



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

## 1992 CHAPTER 7

### PART III **N.I.**

#### NON-CONTRIBUTORY BENEFITS

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

- C1** Pt. III (ss. 63-79) 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. III (ss. 63-79): 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)**.

### 63 Descriptions of non-contributory benefits. **N.I.**

Non-contributory benefits under this Part of this Act are of the following descriptions, namely—

- (a) attendance allowance;
- <sup>F1</sup>(b) .....
- (c) invalid care allowance (with increase for adult and child dependants);
- (d) disability living allowance;
- (e) guardian's allowance;
- (f) retirement pensions of the following categories—
  - (i) Category C, payable to certain persons who were over pensionable age on 5th July 1948 and their wives and widows (with increase for adult and child dependants), and
  - (ii) Category D, payable to persons over the age of 80;
- (g) age addition payable, in the case of persons over the age of 80, by way of increase of a retirement pension of any category or of a pension or allowance to which section 79(2) below applies.

*Status: Point in time view as at 01/04/2002.*

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#### Textual Amendments

- F1** S. 63(b) repealed (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 76, Sch. 10 Pt. IV; S.R. 2000/332, art. 2(3)(g)(4)(5)

### *Attendance allowance*

#### **64 Entitlement. N.I.**

- (1) A person shall be entitled to an attendance allowance if he is aged 65 or over, he is not entitled to the care component of a disability living allowance and he satisfies either—
- (a) the condition specified in subsection (2) below (“the day attendance condition”), or
  - (b) the condition specified in subsection (3) below (“the night attendance condition”),
- and prescribed conditions as to residence and presence in Northern Ireland.
- (2) A person satisfies the day attendance condition if he is so severely disabled physically or mentally that, by day, he requires from another person either—
- (a) frequent attention throughout the day in connection with his bodily functions, or
  - (b) continual supervision throughout the day in order to avoid substantial danger to himself or others.
- (3) A person satisfies the night attendance condition if he is so severely disabled physically or mentally that, at night,—
- (a) he requires from another person prolonged or repeated attention in connection with his bodily functions, or
  - (b) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- [<sup>F2</sup>(4) Circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsections (2) and (3) above as may be prescribed.]

#### Textual Amendments

- F2** S. 64(4) added (12.1.2000) by S.I. 1999/3147 (N.I. 11), art. 63(1); S.R. 1999/494, art. 2(3)

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

- C3** S. 64 modified (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 c. 9, ss. 5, 7(2), Sch. 3 Pt. II para. 19.

#### **65 Period and rate of allowance. N.I.**

- (1) Subject to the following provisions of this Act, the period for which a person is entitled to an attendance allowance shall be—

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- (a) a period throughout which he has satisfied or is likely to satisfy the day or the night attendance condition or both; and
  - (b) a period preceded immediately, or within such period as may be prescribed, by one of not less than 6 months throughout which he satisfied, or is likely to satisfy, one or both of those conditions.
- (2) For the purposes of subsection (1) above a person who suffers from renal failure and is undergoing such form of treatment as may be prescribed shall, in such circumstances as may be prescribed, be deemed to satisfy or to be likely to satisfy the day or the night attendance condition or both.
- (3) The weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in Schedule 4, Part III, paragraph 1, if both as regards that period and as regards the period of 6 months mentioned in subsection (1)(b) above he has satisfied or is likely to satisfy both the day and the night attendance conditions, and shall be the lower rate in any other case.
- (4) A person shall not be entitled to an attendance allowance for any period preceding the date on which he makes, or is treated as making, a claim for it.
- (5) Notwithstanding anything in subsection (4) above, provision may be made by regulations for a person to be entitled to an attendance allowance for a period preceding the date on which he makes or is treated as making a claim for it if such an allowance has previously been paid to or in respect of him.
- (6) Except in so far as regulations otherwise provide and subject to section 66(1) below—
  - (a) a claim for an attendance allowance may be made during the period of 6 months immediately preceding the period for which the person to whom the claim relates is entitled to the allowance; and
  - (b) an award may be made in pursuance of a claim so made, subject to the condition that, throughout that period of 6 months, that person satisfies—
    - (i) both the day and the night attendance conditions, or
    - (ii) if the award is at the lower rate, one of those conditions.

## **66 Attendance allowance for the terminally ill. N.I.**

- (1) If a terminally ill person makes a claim expressly on the ground that he is such a person, then—
  - (a) he shall be taken—
    - (i) to satisfy, or to be likely to satisfy, both the day attendance condition and the night attendance condition [<sup>F3</sup>for so much of the period for which he is terminally ill as does not fall before the date of the claim]; and
    - (ii) to have satisfied those conditions for the period of 6 months immediately preceding [<sup>F4</sup>the date of the claim or, if later, the first date on which he is terminally ill] (so however that no allowance shall be payable by virtue of this sub-paragraph for any period preceding that date); and
  - (b) the period for which he is entitled to attendance allowance shall be [<sup>F5</sup>so much of the period for which he is terminally ill as does not fall before the date of the claim].
- (2) For the purposes of subsection (1) above—

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- (a) a person is “terminally ill” at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months; and
- (b) where a person purports to make a claim for an attendance allowance by virtue of that subsection on behalf of another, that other shall be regarded as making the claim, notwithstanding that it is made without his knowledge or authority.

**Textual Amendments**

- F3** Words in s. 66(1)(a)(i) substituted (12.1.2000) by S.I. 1999/3147 (N.I. 11), **art. 63(2)(a)**; S.R. 1999/494, **art. 2(3)**
- F4** Words in s. 66(1)(a)(ii) substituted (12.1.2000) by S.I. 1999/3147 (N.I. 11), **art. 63(2)(b)**; S.R. 1999/494, **art. 2(3)**
- F5** Words in s. 66(1)(b) substituted (12.1.2000) by S.I. 1999/3147 (N.I. 11), **art. 63(2)(c)**; S.R. 1999/494, **art. 2(3)**

**67 Exclusions by regulation. N.I.**

- (1) Regulations may provide that, in such circumstances, and for such purposes as may be prescribed, a person who is, or is treated under the regulations as, undergoing treatment for renal failure in a hospital or other similar institution otherwise than as an in-patient shall be deemed not to satisfy or to be unlikely to satisfy the day attendance condition or the night attendance condition, or both of them.
- (2) Regulations may provide that an attendance allowance shall not be payable in respect of a person for any period when he is a person for whom accommodation is provided—
  - (a) in pursuance of Article 5, 7, 15 or 36 of the <sup>M1</sup>Health and Personal Social Services (Northern Ireland) Order 1972 ;
  - (b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability.

**Marginal Citations**

- M1** S.I. 1972/1265 (N.I. 14).

*Severe disablement allowance*

**F6 68** ..... **N.I.**

**Textual Amendments**

- F6** S. 68 repealed (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 76, Sch. 10 Pt. IV**; S.R. 2000/332, **art. 2(3)(g)(4)(5)**

**F7 69** ..... **N.I.**

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### Textual Amendments

- F7** S. 69 repealed (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 76, Sch. 10 Pt. IV; S.R. 2000/332, art. 2(3)(g)(4)(5)

### *Invalid care allowance*

## **70 Invalid care allowance.** **N.I.**

- (1) A person shall be entitled to an invalid care allowance for any day on which he is engaged in caring for a severely disabled person if—
  - (a) he is regularly and substantially engaged in caring for that person;
  - (b) he is not gainfully employed; and
  - (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.
- (2) In this section, “severely disabled person” means a person in respect of whom there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate or such other payment out of public funds on account of his need for attendance as may be prescribed.
- (3) A person shall not be entitled to an allowance under this section if he is under the age of 16 or receiving full-time education.
- (4) A person shall not be entitled to an allowance under this section unless he satisfies prescribed conditions as to residence or presence in Northern Ireland.
- (5) Subject to subsection (6) below, a person who has attained [<sup>F8</sup>the age of 65] shall not be entitled to an allowance under this section unless he was so entitled (or is treated by regulations as having been so entitled) immediately before attaining that age.
- (6) Regulations may make provision whereby a person who has attained [<sup>F9</sup>the age of 65], and was entitled to an allowance under this section immediately before attaining that age, continues to be so entitled notwithstanding that he is not caring for a severely disabled person or no longer satisfies the requirements of subsection (1)(a) or (b) above.
- (7) No person shall be entitled for the same day to more than one allowance under this section; and where, apart from this subsection, two or more persons would be entitled for the same day to such an allowance in respect of the same severely disabled person, one of them only shall be entitled and that shall be such one of them—
  - (a) as they may jointly elect in the prescribed manner, or
  - (b) as may, in default of such an election, be determined by the Department in its discretion.
- (8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education.
- (9) An invalid care allowance shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 4.

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<sup>F10</sup>(10) .....

**Textual Amendments**

- F8** Words in s. 70(5) substituted (28.10.1994) by S.R. 1994/370, **regs. 1, 2(3)(a)**  
**F9** Words in s. 70(6) substituted (28.10.1994) by S.R. 1994/370, **regs. 1, 2(3)(b)**  
**F10** S. 70(10) omitted (28.10.1994) by virtue of S.R. 1994/370, **regs. 1, 2(3)(c)**

*Disability living allowance*

**71 Disability living allowance. N.I.**

- (1) Disability living allowance shall consist of a care component and a mobility component.
- (2) A person's entitlement to a disability living allowance may be an entitlement to either component or to both of them.
- (3) A person may be awarded either component for a fixed period or [<sup>F11</sup>for an indefinite period], but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.
- (4) The weekly rate of a person's disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.
- (5) The weekly rate of a person's disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.
- (6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Northern Ireland.

**Textual Amendments**

- F11** Words in s. 71(3) substituted (12.1.2000) by S.I. 1999/3147 (N.I. 11), **art. 64(1)**; S.R. 1999/494, **art. 2(3)**

**72 The care component. N.I.**

- (1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which—
  - (a) he is so severely disabled physically or mentally that—
    - (i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods); or
    - (ii) he cannot prepare a cooked main meal for himself if he has the ingredients;
  - (b) he is so severely disabled physically or mentally that, by day, he requires from another person—

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- (i) frequent attention throughout the day in connection with his bodily functions; or
    - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
  - (c) he is so severely disabled physically or mentally that, at night,—
    - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or
    - (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- (2) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—
  - (a) throughout—
    - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
    - (ii) such other period of 3 months as may be prescribed,  
he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and
  - (b) he is likely to continue to satisfy one or other of those conditions throughout—
    - (i) the period of 6 months beginning with that date; or
    - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (3) Three weekly rates of the care component shall be prescribed.
- (4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—
  - (a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;
  - (b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and
  - (c) the lowest rate in any other case.
- (5) For the purposes of this section, a person who is terminally ill, as defined in section 66(2) above, and makes a claim expressly on the ground that he is such a person, shall be taken—
  - (a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and
  - (b) to satisfy or to be likely to satisfy those conditions [<sup>F12</sup>for so much of the period for which he is terminally ill as does not fall before the date of the claim].
- (6) For the purposes of this section in its application to a person for any period in which he is under the age of 16—

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- (a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and
  - (b) neither the condition mentioned in sub-paragraph (i) of that paragraph nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless—
    - (i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age; or
    - (ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.
- (7) Subject to subsections (5) and (6) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.
- (8) Regulations may provide that a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for a period when he is a person for whom accommodation is provided—
- (a) in pursuance of Article 5, 7, 15 or 36 of the <sup>M2</sup>Health and Personal Social Services (Northern Ireland) Order 1972; or
  - (b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

#### Textual Amendments

**F12** Words in s. 72(5)(b) substituted (12.1.2000) by [S.I. 1999/3147 \(N.I. 11\)](#), [art. 64\(2\)](#); [S.R. 1999/494](#), [art. 2\(3\)](#)

#### Marginal Citations

**M2** [S.I. 1972/1265 \(N.I. 14\)](#).

### 73 The mobility component. **N.I.**

- (1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over [<sup>F13</sup>the relevant age] and throughout which—
- (a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so;
  - (b) he falls within subsection (2) below;
  - (c) he falls within subsection (3) below; or
  - (d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

[<sup>F14</sup>(1A) In subsection (1) above “the relevant age” means—

- (a) in relation to the conditions mentioned in paragraph (a),
- (b) or (c) of that subsection, the age of 3;



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- (b) in relation to the conditions mentioned in paragraph (d) of that subsection, the age of 5.]
- (2) A person falls within this subsection if—
  - (a) he is both blind and deaf; and
  - (b) he satisfies such other conditions as may be prescribed.
- (3) A person falls within this subsection if—
  - (a) he is severely mentally impaired; and
  - (b) he displays severe behavioural problems; and
  - (c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.
- (4) For the purposes of this section in its application to a person for any period in which he is under the age of 16, the condition mentioned in subsection (1)(d) above shall not be taken to be satisfied unless—
  - (a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or
  - (b) persons of his age in normal physical and mental health would not require such guidance or supervision.
- (5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.
- (6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.
- (7) A person who is to be taken for the purposes of section 72 above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.
- (8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.
- (9) A person shall not be entitled to the mobility component of a disability living allowance unless—
  - (a) throughout—
    - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
    - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and
  - (b) he is likely to continue to satisfy one or other of those conditions throughout—
    - (i) the period of 6 months beginning with that date; or
    - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (10) Two weekly rates of the mobility component shall be prescribed.
- (11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—
  - (a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned

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- in subsection (1)(a), (b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and
- (b) the lower rate in any other case.
- (12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 66(2) above, and who makes a claim expressly on the ground that he is such a person—
- (a) subsection (9)(a) above shall be omitted; and
- (b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “ the period mentioned in subsection (9)(b) above ”.
- (13) Regulations may prescribe cases in which a person who has the use—
- (a) of an invalid carriage or other vehicle provided under Article 30(1) of the <sup>M3</sup>Health and Personal Social Services (Northern Ireland) Order 1972 or provided by the Secretary of State under section 5(2)(a) of the <sup>M4</sup>National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the <sup>M5</sup>National Health Service (Scotland) Act 1978; or
- (b) of any prescribed description of appliance supplied under that Order being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,
- is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.
- (14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person’s means.

#### Textual Amendments

**F13** Words in s. 73(1) substituted (9.4.2001) by [S.I. 1999/3147 \(N.I. 11\)](#), [art. 64\(3\)\(4\)](#); [S.R. 2000/182](#), [art. 2\(c\)](#)

**F14** S. 73(1A) inserted (9.4.2001) by [S.I. 1999/3147 \(N.I. 11\)](#), [art. 64\(3\)\(4\)](#); [S.R. 2000/182](#), [art. 2\(c\)](#)

#### Marginal Citations

**M3** [S.I. 1972/1265 \(N.I. 14\)](#).

**M4** [1977 c. 49](#).

**M5** [1978 c. 29](#).

## 74 **Mobility component for certain persons eligible for invalid carriages. N.I.**

- (1) Regulations may provide for the issue, variation and cancellation of certificates in respect of prescribed categories of persons to whom this section applies; and a person in respect of whom such a certificate is issued shall, during any period while the certificate is in force, be deemed for the purposes of section 73 above to satisfy the condition mentioned in subsection (1)(a) of that section and to fall within paragraphs (a) and (b) of subsection (9) by virtue of having satisfied or being likely to satisfy that condition throughout both the periods mentioned in those paragraphs.

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- (2) This section applies to any person whom the Department considers—
- (a) was on 1st January 1976 in possession of an invalid carriage or other vehicle provided in pursuance of Article 30 of the <sup>M6</sup>Health and Personal Social Services (Northern Ireland) Order 1972 (which relates to vehicles for persons suffering from physical defect or disability) or receiving payments in pursuance of paragraph (3) of that Article;
  - (b) had at that date, or at a later date specified by the Department made an application which the Department approved for such a carriage or vehicle or for such payments;
  - (c) was, both at some time during a prescribed period before that date and at some time during a prescribed period after that date, in possession of such a carriage or vehicle or receiving such payments; or
  - (d) would have been, by virtue of any of the preceding paragraphs, a person to whom this section applies but for some error or delay for which in the opinion of the Department the person was not responsible and which was brought to the attention of the Department within the <sup>M7</sup>period of one year beginning with 30th March 1977 (the date of the making of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977, Article 10 of which made provision corresponding to the provision made by this section).

#### Marginal Citations

**M6** S.I. 1972/1265 (N.I. 14).

**M7** S.I. 1977/610 (N.I. 11).

#### 75 Persons 65 or over. **N.I.**

- (1) Except to the extent to which regulations provide otherwise, no person shall be entitled to either component of a disability living allowance for any period after he attains the age of 65 otherwise than by virtue of an award made before he attains that age.
- (2) Regulations may provide in relation to persons who are entitled to a component of a disability living allowance by virtue of subsection (1) above that any provision of this Act which relates to disability living allowance, other than section 74 above, so far as it so relates, and any provision of the Administration Act which is relevant to disability living allowance—
  - (a) shall have effect subject to modifications, additions or amendments; or
  - (b) shall not have effect.

#### 76 Disability living allowance - supplementary. **N.I.**

- (1) Subject to subsection (2) below, a person shall not be entitled to a disability living allowance for any period preceding the date on which a claim for it is made or treated as made by him or on his behalf.
- (2) Notwithstanding anything in subsection (1) above, provision may be made by regulations for a person to be entitled to a component of a disability living allowance for a period preceding the date on which a claim for such an allowance is made or treated as made by him or on his behalf if he has previously been entitled to that component.

*Status: Point in time view as at 01/04/2002.*

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- (3) For the purposes of sections 72(5) and 73(12) above, where—
- (a) a person purports to make a claim for a disability living allowance on behalf of another; and
  - (b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,
- that person shall be regarded as making the claim notwithstanding that it is made without his knowledge or authority.

### *Guardian's allowance*

## 77 **Guardian's allowance.** **N.I.**

- (1) A person shall be entitled to a guardian's allowance in respect of a child if—
  - (a) he is entitled to child benefit in respect of that child, and
  - (b) the circumstances are any of those specified in subsection (2) below;
 but this subsection is subject, in particular, to section 81 below.
- (2) The circumstances referred to in subsection (1)(b) above are—
  - (a) that both of the child's parents are dead;
  - (b) that one of the child's parents is dead and the person claiming a guardian's allowance shows that he was at the date of the death unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent; or
  - (c) that one of the child's parents is dead and the other is in prison.
- (3) There shall be no entitlement to a guardian's allowance in respect of a child unless at least one of the child's parents satisfies, or immediately before his death satisfied, such conditions as may be prescribed as to nationality, residence, place of birth or other matters.
- (4) 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 guardian's allowance, that amount shall not be payable unless one of the conditions specified in subsection (5) below is satisfied.
- (5) 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.
- (6) The condition specified in subsection (5)(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 (4) above—
    - (i) by the beneficiary; or
    - (ii) where the beneficiary is one of two spouses residing together, by them together; and
  - (b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 139(1)(b) below.

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- (7) A guardian's allowance in respect of a child shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 5.
- (8) Regulations—
- (a) may modify subsection (2) or (3) above in relation to cases in which a child has been adopted or is illegitimate, or the marriage of a child's parents has been terminated by divorce;
  - (b) shall prescribe the circumstances in which a person is to be treated for the purposes of this section as being in prison (by reference to his undergoing a sentence of imprisonment for life or of a prescribed minimum duration, or to his being in legal custody in prescribed circumstances); and
  - (c) may, for cases where entitlement to a guardian's allowance is established by reference to a person being in prison, provide—
    - (i) for requiring him to pay to the National Insurance Fund sums paid by way of a guardian's allowance;
    - (ii) for suspending payment of an allowance where a conviction, sentence or order of a court is subject to appeal, and for matters arising from the decision of an appeal;
    - (iii) for reducing the rate of an allowance in cases where the person in prison contributes to the cost of providing for the child.
- (9) Where a husband and wife are residing together and, apart from this subsection, they would each be entitled to a guardian's allowance in respect of the same child, only the wife shall be entitled, but payment may be made either to her or to him unless she elects in the prescribed manner that payment is not to be made to him.
- (10) Subject to subsection (11) below, no person shall be entitled to a guardian's allowance in respect of a child of which he or she is the parent.
- (11) Where a person—
- (a) has adopted a child; and
  - (b) was entitled to guardian's allowance in respect of the child immediately before the adoption,
- subsection (10) above shall not terminate his entitlement.

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

- C4 S. 77: functions of the Northern Ireland Department transferred (prosp.) to the Treasury by [Tax Credits Act 2002 \(c. 21\)](#), ss. 49(2), 61 (with s. 54(1)(3)(4)(6)(8))

*Benefits for the aged*

**78 Category C and Category D retirement pensions and other benefits for the aged. N.I.**

- (1) A person who was over pensionable age on 5th July 1948 and who satisfies such conditions as may be prescribed shall be entitled to a Category C retirement pension at the appropriate weekly rate.
- (2) If a woman whose husband is entitled to a Category C retirement pension—
- (a) is over pensionable age; and

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- (b) satisfies such other conditions as may be prescribed,  
she shall be entitled to a Category C retirement pension at the appropriate weekly rate.
- (3) A person who is over the age of 80 and satisfies such conditions as may be prescribed shall be entitled to a Category D retirement pension at the appropriate weekly rate if—
- (a) he is not entitled to a Category A, Category B or Category C retirement pension; or
  - (b) he is entitled to such a pension, but it is payable at a weekly rate which, disregarding those elements specified in subsection (4) below, is less than the appropriate weekly rate.
- (4) The elements referred to in subsection (3)(b) above are—
- (a) any additional pension;
  - (b) any increase so far as attributable to—
    - (i) any additional pension, or
    - (ii) any increase in a guaranteed minimum pension;
  - (c) any graduated retirement benefit; and
  - (d) any increase (for dependants) under section 80, 83 or 85 below.
- (5) The appropriate weekly rate of a Category C retirement pension—
- (a) shall be the lower rate specified in Schedule 4, Part III, paragraph 6, where—
    - (i) the pensioner is a married woman, and
    - (ii) she has not, at any time since she became entitled to her pension, ceased to be a married woman; and
  - (b) shall be the higher rate so specified in any other case.
- (6) The appropriate weekly rate of a Category D retirement pension shall be that specified in Schedule 4, Part III, paragraph 7.
- (7) Entitlement to a Category C or Category D retirement pension shall continue throughout the pensioner's life.
- (8) A Category C or Category D 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.
- (9) Regulations may provide for the payment—
- (a) to a widow whose husband was over pensionable age on 5th July 1948; or
  - (b) to a woman whose marriage to a husband who was over pensionable age on that date was terminated otherwise than by his death,
- of a Category C retirement pension or of benefit corresponding to a widow's pension or a widowed mother's allowance; and any such retirement pension or any such benefit shall be at the prescribed rate.

## 79 Age addition. N.I.

- (1) A person who is over the age of 80 and entitled to a retirement pension of any category shall be entitled to an increase of the pension, to be known as "age addition".
- (2) Where a person is in receipt of a pension or allowance payable by virtue of any prescribed enactment or instrument (whether passed or made before or after this Act) and—

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- (a) he is over the age of 80; and
  - (b) he fulfils such other conditions as may be prescribed,
- he shall be entitled to an increase of that pension or allowance, also known as age addition.
- (3) Age addition shall be payable for the life of the person entitled, at the weekly rate specified in Schedule 4, Part III, paragraph 8.

**Status:**

Point in time view as at 01/04/2002.

**Changes to legislation:**

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