

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 12

Amendment 33 – February 2016

1. This letter provides details on Amendment 33; 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 33 affects list of Abbs, SI's and Statutes, chapter 75. The changes
 - Incorporate memo DMG 23/15, update guidance and legal references and minor inconsequential amendments in chapter 78.
4. The last two amendment packages amending Volume 12 were
Amendment 32 [October 2015]
Amendment 31 [February 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).

The content of the examples in this document (including use of imagery) is for illustrative purposes only

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Abbreviations

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Statutory Instruments

SS Ben (PA) Regs - SS (IB) (Trans)
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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

National Health Service Act 1977	NHS Act 77
National Health Service Act 1990	NHS Act 90
National Health Service and Community Care Act 1990	NHS & CC Act 90
National Insurance Act 1965	NI Act 65
National Insurance (Industrial Injuries) Act 1965	NI (II) Act 65
National Insurance contributions Act 2008	NIC Act 08
National Minimum Wage Act 1998	NMW Act 98
Pensions Act 2007	Pensions Act 07
Pensions Act 2008	Pensions Act 08
Pensions Act 2014	Pensions Act14
Pension Schemes Act 1993	PS Act 93
Registered Homes (Amendment) Act 1991	RH (Amdt) Act 91
Registered Homes Act 1984	RH Act 84
Rehabilitation of Offenders Act 1974	ROO Act 74
Social Security Act 1975	SS Act 75
Social Security Act 1985	SS Act 85
Social Security Act 1986	SS Act 86
Social Security Act 1988	SS Act 88
Social Security Act 1989	SS Act 89
Social Security Act 1990	SS Act 90
Social Security Administration Act 1992	SS A Act 92

Social Security Contributions and Benefits Act 1992	SS CB Act 92
Social Security Contributions (Transfer of Functions, etc) Act 1999	SSC (ToF) Act 99
Social Security Fraud Act 2001	SS Fraud Act 01
Social Security (Incapacity for Work) Act 1994	SS (IfW) Act 94
Social Work (Scotland) Act 1968	SW (Scot) Act 68
State Pension Credit Act 2002	SPC Act 02
Supervised Jobsearch Pilot Scheme (Designation of Employment Officers) Order 2014	SJP Scheme (Designation of Emp. O) Order 2014
Tax Credit Act 2002	TC Act 02
Tribunals, Courts and Enforcement Act 2007	TCE Act 07
Teaching and Higher Education Act 1998	T & HE Act 98
Trade Union and Labour Relations (Consolidation) Act 1992	TULR (C) Act 92
Trade Union Reform and Employment Rights Act 1993	TURER Act 93
Welfare Reform Act 2007	WR Act 07
Welfare Reform Act 2009	WR Act 09
Welfare Reform and Pensions Act 1999	WRP Act 99
Workmen's Compensation Act 1925	WC Act 25

Statutory Instruments

The Social Security Benefit (Persons Abroad) Regulations 1975 No. 563	SS Ben (PA) Regs
The Social Security (Civil Penalties) Regulations 2012	SS (CPen) Regs
The Social Security (Computation of Earnings) Regulations 1978 No. 1698	SS (C of E) Regs
The Social Security (Claims and Information) Regulations 2007 No. 2911	SS (C&I) Regs
The Social Security Class 3A Contributions (Units of Additional Pension) Regulations 2014 SI 2014 No. 3240	SS Class 3A Conts (UAP) Regs
The Social Security (Child Maintenance Bonus) Regulations 1996 No. 3195	SS (CMB) Regs
The Social Security (Claims and Payments) Regulations 1979 No. 628	SS (C&P) Regs 79
The Social Security (Claims and Payments) Regulations 1987 No. 1968	SS (C&P) Regs
The Social Security Commissioners (Procedure) Regulations 1999 No. 1495	SS Commissioners Procedure Regs
The Social Security (Contributions) Regulations 1979 No. 591	SS (Conts) Regs
The Social Security (Contributions) Regulations 2001 No. 1004	SS (Conts) Regs 01
Social Security (Contribution Credits for Parents and Carers) Regulations 2010 No. 19	SS (CC P & C) Regs
The Social Security (Credits) Regulations 1975 No. 556	SS (Credits) Regs
The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 No. 769	SS (Crediting etc) Regs
The Social Security and Child Support (Decisions and Appeals) Regulations 1999 No. 991	SS CS (D&A) Regs
The Social Security and Child Support (Jobseeker's Allowance) (Miscellaneous Amendment) Regulations 1996 No. 2538	SS & CS (JSA) (Misc Amdt) Regs

Statutory Instruments

The Social Security (Deferral of Retirement Pensions) Regulations 2005 No. 453	SS (Def RP) Regs
The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005 No. 2677	SS (Def RP, SAP & GRB) (Misc Provs) Regs
The Social Security (Disability Living Allowance) Regulations 1991 No. 2890	SS (DLA) Regs
The Social Security (Introduction of Disability Living Allowance) Regulations 1991 No. 2891	SS (Introduction of DLA) Regs
The Social Security and Family Allowances (Polygamous Marriages) Regulations 1975 No. 561	SS & FA (Poly Marr) Regs
The Social Security (General Benefit) Regulations 1982 No. 1408	SS (Gen Ben) Regs
The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 No. 393	SS (GRB) (No. 2) Regs
The Social Security (Graduated Retirement Benefit) Regulations 2005 No. 454	SS (GRB) Regs
The Social Security (Habitual Residence) Amendment Regulations 2004 No. 1232	SS Hab Res Regs
The Social Security (Hospital In-Patients) Regulations 1975 No. 555	SS (HIP) Regs
The Social Security (Hospital In-Patients) Regulations 2005 No. 3360	SS (HIP) Regs 05
The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 No. 636	SS (I&A) Cql Amdts Regs
The Social Security (Incapacity Benefit) Regulations 1994 No. 2946	SS (IB) Regs
The Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 No. 2945	SS (IB for D) Regs
The Social Security (Incapacity Benefit) (Transitional) Regulations 1995 No. 310	SS (IB) (Trans) Regs

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Chapter 75 - Retirement pension

Categories of retirement pensions

Introduction

75001 There are four categories of RP. These consist of

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

Contributory pensions

75002 Contributory pensions are

1. Cat A RP¹ (see DMG 75010 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

75003 Non-contributory pensions are

1. Cat C RP¹ (see DMG 75181 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

75004 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

75005 To be entitled to Cat A, Cat B or Cat C RP a person must have reached pensionable age¹. Pensionable age² is

1. the 60th birthday for a woman born before 6.4.50
2. the 65th birthday for a man born before 6.12.53
3. the 66th birthday for a person born after 5.10.54 but before 6.4.60
4. the 67th birthday for a person born after 6.3.61 but before 6.4.77
5. the 68th birthday for a person born after 5.4.78.

Note: See Appendix 1 to this Chapter for pensionable age for a woman born from 6.4.50 to 5.12.53 inclusive. See Appendix 2 to this Chapter for pensionable age for a person born 6.12.53 to 5.10.54 inclusive. See Appendix 3 to this Chapter for pensionable age for a person born 6.4.60 to 5.3.61 inclusive (DMs should note that pensionable age for such a person is linked to their date of birth and there is no common pensionable age for those born within a specified period). See Appendix 4 to this Chapter for pensionable age for a person born 6.4.77 to 5.4.78 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

75006 However, to be entitled to Cat D RP a person must have reached the age of 80¹.

1 SS CB Act 92, s 78(3)

Marriage

75007 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)

75008 For the purpose of DMG 75007, 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

Category A retirement pension

Conditions of entitlement

75010 The conditions of entitlement to Cat A RP¹ are that the claimant

1. has reached pensionable age² (see DMG 75005) **and**
2. satisfies the contribution conditions³ (see DMG 75014 et seq) **and**
3. makes a claim⁴ (unless it is not required⁵).

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) & Sch 3, Part I, para 5; 4 SS A Act 92, s 1; 5 SS (C&P) Regs, reg 3(ca); reg 3(d) & reg 3A

75011 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

75012 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

75013 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 transsexual receives a GRC before age 65 (see DMG 75048).

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

Basic pension

75014 People who reach pensionable age on or after 6.4.10 are entitled to a standard rate BP if they satisfy a single contribution condition¹ (see DMG 75015 et seq)

Note: See Appendix 5 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)(b), s 44(1A)(b) & Sch 3, Part I, para 5A

75015 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)

75016 Pre-1975 contributions can be used towards satisfying the single contribution condition¹.

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

75017 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)

75018 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 75015 are satisfied¹.

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

75019 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

75020 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

75021 AP may be payable in addition to BP¹. This includes reduced rate BP² (see DMG 75018).

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

75022 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)

75023 Where DMG 75022 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 & WIVP) Regs, reg 3

Transsexual claimants

75024 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 transsexual 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 transsexual 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

75025 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.

75026 A person may have had surgery for the purposes of acquiring a new gender, but not any of the procedures at DMG 75025 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 transsexual who does not have a full GRC to DMA Leeds for advice.

Period before gender recognition legislation came into force

Male to female transsexual

75027 Where a male to female transsexual reaches female pensionable age before 4.4.05, DMs should have regard to a Court of Appeal decision¹ (see DMG 75028 - 75032).

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

75028 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 transsexual 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

75029 As a result of the Court of Appeal's decision¹ a male to female transsexual 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

75030 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 75033.

Note: See DMG 75035 - 75044 for further guidance.

1 R(P) 2/09

75031 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 75033.

Note: See DMG 75037 – 75044 for further guidance.

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

75032 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 75033.

Note: See DMG 75037 - 75044 for further guidance.

75033 Where DMG 75030, DMG 75031 or DMG 75032 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 75010 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

75034 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 75037 – 75044 for further guidance.

1 GR Act 04

75035 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 transsexual 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 75033.

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 75043). 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 transsexual. 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 75043); 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 transsexual. 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 75043); it is from this date that she receives the new rate of RP, taking into account Incs in respect of deferral.

Female to male transsexual

75045 DMs should **not** revise or supersede decisions awarding a Cat A RP to female to male transsexuals 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 transsexual

75046 Where a male to female transsexual 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)

75047 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 transsexual

75048 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 a Cat A RP on the basis that pensionable age is 65. If immediately before a full GRC is issued a female to male transsexual

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 deferral 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 transsexual - retirement pension awarded

75049 Where a male to female transsexual 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 transsexual - retirement pension not awarded

75050 Where a male to female transsexual 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 transsexual - retirement pension awarded

75051 Where a female to male transsexual 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 transsexual - retirement pension not awarded

75052 Where a female to male transsexual 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)

Composite pension

75053 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 75130).

Note 2: This does **not** apply³ where a claimant is treated as entitled to a Cat A RP in accordance with DMG 75600.

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

75054 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)

75055 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 75060 et seq). Their Cat A entitlement includes this increase when the calculation in DMG 75054 is made.

1 SS CB Act 92, s 52(2)

75056 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 75054 will therefore apply¹.

1 SS (WB & RP) Regs, reg 6(2)

Note: Before 6.4.10 this applies to the first and second contribution condition (see Appendix 5 to this Chapter). From 6.4.10 it also applies to the single contribution condition² (see DMG 75015 et seq).

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

75067 For the purposes of DMG 75066, 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)

75068 Also for the purposes of DMG 75066, 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 75069).

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

75069 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. Also, a year where people receive 52 class 3 credits for being entitled to HRP before 6.4.10⁵ is not a qualifying year where their marriage or civil partnership ended before that date⁶.

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 SS CB Act 92, s 23A(5); 6 SS (SP & NIC) Regs, reg 15(3)

75070 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 fully satisfied the single contribution condition by having 30 qualifying years⁶ (see DMG 75015 et seq).

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

Additional pension

75071 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

75072 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

75073 Guidance on death and the presumption of death is in DMG Chapter 10.

75074 The guidance in DMG 75060 - 75071 applies where a person obtains a decree absolute of

1. presumption of death **and**
2. dissolution of marriage¹.

1 Mat Causes Act 73

75075 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

75076 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

75077 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)

75078 - 75100

Category B retirement pension

Conditions of entitlement

75101 People can be entitled to Cat B RP if they have reached pensionable age¹ **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. were entitled to
 - 6.1 WPA⁷ **or**
 - 6.2 BA⁸ **or**
 - 6.3 WP⁹

before pensionable age was reached.

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

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

1. spouse¹ **or**
2. deceased spouse² **or**
3. civil partner³ **or**
4. deceased civil partner⁴.

1 SS CB Act 92, s 48A(1); 2 s 48B(1); 3 s 48A(2A); 4 s 48B(1A)

75103 Cat B RP may consist of a BP and an AP¹.

1 SS CB Act 92, s 48A(3), 48A(4) & 48B(2)

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

- 4.2 before 6.4.10 and the woman to whom she was married died after reaching pensionable age on or after that date⁷ **or**
- 5. from 10.12.14
 - 5.1 a person's spouse is a woman who
 - 5.1.a legally changed gender from male to female **and**
 - 5.1.b was born on or after 6.4.45 but before 6.4.50⁸ **and**
 - 5.2 the marriage existed immediately before the spouse obtained a full GRC⁹
- 6. from 10.12.14
 - 6.1 a person's late spouse
 - 6.1.a died on or after 5.4.10¹⁰ **and**
 - 6.1.b was born on after 6.4.45 but before 6.4.50¹¹ **and**
 - 6.1.c was, at the time of her death, a woman who legally changed gender from male to female¹² **and**
 - 6.2 the marriage existed immediately before the spouse obtained a full GRC¹³ **and**
 - 6.3 the person is a woman¹⁴.

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 6.4.50¹⁵.

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 5 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(2)(a) & 48A(2B)(a) & Sch 3, Part I, para 5A; 2 s 48A(1)(b) & 48(2A)(b); 3 s 48A(2)(a) & 48A(2B)(a); 4 CP Act 04, Sch 24, Part 3, para 25(6); 5 SS CB Act 92, s 48B(1); 6 s 48B(1ZA)(b); s 48B(1A); 7 Marr (SSC) Act 13, Sch 4, Part 5, para 12(1); SS CB Act 92, s 48B; 8 s 48A(2ZA)(d); 9 s 48A(2ZB); 10 s 48B(1ZA)(c)(i); 11 s 48B(1ZA)(c)(ii); 12 s 48B(1ZA)(c)(iii); 13 s 48B(1ZB); 14 s 48B(1ZA)(c)(iii); 15 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 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 48A(4) & 48B(2); 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 75053 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

75125 - 75129

Married person or civil partner

75130 A married person or a civil partner is entitled to a Cat B RP if

1. they and their spouse or civil partner both have reached pensionable age¹ **and**
2. the spouse or civil partner satisfies the single contribution condition² (see DMG 75015 et seq) **and**
3. they make a claim³ (unless it is not required⁴).

Note 1: Before 6.4.10, for a woman married to a man to be entitled to a Cat B RP her husband had to satisfy the contribution conditions⁵ at Appendix 5 to this Chapter **and** be entitled to a Cat A RP.

Note 2: The earliest a man married to a woman or a female civil partner is entitled to a Cat B RP is 6.5.10 as that is the date a woman born on 6.4.50 reaches pensionable age. From 29.3.14 this will also apply to a woman married to another woman.

Note 3: The earliest a man married to a man or a male civil partner is entitled to a Cat B RP is 6.4.15 as that is the date a man born on 6.4.50 reaches pensionable age.

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

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

75131 Where DMG 75130 applies, the weekly rate of Cat B RP is that stated in legislation¹. However, this amount may be reduced (see DMG 75111).

1 SS CB Act 92, s 48A(3) & Sch 4, Part I, para 5

Widows, widowers and surviving civil partners

75132 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 75134 - 75158 explains the differences.

75133 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 75015 et seq for guidance on the single contribution condition.

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

Women widowed after reaching pensionable age

75134 A woman widowed after reaching pensionable age¹ is entitled to a Cat B RP on her late spouse's contributions if

1. she was married to them when they died² **and**
2. they had satisfied
 - 2.1 the contribution conditions in Appendix 5 to this Chapter if they died
 - 2.1.a before 6.4.10 **or**
 - 2.1.b on or after 6.4.10 having reached pensionable age before that date³ **or**
 - 2.2 the single contribution condition (see DMG 75016 et seq) if
 - 2.2.a her husband **or**
 - 2.2.b she was married to a woman, reached pensionable age on or after 6.4.10 and her wife died on or after 6.4.10 without having reached pensionable age before that date⁴ **and**
3. she 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 48B(1)(b); 2 s 48B(1)(a); 3 s 48B(1), s 48B(1ZA)(a) & Sch 3, Part 1, para 5; 4 s 48B(1), s 48B(1ZA)(b) & Sch 3, Part 1, para 5A; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75135 Where DMG 75134 applies, the weekly rate of a woman's Cat B RP is the amount of Cat A RP¹ (see DMG 75015 et seq). However, see DMG 75532 et seq for guidance on the amount of AP.

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

75136 Also, unless DMG 75137 applies, a woman who had reached pensionable age before 6.4.10¹ and who then becomes a surviving same sex spouse is entitled to a Cat B RP on their late same sex spouse's contributions if

1. she was married to them at the time of their death² **and**

2. they had both reached pensionable age when her same sex spouse died³
and
3. the deceased same sex spouse satisfied the contribution conditions in Appendix 5 to this Chapter⁴ **and**
4. the person makes a claim⁵ (unless it is not required⁶).

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

1 Marr (SSC) Act 13, Sch 4, Part 5, para 13(5); 2 SS CB Act 92, s 51(1ZA)(a); 3 s 51(1ZA)(b); 4 s 51(1ZA)(c) & Sch 3, Part I, para 5; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75137 DMG 75136 does not apply to a widow whose

1. late female spouse legally changed gender from male to female **and**
2. marriage existed immediately before the spouse obtained a full GRC¹.

Note: Where this applies, DMs entitlement to a Cat B RP should be considered under DMG 75134.

1 Marr (SSC) Act 13, Sch 4, Part 5, para 13(6)

75138 Where DMG 75136 applies, the weekly rate of a woman's Cat B RP is the amount of Cat A RP¹ (see DMG 75015 et seq). However, see DMG 75532 et seq for guidance on the amount of AP.

1 SS CB Act 62, s 51(2)

Men widowed after reaching pensionable age

75139 A man widowed after reaching pensionable age before 6.4.10¹ is entitled to a Cat B RP on his late spouse's contributions if

1. he was married to
 - 1.1 a woman who died on or after 6.4.79 and he was married to her when she died² **or**
 - 1.2 a man and he was married to him when he died³ **and**
2. both of them had reached pensionable age when the late spouse died⁴ **and**
3. the late spouse had satisfied the contribution conditions in Appendix 5 to this Chapter⁵ **and**
4. he makes a claim⁶ (unless it is not required⁷).

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); Marr (SSC) Act 13, Sch 4, Part 5, para 13(5); 2 SS CB Act 92, s 51(1)(a); 3 s 51(1ZA)(a); 4 s 51(1)(b) & 51(1ZA)(b); 5 s 51(1)(c) & 51(1ZA)(c) & Sch 3, Part I, para 5; 6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75140 A man widowed after reaching pensionable age¹ on or after 6.4.10² is entitled to a Cat B RP on his late spouse's contributions if

1. he was married to them when they died³ **and**
2. they had satisfied

- 2.1 the contribution conditions in Appendix 5 to this Chapter if the late spouse was a woman and she died
 - 2.1.a before 6.4.10 **or**
 - 2.1.b on or after 6.4.10 having reached pensionable age before that date⁴ **or**
- 2.2 the single contribution condition (see DMG 75016 et seq) if the late spouse was a woman or a man and they died on or after 6.4.10 without having reached pensionable age before that date⁵ **and**
- 3. he makes a claim⁶ (unless it is not required⁷).

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

1 SS CB Act 92, s 48B(1)(b); 2 Pensions Act 1995, Sch 4, Part II, para 3(3); 3 SS CB Act 92, s 48B(1)(a); 4 s 48B(1), s 48B(1ZA)(a) & Sch 3, Part I, para 5; 5 s 48B(1), s 48B(1ZA)(b) & Sch 3, Part I, para 5A; 6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75141 Where DMG 75139 or DMG 75140 applies, the weekly rate of a man's Cat B RP is the amount of Cat A RP¹ (see DMG 75015 et seq). However, see DMG 75532 et seq for guidance on the amount of AP.

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

People becoming surviving civil partners after reaching pensionable age

75142 A person who had reached pensionable age before 6.4.10¹ and who then becomes a surviving civil partner is entitled to a Cat B RP on their late civil partner's contributions if

- 1. they were civil partners of each other² **and**
- 2. they had both reached pensionable age when the person's civil partner died³ **and**
- 3. the deceased civil partner satisfied the contribution conditions in Appendix 5 to this Chapter⁴ **and**
- 4. the person makes a claim⁵ (unless it is not required⁶).

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

1 CP Act 04, Sch 24, para 28(6); 2 SS CB Act 92, s 51(1A)(a); 3 s 51(1A)(b); 4 s 51(1A)(c) & Sch 3, Part I, para 5; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75143 A person who reaches pensionable age on or after 6.4.10¹ and who then becomes a surviving civil partner² is entitled to a Cat B RP on their late civil partner's contributions if

- 1. they were civil partners of each other³ **and**
- 2. the deceased civil partner satisfied the single contribution condition⁴ (see DMG 75016 et seq) **and**
- 3. the person 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 48B(1A); 2 s 48B(1A)(b); 3 s 48B(1A)(a); 4 s 48B(1A) & Sch 3, Part I, para 5; 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75144 Where DMG 75142 or DMG 75143 apply, the weekly rate of a person's Cat B RP is the amount of Cat A RP¹ (see DMG 75015 et seq). However, see DMG 75532 et seq for guidance on AP.

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

Women widowed before reaching pensionable age

75145 A woman who has reached pensionable age but whose husband died before 9.4.01¹ and before she reached pensionable age² 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 WP³ **and**
2. became entitled to WP following the death of her spouse⁴ **and**
3. makes a claim⁵ (unless it is not required⁶).

Note 1: See DMG 75153 - 75158 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 75149 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(8) & WRP Act 99 (Commencement No. 4) Order 2000, art 2(2)(a)(ii); 2 SS CB Act 92, s 48B(4); 3 s 48B(4)(a) & 48B(5)(a); 4 s 48B(4)(a) & 48B(5)(b); 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75146 Where DMG 75145 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

75147 A man who reaches pensionable age on or after 6.4.10¹ but whose wife died before 9.4.01² is entitled to a Cat B RP based on his late spouse's contributions³ if he would have been entitled to WP⁴ in accordance with DMG 75149

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

as a woman⁵ and he makes a claim⁶ (unless it is not required⁷).

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

75148 Where DMG 75147 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)

Women treated as receiving widow's pension before 9.4.01

75149 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

75150 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 is entitled to a Cat B RP based on the contributions of their late spouse or civil partner² 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 partner³ **and**
2. following the death of the spouse or civil partner the person has not remarried or formed a civil partnership⁴ **and**
3. the person makes a claim⁵ (unless it is not required⁶).

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(2); 3 s 48BB(1)(a); 4 s 48BB(1)(b); 5 SS A Act 92, s 1; 6 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75151 DMG 75150 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

75152 Where DMG 75150 and 75151 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)

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

75153 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 is entitled to a Cat B RP based on the contributions of their late spouse or civil partner² 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 age³ **or**
 - 1.2 WPA (see DMG Chapter 63) at any time over age 45 but **not** immediately before reaching pensionable age⁴ **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, art 2(2)(a)(ii); 2 SS CB Act 92, s 48BB(4); 3 s 48BB(3)(a)(i); 4 s 48BB(3)(a)(ii); 5 s 48BB(3)(b); 6 SS A Act 92, s 1; 7 SS (C&P) Regs, reg 3(cb); reg 3(d) & reg 3A

75154 Where DMG 75153 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)

75155 If a person to whom DMG 75153 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)

75156 The reduction for the purposes of DMG 75155 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 died
- was 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

75157 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

Meaning of late spouse or civil partner

75158 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 75150 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 75153 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

75159 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

75160 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

Category D retirement pension

Conditions of entitlement

75221 Cat D RP is a non-contributory pension payable to people who

1. are over age 80¹ **and**
2. are either
 - 2.1 not entitled to a Cat A, B or C RP² **or**
 - 2.2 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 legislation³ **and**
3. 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 after⁴ **and**
4. were ordinarily resident in GB on the
 - 4.1 day they reached age 80 **or**
 - 4.2 date of claim for the pension if later⁵ **and**
5. make a claim unless they are in receipt of Cat A, B or C RP⁶ (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, **4.2** 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)(a); 3 s 78(3)(b) & (4); 4 SS (WB & RP) Regs, reg 10(a); 5 reg 10(b); 6 SSA Act 92, s 1; SS (C&P) Regs, reg 3(b)(ii)

75222 For the purposes of DMG 75221 **2.2** 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 3. 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.

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 75600 **or**
2. a Cat B RP² in accordance with DMG 75601.

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 75593 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 75053 et seq) **and**
 2. widows, widowers or surviving civil partners (see DMG 75060 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 75015 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.

Example

Eric is a surviving civil partner receiving a Cat B RP who forms another civil partnership. Eric retains his entitlement to Cat B RP and becomes entitled to a further award of Cat B RP on the death of his second civil partner. Eric would be entitled to the more beneficial Cat B RP. The second award would enable the original to be superseded.

75250 - 75260

Increases of Retirement Pension

Introduction

75261 A person who is entitled to RP may also be entitled to an increase in the weekly rate of their pension because of

1. an incapacity age addition¹ or IVA (see DMG 75271 et seq) **or**
2. an age addition² (see DMG 75281 et seq) **or**
3. Incs or a lump sum payment because of deferred or cancelled entitlement to RP³ (see DMG 75291 et seq) **or**
4. GRB⁴ (see DMG 75471 et seq) **or**
5. a dependency increase for
 - 5.1 children⁵ (see DMG 75526) **or**
 - 5.2 adults⁶ (see DMG 75527 - 75531).

1 SS CB Act 92, s 47; 2 s 79; 3 s 55 & Sch 5; 4 SS (GRB) (No. 2) Regs, reg 3 & Sch 1; SS (GRB) Regs, reg 3 & Sch 1 & 2; 5 SS CB Act 92, s 80; 6 s 83, 84 & 85

75262 - 75270

Incapacity age addition

Entitlement to incapacity age addition

75271 A person who has been entitled to an IBLT age addition for any day not more than 57 days immediately before reaching pensionable age is entitled to an increase of a Cat A RP¹. Entitlement to IBLT age addition includes transitional IVA². However, there is no entitlement to an incapacity age addition if BP is not payable because of a failure to satisfy the contribution conditions³.

Note 1: However, where a person is a WtWB the period is 104 weeks⁴ instead of 57 days. Before 9.10.06 the period was 52 weeks.

Note 2: See DMG Chapter 56 for full guidance on IBLT and DMG Chapter 55 for full guidance on transitional provisions applying on the introduction of IB.

*1 SS CB Act 92, s 47(1); 2 Social Security (Incapacity Benefit) (Transitional) Regulations 1995, reg 23;
3 SS CB Act 92, s 61(1); 4 SS (WB & RP) Regs, reg 3A; Social Security (Incapacity Benefit) (Transitional)
Regulations 1995, reg 23(2)*

75272 For DMG 75271 to apply it is only necessary for a person to have been entitled to an IBLT age addition for a day within that period of 57 days. It is **not** a requirement that an IBLT age addition should actually have been paid, for example entitlement would remain if it was not payable because of the overlapping benefit provisions (see DMG Chapter 17). However, entitlement can be extinguished by the AP adjustment.

75273 Incapacity age addition forms an integral part of a Cat A RP. Therefore, it is included in the weekly rate upon which Incs are earned in the calculation of a deferred lump sum payment or increased pension¹ (see DMG 75291 et seq).

1 SS CB Act 92, s 47

Weekly rate of incapacity age addition

75274 The rate of the increase of a Cat A RP is the weekly amount of IBLT age addition to which a claimant was entitled¹. However, this amount is reduced² where the

1. Cat A includes an AP (see DMG 75532 et seq) **or**
2. claimant is entitled to a GMP³ (see DMG 75651 et seq).

Note: See DMG Chapter 56 for guidance on the calculation of IBLT age addition.

1 SS CB Act 92, s 47(1); 2 s 47(2); 3 s 47(3); PS Act 93, s 46

75275 In deciding the amount of the reduction in DMG 75274 **1.** or **2.** an AP or GMP includes any amount inherited from a deceased spouse or civil partner but does **not** include Incs¹.

1 SS CB Act 92, s 47(4)

75276 - 75280

Cancelling entitlement

75301 Before 6.4.05 a Cat A or a Cat B RP could only be cancelled by a woman under age 65 and a man under age 70 and notice of an election to cancel entitlement had to be in writing. However, from and including 6.4.05¹ there is no longer an upper age limit². Also, from and including 6.4.05 notice of an election to cancel entitlement can be given by telephone to the telephone number specified by the Secretary of State unless the DM directs that the notice must be in writing³.

Note: Cancelling entitlement to a Cat A or a Cat B RP is sometimes known as de-retiring.

1 Pensions Act 2004, s 322(3)(b); 2 SS CB Act 92, s 54(1); Pensions Act 1995, Sch 4, Part II, para 6(1) & 6(5)(a); SS (WB & RP) Regs, reg 2(1); 3 reg 2(3)

75302 Where notice of an election to cancel entitlement to a Cat A or a Cat B RP is given in writing, it should be treated as being notice of election by the DM only if it is clearly intended to be such¹.

1 R(P) 1/61

75303 The rules for making an election¹ do **not** apply to a person

1. who has previously made an election² **or**
2. who is not ordinarily resident in GB³ (except people living in an EEA country) **or**
3. under minimum pensionable age (see DMG 75304).

Note: See DMG 75305 et seq for guidance on when these rules also apply to married men before 6.4.10.

1 SS CB Act 92, s 54(1); SS (WB & RP) Regs, reg 2; 2 reg 2(2); 3 SS Ben (PA) Regs, reg 6

Example 1

Mary is now 67. When she reached pensionable age in 1999 she did not claim her RP and continued deferring until she reached age 65 in 2004. She then claimed RP because she could not earn any further increments by continuing to defer beyond that date. In May 2005 she decides that she wants to start deferring again. As Mary has not elected to cancel previously, the DM decides she is able to cancel her entitlement to her RP and defer again.

Example 2

Mark is now 71. He claimed his RP when he reached pensionable age but after two years elected to cancel his entitlement to RP in order to earn increments. He cancelled his entitlement until he reached age 70. He then claimed RP as he could not earn any further increments. In May 2005 he asks again if he can defer his RP. The DM decides Mark is not able to cancel his entitlement to RP as he had previously made an election to do so.

75304 To make an election a person must be entitled to a Cat A or a Cat B RP. A person under pensionable age cannot be entitled to RP¹ and so cannot elect not to be entitled. The DM should not accept an early notice of election as valid, and should disallow it.

1 SS CB Act 92, s 44(1)

Married men cancelling entitlement before 6.4.10

75305 Before 6.4.10 the rules for making an election¹ do **not** apply to a married man entitled to Cat A RP whose wife

1. is entitled to
 - 1.1. a Cat B RP **or**
 - 1.2. an increase on the person's contributions² **and**
2. does not consent to the election, unless that consent is withheld unreasonably³ (see DMG 75307 et seq) **or**

*1 SS CB Act 92, s 54(1); SS (WB & RP) Regs, reg 2; 2 SS CB Act 92, s 51A(1)(b);
3 s 54(3); SS (WB & RP) Regs, reg 2(2)(b)*

75306 The election of a married man whose wife

1. is entitled to
 - 1.1 a Cat B RP **or**
 - 1.2 an increase on their contributions **and**
2. consents to their cancellation of entitlement¹

cannot take effect earlier than the date of their consent². Before 6.4.05 that consent had to be in writing. However, from and including 6.4.05 the consent can be given by telephone to the telephone number specified by the Secretary of State unless the DM directs that the consent must be in writing³.

Note: If DMG 75307 applies, the election takes effect from the date as in DMG 75310 or any later date that the DM can decide⁴.

1 SS CB Act 92, s 54(3); 2 SS (WB & RP) Regs, reg 2(5)(a); 3 reg 2(3); 4 reg 2(5)(b)

Wife refuses consent

75307 When a married man makes an election before 6.4.10 to cancel their entitlement, and it is accepted, both their RP and RP payable to their wife on their contributions will end. Unless it is withheld unreasonably, the consent of the wife must be obtained before the election can be accepted. It is for the DM to determine whether the wife has consented or not. If they have not, the DM must decide if the refusal to give consent is unreasonable. If the DM decides that the refusal to give consent is unreasonable the election may be accepted despite the failure to give consent.

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 apply**⁵.

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

Lump sum payment

75521 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 (GRB) Regs, Sch 1, para 15(1); 2 Sch 1, para 12(3); 3 Sch 1, para 16(1);
4 Sch 1, para 16(3), 16(4) & 16(5); 5 Sch 1, para 16(2)*

Lump sum payment - widow, widower or surviving civil partner

75522 Where DMG 75513 applies, the widowed person's lump sum¹ to be received by a widow, widower or surviving civil partner is calculated² in a similar way to DMG 75425 - 75430. This means 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 deferred and DMG 75428 - 75430 applies when, in the calculation of the accrued amount, the amount at 2. can be increased.

1 SS (GRB) Regs, Sch 1, para 19(2); 2 Sch 1, para 20

Transitional cases

75523 A transitional case is where a person's entitlement to GRB only 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 (GRB) Regs, Sch 2, para 1; 2 Sch 2

75524 - 75525

Dependency increase

Children

75526 Before 6.4.03 increases for children¹ could be paid with Cat A, Cat B and Cat C RP. On 6.4.03 these increases were abolished². However, certain transitional and saving arrangements exist for occasions where entitlement either predates 6.4.03³ or where entitlement is subsequently shown to exist prior to this date⁴.

Note: See DMG Chapter 16 for full guidance on increases for children.

1 SS CB Act 92, s 80; 2 Tax Credit Act 2002, s 1(3)(e); 3 Tax Credit Act 2002 (Commencement No. 3 and Savings Provisions) Order 2003, art 3(1) & (2)(a); 4 art 3(1) & 2(b)

Adults

Abolition of adult dependency increases

75527 From 6.4.10 increases of RP for an adult dependent are abolished¹. However people² will continue to have entitlement to an ADI³ until the earlier or earliest date⁴ in DMG 75528 where they

1. have applied for an ADI before 6.4.10 **and**
2. are immediately before 6.4.10
 - 2.1 entitled to an ADI **or**
 - 2.2 would be entitled to an ADI if the earnings rule⁵ did not apply.

Note 1: 2.1 will apply where the amount of ADI payable is extinguished under the overlapping benefit provisions⁶ (see DMG Chapter 17).

Note 2: 2.2 only applies if entitlement has been established by actual payment of ADI prior to the earnings extinguishing.

1 Pensions Act 07, s 4(1) & 4(2); 2 s 4(6); 3 s 4(5); 4 s 4(7); 5 SS CB Act 92, s 92; 6 SS (OB) Regs, reg 10

Example

Brian claims Cat A RP and has entitlement from 2.3.10. He claims an ADI for his wife Paula. However, Paula works and has earnings of £100 a week. Therefore the DM disallows the increase. Paula stops work on 30.7.10. Brian is not entitled to an ADI when Paula stops work.

75528 For the purposes of DMG 75527 the dates are the earlier or earliest of

1. 6.4.20 **or**
2. the date on which entitlement to an ADI ends **or**
3. the date on which a person's wife reaches pensionable age¹ where that occurs on or after 6.4.10.

Therefore the guidance at DMG 75529 - 75531 will continue to apply until the earlier or earliest of these dates.

1 Pensions Act 07, s 4(7)

Increase for a wife

75529 A man can receive an increase of a Cat A or Cat C RP¹ for his wife for any period during which he is²

1. residing with her **or**
2. contributing to her maintenance at a weekly rate not less than the amount of the increase payable and she does not have weekly earnings which exceed that amount.

Note: See DMG Chapter 16 for full guidance on increases for a wife.

1 SS CB Act 92, s 83(1); 2 s 83(2)

Increase for a husband

75530 A woman can receive an increase of a Cat A RP for her husband where her entitlement began immediately after a period during which she was entitled to an increase of IB for him¹ and she is²

1. residing with him **or**
2. contributing to his maintenance at a weekly rate not less than the amount of the increase payable and he does not have weekly earnings which exceed that amount.

Note: See DMG Chapter 16 for full guidance on increases for a husband.

1 SS CB Act 92, s 84(1)(a); 2 s 84(2)

Increase for a carer

75531 People can receive an increase of a Cat A RP if they

1. reside with **or**
2. employ **or**
3. contribute towards the maintenance of

a person who cares for a child or qualifying young person¹.

Note: See DMG Chapter 16 for full guidance on increases for a carer.

1 SS CB Act 92, s 85; SS Ben (Dep) Regs, reg 10(2)

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 75602 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 75019 and DMG 75111). It can also be paid in addition to Cat A RP² or 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 75005). 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 75593).

1 SS (WB & RP) Regs, reg 6A(2)(b); 2 SS CB Act 92, s 44(3); 3 s 48A(4) & 48B(2); 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 75018 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 75018 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 75018 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 75018 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

Meaning of partner

75554 For the purposes of DMG 75550 1.

1. partner means a person with whom another person resides and shares responsibility for a child under the age of 12¹ **and**
2. the partner of a person awarded CHB for a child under the age of 12 is **engaged** in caring **only if** the relevant tax year is a qualifying year for AP² for the person in receipt of CHB³.

Note: For the purpose of 2. any credits awarded to the person in receipt of CHB because that person is a relevant carer (see DMG 75547) are not taken into account when deciding whether the relevant tax year is a qualifying year⁴.

1 SS (CC P & C) Regs, reg 2(1); 2 reg 6(2) & SS CB Act 92, s 45; 3 SS (CC P & C) reg 6(1); 4 reg 6(3)

Meaning of relevant benefit

75555 For the purposes of DMG 75550 2.1 a relevant benefit¹ is

1. AA² **or**
2. the middle or highest rate of the care component of DLA³ **or**
3. increase of IIDB where constant attention needed⁴ **or**
4. PB and MDB or WC (Supp) payable at 100%⁵ **or**
5. a constant attendance allowance payable under prescribed legislation⁶ **or**
6. the daily living component of PIP⁷ **or**
7. AFIP⁸.

1 SS (CC P & C) Regs, reg 2(1); 2 SS CB Act 92, s 64; 3 s 72(3); 4 s 104; 5 PB & MDB Scheme; WC(S) Scheme; 6 Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006, art 12 & Personal Injuries (Civilians) Scheme 1983, art 18; 7 WR Act 12, s 78; 8 Armed Forces and Reserve Forces (Compensation Scheme) Order 2011

Applications

75556 Applications for credits where DMG 75548 and DMG 75550 1. apply are made to HMRC¹. Applications for credits where DMG 75550 2. applies are made to the Secretary of State². Applications are not required where the person is a married woman who is not entitled to CA credits because of an election to pay reduced rate NI contributions³. Applications must be received

1. before the end of the tax year following the tax year in respect of which the application relates⁴ **or**
2. within such further time which is reasonable in the circumstances⁵.

1 SS (CC P & C) Regs, reg 9(b); 2 reg 10(1); 3 reg 10(2); SS (Credits) Regs, reg 7A(1) & (2)(b); SS CB Act 92, s 19(4); 4 SS (CC P & C) Regs, reg 12(a); 5 reg 12(b)

Effect of certain benefits on additional pension

75557 Where pensionable age is reached on or after 6.4.99 any

1. FamC and, from 5.10.99, WFTC **or**
2. DWA and, from 5.10.99, DPTC

a person has received as an employed earner in one or more of the tax years from 1995/96 to 2001/02 can be used in the calculation of their AP¹.

1 SS CB Act 92, s 45AA

Calculation of earnings factors for additional pension

75558 The calculation of earnings factors for people's AP depends on when they reach pensionable age¹.

1 Pensions Act 1995, s 128

Pensionable age reached before 6.4.00

75559 Where pensionable age is reached before 6.4.00 earnings factors for deciding the amount of AP are calculated in accordance with DMG 75560 - 75562.

75560 The earnings factor for any of the tax years from 1978/79 to 1986/87 is the total of the earnings factors derived from

1. earnings on which class 1 contributions are paid either at the contracted-in or contracted-out rate **and**
2. class 2 and 3 contributions actually paid¹.

1 SS CB Act 92, s 44(6)(b)

75561 The earnings factor for any of the tax years from 1987/88 to 1996/97 is the total of

1. the earnings factors derived from earnings on which class 1 contributions are
 - 1.1 paid either at the contracted-in or contracted out rate **or**
 - 1.2 treated as paid¹ **and**
2. the earnings factor derived from class 2 and 3 contributions actually paid² **and**
3. any FamC or DWA in respect of the 1995/96 and 1996/97 tax years where pensionable age is reached on or after 6.4.99³.

1 SS CB Act 92, s 44(6)(a)(i); 2 s 44(6)(a)(ii); 3 s 45AA

75562 The earnings factor for any of the tax years from 1997/98 to 1999/00 is the total of

1. the earnings factors derived from earnings on which class 1 contributions are
 - 1.1 paid at the contracted-in rate¹ **or**
 - 1.2 treated as paid² **and**

2. the earnings factor derived from class 2 and 3 contributions actually paid³
and any

- 2.1 FamC or WFTC **or**

- 2.2 DWA or DPTC

where pensionable age is reached on or after 6.4.99⁴.

1 PS Act 93, s 48A; 2 SS CB Act 92, s 44(6)(a)(i); 3 s 44(6)(a)(ii); 4 s 45AA

Pensionable age reached after 5.4.00

75563 When pensionable age is reached after 5.4.00 earnings factors for deciding the amount of AP are calculated in accordance with DMG 75564 - 75569.

75564 The earnings factor for any of the tax years from 1978/79 to 1986/87 is the total of

1. the earnings factors derived from earnings on which class 1 contributions are paid either at the contracted-in or contracted-out rate¹ **and**
2. the earnings factors derived from
 - 2.1 class 2 and 3 contributions actually paid **or**
 - 2.2 the qualifying earnings factor for the relevant year if this is less².

1 SS CB Act 92, s 44(6)(b)(i) (as amended by Pensions Act 1995, s 128);

2 s 44(6)(b)(ii) (as amended by Pensions Act 1995, s 128)

75565 The earnings factor for any of the tax years from 1987/88 to 1996/97 is the total of

1. the earnings factors derived from earnings on which class 1 contributions are
 - 1.1 paid at the contracted-in or contracted out rate **or**
 - 1.2 treated as paid¹ **and**
2. the earnings factor derived from
 - 2.1 class 2 and 3 contributions actually paid **or**
 - 2.2 the qualifying earnings factor for the relevant year if this is less² **and**
3. any FamC or DWA in respect of the 1995/96 and 1996/97 tax years³.

1 SS CB Act 92, s 44(6)(a)(i) (as amended by Pensions Act 1995, s 128);

2 s 44(6)(a)(ii) (as amended by Pensions Act 1995, s 128); 3 s 45AA

75566 The earnings factor for any of the tax years from 1997/98 to 2001/02 is the total of

1. the earnings factors derived from earnings on which class 1 contributions are
 - 1.1 paid at the contracted-in rate¹ **or**
 - 1.2 treated as paid² **and**
2. the earnings factor derived from
 - 2.1 class 2 and 3 contributions actually paid **or**
 - 2.2 the qualifying earnings factor for the relevant year if this is less³ **and**

3. any
 - 3.1 FamC or WFTC **or**
 - 3.2 DWA or DPTC⁴.

*1 PS Act 93, s 48A; 2 SS CB Act 92, s 44(6)(a)(i) (as amended by Pensions Act 1995, s 128);
3 s 44(6)(a)(ii) (as amended by Pensions Act 1995, s 128); 4 s 45AA*

75567 The earnings factor for the tax year 2002/03 is the total of

1. the earnings factors derived from earnings on which class 1 contributions are
 - 1.1 paid at the contracted-in or contracted-out rate **or**
 - 1.2 treated as paid¹ **and**
2. any deemed earnings² (see DMG 75570).

*1 SS CB Act 92, Sch 4A, para 1 & 2; AP & SS Pens (HR) (Amdt) Regs, reg 2;
2 SS CB Act 92, Sch 4A, para 3(2) & 8(2)*

75568 The earnings factor for any tax year from 2003/04 is the total of

1. earnings that do not exceed the upper earnings limit on which class 1 contributions are
 - 1.1 paid at the contracted-in or contracted-out rate **or**
 - 1.2 treated as paid¹ **and**
2. any deemed earnings² (see DMG 75570).

*1 SS CB Act 92, Sch 4A, para 1 & 2; AP & SS Pens (HR) (Amdt) Regs, reg 2;
2 SS CB Act 92, Sch 4A, para 3(2) & 8(2)*

75569 For the purpose of DMG 75564 **2.2**, 75565 **2.2** and 75566 **2.2** the qualifying earnings factor is an amount equal to the weekly lower earnings limit for the relevant year multiplied by 52¹.

1 SS CB Act 92, s 122(1)

Deemed earnings

75570 From 6.4.97 earnings in contracted-out employment were not included in deciding the amount of surplus earnings in a relevant tax year¹. However, from 6.4.02 earnings in contracted-out employment are included if they are in respect of employment qualifying the claimant for a pension provided by

1. a salary related contracted-out scheme **or**
2. a money purchase contracted-out scheme **or**
3. an appropriate personal pension scheme².

1 PS Act 93, s 48A(1); 2 SS CB Act 92, Sch 4A, para 3(2) & 8(2)

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 75589 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 48A(4) & s 48B(2); 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).

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 AP is to become flat rate. To achieve this, entitlement to AP will be capped. DMG 75578 - 75580 give guidance on changes from 6.4.09 so that AP will be flat rate by around 2030. There are two other changes that will achieve this. 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 uprated³. The second accrual band will remain. However, the upper accrual point will not be uprated. Therefore the two accrual bands will eventually have the same value.

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 48A(4)(b) & 48B(2)(b)

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 diedpensionable 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.

State scheme pension debits

75587 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 75608 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

75588 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

75589 There is a prescribed maximum amount of AP¹ where a claimant 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 RP².

Note: See DMG 75593 for the meaning of units of AP.

1 SS (MAP) Regs, reg 3; 2 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.

75590 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 specified day (see DMG 75591) **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)

75591 For the purposes of DMG 75590 1., the specified 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

75592 For the purposes of DMG 75590 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.

Unit of additional pension

Meaning of unit of additional pension

75593 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

75594 Class 3A contributions are voluntary NI contributions. From 12.10.15 a person who satisfies DMG 75597 or DMG 75598 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)

75595 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 6 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

75596 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

75597 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)

75598 A person is also an eligible person if they have

- 1. prospective entitlement to RP or GRB as in DMG 75597 **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

75599 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 75600).

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 48A(4), s 48B(2) & s 48BB(5);
4 SS Class 3A Conds (UAP) Regs, reg 4; 5 SS CB Act 92, s 48A(4), s 48B(2) & s 48BB(5)*

Treated as entitled to category A retirement pension

75600 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 75593 for the meaning of units of AP.

Note 2: The relevant contribution conditions are the first and second contribution conditions (see Appendix 5 to this Chapter) or the single contribution condition (see DMG 75014 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

75601 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 75593 for the meaning of units of AP.

Note 2: The relevant contribution conditions are the first and second contribution conditions (see Appendix 5 to this Chapter) or the single contribution condition (see DMG 75014 et seq).

1 SS CB Act 92, s 61ZB(2); 2 s 61ZB(1); 3 s 61ZB(3)

Shared additional pension

Background

75602 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

75603 The following paragraphs explain the meaning of terms used in connection with a SAP.

Final relevant year

75604 The final relevant year is the tax year immediately before the one in which a person reaches pensionable age¹ (see DMG 75005).

1 SS CB Act 92, s 55A(7) & 55B(8)

State scheme pension debit

75605 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)

State scheme pension credit

75606 A 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

75607 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 state scheme pension credit.

1 WRP Act 99, s 49

Shareable rights

75608 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)

75609 - 75610

Entitlement to shared additional pension

75611 To be entitled to a SAP a person must be

1. over pensionable age (see DMG 75005) **and**
2. entitled to a state scheme pension credit¹ (see DMG 75606).

A person's entitlement to SAP continues throughout their life².

1 SS CB Act 92, s 55A(1); 2 s 55A(2)

Weekly rate of shared additional pension

75612 The weekly rate of a SAP to which a person is entitled 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

75613 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 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

75614 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 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

75615 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)

Guaranteed minimum pension

Introduction

75651 A GMP is a pension provided for through certain contracted-out occupational pension schemes¹. This includes amounts treated as a GMP and to which there is entitlement under a

1. personal pension scheme² **or**
2. money purchase contracted-out scheme³.

The schemes also provide for payments of a survivor benefit to widows, widowers and surviving civil partners⁴. From 14.06.99⁵, all decisions regarding entitlement to, and calculating the level of payment of, a GMP have been transferred to HMRC⁶.

1 PS Act 93, s 13(1); 2 s 48(1)(b); 3 s 48(1)(a); 4 s 17(1); 5 SSC (ToF) Act 99 (Commencement No. 2 and Consequential and Transitional Provisions) Order 1999, Sch 1 Part I; 6 SSC (ToF) Act 99, s 16; R(P)1/04

75652 From 6.4.09 occupational schemes which undergo a conversion exercise do not have to provide for a GMP¹ if certain conditions are satisfied². Instead the GMP is converted into other equivalent scheme benefits under pensions legislation³. It is for scheme trustees to decide whether they wish to convert GMPs into other benefits. However, conversion will only take place if the employer has given consent⁴.

1 PS Act 93, s 13(1A) & s 17(1A); 2 s 24B; 3 s 24A – 24H; 4 s 24E(2)

75653 One of the conditions to be satisfied is that the converted scheme does not provide for a reduction in payments where, immediately before the conversion date, the earner was entitled to the payment of a pension under the scheme¹. However, where a GMP has been converted, people will be treated as entitled to a notional GMP for the purpose of calculating the contracted out deduction which will be applied to the AP².

Note: The entitlement to a notional GMP will be decided by HMRC.

1 PS Act 93, s 24B(3); 2 s 47(9)

Obtaining information

75654 Before making a decision on the amount of a person's AP (see DMG 75534 et seq.) the DM should obtain information about GMP from HMRC¹ (see DMG Chapter 01).

1 R(P) 1/04

Period of entitlement

75655 Entitlement to GMP continues throughout a claimant's life¹.

1 PS Act 93, s 13(3)

75656 - 75660

Appendix 5

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) & 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 75593 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. deceased spouse **or**
3. civil partner **or**
4. deceased 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(2)(b), 48A(2B)(b), 48B(1)(b) & 48B(1ZA)(a) & Sch 3, para 5; 2 s 60(1); SS (WB & RP) Regs, reg 6

- 9 However, paragraph 8 will only apply where

1. the spouse is a man married to a woman¹ who
 - 1.1 reaches pensionable age before 6.4.10² **or**
 - 1.2 died before 6.4.10³ **or**
 - 1.3 died on or after 6.4.10 having reached pensionable age before that date⁴ **or**
2. the claimant is a widower
 - 2.1 who
 - 2.1.a reached pensionable age before 6.4.10⁵ **and**
 - 2.1.b was over pensionable age when his wife died **and**
 - 2.2 whose deceased wife
 - 2.2.a died on or after 6.4.79 but before 6.4.10 **and**
 - 2.2.b was over pensionable age when she died⁶ **or**

3. the claimant is a surviving civil partner
 - 3.1 who
 - 3.1.a reached pensionable age before 6.4.10⁷ **and**
 - 3.1.b was over pensionable age when their civil partner died **and**
 - 3.2 whose deceased civil partner
 - 3.2.a reached pensionable age before 6.4.10 **and**
 - 3.2.b was over pensionable age when they died⁸ **or**
4. from 10.12.14
 - 4.1 the claimant's spouse is a woman who
 - 4.1.a legally changed gender from male to female **and**
 - 4.1.b was born before 6.4.45⁹ **and**
 - 4.2 the marriage existed immediately before the spouse obtained a full GRC¹⁰.

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 SS CB Act 92, s 48A(2ZA)(a); 2 s 48A(2)(b) & 48A(2ZA)(a) & Sch 3, Part I, para 5; 3 s 48B(1) & 48B(1ZA)(a)(i) & Sch 3, Part I, para 5; 4 s 48B(1) & 48B(1ZA)(a)(ii) & Sch 3, Part I, para 5; 5 Pensions Act 1995, Sch 4, Part II, para 3(3); 6 SS CB Act 92, s 51(1) & Sch 3, Part I, para 5; 7 CP Act 04, Sch 24, Part 3, para 28(b); 8 SS CB Act 92, s 51(1A) & Sch 3, Part I, para 5; 9 s 48A & 48B; Pensions Act 1995, Sch 4, Part II, para 3(2) & 3(3); CP Act 04, Sch 24, Part 3, para 25(6) & 28(b); 9 SS CB Act 92, s 48A(2ZA)(c); 10 s 48A(2ZB)

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 SS 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 SS (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 75593 for the meaning of units of AP.

1 SS CB Act 92, s 61ZB(3); 2 s 61ZB(1)

APPENDIX 6

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

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