

**SOCIAL SECURITY (CLOSED LONG-TERM
BENEFITS AND SCHEME) ACT 1996**

Principal Act

Act. No. 1996-06

Commencement

1.10.1996

Assent

26.9.1996

Amending
enactments

Relevant current
provisions

Commencement
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Act. 1997-13

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2001-08

s. 7B

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AN ACT TO ESTABLISH A SCHEME FOR THE PURPOSE OF PROVIDING PECUNIARY BENEFITS BY WAY OF OLD AGE PENSIONS, WIDOW'S BENEFIT, GUARDIAN'S ALLOWANCE AND WIDOWER'S PENSION TO PERSONS WHO PAID CONTRIBUTIONS UNDER THE SOCIAL SECURITY (INSURANCE) ACT 1955 AND FOR CONNECTED PURPOSES.

PART I
GENERAL

Title and commencement.

1. This Act may be cited as the Social Security (Closed Long-Term Benefits and Scheme) Act 1996 and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint.

Interpretation

2.(1) In this Act, unless the context otherwise requires—

“the 1955 Act” means the Social Security (Insurance) Act 1955 ¹as amended from time to time;

“actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries of Great Britain;

“beneficiary”, in relation to any benefit, means a person entitled to that benefit;

“benefit” means benefit under this Act;

“Board” means the Closed Long-Term Benefits Appeals Board established under section 25 of this Act;

“contribution” means a contribution paid or payable or credited (as the case may be) under the 1955 Act (but references to contributions paid or credited under that Act do not include contributions paid or credited in respect of any period after the 31 day of December, 1993);

“contribution week” means a period of seven days commencing from midnight between Sunday and Monday and “contribution year” in relation to any person shall be the period of fifty-two or fifty-three contribution weeks commencing with the first complete contribution week in any year and ending with the contribution

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week next preceding the first complete contribution week in the following year;

“Director” means the person for the time being holding or carrying out the duties of the office of the Director of Social Affairs or such other person as the Minister may appoint to administer the provisions of this Act;

“earnings” include any remuneration or profit derived from a gainful occupation;

“entry into insurance” means, in relation to any person, the date on which he became an insured person under the 1955 Act;

“Fund” means the Closed Long-Term Benefits Fund established under section 3 below;

“Minister” means the Minister for Social Affairs;

“pensionable age” means the age of sixty-five in the case of a man and sixty in the case of a woman;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Minister under this Act;

“relevant contribution conditions”, in relation to benefit of any description means the contribution conditions for benefit of that description;

“special fund” means a fund specified in Schedule 1 to the Public Finance (Control and Audit) Act (No.9 of 1977).

(2) For the purposes of this Act the expression “child” means a person under the age of—

- (a) fifteen years; or
- (b) nineteen years and over the age of fourteen years who is receiving full time instruction at any university, college, school or other educational establishment approved by the Director.

(3) For the purposes of this Act each of the following shall be treated as constituting a family, that is to say—

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- (a) a man and his wife living together and any child or children living together with them who is or are either issue of theirs, his or hers, or maintained by them;
- (b) a man not having a wife or not living together with his wife, and any child or children living together with him who is or are either issue of his, or maintained by him;
- (c) a woman not having a husband or not living together with her husband, and any child or children living together with her who is or are either issue of hers, or maintained by her.

Where a child could otherwise be treated as included at the same time in one family as being issue of his or her parents or either of them, and in another family as being maintained by any other person, the child shall be treated as included in that family only in which he or she can be treated as included as being issue of the parents or parent.

- (4) For the purposes of this section—
 - (a) “issue” means issue of the first generation;
 - (b) where a child born before the marriage of the child’s parents has been legitimated by virtue of the subsequent marriage of the parents, the child shall be treated as being issue of the marriage;
 - (c) an adopted child within the meaning of the Adoption Act (No.19 of 1951) shall be treated as if the child were legitimate issue of the adopter, or, if the child was adopted by two spouses jointly, or by one of two spouses after their marriage, as if the child were legitimate issue of their marriage, and shall not be treated as being issue of any other person;
 - (d) an illegitimate child shall not be treated as being issue of the child’s father;
 - (e) references to the parents, a parent, the father or the mother of a child, or to an illegitimate child shall be construed in accordance with the foregoing provisions of this subsection.

(5) For the purposes of this Act, two persons shall not be treated as having ceased to live together by reason of any temporary absence of either or both of them, and in particular by reason of any such absence at school or while receiving medical treatment as an in-patient in a hospital or similar institution.

(6) For the purposes of this Act a man and his wife shall not be treated as residing otherwise than together unless they are permanently living in separation either by agreement or under an order of the court, or one of them has deserted the other and the separation which is incident to the desertion has not come to an end.

(7) For the purposes of this Act a person-

- (a) is over or under a particular age if he has or, as the case may be, has not attained that age;
- (b) is between two particular ages if he has attained the first but not the second;

and the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth.

(8) For the purposes of this Act the amount of a person's earnings for any period, and the rate of a person's remuneration, shall be calculated or estimated in such manner and on such basis as may be prescribed.

PART II

THE CLOSED LONG-TERM BENEFITS FUND

Closed Long-Term Benefits Fund.

3.(1) There shall be established a fund called the Closed Long-Term Benefits Fund for the purpose of paying benefits in accordance with the following provisions of this Act to persons who were insured under the 1955 Act and whose entitlement to benefit under this Act derives from contributions paid or credited under the 1955 Act.

(2) There shall be credited to the Fund –

- (a) all moneys standing to the credit of the Transitional Interim Payment Fund² on 30th September 1996;
- (b) any arrears of contributions whenever paid;
- (c) all moneys received from time to time by the Government of Gibraltar by way of grants from her Majesty's Government in the United Kingdom for the purposes of the Fund;

² LN. 1993/170

- (d) the moneys for which provision is made in section 20 of the Public Finance (Control and Audit) Act (No.9 of 1977).
- (3) There shall be charged upon the Fund –
- (a) the payment of the benefits described in section 5 below including notwithstanding the provisions of section 5 of the European Communities, Act, claims for such benefits payable by reason of Gibraltar's obligations under the regulations of the Council of the European Communities on the application of Social Security schemes to employed persons and their families moving within the Community;
- (b) all expenses incurred in the administration of this Act and the Fund; and
- (c) any moneys transferred to the Consolidated Fund or any other special fund being moneys which in the opinion of the Financial and Development Secretary are surplus to the requirements of the Fund.
- (4) Accounts of the Fund shall be prepared in such form, in such manner and at such times as the Financial and Development Secretary may direct and the Principal Auditor shall examine and certify every such account.
- (5) Any moneys forming part of the Fund may from time to time be invested, in accordance with such directions as may be given by the Financial and Development Secretary and any interest received from such investments shall be credited to the Fund.
- (6) The Closed Long-Term Benefits Fund shall be a special fund for the purposes of Part III of the Public Finance (Control and Audit) Act.
- (7) As soon as may be after the 31st day of December of every successive fifth year, or such lesser period as the Minister may at any time direct, a report to the Director shall be made by an actuary appointed by the Minister on the financial condition of the Fund and on the level of funding required to support the benefits payable under this Act having regard to the liabilities of the Fund.

PART III
INSURANCE AND BENEFITS
PRELIMINARY

Continuation of insurance

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4. A person who was insured under the 1955 Act shall be insured under this Act and shall thereafter continue throughout his life to be so insured.

Description and rate of benefit and contribution conditions

5.(1) Benefits shall be of the following descriptions—

- (a) guardian's allowance;
- (b) widow's benefit, which shall include widow's allowance, widowed mother's allowance, and widow's pension;
- (c) widower's pension;
- (d) old age pension.

(2) Subject to the provisions of this Act—

- (a) except in the circumstances set out in subsection (3), the weekly rates of the several descriptions of benefit shall be as set out in the second column of Part I of Schedule 1 ("standard rate of benefit"); and
- (b) the contributions conditions for the several descriptions of benefits set out in Part I of Schedule 1 shall be as set out in Part I of Schedule 2.

(3) If neither the person entitled to benefit nor (if different) the person on whose contribution record title to the benefit is established has, for at least one hundred and four weeks in the aggregate since the second day of July 1970, been—

- (a) ordinarily resident in Gibraltar; or
- (b) insured under the 1955 Act in a self-employed or an employed person's capacity

the weekly rate of the several descriptions of benefit shall be as set out in the second column of Part II of Schedule I ("lower rate of benefit") or, where the additional contribution conditions specified in Part II of Schedule 2 are satisfied, the weekly rate set out in the second column of Part III of Schedule 1 ("additional contributions rate").

(4) Any person who is at the date of entitlement to benefit entitled to the rate specified in subsection (2)(a) above shall not lose such right by reason of ceasing to reside in Gibraltar at any time thereafter.

- (5) Any reference in this Act to—
- (a) contributions paid or credited to any person shall be a reference to contributions paid or credited to him under the 1955 Act; and
 - (b) the yearly average of such contributions shall be a reference to that average (calculated in the prescribed manner) over the period—
 - (i) beginning with the contribution year in which he attained the age of twenty or 1st January 1955 whichever is the later, and
 - (ii) ending with the end of the last complete contribution year before the date as at which the average is to be ascertained.

Transitional provisions— existing beneficiaries.

6.(1) Subject to subsections (2) and (3) below, where a person was entitled to a—

- (a) benefit in paragraph (b), (c), (d) or (f) of section 10(1) of the 1955 Act on the 31st day of December, 1993; or
- (b) payment under the Transitional Interim Payment Fund Regulations 1993 on the 30th day of September, 1996; or
- (c) payment under the Pre-Occupational Pensions Payments Fund Regulations 1993³ on the 30th day of September, 1996,

he shall be entitled to a corresponding benefit under this Act.

(2) Where a benefit is payable under this Act by virtue of paragraph (a) or (b) of subsection (1) above, the benefit shall be paid at the same rate at which it was payable on the date mentioned in the relevant paragraph.

(3) Where a benefit is payable under this Act by virtue of subsection (1)(c) above, the benefit shall be calculated in accordance with the provisions of section 7A.

(4) Where a benefit is payable under this Act by virtue of subsection (1) above, all the provisions of this Act shall thereafter apply to that benefit.

³ LN 1993/172

Transitional provisions– extension of time for claiming.

7.(1) For the period of one year from 1st October 1996, any person who considers he may have been entitled to a–

- (a) benefit specified in section 10(1)(b), (c), (d) or (f) of the 1955 Act; or
- (b) payment under either the Transitional Interim Payment Fund Regulations 1993 or the Pre-Occupational Pensions Payments Fund Regulations 1993;

had he made a claim for it within the period of six months from the date on which he considers the entitlement arose, may make a claim for that benefit or payment under this Act on the basis of contributions paid under the 1955 Act.

(2) Any claim for benefit or payment referred to in subsection (1) above shall be treated as a claim for benefit under section 5 of this Act.

(3) Where a claim made under this section is determined in the claimant's favour he shall be entitled to benefit from the date on which he would have been entitled had he made a claim within the prescribed time for claiming benefits, provided that such entitlement did not arise prior to 1 July 1993.

(4) Notwithstanding subsection (1), a person shall not be entitled to claim a payment or benefit under the Pre-Occupational Pensions Payments Fund Regulations 1993, except to the extent that the payment to which the person is entitled under those regulations is attributable to contributions paid or credited under the 1955 Act in respect of periods up to and including the 31st day of December, 1993.

(5) To the extent that any person is entitled to claim a benefit or payment under this Act by virtue of subsection (1), that person shall cease to be entitled to any benefit or payment under the 1955 Act, Transitional Interim Payment Fund Regulations 1993 or the Pre-Occupational Pensions Payments Fund Regulations 1993.

Transitional Provisions – persons insured under both this Act and the Social Security (Open Long-Term Benefits Scheme) Act 1997.

7A(1) Subject to subsection (2) below, if a person is insured under both this Act and the Social Security (Open Long-Term Benefits Scheme) Act 1997 (hereafter in this section referred to as “the Open Scheme Act”) –

- (a) contributions paid by or credited to that person under the Open Scheme Act (including, for the purposes of this section, the levy under the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Regulations 1993* will be treated as paid or credited (as the case may be) under the 1955 Act; and
 - (b) the yearly average of contributions paid by or credited to 1 that person will be calculated accordingly.
- (2) For the purposes of calculating the amount of any benefit payable under this Act–
- (a) a theoretical benefit will be calculated as described in subsection (3) below; and
 - (b) the benefit payable under this Act will be equal to the relevant proportion (as defined in subsection (4) below) of that theoretical benefit.
- (3) For the purpose of subsection 2(a) above, the theoretical benefit will be calculated by reference to the weekly rate of the relevant description of benefit set out in whichever of Parts I, II and III of Schedule 1 is appropriate (and subsection (1) will apply for the purpose of calculating this theoretical benefit).
- (4) For the purpose of subsection (2)(b) above, the “relevant proportion” is the proportion that, disregarding subsection (1) above, the number of contributions paid by or credited to the insured person under the 1955 Act bears to the total of–
- (a) the number of contributions paid by or credited to the insured person under the 1955 Act; plus
 - (b) the number of contributions paid by or credited to the insured person under the Open Scheme Act (including, for the purposes of this section, the levy under the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Regulations 1993 (Legal Notice No. 188 of 1993).

Further right of election to pay arrears.

7B (1) Every person who was required to be insured under the 1955 Act on the 6th January, 1975, but who was not so insured at any period of time

* LN 1993/188

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prior to that date may elect to pay all arrears of contributions (both of an insured person and an employer) at the rates from time to time in force, in respect of any period of time in which he was self-employed or any period of time during which he was employed but not compulsorily insured prior to and until the 5th January, 1975.

Provided that notice in writing of such election is received by the Director prior to 30th June 2001.

(2) Any person who entered or re-entered insurance under the 1955 Act with effect from the 2nd July, 1973 in exercise of the right conferred on him by section 3A of the Social Insurance Act but who did not elect to pay all the arrears of contributions (both of the insured person and of the employer) whether under that section, or under section 3B of the Social Insurance Act at the rates from time to time in force, may elect to pay all arrears at the rates from time to time in force in respect of any period of time in which he was self-employed or any period of time during which he was employed but not compulsorily insured prior to and until the 1st July 1973.

Provided that notice in writing of such election is received by the Director prior to 30th June 2001.

(3) Payment of arrears of contributions under this section shall be made:-

- (a) in a manner approved by the Director;
- (b) prior to 30th June 2001;

Provided that in the case of a person who has not yet reached pensionable age, all arrears shall be paid before he reaches pensionable age.

(4) The widow or widower of every person eligible to pay arrears under subsections (1) or (2) above may elect to pay all the deceased spouse's arrears of contributions pursuant to the provisions of subsections (1) and (2) above.

Provided that notice in writing of such election is received by the Director prior to 30th June 2001.

(5) Payment of arrears of contributions under subsection (4) shall be made:-

- (a) in a manner approved by the Director;
- (b) prior to 30th June 2001;

(6) The right to pay arrears shall be extinguished on the failure by any person to comply with the requirements of this section.

(7) For the avoidance of doubt, a reference in this section to-

(a) section 3A of the Social Insurance Act, is a reference to the section 3A enacted under section 2 of the Social Insurance (Amendment) Act 1973, and as amended from time to time.

(b) section 3B of the Social Insurance Act, is a reference to the section 3B enacted under section 2 of the Social Insurance (Amendment) Act 1975, and as amended from time to time.

(8) Nothing in this section shall entitle any person to claim any payments or benefits to which this section applies in respect of any period prior to the 1st January 2001

WIDOW'S BENEFIT

Widow's benefit.

8.(1) Subject to the provisions of this Act, a widow shall be entitled to widow's benefit if the husband satisfied the relevant contribution conditions and-

(a) in the case of a widow's allowance, if at the husband's death either he was not entitled to an old age pension or she was under pensionable age;

(b) in the case of a widowed mother's allowance, if the widow has a family which includes a child who, or children one of whom, either was at the husband's death a child of the family or who is a son or daughter of theirs;

(c) in the case of a widow's pension, if (subject to section 9) at the husband's death he and the widow had been married for not less than one year and she was over the age of forty but under pensionable age.

(2) The period for which widow's benefit is payable to a widow shall be-

(a) in the case of a widow's allowance, the thirteen weeks next following the husband's death;

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- (b) in the case of a widowed mother's allowance, any period during which she has a child referred to in subsection (1)(b) above and for which she is not entitled to a widow's allowance; and
- (c) in the case of a widow's pension, any period during which she is under pensionable age and for which she is not entitled to widow's allowance or widowed mother's allowance.

(3) Widow's benefit shall not be payable for any period after her death or remarriage or for any period during which she is cohabiting with a man as his wife.

(4) In this section the expression "the husband", in relation to a woman who has been married more than once, refers only to her last husband.

Widow's pension in special cases.

9.(1) Where a widow, in relation to whom the conditions for a widow's pension contained in paragraph (c) of section 8(1) above are not satisfied, ceases to be entitled to a widowed mother's allowance at a time when-

- (a) she is over the age of forty but under pensionable age; and
- (b) one year has elapsed since the date of the marriage in respect of which the allowance is payable

she shall for any subsequent period have the same right (if any) to a widow's pension in respect of that marriage as if such conditions were satisfied.

(2) Where a widow, in relation to whom neither the condition for a widow's pension nor the alternative conditions contained in subsection (1) above are satisfied, ceases to be entitled to a widow's allowance or a widowed mother's allowance at a time when she is pregnant by her late husband, she shall, for the remainder of the period of that pregnancy, have the same right (if any) to a widow's pension in respect of her marriage to the husband as if the said conditions were satisfied.

(3) Regulations may provide that, where a widow, in relation to whom neither the conditions for a widow's pension nor the alternative conditions contained in subsection (1) are satisfied, would but for the regulations cease to be entitled to widow's benefit at a time when she is by reason of any infirmity incapable of self-support and is under pensionable age, she shall, for any subsequent period during which she is incapable of self-support by reason of that infirmity, have the same right (if any) to a widow's pension in

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respect of the marriage in respect of which she was entitled to a widow's benefit as if the said conditions were satisfied.

(4) Where a widow is entitled to a widow's pension by virtue of subsection (3) above but ceases to be so entitled at a time when-

- (a) she is over the age of forty but under pensionable age; and
- (b) one year has elapsed since the date of the marriage in respect of which the pension is payable,

she shall, for any subsequent period, have the same right (if any) to a widow's pension in respect of that marriage as if she had attained the age of forty and one year had elapsed before the husband's death.

(5) Where a widow has been married more than once, regulations may relax, for the purpose of her right to a widow's pension in respect of her last marriage, the condition as to the duration of that marriage contained in section 8(1)(c) above (or in a case to which instead of that condition, the alternative condition contained in paragraph (b) of subsection (1) or (4) of this section applies, the alternative condition).

WIDOWER'S PENSION

Widower's pension.

10.(1) Subject to the provisions of this Act, a widower shall be entitled to a widower's pension if his wife satisfied the relevant contribution conditions, and-

- (a) he is and has been permanently incapable of self-support for not less than ten years and has been wholly or mainly maintained by her during this time; and
- (b) he is under pensionable age.

(2) Widower's pension shall not be payable for any period after his death or remarriage or for any period during which he is cohabiting with a woman as her husband.

(3) In this section the expression "wife" in relation to a man who has been married more than once, refers only to his last wife.

GUARDIAN'S ALLOWANCE

Guardian's Allowance.

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11.(1) Subject to the provisions of this Act, a person shall be entitled to a guardian's allowance in respect of any child who is for the time being a child of his family, if—

- (a) the parents of the child are dead; and
- (b) the relevant contribution conditions are satisfied.

(2) Regulations may modify the conditions in subsection (1) above in relation to cases—

- (i) where a child has been adopted or is illegitimate; or
- (ii) where the marriage of a child's parents was terminated by divorce, or the child's parents or one of them cannot be traced

but nothing in the regulations shall entitle the parent of a child to a guardian's allowance in respect of that child.

(3) In the case of a child who is a child of the family of a man and his wife, the wife only shall be entitled to a guardian's allowance.

(4) In this section the expression "parent" includes a step-parent.

OLD AGE PENSIONS

Old Age Pensions.

12.(1) Subject to the provisions of this Act, a person shall be entitled to an old age pension if—

- (a) he is over pensionable age; and
- (b) he satisfies the relevant contribution conditions.

(2) Subject to the provisions of this Act, an old age pension shall be payable from the date at which the insured person becomes entitled to it and shall be payable from that date for life.

Special provisions as to men.

13.(1) Subject to the provisions of this Act, a man who is over pensionable age shall be entitled to an old age pension by virtue of the insurance of his wife, being a wife—

- (a) to whom he is married at the time when he attains that age; or
- (b) in respect of whose death he was immediately before attaining that age entitled to widower's pension; or
- (c) whom he has married after attaining that age,

if the following conditions are satisfied, that is to say—

- (i) either she is over pensionable age or she is dead; and
- (ii) she satisfies the relevant contribution conditions; and
- (iii) in a case where he has married the wife after he has attained pensionable age, such further conditions as may be prescribed.

(2) Where a man had, immediately before attaining pensionable age, established title to a widower's pension under section 10(1) above he shall, on attaining pensionable age, be entitled to an old age pension at the equivalent rate of his widower's pension entitlement, notwithstanding that his deceased wife had not satisfied the relevant contribution conditions in respect of such an old age pension.

(3) Subject to subsection (4) below, an old age pension payable to a man by virtue of his wife's insurance shall commence from the date on which the provisions of subsection (1) above are satisfied in relation to the pension and shall be payable for life.

(4) Where a widower entitled to an old age pension by virtue of his wife's insurance remarries, the pension shall not be payable for any subsequent period.

(5) A man shall not be entitled for the same period to more than one old age pension, but if he would be so entitled but for this provision he may, on such occasions and in the manner as may be prescribed, choose which he shall be entitled to.

(6) Where immediately before attaining pensionable age a man is a widower not entitled to a widower's pension, he may elect that, in calculating for the purpose of his right to an old age pension by virtue of his own insurance the yearly average of the contributions paid by or credited to him, there shall be treated as so paid or credited either—

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- (a) for each contribution year falling wholly or partly before his wife's death; or
- (b) for each contribution year falling wholly or partly during the period of their marriage

a number of contributions equal to the yearly average (ascertained as at the date of her or him attaining pensionable age or dying under that age) of the contributions paid by or credited to her, instead of the number of contributions actually paid by or credited to him for that year.

Special provisions as to women.

14.(1) Subject to the provisions of this Act, a woman who is over pensionable age shall be entitled to an old age pension by virtue of the insurance of her husband being a husband—

- (a) to whom she is married at the time when she attains that age; or
- (b) in respect of whose death she was immediately before attaining that age entitled to widow's benefit; or
- (c) whom she has married after attaining that age,

if the following conditions are satisfied, that is to say—

- (i) either he is over pensionable age or that he is dead; and
- (ii) he satisfies the relevant contribution conditions; and
- (iii) in a case where she has married the husband after she has attained pensionable age, such further conditions as may be prescribed.

(2) Where a woman had, immediately before attaining pensionable age, established title to a widow's pension under section 8(1) above she shall on attaining pensionable age be entitled to an old age pension at the equivalent rate of her widow's pension entitlement, notwithstanding that her deceased husband had not satisfied the relevant contribution conditions in respect of such an old age pension.

(3) Subject to subsection (4) below, an old age pension payable to a woman by virtue of her husband's insurance shall commence from the date on which the provisions of subsection (1) above are satisfied in relation to the pension and shall be payable for life.

(4) Where a widow entitled to an old age pension by virtue of her late husband's insurance remarries, the pension shall not be payable for any subsequent period.

(5) A woman shall not be entitled for the same period to more than one old age pension, but if she would be so entitled but for this provision she may, on such occasions and in such manner as may be prescribed, choose which she shall be entitled to.

(6) Where immediately before attaining pensionable age a woman is a widow not entitled to a widow's benefit, she may elect that, in calculating for the purpose of her right to an old age pension by virtue of her own insurance the yearly average of the contributions paid by or credited to her, there shall be treated as so paid or credited either—

- (a) for each contribution year falling wholly or partly before her husband's death; or
- (b) for each contribution year falling wholly or partly during the period of their marriage;

a number of contributions equal to the yearly average (ascertained as at the date of his attaining pensionable age or dying under that age) of the contributions paid by or credited to him, instead of the number of contributions actually paid by or credited to her for that year.

ADDITIONAL RIGHTS TO BENEFIT

Increase of benefit for children.

15.(1) Subject to subsection (2) below and in the case of an old age pension to subsections (4) and (6) below, the weekly rate of an old age pension, a widower's pension, a widow's allowance or a widowed mother's allowance shall, for any period for which the beneficiary has a family which includes a child or children, be increased in respect of such child or children by the amount set out in the fourth column of Part I of Schedule 1.

(2) Where a person does not satisfy the condition in section 5(3) above and is in consequence entitled to a rate of benefit set out in the second column of Part II or III of Schedule 1, the rate of the increase paid under this section shall be the rate set out in the fourth column of that Part.

(3) Where the beneficiary is a man, a child of the family of any woman for the time being residing with him shall be treated for the purposes of this section as a child of his family if the child—

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- (a) is an illegitimate son or daughter of theirs; or
 - (b) was born not less than six months before the day for which benefit is claimed and was wholly or mainly maintained by the beneficiary throughout the six months ending immediately before that day.
- (4) In the case of an old age pension—
- (a) where a man and his wife are both entitled to a pension by virtue of either his or her insurance, they shall not both be entitled for the same period to an increase under this section in respect of the same child or, between them, to increase in respect of more than four children; and
 - (b) for any reference in subsection (3) above to the day for which benefit is claimed there shall be substituted a reference to pensionable age.
- (5) Except in the case of widowed mother's allowance, a benefit shall not be increased under this section in respect of more than four children.
- (6) Where, but for subsection (4)(a) above, a man and his wife would both be entitled to an increase of an old age pension under this section, regulations may make provision as to their priority.

Increase of old age pension.

16. The weekly rate of an old age pension shall be increased by the amount set out in the third column of either Parts I, II or III of Schedule 1 (depending on which rate of benefit in those Parts is paid to the beneficiary) for any period during which the beneficiary—

- (a) if a man is residing with or is wholly or mainly maintaining his wife who is not over pensionable age and who is not engaged in any gainful occupation from which her weekly earnings exceed £23.90; or
- (b) if a woman is residing with and is and has been for not less than ten years wholly or mainly maintaining her husband who is not over pensionable age and who is and has been during this period permanently incapable of self-support.

Partial satisfaction of contribution conditions.

17.(1) Regulations may provide for entitling to benefit persons who would be entitled to such benefits but for the fact that the relevant contribution conditions are not satisfied as respects the total number of contributions paid or credited, the number of contributions paid or credited in a contribution year, the number of contributions paid at a particular rate or the yearly average of contributions paid or credited.

(2) Subject to section (3) below, regulations under this section shall provide that benefit payable by virtue of any such regulations shall be payable at a rate, or shall be of an amount, less than that specified in Schedule 1 and the rate or amount prescribed by the regulations may vary with the extent to which the contribution conditions are satisfied.

(3) Regulations under this subsection shall not provide for a reduction in the rate of increase in benefit paid in respect of a child under section 15 above.

MISCELLANEOUS PROVISIONS AS TO BENEFIT

Claims and notices.

18.(1) Subject to the provisions of subsection (4) below, it shall be a condition of a person's right to any benefit that he makes a claim for it in the prescribed manner.

(2) Subject to subsection (4) below, regulations may provide for disqualifying a person for the receipt of any benefit if he fails to make a claim for it within the prescribed time.

(3) *Omitted.*

(4) Nothing in the foregoing provisions of this section relating to the making of claims shall affect any right of a widow to an old age pension by virtue of the insurance of her husband in respect of whose death she was immediately before attaining pensionable age entitled to a widow's benefit or the corresponding right of a widower to an old age pension in such circumstances.

(5) Any claim for benefit may be treated for the purposes of this Act as a claim, in the alternative, for such other benefit as may be prescribed.

(6) For the purposes of this Part any claim or notice made or sent by post shall be deemed to have been made or given on the day on which it was posted.

Disqualification for imprisonment.

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19.(1) Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit, and an increase of benefit shall not be payable in respect of any person as the beneficiary's wife or husband, for any period during which that person is undergoing imprisonment or detention in legal custody.

(2) Regulations may provide for the suspension of payment to or in respect of any person during any such period of benefit which is excepted from the operation of subsection (1) above or which is payable otherwise than in respect of that period.

Overlapping benefits.

20.(1) Regulations may provide—

- (a) for adjusting benefit payable to or in respect of any person, or the conditions for the receipt of benefit where any pension or allowance payable out of any public funds including any other benefit under this Act (whether of the same or a different description), is payable to or in respect of that person or his wife or husband;
- (b) for treating as reduced by the prescribed amount any arrears of benefit payable to or in respect of any person for a period in respect of which there has been granted to or on account of that person by the Director, social assistance of an amount equal to the reduction and for the payment to the Consolidated Fund out of the Fund of an amount equal to the reduction.

(2) Where but for regulations made by virtue of subsection (1)(a) above two persons would be entitled to an increase of benefit in respect of a third person, regulations may make provision as to their priority.

Disqualification etc. to be disregarded for certain purposes.

21. Regulations may provide that a person who would be entitled to any benefit but for the operation of either section 19 or 20 or of any other provision of this Act disqualifying him for the receipt of that benefit shall be treated as if he were entitled to it for purpose of any rights or obligations under this Part (whether of himself or any other person) which depend on his being so entitled, other than the right to payment of that benefit.

Benefit to be inalienable.

22. Every assignment of, or charge on, benefit and every agreement to assign or charge benefit shall be void, and on the bankruptcy of a

beneficiary, the benefit shall not pass to any trustee or other person acting on behalf of his creditors.

Provisions as to maintenance and incapacity for self-support.

23.(1) Regulations may provide for determining the circumstances in which a person is or is not to be treated for the purposes of this Part as wholly or mainly maintaining another person.

(2) Regulations under subsection (1) above may provide, for the purpose of the provisions relating to an increase of benefit in respect of a husband or wife or that where—

- (a) a person is partly maintained by each of two or more beneficiaries, each of whom would be entitled to such an increase in respect of that person if he were wholly or mainly maintaining that person; and
- (b) the contributions made by those two or more beneficiaries toward the maintenance of the person amount in the aggregate to sums which would, if they had been contributed by one of those beneficiaries, be sufficient to satisfy the requirements of regulations made by virtue of subsection (1) above

that person shall be treated for the purpose of those provisions to be wholly or mainly maintained by such of those beneficiaries as may be prescribed.

(3) For the purposes of this Act, a person shall be treated as being incapable of self-support if he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for a prolonged period.

PART IV

ADMINISTRATION AND LEGAL PROCEEDINGS

Administration

Determination of claims and questions by Director.

24.(1) Except as provided in subsection (2) below, all questions and claims arising under this Act shall be determined by the Director.

(2) Any question of law arising in connection with such determination may, if the Director thinks fit, at the instance of the Attorney General be referred for decision to the Supreme Court.

(3) References and appeals to the Supreme Court under this Act shall be governed by rules of court and such rules shall provide for limiting the time within which appeals may be brought.

(4) The Director shall be entitled to appear and be heard on any such reference.

Constitution of Appeals Board.

25.(1) There shall be established a Closed Long-Term Benefits Appeals Board for the purpose of hearing and determining appeals under this Act.

(2) The Board shall consist of the following members appointed by the Minister—

- (a) a person entitled to practice in Gibraltar as a legal practitioner, who shall be chairman;
- (b) a person who, in the opinion of the Minister, is representative of the interests of insured persons; and
- (c) a person who, in the opinion of the Minister, is representative of the interests of employers of insured persons.

(3) The Minister may also appoint supplementary members of the Board having the respective qualifications set out in subsection (2) to surrogate the chairman or other member of the Board as occasion may require.

(4) The Board shall not be competent to decide any question or appeal unless all members are present and give their opinion on the question or appeal under consideration.

(5) Subject to any regulations made under section 26 below, the Board may regulate its proceedings in such manner as it thinks fit.

(6) The Minister shall appoint a secretary to the Board.

Procedure.

26. Regulations may—

- (a) prescribe the procedure to be followed in connection with the consideration and determination of questions and claims by the Director and the Board; and

- (b) enable the Director and the Board to obtain a medical opinion on a question or claim from a medical practitioner appointed by the Minister for the purpose.

Fees.

27. Regulations may provide for the payment of such fees as may be specified in the regulations to members of the Board and medical practitioners appointed under section 26 above.

Appeals to the Board.

28.(1) A person aggrieved by the decision of the Director on any question or claim may appeal to the Board.

(2) Where any person wishes to appeal to the Board he shall give notice of appeal, setting out his grounds of appeal, to the secretary to the Board within eight days of the date of the communication to him of the decision.

(3) The Board or Director may, if they think that the interests of justice so require, extend the time for appealing notwithstanding that the time for appealing has elapsed.

(4) The Director or his representative shall be entitled to appear and be heard on any appeal.

(5) On an appeal the Board may give such directions and make such decisions in the matter as it shall think proper, including directions as to the costs of the appeal.

(6) Subject to the provisions of section 29 a decision of the Board shall be final and not subject to appeal.

(7) The Board shall have power to take expert advice when necessary at its discretion, and to summon any person to appear before it to give evidence on oath or to produce documents and for these purposes the Board shall have all the powers of the magistrates' court.

(8) Every summons shall be signed by the chairman and may be served either personally or by registered post, and in the latter case, in proving service, it shall be sufficient to prove that the summons was properly addressed and posted.

Appeals to Supreme Court.

This version is out of date

29.(1) Any person aggrieved by the decision of the Board on any question of law or on any question of mixed fact and law may appeal to the Supreme Court.

(2) On an appeal the Supreme Court may give such directions and make such decisions in the matter as it thinks proper, including directions as to the costs of the appeal.

(3) The Board shall be entitled to appear and be heard on any appeal, either by counsel or in person by any member of the Board.

Review.

30.(1) Subject to subsection (2) below, any decision of the Director, Supreme Court or Board may be reviewed at any time by the Director, Supreme Court or Board, as the case may be, if—

- (a) it can be proved that the decision was given in ignorance of, or was based on a mistake as to some material fact; or
- (b) there has been any relevant change of circumstances.

(2) A decision shall not be reviewed while an appeal is pending against the decision of the Director, or the Board, or before the time for lodging such appeal has expired.

(3) Any question of law arising in connection with a review of a decision made by the Director, may if the Director thinks fit, at the instance of the Attorney General, be referred for decision to the Supreme Court.

Administration of benefit.

31.(1) Provisions may be made by regulations as to the time and manner of payment of benefit, and as to the information and evidence to be furnished in connection with a claim for benefit and by beneficiaries when applying for payment, and for payment of benefit through the Post Office or by such other person or body as may be specified in the regulations.

(2) Regulations made under this section as to the time of payment of benefit may provide—

- (a) notwithstanding anything in this Act, for adjusting the commencement and termination of benefit, or of changes in the rate of benefit, so that payments shall not be made in respect of periods less than a week or at different rates for different parts of a week.

(b) for extinguishing the right to any sum payable by way of benefit where payment of that sum is not obtained within twelve months or such shorter period as may be prescribed from the time at which that sum is receivable in accordance with regulations.

(3) Regulations may also provide—

(a) for enabling a person to be appointed to exercise, on behalf of a claimant or beneficiary who is a child or who may be or become unable for the time being to act, any right or power which the claimant or beneficiary may be entitled to exercise under this Act, and for authorising a person so appointed to receive and deal with any sum payable by way of benefit on behalf of the claimant or beneficiary;

(b) in connection with the death of any person, for enabling a claim for benefit to be made or proceeded with in his name, for authorising payment or distribution of benefit to or amongst persons claiming as his personal representatives, legatees, next-of-kin or creditors (or, in cases of illegitimacy of deceased persons, to or amongst others) and for dispensing with strict proof of the title of persons so claiming.

(4) For the purposes of paragraph (b) of subsection (3), the expression “next-of-kin” shall be construed as referring to persons who would take beneficially on an intestacy under the provisions of Part IV of the Administration of Estates Act 1933⁴.

Interim payments, arrears and repayments.

32.(1) Regulations may make provisions as respects matters arising—

(a) pending the determination under this Act (whether in the first instance or on an appeal or reference, and whether originally or on review) of any claim for benefit or of any question affecting any person’s right to benefit; or

(b) out of the revision on appeal or review of any decision under this Act, on any such claim or question.

(2) Without prejudice to the generality of subsection (1), regulations under that subsection may include provisions—

⁴ 1933-02

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- (a) for the suspension of benefit where it appears to the Director that there is or may be a question whether the conditions for receipt of benefit in accordance with an award are or were fulfilled or whether the award ought to be revised;
- (b) as to the date from which any decision on a review is to have effect or to be treated as having had effect;
- (c) for treating any benefit paid to any person under an award or by virtue of any provision of the regulations, which it is subsequently decided was not payable, as properly paid or as paid on account of any other benefit which it is decided was payable to him, or for the repayment of any such benefit and the recovery of such benefit by deduction from other benefit or otherwise;
- (d) for treating benefit paid to one person in respect of another as being a child of the family, or the wife or husband, or an adult dependant, of the first-mentioned person as having been properly paid for any period, notwithstanding that under regulations relating to overlapping benefits it is not payable for that period by reason of a subsequent decision either—
 - (i) that the other person is himself entitled to benefit for that period; or
 - (ii) that a third person is entitled to benefit for that period in respect of the other person in priority to the first mentioned person and for reducing or withholding accordingly any arrears payable for that period by virtue of the subsequent decision.

Exemption from stamp duty.

33. Stamp duty shall not be chargeable upon documents used in connection with business under this Act as may be specified in Schedule 3.

LEGAL PROCEEDINGS

General provisions as to offences or penalties.

34.(1) A person who for the purpose of obtaining any benefit or continuing to obtain any benefit or other payment under this Act whether for himself or some other person or for any other purpose connected with this Act—

- (a) knowingly makes any false statement or false representation; or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular; or
- (c) fails to notify the Director in writing of any change of circumstances which he might reasonably be expected to know might affect the continuance of his entitlement to benefit as to the payment of benefit

is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine at level 3 on the standard scale.

(2) Nothing in this section shall be construed as preventing the Director from recovering by means of civil proceedings any sums due to the Fund.

General provisions as to prosecutions.

35.(1) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General or other officer authorised in that behalf by special or general directions of the Attorney-General.

(2) A public officer authorised in that behalf by special or general directions of the Director may, although not a barrister or a solicitor, prosecute or conduct before the magistrate's court any proceedings for an offence under this Act.

(3) Notwithstanding any provision in any Act prescribing the period within which summary proceedings may be commenced, proceedings for an offence against this Act may be commenced at any time within the period of three months from the date on which evidence, sufficient in the opinion of the Attorney-General to justify a prosecution for the offence, comes to his knowledge, or within the period of twelve months after the commission of the offence, whichever is the latest.

(4) For the purposes of subsection (3) above a certificate, purporting to be signed by or on behalf of the Attorney-General as to the date on which such evidence came to his knowledge shall be conclusive evidence as to that date.

(5) In any proceedings for an offence against this Act, the wife or husband of the accused shall be competent to give evidence, whether for or against the accused.

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(6) The wife or husband of the accused shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused.

Civil proceedings to recover sums due to fund.

36.(1) All sums due to the Fund shall be recoverable as debts due to the Crown and without prejudice to any other remedy may be recovered by the Director summarily as a civil debt.

(2) Proceedings for the summary recovery as civil debts of sums due to the Fund may, notwithstanding anything in any law to the contrary, be brought at any time within three years from the time when the matter complained of arose.

(3) Proceedings for the summary recovery as civil debts of sums due to the Fund may be instituted by a public officer authorised in that behalf by special or general directions of the Director, and any such officer may, although not a barrister or a solicitor, conduct such proceedings.

**PART V
MISCELLANEOUS**

Reciprocal agreements with United Kingdom, dominions and foreign countries.

37.(1) For the purpose of giving effect to any agreement with the Government of the United Kingdom, or of any part of Her Majesty's dominions, or the government of any foreign country, providing for reciprocity in matters relating to payments in respect of widowhood, orphanhood, retirement or old age, it shall be lawful for the Minister by order to make provision for modifying or adapting this Act in its application to cases affected by the agreement.

(2) The modification of this Act which may be made by virtue of subsection (1) shall include provision—

- (a) for securing that acts, omissions and events having any effect for the purposes of the law of the country in respect of which the agreement is made shall have a corresponding effect for the purposes of this Act (but not so as to confer a right to double benefit);
- (b) for determining in cases where rights accrue both under this Act and under the law of the said country, which of these rights shall be available to the person concerned;

- (c) for making any provisions as to administration and enforcement contained in this Act or in any regulations applicable also for the purposes of the law of the said country;
- (d) for making any necessary financial adjustments by payments into or out of the Fund.

38. *Omitted.*

Amendment of Public Finance (Control and Audit) Act.

39. The Public Finance (Control and Audit) Act is amended—

- (a) in section 12(e), by adding after paragraph (xiii) “(xiv) the Social Security (Closed Long-Term) Benefits Fund” and deleting paragraph (e)(xii);and
- (b) in Schedule 1, for the words “Social Insurance Fund (Social Security (Insurance) Act) there shall be substituted the words “Closed Long-Term Benefits Fund (Social Security (Closed Long-Term Benefits Scheme) Act)”.

Revocation of instruments.

40. The Transitional Interim Payment Fund Regulations 1993 and the Transitional Interim Payment Fund (Establishment) Notice 1993 shall cease to have effect.

This version is out of date

SCHEDULE 1

RATE OR AMOUNT OF BENEFIT

PART I

Section 5(2)(a)

STANDARD RATES OF BENEFITS AND OF INCREASES FOR
DEPENDANTS

Description of Benefit	Weekly Basic Rate	Increase for wife or adult dependant where payable	Increases for children not exceeding 4*, where payable for child
	£	£	£
1. Widow's benefit:			
(a) Widow's Allowance.	56.70	—	6.90
(b) Widowed Mother's Allowance.	47.80	—	6.90*
(c) Widow's pension.	47.80	—	6.90
1A. Widower's pension (incapable of self support)	47.80	—	6.90
2. Guardian's Allowance:	12.20	—	—
3. Old age pensions:			
(a) where the pension is payable to a woman by virtue of a husband's insurance, and he is alive, or where the pension is payable by virtue of his wife's insurance to a man who is permanently incapable of self-support, and she is alive.	23.90	—	6.90
(b) in any other case.	47.80	23.90	6.90

*Except in the case of a Widowed Mother's allowance where there is no limit to the number of children in respect of whom increases may be paid.

This version is out of date

PART II

Section 5(3)

**LOWER RATES OF BENEFITS AND OF INCREASES
FOR DEPENDANTS**

Description of Benefit	Weekly Basic Rate	Increase for wife or adult dependant where payable	Increases for children not exceeding 4*, where payable per child
	£	£	£
1. Widow's benefit:			
(a) Widow's Allowance.	1.20	—	0.25
(b) Widowed Mother's Allowance.	0.60	—	0.13*
(c) Widow's pension.	0.60	—	—
1A. Widower's pension (incapable of self support)	0.60	—	0.13
2. Guardian's Allowance:	0.25	—	—
3. Old age pensions:			
(a) where the pension is payable to a woman by virtue of a husband's insurance, and he is alive, or where the pension is payable by virtue of his wife's insurance to a man who is permanently incapable of self-support, and she is alive.	0.40	—	0.13
(b) in any other case.	0.60	0.40	0.13

* Except in the case of a Widowed Mother's Allowance where there is no limit to the number of children in respect of whom increases may be paid.

This version is out of date

PART III

Section 5(3)

ADDITIONAL CONTRIBUTIONS RATES OF BENEFITS AND OF INCREASES FOR DEPENDANTS

Description of Benefit	Weekly Basic Rate	Increase for wife or adult dependant where payable	Increases for children not exceeding 4*, where payable per child
	£	£	£
1. Widow's benefit:			
(a) Widow's Allowance.	2.00	—	0.25
(b) Widowed Mother's Allowance.	1.50	—	0.25*
(c) Widow's pension.	1.50	—	—
1A. Widower's pension (incapable of self support)	1.50	—	0.25
2. Guardian's Allowance:	0.50	—	—
3. Old age pensions:			
(a) where the pension is payable to a woman by virtue of a husband's insurance, and he is alive, or where the pension is payable by virtue of his wife's insurance to a man who is permanently incapable of self-support, and she is alive.	0.90	—	0.25
(b) in any other case.	1.50	0.90	0.25

* Except in the case of a Widowed Mother's Allowance where there is no limit to the number of children in respect of whom increases may be paid.

SCHEDULE 2**PART I**

Section 5(2)(b)

CONTRIBUTION CONDITIONS**WIDOWS BENEFIT OR WIDOWER'S PENSION**

1.(1) The contribution conditions for widow's benefit or widower's pension are that

(a) not less than two hundred and fifty contributions have been paid by the husband or wife as the case may be in respect of the period between his or her entry into insurance and the relevant time; and

(b) the yearly average of the contributions paid by or credited to the husband or wife as the case may be (ascertained at the relevant time) is not less than forty-five.

(2) In this paragraph the expression "relevant time" means the date of the husband or wife as the case may be attaining pensionable age or dying under that age.

GUARDIAN'S ALLOWANCE

2.(1) The contribution conditions for guardian's allowance are that—

(a) not less than twenty-six contributions have been paid by either one or the other of the parents (including step-parents) between that person's entry into insurance and the relevant time; and

(b) either—

(i) not less than thirteen such contributions have been paid by or credited to that person in respect of the last complete contribution year before the relevant time; or

(ii) the yearly average number of contributions paid by or credited to that person (ascertained at the relevant time) is not less than thirteen.

(2) In this paragraph "relevant time" means the date of the death of the last surviving parent.

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OLD AGE PENSION

3.(1) The contribution conditions for old age pension are that—

(a) not less than one hundred and fifty-six contributions have been paid by the relevant person in respect of the period between that person's entry into insurance and the relevant time; and

(b) the yearly average of the contributions paid by or credited to that person (ascertained at the relevant time) is not less than fifty.

(2) In this paragraph—

(a) the expression "relevant person" means the person by whom the conditions are to be satisfied;

(b) the expression "relevant time" means the date of the relevant person attaining pensionable age or dying under that age.

PART II

Section 5(3)

ADDITIONAL CONTRIBUTION CONDITIONS

Benefits at the rates specified in Part III of Schedule 1 shall be payable if the contributions which satisfy the contribution conditions specified in Part I of this Schedule include contributions paid after the 1st day of January, 1968, as follows:—

(a) Widow's benefit or widower's pension	not less than 104
(b) Guardian's allowance	not less than 26
(c) Old age pensions.....	not less than 104

SCHEDULE 3**DOCUMENTS EXEMPTED FROM STAMP DUTY**

1. Claim or application made by any person under or for the purposes of this Act.
2. Power of attorney which grants a mandate solely to claim benefit or to receive and give acquittance for payment in respect of benefit.