



# 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—
- (a) unemployment benefit (with increase for adult and, where the beneficiary is over pensionable age, child dependants);
  - (b) sickness benefit (with increase for adult and, where the beneficiary is over pensionable age, child dependants);
  - (c) invalidity benefit, comprising—
    - (i) invalidity pension under section 33, 40 or 41 below (with increase for adult and child dependants);

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- (ii) invalidity allowance;
  - (d) maternity allowance (with increase for adult dependants);
  - (e) widow’s benefit, comprising—
    - (i) widow’s payment;
    - (ii) widowed mother’s allowance (with increase for child dependants);
    - (iii) widow’s pension;
  - (f) retirement pensions of the following categories—
    - (i) Category A, payable to a person by virtue of his own contributions (with increase for adult and child dependants); and
    - (ii) Category B, payable to a woman by virtue of her husband’s contributions or payable to a man by virtue of his late wife’s contributions (with increase for child dependants);
  - (g) for existing beneficiaries only, child’s special allowance.
- (2) In this Act—
- “long-term benefit” means—
- (a) an invalidity pension under section 33, 40 or 41 below;
  - (b) a widowed mother’s allowance;
  - (c) a widow’s pension; and
  - (d) a Category A or Category B retirement pension; and
- “short-term benefit” means—
- (a) unemployment benefit;
  - (b) sickness benefit; and
  - (c) maternity allowance.
- (3) The provisions of this Part of this Act are subject to the provisions of Part IV of the Pensions Order (contracting-out - reduced rates of benefit).

## 21 Contribution conditions.

- (1) Entitlement to any benefit specified in section 20(1) above, other than invalidity benefit, 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—

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### *Short-term benefit*

Unemployment benefit	Class 1
Sickness benefit	Class 1 or 2
Maternity allowance	Class 1 or 2
<i>Other benefits</i>	
Widow’s payment	Class 1, 2 or 3
Widowed mother’s allowance	Class 1, 2 or 3
Widow’s pension	Class 1, 2 or 3
Category A retirement pension	Class 1, 2 or 3

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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, other than maternity allowance, in certain cases where a claim for short-term benefit or a widow's 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 all his earnings 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.
- (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.

## 22 Earnings factors.

- (1) A person shall, for the purposes specified in subsection (2) below, be treated as having annual earnings factors derived—
- (a) in the case of 1987-88 or any subsequent tax year, from those of his earnings upon which primary Class 1 contributions have been paid or treated as paid and from Class 2 and Class 3 contributions; and
  - (b) 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—
- (a) establishing, by reference to the satisfaction of contribution conditions, entitlement to any benefit specified in section 20(1) above, other than maternity allowance; and

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- (b) calculating the additional pension in the rate of a long-term benefit.
- (3) Separate earnings factors may be derived for 1987-88 and subsequent tax years—
- (a) from earnings upon which primary Class 1 contributions have been paid or treated as paid;
  - (b) from earnings which have been credited;
  - (c) from contributions of different classes paid or credited in the same tax year;
  - (d) 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—
- (a) for 1987-88 or any subsequent tax year, from earnings upon which primary Class 1 contributions are paid at the reduced rate, or
  - (b) 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—
- (a) for 1987-88 or any subsequent tax year, earnings or Class 2 or Class 3 contributions, or
  - (b) 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 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.

**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

**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 22(1)(a) 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

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- (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 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 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.

#### **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 that person's earnings 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.

#### *Unemployment benefit*

#### **25 Unemployment benefit.**

- (1) Subject to the provisions of this section, a person who satisfies any of the three conditions of subsection (2) below shall be entitled to unemployment benefit in respect of any day of unemployment which forms part of a period of interruption of employment.
- (2) The conditions of this subsection are that—
  - (a) the person is under pensionable age on the day in question and satisfies the contribution conditions specified for unemployment benefit in Schedule 3, Part I, paragraph 1;

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- (b) on that day the person—
  - (i) is over pensionable age, but not more than 5 years over that age; and
  - (ii) 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
- (c) on that day the person—
  - (i) is over pensionable age, but not more than 5 years over that age; and
  - (ii) 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.
- (3) A person shall not be entitled to unemployment benefit for the first three days of any period of interruption of employment.
- (4) In the case of a person entitled under paragraph (a) of subsection (2) above unemployment benefit shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 1.
- (5) In the case of any person over pensionable age who is entitled under paragraph (b) or (c) of subsection (2) above, unemployment benefit shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable; but in determining that rate for the purposes of this subsection any increase specified in subsection (6) below shall be disregarded.
- (6) The increases to be disregarded for the purposes of subsection (5) above are the following—
  - (a) any increase (for invalidity) under section 47(1) below;
  - (b) any increase (for married women) under section 53(2) below or (for deferred entitlement) under Schedule 5 to this Act;
  - (c) any increase (for dependants) under section 80, 83 or 85 below;
  - (d) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act which corresponds to an increase under section 150 of the Great Britain Administration Act.
- (7) The amount payable by way of benefit under this section for any day of unemployment or of incapacity for work shall be one sixth of the appropriate weekly rate.

VALID FROM 13/04/1995

**[<sup>F1</sup>25A Determination of days for which unemployment benefit is payable.**

- (1) For the purposes of any provisions of this for Act relating to unemployment benefit—
  - (a) subject to the provisions of this Act, a day shall not be treated in relation to any person as a day of unemployment unless on that day—
    - (i) he is capable of work; and
    - (ii) he is, or is deemed in accordance with regulations to be, available to be employed in employed earner’s employment; and that day falls in a week in which he is, or is deemed in accordance with regulations to be, actively seeking such employment;
  - (b) where a person is an employed earner and his employment as such has not been terminated, then in any week a day on which in the normal course that

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person would not work in that employment or in any other employed earner's employment shall not be treated as a day of unemployment unless each other day in that week (other than the day referred to in paragraph (e) below) on which in the normal course he would so work is a day of interruption of employment;

- (c) "day of interruption of employment" means a day which is a day of unemployment or of incapacity for work;
- (d) the following periods, namely—
  - (i) any 2 days of unemployment, whether consecutive or not, within a period of 6 consecutive days;
  - (ii) any 4 or more consecutive days of incapacity for work,
 shall be treated as a period of interruption of employment, and any 2 such periods not separated by a period of more than 8 weeks ("week" for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment;
- (e) Sunday or such other day in each week as may be prescribed shall not be treated as a day of unemployment and shall be disregarded in computing any period of consecutive days.

(2) For the purposes of any provision of this Act relating to unemployment benefit, references to a day or period of incapacity for work have the same meaning as they have for the purposes of incapacity benefit.

(3) Regulations may—

- (a) make provision (subject to subsections (1) and (2) above) as to the days which are or are not to be treated for the purposes of unemployment benefit as days of unemployment;
- (b) make provision with respect to—
  - (i) steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner's employment in that week;
  - (ii) the meaning of "week" in subsection (1)(a) above or in any other provision relating to a person's actively seeking employed earner's employment;
- (c) prescribe respective circumstances in which, for the purposes of subsection (1)(b) above—
  - (i) employment which has not been terminated may be treated as if it had been terminated; or
  - (ii) a day which falls in a period when an employed earner's employment is suspended but does not fall to be so treated and which, apart from the regulations, would not fall to be treated as a day of interruption of employment may be treated as such a day.

(4) Where it has been determined that a person is to be deemed in accordance with regulations to be available for employment in employed earner's employment in respect of any day, the question of his actual availability for such employment in respect of that day may be subsequently determined on a review of the determination as to his deemed availability.

(5) Where it has been determined that a person is to be deemed in accordance with regulations to be actively seeking employed earner's employment in any week, the

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question of his actually doing so in that week may be subsequently determined on a review of the determination as to his deemed doing so.

- (6) If regulations under paragraph (a) of subsection (3) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—
- (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
  - (b) for calculating or estimating that person's level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
  - (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

In this subsection “post-employment period” means a period following the termination of a person's employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.]

#### Textual Amendments

- F1** S. 25A inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 5**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

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

- C6** S. 25A(1)(3) amended (13.4.1995) by 1992 c. 7, s. 25B (as inserted by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 5**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**)
- C7** S. 25A(1)(d): power to amend conferred (13.4.1995) by 1992 c. 7, s. 25B (as inserted by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 5**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**)

VALID FROM 13/04/1995

#### **[25B Power to amend provisions as to days of entitlement.**

- (1) Subsections (1) and (3) of section 25A above shall, on and after such day as the Department may by order appoint, have effect—
- (a) with the substitution for subsection (1)(b) of the following paragraph—  
“
  - (b) where a person is an employed earner and his employment as such has not been terminated but has been suspended by the employer, a day shall not be treated in relation to that person as a day of unemployment unless it is the 7th or a later day in a continuous period of days on which that suspension has lasted, there being disregarded for the purposes of determining the first 6 days of the period (but for no other purpose)—  
    - (i) Sunday or such other day in each week as may have been prescribed under paragraph (e) of this subsection;
    - (ii) any day of recognised or customary holiday in connection with the suspended employment;



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- (iii) such other day or days as may be prescribed; and
- (b) with the substitution for subsection (3)(c) of the following paragraph—  
“ldquo;
- (c) prescribe respective circumstances in which for the purposes of subsection (1)(b) above an employed earner’s employment may be treated—
  - (i) as having been or, as the case may be, as not having been terminated; or
  - (ii) as having been or, as the case may be, as not having been suspended.”
- (2) Regulations may provide—
  - (a) that paragraph (d) of section 25A(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; and
  - (b) that sub-paragraph (ii) of that paragraph 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.
- (3) Regulations under subsection (2)(b) above may be made to have effect from such date, not earlier than 14th September 1980, as may be specified in the regulations.]

## 26 Duration of unemployment benefit.

- (1) A person who, in respect of any period of interruption of employment, has been entitled to unemployment benefit for 312 days shall not thereafter be entitled to that benefit for any day of unemployment (whether in the same or a subsequent period of interruption of employment) unless before that day he has requalified for benefit.
- (2) A person who has exhausted his right to unemployment benefit requalifies for it on the next occasion when, having again been in employment as an employed earner, he makes a claim for that benefit in circumstances such that the requalification conditions are satisfied with respect to each of at least 13 weeks in the period of 26 weeks immediately preceding—
  - (a) the day on which the claim is made, or
  - (b) if he would not requalify by reference to that day, his first day of unemployment since he was last in employment as an employed earner.
- (3) For the purposes of subsection (2) above the requalification conditions are satisfied with respect to any week if—
  - (a) the person in question has been in employment as an employed earner in that week;
  - (b) he has worked in such employment for at least 16 hours in that week; and
  - (c) the week begins after the last day for which he was entitled to unemployment benefit.
- (4) Subsection (2) above shall have effect in prescribed cases with the substitution for the reference to 26 weeks of a reference to such longer period as may be prescribed.
- (5) Where a person requalifies for unemployment benefit, subsection (1) above shall again apply to him but, in a case where the period of interruption of employment in which he exhausted his right to that benefit continues after his requalification, as if the part

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before and the part after his requalification were distinct periods of interruption of employment.

- (6) Regulations may provide for a person who would be entitled to unemployment benefit but for the operation of any provision of this Act or of regulations disentitling him to it or disqualifying him for it to be treated as if entitled to it for the purposes of this section.

## 27 Interruption of employment in connection with trade dispute.

- (1) Subject to the following provisions of this section—
- (a) an employed earner who has lost employment as an employed earner by reason of a stoppage of work due to a trade dispute at his place of employment is disqualified for receiving unemployment benefit for any day during the stoppage unless he proves that he is not directly interested in the dispute; and
  - (b) an employed earner who has withdrawn his labour in furtherance of a trade dispute, but does not fall within paragraph (a) above, is disqualified for receiving unemployment benefit for any day on which his labour remains withdrawn.
- (2) A person disqualified under subsection (1)(a) above for receiving unemployment benefit shall cease to be so disqualified if he proves that during the stoppage—
- (a) he has become bona fide employed elsewhere;
  - (b) his employment has been terminated by reason of redundancy within the meaning of section 11(2) of the <sup>M2</sup>Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965; or
  - (c) he has bona fide resumed employment with his employer but has subsequently left for a reason other than the trade dispute.
- (3) In this Act—
- (a) “place of employment” in relation to any person, means the factory, workshop, farm or other premises or place at which he was employed, so however that, where separate branches of work which are commonly carried on as separate businesses in separate premises or at separate places are in any case carried on in separate departments on the same premises or at the same place, each of those departments shall for the purposes of this paragraph be deemed to be a separate factory or workshop or farm or separate premises or a separate place, as the case may be;
  - (b) “trade dispute” means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.

### Marginal Citations

M2 1965 c. 19 (N.I.).

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## **28 Unemployment benefit - other disqualifications, etc.**

- (1) Subject to section 29 below a person shall be disqualified for receiving unemployment benefit for such period not exceeding 26 weeks as may be determined in accordance with Part II of the Administration Act if—
  - (a) he has lost his employment as an employed earner through his misconduct, or has voluntarily left such employment without just cause;
  - (b) after a situation in any employment has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him;
  - (c) he has without good cause neglected to avail himself of a reasonable opportunity of employment;
  - (d) he has without good cause refused or failed to carry out any official recommendations given to him with a view to assisting him to find employment, being recommendations which were reasonable having regard to his circumstances and to the means of obtaining that employment usually adopted in the district in which he resides;
  - (e) he has lost his place on an approved training scheme through his misconduct, or has voluntarily left such a place without good cause;
  - (f) after a place on an approved training scheme has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that place or refused to accept that place when offered to him; or
  - (g) he has without good cause neglected to avail himself of a reasonable opportunity of a place on an approved training scheme.
- (2) The Department may by order substitute a shorter period for the period for the time being mentioned in subsection (1) above.
- (3) Regulations may also provide for imposing, in the case of any prescribed category of persons—
  - (a) additional conditions with respect to the receipt of unemployment benefit; and
  - (b) restrictions on the rate and duration of unemployment benefit,if, having regard to special circumstances, it appears to the Department necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.
- (4) For the purposes of this section a person who has been dismissed by his employer by reason of redundancy within the meaning of section 11(2) of the <sup>M3</sup>Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 after volunteering or agreeing so to be dismissed shall not be deemed to have left his employment voluntarily.
- (5) For the purposes of subsection (1) above regulations may—
  - (a) prescribe matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
  - (b) prescribe circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission;but, subject to any such regulations, in determining for the purposes of that subsection whether a person does or does not have good cause for any act or omission, there shall be disregarded any matter relating to the level of remuneration in the employment in question.

**Status:** Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(6) For the purposes of this section—

- (a) “properly notified”, in subsection (1)(b) and (f) above, means notified by the Department of Economic Development or some other recognised agency, or by or on behalf of an employer;
- (b) “official recommendations”, in subsection (1)(d) above, means recommendations in writing made by an officer of the Department of Economic Development;
- (c) “approved training scheme”, in subsection (1)(e), (f) and (g) above, means a scheme under which persons—
  - (i) are trained for employment; or
  - (ii) acquire work-experience for the purpose of becoming or keeping fit for entry to or return to regular employment,
 and which is approved by the Department of Economic Development for the purposes of this section;
- (d) “week” means any period of 7 days.

#### Marginal Citations

M3 1965 c. 19 (N.I.).

## 29 Exemptions from disqualification for unemployment benefit.

- (1) Nothing in section 28 above or in regulations under that section shall be taken to disqualify a person for receiving unemployment benefit by reason only of his refusal—
  - (a) to seek or accept employment in a situation which is vacant in consequence of a stoppage of work due to a trade dispute; or
  - (b) to seek or accept during the permitted period any employment other than employment in his usual occupation at a level of remuneration not lower than he is accustomed to receive.
- (2) Regulations shall make provision for the purpose of enabling any person of a prescribed description to accept any employed earner’s employment without being disqualified under—
  - (a) subsection (1)(a) of section 28 above, so far as it relates to a person who voluntarily leaves such employment without just cause, or
  - (b) subsection (1)(c) of that section,
 should he leave that employment voluntarily and without just cause at any time after the end of the 6th week, but not later than the end of the 12th week, of a trial period.
- (3) In this section—
 

“permitted period”, in relation to any person, means such period, whether expired or not, as may be determined in accordance with regulations by an adjudication officer on the submission of the question whether that person is disqualified under section 28 above for receiving unemployment benefit; and any such regulations may prescribe—

  - (a) the day on which any such period shall be regarded as having commenced in any case;
  - (b) the shortest and longest periods which may be so determined in any case; and

*Status:* Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(c) criteria to which the adjudication officer is to have regard in determining the permitted period in any case;

“trial period” means a period of 12 weeks beginning with the commencement of the employment in question; but regulations may—

(a) make provision for the purpose of determining the day on which a person’s employment is to be regarded as commencing; and

(b) provide that, for the purpose of determining the time at which the 6th or 12th week of a trial period ends, prescribed periods may be disregarded in prescribed circumstances.

### **30 Abatement of unemployment benefit on account of payments of occupational or personal pension.**

(1) If payments by way of occupational or personal pension which in the aggregate exceed the maximum sum are made for any week to a person who has attained the age of 55, the rate of any unemployment benefit to which apart from this section he is entitled for that week shall be reduced by 10 pence for each 10 pence of the excess; and in this subsection “the maximum sum” means such sum not less than £35 as is prescribed.

(2) Where a reduction in the rate of unemployment benefit payable to a person falls to be made under this section the reduction shall be made, so far as is necessary—

(a) initially against so much of the benefit as falls to be paid by virtue of section 25(4) or (5) above or of regulations under section 60 below;

(b) then against any increase in the benefit payable under section 82 below; and

(c) finally against any increase in the benefit payable under section 80 below.

(3) Regulations may provide—

(a) for such sums as are specified in or determined under the regulations to be disregarded for the purposes of this section;

(b) for securing that no reduction in pursuance of subsection (1) above is made in the unemployment benefit for any day before the day which in pursuance of the regulations is treated as that on which relevant payments by way of occupational or personal pension begin;

(c) for this section to apply, in cases where—

(i) a lump sum is paid to a person in connection with a former employment of his or arrangements are made for a lump sum to be so paid;

(ii) benefits of any description are made available to a person in connection with a former employment of his or arrangements are made for them to be made so available; or

(iii) payments by way of occupational or personal pension to a person are assigned, reduced or postponed or are made otherwise than weekly,

as if there were made to the person such weekly payments by way of occupational or personal pension as are specified in or determined under the regulations;

(d) for the method of determining whether payments by way of occupational or personal pension are made to a person for any week and the amount of any such payments which are so made;

(e) for section 26(1) above and section 57(1) below to have effect, in relation to a person whose rate of unemployment benefit is reduced by virtue of this section, with such modifications as are prescribed.

*Status: Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In this section—

“employer” means—

- (a) in relation to an employment under a contract of service, the employer under the contract;
- (b) in relation to an employment in an office with emoluments, the person responsible for paying the emoluments;

“employment” means an employment under a contract of service or in an office with emoluments;

“modifications” includes additions, omissions and amendments;

and the reference in subsection (1) above to unemployment benefit includes any increase of the benefit on account of dependants.

### *Incapacity benefit*

VALID FROM 13/04/1995

#### **[<sup>F3</sup>30A Incapacity benefit: entitlement.**

- (1) Subject to the following provisions of this section, a person who satisfies either of the following conditions is entitled to short-term incapacity benefit in respect of any day of incapacity for work which forms part of a period of incapacity for work.
- (2) The conditions are that—
  - (a) he is under pensionable age on the day in question 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.
- (3) A person is not entitled to short-term incapacity benefit 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.]

**Status:** Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Textual Amendments

**F3** 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

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

**C8** S. 30A(4) modified (13.4.1995) by S.R. 1995/35, reg. 4

### 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 (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;
  - (b) any increase (for dependants) under section 80, 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 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.



*Status: Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

VALID FROM 21/11/1994

### **[<sup>F5</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;
  - (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.
- (5) Where—
- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
  - (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
  - (c) he qualified for a disability working allowance for that week by virtue of the higher rate of short-term incapacity benefit, or long-term incapacity benefit under section 30A above, having been payable to him; and



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**Changes to legislation:** Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above 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,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(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,

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

**F5** 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

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

**C12** S. 30C modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), arts. 1(3), 73(8)(b)

VALID FROM 21/11/1994

#### [<sup>F6</sup>30D Incapacity benefit: construction of references to days of entitlement.

(1) The following provisions have effect in calculating for the purposes of—

- (a) section 30A(4) above (length of entitlement to short-term incapacity benefit);  
 (b) section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);  
 (c) section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and  
 (d) section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),

**Status:** Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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

- (2) There shall be included—
  - (a) the first 3 days of the period of incapacity for work; and
  - (b) 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

**F6** 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

VALID FROM 03/11/2000

#### [<sup>F7</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;

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- (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;
- 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>M4</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>M5</sup>Income and Corporation Taxes Act 1988 (retirement annuities).]

#### Textual Amendments

**F7** 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

**M4** 1993 c. 49.

**M5** 1988 c. 1.

VALID FROM 21/11/1994

#### [<sup>F8</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.

**Status:** Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

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- (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

- F8** 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*

#### **31 Sickness benefit.**

- (1) Subject to the provisions of this section, a person who satisfies any of the three conditions of subsection (2) below shall be entitled to sickness benefit in respect of any day of incapacity for work which forms part of a period of interruption of employment.
- (2) The conditions of this subsection are that—
- (a) the person is under pensionable age on the day in question and satisfies the contribution conditions specified for sickness benefit in Schedule 3, Part I, paragraph 2;
  - (b) on that day the person—
    - (i) is over pensionable age, but not more than 5 years over that age; and
    - (ii) 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
  - (c) on that day the person—
    - (i) is over pensionable age, but not more than 5 years over that age; and
    - (ii) 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.
- (3) Subsection (1) above is subject to the provision made by section 102 below in relation to entitlement to sickness benefit in cases of industrial injury.
- (4) A person shall not be entitled to sickness benefit for the first 3 days of any period of interruption of employment.
- (5) In the case of a person entitled under paragraph (a) of subsection (2) above (including a person entitled by virtue of that paragraph and section 102 below) sickness benefit shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 2.

*Status:* Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

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- (6) In the case of any person over pensionable age who is entitled under paragraph (b) or (c) of subsection (2) above, sickness benefit shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable; but in determining that rate for the purposes of this subsection any increase specified in subsection (7) below shall be disregarded.
- (7) The increases to be disregarded for the purposes of subsection (6) above are the following—
  - (a) any increase (for married women) under section 53(2) below or (for deferred entitlement) under Schedule 5 to this Act;
  - (b) any increase (for dependants) under section 80, 83 or 85 below; and
  - (c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act which corresponds to an increase under section 150 of the Great Britain Administration Act.
- (8) The amount payable by way of benefit under this section for any day of incapacity for work shall be one-sixth of the appropriate weekly rate.

### **32 Sickness benefit - disqualifications, etc.**

- (1) Regulations may provide for disqualifying a person for receiving sickness benefit for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act if—
  - (a) he has become incapable of work through his own misconduct; or
  - (b) he fails without good cause to attend for, or to submit himself to, such medical or other examination or treatment as may be required in accordance with the regulations, or to observe any prescribed rules of behaviour.
- (2) Regulations may also provide for imposing, in the case of any prescribed category of persons—
  - (a) additional conditions with respect to the receipt of sickness benefit; and
  - (b) restrictions on the rate and duration of sickness benefit,if, having regard to special circumstances, it appears to the Department necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.
- (3) For the purposes of this section “week” means any period of 7 days.

### *Invalidity benefits*

### **33 Invalidity pension.**

- (1) Where in respect of any period of interruption of employment a person has been entitled to sickness benefit for 168 days (including, in the case of a woman, any day for which she was entitled to a maternity allowance) then—
  - (a) he shall cease to be entitled to that benefit for any subsequent day of incapacity for work falling within that period; and
  - (b) he shall be entitled to an invalidity pension under this section for any day of incapacity for work in that period for which, by virtue only of paragraph (a) above, he is not entitled to sickness benefit if on that day either—
    - (i) he is under pensionable age, or

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(ii) being over that age but not more than 5 years over it he satisfies either of the conditions of subsection (2) below;

and any day in the first 3 days of a period of interruption of employment which was a day of incapacity for work shall be treated for the purposes of this subsection as a day on which he was so entitled.

(2) The conditions of this subsection are that on that day—

- (a) the person 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
- (b) the person 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.

(3) Except as provided by subsection (4) below, the weekly rate of an invalidity pension under this section shall for any period of interruption of employment be determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but—

- (a) with the modification provided by section 46(1) below, and
- (b) with the substitution for section 44(7) below of the following—

“(7) In the application of this section for the purpose of determining the weekly rate of a person’s invalidity pension for any period of interruption of employment—

- (a) “relevant year” means any tax year, being neither earlier than the tax year 1978-79 nor later than the tax year 1990-91, in the period which—
  - (i) begins with the tax year in which the invalidity pensioner attained the age of 16; and
  - (ii) ends with the tax year immediately preceding the tax year which includes or included the first day of entitlement to the pension in respect of that period of interruption of employment; and
- (b) “final relevant year” means the last tax year which is a relevant year in relation to the invalidity pensioner.”.

(4) In the case of a person over pensionable age who is entitled to an invalidity pension under paragraph (a) or (b) of subsection (2) above, the pension shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable, apart from any increase to be disregarded by virtue of subsection (5) below.

(5) The increases to be disregarded for the purposes of subsection (4) above are the following—

- (a) if he is also entitled to an invalidity allowance, any increase under section 47(1) or 50(2) below;
- (b) any increase (for married women) under section 53(2) below or (for deferred entitlement) under Schedule 5 to this Act;
- (c) any increase (for dependants) under section 80, 83 or 85 below; and
- (d) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act which corresponds to an increase under section 150 of the Great Britain Administration Act.

*Status: Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) The amount payable by way of an invalidity pension under this section shall for any day of incapacity for work be one sixth of the appropriate weekly rate.
- (7) Where—
  - (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
  - (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
  - (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under this section having been payable to him; and
  - (d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of 2 years beginning with the last day for which he was entitled to such a pension,  
any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.
- (8) Any day other than a Sunday or a day prescribed under section 57(1)(e) below is a relevant day for the purposes of subsection (7) above.
- (9) Regulations may make provision in relation to entitlement to invalidity pension under this section—
  - (a) corresponding to that made by or under section 102 below in relation to sickness benefit for persons who have attained pensionable age;
  - (b) restricting entitlement to invalidity pension under this section in cases where in respect of one or more of the 168 days mentioned in subsection (1) above the person claiming invalidity pension (whether or not he has attained pensionable age) would not have been entitled to sickness benefit but for the provision so made.
- (10) The Department may by regulations provide that, for the purpose of entitlement to invalidity pension under this section, such days as may be prescribed, in respect of which a person is or has been entitled to statutory sick pay, shall be days in respect of which he is deemed to be or to have been entitled to sickness benefit.
- (11) A person under pensionable age who is deemed in accordance with regulations under subsection (10) above to have been entitled to sickness benefit for the whole or any part of a period of 168 days such as is mentioned in subsection (1) above shall not be entitled to invalidity pension under this section unless he would have satisfied the contribution conditions for sickness benefit had he claimed that benefit on the first of those days.

### **34 Invalidity allowance.**

- (1) If a person is more than 5 years below pensionable age on the qualifying date in any period of interruption of employment then, subject to the following provisions of this section, in respect of every day of that period in respect of which he is entitled to an invalidity pension, he shall also be entitled to an invalidity allowance at the appropriate weekly rate specified in Schedule 4, Part I, paragraph 3.

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- (2) In this section “the qualifying date” means the first day in the period of interruption of employment in question (whether that day falls before the coming into force of this section or later) which is a day of incapacity for work or such earlier day as may be prescribed.
- (3) An invalidity allowance shall be payable—
- (a) at the higher rate specified in Schedule 4, Part I, paragraph 3, if—
    - (i) the qualifying date fell before 5th July 1948; or
    - (ii) on the qualifying date the beneficiary was under the age of 35; or
    - (iii) on the qualifying date the beneficiary was under the age of 40 and had not attained pensionable age before 6th April 1979;
  - (b) at the middle rate so specified if paragraph (a) above does not apply and either—
    - (i) on the qualifying date the beneficiary was under the age of 45; or
    - (ii) on the qualifying date the beneficiary was under the age of 50 and had not attained pensionable age before 6th April 1979;
  - (c) at the lower rate so specified if paragraphs (a) and (b) above do not apply, and on the qualifying date the beneficiary was a man under the age of 60 or a woman under the age of 55.
- (4) Where for any period the weekly rate of the invalidity pension to which the beneficiary is entitled includes an additional pension such as is mentioned in section 44(3)(b) below, for that period the relevant amount shall be deducted from the appropriate weekly rate of invalidity allowance and he shall be entitled to invalidity allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.
- (5) In this section “the relevant amount” means an amount equal to the additional pension reduced by the amount of any reduction in the weekly rate of the invalidity pension made by virtue of Article 31 of the Pensions Order.
- (6) In this section references to an additional pension are references 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.
- (7) The amount payable by way of invalidity allowance shall for any day of incapacity for work be one sixth of the appropriate weekly rate or, where subsection (4) above applies, of the weekly rate payable under that subsection.

### *Maternity*

#### **35 State maternity allowance.**

- (1) A woman shall be entitled to a maternity allowance at the weekly rate specified in Schedule 4, Part I, paragraph 4, 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 at least 26 weeks in the 52 weeks immediately preceding the 14th week before the expected week of confinement; and



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- (c) she satisfies the contribution condition for a maternity allowance specified in Schedule 3, Part I, paragraph 3; and
  - (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 Schedule 3, Part I, paragraph 3 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.
- (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>F9</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.
- (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.

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### Textual Amendments

**F9** Words in s. 35(6) substituted (1.10.1992) by S.I. 1992/1310, art. 4(a).

VALID FROM 12/01/2000

### [<sup>F10</sup>35A Appropriate weekly rate of maternity allowance.

- (1) For the purposes of section 35(1) above the appropriate weekly rate is that specified in whichever of subsection (2) or (3) below applies.
- (2) Where the woman's average weekly earnings are not less than the lower earnings limit for the relevant tax year, the appropriate weekly rate is a weekly rate equal to the lower rate of statutory maternity pay for the time being prescribed under section 162(3) below.
- (3) Where the woman's average weekly earnings—
  - (a) are less than the lower earnings limit for the relevant tax year, but
  - (b) are not less than the maternity allowance threshold for that tax year,
 the appropriate weekly rate is a weekly rate equivalent to 90 per cent. of her average weekly earnings or (if lower) the rate specified in subsection (2) above.
- (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;
  - (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 the lower earnings limit 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).
- (6) In this section—

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- (a) “the maternity allowance threshold”, in relation to a tax year, means (subject to subsection (7) below) £30;
  - (b) “the relevant tax year” means the tax year in which the beginning of the period of 66 weeks mentioned in section 35(1)(b) above falls; and
  - (c) “specified” means prescribed by or determined in accordance with regulations.
- (7) Whenever the Secretary of State makes an order under section 35A of the Great Britain Contributions and Benefits Act (increase of maternity allowance threshold), the Department may make a corresponding order for Northern Ireland.]

#### Textual Amendments

**F10** 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)

### *Benefits for widows and widowers*

#### **36 Widow’s payment.**

- (1) A woman who has been widowed shall be entitled to a widow’s payment of the amount specified in Schedule 4, Part II if—
- (a) she was under pensionable age at the time when her late husband died, or he was then not entitled to a Category A retirement pension under section 44 below; and
  - (b) her late husband satisfied the contribution condition for a widow’s payment specified in Schedule 3, Part I, paragraph 4.
- (2) The payment shall not be payable to a widow if she and a man to whom she is not married are living together as husband and wife at the time of her husband’s death.
- (3) A widow’s payment is payable only in cases where the husband dies on or after 11th April 1988 (the coming into operation of Article 37 of the 1986 Order, which introduced the widow’s payment by making provision corresponding to this section).

VALID FROM 24/04/2000

#### **[<sup>F11</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.]

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### Textual Amendments

**F11** 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—
  - (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 81(2) 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.

## 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.

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- (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;
  - (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. N.I.**

- (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 sections 44 and 45 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 46(2) below.
- (2) In the application of sections 44 and 45 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.
- (3) In the case of a woman whose husband dies after [<sup>F12</sup>5th October 2002], the additional pension falling to be calculated under sections 44 and 45 below 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—

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- (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 ".

#### Textual Amendments

**F12** Words in s. 39(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(a)

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

- (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 sections 44 and 45 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 46(2) below.
- (2) In the application of sections 44 and 45 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.
- (3) In the case of a woman whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 below 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
  - (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 ".

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### **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 81(2) 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—
  - (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.

VALID FROM 24/04/2000

### **[<sup>F14</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.



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- (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

**F14** 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

### 39C Rate of widowed parent's allowance and bereavement allowance. **N.I.**

- (1) The weekly rate of a widowed parent's allowance shall be determined in accordance with the provisions of sections 44 to 45A 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 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 45A 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.



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- (4) Where a widowed parent's allowance is payable to a person whose spouse dies after 5th April 2000, the additional pension falling to be calculated under sections 44 to 45A 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 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).

[<sup>F32</sup>**39C Rate of widowed parent's allowance and bereavement allowance. N.I.**

- (1) The weekly rate of a widowed parent's allowance shall be determined in accordance with the provisions of sections 44 to 45A 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 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 45A 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>F33</sup>5th October 2002], the additional pension falling to be calculated under sections 44 to 45A 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 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**

**F32** 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

**F33** Words in s. 39C(4) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(a)

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#### 40 Invalidity pension 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; and
  - (b) is incapable of work at the time when he dies or when she subsequently ceases to be so entitled; and
  - (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.
- (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) Subject to subsection (7) below, a woman to whom this section applies shall be entitled to an invalidity pension under this section for any day of incapacity for work which—
  - (a) falls in a period of interruption of employment 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 168 days of incapacity for work in that period.
- (4) An invalidity pension under this section shall be payable at the higher of—
  - (a) the weekly rate which would apply if the pension were payable under section 33 above; or
  - (b) the weekly rate specified in subsection (5) below.
- (5) The weekly rate referred to in subsection (4)(b) above is—
  - (a) if the woman is not entitled to a widow's pension, a weekly rate equal to that of the widow's pension to which she would have been entitled if she had been over the age of 55 when her husband died; and
  - (b) if she is entitled to a widow's pension with a reduction under section 39(4) above, a weekly rate equal to the difference between the weekly rate of that pension and what it would have been without the reduction,

but, in calculating the weekly rate of a widow's pension for the purposes of paragraph (a) above, or the weekly rate of a widow's pension without reduction, for the purposes of paragraph (b) above, any additional pension by virtue of section 44(3) below as it applies for the purposes of section 39 above shall be determined without reference to any surpluses in her late husband's earnings factors for tax years after 1990-91.
- (6) For the purpose of calculating the rate of an invalidity pension for a woman to whom this section applies by virtue of subsection (1)(c)(ii) above, subsections (4) and (5) above shall have effect with such modifications as are prescribed.
- (7) A woman shall not be entitled to an invalidity pension under this section if she is over pensionable age and is entitled to a Category A or Category B retirement pension; but if she has attained pensionable age, and the period of interruption of employment

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mentioned in subsection (3)(a) above did not terminate earlier than the day 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.
- (8) No invalidity pension shall be payable under section 33 above for any day of incapacity for which an invalidity pension is payable under this section.
- (9) In subsection (6) above “modifications” includes additions, omissions and amendments.

#### **41 Invalidity pension for widowers.**

- (1) This section applies to a man whose wife has died on or after 6th April 1979 and who either—
  - (a) was incapable of work at the time when she died; or
  - (b) becomes incapable of work within the prescribed period after that time.
- (2) Subject to subsection (7) below, a man to whom this section applies shall be entitled to an invalidity pension under this section for any day of incapacity for work which—
  - (a) falls in a period of interruption of employment 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 168 days of incapacity for work in that period.
- (3) An invalidity pension under this section shall be payable at the higher of—
  - (a) the weekly rate which would apply if the pension were payable under section 33 above; or
  - (b) the weekly rate specified in subsection (4) below.
- (4) The weekly rate mentioned in subsection (3)(b) above is a rate determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but subject, in particular, to subsections (5) and (6) and section 46(2) below.
- (5) In the application of sections 44 and 45 below by virtue of subsection (4) above—
  - (a) where the man’s wife was over pensionable age when she died, references in those sections to the pensioner shall be taken as references to the wife; and
  - (b) where the man’s wife was under pensionable age when she 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 wife and the tax year in which she died; and
  - (c) any additional pension shall be determined without reference to any surpluses in her earnings factors for tax years after 1990-91.
- (6) In the case of a widower whose wife dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 below by virtue of subsection (4) above shall be one half of the amount which it would be apart from this subsection.

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- (7) A man shall not be entitled to an invalidity pension under this section if he is over pensionable age and is entitled to a Category A or Category B retirement pension; but if he has attained pensionable age, and the period of interruption of employment mentioned in subsection (2)(a) above did not terminate earlier than the day 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 section 51 below, 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.
- (8) No invalidity pension shall be payable under section 33 above for any day of incapacity for which an invalidity pension is payable under this section.

#### **42 Entitlement to invalidity pension on termination of employment after period of entitlement to disability working allowance.**

- (1) Where—
- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
  - (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
  - (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under section 40 or 41 above having been payable to him; and
  - (d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of the period of 2 years beginning with the last day for which he was entitled to such a pension,
- any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was incapable of work.
- (2) Any day other than a Sunday or a day prescribed under section 57(1)(e) below is a relevant day for the purposes of this section.

#### *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,

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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,
- 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).

#### **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.
- (4) The weekly rate of the basic pension shall be £54.15 except that, so far as the sum is relevant for the purpose of calculating the rate of sickness benefit under section 31(6) above, it shall be £51.95.
- (5) For the purposes of this section and section 45 below—
- (a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for the final relevant year; and
  - (b) the amount of the surplus is the amount of that excess;
- and for the purposes of paragraph (a) above the pensioner's earnings factor for any relevant year shall be taken to be that factor as increased by the last order under section 130 of the Administration Act to come into force before the end of the final relevant year.
- (6) <sup>F16</sup>Subject to subsection (7A) below] any reference in this section or section 45 below to the pensioner's earnings factor for any relevant year is a reference—

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- (a) where the relevant year is 1987-88 or any subsequent tax 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
  - (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of it; and
- (b) where the relevant year is an earlier tax year, to the aggregate of his earnings factors derived from contributions actually paid by him in respect of 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>F17</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>M6</sup>Interpretation Act 1978).

#### Textual Amendments

**F16** Words in s. 44(6) inserted (*temp.*) (1.7.1992) by Social Security (Consequential Provisions)(Northern Ireland) Act 1992 (c. 9), s. 6, Sch. 4 Pt. I paras. 1,2.

**F17** S. 44(7A) inserted (*temp.*) (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.

#### Marginal Citations

**M6** 1978 c. 30.

VALID FROM 08/01/2001

#### [<sup>F18</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—
  - (a) is derived from earnings on which primary Class 1 contributions were paid; and
  - (b) 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—

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- (a) the pensioner would, apart from this section, have an earnings factor for the year—
    - (i) equal to or greater than the qualifying earnings factor for the year; but
    - (ii) less than the low earnings threshold for the year;
  - (b) invalid care allowance—
    - (i) was payable to the pensioner throughout the year; or
    - (ii) 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;
  - (c) 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—
    - (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.]

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### Textual Amendments

**F18** 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)

### Modifications etc. (not altering text)

**C13** 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)

## 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 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—
  - (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 amount of those surpluses; and
  - (b) in relation to any surpluses in the pensioner’s earnings factors in a tax year after 1987-88, the weekly equivalent of the relevant percentage of the amount of those surpluses.
- (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.
- (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,



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

- (6) For the purposes of subsections (1) and (2) above, the weekly equivalent of the amount of any surpluses 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.

VALID FROM 16/12/1995

**[<sup>F19</sup>45A Effect of family credit and disability working allowance on earnings factor.**

- (1) For the purpose of calculating additional pension under sections 44 and 45 above where, in the case of any relevant year, family credit is paid in respect of any employed earner, or disability working allowance is paid to any employed earner, section 44(6)(a)(i) above shall have effect as if—
  - (a) where that person had earnings of not less than the qualifying earnings factor for the year, being earnings upon which primary Class 1 contributions were paid or treated as paid ('qualifying earnings') in respect of that year, the amount of those qualifying earnings were increased by the aggregate amount (call it 'AG') of family credit or, as the case may be, disability working allowance paid in respect of that year, and
  - (b) in any other case, that person had qualifying earnings in respect of that year and the amount of those qualifying earnings were equal to AG plus the qualifying earnings factor for that year.
- (2) The reference in subsection (1) above to the person in respect of whom family credit is paid—
  - (a) where it is paid to one of a married or unmarried couple, is a reference to the prescribed member of the couple, and
  - (b) in any other case, is a reference to the person to whom it is paid.
- (3) A person's qualifying earnings in respect of any year cannot be treated by virtue of subsection (1) above as exceeding the upper earnings limit for that year multiplied by fifty-three.
- (4) Subsection (1) above does not apply to any woman who has made, or is treated as having made, an election under regulations under section 19(4) above, which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.
- (5) In this section—

“married couple” and “unmarried couple” (defined in section 133 below) have the same meaning as in Part VII, and

“relevant year” has the same meaning as in section 44 above.]

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### Textual Amendments

**F19** S. 45A inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 124

### [<sup>F20</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—
  - (a) the pensioner has become subject to a state scheme pension debit, and
  - (b) the debit is to any extent referable to the additional pension.
- (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.
- (7) Cash equivalents for the purposes of this section shall be calculated in accordance with 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

**F20** S. 45B inserted (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 47(1), Sch. 6 para. 2

*Status: Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

- (1) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 33(3) above, the following definition shall be substituted for the definition of “N” in section 45(4)(b) above—

“N = the number of tax years which begin after 5th April 1978 and end before the first day of entitlement to the additional pension in the period of interruption of employment in which that day falls, except that if—

- (i) in a case where the person entitled to the pension is a man, that number would be greater than 49; or
- (ii) in a case where the person so entitled is a woman, that number would be greater than 44,

N = 49 or 44, as the case may be”.

- (2) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 39(1) or 41(4) above or section 50(3) 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 = the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, except that if—

- (i) in a case where the deceased spouse was a man, that number would be greater than 49, or
- (ii) in a case where the deceased spouse was a woman, that number would be greater than 44,

N = 49 or 44, as the case may be”.

#### **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 invalidity allowance 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 invalidity allowance 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 Article 31 of the Pensions Order.

- (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.

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*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) In ascertaining for the purposes of subsection (1) above the rate of a pensioner's invalidity allowance, 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.

#### **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,

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.

VALID FROM 16/12/1995

#### **[<sup>F21</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 45A above as they apply in relation to

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a Category A retirement pension but subject to section 46(2) above and the modification in section 48C(4) below.

- (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

**F21** 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)**

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

**C14** 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)**

VALID FROM 16/12/1995

#### [<sup>F22</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 45A above 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 45A above 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

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- (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.
- (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.]

#### Textual Amendments

**F22** 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)**

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

**C15** 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)**

VALID FROM 24/04/2000

#### [<sup>F23</sup>48BB] **Category B retirement pension: entitlement by reference to benefits under section 39A or 39B. N.I.**

- (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.

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**Changes to legislation:** Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 45A above as they apply in relation to a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) above.
- (6) Where the spouse died under pensionable age, references in the provisions of sections 44 to 45A above, 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 5th April 2000, 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

**F23** 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

#### [<sup>F34</sup>48BBCategory B retirement pension: entitlement by reference to benefits under section 39A or 39B. **N.I.**

- (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.



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- (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 45A above as they apply in relation to a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) above.
- (6) Where the spouse died under pensionable age, references in the provisions of sections 44 to 45A above, 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 [F<sup>35</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).]



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#### Textual Amendments

- F34** 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
- F35** Words in s. 48BB(7) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)

VALID FROM 16/12/1995

#### [48C] <sup>F24</sup>Category B retirement pension: general. **N.I.**

- (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 5th April 2000, 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 45A above by virtue of sections 48A(4) or 48B(2) above, references in those provisions to the pensioner shall be taken as references to the spouse.]

#### Textual Amendments

- F24** 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)

#### [48C] <sup>F36</sup>Category B retirement pension: general. **N.I.**

- (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,

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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>F37</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 45A above by virtue of sections 48A(4) or 48B(2) above, references in those provisions to the pensioner shall be taken as references to the spouse.

#### Textual Amendments

**F36** 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)**

**F37** Words in s. 48C(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. **35(1)(a)(2)(b)**

#### <sup>XI</sup>49 **Category B retirement pension for women.**

- (1) A woman who is or has been married, and has attained pensionable age, shall be entitled to a Category B retirement pension by virtue of the contributions of her husband; and the cases in which a woman is so entitled are those specified in subsections (2) to (5) below.
- (2) The first case of entitlement is where the woman is married to that husband at the time when she attains pensionable age and—
- he also has attained pensionable age and has become entitled to a Category A retirement pension; and
  - he satisfies the relevant contribution conditions.
- (3) The second case of entitlement is where the woman marries after attaining pensionable age and—
- her husband has also attained pensionable age and has become entitled to a Category A retirement pension; and
  - he satisfies the relevant contribution conditions.
- (4) The third case of entitlement is where the woman’s husband is dead and his death was after she attained pensionable age, and—
- she was married to him when he died; and
  - before his death he satisfied the relevant contribution conditions.
- (5) The fourth case of entitlement is where the woman’s husband is dead and his death was before she attained pensionable age, and—
- she was a widow immediately before attaining pensionable age and is entitled (or is treated by regulations as entitled) to a widow’s pension; and
  - she became entitled to the pension in consequence of the husband’s death.
- (6) The relevant contribution conditions for the purposes of the first, second and third cases of entitlement are those specified in Schedule 3, Part I, paragraph 5.

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- (7) Subject to the provisions of this Act, a woman's entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.
- (8) A woman's Category B retirement pension shall not be payable for 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.

#### Editorial Information

**X1** Ss. 49, 50 replaced by ss. 48A-48C by virtue of S.I. 1995/3213, Sch. 2 Pt. II para. 3(1)

### 50 Rate of Category B retirement pension for women.

- (1) A woman's Category B retirement pension—
  - (a) in the first and second cases of entitlement under section 49 above, shall—
    - (i) during any period in which the husband is alive, be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5, and
    - (ii) during any period after he is dead, be payable at a weekly rate ascertained in accordance with subsection (3) below;
  - (b) in the third case of entitlement under that section, shall be payable at a weekly rate ascertained in accordance with subsection (3) below; and
  - (c) in the fourth case of entitlement under that section, shall be payable at the same weekly rate as her widow's pension.
- (2) In any case where—
  - (a) a woman would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
  - (b) subsection (1) of section 47 above would apply for the increase of the Category A retirement pension,that subsection 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 Article 31B(2) of the Pensions Order.
- (3) The weekly rate referred to in paragraphs (a)(ii) and (b) of subsection (1) above for a woman's Category B retirement pension shall be determined in accordance with the provisions of sections 44 and 45 above as they apply in the case of a Category A retirement pension, but subject, in particular—
  - (a) to section 46(2) above; and
  - (b) to subsections (4) and (5) below.
- (4) In the application of sections 44 and 45 above by virtue of subsection (3) above—
  - (a) references in those sections to the pensioner shall be taken as references to the husband, and
  - (b) where, in the third case of entitlement under section 49 above, 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.

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- (5) In the case of a widow whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (3) above shall be one half of the amount which it would be apart from this subsection.

## 51 Category B retirement pension for widowers.

- (1) A man shall be entitled to a Category B retirement pension if—
- 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
  - they were both over pensionable age when she died; and
  - 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 sections 44 and 45 above as they apply in 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>F25</sup>5th October 2002], the additional pension falling to be calculated under sections 44 and 45 above 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

**F25** Words in s. 51(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)

VALID FROM 16/12/1995

### [<sup>F26</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—
- to a Category A retirement pension, and
  - 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—
- the amount of the shortfall, or
  - 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.]

*Status: Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Part II is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F26** 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)

## 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
  - (b) to a Category B retirement pension—
    - (i) under section 49 above by virtue of the contributions of a husband who has died; or
    - (ii) under section 51 above.
- (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.

## 53 Special provision for married women.

- (1) This section has effect where, apart from section 43(1) above, a married woman 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 her husband.
- (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 the husband and wife attained pensionable age before 6th April 1979.

*Status: Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.*

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#### **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.

(2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act, or of those of Part II of the Administration Act 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.

(3) Where a husband and wife have both become entitled to retirement pensions and—

- (a) the husband’s pension is Category A; and
- (b) the wife’s pension is—
  - (i) Category B by virtue of that husband’s contributions, or
  - (ii) Category A with an increase under section 53(2) above by virtue of that husband’s contributions,

the husband shall not be entitled to make an election in accordance with regulations made under subsection (1) above without the consent of the wife, unless that consent is unreasonably withheld.

(4) In any case where—

- (a) a person claims a Category A or Category B retirement pension; and
- (b) the date specified in the claim as the date on which entitlement to the pension is to commence falls after the date when the claim was made,

such a pension may be awarded as from the date so specified but, if so awarded, shall be conditional on the person’s not ceasing to be entitled to the pension in consequence of any election under subsection (1) above.

#### **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 his 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 he does not become entitled to that pension by reason only—

- (a) that he has not satisfied the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim); or
- (b) that, in the case of a woman’s Category B retirement pension by virtue of her husband’s contributions, her husband has not satisfied those conditions with respect to his Category A retirement pension;

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

**Status:** Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

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### [<sup>F27</sup> Shared additional pension]

#### Textual Amendments

**F27** 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**

VALID FROM 01/12/2000

#### [<sup>F28</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.
- (6) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.
- (7) In this section—
  - “final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;
  - “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

**F28** Ss. 55A-55C inserted (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 47(1), **Sch. 6 para. 3**



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**[<sup>F29</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.
- (7) Cash equivalents for the purposes of this section shall be calculated in accordance with 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**

**F29** Ss. 55A-55C inserted (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 47(1), **Sch. 6 para. 3**

VALID FROM 01/12/2000

**[<sup>F30</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—



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- (a) 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
- (b) 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.
- (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

**F30** 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**

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

- C16** 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
- C17** S. 55C amended (8.4.2002 with effect as mentioned in art. 6 of the amending S.R.) by The Social Security Benefits Up-rating Order (Northern Ireland) 2002 (S.R. 2002/99), arts. 1(1)(d)(2), 4(5)

*Child's special allowance*

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

- (1) Subject to the provisions of this Act (and in particular to those of section 81 below), 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 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

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- (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.

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

## **57 Determination of days for which benefit is payable.**

- (1) For the purposes of any provisions of this Act relating to unemployment benefit, sickness benefit or invalidity benefit—
- (a) subject to the provisions of this Act, a day shall not be treated in relation to any person—
    - (i) as a day of unemployment unless on that day he is capable of work and he is, or is deemed in accordance with regulations to be, available to be employed in employed earner's employment and that day falls in a week in which he is, or is deemed in accordance with regulations to be, actively seeking such employment; or
    - (ii) as a day of incapacity for work unless on that day he is, or is deemed in accordance with regulations to be, incapable of work by reason of some specific disease or bodily or mental disablement,
- (“work”, in this paragraph, meaning work which the person can reasonably be expected to do);
- (b) where a person is an employed earner and his employment as such has not been terminated, then in any week a day on which in the normal course that person would not work in that employment or in any other employed earner's employment shall not be treated as a day of unemployment unless each other day in that week (other than the day referred to in paragraph (e) below) on which in the normal course he would so work is a day of interruption of employment;
  - (c) “day of interruption of employment” means a day which is a day of unemployment or of incapacity for work;
  - (d) the following periods, namely—
    - (i) any 2 days of unemployment, whether consecutive or not, within a period of 6 consecutive days,
    - (ii) any 4 or more consecutive days of incapacity for work,
- shall be treated as a period of interruption of employment, and any 2 such periods not separated by a period of more than 8 weeks (“week” for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment;

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- (e) Sunday or such other day in each week as may be prescribed shall not be treated as a day of unemployment or of incapacity for work and shall be disregarded in computing any period of consecutive days.
- (2) Any day which falls within the maternity allowance period as defined in section 35(2) above shall be treated for the purposes of any provision of this Act relating to unemployment benefit, sickness benefit or invalidity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance in respect of that day by virtue of regulations under section 35(3)(a) above.
- (3) Regulations may—
- (a) make provision (subject to subsections (1) and (2) above) as to the days which are or are not to be treated for the purposes of unemployment benefit, sickness benefit and invalidity benefit as days of unemployment or of incapacity for work;
  - (b) make provision with respect to—
    - (i) steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner’s employment in that week;
    - (ii) the meaning of “week” in subsection (1)(a)(i) above or in any other provision relating to a person’s actively seeking employed earner’s employment;
  - (c) prescribe respective circumstances in which, for the purposes of subsection (1) (b) above—
    - (i) employment which has not been terminated may be treated as if it had been terminated; or
    - (ii) a day which falls in a period when an employed earner’s employment is suspended but does not fall to be so treated and which, apart from the regulations, would not fall to be treated as a day of interruption of employment may be treated as such a day.
- (4) Where it has been determined that a person is to be deemed in accordance with regulations to be available for employment in employed earner’s employment in respect of any day, the question of his actual availability for such employment in respect of that day may be subsequently determined on a review of the determination as to his deemed availability.
- (5) Where it has been determined that a person is to be deemed in accordance with regulations to be actively seeking employed earner’s employment in any week, the question of his actually doing so in that week may be subsequently determined on a review of the determination as to his deemed doing so.
- (6) If regulations under paragraph (a) of subsection (3) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—
- (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
  - (b) for calculating or estimating that person’s level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
  - (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

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- (7) In subsection (6) above “post-employment period” means a period following the termination of a person’s employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.
- (8) Subsections (1) and (3) above shall, on and after such day as the Department may by order appoint, have effect—
- (a) with the substitution for paragraph (b) of subsection (1) of the following paragraph—

“(b) where a person is an employed earner and his employment as such has not been terminated but has been suspended by the employer, a day shall not be treated in relation to that person as a day of unemployment unless it is the 7th or a later day in a continuous period of days on which that suspension has lasted, there being disregarded for the purposes of determining the first 6 days of the period (but for no other purpose)—

    - (i) Sunday or such other day in each week as may have been prescribed under paragraph (e) of this subsection,
    - (ii) any day of recognised or customary holiday in connection with the suspended employment,
    - (iii) such other day or days as may be prescribed;”;
  - (b) with the substitution for paragraph (c) of subsection (3) of the following paragraph—

“(c) prescribe respective circumstances in which for the purposes of subsection (1) (b) above an employed earner’s employment may be treated—

    - (i) as having been or, as the case may be, as not having been terminated, or
    - (ii) as having been or, as the case may be, as not having been suspended.”.
- (9) Regulations may provide—
- (a) that paragraph (d) of 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; and
  - (b) that sub-paragraph (ii) of that paragraph shall have effect in such cases as may be specified in the regulations, as if—
    - (i) the period of 4 days mentioned there were such lesser period as may be specified; and
    - (ii) the word “consecutive” were omitted.
- (10) Regulations under subsection (9)(b) above may be made to have effect from such date, not earlier than 14th September 1980, as may be specified in the regulations.

## **58 Incapacity for work: work as councillor to be disregarded.**

- (1) In determining for the purposes of any of the provisions of this Part of this Act which relate to sickness benefit or invalidity benefit whether any day is to be treated as a day of incapacity for work in relation to a person, there shall be disregarded any work which that person has undertaken, or is capable of undertaking, as a councillor.

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- (2) Where the net amount of councillor’s allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any sickness benefit or invalidity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.
- (3) In determining whether a person satisfies the conditions of entitlement for any such benefit, he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
  - (b) would not have been so treated apart from this subsection.
- (4) In this section—
- “councillor” means a member of a district council;
- “councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a councillor as the Department may prescribe 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;
- “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;
- “permitted earnings limit” means the amount specified in regulation 3(3) of the <sup>M7</sup>Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984;
- “pre-commencement period” means the <sup>M8</sup>period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into operation of paragraph 2 of Schedule 8 to the Social Security (Northern Ireland) Order 1989 which made provision corresponding to the provision made by this section).
- (5) Any reference in this section to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.

#### Marginal Citations

**M7** S.R. (N.I.) 1984 No. 245.

**M8** S.I. 1989/1342 (N.I. 13).

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*Invalidity benefit - disqualifications, etc.*

**59 Invalidation benefit - disqualifications, etc.**

- (1) Regulations may provide for disqualifying a person for receiving invalidity benefit for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act if—
  - (a) he has become incapable of work through his own misconduct; or
  - (b) he fails without good cause to attend for, or to submit himself to, such medical or other examination or treatment as may be required in accordance with the regulations, or to observe any prescribed rules of behaviour.
- (2) Regulations may also provide for imposing, in the case of any prescribed category of persons—
  - (a) additional conditions with respect to the receipt of invalidity benefit; and
  - (b) restrictions on the rate and duration of invalidity benefit,if, having regard to special circumstances, it appears to the Department necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.
- (3) For the purposes of this section “week” means any period of 7 days.

*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,
  - (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 him,those conditions shall be taken to be satisfied for the purposes of his widow’s entitlement to any of the benefits specified in subsection (3) below.
- (3) The benefits referred to in subsection (2) above are the following—
  - (a) a widow’s payment;
  - (b) a widowed mother’s allowance;
  - (c) a widow’s pension;

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- (d) a Category B retirement pension payable to a woman which is payable to her at the same rate as her widow's pension or which falls within section 49(4) above.
- (4) Subject to subsections (6) and (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 subsections (6) and (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).
- (6) The amount prescribed by regulations under subsection (1) above for any increase of benefit in respect of a child shall, subject to subsection (7) below, be the same as if both of the relevant contribution conditions had been fully satisfied.
- (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.

## **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 which is so payable shall not be increased under section 47(1) above or under Part IV below on account of a child or an adult if the pension or allowance contains no basic pension in consequence of a failure to satisfy a contribution condition.
- (2) Where a person is entitled—
  - (a) to unemployment benefit at a rate determined under section 25(5) above;
  - (b) to sickness benefit at a rate determined under section 31(6) above; or
  - (c) to an invalidity pension at a rate determined under section 33(4) above,
 and the retirement pension by reference to which the rate of the benefit or invalidity pension is determined—
  - (i) would have been payable only by virtue of section 60 above; and
  - (ii) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension,
 the benefit or invalidity pension shall not be increased under section 47(1) above or under Part IV below on account of a child or an adult.



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VALID FROM 16/12/1995

**[<sup>F31</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 Department is 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.
- (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,
  - (c) widowed mother's allowance and widow's pension, and
  - (d) incapacity benefit (except in transitional cases).
- (4) Regulations may, where—
  - (a) this section applies in the case of any individual, and
  - (b) the Department is 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),

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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

**F31** 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

### *Graduated retirement benefit*

#### **62 Graduated retirement benefit.**

- (1) So long as sections 35 and 36 of the <sup>M9</sup>National Insurance Act (Northern Ireland) 1966 (graduated retirement benefit) continue in force by virtue of regulations made under Schedule 3 to the <sup>M10</sup>Social Security (Consequential Provisions) Act 1975 or under Schedule 3 to the Consequential Provisions Act, regulations may make provision—
- (a) for replacing section 35(4) of the National Insurance Act (Northern Ireland) 1966 (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;
  - (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.
- (2) This section is without prejudice to any power to modify those sections conferred by Schedule 3 to the Consequential Provisions Act.

#### Marginal Citations

**M9** 1966 c. 6 (N.I.).

**M10** 1975 c. 18.

**Status:**

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**Changes to legislation:**

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