropriate amount⁴. Revaluation takes place when AP becomes payable. A state scheme pension debit is not subject to revaluation but AP is⁵.

Note: See DMG 75618 for further guidance on pension sharing.

*1 WRP Act 99, s 49(1)(a); 2 SS CB Act 92, s 45B(1); 3 s 45B(2) & WRP Act 99, s 49(2);
4 SS CB Act 92, s 45B(3) & WRP Act 99, s 49(2); 5 SS A Act 92, s 148*

Effect of guaranteed minimum pension

75590 Entitlement to GMP will affect the rate of AP to be included as part of a person's Cat A RP, including a composite pension, or Cat B RP. See DMG 75651 et seq for full guidance on GMP.

Prescribed maximum Meaning of relevant day

75591 The relevant day is the day on which a survivor would have become entitled to both

1. Cat A RP **and**

2. Cat B RP on their late spouse's or civil partner's contributions or would have been so entitled had neither been deferred¹.

1 SS (MAP) Regs, reg 2(1)

Relevant day before 6.4.16

75592 There is a prescribed maximum amount of AP¹ where a claimant, whose relevant day is before 6.4.16², is entitled to inherited AP from their late spouse or civil partner. This applies even if the claimant has no AP based on their own contributions. However, any amount of Cat A AP or Cat B AP attributable to units of AP is not included in the calculation of prescribed maximum amount of RP³.

Note: See DMG 75601 for the meaning of units of AP.

1 SS (MAP) Regs, reg 3; 2 reg 3(A1); 3 SS CB Act 92, s 52(3A), s 52(3B), s 61ZC(3)(b) & s 61ZC(3)(c)

Example

Person A is entitled to Cat A RP which includes AP of £142.17. Person A is widowed on 8.2.16 and is entitled to Cat B RP which includes AP of £53.81 plus £20.00 AP attributable to units of AP. Added together, the amounts of £142.17 and £53.81 exceed the prescribed maximum of £164.36. The DM awards AP of £184.36; the amount of the prescribed maximum plus £20.00 AP attributable to units of AP.

75593 The prescribed maximum amount of AP¹ is the amount of AP to which a person would be entitled where that person

1. has reached pensionable age on the relevant day (see DMG 75594) **and**
2. in each relevant year has a specified earnings factor (see DMG 75552).

Note: A relevant year is any tax year from 1978/79 in the period from the tax year in which a claimant reached age 16 to the tax year before pensionable age is reached².

1 SS (MAP) Regs, reg 3(1); 2 SS CB Act 92, s 44(7)(a)

75594 For the purposes of DMG 75593 1., the relevant day is the day on which a claimant would have become entitled to **both**

1. Cat A RP **and**
2. Cat B RP on their late spouse's or civil partner's contributions or would have been so entitled had neither been deferred¹.

Note 1: The dual entitlement provisions² do not apply.

Note 2: See DMG 75241 for guidance on the dual entitlement provisions.

1 SS (MAP) Regs, reg 3(2); 2 SS CB Act 92, s 43

75595 For the purposes of DMG 75593 2., the specified earnings factor is an earnings factor which is

1. equal to 53 times that year's applicable limit¹ before any increase² **and**

2. derived from earnings on which class 1 contributions were paid³.

Note: Before 6.4.10 the applicable limit is the upper earnings limit and from and including 6.4.10 it is the upper accrual point (see DMG 75579).

1 SS (MAP) Regs, reg 3(3)(a); 2 SS A Act 92, s 148; 3 SS (MAP) Regs, reg 3(3)(b)

Example 1

Carol is entitled to Cat A RP which includes AP of £116.72. She is widowed on 5.5.11 and is entitled to Cat B RP which includes AP of 67.81. There is no entitlement to GMP. Added together these amounts of AP exceed the prescribed maximum. Therefore the DM awards Carol AP of £159.52, the prescribed maximum.

Example 2

Neil is entitled to Cat A RP which includes AP of £160.13. Neil's civil partner Tom dies on 7.10.11. Because Neil's AP is over the prescribed maximum he does not inherit any of Tom's AP. However, Neil's AP is not restricted to the prescribed maximum.

Relevant day on or after 6.4.16

- 75596 The prescribed maximum amount of RP AP for a survivor whose relevant day is on or after 6.4.16 is £165.60¹.

1 SS (MAP) Regs, reg 3A

75597 – 75600

Unit of additional pension

Meaning of unit of additional pension

- 75601 A unit of AP is a unit of AP for which a person has paid a Class 3A contribution¹.

1 SS CB Act 92, s 122(1)

Payment of Class 3A contributions

- 75602 Class 3A contributions are voluntary NI contributions. From 12.10.15 a person who satisfies DMG 75605 or DMG 75606 may pay a class 3A contribution before the cut-off date in order to obtain a unit, or units, of AP¹. Such a person is known as an eligible person. The cut-off date is

1. 5.4.17² or
2. if later, the end of the 30 day period beginning with the day on which the person is sent information about class 3A contributions by HMRC in response to a request made before 6.4.17³.

1 SS CB Act 92, s 14A(1); 2 s 14A(1A)(a); 3 s 14A(1A)(b)

- 75603 A person may pay class 3A contributions on more than one occasion¹. However, the maximum number of units of AP they can obtain is 25². The amount of class 3A

contribution needed by an eligible person to obtain a unit of AP is determined by their age and is the amount specified³. The date of payment is the date the class 3A contribution is received by HMRC⁴.

Note 1: The amount specified is in accordance with the Appendix 3 to this Chapter.

Note 2: The normal rules on revision (see DMG Chapter 03) and supersession (see DMG Chapter 04) apply when the rate of a claimant's RP changes because they have paid Class 3A contributions.

1 SS CB Act 92, s 14A(5)(a); 2 s 14A(5)(b); SS Class 3A Conts (UAP) Regs, reg 3; 3 reg 2(1) & (2); 4 reg 2(3)

Repayment of Class 3A contributions

75604 A Class 3A contribution which has been paid is repaid where the person who paid the contribution

1. dies **or**
2. makes an application to HMRC for repayment

within the period of 90 days beginning with the date of payment of the contribution¹. Where a Class 3A contribution is repaid, any AP received in return for that contribution is deducted from the repayment². In these circumstances, a person is treated as never having had a unit of AP³.

Note: The normal rules on revision (see DMG Chapter 03) and supersession (see DMG Chapter 04) apply when the rate of a claimant's RP changes because they have been refunded Class 3A contributions.

1 SS (Conts) Regs 01, reg 56A(1); 2 reg 56A(2); 3 SS CB Act 92, s 14B(3)

Eligible person

75605 A person is an eligible person if they

1. are entitled to
 - 1.1 Cat A RP **or**
 - 1.2 Cat B RP **or**
 - 1.3 Cat D RP **or**
 - 1.4 GRB¹ **or**
2. have deferred entitlement to
 - 2.1 Cat A RP **or**
 - 2.2 Cat B RP **or**
 - 2.3 GRB².

Note: See DMG 75291 et seq for guidance on deferment of Cat A RP and Cat B RP and DMG 75496 et seq for guidance on deferment of GRB.

1 SS CB Act 92, s 14A(2)(a); 2 s 14A(2)(b)

75606 A person is also an eligible person if they have

1. prospective entitlement to RP or GRB as in DMG 75605 **and**
2. not reached pensionable age but will do so before 6.4.16¹.

1 Pensions Act 14, Sch 15, Part 1, para 4

Effect on additional pension

75607 A unit, or units, of AP for which a person has paid a Class 3A contribution¹, will be included in their AP for Cat A RP² or Cat B RP³ purposes. The amount of AP payable for each unit of AP for Cat A RP is £1⁴. For Cat B purposes it is half that amount⁵.

Note 1: A person entitled to a Cat B RP may inherit entitlement to their late spouse's AP that derives from late spouse's class 3A NI contributions. The surviving spouse can also pay for their own class 3A contributions even if they have no entitlement to Cat A RP (see DMG 75608).

Note 2: See DMG 75581 et seq for guidance on the amount of AP payable.

*1 SS CB Act 92, s 122(1); 2 s 44(3), s 45(1)(b) & s 45(2)(e); 3 s 48B(2), 48BB(5) & 51(6) & (7);
4 SS Class 3A Conds (UAP) Regs, reg 4; 5 SS CB Act 92, s 48B(2), 48BB(5) & 51(6) & (7)*

Treated as entitled to category A retirement pension

75608 A person is treated as being entitled to a Cat A RP¹ if they

1. have one or more units of AP **and**
2. are not entitled to a Cat A RP but would be if the relevant contribution conditions were satisfied².

Where this applies, a person is only entitled to AP attributable to units of AP³.

Note 1: See DMG 75601 for the meaning of units of AP.

Note 2: The relevant contribution conditions are the first and second contribution conditions (see Appendix 2 to this Chapter) or the single contribution condition (see DMG 75026 et seq).

1 SS CB Act 92, s 61ZA(2); 2 s 61ZA(1); 3 s 61ZA(3)

Treated as entitled to category B retirement pension

75609 A person is treated as being entitled to a Cat B RP¹ if

1. their deceased spouse or civil partner had one or more units of AP **and**
2. they are not entitled to a Cat B RP as a result of the death of their spouse or civil partner but would be if the relevant contribution conditions were satisfied².

Where this applies, a person is only entitled to AP attributable to units of AP³.

Note 1: See DMG 75601 for the meaning of units of AP.

Note 2: The relevant contribution conditions are the first and second contribution conditions (see Appendix 2 to this Chapter) or the single contribution condition (see DMG 75026 et seq).

1 SS CB Act 92, s 61ZB(2); 2 s 61ZB(1); 3 s 61ZB(3)

75610

Shared additional pension

Background

- 75611 A SAP exists if the court makes a pension sharing order as part of the financial settlement following divorce where proceedings were commenced on or after 1.12.00¹. A court may make a pension sharing order as part of the financial settlement following dissolution of a civil partnership. These orders are used as a means of apportioning the financial assets of a divorcing married couple or parties to a dissolved civil partnership.

1 WRP Act 99 (Commencement No. 4) Order 2000, art 2(2)(d)

Definitions

- 75612 The following paragraphs explain the meaning of terms used in connection with a SAP.

Final relevant year

- 75613 The final relevant year is the tax year immediately before the one in which a person reaches pensionable age¹ (see DMG 75015).

1 SS CB Act 92, s 55A(7) & 55B(8)

State scheme pension debit

- 75614 A state scheme pension debit is the amount that is left for the spouse or civil partner following the reductions of the appropriate amount under a pension sharing order¹.

1 SS CB Act 92, s 55B(8); WRP Act 99, s 49(1)(a)

Old state scheme pension credit

- 75615 An old state scheme pension credit is an amount a spouse or civil partner receives from the other spouse or civil partner under a pension sharing court order¹.

1 SS CB Act 92, s 55A(7); WRP Act 99, s 49(1)(b)

Valuation day

- 75616 The valuation day is the day on which the pension credit and pension debit are created¹. On the valuation day the AP belonging to one spouse or civil partner is reduced by the percentage ordered by the court and a sum of money equal to the amount of the reduction is deposited in the NI account of the other spouse or civil partner. This is the old state scheme pension credit.

1 WRP Act 99, s 49

New state scheme pension credit

- 75617 A new state scheme pension credit is an amount a spouse or civil partner receives from the other spouse or civil partner under a pension sharing court order¹.

1 SS CB Act 92, s 55AA(4); WRP Act 99, s 49A(2)(b)

Shareable rights

- 75618 Sharable rights include a person's
1. AP (see DMG 75534 et seq) **or**
 2. prospective entitlement to AP **or**
 3. SAP **or**
 4. prospective entitlement to SAP¹.

Note: Sharable rights do not include a person's BP or GRB.

1 WRP Act 99, s 47(2)

75619 - 75620

Entitlement to shared additional pension because of an old state scheme pension credit

75621 To be entitled to a SAP because of an old state scheme pension credit a person must

1. have reached pensionable age before 6.4.16¹ **and**
2. be entitled to an old state scheme pension credit² (see DMG 75615).

A person's entitlement to SAP continues throughout their life³.

Note: For this to apply the person subject to an old state scheme pension debit must either be a person who reaches pensionable age before 6.4.16 or be a person who reaches pensionable age on or after that day but the legal proceedings relating to the termination of the marriage or civil partnership start before 6.4.16⁴.

1 SS CB Act 92, s 55A(1)(a); 2 s 55A(1)(b); 3 s 55A(2); 4 Pensions Act 2014 (Pension Sharing on Divorce etc.) (Transitional Provision) Order 2016, art 2(1)

Weekly rate of shared additional pension

75622 The weekly rate of a SAP to which a person is entitled because of an old state scheme pension credit depends on whether the valuation day is after or before the start of the final relevant year¹.

1 SS CB Act 92, s 55A(3)

Valuation day after the start of the final relevant year

75623 Where the valuation day is after the start of the final relevant year, the weekly rate of a person's SAP is derived from the old state scheme pension credit as calculated on the valuation day¹.

1 SS CB Act 92, s 55A(4)

Valuation day before the start of the final relevant year

75624 Where the valuation day is before the start of the final relevant year, the weekly rate of a person's SAP is derived from the old state scheme pension credit as calculated on the valuation day¹ and then revalued in accordance with legislation².

1 SS CB Act 92, s 55A(5); 2 SS A Act 92, s 148

Effect of state scheme pension debit

75625 The weekly rate of a person's SAP is reduced where

1. they become liable for a state scheme pension debit **and**
2. the state scheme pension debit is in any way connected to their SAP¹.

1 SS CB Act 92, s 55B(1)

Amount of reduction

75626 The amount of the reduction of a person's SAP depends on whether the valuation day is

1. in or after¹ **or**
2. before²

the final relevant year.

1 SS CB Act 92, s 55B(2); 2 s 55B(3)

Valuation day in or after the final relevant year

75627 Where the valuation day is in or after the final relevant year a person's SAP is reduced by the amount of the state scheme debit on the valuation day¹.

1 SS CB Act 92, s 55B(2) & (3)

Valuation day before the final relevant year

75628 Where the valuation day is before the final relevant year a person's SAP is reduced by the amount of the state scheme debit on the valuation day¹ after it has been increased in accordance with legislation².

1 SS CB Act 92, s 55B(3) & (4); 2 SS A Act 92, s 148

75629 – 75630

Shared additional pension because of a new state scheme pension credit

Background

75631 Changes from 6.4.16 enable a person who reaches pensionable age before that date to receive a SAP in relation to an order made against another person who reaches pensionable age after that date.

Note: See DMG 75617 for the meaning of new state scheme pension credit.

Entitlement

75632 To be entitled to a SAP because of a new state scheme pension credit a person must

1. have reached pensionable age before 6.4.16¹ **and**

2. be entitled to a new state scheme pension credit².

A person's entitlement to a SAP because of a new state scheme pension credit continues throughout their life³.

Note: For this to apply the person subject to a new state scheme pension debit must be a person who reaches pensionable age on or after 6.4.16 and the legal proceedings relating to the termination of the marriage or civil partnership must start on or after 6.4.16.

1 SS CB Act 92, s 55AA(1)(a); 2 s 55AA(1)(b); 3 s 55AA(2)

Weekly rate

75633 The weekly rate of a SAP to which a person is entitled in accordance with DMG 75632 is the amount of the new state scheme pension credit¹. The amount of the new state scheme pension credit is the specified percentage of the excess amount of transitional rate of SP² of the person who has an order made against them³. The specified percentage is determined by the court issuing the pension sharing order⁴. The excess amount⁵ is the amount by which the person's transitional rate of SP exceeds their full rate⁶.

1 SS CB Act 92, s 55AA(3); 2 Pensions Act 14, s 4; 3 WRP Act 99, s 49A(3); 4 s 49A(3) & (5); 5 s 47(4); 6 Pensions Act 14, s 3

75634 - 75635

Deferring shared additional pension

75636 Entitlement to SAP can be deferred. Before 6.4.05 people deferring entitlement to SAP received Incs. However, from and including 6.4.05, people can choose between Incs and a lump sum payment¹. People must elect to receive either Incs or a lump sum when SAP has been deferred for at least twelve months². If no election is made people will be treated as having chosen a lump sum payment³.

1 SS CB Act 92, s 55C & Sch 5A; 2 Sch 5A, para 1; 3 Sch 5A, para 2

75637 For the purposes of DMG 75636, from 6.4.05 an election¹ to receive Incs or a lump sum payment may be made²

1. in writing to an office specified by the Secretary of State for accepting elections **or**
2. by telephone call to the telephone number specified by the Secretary of State, unless the DM directs that an election must be made in writing.

The claimant must then choose to receive either Incs or a lump sum payment within three months of the date of the notice confirming that this election must be made³. If more than one notice has been issued, the period of three months begins on the date shown on the latest notice⁴. However, if an election has not been made within

the period of three months the DM may extend this period where it is considered reasonable⁵.

Note: A person may change their election⁶. Where an application to change an election is made DMG 75342 et seq applies.

1 SS CB Act 92, Sch 5A, para 1; 2 SS (DefRP, SAP & GRB) (Misc Provs) Regs, reg 4; 3 reg 3(1); 4 reg 3(3); 5 reg 3(4); 6 reg 5

Meaning of period of deferment

75638 A period of deferment¹ for SAP is the period throughout which a person

1. has deferred entitlement to a Cat A or Cat B RP **or**
2. does not make a claim for SAP.

1 SS CB Act 92, s 55C(3)

Calculation of increments

75639 A person's SAP will be increased at an amount equal to the aggregate of Incs earned in each complete incremental period throughout the period of deferment¹ if the

1. period of deferment is less than twelve months² **or**
2. person has elected to receive Incs³.

An incremental period for SAP is any period of six days which are treated as days of increment⁴.

1 SS CB Act 92, Sch 5A, para 3(1); 2 Sch 5A, para 2(1)(a); 3 Sch 5A, para 2(1)(b); 4 Sch 5A, para 3(5)

Note: See DMG 75644 for guidance on days treated as days of increment.

75640 However, a person will not be entitled to Incs unless the length of the period of deferment is sufficient to earn an increase in SAP of at least 1%¹. This is known as the 1% rule. This means that for periods of deferment beginning on or after 6.4.05 SAP will not be increased unless there are at least 30 days of increment. Before 6.4.05 the period was at least 42 days.

1 SS CB Act 92, Sch 5A, para 2(2)

75641 Before 6.4.05 SAP is increased by 1/7% for every six days of increment in the period of deferment. However, from and including 6.4.05 SAP is increased by 1/5% of the weekly rate of SAP to which people would be entitled if it had not been deferred¹.

1 SS CB Act 92, Sch 5A, para 3(2)

75642 The amount of each increment calculated under DMG 75639 is rounded to the nearest penny with an amount of 1/2p being rounded up¹.

1 SS CB Act 92, Sch 5A, para 3(3)

75643 Where uprating has occurred during the period of deferment, the rate of each incremental period is determined as if the uprating had occurred before the beginning of the period of deferment¹.

1 SS CB Act 92, Sch 5A, para 3(6)

Days treated as days of increment

75644 For SAP purposes a day is treated as a day of increment where it is a day in a person's period of deferment if there

1. would have been entitlement to SAP had it not been deferred **and**
2. no disqualification from receiving SAP because of imprisonment or detention in legal custody¹.

1 SS (WB & RP) Regs, reg 4(4)

Lump sum payment

75645 A person who has elected¹, or treated as having elected to receive², a lump sum payment will receive³ the accrued amount for the last accrual period beginning during the period of deferment. The lump sum is calculated⁴ in a similar way to DMG 75408 - 75424.

Note: Accrued amount and accrual period have the same meaning⁵ as at DMG 75406 - 75407.

1 SS CB Act 92, Sch 5A, para 4(1); 2 Sch 5A, para 1(2); 3 Sch 5A, para 5(1); 4 Sch 5A, para 5(3), 5(4) & 5(5); 5 Sch 5A, para 5(2)

Transitional cases

75646 A transitional case is where a person's entitlement to SAP has been deferred and the period of deferment begins before 6.4.05 and ends on or after that day¹. In transitional cases there are modifications² similar to those in DMG 75432 - 75438.

1 SS (RP etc) (Trans Provs) Regs, reg 1(3); 2 reg 3

75647 - 75650

Effect of guaranteed minimum pension on category A and category B retirement pension

75661 Throughout any period where a person is entitled to a Cat A or Cat B RP **and** is also entitled to one or more GMP, the weekly rate of RP is reduced by an amount equal to the

1. part of any AP attributed to the earnings factors for tax years ending before 6.4.97 **or**
2. weekly rate of a GMP or the aggregate all GMPs where entitled to more than one GMP exists

whichever is less¹. This means that the maximum deduction can never be more than the amount of a person's AP².

1 PS Act 93, s 46(1); 2 R(P) 1/04

75662 A composite Cat A RP (see DMG 75071 et seq) is reduced in the same way as a Cat A RP.

Widows

75663 Widows are entitled to 1/2 the GMP to which their late spouse or civil partner would have been entitled¹. This includes GMP Incs (see DMG 75682 et seq). It is also in addition to any GMP to which the widow is entitled in her own right.

1 PS Act 93, s 17(3)

Widowers, surviving civil partners and surviving same sex spouses

75664 Widowers, surviving civil partners and surviving same sex spouses are entitled to 1/2 the GMP for tax years from 1988/89¹ to which their late spouse or civil partner would have been entitled. This includes GMP Incs (see DMG 75682 et seq). It is also in addition to any GMP to which the widower, surviving civil partner or surviving same sex spouse is entitled in their own right.

1 PS Act 93, s 17(4)

75665 DMG 75664 applies where the widower, surviving civil partner or surviving same sex spouse is entitled to

1. Cat B RP or would be but for the provisions preventing dual entitlement¹ (see DMG 75241 et seq) **or**
2. IBST(H) at the amount of his Cat A RP entitlement² (see DMG Chapter 56).

1 PS Act 93, s 47(1)(a); SS CB Act 92, s 43(1); 2 PS Act 93, s 47(1)(b)

75666 - 75670

Treated as being entitled to guaranteed minimum pension

75671 A person is treated as being entitled to a weekly GMP and a deduction is made from their Cat A or Cat B RP even if

1. receipt of GMP has been postponed¹ **or**
2. GMP was commuted to a lump sum².

1 PS Act 93, s 47(2); 2 s 47(5)

75672 A person is also treated as being entitled to a GMP even if it is not being paid. Where this is the case, the weekly rate of RP is reduced by an amount equal to

1. the AP attributed to the earnings factors for tax years ending before 6.4.97 **or**
2. an amount equal to the weekly GMP to which a person is treated as being entitled

whichever is less¹.

1 PS Act 93, s 47(3)

Widows

75673 A widow is treated as being entitled to 1/2 the GMP to which her late husband would have been entitled¹ where DMG 75671 - 75672 applies.

1 PS Act 93, s 17(3)

Widowers, surviving civil partners and surviving same sex spouses

75674 Widowers, surviving civil partners and surviving same sex spouses are treated as being entitled to 1/2 the GMP for tax years from 1988/89¹ to which their late wife, civil partner or same sex spouse would have been entitled where DMG 75671 - 75672 applies.

1 PS Act 93, s 17(4)

75675 DMG 75674 applies where the widower, surviving civil partner or surviving same sex spouse is entitled to

1. Cat B RP or would be but for the provisions preventing dual entitlement¹ (see DMG 75241 et seq) **or**
2. IBST(H) at the amount of his Cat A RP entitlement² (see DMG Chapter 56).

1 PS Act 93, s 47(1)(a); SS CB Act 92, 43(1); 2 PS Act 93, s 47(1)(b)

75676 – 76680

Deferring entitlement to guaranteed minimum pension

75681 Entitlement to GMP can be deferred¹. However, people deferring entitlement to GMP can only receive Incs; they **cannot** choose between Incs and a lump sum payment.

1 PS Act 93, s 13(4) & (5)

Increments

75682 Claimants are entitled to have the GMP increased by the occupational pensions scheme if they

1. are a member of a
 - 1.1 personal pension scheme **or**
 - 1.2 money purchase scheme **and**
2. postpone receipt of GMP¹.

The rate of increase is 1/7% of the amount of GMP for each complete week of postponement². A week is any period of seven consecutive days³.

Note: The rate of increase has **not** changed to 1/5%.

1 PS Act 93, s 13(4) & (5); 2 s 15(1); 3 s 15(2)

Uprating of increments

75683 GMP Incs as in DMG 75684 et seq will only be uprated where

1. a person became entitled to Cat A or Cat B RP **and**
2. their GMP Incs became payable

before 6.4.12¹.

1 SSA Act 92, s 150(1A)

75684 GMP Incs in DMG 75682 are inflation-protected and the responsibility for that rests with the State scheme. However, from 6.4.90 the occupational pensions scheme must inflation-proof that part of both GMP and GMP Incs based on earnings from 6.4.88 by an amount up to 3%¹. Any increase in excess of 3% is the responsibility of the State scheme.

1 PS Act 93, s 109

75685 The amount of GMP Incs is achieved by increasing a person's Cat A or B RP by an amount representing that inflation-proofing. In most cases, entitlement to RP and GMP will arise at the same time and the amount representing the uprating of GMP Incs will be payable from the next uprating.

75686 The increased amount in DMG 75675 is paid from the date of entitlement to RP where

1. GMP Incs are in payment before entitlement to RP arises **and**

2. there has been at least one uprating since they commenced.

75687 The rate of increase will take into account any upratings between the date from which the GMP Incs were paid and the date from which RP is payable¹.

I SS A Act 92, s 150

75688 - 75689

Inherited increments

75690 Inherited GMP Incs as in DMG 75691 et seq will only be uprated where

1. a widow, widower or surviving civil partner became entitled to Cat A or Cat B RP **and**
2. their late spouse or civil partner died before 6.4.12¹.

1 Pensions Act 11, s 2(5) & (7); Pensions Act 11, (Commencement No. 1) Order 2011, art 4(b) & (d)

75691 A widow, widower or surviving civil partner is entitled to receive with a Cat A or Cat B RP

1. amounts broadly equivalent to that part of the deceased's GMP Incs that is no longer payable on the death of the spouse or civil partner **and**
2. any inflation-proofing previously payable to the deceased.

This ensures that the provisions for the inheritance of GMP Incs by widows, widowers and surviving civil partners are no less favourable than the provisions for AP Incs (see DMG 75374 et seq). Their RP is increased by an amount representing the uprating of those inherited GMP Incs¹. From 6.4.90 the uprating provisions are as in DMG 75684.

1 SS CB Act 92, Sch 5, para 5, 6 & 7

75692 A widow, widower or surviving civil partner whose late spouse or civil partner

1. was entitled to
 - 1.1 GMP Incs **or**
 - 1.2 an amount representing the uprating of those Incs **or**
2. would have been entitled had they claimed RP

has their Cat A or Cat B RP increased in accordance with DMG 75693.

75693 Where DMG 75692 applies the Cat A or Cat B RP of a widow, widower or surviving civil partner is increased by

1. one half of the GMP Incs earned by the spouse to which they were entitled when they died, or would have been entitled if they had claimed RP **and**
2. the greater of the amount by which

Appendix 1

Pensionable age for a woman born from 6.4.50 to 5.4.53 inclusive

Period within which woman's birthday falls	Day pensionable age reached
6.4.50 - 5.5.50	6.5.10
6.5.50 - 5.6.50	6.7.10
6.6.50 - 5.7.50	6.9.10
6.7.50 - 5.8.50	6.11.10
6.8.50 - 5.9.50	6.1.11
6.9.50 - 5.10.50	6.3.11
6.10.50 - 5.11.50	6.5.11
6.11.50 - 5.12.50	6.7.11
6.12.50 - 5.1.51	6.9.11
6.1.51 - 5.2.51	6.11.11
6.2.51 - 5.3.51	6.1.12
6.3.51 - 5.4.51	6.3.12
6.4.51 - 5.5.51	6.5.12
6.5.51 - 5.6.51	6.7.12
6.6.51 - 5.7.51	6.9.12
6.7.51 - 5.8.51	6.11.12
6.8.51 - 5.9.51	6.1.13
6.9.51 - 5.10.51	6.3.13
6.10.51 - 5.11.51	6.5.13
6.11.51 - 5.12.51	6.7.13
6.12.51 - 5.1.52	6.9.13
6.1.52 - 5.2.52	6.11.13
6.2.52 - 5.3.52	6.1.14
6.3.52 - 5.4.52	6.3.14
6.4.52 - 5.5.52	6.5.14
6.5.52 - 5.6.52	6.7.14
6.6.52 - 5.7.52	6.9.14
6.7.52 - 5.8.52	6.11.14

6.8.52 - 5.9.52	6.1.15
6.9.51 - 5.10.52	6.3.15
6.10.52 - 5.11.52	6.5.15
6.11.52 - 5.12.52	6.7.15
6.12.52 - 5.1.53	6.9.15
6.1.53 - 5.2.53	6.11.15
6.2.53 - 5.3.53	6.1.16
6.3.53 - 5.4.53	6.3.16

Appendix 2

Contribution conditions for people who reached pensionable age before 6.4.10

Category A retirement pension

- 1 To be entitled to a standard rate BP a person must satisfy two contribution conditions¹.

1 SS CB Act 92, s 44(1)(b), s 44(1A)(a) & Sch 3, Part I, para 5

- 2 The first contribution condition is satisfied by

1. the payment of sufficient class 1, 2 or 3 contributions in any one year¹ **or**
2. being entitled to IBLT at anytime during the year
 - 2.1 in which pensionable age is reached **or**
 - 2.2 immediately before the year in which pensionable age is reached² **or**
3. the payment of not less than 50 contributions before 6.4.75³.

1 SS CB Act 92, Sch 3, para 5(2); 2 Sch 3, para 5(6); 3 SS (WB, RP & OB) (Trans) Regs, reg 6(1)

- 3 The second contribution is satisfied by

1. the
 - 1.1 payment of, or being credited with, contributions **or**
 - 1.2 crediting of earnings from 6.4.87for a specified number of years **and**
2. having an earnings factor equal to, or greater than, the qualifying earnings factor for each of those years¹.

1 SS CB Act 92, Sch 3, Part I, para 5(3)

- 4 The weekly rate of BP is that stated in legislation¹. However, if the second contribution is not fully satisfied, there may be entitlement to a BP at a reduced rate as long as at least 25% of the working years are also qualifying years².

1 SS CB Act 92, s 44(4); 2 s 60(1), SS (WB & RP) Regs, reg 6

- 5 Where

1. class 1 contributions have been paid or treated as paid in any tax year from 1987/88 **and**
2. the amount paid, plus any class 2 or class 3 contributions paid or credited, is not enough to make the year a qualifying year by £50 or less

the earnings factor is increased by the amount required to make the year a qualifying year¹. This applies to both the first and second contribution condition.

1 Social Security (Earnings Factor) Regulations 1979, Sch 1, para 4

- 6 Unless paragraph 7 applies, to be entitled to AP the first contribution condition must be satisfied. However, there may be entitlement to AP even if there is no entitlement to BP because of a failure to satisfy the second contribution condition only¹. AP may be payable in addition to BP.

Note: The first contribution condition can be satisfied by the payment of voluntary class 3 contributions

1 SS (WB & RP) Regs, reg 6(2) & (3A)

- 7 There can be entitlement to AP attributable to units of AP¹ if the first and second contribution conditions are not satisfied².

Note: See DMG 75601 for the meaning of units of AP.

1 SS CB Act 92, s 61ZA(3); 2 s 61ZA(1)

Category B retirement pension

- 8 To be entitled to a BP a person's

1. spouse **or**
2. late spouse **or**
3. former spouse **or**
4. civil partner **or**
5. late civil partner **or**
6. former civil partner

must satisfy the contribution conditions for a Cat A RP¹ (see paragraphs 1-5). There may be entitlement to BP at a reduced rate if the contribution conditions are not satisfied in full².

1 SS CB Act 92, s 48A(1)(b)(ii), s 48AA(1)(b)(ii); 48B(1ZB)(b), 48B(1B)(a), 51(1)(c) & 51(4)(c) & Sch 3, para 5; 2 s 60(1); SS (WB & RP) Regs, reg 6

- 9 However, paragraph 8 will only apply where

1. the claimant is a woman whose husband
 - 1.1 was born before 6.4.45¹ **and**
 - 1.2 satisfies the first and second contribution conditions² **or**
2. the claimant is a woman whose former husband
 - 2.1 was born before 6.4.45³ **and**
 - 2.2 satisfies the first and second contribution conditions⁴ **or**
3. the claimant is a woman whose late husband
 - 3.1 died
 - 3.1.a before 6.4.10⁵ **or**
 - 3.1.b on or after 6.4.10 having reached pensionable age before that date⁶ **and**

- 3.2 satisfied the first and second contribution conditions⁷ **or**
- 4. the claimant's deceased civil partner
 - 4.1 reached pensionable age before 6.4.10⁸ **and**
 - 4.2 satisfied the first and second contribution conditions⁹ **or**
- 5. the claimant is a widower whose deceased wife
 - 5.1 was over pensionable age when she died¹⁰ **and**
 - 5.2 died on or after 6.4.79¹¹ **and**
 - 5.3 satisfied the first and second contribution conditions¹²
- 6. the claimant is a surviving civil partner whose deceased civil partner
 - 6.1 reached pensionable age before 6.4.10¹³ **and**
 - 6.2 satisfied the first and second contribution conditions¹⁴ **or**
- 7. the claimant is a woman whose
 - 7.1 spouse, former spouse or late spouse legally changed gender from male to female¹⁵ **and**
 - 7.2 marriage existed immediately before the spouse obtained a full GRC¹⁶.

Note: The guidance at paragraph 8 will now not apply where the spouse is a married woman or to civil partners. This is because the relevant legislation⁹ does not entitle a married man or civil partner to Cat B RP if their wife or civil partner reaches pensionable age before 6.4.10.

1 s s CB Act 92, s 48A(6)(a); 2 s 48A(1)(b)(ii) & Sch 3, Part 1, para 5; 3 s 48AA(6)(a); 4 s 48AA(1)(b)(ii) & Sch 3, Part 1, para 5; 5 s 48B(1ZA)(a)(i); 6 s 48B(1ZA)(a)(ii); 7 s 48B(1)(b) & Sch 3, Part 1, para 5; 8 s 48B(1B)(a); 9 s 48B(1A)(b) & Sch 3, Part 1, para 5; 10 s 51(1)(a); 11 s 51(2)(b); 12 s 51(1)(c) & Sch 3, Part 1, para 5; 13 s 51(3)(a); 14 s 51(1)(c) & Sch 3, Part 1, para 5; 15 s 51ZA(1)(a), (2)(a) & (3)(a); 16 s 51ZA(1)(b), (2)(b) & 3(b)

10 Where the claimant is a widow, widower or surviving civil partner whose

- 1. spouse died on or after 11.4.88 **or**
- 2. civil partner died on or after 5.12.05

as a result of an IA or PD the first and second contribution conditions are treated as fully satisfied¹ for Cat B RP².

1 s s CB Act 92, s 60(2) & (8); 2 s 60(3)

11 Unless paragraph 12 applies, to be entitled to AP the first contribution condition must be satisfied. However, there may be entitlement to AP even if there is no entitlement to BP because of a failure to satisfy the second contribution condition only¹. AP may be payable in addition to BP.

Note: The first contribution condition can be satisfied by the payment of voluntary class 3 contributions

1 s s (WB & RP) Regs, reg 6(2) & (3A)

- 12 There can be entitlement to AP attributable to units of AP¹ if the first and second contribution conditions are not satisfied².

Note: See DMG 75601 for the meaning of units of AP.

1 SS CB Act 92, s 61ZB(3); 2 s 61ZB(1)

Appendix 3

Specified amounts for units of additional pension

Age of person on the date of payment	Amount of Class 3A contribution needed to obtain a unit of AP
62 (women only)	£956
63 (women only)	£934
64 (women only)	£913
65	£890
66	£871
67	£847
68	£827
69	£801
70	£779
71	£761
72	£738
73	£719
74	£694
75	£674
76	£646
77	£625
78	£596
79	£574
80	£544

81	£514
82	£484
83	£454
84	£424
85	£394
86	£366
87	£339
88	£314
89	£291
90	£270
91	£251
92	£232
93	£216
94	£200
95	£185
96	£172
97	£159
98	£148
99	£137
100 and over	£127

Appendix 4

Category C retirement pension for people who reached pensionable age before 6.4.16

Conditions of entitlement

- 1 Cat C RP is a non-contributory pension to which people may be entitled if they were
1. over pensionable age on 5.7.48¹ **and**
 2. resident in GB for a period of at least ten years between 5.7.48 and 1.11.70 (both dates included)² **and**
 3. ordinarily resident in GB on
 - 3.1 2.11.70 **or**
 - 3.2 the date of claim to Cat C RP³.

1 SS CB Act 92, s 78(1); 2 SS (WB & RP) Regs, reg 9(a); 3 reg 9(b)

Residence

- 2 For the purposes of paragraph 1 2. a period of at least ten years means
1. a period of **or**
 2. periods amounting to 3652 days¹.

Note: See DMG Chapter 07 for guidance on resident in GB and ordinarily resident.

1 SS (WB & RP) Regs, reg 1(2)

Period of entitlement

- 3 Entitlement to Cat C RP continues throughout a person's life¹. However, see DMG Chapter 07 for guidance on the effect of absence from GB², DMG Chapter 12 for guidance on the effect of imprisonment³ on Cat C RP, and DMG Chapter 04 for guidance on suspension and termination of benefit⁴.

1 SS CB Act 92, s 78(7); 2 s 113(1)(a); 3 s 113(1)(b); 4 SS CS (D&A) Regs, regs 16-18

Weekly rate of Category C retirement pension

- 4 The weekly rate of a Cat C RP is that stated in legislation¹ and is a
1. lower rate where the claimant is a married woman who has not, at anytime since becoming entitled to Cat C RP, ceased to be married² **or**
 2. a higher rate if 1. does not apply³.

Note: See DMG 75241 et seq for guidance on when a person is entitled to both a Cat C RP and either a Cat A or a Cat B RP.

1 SS CB Act 92, Sch 4, Part III, para 6; 2 s 78(5)(a); 3 s 78(5)(b)

Married women, widows and former wives

- 5 A married woman whose husband was entitled to Cat C RP¹ and a widow² or former wife³ of a man who was over pensionable age on 5.7.48 may have entitlement to Cat C RP.

*1 SS CB Act 92, s 78(2); 2 s 78(9)(a); SS (WB & RP) Regs, reg 11;
3 SS CB Act 92, s 78(9)(b); SS (WB & RP) Regs, reg 12*

Married women

- 6 A married woman whose husband was entitled to a Cat C RP is also entitled to a Cat C RP¹ as in paragraph 4 **1**. if she
1. is over pensionable age² **and**
 2. makes a claim³ (unless it is not required⁴).

Note: See DMG Chapter 02 for guidance on when a claim is not required.

*1 SS CB Act 92, s 78(2) & 78(5)(a); 2 s 78(2)(a);
3 SS A Act 92, s 1; 4 SS (C&P) Regs, reg 3(a)*

Widows

- 7 A widow whose late husband was over pensionable age on 5.7.48 is entitled to a Cat C RP¹ as in paragraph 4 **2**. if
1. she is over pensionable age **and**
 2. she was over age 45
 - 2.1 when her husband died **or**
 - 2.2 when she ceased to be entitled to WMA(C) **and**
 3. her husband
 - 3.1 was entitled to Cat C RP (see paragraph 10) **or**
 - 3.2 died before 2.11.70 **and**
 - 3.2.a she was resident in GB for a period of at least ten years (see paragraph 2) between 5.7.48 and 1.11.70 (both dates included) **and**
 - 3.2.b she was ordinarily resident in GB on 2.11.70 or the date of her claim to Cat C RP **and**
 - 3.2.c her husband was ordinarily resident in GB on the date of his death² **and**
 4. she makes a claim³ (unless it is not required⁴).

Note 1: Before 11.4.88, for the purposes of **2.** a widow had to be over age 40.

Note 2: See DMG Chapter 02 for guidance on when a claim is not required.

*1 SS CB Act 92, s 78(5)(b); 2 s 78(9)(a); SS (WB & RP) Regs, reg 11(1);
3 SS A Act 92, s 1; 4 SS (C&P) Regs, reg 3(a)*

8 Cat C RP is payable at a reduced rate¹ where the widow was under age 55

1. when her entitlement to WMA(C) ceased **or**
2. if she has not been entitled to WMA(C), when her late husband died².

Note: Before 11.4.88, a widow had to be under age 50.

1 SS CB Act 92, s 39(4); 2 SS (WB & RP) Regs, reg 11(3)(a)

Former wives

9 Where a woman's marriage ends by divorce or annulment she is entitled to a Cat C RP¹ as in paragraph 4 **2.** if

1. her husband was over pensionable age on 5.7.48 **and**
2. she has reached pensionable age before the end of the marriage **and**
3. where the marriage ended
 - 3.1 on or after 2.11.70², her husband was entitled to Cat C RP (see paragraph 10) **or**
 - 3.2 before 2.11.70³
 - 3.2.a she has been resident in GB for a period of at least 10 years (see paragraph 2) between 5.7.48 and 1.11.70 (both dates included) **and**
 - 3.2.b she was ordinarily resident in GB on 2.11.70 or on the date of her claim to Cat C RP **and**
 - 3.2.c her husband was ordinarily resident in GB when the marriage ended **and**
 - 3.2.d she did not remarry between the date the marriage ended and 2.11.70 **and**
4. she makes a claim⁴ (unless it is not required⁵).

Note 1: See DMG 75094 for guidance on voidable marriages that have been annulled.

Note 2: See DMG Chapter 02 for guidance on when a claim is not required.

*1 SS CB Act 92, s 78(5)(b); 2 SS (WB & RP) Regs, reg 12(1) & (3);
3 reg 12(1) & (2); 4 SS A Act 92, s 1; 5 SS (C&P) Regs, reg 3(a)*

Meaning of “entitled to Category C retirement pension”

- 10 For the purposes of paragraph 7 3.1 and paragraph 9 3.1 a husband is treated as entitled to Cat C RP if the absence of a claim, where one is required, is all that prevents entitlement¹.

1 SS (WB & RP Regs), reg 1(4)

Gender recognition certificate issued

- 11 Where paragraph 6 applies immediately before a full GRC is issued, entitlement to Cat C RP ceases when the full GRC is issued¹.

1 GR Act 04, Sch 5, para 11

Effect of the forfeiture rule

- 12 The forfeiture rule means that in certain circumstances a person who has unlawfully killed another cannot benefit from that killing¹. A widow's entitlement to Cat C RP may have to be considered under this provision (see DMG Chapter 76).

1 Forfeiture Act 1982

The content of the examples in this document (including use of imagery) is for illustrative purposes only.

Chapter 76 - Forfeiture Act 1982

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Chapter 76 - Forfeiture Act 1982

Introduction

76001 The forfeiture rule is a long established principle of common law. The rule, which means that no one should benefit from their own wrong¹, also applies to SS benefits².

*1 Cleaver and others v Mutual Reserve Fund Life Assoc [1982] 1QB 147;
2 R(G) 2/79; R v Chief National Insurance Commissioner ex parte Connor [1981] 1QB 758*

76002 For SS purposes the rule means that, in certain circumstances, a person who has unlawfully killed their spouse or civil partner cannot receive SS benefits as a result of the spouse's or civil partner's death¹.

1 Forfeiture Act 1982, s 1(1)

76003 The forfeiture rule applies to unlawful killing which includes

1. murder
2. manslaughter
3. culpable homicide¹ in Scotland **and**
4. unlawfully aiding, abetting, counselling or procuring the death of another².

There can be no relief from forfeiture in cases of unlawful killing unless it can be shown that justice requires the rule to be modified³. But see DMG 76006 for modifications to the forfeiture rule for **2.** to **4.** above.

Note: The forfeiture rule applies where a hospital order is imposed⁴ following a conviction for manslaughter based on diminished responsibility.

1 R(G) 3/90; 2 Forfeiture Act 1982, s 1(2); R(FG) 1/04; 3 R(G) 1/91; 4 Mental Health Act 1983, s 37

76004 A forfeiture rule question only arises in cases where there has been an unlawful killing and where the claimant stands to gain an advantage by the death of his/her spouse or civil partner. A question would not arise where, for example, a woman was aged over 60, entitled to a Cat A RP in her own right and would not derive any additional benefit as a direct result of the death of her husband or civil partner.

76005 Forfeiture rule questions can be determined only by the UT¹. Before 25.7.86, there could only be a decision whether or not the rule applied. If it did apply the claimant was prevented from deriving benefit directly from the unlawful act. There was no power to modify the effect of the rule².

*1 Forfeiture Act 1982, s 4(1); TP (UT) Rules, Rule 26;
2 R(G) 2/84(T); R(P) 1/84(T)*

76006 From 25.7.86 a change in legislation enabled modification of the effect of the rule. However, that modification cannot apply to

any period before 25.7.86. The UT can modify the effect of the rule so that it applies¹

1. only to a specified proportion of the benefit or advantage **and/or**
2. to the benefit or advantage only for a specified period of time.

There can, however, be no modification of the rule in cases of murder².

1 Forfeiture Act 1982, s 4(1C); 2 s 5

76007 The UT can

1. direct that a decision on the forfeiture question should apply also to any future benefit claim arising from the same unlawful killing¹ **and**
2. reconsider any determination of a forfeiture question made before 25.7.86².

Note: It does not matter who determined the forfeiture question for **2.** to apply.

1 Forfeiture Act 1982, s 4(1E); 2 s 4(1G)

76008 The benefits most likely affected by the forfeiture rule are WB, BB and RP based wholly or in part on a late husband's, wife's or civil partner's contributions (see DMG 76032 - 76033).

76009 - 76012

DMs action

76013 In most cases it will be for the DM to decide if a forfeiture rule question arises. If it does, the DM should refer the case to DMA Leeds who will refer the case to the UT to decide the question¹ (see DMG 76015).

1 TP (UT) Rules, Rule 26(1)

76014 The DM should consider whether a forfeiture question arises in any case involving unlawful killing of a spouse or civil partner. Knowledge of unlawful killing is usually available from

1. the Director of Public Prosecutions, who informs the Department of cases where a person has been convicted of the murder or manslaughter of a spouse or civil partner **or**
2. media reporting of a killing involving a spouse or civil partner.

Referral to Decision Making and Appeals Leeds

76015 DMA Leeds will refer cases to the UT. In addition to those cases in DMG 76014, all cases should be referred to DMA Leeds to consider reference to the UT where

1. a reference has been made to the DM to consider the effect of the forfeiture rule **and**
2. the claimant has been charged with and **acquitted** of an offence outlined in DMG 76003.

It is the circumstances of the unlawful killing and not the conviction which gives rise to a reference¹. The onus of proving that a killing was unlawful will be on the DM.

1 R(G) 2/90

76016 The papers should also be sent to DMA Leeds for consideration where it is clear that

1. a person has unlawfully killed his/her spouse or civil partner but the coroner has not named the offender **and**
2. the person has not been convicted of the crime, for example because of old age.

76017 - 76028

Information to be obtained

- 76029 The DM should send the following documents to DMA Leeds
1. the case papers
 2. an assessment of the rate of benefit payable if the forfeiture rule did not apply
 3. a certificate of conviction and sentence (obtainable from the Court)
 4. a transcript of both the judge's summing up and the remarks upon conviction in cases involving a trial. These may be separate documents.
 5. a transcript of the entire proceedings in cases in England and Wales involving a guilty plea
 6. in guilty pleas in Scottish cases, documents as directed by DMA Leeds.
- 76030 Transcripts are obtainable from the official Court shorthand writers at a fee **which should be paid locally**. It may be possible to obtain a transcript at no cost from a defence solicitor.

Determination of forfeiture rule question

- 76031 Having determined the forfeiture rule question the UT will return the case to the DM to dispose of in the light of the UT's decision.

Effect on WB, BB, SP and RP

- 76032 Where there is reason to believe that
1. a person has been, or is likely to be charged with their spouse's or civil partner's murder, manslaughter or culpable homicide **and**
 2. the person's claim for WB, BB, SP or RP is based wholly or partly on their late spouse's or civil partner's contributions

the DM should send the claim to DMA Leeds as soon as possible with the documents in DMG 76029.

- 76033 The DM should also send to DMA Leeds a claim received from a widower whose entitlement to benefit arises directly from his unlawful act of murder or manslaughter. The benefit affected is an IB(LT) or a Category A RP¹.

Any case in which the survivor's RP entitlement would normally be increased on account of inheritable components should be sent to DMA Leeds.

1 SS CB Act 92, s 41

76034 - 76999

The content of the examples in this document (including use of imagery) is for illustrative purposes only