



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

## 1992 CHAPTER 7

### PART II

#### CONTRIBUTORY BENEFITS

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

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

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

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(5) If no such notice is given, the person shall be entitled to whichever of the pensions is from time to time the most favourable to him (whether it is the pension which he claimed or not).

[<sup>F1</sup>(6) For the purposes of this section, a pension under section 55A below is not a retirement pension.]

#### Textual Amendments

**F1** S. 43(6) added (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 8**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

#### 44 Category A retirement pension.

(1) A person shall be entitled to a Category A retirement pension if—

- (a) he is over pensionable age; and
- (b) he satisfies the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5;

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

(2) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act.

(3) A Category A retirement pension shall consist of—

- (a) a basic pension payable at a weekly rate; and
- (b) an additional pension payable where there are one or more surpluses in the pensioner's earnings factors for the relevant years.

[<sup>F2</sup>(4) The weekly rate of the basic pension shall be [<sup>F3</sup>£67.50] except that, so far as the sum is relevant for the purpose of calculating the lower rate of short-term incapacity benefit under section 30B(3) above, it shall be [<sup>F3</sup>£64.75].

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

[<sup>F4</sup>(5A) For the purpose 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 that year, and
- (b) the amount of the surplus is the amount of that excess, as increased by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.]

(6) [<sup>F5</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—

- (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

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- [<sup>F6</sup>(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of that year, or, if less, the qualifying earnings factor for that year; and
- (b) where the relevant year is an earlier tax year, to the aggregate of—
- (i) his earnings factors derived from Class 1 contributions actually paid by him in respect of that year; and
- (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid by him in respect of that year, or, if less, the qualifying earnings factor for that year.]
- (7) In this section—
- (a) “relevant year” means 1978-79 or any subsequent tax year in the period between—
- (i) (inclusive) the tax year in which the pensioner attained the age of 16, and
- (ii) (exclusive) the tax year in which he attained pensionable age;
- (b) “final relevant year” means the last tax year which is a relevant year in relation to the pensioner.
- [<sup>F7</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>M1</sup>Interpretation Act 1978).

#### Textual Amendments

- F2** S. 44(4) substituted (9.9.1998) by S.I. 1998/1506 (N.I. 10), art. 64; S.R. 1998/312, art. 2(a)(b)(d), Sch. Pt. I
- F3** Sums in s. 44(4) substituted (10.4.2000) by S.R. 2000/38, arts. 1(e), 4(3)
- F4** S. 44(5A) substituted for s. 44(5) (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 125(1)(4)-(6)
- F5** 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.
- F6** S. 44(6)(a)(ii)(b) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 125(2)(4)-(6)
- F7** 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.

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

- C1** S. 44(5A) modified (29.12.2000) by S.R. 2000/360, reg. 2

#### Marginal Citations

- M1** 1978 c. 30.

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VALID FROM 08/01/2001

#### **[<sup>F8</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—
  - (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

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- (ii) any year in which he is deemed under subsection (1) above to have an earnings factor by virtue of fulfilling the condition in subsection (2)(b) or (c) above; and
  - (b) the figure calculated by dividing his working life by ten shall be rounded to the nearest whole year (and any half year shall be rounded down).
- (5) The low earnings threshold for the first appointed year and subsequent tax years shall be £9,500 (but subject to section 130A of the Administration Act).
- (6) In subsection (2)(d)(ii) above, “occupational pension scheme” and “personal pension scheme” have the same meanings as in subsection (6) of section 30DD above for the purposes of subsection (5) of that section.]

#### Textual Amendments

**F8** 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)

**C2** 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

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- (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—
- was credited with contributions or earnings under this Act by virtue of regulations under section 22(5) above, or
  - was precluded from regular employment by responsibilities at home, or
  - in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,
- but not so as to reduce the number of years below 20.
- (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.

**[<sup>F9</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, [<sup>F10</sup>working families' tax credit] is paid in respect of any employed earner, or [<sup>F11</sup>disabled person's tax credit] is paid to any employed earner, section 44(6)(a)(i) above shall have effect as if—
- 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 [<sup>F10</sup>working families' tax credit] or, as the case may be, [<sup>F11</sup>disabled person's tax credit] paid in respect of that year, and
  - 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 [<sup>F10</sup>working families' tax credit] is paid—
- where it is paid to one of a married or unmarried couple, is a reference to the prescribed member of the couple, and
  - 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.

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- (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.]

#### Textual Amendments

- F9** 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
- F10** Words in s. 45A(1)(2) substituted (5.10.1999) by 1999 c. 10, ss. 1(2), 20(1), Sch. 1 paras. 1(a), 4(c)
- F11** Words in s. 45A(1) substituted (5.10.1999) by 1999 c. 10, ss. 1(2), 20(1), Sch. 1 paras. 1(b), 4(c)

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

- C3** S. 45A(2)(a): certain functions transferred (5.10.1999) by 1999 c. 10, ss. 2, 20(1), Sch. 2 para. 3(a)

### [<sup>F12</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.



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[ The Department may by regulations make provision for the calculation and <sup>F13</sup>(7) verification of cash equivalents for the purposes of this section.

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

(8) In this section—

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

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

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

#### Textual Amendments

**F12** S. 45B inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 47(1), **Sch. 6 para. 2**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F13** S. 45B(7)(7A) substituted for s. 45B(7) (22.11.2000) by 2000 c. 4 (N.I.), **s. 37(2)**; S.R. 2000/358, art. 2(a), **Sch. Pt. I**

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

<sup>F14</sup>(1) . . . . .

- (2) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 39(1) [<sup>F15</sup>or 39C(1)]. . . above or section [<sup>F16</sup>48A(4) [<sup>F17</sup>, 48B(2) or 48BB(5)]] below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of “N” in section 45(4)(b) above—

[<sup>F18</sup>N=

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

whichever is the smaller number.]



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#### Textual Amendments

- F14** S. 46(1) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 12(a), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F15** Words in s. 46(2) inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 4(a)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**
- F16** Words in s. 46(2) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 18(5)**
- F17** Words in s. 46(2) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 4(b)**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**
- F18** Words in s. 46(2) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 5**

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

- (1) Subject to section 61 below, the weekly rate of a Category A retirement pension shall be increased if the pensioner was entitled to an [<sup>F19</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above] in respect of—
- any day falling within the period of 8 weeks ending immediately before the day on which he attains pensionable age; or
  - the last day before the beginning of that period;
- and the increase shall, subject to subsection (2) below, be of an amount equal to the appropriate weekly rate of the [<sup>F19</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above] on that day.
- (2) Where for any period the weekly rate of a Category A retirement pension includes an additional pension, for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under subsection (1) above and the pensioner shall be entitled to an increase under that subsection only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.
- (3) In subsection (2) above the “relevant amount” means an amount equal to the additional pension, reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of [<sup>F20</sup>section 42 of the Pensions Act].
- (4) In this section any reference to an additional pension is a reference to that pension after any increase under section 52(3) below but without any increase under paragraphs 1 and 2 of Schedule 5 to this Act.
- (5) In ascertaining for the purposes of subsection (1) above the rate of a pensioner’s [<sup>F19</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above], regard shall be had to the rates in force from time to time.
- (6) Regulations may provide that subsection (1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations.

#### Textual Amendments

- F19** Words in s. 47(1)(5) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 13**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F20** Words in s. 47(3) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 33**; S.R. 1994/17, art. 2

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

- C4** S. 47 modified (7.2.1994) by 1993 c. 49, s. 42(4); S.R. 1994/17, art. 2  
S. 47 modified (13.4.1995) by S.R. 1995/35, reg. 23
- C5** S. 47(1) modified (7.2.1994) by 1993 c. 49, s. 42(5); S.R. 1994/17, art. 2
- C6** S. 47(2) modified (7.2.1994) by 1993 c. 49, s. 44(2); S.R. 1994/17, art. 2

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

- (1) Where a person—
- (a) has been married, and
  - (b) in respect of the tax year in which the marriage terminated or any previous tax year, does not with his own contributions satisfy the contribution conditions for a Category A retirement pension,
- then, for the purpose of enabling him to satisfy those conditions (but only in respect of any claim for a Category A retirement pension), the contributions of his former spouse may to the prescribed extent be treated as if they were his own contributions.
- (2) Subsection (1) above shall not apply in relation to any person who attained pensionable age before 6th April 1979 if the termination of his marriage also occurred before that date.
- (3) Where a person has been married more than once this section applies only to the last marriage and the references to his marriage and his former spouse shall be construed accordingly.

#### **[<sup>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 [<sup>F22</sup>45B] above as they apply in relation to a Category A retirement pension but subject to section 46(2) above and the modification in section 48C(4) below.

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[ Subsection (4) above shall have effect with the omission of the words from “plus” to <sup>F23</sup>(4A) the end if the pensioner is not the widow or widower of the person by virtue of whose contributions the pension is payable.]

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

#### Textual Amendments

**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)**

**F22** Words in s. 48A(4) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 9**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**F23** S. 48A(4A) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 31**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

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

**C7** 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)**

#### [<sup>F24</sup>48B Category B retirement pension for widows and widowers.

- (1) A person (“the pensioner” whose spouse died—
  - (a) while they were married, and
  - (b) after the pensioner attained pensionable age,shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if the spouse satisfied the conditions specified in Schedule 3, Part I, paragraph 5.
- (2) A Category B retirement pension payable by virtue of subsection (1) above shall be payable at a weekly rate corresponding to—
  - (a) the weekly rate of the basic pension, plus
  - (b) half of the weekly rate of the additional pension,determined in accordance with the provision of sections 44 to [<sup>F25</sup>45B] 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 [<sup>F25</sup>45B] 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 (“he 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—

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- (a) is entitled (or is treated by regulations as entitled) to a widow’s pension by virtue of section 38 above, and
  - (b) became entitled to that pension in consequence of the spouse’s death.
- (6) A Category B retirement pension payable by virtue of subsection (4) above shall be payable—
- (a) where the pensioner is a woman, at the same weekly rate as her widow’s pension and
  - (b) where the pensioner is a man, at the same weekly rate as that of the pension to which he would have been entitled by virtue of section 38 above on the assumption mentioned in subsection (7) below.
- (7) The assumption referred to in subsections (4) and (6) above is that a man is entitled to a pension by virtue of section 38 above on the same terms and conditions, and at the same rate, as a woman.

[ Nothing in subsections (4) to (7) above applies in a case where the spouse dies on or <sup>F26</sup>(8) after the appointed day (as defined by section 36A(3)).]

#### 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)**
- F25** Words in s. 48B(2)(3) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 10**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F26** S. 48B(8) added (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 5**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**

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

- C8** 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)**

### <sup>F27</sup>**48BB**Category B retirement pension: entitlement by reference to benefits under section 39A or 39B.

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

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- (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 [<sup>F28</sup>5th October 2002], the pension payable by virtue of subsection (4) above shall (before making any reduction required by subsection (8) below) be one half of the amount which it would be apart from this subsection.
- (8) Where the pensioner was under the age of 55 at the relevant time, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied—
- (a) by the number of years by which the pensioner’s age at that time was less than 55 (any fraction of a year being counted as a year), or
- (b) by ten, if that number exceeds ten.
- (9) In subsection (8) above “the relevant time” means—
- (a) where the pensioner became entitled to a widowed parent’s allowance in consequence of the death of the spouse, the time when the pensioner’s entitlement to that allowance ended; and
- (b) otherwise, the time of the spouse’s death.
- (10) The amount determined in accordance with subsections (5) to (9) above as the weekly rate of the pension payable to the pensioner by virtue of subsection (4) above shall be increased by such percentage as equals the overall percentage by which, had the pension been in payment as from the date of the spouse’s death until the date when the pensioner attained pensionable age, that weekly rate would have been increased during that period by virtue of any orders under section 132 of the Administration Act (annual up-rating of benefits).]

#### Textual Amendments

**F27** 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

**F28** Words in s. 48BB(7) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)

#### [48C <sup>F29</sup>Category B retirement pension: general.

- (1) Subject to the provisions of this Act, a person’s entitlement to a Category B retirement pension shall begin on the day on which the conditions of entitlement become satisfied and shall continue for life.
- (2) In any case where—

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- (a) a person would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
  - (b) section 47(1) above would apply for the increase of the Category A retirement pension,  
 section 47(1) above shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 42(5) of the Pensions Act.
- (3) In the case of a pensioner whose spouse died on or before [<sup>F30</sup>5th October 2002]], sections 48A(4)(b) and 48B(2)(b) above shall have effect with the omission of the words “half of”.
  - (4) In the application of the provisions of section 44 to [<sup>F31</sup>45B] above by virtue of sections 48A(4) [<sup>F32</sup>, 48B(2) or 48BB(5)] above, references in those provisions to the pensioner shall be taken as references to the spouse.

#### **Textual Amendments**

- F29** 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)**
- F30** Words in s. 48C(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. **35(1)(a)(2)(b)**
- F31** Words in s. 48C(4) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 11**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F32** Words in s. 48C(4) substituted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 67, **Sch. 8 para. 6**; S.R. 2000/133, art. 2(3)(a), **Sch. Pt. I**

## **51 Category B retirement pension for widowers.**

- (1) A man shall be entitled to a Category B retirement pension if—
  - (a) he has had a wife and she has died on or after 6th April 1979, and he was married to her when she died; and
  - (b) they were both over pensionable age when she died; and
  - (c) before her death she satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part I, paragraph 5.
- (2) The weekly rate of a man’s Category B retirement pension under this section shall, subject to subsection (3) below, be determined in accordance with the provisions of [<sup>F34</sup>sections 44 to 45A] 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>F35</sup>5th October 2002], the additional pension falling to be calculated under [<sup>F34</sup>sections 44 to 45A] 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.



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#### Textual Amendments

- F34** Words in s. 51(2)(3) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 124(2)-(5)
- F35** Words in s. 51(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)

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

- C9** S. 51 restricted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, Sch. 2 Pt. II para. 3(3)

### [<sup>F36</sup> 51A Special provision for married people.

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

#### Textual Amendments

- F36** 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
  - [<sup>F37</sup>(b) to a Category B retirement pension by virtue of the contributions of a spouse who has died.]
- (2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the full amount, that basic pension shall be increased by the lesser of—
  - (a) the amount of the shortfall, or
  - (b) the amount of the basic pension in the rate of the Category B retirement pension,“full amount” meaning for this purpose the sum specified in section 44(4) above as the weekly rate of the basic pension in a Category A retirement pension.



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- (3) If the additional pension in the Category A retirement pension falls short of the prescribed maximum, that additional pension shall be increased by the lesser of—
- (a) the amount of the shortfall, or
  - (b) the amount of the additional pension in the Category B retirement pension.
- (4) This section does not apply in any case where the death of the wife or husband, as the case may be, occurred before 6th April 1979 and the surviving spouse had attained pensionable age before that date.

#### Textual Amendments

**F37** S. 52(1)(b) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, Sch. 2 Pt. III para. 18(7)

<sup>F38</sup>53 .....

#### Textual Amendments

**F38** S. 53 repealed (16.12.1995 subject to Sch. 2 of the amending S.I.) by virtue of S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, 168, Sch. 2 Pt. III para. 18(6), Sch. 5 Pt. II

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

- (1) Regulations may provide that in the case of a person of any prescribed description who—
- (a) has become entitled to a Category A or Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and
  - (b) elects in such manner and in accordance with such conditions as may be prescribed that the regulations shall apply in his case,
- this Part of this Act shall have effect as if that person had not become entitled to such a retirement pension [<sup>F39</sup>or to a shared additional pension].
- (2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act, or of those of [<sup>F40</sup>Chapter II of Part II of the Social Security (Northern Ireland) Order 1998] as those provisions apply in a case where a person makes an election under the regulations, as may appear to the Department necessary or expedient.
- [<sup>F41</sup>(3) Where both parties to a marriage (call them “P” and “S”) have become entitled to retirement pensions and—
- (a) P’s pension is Category A, and
  - (b) S’s pension is—
    - (i) Category B by virtue of P’s contributions, or
    - (ii) Category A with an increase under section 51A(2) above by virtue of P’s contributions,

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

<sup>F42</sup>(4) .....

**Textual Amendments**

- F39** Words in s. 54(1) inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 12**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F40** Words in s. 54(2) substituted (5.10.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 44**; S.R. 1999/407, **art. 2(a)**
- F41** S. 54(3) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 18(8)**
- F42** S. 54(4) repealed (16.12.1995 subject to Sch. 2 of the amending S.I.) by virtue of S.I. 1995/3213 (N.I. 22), arts. 1(3), 131(2), 168, **Sch. 5 Pt. II**

[<sup>F43</sup>**55 Increase of retirement pension where entitlement is deferred.**

- (1) Where a person’s entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of pension.
  - (2) For the purposes of this Act a person’s entitlement to a Category A or Category B retirement pension is deferred if and so long as that person—
    - (a) does not become entitled to that pension by reason only—
      - (i) of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), or
      - (ii) in the case of a Category B retirement pension payable by virtue of a spouse’s contributions, of the spouse not satisfying those conditions with respect to his Category A retirement pension; or
    - (b) in consequence of an election under section 54(1) above, falls to be treated as not having become entitled to that pension;
- and, in relation to any such pension, “period of deferment” shall be construed accordingly.]

**Textual Amendments**

- F43** S. 55 substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 131(3)**

**Status:**

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