

CHAPTER 5

Retirement pension

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CHAPTER 5**Retirement pension****Part 1: Treated as retired from regular employment****1 General considerations**

i It is the intention of the claimant when he proposes to retire that counts. R(P) 8/51
Assuming that that intention does not satisfy (what is now) section 27(3)(b)(i) of the Act, then, provided the intention was a reasonably possible one, the mere fact that he is unfortunate enough not to achieve his intention cannot alter the nature of it retrospectively. He cannot be treated as having retired until the intention complies with one of the requirements of paragraph (b)(i) of section 27(3) of the Act. thus, when purporting to give notice of treatment, a man aged 66 said that he hoped to obtain work as a tailor and expected to work 15 hours a week. It was held that the notice could not be accepted as a notice of retirement because the claimant had at that date a reasonable expectation of obtaining the work he indicated. See and compare R(P) 8/52.

ii In order to decide whether a person is engaged, or intends to engage in a gainful R(P) 8/54
occupation in circumstances not inconsistent with retirement, it is necessary to have regard to the circumstances of the occupation looked at as a whole. The number of hours worked, though material, is not conclusive unless the hours are short enough to justify a finding that the occupation is engaged in only to an inconsiderable extent; the fact that the claimant's earnings have been reduced to a sum such that, if h were entitled to a retirement pension, his earnings would not cause the amount to be reduced would not in itself satisfy these requirements. It is necessary to look at all the circumstances of the occupation, including the sort of work involved and, if the work is of a kind which a retired person might reasonably be expected to do and there is no other feature in the occupation which would render it unreasonable to speak of a person engaged in it as having retired from regular employment, the occupation is not inconsistent with retirement. Thus a claimant who was employed in the school meals service for some 10 years gave notice of retirement but stated that she intended to continue in the same employment working for 12½ hours a week. It was held by a Tribunal of Commissioners that work in the school meals service for that number of hours a week was not inconsistent with retirement since it was the type of work which a person who had retired from regular employment might well undertake. See also R(P) 4/55, R(P) 10/55, R(P) 2/61 and R(P) 3/61. See also R(P) 16/55, *infra* 5.1.3 x. (T)

2 Does not intend to be an earner

C.P. 49/49

i A man who was totally and permanently incapable of work, but who did not realise how bad he was and hoped to be able to resume his employment, was held to be entitled to a retirement pension since his hope of returning to work was illusory.

3 'Or otherwise in circumstances not inconsistent with retirement'

C.P. 70/50

i The claimant was the proprietor of a ladies hairdressing business but, having engaged a manageress, she only worked for 2 or 3 hours a week in the business, from which the profits were small. It was held that she was engaged in a gainful occupation but in the circumstances not inconsistent with retirement.

R(P) 5/51

ii A woman who, on attaining pensionable age, did only such light domestic work as her health and strength permitted in return for a home and pocket-money was treated as having retired and held to be entitled to a retirement pension.

R(P) 3/52

iii A woman who gave up work to keep her house for her brother-in-law, in return for which she had free board and lodging, was held to be engaged in gainful occupation in circumstances not inconsistent with retirement.

R(P) 9/52

iv The duties of a resident domestic servant aged 62 were very considerably reduced and her wages were halved. It was held that she was engaged in her occupation in circumstances not inconsistent with retirement. See also R(P) 11/59, *infra* 5.1.3 xv.

R(P) 10/52

v A master grocer, aged 65, was held to be engaged in his grocery business in circumstances not inconsistent with retirement when he entrusted the management of his 2 shops to relatives but continued to spend 10 hours a week in one of them. He spent his time cutting bacon, but it was found that he did so more as a hobby, or as a means of employing his leisure time, rather than as an employment.

R(P) 15/52

vi A kitchen assistant in the school meals service gave notice of retirement, but later resumed work as a dining-room assistant on a part-time basis for 12½ hours a week. It was held that work for 12½ hours a week was not inconsistent with retirement if there were specific circumstances justifying a change of work at pensionable age. It was the type of part-time work that a retired person might well undertake and the claimant could, therefore, be treated as having retired. (See paragraph 3. See also R(P) 7/56.)

R(P) 2/53

vii A wholesaler gave up more than half his business when his only employee retired. The trade he continued to carry on by himself was very small, and after reaching the age of 65 he gave notice of retirement. It was held that he could be treated as having retired since, on the facts, he was engaged in his occupation in circumstances consistent with retirement.

- viii A man aged 67 who had been working full time doing odd jobs for a manufacturing company reduced his hours of work to 18 hours a week and performed only very light duties because of his state of health. It was held that he could be treated as having retired from regular employment because the work which he did when he changed to part-time work was not inconsistent with retirement and he did not then intend to resume full-time work. See R(P) 15/52, *supra* 5.1.3 vi and compare R(P) 8/51, *infra* 5.1.1 i. R(P) 9/53
- ix Although the contemplated hours of work after retirement are a very relevant consideration when it is being determined whether an occupation in which a person intends to engage is inconsistent with retirement, it is also necessary to bear in mind the type of work involved. A porter at a railway station intended to retire from his regular occupation and immediately to commence part-time employment for 20 hours a week at the same station as an outside porter. It was held that he could be treated as having retired from regular employment since, although he might attend the station for 20 hours a week, that was unlikely to be the actual period for which he would obtain work and the character of the work he intended to do had completely changed. Compare R(P) 12/53, *infra* 5.1.5 ii and R(P) 6/55. R(P) 6/54
- x A shop assistant gave notice of retirement approximately a month after attaining the age of 62, but said that she intended to continue in the same employment for 2 days a week, working 8 hours each day. It was held that she could be treated as having retired and at paragraph 9 of the decision the Commissioner said that it was not a case of a person who had been compulsorily retired and who sought fresh employment, but of a person who felt that she was no longer capable of regular employment in the ordinary labour market and who, having voluntarily decided to retire, desired, nevertheless, to perform a certain amount of useful work which would prevent her from stagnating. Reference was made to R(P) 8/54, *supra* 5.1.1 ii with reference to the meaning of 'in circumstances inconsistent with retirement'. R(P) 16/55
- xi A laundry packer intended to reduce her working week from 45 to 17½ hours on her retirement and her employers confirmed that the arrangement was made on sympathetic grounds in recognition of her past services. It was held that what she intended to do was not inconsistent with retirement. Compare R(P) 1/52, *infra* 5.1.5 i. R(P) 7/56
- xii The claimant's wife had for some 7 years been the licensee of a public house. After returning from his regular occupation of a driver/salesman the claimant helped his wife in the evenings and at midday on Sunday during the summer, but less in the winter-time. It was held that the claimant could be treated as having retired. See paragraph 9 where a distinction is drawn between the case of a barman committed to working set hours and that of a husband giving his wife a helping hand as occasion required. R(P) 6/57
- xiii The claimant worked as an assistant librarian in a small public library for 5 hours on Tuesdays and Fridays each week. She also worked as a book-keeper for 2 hours on Mondays, Wednesdays and Fridays. It was held that she was engaged in a gainful occupation in circumstances not inconsistent with retirement. See R(P) 8/54, 5.1.1 ii. R(P) 3/58
- xiv In consequence of his wife's ill-health the claimant attended his off-licence business for 20 hours a week and not for only 12 hours a week, as when he had originally intended. Relatives looked after the shop in the evenings, when most of the business was done, and it was held that the claimant's occupation was not inconsistent with retirement. He lived on the premises but was unlikely to be called upon in the evenings and he thus enjoyed a large degree of freedom from the hours and restraints of normal business. Compare R(P) 12/53, *infra* 5.1.5 ii and see R(P) 8/54, *supra* 5.1.1 ii. R(P) 2/59
- xv On attaining pensionable age the hours of work of a non-resident domestic servant were reduced from 30 to 18 hours a week. It was intended that she would do light housework only and sit with her employer's aged mother while her employer R(P) 11/59

was out shopping. It was held that she could be treated as having retired from regular employment, her duties being exceptionally light and a good deal of her working time not involving actual work. She was engaged in circumstances not inconsistent with retirement. See R(P) 9/52, *supra* 5.1.3 iv.

- R(P) 3/60 xvi A man aged 67 gave up his regular occupation of a refuse collector and took part-time employment as a general help at a shop where he unpacked the goods and kept the premises clean. He did very little heavy work, but his working hours were 16 3/4 spread over 2½ days each week. It was held that that work was work of a kind a retired person might reasonable be expected to do and was not inconsistent with retirement. R(P) 8/54, *supra* 5.1.1 ii, applied and R(P) 11/56, *infra* 5.1.4 v, distinguished.
- R(P) 3/61 xvii After returning from his full-time occupation of a heavy labourer a man was employed for 4 hours a day on 5 days a week as a lavatory attendant. It was held that it was work of a kind that a retired person might be expected to do and that the claimant could be treated as having retired from regular employment.
- R(P) 4/61 xviii The claimant was the sole director of a limited liability company carrying on business as bakers and confectioners. On claiming a retirement pension she declared that she intended to retire from her regular employment and would work in the shop on Fridays and Saturdays only for a total of 12 hours each week. It was held that she could be treated as having retired on her 60th birthday since the extent to which she intended to participate in her business was not inconsistent with retirement.

4 Not retired from regular employment

- R(P) 1/53 i A man who had carried on business as a hay and straw merchant continued to do so after attaining pensionable age, albeit with the intention of limiting his profits. It was held that there were no grounds on which he could be held to have retired from regular employment.
- R(P) 10/53 ii A retired Post Office worker who claimed retirement pension from the age of 65 was a member of the Corps of Commissionaires. He was willing to do all the work he could get, but it was available periodically only and he had actually averaged no more than 27 weeks a year for the past 4 years. It was held, nevertheless, that the claimant could not be treated as having retired from regular employment since he was holding himself out for such work as might be available, and the fact that it was uncertain how much work he would obtain did not help him to prove that he had retired from regular employment within the meaning of the relevant statutory provisions. See also C.P. 126/49.
- R(P) 1/54 iii A winder in a cotton mill who had been working for 45 hours a week gave notice that she intended to retire and to reduce her hours of work to 20 each week because of her state of health. It was held that a mere reduction of working hours from 45 to 20 a week when the character of, and the rate of remuneration for, the work

remained unchanged was inconsistent with retirement. Compare R(P) 9/53. See also R(P) 8/55.

iv It was held that a woman who had retired from her occupation of running a smallholding and intended to work as a part-time school-cleaner for 25 hours a week could not be treated as having retired from regular employment. Compare R(P) 1/52, R(P) 6/54, *supra* 5.1.3 ix and see R(P) 12/55 and R(P) 3/61. R(P) 11/55

v A greengrocer's shop assistant worked 17 hours a week over Friday, Saturday and Monday and it was held that, being engaged on 3 days of the week in work of a very active description, she could not be treated as having retired from regular employment. Compare R(P) 16/55, *supra* 5.1.3 x and R(P) 3/60, *supra* 5.1.3 xvi. R(P) 11/56

vi The claimant and his wife had for 9 years been employed jointly as caretakers of a meeting-house. Their duties included cleaning and stoking and attendance during the day, when a reading-room and library were open to the public; their duties also included attendance on certain nights when meetings were held. They were paid a joint wage with free accommodation, coal, gas and light. It was held that the claimant could not be treated as having retired from regular employment, the question being not whether he could be so treated on account of earnings but upon the amount and kind of work involved in his occupation. See R(P) 8/54, *supra* 5.1.1 ii. RP) 16/56

5 Not only occasionally or to an inconsiderable extent

i An office cleaner who claimed retirement pension said that she intended to continue working for 17½ hours each week. It was held that she could not be treated as having retired on the ground that it could not be said of her that she did not intend to follow a gainful occupation only occasionally or to an inconsiderable extent or otherwise in circumstances not inconsistent with retirement. See also R(P) 6/55 and R(P) 7/56, *supra* 5.1.3 xi. R(P) 1/52

ii A woman aged 60 acted as sub-postmistress in a small village. The Post Office was open 44 hours a week but the business actually transacted occupied only a few hours each week. It was held that the claimant could not be treated as having retired from regular employment since her work was neither occasional nor of inconsiderable extent and the obligation on her to be on duty during normal business hours was inconsistent with retirement. See R(P) 10/53 and compare R(P) 6/54, *supra* 5.1.3 ix. See also R(P) 3/61. R(P) 12/53

iii A woman who kept a boarding-house intended to take visitors for several months a year during the holiday season and it was held, applying the principles of R(P) 8/54, *supra* 5.1.1 ii, that she could not be treated as having retired from regular employment. The fact that a person's occupation is seasonal does not of itself enable it to be held that she has retired from regular employment. It is necessary to consider whether she is engaged, or intends to engage, in her occupation only occasionally or R(P) 6/56

to an inconsiderable extent or otherwise in circumstances not inconsistent with retirement.

R(P) 4/57 iv Shortly before attaining the age of 60 the claimant stated on the appropriate form that her occupation was that of a newsagent's assistant and that she intended to continue to follow that occupation after her 60th birthday, when she would work 18 hours a week. It was held that she could not be treated as having retired from regular employment since her occupation was not peculiarly characteristic of a retired person's occupation and her engagement in it was not occasional or inconsiderable. See also R(P) 5/57.

R(P) 1/60 v On claiming a retirement pension the claimant said that he had retired from regular teaching some 12 years previously, that thereafter he worked as a teacher for about 5 hours a week and that he proposed to continue his work as an author, but could not say what his weekly earnings would be because the money he received came in at odd times. It was held that he had not retired from regular employment since it was clear that he did not intend to engage in the occupation of an author only occasionally or to an inconsiderable extent; nor could it be said that he would be engaged in it in circumstances not inconsistent with retirement.

6 Circumstances inconsistent with retirement

R(P) 18/56 i A widow, after attaining pensionable age, indicated that she intended to have a gainful occupation in the school-meals service, working an unvarying schedule amounting to 17 hours a week. There was no suggestion that she would not be fully occupied during her hours of duty or that she would be given special privileges. It was held that the work she intended to do was inconsistent with retirement. See paragraph 5 where comparison is made with other decisions.

R(P) 2/76 ii A city councillor whose council activities included attendance at council meetings for approximately 30 hours a week (usually over 5 days) for which he received attendance allowance amounting to approximately £50 a week. It was held that he was following a gainful occupation as a city councillor; that the attendance allowances paid to him were remuneration from the gainful occupation in which he was engaged; that his engagement in that occupation was in circumstances inconsistent with retirement; that when the Social Security Act 1975 came into effect on 6th April 1975 the effect was that the claimant was an 'earner' for the purposes of section 27(3) of that Act (see paragraph 22 of the decision); and that a retirement pension was not payable to the claimant, or to his wife on his insurance, on the ground that he could not be treated as retired under either of the provisions in force before or after 6th April 1975.

7 Treated as having retired: member of religious orders and communities

- i A member of a religious community was obliged to give up full-time work because of ill-health, whereafter she performed light duties only. It was held that she continued to be engaged in a gainful occupation but that she was engaged in it only to an inconsiderable extent and in circumstances not inconsistent with retirement. C P 7/49
- ii A woman who had been regularly employed in the Foreign Office gave up that employment and joined an enclosed religious order, where she was mainly employed in devotional exercises but spent approximately 5 hours a day on domestic duties in the convent. It was held that, in the light of the view taken by the then Minister of National Insurance that members of religious communities engaged solely on devotional exercises and domestic duties within the community fell within the class of non-employed persons, the question whether the claimant's occupation was inconsistent with retirement did not arise. Nevertheless, although membership of such an order is a vocation, such members are, in the circumstances, not employed in a gainful occupation. See paragraph 4 where decision CP 7/49 is considered and discussed. R(P) 7/54
- iii At the age of 65 a Baptist minister retired from his regular pastorate and was awarded a superannuation allowance by the Baptist Union, who treated him as a retired minister. He was then appointed to a small Baptist church in a different district, the total congregation of which was between 30 and 40. The services in that church were normally 2 on Sundays and one in the middle of the week, and each service lasted about an hour. The claimant was also required, as needed, to officiate at baptisms, weddings and funerals, but in the previous 10 years there had only been 5 weddings and 7 funerals. His duties also included visiting the sick persons, which it was estimated involved about 4 hours a week. His remuneration was £1 a week and a house. It was held, applying the test in R(P) 8/54, 5.1.1 ii *above*, that the claimant could be regarded as having retired from regular employment. R(P) 9/54
- iv A Methodist minister who was over pensionable age retired from his full-time charge and was placed on the list of retired ministers. He was awarded a superannuation allowance but later took up duty as a part-time supernumerary minister for which he received a salary of £200 a year and a free house. It was held that he was entitled to be treated as having retired from regular employment. See paragraphs 6, 8 and 9 and R(P) 9/54, 5.1.7 iii *above*. But compare R(P) 11/52. R(P) 13/55
- v A rector who wished to be treated as retired from a specified date intended to continue working full-time as rector of the parish. He received £7300 per annum (£140.39 a week) from the Church Commissioners, of which £43.57 a week was an allowance for heating, lighting, cleaning and attending to the garden of the rectory where he was obliged to live. The Commissioner held that the allowance did not constitute earnings and should not be taken into account. After deducting certain other expenses, not in dispute, the claimant's 'earnings' fell below the earnings limit then in force for retirement pension and he should be treated as having retired on the specified date (section 17(3)(b)(ii) of the SS Act 1975). Other synopses of this decision are at 5.2.1 vii and 5.2.2 v. R(P) 1/87

8 Persons engaged in agriculture

R(P) 7/52 i A farmer aged 67 gave up his farm of 134 acres but retained some 20 acres, on part of which he kept 2 cows and other stock and also sold milk. It was held he could not be treated as having retired on the ground that he had not proved that the gainful occupation he was following was not inconsistent with retirement. See and compare R(P) 6/53, 5.1.8 iii *below*.

Retirement pension: whether treated as retired

5.1.8

- ii A farm labourer aged 65 stayed on at the farm in which he had been employed for a number of years and continued with his former work, although not for wages as before but simply for board and lodging. It was held that he could not be treated as having retired. R(P) 3/53
- iii A farmer retired owing to ill-health at the age of 52 and thereafter kept a small-holding of about 4 acres with a few livestock. The produce from the holding was insufficient to provide him and his wife, who assisted him, with a livelihood and they were compelled to draw from their savings. It was held that the claimant was engaged in an occupation not inconsistent with retirement. Compare R(P) 7/52, 5.1.8 i *above*. R(P) 6/53
- iv For 16 years before attaining pensionable age a man had worked solely on his 25-acre holding, which provided his only means of livelihood. He was still doing so when he gave notice of retirement, and it was held that he could not be treated as having retired from regular employment. R(P) 15/55
- v A crofter, on reaching the age of 65, claimed that, although continuing to work his croft, he should be treated as having retired. It was held that, on the facts set out in paragraph 4 of the decision, the scale of the claimant's occupation of the croft was too great to be consistent with retirement and that he could not be treated as having retired. R(P) 8/56
- vi The claimant and his son were equal partners in a dairy farm, each being entitled to half the profits. After an illness the claimant's activities were reduced and the direction of affairs was left mainly in the son's hands. It was held that the claimant could not be treated as retired since his position on the farm was more than that of a mere resident or shareholder. R(P) 19/56

Part 2: Reduction on account of earnings

Section 30 of the Act, as amended by the Social Security (Miscellaneous Provisions) Act 1977, section 5(1).

1 Computation of earnings: general considerations

Social Security (Computation of Earnings) Regulations 1978 - hereafter in Part 2 of Chapter 5 referred to as 'the Regulations'.

- R(P) 8/59 i Where a man carries on business the profits from which are received in considerable sums at long intervals of uncertain duration, the only reasonable basis of calculation is to take the earnings over a year. And where earnings are calculated year by year they must be calculated by reference to the prior year unless there is evidence of a change of circumstances justifying a review during the year. And see regulation 2(3) of the Regulations.
- R(P) 2/60 ii The claimant was a director of a company from which he derived substantial director's fees. He also carried on a farm in respect of which for the relevant income-tax year he made a loss which, if it were to be set off against his director's fees for the purpose of ascertaining his earnings, would have
- R(P) 1/73 iii The facts of the case which gave rise to this decision are long and complicated, but see paragraphs 19-38 where the history and effect of regulations 6-7 of the National Insurance (Computation of Earnings) Regulations 1967 (see now regulations 5-6 of the Regulations) are considered and explained. See also R(P) 2/74, and R(P) 3/84, 17.6.1 iv *below*.
- R(P) 2/75 iv A civil servant retired and was awarded a national insurance retirement pension. Some 16 months later he was re-employed by the same Department on a part-time basis and his earnings then exceeded the amount then prescribed under the relevant provision of the National Insurance Act 1965, namely section 30(7). Under the provisions of the Principal Civil Service Pension Scheme he was obliged to contribute a weekly sum for the purpose of a widow's pension and he contended that, when his net earnings were being calculated, that contribution should be deducted under regulation 5(g) of the National Insurance (Computation of Earnings) Regulations 1967. It was held that a superannuation contribution was not within the scope of regulation 5(g) on the ground that it was not an expense incurred for the purpose of employment and that a contribution to the Principal Civil Service Pension Scheme constituted a sum 'the deduction of which from wages or salary is authorised by statute' and thus was expressly excluded by regulation 5(g). See paragraphs 7-10. See also 5.2.2 iv, *below*.
- R(P) 1/76 v The claimant was a landlord of a small public house in the carrying-on of which he was helped by his wife. He claimed to be retired and to be entitled to a retirement pension. It was accepted that the earnings from the business were approximately £20 a week and it was held that where a wife works jointly with her husband in a business acquired after marriage they are *prima facie* each entitled to an equal share of the business assets, including profits. The fact that the claimant's wife had never asserted her rights and that the claimant had never recognised them were held to be immaterial, and in so holding the Commissioner applied the principle expounded by Lord Denning M.R. in *Nixon v. Nixon* (1969) 1 WLR at page 1678; and *In re Cummins deceased* (1972) Ch. 62 at page 68. See paragraph 7 of the decision.

Retirement pension: reduction for earnings

5.2.1-2

vi For the purposes of regulation 5 of the Regulations a claimant's assessment period was the tax year which ended 5.4.84, a period of 52 weeks and 2 days. It was held by the Commissioner that 'weeks in that assessment period' in regulation 5(2) of the Regulations is to be taken as complete periods of 7 days falling wholly within the assessment period; where that period is exactly one year the number of weeks by which the aggregate earnings falls to be divided is 52 (paragraph 9). (For fuller summary of this case see 17.6.1 *iv below*.) R(P) 3/84

vii The claimant wished to be treated as retired from a specified date though continuing to work full-time as rector of a parish. The Commissioner held that in considering whether the claimant could be treated as retired, the calculation of his earnings for the purposes of sections 27 and 30 of the SS Act 1975 was subject to the SS (Computation of Earnings) Regulations 1978; and that the word 'earnings' in regulation 2 of those Regulations had the same meaning as in regulation 2(3) of the Family Income Supplement (General) Regulations 1980 (see R(FIS) 4/85). Further synopses of this decision are at 5.1.7 *v* and 5.2.2 *v*. R(P) 1/87

viii A self-employed claimant retired at age 65, but continued in part-time employment. His earnings not being immediately ascertainable, interim payments of retirement pension were made. The Commissioner held that: R(P) 1/89

- a. balancing charges were to be taken into account when calculating earnings;
- b. adjudicating authorities must decide on the basis of agreed figures for the trading year and not the tax year;
- c. the burden or benefit of any capital charges or allowances should lie where it falls and be taken into account in the assessment period in which it appears;
- d. reassessment by the Inland Revenue at the end of trading has no effect on the adjudication officer's decision.

See also R(U) 3/88 and R(P) 2/74.

2 Allowable deductions from earnings

See also R(G) 6/53, R(G) 1/56 and R(G) 7/62.

i The claimant, who was in receipt of retirement pension, was employed as a gatekeeper at a race-course and it was held that the amount he spent on food and the expense incurred for the care of his invalid wife during his absence from home were reasonable expenses incurred in connection with his employment so that the amount he was paid as a gatekeeper fell to be reduced by the total of those amounts. See now regulation 4(b)(v) and (vi) of the Regulations. R(P) 2/54

ii A retired civil servant was in receipt of a civil service pension and he was also in receipt of a retirement pension under the National Insurance Act. He became re-employed as a temporary civil servant at a rate of salary which resulted in his civil service pension being abated. It was held that the amount by which his civil service pension was reduced was not an allowable deduction from his salary when his earnings were being computed for the purpose of determining the amount payable to him by way of a retirement pension. See paragraphs 8-10. R(P) 1/64

iii A man in receipt of a retirement pension was employed as a general wood-worker at a school. He travelled to and from his place of work by motor-van both morning and evening, and also at midday for the purpose of having a meal at home. It was held that the expenses referred to in regulation 4(1)(a)(ii) of the National Insurance (General Benefit) Regulations 1948, as amended (see now regulation 4(c) of the Regulations) must be expenses incurred by the person concerned in connection with his employment and must be reasonable, not only in relation to the subject-matter of the expenditure and the amount spent on it, but also in connection with his R(P) 1/66

5.2.2-3

employment. It was held further that the words ‘incurred by the person in connection with the employment’ were wide enough to cover reasonable expenses incurred in making a return journey home at midday for the purpose of taking a meal which was necessary and desirable in the interests of the claimant’s health.

R(P) 2/75

iv A civil servant was re-employed by his former Department some 16 months after he had retired. His re-employment was part-time only but his earnings exceeded the amount then prescribed by section 30(7) of the National Insurance Act 1965 (see now section 30 of the Social Security Act 1975) and his retirement pension was accordingly subject to reduction. The claimant was, however, obliged to contribute a weekly sum of 42p under the Civil Service Pension Scheme for the purpose of a widow’s pension and he contended that, when his net earnings were being calculated, that contribution should be deducted under regulation 5(g) of the National Insurance (Computation of Earnings) Regulations 1967, as amended (see now regulation 4(c) of the Regulations). It was held that a superannuation contribution does not come within the scope of the regulation because it is not an expense incurred for the purpose of employment; it is more truly a disbursement of income. Further, a contribution under the Civil Service Pension Scheme constituted a sum ‘the deduction of which from wages or salary is authorised by statute’ and so was expressly excluded by regulation 5(g) of the 1967 Regulations. (Compare the difference in language between the 1967 and 1974 Regulations.)

R(P) 1/87

v In calculating the earnings of a rector for the purposes of sections 27(3)(b)(ii) and 30 of the SS Act 1975 the Commissioner held that the appeal tribunal had erred in law in deciding that a tax-free allowance from the Church Commissioners for heating, lighting, cleaning and tending the garden of the rectory was deductible; the allowance did not constitute earnings and should not have been taken into account at all. (R(FIS) 4/85 followed.) A further sum for expenses of his work not reimbursed (car depreciation, official entertainment, wife’s salary, robes and carpet repairs in the study) was properly deductible. Other synopses are at 5.1.7 v and 5.2.1 vi *above*.

3 Incidence of income-tax

But see now regulation 4(c) of the Regulations.

R(P) 3/56
(T)

i The claimant was employed intermittently as a relief secretary at a hospital and the question that fell to be determined was whether, when the amount of her earnings for the purpose of deciding whether her weekly rate of retirement pension fell to be reduced was being calculated, any sum should be deducted in respect of income-tax. It was held by a Tribunal of Commissioners, for the reasons given at paragraphs 7-9, that income tax paid under the PAYE scheme could be deducted but income-tax paid by other methods could not be deducted.

R(P) 3/62

ii As a general rule sums cannot be deducted from earnings unless a deduction has been authorised by statute and the sums have been actually deducted from salary or wages. Thus when a retirement pensioner had an amount of 3s. income-tax deducted from his wages for a particular week under a PAYE emergency coding, and later the inspector of taxes stated that the weekly tax due was over £1, it was held that for the week concerned the claimant’s earnings fell to be reduced by 3s. only.

R(P) 2/66

iii A retirement pensioner was in receipt of a pension from his former employers and also a salary from his current employers. In pursuance of an arrangement made with the Inland Revenue no income-tax was deducted from his salary, the whole of the tax for which he was liable being deducted from his pension. It was held that, for the purposes of regulation 4(1)(a) of the National Insurance (General Benefit) Regulations 1948, ‘net remuneration or profit’ should be arrived at before tax is deducted; and that, if an employer makes no deduction for tax when paying a person’s salary, it cannot be said that tax attributable to a person’s salary, but paid otherwise, is a deduction ‘authorised by statute’.

4 What constitutes 'gainful occupation' or 'gainful employment' for the purpose of calculating earnings

- i It was said in an earlier decision that a gainful occupation is one in which a person is engaged with the desire, hope and intention of obtaining for himself, directly and personally, remuneration or profit in return for his services. Thus a retired coal dealer who owned 4 buildings which he let partly furnished and partly unfurnished, and for each of which he engaged a caretaker, was held not to be engaged in a gainful occupation. CP 129/50
- ii As a general rule members of a religious order are not employed in a gainful occupation. See 5.1.7 *above*. R(P) 7/54
- iii A woman was appointed a director of a private family company and received fees of an amount sufficient to extinguish her right to a retirement pension. It was held that she was not entitled to her retirement pension on the ground that, as a director of the company, she was engaged in a gainful occupation and that her fees as a director constituted earnings. R(P) 9/55
- iv A member of the court of a city livery company who was in receipt of a retirement pension was paid a fee each time he attended a meeting of the court. Attendance was voluntary and the fees were not treated by the Inland Revenue as eligible for earned-income relief. It was held, (1) the claimant's fees were remuneration derived from his occupation as a member attending meetings of the court and constituted earnings from a gainful occupation; and (2) the fact that the fees were not regarded by the Inland Revenue authority as eligible for earned-income relief was not binding on the statutory authorities under the National Insurance Acts. Followed in R(SB) 4/85 *below*. R(P) 1/65
- v The claimant, who had been a partner in a firm of chartered accountants and who had retired after reaching the age of 65, was entitled under his Articles of Partnership to an annuity. A year after his retirement he was given an amount of £1,000, expressed to be in addition to, and independent of, his annuity, in payment for advisory services during the previous year. The payment was in no way solicited or expected by him and it was held that it did not constitute earnings derived from a gainful occupation. The payments for retirement pension did not, therefore, fall to be reduced or extinguished. But see paragraphs 10 and 22 and R(P) 1/69. R(P) 4/67
- vi The claimant to whom R(P) 4/67, 5.2.4 *v above*, relates received a further payment of £1,000 and informed the Inland Revenue both of that payment and the previous payment of £1,000 received as a 'fee for advisory services'. He was awarded earned-income relief in respect of both payments. It was held that the claimant had followed a gainful occupation from which he derived earnings and that he could not be held to say, for the purpose of obtaining relief from tax due to the Crown, that he had received £1,000 in reward for services and thereafter, for the purpose of avoiding a reduction of his state pension, that he did not have any earnings. See paragraphs 8-10. R(P) 1/69
- vii A city councillor whose council activities, including attendance at council meetings, lasted approximately 30 hours a week, usually over 5 days a week, for which he was paid fees amounting to approximately £50 a week, was held to be following a gainful occupation in circumstances inconsistent with retirement. See 5.1.6 *ii above*. See paragraphs 12 *et seq.* Followed, as regards gainful occupation, in R(U) 6/88. R(P) 2/76
- viii The claimant continued to trade as her husband's partner after her Category A retirement pension was awarded. The AO decided her earnings were not immediately ascertainable and interim payments were paid. Later, using profits agreed with the Inland Revenue, the AO took the preceding year as the period for calculating her weekly earnings. It was held that: R(P) 2/92

1. a self-employed person's assessment period for earnings is his accounting period;
2. his accounting period is one in which a return or statement of the emoluments or gains from that employment covering the period in which that week ends had been delivered to the Inland Revenue for tax purposes and it has been “determined or agreed as the basis for an assessment to income tax”;
3. actual earnings must be used for the calculation;
4. a partner's accounting period is the same as that of the partnership.

See also R(P) 1/73 and R(P) 1/89.

Part 3: Married women

1 Increase of RP for wife

- i The wife of a retirement pensioner was employed as housekeeper at a house occupied by assistant masters at a school. In addition to her weekly wage she and her husband had the use of two rooms rent free. It was held that, when the claimant's wife's earnings for the purpose of determining his entitlement to an increase of his RP were being calculated, account must be taken of the value of the free accommodation. CP 1/48
- ii NI contributions and fares are permissible deductions from a wife's earnings, but not an insurance premium and rent, or the cost of food. CP 2/48
- iii When a person is paid on commission only the payments should be averaged over a reasonable period. CP 3/48
- iv A man who was the proprietor of a tobacconist's and newsagent's shop retired on account of ill-health, but his wife continued to carry on the tobacconist side of the business. It was held that she must be regarded as earning the whole of the profits from the business and that the amount was such as to disentitle the claimant from an increase of his RP. Compare R(P) 3/57. R(P) 7/51
- v The wife of a retirement pensioner ceased work on a Wednesday and earned nothing thereafter. It was held that an increase of his RP was payable to the claimant from the following day, the Thursday. R(P) 2/56
- vi Under s. 20(2)(b) of the NI Act 1946 (see now s. 27(4) of the Act) a person could not (cannot) be treated as having retired from regular employment unless he has given the prescribed notice of the date of his retirement. Thus a woman who was divorced from her husband after attaining pensionable age, but before giving the prescribed notice, was held not to be entitled to an RP on his insurance on the ground that when she gave notice of retirement she did not have a husband. R(P) 14/56
- vii The claimant's wife was ill and subsequently absent from her employment for between two and three weeks, but she received certain payments from her employers under their staff scheme for payment during absence due to sickness or industrial injury. It was held that she was engaged in a gainful occupation and that the payments she received were earnings, with the result that the claimant was not entitled to an increase of his RP for her. See as to the meaning of 'earnings' paras. 7 and 8. R(P) 7/61
- viii A man earns that which he is entitled to receive in return for his work of services whether or not he is paid at the time, and the definition of earnings in s. 114 of the NI Act 1965 (see now s. 3 of the SS Act 1975) did not (does not) imply that the earnings must be earned in or transmitted to GB. Thus a man was held not to be entitled to an increase of his RP for his wife who had a business in Italy from which she derived more than the permitted amount for the increase notwithstanding no money was transmitted to her from Italy to England. R(P) 1/70
- ix While working in Mexico a man obtained a divorce from his wife. He later remarried. In 1984 he claimed and was awarded RP and an increase for his wife. His first wife subsequently claimed a pension based on his contribution record. The Commissioner held that the first wife, who remarried in England but was represented at the hearing in Mexico, was a party to the divorce proceedings. The marriage between the claimant and his first wife was lawfully and validly dissolved by the decree of divorce granted in Mexico. In consequence the claimant was entitled to an increase in RP in respect of his second wife. See also 7.1.5 *i below*. R(P) 2/90

5.3.1-3

- R(P) 4/93 x The claimant received invalidity benefit including an increase for his wife. The “tapered” earnings rule had been applied to her earnings. Entitlement to invalidity benefit ceased when the claimant was awarded RP at age 70. The “tapered” earnings rule ceased to apply and reg. 8(6) of the Dependency Regs. 1977 did not afford transitional protection. Although increases of RP and invalidity benefit for a dependent wife are provided for by a single s. of the SS Act 1975 and by two ss. for a dependent husband, this did not mean that the increases for a dependent wife were intended to be one and indivisible.

2 Entitlement of a wife to a RP on her husband’s contributions

- C.P. 96/50 i A RP payable to a wife by virtue of her husband’s record should be regarded as a contribution by him towards her maintenance. See paras. 7 and 8.

- R(P) 3/67 ii A married woman was in receipt of a RP on her own insurance and the amount of it included an increment in respect of deferred retirement. Her husband was also in receipt of a RP when he died and the claimant was then awarded RP on his insurance at a higher rate than she had been receiving on her own insurance record. It was held that there was no provision for the payment, in addition, of the increments for deferred retirement earned by a widow on her own insurance during a period before the death of her husband. See paras. 3 and 4.

3 Whether husband and wife are residing together during a period of absence

- R(P) 5/54 i After receiving free in-patient treatment in a mental hospital for two years a woman in receipt of RP was declared by the medical superintendent to be fit to be discharged, but it proved to be impossible for arrangements for her accommodation at home to be made and there was no prospect of her being able to return to her home. It was held that her absence from her husband had ceased to be temporary and that she was no longer ‘residing’ with him, so that RP fell to be reduced.
- R(P) 15/56 ii A husband and wife lived in accommodation provided under Part III of the National Assistance Act 1948. They had to sleep in separate dormitories but otherwise spent their time together. It was held that they were residing together.

4 Validity of marriage

- i The word 'married' means validly married. Thus the fact that the claimant and the man with whom she went through a form of marriage both believed on reasonable grounds that they were lawfully married when, in fact, it transpired that the man's lawful wife, of whom he had heard nothing for 40 years, was still alive did not entitle the claimant to a retirement pension on the man's insurance. R(P) 1/59
- ii The claimant went through a ceremony of marriage but to prevent parental interference the banns were published and the ceremony conducted in a name which both the claimant and the man knew to be false. It was held that the marriage was void and that the claimant was not entitled to a retirement pension on the man's insurance. R(P) 9/59
- iii The claimant's husband had gone through a panchayat divorce with his first wife before he married the claimant. It was held that a panchayat divorce in India constituted a fully recognised divorce under the Hindu Law of India and such a divorce constituted proceedings under section 46(1) of the Family Act 1986. The claimant was therefore legally married to her husband and was entitled to claim a retirement pension on his insurance. See also R(G) 3/55, 3.2.2 i, R(G) 1/72, 3.2.2 ii, R(G) 3/74, 3.2.2 iii, and R(G) 4/74, 3.2.2 iv. R(P) 1/98

5 Marriage by 'habit and repute'

- i A woman claimed retirement pension as the wife of a man with whom she had cohabited as his wife for many years and with whom she went through a ceremony of marriage in March 1949. It was held that marriage by habit or repute under Scots law before that date was not established. See as to marriage by habit and repute under the law of Scotland paragraphs 3-4, and as to the onus of proof paragraphs 6-7. R(P) 1/51
- ii A woman applied for determination of her provisional entitlement to a retirement pension on the insurance of a man who, she claimed, was her husband as the result of marriage by habit and repute according to the law of Scotland. It was held that matrimonial consent could be presumed to have been given on the date the claimant and the man with whom she lived for many years knew they were free to marry and that, for the purposes of the National Insurance Act 1946, the claimant had established that she was the wife of the man in question. See as to the law relating to marriage by habit and repute paragraphs 4-7. R(P) 1/58

Part 4: General considerations affecting entitlement

1 Effect of free in-patient treatment in hospital

- R(P) 13/52 i A retirement pensioner who was an in-patient in a Scottish hospital and who paid 3s. a day to cover part of the cost of her accommodation was held to be receiving free in-patient treatment, which reduced the amount of her retirement pension. See paragraphs 4-5.
- R(P) 17/55 ii After a period of free in-patient treatment in a hospital a retirement pensioner was sent to an old people's home with the intention of becoming a permanent resident there. She was, however, returned to the hospital after one night in the home and it was held that that should not be treated as a period of residence in prescribed accommodation. The phrase 'ceased to reside' in the context of (what is now) regulation 17 of the Social Security (Hospital In-patients) Regulations 1975 implies that there has, in fact, been a period of residence. See paragraph 5.
- R(P) 2/62 iii As a result of continuing to work after reaching pensionable age a man was entitled to an increment of his retirement pension. He was admitted to hospital and after 52 weeks as an in-patient his retirement pension was reduced. The claimant contended that his commitments at home remained the same and that he should not be deprived of the increment to his retirement pension, but it was held that the statutory authorities have no power to vary the amount of the reduction and that the whole of the claimant's retirement pension fell to be reduced as being 'personal benefit'. See also R(I) 2/83.
- R(P) 1/67 iv A retirement pensioner had been an in-patient in a hospital for approximately 40 weeks when she was admitted on a permanent basis to a home which was Part III accommodation within the meaning of the National Assistance Act 1948. A little under 2 weeks later the home was found to be unsuitable for her and she was transferred back to the hospital as an in-patient to await a geriatric bed becoming available for her. It was contended that the period the claimant was in the home should not be excluded in computing a period of 52 weeks for which she received free in-patient treatment in the hospital. It was held that the claimant was undergoing 'medical or other treatment' during both periods when she was an in-patient and that regulation 12(2) and proviso (a) of the National Insurance (Hospital In-patients) Regulations 1949 (see now regulation 17 of the Social Security (Hospital In-patients) Regulations 1975) applied, with the result that the claimant had to be treated as having received free in-patient treatment for more than 52 weeks. A restrictive interpretation should not be put on the words 'medical or other treatment' and the fact that a person is an in-patient in a hospital is strong *prima facie* evidence that he is undergoing 'medical or other treatment'. Compare R(P) 17/55, *above* 5.4.1 ii.

2 Detention in legal custody

i A retirement pensioner in a mental hospital was held to be detained in legal custody pursuant to a court order under the Criminal Justice (Scotland) Act 1949 and was, therefore, disqualified for receiving his retirement pension. R(P) 10/54

ii A retirement pensioner was convicted of an offence and was committed to prison. A little under 3 weeks later she was certified to be insane and was sent as a Broadmoor patient to a mental hospital. On the determination of her prison sentence an order took effect by which she was to be detained in the mental home as a 'Health Service patient' as defined by the Mental Treatment Rules 1948. It was held that after the end of the prison sentence the claimant was no longer to be regarded as detained in legal custody. R(P) 2/57 (T)

3 Evidence of date of birth

i Documentary evidence of the registration of a birth is not the only method of proof available to establish a person's age. Medical evidence may be taken into account, but the weight to be attached to such evidence will vary according to the nature of any physical examination, the degree to which the accepted signs of age are explored, and the certainty, or lack of certainty, expressed by the medical opinion. In the case of a Pakistani who claimed a retirement pension documentary evidence from Pakistan was rejected but medical evidence was accepted. See paragraph 10. See also CP 11/49. R(P) 1/75

4 Days for which a retirement pension is payable

i The claimant, who was in receipt of sickness benefit, gave notice of retirement on 20th November, to take effect on that date. It was held, for the reasons given in paragraph 3, that sickness benefit ceased to be payable from and including the date of his retirement, namely 20th November, and that a retirement pension was not payable until the first pension pay-day thereafter, i.e. 25th November. CSP 15/49

- R(P) 16/52 ii A retirement pensioner was disqualified for receiving her retirement pension during a period of imprisonment. She was released on a Friday and it was held that her retirement pension was not payable until the next pension pay-day, i.e. the following Thursday.
- R(P) 17/52 iii A woman gave notice of retirement stating that she intended to retire on 4th April. She then had 2 weeks' holiday, which she could have taken before the date of her retirement and for which she was paid 2 weeks' wages. It was held that she could be treated as having retired on 4th April and that her retirement pension did not fall to be reduced by reason of her receipt of 2 weeks' wages which, it was held were not earnings from a gainful occupation but payment for pre-retirement services.
- R(P) 2/73 iv The combined effect of section 52 of the National Insurance Act 1965 and regulation 10 of the National Insurance (Claims and Payments) Regulations 1965 (see now section 81 of the Act and regulation 15(6) of the Social Security (Claims and Payments) Regulations 1975) was (is) not merely to make a retirement pension *payable* from a particular date but to make it *commence* from that date. Thus it was held that when a claimant retired on 7th January and was awarded a retirement pension it was correctly paid to him from the first relevant pension pay-day thereafter, i.e. Thursday, 13th January.
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5 Notice of retirement

- R(P) 4/52 i In giving notice of retirement a claimant mistakenly gave a wrong date as the date from which he retired and it was held that there was no provision of the National Insurance Acts, or of the regulations made thereunder, authorising a claimant to amend a notice of retirement by substituting an earlier date than that given in the notice. See also and compare R(P) 4/53 and see as to notice of de-retirement R(P) 1/61.
- R(P) 5/55 ii A non-employed claimant was awarded a retirement pension, but shortly before the due date for payment she purported to waive her claim to a pension. The insurance officer decided on review that the claimant had not retired. Two years later the claimant gave a fresh notice of retirement and a retirement pension was awarded to her from the date of the second notice. The claimant's circumstances had not changed and the evidence showed that the insurance officer's review was based on a misapprehension of the facts. It was held that the claimant should be treated as having retired from the date of the original notice. See paragraphs 12-16.
- R(P) 17/56 iii A notice of retirement is valid only for the date stated in it, or the date of the notice if later, and not for any other date. Thus, in the case of a claimant who gave advanced notice of retirement, but in the event delayed her retirement for approximately a week and did not give a fresh notice until several weeks later, it was held that

retirement could only be accepted from the date given in the fresh notice. See paras. 10 and 11. See also CSP 13/49.

6 Residence in GB

i The question whether a person is, or is not, resident in GB is one of fact and degree. “Resident” is not synonymous with ‘ordinarily resident’. In certain circumstances a person can be resident in more than one country at the same time. Thus when a husband and wife came to GB from Australia in September 1963 and spent some time travelling on the Continent before returning to Australia early in 1965 they were held to have become resident in GB in the September, as from when they did not fall to be disqualified for receiving an increase of RP by force of the regs. then in operation. See paras. 9 to 14 and see also R(P) 1/72. R(P) 2/67

7 Overlapping benefits

i A widow was awarded RP based on her own deficient contribution record and claimed that by adding her husband’s contributions to her own she could be entitled to a pension at the full rate. The Minister of Pensions and NI (as he then was) decided that on that basis the relevant contribution conditions were fully satisfied. But the claimant was, however, also in receipt of a dependant’s war pension which exceeded the amount to which she would have been entitled if her late husband’s contributions were taken into account. It was held that the claimant’s war pension was a “personal death benefit” and as a result of the application of the relevant provision of the NI (Overlapping Benefits) Regs. she would derive no benefit from relying on her late husband’s insurance, but that she was entitled to RP on her own insurance, which was excepted from the provisions of the regs. R(P) 4/58

8 Transexuals

i The claimant who was born a male in 1915 commenced, living and working as a woman in 1960 following medical and psychiatric treatment. The claimant claimed that pensionable age in her case was the age of 60 on reaching that age in 1975. It was held that even while living as a woman the claimant was biologically a man and had not reached the appropriate pensionable age of 65. See also R(P) 2/80 and R(P) 1/07, 19.1.2 xxvii. R(P) 1/80

ii The term ‘woman’ in s. 27 of the Act refers to a person who is biologically a woman. There is no statutory power whereby a person may change his NI rights from those of a man to those of a woman. R(P) 1/80 followed. See also R(P) 1/07, 19.1.2 xxvii. R(P) 2/80

iii The claimant, a male-to-female transsexual, claimed and was awarded RP at age 65. In May 2005 the claimant obtained a GRC under the Gender Recognition Act 2004. Her RP was recalculated from June 2005 to reduce her AP. In May 2006 the claimant applied for her RP to be awarded to her as a woman back to her 60th birthday, asserting entitlement to equal treatment under Art. 4(1) of Council Directive 79/7. The Commissioners held that the claimant was entitled to assert a claim under the direct effect of Art. 4(1) (see R(P) 1/09). However any claim is subject to the same general procedural requirements, time limits and restrictions as any corresponding applications under domestic law. Applying those requirements, the claimant’s application of May 2006 could only be considered as one for the alteration of the RP she had claimed and been awarded in 1999, not as a fresh or separate claim. The only relevant power to alter that award was to supersede it under s.10 of the Social Security Act 1998 with effect from the date of her application. There was no ground to revise it back to its original date, as any error in failing to accord equal treatment as required by the Directive was only shown to be so by R(P) 1/07 and therefore outside the definition of “official error” in reg. 1(3) of the Social Security and Child Support (Decisions and Appeals) Regs. 1999. The decision to reduce the claimant’s RP was questioned. That decision had to be reconsidered, for possible separate revision of the claimant’s award back to that date if it had failed to give effect to para. 7(4) of Sch. 5 to the Gender Recognition Act 2004 with regard to the amount of AP. The claimant was entitled to have include in her RP, R(P) 2/09

from the effective date of the superseding or revised decision, a percentage increase for deferment from the date when she could first have claimed RP under the Directive until its actual starting date in 1999. The date when the claimant had first become entitled to the benefit of equal treatment in her acquired gender was to be determined by applying the same tests as in the Gender Recognition Act, even as regards periods before it came into force (See R(P) 1/09). See also 19.1.2 xxviii.

[2002] AOCR 13 iv *MP v SSWP (RP)* [2009] UKUT 205 (AAC); [2010] AACR 13. The claimant, a male-to-female transsexual, married while a man, but underwent gender reassignment surgery and was divorced. The claimant continue to pay NI contributions until she reached age 65. She was paid RP which was calculated on the basis that she was male. The claimant was issued with a GRC and the claimant's AP was reduced by means of a supersession. The AT (now FtT) upheld that decision. Before the UT decided the claimant's appeal she received a refund of the NI contributions she had paid between the ages of 60 and 65. The UT allowed the appeal and held that the decision reducing the claimant's AP was wrong. The UT also held that there was no basis for refunding the claimant's NI contributions, since the rationale for the refund was that her AP had to be recalculated in order to ignore earnings factors accrued between age 60 and 65. If no such recalculation was required, there was no basis for refunding the NI contributions. However, the claimant was entitled to an increase of BP due to deferment under the equal treatment provisions. See also 17.11.1 x, 5.4.8 iii and 19.1.2 xxvii.

9 Absence from GB

R(P) 2/08 i The claimant, a married couple who had lived in Australia, came to the UK in the 1970s. On reaching pension age they were both awarded full UK RP as they were credited with deemed contributions for their residence in Australia under a reciprocal agreement between the UK and Australia. That agreement was subsequently terminated from 2001 save for certain limited provisions preserving and continuing the RP rights of existing recipients. The claimants moved to France in 2004 and their pensions were reduced to 35% of the standard rate; that being the appropriate rate based on only UK contributions. The claimants appealed, arguing that Art 10 of Reg. (EEC) 1408/71 precludes any reduction in old age benefits simply because a recipient resides in another member state. The CA held that the reduction was lawful as the claimants were not protected by Art 10 because Reg 1408/71 does not apply to agreements between the UK and a third state (Annex VI, section Y, para 7). The 1971 Reg. clearly excluded conventions between a single member state and a third non-member state. The Court held that the SS (Australia) Order 2000, although revoking earlier agreements, did continue in force certain provisions and was thus an agreement between the UK and a non-member state.

R(P) 3/09 ii The claimant, a Canadian citizen, married her late husband in 2001. He was a UK citizen who had emigrated to Canada in 1976, his RP and GRB being "frozen" thereafter so that he was not entitled to any subsequent upratings. Following marriage the claimant was awarded Category B retirement pension on her husband's contributions, but frozen at the 1975 rate. After the death of her husband in 2002 she was awarded RP in her own right, plus half of her late husband's GRB, but again frozen at the 1975 rate. A tribunal dismissed the claimant's appeal, but a Commissioner found that she was entitled to have her RP uprated from the date of her husband's death. The Secretary of State appealed, and the CA held that the general bar on uprating abroad continued to apply to the claimant both before and after she became a widow. There was a strong incentive to read any ambiguity in the regs. so as to accord with the evident policy intention. The Court, however, remitted the case back to the Upper Tribunal so that the matter could be reviewed when the final decision of the ECHR was given in Carson (challenging all frozen rates for persons living outside the EU).

10 GMP deduction - point at which made

R(P) 1/03 i A woman was in receipt of a RP on her own insurance. The pension consisted of a basic and additional pension but was subject to a GMP deduction. On the death of her husband she became entitled to a pension based on his contributions, also subject to a GMP deduction. On the death of her husband she became entitled to a pension

based on his contributions, also subject to a deduction in respect of her GMP. As the pension on her own insurance was higher, the issue was whether the deduction in respect of the GMP should be made at the stage of calculating the additional pension attributable to her own earnings, as this led to a more favourable result. It was held that the GMP was to be deducted after the appropriate pension had been worked out and not at some intermediate stage in working it out.

ii *W v SSWP* [2009] EWCA Civ. 1111; [2010] AACR 7. The claimant was awarded RP. However, the AP was subject to a GMP deduction. The claimant appealed, stating that the GMP should only be deducted from pre-6.4.97 AP for the period he was in contracted-out employment. The UT commented that the claimant's position appeared anomalous but, citing *Inco Europe v First Choice Distribution* [2000] 1 WLR 586, dismissed the appeal. The claimant appealed to the CA. The CA dismissed the appeal and held that the absence of any restriction of the statutory set-off to AP accruing in the contracted-out period of employment was due to an error on the part of the draftsman and did not represent the intention of the legislature. The CA also held that CMP could be deducted even for periods when the claimant was in contracted-out employment. [2010] AACR 7

The decisions listed below are not included in Chapter 5

A *The following decisions are no longer of authority, having been overruled or given under statutory provisions which are no longer in force*

- CP 24/49 Given under transitional regulations
 CP 33/49 Relates to an arbitrary rule evolved by the Umpire under repealed Acts
 CSP 28/49 Given under classification regulations no longer in force
 CSP 11/50
 CP 77/50 } Question of good faith in the obtaining and receipt of benefit
 R(P) 2/51 }
 R(P) 4/51 }
 R(P) 6/52 } Given under transitional regulations
 R(P) 12/52 Whether a woman continued to be entitled to a pension after the coming into force of the NI Act 1946
 R(P) 14/52 Given under transitional regulations
 R(P) 5/53 } See now the Social Security (Computation of Earnings) Regulations 1974
 R(P) 11/53 }
 R(P) 13/53 } Question of good faith in the obtaining and receipt of benefit
 R(P) 3/54 }
 R(P) 4/54 } Overruled, see R(P) 2/67
 R(P) 1/56 Question of good faith in the obtaining and receipt of benefit
 R(P) 12/56 }
 R(P) 4/56 } See now the Social Security (Computation of Earnings) Regulations 1974
 R(P) 9/56 }
 R(P) 4/59 } Minister's question
 R(P) 6/59 Increase of RP payable only when pensioner is in
 R(P) 2/64 } GB
 R(P) 1/68 } "Three-year test" for entitlement of a wife to a RP on husband's insurance
 R(P) 1/92 Review and limitation of payment
 R(P) 1/93 New reg. 8 substituted from 5 December 1992
 R(P) 2/93 New reg. 4 substituted from 5 August 1992

B *Decisions which relate to special circumstances or turn purely on questions of fact*

- CP 21/49 Claimant held not to have retired from regular employment
 CP 125/49 Amount of reduction on account of earnings
 CP 1/50 Date from which contributory old age pension payable
 CP 39/50 On the available evidence claimant held not to have proved retirement
 R(P) 2/52 Absence from GB
 R(P) 3/55 Amount of increase payable to man of over seventy
 R(P) 14/55 Reciprocal Agreement with France
 R(P) 5/56 Meaning of "public funds"
 R(P) 13/56 }
 R(P) 6/58 } On the facts a man was held to have become resident in GB
 R(P) 5/59 Validity of marriage in Ireland under Act of 1870

C *Decisions on good cause for late claims for benefit and relating to extinguishment of benefit*

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|-----------|-----------|------------|-----------|
| CSP 13/49 | R(P) 2/55 | R(P) 7/59 | R(P) 1/74 |
| CP 30/50 | R(P) 7/55 | R(P) 10/59 | |
| CP 127/50 | R(P) 2/58 | R(P) 5/61 | |
| R(P) 3/51 | R(P) 5/58 | R(P) 6/61 | |
| R(P) 6/51 | R(P) 3/59 | R(P) 2/65 | |

D *Decisions relating to adjudication*

5 Annex

CPP 127/49

R(P) 5/52

R(P) 1/55

R(P) 3/74

E *Decisions relating to EC Law*

R(P) 4/88