



# Social Security Contributions and Benefits Act 1992

## 1992 CHAPTER 4

### PART II

#### CONTRIBUTORY BENEFITS

##### *Benefits for widows and widowers*

#### [<sup>F1</sup>36] Bereavement payment.

- (1) A person whose spouse [<sup>F2</sup>or civil partner] 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 [<sup>F2</sup>or civil partner] died or the spouse [<sup>F2</sup>or civil partner] was then not entitled to a Category A retirement pension under section 44 below; and
  - (b) the spouse [<sup>F2</sup>or civil partner] satisfied the contribution condition for a bereavement payment specified in Schedule 3, Part I, paragraph 4.
- [<sup>F3</sup>2) A bereavement payment shall not be payable to a person if that person and a person whom that person was not married to, or in a civil partnership with, were living together as a married couple at the time of the spouse's or civil partner's death.]
- (3) In this section “the appointed day” means the day appointed for the coming into force of sections 54 to 56 of the Welfare Reform and Pensions Act 1999.]

#### Textual Amendments

- F1** S. 36 substituted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 54(1)**, 89(1); S.I. 2000/1047, art. 2(2)(a), Sch. Pt. I
- F2** Words in s. 36(1) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(d), **Sch. 24 para. 16(2)**; S.I. 2005/3175, art. 2(1), Sch. 1

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- F3** S. 36(2) substituted (E.W.) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\)](#), art. 1(2), **Sch. 1 para. 22(2)**; and substituted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 4 para. 2(2)**

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

- C1** S. 36(1) modified (with effect in accordance with art. 1(3)(a), 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(d), **12(1)**
- C2** S. 36(1)(a) modified (temp.) (6.4.2016) by [The Pensions Act 2014 \(Transitional and Transitory Provisions\) Order 2016 \(S.I. 2016/408\)](#), arts. 1(2)(3), **2** (with art. 3)

**[<sup>F4</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 [<sup>F5</sup>or civil partner] 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 force of sections 54 to 56 of the Welfare Reform and Pensions Act 1999.]

**Textual Amendments**

- F4** S. 36A inserted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 55(1)**, 89(1); S.I. 2000/1047, art. 2(2)(a), **Sch. Pt. I**
- F5** Words in s. 36A(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(d), **Sch. 24 para. 17**; S.I. 2005/3175, art. 2(1), **Sch. 1**

**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—
  - (a) the woman is entitled to child benefit in respect of a child [<sup>F6</sup>or qualifying young person] falling within subsection (2) below; or
  - (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 [<sup>F7</sup>or qualifying young person] falls within this subsection if <sup>F8</sup>... the child [<sup>F9</sup>or qualifying young person] is either—
  - (a) a son or daughter of the woman and her late husband; or

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- (b) a child [<sup>F10</sup>or qualifying young person] 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 [<sup>F10</sup>or qualifying young person] 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 [<sup>F11</sup>or forms a civil partnership], 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)(k) of the Administration Act; <sup>F12</sup>... [<sup>F13</sup>or]
  - <sup>F14</sup>(b) for any period during which she and a person whom she is not married to, or in a civil partnership with, are living together as a married couple.]

#### Textual Amendments

- F6** Words in s. 37(1)(a) inserted (10.4.2006) by [Child Benefit Act 2005 \(c. 6\), s. 6\(2\), Sch. 1 para. 2\(2\)](#)
- F7** Words in s. 37(2) inserted (10.4.2006) by [Child Benefit Act 2005 \(c. 6\), s. 6\(2\), Sch. 1 para. 2\(3\)\(a\)](#)
- F8** Words in s. 37(2) repealed (7.10.2008) by [Welfare Reform Act 2007 \(c. 5\), ss. 50, 70\(2\), Sch. 8; S.I. 2008/2101, art. 2\(3\)\(a\); S.I. 2009/775, art. 2\(b\); for savings see S.I. 2003/938, art. 4; S.I. 2008/2101, art. 3\(3\); S.I. 2009/775, art. 3](#)
- F9** Words in s. 37(2) inserted (10.4.2006) by [Child Benefit Act 2005 \(c. 6\), s. 6\(2\), Sch. 1 para. 2\(3\)\(b\)](#)
- F10** Words in s. 37(2) inserted (10.4.2006) by [Child Benefit Act 2005 \(c. 6\), s. 6\(2\), Sch. 1 para. 2\(3\)\(c\)](#)
- F11** Words in s. 37(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(8\)\(d\), Sch. 24 para. 18\(2\); S.I. 2005/3175, art. 2\(1\), Sch. 1](#)
- F12** Word in s. 37(4)(a) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(b\)\(d\), Sch. 30; S.I. 2005/3175, art. 2\(6\)](#)
- F13** Word in s. 37(4) inserted (E.W.) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\), art. 1\(2\), Sch. 1 para. 22\(3\); and inserted \(S.\) \(16.12.2014\) by The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\), art. 1\(2\), Sch. 4 para. 2\(3\)\(a\)](#)
- F14** S. 37(4)(b) substituted for s. 37(4)(b)(c) (E.W.) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\), art. 1\(2\), Sch. 1 para. 22\(3\); and substituted \(S.\) \(16.12.2014\) by The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\), art. 1\(2\), Sch. 4 para. 2\(3\)\(b\)](#)

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

- C3** S. 37(1) modified by [The Social Security Benefit \(Dependency\) Regulations 1977 \(S.I. 1977/343\), reg. 4B](#) (as substituted (9.4.2001) by [S.I. 2000/1483, regs. 1, 5](#))

### 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—

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- (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 [<sup>F15</sup>or forms a civil partnership], 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)(k) of the Administration Act;
  - (b) for any period for which she is entitled to a widowed mother's allowance;  
<sup>F16</sup>... [<sup>F17</sup>or]
  - [<sup>F18</sup>(c) for any period during which she and a person whom she is not married to, or in a civil partnership with, are living together as a married couple.]
- (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".

#### Textual Amendments

- F15** Words in s. 38(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 19(2)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F16** Word in s. 38(3)(b) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b)(d), **Sch. 30**; S.I. 2005/3175, art. 2(6)
- F17** Word in s. 38(3) inserted (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 22(4)**; and inserted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 4 para. 2(4)(a)**
- F18** S. 38(3)(c) substituted for s. 38(3)(c)(d) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 22(4)**; and substituted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 4 para. 2(4)(b)**

### 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 [<sup>F19</sup>sections 44 to [<sup>F20</sup>45B]]<sup>F21</sup>... below 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 [<sup>F22</sup>46] below.

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(2) In the application of [F19 sections 44 to [F20 45B]] F21 ... below 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.

[F23(2A) In its application by virtue of subsection (1) above, section 44(4) below is to be read as if for the first amount specified in that provision there were substituted a reference to the amount prescribed for the purposes of this subsection.]

F24(3) .....

(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
- (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 ", in both places where it occurs.

#### Textual Amendments

**F19** Words in s. 39(1)-(3) substituted (with effect in accordance with s. 127(3)-(5) of the amending Act) by Pensions Act 1995 (c. 26), ss. 127(2), 180(2)(a) (with Sch. 4) (and see, as to the continuation of these amendments, Tax Credits Act 2002 (c. 21), s. 61, Sch. 3 para. 27)

**F20** Words in s. 39(1)(2)(3) substituted (1.12.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), Sch. 12 para. 17; S.I. 2000/1047, art. 2(2)(d), Sch. Pt. IV

**F21** Words in s. 39 repealed (26.9.2007) by Pensions Act 2007 (c. 22), ss. 27(3)(c), 30(3), Sch. 2 para. 3(a), Sch. 7 Pt. 5

**F22** Figure in s. 39(1) substituted (3.1.2012) by Pensions Act 2008 (c. 30), s. 149(1), Sch. 4 para. 3; S.I. 2011/3033, art. 2(c)(ii)

**F23** S. 39(2A) inserted (with effect in relation to the tax year 2010-2011 and subsequent tax years) by Pensions Act 2007 (c. 22), ss. 6(5), 30(1)(a)(3) (with ss. 5(4)-(6), 6(7)); S.I. 2010/2650

**F24** S. 39(3) repealed (26.9.2007) by Pensions Act 2007 (c. 22), ss. 27(3)(c), 30(3), Sch. 2 para. 3(b), Sch. 7 Pt. 5

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### **[<sup>F25</sup>39A Widowed parent's allowance.**

- (1) This section applies where—
  - (a) a person whose spouse [<sup>F26</sup>or civil partner] dies on or after the appointed day is under pensionable age at the time of the spouse's [<sup>F27</sup>or civil partner'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 [<sup>F26</sup>or civil partner] shall be entitled to a widowed parent's allowance at the rate determined in accordance with section 39C below if the deceased spouse [<sup>F26</sup>or civil partner] satisfied the contribution conditions for a widowed parent's allowance specified in Schedule 3, Part I, paragraph 5 and—
  - (a) the surviving spouse [<sup>F26</sup>or civil partner] is entitled to child benefit in respect of a child [<sup>F28</sup>or qualifying young person] falling within subsection (3) below; <sup>F29</sup>  
...
  - (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 [<sup>F30</sup>or
  - (c) the surviving civil partner is a woman who—
    - (i) was residing together with the deceased civil partner immediately before the time of the death, and
    - (ii) is pregnant as the result of being artificially inseminated before that time with the semen of some person, or as a 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.]
- (3) A child [<sup>F31</sup>or qualifying young person] falls within this subsection if <sup>F32</sup>... the child [<sup>F33</sup>or qualifying young person] is either—
  - (a) a son or daughter of the surviving spouse [<sup>F26</sup>or civil partner] and the deceased spouse [<sup>F26</sup>or civil partner]; or
  - (b) a child [<sup>F34</sup>or qualifying young person] in respect of whom the deceased spouse [<sup>F26</sup>or civil partner] was immediately before his or her death entitled to child benefit; or
  - (c) if the surviving spouse [<sup>F26</sup>or civil partner] and the deceased spouse [<sup>F26</sup>or civil partner] were residing together immediately before his or her death, a child [<sup>F34</sup>or qualifying young person] in respect of whom the surviving spouse [<sup>F26</sup>or civil partner] 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 [<sup>F35</sup>or forms a civil partnership], but, subject to that, the surviving spouse shall continue to be entitled to it for any period throughout which she or he—
  - (a) satisfies the requirements of subsection (2)(a) or (b) above; and
  - (b) is under pensionable age.

[ The surviving civil partner shall not be entitled to the allowance for any period after <sup>F36</sup>(4A) she or he forms a subsequent civil partnership or marries, but, subject to that, the surviving civil partner 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 [<sup>F27</sup>or civil partner's] entitlement is to be regarded as commencing by virtue of section 5(1)(k) of the Administration Act; <sup>F37</sup>... [<sup>F38</sup>or]  
[ for any period during which the surviving spouse or civil partner and a person  
<sup>F39</sup>(b) whom she or he is not married to, or in a civil partnership with, are living together as a married couple.]]

#### Textual Amendments

- F25** Ss. 39A-39C inserted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), ss. 55(2), 89(1); S.I. 2000/1047, art. 2(2)(a), Sch. Pt. I
- F26** Words in s. 39A inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), Sch. 24 para. 20(2); S.I. 2005/3175, art. 2(1), Sch. 1
- F27** Words in s. 39A inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), Sch. 24 para. 20(3); S.I. 2005/3175, art. 2(1), Sch. 1
- F28** Words in s. 39A(2)(a) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), Sch. 1 para. 3(2)
- F29** Word in s. 39A(2)(a) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b)(d), Sch. 30; S.I. 2005/3175, art. 2(6)
- F30** S. 39A(2)(c) and preceding word inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), Sch. 24 para. 20(4); S.I. 2005/3175, art. 2(1), Sch. 1
- F31** Words in s. 39A(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), Sch. 1 para. 3(3)(a)
- F32** Words in s. 39A(3) repealed (7.10.2008) by Welfare Reform Act 2007 (c. 5), ss. 51, 70(2), Sch. 8; S.I. 2008/2101, art. 2(3)(b); S.I. 2009/775, art. 2(b); for savings see S.I. 2003/938, art. 4; S.I. 2008/2101, art. 3(3); S.I. 2009/775, art. 3
- F33** Words in s. 39A(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), Sch. 1 para. 3(3)(b)
- F34** Words in s. 39A(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), Sch. 1 para. 3(3)(c)
- F35** Words in s. 39A(4) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), Sch. 24 para. 20(5); S.I. 2005/3175, art. 2(1), Sch. 1
- F36** S. 39A(4A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), Sch. 24 para. 20(6); S.I. 2005/3175, art. 2(1), Sch. 1
- F37** Word in s. 39A(5)(a) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b)(d), Sch. 30; S.I. 2005/3175, art. 2(6)
- F38** Word in s. 39A(5) inserted (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), Sch. 1 para. 22(5); and inserted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), Sch. 4 para. 2(5)(a)
- F39** S. 39A(5)(b) substituted for s. 39A(5)(b)(c) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), Sch. 1 para. 22(5); and substituted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), Sch. 4 para. 2(5)(b)

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

- C4** S. 39A(2) modified by The Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977/343), reg. 4B (as substituted (9.4.2001) by S.I. 2000/1483, regs. 1, 5)

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**[<sup>F25</sup>39B Bereavement allowance where no dependent children.**

- (1) This section applies where a person whose spouse [<sup>F40</sup>or civil partner] dies on or after the appointed day is over the age of 45 but under pensionable age at the spouse's [<sup>F41</sup>or civil partner's] death.
- (2) The surviving spouse [<sup>F40</sup>or civil partner] shall be entitled to a bereavement allowance at the rate determined in accordance with section 39C below if the deceased spouse [<sup>F40</sup>or civil partner] 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 [<sup>F41</sup>or civil partner's] death or (if later) the day on which the surviving spouse's [<sup>F41</sup>or civil partner's] entitlement is to be regarded as commencing by virtue of section 5(1)(k) of the Administration Act.
- (4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries [<sup>F42</sup>or forms a civil partnership], 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.
 

[ The surviving civil partner shall not be entitled to the allowance for any period after

<sup>F43</sup>(4A) she or he forms a subsequent civil partnership or marries, but, subject to that, the surviving civil partner 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 [<sup>F40</sup>or civil partner] is entitled to a widowed parent's allowance; <sup>F44</sup>... [<sup>F45</sup>or]
  - [ for any period during which the surviving spouse or civil partner and a person
  - <sup>F46</sup>(b) whom she or he is not married to, or in a civil partnership with, are living together as a married couple.]]

**Textual Amendments**

- F25** Ss. 39A-39C inserted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 55(2)**, 89(1); S.I. 2000/1047, art. 2(2)(a), Sch. Pt. I
- F40** Words in s. 39B inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(d), **Sch. 24 para. 21(2)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F41** Words in s. 39B inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(d), **Sch. 24 para. 21(3)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F42** Words in s. 39B(4) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(d), **Sch. 24 para. 21(4)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F43** S. 39B(4A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(8)(d), **Sch. 24 para. 21(5)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F44** Word in s. 39B(5)(a) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(b)(d), **Sch. 30**; S.I. 2005/3175, art. 2(6)
- F45** Word in s. 39B(5) inserted (E.W.) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\)](#), art. 1(2), **Sch. 1**



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**para. 22(6)**; and inserted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 4 para. 2(6)(a)**

**F46** S. 39B(5)(b) substituted for s. 39B(5)(b)(c) (E.W.) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 22(6)**; and substituted (S.) (16.12.2014) by The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 (S.I. 2014/3229), art. 1(2), **Sch. 4 para. 2(6)(b)**

### **[<sup>F25</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>F47</sup>45AA and Schedules 4A and 4B below 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 [<sup>F48</sup>46] below.

(2)

[ In its application by virtue of subsection (1) above, section 44(4) below is to be read <sup>F49</sup>(1A) as if for the first amount specified in that provision there were substituted a reference to the amount prescribed for the purposes of this subsection.

(2) The weekly amount of a bereavement allowance is an amount equal to the amount prescribed for the purposes of subsection (1A) above.]

(3) In the application of sections 44 to [<sup>F50</sup>45AA and Schedules 4A and 4B below by virtue of subsection (1) above] —

(a) where the deceased spouse [<sup>F51</sup>or civil partner] was over pensionable age at his or her death, references in those [<sup>F52</sup>provisions] to the pensioner shall be taken as references to the deceased spouse [<sup>F51</sup>or civil partner], and

(b) where the deceased spouse [<sup>F51</sup>or civil partner] was under pensionable age at his or her death, references in those [<sup>F53</sup>provisions] to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the deceased spouse [<sup>F51</sup>or civil partner] and the tax year in which he or she died.

(4) Where a widowed parent's allowance is payable to a person whose spouse [<sup>F51</sup>or civil partner] dies after [<sup>F54</sup>5th October 2002], the additional pension falling to be calculated under sections 44 to [<sup>F55</sup>45AA and Schedules 4A and 4B below] 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 [<sup>F56</sup>or civil partner'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**

**F25** Ss. 39A-39C inserted (24.4.2000 for specified purposes, 9.4.2001 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), **ss. 55(2)**, 89(1); S.I. 2000/1047, art. 2(2)(a), Sch. Pt. I

**F47** Words in s. 39C(1) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 93(2)**

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- F48** Word in s. 39C(1) substituted (3.1.2012) by Pensions Act 2008 (c. 30), s. 149(1), **Sch. 4 para. 4(2)(c)**; S.I. 2011/3033, art. 2(c)(iv)
- F49** S. 39C(1A)(2) substituted for s. 39C(2) (with effect in relation to the tax year 2010-2011 and subsequent tax years) by Pensions Act 2007 (c. 22), **ss. 6(6)(a), 30(1)(a)(3)** (with ss. 5(4)-(6), 6(7)); S.I. 2010/2650
- F50** Words in s. 39C(3) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 93(3)**
- F51** Words in s. 39C inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 22(a)**; S.I. 2005/3175, art. 2(1), Sch. 1
- F52** Word in s. 39C(3)(a) substituted (26.9.2007) by Pensions Act 2007 (c. 22), s. 30(3), **Sch. 2 para. 4(3)**
- F53** Word in s. 39C(3)(b) substituted (26.9.2007) by Pensions Act 2007 (c. 22), s. 30(3), **Sch. 2 para. 4(3)**
- F54** Words in s. 39C(4) substituted (with retrospective effect) by Child Support, Pensions and Social Security Act 2000 (c. 19), **s. 39(1)(a)(2)(a), 86(1)(b)(2)** (with s. 83(6))
- F55** Words in s. 39C(4) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 93(4)**
- F56** Words in s. 39C(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 22(b)**; S.I. 2005/3175, art. 2(1), Sch. 1

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

- C5** S. 39C modified (6.10.2002) by The Social Security (Inherited SERPS) Regulations 2001 (S.I. 2001/1085), **regs. 1(1), 2, Sch.** (as amended (5.12.2005) by S.I. 2005/3030, **regs. 1, 2**)

**[<sup>F57</sup>40 Long-term incapacity benefit for widows.**

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

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- (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
  - (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 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

**F57** S. 40 substituted (13.4.1995) by [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\), s. 16\(3\), Sch. 1 para. 8](#); [S.I. 1994/2926, art. 2\(4\), Sch. Pt. 4](#)

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

**C6** S. 40 excluded (1.10.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) Regulations 2010 \(S.I. 2010/1907\), regs. 1\(2\), 22\(a\)](#)

#### [<sup>F58</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—

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- (a) was incapable of work at the time when she died, or
  - (b) 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—
- (a) 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
  - (b) 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—
- (a) 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
  - (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 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.
- (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>F59</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 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

**F58** S. 41 substituted (13.4.1995) by [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\), s. 16\(3\), Sch. 1 para. 9](#); S.I. 1994/2926, art. 2(4), Sch. Pt. 4

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**F59** Words in s. 41(5)(a) substituted (19.7.1995) by Pensions Act 1995 (c. 26), s. 180(2)(a), Sch. 4 para. 21(4)

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

**C7** S. 41 excluded (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), regs. 1(2), 22(a)

**[<sup>F60</sup>42 Entitlement under s. 40 or 41 after period of employment or training for work.**

**[<sup>F61</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
- (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 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 or training of such other description as may be prescribed.

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

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#### **Textual Amendments**

**F60** S. 42 substituted (13.4.1995) by [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\), s. 16\(3\), Sch. 1 para. 10](#); [S.I. 1994/2926, art. 2\(4\), Sch. Pt. 4](#)

**F61** S. 42(1)(1A) substituted for s. 42(1) (6.4.2003) by [Tax Credits Act 2002 \(c. 21\), s. 61, Sch. 3 para. 30](#); [S.I. 2003/962, art. 2\(3\)\(d\)\(iii\)](#)

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

**C8** 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\(3\)](#)

**Status:**

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