

SCHEDULES

SCHEDULE 4

EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION

PART 6

OCCUPATIONAL PENSIONS AND SURVIVOR BENEFITS

Benefits dependent on marriage of same sex couples

- 17 (1) Paragraph 18 of Schedule 9 to the Equality Act 2010 (work: exceptions) is amended as follows.
- (2) Sub-paragraph (1): for “married” substitute “within sub-paragraph (1A)”.
- (3) After sub-paragraph (1) insert—
- “(1A) A person is within this sub-paragraph if the person is—
- (a) a man who is married to a woman, or
- (b) a woman who is married to a man, or
- (c) married to a person of the same sex in a relevant gender change case.
- (1B) The reference in sub-paragraph (1A)(c) to a relevant gender change case is a reference to a case where—
- (a) the married couple were of the opposite sex at the time of their marriage, and
- (b) a full gender recognition certificate has been issued to one of the couple under the Gender Recognition Act 2004.”.

Pension Schemes Act 1993

- 18 The Pension Schemes Act 1993 is amended in accordance with paragraphs 19 to 26.
- 19 In section 8(2) (meaning of certain terms), in the definition of “guaranteed minimum pension”, after “widower’s” insert “, surviving same sex spouse’s”.
- 20 (1) Section 17 (minimum pensions for widows and widowers) is amended as follows.
- (2) Subsection (2)—
- (a) paragraph (a): after “man” insert “, or a woman in a relevant gender change case,”;
- (b) after paragraph (c) insert—
- “(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will

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not be less than the surviving same sex spouse’s guaranteed minimum;

- (e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow’s pension will not be less than the surviving same sex spouse’s guaranteed minimum.”.

(3) Subsection (4): after “partner’s” insert “or surviving same sex spouse’s”.

(4) Subsection (5): at the beginning insert “In the case of a woman who is the widow of a man,”.

(5) Subsection (6)—

- (a) at the beginning insert “In any other case,”;
- (b) after “widower’s” insert “, widow’s”.

(6) After subsection (9) insert—

“(10) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—

- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.

(11) This section is subject to regulations under section 38A.”.

21 (1) Section 24D (survivors’ benefits) is amended as follows.

(2) Subsection (2): after “earner” insert “is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner”.

(3) Subsection (3)—

- (a) after “earner” insert “is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner”;
- (b) after “widower” insert “, widow”.

(4) After subsection (3) insert—

“(4) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—

- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.

(5) This section is subject to regulations under section 38A.”.

22 (1) Section 37 (alteration of rules of contracted-out schemes) is amended as follows.

(2) For subsection (4) substitute—

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- “(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.
- (5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—
- (a) the widower of a female earner;
 - (b) the widower of a male earner;
 - (c) the widow of a female earner, except where it is a relevant gender change case; or
 - (d) the survivor of a civil partnership with an earner.
- (6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
 - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.
- (7) This section is subject to regulations under section 38A.”.

23 Before section 39 insert—

“38A Regulations about relevant gender change cases

- (1) The Secretary of State may, by regulations, make provision for—
- (a) section 17,
 - (b) section 24D, or
 - (c) section 37,
- to have its special effect in relevant gender change cases only if conditions prescribed in the regulations are met.
- (2) Regulations under subsection (1) may, in particular, prescribe conditions that relate to the provision of information by—
- (a) one or both of the members of married same sex couples, or
 - (b) the survivors of such couples.
- (3) The Secretary of State may, by regulations, make further provision about cases where (because of regulations under subsection (1))—
- (a) section 17,
 - (b) section 24D, or
 - (c) section 37,
- does not have its special effect in relevant gender change cases.
- (4) Regulations under subsection (3) may, in particular, provide for the section in question to have its ordinary effect in relevant gender change cases.
- (5) Regulations under subsection (1) or (3) may, in particular, modify or disapply any enactment that concerns information relating to—
- (a) the gender or sex of a person, or
 - (b) the change of gender or sex of a person,

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including any enactment that concerns requests for, or disclosure of, such information.

(6) In this section, in relation to section 17, 24D or 37—

- (a) “relevant gender change case” has the same meaning as in that section;
- (b) “special effect” means the effect which the section has (if regulations under subsection (1) of this section are ignored) in relation to relevant gender change cases, insofar as that effect is different from the section’s ordinary effect;
- (c) “ordinary effect” means the effect which the section has in relation to same sex married couples in cases that are not relevant gender change cases.”.

24 In section 47 (further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits), in subsection (1) after “widower” insert “, surviving same sex spouse”.

25 In section 84 (basis of revaluation), in subsection (5), after “widower” insert “, surviving same sex spouse”.

26 In Schedule 3 (methods of revaluing accrued pension benefits), in paragraph 1(1E) (b), after “widower” insert “, surviving same sex spouse”.