



# SOCIAL SECURITY (MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENT) ACT 2016) ORDER 2016

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Statutory Document No. 2016/0198



*Social Security Act 2000*

## **SOCIAL SECURITY (MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENT) ACT 2016) ORDER 2016**

*Approved by Tynwald: 20 July 2016*  
*Coming into Operation in accordance with article 2*

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The Treasury makes the following Order under section 1 of the Social Security Act 2000.

### **1 Title**

This Order is the Social Security (Marriage and Civil Partnership (Amendment) Act 2016) Order 2016.

### **2 Commencement**

This Order comes into operation on 22 July 2016<sup>1</sup>.

### **3 Effect of extension of marriage: further provision**

- (1) This Order makes provision corresponding to Part 5 (state pensions) of Schedule 4 to the Marriage (Same Sex Couples) Act 2013<sup>2</sup> (of Parliament) (effect of extension of marriage: further provision).
- (2) The Schedule (which makes provision in relation to the Social Security Contributions and Benefits Act 1992<sup>3</sup> as it has effect in the Island<sup>4</sup>) has effect.

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<sup>1</sup> Under section 2(1) of the Social Security Act 2000 an order under section 1(1) or (6) of that Act shall be laid before Tynwald as soon as may be after it is made and unless it is approved by Tynwald at the sitting at which it is laid or the next following sitting, it ceases to have effect, but without prejudice to anything done under it or the making of a new order.

<sup>2</sup> 2013 c.30.

<sup>3</sup> 1992 c.4.

<sup>4</sup> See SD 505/94. The Schedule to SD 505/94 sets out the Social Security Contributions and Benefits Act 1992 as it has effect in the Island.

**MADE 19<sup>TH</sup> JULY 2016**

**W E TEARE**  
*Minister for the Treasury*

SCHEDULE

[Article 3(2)]

**PROVISION CORRESPONDING TO PART 5 (STATE PENSIONS) OF SCHEDULE 4 TO THE MARRIAGE (SAME SEX COUPLES) ACT 2013 (OF PARLIAMENT)  
(EFFECT OF EXTENSION OF MARRIAGE: FURTHER PROVISION)**

**1 Introduction**

The entries relating to the provisions of the Social Security Contributions and Benefits Act 1992<sup>5</sup> in the Schedule to the Social Security Contributions and Benefits Act 1992 (Application) Order 1994<sup>6</sup> specified in this Schedule are amended, and are subject to other provision, in accordance with paragraphs 2 to 6.

**2 Category B retirement pension for married person**

- (1) Section 48A<sup>7</sup> (Category B retirement pension for married person) does not confer a right to a Category B retirement pension on a person by reason of the person being married to a person of the same sex who was born before 6 April 1950.
- (2) But that does not prevent section 48A from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—
  - (a) the spouse is a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued; and
  - (b) the marriage subsisted before the time when that certificate was issued.
- (3) In section 48A—
  - (a) in subsection (2ZA)<sup>8</sup>—
    - (i) in paragraph (a) for “married man who” substitute **63** man married to a woman and the spouse **62**;
    - (ii) after paragraph (b) insert—
      - 63**(c) in a case where the spouse is a woman born before 6 April 1945 who is married to a woman and subsection (2ZB)

<sup>5</sup> 1992 c.4.

<sup>6</sup> SD 505/94.

<sup>7</sup> Sections 48A, 48B and 48C substituted for sections 49 and 50 by paragraph 3 of Schedule 4 to the Pensions Act 1995 (see SD 501/97).

<sup>8</sup> Subsection (2ZA) inserted by paragraph 2 of Schedule 1 to the Pensions Act 2007 (see SD 193/09).

- applies, the conditions specified in Schedule 3, Part 1, paragraph 5;
- (d) in a case where the spouse is a woman born on or after 6 April 1945 but before 6 April 1950 who is married to a woman and subsection (2ZB) applies, the condition specified in Schedule 3, Part 1, paragraph 5A. ~~22~~; and
- (b) after subsection (2ZA) insert—
- ~~22~~ (2ZB) This subsection applies where—
- (a) the spouse is a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and
- (b) the marriage subsisted before the time when that certificate was issued. ~~22~~.
- (4) In paragraph 5A<sup>9</sup> of Schedule 3, at the end of sub-paragraph (1)(b) insert ~~22~~ or in a case of the kind mentioned in subsection (2ZA)(d) of that section ~~22~~.

### 3 Category B retirement pension for widows and widowers

- (1) Section 48B<sup>10</sup> (Category B retirement pension for widows and widowers) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6 April 2010 by reason of her marriage to another woman.
- (2) But that does not prevent section 48B from conferring a right to such a pension on a woman by reason of her marriage to another woman (“the spouse”) if—
- (a) the spouse was, at the time of her death, a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and
- (b) the marriage subsisted before the time when that certificate was issued.
- (3) In section 48B—
- (a) in subsection (1ZA)<sup>11</sup> —
- (i) in paragraph (a)(ii) after “date” (in the second place where it appears) insert ~~22~~ and the case does not fall within paragraph (c) ~~22~~; and
- (ii) after paragraph (b) insert—

<sup>9</sup> Paragraph 5A inserted by section 1 of the Pensions Act 2007 (see SD 193/09).

<sup>10</sup> Sections 48A, 48B and 48C substituted for sections 49 and 50 by paragraph 3 of Schedule 4 to the Pensions Act 1995 (see SD 501/97).

<sup>11</sup> Subsection (1ZA) inserted by paragraph 3 of Schedule 1 to the Pensions Act 2007 (see SD 193/09).

- | **66**(c) in a case where—
  - (i) the spouse died on or after 6 April 2010,
  - (ii) the spouse was born on or after 6 April 1945 but before 6 April 1950,
  - (iii) the spouse was, at the time of her death, a woman and the pensioner in question is a woman, and
  - (iv) subsection (1ZB) applies,the condition specified in Schedule 3, Part 1, paragraph 5A. **67**; and
- (c) after subsection (1ZA) insert—
  - | **66**(1ZB) This subsection applies where—
    - (a) the spouse was, at the time of her death, a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and
    - (b) the marriage subsisted before the time when that certificate was issued. **67**.
- (4) In paragraph 5A<sup>12</sup> of Schedule 3, at the end of sub-paragraph (1)(c) insert **66** or in a case of the kind mentioned in subsection (1ZA)(c) of that section **67**.

#### 4 Category B retirement pension for widowers

- (1) Section 51 (Category B retirement pension for widowers) is amended as follows.
- (2) After subsection (1) insert—
  - | **66**(1ZA) A party to a marriage of a same sex couple shall be entitled to a Category B retirement pension if—
    - (a) the other party has died and they were married to each other at the time of that death,
    - (b) they were both over pensionable age at the time of that death, and
    - (c) before that death the deceased party satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part 1, paragraph 5. **67**.
- (3) In subsection (2) after “wife” insert **66**, husband **67**.
- (4) In subsection (3)<sup>13</sup> after “2002” insert **66**, a surviving party to a same sex marriage **67**.

<sup>12</sup> Paragraph 5A inserted by section 1 of the Pensions Act 2007 (see SD 193/09).

- (5) Section 51(1ZA) does not confer a right to a Category B retirement pension on a person if the person attains pensionable age on or after 6 April 2010.
- (6) Section 51(1ZA) does not confer a right to a Category B retirement pension on a woman by reason of her marriage to another woman (“the spouse”) if—
  - (a) the spouse was, at the time of her death, a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and
  - (b) the marriage subsisted before the time when that certificate was issued.

## 5 Graduated retirement benefit

- (1) Section 62 (graduated retirement benefit) is amended as follows.
- (2) In subsection (1) after paragraph (ac)<sup>14</sup> insert—
  - █(ad) for extending section 36 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—
    - (i) men and their late husbands, and
    - (ii) women and their late wives,and for that section (except subsection (5)) so to apply as it applies to women and their late husbands;
  - (ae) for extending section 36 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—
    - (i) men and their late husbands, and
    - (ii) women and their late wives,who attained pensionable age before 6 April 2010 and for that section (except subsection (5)) so to apply as it applies to men and their late wives;█.
- (3) After subsection (2) insert—
  - █(3) In relevant gender change cases, women and their late wives are to be treated for the purposes of sections 35 and 36 of the National Insurance (Isle of Man) Act 1971 in the same way as women and their late husbands.
  - (4) For that purpose “**relevant gender change case**”, in relation to a woman (“the pensioner”) and her late wife, means a case where—

<sup>13</sup> Subsection (3) amended by section 39 of the Child Support, Pensions and Social Security Act 2000 (see SD 378/01).

<sup>14</sup> Paragraph (ac) inserted by paragraph 1 of Schedule 1 to S.I. 2005/3029 (see SD 20/06).



- (a) the late wife was, at the time of her death, a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and
- (b) the marriage of the pensioner and her late wife subsisted before the time when the certificate was issued. **22**.

## 6 Adult dependency increases

- (1) In a case where a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) is issued to a person—
  - (a) section 83 (pension increase (wife)) does not cease to apply by virtue of the change of gender; and
  - (b) in the continued application of section 83 in such a case, references to a pension payable to a man, or references to his wife, are to be construed accordingly.
- (2) In a case where a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) is issued to a person—
  - (a) section 84 (pension increase (husband)) does not cease to apply by virtue of the change of gender; and
  - (b) in the continued application of section 84 in such a case, references to a pension payable to a woman, or references to her husband, are to be construed accordingly.

*EXPLANATORY NOTE**(This note is not part of the Order)*

The Marriage and Civil Partnership (Amendment) Act 2016 provides that, as a result of the extension of marriage to same sex couples under that Act, marriage has the same effect in law in relation to such a couple as it does in relation to an opposite sex couple.

This Order makes provision in relation to the Social Security Contributions and Benefits Act 1992 (as it has effect in the Island) to give effect to the extension of marriage to same sex couples in relation to a person's entitlement to state pension based on a current or deceased spouse's or civil partner's National Insurance record payable by way of a "Category B pension" under that Act and other matters.

The provision made corresponds to Part 5 (state pensions) of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (of Parliament) (effect of extension of marriage: further provision).