



# Social Security Contributions and Benefits (Northern Ireland) Act 1992

## 1992 CHAPTER 7

### PART II

#### CONTRIBUTORY BENEFITS

##### Modifications etc. (not altering text)

- C1 Pt. II (ss. 20-62) excluded (13.1.1993) by S.R. 1979/242, **reg. 4(1)** (as substituted (13.1.1993) by S.R. 1992/557, **reg. 3**).
- C2 Pt. II (ss. 20-62): power to apply conferred (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 161, 168(4), **Sch. 6 para. 1(3)(a)**.
- C3 Pt. II: power to amend or modify conferred (1.12.1999) by S.I. 1999/3147 (N.I. 11), **art. 49(2)(3)**
- C4 Pt. II modified (*temp.* from 1.12.1999 to 5.10.2002) by S.I. 1999/3147 (N.I. 11), **art. 49(7)(a)** (the *temp.* modification lapsing on the coming into operation of S.R. 2001/441, which modifies specified provisions of Pt. II, on 6.10.2002)

#### *Preliminary*

## 20 Descriptions of contributory benefits.

(1) Contributory benefits under this Part of this Act are of the following descriptions, namely—

- <sup>F1</sup>(a) .....
- [<sup>F2</sup>(b) incapacity benefit, comprising—
  - (i) short-term incapacity benefit; and
  - (ii) long-term incapacity benefit;]
  - (d) maternity allowance (with increase for adult dependants);
  - (e) widow's benefit, comprising—
    - <sup>F3</sup>(i) .....

*Status: Point in time view as at 12/04/2004.*

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- (ii) widowed mother’s allowance<sup>F4</sup> ...;
  - (iii) widow’s pension;
  - [<sup>F5</sup>(ea) bereavement benefits, comprising—
    - (i) bereavement payment;
    - (ii) widowed parent’s allowance<sup>F4</sup> ...;
    - (iii) bereavement allowance;]
  - (f) retirement pensions of the following categories—
    - (i) Category A, payable to a person by virtue of his own contributions (with increase for adult<sup>F6</sup> ... dependants); and
    - [<sup>F7</sup>(ii) Category B, payable to a person by virtue of the contributions of a spouse<sup>F4</sup> ...;]
  - [<sup>F8</sup>(fa) shared additional pensions;]
  - (g) for existing beneficiaries only, child’s special allowance.
- (2) In this Act—
- “long-term benefit” means—
    - (a) [<sup>F9</sup>long-term incapacity benefit;]
    - (b) a widowed mother’s allowance;
  - [<sup>F10</sup>(ba) a widowed parent’s allowance;
  - (bb) a bereavement allowance;]
  - (c) a widow’s pension; and
  - (d) a Category A or Category B retirement pension; and
  - [<sup>F11</sup>(e) a shared additional pension;]
  - “short-term benefit” means—
    - (a) <sup>F12</sup> .....
  - [<sup>F13</sup>(b) short-term incapacity benefit; and]
  - (c) maternity allowance.
- (3) The provisions of this Part of this Act are subject to the provisions of [<sup>F14</sup>Chapter II of Part III of the Pensions Act (reduction in state scheme contributions and social security benefits for members of certified schemes)].

#### Textual Amendments

- F1** S. 20(1)(a) repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, art. 2
- F2** S. 20(1)(b) substituted for s. 20(1)(b)(c) (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 2(2)**; S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F3** S. 20(1)(e)(i) repealed (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), arts. 67, 76, Sch. 8 para. 2(2)(a), **Sch. 10 Pt. V**; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I
- F4** Words in s. 20(1) repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), Sch. 1 (with savings in S.R. 2003/212, art. 2)
- F5** S. 20(1)(ea) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 2(2)(b)**; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I
- F6** Words in s. 20(1)(f)(i) repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), Sch. 1 (with savings in S.R. 2003/212, art. 2)
- F7** S. 20(1)(f)(ii) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(1)**
- F8** S. 20(1)(fa) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 5(2)**; S.R. 2000/133, art. 2(3)(d), Sch. Pt. IV

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- F9** S. 20(2): para. (a) in definition of “long-term benefit” substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 2(3)(a)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F10** S. 20(2): paras. (ba)(bb) in definition of “long-term benefit” inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147(N.I. 11), art. 67, **Sch. 8 para. 2(3)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**
- F11** S. 20(2): para. (e) in definition of “long-term benefit” inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 5(3)**; S.R. 2000/133, art. 2(3)(d), **Sch. Pt. IV**
- F12** Words in definition in s. 20(2) repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, art. 2
- F13** S. 20(2): para. (b) in definition substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 2(3)(b)**; S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F14** Words in s. 20(3) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 30**; S.R. 1994/17, art. 2

## 21 Contribution conditions.

- (1) Entitlement to any benefit specified in section 20(1) above, [<sup>F15</sup>other than [<sup>F16</sup>short-term incapacity benefit under subsection (1)(b) of section 30A below,] long-term incapacity benefit under section [<sup>F17</sup>subsection (5) of that section][<sup>F18</sup>, maternity allowance under section 35 below] or short-term or long-term incapacity benefit under section 40 or 41 below][<sup>F19</sup>or a shared additional pension under section 55A below], depends on contribution conditions being satisfied (either by the claimant or by some other person, according to the particular benefit).
- (2) The class or classes of contribution which, for the purposes of subsection (1) above, are relevant in relation to each of those benefits are as follows—

### *Short-term benefit*

|   |                                |
|---|--------------------------------|
| <b>F20</b>  | <b>F20</b>                     |
| ...   | ...                            |
| [ <sup>F21</sup> Short-term incapacity benefit under section [ <sup>F22</sup> 30A(1)(a)] below] | Class 1 or 2                   |
| [ <sup>F23</sup> Maternity allowance]   | [ <sup>F23</sup> Class 1 or 2] |
| <i>Other benefits</i>   |                                |
| [ <sup>F24</sup> Bereavement payment]   | Class 1, 2 or 3                |
| Widowed mother’s allowance  | Class 1, 2 or 3                |
| [ <sup>F25</sup> Widowed parent’s allowance]  | Class 1, 2 or 3                |
| Bereavement allowance   | Class 1, 2 or 3]               |
| Widow’s pension   | Class 1, 2 or 3                |
| Category A retirement pension   | Class 1, 2 or 3                |
| Category B retirement pension   | Class 1, 2 or 3                |
| Child’s special allowance   | Class 1, 2 or 3                |

- (3) The relevant contribution conditions in relation to the benefits specified in subsection (2) above are those specified in Part I of Schedule 3 to this Act.
- (4) Part II of Schedule 3 to this Act shall have effect as to the satisfaction of contribution conditions for benefit [<sup>F26</sup>, other than maternity allowance,] in certain cases where a

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claim for short-term benefit or a <sup>F27</sup>bereavement payment] is, or has on a previous occasion been, made in the first or second year after that in which the contributor concerned first became liable for primary Class 1 or Class 2 contributions.

- (5) In subsection (4) above and Schedule 3 to this Act—
- (a) “the contributor concerned”, for the purposes of any contribution condition, means the person by whom the condition is to be satisfied;
  - (b) “a relevant class”, in relation to any benefit, means a class of contributions specified in relation to that benefit in subsection (2) above;
  - (c) “the earnings factor”—
    - (i) where the year in question is 1987-88 or any subsequent tax year, means, in relation to a person, the aggregate of his earnings factors derived from <sup>F28</sup>so much of his earnings as did not exceed the upper earnings limit and] upon which primary Class 1 contributions have been paid or treated as paid and from his Class 2 and Class 3 contributions; and
    - (ii) where the year in question is any earlier tax year, means, in relation to a person’s contributions of any class or classes, the aggregate of his earnings factors derived from all those contributions;
  - (d) except in the expression “benefit year”, “year” means a tax year.

<sup>F29</sup>(5A) Where primary Class 1 contributions have been paid or treated as paid on any part of a person’s earnings, the following provisions, namely—

- (a) subsection (5)(c) above;
- (b) sections 22(1)(a) <sup>F30</sup>, (2A)] and (3)(a), 23(3)(a), 24(2)(a), <sup>F31</sup>44(6)(za) and (a)]<sup>F32</sup>... below; and
- (c) paragraphs 2(4)(a) and (5)(a), 4(2)(a), 5(2)(b) and (4)(a) and 7(4)(a) of Schedule 3 to this Act,

shall have effect as if such contributions had been paid or treated as paid on so much of the earnings as did not exceed the upper earnings limit.]

- (6) In this Part of this Act “benefit year” means a period—
- (a) beginning with the first Sunday in January in any calendar year, and
  - (b) ending with the Saturday immediately preceding the first Sunday in January in the following calendar year;

but for any prescribed purposes of this Part of this Act “benefit year” may by regulations be made to mean such other period (whether or not a period of 12 months) as may be specified in the regulations.

#### Textual Amendments

- F15** Words in s. 21(1) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 3(2)**; S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F16** Words in s. 21(1) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 20(a)**; S.R. 2000/332, art. 2(3)(e)(4)(5)
- F17** S. 21(1): By S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 20(a)**; S.R. 2000/332, art. 2(3)(e)(4)(5) it is provided that, for the words "30A below", there are substituted (3.11.2000 for specified purposes and 6.4.2001 otherwise) the words "subsection (5) of that section"
- F18** Words in s. 21(1) inserted (12.1.2000 and 2.4.2000 for specified purposes and otherwise prosp.) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 Pt. VI para. 29(2)**; S.R. 1999/494, art. 2(1)(b)

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- F19** Words in s. 21(1) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 6**; S.R. 2000/133, art. 2(3)(d), **Sch. Pt. IV**
- F20** Entry in s. 21(2) repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, art. 2
- F21** Words in s. 21(2) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 3(3)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F22** Words in s. 21(2) substituted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 20(b)**; S.R. 2000/332, art. 2(3)(e)(4)(5)
- F23** Entry in s. 21(2) repealed (12.1.2000 and 2.4.2000 for specified purposes and otherwise prosp.) by S.I. 1999/3147 (N.I. 11), arts. 67, 76, **Sch. 8 Pt. VI para. 29(3)**, **Sch. 10 Pt. V**; S.R. 1999/494, art. 2(1)(b)(c)(i)
- F24** Words in s. 21(2) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 3(2)(a)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**
- F25** Entries in s. 21(2) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 3(2)(b)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**
- F26** Words in s. 21(4) repealed (12.1.2000 and 2.4.2000 for specified purposes and otherwise prosp.) by S.I. 1999/3147 (N.I. 11), arts. 67, 76, **Sch. 8 Pt. VI para. 29(4)**, **Sch. 10 Pt. V**; S.R. 1999/494, art. 2(1)(b)(c)(i)
- F27** Words in s. 21(4) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 3(3)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**
- F28** Words in s. 21(5)(c)(i) substituted (with effect for 2003-04 and subsequent tax years) by **National Insurance Contributions Act 2002 (c. 19)**, ss. 6, 8(2), **Sch. 1 para. 25**
- F29** S. 21(5A) inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 42**; S.R. 1999/72, art. 2(b), **Sch.**
- F30** Words in s. 21(5A)(b) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(2)(a); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F31** Words in s. 21(5A)(b) substituted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(2)(b); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F32** Words in s. 21(5A)(b) repealed (6.4.2003) by **Tax Credits Act 2002 (c. 21)**, s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), **Sch. 1** (with savings in S.R. 2003/212, art. 2)

## 22 Earnings factors.

- (1) A person shall, for the purposes specified in subsection (2) below, be treated as having annual earnings factors derived—
- in the case of 1987-88 or any subsequent tax year, from [<sup>F33</sup>so much of his earnings as did not exceed the upper earnings limit and] upon which primary Class 1 contributions have been paid or treated as paid and from Class 2 and Class 3 contributions; and
  - in the case of any earlier tax year, from his contributions of any of Classes 1, 2 and 3;
- but subject to the following provisions of this section and those of section 23 below.
- (2) The purposes referred to in subsection (1) above are those of—
- establishing, by reference to the satisfaction of contribution conditions, entitlement to [<sup>F34</sup>a contribution-based jobseeker's allowance or to] any benefit specified in section 20(1) above, other than maternity allowance; and
  - calculating the additional pension in the rate of a long-term benefit.

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- [<sup>F35</sup>(2A) For the purpose specified in subsection (2)(b) above, in the case of the first appointed year or any subsequent tax year a person's earnings factor shall be treated as derived only from [<sup>F33</sup>so much of his earnings as did not exceed the upper earnings limit and] on which primary Class 1 contributions have been paid or treated as paid.]
- (3) Separate earnings factors may be derived for 1987-88 and subsequent tax years—
- from earnings [<sup>F36</sup>not exceeding the upper earnings limit] upon which primary Class 1 contributions have been paid or treated as paid;
  - from earnings which have been credited;
  - from contributions of different classes paid or credited in the same tax year;
  - by any combination of the methods mentioned in paragraphs (a) to (c) above, and may be derived for any earlier tax year from contributions of different classes paid or credited in the same tax year, and from contributions which have actually been paid, as opposed to those not paid but credited.
- (4) Subject to regulations under section 19(4) to (6) above, no earnings factor shall be derived—
- for 1987-88 or any subsequent tax year, from earnings [<sup>F37</sup>in respect of which] primary Class 1 contributions are paid at the reduced rate, or
  - for any earlier tax year, from primary Class 1 contributions paid at the reduced rate or from secondary Class 1 contributions.
- (5) Regulations may provide for crediting—
- for 1987-88 or any subsequent tax year, earnings or Class 2 or Class 3 contributions, or
  - for any earlier tax year, contributions of any class, for the purpose of bringing a person's earnings factor for that tax year to a figure which will enable him to satisfy contribution conditions of entitlement to [<sup>F34</sup>a contribution-based jobseeker's allowance or to]any prescribed description of benefit (whether his own entitlement or another person's).
- (6) Regulations may impose limits with respect to the earnings factors which a person may have or be treated as having in respect of any one tax year.
- (7) The <sup>M1</sup>power to amend regulations made before 30th March 1977 (the making of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977) under subsection (5) above may be so exercised as to restrict the circumstances in which and the purposes for which a person is entitled to credits in respect of weeks before the coming into force of the amending regulations; but not so as to affect any benefit for a period before the coming into force of the amending regulations if it was claimed before 18th March 1977.

#### Textual Amendments

- F33** Words in s. 22(1)(a)(2A) substituted (with effect for 2003-04 and subsequent tax years) by [National Insurance Contributions Act 2002 \(c. 19\)](#), ss. 6, 8(2), [Sch. 1 para. 26\(2\)](#)
- F34** Words in s. 22(2)(a)(5) inserted (7.10.1996) by [S.I. 1995/2705 \(N.I. 15\)](#), art. 40(1), [Sch. 2 para. 5](#); [S.R. 1996/401](#), art. 2
- F35** [S. 22\(2A\)](#) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by [2000 c. 4 \(N.I.\)](#), [s. 29\(1\)](#); [S.R. 2000/358](#), art. 2(e), [Sch. Pt. IV](#) (as amended by [S.R. 2000/374](#), art. 3); [S.R. 2001/34](#), art. 2(a)



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**F36** Words in s. 22(3)(a) inserted (with effect for 2003-04 and subsequent tax years) by National Insurance Contributions Act 2002 (c. 19), ss. 6, 8(2), **Sch. 1 para. 26(3)**

**F37** Words in s. 22(4)(a) substituted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 43**; S.R. 1999/72, art. 2(b), Sch.

#### Modifications etc. (not altering text)

**C5** S. 22 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

**C6** S. 22(5)(a) modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), **arts. 1(3), 73(a)a**

#### Marginal Citations

**M1** S.I. 1977/610 (N.I. 11).

### 23 Provisions supplemental to ss. 21 and 22.

- (1) Earnings factors derived as mentioned in section [<sup>F38</sup>22(1)] above, including earnings factors as increased by any order under section 130 of the Administration Act—
  - (a) shall be expressed, subject to subsection (2) below, as whole numbers of pounds; and
  - (b) shall be made ascertainable from tables or rules to be drawn up by the Department and embodied in regulations.
- (2) Subsection (1) above does not require earnings factors in respect of the tax year 1978-79 or any subsequent tax year which have been revalued for the purpose of calculating guaranteed minimum pensions under the Pensions Order [<sup>F39</sup> or the Pensions Act] to be expressed as whole numbers of pounds.
- (3) The tables and rules referred to in subsection (1) above shall be drawn up so that, in general—
  - (a) in respect of the tax year 1987-88 and any subsequent tax year, the amount of earnings [<sup>F40</sup>not exceeding the upper earnings limit] upon which primary Class 1 contributions have been paid or treated as paid gives rise, subject to subsection (4) below, to an earnings factor for that year equal or approximating to the amount of those earnings; and
  - (b) any number of Class 2 or Class 3 contributions in respect of a tax year gives rise to an earnings factor for that tax year equal or approximating to that year's lower earnings limit for Class 1 contributions multiplied by the number of contributions.
- (4) The Department may by regulations make such modifications of subsection (3)(a) above as appear to the Department to be appropriate in consequence of section 8(2) above.

#### Textual Amendments

**F38** Words in s. 23(1) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 131(2)**

**F39** Words in s. 23(2) inserted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 31**; S.R. 1994/17, art. 2

**F40** Words in s. 23(3)(a) inserted (with effect for 2003-04 and subsequent tax years) by National Insurance Contributions Act 2002 (c. 19), ss. 6, 8(2), **Sch. 1 para. 27**

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**Modifications etc. (not altering text)**

C7 S. 23 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

**24 Records of earnings and calculation of earnings factors in absence of records.**

- (1) Regulations may provide for requiring persons to maintain, in such form and manner as may be prescribed, records of such earnings paid by them as are relevant for the purpose of calculating earnings factors, and to retain such records for so long as may be prescribed.
- (2) Where the Department is satisfied that records of earnings relevant for the purpose of calculating a person’s earnings factors for the tax year 1987-88 or any subsequent tax year have not been maintained or retained or are otherwise unobtainable, then, for the purpose of determining those earnings factors, the Department may—
  - (a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of [<sup>F41</sup>so much of that person’s earnings as did not exceed the upper earnings limit and] on which primary Class 1 contributions have been paid or treated as paid; or
  - (b) take the amount of those earnings to be such sum as it may specify in the particular case.

**Textual Amendments**

F41 Words in s. 24(2)(a) substituted (with effect for 2003-04 and subsequent tax years) by National Insurance Contributions Act 2002 (c. 19), ss. 6, 8(2), Sch. 1 para. 28

*Unemployment benefit*

<sup>F42</sup>25 .....

**Textual Amendments**

F42 S. 25 repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), Sch. 3; S.R. 1996/401, art. 2

<sup>F43</sup>25A .....

**Textual Amendments**

F43 S. 25A repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), Sch. 3; S.R. 1996/401, art. 2

<sup>F44</sup>25B .....



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**Textual Amendments**

**F44** S. 25B repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, **art. 2**

<sup>F45</sup>**26** .....

**Textual Amendments**

**F45** S. 26 repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, **art. 2**

<sup>F46</sup>**27** .....

**Textual Amendments**

**F46** S. 27 repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, **art. 2**

<sup>F47</sup>**28** .....

**Textual Amendments**

**F47** S. 28 repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, **art. 2**

<sup>F48</sup>**29** .....

**Textual Amendments**

**F48** S. 29 repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, **art. 2**

<sup>F49</sup>**30** .....

**Textual Amendments**

**F49** S. 30 repealed (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(2), **Sch. 3**; S.R. 1996/401, **art. 2**

*[<sup>F50</sup>Incapacity benefit]*

**Textual Amendments**

**F50** S. 30A and preceding cross-heading inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 3(1)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Status: Point in time view as at 12/04/2004.*

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### **[<sup>F51</sup>30A Incapacity benefit: entitlement.**

(1) Subject to the following provisions of this section, a person who satisfies

- <sup>F52</sup>(a) [ either of the conditions mentioned in subsection (2) below; or
- (b) if he satisfies neither of those conditions, each of the conditions mentioned in subsection (2A) below,]

is entitled to short-term incapacity benefit in respect of any day of incapacity for work [<sup>F53</sup>(“the relevant day”)] which forms part of a period of incapacity for work.

(2) The conditions [<sup>F54</sup>mentioned in subsection (1)(a) above] are that—

- (a) he is under pensionable age on [<sup>F55</sup>the relevant day] and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, paragraph 2; or
- (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—
  - (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or
  - (ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

[ The conditions mentioned in subsection (1)(b) above are that—

- <sup>F56</sup>(2A) (a) he is aged 16 or over on the relevant day;
- (b) he is under the age of 20 or, in prescribed cases, 25 on a day which forms part of the period of incapacity for work;
- (c) he was incapable of work throughout a period of 196 consecutive days immediately preceding the relevant day, or an earlier day in the period of incapacity for work on which he was aged 16 or over;
- (d) on the relevant day he satisfies the prescribed conditions as to residence in Northern Ireland, or as to presence there; and
- (e) he is not, on that day, a person who is receiving full-time education.]

(3) A person is not entitled to short-term incapacity benefit [<sup>F57</sup>under subsection (1)(a) above] for the first 3 days of any period of incapacity for work.

(4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.

(5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.

[ Regulations may provide that persons who have previously been entitled to incapacity <sup>F58</sup>(6) benefit shall, in prescribed circumstances, be entitled to short-term incapacity benefit under subsection (1)(b) above notwithstanding that they do not satisfy the condition set out in paragraph (b) of subsection (2A) above.

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- (7) Regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time education for the purposes of paragraph (e) of subsection (2A) above.]]

#### Textual Amendments

- F51** S. 30A and preceding cross-heading inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 3(1)**; S.R. 1994/450, **art. 2(d)**, **Sch. Pt. IV**
- F52** Words in s. 30A(1) substituted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(1)(a)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F53** Words in s. 30A(1) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(1)(b)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F54** Words in s. 30A(2) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(2)(a)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F55** Words in s. 30A(2)(a) substituted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(2)(b)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F56** S. 30A(2A) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(3)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F57** Words in s. 30A(3) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(4)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F58** S. 30A(6)(7) added (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(5)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**

#### Modifications etc. (not altering text)

- C8** S. 30A modified (5.5.2003) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modifications for Her Majestys Forces and Incapacity Benefit) Regulations 2003 (S.I. 2003/735), **regs. 1, 2**
- C9** S. 30A(4) modified (13.4.1995) by S.R. 1995/35, **reg. 4**

#### [<sup>F59</sup>30B Incapacity benefit: rate.

- (1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.
- (2) Subject to the following provisions of this section the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.

The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

- (3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.

But in determining that rate any increase of the following descriptions shall be disregarded—

- (a) any increase [<sup>F60</sup>(for married people) under section 51A(2)] below or (for deferred retirement) under Schedule 5 to this Act;
- (b) any increase (for dependants) under section <sup>F61</sup>... 83 or 85 below; and
- (c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating of benefits) which corresponds to

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an increase of the sums mentioned in section 150(1)(e) of the Great Britain Administration Act.

- (4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—
- (a) is terminally ill; or
  - (b) is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.

For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

- (5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.
- (6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.
- (7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.

For this purpose “the qualifying date” means the first day of the period of incapacity for work or such earlier day as may be prescribed.]

#### Textual Amendments

- F59** S. 30B inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 4(1)**; S.R. 1994/450, **art. 2(b)**, **Sch. Pt. II**
- F60** Words in s. 30B(3)(a) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 123**, **Sch. 2 Pt. II para. 18(3)**
- F61** Word in s. 30B(3) repealed (6.4.2003) by **Tax Credits Act 2002 (c. 21)**, s. 61, **Sch. 6**; S.I. 2003/962, **art. 2(3)(e)**, **Sch. 1** (with savings in S.R. 2003/212, **art. 2**)

#### Modifications etc. (not altering text)

- C10** S. 30B modified (13.4.1995) by S.R. 1995/35, **regs. 12, 13(1)(2), 14, 19, 20**
- C11** S. 30B(2)(4) modified (13.4.1995) by S.R. 1995/35, **reg. 4**
- C12** S. 30B(5) applied (1.5.1995) by 1994 c. 9, **s. 139(6)** (as inserted by 1995 c. 4, s. 141(3))

### [<sup>F62</sup>30C Incapacity benefit: days and periods of incapacity for work.

- (1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—
- (a) a day of incapacity for work means a day on which a person is incapable of work;

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- (b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and
  - (c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.
- (2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.
- (3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.
- (4) Regulations may provide—
  - (a) that paragraph (b) of subsection (1) above shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be specified in the regulations; and
  - (b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be specified in the regulations.
- [<sup>F63</sup>(5) Where a person claims the higher rate of short-term incapacity benefit, or long-term incapacity benefit, under section 30A above for a period commencing after he has ceased to be in qualifying remunerative work (within the meaning of Part 1 of the Tax Credits Act 2002) and—
  - (a) the day following that on which he so ceased was a day of incapacity for work for him,
  - (b) he has been entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit, under section 30A above within the period of two years ending with that day of incapacity for work, and
  - (c) he satisfied the relevant tax credit conditions on the day before he so ceased, every day during that period on which he satisfied those conditions is to be treated for the purposes of the claim as a day of incapacity for work for him.
- (5A) A person satisfies the relevant tax credit conditions on a day if—
  - (a) he is entitled for the day to the disability element of working tax credit (on a claim made by him or by him jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act 2002) in his or their case is such that he is not so entitled, and
  - (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.]
- (6) Where—
  - (a) a person becomes engaged in training for work; and
  - (b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged; and
  - (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

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any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

(7) For the purposes of this section “week” means any period of 7 days.]

#### Textual Amendments

**F62** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 5(1)**; S.R. 1994/450, art. 2(b), **Sch. Pt. II**

**F63** S. 30C(5)(5A) substituted for s. 30C(5) (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 37**; S.I. 2003/962, art. 2(3)(d)(iii)

#### Modifications etc. (not altering text)

**C13** S. 30C modified (31.3.2003) by The Tax Credits Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003 (S.I. 2003/962), **art. 5(2)**

**C14** S. 30C modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), **arts. 1(3)**, 73(8)(b)

### [<sup>F64</sup>30D Incapacity benefit: construction of references to days of entitlement.

- (1) The following provisions have effect in calculating for the purposes of—
- section 30A(4) above (length of entitlement to short-term incapacity benefit);
  - section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);
  - section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and
  - section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),

the number of days for which a person has been entitled to short-term incapacity benefit.

- (2) There shall be included—
- the first 3 days of the period of incapacity for work; and
  - in the case of a woman, any days for which she was entitled to maternity allowance.
- (3) There shall also be included such days as may be prescribed in respect of which a person was entitled to statutory sick pay, and on the first of which he satisfied the contribution conditions for short-term incapacity benefit.
- (4) There shall be excluded any days in respect of which a person was disqualified for receiving incapacity benefit.]

#### Textual Amendments

**F64** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 5(1)**; S.R. 1994/450, art. 2(b), **Sch. Pt. II**



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**Modifications etc. (not altering text)**

**C15** S. 30D modified (6.4.2003) by [The Social Security Contributions and Benefits \(Northern Ireland\) Act 1992 \(Modifications for Her Majesty's Forces and Incapacity Benefit\) Regulations 2003 \(S.I. 2003/735\)](#), regs. 1, 3

**[<sup>F65</sup>30DD] Incapacity benefit: reduction for pension payments.**

- (1) Where—
  - (a) a person is entitled to incapacity benefit in respect of any period of a week or part of a week,
  - (b) a pension payment is payable to him in respect of that period (or a period which forms part of that period or includes that period or part of it), and
  - (c) the amount of that payment (or, as the case may be, the amount which in accordance with regulations is to be taken as payable to him by way of pension payments in respect of that period) exceeds the threshold,the amount of that benefit shall be reduced by an amount equal to 50 per cent. of that excess.
- (2) In subsection (1) above “the threshold” means—
  - (a) if the period in question is a week, £85 or such greater amount as may be prescribed; or
  - (b) if that period is not a week, such proportion of the amount mentioned in paragraph (a) as falls to be calculated in accordance with regulations on such basis as may be prescribed.
- (3) Regulations may secure that a person of any prescribed description does not suffer any reduction under subsection (1) above in any amount of incapacity benefit to which he is entitled.
- (4) Regulations may provide—
  - (a) for sums of any specified description to be disregarded for the purposes of this section;
  - (b) for sums of any specified description to be treated for those purposes as payable to persons as pension payments (including, in particular sums in relation to which there is a deferred right of receipt);
  - (c) for the aggregation of sums of any specified description which are payable as pension payments (or treated as being so payable) in respect of the same or different periods;
  - (d) for such sums or aggregate sums to be apportioned between or otherwise allocated to periods in respect of which persons are entitled to incapacity benefit.
- (5) In this section “pension payment” means—
  - (a) a periodical payment made in relation to a person under a personal pension scheme or, in connection with the coming to an end of an employment of his, under an occupational pension scheme or a public service pension scheme;
  - (b) a payment of any specified description, being a payment made under an insurance policy providing benefits in connection with physical or mental illness, disability, infirmity or defect; or
  - (c) a payment of any other specified description;

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and “specified” means prescribed by or determined in accordance with regulations under this section.

(6) For the purposes of subsection (5) above

“occupational pension scheme”, “personal pension scheme” and “public service pension scheme” each has the meaning given by section 1 of the <sup>M2</sup>Pension Schemes (Northern Ireland) Act 1993, except that

“personal pension scheme” includes a contract or trust scheme approved under Chapter III of Part XIV of the <sup>M3</sup>Income and Corporation Taxes Act 1988 (retirement annuities).]

#### Textual Amendments

**F65** S. 30DD inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 60; S.R. 2000/332, art. 2(3)(b)(4)(5)

#### Marginal Citations

**M2** 1993 c. 49.

**M3** 1988 c. 1.

### [<sup>F66</sup>30E Incapacity benefit: reduction for councillor’s allowance.

(1) Where the net amount of councillor’s allowance to which a person is entitled in respect of any week exceeds such amount as may be prescribed, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(2) In this section “councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a member of a district council as may be prescribed for the purposes of this section; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments.

(3) In subsection (1) above “net amount”, in relation to any councillor’s allowance to which a person is entitled, means the aggregate amount of the councillor’s allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question.]

#### Textual Amendments

**F66** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), art. 5(1); S.R. 1994/450, art. 2(b), Sch. Pt. II

### *Sickness benefit*

<sup>F67</sup>31 .....

*Status: Point in time view as at 12/04/2004.*

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**Textual Amendments**

**F67** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F68** **32** .....

**Textual Amendments**

**F68** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Invalidity benefits*

**F69** **33** .....

**Textual Amendments**

**F69** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F70** **34** .....

**Textual Amendments**

**F70** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Maternity*

**35 State maternity allowance.**

[<sup>F71</sup>(1) A woman shall be entitled to a maternity allowance, at the appropriate weekly rate determined under section 35A below, if—

- (a) she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
- (b) she has been engaged in employment as an employed or self-employed earner for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the expected week of confinement; and

[<sup>F72</sup>(c) her average weekly earnings (within the meaning of section 35A below) are not less than the maternity allowance threshold for the tax year in which the beginning of the period of 66 weeks mentioned in paragraph (b) above falls;]

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- (d) she is not entitled to statutory maternity pay for the same week in respect of the same pregnancy.]
- (2) Subject to the following provisions of this section, a maternity allowance shall be payable for the period (“the maternity allowance period”) which, if she were entitled to statutory maternity pay, would be the maternity pay period under section 161 below.
- (3) Regulations may provide—
- (a) for disqualifying a woman for receiving a maternity allowance if—
    - (i) during the maternity allowance period she does any work in employment as an employed or self-employed earner, or fails without good cause to observe any prescribed rules of behaviour; or
    - (ii) at any time before she is confined she fails without good cause to attend for, or submit herself to, any medical examination required in accordance with the regulations;
  - (b) that this section and [<sup>F73</sup>section 35A below] shall have effect subject to prescribed modifications in relation to cases in which a woman has been confined and—
    - (i) has not made a claim for a maternity allowance in expectation of that confinement (other than a claim which has been disallowed); or
    - (ii) has made a claim for a maternity allowance in expectation of that confinement (other than a claim which has been disallowed), but she was confined more than 11 weeks before the expected week of confinement.
  - [<sup>F74</sup>(c) that subsection (2) above shall have effect subject to prescribed modifications in relation to cases in which a woman fails to satisfy the conditions referred to in subsection (1)(b) [<sup>F75</sup>or (c) above] at the commencement of the 11th week before the expected week of confinement, but subsequently satisfies those conditions at any time before she is confined.]
- (4) A woman who has become entitled to a maternity allowance shall cease to be entitled to it if she dies before the beginning of the maternity allowance period; and if she dies after the beginning, but before the end, of that period, the allowance shall not be payable for any week subsequent to that in which she dies.
- (5) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of a maternity allowance—
- (a) Sunday or such other day in each week as may be prescribed shall be disregarded; and
  - (b) the amount payable by way of that allowance for any other day shall be taken as one sixth of the weekly rate of the allowance.
- (6) In this section “confinement” means—
- (a) labour resulting in the issue of a living child, or
  - (b) labour after [<sup>F76</sup>24 weeks] of pregnancy resulting in the issue of a child whether alive or dead,

and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them.

*Status: Point in time view as at 12/04/2004.*

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[<sup>F77</sup>(6A) In this section “the maternity allowance threshold”, in relation to a tax year, means (subject to subsection (6B) below) £30.

(6B) Whenever the Secretary of State makes an order under section 35(6B) of the Great Britain Contributions and Benefits Act (increase of maternity allowance threshold), the Department may make a corresponding order for Northern Ireland.]

(7) The fact that the mother of a child is being paid maternity allowance shall not be taken into consideration by any court in deciding whether to order payment of expenses incidental to the birth of the child.

#### Textual Amendments

- F71** S. 35(1) substituted for s. 35(1)(1A) (12.1.2000 for specified purposes and 2.4.2000 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 50(1)**; S.R. 1999/494, **art. 2(1)(a)**
- F72** S. 35(1)(c) substituted (6.4.2003) by Social Security Act (Northern Ireland) 2002 (c. 10), s. 9(1), **Sch. 1 para. 2(a)**; S.R. 2002/358, art. 2(c), Sch. Pt. II
- F73** Words in s. 35(3)(b) substituted (12.1.2000 for specified purposes and 2.4.2000 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 50(2)(a)**; S.R. 1999/494, **art. 2(1)(a)**
- F74** S. 35(3)(c) added (in accordance with reg. 1(2)(3) of the amending S.R.) by S.R. 1994/176, **reg. 2(3)**
- F75** Words in s. 35(3)(c) substituted (6.4.2003) by Social Security Act (Northern Ireland) 2002 (c. 10), s. 9(1), **Sch. 1 para. 2(b)**; S.R. 2002/358, art. 2(c), Sch. Pt. II
- F76** Words in s. 35(6) substituted (1.10.1992) by S.I. 1992/1310, **art. 4(a)**.
- F77** S. 35(6A)(6B) inserted (6.4.2003) by Social Security Act (Northern Ireland) 2002 (c. 10), s. 9(1), **Sch. 1 para. 2(c)**; S.R. 2002/358, art. 2(c), Sch. Pt. II

#### [<sup>F78</sup>35A Appropriate weekly rate of maternity allowance.

[<sup>F79</sup>(1) For the purposes of section 35(1) above the appropriate weekly rate is (subject to subsection (5A) below) whichever is the lower rate of—

- (a) a weekly rate equivalent to 90 per cent. of the woman's average weekly earnings; and
- (b) the weekly rate for the time being prescribed under section 162(1)(b) below.

(2)

(3)]

(4) For the purposes of this section a woman's

“average weekly earnings” shall be taken to be the average weekly amount (as determined in accordance with regulations) of specified payments which—

- (a) were made to her or for her benefit as an employed earner, or
- (b) are (in accordance with regulations) to be treated as made to her or for her benefit as a self-employed earner,

during the specified period.

(5) Regulations may, for the purposes of subsection (4) above, provide—

- (a) for the amount of any payments falling within paragraph (a) or (b) of that subsection to be calculated or estimated in such manner and on such basis as may be prescribed;

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- (b) for a payment made outside the specified period to be treated as made during that period where it was referable to that period or any part of it;
- (c) for a woman engaged in employment as a self-employed earner to be treated as having received a payment in respect of a week—
  - (i) equal to [<sup>F80</sup>an amount 90 per cent. of which is equal to the weekly rate prescribed under section 162(1)(b) below that is] in force on the last day of the week, if she paid a Class 2 contribution in respect of the week, or
  - (ii) equal to the maternity allowance threshold in force on that day, if she was excepted (under section 11(4) above) from liability for such a contribution in respect of the week;
- (d) for aggregating payments made or treated as made to or for the benefit of a woman where, either in the same week or in different weeks, she was engaged in two or more employments (whether, in each case, as an employed earner or a self-employed earner).

[ Where subsection (5B) below applies the appropriate weekly rate is the weekly rate <sup>F81</sup>(5A) for the time being prescribed under section 162(1)(b) below.

(5B) This subsection applies where a woman is treated by virtue of regulations under sub-paragraph (i) of paragraph (c) of subsection (5) above as having received a payment in respect of each week in the specified period equal to the amount mentioned in that sub-paragraph.]

[<sup>F82</sup>(6) In this section—

“the maternity allowance threshold” has the same meaning as in section 35 above;

“specified” means prescribed by or determined in accordance with regulations.

(7)]

#### Textual Amendments

- F78** S. 35A inserted (12.1.2000 for specified purposes and 2.4.2000 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 50(3)**; S.R. 1999/494, **art. 2(1)(a)**
- F79** S. 35A(1) substituted for s. 35A(1)-(3) (6.4.2003) by Social Security Act (Northern Ireland) 2002 (c. 10), **ss. 4(1)(a)**, 9(1); S.R. 2002/358, **art. 2(c)**, Sch. Pt. II (with art. 3(3))
- F80** Words in s. 35A(5)(c)(i) substituted (19.11.2002 for certain purposes and 24.11.2002 otherwise) by Social Security Act (Northern Ireland) 2002 (c. 10 (N.I.)), **ss. 4(1)(b)**, 9; S.R. 2002/351, **art. 2(b)**, Sch. Pt. II; S.R. 2002/358, **art. 2(b)**, Sch. Pt. I (with art. 3(1))
- F81** S. 35A(5A)(5B) inserted (6.4.2003) by Social Security Act (Northern Ireland) 2002 (c. 10), **ss. 4(1)(c)**, 9(1); S.R. 2002/358, **art. 2(c)**, Sch. Pt. II
- F82** S. 35A(6) substituted for s. 35A(6)(7) (6.4.2003) by Social Security Act (Northern Ireland) 2002 (c. 10), s. 9(1), **Sch. 1 para. 3**; S.R. 2002/358, **art. 2(c)**, Sch. Pt. II

#### Modifications etc. (not altering text)

- C16** S. 35A(5)(c)(i) modified (19.11.2002 for certain purposes and 24.11.2002 otherwise) by Social Security Act (Northern Ireland) 2002 (c. 10 (N.I.)), **ss. 4(2)**, 9; S.R. 2002/351, **art. 2(b)**, Sch. Pt. II; S.R. 2002/358, **art. 2(b)**, Sch. Pt. I (with art. 3(1))



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### *Benefits for widows and widowers*

#### [<sup>F83</sup>36 **Bereavement payment.**

- (1) A person whose spouse dies on or after the appointed day shall be entitled to a bereavement payment if—
  - (a) either that person was under pensionable age at the time when the spouse died or the spouse was then not entitled to a Category A retirement pension under section 44 below; and
  - (b) the spouse satisfied the contribution condition for a bereavement payment specified in Schedule 3, Part I, paragraph 4.
- (2) A bereavement payment shall not be payable to a person if that person and a person of the opposite sex to whom that person was not married were living together as husband and wife at the time of the spouse's death.
- (3) In this section “the appointed day” means the day appointed for the coming into operation of Articles 51 to 53 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.]

#### **Textual Amendments**

**F83** S. 36 substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 51(1); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

#### [<sup>F84</sup>36A **Cases in which sections 37 to 41 apply.**

- (1) Sections 37 to 39 and section 40 below apply only in cases where a woman's husband has died before the appointed day, and section 41 below applies only in cases where a man's wife has died before that day.
- (2) Sections 39A to 39C below apply in cases where a person's spouse dies on or after the appointed day, but section 39A also applies (in accordance with subsection (1)(b) of that section) in cases where a man's wife has died before that day.
- (3) In this section, and in sections 39A and 39B below, “the appointed day” means the day appointed for the coming into operation of Articles 51 to 53 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.]

#### **Textual Amendments**

**F84** S. 36A inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 52(1); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

#### **37 Widowed mother's allowance.**

- (1) A woman who has been widowed shall be entitled to a widowed mother's allowance at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widowed mother's allowance specified in Schedule 3, Part I, paragraph 5 and either—

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- (a) the woman is entitled to child benefit in respect of a child falling within subsection (2) below;
  - (b) the woman is pregnant by her late husband; or
  - (c) if the woman and her late husband were residing together immediately before the time of his death, the woman is pregnant as the result of being artificially inseminated before that time with the semen of some person other than her husband, or as the result of the placing in her before that time of an embryo, of an egg in the process of fertilisation, or of sperm and eggs.
- (2) A child falls within this subsection if one of the conditions specified in section <sup>F85</sup>77(5) below is for the time being satisfied with respect to the child and the child is either—
- (a) a son or daughter of the woman and her late husband;
  - (b) a child in respect of whom her late husband was immediately before his death entitled to child benefit; or
  - (c) if the woman and her late husband were residing together immediately before his death, a child in respect of whom she was then entitled to child benefit.
- (3) The widow shall not be entitled to the allowance for any period after she remarries, but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1)(a), (b) or (c) above.
- (4) A widowed mother's allowance shall not be payable—
- (a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act; or
  - (b) for any period during which she and a man to whom she is not married are living together as husband and wife.

#### Textual Amendments

**F85** Word in s. 37(2) substituted (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, Sch. 3 para. 38; S.I. 2003/962, art. 2(3)(d)(iii)

### 38 Widow's pension.

- (1) A woman who has been widowed shall be entitled to a widow's pension at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widow's pension specified in Schedule 3, Part I, paragraph 5 and either—
- (a) she was, at the husband's death, over the age of 45 but under the age of 65; or
  - (b) she ceased to be entitled to a widowed mother's allowance at a time when she was over the age of 45 but under the age of 65.
- (2) The widow shall not be entitled to the pension for any period after she remarries, but, subject to that, she shall continue to be entitled to it until she attains the age of 65.
- (3) A widow's pension shall not be payable—
- (a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act;

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- (b) for any period for which she is entitled to a widowed mother's allowance; or
  - (c) for any period during which she and a man to whom she is not married are living together as husband and wife.
- (4) In the case of a widow whose late husband died before 11th April 1988 and who either—
- (a) was over the age of 40 but under the age of 55 at the time of her husband's death; or
  - (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,
- subsection (1) above shall have effect as if for "45" there were substituted "40".

### **39 Rate of widowed mother's allowance and widow's pension.**

- (1) The weekly rate of—
- (a) a widowed mother's allowance,
  - (b) a widow's pension,
- shall be determined in accordance with the provisions of [F86][F87]sections 44 to[F8845B]] below [F89]and Schedule 4A to this Act] as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.
- (2) In the application of [F86][F87]sections 44 to[F8845B]] below [F89]and Schedule 4A to this Act] by virtue of subsection (1) above—
- (a) where the woman's husband was over pensionable age when he died, references in those sections to the pensioner shall be taken as references to the husband, and
  - (b) where the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.
- (3) In the case of a woman whose husband dies after [F90]5th October 2002], the additional pension falling to be calculated under [F86][F87]sections 44 to[F8845B]] below [F89]and Schedule 4A to this Act] by virtue of subsection (1) above shall (before making any reduction required by subsection (4) below) be one half of the amount which it would be apart from this subsection.
- (4) Where a widow's pension is payable to a woman who was under the age of 55 at the time when the applicable qualifying condition was fulfilled, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which her age at that time was less than 55 (any fraction of a year being counted as a year).
- (5) For the purposes of subsection (4) above, the time when the applicable qualifying condition was fulfilled is the time when the woman's late husband died or, as the case may be, the time when she ceased to be entitled to a widowed mother's allowance.
- (6) In the case of a widow whose late husband died before 11th April 1988 and who either—
- (a) was over the age of 40 but under the age of 55 at the time of her husband's death; or

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- (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,  
subsection (4) above shall have effect as if for "55" there were substituted "50".

#### Textual Amendments

- F86** Words in s. 39(1)(2)(3) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 124(2)-(5)**
- F87** Words in s. 39(1)(2)(3) amendment continued (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 39**; S.I. 2003/962, art. 2(3)(d)(iii)
- F88** Words in s. 39(1)(2)(3) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 7**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F89** Words in s. 39(1)(2)(3) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(3); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F90** Words in s. 39(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(a)

#### [<sup>F91</sup>39A Widowed parent's allowance.

- (1) This section applies where—
- (a) a person whose spouse dies on or after the appointed day is under pensionable age at the time of the spouse's death, or
  - (b) a man whose wife died before the appointed day—
    - (i) has not remarried before that day, and
    - (ii) is under pensionable age on that day.
- (2) The surviving spouse shall be entitled to a widowed parent's allowance at the rate determined in accordance with section 39C below if the deceased spouse satisfied the contribution conditions for a widowed parent's allowance specified in Schedule 3, Part I, paragraph 5 and—
- (a) the surviving spouse is entitled to child benefit in respect of a child falling within subsection (3) below; or
  - (b) the surviving spouse is a woman who either—
    - (i) is pregnant by her late husband, or
    - (ii) if she and he were residing together immediately before the time of his death, is pregnant in circumstances falling within section 37(1)(c) above.
- (3) A child falls within this subsection if one of the conditions specified in section [<sup>F92</sup>77(5)] below is for the time being satisfied with respect to the child and the child is either—
- (a) a son or daughter of the surviving spouse and the deceased spouse; or
  - (b) a child in respect of whom the deceased spouse was immediately before his or her death entitled to child benefit; or
  - (c) if the surviving spouse and the deceased spouse were residing together immediately before his or her death, a child in respect of whom the surviving spouse was then entitled to child benefit.
- (4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries, but, subject to that, the surviving spouse shall continue to be entitled to it for any period throughout which she or he—

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- (a) satisfies the requirements of subsection (2)(a) or (b) above; and
  - (b) is under pensionable age.
- (5) A widowed parent's allowance shall not be payable—
- (a) for any period falling before the day on which the surviving spouse's entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act; or
  - (b) for any period during which the surviving spouse and a person of the opposite sex to whom she or he is not married are living together as husband and wife.]

#### Textual Amendments

- F91** Ss. 39A-39C inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by [S.I. 1999/3147 \(N.I. 11\)](#), [art. 52\(2\)](#); [S.R. 2000/133](#), [art. 2\(3\)\(a\)](#), [Sch. Pt. I](#)
- F92** Word in [s. 39A\(3\)](#) substituted (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), [s. 61](#), [Sch. 3 para. 40](#); [S.I. 2003/962](#), [art. 2\(3\)\(d\)\(iii\)](#)

#### [<sup>F93</sup> **39B Bereavement allowance where no dependent children.**

- (1) This section applies where a person whose spouse dies on or after the appointed day is over the age of 45 but under pensionable age at the spouse's death.
- (2) The surviving spouse shall be entitled to a bereavement allowance at the rate determined in accordance with section 39C below if the deceased spouse satisfied the contribution conditions for a bereavement allowance specified in Schedule 3, Part I, paragraph 5.
- (3) A bereavement allowance shall be payable for not more than 52 weeks beginning with the date of the spouse's death or (if later) the day on which the surviving spouse's entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act.
- (4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries, but, subject to that, the surviving spouse shall continue to be entitled to it until—
  - (a) she or he attains pensionable age, or
  - (b) the period of 52 weeks mentioned in subsection (3) above expires,whichever happens first.
- (5) The allowance shall not be payable—
  - (a) for any period for which the surviving spouse is entitled to a widowed parent's allowance; or
  - (b) for any period during which the surviving spouse and a person of the opposite sex to whom she or he is not married are living together as husband and wife.]

#### Textual Amendments

- F93** Ss. 39A-39C inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by [S.I. 1999/3147 \(N.I. 11\)](#), [art. 52\(2\)](#); [S.R. 2000/133](#), [art. 2\(3\)\(a\)](#), [Sch. Pt. I](#)

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### **[<sup>F94</sup>39C Rate of widowed parent’s allowance and bereavement allowance.**

- (1) The weekly rate of a widowed parent’s allowance shall be determined in accordance with the provisions of sections 44 to [<sup>F95</sup>45] below [<sup>F96</sup>and Schedule 4A to this Act] as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.
- (2) The weekly rate of a bereavement allowance shall be determined in accordance with the provisions of section 44 below as they apply in the case of a Category A retirement pension so far as consisting only of the basic pension referred to in subsection (3)(a) of that section, but subject, in particular, to the following provisions of this section.
- (3) In the application of sections 44 to [<sup>F97</sup>45][below and Schedule 4A to this Act] or (as the case may be) section 44 below by virtue of subsection (1) or (2) above—
  - (a) where the deceased spouse was over pensionable age at his or her death, references in those sections to the pensioner shall be taken as references to the deceased spouse, and
  - (b) where the deceased spouse was under pensionable age at his or her death, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the deceased spouse and the tax year in which he or she died.
- (4) Where a widowed parent’s allowance is payable to a person whose spouse dies after [<sup>F98</sup>5th October 2002], the additional pension falling to be calculated under sections 44 to [<sup>F97</sup>45] below [and Schedule 4A to this Act] by virtue of subsection (1) above shall be one half of the amount which it would be apart from this subsection.
- (5) Where a bereavement allowance is payable to a person who was under the age of 55 at the time of the spouse’s death, the weekly rate of the allowance shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which that person’s age at that time was less than 55 (any fraction of a year being counted as a year).]

#### **Textual Amendments**

- F94** Ss. 39A-39C inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 52(2)**; S.R. 2000/133, **art. 2(3)(a)**, **Sch. Pt. I**
- F95** Word in s. 39C(1) substituted (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 41**; S.I. 2003/962, **art. 2(3)(d)(iii)**
- F96** Words in s. 39C(1)(3)(4) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), **s. 33(4)**; S.R. 2000/358, **art. 2(e)**, **Sch. Pt. IV** (as amended by S.R. 2000/374, **art. 3**); S.R. 2001/34, **art. 2(a)**
- F97** Word in s. 39C(3)(4) substituted (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 41**; S.I. 2003/962, **art. 2(3)(d)(iii)**
- F98** Words in s. 39C(4) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), **s. 35(1)(a)(2)(a)**

#### **Modifications etc. (not altering text)**

- C17** S. 39C modified (6.10.2002) by S.R. 2001/441, **art. 2**

### **[<sup>F99</sup>40 Long-term incapacity benefit for widows.**

- (1) Subject to subsection (2) below, this section applies to a woman who—



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- (a) on her late husband's death is not entitled to a widowed mother's allowance or subsequently ceases to be entitled to such an allowance;
  - (b) is incapable of work at the time when he dies or when she subsequently ceases to be so entitled;
  - (c) either—
    - (i) would have been entitled to a widow's pension if she had been over the age of 45 when her husband died or when she ceased to be entitled to a widowed mother's allowance; or
    - (ii) is entitled to such a pension with a reduction under section 39(4) above; and
  - (d) is not entitled to incapacity benefit apart from this section.
- (2) This section does not apply to a woman unless—
- (a) her husband died after 5th April 1979; or
  - (b) she ceased to be entitled to a widowed mother's allowance after that date (whenever her husband died).
- (3) A woman to whom this section applies is entitled to long-term incapacity benefit under this section for any day of incapacity for work which—
- (a) falls in a period of incapacity for work that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and
  - (b) is after that time and after the first 364 days of incapacity for work in that period.
- (4) A woman to whom this section applies who is not entitled to long-term incapacity benefit under subsection (3) above, but who is terminally ill, is entitled to short-term incapacity benefit under this section for any day of incapacity for work which—
- (a) falls in a period of incapacity for work that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and
  - (b) is after that time and after the first 196 days of incapacity for work in that period.
- For the purposes of this subsection a woman is terminally ill if she suffers from a progressive disease and her death in consequence of that disease can reasonably be expected within 6 months.
- (5) The weekly rate of incapacity benefit payable under this section is—
- (a) if the woman is not entitled to a widow's pension, that which would apply if she were entitled to long-term incapacity benefit under section 30A above; and
  - (b) if she is entitled to a widow's pension with a reduction under section 39(4) above, the difference between the weekly rate of that pension and the weekly rate referred to in paragraph (a) above.
- (6) A woman is not entitled to incapacity benefit under this section if she is over pensionable age; but if she has attained pensionable age and the period of incapacity for work mentioned in subsection (3)(a) or (4)(a) above did not terminate before she attained that age—
- (a) she shall, if not otherwise entitled to a Category A retirement pension, be entitled to such a pension; and

*Status: Point in time view as at 12/04/2004.*

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- (b) the weekly rate of the Category A retirement pension to which she is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.
- (7) Where a woman entitled to short-term incapacity benefit under subsection (4) above attains pensionable age and defers her entitlement to a Category A retirement pension or makes an election under section 54(1) below, the days of incapacity for work falling within the period of incapacity for work mentioned in that subsection shall, for the purpose of determining any subsequent entitlement to incapacity benefit under section 30A above or the rate of that benefit, be treated as if they had been days of entitlement to short-term incapacity benefit.
- (8) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable under subsection (4) above.]

#### Textual Amendments

**F99** S. 40 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 8**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### Modifications etc. (not altering text)

**C18** S. 40(8) applied (1.5.1995) by 1994 c. 9, s. 139(6) (as inserted by 1995 c. 4, s. 141(3))

### [<sup>F100</sup>41 Long-term incapacity benefit for widowers.

- (1) This section applies to a man whose wife has died on or after 6th April 1979 and who either—
- was incapable of work at the time when she died; or
  - becomes incapable of work within the prescribed period after that time;
- and is not entitled to incapacity benefit apart from this section.
- (2) A man to whom this section applies is entitled to long-term incapacity benefit under this section for any day of incapacity for work which—
- falls in a period of incapacity for work that began before the time when his wife died or within the prescribed period after that time; and
  - is after that time and after the first 364 days of incapacity for work in that period.
- (3) A man to whom this section applies who is not entitled to long-term incapacity benefit under subsection (2) above, but who is terminally ill, is entitled to short-term incapacity benefit under this section for any day of incapacity for work which—
- falls in a period of incapacity for work that began before the time when his late wife died or within the prescribed period after that time; and
  - is after that time and after the first 196 days of incapacity for work in that period.

For the purposes of this subsection a man is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

- (4) The weekly rate of incapacity benefit payable under this section is that which would apply if he were entitled to long-term incapacity benefit under section 30A above.

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- (5) A man is not entitled to incapacity benefit under this section if he is over pensionable age; but if he has attained pensionable age, and the period of incapacity for work mentioned in subsection (2)(a) or (3)(a) above did not terminate before he attained that age—
- (a) he shall, if not otherwise entitled to a Category A retirement pension and also not entitled to a Category B retirement pension by virtue of [<sup>F101</sup>the contributions of his wife], be entitled to a Category A retirement pension; and
  - (b) the weekly rate of the Category A retirement pension to which he is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.
- (6) Where a man entitled to short-term incapacity benefit under subsection (3) above attains pensionable age and defers his entitlement to a Category A retirement pension or makes an election under section 54(1) below, the days of incapacity for work falling within the period of incapacity for work mentioned in that subsection shall, for the purpose of determining any subsequent entitlement to incapacity benefit under section 30A above or the rate of that benefit, be treated as if they had been days of entitlement to short-term incapacity benefit.
- (7) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable under subsection (3) above.]

#### Textual Amendments

**F100** S. 41 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 9**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F101** Words in s. 41(5)(a) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(4)**

#### Modifications etc. (not altering text)

**C19** S. 41(7) applied (1.5.1995) by 1994 c. 9, s. 139(6) (as inserted by 1995 c. 4, s. 141(3))

#### [<sup>F102</sup>42 Entitlement under s. 40 or 41 after period of employment or training for work.

[<sup>F103</sup>(1) Where a person claims incapacity benefit under section 40 or 41 above for a period commencing after he has ceased to be in qualifying remunerative work (within the meaning of Part 1 of the Tax Credits Act 2002) and—

- (a) the day following that on which he so ceased was a day of incapacity for work for him,
  - (b) he has been entitled to incapacity benefit under that section within the period of two years ending with that day of incapacity for work, and
  - (c) he satisfied the relevant tax credit conditions on the day before he so ceased, every day during that period on which he satisfied those conditions is to be treated for the purposes of the claim as a day of incapacity for work for him.
- (1A) A person satisfies the relevant tax credit conditions on a day if—
- (a) he is entitled for the day to the disability element of working tax credit (on a claim made by him or by him jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act 2002) in his or their case is such that he is not so entitled, and

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- (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.]
- (2) Where—
- (a) a person becomes engaged in training for work; and
  - (b) he was entitled to incapacity benefit under section 40 or 41 above for one or more of the 56 days immediately before he became so engaged; and
  - (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to incapacity benefit under that section,
- any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for incapacity benefit under that section for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

- (3) For the purposes of this section “week” means any period of 7 days.]

#### Textual Amendments

**F102** S. 42 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 10**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F103** S. 42(1)(1A) substituted for s. 42(1) (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 42**; S.I. 2003/962, art. 2(3)(d)(iii)

#### Modifications etc. (not altering text)

**C20** S. 42 modified (31.3.2003) by The Tax Credits Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003 (S.I. 2003/962), **art. 5(3)**

### *Retirement pensions (Categories A and B)*

#### **43 Persons entitled to more than one retirement pension.**

- (1) A person shall not be entitled for the same period to more than one retirement pension under this Part of this Act except as provided by subsection (2) below.
- (2) A person who, apart from subsection (1) above, would be entitled for the same period to both—
  - (a) a Category A or a Category B retirement pension under this Part; and
  - (b) a Category C or a Category D retirement pension under Part III of this Act,
 shall be entitled to both of those pensions for that period, subject to any adjustment of them in pursuance of regulations under section 71 of the Administration Act.
- (3) A person who, apart from subsection (1) above, would be entitled—
  - (a) to both a Category A and a Category B retirement pension under this Part for the same period, or
  - (b) to both a Category C and a Category D retirement pension under Part III of this Act for the same period,

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may from time to time give notice in writing to the Department specifying which of the pensions referred to in paragraph (a) or, as the case may be, paragraph (b) above he wishes to receive.

- (4) If a person gives such a notice, the pension so specified shall be the one to which he is entitled in respect of any week commencing after the date of the notice.
- (5) If no such notice is given, the person shall be entitled to whichever of the pensions is from time to time the most favourable to him (whether it is the pension which he claimed or not).

[<sup>F104</sup>(6) For the purposes of this section, a pension under section 55A below is not a retirement pension.]

#### Textual Amendments

**F104** S. 43(6) added (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 8**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

#### 44 Category A retirement pension.

- (1) A person shall be entitled to a Category A retirement pension if—
  - (a) he is over pensionable age; and
  - (b) he satisfies the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5;

and, subject to the provisions of this Act, he shall become so entitled on the day on which he attains pensionable age and his entitlement shall continue throughout his life.

- (2) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act.
- (3) A Category A retirement pension shall consist of—
  - (a) a basic pension payable at a weekly rate; and
  - (b) an additional pension payable where there are one or more surpluses in the pensioner's earnings factors for the relevant years.

[<sup>F105</sup>(4) The weekly rate of the basic pension shall be [<sup>F106</sup>£79·60] except that, so far as the sum is relevant for the purpose of calculating the lower rate of short-term incapacity benefit under section 30B(3) above, it shall be [<sup>F106</sup>£71·15].

In this subsection “the lower rate” means the rate payable for the first 196 days of entitlement in any period of incapacity for work.]

[<sup>F107</sup>(5A) For the purpose of this section and section 45 below [<sup>F108</sup>and Schedule 4A to this Act]—

- (a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for [<sup>F109</sup>that year,
- (b) the amount of the surplus is the amount of that excess, and
- (c) for the purposes of section 45(1) and (2)(a) and (b) below, the adjusted amount of the surplus] is the amount of that excess, as increased by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.]

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- (6) <sup>F110</sup>Subject to subsection (7A) below] any reference in this section or section 45 below <sup>F111</sup>or Schedule 4A to this Act] to the pensioner’s earnings factor for any relevant year is a reference—
- <sup>F112</sup>(za) where the relevant year is the first appointed year or any subsequent year, to the aggregate of his earnings factors derived from <sup>F113</sup>so much of his earnings as did not exceed the upper earnings limit and] upon which primary Class 1 contributions have been paid or treated as paid in respect of that year;
- (a) where the relevant year is 1987-88 or any subsequent tax year <sup>F114</sup>before the first appointed year], to the aggregate of—
- (i) his earnings factors derived from earnings upon which primary Class 1 contributions were paid or treated as paid in respect of that year, and
- <sup>F115</sup>(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of that year, or, if less, the qualifying earnings factor for that year; and
- (b) where the relevant year is an earlier tax year, to the aggregate of—
- (i) his earnings factors derived from Class 1 contributions actually paid by him in respect of that year; and
- (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid by him in respect of that year, or, if less, the qualifying earnings factor for that year.]
- (7) In this section—
- (a) “relevant year” means 1978-79 or any subsequent tax year in the period between—
- (i) (inclusive) the tax year in which the pensioner attained the age of 16, and
- (ii) (exclusive) the tax year in which he attained pensionable age;
- (b) “final relevant year” means the last tax year which is a relevant year in relation to the pensioner.
- <sup>F116</sup>(7A) The Department may prescribe circumstances in which pensioners’ earnings factors for any relevant year may be calculated in such manner as may be prescribed.]
- (8) For the purposes of this section any order under Article 23 of the Pensions Order (which made provision corresponding to section 130 of the Administration Act) shall be treated as an order under section 130 (but without prejudice to sections 16 and 17 of the <sup>M4</sup>Interpretation Act 1978).

#### Textual Amendments

**F105** S. 44(4) substituted (9.9.1998) by S.I. 1998/1506 (N.I. 10), art. 64; S.R. 1998/312, art. 2(a)(b)(d), Sch. Pt. I

**F106** Sums in s. 44(4) substituted (with effect in accordance with art. 6 of the amending Rule) by The Social Security Benefits Up-rating Order (Northern Ireland) 2004 (S.R. 2004/82), arts. 1(1)(e)(2), 4(3)

**F107** S. 44(5A) substituted for s. 44(5) (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 125(1)(4)-(6)

**F108** Words in s. 44(5A) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(5); S.R. 2000/358, art. 2(e), Sch. Pt. IV (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)

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- F109** Words in s. 44(5A) substituted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(6); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F110** Words in s. 44(6) inserted (temp. from 1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), s. 6, Sch. 4 paras. 1, 2
- F111** Words in s. 44(6) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(7); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F112** S. 44(6)(za) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 29(2)(a); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F113** Words in s. 44(6)(za) substituted (with effect for 2003-04 and subsequent tax years) by National Insurance Contributions Act 2002 (c. 19), ss. 6, 8(2), **Sch. 1 para. 29**
- F114** Words in s. 44(6) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 29(2)(b); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F115** S. 44(6)(a)(ii)(b) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 125(2)(4)-(6)
- F116** S. 44(7A) inserted (temp. from 1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 6, 7(2), Sch. 4 Pt. I paras. 1, 3

#### Modifications etc. (not altering text)

- C21** S. 44(5A) modified (29.12.2000) by S.R. 2000/360, reg. 2

#### Marginal Citations

- M4** 1978 c. 30.

### [<sup>F117</sup>44A Deemed earnings factors

- (1) For the purposes of section 44(6)(za) above, if any of the conditions in subsection (2) below is satisfied for a relevant year, a pensioner is deemed to have an earnings factor for that year which—
- is derived from [<sup>F118</sup>so much of his earnings as did not exceed the upper earnings limit and] on which primary Class 1 contributions were paid; and
  - is equal to the amount which, when added to any other earnings factors taken into account under that provision, produces an aggregate of earnings factors equal to the low earnings threshold.
- (2) The conditions referred to in subsection (1) above are that—
- the pensioner would, apart from this section, have an earnings factor for the year—
    - equal to or greater than the qualifying earnings factor for the year; but
    - less than the low earnings threshold for the year;
  - [<sup>F119</sup>carer's allowance]—
    - was payable to the pensioner throughout the year; or
    - would have been so payable but for the fact that under regulations the amount payable to him was reduced to nil because of his receipt of other benefits;
  - for the purposes of paragraph 5(7)(b) of Schedule 3, the pensioner is taken to be precluded from regular employment by responsibilities at home throughout the year by virtue of—



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- (i) the fact that child benefit was payable to him in respect of a child under the age of six; or
- (ii) his satisfying such other condition as may be prescribed; or
- (d) the pensioner is a person satisfying the requirement in subsection (3) below to whom long-term incapacity benefit was payable throughout the year, or would have been so payable but for the fact that—
  - (i) he did not satisfy the contribution conditions specified in paragraph 2 of Schedule 3; or
  - (ii) under regulations the amount payable to him was reduced to nil because of his receipt of other benefits or of payments from an occupational pension scheme or personal pension scheme.
- (3) The requirement referred to in subsection (2)(d) above is that—
  - (a) for one or more relevant years the pensioner has paid, or (apart from this section) is treated as having paid, primary Class 1 contributions on earnings equal to or greater than the qualifying earnings factor; and
  - (b) the years for which he has such a factor constitute at least one tenth of his working life.
- (4) For the purposes of subsection (3)(b) above—
  - (a) a pensioner’s working life shall not include—
    - (i) any tax year before 1978-79; or
    - (ii) any year in which he is deemed under subsection (1) above to have an earnings factor by virtue of fulfilling the condition in subsection (2) (b) or (c) above; and
  - (b) the figure calculated by dividing his working life by ten shall be rounded to the nearest whole year (and any half year shall be rounded down).
- (5) The low earnings threshold for the first appointed year and subsequent tax years shall be £9,500 (but subject to section 130A of the Administration Act).
- (6) In subsection (2)(d)(ii) above, “occupational pension scheme” and “personal pension scheme” have the same meanings as in subsection (6) of section 30DD above for the purposes of subsection (5) of that section.]

#### Textual Amendments

**F117** S. 44A inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 29(3); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)

**F118** Words in s. 44A(1)(a) substituted (with effect for 2003-04 and subsequent tax years) by National Insurance Contributions Act 2002 (c. 19), ss. 6, 8(2), **Sch. 1 para. 30**

**F119** Words in s. 44A(2)(b) substituted (21.10.2002 for certain purposes and 1.4.2003 otherwise) by The Deregulation (Carer's Allowance) Order (Northern Ireland) 2002 (S.R. 2002/321), arts. 1, 2(2)(a)(i)

#### Modifications etc. (not altering text)

**C22** S. 44A(1) modified (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 29(4); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)

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#### **45 The additional pension in a Category A retirement pension.**

- (1) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year before 6th April 1999 shall be the weekly equivalent of 1 1/4 per cent. of the [<sup>F120</sup>adjusted] amount of the surpluses mentioned in section 44(3)(b) above.
- (2) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year after 5th April 1999 shall be [<sup>F121</sup>the sum of the following]—
  - (a) in relation to any surpluses in the pensioner’s earnings factors for the tax years in the period beginning with 1978-79 and ending with 1987-88, the weekly equivalent of 25/N per cent. of the [<sup>F120</sup>adjusted] amount of those surpluses; and
  - (b) in relation to any surpluses in the pensioner’s earnings factors in a tax year after 1987-88 [<sup>F122</sup>but before the first appointed year], the weekly equivalent of the relevant percentage of the [<sup>F120</sup>adjusted] amount of those surpluses [<sup>F123</sup>; and
  - (c) in relation to any tax years falling within subsection (3A) below, the weekly equivalent of the amount calculated in accordance with Schedule 4A to this Act.]
- (3) In subsection (2)(b) above, “relevant percentage” means—
  - (a) 20/N per cent., where the pensioner attained pensionable age in 2009-10 or any subsequent tax year;
  - (b) (20+X)/N per cent., where the pensioner attained pensionable age in a tax year falling within the period commencing with 1999-2000 and ending with 2008-9.

[<sup>F124</sup>(3A) The following tax years fall within this subsection—

- (a) the first appointed year;
- (b) subsequent tax years.]

- (4) In this section—
  - (a) X = 0.5 for each tax year by which the tax year in which the pensioner attained pensionable age precedes 2009-10; and
  - (b) N = the number of tax years in the pensioner’s working life which fall after 5th April 1978;

but paragraph (b) above is subject, in particular, to subsection (5) and, where applicable, section 46 below.

- (5) Regulations may direct that in prescribed cases or classes of cases any tax year shall be disregarded for the purpose of calculating N under subsection (4)(b) above, if it is a tax year after 5th April 1978 in which the pensioner—
  - (a) was credited with contributions or earnings under this Act by virtue of regulations under section 22(5) above, or
  - (b) was precluded from regular employment by responsibilities at home, or
  - (c) in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,

but not so as to reduce the number of years below 20.

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- (6) For the purposes of subsections (1) and (2) above, the weekly equivalent of [<sup>F125</sup>any amount] shall be calculated by dividing that amount by 52 and rounding the result to the nearest whole penny, taking any 1/2p as nearest to the next whole penny.
- (7) Where the amount falling to be rounded under subsection (6) above is a sum less than 1/2p, the amount calculated under that subsection shall be taken to be zero, notwithstanding any other provision of this Act or the Administration Act.
- (8) The sums which are the weekly rate of the additional pension in a Category A retirement pension are subject to alteration by orders made by the Department under section 132 of the Administration Act.

#### Textual Amendments

- F120** Words in s. 45(1)(2)(a)(b) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(8)(a); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F121** Words in s. 45(2) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 30(1)(a); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F122** Words in s. 45(2)(b) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 30(1)(b); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F123** S. 45(2)(c) and word “and” immediately preceding it added (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 30(1)(c); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F124** S. 45(3A) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 30(2); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)
- F125** Words in s. 45(6) substituted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(8)(b); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)

#### <sup>F126</sup>45A Effect of family credit and disability working allowance on earnings factor.

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#### Textual Amendments

- F126** S. 45A repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), **Sch. 1** (with savings in S.R. 2003/212, art. 2)

#### [<sup>F127</sup>45B Reduction of additional pension in Category A retirement pension: pension sharing.

- (1) The weekly rate of the additional pension in a Category A retirement pension shall be reduced as follows in any case where—
- the pensioner has become subject to a state scheme pension debit, and
  - the debit is to any extent referable to the additional pension.

*Status: Point in time view as at 12/04/2004.*

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- (2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount.
  - (3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.
  - (4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the additional pension.
  - (5) The pension referred to above is a notional pension for the pensioner by virtue of section 44(3)(b) above which becomes payable on the later of—
    - (a) his attaining pensionable age, and
    - (b) the valuation day.
  - (6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.
- [ The Department may by regulations make provision for the calculation and <sup>F128</sup>(7) verification of cash equivalents for the purposes of this section.
- (7A) The power conferred by subsection (7) above includes power to provide—
    - (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
    - (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.]
  - (8) In this section—

“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;

“state scheme pension debit” means a debit under Article 46(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (debit for the purposes of this Part of this Act);

“valuation day” means the day on which the pensioner became subject to the state scheme pension debit.]

#### Textual Amendments

**F127** S. 45B inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 47(1), **Sch. 6 para. 2**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F128** S. 45B(7)(7A) substituted for s. 45B(7) (22.11.2000) by 2000 c. 4 (N.I.), **s. 37(2)**; S.R. 2000/358, art. 2(a), **Sch. Pt. I**

#### 46 Modifications of s. 45 for calculating the additional pension in certain benefits.

<sup>F129</sup>(1) . . . . .

*Status: Point in time view as at 12/04/2004.*

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- (2) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 39(1) [F130 or 39C(1)]. . . above or section [F131 48A(4) [F132, 48B(2) or 48BB(5)]] below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of “N” in section 45(4)(b) above—

[F133 N=

- (a) the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, or
- (b) the number of tax years in the period—
- (i) beginning with the tax year in which the deceased spouse (“S”) attained the age of 16 or if later 1978-79, and
- (ii) ending immediately before the tax year in which S would have attained pensionable age if S had not died earlier.

whichever is the smaller number.]

- [F134 (3) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 48BB below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of “N” in section 45(4)(b) above—

“N” =

- a the number of tax years which begin after 5th April 1978 and end before the date when the deceased spouse dies, or
- b the number of tax years in the period—
- (i) beginning with the tax year in which the deceased spouse (“S”) attained the age of 16 or, if later, 1978-79, and
- (ii) ending immediately before the tax year in which S would have attained pensionable age if S had not died earlier,

whichever is the smaller number.”]

#### Textual Amendments

**F129** S. 46(1) repealed (13.4.1995) by *The Social Security (Incapacity for Work) (Northern Ireland) Order 1994* (S.I. 1994/1898 (N.I. 12)), art. 13(1)(2), Sch. 1 Pt. I para. 12(a), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F130** Words in s. 46(2) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 4(a)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**

**F131** Words in s. 46(2) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(5)**

**F132** Words in s. 46(2) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 4(b)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**

**F133** Words in s. 46(2) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 5**

**F134** S. 46(3) added (8.1.2001 for specified purposes and 9.4.2001 otherwise) by 2000 c. 4 (N.I.), s. 31(1); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(c)

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#### 47 Increase of Category A retirement pension for invalidity.

- (1) Subject to section 61 below, the weekly rate of a Category A retirement pension shall be increased if the pensioner was entitled to an [<sup>F135</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above] in respect of—
  - (a) any day falling within the period of 8 weeks ending immediately before the day on which he attains pensionable age; or
  - (b) the last day before the beginning of that period;and the increase shall, subject to subsection (2) below, be of an amount equal to the appropriate weekly rate of the [<sup>F135</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above] on that day.
- (2) Where for any period the weekly rate of a Category A retirement pension includes an additional pension, for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under subsection (1) above and the pensioner shall be entitled to an increase under that subsection only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.
- (3) In subsection (2) above the “relevant amount” means an amount equal to the additional pension, reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of [<sup>F136</sup>section 42 of the Pensions Act].
- (4) In this section any reference to an additional pension is a reference to that pension after any increase under section 52(3) below but without any increase under paragraphs 1 and 2 of Schedule 5 to this Act.
- (5) In ascertaining for the purposes of subsection (1) above the rate of a pensioner’s [<sup>F135</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above], regard shall be had to the rates in force from time to time.
- (6) Regulations may provide that subsection (1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations.

##### Textual Amendments

**F135** Words in s. 47(1)(5) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 13**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F136** Words in s. 47(3) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 33**; S.R. 1994/17, art. 2

##### Modifications etc. (not altering text)

**C23** S. 47 modified (7.2.1994) by 1993 c. 49, s. 42(4); S.R. 1994/17, art. 2  
S. 47 modified (13.4.1995) by S.R. 1995/35, reg. 23

**C24** S. 47(1) modified (7.2.1994) by 1993 c. 49, s. 42(5); S.R. 1994/17, art. 2

**C25** S. 47(2) modified (7.2.1994) by 1993 c. 49, s. 44(2); S.R. 1994/17, art. 2

#### 48 Use of former spouse’s contributions.

- (1) Where a person—
  - (a) has been married, and
  - (b) in respect of the tax year in which the marriage terminated or any previous tax year, does not with his own contributions satisfy the contribution conditions for a Category A retirement pension,

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then, for the purpose of enabling him to satisfy those conditions (but only in respect of any claim for a Category A retirement pension), the contributions of his former spouse may to the prescribed extent be treated as if they were his own contributions.

- (2) Subsection (1) above shall not apply in relation to any person who attained pensionable age before 6th April 1979 if the termination of his marriage also occurred before that date.
- (3) Where a person has been married more than once this section applies only to the last marriage and the references to his marriage and his former spouse shall be construed accordingly.

**[<sup>F137</sup>48A Category B retirement pension for married person.**

- (1) A person who—
  - (a) has attained pensionable age, and
  - (b) on attaining that age was a married person or marries after attaining that age, shall be entitled to a Category B retirement pension by virtue of the contributions of the other party to the marriage (“the spouse”) if the following requirement is met.
- (2) The requirement is that the spouse—
  - (a) has attained pensionable age and become entitled to a Category A retirement pension, and
  - (b) satisfies the conditions specified in Schedule 3, Part I, paragraph 5.
- (3) During any period when the spouse is alive, a Category B retirement pension payable by virtue of this section shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5.
- (4) During any period after the spouse is dead, a Category B retirement pension payable by virtue of this section shall be payable at the weekly rate corresponding to—
  - (a) the weekly rate of the basic pension, plus
  - (b) half of the weekly rate of the additional pension, determined in accordance with the provisions of sections 44 to [<sup>F138</sup>45B] above [<sup>F139</sup>and Schedule 4A to this Act] as they apply in relation to a Category A retirement pension but subject to section 46(2) above and the modification in section 48C(4) below.

[ Subsection (4) above shall have effect with the omission of the words from “plus” to <sup>F140</sup>(4A) the end if the pensioner is not the widow or widower of the person by virtue of whose contributions the pension is payable.]

- (5) person’s Category B retirement pension payable by virtue of this section shall not be payable for any period falling before the day on which the spouse’s entitlement is to be regarded as beginning for that purpose by virtue of section 5(1)(1) of the Administration Act.]

**Textual Amendments**

**F137** S. 48A-48C substituted for ss. 49, 50 (16.12.1995) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(1)**

**F138** Words in s. 48A(4) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 9**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**



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**F139** Words in s. 48A(4) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(9); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)

**F140** S. 48A(4A) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 31**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**Modifications etc. (not altering text)**

**C26** S. 48A restricted (16.12.1995) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(2)**

**C27** S. 48A modified (6.10.2002) by S.R. 2001/441, art. 2

**[<sup>F141</sup>48B Category B retirement pension for widows and widowers.**

- (1) A person (“the pensioner” whose spouse died—
  - (a) while they were married, and
  - (b) after the pensioner attained pensionable age,shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if the spouse satisfied the conditions specified in Schedule 3, Part I, paragraph 5.
- (2) A Category B retirement pension payable by virtue of subsection (1) above shall be payable at a weekly rate corresponding to—
  - (a) the weekly rate of the basic pension, plus
  - (b) half of the weekly rate of the additional pension,determined in accordance with the provision of sections 44 to [<sup>F142</sup>45B] above [<sup>F143</sup>and Schedule 4A to this Act] as they apply in relation to a Category A retirement pension, but subject to section 46(2) above and the modifications in subsection (3) below and section 48C(4) below.
- (3) Where the spouse died under pensionable age, references in the provisions of section 44 to [<sup>F142</sup>45B] above [<sup>F143</sup>and Schedule 4A to this Act] as applied by subsection (2) above to the tax year in which the pensioner attained pensionable age shall be taken as references to the tax year in which the spouse died.
- (4) A person who has attained pensionable age (“the pensioner”) whose spouse died before the pensioner attained that age shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if—
  - (a) where the pensioner is a woman, the following condition is satisfied, and
  - (b) where the pensioner is a man, the following condition would have been satisfied on the assumption mentioned in subsection (7) below.
- (5) The condition is that the pensioner—
  - (a) is entitled (or is treated by regulations as entitled) to a widow’s pension by virtue of section 38 above, and
  - (b) became entitled to that pension in consequence of the spouse’s death.
- (6) A Category B retirement pension payable by virtue of subsection (4) above shall be payable—
  - (a) where the pensioner is a woman, at the same weekly rate as her widow’s pension and
  - (b) where the pensioner is a man, at the same weekly rate as that of the pension to which he would have been entitled by virtue of section 38 above on the assumption mentioned in subsection (7) below.

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(7) The assumption referred to in subsections (4) and (6) above is that a man is entitled to a pension by virtue of section 38 above on the same terms and conditions, and at the same rate, as a woman.

[ Nothing in subsections (4) to (7) above applies in a case where the spouse dies on or <sup>F144</sup>(8) after the appointed day (as defined by section 36A(3)).]

#### Textual Amendments

- F141** Ss. 48A-48C substituted for ss. 49, 50 (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(1)**
- F142** Words in s. 48B(2)(3) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 10**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F143** Words in s. 48B(2)(3) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. **33(10)**; S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, **art. 3**); S.R. 2001/34, **art. 2(a)**
- F144** S. 48B(8) added (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 5**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**

#### Modifications etc. (not altering text)

- C28** S. 48B restricted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(3)**
- C29** S. 48B modified (6.10.2002) by S.R. 2001/441, **art. 2**

#### [<sup>F145</sup>48B] **Category B retirement pension: entitlement by reference to benefits under section 39A or 39B.**

- (1) Subsection (2) below applies where a person (“the pensioner”) who has attained pensionable age—
- (a) was, immediately before attaining that age, entitled to a widowed parent’s allowance in consequence of the death of his or her spouse; and
  - (b) has not remarried.
- (2) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse, which shall be payable at the same weekly rate as the widowed parent’s allowance.
- (3) Subsections (4) to (10) below apply where a person (“the pensioner”) who has attained pensionable age—
- (a) was in consequence of the death of his or her spouse either—
    - (i) entitled to a bereavement allowance at any time prior to attaining that age, or
    - (ii) entitled to a widowed parent’s allowance at any time when over the age of 45 (but not immediately before attaining pensionable age); and
  - (b) has not remarried.
- (4) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse.
- (5) A Category B retirement pension payable by virtue of subsection (4) above shall be payable at a weekly rate corresponding to the weekly rate of the additional pension determined in accordance with the provisions of sections 44 to [<sup>F146</sup>45] above

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[<sup>F147</sup>and Schedule 4A to this Act] as they apply in relation to a Category A retirement pension, but subject, in particular, to the following provisions of this section and [<sup>F148</sup>section 46(3)] above.

- (6) Where the spouse died under pensionable age, references in the provisions of sections 44 to [<sup>F146</sup>45] above [<sup>F147</sup>and Schedule 4A to this Act], as applied by subsection (5) above, to the tax year in which the pensioner attained pensionable age shall be taken as references to the tax year in which the spouse died.
- (7) Where the spouse dies after [<sup>F149</sup>5th October 2002], the pension payable by virtue of subsection (4) above shall (before making any reduction required by subsection (8) below) be one half of the amount which it would be apart from this subsection.
- (8) Where the pensioner was under the age of 55 at the relevant time, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied—
  - (a) by the number of years by which the pensioner’s age at that time was less than 55 (any fraction of a year being counted as a year), or
  - (b) by ten, if that number exceeds ten.
- (9) In subsection (8) above “the relevant time” means—
  - (a) where the pensioner became entitled to a widowed parent’s allowance in consequence of the death of the spouse, the time when the pensioner’s entitlement to that allowance ended; and
  - (b) otherwise, the time of the spouse’s death.
- (10) The amount determined in accordance with subsections (5) to (9) above as the weekly rate of the pension payable to the pensioner by virtue of subsection (4) above shall be increased by such percentage as equals the overall percentage by which, had the pension been in payment as from the date of the spouse’s death until the date when the pensioner attained pensionable age, that weekly rate would have been increased during that period by virtue of any orders under section 132 of the Administration Act (annual up-rating of benefits).]

#### Textual Amendments

- F145** S. 48BB inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 53**; S.R. 2000/133, **art. 2(3)(a)**, **Sch. Pt. I**
- F146** Word in s. 48BB(5)(6) substituted (6.4.2003) by **Tax Credits Act 2002 (c. 21)**, s. 61, **Sch. 3 para. 43**; S.I. 2003/962, **art. 2(3)(d)(iii)**
- F147** Words in s. 48BB(5)(6) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), **s. 33(11)**; S.R. 2000/358, **art. 2(e)**, **Sch. Pt. IV** (as amended by S.R. 2000/374, **art. 3**); S.R. 2001/34, **art. 2(a)**
- F148** Words in s. 48BB(5) substituted (8.1.2001 for specified purposes and 9.4.2001 otherwise) by 2000 c. 4 (N.I.), **s. 31(2)**; S.R. 2000/358, **art. 2(e)**, **Sch. Pt. IV** (as amended by S.R. 2000/374, **art. 3**); S.R. 2001/34, **art. 2(c)**
- F149** Words in s. 48BB(7) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), **s. 35(1)(a)(2)(b)**

#### Modifications etc. (not altering text)

- C30** S. 48BB modified (6.10.2002) by S.R. 2001/441, **art. 2**

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## <sup>F150</sup> 48C Category B retirement pension: general.

- (1) Subject to the provisions of this Act, a person's entitlement to a Category B retirement pension shall begin on the day on which the conditions of entitlement become satisfied and shall continue for life.
- (2) In any case where—
  - (a) a person would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
  - (b) section 47(1) above would apply for the increase of the Category A retirement pension,
 section 47(1) above shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 42(5) of the Pensions Act.
- (3) In the case of a pensioner whose spouse died on or before [<sup>F151</sup>5th October 2002]], sections 48A(4)(b) and 48B(2)(b) above shall have effect with the omission of the words “half of”.
- (4) In the application of the provisions of section 44 to [<sup>F152</sup>45B] above [<sup>F153</sup>and Schedule 4A to this Act] by virtue of sections 48A(4) [<sup>F154</sup>, 48B(2) or 48BB(5)] above, references in those provisions to the pensioner shall be taken as references to the spouse.

### Textual Amendments

- F150** Ss. 48A-48C substituted for ss. 49, 50 (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(1)**
- F151** Words in s. 48C(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)
- F152** Words in s. 48C(4) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 11**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F153** Words in s. 48C(4) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 33(12); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, **art. 3**); S.R. 2001/34, **art. 2(a)**
- F154** Words in s. 48C(4) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 6**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**

## 51 Category B retirement pension for widowers.

- (1) A man shall be entitled to a Category B retirement pension if—
  - (a) he has had a wife and she has died on or after 6th April 1979, and he was married to her when she died; and
  - (b) they were both over pensionable age when she died; and
  - (c) before her death she satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part I, paragraph 5.
- (2) The weekly rate of a man's Category B retirement pension under this section shall, subject to subsection (3) below, be determined in accordance with the provisions of [<sup>F156</sup>sections 44 to [<sup>F157</sup>45]] above [<sup>F158</sup>and Schedule 4A to this Act] as they apply in

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the case of a Category A retirement pension, taking references in those sections to the pensioner as references to the wife.

- (3) In the case of a widower whose wife dies after [<sup>F159</sup>5th October 2002], the additional pension falling to be calculated under [<sup>F156</sup>sections 44 to [<sup>F157</sup>45]] above [<sup>F158</sup>and Schedule 4A to this Act] by virtue of subsection (2) above shall be one half of the amount which it would be apart from this subsection.
- (4) Subject to the provisions of this Act, a man shall become entitled to a Category B retirement pension on the day on which the conditions of entitlement become satisfied in his case and his entitlement shall continue throughout his life.

#### Textual Amendments

**F156** Words in s. 51(2)(3) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 124(2)-(5)**

**F157** Word in s. 51(2)(3) substituted (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 44**; S.I. 2003/962, art. 2(3)(d)(iii)

**F158** Words in s. 51(2)(3) inserted (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), **s. 33(13)**; S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, **art. 3**); S.R. 2001/34, **art. 2(a)**

**F159** Words in s. 51(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), **s. 35(1)(a)(2)(b)**

#### Modifications etc. (not altering text)

**C31** S. 51 restricted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 123, Sch. 2 Pt. II para. 3(3)**

**C32** S. 51 modified (6.10.2002) by S.R. 2001/441, **art. 2**

#### [<sup>F160</sup>51A Special provision for married people.

- (1) This section has effect where, apart from section 43(1) above, a married person would be entitled both—
  - (a) to a Category A retirement pension, and
  - (b) to a Category B retirement pension by virtue of the contributions of the other party to the marriage.
- (2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the weekly rate specified in Schedule 4, Part I, paragraph 5, that basic pension shall be increased by the lesser of—
  - (a) the amount of the shortfall, or
  - (b) the amount of the weekly rate of the Category B retirement pension.
- (3) This section does not apply in any case where both parties to the marriage attained pensionable age before 6th April 1979.]

#### Textual Amendments

**F160** S. 51A inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 123, Sch. 2 Pt. III para. 18(6)**

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## 52 Special provision for surviving spouses.

- (1) This section has effect where, apart from section 43(1) above, a person would be entitled both—
- (a) to a Category A retirement pension; and
  - [<sup>F161</sup>(b) to a Category B retirement pension by virtue of the contributions of a spouse who has died.]
- (2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the full amount, that basic pension shall be increased by the lesser of—
- (a) the amount of the shortfall, or
  - (b) the amount of the basic pension in the rate of the Category B retirement pension,
- “full amount” meaning for this purpose the sum specified in section 44(4) above as the weekly rate of the basic pension in a Category A retirement pension.
- (3) If the additional pension in the Category A retirement pension falls short of the prescribed maximum, that additional pension shall be increased by the lesser of—
- (a) the amount of the shortfall, or
  - (b) the amount of the additional pension in the Category B retirement pension.
- (4) This section does not apply in any case where the death of the wife or husband, as the case may be, occurred before 6th April 1979 and the surviving spouse had attained pensionable age before that date.

### Textual Amendments

**F161** S. 52(1)(b) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, Sch. 2 Pt. III para. 18(7)

<sup>F162</sup>53 .....

### Textual Amendments

**F162** S. 53 repealed (16.12.1995 subject to Sch. 2 of the amending S.I.) by virtue of S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, 168, Sch. 2 Pt. III para. 18(6), Sch. 5 Pt. II

## 54 Category A and Category B retirement pensions: supplemental provisions.

- (1) Regulations may provide that in the case of a person of any prescribed description who—
- (a) has become entitled to a Category A or Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and
  - (b) elects in such manner and in accordance with such conditions as may be prescribed that the regulations shall apply in his case,
- this Part of this Act shall have effect as if that person had not become entitled to such a retirement pension [<sup>F163</sup>or to a shared additional pension].



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(2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act, or of those of [<sup>F164</sup>Chapter II of Part II of the Social Security (Northern Ireland) Order 1998] as those provisions apply in a case where a person makes an election under the regulations, as may appear to the Department necessary or expedient.

[<sup>F165</sup>(3) Where both parties to a marriage (call them “P” and “S”) have become entitled to retirement pensions and—

- (a) P’s pension is Category A, and
- (b) S’s pension is—
  - (i) Category B by virtue of P’s contributions, or
  - (ii) Category A with an increase under section 51A(2) above by virtue of P’s contributions,

P shall not be entitled to make an election in accordance with regulations made under subsection (1) above without S’s consent, unless that consent is unreasonably withheld.]

[<sup>F166</sup>(4) . . . . .]

#### Textual Amendments

**F163** Words in s. 54(1) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 12**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F164** Words in s. 54(2) substituted (5.10.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 44**; S.R. 1999/407, **art. 2(a)**

**F165** S. 54(3) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 18(8)**

**F166** S. 54(4) repealed (16.12.1995 subject to Sch. 2 of the amending S.I.) by virtue of S.I. 1995/3213 (N.I. 22), arts. 1(3), 131(2), 168, **Sch. 5 Pt. II**

#### [<sup>F167</sup>55 Increase of retirement pension where entitlement is deferred.

(1) Where a person’s entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of pension.

(2) For the purposes of this Act a person’s entitlement to a Category A or Category B retirement pension is deferred if and so long as that person—

- (a) does not become entitled to that pension by reason only—
  - (i) of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), or
  - (ii) in the case of a Category B retirement pension payable by virtue of a spouse’s contributions, of the spouse not satisfying those conditions with respect to his Category A retirement pension; or
- (b) in consequence of an election under section 54(1) above, falls to be treated as not having become entitled to that pension;

and, in relation to any such pension, “period of deferment” shall be construed accordingly.]



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#### Textual Amendments

**F167** S. 55 substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 131(3)**

*[<sup>F168</sup>Shared additional pension]*

#### Textual Amendments

**F168** Cross-heading and ss. 55A-55C inserted (1.12.2000) by S.I. 1999/3147, art. 47(1), **Sch. 6 para. 3**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

#### <sup>F169</sup>**55A Shared additional pension.**

- (1) A person shall be entitled to a shared additional pension if he is—
  - (a) over pensionable age, and
  - (b) entitled to a state scheme pension credit.
- (2) A person's entitlement to a shared additional pension shall continue throughout his life.
- (3) The weekly rate of a shared additional pension shall be the appropriate weekly amount, unless the pensioner's entitlement to the state scheme pension credit arose before the final relevant year, in which case it shall be that amount multiplied by the relevant revaluation percentage.
- (4) The appropriate weekly amount for the purposes of subsection (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pensioner's entitlement, or prospective entitlement, to the shared additional pension is equal to the state scheme pension credit.
- (5) The relevant revaluation percentage for the purposes of that subsection is the percentage specified, in relation to earnings factors for the tax year in which the entitlement to the state scheme pension credit arose, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.

<sup>F170</sup> [ The Department may by regulations make provision for the calculation and (6) verification of cash equivalents for the purposes of this section.

- (6A) The power conferred by subsection (6) above includes power to provide—
  - (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
  - (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.]
- (7) In this section—
 

“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;

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“state scheme pension credit” means a credit under Article 46(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (credit for the purposes of this Part of this Act);

“valuation day” means the day on which the pensioner becomes entitled to the state scheme pension credit.]

#### Textual Amendments

**F169** Ss. 55A-55C inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 47(1), **Sch. 6 para. 3**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F170** S. 55A(6)(6A) substituted for s. 55A(6) (22.11.2000) by 2000 c. 4 (N.I.), s. 37(3); S.R. 2000/358, art. 2(a), **Sch. Pt. I**

#### Modifications etc. (not altering text)

**C33** S. 55A amended (with effect in accordance with art. 6 of the amending Rule) by The Social Security Benefits Up-rating Order (Northern Ireland) 2004 (S.R. 2004/82), arts. 1(1)(e)(2), 4(5)

#### [<sup>F171</sup> **55B Reduction of shared additional pension: pension sharing.**

- (1) The weekly rate of a shared additional pension shall be reduced as follows in any case where—
  - (a) the pensioner has become subject to a state scheme pension debit, and
  - (b) the debit is to any extent referable to the pension.
- (2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the pension shall be reduced by the appropriate weekly amount.
- (3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.
- (4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the shared additional pension.
- (5) The pension referred to above is a notional pension for the pensioner by virtue of section 55A above which becomes payable on the later of—
  - (a) his attaining pensionable age, and
  - (b) the valuation day.
- (6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.

[ The Department may by regulations make provision for the calculation and <sup>F172</sup>(7) verification of cash equivalents for the purposes of this section.

- (7A) The power conferred by subsection (7) above includes power to provide—
  - (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and

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- (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.]

(8) In this section—

“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;

“state scheme pension debit”, means a debit under Article 46(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (debit for the purposes of this Part of this Act);

“valuation day” means the day on which the pensioner became subject to the state scheme pension debit.]

#### Textual Amendments

**F171** Ss. 55A-55C inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 47(1), **Sch. 6 para. 3**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F172** S. 55B(7)(7A) substituted for s. 55B(7) (22.11.2000) by 2000 c. 4 (N.I.), **s. 37(4)**; S.R. 2000/358, art. 2(a), **Sch. Pt. I**

#### [<sup>F173</sup> **55C Increase of shared additional pension where entitlement is deferred.**

- (1) For the purposes of this section, a person’s entitlement to a shared additional pension is deferred—
- where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement to such a pension is deferred, if and so long as his entitlement to such a pension is deferred, and
  - otherwise, if and so long as he does not become entitled to the shared additional pension by reason only of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim),
- and, in relation to a shared additional pension, “period of deferment” shall be construed accordingly.
- (2) Where a person’s entitlement to a shared additional pension is deferred, the rate of his shared additional pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under subsection (3) below, but only if that amount is enough to increase the rate of the pension by at least one per cent.
- (3) A person is entitled to an increment under this subsection for each complete incremental period in his period of enhancement.
- (4) The amount of the increment for an incremental period shall be 1/7th per cent. of the weekly rate of the shared additional pension to which the person would have been entitled for the period if his entitlement had not been deferred.
- (5) Amounts under subsection (4) above shall be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny.
- (6) Where an amount under subsection (4) above would, apart from this subsection, be a sum less than 1/2p, the amount shall be taken to be zero, notwithstanding any other provision of this Act, the Pensions (Northern Ireland) Order 1995 or the Administration Act.

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- (7) Where one or more orders have come into operation under section 132 of the Administration Act during the period of enhancement, the rate for any incremental period shall be determined as if the order or orders had come into operation before the beginning of the period of enhancement.
- (8) The sums which are the increases in the rates of shared additional pensions under this section are subject to alteration by order made by the Department under section 132 of the Administration Act.
- (9) In this section—
- “incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this section in relation to the person and pension in question; and
- “period of enhancement”, in relation to that person and that pension, means the period which—
- (a) begins on the same day as the period of deferment in question, and
  - (b) ends on the same day as that period or, if earlier, on the day before the 5th anniversary of the beginning of that period.]

#### Textual Amendments

**F173** Ss. 55A-55C inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 47(1), **Sch. 6 para. 3**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

#### Modifications etc. (not altering text)

**C34** S. 55C modified (1.12.2000 with effect in relation to incremental periods beginning on or after 6.4.2010) by S.I. 1999/3147 (N.I. 11), **art. 47(2)**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**C35** S. 55C amended (with effect in accordance with art. 6 of the amending Rule) by The Social Security Benefits Up-rating Order (Northern Ireland) 2004 (S.R. 2004/82), arts. 1(1)(e)(2), **4(5)**

### *Child's special allowance*

#### **56 Child's special allowance - existing beneficiaries.**

- (1) Subject to the provisions of this Act <sup>F174</sup>... , a woman whose marriage has been terminated by divorce shall be entitled to a child's special allowance at the weekly rate specified in Schedule 4, Part I, paragraph 6, if—
- (a) the husband of that marriage is dead and satisfied the contribution condition for a child's special allowance specified in Schedule 3, Part I, paragraph 6; and
  - (b) she is entitled to child benefit in respect of a child and either—
    - (i) she was so entitled immediately before that husband's death; or
    - (ii) in such circumstances as may be prescribed, he was then so entitled; and
  - (c) either—
    - (i) that husband had before his death been contributing at not less than the prescribed weekly rate to the cost of providing for that child; or
    - (ii) at the date of that husband's death she was entitled, under an order of a court, trust or agreement which she has taken reasonable steps to enforce, to receive (whether from that husband or from another

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person) payments in respect of that child at not less than that rate provided or procured by that husband.

- (2) A child's special allowance shall not be payable to a woman—
- (a) for any period after her remarriage; or
  - (b) for any period during which she and a man to whom she is not married are living together as husband and wife.
- (3) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, payment of an amount by way of a child's special allowance, that amount shall not be payable unless one of the conditions specified in subsection (4) below is satisfied.
- (4) Those conditions are—
- (a) that the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or
  - (b) that the requisite contributions are being made to the cost of providing for the child.
- (5) The condition specified in subsection (4)(b) above is to be treated as satisfied if, but only if—
- (a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (3) above—
    - (i) by the beneficiary; or
    - (ii) where the beneficiary is one of two spouses residing together, by them together; and
  - (b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 139(1)(b) below.
- (6) A child's special allowance shall not be payable for any period after 5th April 1987 except to a woman who immediately before 6th April 1987—
- (a) satisfied the conditions set out in paragraphs (a) to (c) of subsection (1) above; and
  - (b) was not barred from payment of the allowance for either of the reasons mentioned in subsection (2) above,
- and who has so continued since 6th April 1987.

#### Textual Amendments

**F174** Words in s. 56(1) repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 6](#); S.I. 2003/962, art. 2(3)(e), [Sch. 1](#) (with savings in [S.R. 2003/212](#), art. 2)

*Provisions relating to unemployment benefit, sickness benefit and invalidity benefit*

*Status: Point in time view as at 12/04/2004.*

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**Textual Amendments**

**F175** S. 57 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 14, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

<sup>F176</sup>**58** .....

**Textual Amendments**

**F176** S. 58 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 15, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Invalidity benefit - disqualifications, etc.*

<sup>F177</sup>**59** .....

**Textual Amendments**

**F177** S. 59 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 16, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Partial satisfaction of contribution conditions*

**60 Partial satisfaction of contribution conditions.**

(1) Subject to the provisions of this section, regulations may provide for persons to be entitled to any of the following benefits, namely—

- (a) a widowed mother's allowance,
- [<sup>F178</sup>(aa) a widowed parent's allowance,
- (ab) a bereavement allowance,]
- (b) a widow's pension,
- (c) a Category A retirement pension,
- (d) a Category B retirement pension,

in cases where the first contribution condition specified in relation to that benefit in paragraph 5 of Schedule 3 to this Act is satisfied and the second contribution condition so specified is not.

(2) Subject to subsection (8) below, in any case where—

- (a) an employed earner who is married dies as a result of—
  - (i) a personal injury of a kind mentioned in section 94(1) below, or
  - (ii) a disease or injury such as is mentioned in section 108(1) below, and
- (b) the contribution conditions are not wholly satisfied in respect of [<sup>F179</sup>the employed earner],

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those conditions shall be taken to be satisfied for the purposes of <sup>F180</sup>the entitlement of the employed earner's widow or widower] to any of the benefits specified in subsection (3) below.

- (3) The benefits referred to in subsection (2) above are the following—
- <sup>F181</sup>(a) a bereavement payment;
  - (b) a widowed mother's allowance;
  - <sup>F182</sup>(ba) a widowed parent's allowance,
  - (bb) a bereavement allowance,]
  - (c) a widow's pension;
  - <sup>F183</sup>(d) a Category B retirement pension payable by virtue of section 48B <sup>F184</sup>or 48BB] above.]
- (4) Subject to <sup>F185</sup>subsection (7)] below, regulations under subsection (1) above shall provide for benefit payable by virtue of any such regulations to be payable at a rate, or to be of an amount, less than that which would be applicable under this Part of this Act had both of the relevant contribution conditions been fully satisfied.
- (5) Subject to <sup>F185</sup>subsection (7)] below, the rate or amount prescribed by regulations under subsection (1) above may vary with the extent to which the relevant contribution conditions are satisfied (and may be nil).
- <sup>F186</sup>(6) .....
- (7) Regulations may provide that where—
- (a) a person is entitled by virtue of subsection (1) above to a Category A or Category B retirement pension consisting only of the additional pension with no basic pension, and
  - (b) that retirement pension, and any graduated retirement benefit to which he may be entitled, together amount to less than the prescribed rate,
- that person's entitlement as respects that retirement pension shall be satisfied either altogether or for a prescribed period by the making of a single payment of the prescribed amount.
- (8) Subsection (2) above only has effect where the employed earner's death occurred on or after 11th April 1988.

#### Textual Amendments

- F178** S. 60(1)(aa)(ab) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 7(2)**; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I
- F179** Words in s. 60(2)(b) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(9)(a)**
- F180** Words in s. 60(2) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(9)(a)**
- F181** S. 60(3)(a) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 7(3)(a)**; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I
- F182** S. 60(3)(ba)(bb) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 7(3)(b)**; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I
- F183** S. 60(3)(d) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(9)(b)**
- F184** Words in s. 60(3)(d) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 7(3)(c)**; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I



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- F185** Words in s. 60(4)(5) substituted (6.4.2003) by [Tax Credits Act 2002 \(c. 21\), s. 61, Sch. 3 para. 45](#); S.I. 2003/962, art. 2(3)(d)(iii)
- F186** S. 60(6) repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\), s. 61, Sch. 6](#); S.I. 2003/962, art. 2(3)(e), Sch. 1 (with savings in S.R. 2003/212, art. 2)

## 61 Exclusion of increase of benefit for failure to satisfy contribution condition.

(1) A Category A or Category B retirement pension which is payable by virtue of section 60(1) above and a widowed mother's allowance [<sup>F187</sup>or widowed parent's allowance] which is so payable shall not be increased under section 47(1) above or under Part IV below <sup>F188</sup>... if the pension or allowance contains no basic pension in consequence of a failure to satisfy a contribution condition.

[<sup>F189</sup>(2) Where a person is entitled to short-term incapacity benefit at a rate determined under section 30B(3) above and the retirement pension by reference to which the rate of the benefit is determined—

- (a) would have been payable only by virtue of section 60 above, and
- (b) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension,

the benefit shall not be increased under section 47(1) above or under Part IV below <sup>F188</sup>... .]

### Textual Amendments

- F187** Words in s. 61(1) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, [Sch. 8 para. 8](#); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I
- F188** Words in s. 61(1)(2) repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\), s. 61, Sch. 6](#); S.I. 2003/962, art. 2(3)(e), Sch. 1 (with savings in S.R. 2003/212, art. 2)
- F189** S. 61(2) substituted (7.10.1996) by S.I. 1995/2705 (N.I. 15), art. 40(1), [Sch. 2 para. 6](#); S.R. 1996/401, art. 2

### Modifications etc. (not altering text)

- C36** S. 61 modified (13.4.1995) by S.R. 1995/35, [reg. 23](#)

## [<sup>F190</sup>61A Contributions paid in error.

- (1) This section applies in the case of any individual if—
- (a) the individual has paid amounts by way of primary Class 1 contributions which, because the individual was not an employed earner, were paid in error, and
  - (b) prescribed conditions are satisfied.
- (2) Regulations may, where—
- (a) this section applies in the case of any individual, and
  - (b) the [<sup>F191</sup>Inland Revenue are] of the opinion that it is appropriate for the regulations to apply to the individual,
- provide for entitlement to, and the amount of, additional pension to be determined as if the individual had been an employed earner and, accordingly, those contributions had been properly paid.

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- (3) The reference in subsection (2) above to additional pension is to additional pension for the individual or the individual's spouse falling to be calculated under section 45 above for the purposes of—
- (a) Category A retirement pension,
  - (b) Category B retirement pension for widows or widowers [<sup>F192</sup>(payment by virtue of section 48B or 48BB above)],
  - (c) widowed mother's allowance and widow's pension,  
[ widowed parent's allowance,] and
  - <sup>F193</sup>(ca) (d) incapacity benefit (except in transitional cases).
- (4) Regulations may, where—
- (a) this section applies in the case of any individual, and
  - (b) the [<sup>F191</sup>Inland Revenue are] of the opinion that it is appropriate for regulations made by virtue of Article 6(8) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (provision during transition from invalidity benefit to incapacity benefit for incapacity benefit to include the additional pension element of invalidity pension) to have the following effect in the case of the individual,  
provide for the regulations made by virtue of that Article to have effect as if, in relation to the provisions in force before the commencement of that Article with respect to that additional pension element, the individual had been an employed earner and, accordingly, the contributions had been properly paid.
- (5) Where such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual, regulations under paragraph 8(1)(m) of Schedule 1 to this Act may not require the amounts paid by way of primary Class 1 contributions to be repaid.
- (6) Regulations may provide, where—
- (a) such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual,
  - (b) prescribed conditions are satisfied, and
  - (c) the amount calculated by reference to the contributions in question has been paid in respect of that individual by way of minimum contributions under section 39 of the Pensions Act (contributions to personal pension schemes),  
for that individual to be treated for the purposes of that Act as if that individual had been an employed earner and, accordingly, the amount had been properly paid.]

#### Textual Amendments

**F190** S. 61A inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 130

**F191** Words in s. 61A(2)(b)(4)(b) substituted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), Sch. 1 para. 9 (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6)

**F192** Words in s. 61A(3)(b) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, Sch. 8 para. 9(a); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

**F193** S. 61A(3)(ca) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, Sch. 8 para. 9(b); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

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### *Graduated retirement benefit*

## **62 Graduated retirement benefit.**

- (1) So long as sections 35 and 36 of the <sup>M5</sup>National Insurance Act (Northern Ireland) 1966 (graduated retirement benefit) continue in force by virtue of regulations made under Schedule 3 to the <sup>M6</sup>Social Security (Consequential Provisions) Act 1975 or under Schedule 3 to the Consequential Provisions Act, regulations may make provision—
- (a) for [<sup>F194</sup>amending section 35(2) of the National Insurance Act (Northern Ireland) 1966 (value of unit of graduated contributions) so that the value is the same for women as it is for men for replacing section 35(4) of that Act] (increase of graduated retirement benefit in cases of deferred retirement) with provisions corresponding to those of paragraphs 1 to 3 of Schedule 5 to this Act;
- [<sup>F195</sup>(aa) for amending section 35(7) of that Act (persons to be treated as receiving nominal retirement pension) so that where a person has claimed a Category A or Category B retirement pension but—
- (i) because of an election under section 54(1) above, or
- (ii) because he has withdrawn his claim for the pension, he is not entitled to such a pension, he is not to be treated for the purposes of the preceding provisions of that section as receiving such a pension at a nominal weekly rate;]
- (b) for extending section 36 of that Act (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to men and their late wives [<sup>F196</sup>and for that section (except subsection (5) so to apply as it applies to women and their late husbands].
- (2) This section is without prejudice to any power to modify those sections conferred by Schedule 3 to the Consequential Provisions Act.

#### **Textual Amendments**

**F194** Words in s. 62(1)(a) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 7(a)**

**F195** S. 62(1)(aa) inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 128**

**F196** Words in s. 62(1)(b) added (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 7(b)**

#### **Marginal Citations**

**M5** 1966 c. 6 (N.I.).

**M6** 1975 c. 18.

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