

# Social Security (Open Long-Term Benefits Scheme) Act 1997

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## Principal Act

<b>Act. No. 1997-16</b>	<i>Commencement</i>	1.4.1997
	<i>Assent</i>	10.4.1997
Amending enactments	Relevant current provisions	Commencement date
LN. 1997/167	Sch.1	30.12.1997
Act. 1999-23	s. 4(8).	5.7.1999
2001-04	ss. 2, 8, 39	14.3.2001
LN. 2004/132	Sch.1	3.1.2005
Act. 2007-19	s. 4(9), (10), Sch.1	1.7.2006
“	s. 22(a), Sch.2	1.4.2007
LN. 2007/051	Sch.1	1.4.2007
Act. 2007-17	ss. 10(3)(c), (4)-(5), 30(2), 33(3)	14.6.2007
2008-02	s. 18A	1.7.2007
2009-12	ss. 11(2)-(3), 12(3), 18A(3), 21(1), 22, (a), 34(2)(a), Sch.2	1.4.2008
LN. 2008/045 <sup>1</sup>	Sch.1	12.6.2008
2008/046	Sch.1	12.6.2008
2009/084	s. 22(a), Sch.2	1.4.2009
Act. 2011-29 <sup>i</sup>	ss. 11(1)(b)-(c), 14-16, 19(1)(b), (2), (6), 20(1)(b), (2), (6), 21(1), (4), 24(3), Sch.2-3	1.7.2009
LN. 2009/041 <sup>2</sup>	Sch.1	16.7.2009
2010/103	s. 22(a), Sch.2	1.4.2010
2010/114 <sup>3</sup>	Sch.1	1.7.2010
2011/138	s. 22(a), Sch.2	1.4.2011
2012/195	s. 22(a), Sch.2	1.8.2012
2013/168	s. 22(a), Sch.2	1.8.2013
Act. 2013-27	ss. 4(2)-(3), 39(5), 41(2), (4)-(5), Sch.1	28.11.2013
2014-10	ss. 2(3)(a), (4)(c), (6), 14-15, 17(2)(b), (3), 18A, 19-20, 21(5)(a), (6), 22(a)-(b), 24(3), 25, 26(1)(a), 29(2), 35(2)(d), 40(5)-(6), 45(1), Schs.1-2	28.3.2014
LN. 2015/136	s. 22(a), Sch.2	1.8.2014

<sup>1</sup> LN. 2008/045 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Open Long-Term Benefits Scheme) (Contributions) (Amendment) Order 2008 (LN. 2008/046).

<sup>2</sup> LN. 2009/041 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Open Long-Term Benefits Scheme) (Contributions) (Amendment) Order 2008 (LN. 2008/046).

<sup>3</sup> LN. 2010/114 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Open Long-Term Benefits Scheme) (Contributions) (Amendment) Order 2008 (LN. 2008/046).

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Act. 2017-13	s. 5(1), (5)	1.7.2015
LN. 2016/196	s. 22(a), Sch.2	1.8.2015
2016/197	s. 22(a), Sch.2	1.8.2016
2017/057 <sup>2</sup>	Sch.1	1.4.2017
2017/200	s. 22(a), Sch.2	1.8.2017
2018/231	s. 22(a), Sch.2	1.8.2018
2019/167	s. 22(a), Sch.2	1.8.2019
2020/502	s. 3(4)	24.12.2020
2020/535	s. 45(1), (4)	24.12.2020
“	s. 10(3)(a), (8)	1.1.2021
Act. 2021-09	ss. 2(4)(cc), 17(2)(a)	9.2.2021
LN. 2021/360	s. 22(a), Sch.2	1.8.2021
2021/497	s. 3(4)	23.12.2021
2023/336	s. 22(a), Sch.2	1.8.2022
2022/339	s. 3(3)	22.12.2022

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<sup>2</sup> LN. 2017/057 amending the Social Security Insurance Act (1955-14) also amends this Act by virtue of the Social Security (Open Long-Term Benefits Scheme) (Contributions) (Amendment) Order 2008 (LN. 2008/046).

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AN ACT TO ESTABLISH A REPLACEMENT SCHEME TO THE SOCIAL SECURITY (INSURANCE) ACT 1955 FOR THE PURPOSE OF PROVIDING PECUNIARY BENEFITS BY WAY OF OLD AGE PENSIONS, WIDOW'S BENEFIT, GUARDIAN'S ALLOWANCE AND WIDOWER'S PENSION IN RESPECT OF CONTRIBUTIONS PAID BY OR CREDITED TO INSURED PERSONS AFTER THE 31ST DAY OF DECEMBER, 1993 AND FOR CONNECTED PURPOSES.

## PART I

### GENERAL

#### **Title and commencement.**

1. This Act may be cited as the Social Security (Open Long-Term Benefits Scheme) Act 1997 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<sup>1</sup> as 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 the Closed Scheme Act.

“the Closed Scheme Act” means the Social Security (Closed Long-Term Benefits and Scheme) Act 1996;

“contract of service” means any contract of service or apprenticeship, whether written or oral, and whether express or implied;

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<sup>1</sup> 1955-14

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“contribution” means a contribution under this Act, and any payment of the levy under the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Regulations 1993 (Legal Notice No. 188 of 1993) shall be treated as a contribution under this Act;

“contribution week” means a period of seven days commencing from midnight between Sunday and Monday;

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

“Director” means such public officer as the Minister may designate to administer the provisions of this Act;

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

“employer’s contribution” means a contribution payable by an employer in respect of an insured person;

“employed person” means a person occupied in employment being employment under a contract of service or in employment by or under the Government and includes apprentices and learners under agreement whether written or oral and whether express or implied;

“employed contributor’s employment” means any employment by virtue of which an insured person is an employed person;

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

“Fund” means the Open Long-Term Benefits Fund established under section 10 below;

“Her Majesty’s dominions” includes British protectorates and protected states;

“incapable of work” means incapable of work by reason of some specific disease or bodily or mental disablement or treated, in accordance with regulations, as so incapable;

“insured person” means a person insured under this Act;

“Minister” means the Minister with responsibility for Social Affairs;

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“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 under Part I of Schedule 3 for benefit of that description;

“relevant time”, in relation to benefit of any description, means the relevant time under Part I of Schedule 3 for benefit of that description;

“self-employed person” means—

- (a) a person occupied in gainful employment in Gibraltar who is not an employed person; or
- (b) a person exercising functions in Gibraltar as an ordained minister of religion or as a member of a religious order, who is not an employed person;

“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—

- (a) a man and his wife, or civil partners 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;



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- (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 or civil partners jointly, or by one of two spouses or civil partners after their marriage, or civil partnership, as the case may be; as if the child were legitimate issue of their marriage, or civil partnership and shall not be treated as being issue of any other person;
  - (cc) a child by virtue of a parental order shall be treated as if the child were legitimate issue of the applicant on the said order or if the child was deemed by the parental order to be the child of spouses or civil partners jointly, or by one of two spouses or civil partners after their marriage, or civil partnership, as the case may be; as if the child were legitimate issue of their marriage, or civil partnership 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.

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(6) For the purposes of this Act, a man and his wife, or civil partners 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) Regulations may provide that, for the purpose of determining whether a contribution is payable under this Act in respect of any person, or at what rate a contribution is payable, that person shall be treated as having attained at the beginning of a contribution week, or as not having attained until the end of a contribution week, any age which he attains during the course of that week.

(9) 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 INSURED PERSONS AND CONTRIBUTIONS

### Description of insured persons.

3.(1) Subject to the provisions of this Act, every person who on or after the 1st day of January, 1994 is —

- (a) under pensionable age; and
- (b) either self-employed or in insurable employment under the Social Security (Employment Injuries Insurance) Act,

shall be insured under this Act and shall thereafter continue throughout his life to be so insured.

(2) Provision may be made by regulations for modifying the application of this Act in relation to cases where it appears to the Minister desirable by reason of the nature or

circumstances of a person's employment or otherwise, and such regulations may in particular provide—

- (a) for disregarding employment which is of a casual or subsidiary nature or in which the insured person is engaged only to an inconsiderable extent;
- (b) for treating a person's employment as continuing during periods of holiday, unemployment or incapacity for work and in such other circumstances as may be prescribed.

(3) Provision may be made by regulations made by the Minister, for amending the definition of "pensionable age", provided that the effects of such provision shall be that, with effect from the Equalisation Date, the process of the equalisation of the pensionable ages of men and women insured under this Act shall be commenced.

(4) For the purposes of subsection (3), the Equalisation Date shall be determined by regulations, but shall in any event not fall later than the 31st day of December, 2022.

#### **Source of funds.**

4.(1) For the purpose of providing the funds required for paying benefit, and for making any other payments which under this Act are to be made out of the Fund established under this Act, contributions shall be payable by self-employed persons, employed persons and by employers in accordance with the following provisions of this section.

(2) Every employed person and every employer of such person shall be liable to pay weekly contributions at the respective rates set out in Schedule 1.

(3) Every self-employed person shall be liable to pay weekly contributions at the rates set out in Schedule 1.

(4) Regulations may provide that where an insured person ceases to be a self-employed person or an employed person at a time when he satisfies such other conditions as may be prescribed, he may elect to pay such contributions as may be prescribed.

(5) Regulations may provide that where the total contributions paid by or credited to an insured person in any contribution year falls short of the maximum possible number and he satisfies such other conditions as may be prescribed, he may elect to pay such contributions as may be prescribed.

(6) Subject to the provisions of this Act and of any regulations, no person shall be entitled to pay any contribution thereunder other than a contribution which he is liable to pay.

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(7) An employer or insured person who fails to pay any contribution which he is liable under this Act to pay, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(8) Notwithstanding subsection 1, no contribution shall be payable in respect of an employee for any week during the whole or any part of which she is absent from work in exercise of her right to maternity leave under the Employment (Maternity and Health and Safety) Regulations 1996.

(9) No insured person over the age of 60 or one who has retired at age 55 by operation of law shall be liable to make contributions pursuant to the provisions of this Act. For the avoidance of doubt, nothing in this sub-section affects the application of this Act as it applies to employers.

(10) An insured person whose retirement age is 55 by operation of law and who retires at a prior age shall continue to be liable to make contributions pursuant to the provisions of this Act until age 55 is reached.

## **Number and class of contribution for any week.**

5.(1) A person shall not be liable to pay more than the maximum contribution for an insured person in any contribution week and not more than the maximum contribution for an employer shall be payable in respect of any person for any contribution week.

(2) Where, as respects any employed contributor's employment—

(a) no services are rendered by an employed person in any contribution week; and

(b) no remuneration is paid wholly or partly in respect of any day in that week other than a day on which he either—

(i) is incapable of work and would but for the incapacity have been working;  
or

(ii) does not work in a normal week,

then that employment shall, in relation to that week, be disregarded for the purposes of this Act.

(3) Regulations may provide, as respects any period during which no services are rendered by an employed person, that for the purposes of this Act any payments which he receives or is entitled (whether conditionally or not) to receive in any prescribed circumstances are or are not to be treated as remuneration paid in respect of any day in that period.

(4) Regulations may provide for disregarding for the purposes of this Act any employment in which a person engages or continues to be engaged solely or mainly for the purpose of acquiring or preserving a right or a larger right to benefit.

(5) In subsection (1), “maximum contribution” –

- (a) in respect of an insured person, means the maximum contribution as set out in Schedule 1 for an employee or self-employed; and
- (b) in respect of an employer’s contribution, means the maximum contribution as set out in Schedule 1 for an employer.

**Crediting of contributions.**

6.(1) Regulations may provide for crediting contributions to insured persons for–

- (a) periods of unemployment or of incapacity for work;
- (b) periods of full-time education or of full-time unpaid apprenticeship;
- (c) the period between the beginning of the contribution year last preceding that in which they became insured persons and their entry into insurance; and
- (d) such other periods as may be prescribed.

(2) Regulations under subsection (1) may provide for crediting a person with contributions as if this Act and the regulations had come into effect on the 1st day of January, 1994, and as if the person concerned had become an insured person on the date on which he would have become an insured person in that event.

**Contributions of employed persons and employers.**

7.(1) Except where regulations otherwise prescribe, an employer liable to pay a contribution in respect of a person employed by him shall, in the first instance, be liable to pay also, on behalf of and to the exclusion of that person, any contribution as an insured person payable by that person for the same contribution week, and for the purposes of this Act contributions paid by an employer on behalf of an insured person shall be treated as contributions by the insured person.

(2) Notwithstanding any contract to the contrary, an employer shall not be entitled to deduct from the wages or other remuneration of a person employed by him, or otherwise to recover from such a person, the employer’s contribution in respect of that person.

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(3) An employer who deducts or attempts to deduct the whole or any part of the employer's contribution in respect of any person from his wages or other remuneration is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(4) An employer shall be entitled, subject to and in accordance with regulations, to recover from an insured person the amount of any contribution paid or to be paid by him on behalf of that person, and, notwithstanding anything in any enactment, regulations under this subsection may authorise recovery by deductions from the insured person's wages or remuneration.

(5) Any regulations under subsection (4) shall provide that—

- (a) where the insured person does not receive any wages or other pecuniary remuneration in respect of an employed contributor's employment either from the employer or from any other person, the employer shall not be entitled to recover the amount of any such contribution from him; and
- (b) where the insured person does receive any such wages or remuneration from the employer, the employer shall not be entitled to recover any such contribution otherwise than by deductions from the wages or remuneration.

### **Method of payment of contribution.**

8. Subject to the provisions of this Act, regulations may provide for any matters incidental to the payment and collection of contributions under this Act, and in particular but without prejudice to the generality of the foregoing—

- (a) for assessing the amount of contributions liable to be paid by any person;
- (b) for payment of contributions by such means as the Minister shall deem appropriate, and for regulating the manner, times, and conditions in, at and under which such payments are to be made;
- (c) for the issue, replacement, custody, production and delivery up of prescribed certificates;
- (d) for treating, for the purpose of any right to benefit, contributions paid after the due dates as paid on those dates or on such later dates as may be prescribed, or as not having been paid and for treating, for the purpose aforesaid, contributions payable by an employer on behalf of an insured person, but not paid, as paid where the failure to pay is shown not to have been with the consent or connivance of, or attributable to any negligence on the part of, the insured person;

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- (e) for treating contributions of the wrong class or at the wrong rate as paid on account of the contributions properly payable or on account of contributions under the Social Security (Employment Injuries Insurance) Act or the Social Security (Insurance) Act, and for treating contributions under that Act which were not payable as paid on account of contributions under this Act, notwithstanding anything in that Act;
- (f) for the return of contributions under this Act paid in error or in accordance with the law as it stood prior to the coming into force of the Social Security (Miscellaneous Provisions) Act 2001; and
- (g) (without prejudice to any other remedy) for the recovery, on prosecutions brought under or by virtue of this Act, of contributions under this Act, under the Social Security (Employment Injuries Insurance) Act or under the Social Security (Insurance) Act,

and any such regulations relating to the time of payment of contributions may require or authorise an employer, where an insured person's remuneration is paid in advance and in such other cases as may be prescribed, to pay contributions in advance and in connection therewith may make provision for the event of contributions so paid proving not to be payable.

**Persons to be treated as employers.**

9.(1) In relation to persons who—

- (a) are employed by more than one employer in any contribution week; or
- (b) work under the general control or management of some person other than their immediate employer,

and in relation to any other cases for which it appears to the Minister that special provision is needed, regulations may provide that for the purposes of this Act the prescribed person shall be treated as their employer; and regulations made by virtue of paragraph (b) may provide for adjusting the rights between themselves of the person prescribed as the employer, the immediate employer and the persons employed.

(2) References in this Act to a person's employer shall not be construed as including his employer in any employment other than one which is an employed contributor's employment (or, in the case of a person who is not, but would if he were under pensionable age be, an insured person, an employment which would be an employed contributor's employment in his case if he were under that age).

**PART III**

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## THE OPEN LONG-TERM BENEFITS FUND

### Open Long-Term Benefits Fund.

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

- (2) There shall be credited to the Fund—
  - (a) all contributions paid under this Act;
  - (b) all moneys standing to the credit of the Pre-Occupational Pensions Payments Fund and the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Fund (Legal Notices Nos.171 and 189 of 1993) on the 31st day of March, 1997;
  - (c) any arrears of the levy payable by virtue of the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Regulations 1993 (Legal Notice No.188 of 1993), whenever paid;
  - (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 11 below, including claims for such benefits payable by reason of Gibraltar's obligations under the social security provisions of the withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement;
  - (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 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 Secretary may direct and the Principal Auditor shall examine and certify every such account.



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(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 Secretary, and any interest received from such investments shall be credited to the Fund.

(6) The Open 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.

(8) In this section, “withdrawal agreement”, “EEA EFTA separation agreement” and “Swiss citizens’ rights agreement” have the same meaning as in section 3(1) of the European Union (Withdrawal Agreement) Act 2020.

**PART IV  
BENEFITS  
PRELIMINARY**

**Description and rates of benefit and contribution conditions.**

11.(1) Benefits shall be of the following descriptions–

- (a) guardian’s allowance;
- (b) survivor’s benefit, which shall include survivor’s bereavement allowance, widowed parent’s allowance, and survivor’s pension;
- (c) *Deleted.*
- (d) old age pension.

(2) Subject to the provisions of this Act–

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

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(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 2nd day of July, 1970, been—

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

the monthly rate of the several descriptions of benefit shall be as set out in the second column of Part II of Schedule 2 ("lower rate of benefit") or, where the additional contribution conditions specified in Part II of Schedule 3 are satisfied, the monthly rate set out in the second column of Part III of Schedule 2 ("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 by or credited to any person shall be a reference to contributions paid by or credited to him under this 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 the 1st day of 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— persons insured under both this Act and the Closed Scheme Act.**

12.(1) Subject to subsection (2) below, if a person is insured under both this Act and the Closed Scheme Act—

- (a) contributions paid by or credited to that person under the 1955 Act in respect of periods before the 1st day of January, 1994 will be treated as paid or credited (as the case may be) under this Act;

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- (b) the date on which that person became an insured person under the 1955 Act will be treated as the date of that person's entry into insurance under this Act; and
  - (c) the yearly average of contributions paid by or credited to the relevant person will be calculated accordingly.
- (2) For the purpose 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 monthly rate of the relevant description of benefit set out in whichever of parts I, II and III of Schedule 2 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 this Act bears to the total of–
- (a) the number of contributions paid by or credited to the insured person under this Act; plus
  - (b) the number of contributions paid by or credited to the insured person under the 1955 Act in respect of periods before the 1st day of January, 1994.

**Transitional provisions– existing beneficiaries.**

13.(1) Subject to subsection (2) below, where a person was entitled to a payment under the Pre-Occupational Pensions Payments Fund Regulations 1993<sup>2</sup> on the 31st day of March, 1997, he shall be entitled to a corresponding benefit under this Act paid at the same rate at which it was payable on that date.

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

**SURVIVOR'S BENEFIT**

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<sup>2</sup> LN.1993/172

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## Survivor's benefit.

14.(1) Subject to the provisions of this Act, a surviving spouse or civil partner shall be entitled to survivor's benefit if the deceased spouse or civil partner satisfied the relevant contribution conditions and—

- (a) in the case of a survivor's bereavement allowance, if at the deceased spouse's or civil partner's death either the deceased spouse or civil partner was not entitled to an old age pension or the surviving spouse or civil partner was under pensionable age;
- (b) in the case of a widowed parent's allowance, if the surviving spouse or civil partner has a family which includes a child who, or children one of whom, either was at the deceased spouse's or civil partner's death a child of the family or who is a son or daughter of theirs;
- (c) in the case of a survivor's pension, if (subject to section 15) at the deceased spouse's or civil partner's death the deceased spouse and the surviving spouse had been married to each other or in a civil partnership for not less than one year and the surviving spouse or civil partner was over the age of forty but under pensionable age.

(2) The period for which survivor's benefit is payable to a surviving spouse or civil partner shall be—

- (a) in the case of a survivor's bereavement allowance, the three months next following the deceased spouse's death;
- (b) in the case of a widowed parent's allowance, any period during which the surviving spouse or civil partner has a child referred to in subsection (1)(b) above and for which the surviving spouse is not entitled to survivor's bereavement allowance; and
- (c) in the case of a survivor's pension, any period during which the surviving spouse or civil partner is under pensionable age and for which he or she is not entitled to survivor's bereavement allowance or widowed parent's allowance.

(3) Survivor's benefit shall not be payable for any period after the beneficiary's death or remarriage or enters into a further civil partnership or a civil partnership subsequent to his or her marriage or for any period during which he or she is cohabiting with another person as his or her spouse or civil partner.

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(4) In this section the expression “deceased spouse or civil partner”, in relation to a surviving spouse or civil partner who has been married or in a civil partnership more than once, refers only to that person’s last spouse or civil partner.

**Survivor’s pension in special cases.**

15.(1) Where a surviving spouse or civil partner, in relation to whom the conditions for a survivor’s pension contained in paragraph (c) of section 14(1) above are not satisfied, ceases to be entitled to a widowed parent’s allowance at a time when—

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

he or she shall for any subsequent period have the same right (if any) to a survivor’s pension in respect of that marriage or civil partnership as if such conditions were satisfied.

(2) Where a widow, in relation to whom neither the condition for a survivor’s pension nor the alternative conditions contained in subsection (1) above are satisfied, ceases to be entitled to a survivor’s bereavement allowance or a widowed parent’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 survivor’s pension in respect of her marriage to the husband as if the said conditions were satisfied.

(3) Regulations may provide that, where a surviving spouse or civil partner, in relation to whom neither the conditions for a survivor’s pension nor the alternative conditions contained in subsection (1) are satisfied, would but for the regulations cease to be entitled to survivor’s benefit at a time when such person is by reason of any infirmity incapable of self-support and is under pensionable age, he or she shall, for any subsequent period during which he or she is incapable of self-support by reason of that infirmity, have the same right (if any) to a survivor’s pension in respect of the marriage or civil partnership in respect of which he or she was entitled to a survivor’s benefit as if the said conditions were satisfied.

(4) Where a surviving spouse or civil partner is entitled to a survivor’s pension by virtue of subsection (3) above but ceases to be so entitled at a time when—

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

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he or she shall, for any subsequent period, have the same right (if any) to a survivor's pension in respect of that marriage or civil partnership as if he or she had attained the age of forty and one year had elapsed before the deceased spouse's or civil partner's death.

(5) Where a surviving spouse or civil partner has been married or in a civil partnership more than once, regulations may relax, for the purpose of his or her right to a survivor's pension in respect of that person's last marriage or civil partnership, the condition as to the duration of that marriage or civil partnership contained in section 14(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).

16. Deleted.

## GUARDIAN'S ALLOWANCE

### Guardian's Allowance.

17.(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—
- (a) where a child has been adopted or the subject of a parental order or is illegitimate; or
  - (b) where the marriage or civil partnership of a child's parents was terminated by divorce or dissolution, 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 or of two civil partners, the wife or one of the civil partners 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.

18.(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.

**Old age pensions for persons whose marriages or civil partnerships have been dissolved.**

18A.(1) This section applies to any person whose last marriage or civil partnership terminated otherwise than by the death of his spouse or civil partner and such person shall be referred to in this section as “the beneficiary”.

- (2) Where a beneficiary—
  - (a) has been married or in a civil partnership, and
  - (b) does not satisfy the contribution conditions for the standard rate of old age pension,

then the beneficiary may elect that contributions of that beneficiary’s former spouse or civil partner during the period of the marriage or civil partnership be treated to the extent specified in this section as though they were that beneficiary’s own contributions.

(3) For the purposes of this section the standard rate of old age pension means the monthly rate of old age pension payable to an insured person by virtue of his own insurance as set out in Part I of Schedule 2 of the Act.

- (4) For the purposes of this section—
  - (a) “the beneficiary’s relevant contributions” are the beneficiary’s own contributions excluding those for each contribution year falling wholly or partly within the period of the marriage or civil partnership; and
  - (b) “the former spouse’s or civil partner’s relevant contributions” are the contributions made by the beneficiary’s former spouse for each contribution year falling wholly or partly within the period of the marriage or civil partnership;

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the beneficiary shall be treated as satisfying the condition set out in part 3(1)(a) of Part 1 of Schedule 3 if the total of the beneficiary's relevant contributions and the former spouse's or civil partner's relevant contributions is not less than one hundred and fifty-six.

(5) For the purposes of paragraph 3(1)(b) of Part 1 of Schedule 3, and subject to this section, the contributions paid by or credited to the former spouse or civil partner for each contribution year falling wholly or partly within the period of the marriage or civil partnership shall be credited to or treated as paid by the beneficiary.

(6) The yearly average for the beneficiary shall be calculated on the basis of the total of the beneficiary's relevant contributions and the former spouse's or civil partner's relevant contributions.

(7) The "theoretical rate" is the amount of entitlement that would be payable on the basis of the yearly average calculated under sub-section (6).

(8) The beneficiary's entitlement shall be the sum of—

(a) the number of the beneficiary's relevant contributions multiplied by the theoretical rate, and divided by the total number of contributions used for calculating the beneficiary's yearly average; and

(b) the number of the former spouse's or civil partner's relevant contributions multiplied by the half of the theoretical rate, and divided by the total number of contributions used for calculating the beneficiary's yearly average.

(9) Where a person has been married more than once this section applies only to the last marriage or civil partnership and the references to his marriage or civil partnership and his former spouse or civil partner shall be construed accordingly.

(10) For the purposes of this section, where a decree of nullity was granted in relation to a person on the ground that the marriage or civil partnership was void, that person shall be treated as a person whose marriage or civil partnership has been terminated by divorce or dissolution from the date on which that decree or order was made absolute or final.

(11) 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 1 July 2007.

## Special provisions as to men.

19.(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 or civil partner, being a wife or civil partner –



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

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

- (i) either she or he is over pensionable age or she or he is dead; and
- (ii) she or he satisfies the relevant contribution conditions; and
- (iii) in a case where he has married or has entered into a civil partnership 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 survivor's pension under section 14(1) above, he shall, on attaining pensionable age, be entitled to an old age pension at the equivalent rate of his survivor's pension entitlement, notwithstanding that his deceased wife or civil partner 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 or civil partner'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 or civil partner's insurance remarries or enters into a further civil partnership or a civil partnership subsequent to his marriage, 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 such manner as may be prescribed, choose which he shall be entitled to.

(6) Where immediately before attaining pensionable age a man is a widower or surviving civil partner not entitled to a survivor'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 or civil partner'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 or him, instead of the number of contributions actually paid by or credited to him for that year.

### **Special provisions as to women.**

20.(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 or civil partner being a husband or civil partner—

- (a) to whom she is married or in a civil partnership at the time when she attains that age; or
- (b) in respect of whose death she was immediately before attaining that age entitled to survivor'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 or she is over pensionable age or that he or she is dead; and
- (ii) he or she satisfies the relevant contribution conditions; and
- (iii) in a case where she has married or entered into a civil partnership 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 survivor's pension under section 14(1) above, she shall, on attaining pensionable age, be entitled to an old age pension at the equivalent rate of her survivor's pension entitlement, notwithstanding that her deceased husband or civil partner 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 or civil partner's insurance shall commence from the date on which the

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provisions of subsection (1) above are satisfied in relation to the pension and shall be payable for life.

(4) Where a widow or surviving civil partner entitled to an old age pension by virtue of her late husband's or civil partner's insurance remarries or enters into a further civil partnership or a civil partnership subsequent to her marriage, 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 or surviving civil partner not entitled to a survivor'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 or civil partner'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 or her, 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.**

21.(1) Subject to subsections (2) and (4) below and, in the case of an old age pension, to subsections (5) and (6) below, the monthly rate of an old age pension, a survivor's bereavement allowance or a widowed parent'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 2.

(2) Where a person does not satisfy the condition in section 11(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 2, the rate of the increase paid under this section shall be the rate set out in the fourth column of that Part.

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(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—

- (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) Except in the case of widowed parent's allowance, a benefit shall not be increased under this section in respect of more than four children.

(5) In the case of an old age pension—

- (a) where a man and his wife or civil partners 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;
- (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.

(6) Where, but for subsection (5)(a) above, a man and his wife or civil partners 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.**

22. The monthly 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 2 (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 or civil partner who is not over pensionable age and who is not engaged in any gainful occupation from which her monthly earnings exceed £260.25; 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 or civil partner 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.**

23.(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 after a particular date or the yearly average of contributions paid or credited.

(2) Subject to subsection (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 2 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 21 above.

#### MISCELLANEOUS PROVISIONS AS TO BENEFIT

##### **Claims and notices.**

24.(1) Subject to subsection (3) 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 (3) 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) Nothing in the foregoing provisions of this section relating to the making of claims shall affect any right of a surviving spouse or civil partner to an old age pension by virtue of the insurance of their deceased spouse or civil partner in respect of whose death he or she was immediately before attaining pensionable age entitled to survivor's benefit.

(4) Any claim for any benefit under this Act may be treated –

- (a) for the purposes of this Act as a claim, in the alternative, for such other benefit under this Act as may be prescribed; or
- (b) for the purposes of the Social Security (Employment Injuries Insurance) Act, as a claim, in the alternative, for such benefit under that Act as may be prescribed,

and any claim for benefit under the Social Security (Employment Injuries Insurance) Act, may be treated for the purposes of this section as a claim, in the alternative, for such benefit under this Act as may be prescribed.

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(5) For the purposes of this Part, any claim or notice made or sent by post shall be treated as made or given on the day on which it was posted.

## **Disqualification for imprisonment.**

25.(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, husband or civil partner, 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.**

26.(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, husband or civil partner;
- (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.**

27. Regulations may provide that a person who would be entitled to any benefit but for the operation of either section 25 or 26 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 the 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.**

28. 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.**

29.(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 civil partner 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 V**  
**ADMINISTRATION AND LEGAL PROCEEDINGS**  
**ADMINISTRATION**

**Determination of claims and questions by Director.**

30.(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 Government 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.

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

## Appeals to the Board.

31.(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 32, 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.

## Procedure.

31A. Regulations may—

- (a) prescribe the procedure to be followed in connection with the consideration and determination of questions and claims by the Director, and
- (b) enable the Director to obtain a medical opinion on a question or claim from a medical practitioner appointed by the Minister for the purpose.

## Fees.



31B. Regulations may provide for the payments of such fees as may be specified in the regulations to medical practitioners appointed under section 31A above.

**Appeals to Supreme Court.**

32.(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.**

33.(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 Government, be referred for decision to the Supreme Court.

**Administration of benefit.**

34.(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;

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- (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 1933 (No.2 of 1933).

## **Interim payments, arrears and repayments.**

35.(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 any person’s liability for contributions; 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–

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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 civil partner, 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.

**Recovery of sums by deduction from benefit.**

36.(1) Where, in the case of any person, any sum may by virtue of section 35 be recovered by deduction from benefit under this Act, it may instead be recovered from him in whole or in part by deduction from any payment under the Social Security (Employment Injuries Insurance) Act, and any amount so recovered shall be paid to the Fund.

(2) Where, in the case of any person, any sum may by virtue of any provision of the Social Security (Employment Injuries Insurance) Act, be recovered by deduction from any payment under that Act, it may instead be recovered from him in whole or in part by deduction from benefit under this Act, and any amount so recovered shall be paid into the Employment Injuries Insurance Fund.

**Inspectors.**

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37.(1) For the purposes of this Act, the Minister may appoint such inspectors as he may determine.

(2) An inspector appointed under this Act, shall, for the purposes of the execution of this Act, have power to do all or any of the following things, namely—

- (a) to enter at all reasonable times any premises or place liable to inspection under this section;
- (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place;
- (c) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Act on which he may reasonably require information, every person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an insured person, and to require every such person to be so examined;
- (d) to exercise such other powers as may be necessary for carrying this Act into effect.

(3) The occupier of any premises or place liable to inspection under this section, and any person who is or has been employing any person, and the servants and agents of such occupier or other person, and any insured person, shall furnish to an inspector all such information and produce for inspection all such documents as the inspector may reasonably require for the purpose of ascertaining whether contributions are or have been payable, or have been duly paid, by or in respect of any person, or whether benefit is or was payable to or in respect of any person.

(4) A person who—

- (a) wilfully delays or obstructs an inspector in the exercise of any power under this section; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required so to do under this section, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale in the case of a first offence under this subsection, and a fine of twice the amount at level 3 on the standard scale in the case of a second or subsequent such offence,

but no one shall be required under this section to answer any questions or to give any evidence tending to incriminate himself.

(5) For the purposes of subsection (4) an offence shall be treated as not being a first offence if the offender has previously been found guilty of an offence against the provisions of the Social Security (Employment Injuries Insurance) Act, which relate to inspectors, and for the purposes of the provisions of that Act an offence shall not be treated as a first offence if the offender has previously been found guilty of an offence against subsection (4) of this section.

(6) Every inspector shall be furnished with a certificate of his appointment, and on applying for admission to any premises or place for the purposes of this Act shall, if so required, produce such certificate.

(7) The premises and places liable to inspection under this section are any premises or places where an inspector appointed under this Act has reasonable grounds for supposing that any persons are self-employed or employed, except that they do not include any private dwelling-house not used by or by permission of the occupier for the purposes of a trade or business.

**Exemption from stamp duty.**

38. Stamp duty shall not be chargeable upon documents used in connection with business under this Act as may be specified in Schedule 4.

**LEGAL PROCEEDINGS**

**General provisions as to offences or penalties.**

39.(1) A person who –

- (a) omitted.
- (b) omitted.
- (c) for the purpose of obtaining 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–
  - (i) knowingly makes any false statement or false representation; or
  - (ii) 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

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- (iii) 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) Regulations may provide for the recovery on summary conviction of monetary penalties in respect of any offence under this Act, being a contravention of or failure to comply with regulations, so however, that such penalties shall not exceed the amount at level 1 on the standard scale for each offence or, where the offence consists of continuing any such contravention or failure after conviction thereof,  $1/10^{\text{th}}$  of the amount at level 3 on the standard scale together with a further  $1/10^{\text{th}}$  of the amount at level 3 on the standard scale for each day on which it is so continued.

(3) Where an offence against this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he as well as the body corporate shall be treated as guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) *Omitted.*

(5) Nothing in this section shall be construed as preventing the Director or such other person authorised by him in writing from recovering by means of civil proceedings any sums due to the Fund.

## **General provisions as to prosecutions.**

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

(2) Any inspector or other 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, husband or civil partner of the accused shall be competent to give evidence, whether for or against the accused.

(6) The wife, husband or civil partner 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 civil partnership by the accused.

**Civil proceedings to recover sums due to the Fund.**

41.(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 section 65 of the Magistrates' Court Act or anything in any law to the contrary, be brought at any time.

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

(4) Proceedings for the recovery as civil debts of sums due to the Fund, other than by summary proceedings, may be instituted by the Director or any person authorised by him in writing.

(5) If the employer, being a body corporate, fails to pay to the Fund any sum which the employer has been ordered to pay, that sum, or such part thereof as remains unpaid, shall be a debt due to the Fund jointly and severally from any directors of the body corporate.

**PART VI**  
**MISCELLANEOUS**

**Crown servants.**

42. This Act shall apply to persons employed by or under the Crown, subject to any special provision made by or by virtue of any other section thereof, in like manner as if the employer

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were a private person, which such modifications as may be made therein by regulations for the purpose of adapting the provisions of this Act to the case of such persons.

## **Members of the Gibraltar Regiment.**

43.(1) Subject to any prescribed exceptions, any person who, being over school leaving age and under pensionable age, is serving as a member of the Gibraltar Regiment shall, notwithstanding that he does not fulfil the conditions of section 3, be an insured person, and any such person while he is serving as aforesaid shall, in respect of his membership of that Regiment, be an employed person.

(2) Without prejudice to the generality of any other power to make regulations, the Minister may make regulations modifying in such manner, subject to the foregoing provisions of this section, as he thinks proper the provisions of this Act, in their application in relation to persons who are or have been members of the Gibraltar Regiment.

## **Married women.**

44. Without prejudice to the generality of any other power to make regulations, the Minister may make regulations modifying in such manner as he thinks proper the provisions of this Act in their application in relation to married women, and in relation to women who have been married and during their marriage were affected by any such regulations.

## **Reciprocal agreements with United Kingdom, dominions and foreign countries.**

45.(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, or an international organisation, providing for reciprocity in matters relating to payments in respect of widowhood, surviving civil partners, orphanhood, retirement or old age, and any related matters to which the Social Security Coordination Regulations apply, 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) may 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);



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- (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.

(3) The Social Security (Employment Injuries Insurance) and Social Security (Insurance) (Amendment) Order, 1997 (Legal Notice No. 23 of 1997) shall have effect in relation to this Act as if made in exercise of the powers conferred by subsection (1) above; and this Act shall have effect subject to such modifications as may be required for the purpose of giving effect to the provisions contained in the Letters set out in the Schedule to that Order.

(4) In this section—

“international organisation” means an organisation of which—

- (a) two or more sovereign powers are members; or
- (b) the governments of two or more sovereign powers are members;

“Social Security Coordination Regulations” means—

- (a) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as it forms part of domestic law by virtue of section 6 of the European Union (Withdrawal) Act 2019;
- (b) Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) 883/2004, as it forms part of domestic law by virtue of section 6 of the European Union (Withdrawal) Act 2019;
- (c) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as it forms part of domestic law by virtue of section 6 of the European Union (Withdrawal) Act 2019;
- (d) Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of

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social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as it forms part of domestic law by virtue of section 6 of the European Union (Withdrawal) Act 2019; and

- (e) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, as it forms part of domestic law by virtue of section 6 of the European Union (Withdrawal) Act 2019.

## **Amendment of rates of benefit.**

46.(1) The Minister may by order amend the sum in section 22 above and the sums specified in Schedules 1 and 2 below.

(2) No order shall be made under this section unless it has been approved by resolution of the Parliament.

## **Amendment of Public Finance (Control and Audit) Act.**

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

- (a) in paragraph (xiii) of section 12(e) (funds to which advances may be made), by replacing “Pre-Occupational Pensions Payments Fund” with “Open Long-Term Benefits Fund”;
- (b) by renumbering the paragraph (xiv) of section 12(e) inserted by the Social Security (Closed Long-Term Benefits and Scheme) Act 1996, and replacing it with—  
“(xv) Closed Long-Term Benefits Fund”; and
- (c) in Schedule 1, after “Note Security Fund (Currency Note Act)”, by inserting “Open Long-Term Benefits Fund (Social Security (Open Long-Term Benefits Scheme) Act 1997)”.

## **Revocation of instruments.**

48. The following shall cease to have effect, namely—

- (a) the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Regulations 1993;

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- (b) the Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Fund Rules 1993;
- (c) the Pre-Occupational Pensions Payments Fund Regulations 1993; and
- (d) the Pre-Occupational Pensions Payments Fund (Establishment) Notice 1993.

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## **SCHEDULE 1**

### **Combined Social Insurance and Other Contribution Rates.**

#### **Rate of Contribution for an Employed Person.**

##### **Employee - 10% of Gross Earnings.**

Subject to a maximum contribution of £1,430.00 per annum.

Contributions are payable weekly subject to a minimum of £5.50 per week and a maximum of £27.50 per week.

##### **Married Women.\***

£14.50 per week.

\*This rate only applies to those married women who prior to 1 January 1985 elected not to pay contributions to the Social Insurance Scheme.

##### **Employer - 20% of Gross Earnings.**

Subject to a maximum contribution of £1,898.00 per annum.

Contributions are payable weekly subject to a minimum of £16.50 per week and a maximum of £36.50 per week.

Where the person employed is 60 years or over or one who has retired at age 55 by operation of law, only the employer's share of the contribution is payable.

##### **Rate of Contribution for a Self-Employed Person - 20% of Gross Earnings.**

Subject to a maximum contribution of £1,742.00 per annum.

Contributions are payable weekly subject to a minimum of £11.00 per week and a maximum of £33.50 per week.

##### **Rate of Additional voluntary Contribution for a Self-employed Woman.**

In addition to the rate of contribution for a self-employed person a fixed amount of £2.20 per week is optionally payable for the purpose of Maternity Allowance.

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### **Apportionment of Contributions.**

All contributions shall be deemed to be collected as follows–

Social Security (Employment Injuries Insurance) Act	0.6%
Social Security (Insurance) Act	1.2%
Social Security (Open Long-Term Benefits Scheme) Act	28.2%
Medical (Group Practice Scheme) Act	70%

All contributions collected with effect from 1 July 2010 shall be apportioned as follows:

Gibraltar Health Authority – GPMS	70.00%
Statutory Benefits Fund	30.00%
Total	100.00%.

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## SCHEDULE 2

### PART I

Section 11(2)

#### STANDARD RATES OF BENEFITS AND OF INCREASES FOR DEPENDANTS

Description of Benefit	Monthly Basic Rate	Increase for wife, civil partner or adult dependant where payable	Increases for children not exceeding 4*, where payable for child
1. Survivor's Benefit:			
(a) Survivor's Bereavement Allowance.	£617.00	-	£75.30
(b) Widowed Parent's Allowance.	£520.20	-	£75.30*
(c) Survivor's Pension.	£520.20	-	-
2. Guardian's Allowance.	£132.80	-	-
3. Old Age Pensions:			
(a) where the pension is payable to a woman by virtue of a husband's or civil partner's insurance, and he is alive, or where the pension is payable to a man by virtue of his wife's or civil partner's insurance and she is alive.	£260.25	-	£75.30
(b) in any other case.	£520.20	£260.25	£75.30

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

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## PART II

Section 11(3)

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

Description of Benefit	Monthly Basic Rate	Increase for wife, civil partner or adult dependant where payable	Increases for children not exceeding 4*, where payable for child
	£	£	£
1. Survivor's Benefit:			
(a) Survivor's Bereavement Allowance.	5.22	–	1.09
(b) Widowed Parent's Allowance.	2.61	–	0.57*
(c) Survivor's Pension.	2.61	–	–
2. Guardian's Allowance.	1.09	–	–
3. Old age pensions:			
(a) where the pension is payable to a woman by virtue of a husband's or civil partner's insurance, and he is alive, or where the pension is payable by virtue of his wife's or civil partner's insurance to a man who is permanently incapable of self-support, and she is alive.	1.74	–	0.57
(b) in any other case.	2.61	1.74	0.57

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

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## PART III

Section 11(3)

### ADDITIONAL CONTRIBUTIONS RATES OF BENEFITS AND OF INCREASES FOR DEPENDANTS

Description of Benefit	Monthly Basic Rate	Increase for wife, civil partner or adult dependant where payable	Increases for children not exceeding 4*, where payable for child
	£	£	£
1. Survivor's Benefit:			
(a) Survivor's Bereavement Allowance.	8.70	–	1.09
(b) Widowed Parent's Allowance.	6.53	–	1.09*
(c) Survivor's pension.	6.53	–	–
2. Guardian's Allowance.	2.18	–	–
3. Old age pensions:			
(a) where the pension is payable to a woman by virtue of a husband's or civil partner's insurance, and he is alive, or where the pension is payable by virtue of his wife's or civil partner's insurance to a man who is permanently incapable of self-support, and she is alive.	3.92	–	1.09
(b) in any other case.	6.53	3.92	1.09

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



SCHEDULE 3

PART I. Section 11(2)(b).

CONTRIBUTION CONDITIONS

SURVIVOR'S BENEFIT

1.(1) The contribution conditions for survivor's benefit are that—

- (a) not less than two hundred and fifty contributions have been paid by the husband, wife or civil partner 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, wife or civil partner 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.

OLD AGE PENSION

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

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- (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 11(3).

**ADDITIONAL CONTRIBUTION CONDITIONS**

Benefits at the rates specified in Part III of Schedule 2 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) Survivor's benefit:.....not less than 104;
- (b) Guardian's allowance:.....not less than 26;
- (c) Old age pensions:.....not less than 104.

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**SCHEDULE 4**

Section 38.

**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

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<sup>i</sup> (1) Nothing in this Act shall entitle any person to claim any benefit to which he was not entitled to prior to the coming into force of this Act in respect of any period prior to the 1st July 2009.

(2) Subject to subsection (1), a claim for a survivor's benefit—

- (a) made before the 1st July 2011; and
- (b) by any person who considers he may have been entitled to that benefit to which he would not have been entitled to prior to 1st July 2009,

shall be deemed to have been made within the prescribed time for claiming such benefit.

(3) Where a claim made in accordance with this section is determined in the claimant's favour he shall, subject to subsection (1), 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 the said benefit.