

EXPLANATORY MEMORANDUM TO
THE PENSIONS (2015 ACT) (CONSEQUENTIAL, SUPPLEMENTARY AND
INCIDENTAL AMENDMENTS) ORDER (NORTHERN IRELAND) 2017

S.R. 2017 No. 66

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under the powers conferred by section 50 of the Pensions Act (Northern Ireland) 2015 (“the 2015 Act”) and is subject to the negative resolution procedure before the Assembly.

2. Purpose

- 2.1 The Order supports the introduction of a new social security benefit called Bereavement Support Payment (BSP) which will replace the current suite of bereavement benefits (Bereavement Payment, Bereavement Allowance and Widowed Parent’s Allowance). BSP is for surviving spouses and civil partners who are widowed on or after 6 April 2017. The current bereavement benefits are for surviving spouses and civil partners who are widowed before 6 April 2017. The Order removes references to the current bereavement benefits in secondary legislation and replaces them with references to BSP as necessary.
- 2.2 Section 29 of the 2015 Act sets out the main entitlement provisions for BSP which will come into operation on 6th April 2017. Detailed provisions are contained in the Bereavement Support Payment Regulations (Northern Ireland) 2017 (the BSP Regulations), which will come into operation on the same day. This Order comes into operation on the same day for the purposes of a claim for BSP.
- 2.3 With the introduction of BSP, this Order makes amendments which omit references to Bereavement Allowance and Bereavement Benefit from secondary legislation (Schedule 16 to the 2015 Act makes similar omissions from primary legislation). References to Widowed Parent’s Allowance are not omitted from existing primary or secondary legislation. Where appropriate, it includes references to the new BSP. Articles 2 and 3 of this Order contain commencement provisions which ensure that the appropriate legislation is in operation for the appropriate case.
- 2.4 Bereavement Allowance, Bereavement Payment and Widowed Parent’s Allowance remain in operation for the purposes of deaths before 6 April 2017. The 2015 Act treats these three existing benefits in a different way. The primary legislation on Widowed Parent’s Allowance is not repealed (see for example paragraph 12 of Schedule 16 to the 2015 Act). This Order therefore does not revoke the secondary legislation on Widowed Parent’s Allowance. The primary legislation on Bereavement Allowance and Bereavement Payment is repealed (see for example paragraphs 8 and 13 of Schedule 16 to the 2015 Act). This Order therefore revokes the secondary

legislation on Bereavement Allowance and Bereavement Payment. Those revocations only come into operation once such claims for Bereavement Allowance and Bereavement Payment come to an end.

2.5 In summary, Articles 2 and 3 of the Order provide that:

- the secondary legislation on Bereavement Allowance and Bereavement Payment remains in operation in relation to claims for deaths before 6 April 2017; and
- the secondary legislation on BSP comes into operation in relation to claims for deaths on or after 6 April 2017.

2.6 Legislation dealing with the administration of social security benefits, including bereavement benefits, is contained in the Social Security Administration (Northern Ireland) Act 1992, the Social Security (Northern Ireland) Act 1998 and associated regulations. Those Acts were amended by the 2015 Act to include references to BSP. This Order amends regulations made under those provisions to extend existing administrative arrangements to do with claims, decision-making, payments and overpayments to BSP.

2.7 The other provisions in this Order are mostly minor consequential or supplementary amendments to secondary legislation.

3. Background

3.1 These amendments ensure that existing secondary legislation makes reference to BSP where appropriate and provides for the interaction with other social security benefits as a consequence of the introduction of this new benefit. Those already in receipt of, or entitled to, existing bereavement benefits (Bereavement Payment, Bereavement Allowance and Widowed Parent's Allowance) will continue to receive their current benefit for the lifetime of their award. Once these payments have ended, such references will be obsolete.

Article 4: Social Security (Credits) Regulations

3.2 Article 4 of this Order amends regulations which provide that National Insurance credits awarded in certain circumstances, for example, such as caring, disability, unemployment and incapacity for work can be used to determine entitlement to bereavement benefits and bereavement allowance. As National Insurance credits awarded will not be used to determine entitlement to BSP, the amendments omit reference to bereavement benefits and bereavement allowance where appropriate which will be redundant with the introduction of BSP, once any existing entitlement to those benefits comes to an end.

Article 5: Social Security (Persons Abroad) Regulations

- 3.3 Article 5 of the Order amends the regulations which set out the circumstances in which disqualification from receiving certain social security benefits during periods of absence from Northern Ireland may be removed. The amendments remove references to Bereavement Allowance and Bereavement Payment which will be redundant with the introduction of BSP. The amendments also ensure that these Regulations continue to apply to Widowed Parent's Allowance.

Article 6: Social Security (Overlapping Benefits) Regulations

- 3.4 Article 6 of the Order amends these regulations which list the social security benefits a person cannot get at the same time as another social security benefit. Unlike bereavement allowance and widowed parent's allowance (for those bereaved before 6th April 2017), entitlement to BSP will not stop a person getting entitlement to any other contributory benefit. This Article removes references to Bereavement Allowance which will become obsolete.

Article 7: Social Security (Widow's Benefit and Retirement Pensions) Regulations

- 3.5 A person who was entitled to Widowed Parent's Allowance or Bereavement Allowance and had not remarried or formed a new civil partnership in the interval before State Pension age is entitled to a Category B pension based on their late spouse or civil partner's National Insurance contributions if they reached State Pension age before the introduction of the new State Pension on 6 April 2016. Regulations 7 and 7A set out the circumstances in which the person may be treated as entitled to those benefits for the purposes of entitlement to a Category B pension.
- 3.6 A person reaching State Pension age on or after 6 April 2016 whose late spouse or civil partner had died or reached State Pension age before that date may qualify for a survivor's pension under transitional arrangements if (among other conditions) they would have been entitled to a Category B pension had the old system rules still applied to them. The 2015 Act modifies the Category B provisions to enable this to apply where the bereavement is on or after 6 April 2017 and the survivor is awarded BSP.
- 3.7 This Article provides that regulations 7 and 7A will therefore continue to apply for the purpose of establishing entitlement to survivor's pension where the survivor received a "legacy" bereavement benefit. Article 7(4) of the Order adds new regulation 7B which sets out the circumstances in which a person can be treated as entitled to BSP for this purpose.

Article 8: Social Security (General Benefits) Regulations

- 3.8 Claimants are normally disqualified from receiving any benefit when they are undergoing imprisonment or detention in legal custody as a result of, or in connection with, criminal proceedings. For prescribed benefits, however, disqualification applies to a claimant undergoing imprisonment or detention in legal custody in connection with criminal proceedings only where a penalty is imposed at the conclusion of those proceedings. This Article amends regulations to remove reference to bereavement payment and bereavement allowance from the list of prescribed benefits, since the references will become obsolete. Section 31 of the 2015 Act and regulations made under it contain provisions for BSP disqualifications where the claimant is undergoing imprisonment or detention in legal custody.

Articles 9; 14, 21 and 25: Amendments to certain income-related benefit Regulations

- 3.9 The amendments ensure that the various payments of BSP are disregarded in the calculation of income-related benefits so that the:
- initial larger payment and any arrears which are included in the first monthly payment are treated as capital, and a 12 month disregard is applied from the date of payment, to allow for sufficient time for monies to be spent by the recipient; and
 - subsequent smaller monthly payments (except for arrears) are treated as income and disregarded for a month.

Article 10: Social Security (Claims and Payments) Regulations

- 3.10 The amendments in Article 10 remove references to Bereavement Allowance and Bereavement Payment and extend the existing administrative arrangements relating to claims for, and payments of bereavement benefits to BSP. There are special provisions for BSP in Article 10(7)(d) which sets a time limit of 12 months for claiming a BSP lump sum.

Article 11: Social Fund (Recovery by Deductions from Benefit) Regulations

- 3.11 Article 11 removes the redundant reference to recovering a payment from the Social Fund from bereavement allowance.

Article 12: Social Security (Payments on Account, Overpayments and Recovery) Regulations

- 3.12 Where a claimant receives certain income-related benefits and a lesser amount would have been paid if another benefit (the “prescribed benefit”) had been paid on time, the amount which would not have been paid can be recovered. Regulations list the other benefits which currently include Bereavement Benefit. The Article 12 amendments reflect that BSP will not be a prescribed benefit by omitting references to Bereavement Benefit and Bereavement Payment from the definitions and not replacing them with BSP; and not including BSP in the list of prescribed benefits. Widowed Parent’s Allowance is now the only bereavement-type payment that remains a prescribed payment.

Article 13: Child Support (Maintenance Assessments and Special Cases) Regulations

- 3.13 The amendment in Article 13 ensures that BSP made on an ongoing, periodical basis will not be considered as income for the purposes of assessing a parent’s circumstances when calculating the amount of child support payments they are required to make.

Article 15: Social Security and Child Support (Decisions and Appeals) Regulations

- 3.14 Article 15 adds BSP to the list of benefits in which, in a particular set of circumstances, a decision made by the Department should not be changed where there has been an official error. Provision is also made that a decision to award BSP may be revised at any time where National Insurance contributions are repaid or returned to the contributor, where this means the person no longer satisfies the contribution conditions of entitlement to BSP.

Articles 16 and 27: Child Support (Maintenance Calculations and Special Cases) Regulations

- 3.15 The amendment removes references to Bereavement Allowance from the provisions which would lead to a Flat Rate of child support maintenance being payable were it in payment. Reference to BSP is not introduced in its place because of the differences between this and Bereavement Allowance. BSP will also not count towards a parent’s income when calculating the amount of child support they are liable to pay.

Article 17: Social Security (Inherited SERPS) Regulations

- 3.16 A person whose spouse or civil partner has died can inherit 50% of their late partner’s State Earnings Related Pension Scheme entitlement (SERPS). The inheritable percentage can be increased if the deceased had reached (or was due to reach) State pension age before 6 October 2010. Regulations specify the rate of both Widowed Parent’s Allowance and Bereavement Allowance, except to the extent that that section

applies to bereavement allowance, which does not include SERPS. The amendment omits the references to bereavement allowance which will be redundant once it is abolished.

Article 18: Social Security (Loss of Benefits) Regulations

3.17 This amendment ensures that BSP will be a disqualifying but not a sanctionable benefit for fraud loss of benefit purposes. This means that a fraud committed against BSP can trigger a fraud loss of benefit reduction in a sanctionable benefit following a conviction for benefit fraud, or acceptance of a penalty in lieu of prosecution. BSP itself will not be subject to any fraud loss of benefit reduction.

Articles 19, 22 and 28: State Pension Credit Regulations; Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) and Universal Credit Regulations

3.18 The amendments remove references to bereavement allowance from the provisions for the treatment of unearned income (which assess a person's income for the purposes of determining whether they are entitled to one of the benefits listed above). The amendments also provide a new 52 week capital disregard for the initial lump sum rate of BSP payable in the first month (which means the lump sum is not taken into account for that period when assessing the person's income for the purposes of determining entitlement to the benefits listed above). They also add BSP to the Housing Benefit and State Pension Credit provisions that provide a one year disregard for arrears of benefit.

Article 20: Social Fund Maternity and Funeral Expenses (General) Regulations

3.19 As arrears of specific benefits payable to the deceased at the date of death do not count as assets of the deceased, the amendments replace Bereavement Allowance with BSP so that this continues to be the case for BSP.

Article 23: Gender Recognition (Application Fees) Order

3.20 Eligibility for help with paying fees for a Gender Recognition certificate is based on two tests: the disposable capital and gross monthly income tests. An applicant will have to pass both tests in order to qualify for help with fees. Income from bereavement payment is excluded in this calculation for both tests. These regulations will ensure this continues to be the case for BSP.

Article 24: Social Security (Claims and Information) Regulations

3.21 This Article replaces bereavement benefits with BSP in the list of "specified benefits" of the Social Security Claims and Information Regulations (Northern Ireland) 2007.

Article 26: Rate of Bereavement Benefits

3.22 These regulations set the rate of Bereavement Allowance. This amendment deletes references to Bereavement Allowance as it will not apply where the late spouse or civil partner dies on or after 6th April 2017.

4. Consultation

4.1 There is no requirement to consult on this Rule. The changes are purely technical amendments which are required to ensure the continued operation of existing business processes.

5. Equality Impact

5.1 The provisions of the 2015 Act were the subject of a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has screened these proposals and has concluded that they do not have any additional implications for equality of opportunity.

6. Regulatory Impact

6.1 The Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Order –

- (a) is not incompatible with any of the Convention rights,
- (b) is not incompatible with Community law,
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Order (S.I. 2017 No 422) comes into force on 6th April 2017. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.

11. 21 Day Rule

- 11.1 The Great Britain Order was made on 16th March 2017. The Order was made as soon as possible thereafter, on 20th March 2017. Owing to parity considerations it is vital that the Order come into operation on the same date as the Great Britain Order, in this instance 6th April 2017.