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CHAPTER 4

Widow's benefit

Part 1: Whether claimant is a widow

Sections 24-26 of the Social Security Act 1975 ("the Act").

1 Certificate of marriage

i A certificate of marriage is *prima facie* evidence of a valid marriage and it is for those who question it to prove the contrary. Where the only evidence of non-validity of the claimant's marriage was that she had been previously married to another man who had not been seen or heard of for 20 years, it was held that she was entitled to widow's benefit in respect of her second husband. C.G. 203/49

2 Presumption of marriage

i The presumption of a valid marriage which arises from the acceptance for a substantial period that a man and woman are married can only be rebutted by cogent evidence. Thus, in a case where it had been accepted for 24 years that the claimant and the deceased were man and wife, it was held that the fact that no trace could be found of her marriage, and all the witnesses were dead, was insufficient evidence to rebut the presumption that the claimant was validly married. See as to the standard of proof of evidence rebutting the presumption R(G) 2/70, para. 17 *infra* 4.1.3 i. C.G. 53/50

ii The claimant was married in a Sikh Gurdwara (temple) in London. The Gurdwara was not registered for the solemnization of marriages under Part III of the Marriage Act 1949. The Commissioner held that an irregular *bona fide* ceremony constituted a valid marriage because there is a presumption of marriage from long cohabitation even without a ceremony. The CA held that the marriage was valid because there was insufficient evidence to rebut the presumption. It was also held that non-compliance with the requirements of Part III of the Marriage Act will invalidate a marriage only if the parties knowingly and wilfully intermarried contrary to those requirements. R(G) 2/70 was distinguished, see 4.1.3i. R(G) 1/00

3 Presumption of marriage not established

i The claimant's marriage to her first husband having been dissolved in 1946, she was free to marry a Mr. E., with whom she was cohabiting as his wife and with whom she continued to live until his death in 1968. In July 1947 she and Mr. E. had gone through what was alleged to have been a form of marriage (see paras. 3 and 8). It was held (see paras. 13-15) that, on the evidence, the presumption of marriage did not arise and that the claim for widow's benefit failed. See as to the standard of proof para. 17. R(G) 2/70

ii The claimant claimed widow's benefit following the death of her long term partner. They had discussed marriage but decided against it regarding themselves as committed without the need for a marriage certificate. The claim was refused on the grounds that the claimant was not 'a woman who had been widowed'. The claimant appealed on two grounds. Firstly, that she could still qualify for WB by presumption of marriage through long cohabitation. Alternatively that by virtue of the European Convention on Human Rights, entitlement to widow's pension should be extended to longstanding unmarried partners. The CA held that presumption of lawful marriage from long cohabitation as analysed in R(G) 1/00 had been rebutted by compelling evidence that the parties had never married and had determined not to do so. See also Chapter 19 for the Human Rights aspect. R(G) 1/04

4.1.4-5

4 Presumption of death

- R(G) 1/62 i The claimant's husband had deserted her and she was subsequently awarded a decree of presumption of his death by a Scottish court under the Presumption of Life Limitation (Scotland) Act 1891. It was held, for the reasons given at paras. 3 and 4, that for the purposes of her claim for a widow's pension under the NI Acts, it had not been established that she was a widow. See also R(G) 1/51 but compare R(G) 4/57. And see Presumption of Death (Scotland) Act 1977.
- R(G) 1/80 ii The claimant's husband disappeared in August 1959. Having obtained a decree under the Presumption of Life Limitation (Scotland) Act 1891 the claimant claimed WB. That claim was eventually decided by the Commissioner who, on 16 September 1970, refused it being not satisfied that the claimant's husband was or should be presumed dead. Following the coming into force on 1 March 1978 of the Presumption of Death (Scotland) Act 1977 the claimant sought a review of the Commissioner's decision. The Commissioner held that the coming into force of that Act was a relevant change of circumstances justifying a review and that the insurance officer, the local tribunal and the Commissioner are statutory tribunals in terms of S.17 of that Act. When considering whether a person should be presumed to be dead it is necessary to show that the person is a "missing person" within the meaning of S. 1 of that Act and that of itself involves some consideration of the circumstances of the alleged disappearance of the person. In the instant case the Commissioner was not satisfied that the claimant's husband had not been known to be alive for a period of at least seven years and accordingly the Commissioner's decision of 16 September 1970 could not be revised.

5 Irregular marriages

- R(G) 10/53 i A woman who went through a ceremony of marriage with her uncle claimed WB when he died. But it was held that she was not the deceased's widow because the parties to the ceremony of marriage were within the prohibited degrees of relationship and the marriage was accordingly null and void for all purposes.
- R (G) 2/63 ii In the case of a widow who went through a form of marriage with a man in America, it was held that, in the light of further information which was obtained, the marriage was void for the reason that at the time of it the man had been married to

another woman. The claimant was, accordingly, entitled to WB under the National Insurance Acts.

iii A claimant whose previous marriage had ended by divorce went through a Church of England ceremony of marriage without disclosing that she had been divorced. She used her maiden name and was so described in the banns as published and in the marriage certificate, both of which gave her status as that of a spinster. It was held that the second marriage was null and void by reason of undue publication of banns. R(G) 1/68

6 Irregular marriages in Scotland

See also 7.1.4 below

i A claimant for WB in respect of a man with whom she had lived in Scotland for over 20 years was held not to have proved that an irregular marriage by the law of Scotland was constituted. When the claimant and the man first lived together she knew that his wife was living, but later heard that the wife had divorced her husband. Neither the claimant nor the man with whom she was living took any steps to verify that information. It was held, on the facts, that it could not be inferred that there could have been the necessary exchange of matrimonial consent and the claim for widow's benefit was disallowed. See also R(G) 8/56 but compare R(G) 7/56. R(G) 1/55

ii Whether marriage by cohabitation, habit and repute is established is a question of fact. Thus the claimant was held not to be entitled to WB in respect of a man with whom she had cohabited for many years on the ground that, when all the circumstances which are set out in paragraphs 2-4 of the headnote to the decision were considered as a whole, marriage by habit and repute could not be sustained. See also paragraphs 6-9. R(G) 1/71

iii A woman claimed WB in respect of the death of the man with whom she had been living in Scotland for over 20 years, but with whom she had contracted no regular marriage. At the start of the cohabitation both knew that each had a spouse living. Both knew that the claimant's marriage was later dissolved. The man's marriage had in fact been dissolved some 11 years before that of the claimant, but neither she or he knew of this to the date of his death. It was held that the claimant had not established a marriage by habit and repute and she was not entitled to widow's benefit. The law concerning marriage by habit and repute in the light of the knowledge or lack of knowledge of any impediment to marriage considered together with the legal authorities on the subject. CSP 2/77 not followed. See also R(G) 4/84, 3.1.1 ii *above*. R(G) 2/82 (T)

iv To establish an irregular marriage by cohabitation with habit and repute under Scottish law the parties must have so cohabited with the habit and repute of married persons for a considerable period. How long is not laid down, but the sufficiency of the period is to be judged in the light of all the circumstances. Tacit consent to marriage cannot be inferred from cohabitation with habit and repute so long as there is an impediment to the constitution of a valid marriage, but after the removal of the impediment, tacit consent may be deducted from continued cohabitation. The question whether tacit consent can then be inferred is to be decided having regard to all the circumstances throughout the whole period of the cohabitation. R(G) 5/83 (T)

7 Effect of decree of nullity of marriage

i Following the death of her husband the claimant was awarded WB until, some 8 years later she remarried. She and her second husband lived together for less than 6 months, however, and it was, subsequently found that the marriage was voidable on the ground of non-consummation. A year later it was annulled. As the law then was, the claimant reverted to the status of a widow retrospectively and R(G) 3/72

it was held (see paras 3-8) that a widowed mother's allowance was not payable to her for the period between the date of her second marriage and the date of decree absolute of nullity - namely 25th January 1971. R(G) 1/53 not followed. See also section 5 of the Nullity of Marriage Act 1971, which came into force on 1st August 1971.

R(G) 1/73
(T) ii A widow was awarded WB until she remarried, but she lived with her second husband for no more than a week and some 12 months later a decree of nullity was granted on the ground of the claimant's wilful refusal to consummate the marriage. The decree nisi and the certificate making it absolute were in the form authorised by the Matrimonial Causes Rules 1971 following the coming into force of the Nullity of Marriage Act 1971 (see para. 6). It was held that a decree of nullity on a voidable ground is no longer retrospective and that the whole period from the date of the claimant's remarriage was a period after her marriage within the meaning of (what is now) section 26 of the Act so that widow's pension was not, and would not in future be, payable to the claimant. See paragraphs 18-26; and see also R(G) 2/73 and R(G) 1/85. Followed in R(G) 1/85.

R(G) 1/85 iii A widow in receipt of a widow's pension was at all material times domiciled and resident in Scotland. On 6.12.80 she married in Scotland a man who was domiciled in Northern Ireland and she returned her widow's pension order book to the authorities. She went to live with her husband in Northern Ireland, but after only 7 weeks they separated and she returned to live in Scotland. She subsequently obtained in the High Court in Northern Ireland a decree of Nisi of nullity of her marriage on the grounds of non-consummation due to impotency and she applied for the reinstatement of her widow's pension with effect from 6.12.80. The question of her entitlement to the pension after marriage in 1980 depended upon the validity of that marriage and so upon the question whether the decree of nullity avoided the marriage *ab initio*, which on the above grounds would have been in accordance with the law of Scotland, or whether it avoided it only from the date of the decree absolute, which would have been in accordance with the law of N. Ireland. The Commissioner held that the decree of the Northern Ireland Court should be regarded as a 'foreign' decree in Scotland and the question of its recognition was to be resolved under the rules of common law and the decree of nullity of the Northern Ireland Court should be recognised in the present case (para. 16); that the effect to be attributed in Scotland to the decree should be the effect which the decree had under the law of Northern Ireland where the decree was pronounced (para. 24); and accordingly that the claimant's marriage on 6.12.80 had to be treated as having subsisted from the date of the ceremony until the date of the decree absolute of nullity and so widow's pension was not payable for any period after 6.12.80, because that was a period 'after the widow's remarriage' in the terms of the proviso to s. 26(3) of the Social Security Act 1975 (para. 25). R(G) 1/73 *above* followed.

8 Marriage outside Great Britain

R(G) 18/52
(T) i A claimant for WB had been married to her deceased husband in Sierra Leone according to the native law, which allowed polygamy. It was held by a Tribunal of Commissioners that widow's benefit was not payable on the ground that 'widow', for the purpose of the National Insurance Act, means a woman who was married to her husband by a marriage in the sense of the law of Great Britain; i.e. the voluntary union for life of one man and one woman to the exclusion of all others.

R(G) 1/70 ii The claimant was married to man in India, in accordance with the Sikh religion, in 1951 during the life-time of the man's first wife, whom he had married some 3 years previously, also in accordance with the Sikh religion. Prior to the Hindu Marriage Act 1955 Indian law regarded Sikh polygamous marriages as valid. It was not accepted that the first marriage had been terminated by a divorce according to Sikh custom before the man married the claimant and that widow's allowance was not, accordingly, payable to her.

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- iii The claimant married her husband according to Hindu law and custom. The husband, born in what was India, was later granted British citizenship. He married a second wife in Bangladesh by Hindu custom. Both women were disallowed WB on the ground that neither marriage was monogamous at the date of the husband's death. Under English law every person receives a domicile of origin at birth. A domicile of choice can be acquired by residing in a country other than that of the domicile of origin while intending to stay there permanently or indefinitely, and may only be abandoned by ceasing to reside and ceasing to intend to reside there, either acquiring a new domicile or reviving the domicile of origin. The husband acquired a domicile of choice in England, abandoning it before his second marriage, his domicile of origin reviving. He was therefore subject to the "distinctive legal system" of Bangladesh. The second marriage was valid under English law and could not be invalidated even if he again acquired an English domicile of choice. See also R(G) 18/52 and R(G) 1/70. R(G) 1/93
- iv The claimant was married in East Pakistan. Her widowed mother's allowance was reviewed and revised on the grounds that the marriage was polygamous, her late husband having married a second wife in East Pakistan. The claimant contended the second marriage was invalid because it happened without her knowledge and consent contrary to Islamic law. As the husband had not acquired a domicile of choice at the time of his second marriage he had the capacity to contract that second marriage which conformed with the law of Bangladesh. The husband was under no duty to inform his first wife that he was taking a second wife, let alone seek her consent. The second marriage was therefore a valid polygamous marriage. R(G) 4/93
- v The claimant's entitlement to WB depended on whether her marriage to her late husband was monogamous at the date of his death. Her late husband pronounced *Talaq* in the UK in respect of his first wife. As the marriage was not terminated in accordance with the Domicile and Matrimonial Proceedings Act 1973 the claimant's marriage was polygamous. R(G) 1/94
- vi The claimant married her husband when both were domiciled in Pakistan. The husband came to England for employment and later registered as a British citizen. He went through a ceremony of marriage with his second wife in Pakistan and returned with her to England where they lived together until the husband's death. The claimant (the first wife) claimed WB which was refused on the ground that she was not her husband's widow for social security purposes, because his marriage was not monogamous at the time of his death. It was held that it was not necessary in order to acquire a domicile of choice that a person should have decided to make his permanent home in the country concerned. An intention, formed independently of external pressures, to reside indefinitely in a territory subject to a distinctive legal system, with only vague or floating possibilities of returning to the territory of the domicile of origin, would suffice to establish a domicile of choice. The standard of proof required is not that of proof beyond reasonable doubt. There is no presumption that a person does not acquire a domicile in a country whose religion, manners and customs, differ widely from those of his own country. The husband had acquired a domicile of choice in England with the result that his second marriage was invalid. See also R(S) 2/92, R(G) 1/93 and R(G) 4/93. R(G) 1/95
- vii The claimant divorced her first husband by *talaq* (oral Islamic divorce) under Bangladeshi law. The *talaq* was not registered with the Union Council as required by the Muslim Family Laws Ordinance 1961. WB in respect of her second husband was disallowed because she had not validly divorced her first husband. Expert evidence said that non-registration did not invalidate a *talaq* under Bangladeshi law and that Union Councils were inoperative at the relevant time. That evidence was disputed on appeal to the Commissioner. The Commissioner held that a question of foreign law is a question of fact. R(G) 2/71 and R(G) 4/93 were distinguished, see 3.2.5i and 4.1.8v. It was also held that the question of the validity of the divorce was "incidental" to the R(G) 2/00

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validity of her second marriage. Therefore a question did not arise whether the *talaq* should be recognized under s. 51 of the Family Law Act 1986.

R(G) 1/97 viii Held that the first wife in polygamous marriage was not entitled to widowed mother's allowance if the marriage was not monogamous at the time of the husband's death.

R (P) 2/06 ix A tribunal of Commissioners considered appeals from three claimants where widows benefits had been refused. In each case the claimant was polygamously married to her husband, the marriages were recognized in English law, but each marriage was actually polygamous at the date of the death of the husband in respect of whose contributions the claim to benefit had been made. On appeal it was common ground that the cases were correctly decided under domestic law. The only issue before the Commissioners was whether the difference in treatment of monogamously and polygamously married women amounted to discrimination, contrary to Art. 14 of the Convention. The Commissioners held that the failure to treat the two situations alike was not discrimination because they are relevantly different and thus no further justification was necessary.

**PART 2: LIVING TOGETHER AS HUSBAND AND WIFE
(FORMERLY TERMED COHABITING)**

See the proviso at the end of sections 24-26 of the Act.

1 Meaning of living together as husband and wife

i A woman is cohabiting with a man as his wife if she and he are carrying on a common home in the manner in which husbands and wives do. It is their general relationship which has to be looked at; neither their habits in relation to sexual intercourse nor the manner in which the common household fund is spent or provided is conclusive. See also R(G) 11/55.

2 Evidence of living together as husband and wife

i A man and woman of marriageable age lived together for 2 years in a caravan sharing a double bed. Admittedly sexual intercourse took place between them and the man was the father of the woman's child. They intended to get married when the man's marriage should be dissolved. It was held that the evidence of cohabitation in those circumstances is overwhelming and could not be outweighed by the financial arrangements between the man and the woman, whatever they might be. R(G) 2/64

ii Proof of sexual relations is not an essential element of cohabitation between a man and a woman, but if such relations are admitted that is strong evidence of cohabitation. It is also cogent evidence of cohabitation when a man and woman are using the same accommodation and the woman has assumed the man's surname, whatever the reason may be. Thus when, at the date of her late husband's death, the claimant had been separated from him for some 8 years and for a time had been living in the flat of a man friend she had known for very many years, it was held that, although the claimant stated there were no sexual relations between them, that the man was rarely in the flat except at weekends, when he slept on a settee in the living room, and that it was solely to allay gossip that she adopted his surname, there was sufficient evidence that she was cohabiting with him as his wife. R(G) 5/68

3 Temporary absence of one party

i The man with whom a widow was cohabiting left her after a quarrel and went to live in lodgings elsewhere. Some 2 months later he returned to live with the claimant, allegedly as a lodger, because he had heard she was in financial difficulties. It was held that cohabitation did not continue during the man's absence but that the claimant resumed cohabitation with him on his return since there was no ground for saying that there had been any material change in their relationship. But compare R(G) 147/59. R(G) 11/59

ii The relationship between a man and a claimant for widow's benefit had, admittedly, been that of a de facto husband and wife. The man left her, but 2 months later returned to the house in which she lived and then occupied the upper part of it. He did his own shopping and cooking, but shared the kitchen. She and the man were joint owners of the house and had shared payment of the mortgage, but it was accepted that she only re-admitted him to the house because she could not pay the mortgage without financial help and that she had nothing else to do with him. In those circumstances it was held that there had been a complete change in the relationship between the parties and that cohabitation had not been resumed. R(G) 14/59

4.2.4

4 General considerations

- R(G) 11/55 i A married man with whom a woman in receipt of widow's benefit had lived for a time before her husband's death finally left his wife and went to live with the claimant and her two daughters. At first they lived in a house which contained four bedrooms, but later moved into a smaller house with two bedrooms only. They wished to marry if the man were free to do so. The plea that the man was simply a lodger in the claimant's house was rejected and it was held that the claimant was cohabiting with a man as his wife and was, therefore, disentitled to widow's benefit.
- R(G) 3/71 ii When the question of cohabitation during a certain period is being considered the relationship of the parties at an earlier period, and the circumstances in which that relationship rose, may be looked at in order to throw light on their relationship during the period at issue. Whether a woman is cohabiting with a man as his wife requires examination of 3 main areas of their relationship: (1) sexual; (2) financial; and (3) general. Although all three are as a rule relevant, no single one is necessarily conclusive. It was held that in the circumstances of the case (see paragraphs 4 and 6-9) the claimant was cohabiting with a man as his wife and that widowed mother's allowance was not payable to her. See also R(SB) 32/84 and R(SB) 19/85.
- R(G) 2/72 iii To decide whether a widow is cohabiting as a man's wife it is necessary to look at the whole picture. Important elements to be considered include living together in a house and habitually sharing a bed, being the parents of a child which she was expecting when he came to live with her, having sexual intercourse and the pooling of financial resources. See paragraph 6.
- R(G) 1/79 iv Following the death of her husband the claimant claimed and was awarded widow's benefit in her married name. A few months later she changed her surname by statutory declaration to that of a man with whom she was living in the same house and with whom she had had a business relationship for a number of years. Electoral rolls showed that she had used the man's surname for several years. It was held that evidence that a woman had lived in the same house as a man for a number of years using his name as his wife was evidence from which a sexual relationship could be inferred if such a finding were necessary. Financially it was probable that their business partnership extended to their living partnership and that resources were shared. Their general relationship possessed all the attributes of a woman living with a man as his wife.
- R(G) 3/81 v A widow in receipt of a widow's pension under the Act had been living for some years in a widower's house as his housekeeper. She received no wage. There was no sexual relationship between them. Their relationship was formal. She paid half the cost of the food and £5 a week towards the general expenses and paid for the cost of the telephone which she had had installed. The Commissioner held that they had not been living together as man and wife; that that concept was the same under the Act as under the Supplementary Benefits Act 1976; that the criteria under both were the same and that the High Court decisions under the one were of great persuasive force in construing the meaning of the equivalent phrase under the other. The criteria (membership of the same household; stability of the association; financial support; sexual relationship; mutual children and public acknowledgement of the association) considered and explained.

Part 3: General

1 Whether a person is 'residing' with a widow

i A claimant for widowed mother's allowance had a son aged 16 who, after a training course in agriculture, was employed on a farm where he lived in during the week but spent week-ends and holidays with his mother. It was held that he was residing with her and that she was entitled to widowed mother's allowance. R(G) 1/57

2 Calculation of period for which widow's allowance payable

i A local tribunal decided that, the claimant's husband having died on a Tuesday, widow's allowance began to accrue on the following Wednesday. On appeal it was held that the expression in section 17(2)(a) of the National Insurance Act 1946 'the 13 weeks next following the husband's death' means 'the 13 (pension) weeks from and including the day of the husband's death'. (N.B.: The period for which widow's allowance is now payable is 26 weeks - see section 24(2) of the Act.) R(G) 3/52

3 Not a 'child of the claimant's family'

i When the claimant's husband died she was caring for his brother's child, whom she later adopted. The brother paid her the amount he received by way of a family allowance for the child but nothing more. It was held that that payment did constitute 'maintenance' and that the child must be treated as included in his family and not in that of the claimant. Widowed mother's allowance was not therefore payable to the claimant. R(G) 3/61

- R(G) 4/62 ii A widow, her daughter and the daughter's illegitimate child lived together in the same house. The claimant looked after the child while her daughter was at work. The daughter could not support herself and her child, but she had not relinquished parental control. It was held that there is a presumption that when a mother and her child are living together in the same house the child is 'living with' the mother and that the daughter's child could not therefore be said to be a child of the claimant's family.

4 Entitlement to widow's pension on cessation of widowed mother's allowance

- R(G) 3/62 i The claimant's entitlement to widow's pension depended upon her ceasing to be entitled to widowed mother's allowance and upon her being over the age of 50. her fiftieth birthday, and the eighteenth birthday of her daughter (in respect of whom the allowance had been payable), both fell on 5th September and it was held that the respective anniversaries commenced at midnight between the 4th and 5th September, at which point of time the two events - the cessation of the claimant's entitlement to widowed mother's allowance and her being over 50 years of age - coincided. (N.B.: The material age is now 40, see section 26(1)(b) of the Act.)
- R(G) 2/55 ii The claimant became a widow in 1947, at which time she was not in Great Britain. She paid a visit to Great Britain in 1952 and became entitled to widow's basic pension but not to widowed mother's allowance in respect of her child. In 1954 when she became permanently resident in Great Britain, her son had ceased to be a child for the purposes of widowed mother's allowance. It was held that widow's pension was not payable on the ground that it could not be said that she had 'ceased to be entitled to widowed mother's allowance' having never acquired entitlement to that benefit.

5 Overlapping benefit

- i A widow in receipt of widow's pension with an underlying title to a widow's basic pension met with an industrial accident and became entitled to injury benefit of a weekly amount in excess of that payable to her by way of WB. It was held that the amount payable to her by way of injury benefit was the aggregate sum to which she was entitled by force of the NI (Overlapping Benefits) Regs. 1948. See now the Social Security (Overlapping Benefits) Regs. 1975. R(G) 7/54
- ii Reg. 4 of the SS (Overlapping Benefits) Regs. 1979 applies where entitlement to two (or more) personal benefits exists, one of which is contributory and one a non-contributory, and both would otherwise be payable. The non-contributory benefit must be adjusted by deducting from it the contributory benefit. Only the balance, if any, is payable. In the claimant's case her weekly widow's pension exceeded the weekly rate of ICA and no balance remained to be paid. See 19.2.12 ii *below* for the Commissioners ruling on equal treatment and a full synopsis of the decision. R(S) 2/89

Part 4: Bereavement benefit

1 Spouse's category A pension

- R(G) 1/06 i The claimants in three appeals were widowers over pension age who had been refused bereavement payments on the grounds that their late wives had been getting a Category A RP on their own contributions topped up by a Category B pension based on their husband's contributions. It is a condition of entitlement to a bereavement payment that the claimant is under pension age or that the claimant's late spouse had not been receiving a Category A RP. The claimants argued that they should be treated as if their wives had been receiving only the Category B pension and were therefore entitled to the bereavement payment. In the third case a tribunal had accepted that argument and the Secretary of State had appealed. The other claimants appealed to the Commissioner arguing that their wives did not have a full contribution record and were not therefore entitled to a full Category A RP and this type of Category A RP was not excluded from entitlement to a bereavement payment. Alternatively, it was argued that the legislation should have operated to allow the wives entitlement to whichever of the pensions would have been most favourable to them. Furthermore the Human Rights Act required the legislation to be read so as to remove the anomaly between bereavement payment claimants whose spouses had or had not opted for a Category B rather than a Category A RP, which amounted to discrimination between people in relevantly similar circumstances. The Commissioner, allowing the appeal of the Secretary of State and dismissing the appeals of the two claimants, held that the tribunal in the third case had misdirected itself because a category A pension which is topped up to the level of a Category B pension remains a Category A pension: there is no substitution of a different category of pension. The Commissioner also held that the claimants failed to meet the conditions of entitlement for a bereavement payment because, taken in conjunction with the rule of finality of determinations on entitlement, once the entitlement of the wives had been determined and not appealed, there was no alternative entitlement to a different Category of RP. With regard to the arguments concerning the Human Rights Act, the Commissioner held that the differences of treatment, arising as they did inevitably out of a complicated and interlocking insured benefit scheme, did not constitute unlawful discrimination contrary to Article 14, as they did not raise questions of differential treatment between categories of human beings on the "suspect" grounds, such as sex, race, and so forth or otherwise offensive to accepted notions of the respect due to the individual.

The decisions listed below are not included in chapter 4

A *Decisions which are no longer of authority and/or turn on pure questions of fact*

C.G. 73/50	'Ten year' test and presumption of death
C.G. 98/50	Husband entitled to retirement pension prior to his death
C.G. 186/50	Widow in receipt of war pension
R(G) 1/51	Held on the facts that the claimant was not a widow
R(G) 5/51	Whether claimant acted in all respects in good faith in the obtaining and receipt of benefit
R(G) 7/51	
R(G) 19/52	Widow married for less than ten years
R(G) 6/53	Whether claimant acted in all respects in good faith in the obtaining and receipt of benefit
R(G) 1/54	Absence from Great Britain
R(G) 2/54	Whether claimant acted in all respects in good faith in the obtaining and receipt of benefit
R(G) 1/58	Married less than three years
R(G) 4/61	
R(G) 9/62	Whether claimant acted in all respects in good faith in the obtaining and receipt of benefit
R(G) 3/64	Married for less than three years
R(G) 2/89	Effect of decision removed in 1990 by Social Security Act

B *Decisions relating to the assessment of a widow's earnings and reasonable expenses*

C.G. 178/50	R(G) 20/52	R(G) 9/55	R(G) 10/59
C.G. 203/50	R(G) 7/53	R(G) 1/56	R(G) 1/60
R(G) 9/51	R(G) 6/54	R(G) 14/56	R(G) 7/62
R(G) 7/52	R(G) 9/54	R(G) 5/57	R(G) 1/64
R(G) 12/52	R(G) 4/55	R(G) 7/59	R(G) 2/65

C *Decisions as to whether, on the evidence, a widow was incapable of self-support*

C.G. 3/48	C.G. 30/49	R(G) 16/52	R(G) 8/54
C.G. 4/48	C.G. 66/49	R(G) 22/52	R(G) 3/56
C.G. 5/48	C.G. 128/50	R(G) 8/53	R(G) 2/57
C.S.G. 2/48	R(G) 4/51	R(G) 12/53	R(G) 3/57
			R(G) 2/58

D *Decisions relating to late claims and extinguishment of benefit*

C.W.G. 6/50	R(G) 9/53	R(G) 2/74
C.G. 153/49	R(G) 5/62	

E *Decisions relating to adjudication*

R(G) 2/53	R(G) 5/56	R(G) 1/63	R(G) 3/63
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