

---

STATUTORY INSTRUMENTS

---

**2019 No. 1514**

**The Marriage (Same-sex Couples) and Civil Partnership  
(Opposite-sex Couples) (Northern Ireland) Regulations 2019**

**PART 6**

**Amendments: Pensions and Social Security: Primary Legislation**

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

**66.**—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992(1) is amended as follows.

(2) In section 37(4)(2) (widowed mother's allowance for persons widowed before 9th April 2001: events on which allowance ends), for paragraphs (b) and (c) substitute—

“or

(b) for any period during which she, and a person who is neither her spouse nor her civil partner, are living together as if spouses of each other.”.

(3) In section 38(3)(3) (widow's pension for person's widowed before 9th April 2001: events on which pension ends), for paragraphs (c) and (d) substitute—

“or

(c) for any period during which she, and a person who is neither her spouse nor her civil partner, are living together as if spouses of each other.”.

(4) In section 39A(5)(4) (widowed parent's allowance for persons whose spouse or civil partner dies on or after 9th April 2001 but before 6th April 2017: events on which allowance ends), for subparagraphs (b) and (c) substitute—

“or

(b) for any period during which—

(i) the surviving spouse or civil partner, and

(ii) a person who is neither the spouse, nor the civil partner, of the surviving spouse or civil partner,

are living together as if spouses of each other.”.

(5) In section 48(5), after subsection (4) insert—

---

(1) 1992 c.7.

(2) Section 37(4)(c) was inserted by paragraph 72 of Schedule 24, and “or” at the end of section 37(4)(a) was omitted by Schedule 30, to the Civil Partnership Act 2004.

(3) Section 38(3)(d) was inserted by paragraph 73 of Schedule 24, and “or” at the end of section 38(3)(b) was omitted by Schedule 30, to the Civil Partnership Act 2004.

(4) Section 39A(5)(c) was inserted by paragraph 74 of Schedule 24, and “or” at the end of section 39A(5)(a) was omitted by Schedule 30, to the Civil Partnership Act 2004.

(5) Section 48 was amended by paragraph 78 of Schedule 24 to the Civil Partnership Act 2004 and by paragraph 48 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 (c.5 (N.I.)).

- “(5) For the purposes of this section, a civil partnership is not to be treated as having terminated—
- (a) by reason of its having been—
    - (i) converted into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013;
    - (ii) changed into a marriage under the Marriage (Scotland) Act 1977;
    - (iii) changed into a marriage in accordance with provision made under section 10 of the Marriage and Civil Partnership (Scotland) Act 2014; or
    - (iv) changed into a marriage under Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014; or
  - (b) by reason of a marriage which has been treated in Northern Ireland as a civil partnership ceasing to be so treated with effect from 13 January 2020.”.
- (6) In section 48A(6) (category B retirement pension for married person or civil partner)—
- (a) after subsection (2) insert—
 

“(2A) And subsection (1) does not confer a right to a Category B retirement pension on a woman whose wife was born before 6 April 1950.”,
  - (b) after subsection (6) insert—
 

“(6A) For the purposes of subsection (5)(b), a person is not to be treated as having ceased to be in a civil partnership—

    - (a) by reason of its having been—
      - (i) converted into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013;
      - (ii) changed into a marriage under the Marriage (Scotland) Act 1977;
      - (iii) changed into a marriage in accordance with provision made under section 10 of the Marriage and Civil Partnership (Scotland) Act 2014; or
      - (iv) changed into a marriage under Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014; or
    - (b) by reason of a marriage which has been treated in Northern Ireland as a civil partnership ceasing to be so treated with effect from 13 January 2020.”, and
  - (c) after subsection (7) insert—
 

“(8) Section 51ZA contains special rules for cases involving changes in gender.”.
- (7) In section 48AA(7) (category B retirement pension for former spouse or civil partner)—
- (a) after subsection (2) insert—
 

“(2A) And subsection (1) does not confer a right to a Category B retirement pension on a woman whose former wife was born before 6 April 1950.”, and
  - (b) after subsection (8) insert—
 

“(9) Section 51ZA contains special rules for cases involving changes in gender.”.
- (8) In section 48B(8) (category B retirement pension for surviving spouse or civil partner)—

(6) Section 48A was substituted by [S.I. 1995/3213 \(N.I. 22\)](#) and was further substituted by paragraph 52 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 ([c.5 \(N.I.\)](#)).

(7) Section 48AA was substituted by paragraph 52 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 ([c.5 \(N.I.\)](#)).

(8) Section 48B was substituted by [S.I. 1995/3213 \(N.I. 22\)](#) and subsections (1) to (1B) were further substituted by paragraph 53 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 ([c.5 \(N.I.\)](#)).

- (a) after subsection (1ZA) insert—
  - “(1ZAA) And subsection (1) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6 April 2010 if the spouse was a woman.”, and
- (b) after subsection (10) insert—
  - “(11) Section 51ZA contains special rules for cases involving changes in gender.”.
- (9) In section 51(9) (category B retirement pension for widower or civil partner)—
  - (a) in subsection (1), for “man” substitute “person”,
  - (b) in subsection (1), for “wife”, in both places it occurs, substitute “spouse”,
  - (c) in subsection (2), after “on” insert—
    - “—
    - (a) a woman whose husband has died, or
    - (b)”,
    - and
  - (d) in subsection (7), before the “or” at the end of paragraph (a) insert—
    - “(aa) a surviving party to a marriage of a same sex couple.”, and
  - (e) after subsection (11) insert—
    - “(12) Section 51ZA contains special rules for cases involving changes in gender.”.
- (10) After section 51 insert—

**“Special provision for married person whose spouse changed gender**

**51ZA.**—(1) Section 48A(2A) does not prevent a woman from being entitled to a Category B retirement pension under section 48 in a case where—

- (a) her spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued.

(2) Section 48AA(2A) does not prevent a woman from being entitled to a Category B retirement pension under section 48AA in a case where—

- (a) her former spouse was, at the time the marriage was dissolved, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued.

(3) Section 48B(1ZAA) does not prevent a woman being entitled to a Category B retirement pension under section 48B in a case where—

- (a) her dead spouse was, at the time of death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) the marriage subsisted before the time when that certificate was issued,

and in such a case the reference in section 48B(1ZB)(a)(ii) to the spouse having attained pensionable age before 6 April 2010 is to be read as a reference to the spouse having been born before 6 April 1945.

- (4) Section 51(1) does not confer a right to a Category B retirement pension on a woman if—
- (a) her dead spouse was, at the time of death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage subsisted before the time when that certificate was issued.”.
- (11) In section 62(10) (regulations in connection with graduated retirement benefit)—
- (a) in subsection (1), after paragraph (ac) insert—
    - “(ad) for extending section 36 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—
      - (i) men and their late husbands, and
      - (ii) women and their late wives,
 and for that section (except subsection (5)) so to apply as it applies to women and their late husbands;
    - (ae) for extending section 36 of that Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to—
      - (i) men and their late husbands, and
      - (ii) women and their late wives,
 who attained pensionable age before 6th April 2010 and for that section (except subsection (5)) so to apply as it applies to men and their late wives;”, and
  - (b) after subsection (2) insert—
    - “(3) In relevant gender change cases, women and their late wives are to be treated for the purposes of sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966 in the same way as women and their late husbands.
    - (4) For that purpose “relevant gender change case”, in relation to a woman (“the pensioner”) and her late wife, means a case where—
      - (a) the late wife was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
      - (b) the marriage of the pensioner and her late wife subsisted before the time when the certificate was issued.”.
- (12) In section 77(9)(11) (guardian’s allowance: more than one person entitled)—
- (a) for “a husband and wife are residing together” substitute “a man and woman are married to, or civil partners of, each other and are residing together,” and
  - (b) for “the wife” substitute “the woman”.
- (13) Omit section 121(1A)(12).
- (14) In section 133(13) (interpretation of Part 7)—
- (a) in subsection (1), for the definition of “couple” substitute—

(10) In section 62(1), paragraph (aa) was inserted by, and paragraphs (a) and (b) were amended by, *S.I. 1995/3213 (N.I. 22)*, paragraph (ab) was inserted by paragraph 87 of Schedule 24 to the Civil Partnership Act 2004, paragraph (ac) was inserted by *S.R. (N.I.) 2005/471*, paragraph (c) was inserted by, and paragraph (a) was amended by, *S.I. 2005/255 (N.I. 1)*, and paragraph (c) was amended by *S.R. (N.I.) 2005/434*.

(11) Section 77(9) was amended by paragraph 30 of Schedule 1 to the Child Benefit Act 2005 (c.6).

(12) Section 121(1A) was inserted by paragraph 95 of Schedule 24 to the Civil Partnership Act 2004.

(13) In section 133, the definition of “couple” in subsection (1), and subsection (1A), were inserted by paragraph 99 of Schedule 24 to the Civil Partnership Act 2004.

“couple” means—

- (a) two people who are married to, or civil partners of, each other and are members of the same household, or
- (b) two people who are not married to, or civil partners of, each other but are living together as if spouses of each other otherwise than in prescribed circumstances;”, and

(b) omit subsection (1A).

(15) In section 141A(14) (entitlement to child benefit after death of child or qualifying young person)—

(a) in subsection (2)(b), for “an unmarried couple or a cohabiting same-sex couple” substitute “a cohabiting couple”,

(b) in subsection (5)—

(i) in the definition of “civil partnership” omit “of the same sex”,

(ii) for the definition of “cohabiting same-sex couple” substitute—

“cohabiting couple” means two people who are not married to, or civil partners of, each other but are living together as if spouses of each other;”, and

(iii) omit the definition of “unmarried couple”, and

(c) omit subsection (6).

(16) In section 167ZL(15) (statutory adoption pay: entitlement)—

(a) in subsection (4)(b) (no election for statutory adoption pay where child being adopted by couple and other member of couple has made election)—

(i) for “married couple or civil partnership and his spouse or civil partner” substitute “couple and the other member of the couple”, and

(ii) for “his spouse or civil partner”, in the second place it occurs, substitute “that other member of the couple”, and

(b) after subsection (4) insert—

“(4A) In subsection (4)(b) “couple” has the same meaning as in the Adoption (Northern Ireland) Order 1987 (see Article 2(6) to (8) of that Order).”(16).

(17) In Schedule 3(17) (contribution conditions for entitlement to benefit), in paragraphs 5(1)(c) and 5A(1)(b), for “51” substitute “51ZA”.

(18) In Schedule 5 (cases where entitlement to retirement pension is deferred)—

(a) in paragraph 5(2)(18)—

(i) in paragraph (a), for “a widow, an” substitute—

“a woman—

(i) whose deceased spouse was a man, or

(ii) who falls within paragraph 7(3) below,

---

(14) Section 141A was inserted by section 55 of the Tax Credits Act 2002 (c.21), and relevant amendments were made by paragraph 101 of Schedule 24 to the Civil Partnership Act 2004.

(15) Section 167ZL was inserted by S.I. 2002/2836 (N.I. 2), and subsection (4)(b) was amended by paragraph 103 of Schedule 24 to the Civil Partnership Act 2004.

(16) S.I. 1987/2203 (N.I. 22). Article 2(6) to (8) are inserted by these Regulations.

(17) Paragraph 5A was inserted by the Pensions Act (Northern Ireland) 2008 (c.1 (N.I.)) and paragraphs 5(1) and 5A(1)(b) were substituted by the Pensions Act (Northern Ireland) 2015 (c.5 (N.I.)).

(18) Paragraphs 5 to 6 were substituted by S.I. 1995/3213 (N.I. 22) and are prospectively repealed by the Pensions Act (Northern Ireland) 2012 (c.3 (N.I.)).

- an”,
- (ii) in paragraph (b), for “widower” substitute “man whose deceased spouse was a woman”, and
- (iii) in paragraph (c), for “is a surviving civil partner, an” substitute—
- “is—
- (i) a woman who does not fall within paragraph 7(3) below and whose deceased spouse was a woman,
- (ii) a man whose deceased spouse was a man, or
- (iii) a surviving civil partner,
- an”,
- (b) in paragraph 5A(1), for “widow” substitute—
- “woman—
- (a) whose deceased spouse was a man, or
- (b) who falls within paragraph 7(3) below.”,
- (c) in paragraph 5A(2) and (3), for “husband”, in each place it occurs, substitute “spouse”,
- (d) in paragraph 6(1), for “widower” substitute “man whose deceased spouse was a woman”,
- (e) in paragraph 6A(1)(19), for “is a surviving civil partner” substitute—
- “is—
- (a) a woman who does not fall within paragraph 7(3) below and whose deceased spouse was a woman,
- (b) a man whose deceased spouse was a man, or
- (c) a surviving civil partner.”,
- (f) in paragraph 6A(2)(c), after “deceased” insert “spouse or”, and
- (g) in paragraph 7, after sub-paragraph (2) insert—
- “(3) For the purposes of paragraphs 5, 5A and 6A above, a woman falls within this sub-paragraph if—
- (a) she was married to another woman who, at the time of her death, was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
- (b) that marriage subsisted before the time when that certificate was issued.”.
- (19) In Schedule 7(20) (industrial injuries benefits)—
- (a) in paragraph 4(3)(a), for sub-paragraphs (ii) and (iii) substitute—
- “or
- (ii) two people who are not married to, or civil partners of, each other but are living together as if spouses of each other, and”, and
- (b) in paragraph 15(3), for the words after “beneficiary is” substitute “neither married, nor a party to a civil partnership, but is living together with another person as if they were spouses of each other.”.

(19) Paragraph 6A was inserted by [S.R. \(N.I.\) 2005/434](#), and would have been repealed by section 3(5) of the Pensions Act (Northern Ireland) 2012 ([c.3 \(N.I.\)](#)) but section 3(5) was itself repealed, before fully coming into force, by paragraph 82 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 ([c.5 \(N.I.\)](#)).

(20) Paragraph 4(3)(a) was substituted, and paragraph 15(3) was amended, by paragraph 105 of Schedule 24 to the Civil Partnership Act 2004.

(20) In Schedule 10 (priority as between different persons otherwise entitled to child benefit in respect of same child)—

(a) for paragraph 3 substitute—

**“Opposite-sex spouses or civil partners**

**3.** Subject to paragraphs 1 and 2 above, as between a man and woman who are married to, or civil partners of, each other and are residing together, the woman shall be entitled.”, and

(b) in paragraph 4(2)(**21**), for “not husband and wife” substitute “do not fall within paragraph 3”.