

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 12 Amendment 35 – June 2017

1. This letter provides details on Amendment 35; 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/lq/acileeds/guidance/decision%20makers%20guide/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 35 affects chapters 74, 75 & 76. The changes
 - incorporate memo DMG 25/16
 - incorporate memo DMG 11/17
 - make minor and consequential changes
4. The last two amendment packages amending Volume 12 were
Amendment 34 [June 2016]
Amendment 33 [February 2016]
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).

Remove

Chapter 74

74101 – 74222 (3 pages)

74319 – 74400 (9 pages)

Insert

Chapter 74

74101 – 74222 (3 pages)

74319 – 74400 (9 pages)

Chapter 75

75021 – 75030 (1 page)

Chapter 76

Contents (1 page)

76001 – 76999 (2 pages)

Chapter 75

75021 – 75030 (1 page)

Chapter 76

Contents (1 page)

76001 – 76999 (2 pages)

Full rate of state pension

Introduction

74101 The guidance at DMG 74102 – 74104 applies to people who have no pre-commencement qualifying years.

Note: See DMG 74201 et seq for guidance on SP payable at the transitional rate which applies when people have at least one pre-commencement qualifying year.

74102 People may be entitled to SP at the full rate if

1. they are under age 16 on 6.4.16 **or**
2. they arrive in the UK for the first time on or after 6.4.16 **or**
3. for any other reason they
 - 3.1 have not paid, or been credited with, NI contributions **or**
 - 3.2 do not have a qualifying year before 6.4.16.

Entitlement

74103 A person is entitled to SP payable at the full rate if they

1. have reached pensionable age **and**
2. have 35 or more qualifying years¹.

Note 1: See DMG 74022 for the meaning of pensionable age and DMG 74023 for the meaning of qualifying year.

Note 2: See DMG 74012 for guidance on references to HMRC if there is a dispute about a NI contribution record.

Note 3: See DMG Chapter 03 for guidance on revision where there is a late award of contributions or credits, or because of changes to Class 2 NI collection.

1 Pensions Act 14, s 2(1)

Amount

74104 The full rate of SP is the weekly rate specified in regulations¹. This will initially be £155.65². When the full rate of SP is up-rated in April 2017 and subsequent years, the rate will be replaced by a new rate that applies from the date the up-rating Order takes effect.

1 Pensions Act 14, s 3(1); 2 SP Regs, reg 1A

74105 – 74150

Reduced rate of state pension

Introduction

74151 The guidance at DMG 74152 – 74162 applies to people who have no pre-commencement qualifying years.

Note: See DMG 74201 et seq for guidance on SP payable at the transitional rate which applies when people have at least one pre-commencement qualifying year.

74152 People may be entitled to SP at the reduced rate if

1. they are under age 16 on 6.4.16 **or**
2. they arrive in the UK for the first time on or after 6.4.16 **or**
3. for any other reason they
 - 3.1 have not paid, or been credited with, NI contributions **or**
 - 3.2 do not have a qualifying yearbefore 6.4.16.

Entitlement

74153 A person is entitled to SP payable at the reduced rate if they have

1. reached pensionable age¹ **and**
2. at least 10 qualifying years² but less than 35³.

Note 1: See DMG 74022 for the meaning of pensionable age and DMG 74023 for the meaning of qualifying year.

Note 2: See DMG 74012 for guidance on references to HMRC if there is a dispute about a NI contribution record.

Note 3: See DMG 74406 for when the minimum period of 10 qualifying years does not apply.

Note 4: See DMG Chapter 03 for guidance on revision where there is a late award of contributions or credits, or because of changes to Class 2 NI collection.

1 Pensions Act 14, s 2(2)(a); 2 SP Regs, reg 13(1); 3 Pensions act 14, s 2(2)(b)

74154 Contributions paid by a person who has worked or resided outside the UK may count towards the minimum period of 10 qualifying years.

74155 – 75160

Amount

74161 The reduced rate of SP is 1/35 of the full rate multiplied by the number of qualifying years¹.

Note: See DMG 74101 et seq for guidance on the full rate of SP.

1 Pensions Act 14, s 3(2)

Example

Person A has 25 qualifying years. They are entitled to SP of $25/35 \times £155.65 = £118.18$. (DMs should note that the rate used is for illustrative purposes only.)

74162 Although contributions paid by a person who has worked or resided outside the UK may count towards the minimum period of 10 qualifying years, they are **not** included when deciding the amount of SP. Therefore, a person may receive less than 10/35 of the full rate of SP.

Example

Person A has 8 qualifying years. However, they also have 5 qualifying years when working outside the UK. Therefore, Person A has more than 10 qualifying years. However, the DM decides that they are entitled to 8/35 of the full rate of SP.

74163 – 74200

Transitional rate of state pension

Introduction

74201 The transitional rate of SP applies to people who have

1. paid or
2. been treated as having paid **or**
3. been credited with

NI contributions in respect of tax years before 6.4.16.

Entitlement

74202 A person is entitled to SP payable at the transitional rate if they have

1. reached pensionable age¹ **and**
2. at least 10 qualifying years² **and**
3. at least one pre-commencement qualifying year³.

Note 1: See DMG 74022 for the meaning of pensionable age, DMG 74023 for the meaning of qualifying year and DMG 74024 for the meaning of pre-commencement qualifying year.

Note 2: See DMG 74012 for guidance on references to HMRC if there is a dispute about a NI contribution record.

Note 3: See DMG Chapter 03 for guidance on revision where there is a late award of contributions or credits, or because of changes to Class 2 NI collection.

1 Pensions Act 14, s 4(1)(a); 2 s 4(1)(b); SP Regs, reg 13(2); 3 Pensions Act 14, s 4(1)(c)

74203 A reckonable year that would have been treated as a qualifying year for determining a person's entitlement to Cat A RP (see DMG 74024 **2.**) counts towards the minimum number of qualifying years required in order to be entitled to SP payable at the transitional rate¹ (see DMG 74202 **2.**).

Note: See DMG 74023 for guidance on the meaning of qualifying year.

1 SS (WB, RP & OB) (Trans) Regs, reg 13(1) & Pensions Act 14, s 4(4)

74204 A person who is entitled to SP at the transitional rate and who has some post 6.4.16 qualifying years cannot also qualify for SP¹ in accordance with DMG 74101 et seq or DMG 74151 et seq.

1 Pensions Act 14, s 4(3)

74205 – 74210

Amount

- 74211 The transitional rate of SP is the higher of a weekly rate equal to
1. the total of the amounts calculated¹ as in DMG 74221 et seq for a person's
 - 1.1 pre-commencement **and**
 - 1.2 post-commencementqualifying years capped at the full rate of SP on the day a person reaches pensionable age² **or**
 2. the amount for a person's pre-commencement qualifying years only³.

Note 1: See DMG 74401 for guidance on special rules about the transitional rate of SP for women with reduced rate elections⁴.

Note 2: See DMG 74266 for guidance on recalculating and backdating of the transitional rate of SP⁵.

Note 3: See DMG 74022 for the meaning of pensionable age, DMG 74024 for guidance on the meaning of pre-commencement qualifying year and DMG 74025 for guidance on the meaning of post-commencement qualifying year.

1 Pensions Act 14, Sch 1; 2 s 5(1)(a); 3 s 5(1)(b) 4 s 5(4) & 11; 5 s 5(3) & 6

74212 – 74220

Calculating the amount of the transitional rate of state pension

- 74221 DMG 74222 et seq give guidance on how to calculate the amount for a person's pre-commencement qualifying years and DMG 74263 et seq give guidance on how to calculate the amount for a person's post-commencement qualifying years.

Amount for pre-commencement qualifying years

- 74222 A person's amount for pre-commencement qualifying years is calculated by
1. calculating the weekly amount of RP (including AP (less any GMP deduction)) and GRB (see DMG 74231 et seq) **and**
 2. calculating the weekly amount of SP (see DMG 74251 et seq) **and**
 3. taking the highest of the amounts at 1. and 2. **and**
 4. revaluing the amount at 3. (see DMG 74262).

The amount at 4. is the amount for the person's pre-commencement qualifying years¹.

Note: See DMG 74024 for guidance on the meaning of pre-commencement qualifying year.

1 Pensions Act 14, Sch 1, Part 2, para 2

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

Note 1: To be entitled to a Cat B RP there is a requirement that a person has to reach pensionable age before 6.4.16. However, for the purposes of 4., that requirement does not apply³. Also for the purposes of 4., before 6.4.17 one of the conditions of entitlement to a Cat B RP was that a person was entitled to BA at any time before reaching pensionable age. From 6.4.17 one of the conditions for an inherited amount is that a person is entitled to BSP at any time before reaching pensionable age⁴. A person is treated as being entitled to BSP⁵ if they failed to make, or delayed making, a claim for BSP⁶ and/or they were not paid BSP because they were a prisoner⁷.

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

*1 Pensions Act 14, Sch 3, para 3(1); 2 SS CB Act 92, s 48BB; 3 Pensions Act 14, Sch 3, para 3(1)(d);
4 Sch 3, para 3(1)(d); 5 SS (WP & RP) Regs, reg 7B(2); 6 reg 7B(3)(a);
7 reg 7B(3)(b); Pensions Act 14, s 32: BSP Regs, reg 6*

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

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

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

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

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

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

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

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

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

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

74322 – 74325

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

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

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

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

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

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

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

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

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

3. their spouse or civil partner was, immediately before their death, entitled to SP payable at the transitional rate **and**
4. that transitional rate exceeded the full rate of SP **and**
5. they did not marry or form a civil partnership
 - 5.1 after their spouse or civil partner died **and**
 - 5.2 before they reached pensionable age.

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

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

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

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

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

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

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

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

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

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

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

1. their
 - 1.1 marriage took place **or**
 - 1.2 civil partnership was formed

before 6.4.16 **and**

2. they were under pensionable age when their spouse or civil partner died **and**
3. their spouse or civil partner died on or after 6.4.16 **and**
4. their spouse or civil partner was under pensionable age when they died **and**
5. their spouse or civil partner would have been entitled to SP payable at the transitional rate if they had reached pensionable age on the same day as the person **and**
6. that transitional rate would have exceeded the full rate of SP **and**
7. they did not marry or form a civil partnership
 - 7.1 after their spouse or civil partner died **and**
 - 7.2 before they reached pensionable age.

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

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

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

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

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

Example

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

74334 – 74340

Inheritance of deferred retirement pension

Introduction

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

1. reached pensionable age before 6.4.16 **and**

2. deferred their entitlement to RP

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

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

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

Survivor's choice of inherited lump sum or state pension

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

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

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

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

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

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

have been entitled to RP if RP had not ceased to apply to people reaching state pension age on or after 6.4.16².

Note 1: For the purposes of 5. any requirement to make a claim is ignored³. Also for the purposes of 5., from 6.4.17 when determining whether a person would have been entitled to RP if RP had not ceased to apply to people reaching pensionable age after 5.4.16, references to BA⁴ should be read as references to BSP⁵.

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

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

1 Pensions Act 14, s 8(1); 2 SS CB Act 92, s 44(1)(a), 48(1), 48A(1) & (3), 48B(1), (1A), (4) & (4A), & 48BB(1) & (3); Pensions Act 14, s 8(1)(e); 3 s 8(9)(c); 4 SS CB Act 92, s 48BB; 5 Pensions Act 14, s 8(1)(e)

74344 – 74345

Making a choice

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

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

to make that choice¹.

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

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

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

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

1 SP Regs, reg 4(3)

Making a late choice

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

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

1 SP Regs, reg 4(4)

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

1 SP Regs, reg 4(5)

How a choice is made

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

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

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

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

Changing a choice

74351 Where DMG 74352 applies a choice may be altered¹.

1 SP Regs, reg 6(1)

74352 A choice may be altered if

1. the person who made the choice has not subsequently died¹ **and**
2. an application is made to alter the choice² **and**
3. the application is made within
 - 3.1 the period of three months starting on the date in the notification which confirms that a choice has been made **or**
 - 3.2 such longer period as the DM considers reasonable³ **and**
4. the application is made
 - 4.1 in writing if the person is directed by the Secretary of State to do so **or**
 - 4.2 in writing or by telephone if 4.1 does not apply⁴ **and**
5. any lump sum⁵ paid has been repaid
 - 5.1 in full **and**
 - 5.2 within the period in 3. **and**
 - 5.3 in the currency in which it was originally paidwhere the application is to alter the choice so that it becomes a choice to be paid a SP⁶ **and**
6. the application is to alter the choice so that it becomes a choice to be paid a lump sum⁷, any amount paid by way of weekly SP⁸ would be less than the amount of the lump sum⁹ **and**
7. no previous alteration has been made in respect of the same deferral¹⁰ **and**
8. the choice has not been treated as a choice for a SP¹¹.

1 SP Regs, reg 6(2)(a); 2 reg 6(2)(b); 3 reg 6(2)(c); 4 reg 6(2)(d); 5 Pensions Act 14, s 9;

6 s 8; SP Regs, reg 6(2)(e); 7 Pensions Act 14, s 8; 8 s 9; 9 SP Regs, reg 6(2)(f);

10 Pensions Act 14, s 8(1)(c); SP Regs, reg 6(2)(g); 11 reg 6(2)(h); SS (C&P) Regs, reg 30(5G) & 30(5H)

74353 Where DMG 74352 6. applies, any SP¹ paid in respect of a deferral² is to be treated as having been paid³ on account of the lump sum⁴.

1 Pensions Act 14, s 9; 2 s 8(1)(c); 3 SP Regs, reg 6(3); 4 Pensions Act 14, s 8

Payment of a lump sum

74354 A person who

1. chooses to be paid a lump sum **or**
2. fails to make a choice within the period specified in DMG 74346

is entitled to a widowed person's or surviving civil partner's lump sum¹ payable under RP rules².

Note: See DMG Chapter 75 for full guidance on a widowed person's or surviving civil partner's lump sum. However, that guidance is subject to modifications³.

1 Pensions Act 14, s 8(4); 2 SS CB Act 92, Sch 5, para 7B; 3 Pensions Act 14, s 8(5)

Tax election

74355 A lump sum payment is subject to income tax¹. A claimant may therefore chose to delay being paid the lump sum until the tax year following that in which the lump sum would normally have been payable following the period of deferment (the later year of assessment²). This is known as a tax election³. Even if the choice is being made in the later year of assessment, a tax election is still necessary to take advantage of the tax provisions.

1 Finance (No. 2) Act 2005, s 7 - 9; 2 SS (C&P) Regs, reg 21A(8); 3 reg 21A(1) & (2)

74356 A tax election must be made on the same day as the election for the lump sum or within one month of that day¹. This period cannot be extended for reasonableness. The tax election can be made²

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

1 SS (C&P) Regs, reg 21A(3); 2 reg 21A(4)

74357 Where a tax election is made, payment of the lump sum (or any payment on account of the lump sum) must be made in the first month of the later year of assessment (i.e. the following April), or as soon as reasonably practicable after that date¹.

1 SS (C&P) Regs, reg 21A(5)

74358 Where no tax election is made, or a tax election is revoked, the lump sum must be paid as soon as reasonably practical after the claimant

1. chose, or was deemed to have chosen, a lump sum¹ **or**
2. revoked a tax election².

1 SS (C&P) Regs, reg 21A(6)(a); 2 reg 21A(6)(b)

74359 Under tax law¹ the lump sum cannot be chargeable to tax for a tax year later than the one in which a claimant dies. Therefore, if a claimant dies before the beginning of the later year of assessment

1. any tax election ceases to have effect **and**
2. anybody appointed to act on the claimant's behalf is not able to make a tax election².

1 Finance (No. 2) Act 2005, s 8; 2 SS (C&P) Regs, reg 21A(7)

74360

Survivor's pension based on inheritance of deferred retirement pension

Entitlement

74361 A person is entitled¹ to SP based on inherited deferral amount

1. if they have reached pensionable age **and**
2. if their
 - 2.1 spouse died while they were married **or**
 - 2.2 civil partner died while they were civil partners of each other **and**
3. if they were
 - 3.1 under pensionable age when their spouse or civil partner died and they did not marry or form a civil partnership
 - 3.1.a after the death **and**
 - 3.1.b before reaching pensionable age **or**
 - 3.2 over pensionable age when their spouse or civil partner died **and**
4. if they are entitled to an inherited deferral amount calculated as in DMG 74365 et seq **and**
5. where they are entitled to a choice as in DMG 74342, they chose to be paid a weekly pension based on the inherited deferral amount.

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

1 Pensions Act 14, s 9(1)

74362 When determining entitlement to, or calculating, an inherited deferral amount as in DMG 74365 et seq, DMs should ignore

1. any requirement to make a claim for RP **and**
2. any suspension or disqualification of any amount of RP¹.

1 Pensions Act 14, Sch 5, para 5

Rate

74363 A transitional amount of SP as in DMG 74361 will be payable at the inherited deferral amount¹ calculated as in DMG 74365 et seq. That amount can be uprated².

1 Pensions Act 14, s 9(2); 2 s 9(3); SS A Act 92, s 151A

74364 A survivor may be entitled to more than one SP by inheriting deferred RP¹.

1 Pensions Act 14, s 9(4)

Deceased spouse or civil partner entitled to retirement pension with increments

74365 A person whose spouse or civil partner has died is entitled¹ to an inherited deferral amount if

1. their spouse or civil partner was entitled to RP with Incs² **and**
2. they would

2.1 on reaching pensionable age **or**

2.2 on the death of their spouse or civil partner

have been entitled to RP if RP had not ceased to apply to people reaching state pension age on or after 6.4.16³.

Note 1: From 6.4.17, when determining whether a person would have been entitled to RP if RP had not ceased to apply to people reaching pensionable age after 5.4.16, references to BA⁴ should be read as references to BSP⁵.

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

1 Pensions Act 14, Sch 5, para 2(1); 2 SS CB Act 92, Sch 5, para 1 & 2A; 3 s 44(1)(a), 48(1), 48A(1) & (3), 48B(1), (1A), (4) & (4A), & 48BB(1) & (3); Pensions Act 14, Sch 5, para 2(1)(b); 4 SS CB Act 92, s 48BB; 5 Pensions Act 14, Sch 5, para 2(1)(b) & para 3(1)(b)

74366 Where DMG 74365 applies the inherited deferral amount is equal to the amount by which the person's RP would have been increased¹ on the day they became entitled to the inherited deferred amount². However, there will be no inheritance of Incs accrued by a person's late spouse or civil partner except, for any Incs the person's late spouse accrued on any Incs they inherited³.

1 SS CB Act 92, Sch 5, para 4; 2 Pensions Act 14, Sch 5, para 2(2); 3 Sch 5, para 2(3)

Deceased spouse or civil partner deferring entitled to retirement pension

74367 A person whose spouse or civil partner has died is entitled¹ to an inherited deferral amount if

1. their spouse or civil partner was deferring entitlement to RP² when they died **and**

2. their spouse or civil partner had deferred for less than 12 months or the person had chosen to be paid a weekly pension **and**
3. they would
 - 3.1 on reaching pensionable age **or**
 - 3.2 on the death of their spouse or civil partner
 have been entitled to a Cat A or Cat B RP³.

Note 1: To be entitled to RP there is a requirement that a person has to reach pensionable age before 6.4.16. However, for the purposes of 2., that requirement does not apply⁴.

Note 2: For the purposes of 3., from 6.4.17, when determining whether a person would have been entitled to Cat A or Cat B RP if Cat A or Cat B RP had not ceased to apply to people reaching pensionable age after 5.4.16, references to BA⁵ should be read as references to BSP⁶.

Note 3: See DMG Chapter 75 for full guidance on Cat A and Cat B RP.

1 Pensions Act 14, Sch 5, para 3(1); 2 SS CB Act 92, s 55(3); 3 s 44(1)(a), 48(1), 48A(1) & (3), 48B(1), (1A), (4) & (4A), & 48BB(1) & (3); 4 Pensions Act 14, Sch 5, para 3(1)(b) 5 SS CB Act 92, s 48BB; 2 Pensions Act 14, Sch 6, para 2(1)(b) & para 3(1)(b)

74368 Where DMG 74367 applies the inherited deferral amount is equal to the amount by which the person's RP would have been increased¹ on the day they became entitled to the inherited deferred amount².

1 SS CB Act 92, Sch 5, para 4; 2 Pensions Act 14, Sch 5, para 3(2)

74369 When calculating the amount of the increase¹ in DMG 74367, DMs should note that

1. a person who is not entitled to a choice² as in DMG 74343 is treated as satisfying the condition that the period of deferment was less than twelve months but sufficient to satisfy the 1% rule at the date of death of the late spouse or civil partner³ **and**
2. a person who has chosen⁴ as in DMG 74361 to be paid SP⁵ is treated as satisfying the condition that they have elected to receive Incs⁶ **and**
3. the rules for calculating inherited Incs are modified⁷.

1 Pensions Act 14, Sch 5, para 3(3); 2 s 8; 3 SS CB Act 92, Sch 5, para 4(1)(c); 4 Pensions Act 14, s 8; 5 s 9; 6 SS CB Act 92, Sch 5, para 4(1)(b); 7 Sch 5, para 4(1A)

74370 – 74375

Survivor's pension based on inherited graduated retirement benefit

74376 Where DMG 74377 et seq applies, people may be entitled to a survivor's pension based on inherited GRB.

74377 A person whose deceased spouse or civil partner paid graduated contributions is entitled to a survivor's pension¹ if

Deleted: ¶

1. they have reached pensionable age² **and**
2. their
 - 2.1 spouse died while they were married **or**
 - 2.2 civil partner died while they were civil partners of each other³ **and**
3. the
 - 3.1 marriage took place **or**
 - 3.2 civil partnership was formedbefore 6.4.16⁴ **and**

4. they are entitled to an inherited amount⁵ if any of DMG 74378, DMG 74379 or DMG 74380 apply.

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

1 SP Regs, reg 15(1); 2 reg 15(2)(a); 3 reg 15(2)(b); 4 reg 15(2)(c); 5 reg 15(2)(d)

74378 A person is entitled to an inherited amount under DMG 74377 **4.** if

1. their spouse or civil partner died before 6.4.16¹ **and**
2. they were under pensionable age when their spouse or civil partner died² **and**
3. they have not married or formed a civil partnership after the death and before they reached pensionable age³.

1 SP Regs, reg 16(1)(a); 2 reg 16(1)(b); 3 reg 16(1)(c)

74379 Alternatively, a person is entitled to an inherited amount under DMG 74377 **4.** if

1. their spouse or civil partner reached pensionable before 6.4.16 but died on or after that date¹ **and**
2. they were under pensionable age when their spouse or civil partner died² **and**
3. they have not married or formed a civil partnership after the death and before they reached pensionable age³.

1 SP Regs, reg 16(2)(a); 2 reg 16(2)(b); 3 reg 16(2)(c)

74380 Also alternatively, a person is entitled to an inherited amount under DMG 74377 **4.** if

1. their spouse or civil partner reached pensionable before 6.4.16 but died on or after that date¹ **and**
2. they were over pensionable age when their spouse or civil partner died².

1 SP Regs, reg 16(3)(a); 2 reg 16(3)(b)

Rate of inherited amount

74381 SP in respect of inherited GRB is payable at the weekly rate¹ determined in accordance with DMG 74382 on the date as in DMG 74383. This applies whether or not the deceased was

1. receiving **or**
2. entitled to receive

GRB².

1 SP Regs, reg 15(3); 2 reg 16(4)

74382 The inherited amount is half the weekly rate of the deceased spouse's or civil partner's GRB¹. It is determined by

1. taking the weekly rate of the deceased's GRB² **and**
2. including any uprating³ since the deceased's death **and**
3. **excluding** any amount due to the deceased's own⁴
 - 3.1 deferral⁵ **or**
 - 3.2 inheritance⁶.

*1 SP Regs, reg 16(4); 2 reg 16(5)(a); 3 reg 16(5)(b); 4 reg 16(5)(c);
5 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 36(4);
6 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 37(1)*

74383 The inherited amount as in DMG 74382 is determined on the date on which

1. the person reaches pensionable age where DMG 74378 or DMG 74379 apply¹ **or**
2. the person's spouse or civil partner died where DMG 74380 applies².

1 SP Regs, reg 16(6)(a); 2 reg 16(6)(b)

74384 Where DMG 74383 applies, the inherited amount is half the amount by which the late spouse's or civil partner's transitional amount of SP in respect of inherited GRB would have exceeded the full amount if they had reached pensionable age on the same day as the person¹.

Note: A survivor's pension, including the inherited amount, up to the full rate of SP is uprated by reference to earnings. Any amount in excess of the full rate of SP is uprated by reference to prices².

1 SP Regs, reg 16(4); 2 reg 17

74385

Inheritance of deferred graduated retirement benefit Survivor's choice of inherited lump sum or state pension

74386 Unless DMG 74388 applies, a person is entitled to a choice of a survivor's lump sum based on inheritance of deferred GRB or a survivor's SP based on inheritance of deferred GRB if

1. they have reached pensionable age¹ **and**
2. their
 - 2.1 spouse died while they were married **or**
 - 2.2 civil partner died while they were civil partners of each other² **and**
3. the spouse's or civil partner's entitlement to GRB was deferred
 - 3.1 at the time of their death **and**
 - 3.2 throughout the period of 12 months ending the day before they died³ **and**
4. they were
 - 4.1 under pensionable age when their spouse or civil partner died and they did not marry or form a civil partnership after the death and before they reached pensionable age⁴ **or**
 - 4.2 over pensionable age when their spouse or civil partner died⁵.

1 SP Regs, reg 18(1)(a); 2 reg 18(1)(b); 3 reg 18(1)(c); 4 reg 18(1)(d)(i); 5 reg 18(1)(d)(ii)

74387 Where DMG 74386 applies and a person

1. makes a choice for
 - 1.1 a lump sum¹, they will be paid a survivor's lump sum based on inheritance of deferred GRB² **or**
 - 1.2 SP³, they will be paid a survivor's SP based on inheritance of deferred GRB⁴ **or**
2. alters a choice as in DMG 74351 – 74353 they will be paid
 - 2.1 a survivor's lump sum based on inheritance of deferred GRB⁵ where their new choice is a lump sum⁶ **or**
 - 2.2 a survivor's SP based on inheritance of deferred GRB⁷ where their new choice is for SP⁸ **or**
3. fails to make a choice⁹ within the period specified in DMG 74346, they will be paid a survivor's lump sum based on inheritance of deferred GRB¹⁰.

1 Pensions Act 14, s 8(2)(a); 2 SP Regs, reg 18(9)(a) & 19; 3 Pensions Act 14, s 8(2)(b);

4 SP Regs, reg 18(9)(b) & 20; 5 reg 19(1) & (2) & SS (GRB) Regs, Sch 1, para 10 & 20;

6 Pensions Act 14, s 8; SP Regs, reg 18(10)(a); 7 reg 20; 8 Pensions Act 14, s 9; SP Regs, reg 18(10)(b);

9 Pensions Act 14, s 8(2); 10 SP Regs, reg 18(11) & 19

74388 DMG 74386 does not apply¹ where a person is entitled to make a choice of a lump sum or SP² as in DMG 74342 et seq.

1 SP Regs, reg 18(8); 2 Pensions Act 14, s 8(2)

How a choice is made

74389 A person may choose to be paid a survivor's lump sum based on inheritance of deferred GRB or a survivor's SP based on inheritance of deferred GRB¹

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

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

1 SP Regs, reg 18(2); 2 reg 5(2) & 18(3); 3 reg 5(3) & 18(3)

Making a choice

74390 When a notice has been issued confirming that a person may make a choice to be paid a survivor's lump sum based on inheritance of deferred GRB or a survivor's SP based on inheritance of deferred GRB, they have a period of three months starting on the date in

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

to make that choice¹.

Note: If a choice is not made, a person is entitled to a survivor's lump sum based on inheritance of deferred GRB² (see DMG 74387).

1 SP Regs, reg 4(2) & 18(4); 2 reg 18(5)

74391 If a person makes the choice before a notice has been issued, the period of three months

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

1 SP Regs, reg 4(3) & 18(4)

Making a late choice

74392 A person may make a choice after the period of three months where

1. the DM considers it is reasonable¹ **and**
2. any survivor's lump sum based on inheritance of GRB paid has been repaid

2.1 in full² **and**

2.2 in the currency in which it was originally paid³.

1 SP Regs, reg 18(4)(a); 2 reg 18(4)(b)(i); 3 reg 18(4)(b)(ii)

74393 Where a late choice is made for a survivor's SP based on inheritance of GRB in accordance with DMG 74348, the amount of any lump sum based on inheritance of GRB to be paid is reduced to nil¹.

1 SP Regs, reg 18(6)

Changing a choice

74394 A choice may be altered¹ in the circumstances at DMG 74352. When considering this, DMs should note that

1. any survivor's SP based on inheritance of deferred GRB paid which would be less than the amount of the survivor's lump sum based on inheritance of deferred GRB is to be treated as having been paid on account of a survivor's lump sum based on inheritance of deferred GRB² **and**
2. references to a lump sum SP should be read as references to survivor's lump sum based on inheritance of deferred GRB³ **and**
3. references to SP should be read as references to survivor's SP based on inheritance of deferred GRB⁴.

1 SP Regs, reg 6(2) & reg 18(7); 2 reg 18(7)(a); 3 reg 18(7)(b); 4 reg 18(7)(c)

74395

Amount of lump sum

74396 Where a person is to be paid a survivor's lump sum based on inheritance of deferred GRB¹, the accrued amount of that lump sum is calculated by adding the amount for the previous accrual period, if there is one, to the amount of GRB to which the deceased would have been entitled had entitlement not been deferred².

1 SP Regs, reg 18; 2 reg 19(1) & (2) & SS (GRB) Regs, Sch 1, para 10 & 20

Amount of state pension

74397 A person is entitled to a survivor's SP based on inheritance of deferred GRB if

1. they have reached pensionable age¹ **and**
2. their
 - 2.1 spouse died while they were married **or**
 - 2.2 civil partner died while they were civil partners of each other² **and**
3. they were

- 3.1 under pensionable age when their spouse or civil partner died and they did not marry or form a civil partnership after the death and before they reached pensionable age³ **or**
- 3.2 over pensionable age when their spouse or civil partner died⁴ **and**
- 4. their
 - 4.1 spouse or civil partner was entitled to an increase in GRB⁵ **or**
 - 4.2 spouse's or civil partner's entitlement to GRB was deferred when they died⁶ **and**
- 5. if they were
 - 5.1 entitled to a choice as in DMG 74386, they have chosen⁷ **or**
 - 5.2 not entitled to a choice because DMG 74388 applies, they are required⁸

to be paid a survivor's SP based on inherited GRB.

*1 SP Regs, reg 20(1)(a); 2 reg 20(1)(b); 3 reg 20(1)(c)(i); 4 reg 20(1)(c)(ii);
5 reg 20(1)(d)(i); 6 reg 20(1)(d)(ii); 7 reg 20(1)(e); 8 reg 20(1)(f)*

74398 A survivor's SP based on inheritance of deferred GRB is payable at a weekly rate which is half the weekly rate of

- 1. the deceased spouse's or civil partner's increase of GRB¹ **or**
- 2. where the deceased spouse's or civil partner's entitlement to GRB was deferred when they died, the increase in GRB that would have been payable if the deferral had ended immediately before their death² (see DMG 74399).

Note: The weekly rate of a survivor's SP based on inheritance of deferred GRB may be updated³.

1 SP Regs, reg 20(2)(a); 2 reg 20(2)(b); 3 reg 20(3); SS A Act 92, s 151A

74399 Where DMG 74398 **2.** Applies, the increase is determined as if

- 1. any uprating¹ of GRB between the date
 - 1.1 of the deceased's death **and**
 - 1.2 the survivor reached pensionable age
 had applied before the date of death² **and**
- 2. the deceased's increase did **not** include³ any amount for inheritance⁴.

*1 SS A Act 92, s 150; 2 SP Regs, reg 20(4)(a); 3 reg 20(4)(b);
4 SS (GRB) (No. 2) Regs, Sch 1; NI Act 65, s 37(1)*

74400

Category A retirement pension

Conditions of entitlement

- 75021 The conditions of entitlement to Cat A RP¹ are that the claimant
1. has reached pensionable age² before 6.4.16³ (see DMG 75015) **and**
 2. satisfies the contribution conditions⁴ (see DMG 75026 et seq) **and**
 3. makes a claim⁵ (unless it is not required⁶).

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

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

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

1 SS CB Act 92, s 44(3)

Date of entitlement for the purpose of payability

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

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

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

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

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

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

Period of entitlement

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

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

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

75025

Basic pension

75026 People who reach pensionable age

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

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

Note 1: See Appendix 2 to the Chapter for guidance on the contribution conditions for people who reached pensionable age before 6.4.10.

Note 2: See DMG Chapter 03 for guidance on revision where there is a late award of contributions or credits, or because of changes to Class 2 NI collection.

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

75027 The single contribution condition is satisfied by

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

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

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

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

75029 Also, a person who is

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

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

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

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

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

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

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

Chapter 76 - Forfeiture Act 1982

Contents

Introduction	76001
DM's action	76013
Referral to Decision Making and Appeals Leeds	76015
Information to be obtained	76029
Determination of forfeiture rule question	76031
Effect on WB, BB, BSP, SP and RP	76032

Chapter 76 - Forfeiture Act 1982

Introduction

76001 The forfeiture rule is a long established principle of common law. The rule, which means that no one should benefit from their own wrong¹, also applies to SS benefits².

*1 Cleaver and others v Mutual Reserve Fund Life Assoc [1982] 1QB 147;
2 R(G) 2/79; R v Chief National Insurance Commissioner ex parte Connor [1981] 1QB 758*

76002 For SS purposes the rule means that, in certain circumstances, a person who has unlawfully killed their spouse or civil partner cannot receive SS benefits as a result of the spouse's or civil partner's death¹.

1 Forfeiture Act 1982, s 1(1)

76003 The forfeiture rule applies to unlawful killing which includes

1. murder
2. manslaughter
3. culpable homicide¹ in Scotland **and**
4. unlawfully aiding, abetting, counselling or procuring the death of another².

There can be no relief from forfeiture in cases of unlawful killing unless it can be shown that justice requires the rule to be modified³. But see DMG 76006 for modifications to the forfeiture rule for **2.** to **4.** above.

Note: The forfeiture rule applies where a hospital order is imposed⁴ following a conviction for manslaughter based on diminished responsibility.

1 R(G) 3/90; 2 Forfeiture Act 1982, s 1(2); R(FG) 1/04; 3 R(G) 1/91; 4 Mental Health Act 1983, s 37

76004 A forfeiture rule question only arises in cases where there has been an unlawful killing and where the claimant stands to gain an advantage by the death of his/her spouse or civil partner. A question would not arise where, for example, a woman was aged over 60, entitled to a Cat A RP in her own right and would not derive any additional benefit as a direct result of the death of her husband or civil partner.

76005 Forfeiture rule questions can be determined only by the UT¹. Before 25.7.86, there could only be a decision whether or not the rule applied. If it did apply the claimant was prevented from deriving benefit directly from the unlawful act. There was no power to modify the effect of the rule².

*1 Forfeiture Act 1982, s 4(1); TP (UT) Rules, Rule 26;
2 R(G) 2/84(T); R(P) 1/84(T)*

76006 From 25.7.86 a change in legislation enabled modification of the effect of the rule. However, that modification cannot apply to

any period before 25.7.86. The UT can modify the effect of the rule so that it applies¹

1. only to a specified proportion of the benefit or advantage **and/or**
2. to the benefit or advantage only for a specified period of time.

There can, however, be no modification of the rule in cases of murder².

1 Forfeiture Act 1982, s 4(1C); 2 s 5

76007 The UT can

1. direct that a decision on the forfeiture question should apply also to any future benefit claim arising from the same unlawful killing¹ **and**
2. reconsider any determination of a forfeiture question made before 25.7.86².

Note: It does not matter who determined the forfeiture question for **2.** to apply.

1 Forfeiture Act 1982, s 4(1E); 2 s 4(1G)

76008 The benefits most likely affected by the forfeiture rule are WB, BB, BSP, SP and RP based wholly or in part on a late husband's, wife's or civil partner's contributions (see DMG 76032 - 76033).

76009 - 76012

DMs action

76013 In most cases it will be for the DM to decide if a forfeiture rule question arises. If it does, the DM should refer the case to DMA Leeds who will refer the case to the UT to decide the question¹ (see DMG 76015).

1 TP (UT) Rules, Rule 26(1)

76014 The DM should consider whether a forfeiture question arises in any case involving unlawful killing of a spouse or civil partner. Knowledge of unlawful killing is usually available from

1. the Director of Public Prosecutions, who informs the Department of cases where a person has been convicted of the murder or manslaughter of a spouse or civil partner **or**
2. media reporting of a killing involving a spouse or civil partner.

Referral to Decision Making and Appeals Leeds

76015 DMA Leeds will refer cases to the UT. In addition to those cases in DMG 76014, all cases should be referred to DMA Leeds to consider reference to the UT where

1. a reference has been made to the DM to consider the effect of the forfeiture rule **and**
2. the claimant has been charged with and **acquitted** of an offence outlined in DMG 76003.

It is the circumstances of the unlawful killing and not the conviction which gives rise to a reference¹. The onus of proving that a killing was unlawful will be on the DM.

1 R(G) 2/90

76016 The papers should also be sent to DMA Leeds for consideration where it is clear that

1. a person has unlawfully killed his/her spouse or civil partner but the coroner has not named the offender **and**
2. the person has not been convicted of the crime, for example because of old age.

76017 - 76028

Information to be obtained

- 76029 The DM should send the following documents to DMA Leeds
1. the case papers
 2. an assessment of the rate of benefit payable if the forfeiture rule did not apply
 3. a certificate of conviction and sentence (obtainable from the Court)
 4. a transcript of both the judge's summing up and the remarks upon conviction in cases involving a trial. These may be separate documents.
 5. a transcript of the entire proceedings in cases in England and Wales involving a guilty plea
 6. in guilty pleas in Scottish cases, documents as directed by DMA Leeds.
- 76030 Transcripts are obtainable from the official Court shorthand writers at a fee **which should be paid locally**. It may be possible to obtain a transcript at no cost from a defence solicitor.

Determination of forfeiture rule question

- 76031 Having determined the forfeiture rule question the UT will return the case to the DM to dispose of in the light of the UT's decision.

Effect on WB, BB, BSP, SP and RP

- 76032 Where there is reason to believe that
1. a person has been, or is likely to be charged with their spouse's or civil partner's murder, manslaughter or culpable homicide **and**
 2. the person's claim for WB, BB, BSP, SP or RP is based wholly or partly on their late spouse's or civil partner's contributions

the DM should send the claim to DMA Leeds as soon as possible with the documents in DMG 76029.

- 76033 The DM should also send to DMA Leeds a claim received from a widower whose entitlement to benefit arises directly from his unlawful act of murder or manslaughter. The benefit affected is an IB(LT) or a Category A RP¹.

Any case in which the survivor's RP entitlement would normally be increased on account of inheritable components should be sent to DMA Leeds.

1 SS CB Act 92, s 41

76034 - 76999

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