

Gender Recognition Act 2004

2004 Chapter 7

The material reproduced below is limited to what is relevant to this volume, which includes Schedule 5.

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An Act to make provision for and in connection with change of gender.

[1st July 2004]

SCHEDULE 5

Section 13

BENEFITS AND PENSIONS

PART 1

INTRODUCTORY

- 1** This Schedule applies where a full gender recognition certificate is issued to a person.

PART 2

STATE BENEFITS

Introductory

- 2** (1) In this Part of this Schedule “the 1992 Act” means—
- (a) in England and Wales and Scotland, the Social Security Contributions and Benefits Act 1992 (c. 4), and
 - (b) in Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (2) In this Part of this Schedule “the Administration Act” means—
- (a) in England and Wales and Scotland, the Social Security Administration Act 1992 (c. 5), and

(b) in Northern Ireland, the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

- (3) Expressions used in this Part of this Schedule and in Part 2 of the 1992 Act have the same meaning in this Part of this Schedule as in Part 2 of the 1992 Act.

Widowed mother's allowance

- 3 (1) If (immediately before the certificate is issued) the person is, or but for section 1 of the Administration Act would be, entitled to a widowed mother's allowance under section 37 of the 1992 Act (allowance for woman whose husband died before 9th April 2001)—
- (a) the person is not entitled to that allowance afterwards, but
 - (b) (instead) subsections (2) to (5) of section 39A of the 1992 Act (widowed parent's allowance) apply in relation to the person.
- (2) If (immediately before the certificate is issued) the person is (actually) entitled to a widowed mother's allowance, the entitlement to widowed parent's allowance conferred by sub-paragraph (1) is not subject to section 1 of the Administration Act.

Widow's pension

- 4 If (immediately before the certificate is issued) the person is entitled to a widow's pension under section 38 of the 1992 Act (pension for woman whose husband died before 9th April 2001), the person is not entitled to that pension afterwards.

Widowed parent's allowance

- 5 If (immediately before the certificate is issued) the person is, or but for section 1 of the Administration Act would be, entitled to a widowed parent's allowance by virtue of subsection (1)(b) of section 39A of the 1992 Act (allowance for man whose wife died before 9th April 2001), subsections (2) to (5) of that section continue to apply in relation to the person afterwards.

Long-term incapacity benefit etc.

- 6 If (immediately before the certificate is issued) the person is entitled to incapacity benefit, or a Category A retirement pension, under—
- (a) section 40 of the 1992 Act (long-term incapacity benefit etc. for woman whose husband died before 9th April 2001), or
 - (b) section 41 of the 1992 Act (long-term incapacity benefit etc. for man whose wife died before that date),
- the person is not so entitled afterwards.

Category A retirement pension

- 7 (1) Any question—
- (a) whether the person is entitled to a Category A retirement pension (under section 44 of the 1992 Act) for any period after the certificate is issued, and
 - (b) (if so) the rate at which the person is so entitled for the period,
- is to be decided as if the person's gender had always been the acquired gender.

- (2) Accordingly, if (immediately before the certificate is issued) the person—
- (a) is a woman entitled to a Category A retirement pension, but
 - (b) has not attained the age of 65,
- the person ceases to be so entitled when it is issued.
- (3) And, conversely, if (immediately before the certificate is issued) the person—
- (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 44 of the 1992 Act as attaining pensionable age when it is issued.
- (4) But sub-paragraph (1) does not apply if and to the extent that the decision of any question to which it refers is affected by—
- (a) the payment or crediting of contributions, or the crediting of earnings, in respect of a period ending before the certificate is issued, or
 - (b) preclusion from regular employment by responsibilities at home for such a period.
- (5) Paragraph 10 makes provision about deferment of Category A retirement pensions.

Category B retirement pension etc.

- 8** (1) Any question whether the person is entitled—
- (a) a Category B retirement pension (under section 48A, 48B, 48BB or 51 of the 1992 Act), or
 - (b) an increase in a Category A retirement pension under section 51A or 52 of the 1992 Act (increase in Category A retirement pension by reference to amount of Category B retirement pension),
- for any period after the certificate is issued is (in accordance with section 9(1)) to be decided as if the person's gender were the acquired gender (but subject to sub-paragraph (4)).
- (2) Accordingly, if (immediately before the certificate is issued) the person is a woman entitled to—
- (a) a Category B retirement pension, or
 - (b) an increase in a Category A retirement pension under section 51A or 52 of the 1992 Act,
- the person may cease to be so entitled when it is issued.
- (3) And, conversely, if (immediately before the certificate is issued) the person—
- (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of sections 48A, 48B and 48BB of the 1992 Act as attaining pensionable age when it is issued.
- (4) But a person who is a man (immediately before the certificate is issued) is not entitled to a Category B retirement pension under section 48B of the 1992 Act for any period after it is issued if the person—
- (a) attains (or has attained) the age of 65 before 6th April 2010, and
 - (b) would not have been entitled to a Category B retirement pension under section 51 of the 1992 Act for that period if still a man.

(5) Paragraph 10 makes provision about deferment of Category B retirement pensions.

Shared additional pension

- 9** (1) Any question—
- (a) whether the person is entitled to a shared additional pension (under section 55A of the 1992 Act) for any period after the certificate is issued, and
 - (b) (if so) the rate at which the person is so entitled for the period, is to be decided on the basis of the person attaining pensionable age on the same date as someone of the acquired gender (and the same age).
- (2) Accordingly, if (immediately before the certificate is issued) the person—
- (a) is a woman entitled to a shared additional pension, but
 - (b) has not attained the age of 65,
- the person ceases to be so entitled when it is issued.
- (3) And, conversely, if (immediately before the certificate is issued) the person—
- (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 55A of the 1992 Act as attaining pensionable age when it is issued.
- (4) Paragraph 10 makes provision about deferment of shared additional pensions.

Deferment of pensions

- 10** (1) The person's entitlement to—
- (a) a Category A retirement pension,
 - (b) a Category B retirement pension, or
 - (c) a shared additional pension,
- is not to be taken to have been deferred for any period ending before the certificate is issued unless the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that the entitlement both—
- (a) was actually deferred during the period, and
 - (b) would have been capable of being so deferred had the person's gender been the acquired gender.

Category C retirement pension for widows

- 11** If (immediately before the certificate is issued) the person is entitled to a Category C retirement pension under section 78(2) of the 1992 Act, the person is not entitled to that pension afterwards.

Graduated retirement benefit: Great Britain

- 12** (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) (power to retain provisions repealed by Social Security Act 1973 (c. 38), with or without modification, for transitional purposes) includes provision modifying the preserved graduated retirement benefit provisions in consequence of this Act.

- (2) “The preserved graduated retirement benefit provisions” are the provisions of the National Insurance Act 1965 (c. 51) relating to graduated retirement benefit continued in force, with or without modification, by regulations having effect as if made under that paragraph.

Graduated retirement benefit: Northern Ireland

- 13** (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9) (corresponding power for Northern Ireland) includes provision modifying the Northern Ireland preserved graduated retirement benefit provisions in consequence of this Act.
- (2) “The Northern Ireland preserved graduated retirement benefit provisions” are the provisions of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)) relating to graduated retirement benefit continued in force, with or without modification, by regulations having effect as if made under that paragraph

PART 3

OCCUPATIONAL PENSION SCHEMES

Guaranteed minimum pensions etc.: Great Britain

- 14** (1) In this paragraph “the 1993 Act” means the Pension Schemes Act 1993 (c. 48); and expressions used in this paragraph and in that Act have the same meaning in this paragraph as in that Act.
- (2) The fact that the person’s gender has become the acquired gender does not affect the operation of section 14 of the 1993 Act (guaranteed minimum) in relation to the person, except to the extent that its operation depends on section 16 of the 1993 Act (revaluation); and sub-paragraphs (3) and (5) have effect subject to that.
- (3) If (immediately before the certificate is issued) the person is a woman who is entitled to a guaranteed minimum pension but has not attained the age of 65–
- (a) the person is for the purposes of section 13 of the 1993 Act and the guaranteed minimum pension provisions to be treated after it is issued as not having attained pensionable age (so that the entitlement ceases) but as attaining pensionable age on subsequently attaining the age of 65, and
 - (b) in a case where the person’s guaranteed minimum pension has commenced before the certificate is issued, it is to be treated for the purposes of Chapter 3 of Part 4 of the 1993 Act (anti-franking) as if it had not.
- (4) But sub-paragraph (3)(a) does not–
- (a) affect any pension previously paid to the person, or
 - (b) prevent section 15 of the 1993 Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) operating to increase the person’s guaranteed minimum by reason of a postponement of the commencement of the person’s guaranteed minimum pension for a period ending before the certificate is issued.
- (5) If (immediately before the certificate is issued) the person is a man who–

- (a) has attained the age of 60, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 13 of the 1993 Act and the guaranteed minimum pension provisions as attaining pensionable age when it is issued.
- (6) If at that time the person has attained the age of 65, the fact that the person's gender has become the acquired gender does not affect the person's pensionable age for those purposes.
 - (7) The fact that the person's gender has become the acquired gender does not affect any guaranteed minimum pension to which the person is entitled as a widow or widower immediately before the certificate is issued (except in consequence of the operation of the previous provisions of this Schedule).
 - (8) If a transaction to which section 19 of the 1993 Act applies which is carried out before the certificate is issued discharges a liability to provide a guaranteed minimum pension for or in respect of the person, it continues to do so afterwards.
 - (9) "The guaranteed minimum pension provision" means so much of the 1993 Act (apart from section 13) and of any other enactment as relates to guaranteed minimum pensions.

Guaranteed minimum pensions etc.: Northern Ireland

- 15** (1) In this paragraph "the 1993 Act" means the Pension Schemes (Northern Ireland) Act 1993 (c. 49); and expressions used in this paragraph and in that Act have the same meaning in this paragraph as in that Act.
- (2) The fact that the person's gender has become the acquired gender does not affect the operation of section 10 of the 1993 Act (guaranteed minimum) in relation to the person, except to the extent that its operation depends on section 12 of the 1993 Act (revaluation); and sub-paragraphs (3) and (5) have effect subject to that.
 - (3) If (immediately before the certificate is issued) the person is a woman who is entitled to a guaranteed minimum pension but has not attained the age of 65–
 - (a) the person is for the purposes of section 9 of the 1993 Act and the guaranteed minimum pension provisions to be treated after it is issued as not having attained pensionable age (so that the entitlement ceases) but as attaining pensionable age on subsequently attaining the age of 65, and
 - (b) in a case where the person's guaranteed minimum pension has commenced before the certificate is issued, it is to be treated for the purposes of Chapter 3 of Part 4 of the 1993 Act (anti-franking) as if it had not.
 - (4) But sub-paragraph (3)(a) does not–
 - (a) affect any pension previously paid to the person, or
 - (b) prevent section 11 of the 1993 Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) operating to increase the person's guaranteed minimum by reason of a postponement of the commencement of the person's guaranteed minimum pension for a period ending before the certificate is issued.

- (5) If (immediately before the certificate is issued) the person is a man who—
- (a) has attained the age of 60, but
 - (b) has not attained the age of 65,
- the person is to be treated for the purposes of section 9 of the 1993 Act and the guaranteed minimum pension provisions as attaining pensionable age when it is issued.
- (6) If at that time the person has attained the age of 65, the fact that the person's gender has become the acquired gender does not affect the person's pensionable age for those purposes.
- (7) The fact that the person's gender has become the acquired gender does not affect any guaranteed minimum pension to which the person is entitled as a widow or widower immediately before the certificate is issued (except in consequence of the operation of the previous provisions of this Schedule).
- (8) If a transaction to which section 15 of the 1993 Act applies which is carried out before the certificate is issued discharges a liability to provide a guaranteed minimum pension for or in respect of the person, it continues to do so afterwards.
- (9) "The guaranteed minimum pension provision" means so much of the 1993 Act (apart from section 9) and of any other enactment as relates to guaranteed minimum pensions.

Equivalent pension benefits: Great Britain

- 16** (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) (power to retain provisions repealed by Social Security Act 1973 (c. 38), with or without modification, for transitional purposes) includes provision modifying the preserved equivalent pension benefits provisions in consequence of this Act.
- (2) "The preserved equivalent pension benefits provisions" are the provisions of the National Insurance Act 1965 (c. 51) relating to equivalent pension benefits continued in force, with or without modification, by regulations having effect as if made under that paragraph.

Equivalent pension benefits: Northern Ireland

- 17** (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9) (corresponding power for Northern Ireland) includes provision modifying the Northern Ireland preserved equivalent pension benefits provisions in consequence of this Act.
- (2) "The Northern Ireland preserved equivalent pension benefits provisions" are the provisions of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)) relating to equivalent pension benefits continued in force, with or without modification, by regulations having effect as if made under that paragraph.

