



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

## 1992 CHAPTER 7

An Act to consolidate for Northern Ireland certain enactments relating to social security contributions and benefits, with corrections and minor improvements under the Consolidation of Enactments (Procedure) Act 1949. [13th February 1992]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act amended (1.7.1992) by [Social Security \(Consequential Provisions\) \(Northern Ireland\) Act 1992 \(c. 9\), ss. 2\(3\), 7\(2\)](#)  
Act amended (5.7.1999, 6.9.1999, 5.10.1999, 18.10.1999 and 29.11.1999 for different purposes, otherwise prosp.) by [S.I. 1998/1506 \(N.I. 10\), arts. 1\(2\), 9](#); [S.R. 1999/310, art. 2\(1\)\(b\), Sch. 1](#) (with arts. 4, 14); [S.R. 1999/371, art. 2\(b\), Sch. 1](#) (with arts. 4, 18); [S.R. 1999/407, art. 2\(b\), Sch. 1](#) (with art. 4); [S.R. 1999/428, art. 2\(b\), Sch. 1](#) (with arts. 4, 16); [S.R. 1999/472, art. 2\(1\)\(a\)\(2\), Sch. 1](#) (with arts. 20-22)  
Act amended (11.5.2001) by [2001 c. 20, s. 5\(5\)](#)
- C2** Act: power to amend conferred (1.7.1992) by [Social Security Administration Act 1992 \(c. 5\), ss. 177\(5\)\(b\), 189\(11\), 192\(4\)](#)  
Act: power to modify conferred (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\), ss. 155\(4\)\(5\), 168\(4\)](#)  
Act: power to repeal or amend conferred (1.7.1992) by [Social Security \(Consequential Provisions\) \(Northern Ireland\) Act 1992 \(c. 9\), ss. 5, 7\(2\), Sch. 3 Pt. I para. 7\(1\)](#)  
Act: power to amend conferred (1.7.1992) by [Social Security \(Consequential Provisions\) \(Northern Ireland\) Act 1992 \(c. 9\), ss. 5, 7\(2\), Sch. 3 Pt. II paras. 12, 13, 14, 21\(3\)\(4\)\(c\)](#)  
Act: power to modify conferred (1.6.1996 for the purpose only of authorising the making of regulations and 6.4.1997 otherwise) by [S.I. 1995/3213 \(N.I. 22\), arts. 1, 146\(1\)\(2\)](#); [S.R. 1996/91, art. 2\(f\)](#); [S.R. 1997/192, art. 2\(b\)](#)  
Act: power to exclude conferred (24.7.1996) by [1996 c. 49, ss. 11\(1\)\(b\)\(2\), 13\(3\)](#)

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- Act: power to amend conferred (2.12.1999) by 1998 c. 47, s. 87; S.I. 1999/3209, art. 2, **Sch.**
- Act: power to issue payment conferred (prosp.) by S.I. 1998/1759 (N.I. 13), **arts. 1(2)**, 71
- Act: power to modify conferred (temp. from 24.3.1999) by S.I. 1999/671, arts. 1(2)(c), 14(1)(2)(b), **Sch. 6** (with savings and transitional provisions in Sch. 7)
- Act: power to modify conferred (1.4.1999) by 1999 c. 2, s. 15(1)(2)(b); S.I. 1999/527, art. 2(b), **Sch. 2**
- Act: power to modify conferred (5.10.1999) by 1999 c. 10, ss. 2, 20, **Sch. 2 para. 30**
- Act: power to amend or apply conferred (8.7.2002) by Employment Act 2002 (c. 22), **ss. 46(3)(d)(iii)**, 55(2)
- C3** Act modified (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), **ss. 30(10)**, 115(4), 168(4)
- Act modified (27.7.1992) by S.R. 1992/328, **art. 2**.
- Act modified (31.12.1992) by S.R. 1992/560, **art. 2**, S.R. 1992/561, **art.2**, S.R. 1992/562, **art.2**, S.R. 1992/563, **art. 2** and S.R. 1992/564, **art. 2**
- Act modified (7.2.1994) by 1993 c. 49, s. 42(1)(a); S.R. 1994/17, **art. 2**
- Act modified (4.7.1994) by S.R. 1995/262, **art. 2**
- Act modified (2.11.1994) by S.R. 1994/427, **art. 2**
- Act modified (13.4.1995) by: S.R. 1995/35, **regs. 16**, 18, 21, 26, 31; S.R. 1995/110, **art. 2**; S.R. 1994/485, **regs. 2-4**; S.R. 1994/485, **reg. 16** (as added by S.R. 1995/150, **reg. 23**); S.R. 1995/150, **Pt. III**, reg. 24
- Act modified (1.12.1995) by S.R. 1995/405, **art. 2(1)**
- Act modified (16.12.1995) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. I para. 1**
- Act modified (1.9.1999) by: S.R. 1999/349, reg. 2(2), **Sch.**; S.R. 1999/350, reg. 2(2), **Sch.**
- Act modified (5.10.1999) by 1999 c. 10, ss. 2, 20, **Sch. 2 para. 29**
- Act modified (1.8.2000) by S.R. 2000/246, art. 2, **Sch.**
- Act modified by S.R. 2000/377, art. 2, **Sch.** (the amendment coming into force in accordance with art. 1(1) of the amending S.R.)
- C4** Act excluded (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 161, 168(4), **Sch. 6 para. 1(7)**
- Act excluded (prosp.) by Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11 (N.I.)), **ss. 6**, 9
- C5** Act explained (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 5, 7(2), **Sch. 3 Pt. I para. 1(2)**
- C6** Act: certain functions transferred (5.10.1999) by 1999 c. 10, ss. 2, 20, **Sch. 2 para. 7(c)**
- Act: functions transferred from the Department of Health and Social Services to the Department for Social Development (1.12.1999) by S.R. 1999/481, art. 8(b), **Sch. 6 Pt. II**
- Act: certain functions of the Secretary of State and the Northern Ireland Department transferred (prosp.) to the Board by Tax Credits Act 2002 (c. 21), **ss. 50**, 61 (subject to s. 49 and with s. 54(2)(3)(5)(7)(9))
- C7** Act restricted (1.1.2000 for specified purposes and otherwise 3.4.2000) by 1999 c. 33, s. 115(1); S.I. 1999/3190, art. 2, **Sch.**; S.I. 2000/464, art. 2, **Sch.**

## PART I

### CONTRIBUTIONS

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

- C8** Pt. I (ss. 1-19): power to modify conferred (7.2.1994) by 1993 c. 49, s. 35, **Sch. 1 Pt. I para. 5(3)(d)**; S.R. 1994/17, **art. 2**
- Pt. I (ss. 1-19) amended (1.4.1999) by 1999 c. 2, s. 3(1)(7); S.I. 1999/527, art. 2(b), **Sch. 2**

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## Preliminary

### 1 Outline of contributory system.

#### (1) The funds required—

- (a) for paying such benefits under this Act as are payable out of the National Insurance Fund and not out of other public money; and
- (b) for the making of payments under section 142 of the Administration Act towards the cost of the health service,

shall be provided by means of contributions payable to the Department by earners, employers and others, together with the additions under subsection (5) below [<sup>F1</sup>and amounts payable under Article 4 of the Social Security (Northern Ireland) Order 1993].

#### (2) Contributions under this Part of this Act shall be of the following five classes—

- (a) Class 1, earnings-related, payable under section 6 below, being—
  - (i) primary Class 1 contributions from employed earners; and
  - (ii) secondary Class 1 contributions from employers and other persons paying earnings;
- (b) Class 1A, payable under section 10 below in respect of cars made available for private use and car fuel by persons liable to pay secondary Class 1 contributions and certain other persons;
- (c) Class 2, flat-rate, payable weekly under section 11 below by self-employed earners;
- (d) Class 3, payable under section 13 below by earners and others voluntarily with a view to providing entitlement to benefit, or making up entitlement; and
- (e) Class 4, payable under section 15 below in respect of the profits or gains of a trade, profession or vocation, or under section 18 below in respect of equivalent earnings.

#### (3) The amounts and rates of contributions in this Part of this Act and the other figures in it which affect the liability of contributors shall—

- (a) be subject to regulations under sections 19(4) and 116 to 119 below; and
- (b) to the extent provided for by section 129 of the Administration Act be subject to alteration by orders made under that section,

and the provisions of this Part of this Act are subject to the provisions of [<sup>F2</sup>Chapter II of Part III of the Pensions Act (reduction in state scheme contributions and social security benefits for members of certified schemes)].

#### (4) Schedule 1 to this Act—

- (a) shall have effect with respect to the computation, collection and recovery of contributions of Classes 1, 1A, 2 and 3, and otherwise with respect to contributions of those classes; and
- (b) shall also, to the extent provided by regulations made under section 18 below, have effect with respect to the computation, collection and recovery of Class 4 contributions, and otherwise with respect to such contributions, where under that section provision is made for contributions of that class to be recovered by the Department and not by the Inland Revenue under section 16(1) to (3) of the Great Britain Contributions and Benefits Act.

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- (5) For each financial year there shall, by way of addition to contributions, be paid out of money hereafter appropriated for that purpose, in such manner and at such times as the Department of Finance and Personnel may determine, amounts the total of which for any such year is equal to the aggregate of all statutory sick pay and statutory maternity pay recovered by employers and others in that year, as estimated by the Department.
- (6) No person shall—
- (a) be liable to pay Class 1, Class 1A or Class 2 contributions unless he fulfils prescribed conditions as to residence or presence in Northern Ireland;
  - (b) be entitled to pay Class 3 contributions unless he fulfils such conditions; or
  - (c) be entitled to pay Class 1, Class 1A or Class 2 contributions other than those which he is liable to pay, except so far as he is permitted by regulations to pay them.

#### Textual Amendments

**F1** Words in s. 1(1) added (17.3.1993) by S.I. 1993/592 (N.I. 2), arts. 1(2), 4(9)

**F2** Words in s. 1(3) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para.27; S.R. 1994/17, art. 2

## 2 Categories of earners.

- (1) In this Part of this Act and Parts II to V—
- (a) “employed earner” means a person who is gainfully employed in Northern Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
  - (b) “self-employed earner” means a person who is gainfully employed in Northern Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment).
- (2) Regulations may provide—
- (a) for employment of any prescribed description to be disregarded in relation to liability for contributions otherwise arising from employment of that description;
  - (b) for a person in employment of any prescribed description to be treated, for the purposes of this Act, as falling within one or other of the categories of earner defined in subsection (1) above, notwithstanding that he would not fall within that category apart from the regulations.
- (3) Where a person is to be treated by reference to any employment of his as an employed earner, then he is to be so treated for all purposes of this Act; and references throughout this Act to employed earner’s employment shall be construed accordingly.
- (4) Subsections (1) to (3) above are subject to the provision made by section 95 below as to the employments which are to be treated, for the purposes of industrial injuries benefit, as employed earner’s employments.
- (5) For the purposes of this Act, a person shall be treated as a self-employed earner as respects any week during any part of which he is such an earner (without prejudice to his being also treated as an employed earner as respects that week by reference to any other employment of his).

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### 3 “Earnings” and “earner”.

- (1) In this Part of this Act and Parts II to V—
- (a) “earnings” includes any remuneration or profit derived from an employment; and
  - (b) “earner” shall be construed accordingly.
- (2) For the purposes of this Part of this Act and of Parts II to V other than those of Schedule 8—
- (a) the amount of a person’s earnings for any period; or
  - (b) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,
- shall be calculated or estimated in such manner and on such basis as may be prescribed.
- (3) Regulations made for the purposes of subsection (2) above may prescribe that payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of that person’s earnings.

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

C9 S. 3 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

### 4 Payments treated as remuneration and earnings.

- (1) For the purposes of section 3 above there shall be treated as remuneration derived from employed earner’s employment—
- (a) any sum paid to or for the benefit of a person in satisfaction (whether in whole or in part) of any entitlement of that person to—
    - (i) statutory sick pay; or
    - (ii) statutory maternity pay; and
  - (b) any sickness payment made—
    - (i) to or for the benefit of the employed earner; and
    - (ii) in accordance with arrangements under which the person who is the secondary contributor in relation to the employment concerned has made, or remains liable to make, payments towards the provision of that sickness payment.
- (2) Where the funds for making sickness payments under arrangements of the kind mentioned in paragraph (b) of subsection (1) above are attributable in part to contributions to those funds made by the employed earner, regulations may make provision for disregarding, for the purposes of that subsection, the prescribed part of any sum paid as a result of the arrangements.
- (3) For the purposes of subsections (1) and (2) above “sickness payment” means any payment made in respect of absence from work due to incapacity for work<sup>F3</sup> . . .
- (4) For the purposes of section 3 above there shall be treated as remuneration derived from an employed earner’s employment any sum paid to or for the benefit of an employed earner which is chargeable to tax by virtue of section 313 of the<sup>M1</sup> Income and Corporation Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) otherwise than by virtue of subsection (4) of that section.

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- (5) For the purposes of section 3 above regulations may make provision for treating as remuneration derived from an employed earner's employment any payment made by a body corporate to or for the benefit of any of its directors where that payment would, when made, not be earnings for the purposes of this Act.

#### Textual Amendments

- F3** Words in s. 4(3) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 1, Sch. 2 (with art. 15(1)); S.R. 1994/450, art. 2, Sch. Pt. IV

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

- C10** S. 4 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

#### Marginal Citations

- M1** 1988 c. 1.

VALID FROM 22/12/1999

#### [<sup>F4</sup>4A Earnings of workers supplied by service companies etc.

- (1) Regulations may make provision for securing that where—
- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for the purposes of a business carried on by another person (“the client”),
  - (b) the performance of those services by the worker is (within the meaning of the regulations) referable to arrangements involving a third person (and not referable to any contract between the client and the worker), and
  - (c) the circumstances are such that, were the services to be performed by the worker under a contract between him and the client, he would be regarded for the purposes of the applicable provisions of this Act as employed in employed earner's employment by the client,
- relevant payments or benefits are, to the specified extent, to be treated for those purposes as earnings paid to the worker in respect of an employed earner's employment of his.
- (2) For the purposes of this section—
- (a) “the intermediary” means—
    - (i) where the third person mentioned in subsection (1)(b) above has such a contractual or other relationship with the worker as may be specified, that third person, or
    - (ii) where that third person does not have such a relationship with the worker, any other person who has both such a relationship with the worker and such a direct or indirect contractual or other relationship with the third person as may be specified; and
  - (b) a person may be the intermediary despite being—
    - (i) a person with whom the worker holds any office or employment, or
    - (ii) a body corporate, unincorporated body or partnership of which the worker is a member;

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and subsection (1) above applies whether or not the client is a person with whom the worker holds any office or employment.

- (3) Regulations under this section may, in particular, make provision—
- (a) for the worker to be treated for the purposes of the applicable provisions of this Act, in relation to the specified amount of relevant payments or benefits (the worker’s “attributable earnings”), as employed in employed earner’s employment by the intermediary;
  - (b) for the intermediary (whether or not he fulfils the conditions prescribed under section 1(6)(a) above for secondary contributors) to be treated for those purposes as the secondary contributor in respect of the worker’s attributable earnings;
  - (c) for determining—
    - (i) any deductions to be made, and
    - (ii) in other respects the manner and basis in and on which the amount of the worker’s attributable earnings for any specified period is to be calculated or estimated,in connection with relevant payments or benefits;
  - (d) for aggregating any such amount, for purposes relating to contributions, with other earnings of the worker during any such period;
  - (e) for determining the date by which contributions payable in respect of the worker’s attributable earnings are to be paid and accounted for;
  - (f) for apportioning payments or benefits of any specified description, in such manner or on such basis as may be specified, for the purpose of determining the part of any such payment or benefit which is to be treated as a relevant payment or benefit for the purposes of the regulations;
  - (g) for disregarding for the purposes of the applicable provisions of this Act, in relation to relevant payments or benefits, an employed earner’s employment in which the worker is employed (whether by the intermediary or otherwise) to perform the services in question;
  - (h) for otherwise securing that a double liability to pay any amount by way of a contribution of any description does not arise in relation to a particular payment or benefit or (as the case may be) a particular part of a payment or benefit;
  - (i) for securing that, to the specified extent, two or more persons, whether—
    - (i) connected persons (within the meaning of section 839 of the <sup>M2</sup>Income and Corporation Taxes Act 1988), or
    - (ii) persons of any other specified description,are treated as a single person for any purposes of the regulations;
  - (j) (without prejudice to paragraph (i) above) for securing that a contract made with a person other than the client is to be treated for any such purposes as made with the client;
  - (k) for excluding or modifying the application of the regulations in relation to such cases, or payments or benefits of such description, as may be specified.
- (4) Regulations made in pursuance of subsection (3)(c) above may, in particular, make provision—
- (a) for the making of a deduction of a specified amount in respect of general expenses of the intermediary as well as deductions in respect of particular expenses incurred by him;



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- (b) for securing reductions in the amount of the worker’s attributable earnings on account of—
- (i) any secondary Class 1 contributions already paid by the intermediary in respect of actual earnings of the worker, and
  - (ii) any such contributions that will be payable by him in respect of the worker’s attributable earnings.
- (5) Regulations under this section may make provision for securing that, in applying any provisions of the regulations, any term of a contract or other arrangement which appears to be of a description specified in the regulations is to be disregarded.
- (6) In this section—
- “the applicable provisions of this Act” means this Part of this Act and Parts II to V below;
- “business” includes any activity carried on—
- (a) by a government department or public or local authority (in the United Kingdom or elsewhere), or
  - (b) by a body corporate, unincorporated body or partnership;
- “relevant payments or benefits” means payments or benefits of any specified description made or provided (whether to the intermediary or the worker or otherwise) in connection with the performance by the worker of the services in question;
- “specified” means prescribed by or determined in accordance with regulations under this section.
- (7) Any reference in this section to the performance by the worker of any services includes a reference to any such obligation of his to perform them as is mentioned in subsection (1)(a) above.
- (8) Regulations under this section shall be made by the Treasury with the concurrence of the Department.
- (9) If, on any modification of the statutory provisions relating to income tax, it appears to the Treasury to be expedient to modify any of the preceding provisions of this section for the purpose of assimilating the law relating to income tax and the law relating to contributions under this Part of this Act, the Treasury may with the concurrence of the Department by order make such modifications of the preceding provisions of this section as the Treasury think appropriate for that purpose.]

#### Textual Amendments

F4 S. 4A inserted (22.12.1999) by 1999 c. 30, s. 76; S.I. 1999/3420, art. 3

#### Marginal Citations

M2 1988 c. 1.

### *Class 1 contributions*

## 5 Earnings limits for Class 1 contributions.

- (1) For the purposes of this Act there shall for every tax year be—



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- (a) a lower earnings limit for Class 1 contributions, being the level of weekly earnings at which employed earners become liable for such contributions in respect of the earnings from their employments; and
- (b) an upper earnings limit for Class 1 contributions, being the maximum amount of weekly earnings in respect of which primary Class 1 contributions are payable;

and those limits shall be the amounts specified for that year by regulations made in accordance with subsections (2) and (3) below.

- (2) The amount specified as the lower earnings limit for any tax year shall be an amount equal to or not more than 99p less than—
  - (a) the sum which at the beginning of that year is specified in section 44(4) below as the weekly rate of the basic pension in a Category A retirement pension; or
  - (b) that sum as increased by any Act, Measure or order passed, enacted or made before the beginning of that year and taking effect before 6th May in that year.
- (3) The amount specified as the upper earnings limit for any tax year shall be an amount which either—
  - (a) is equal to 7 times the sum by reference to which the lower earnings limit for that year is specified in accordance with subsection (2) above; or
  - (b) exceeds or falls short of 7 times that sum by an amount not exceeding half that sum.

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

C11 S. 5 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

## 6 Liability for Class 1 contributions.

- (1) Where in any tax week earnings are paid to or for the benefit of an earner in respect of any one employment of his which is employed earner's employment and—
  - (a) he is over the age of 16; and
  - (b) the amount paid is equal to or exceeds the current lower earnings limit for Class 1 contributions (or the prescribed equivalent in the case of earners paid otherwise than weekly),

a primary and a secondary Class 1 contribution shall be payable in accordance with this section and sections 8 and 9 below.

- (2) Except as may be prescribed, no primary Class 1 contribution shall be payable in respect of earnings paid to or for the benefit of an employed earner after he attains pensionable age, but without prejudice to any liability to pay secondary Class 1 contributions in respect of any such earnings.
- (3) The primary and secondary Class 1 contributions referred to in subsection (1) above are payable as follows—
  - (a) the primary contribution shall be the liability of the earner; and
  - (b) the secondary contribution shall be the liability of the secondary contributor;
 but nothing in this subsection shall prejudice the provisions of paragraph 3 of Schedule 1 to this Act relating to the manner in which the earner's liability falls to be discharged.

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- (4) Except as provided by this Act, the primary and secondary Class 1 contributions in respect of earnings paid to or for the benefit of an earner in respect of any one employment of his shall be payable without regard to any other such payment of earnings in respect of any other employment of his.
- (5) Regulations may provide for reducing primary or secondary Class 1 contributions which are payable in respect of persons to whom section 11 of the <sup>M3</sup>Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (redundancy payments) does not apply by virtue of section 26(1) or (5) of that Act.
- (6) The power conferred by subsection (1) above to prescribe an equivalent of the lower earnings limit includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that limit.

#### Marginal Citations

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

VALID FROM 22/12/1999

#### **[<sup>F5</sup>6A Notional payment of primary Class 1 contribution where earnings not less than lower earnings limit.**

- (1) This section applies where in any tax week earnings are paid to or for the benefit of an earner over the age of 16 in respect of any one employment of his which is employed earner's employment and the amount paid—
  - (a) is not less than the current lower earnings limit (or the prescribed equivalent), but
  - (b) does not exceed the current primary threshold (or the prescribed equivalent).
- (2) Subject to any prescribed exceptions or modifications—
  - (a) the earner shall be treated as having actually paid a primary Class 1 contribution in respect of that week, and
  - (b) those earnings shall be treated as earnings upon which such a contribution has been paid,
 for any of the purposes mentioned in subsection (3) below.
- (3) The purposes are—
  - (a) the purposes of section 14(1)(a) below;
  - (b) the purposes of the provisions mentioned in section 21(5A)(a) to (c) below;
  - (c) any other purposes relating to contributory benefits; and
  - (d) any purposes relating to jobseeker's allowance.
- (4) Regulations may provide for any provision of this Act which, in whatever terms, refers—
  - (a) to primary Class 1 contributions being payable by a person, or
  - (b) otherwise to a person's liability to pay such contributions,
 to have effect for the purposes of this section with any prescribed modifications.

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- (5) Except as may be prescribed, nothing in this section applies in relation to earnings paid to or for the benefit of an employed earner after he attains pensionable age.
- (6) Except as provided by this Act, this section applies in relation to earnings paid to or for the benefit of an earner in respect of any one employment of his irrespective of any other such payment of earnings in respect of any other employment of his.
- (7) Regulations under this section shall be made by the Treasury.]

#### Textual Amendments

**F5** S. 6A inserted (22.12.1999 for specified purposes and 6.4.2000 otherwise) by 1999 c. 30, s. 74, Sch. 10 para. 3; S.I. 1999/3420, art. 2

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

**C12** S. 6A(2) modified (6.4.2000) by S.I. 2000/748, regs. 3-6

## 7 “Secondary contributor”.

- (1) For the purposes of this Act, the “secondary contributor” in relation to any payment of earnings to or for the benefit of an employed earner, is—
- (a) in the case of an earner employed under a contract of service, his employer;
  - (b) in the case of an earner employed in an office with emoluments, either—
    - (i) such person as may be prescribed in relation to that office; or
    - (ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;
- but this subsection is subject to subsection (2) below.
- (2) In relation to employed earners who—
- (a) are paid earnings in a tax week by more than one person in respect of different employments; or
  - (b) work under the general control or management of a person other than their immediate employer,
- and in relation to any other case for which it appears to the Department that such provision is needed, regulations may provide that the prescribed person is to be treated as the secondary contributor in respect of earnings paid to or for the benefit of an earner.

## 8 Calculation of primary Class 1 contributions.

- (1) Where a primary Class 1 contribution is payable, the amount of that contribution shall be the aggregate of—
- (a) the initial primary percentage of so much of the earner’s earnings paid in the tax week, in respect of the employment in question, as does not exceed the current lower earnings limit; and
  - (b) the main primary percentage of so much of those earnings as exceeds that limit but does not exceed the current upper earnings limit;

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but this subsection is subject to regulations under section 6(5) above and sections 116 to 119 below and to <sup>F6</sup>section 37 of the Pensions Act (reduced rates of Class 1 contributions for earners in contracted-out employment)].

- (2) For the purposes of this Act the primary percentages shall be as follows—
- (a) the initial primary percentage shall be 2 per cent.; and
  - (b) the main primary percentage shall be <sup>F7</sup>10 per cent.];
- but the rates of those primary percentages are subject to alteration under section 129 of the Administration Act.
- (3) In the case of earners paid otherwise than weekly, any reference in subsection (1) above to the current upper, or (as the case may be) lower, earnings limit shall be taken as a reference to the prescribed equivalent of that limit.
- (4) The power conferred by subsection (3) above to prescribe an equivalent of a limit includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that limit.

#### Textual Amendments

- F6** Words in s. 8(1) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 28**; S.R. 1994/17, **art. 2**
- F7** Words in s. 8(2)(b) substituted (6.4.1994) by S.I. 1994/765 (N.I. 4), **arts. 1, 3(1)(2)**

## 9 Calculation of secondary Class 1 contributions.

- (1) Where a secondary Class 1 contribution is payable, the amount of that contribution shall be the appropriate secondary percentage of the earnings paid in the week in respect of the employment in question.
- (2) For the purposes of subsection (1) above, the “appropriate secondary percentage”, in relation to the earner’s earnings, is the percentage specified in subsection (3) below as appropriate to the secondary earnings bracket (or the prescribed equivalent in the case of earners paid otherwise than weekly) into which those earnings fall.
- (3) The secondary earnings brackets and the percentages appropriate to them shall be as set out below—

	Weekly earnings	Appropriate percentage
Bracket 1	Current lower earnings limit to <sup>F8</sup> £104.99]	<sup>F8</sup> 3 per cent.]
Bracket 2	<sup>F9</sup> £105.00] to <sup>F9</sup> £149.99]	<sup>F9</sup> 5. per cent.]
Bracket 3	<sup>F10</sup> £150.00] to <sup>F10</sup> £204.99]	<sup>F10</sup> 7per cent.]
Bracket 4	<sup>F11</sup> £205.00] or more	<sup>F11</sup> 10.2per cent.]

- (4) Subsections (1) and (3) above are subject as mentioned below, that is to say—
- (a) subsection (1) is subject to <sup>F12</sup>section 37 of the Pensions Act] and to regulations under section 6(5) above and sections 116 to 119 below;
  - (b) subsection (3) is subject to any order under section 129 of the Administration Act.

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- (5) The power conferred by subsection (2) above to prescribe an equivalent of a bracket includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that bracket.

#### Textual Amendments

- F8** Words in s. 9(3) substituted (6.4.1995) by S.I. 1995/79, art. 2(a)  
**F9** Words in s. 9(3) substituted (6.4.1995) by S.R. 1995/79, art. 2(b)  
**F10** Words in s. 9(3) substituted (6.4.1995) by S.R. 1995/79, art. 2(c)  
**F11** Words in s. 9(3) substituted (6.4.1995) by S.R. 1995/79, art. 2(d)  
**F12** Words in s. 9(4) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 29; S.R. 1994/17, art. 2(a)

### Class 1A contributions

#### 10 Class 1A contributions.

- (1) Where—
- for any tax year an amount in respect of a car is by virtue of section 157 of the <sup>M4</sup>Income and Corporation Taxes Act 1988 chargeable on an earner to income tax under Schedule E; and
  - the employment by reason of which the car is made available is employed earner's employment,
- a Class 1A contribution shall be payable for that tax year, in accordance with this section, in respect of the earner and car in question.
- (2) The Class 1A contribution referred to in subsection (1) above is payable by—
- the person who is liable to pay the secondary Class 1 contribution relating to the last (or only) relevant payment of earnings in the tax year in relation to which there is a liability to pay such a contribution; or
  - if no such contribution is payable in relation to a relevant payment of earnings in the tax year, the person who would be liable but for section 6(1)(b) above to pay a secondary Class 1 contribution relating to the last (or only) relevant payment of earnings in the tax year.
- (3) A payment of earnings is a “relevant payment of earnings” for the purposes of subsection (2) above if it is made to or for the benefit of the earner in respect of the employment by reason of which the car is made available.
- (4) The amount of the Class 1A contribution referred to in subsection (1) above shall be—
- the Class 1A percentage of the cash equivalent of the benefit of the car to the earner in the tax year; or
  - where for the tax year an amount in respect of fuel for the car is by virtue of section 158 of the <sup>M5</sup>Income and Corporation Taxes Act 1988 also chargeable on the earner to income tax under Schedule E, the aggregate of—
    - the Class 1A percentage of the cash equivalent of the benefit of the fuel to the earner in the tax year; and
    - the amount mentioned in paragraph (a) above,
- the cash equivalents of the benefit of a car or fuel being ascertained, subject to the provisions of this section, in accordance with section 157 or, as the case may be, 158 of the Income and Corporation Taxes Act 1988 and Schedule 6 to that Act.

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- (5) In subsection (4) above “the Class 1A percentage” means a percentage rate equal to the percentage rate for secondary Class 1 contributions specified in section 9(3) above as appropriate for the highest secondary earnings bracket for the tax year in question.
- (6) In calculating for the purposes of subsection (4) above the cash equivalent of the benefit of a car or fuel—
- [<sup>F13</sup>(a) the car shall not be treated as being unavailable on a day by virtue of paragraph 9(c) of Schedule 6 to the Income and Corporation Taxes Act 1988 for the purposes of section 158(5) of that Act <sup>F14</sup> or paragraph 3 or 6 of that Schedule, unless the person liable to pay the contribution has information to show that the condition specified in paragraph 9(c) is satisfied as regards that day;
- (b) the use of the car for the earner’s business travel shall be taken—
- (i) for the purposes of sub-paragraph (1) of paragraph 2 of that Schedule to have amounted to less than 18,000 miles (or such lower figure as is applicable by virtue of sub-paragraph (a) of paragraph 3 of that Schedule); and
- (ii) for the purposes of sub-paragraph (2) of paragraph 2 of that Schedule to have amounted to less than 2,500 miles (or such lower figure as is applicable by virtue of sub-paragraph (b) of paragraph 3 of that Schedule),
- unless in either case the person liable to pay the contribution has information to show to the contrary; and]
- (c) for the purposes of [<sup>F15</sup>paragraph 4] of that Schedule, the car shall be treated as not having been the car used to the greatest extent for the employee’s business travel, unless the person liable to pay the contribution has information to show the contrary.
- (7) Regulations may make such amendments of this section as appear to the Department to be necessary or expedient in consequence of any alteration to section 157 or 158 of the <sup>M6</sup>Income and Corporation Taxes Act 1988 or Schedule 6 to that Act.
- (8) A person shall be liable to pay different Class 1A contributions in respect of different earners, different cars and different tax years.
- (9) Regulations may provide—
- (a) for persons to be excepted in prescribed circumstances from liability to pay Class 1A contributions;
- (b) for reducing Class 1A contributions in prescribed circumstances.

#### Textual Amendments

**F13** S. 10(6)(a)(b) substituted (6.4.1994 with effect as mentioned in art. 4(2) of the amending S.R.) by S.R. 1994/94, art. 4(1)(a)(2)

**F14** Section 158(5) was amended by paragraph 6(2) of Schedule 3 to the Finance Act 1993

**F15** Words in s. 10(6)(c) substituted (6.4.1994 with effect as mentioned in art. 4(2) of the amending S.R.) by S.R. 1994/94, art. 4(1)(b)(2)

#### Marginal Citations

**M4** 1988 c. 1.

**M5** 1988 c. 1.

**M6** 1988 c.1.



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VALID FROM 28/07/2000

**[<sup>F16</sup>10ZALiability of third party provider of benefits in kind.**

- (1) This section applies, where—
- (a) a Class 1A contribution is payable for any tax year in respect of the whole or any part of an emolument received by an earner;
  - (b) the emolument, in so far as it is one in respect of which such a contribution is payable, consists in a benefit provided for the earner or a member of his family or household;
  - (c) the person providing the benefit is a person other than the person (“the relevant employer”) by whom, but for this section, the Class 1A contribution would be payable in accordance with section 10(2) above; and
  - (d) the provision of the benefit by that other person has not been arranged or facilitated by the relevant employer.
- (2) For the purposes of this Act if—
- (a) the person providing the benefit pays an amount for the purpose of discharging any liability of the earner to income tax for any tax year, and
  - (b) the income tax in question is tax chargeable in respect of the provision of the benefit or of the making of the payment itself,
- the amount of the payment shall be treated as if it were an emolument consisting in the provision of a benefit to the earner in that tax year and falling, for the purposes of Class 1 contributions, to be left out of account in the computation of the earnings paid to or for the benefit of the earner.
- (3) Subject to subsection (4) below, the liability to pay any Class 1A contribution in respect of—
- (a) the benefit provided to the earner, and
  - (b) any further benefit treated as so provided in accordance with subsection (2) above,
- shall fall on the person providing the benefit, instead of on the relevant employer.
- (4) Subsection (3) above applies in the case of a Class 1A contribution for the tax year beginning with 6th April 2000 only if the person providing the benefit in question gives notice in writing to the Inland Revenue on or before 6th July 2001 that he is a person who provides benefits in respect of which a liability to Class 1A contributions is capable of falling by virtue of this section on a person other than the relevant employer.
- (5) The Treasury may by regulations make provision specifying the circumstances in which a person is or is not to be treated for the purposes of this Act as having arranged or facilitated the provision of any benefit.
- (6) In this section references to a member of a person’s family or household shall be construed in accordance with section 168(4) of the <sup>M7</sup>Income and Corporation Taxes Act 1988.]

**Textual Amendments**

**F16** Ss. 10ZA, 10ZB inserted (28.7.2000) by [2000 c. 19, s. 79\(1\)](#)



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### Marginal Citations

**M7** 1988 c. 1.

VALID FROM 28/07/2000

### [<sup>F17</sup>10ZB Non-cash vouchers provided by third parties.

- (1) In section 10ZA above references to the provision of a benefit include references to the provision of a non-cash voucher.
- (2) Where—
  - (a) a non-cash voucher is received by any person from employment to which Chapter II of Part V of the <sup>M8</sup>Income and Corporation Taxes Act 1988 does not apply, and
  - (b) the case would be one in which the conditions in section 10ZA(1)(a) to (d) above would be satisfied in relation to the provision of that voucher if that Chapter did apply to that employment,
 sections 10 and 10ZA above shall have effect in relation to the provision of that voucher, and to any such payment in respect of the provision of that voucher as is mentioned in section 10ZA(2) above, as if that employment were employment to which that Chapter applied.
- (3) In this section “non-cash voucher” has the same meaning as in section 141 of the <sup>M9</sup>Income and Corporation Taxes Act 1988.]

### Textual Amendments

**F17** Ss. 10ZA, 10ZB inserted (28.7.2000) by 2000 c. 19, s. 79(1)

### Marginal Citations

**M8** 1988 c. 1.

**M9** 1988 c. 1.

VALID FROM 09/09/1998

### [<sup>F18</sup>Class 1B contributions]

### Textual Amendments

**F18** Cross-heading and s. 10A inserted (9.9.1998 for the purpose only of making regulations or orders and otherwise 6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 50; S.R. 1998/312, art. 2(b), Sch. Pt. II

### [<sup>F19</sup>10A Class 1B contributions.

- (1) Where for any tax year a person is accountable to the Inland Revenue in respect of income tax on emoluments of his employees in accordance with a PAYE settlement

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agreement, a Class 1B contribution shall be payable by him for that tax year in accordance with this section.

- (2) The Class 1B contribution referred to in subsection (1) above is payable in respect of—
- (a) the amount of any of the emoluments included in the PAYE settlement agreement which are chargeable emoluments; and
  - (b) the total amount of income tax in respect of which the person is accountable for the tax year in accordance with the PAYE settlement agreement.
- (3) The amount of the Class 1B contribution referred to in subsection (1) above shall be the Class 1B percentage of the aggregate of the amounts mentioned in paragraphs (a) and (b) of subsection (2) above.
- (4) Emoluments are chargeable emoluments for the purposes of subsection (2) above if, apart from section 6(2A) or 10(8A) above, the person accountable in accordance with the PAYE settlement agreement would be liable or entitled to pay secondary Class 1 contributions or Class 1A contributions in respect of them.
- (5) Where—
- (a) the PAYE settlement agreement was entered into after the beginning of the tax year; and
  - (b) Class 1 contributions were due in respect of any emoluments before it was entered into,
- those emoluments shall not be taken to be included in the PAYE settlement agreement.
- (6) For the purposes of subsection (3) above the Class 1B percentage shall be 12.2 per cent., but the percentage is subject to alteration under section 129 of the Administration Act.
- (7) Regulations may provide for persons to be excepted in prescribed circumstances from liability to pay Class 1B contributions.]

#### Textual Amendments

- F19** S. 10A and the preceding cross-note inserted (9.9.1998 for the purpose only of making regulations or orders and otherwise 6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 5; S.R. 1998/312, art. 2(b), Sch. Pt. II

### Class 2 contributions

#### 11 Liability for Class 2 contributions.

- (1) Every self-employed earner who is over the age of 16 shall be liable to pay Class 2 contributions at the rate of [<sup>F20</sup>£5·75] a week, subject to the provisions of this section and sections 12 and 19(4)(b) below.
- (2) No Class 2 contributions shall be payable by an earner in respect of any period after he attains pensionable age.

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- (3) Regulations may make provision so that an earner is liable for a weekly rate of Class 2 contributions higher than that specified in subsection (1) above where—
- (a) in respect of any employment of his, he is treated by regulations under section 2(2)(b) above as being a self-employed earner; and
  - (b) in any period or periods he has earnings from that employment and—
    - (i) those earnings are such that (disregarding their amount) he would be liable for Class 1 contributions in respect of them if he were not so treated in respect of the employment, and
    - (ii) no Class 4 contribution is payable in respect of the earnings by virtue of regulations under section 18(1) below.
- (4) Regulations may provide for an earner otherwise liable for Class 2 contributions in respect of employment as a self-employed earner to be excepted from the liability in respect of any period in which his earnings from such employment are, or are treated by regulations as being, less than [<sup>F21</sup>£3,260] a tax year.
- (5) Regulations made for the purposes of subsection (4) above shall not except a person from liability to pay contributions otherwise than on his own application, but may provide for so excepting a person with effect from any date not earlier than 13 weeks before the date on which his application was made.

#### Textual Amendments

- F20** Words in s. 11(1) substituted (6.4.1995) by S.R. 1995/79, art. 3(a)
- F21** Words in s. 11(4) substituted (6.4.1995) by S.R. 1995/79, art. 3(b)

## 12 Late paid Class 2 contributions.

- (1) This section applies to any Class 2 contribution paid in respect of a week falling within a tax year (“the contribution year”) earlier than the tax year in which it is paid (“the payment year”).
- (2) Subject to subsections (3) to (5) below, the amount of a contribution to which this section applies shall be the amount which the earner would have had to pay if he had paid the contribution in the contribution year.
- (3) Subject to subsections (4) to (6) below, in any case where—
- (a) the earner pays an ordinary contribution to which this section applies after the end of the tax year immediately following the contribution year; and
  - (b) the weekly rate of ordinary contributions for the week in respect of which the contribution was payable in the contribution year differs from the weekly rate applicable at the time of payment in the payment year,
- the amount of the contribution shall be computed by reference to the highest weekly rate of ordinary contributions in the period beginning with the week in respect of which the contribution is paid and ending with the day on which it is paid.
- (4) The Department may by regulations direct that subsection (3) above shall have effect in relation to a higher-rate contribution to which this section applies subject to such modifications as may be prescribed.
- (5) Subject to subsection (6) below, for the purposes of proceedings in any court relating to an earner’s failure to pay Class 2 contributions, the amount of each contribution which

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he is to be treated as having failed to pay is the amount which he would have paid in accordance with subsections (1) to (3) above or regulations under subsection (6) below if he had paid that contribution on the date on which the proceedings commenced.

- (6) The Department may by regulations provide that the amount of any contribution which, apart from the regulations, would fall to be computed in accordance with subsection (3) or (5) above shall instead be computed by reference to a tax year not earlier than the contribution year but earlier—
- (a) in a case falling within subsection (3) above, than the payment year; and
  - (b) in a case falling within subsection (5) above, than the tax year in which the proceedings commenced.
- (7) For the purposes of this section—
- (a) proceedings in the High Court or a county court commence when an action commences; and
  - (b) proceedings under section 108 of the Administration Act (offences relating to contributions) commence when a complaint is made.
- (8) In this section—
- “ordinary contribution” means a contribution under section 11(1) above; and
- “higher-rate contribution” means a contribution under regulations made under section 11(3) above.

### *Class 3 contributions*

## **13 Class 3 contributions.**

- (1) Regulations shall provide for earners and others, if over the age of 16, to be entitled if they so wish, but subject to any prescribed conditions, to pay Class 3 contributions; and, subject to the following provisions of this section, the amount of a Class 3 contribution shall be [<sup>F22</sup>£5.65].
  - (2) Payment of Class 3 contributions shall be allowed only with a view to enabling the contributor to satisfy contribution conditions of entitlement to benefit by acquiring the requisite earnings factor for the purposes described in section 22 below.
  - (3) Regulations may provide for Class 3 contributions, although paid in one tax year, to be appropriated in prescribed circumstances to the earnings factor of another tax year.
  - (4) The amount of a Class 3 contribution in respect of a tax year earlier than the tax year in which it is paid shall be the same as if it had been paid in the earlier year and in respect of that year, unless it falls to be calculated in accordance with subsection (6) below or regulations under subsection (7) below.
  - (5) In this section—
- “the payment year” means the tax year in which a contribution is paid; and
- “the contribution year” means the earlier year mentioned in subsection (4) above.
- (6) Subject to subsection (7) below, in any case where—
- (a) a Class 3 contribution is paid after the end of the next tax year but one following the contribution year; and

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- (b) the amount of a Class 3 contribution applicable had the contribution been paid in the contribution year differs from the amount of a Class 3 contribution applicable at the time of payment in the payment year,  
the amount of the contribution shall be computed by reference to the highest of those two amounts and of any other amount of a Class 3 contribution in the intervening period.
- (7) The Department may by regulations provide that the amount of a contribution which apart from the regulations would fall to be computed in accordance with subsection (6) above shall instead be computed by reference to the amount of a Class 3 contribution for a tax year earlier than the payment year but not earlier than the contribution year.

#### Textual Amendments

**F22** Words in s. 13(1) substituted (6.4.1995) by S.R. 1995/79, art. 4

### 14 Restriction on right to pay Class 3 contributions.

- (1) No person shall be entitled to pay a Class 3 contribution in respect of any tax year if his earnings factor, or the aggregate of his earnings factors, for that year derived—
- in the case of 1987-88 or any subsequent year, from earnings upon which Class 1 contributions have been paid or treated as paid or from Class 2 contributions actually paid; or
  - in the case of any earlier year, from contributions actually paid,  
is equal to or exceeds the qualifying earnings factor for that year; and regulations may provide for precluding the payment of Class 3 contributions in other cases.
- (2) Regulations may provide for the repayment of Class 3 contributions that have been paid in cases where their payment was precluded by, or by regulations made under, subsection (1) above.
- (3) Contributions repayable by virtue of regulations under subsection (2) above shall, for the purpose of determining the contributor's entitlement to any benefit, be treated as not having been paid (but nothing in this subsection shall be taken to imply that any other repayable contributions are to be treated for the purposes of benefit as having been paid).

#### *Class 4 contributions*

### 15 Class 4 contributions recoverable under the Income Tax Acts.

- (1) Class 4 contributions shall be payable for any tax year in respect of all annual profits or gains which—
- are immediately derived from the carrying on or exercise of one or more trades, professions or vocations, and
  - are profits or gains chargeable to income tax under Case I or Case II of Schedule D for the year of assessment corresponding to that tax year.
- (2) Class 4 contributions in respect of profits or gains shall be payable—

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- (a) in the same manner as any income tax which is, or would be, chargeable in respect of those profits or gains (whether or not income tax in fact falls to be paid), and
- (b) by the person on whom the income tax is (or would be) charged,
- in accordance with assessments made from time to time under the Income Tax Acts as applied and modified by section 16(1) to (3) of the Great Britain Contributions and Benefits Act.
- (3) A Class 4 contribution for any tax year shall be an amount equal to [<sup>F23</sup>7·3 per cent.] of so much of the profits or gains referred to in subsection (1) above (as computed in accordance with Schedule 2 to the Great Britain Contributions and Benefits Act, the text of which is set out as Schedule 2 to this Act) as exceeds [<sup>F24</sup>£6,640] and does not exceed [<sup>F24</sup>£22,880].
- (4) The reference in subsection (1) above to profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be taken to include a reference to profits or gains consisting of a payment of enterprise allowance chargeable to income tax under Case VI of Schedule D by virtue of section 127(2) of the <sup>M10</sup>Income and Corporation Taxes Act 1988.
- (5) For the purposes of this section the year of assessment which corresponds to a tax year is the year of assessment (within the meaning of the Tax Acts) which consists of the same period as that tax year.

#### Textual Amendments

**F23** Words in s. 15(3) substituted (6.4.1994) by S.R. 1994/79, art. 5

**F24** Words in s. 15(3) substituted (6.4.1995) by S.R. 1995/79, art. 5

#### Marginal Citations

**M10** 1988 c.1.

## 16 Destination of Class 4 contributions.

Any money paid over by the Secretary of State under section 16(5) of the Great Britain Contributions and Benefits Act (Class 4 contributions collected from Northern Ireland) shall be treated as Class 4 contributions collected by the Department for the purposes of this Act.

## 17 Exceptions, deferment and incidental matters relating to Class 4 contributions.

- (1) The Department may by regulations made with the concurrence of the Inland Revenue provide—
- (a) for excepting persons from liability to pay Class 4 contributions in accordance with section 15(1) to (3) above and section 16(1) to (3) of the Great Britain Contributions and Benefits Act; or
- (b) for deferring any person's liability,
- and may certify from time to time to the Inland Revenue the persons who are excepted from liability, or whose liability is to be deferred, and who accordingly are not required (except in accordance with the regulations) to be assessed for contributions.

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- (2) Exception from liability, or deferment, under subsection (1) above may, in particular, be by reference—
  - (a) to a person otherwise liable for contributions being under a prescribed age at the beginning of a tax year;
  - (b) to a person having attained pensionable age;
  - (c) to a person being in receipt of earnings in respect of which primary Class 1 contributions are, or may be, payable; or
  - (d) to a person not satisfying prescribed conditions as to residence or presence in the United Kingdom.
- (3) Regulations may provide for any incidental matters arising out of the payment of any Class 4 contributions recovered by the Inland Revenue, including in particular the return, in whole or in part, of such contributions in cases where—
  - (a) payment has been made in error; or
  - (b) repayment ought for any other reason to be made.
- (4) Regulations may provide for any matters arising out of the deferment of liability for Class 4 contributions under subsection (1) above, including in particular provision for the amount of a person's profits or gains (as computed in accordance with the Great Britain Contributions and Benefits Act) to be certified by the Inland Revenue to the Department and the person liable.
- (5) No such certificate as is referred to in subsection (4) above shall relate to a person's profits or gains so far as they exceed the higher of the two money sums for the time being specified in section 15(3) above.
- (6) Any regulations under subsection (3) or (4) above must be made with the concurrence of the Inland Revenue.

## 18 Class 4 contributions recoverable under regulations.

- (1) Provision may be made by regulations so that where—
  - (a) an earner, in respect of any one or more employments of his, is treated by regulations under section 2(2)(b) above as being self-employed; and
  - (b) in any tax year he has earnings from any such employment (one or more) which fall within paragraph (b)(i) of subsection (3) of section 11 above but is not liable for a higher weekly rate of Class 2 contributions by virtue of regulations under that subsection; and
  - (c) the total of those earnings exceeds [<sup>F25</sup>£6,640],
 he is to be liable, in respect of those earnings, to pay a Class 4 contribution of an amount equal to [<sup>F26</sup>7.3 per cent.] of so much of the total as exceeds [<sup>F25</sup>£6,640] and does not exceed [<sup>F25</sup>£22,880].
- (2) It shall be for the Department and not the Inland Revenue, to recover Class 4 contributions payable by virtue of regulations under this section and generally to be responsible for the relevant administration; and, in relation to contributions so payable, regulations may—
  - (a) apply any of the provisions of Schedule 1 to this Act (except a provision conferring power to make regulations); and
  - (b) make any such provision as may be made by regulations under that Schedule, except paragraph 6.



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### Textual Amendments

- F25** Words in s. 18(1) substituted (6.4.1995) by S.R. 1995/79, art. 5  
**F26** Words in s. 18(1) substituted (6.4.1994) by S.R. 1994/79, art. 5(a)

## General

### 19 General power to regulate liability for contributions.

- (1) Regulations may provide either generally or in relation to—
- (a) any prescribed category of earners; or
  - (b) earners in any prescribed category of employments,
- that their liability in a particular tax year in respect of contributions of prescribed classes is not to exceed such maximum amount or amounts as may be prescribed.
- (2) Regulations made for the purposes of subsection (1) above may provide—
- (a) for an earner whose liability is subject to a maximum prescribed under that subsection to be liable in the first instance for the full amount of any contributions due from him apart from the regulations, or to be relieved from liability for such contributions in prescribed circumstances and to the prescribed extent; and
  - (b) for contributions paid in excess of any such maximum to be repaid at such times, and in accordance with such conditions, as may be prescribed.
- (3) Regulations may provide, in relation to earners otherwise liable for contributions of any class, for excepting them from the liability for such periods, and in such circumstances, as may be prescribed.
- (4) As respects any woman who was married or a widow on 6th April 1977 (the date of the coming into force of the repeal of the old provisions that primary Class 1 contributions might be paid at a reduced rate and Class 2 contributions need not be paid by a married woman or a widow) regulations shall provide—
- (a) for enabling her to elect that her liability in respect of primary Class 1 contributions shall be a liability to contribute at such reduced rate as may be prescribed; and
  - (b) either for enabling her to elect that her liability in respect of Class 2 contributions shall be a liability to contribute at such reduced rate as may be prescribed or for enabling her to elect that she shall be under no liability to pay such contributions; and
  - (c) for enabling her to revoke any such election.
- (5) Regulations under subsection (4) above may—
- (a) provide for the making or revocation of any election under the regulations to be subject to prescribed exceptions and conditions;
  - (b) preclude a person who has made such an election from paying Class 3 contributions while the election has effect;
  - (c) provide for treating an election made or revoked for the purpose of any provision of the regulations as made or revoked also for the purpose of any other provision of the regulations;

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- (d) provide for treating an election made in accordance with regulations under section 125(2) of the 1975 Act as made for the purpose of regulations under subsection (4) above.
- (6) Regulations may provide for earnings factors to be derived, for such purposes as may be prescribed, as follows, that is to say—
  - (a) in the case of earnings factors for 1987-88 or any subsequent tax year—
    - (i) from earnings upon which primary Class 1 contributions are paid at a reduced rate by virtue of regulations under subsection (4) above; or
    - (ii) from Class 2 contributions paid at a reduced rate by virtue of such regulations; and
  - (b) in the case of earnings factors for any earlier tax year, from contributions which are paid at a reduced rate by virtue of regulations under subsection (4) above;

and if provision is made for a person to have earnings factors so derived for the purpose of establishing entitlement to any benefit, the regulations may, in relation to that person, vary or add to the requirements for entitlement to that benefit.

VALID FROM 10/03/1999

**[<sup>F27</sup>19A Class 1, 1A or 1B contributions paid in error.**

- (1) This section applies where—
  - (a) payments by way of Class 1, Class 1A or Class 1B contributions are made in respect of earnings paid to or for the benefit of an earner (or in respect of a benefit made available to an earner) in 1998-99 or a subsequent tax year (“year 1”);
  - (b) the payments are made in error, in that the employment from which the earnings are derived (or by reason of which the benefit is made available) is not employed earner’s employment; and
  - (c) the person making the payments has not been notified of the error by the Department before the end of the tax year following year 1 (“year 2”).
- (2) After the end of year 2 the earner shall, except in such circumstances as may be prescribed, be treated for all purposes relating to—
  - (a) contributions and contributory benefits; and
  - (b) statutory sick pay and statutory maternity pay,
 as if the earnings were derived from (or the benefit were made available by reason of) employed earner’s employment.]

**Textual Amendments**

**F27** S. 19A inserted (10.3.1999 for specified purposes and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 51; S.R. 1999/102, art. 2(b), Sch. Pt. II

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## PART II

### CONTRIBUTORY BENEFITS

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

- C13** Pt. II (ss. 20-62) excluded (13.1.1993) by S.R. 1979/242, **reg. 4(1)** (as substituted (13.1.1993) by S.R. 1992/557, **reg. 3**).
- C14** Pt. II (ss. 20-62): power to apply conferred (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 161, 168(4), **Sch. 6 para. 1(3)(a)**.
- C15** Pt. II: power to amend or modify conferred (1.12.1999) by S.I. 1999/3147 (N.I. 11), **art. 49(2)(3)**
- C16** Pt. II modified (*temp.* from 1.12.1999 to 5.10.2002) by S.I. 1999/3147 (N.I. 11), **art. 49(7)(a)** (the *temp.* modification lapsing on the coming into operation of S.R. 2001/441, which modifies specified provisions of Pt. II, on 6.10.2002)

#### Preliminary

### 20 Descriptions of contributory benefits.

- (1) Contributory benefits under this Part of this Act are of the following descriptions, namely—
- (a) unemployment benefit (with increase for adult and, where the beneficiary is over pensionable age, child dependants);
  - [<sup>F28</sup>(b) incapacity benefit, comprising—
    - (i) short-term incapacity benefit; and
    - (ii) long-term incapacity benefit;]
  - (d) maternity allowance (with increase for adult dependants);
  - (e) widow's benefit, comprising—
    - (i) widow's payment;
    - (ii) widowed mother's allowance (with increase for child dependants);
    - (iii) widow's pension;
  - (f) retirement pensions of the following categories—
    - (i) Category A, payable to a person by virtue of his own contributions (with increase for adult and child dependants); and
    - (ii) Category B, payable to a woman by virtue of her husband's contributions or payable to a man by virtue of his late wife's contributions (with increase for child dependants);
  - (g) for existing beneficiaries only, child's special allowance.
- (2) In this Act—
- “long-term benefit” means—
    - (a) [<sup>F29</sup>long-term incapacity benefit;]
    - (b) a widowed mother's allowance;
    - (c) a widow's pension; and
    - (d) a Category A or Category B retirement pension; and
  - “short-term benefit” means—
    - (a) unemployment benefit;
  - [<sup>F30</sup>(b) short-term incapacity benefit; and]

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(c) maternity allowance.

- (3) The provisions of this Part of this Act are subject to the provisions of [<sup>F31</sup>Chapter II of Part III of the Pensions Act (reduction in state scheme contributions and social security benefits for members of certified schemes)].

#### Textual Amendments

- F28** S. 20(1)(b) substituted for s. 20(1)(b)(c) (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 2(2)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F29** S. 20(2): para. (a) in definition substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 2(3)(a)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F30** S. 20(2): para. (b) in definition substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 2(3)(b)**; S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F31** Words in s. 20(3) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 30**; S.R. 1994/17, **art. 2**

## 21 Contribution conditions.

- (1) Entitlement to any benefit specified in section 20(1) above, [<sup>F32</sup>other than long-term incapacity benefit under section 30A below or short-term or long-term incapacity benefit under section 40 or 41 below], depends on contribution conditions being satisfied (either by the claimant or by some other person, according to the particular benefit).
- (2) The class or classes of contribution which, for the purposes of subsection (1) above, are relevant in relation to each of those benefits are as follows—

#### *Short-term benefit*

Unemployment benefit	Class 1
[ <sup>F33</sup> Short-term incapacity benefit under section 30A below]	Class 1 or 2
Maternity allowance	Class 1 or 2
<i>Other benefits</i>	
Widow's payment	Class 1, 2 or 3
Widowed mother's allowance	Class 1, 2 or 3
Widow's pension	Class 1, 2 or 3
Category A retirement pension	Class 1, 2 or 3
Category B retirement pension	Class 1, 2 or 3
Child's special allowance	Class 1, 2 or 3

- (3) The relevant contribution conditions in relation to the benefits specified in subsection (2) above are those specified in Part I of Schedule 3 to this Act.
- (4) Part II of Schedule 3 to this Act shall have effect as to the satisfaction of contribution conditions for benefit, other than maternity allowance, in certain cases where a claim for short-term benefit or a widow's payment is, or has on a previous occasion been,

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made in the first or second year after that in which the contributor concerned first became liable for primary Class 1 or Class 2 contributions.

- (5) In subsection (4) above and Schedule 3 to this Act—
- (a) “the contributor concerned”, for the purposes of any contribution condition, means the person by whom the condition is to be satisfied;
  - (b) “a relevant class”, in relation to any benefit, means a class of contributions specified in relation to that benefit in subsection (2) above;
  - (c) “the earnings factor”—
    - (i) where the year in question is 1987-88 or any subsequent tax year, means, in relation to a person, the aggregate of his earnings factors derived from all his earnings upon which primary Class 1 contributions have been paid or treated as paid and from his Class 2 and Class 3 contributions; and
    - (ii) where the year in question is any earlier tax year, means, in relation to a person’s contributions of any class or classes, the aggregate of his earnings factors derived from all those contributions;
  - (d) except in the expression “benefit year”, “year” means a tax year.
- (6) In this Part of this Act “benefit year” means a period—
- (a) beginning with the first Sunday in January in any calendar year, and
  - (b) ending with the Saturday immediately preceding the first Sunday in January in the following calendar year;

but for any prescribed purposes of this Part of this Act “benefit year” may by regulations be made to mean such other period (whether or not a period of 12 months) as may be specified in the regulations.

#### Textual Amendments

- F32** Words in s. 21(1) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 3(2)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F33** Words in s. 21(2) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 3(3)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

## 22 Earnings factors.

- (1) A person shall, for the purposes specified in subsection (2) below, be treated as having annual earnings factors derived—
- (a) in the case of 1987-88 or any subsequent tax year, from those of his earnings upon which primary Class 1 contributions have been paid or treated as paid and from Class 2 and Class 3 contributions; and
  - (b) in the case of any earlier tax year, from his contributions of any of Classes 1, 2 and 3;
- but subject to the following provisions of this section and those of section 23 below.
- (2) The purposes referred to in subsection (1) above are those of—
- (a) establishing, by reference to the satisfaction of contribution conditions, entitlement to any benefit specified in section 20(1) above, other than maternity allowance; and
  - (b) calculating the additional pension in the rate of a long-term benefit.

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- (3) Separate earnings factors may be derived for 1987-88 and subsequent tax years—
- (a) from earnings upon which primary Class 1 contributions have been paid or treated as paid;
  - (b) from earnings which have been credited;
  - (c) from contributions of different classes paid or credited in the same tax year;
  - (d) by any combination of the methods mentioned in paragraphs (a) to (c) above,
- and may be derived for any earlier tax year from contributions of different classes paid or credited in the same tax year, and from contributions which have actually been paid, as opposed to those not paid but credited.
- (4) Subject to regulations under section 19(4) to (6) above, no earnings factor shall be derived—
- (a) for 1987-88 or any subsequent tax year, from earnings upon which primary Class 1 contributions are paid at the reduced rate, or
  - (b) for any earlier tax year, from primary Class 1 contributions paid at the reduced rate or from secondary Class 1 contributions.
- (5) Regulations may provide for crediting—
- (a) for 1987-88 or any subsequent tax year, earnings or Class 2 or Class 3 contributions, or
  - (b) for any earlier tax year, contributions of any class,
- for the purpose of bringing a person's earnings factor for that tax year to a figure which will enable him to satisfy contribution conditions of entitlement to any prescribed description of benefit (whether his own entitlement or another person's).
- (6) Regulations may impose limits with respect to the earnings factors which a person may have or be treated as having in respect of any one tax year.
- (7) The <sup>M11</sup>power to amend regulations made before 30th March 1977 (the making of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977) under subsection (5) above may be so exercised as to restrict the circumstances in which and the purposes for which a person is entitled to credits in respect of weeks before the coming into force of the amending regulations; but not so as to affect any benefit for a period before the coming into force of the amending regulations if it was claimed before 18th March 1977.

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

C17 S. 22 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

**Marginal Citations**

M11 S.I. 1977/610 (N.I. 11).

**23 Provisions supplemental to ss. 21 and 22.**

- (1) Earnings factors derived as mentioned in section 22(1)(a) above, including earnings factors as increased by any order under section 130 of the Administration Act—
- (a) shall be expressed, subject to subsection (2) below, as whole numbers of pounds; and

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- (b) shall be made ascertainable from tables or rules to be drawn up by the Department and embodied in regulations.
- (2) Subsection (1) above does not require earnings factors in respect of the tax year 1978-79 or any subsequent tax year which have been revalued for the purpose of calculating guaranteed minimum pensions under the Pensions Order [<sup>F34</sup>or the Pensions Act] to be expressed as whole numbers of pounds.
- (3) The tables and rules referred to in subsection (1) above shall be drawn up so that, in general—
- (a) in respect of the tax year 1987-88 and any subsequent tax year, the amount of earnings upon which primary Class 1 contributions have been paid or treated as paid gives rise, subject to subsection (4) below, to an earnings factor for that year equal or approximating to the amount of those earnings; and
- (b) any number of Class 2 or Class 3 contributions in respect of a tax year gives rise to an earnings factor for that tax year equal or approximating to that year's lower earnings limit for Class 1 contributions multiplied by the number of contributions.
- (4) The Department may by regulations make such modifications of subsection (3)(a) above as appear to the Department to be appropriate in consequence of section 8(2) above.

#### Textual Amendments

**F34** Words in s. 23(2) inserted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para.31**; S.R. 1994/17, **art. 2**

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

**C18** S. 23 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, **art. 2**

## 24 Records of earnings and calculation of earnings factors in absence of records.

- (1) Regulations may provide for requiring persons to maintain, in such form and manner as may be prescribed, records of such earnings paid by them as are relevant for the purpose of calculating earnings factors, and to retain such records for so long as may be prescribed.
- (2) Where the Department is satisfied that records of earnings relevant for the purpose of calculating a person's earnings factors for the tax year 1987-88 or any subsequent tax year have not been maintained or retained or are otherwise unobtainable, then, for the purpose of determining those earnings factors, the Department may—
- (a) compute, in such manner as it thinks fit, an amount which shall be regarded as the amount of that person's earnings on which primary Class 1 contributions have been paid or treated as paid; or
- (b) take the amount of those earnings to be such sum as it may specify in the particular case.



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## *Unemployment benefit*

### **25 Unemployment benefit.**

- (1) Subject to the provisions of this section, a person who satisfies any of the three conditions of subsection (2) below shall be entitled to unemployment benefit in respect of any day of unemployment which forms part of a period of interruption of employment.
- (2) The conditions of this subsection are that—
  - (a) the person is under pensionable age on the day in question and satisfies the contribution conditions specified for unemployment benefit in Schedule 3, Part I, paragraph 1;
  - (b) on that day the person—
    - (i) is over pensionable age, but not more than 5 years over that age; and
    - (ii) would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or
  - (c) on that day the person—
    - (i) is over pensionable age, but not more than 5 years over that age; and
    - (ii) would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.
- (3) A person shall not be entitled to unemployment benefit for the first three days of any period of interruption of employment.
- (4) In the case of a person entitled under paragraph (a) of subsection (2) above unemployment benefit shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 1.
- (5) In the case of any person over pensionable age who is entitled under paragraph (b) or (c) of subsection (2) above, unemployment benefit shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable; but in determining that rate for the purposes of this subsection any increase specified in subsection (6) below shall be disregarded.
- (6) The increases to be disregarded for the purposes of subsection (5) above are the following—
  - (a) any increase (for [<sup>F35</sup>incapacity]) under section 47(1) below;
  - (b) any increase (for married women) under section 53(2) below or (for deferred entitlement) under Schedule 5 to this Act;
  - (c) any increase (for dependants) under section 80, 83 or 85 below;
  - (d) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act which corresponds to an increase under section 150 of the Great Britain Administration Act [<sup>F36</sup>of the sums mentioned in subsection (1)(e) of that section].
- (7) The amount payable by way of benefit under this section for any day of unemployment or of incapacity for work shall be one sixth of the appropriate weekly rate.

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### Textual Amendments

- F35** Word in s. 25(6)(a) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 4(a)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F36** Words in s. 25(6)(d) inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 4(b)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

## [<sup>F37</sup> 25A Determination of days for which unemployment benefit is payable.

- (1) For the purposes of any provisions of this Act relating to unemployment benefit—
- (a) subject to the provisions of this Act, a day shall not be treated in relation to any person as a day of unemployment unless on that day—
    - (i) he is capable of work; and
    - (ii) he is, or is deemed in accordance with regulations to be, available to be employed in employed earner's employment; and that day falls in a week in which he is, or is deemed in accordance with regulations to be, actively seeking such employment;
  - (b) where a person is an employed earner and his employment as such has not been terminated, then in any week a day on which in the normal course that person would not work in that employment or in any other employed earner's employment shall not be treated as a day of unemployment unless each other day in that week (other than the day referred to in paragraph (e) below) on which in the normal course he would so work is a day of interruption of employment;
  - (c) "day of interruption of employment" means a day which is a day of unemployment or of incapacity for work;
  - (d) the following periods, namely—
    - (i) any 2 days of unemployment, whether consecutive or not, within a period of 6 consecutive days;
    - (ii) any 4 or more consecutive days of incapacity for work,shall be treated as a period of interruption of employment, and any 2 such periods not separated by a period of more than 8 weeks ("week" for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment;
  - (e) Sunday or such other day in each week as may be prescribed shall not be treated as a day of unemployment and shall be disregarded in computing any period of consecutive days.
- (2) For the purposes of any provision of this Act relating to unemployment benefit, references to a day or period of incapacity for work have the same meaning as they have for the purposes of incapacity benefit.
- (3) Regulations may—
- (a) make provision (subject to subsections (1) and (2) above) as to the days which are or are not to be treated for the purposes of unemployment benefit as days of unemployment;
  - (b) make provision with respect to—
    - (i) steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner's employment in that week;

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- (ii) the meaning of “week” in subsection (1)(a) above or in any other provision relating to a person’s actively seeking employed earner’s employment;
- (c) prescribe respective circumstances in which, for the purposes of subsection (1)(b) above—
  - (i) employment which has not been terminated may be treated as if it had been terminated; or
  - (ii) a day which falls in a period when an employed earner’s employment is suspended but does not fall to be so treated and which, apart from the regulations, would not fall to be treated as a day of interruption of employment may be treated as such a day.
- (4) Where it has been determined that a person is to be deemed in accordance with regulations to be available for employment in employed earner’s employment in respect of any day, the question of his actual availability for such employment in respect of that day may be subsequently determined on a review of the determination as to his deemed availability.
- (5) Where it has been determined that a person is to be deemed in accordance with regulations to be actively seeking employed earner’s employment in any week, the question of his actually doing so in that week may be subsequently determined on a review of the determination as to his deemed doing so.
- (6) If regulations under paragraph (a) of subsection (3) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—
  - (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
  - (b) for calculating or estimating that person’s level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
  - (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

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

#### Textual Amendments

**F37** S. 25A inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 5**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

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

**C19** S. 25A(1)(3) amended (13.4.1995) by 1992 c. 7, s. 25B (as inserted by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 5**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**)

**C20** S. 25A(1)(d): power to amend conferred (13.4.1995) by 1992 c. 7, s. 25B (as inserted by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 5**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**)

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

- (1) Subsections (1) and (3) of section 25A above shall, on and after such day as the Department may by order appoint, have effect—
  - (a) with the substitution for subsection (1)(b) of the following paragraph—
    - (b) where a person is an employed earner and his employment as such has not been terminated but has been suspended by the employer, a day shall not be treated in relation to that person as a day of unemployment unless it is the 7th or a later day in a continuous period of days on which that suspension has lasted, there being disregarded for the purposes of determining the first 6 days of the period (but for no other purpose)—
      - (i) Sunday or such other day in each week as may have been prescribed under paragraph (e) of this subsection;
      - (ii) any day of recognised or customary holiday in connection with the suspended employment;
      - (iii) such other day or days as may be prescribed;
  - (b) with the substitution for subsection (3)(c) of the following paragraph—
    - (c) prescribe respective circumstances in which for the purposes of subsection (1)(b) above an employed earner’s employment may be treated—
      - (i) as having been or, as the case may be, as not having been terminated;  
or
      - (ii) as having been or, as the case may be, as not having been suspended.
- (2) Regulations may provide—
  - (a) that paragraph (d) of section 25A(1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations; and
  - (b) that sub-paragraph (ii) of that paragraph shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days, as may be specified in the regulations.
- (3) Regulations under subsection (2)(b) above may be made to have effect from such date, not earlier than 14th September 1980, as may be specified in the regulations.]

## **26 Duration of unemployment benefit.**

- (1) A person who, in respect of any period of interruption of employment, has been entitled to unemployment benefit for 312 days shall not thereafter be entitled to that benefit for any day of unemployment (whether in the same or a subsequent period of interruption of employment) unless before that day he has requalified for benefit.
- (2) A person who has exhausted his right to unemployment benefit requalifies for it on the next occasion when, having again been in employment as an employed earner, he makes a claim for that benefit in circumstances such that the requalification conditions are satisfied with respect to each of at least 13 weeks in the period of 26 weeks immediately preceding—
  - (a) the day on which the claim is made, or
  - (b) if he would not requalify by reference to that day, his first day of unemployment since he was last in employment as an employed earner.

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- (3) For the purposes of subsection (2) above the requalification conditions are satisfied with respect to any week if—
  - (a) the person in question has been in employment as an employed earner in that week;
  - (b) he has worked in such employment for at least 16 hours in that week; and
  - (c) the week begins after the last day for which he was entitled to unemployment benefit.
- (4) Subsection (2) above shall have effect in prescribed cases with the substitution for the reference to 26 weeks of a reference to such longer period as may be prescribed.
- (5) Where a person requalifies for unemployment benefit, subsection (1) above shall again apply to him but, in a case where the period of interruption of employment in which he exhausted his right to that benefit continues after his requalification, as if the part before and the part after his requalification were distinct periods of interruption of employment.
- (6) Regulations may provide for a person who would be entitled to unemployment benefit but for the operation of any provision of this Act or of regulations disentitling him to it or disqualifying him for it to be treated as if entitled to it for the purposes of this section.

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

- (1) Subject to the following provisions of this section—
  - (a) an employed earner who has lost employment as an employed earner by reason of a stoppage of work due to a trade dispute at his place of employment is disqualified for receiving unemployment benefit for any day during the stoppage unless he proves that he is not directly interested in the dispute; and
  - (b) an employed earner who has withdrawn his labour in furtherance of a trade dispute, but does not fall within paragraph (a) above, is disqualified for receiving unemployment benefit for any day on which his labour remains withdrawn.
- (2) A person disqualified under subsection (1)(a) above for receiving unemployment benefit shall cease to be so disqualified if he proves that during the stoppage—
  - (a) he has become bona fide employed elsewhere;
  - (b) his employment has been terminated by reason of redundancy within the meaning of section 11(2) of the <sup>M12</sup>Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965; or
  - (c) he has bona fide resumed employment with his employer but has subsequently left for a reason other than the trade dispute.
- (3) In this Act—
  - (a) “place of employment” in relation to any person, means the factory, workshop, farm or other premises or place at which he was employed, so however that, where separate branches of work which are commonly carried on as separate businesses in separate premises or at separate places are in any case carried on in separate departments on the same premises or at the same place, each of those departments shall for the purposes of this paragraph be deemed to be a separate factory or workshop or farm or separate premises or a separate place, as the case may be;

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- (b) “trade dispute” means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.

#### Marginal Citations

M12 1965 c. 19 (N.I.).

## 28 Unemployment benefit - other disqualifications, etc.

- (1) Subject to section 29 below a person shall be disqualified for receiving unemployment benefit for such period not exceeding 26 weeks as may be determined in accordance with Part II of the Administration Act if—
- (a) he has lost his employment as an employed earner through his misconduct, or has voluntarily left such employment without just cause;
  - (b) after a situation in any employment has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him;
  - (c) he has without good cause neglected to avail himself of a reasonable opportunity of employment;
  - (d) he has without good cause refused or failed to carry out any official recommendations given to him with a view to assisting him to find employment, being recommendations which were reasonable having regard to his circumstances and to the means of obtaining that employment usually adopted in the district in which he resides;
  - (e) he has lost his place on an approved training scheme through his misconduct, or has voluntarily left such a place without good cause;
  - (f) after a place on an approved training scheme has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that place or refused to accept that place when offered to him; or
  - (g) he has without good cause neglected to avail himself of a reasonable opportunity of a place on an approved training scheme.
- (2) The Department may by order substitute a shorter period for the period for the time being mentioned in subsection (1) above.
- (3) Regulations may also provide for imposing, in the case of any prescribed category of persons—
- (a) additional conditions with respect to the receipt of unemployment benefit; and
  - (b) restrictions on the rate and duration of unemployment benefit,
- if, having regard to special circumstances, it appears to the Department necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.
- (4) For the purposes of this section a person who has been dismissed by his employer by reason of redundancy within the meaning of section 11(2) of the <sup>M13</sup>Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 after

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volunteering or agreeing so to be dismissed shall not be deemed to have left his employment voluntarily.

(5) For the purposes of subsection (1) above regulations may—

- (a) prescribe matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
- (b) prescribe circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission;

but, subject to any such regulations, in determining for the purposes of that subsection whether a person does or does not have good cause for any act or omission, there shall be disregarded any matter relating to the level of remuneration in the employment in question.

(6) For the purposes of this section—

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

#### Marginal Citations

M13 1965 c. 19 (N.I.).

## 29 Exemptions from disqualification for unemployment benefit.

(1) Nothing in section 28 above or in regulations under that section shall be taken to disqualify a person for receiving unemployment benefit by reason only of his refusal—

- (a) to seek or accept employment in a situation which is vacant in consequence of a stoppage of work due to a trade dispute; or
- (b) to seek or accept during the permitted period any employment other than employment in his usual occupation at a level of remuneration not lower than he is accustomed to receive.

(2) Regulations shall make provision for the purpose of enabling any person of a prescribed description to accept any employed earner’s employment without being disqualified under—

- (a) subsection (1)(a) of section 28 above, so far as it relates to a person who voluntarily leaves such employment without just cause, or
- (b) subsection (1)(c) of that section,



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should he leave that employment voluntarily and without just cause at any time after the end of the 6th week, but not later than the end of the 12th week, of a trial period.

(3) In this section—

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

- (a) the day on which any such period shall be regarded as having commenced in any case;
- (b) the shortest and longest periods which may be so determined in any case; and
- (c) criteria to which the adjudication officer is to have regard in determining the permitted period in any case;

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

- (a) make provision for the purpose of determining the day on which a person’s employment is to be regarded as commencing; and
- (b) provide that, for the purpose of determining the time at which the 6th or 12th week of a trial period ends, prescribed periods may be disregarded in prescribed circumstances.

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

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

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

- (a) initially against so much of the benefit as falls to be paid by virtue of section 25(4) or (5) above or of regulations under section 60 below;
- (b) then against any increase in the benefit payable under section 82 below; and
- (c) finally against any increase in the benefit payable under section 80 below.

(3) Regulations may provide—

- (a) for such sums as are specified in or determined under the regulations to be disregarded for the purposes of this section;
- (b) for securing that no reduction in pursuance of subsection (1) above is made in the unemployment benefit for any day before the day which in pursuance of the regulations is treated as that on which relevant payments by way of occupational or personal pension begin;
- (c) for this section to apply, in cases where—
  - (i) a lump sum is paid to a person in connection with a former employment of his or arrangements are made for a lump sum to be so paid;

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- (ii) benefits of any description are made available to a person in connection with a former employment of his or arrangements are made for them to be made so available; or
  - (iii) payments by way of occupational or personal pension to a person are assigned, reduced or postponed or are made otherwise than weekly, as if there were made to the person such weekly payments by way of occupational or personal pension as are specified in or determined under the regulations;
  - (d) for the method of determining whether payments by way of occupational or personal pension are made to a person for any week and the amount of any such payments which are so made;
  - (e) for [<sup>F38</sup>sections 25A(1) and 26(1) above] to have effect, in relation to a person whose rate of unemployment benefit is reduced by virtue of this section, with such modifications as are prescribed.
- (4) In this section—
- “employer” means—
    - (a) in relation to an employment under a contract of service, the employer under the contract;
    - (b) in relation to an employment in an office with emoluments, the person responsible for paying the emoluments;
  - “employment” means an employment under a contract of service or in an office with emoluments;
  - “modifications” includes additions, omissions and amendments;
- and the reference in subsection (1) above to unemployment benefit includes any increase of the benefit on account of dependants.

#### Textual Amendments

**F38** Words in s. 30(3)(e) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 6**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### *[<sup>F39</sup>Incapacity benefit]*

#### Textual Amendments

**F39** S. 30A and preceding cross-heading inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 3(1); S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### [<sup>F40</sup>30A Incapacity benefit: entitlement.

- (1) Subject to the following provisions of this section, a person who satisfies either of the following conditions is entitled to short-term incapacity benefit in respect of any day of incapacity for work which forms part of a period of incapacity for work.
- (2) The conditions are that—
  - (a) he is under pensionable age on the day in question and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, paragraph 2; or

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- (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—
  - (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or
    - (ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.
- (3) A person is not entitled to short-term incapacity benefit for the first 3 days of any period of incapacity for work.
- (4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.
- (5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.]

#### Textual Amendments

**F40** S. 30A and preceding cross-heading inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 3(1); S.R. 1994/450, art. 2(d), Sch. Pt. IV

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

**C21** S. 30A(4) modified (13.4.1995) by S.R. 1995/35, reg. 4

### [<sup>F41</sup>30B Incapacity benefit: rate.

- (1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.
- (2) Subject to the following provisions of this section the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.

The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

- (3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.

But in determining that rate any increase of the following descriptions shall be disregarded—

- (a) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;
- (b) any increase (for dependants) under section 80, 83 or 85 below; and
- (c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating of benefits) which corresponds to

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an increase of the sums mentioned in section 150(1)(e) of the Great Britain Administration Act.

- (4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—
- (a) is terminally ill; or
  - (b) is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.

For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

- (5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.
- (6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.
- (7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.

For this purpose “the qualifying date” means the first day of the period of incapacity for work or such earlier day as may be prescribed.]

#### Textual Amendments

**F41** S. 30B inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 4(1)**; S.R. 1994/450, art. 2(b), **Sch. Pt. II**

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

**C22** S. 30B modified (13.4.1995) by S.R. 1995/35, **regs. 12, 13(1)(2), 14, 19, 20**

**C23** S. 30B(2)(4) modified (13.4.1995) by S.R. 1995/35, **reg. 4**

**C24** S. 30B(5) applied (1.5.1995) by 1994 c. 9, **s. 139(6)** (as inserted by 1995 c. 4, **s. 141(3)**)

### [<sup>F42</sup>30C Incapacity benefit: days and periods of incapacity for work.

- (1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—
- (a) a day of incapacity for work means a day on which a person is incapable of work;
  - (b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and
  - (c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.

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- (2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.
- (3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.
- (4) Regulations may provide—
  - (a) that paragraph (b) of subsection (1) above shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be specified in the regulations; and
  - (b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be specified in the regulations.
- (5) Where—
  - (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
  - (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
  - (c) he qualified for a disability working allowance for that week by virtue of the higher rate of short-term incapacity benefit, or long-term incapacity benefit under section 30A above, having been payable to him; and
  - (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

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

- (6) Where—
  - (a) a person becomes engaged in training for work; and
  - (b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged; and
  - (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

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

#### Textual Amendments

**F42** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), art. 5(1); S.R. 1994/450, art. 2(b), Sch. Pt. II

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

**C25** S. 30C modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), arts. 1(3), 73(8)(b)

### [<sup>F43</sup>30D Incapacity benefit: construction of references to days of entitlement.

- (1) The following provisions have effect in calculating for the purposes of—
- section 30A(4) above (length of entitlement to short-term incapacity benefit);
  - section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);
  - section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and
  - section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),
- the number of days for which a person has been entitled to short-term incapacity benefit.
- (2) There shall be included—
- the first 3 days of the period of incapacity for work; and
  - in the case of a woman, any days for which she was entitled to maternity allowance.
- (3) There shall also be included such days as may be prescribed in respect of which a person was entitled to statutory sick pay, and on the first of which he satisfied the contribution conditions for short-term incapacity benefit.
- (4) There shall be excluded any days in respect of which a person was disqualified for receiving incapacity benefit.]

#### Textual Amendments

**F43** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), art. 5(1); S.R. 1994/450, art. 2(b), Sch. Pt. II

VALID FROM 03/11/2000

### [<sup>F44</sup>30DD Incapacity benefit: reduction for pension payments.

- (1) Where—
- a person is entitled to incapacity benefit in respect of any period of a week or part of a week,

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- (b) a pension payment is payable to him in respect of that period (or a period which forms part of that period or includes that period or part of it), and
  - (c) the amount of that payment (or, as the case may be, the amount which in accordance with regulations is to be taken as payable to him by way of pension payments in respect of that period) exceeds the threshold,
- the amount of that benefit shall be reduced by an amount equal to 50 per cent. of that excess.
- (2) In subsection (1) above “the threshold” means—
- (a) if the period in question is a week, £85 or such greater amount as may be prescribed; or
  - (b) if that period is not a week, such proportion of the amount mentioned in paragraph (a) as falls to be calculated in accordance with regulations on such basis as may be prescribed.
- (3) Regulations may secure that a person of any prescribed description does not suffer any reduction under subsection (1) above in any amount of incapacity benefit to which he is entitled.
- (4) Regulations may provide—
- (a) for sums of any specified description to be disregarded for the purposes of this section;
  - (b) for sums of any specified description to be treated for those purposes as payable to persons as pension payments (including, in particular sums in relation to which there is a deferred right of receipt);
  - (c) for the aggregation of sums of any specified description which are payable as pension payments (or treated as being so payable) in respect of the same or different periods;
  - (d) for such sums or aggregate sums to be apportioned between or otherwise allocated to periods in respect of which persons are entitled to incapacity benefit.
- (5) In this section “pension payment” means—
- (a) a periodical payment made in relation to a person under a personal pension scheme or, in connection with the coming to an end of an employment of his, under an occupational pension scheme or a public service pension scheme;
  - (b) a payment of any specified description, being a payment made under an insurance policy providing benefits in connection with physical or mental illness, disability, infirmity or defect; or
  - (c) a payment of any other specified description;
- and “specified” means prescribed by or determined in accordance with regulations under this section.
- (6) For the purposes of subsection (5) above
- “occupational pension scheme”, “personal pension scheme” and “public service pension scheme” each has the meaning given by section 1 of the <sup>M14</sup>Pension Schemes (Northern Ireland) Act 1993, except that
- “personal pension scheme” includes a contract or trust scheme approved under Chapter III of Part XIV of the <sup>M15</sup>Income and Corporation Taxes Act 1988 (retirement annuities).]



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**Textual Amendments**

**F44** S. 30DD inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 60; S.R. 2000/332, art. 2(3)(b)(4)(5)

**Marginal Citations**

**M14** 1993 c. 49.

**M15** 1988 c. 1.

[<sup>F45</sup>**30E Incapacity benefit: reduction for councillor’s allowance.**

- (1) Where the net amount of councillor’s allowance to which a person is entitled in respect of any week exceeds such amount as may be prescribed, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.
- (2) In this section “councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a member of a district council as may be prescribed for the purposes of this section; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments.
- (3) In subsection (1) above “net amount”, in relation to any councillor’s allowance to which a person is entitled, means the aggregate amount of the councillor’s allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question.]

**Textual Amendments**

**F45** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), art. 5(1); S.R. 1994/450, art. 2(b), Sch. Pt. II

*Sickness benefit*

<sup>F46</sup>**31** .....

**Textual Amendments**

**F46** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV

<sup>F47</sup>**32** .....

**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.  
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**Textual Amendments**

**F47** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Invalidity benefits*

**F48** **33** .....

**Textual Amendments**

**F48** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F49** **34** .....

**Textual Amendments**

**F49** Ss. 31-34 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 7, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Maternity*

**35 State maternity allowance.**

- (1) A woman shall be entitled to a maternity allowance at [<sup>F50</sup>the appropriate weekly rate determined under subsection (1A) below], if—
- (a) she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
  - (b) she has been engaged in employment as an employed or self-employed earner for at least 26 weeks in the [<sup>F51</sup>66 weeks immediately preceding] the expected week of confinement; and
  - (c) she satisfies the contribution condition for a maternity allowance specified in Schedule 3, Part I, paragraph 3; and
  - (d) she is not entitled to statutory maternity pay for the same week in respect of the same pregnancy.

[<sup>F52</sup>(1A) For the purposes of subsection (1) above the appropriate weekly rate is—

- (a) in the case of a woman who is engaged in employment as an employed earner in the week immediately preceding the 14th week before the expected week of confinement, a weekly rate equal to the lower rate of statutory maternity pay for the time being prescribed under section 162(3) below or the weekly rate specified in Schedule 4, Part I, paragraph 4, whichever is the higher; and
- (b) in any other case, the weekly rate specified in Schedule 4, Part I, paragraph 4.]

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- (2) Subject to the following provisions of this section, a maternity allowance shall be payable for the period (“the maternity allowance period”) which, if she were entitled to statutory maternity pay, would be the maternity pay period under section 161 below.
- (3) Regulations may provide—
- (a) for disqualifying a woman for receiving a maternity allowance if—
    - (i) during the maternity allowance period she does any work in employment as an employed or self-employed earner, or fails without good cause to observe any prescribed rules of behaviour; or
    - (ii) at any time before she is confined she fails without good cause to attend for, or submit herself to, any medical examination required in accordance with the regulations;
  - (b) that this section and Schedule 3, Part I, paragraph 3 shall have effect subject to prescribed modifications in relation to cases in which a woman has been confined and—
    - (i) has not made a claim for a maternity allowance in expectation of that confinement (other than a claim which has been disallowed); or
    - (ii) has made a claim for a maternity allowance in expectation of that confinement (other than a claim which has been disallowed), but she was confined more than 11 weeks before the expected week of confinement.
  - <sup>F53</sup>(c) that subsection (2) above shall have effect subject to prescribed modifications in relation to cases in which a woman fails to satisfy the conditions referred to in subsection (1)(b) and (c) above at the commencement of the 11th week before the expected week of confinement, but subsequently satisfies those conditions at any time before she is confined.]
- (4) A woman who has become entitled to a maternity allowance shall cease to be entitled to it if she dies before the beginning of the maternity allowance period; and if she dies after the beginning, but before the end, of that period, the allowance shall not be payable for any week subsequent to that in which she dies.
- (5) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of a maternity allowance—
- (a) Sunday or such other day in each week as may be prescribed shall be disregarded; and
  - (b) the amount payable by way of that allowance for any other day shall be taken as one sixth of the weekly rate of the allowance.
- (6) In this section “confinement” means—
- (a) labour resulting in the issue of a living child, or
  - (b) labour after <sup>F54</sup>24 weeks] of pregnancy resulting in the issue of a child whether alive or dead,
- and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them.
- (7) The fact that the mother of a child is being paid maternity allowance shall not be taken into consideration by any court in deciding whether to order payment of expenses incidental to the birth of the child.

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### Textual Amendments

- F50** Words in s. 35(1) substituted (in accordance with reg. 1(2)(3) of the amending S.R.) by S.R. 1994/176, **reg. 2(1)(a)**
- F51** Words in s. 35(1)(b) substituted (in accordance with reg. 1(2)(3) of the amending S.R.) by S.R. 1994/176, **reg. 2(1)(b)**
- F52** S. 35(1A) inserted (in accordance with reg. 1(2)(3) of the amending S.R.) by S.R. 1994/176, **reg. 2(2)**
- F53** S. 35(3)(c) added (in accordance with reg. 1(2)(3) of the amending S.R.) by S.R. 1994/176, **reg. 2(3)**
- F54** Words in s. 35(6) substituted (1.10.1992) by S.I. 1992/1310, **art. 4(a)**.

VALID FROM 12/01/2000

### [<sup>F55</sup>35A Appropriate weekly rate of maternity allowance.

- (1) For the purposes of section 35(1) above the appropriate weekly rate is that specified in whichever of subsection (2) or (3) below applies.
- (2) Where the woman's average weekly earnings are not less than the lower earnings limit for the relevant tax year, the appropriate weekly rate is a weekly rate equal to the lower rate of statutory maternity pay for the time being prescribed under section 162(3) below.
- (3) Where the woman's average weekly earnings—
  - (a) are less than the lower earnings limit for the relevant tax year, but
  - (b) are not less than the maternity allowance threshold for that tax year,
 the appropriate weekly rate is a weekly rate equivalent to 90 per cent. of her average weekly earnings or (if lower) the rate specified in subsection (2) above.
- (4) For the purposes of this section a woman's "average weekly earnings" shall be taken to be the average weekly amount (as determined in accordance with regulations) of specified payments which—
  - (a) were made to her or for her benefit as an employed earner, or
  - (b) are (in accordance with regulations) to be treated as made to her or for her benefit as a self-employed earner,
 during the specified period.
- (5) Regulations may, for the purposes of subsection (4) above, provide—
  - (a) for the amount of any payments falling within paragraph (a) or (b) of that subsection to be calculated or estimated in such manner and on such basis as may be prescribed;
  - (b) for a payment made outside the specified period to be treated as made during that period where it was referable to that period or any part of it;
  - (c) for a woman engaged in employment as a self-employed earner to be treated as having received a payment in respect of a week—
    - (i) equal to the lower earnings limit in force on the last day of the week, if she paid a Class 2 contribution in respect of the week, or
    - (ii) equal to the maternity allowance threshold in force on that day, if she was excepted (under section 11(4) above) from liability for such a contribution in respect of the week;

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- (d) for aggregating payments made or treated as made to or for the benefit of a woman where, either in the same week or in different weeks, she was engaged in two or more employments (whether, in each case, as an employed earner or a self-employed earner).
- (6) In this section—
- (a) “the maternity allowance threshold”, in relation to a tax year, means (subject to subsection (7) below) £30;
- (b) “the relevant tax year” means the tax year in which the beginning of the period of 66 weeks mentioned in section 35(1)(b) above falls; and
- (c) “specified” means prescribed by or determined in accordance with regulations.
- (7) Whenever the Secretary of State makes an order under section 35A of the Great Britain Contributions and Benefits Act (increase of maternity allowance threshold), the Department may make a corresponding order for Northern Ireland.]

#### Textual Amendments

**F55** S. 35A inserted (12.1.2000 for specified purposes and 2.4.2000 otherwise) by S.I. 1999/3147 (N.I. 11), art. 50(3); S.R. 1999/494, art. 2(1)(a)

### *Benefits for widows and widowers*

#### **36 Widow’s payment.**

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

VALID FROM 24/04/2000

#### **[<sup>F56</sup>36A Cases in which sections 37 to 41 apply.**

- (1) Sections 37 to 39 and section 40 below apply only in cases where a woman’s husband has died before the appointed day, and section 41 below applies only in cases where a man’s wife has died before that day.

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- (2) Sections 39A to 39C below apply in cases where a person's spouse dies on or after the appointed day, but section 39A also applies (in accordance with subsection (1) (b) of that section) in cases where a man's wife has died before that day.
- (3) In this section, and in sections 39A and 39B below, "the appointed day" means the day appointed for the coming into operation of Articles 51 to 53 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.]

#### Textual Amendments

**F56** S. 36A inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 52(1); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

### 37 Widowed mother's allowance.

- (1) A woman who has been widowed shall be entitled to a widowed mother's allowance at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widowed mother's allowance specified in Schedule 3, Part I, paragraph 5 and either—
- the woman is entitled to child benefit in respect of a child falling within subsection (2) below;
  - the woman is pregnant by her late husband; or
  - if the woman and her late husband were residing together immediately before the time of his death, the woman is pregnant as the result of being artificially inseminated before that time with the semen of some person other than her husband, or as the result of the placing in her before that time of an embryo, of an egg in the process of fertilisation, or of sperm and eggs.
- (2) A child falls within this subsection if one of the conditions specified in section 81(2) below is for the time being satisfied with respect to the child and the child is either—
- a son or daughter of the woman and her late husband;
  - a child in respect of whom her late husband was immediately before his death entitled to child benefit; or
  - if the woman and her late husband were residing together immediately before his death, a child in respect of whom she was then entitled to child benefit.
- (3) The widow shall not be entitled to the allowance for any period after she remarries, but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1)(a), (b) or (c) above.
- (4) A widowed mother's allowance shall not be payable—
- for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act; or
  - for any period during which she and a man to whom she is not married are living together as husband and wife.

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### 38 Widow's pension.

- (1) A woman who has been widowed shall be entitled to a widow's pension at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widow's pension specified in Schedule 3, Part I, paragraph 5 and either—
  - (a) she was, at the husband's death, over the age of 45 but under the age of 65; or
  - (b) she ceased to be entitled to a widowed mother's allowance at a time when she was over the age of 45 but under the age of 65.
- (2) The widow shall not be entitled to the pension for any period after she remarries, but, subject to that, she shall continue to be entitled to it until she attains the age of 65.
- (3) A widow's pension shall not be payable—
  - (a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act;
  - (b) for any period for which she is entitled to a widowed mother's allowance; or
  - (c) for any period during which she and a man to whom she is not married are living together as husband and wife.
- (4) In the case of a widow whose late husband died before 11th April 1988 and who either—
  - (a) was over the age of 40 but under the age of 55 at the time of her husband's death; or
  - (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,
 subsection (1) above shall have effect as if for "45" there were substituted "40".

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

- (1) The weekly rate of—
  - (a) a widowed mother's allowance,
  - (b) a widow's pension,
 shall be determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.
- (2) In the application of sections 44 and 45 below by virtue of subsection (1) above—
  - (a) where the woman's husband was over pensionable age when he died, references in those sections to the pensioner shall be taken as references to the husband, and
  - (b) where the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.
- (3) In the case of a woman whose husband dies after [<sup>F57</sup>5th October 2002], the additional pension falling to be calculated under sections 44 and 45 below by virtue of subsection (1) above shall (before making any reduction required by subsection (4) below) be one half of the amount which it would be apart from this subsection.



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- (4) Where a widow's pension is payable to a woman who was under the age of 55 at the time when the applicable qualifying condition was fulfilled, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which her age at that time was less than 55 (any fraction of a year being counted as a year).
- (5) For the purposes of subsection (4) above, the time when the applicable qualifying condition was fulfilled is the time when the woman's late husband died or, as the case may be, the time when she ceased to be entitled to a widowed mother's allowance.
- (6) In the case of a widow whose late husband died before 11th April 1988 and who either—
  - (a) was over the age of 40 but under the age of 55 at the time of her husband's death; or
  - (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,subsection (4) above shall have effect as if for "55" there were substituted " 50 ".

#### Textual Amendments

**F57** Words in s. 39(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(a)

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

- (1) The weekly rate of—
  - (a) a widowed mother's allowance,
  - (b) a widow's pension,shall be determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.
- (2) In the application of sections 44 and 45 below by virtue of subsection (1) above—
  - (a) where the woman's husband was over pensionable age when he died, references in those sections to the pensioner shall be taken as references to the husband, and
  - (b) where the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.
- (3) In the case of a woman whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 below by virtue of subsection (1) above shall (before making any reduction required by subsection (4) below) be one half of the amount which it would be apart from this subsection.
- (4) Where a widow's pension is payable to a woman who was under the age of 55 at the time when the applicable qualifying condition was fulfilled, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which her age at that time was less than 55 (any fraction of a year being counted as a year).

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- (5) For the purposes of subsection (4) above, the time when the applicable qualifying condition was fulfilled is the time when the woman's late husband died or, as the case may be, the time when she ceased to be entitled to a widowed mother's allowance.
- (6) In the case of a widow whose late husband died before 11th April 1988 and who either—
- (a) was over the age of 40 but under the age of 55 at the time of her husband's death; or
  - (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,
- subsection (4) above shall have effect as if for "55" there were substituted "50".

### **39A Widowed parent's allowance.**

- (1) This section applies where—
- (a) a person whose spouse dies on or after the appointed day is under pensionable age at the time of the spouse's death, or
  - (b) a man whose wife died before the appointed day—
    - (i) has not remarried before that day, and
    - (ii) is under pensionable age on that day.
- (2) The surviving spouse shall be entitled to a widowed parent's allowance at the rate determined in accordance with section 39C below if the deceased spouse satisfied the contribution conditions for a widowed parent's allowance specified in Schedule 3, Part I, paragraph 5 and—
- (a) the surviving spouse is entitled to child benefit in respect of a child falling within subsection (3) below; or
  - (b) the surviving spouse is a woman who either—
    - (i) is pregnant by her late husband, or
    - (ii) if she and he were residing together immediately before the time of his death, is pregnant in circumstances falling within section 37(1)(c) above.
- (3) A child falls within this subsection if one of the conditions specified in section 81(2) below is for the time being satisfied with respect to the child and the child is either—
- (a) a son or daughter of the surviving spouse and the deceased spouse; or
  - (b) a child in respect of whom the deceased spouse was immediately before his or her death entitled to child benefit; or
  - (c) if the surviving spouse and the deceased spouse were residing together immediately before his or her death, a child in respect of whom the surviving spouse was then entitled to child benefit.
- (4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries, but, subject to that, the surviving spouse shall continue to be entitled to it for any period throughout which she or he—
- (a) satisfies the requirements of subsection (2)(a) or (b) above; and
  - (b) is under pensionable age.
- (5) A widowed parent's allowance shall not be payable—

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- (a) for any period falling before the day on which the surviving spouse's entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act; or
- (b) for any period during which the surviving spouse and a person of the opposite sex to whom she or he is not married are living together as husband and wife.

VALID FROM 24/04/2000

**[<sup>F59</sup>39B Bereavement allowance where no dependent children.**

- (1) This section applies where a person whose spouse dies on or after the appointed day is over the age of 45 but under pensionable age at the spouse's death.
- (2) The surviving spouse shall be entitled to a bereavement allowance at the rate determined in accordance with section 39C below if the deceased spouse satisfied the contribution conditions for a bereavement allowance specified in Schedule 3, Part I, paragraph 5.
- (3) A bereavement allowance shall be payable for not more than 52 weeks beginning with the date of the spouse's death or (if later) the day on which the surviving spouse's entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act.
- (4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries, but, subject to that, the surviving spouse shall continue to be entitled to it until—
  - (a) she or he attains pensionable age, or
  - (b) the period of 52 weeks mentioned in subsection (3) above expires, whichever happens first.
- (5) The allowance shall not be payable—
  - (a) for any period for which the surviving spouse is entitled to a widowed parent's allowance; or
  - (b) for any period during which the surviving spouse and a person of the opposite sex to whom she or he is not married are living together as husband and wife.]

**Textual Amendments**

**F59** Ss. 39A-39C inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 52(2); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

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

- (1) The weekly rate of a widowed parent's allowance shall be determined in accordance with the provisions of sections 44 to 45A below as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.
- (2) The weekly rate of a bereavement allowance shall be determined in accordance with the provisions of section 44 below as they apply in the case of a Category A retirement

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pension so far as consisting only of the basic pension referred to in subsection (3)(a) of that section, but subject, in particular, to the following provisions of this section.

- (3) In the application of sections 44 to 45A or (as the case may be) section 44 below by virtue of subsection (1) or (2) above—
  - (a) where the deceased spouse was over pensionable age at his or her death, references in those sections to the pensioner shall be taken as references to the deceased spouse, and
  - (b) where the deceased spouse was under pensionable age at his or her death, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the deceased spouse and the tax year in which he or she died.
- (4) Where a widowed parent's allowance is payable to a person whose spouse dies after 5th April 2000, the additional pension falling to be calculated under sections 44 to 45A below by virtue of subsection (1) above shall be one half of the amount which it would be apart from this subsection.
- (5) Where a bereavement allowance is payable to a person who was under the age of 55 at the time of the spouse's death, the weekly rate of the allowance shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which that person's age at that time was less than 55 (any fraction of a year being counted as a year).

[<sup>F245</sup>39C Rate of widowed parent's allowance and bereavement allowance. **N.I.**

- (1) The weekly rate of a widowed parent's allowance shall be determined in accordance with the provisions of sections 44 to 45A below as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.
- (2) The weekly rate of a bereavement allowance shall be determined in accordance with the provisions of section 44 below as they apply in the case of a Category A retirement pension so far as consisting only of the basic pension referred to in subsection (3)(a) of that section, but subject, in particular, to the following provisions of this section.
- (3) In the application of sections 44 to 45A or (as the case may be) section 44 below by virtue of subsection (1) or (2) above—
  - (a) where the deceased spouse was over pensionable age at his or her death, references in those sections to the pensioner shall be taken as references to the deceased spouse, and
  - (b) where the deceased spouse was under pensionable age at his or her death, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the deceased spouse and the tax year in which he or she died.
- (4) Where a widowed parent's allowance is payable to a person whose spouse dies after [<sup>F246</sup>5th October 2002], the additional pension falling to be calculated under sections 44 to 45A below by virtue of subsection (1) above shall be one half of the amount which it would be apart from this subsection.
- (5) Where a bereavement allowance is payable to a person who was under the age of 55 at the time of the spouse's death, the weekly rate of the allowance shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number

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of years by which that person's age at that time was less than 55 (any fraction of a year being counted as a year).]

#### Textual Amendments

**F245** Ss. 39A-39C inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 52(2); S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

**F246** Words in s. 39C(4) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(a)

#### [<sup>F61</sup>40 Long-term incapacity benefit for widows.

- (1) Subject to subsection (2) below, this section applies to a woman who—
- (a) on her late husband's death is not entitled to a widowed mother's allowance or subsequently ceases to be entitled to such an allowance;
  - (b) is incapable of work at the time when he dies or when she subsequently ceases to be so entitled;
  - (c) either—
    - (i) would have been entitled to a widow's pension if she had been over the age of 45 when her husband died or when she ceased to be entitled to a widowed mother's allowance; or
    - (ii) is entitled to such a pension with a reduction under section 39(4) above; and
  - (d) is not entitled to incapacity benefit apart from this section.
- (2) This section does not apply to a woman unless—
- (a) her husband died after 5th April 1979; or
  - (b) she ceased to be entitled to a widowed mother's allowance after that date (whenever her husband died).
- (3) A woman to whom this section applies is entitled to long-term incapacity benefit under this section for any day of incapacity for work which—
- (a) falls in a period of incapacity for work that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and
  - (b) is after that time and after the first 364 days of incapacity for work in that period.
- (4) A woman to whom this section applies who is not entitled to long-term incapacity benefit under subsection (3) above, but who is terminally ill, is entitled to short-term incapacity benefit under this section for any day of incapacity for work which—
- (a) falls in a period of incapacity for work that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and
  - (b) is after that time and after the first 196 days of incapacity for work in that period.

For the purposes of this subsection a woman is terminally ill if she suffers from a progressive disease and her death in consequence of that disease can reasonably be expected within 6 months.

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- (5) The weekly rate of incapacity benefit payable under this section is—
- (a) if the woman is not entitled to a widow's pension, that which would apply if she were entitled to long-term incapacity benefit under section 30A above; and
  - (b) if she is entitled to a widow's pension with a reduction under section 39(4) above, the difference between the weekly rate of that pension and the weekly rate referred to in paragraph (a) above.
- (6) A woman is not entitled to incapacity benefit under this section if she is over pensionable age; but if she has attained pensionable age and the period of incapacity for work mentioned in subsection (3)(a) or (4)(a) above did not terminate before she attained that age—
- (a) she shall, if not otherwise entitled to a Category A retirement pension, be entitled to such a pension; and
  - (b) the weekly rate of the Category A retirement pension to which she is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.
- (7) Where a woman entitled to short-term incapacity benefit under subsection (4) above attains pensionable age and defers her entitlement to a Category A retirement pension or makes an election under section 54(1) below, the days of incapacity for work falling within the period of incapacity for work mentioned in that subsection shall, for the purpose of determining any subsequent entitlement to incapacity benefit under section 30A above or the rate of that benefit, be treated as if they had been days of entitlement to short-term incapacity benefit.
- (8) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable under subsection (4) above.]

#### Textual Amendments

**F61** S. 40 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 8**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

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

**C26** S. 40(8) applied (1.5.1995) by 1994 c. 9, s. 139(6) (as inserted by 1995 c. 4, s. 141(3))

### [<sup>F62</sup>41 Long-term incapacity benefit for widowers.

- (1) This section applies to a man whose wife has died on or after 6th April 1979 and who either—
- (a) was incapable of work at the time when she died; or
  - (b) becomes incapable of work within the prescribed period after that time;
- and is not entitled to incapacity benefit apart from this section.
- (2) A man to whom this section applies is entitled to long-term incapacity benefit under this section for any day of incapacity for work which—
- (a) falls in a period of incapacity for work that began before the time when his wife died or within the prescribed period after that time; and
  - (b) is after that time and after the first 364 days of incapacity for work in that period.

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- (3) A man to whom this section applies who is not entitled to long-term incapacity benefit under subsection (2) above, but who is terminally ill, is entitled to short-term incapacity benefit under this section for any day of incapacity for work which—
- (a) falls in a period of incapacity for work that began before the time when his late wife died or within the prescribed period after that time; and
  - (b) is after that time and after the first 196 days of incapacity for work in that period.

For the purposes of this subsection a man is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

- (4) The weekly rate of incapacity benefit payable under this section is that which would apply if he were entitled to long-term incapacity benefit under section 30A above.
- (5) A man is not entitled to incapacity benefit under this section if he is over pensionable age; but if he has attained pensionable age, and the period of incapacity for work mentioned in subsection (2)(a) or (3)(a) above did not terminate before he attained that age—
- (a) he shall, if not otherwise entitled to a Category A retirement pension and also not entitled to a Category B retirement pension by virtue of section 51 below, be entitled to a Category A retirement pension; and
  - (b) the weekly rate of the Category A retirement pension to which he is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.
- (6) Where a man entitled to short-term incapacity benefit under subsection (3) above attains pensionable age and defers his entitlement to a Category A retirement pension or makes an election under section 54(1) below, the days of incapacity for work falling within the period of incapacity for work mentioned in that subsection shall, for the purpose of determining any subsequent entitlement to incapacity benefit under section 30A above or the rate of that benefit, be treated as if they had been days of entitlement to short-term incapacity benefit.
- (7) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable under subsection (3) above.]

#### Textual Amendments

**F62** S. 41 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 9**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

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

**C27** S. 41(7) applied (1.5.1995) by 1994 c. 9, s. 139(6) (as inserted by 1995 c. 4, s. 141(3))

### [<sup>F63</sup> 42 Entitlement under s. 40 or 41 after period of employment or training for work.

- (1) Where—
- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
  - (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and



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- (c) he qualified for a disability working allowance for that week by virtue of incapacity benefit under section 40 or 41 above having been payable to him; and
- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to incapacity benefit under that section,

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

(2) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to incapacity benefit under section 40 or 41 above for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to incapacity benefit under that section,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for incapacity benefit under that section for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

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

#### Textual Amendments

**F63** S. 42 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 10**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

### *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—

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- (a) to both a Category A and a Category B retirement pension under this Part for the same period, or
- (b) to both a Category C and a Category D retirement pension under Part III of this Act for the same period,

may from time to time give notice in writing to the Department specifying which of the pensions referred to in paragraph (a) or, as the case may be, paragraph (b) above he wishes to receive.

- (4) If a person gives such a notice, the pension so specified shall be the one to which he is entitled in respect of any week commencing after the date of the notice.
- (5) If no such notice is given, the person shall be entitled to whichever of the pensions is from time to time the most favourable to him (whether it is the pension which he claimed or not).

#### 44 Category A retirement pension.

- (1) A person shall be entitled to a Category A retirement pension if—
  - (a) he is over pensionable age; and
  - (b) he satisfies the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5;

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

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

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

- (4) The weekly rate of the basic pension shall be [<sup>F64</sup>£58.85] except that, so far as the sum is relevant for the purpose of calculating [<sup>F65</sup>the rate of short-term incapacity benefit under section 30B(3) above], it shall be [<sup>F64</sup>£56.45].

- (5) For the purposes of this section and section 45 below—
  - (a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for the final relevant year; and
  - (b) the amount of the surplus is the amount of that excess;

and for the purposes of paragraph (a) above the pensioner's earnings factor for any relevant year shall be taken to be that factor as increased by the last order under section 130 of the Administration Act to come into force before the end of the final relevant year.

- (6) [<sup>F66</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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- (ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of it; and
  - (b) where the relevant year is an earlier tax year, to the aggregate of his earnings factors derived from contributions actually paid by him in respect of that year.
- (7) In this section—
- (a) “relevant year” means 1978-79 or any subsequent tax year in the period between—
    - (i) (inclusive) the tax year in which the pensioner attained the age of 16, and
    - (ii) (exclusive) the tax year in which he attained pensionable age;
  - (b) “final relevant year” means the last tax year which is a relevant year in relation to the pensioner.

[<sup>F67</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>M16</sup>Interpretation Act 1978).

#### Textual Amendments

- F64** Sums in s. 44(4) substituted (10.4.1995) by S.R. 1995/71, arts. 1(d), 4(1)(3), 6
- F65** Words in s. 44(4) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 11; S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F66** 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.
- F67** S. 44(7A) inserted (*temp.*) (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 6, 7(2), Sch. 4 Pt. I paras. 1, 3.

#### Marginal Citations

- M16** 1978 c. 30.

VALID FROM 08/01/2001

#### [<sup>F68</sup>44A Deemed earnings factors

- (1) For the purposes of section 44(6)(za) above, if any of the conditions in subsection (2) below is satisfied for a relevant year, a pensioner is deemed to have an earnings factor for that year which—
  - (a) is derived from earnings on which primary Class 1 contributions were paid; and
  - (b) is equal to the amount which, when added to any other earnings factors taken into account under that provision, produces an aggregate of earnings factors equal to the low earnings threshold.
- (2) The conditions referred to in subsection (1) above are that—

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- (a) the pensioner would, apart from this section, have an earnings factor for the year—
    - (i) equal to or greater than the qualifying earnings factor for the year; but
    - (ii) less than the low earnings threshold for the year;
  - (b) invalid care allowance—
    - (i) was payable to the pensioner throughout the year; or
    - (ii) would have been so payable but for the fact that under regulations the amount payable to him was reduced to nil because of his receipt of other benefits;
  - (c) for the purposes of paragraph 5(7)(b) of Schedule 3, the pensioner is taken to be precluded from regular employment by responsibilities at home throughout the year by virtue of—
    - (i) the fact that child benefit was payable to him in respect of a child under the age of six; or
    - (ii) his satisfying such other condition as may be prescribed; or
  - (d) the pensioner is a person satisfying the requirement in subsection (3) below to whom long-term incapacity benefit was payable throughout the year, or would have been so payable but for the fact that—
    - (i) he did not satisfy the contribution conditions specified in paragraph 2 of Schedule 3; or
    - (ii) under regulations the amount payable to him was reduced to nil because of his receipt of other benefits or of payments from an occupational pension scheme or personal pension scheme.
- (3) The requirement referred to in subsection (2)(d) above is that—
- (a) for one or more relevant years the pensioner has paid, or (apart from this section) is treated as having paid, primary Class 1 contributions on earnings equal to or greater than the qualifying earnings factor; and
  - (b) the years for which he has such a factor constitute at least one tenth of his working life.
- (4) For the purposes of subsection (3)(b) above—
- (a) a pensioner’s working life shall not include—
    - (i) any tax year before 1978-79; or
    - (ii) any year in which he is deemed under subsection (1) above to have an earnings factor by virtue of fulfilling the condition in subsection (2)(b) or (c) above; and
  - (b) the figure calculated by dividing his working life by ten shall be rounded to the nearest whole year (and any half year shall be rounded down).
- (5) The low earnings threshold for the first appointed year and subsequent tax years shall be £9,500 (but subject to section 130A of the Administration Act).
- (6) In subsection (2)(d)(ii) above, “occupational pension scheme” and “personal pension scheme” have the same meanings as in subsection (6) of section 30DD above for the purposes of subsection (5) of that section.]

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### Textual Amendments

**F68** 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)

**C28** S. 44A(1) modified (8.1.2001, 1.2.2001 for specified purposes and 6.4.2002 otherwise) by 2000 c. 4 (N.I.), s. 29(4); S.R. 2000/358, art. 2(e), **Sch. Pt. IV** (as amended by S.R. 2000/374, art. 3); S.R. 2001/34, art. 2(a)

## 45 The additional pension in a Category A retirement pension.

- (1) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year before 6th April 1999 shall be the weekly equivalent of 1 1/4 per cent. of the amount of the surpluses mentioned in section 44(3)(b) above.
- (2) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year after 5th April 1999 shall be—
  - (a) in relation to any surpluses in the pensioner’s earnings factors for the tax years in the period beginning with 1978-79 and ending with 1987-88, the weekly equivalent of 25/N per cent. of the amount of those surpluses; and
  - (b) in relation to any surpluses in the pensioner’s earnings factors in a tax year after 1987-88, the weekly equivalent of the relevant percentage of the amount of those surpluses.
- (3) In subsection (2)(b) above, “relevant percentage” means—
  - (a) 20/N per cent., where the pensioner attained pensionable age in 2009-10 or any subsequent tax year;
  - (b) (20+X)/N per cent., where the pensioner attained pensionable age in a tax year falling within the period commencing with 1999-2000 and ending with 2008-9.
- (4) In this section—
  - (a) X = 0.5 for each tax year by which the tax year in which the pensioner attained pensionable age precedes 2009-10; and
  - (b) N = the number of tax years in the pensioner’s working life which fall after 5th April 1978;
 but paragraph (b) above is subject, in particular, to subsection (5) and, where applicable, section 46 below.
- (5) Regulations may direct that in prescribed cases or classes of cases any tax year shall be disregarded for the purpose of calculating N under subsection (4)(b) above, if it is a tax year after 5th April 1978 in which the pensioner—
  - (a) was credited with contributions or earnings under this Act by virtue of regulations under section 22(5) above, or
  - (b) was precluded from regular employment by responsibilities at home, or
  - (c) in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,

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

- (6) For the purposes of subsections (1) and (2) above, the weekly equivalent of the amount of any surpluses shall be calculated by dividing that amount by 52 and rounding the result to the nearest whole penny, taking any 1/2p as nearest to the next whole penny.
- (7) Where the amount falling to be rounded under subsection (6) above is a sum less than 1/2p, the amount calculated under that subsection shall be taken to be zero, notwithstanding any other provision of this Act or the Administration Act.
- (8) The sums which are the weekly rate of the additional pension in a Category A retirement pension are subject to alteration by orders made by the Department under section 132 of the Administration Act.

VALID FROM 16/12/1995

**[<sup>F69</sup>45A Effect of family credit and disability working allowance on earnings factor.**

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

“married couple” and “unmarried couple” (defined in section 133 below) have the same meaning as in Part VII, and  
“relevant year” has the same meaning as in section 44 above.]

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#### Textual Amendments

**F69** S. 45A inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 124

#### [<sup>F70</sup> 45B Reduction of additional pension in Category A retirement pension: pension sharing.

- (1) The weekly rate of the additional pension in a Category A retirement pension shall be reduced as follows in any case where—
  - (a) the pensioner has become subject to a state scheme pension debit, and
  - (b) the debit is to any extent referable to the additional pension.
- (2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount.
- (3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.
- (4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the additional pension.
- (5) The pension referred to above is a notional pension for the pensioner by virtue of section 44(3)(b) above which becomes payable on the later of—
  - (a) his attaining pensionable age, and
  - (b) the valuation day.
- (6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.
- (7) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.
- (8) In this section—
 

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

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

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

#### Textual Amendments

**F70** S. 45B inserted (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 47(1), Sch. 6 para. 2



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

<sup>F71</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>F72</sup>. . . above or section 50(3) below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of “N” in section 45(4)(b) above—

“N = the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, except that if—

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

N = 49 or 44, as the case may be”.

#### Textual Amendments

**F71** 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**

**F72** Words in s. 46(2) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 12(b), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### 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>F73</sup>age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above] in respect of—

- (a) any day falling within the period of 8 weeks ending immediately before the day on which he attains pensionable age; or
- (b) the last day before the beginning of that period;

and the increase shall, subject to subsection (2) below, be of an amount equal to the appropriate weekly rate of the [<sup>F73</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>F74</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.

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- (5) In ascertaining for the purposes of subsection (1) above the rate of a pensioner's [<sup>F73</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

- F73** 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**
- F74** 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**

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

- C29** 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**
- C30** S. 47(1) modified (7.2.1994) by 1993 c. 49, s. 42(5); S.R. 1994/17, **art. 2**
- C31** 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.

VALID FROM 16/12/1995

### [<sup>F75</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—

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- (a) has attained pensionable age and become entitled to a Category A retirement pension, and
  - (b) satisfies the conditions specified in Schedule 3, Part I, paragraph 5.
- (3) During any period when the spouse is alive, a Category B retirement pension payable by virtue of this section shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5.
- (4) During any period after the spouse is dead, a Category B retirement pension payable by virtue of this section shall be payable at the weekly rate corresponding to—
- (a) the weekly rate of the basic pension, plus
  - (b) half of the weekly rate of the additional pension, determined in accordance with the provisions of sections 44 to 45A above as they apply in relation to a Category A retirement pension but subject to section 46(2) above and the modification in section 48C(4) below.
- (5) person’s Category B retirement pension payable by virtue of this section shall not be payable for any period falling before the day on which the spouse’s entitlement is to be regarded as beginning for that purpose by virtue of section 5(1)(1) of the Administration Act.]

#### Textual Amendments

**F75** S. 48A-48C substituted for ss. 49, 50 (16.12.1995) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, Sch. 2 Pt. II para. 3(1)

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

**C32** S. 48A restricted (16.12.1995) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, Sch. 2 Pt. II para. 3(2)

VALID FROM 16/12/1995

#### [<sup>F76</sup>48B Category B retirement pension for widows and widowers.

- (1) A person (“the pensioner” whose spouse died—
- (a) while they were married, and
  - (b) after the pensioner attained pensionable age,
- shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if the spouse satisfied the conditions specified in Schedule 3, Part I, paragraph 5.
- (2) A Category B retirement pension payable by virtue of subsection (1) above shall be payable at a weekly rate corresponding to—
- (a) the weekly rate of the basic pension, plus
  - (b) half of the weekly rate of the additional pension,
- determined in accordance with the provision of sections 44 to 45A above as they apply in relation to a Category A retirement pension, but subject to section 46(2) above and the modifications in subsection (3) below and section 48C(4) below.
- (3) Where the spouse died under pensionable age, references in the provisions of section 44 to 45A above as applied by subsection (2) above to the tax year in which

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the pensioner attained pensionable age shall be taken as references to the tax year in which the spouse died.

- (4) A person who has attained pensionable age (“the pensioner”) whose spouse died before the pensioner attained that age shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse if—
- (a) where the pensioner is a woman, the following condition is satisfied, and
  - (b) where the pensioner is a man, the following condition would have been satisfied on the assumption mentioned in subsection (7) below.
- (5) The condition is that the pensioner—
- (a) is entitled (or is treated by regulations as entitled) to a widow’s pension by virtue of section 38 above, and
  - (b) became entitled to that pension in consequence of the spouse’s death.
- (6) A Category B retirement pension payable by virtue of subsection (4) above shall be payable—
- (a) where the pensioner is a woman, at the same weekly rate as her widow’s pension and
  - (b) where the pensioner is a man, at the same weekly rate as that of the pension to which he would have been entitled by virtue of section 38 above on the assumption mentioned in subsection (7) below.
- (7) The assumption referred to in subsections (4) and (6) above is that a man is entitled to a pension by virtue of section 38 above on the same terms and conditions, and at the same rate, as a woman.]

#### Textual Amendments

**F76** Ss. 48A-48C substituted for ss. 49, 50 (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(1)**

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

**C33** S. 48B restricted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. II para. 3(3)**

VALID FROM 24/04/2000

#### [<sup>F77</sup>48BBCategory B retirement pension: entitlement by reference to benefits under section 39A or 39B. **N.I.**

- (1) Subsection (2) below applies where a person (“the pensioner”) who has attained pensionable age—
- (a) was, immediately before attaining that age, entitled to a widowed parent’s allowance in consequence of the death of his or her spouse; and
  - (b) has not remarried.
- (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.

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- (3) Subsections (4) to (10) below apply where a person (“the pensioner”) who has attained pensionable age—
  - (a) was in consequence of the death of his or her spouse either—
    - (i) entitled to a bereavement allowance at any time prior to attaining that age, or
    - (ii) entitled to a widowed parent’s allowance at any time when over the age of 45 (but not immediately before attaining pensionable age); and
  - (b) has not remarried.
- (4) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse.
- (5) A Category B retirement pension payable by virtue of subsection (4) above shall be payable at a weekly rate corresponding to the weekly rate of the additional pension determined in accordance with the provisions of sections 44 to 45A above as they apply in relation to a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) above.
- (6) Where the spouse died under pensionable age, references in the provisions of sections 44 to 45A above, as applied by subsection (5) above, to the tax year in which the pensioner attained pensionable age shall be taken as references to the tax year in which the spouse died.
- (7) Where the spouse dies after 5th April 2000, the pension payable by virtue of subsection (4) above shall (before making any reduction required by subsection (8) below) be one half of the amount which it would be apart from this subsection.
- (8) Where the pensioner was under the age of 55 at the relevant time, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied—
  - (a) by the number of years by which the pensioner’s age at that time was less than 55 (any fraction of a year being counted as a year), or
  - (b) by ten, if that number exceeds ten.
- (9) In subsection (8) above “the relevant time” means—
  - (a) where the pensioner became entitled to a widowed parent’s allowance in consequence of the death of the spouse, the time when the pensioner’s entitlement to that allowance ended; and
  - (b) otherwise, the time of the spouse’s death.
- (10) The amount determined in accordance with subsections (5) to (9) above as the weekly rate of the pension payable to the pensioner by virtue of subsection (4) above shall be increased by such percentage as equals the overall percentage by which, had the pension been in payment as from the date of the spouse’s death until the date when the pensioner attained pensionable age, that weekly rate would have been increased during that period by virtue of any orders under section 132 of the Administration Act (annual up-rating of benefits).]

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### Textual Amendments

**F77** S. 48BB inserted (24.4.2000 for specified purposes and 9.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), art. 53; S.R. 2000/133, art. 2(3)(a), Sch. Pt. I

### <sup>F247</sup> **48BB** Category B retirement pension: entitlement by reference to benefits under section 39A or 39B. **N.I.**

- (1) Subsection (2) below applies where a person (“the pensioner”) who has attained pensionable age—
  - (a) was, immediately before attaining that age, entitled to a widowed parent’s allowance in consequence of the death of his or her spouse; and
  - (b) has not remarried.
- (2) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse, which shall be payable at the same weekly rate as the widowed parent’s allowance.
- (3) Subsections (4) to (10) below apply where a person (“the pensioner”) who has attained pensionable age—
  - (a) was in consequence of the death of his or her spouse either—
    - (i) entitled to a bereavement allowance at any time prior to attaining that age, or
    - (ii) entitled to a widowed parent’s allowance at any time when over the age of 45 (but not immediately before attaining pensionable age); and
  - (b) has not remarried.
- (4) The pensioner shall be entitled to a Category B retirement pension by virtue of the contributions of the spouse.
- (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>F248</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.



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- (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

**F247** 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

**F248** Words in s. 48BB(7) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)

VALID FROM 16/12/1995

#### [48C <sup>F78</sup> Category B retirement pension: general. N.I.]

- (1) Subject to the provisions of this Act, a person’s entitlement to a Category B retirement pension shall begin on the day on which the conditions of entitlement become satisfied and shall continue for life.
- (2) In any case where—
- (a) a person would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
  - (b) section 47(1) above would apply for the increase of the Category A retirement pension,
- section 47(1) above shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 42(5) of the Pensions Act.
- (3) In the case of a pensioner whose spouse died on or before 5th April 2000, sections 48A(4)(b) and 48B(2)(b) above shall have effect with the omission of the words “half of”.
- (4) In the application of the provisions of section 44 to 45A above by virtue of sections 48A(4) or 48B(2) above, references in those provisions to the pensioner shall be taken as references to the spouse.]

#### Textual Amendments

**F78** 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)



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**[48C** <sup>F249</sup> **Category B retirement pension: general.** **N.I.**

- (1) Subject to the provisions of this Act, a person's entitlement to a Category B retirement pension shall begin on the day on which the conditions of entitlement become satisfied and shall continue for life.
- (2) In any case where—
  - (a) a person would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
  - (b) section 47(1) above would apply for the increase of the Category A retirement pension,
 section 47(1) above shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 42(5) of the Pensions Act.
- (3) In the case of a pensioner whose spouse died on or before [<sup>F250</sup>5th October 2002]], sections 48A(4)(b) and 48B(2)(b) above shall have effect with the omission of the words “half of”.
- (4) In the application of the provisions of section 44 to 45A above by virtue of sections 48A(4) or 48B(2) above, references in those provisions to the pensioner shall be taken as references to the spouse.

**Textual Amendments**

**F249** 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)**

**F250** Words in s. 48C(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), **s. 35(1)(a)(2)(b)**

<sup>X1</sup>**49** **Category B retirement pension for women.**

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

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- (5) The fourth case of entitlement is where the woman's husband is dead and his death was before she attained pensionable age, and—
  - (a) she was a widow immediately before attaining pensionable age and is entitled (or is treated by regulations as entitled) to a widow's pension; and
  - (b) she became entitled to the pension in consequence of the husband's death.
- (6) The relevant contribution conditions for the purposes of the first, second and third cases of entitlement are those specified in Schedule 3, Part I, paragraph 5.
- (7) Subject to the provisions of this Act, a woman's entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.
- (8) A woman's Category B retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act.

#### Editorial Information

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

#### <sup>x2</sup>50 Rate of Category B retirement pension for women.

- (1) A woman's Category B retirement pension—
  - (a) in the first and second cases of entitlement under section 49 above, shall—
    - (i) during any period in which the husband is alive, be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5, and
    - (ii) during any period after he is dead, be payable at a weekly rate ascertained in accordance with subsection (3) below;
  - (b) in the third case of entitlement under that section, shall be payable at a weekly rate ascertained in accordance with subsection (3) below; and
  - (c) in the fourth case of entitlement under that section, shall be payable at the same weekly rate as her widow's pension.
- (2) In any case where—
  - (a) a woman would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and
  - (b) subsection (1) of section 47 above would apply for the increase of the Category A retirement pension,that subsection shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or [<sup>F79</sup>section 42(5) of the Pensions Act].
- (3) The weekly rate referred to in paragraphs (a)(ii) and (b) of subsection (1) above for a woman's Category B retirement pension shall be determined in accordance with the provisions of sections 44 and 45 above as they apply in the case of a Category A retirement pension, but subject, in particular—
  - (a) to section 46(2) above; and
  - (b) to subsections (4) and (5) below.
- (4) In the application of sections 44 and 45 above by virtue of subsection (3) above—

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- (a) references in those sections to the pensioner shall be taken as references to the husband, and
  - (b) where, in the third case of entitlement under section 49 above, the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.
- (5) In the case of a widow whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (3) above shall be one half of the amount which it would be apart from this subsection.

#### Editorial Information

**X2** Ss. 49, 50 replaced by ss. 48A-48C by virtue of S.I. 1995/3213, **Sch. 2 Pt. II para. 3(1)**

#### Textual Amendments

**F79** Words in s. 50(2) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para.34**; S.R. 1994/17, **art. 2**

## 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 sections 44 and 45 above as they apply in the case of a Category A retirement pension, taking references in those sections to the pensioner as references to the wife.
- (3) In the case of a widower whose wife dies after [<sup>F80</sup>5th October 2002], the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (2) above shall be one half of the amount which it would be apart from this subsection.
- (4) Subject to the provisions of this Act, a man shall become entitled to a Category B retirement pension on the day on which the conditions of entitlement become satisfied in his case and his entitlement shall continue throughout his life.

#### Textual Amendments

**F80** Words in s. 51(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(b)

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VALID FROM 16/12/1995

### [<sup>F81</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

**F81** S. 51A inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, Sch. 2 Pt. III para. 18(6)

## 52 Special provision for surviving spouses.

- (1) This section has effect where, apart from section 43(1) above, a person would be entitled both—
  - (a) to a Category A retirement pension; and
  - (b) to a Category B retirement pension—
    - (i) under section 49 above by virtue of the contributions of a husband who has died; or
    - (ii) under section 51 above.
- (2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the full amount, that basic pension shall be increased by the lesser of—
  - (a) the amount of the shortfall, or
  - (b) the amount of the basic pension in the rate of the Category B retirement pension,

“full amount” meaning for this purpose the sum specified in section 44(4) above as the weekly rate of the basic pension in a Category A retirement pension.
- (3) If the additional pension in the Category A retirement pension falls short of the prescribed maximum, that additional pension shall be increased by the lesser of—
  - (a) the amount of the shortfall, or
  - (b) the amount of the additional pension in the Category B retirement pension.

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- (4) This section does not apply in any case where the death of the wife or husband, as the case may be, occurred before 6th April 1979 and the surviving spouse had attained pensionable age before that date.

### **53 Special provision for married women.**

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

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

- (1) Regulations may provide that in the case of a person of any prescribed description who—
- (a) has become entitled to a Category A or Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and
  - (b) elects in such manner and in accordance with such conditions as may be prescribed that the regulations shall apply in his case,
- this Part of this Act shall have effect as if that person had not become entitled to such a retirement pension.
- (2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act, or of those of Part II of the Administration Act as those provisions apply in a case where a person makes an election under the regulations, as may appear to the Department necessary or expedient.
- (3) Where a husband and wife have both become entitled to retirement pensions and—
- (a) the husband's pension is Category A; and
  - (b) the wife's pension is—
    - (i) Category B by virtue of that husband's contributions, or
    - (ii) Category A with an increase under section 53(2) above by virtue of that husband's contributions,
 the husband shall not be entitled to make an election in accordance with regulations made under subsection (1) above without the consent of the wife, unless that consent is unreasonably withheld.
- (4) In any case where—
- (a) a person claims a Category A or Category B retirement pension; and

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(b) the date specified in the claim as the date on which entitlement to the pension is to commence falls after the date when the claim was made, such a pension may be awarded as from the date so specified but, if so awarded, shall be conditional on the person's not ceasing to be entitled to the pension in consequence of any election under subsection (1) above.

## 55 Increase of retirement pension where entitlement is deferred.

- (1) Where a person's entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of his pension.
- (2) For the purposes of this Act, a person's entitlement to a Category A or Category B retirement pension is "deferred" if and so long as he does not become entitled to that pension by reason only—
  - (a) that he has not satisfied the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim); or
  - (b) that, in the case of a woman's Category B retirement pension by virtue of her husband's contributions, her husband has not satisfied those conditions with respect to his Category A retirement pension;and, in relation to any such pension, "period of deferment" shall be construed accordingly.

*[<sup>F82</sup>Shared additional pension]*

### Textual Amendments

**F82** Cross-heading and ss. 55A-55C inserted (1.12.2000) by S.I. 1999/3147, art. 47(1), **Sch. 6 para. 3**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

VALID FROM 01/12/2000

### <sup>F83</sup>55A Shared additional pension.

- (1) A person shall be entitled to a shared additional pension if he is—
  - (a) over pensionable age, and
  - (b) entitled to a state scheme pension credit.
- (2) A person's entitlement to a shared additional pension shall continue throughout his life.
- (3) The weekly rate of a shared additional pension shall be the appropriate weekly amount, unless the pensioner's entitlement to the state scheme pension credit arose before the final relevant year, in which case it shall be that amount multiplied by the relevant revaluation percentage.
- (4) The appropriate weekly amount for the purposes of subsection (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pensioner's entitlement, or prospective entitlement, to the shared additional pension is equal to the state scheme pension credit.

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- (5) The relevant revaluation percentage for the purposes of that subsection is the percentage specified, in relation to earnings factors for the tax year in which the entitlement to the state scheme pension credit arose, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.
- (6) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.
- (7) In this section—
  - “final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;
  - “state scheme pension credit” means a credit under Article 46(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (credit for the purposes of this Part of this Act);
  - “valuation day” means the day on which the pensioner becomes entitled to the state scheme pension credit.]

#### Textual Amendments

**F83** Ss. 55A-55C inserted (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 47(1), **Sch. 6 para. 3**

#### [<sup>F84</sup> 55B Reduction of shared additional pension: pension sharing.

- (1) The weekly rate of a shared additional pension shall be reduced as follows in any case where—
  - (a) the pensioner has become subject to a state scheme pension debit, and
  - (b) the debit is to any extent referable to the pension.
- (2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the pension shall be reduced by the appropriate weekly amount.
- (3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.
- (4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the shared additional pension.
- (5) The pension referred to above is a notional pension for the pensioner by virtue of section 55A above which becomes payable on the later of—
  - (a) his attaining pensionable age, and
  - (b) the valuation day.
- (6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.



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(7) Cash equivalents for the purposes of this section shall be calculated in accordance with regulations.

(8) In this section—

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

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

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

#### Textual Amendments

**F84** Ss. 55A-55C inserted (*prosp.*) by S.I. 1999/3147 (N.I. 11), arts. 1(2), 47(1), **Sch. 6 para. 3**

VALID FROM 01/12/2000

#### **[<sup>F85</sup>55C Increase of shared additional pension where entitlement is deferred.**

(1) For the purposes of this section, a person’s entitlement to a shared additional pension is deferred—

(a) where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement to such a pension is deferred, if and so long as his entitlement to such a pension is deferred, and

(b) otherwise, if and so long as he does not become entitled to the shared additional pension by reason only of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim),

and, in relation to a shared additional pension, “period of deferment” shall be construed accordingly.

(2) Where a person’s entitlement to a shared additional pension is deferred, the rate of his shared additional pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under subsection (3) below, but only if that amount is enough to increase the rate of the pension by at least one per cent.

(3) A person is entitled to an increment under this subsection for each complete incremental period in his period of enhancement.

(4) The amount of the increment for an incremental period shall be 1/7th per cent. of the weekly rate of the shared additional pension to which the person would have been entitled for the period if his entitlement had not been deferred.

(5) Amounts under subsection (4) above shall be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny.

(6) Where an amount under subsection (4) above would, apart from this subsection, be a sum less than 1/2p, the amount shall be taken to be zero, notwithstanding any other provision of this Act, the Pensions (Northern Ireland) Order 1995 or the Administration Act.

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- (7) Where one or more orders have come into operation under section 132 of the Administration Act during the period of enhancement, the rate for any incremental period shall be determined as if the order or orders had come into operation before the beginning of the period of enhancement.
- (8) The sums which are the increases in the rates of shared additional pensions under this section are subject to alteration by order made by the Department under section 132 of the Administration Act.
- (9) In this section—
- “incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this section in relation to the person and pension in question; and
- “period of enhancement”, in relation to that person and that pension, means the period which—
- (a) begins on the same day as the period of deferment in question, and
  - (b) ends on the same day as that period or, if earlier, on the day before the 5th anniversary of the beginning of that period.]

#### Textual Amendments

**F85** Ss. 55A-55C inserted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 47(1), **Sch. 6 para. 3**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

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

**C34** S. 55C modified (1.12.2000 with effect in relation to incremental periods beginning on or after 6.4.2010) by S.I. 1999/3147 (N.I. 11), art. 47(2); S.R. 2000/133, art. 2(3), **Sch. Pt. IV**

**C35** S. 55C amended (8.4.2002 with effect as mentioned in art. 6 of the amending S.R.) by The Social Security Benefits Up-rating Order (Northern Ireland) 2002 (S.R. 2002/99), arts. 1(1)(d)(2), **4(5)**

### *Child's special allowance*

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

- (1) Subject to the provisions of this Act (and in particular to those of section 81 below), a woman whose marriage has been terminated by divorce shall be entitled to a child's special allowance at the weekly rate specified in Schedule 4, Part I, paragraph 6, if—
- (a) the husband of that marriage is dead and satisfied the contribution condition for a child's special allowance specified in Schedule 3, Part I, paragraph 6; and
  - (b) she is entitled to child benefit in respect of a child and either—
    - (i) she was so entitled immediately before that husband's death; or
    - (ii) in such circumstances as may be prescribed, he was then so entitled; and
  - (c) either—
    - (i) that husband had before his death been contributing at not less than the prescribed weekly rate to the cost of providing for that child; or
    - (ii) at the date of that husband's death she was entitled, under an order of a court, trust or agreement which she has taken reasonable steps to enforce, to receive (whether from that husband or from another

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person) payments in respect of that child at not less than that rate provided or procured by that husband.

- (2) A child's special allowance shall not be payable to a woman—
- (a) for any period after her remarriage; or
  - (b) for any period during which she and a man to whom she is not married are living together as husband and wife.
- (3) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, payment of an amount by way of a child's special allowance, that amount shall not be payable unless one of the conditions specified in subsection (4) below is satisfied.
- (4) Those conditions are—
- (a) that the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or
  - (b) that the requisite contributions are being made to the cost of providing for the child.
- (5) The condition specified in subsection (4)(b) above is to be treated as satisfied if, but only if—
- (a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (3) above—
    - (i) by the beneficiary; or
    - (ii) where the beneficiary is one of two spouses residing together, by them together; and
  - (b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 139(1)(b) below.
- (6) A child's special allowance shall not be payable for any period after 5th April 1987 except to a woman who immediately before 6th April 1987—
- (a) satisfied the conditions set out in paragraphs (a) to (c) of subsection (1) above; and
  - (b) was not barred from payment of the allowance for either of the reasons mentioned in subsection (2) above,
- and who has so continued since 6th April 1987.

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

F86 57 .....

**Textual Amendments**

**F86** S. 57 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 14, Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV

F87 58 .....

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#### Textual Amendments

**F87** S. 58 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 15, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Invalidity benefit - disqualifications, etc.*

**F88** **59** .....

#### Textual Amendments

**F88** S. 59 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 16, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

*Partial satisfaction of contribution conditions*

### **60 Partial satisfaction of contribution conditions.**

- (1) Subject to the provisions of this section, regulations may provide for persons to be entitled to any of the following benefits, namely—
  - (a) a widowed mother's allowance,
  - (b) a widow's pension,
  - (c) a Category A retirement pension,
  - (d) a Category B retirement pension,
 in cases where the first contribution condition specified in relation to that benefit in paragraph 5 of Schedule 3 to this Act is satisfied and the second contribution condition so specified is not.
- (2) Subject to subsection (8) below, in any case where—
  - (a) an employed earner who is married dies as a result of—
    - (i) a personal injury of a kind mentioned in section 94(1) below, or
    - (ii) a disease or injury such as is mentioned in section 108(1) below, and
  - (b) the contribution conditions are not wholly satisfied in respect of him,
 those conditions shall be taken to be satisfied for the purposes of his widow's entitlement to any of the benefits specified in subsection (3) below.
- (3) The benefits referred to in subsection (2) above are the following—
  - (a) a widow's payment;
  - (b) a widowed mother's allowance;
  - (c) a widow's pension;
  - (d) a Category B retirement pension payable to a woman which is payable to her at the same rate as her widow's pension or which falls within section 49(4) above.
- (4) Subject to subsections (6) and (7) below, regulations under subsection (1) above shall provide for benefit payable by virtue of any such regulations to be payable at a rate,

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or to be of an amount, less than that which would be applicable under this Part of this Act had both of the relevant contribution conditions been fully satisfied.

- (5) Subject to subsections (6) and (7) below, the rate or amount prescribed by regulations under subsection (1) above may vary with the extent to which the relevant contribution conditions are satisfied (and may be nil).
- (6) The amount prescribed by regulations under subsection (1) above for any increase of benefit in respect of a child shall, subject to subsection (7) below, be the same as if both of the relevant contribution conditions had been fully satisfied.
- (7) Regulations may provide that where—
  - (a) a person is entitled by virtue of subsection (1) above to a Category A or Category B retirement pension consisting only of the additional pension with no basic pension, and
  - (b) that retirement pension, and any graduated retirement benefit to which he may be entitled, together amount to less than the prescribed rate,that person's entitlement as respects that retirement pension shall be satisfied either altogether or for a prescribed period by the making of a single payment of the prescribed amount.
- (8) Subsection (2) above only has effect where the employed earner's death occurred on or after 11th April 1988.

## 61 Exclusion of increase of benefit for failure to satisfy contribution condition.

- (1) A Category A or Category B retirement pension which is payable by virtue of section 60(1) above and a widowed mother's allowance which is so payable shall not be increased under section 47(1) above or under Part IV below on account of a child or an adult if the pension or allowance contains no basic pension in consequence of a failure to satisfy a contribution condition.
- (2) Where a person is entitled—
  - (a) to unemployment benefit at a rate determined under section 25(5) above;
  - <sup>F89</sup>(b) to short-term incapacity benefit at a rate determined under section 30B(3) above; . . .
  - <sup>F90</sup>(c) . . . . .and the retirement pension by reference to which the rate of the benefit <sup>F91</sup>. . . is determined—
  - (i) would have been payable only by virtue of section 60 above; and
  - (ii) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension,the benefit <sup>F91</sup>. . . shall not be increased under section 47(1) above or under Part IV below on account of a child or an adult.

### Textual Amendments

**F89** S. 61(2)(b) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 17(2)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F90** S. 61(2)(c) and word preceding it repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), **Sch. 1 Pt. I para. 17(3)(a)**, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

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**F91** Words in s. 61(2) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 17(3)(b), Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV

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

**C36** S. 61 modified (13.4.1995) by S.R. 1995/35, reg. 23

VALID FROM 16/12/1995

**[<sup>F92</sup>61A Contributions paid in error.**

- (1) This section applies in the case of any individual if—
  - (a) the individual has paid amounts by way of primary Class 1 contributions which, because the individual was not an employed earner, were paid in error, and
  - (b) prescribed conditions are satisfied.
- (2) Regulations may, where—
  - (a) this section applies in the case of any individual, and
  - (b) the Department is of the opinion that it is appropriate for the regulations to apply to the individual,

provide for entitlement to, and the amount of, additional pension to be determined as if the individual had been an employed earner and, accordingly, those contributions had been properly paid.
- (3) The reference in subsection (2) above to additional pension is to additional pension for the individual or the individual's spouse falling to be calculated under section 45 above for the purposes of—
  - (a) Category A retirement pension,
  - (b) Category B retirement pension for widows or widowers,
  - (c) widowed mother's allowance and widow's pension, and
  - (d) incapacity benefit (except in transitional cases).
- (4) Regulations may, where—
  - (a) this section applies in the case of any individual, and
  - (b) the Department is of the opinion that it is appropriate for regulations made by virtue of Article 6(8) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (provision during transition from invalidity benefit to incapacity benefit for incapacity benefit to include the additional pension element of invalidity pension) to have the following effect in the case of the individual,

provide for the regulations made by virtue of that Article to have effect as if, in relation to the provisions in force before the commencement of that Article with respect to that additional pension element, the individual had been an employed earner and, accordingly, the contributions had been properly paid.
- (5) Where such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual, regulations under paragraph 8(1)(m) of Schedule 1 to this Act may not require the amounts paid by way of primary Class 1 contributions to be repaid.

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- (6) Regulations may provide, where—
- (a) such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual,
  - (b) prescribed conditions are satisfied, and
  - (c) the amount calculated by reference to the contributions in question has been paid in respect of that individual by way of minimum contributions under section 39 of the Pensions Act (contributions to personal pension schemes), for that individual to be treated for the purposes of that Act as if that individual had been an employed earner and, accordingly, the amount had been properly paid.]

#### Textual Amendments

- F92** S. 61A inserted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 130**

### *Graduated retirement benefit*

## **62 Graduated retirement benefit.**

- (1) So long as sections 35 and 36 of the <sup>M17</sup>National Insurance Act (Northern Ireland) 1966 (graduated retirement benefit) continue in force by virtue of regulations made under Schedule 3 to the <sup>M18</sup>Social Security (Consequential Provisions) Act 1975 or under Schedule 3 to the Consequential Provisions Act, regulations may make provision—
- (a) for replacing section 35(4) of the National Insurance Act (Northern Ireland) 1966 (increase of graduated retirement benefit in cases of deferred retirement) with provisions corresponding to those of paragraphs 1 to 3 of Schedule 5 to this Act;
  - (b) for extending section 36 of that Act (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to men and their late wives.
- (2) This section is without prejudice to any power to modify those sections conferred by Schedule 3 to the Consequential Provisions Act.

#### Marginal Citations

- M17** 1966 c. 6 (N.I.).  
**M18** 1975 c. 18.

## **PART III**

### **NON-CONTRIBUTORY BENEFITS**

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

- C37** 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**).



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**C38** 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.

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

- (a) attendance allowance;
- (b) severe disablement allowance (with age related addition and increase for adult and child dependants);
- (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.

#### *Attendance allowance*

### 64 Entitlement.

- (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.

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

**C39** 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.**

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

- (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 for the remainder of his life, beginning with the date of the claim or, if later, the first date on which he is terminally ill; and

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- (ii) to have satisfied those conditions for the period of 6 months immediately preceding that date (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 the remainder of the person's life, beginning with that date.
- (2) For the purposes of subsection (1) above—
- (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.

## 67 Exclusions by regulation.

- (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>M19</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

M19 S.I. 1972/1265 (N.I. 14).

## *Severe disablement allowance*

## 68 Entitlement and rate.

- (1) Subject to the provisions of this section, a person shall be entitled to a severe disablement allowance for any day (“the relevant day”) if he satisfies—
  - (a) the conditions specified in subsection (2) below; or
  - (b) the conditions specified in subsection (3) below.
- (2) The conditions mentioned in subsection (1)(a) above are that—
  - (a) on the relevant day he is incapable of work; and
  - (b) he has been incapable of work for a period of not less than 196 consecutive days—
    - (i) beginning not later than the day on which he attained the age of 20; and

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- (ii) ending immediately before the relevant day.
- (3) The conditions mentioned in subsection (1)(b) above are that—
  - (a) on the relevant day he is both incapable of work and disabled; and
  - (b) he has been both incapable of work and disabled for a period of not less than 196 consecutive days ending immediately before the relevant day.
- (4) A person shall not be entitled to a severe disablement allowance if—
  - (a) he is under the age of 16;
  - (b) he is receiving full-time education;
  - (c) he does not satisfy the prescribed conditions—
    - (i) as to residence in Northern Ireland; or
    - (ii) as to presence there; or
  - (d) he has attained [<sup>F93</sup>the age of 65] and—
    - (i) was not entitled to a severe disablement allowance immediately before he attained that age; and
    - (ii) is not treated by regulations as having been so entitled immediately before he attained that age.
- (5) A person shall not be entitled to a severe disablement allowance for any day which as between him and his employer falls within a period of entitlement for the purposes of statutory sick pay.
- (6) A person is disabled for the purposes of this section if he suffers from loss of physical or mental faculty such that the extent of the resulting disablement assessed in accordance with Schedule 6 to this Act amounts to not less than 80 per cent.
- (7) A severe disablement allowance shall be paid at the weekly rate specified in Schedule 4, Part III, paragraph 2.
- (8) The amount of severe disablement allowance payable for any relevant day shall be [<sup>F94</sup>1/7th of the weekly rate].
- (9) In any case where—
  - (a) a severe disablement allowance is payable to a woman in respect of one or more relevant days in a week; and
  - (b) an amount of statutory maternity pay becomes payable to her on any day in that week,the amount of the severe disablement allowance (including any increase for a child or adult dependant under section 90(a) below) so payable shall be reduced by the amount of the statutory maternity pay, and only the balance (if any) shall be payable.
- (10) Where—
  - (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
  - (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
  - (c) he qualified for a disability working allowance for that week by virtue of a severe disablement allowance having been payable to him; and
  - (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of

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the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

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

[<sup>F95</sup>(10A) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to a severe disablement allowance for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for a severe disablement allowance as having been a day on which he was both incapable of work and disabled.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.]

(11) Regulations—

- (a) may direct that persons who—
  - (i) have attained [<sup>F96</sup>the age of 65]; and
  - (ii) were entitled to a severe disablement allowance immediately before they attained that age,

shall continue to be so entitled notwithstanding that they do not satisfy the conditions specified in subsection (2) or (3) above;

- (b) may direct—
  - (i) that persons who have previously been entitled to a severe disablement allowance shall be entitled to such an allowance notwithstanding that they do not satisfy the conditions specified in subsection (2)(b) or (3)(b) above;
  - (ii) that subsections (2)(b) and (3)(b) above shall have effect in relation to such persons subject to such modifications as may be specified in the regulations;

[<sup>F97</sup>(ca) may prescribe the circumstances in which a person is or is not to be treated as incapable of work;

(cb) may prescribe the circumstances in which a person is or is not to be treated as receiving full-time education;]

[<sup>F98</sup>(cc) may prescribe evidence which is to be treated as establishing that a person suffers from loss of physical or mental faculty such that the extent of the resulting disablement amounts to not less than 80 per cent.;

[<sup>F99</sup>and

(d) may make in relation to severe disablement allowance any such provision as is made in relation to incapacity benefit by section 30E above.]

(e) .....

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<sup>F100</sup>(12) . . . . .

[<sup>F101</sup>(13) In this section “retiring age” means 70 in the case of a man and 65 in the case of a woman.]

#### Textual Amendments

- F93** Words in s. 68(4)(d) substituted (28.10.1994) by S.R. 1994/370, **regs. 1, 2(2)(a)**
- F94** Words in s. 68(8) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 18(2)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F95** S. 68(10A) inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 11(2)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. II**
- F96** Words in s. 68(11)(a)(i) substituted (28.10.1994) by S.R. 1994/370, **regs. 1, 2(2)(b)**
- F97** S. 68(11)(ca)(cb) substituted for s. 68(11)(c) (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 para. 18(3)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F98** S. 68(11)(cc) inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 11(3)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. II**
- F99** S. 68(11)(d) and the preceding word substituted for s. 68(11)(d) (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 para. 18(4)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F100** S. 68(12) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), **Sch. 1 para. 18(6), Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F101** S. 68(13) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 para. 18(7)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

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

- C40** S. 68 modified (13.1.1994) by S.R. 1984/317, **reg. 19(1A)** (as inserted (13.1.1994) by S.R. 1993/487, **reg. 2**)
- C41** S. 68 modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), **arts. 1(3)(c), 73(8)**
- C42** S. 68(2)(3) amended (13.4.1995) by S.R. 1984/317, **reg. 7(2)** (as substituted by S.R. 1994/462, **reg. 2(5)(b)**)
- C43** S. 68(4)(d) modified (13.1.1994) by S.R. 1984/317, **reg. 19(1A)** (as inserted (13.1.1994) by S.R. 1993/487, **reg. 2**)

### 69 Severe disablement allowance: age related addition.

- (1) If a person was under the age of 60 on the day on which he qualified for severe disablement allowance, the weekly rate of his severe disablement allowance shall be increased by an age related addition at whichever of the weekly rates specified in the second column of paragraph 3 of Part III of Schedule 4 to this Act is applicable in his case, that is to say—
- (a) the higher rate, if he was under the age of 40 on the day on which he qualified for severe disablement allowance;
  - (b) the middle rate, if he was between the ages of 40 and 50 on that day; or
  - (c) the lower rate, if he was between the ages of 50 and 60 on that day.
- (2) Subject to subsection (4) below, for the purposes of this section the day on which a person qualified for severe disablement allowance is his first day of incapacity for work in the period of not less than 196 consecutive days mentioned in section 68(2)(b) or (3)(b) above, as the case may be, which preceded the first day in his current period of entitlement.

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- (3) For the purposes of this section, a person’s “current period of entitlement” is a current period—
- (a) which consists of one or more consecutive days on which he is or has been entitled to a severe disablement allowance; and
  - (b) which begins immediately after the last period of one or more consecutive days for which he was not entitled to such an allowance.
- (4) Regulations—
- (a) may prescribe cases where a person is to be treated for the purposes of this section as having qualified for severe disablement allowance on a prescribed day earlier than the day ascertained in accordance with subsection (2) above;
  - (b) may provide for days which are not days of incapacity for work in relation to a person to be treated as days of incapacity for work for the purpose of determining under this section the day on which he qualified for severe disablement allowance; and
  - (c) may make provision for disregarding prescribed days in computing any period of consecutive days for the purposes of subsection (3) above.

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

**C44** S. 69 modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), arts. 1(3)(c), 73(8)

*Invalid care allowance*

**70 Invalid care allowance.**

- (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>F102</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>F103</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



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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.

<sup>F104</sup>(10) . . . . .

**Textual Amendments**

**F102** Words in s. 70(5) substituted (28.10.1994) by S.R. 1994/370, regs. 1, 2(3)(a)

**F103** Words in s. 70(6) substituted (28.10.1994) by S.R. 1994/370, regs. 1, 2(3)(b)

**F104** 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.**

- (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 for life, 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.

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## 72 The care component.

- (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—
    - (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.

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- (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 for the remainder of his life beginning with that date.
- (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—
- (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>M20</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.

#### Marginal Citations

M20 S.I. 1972/1265 (N.I. 14).

### 73 The mobility component.

- (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 the age of 5 and throughout which—
- (a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so;

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- (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.
- (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.

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- (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 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>M21</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>M22</sup>National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the <sup>M23</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.

#### Marginal Citations

**M21** S.I. 1972/1265 (N.I. 14).

**M22** 1977 c. 49.

**M23** 1978 c. 29.

## 74 Mobility component for certain persons eligible for invalid carriages.

- (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>M24</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>M25</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

**M24** S.I. 1972/1265 (N.I. 14).

**M25** S.I. 1977/610 (N.I. 11).

#### 75 Persons 65 or over.

- (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.

- (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.

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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.**

- (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)**

**C45** 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.**

- (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.

- (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.

## PART IV

### INCREASES FOR DEPENDANTS

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

**C46** Pt. IV (ss. 80-93): 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)**.

#### *Child dependants*

#### **80 Beneficiary's dependent children.**

- (1) Subject to section 61 above and to the following provisions of this Part of this Act, the weekly rate of any benefit to which this subsection applies shall, for any period for which the beneficiary is entitled to child benefit in respect of a child or children, be increased in respect of that child, or each respectively of those children, by the amount specified in relation to the benefit in question in Schedule 4, Part IV, column (2).
- (2) Subsection (1) above applies to—
- (a) unemployment benefit where the beneficiary is over pensionable age;
  - <sup>[F105]</sup>(b) short-term incapacity benefit at the higher rate or where the beneficiary is over pensionable age;
  - (c) long-term incapacity benefit; and]
  - (d) Category A, Category B or Category C retirement pension.
- (3) In any case where—
- (a) a beneficiary is one of two persons who are—
    - (i) spouses residing together; or
    - (ii) an unmarried couple; and
  - (b) the other person had earnings in any week,
- the beneficiary's right to payment of increases for the following week under subsection (1) above shall be determined in accordance with subsection (4) below.
- (4) No such increase shall be payable—
- (a) in respect of the first child where the earnings were <sup>[F106]</sup>£125] or more; and
  - (b) in respect of a further child for each complete <sup>[F106]</sup>£16] by which the earnings exceeded <sup>[F106]</sup>£125].
- (5) Subject to section 81 below, the weekly rate of a widowed mother's allowance payable by virtue of subsection (1)(a) of section 37 above shall be increased for any period

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in respect of the child or, if more than one, each respectively of the children falling within subsection (2)(a), (b) or (c) of that section in respect of whom she is for the time being entitled to child benefit by the amount specified in relation to that allowance in Schedule 4, Part IV, column (2).

- (6) Subject to section 81 below, the weekly rate of a child's special allowance shall, for any period for which the beneficiary is entitled to child benefit in respect of two or more children with respect to whom the conditions specified in section 56(1)(b) and (c) above are satisfied, be increased in respect of each respectively of those children other than the elder or eldest by the amount specified in relation to that allowance in Schedule 4, Part IV, column (2).

- (7) In this section—

“unmarried couple” means a man and a woman who are not married to each other but are living together as husband and wife; and

“week” means such period of 7 days as may be prescribed for the purposes of this section.

#### Textual Amendments

**F105** S. 80(2)(b)(c) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 4(3)** (with **art. 15(1)**); S.R. 1994/450, **art. 2, Sch. Pt. IV**

**F106** Sums in s. 80(4) specified (10.4.1995) by S.R. 1995/71, **art. 8**

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

**C47** S. 80 modified (13.4.1995) by S.R. 1994/485, **regs. 1, 6, 7, 9(2)**

**C48** S. 80(3)(4) modified (13.4.1995) by S.R. 1994/485, **reg. 5**

## 81 Restrictions on increase - child not living with beneficiary, etc.

- (1) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, payment of an amount by way of an increase under section 80 above of any benefit, that amount shall not be payable unless one of the conditions specified in subsection (2) below is satisfied.
- (2) Those conditions are—
- that the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or
  - that the requisite contributions are being made to the cost of providing for the child.
- (3) The condition specified in subsection (2)(b) above is to be treated as satisfied if, but only if—
- such contributions are being made at a weekly rate not less than the amount referred to in subsection (1) above—
    - by the beneficiary; or
    - where the beneficiary is one of two spouses residing together, by them together; and
  - 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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#### Modifications etc. (not altering text)

**C49** S. 81(2) modified (13.4.1995) by S.R. 1994/485, **regs. 1(1), 8(1)**

**C50** S. 81(2)(b) modified (13.4.1995) by S.R. 1994/485, **regs. 1(1), 3(1)**

### *Adult dependants*

#### **82 Short-term benefit: increase for adult dependants.**

- (1) Subject to section 61 above and section 87 below, the weekly rate of unemployment benefit <sup>F107</sup> . . . it shall be increased by the amount specified in relation to the [<sup>F108</sup>that benefit] in Schedule 4, Part IV, column (3), for any period during which—
- (a) the beneficiary is—
    - (i) residing with his wife, or
    - (ii) contributing to the maintenance of his wife at a weekly rate not less than that amount; and
  - (b) his wife does not have weekly earnings which exceed that amount.
- (2) Subject, in particular, to subsection (5) and section 87 below, the weekly rate—
- (a) of unemployment benefit <sup>F109</sup> . . . in the case of a beneficiary not entitled to an increase under subsection (1) above, and
  - (b) of a maternity allowance in any case,
- shall be increased by the amount specified in relation to the benefit in question in Schedule 4, Part IV, column (3) (“the amount of the relevant increase”) for any period to which this subsection applies by virtue of subsection (3) or (4) below.
- (3) Subsection (2) above applies by virtue of this subsection to any period during which—
- (a) the beneficiary’s husband does not have weekly earnings which exceed the amount of the relevant increase, and
  - (b) either she and her husband are residing together or she is contributing to his maintenance at a weekly rate not less than that amount.
- (4) Subsection (2) above applies by virtue of this subsection to any period during which a person—
- (a) who is neither the spouse of the beneficiary nor a child, and
  - (b) in respect of whom such further conditions as may be prescribed are fulfilled,
- has the care of a child or children in respect of whom the beneficiary is entitled to child benefit.
- (5) A beneficiary shall not under subsection (2) above be entitled for the same period to an increase of benefit in respect of more than one person.

#### Textual Amendments

**F107** Words in s. 82(1) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 19(a), **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**F108** Words in s. 82(1) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 19(a)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

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**F109** Words in s. 82(2)(a) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 19(b), **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**X<sup>3</sup>83 Pension increase (wife).**

- (1) This section applies to—
  - (a) a Category A or Category C retirement pension;
  - F110**(b) .....
- (2) Subject to subsection (3) below, the weekly rate of a pension to which this section applies, when payable to a man, shall be increased by the amount specified in relation to the pension in Schedule 4, Part IV, column (3)—
  - (a) for any period during which the pensioner is residing with his wife; or
  - (b) for any period during which the pensioner is contributing to the maintenance of his wife at a weekly rate not less than that amount, and his wife does not have weekly earnings which exceed that amount.
- (3) Regulations may provide that for any period during which the pensioner is residing with his wife and his wife has earnings—
  - (a) the increase of benefit under this section shall be subject to a reduction in respect of the wife’s earnings; or
  - (b) there shall be no increase of benefit under this section.

**Editorial Information**

**X3** Ss. 83 and 84 are replaced by s. 83A (6.4.2010) by virtue of S.I. 1995/3213 (N.I. 22), art. 123, **Sch. 2 Pt. II para. 2**

**Textual Amendments**

**F110** S. 83(1)(b) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 para. 20, **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**84 Pension increase (husband).**

- (1) Where a Category A retirement pension is payable to a woman for any period—
  - [<sup>F111</sup>(a)** which began immediately upon the termination of a period for which the pensioner was entitled—
    - (i) to an increase in unemployment benefit by virtue of section 82(3) above; or
    - (ii) to an increase in incapacity benefit by virtue of any provision of regulations under section 86A below prescribed for the purposes of this sub-paragraph; and]
  - (b) during which the requirements of either paragraph (a) or (b) of subsection (2) below are satisfied (without interruption),then, the weekly rate of the pensioner’s Category A retirement pension shall be increased by the amount specified in relation to that pension in Schedule 4, Part IV, column (3) (“the specified amount”).
- (2) The requirements referred to in subsection (1)(b) above are—
  - (a) that the pensioner is residing with her husband;

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- (b) that the pensioner is contributing to the maintenance of her husband at a weekly rate not less than the specified amount, and her husband does not have weekly earnings which exceed that amount.
- (3) Regulations may provide that for any period during which the pensioner is residing with her husband and her husband has earnings—
  - (a) the increase of benefit under this section shall be subject to a reduction in respect of the husband’s earnings; or
  - (b) there shall be no increase of benefit under this section.

**Textual Amendments**  
**F111** S. 84(1)(a) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 21** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**85 Pension increase (person with care of children).**

- (1) This section applies to—
  - (a) a Category A retirement pension;
  - (b) a Category C retirement pension payable by virtue of section 78(1) above;
  - <sup>F112</sup>(c) .....
- (2) Subject to the following provisions, the weekly rate of a pension to which this section applies shall be increased by the amount specified in relation to that pension in Schedule 4, Part IV, column (3) for any period during which a person who is neither the spouse of the pensioner nor a child has the care of a child or children in respect of whom the pensioner is entitled to child benefit.
- (3) Subsection (2) above does not apply if the pensioner is a man whose wife is entitled to a Category B retirement pension, or to a Category C retirement pension by virtue of section 78(2) above or in such other cases as may be prescribed.
- (4) Regulations may, in a case within subsection (2) above in which the person there referred to is residing with the pensioner and fulfils such further conditions as may be prescribed, authorise an increase of benefit under this section, but subject, taking account of the earnings of the person residing with the pensioner, other than such of that person’s earnings as may be prescribed, to provisions comparable to those that may be made by virtue of section 83(3) above.

**Textual Amendments**  
**F112** S. 85(1)(c) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), **Sch. 1 para. 22**, **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

<sup>F113</sup>86 .....



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#### Textual Amendments

**F113** S. 86 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1, Pt. I para. 23, **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

#### [<sup>F114</sup>86A Incapacity benefit: increase for adult dependants.

- (1) The weekly rates of short-term and long-term incapacity benefit shall, in such circumstances as may be prescribed, be increased for adult dependants by the appropriate amount specified in relation to benefit of that description in Schedule 4, Part IV, column (3).
- (2) Regulations may provide that where the person in respect of whom an increase of benefit is claimed has earnings in excess of such amount as may be prescribed there shall be no increase of benefit under this section.]

#### Textual Amendments

**F114** S. 86A inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), art. 4(4) (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. II**

#### 87 Rate of increase where associated retirement pension is attributable to reduced contributions.

- (1) Where a person—
  - (a) is entitled—
    - (i) to unemployment benefit by virtue of section 25(2)(b) or (c) above, or [<sup>F115</sup>(ii) to short-term incapacity benefit under section 30A(2)(b) above;]
    - (iii) . . . . .
  - (b) would have been entitled only by virtue of section 60(1) above to the retirement pension by reference to which the rate of that benefit <sup>F116</sup> . . . is determined,

[<sup>F117</sup>the amount of any increase of the benefit attributable to sections 82 to 86A above shall be determined in accordance with regulations under this section.]

- (2) The regulations shall not provide for any such increase in a case where the retirement pension by reference to which the rate of the said benefit <sup>F116</sup> . . . is determined—
  - (a) would have been payable only by virtue of section 60 above; and
  - (b) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension.

#### Textual Amendments

**F115** S. 87(1)(a)(ii) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 24(2)(a)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**F116** Words in s. 87(1)(b)(2) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 24(4), **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**F117** Words following s. 87(1)(b) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 24(3)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

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

**C51** S. 87 modified (13.4.1995) by S.R. 1994/485, regs. 1, 13

**[<sup>F118</sup>88 Increases to be in respect of only one adult dependant.**

A person shall not under or by virtue of sections 83 to 86A above be entitled for the same period to an increase of benefit in respect of more than one person.]

**Textual Amendments**

**F118** S. 88 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 25** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

*Miscellaneous*

**89 Earnings to include occupational and personal pensions for purposes of provisions relating to increases of benefits in respect of child or adult dependants.**

- (1) Except as may be prescribed, in section 80 and [<sup>F119</sup>sections 82 to 86A above, and in regulations under section 86A above,] any reference to earnings includes a reference to payments by way of occupational or personal pension.
- (2) For the purposes of the provisions mentioned in subsection (1) above, the Department may by regulations provide, in relation to cases where payments by way of occupational or personal pension are made otherwise than weekly, that any necessary apportionment of the payments shall be made in such manner and on such basis as may be prescribed.

**Textual Amendments**

**F119** Words in s. 89 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 26** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

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

**C52** S. 89 modified (13.4.1995) by S.R. 1994/485, regs. 1, 11

**90 Beneficiaries under sections 68 and 70.**

The weekly rates—

- (a) of a severe disablement allowance, and
- (b) of an invalid care allowance,

shall, in such circumstances as may be prescribed, be increased for child or adult dependants by the appropriate amount specified in relation to the allowance in question in Schedule 4, Part IV.

**91 Effect of trade disputes on entitlement to increases.**

- (1) A beneficiary shall not be entitled—

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- (a) to an increase in any benefit [<sup>F120</sup>under or by virtue of sections 82 to 88 above];  
or
- (b) to an increase in benefit for an adult dependant by virtue of regulations under section 90 above,

if the person in respect of whom he would be entitled to the increase falls within subsection (2) below.

- (2) A person falls within this subsection if—
  - (a) he is disqualified under section 27 above for receiving unemployment benefit;  
or
  - (b) he would be so disqualified if he were otherwise entitled to that benefit.

#### Textual Amendments

**F120** Words in s. 91(1)(a) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 27 (with art. 15(1))

## 92 Dependency increases: continuation of awards in cases of fluctuating earnings.

- (1) Where a beneficiary—
  - (a) has been awarded an increase of benefit under this Part of this Act, but
  - (b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person (“the relevant earner”) exceed the amount of the increase or, as the case may be, some specified amount,then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.
- (2) In this section the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this section, would be taken into account in determining whether the beneficiary is entitled to the increase in question for that week.

## 93 Dependency increases on termination of employment after period of entitlement to disability working allowance.

Where—

- [<sup>F121</sup>(a) a person becomes entitled—
  - (i) to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit, by virtue of section 30C(5) or (6) or section 42 above; or
  - (ii) to severe disablement allowance by virtue of section 68(10) or (10A) above; and]
  - (b) when he was last entitled to that [<sup>F122</sup>benefit or] allowance, it was increased in respect of a dependant by virtue of—
    - (i) regulation 8(6) of the <sup>M26</sup>Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977;
    - (ii) regulation 3 of the <sup>M27</sup>Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1984;

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- (iii) regulation 2 of the <sup>M28</sup>Social Security (Savings for Existing Beneficiaries) Regulations (Northern Ireland) 1984; or
- (iv) regulation 4 of the <sup>M29</sup>Social Security Benefit (Dependency and Computation of Earnings) (Amendment) Regulations (Northern Ireland) 1989,

for the purpose of determining whether his [<sup>F122</sup>benefit or] allowance should be increased by virtue of that regulation for any period beginning with the day on which he again becomes entitled to his [<sup>F122</sup>benefit or] allowance, the increase in respect of that dependant shall be treated as having been payable to him on each day between the last day on which his [<sup>F122</sup>benefit or] allowance was previously payable and the day on which he again becomes entitled to it.

#### Textual Amendments

- F121** S. 93(a) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 28(a)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F122** Words in s. 93 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 28(b)** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**

#### Marginal Citations

- M26** S.R. (N.I.) 1977 No. 74.  
**M27** S.R. (N.I.) 1984 No. 373.  
**M28** S.R. (N.I.) 1984 No. 381.  
**M29** S.R. (N.I.) 1989 No. 381.

## PART V

### BENEFIT FOR INDUSTRIAL INJURIES

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

- C53** Pt. 5 (ss. 94-111): 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)**

#### *General provisions*

#### **94 Right to industrial injuries benefit.**

- (1) Industrial injuries benefit shall be payable where an employed earner suffers personal injury caused after 4th July 1948 by accident arising out of and in the course of his employment, being employed earner's employment.
- (2) Industrial injuries benefit consists of the following benefits—
  - (a) disablement benefit payable in accordance with sections 103 to 105 below, paragraphs 2 and 3 of Schedule 7 to this Act and Parts II and III of that Schedule;
  - (b) reduced earnings allowance payable in accordance with Part IV of that Schedule;
  - (c) retirement allowance payable in accordance with Part V of that Schedule; and

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- (d) industrial death benefit, payable in accordance with Part VI of that Schedule.
- (3) For the purposes of industrial injuries benefit an accident arising in the course of an employed earner's employment shall be taken, in the absence of evidence to the contrary, also to have arisen out of that employment.
- (4) Regulations may make provision as to the day which, in the case of night workers and other special cases, is to be treated for the purposes of industrial injuries benefit as the day of the accident.
- (5) Subject to sections 117 and 119 below, industrial injuries benefit shall not be payable in respect of an accident happening while the earner is outside Northern Ireland.
- (6) In the following provisions of this Part of this Act "work" in the contexts "incapable of work" and "incapacity for work" means work which the person in question can be reasonably expected to do.
- (7) Subsection (5) above shall cease to have effect on such day as the Head of the Department may by order appoint.

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

C54 S. 94(2)(a) applied (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), ss. 167(1).

**95 Relevant employments.**

- (1) In section 94 above, this section and sections 98 to 109 below "employed earner's employment" shall be taken to include any employment by virtue of which a person is, or is treated by regulations as being for the purposes of industrial injuries benefit, an employed earner.
- (2) Regulations may provide that any prescribed employment shall not be treated for the purposes of industrial injuries benefit as employed earner's employment notwithstanding that it would be so treated apart from the regulations.
- (3) For the purposes of the provisions of this Act mentioned in subsection (1) above an employment shall be an employed earner's employment in relation to an accident if (and only if) it is, or is treated by regulations as being, such an employment when the accident occurs.
- (4) Any reference in the industrial injuries and diseases provisions to an "employed earner" or "employed earner's employment" is to be construed, in relation to any time before 6th April 1975, as a reference respectively to an "insured person" or "insurable employment" within the meaning of the provisions relating to industrial injuries and diseases which were in force at that time.
- (5) In subsection (4) above "the industrial injuries and diseases provisions" means—
- this section and sections 96 to 110 below;
  - any other provisions of this Act so far as they relate to those sections; and
  - any provisions of the Administration Act so far as they so relate.

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## **96 Persons treated as employers for certain purposes.**

In relation to—

- (a) a person who is an employed earner for the purposes of this Part of this Act otherwise than by virtue of a contract of service or apprenticeship; or
- (b) any other employed earner—
  - (i) who is employed for the purpose of any game or recreation and is engaged or paid through a club; or
  - (ii) in whose case it appears to the Department there is special difficulty in the application of all or any of the provisions of this Part of this Act relating to employers,

regulations may provide for a prescribed person to be treated in respect of industrial injuries benefit and its administration as the earner's employer.

## **97 Accidents in course of illegal employments.**

- (1) Subsection (2) below has effect in any case where—
  - (a) a claim is made for industrial injuries benefit in respect of an accident, or of a prescribed disease or injury; or
  - (b) an application is made under section 42 of the Administration Act for a declaration that an accident was an industrial accident, or for a corresponding declaration as to a prescribed disease or injury.
- (2) The Department may direct that the relevant employment shall, in relation to that accident, disease or injury, be treated as having been employed earner's employment notwithstanding that by reason of a contravention of, or non-compliance with, some provision contained in or having effect under an enactment passed for the protection of employed persons or any class of employed persons, either—
  - (a) the contract purporting to govern the employment was void; or
  - (b) the employed person was not lawfully employed in the relevant employment at the time when, or in the place where, the accident happened or the disease or injury was contracted or received.
- (3) In subsection (2) above "relevant employment" means—
  - (a) in relation to an accident, the employment out of and in the course of which the accident arises; and
  - (b) in relation to a prescribed disease or injury, the employment to the nature of which the disease or injury is due.

## **98 Earner acting in breach of regulations, etc.**

An accident shall be taken to arise out of and in the course of an employed earner's employment, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if—

- (a) the accident would have been taken so to have arisen had the act not been done in contravention of any such regulations or orders, or without such instructions, as the case may be; and
- (b) the act is done for the purposes of and in connection with the employer's trade or business.

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## **99 Earner travelling in employer’s transport.**

- (1) An accident happening while an employed earner is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be taken to arise out of and in the course of his employment if—
- (a) the accident would have been taken so to have arisen had he been under such an obligation; and
  - (b) at the time of the accident, the vehicle—
    - (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and
    - (ii) is not being operated in the ordinary course of a public transport service.
- (2) In this section references to a vehicle include a ship, vessel, hovercraft or aircraft.

## **100 Accidents happening while meeting emergency.**

An accident happening to an employed earner in or about any premises at which he is for the time being employed for the purposes of his employer’s trade or business shall be taken to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

## **101 Accident caused by another’s misconduct, etc.**

An accident happening after 19th December 1961 shall be treated for the purposes of industrial injuries benefit, where it would not apart from this section be so treated, as arising out of an employed earner’s employment if—

- (a) the accident arises in the course of the employment; and
- (b) the accident either is caused—
  - (i) by another person’s misconduct, skylarking or negligence, or
  - (ii) by steps taken in consequence of any such misconduct, skylarking or negligence, or
  - (iii) by the behaviour or presence of an animal (including a bird, fish or insect),or is caused by or consists in the employed earner being struck by any object or by lightning; and
- (c) the employed earner did not directly or indirectly induce or contribute to the happening of the accident by his conduct outside the employment or by any act not incidental to the employment.

*Sickness benefit*

F123 **102** .....



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### Textual Amendments

**F123** S. 102 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1, Pt. I para. 29, Sch. 2 (with art. 15(1)); S.R. 1994/450, art. 2, Sch.

### *Disablement pension*

#### **103 Disablement pension.**

- (1) Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 19th November 1986, 20 per cent.
- (2) In the determination of the extent of an employed earner's disablement for the purposes of this section there may be added to the percentage of the disablement resulting from the relevant accident the assessed percentage of any present disablement of his—
  - (a) which resulted from any other accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, and
  - (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement,
 (as well as any percentage which may be so added in accordance with regulations under subsection (2) of section 109 below made by virtue of subsection (4)(b) of that section).
- (3) Subject to subsection (4) below, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—
  - (a) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10, and
  - (b) if it is not a multiple of 5, as being the nearest percentage which is a multiple of 10,
 and where the assessment of disablement on a claim made on or after 19th November 1986 is less than 20 per cent., but not less than 14 per cent., it shall be treated as 20 per cent.
- (4) Where subsection (2) above applies, subsection (3) above shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.
- (5) In this Part of this Act “assessed”, in relation to the extent of any disablement, means assessed in accordance with Schedule 6 to this Act; and for the purposes of that Schedule there shall be taken to be no relevant loss of faculty when the extent of the resulting disablement, if so assessed, would not amount to 1 per cent.
- (6) A person shall not be entitled to a disablement pension until after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident.

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- (7) Subject to subsection (8) below, where disablement pension is payable for a period, it shall be paid at the appropriate weekly rate specified in Schedule 4, Part V, paragraph 1.
- (8) Where the period referred to in subsection (7) above is limited by reference to a definite date, the pension shall cease on the death of the beneficiary before that date.

#### **104 Increase where constant attendance needed.**

- (1) Where a disablement pension is payable in respect of an assessment of 100 per cent., then, if as the result of the relevant loss of faculty the beneficiary requires constant attendance, the weekly rate of the pension shall be increased by an amount, not exceeding the appropriate amount specified in Schedule 4, Part V, paragraph 2 determined in accordance with regulations by reference to the extent and nature of the attendance required by the beneficiary.
- (2) An increase of pension under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.
- (3) The Department may by regulations direct that any provision of sections 64 to 67 above shall have effect, with or without modifications, in relation to increases of pension under this section.
- (4) In subsection (3) above, “modifications” includes additions and omissions.

#### **105 Increase for exceptionally severe disablement.**

- (1) Where a disablement pension is payable to a person—
  - (a) who is or, but for having received medical or other treatment as an in-patient in a hospital or similar institution, would be entitled to an increase of the weekly rate of the pension under section 104 above, and the weekly rate of the increase exceeds the amount specified in Schedule 4, Part V, paragraph 2(a); and
  - (b) his need for constant attendance of an extent and nature qualifying him for such an increase at a weekly rate in excess of that amount is likely to be permanent,the weekly rate of the pension shall, in addition to any increase under section 104 above, be further increased by the amount specified in Schedule 4, Part V, paragraph 3.
- (2) An increase under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.

#### *Other benefits and increases*

#### **106 Benefits and increases subject to qualifications as to time.**

Schedule 7 to this Act shall have effect in relation—

- (a) to unemployment supplement;
- (b) to disablement gratuity;
- (c) to increases of disablement pension during hospital treatment;
- (d) to reduced earnings allowance;
- (e) to retirement allowance; and

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- (f) to industrial death benefit,  
 for all of which the qualifications include special qualifications as to time.

#### *Successive accidents*

### **107 Adjustments for successive accidents.**

- (1) Where a person suffers two or more successive accidents arising out of and in the course of his employed earner's employment—
- (a) he shall not for the same period be entitled (apart from any increase of benefit mentioned in subsection (2) below) to receive industrial injuries benefit by way of two or more disablement pensions at an aggregate weekly rate exceeding the appropriate amount specified in Schedule 4, Part V, paragraph 4; and
  - (b) regulations may provide for adjusting—
    - (i) disablement benefit, or the conditions for the receipt of that benefit, in any case where he has received or may be entitled to a disablement gratuity;
    - (ii) any increase of benefit mentioned in subsection (2) below, or the conditions for its receipt.
- (2) The increases of benefit referred to in subsection (1) above are those under the following provisions of this Act—
- section 104,
  - section 105,
  - paragraph 2, 4 or 6 of Schedule 7.

#### *Prescribed industrial diseases, etc.*

### **108 Benefit in respect of prescribed industrial diseases, etc.**

- (1) Industrial injuries benefits shall, in respect of a person who has been in employed earner's employment, be payable in accordance with this section and sections 109 and 110 below in respect of—
- (a) any prescribed disease, or
  - (b) any prescribed personal injury (other than an injury caused by accident arising out of and in the course of his employment),
- which is a disease or injury due to the nature of that employment and which developed after 4th July 1948.
- (2) A disease or injury may be prescribed in relation to any employed earners if the Department is satisfied that—
- (a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
  - (b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

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- (3) Regulations prescribing any disease or injury for those purposes may provide that a person who developed the disease or injury on or at any time after a date specified in the regulations (being a date before the regulations came into force but not before 5th July 1948) shall be treated, subject to any prescribed modifications of this section or section 109 or 110 below, as if the regulations had been in force when he developed the disease or injury.
- (4) Provision may be made by regulations for determining—
  - (a) the time at which a person is to be treated as having developed any prescribed disease or injury; and
  - (b) the circumstances in which such a disease or injury is, where the person in question has previously suffered from it, to be treated as having recrudesced or as having been contracted or received afresh.
- (5) Notwithstanding any other provision of this Act, the power conferred by subsection (4)
  - (a) above includes power to provide that the time at which a person shall be treated as having developed a prescribed disease or injury shall be the date on which he first makes a claim which results in the payment of benefit by virtue of this section or section 110 below in respect of that disease or injury.
- (6) Nothing in this section or in section 109 or 110 below affects the right of any person to benefit in respect of a disease which is a personal injury by accident within the meaning of this Part of this Act, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment.

## **109 General provisions relating to benefit under s. 108.**

- (1) Subject to the power to make different provision by regulations, and to the following provisions of this section and section 110 below—
  - (a) the benefit payable under section 108 above in respect of a prescribed disease or injury, and
  - (b) the conditions for receipt of benefit,shall be the same as in the case of personal injury by accident arising out of and in the course of employment.
- (2) In relation to prescribed diseases and injuries, regulations may provide—
  - (a) for modifying any provisions contained in this Act or the Administration Act which relate to disablement benefit or reduced earnings allowance or their administration; and
  - (b) for adapting references in this Act and that Act to accidents,and for the purposes of this subsection the provisions of the Administration Act which relate to the administration of disablement benefit or reduced earnings allowance shall be taken to include section 1 and any provision which relates to the administration of both the benefit in question and other benefits.
- (3) Without prejudice to the generality of subsection (2) above, regulations under that subsection may in particular include provision—
  - (a) for presuming any prescribed disease or injury—
    - (i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at

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- the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury,
- (ii) not to be due to the nature of a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury;
- (b) for such matters as appear to the Department to be incidental to or consequential on provisions included in the regulations by virtue of subsection (2) and paragraph (a) above.
- (4) Regulations under subsection (2) above may also provide—
- (a) that, in the determination of the extent of an employed earner's disablement resulting from a prescribed disease or injury, the appropriate percentage may be added to the percentage of that disablement; and
- (b) that, in the determination of the extent of an employed earner's disablement for the purposes of section 103 above, the appropriate percentage may be added to the percentage of disablement resulting from the relevant accident.
- (5) In subsection (4)(a) above "the appropriate percentage" means the assessed percentage of any present disablement of the earner which resulted—
- (a) from any accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, or
- (b) from any other prescribed disease or injury due to the nature of that employment and developed after 4th July 1948,
- and in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement.
- (6) In subsection (4)(b) above "the appropriate percentage" means the assessed percentage of any present disablement of the earner—
- (a) which resulted from any prescribed disease or injury due to the nature of his employment and developed after 4th July 1948, and
- (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement.
- (7) Where regulations under subsection (2) above—
- (a) make provision such as is mentioned in subsection (4) above, and
- (b) also make provision corresponding to that in section 103(3) above,
- they may also make provision to the effect that those corresponding provisions shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.

## **110 Respiratory diseases.**

- (1) As respects pneumoconiosis, regulations may further provide that, where a person is found to be suffering from pneumoconiosis accompanied by tuberculosis, the effects of the tuberculosis shall be treated for the purposes of this section and sections 108 and 109 above as if they were effects of the pneumoconiosis.
- (2) Subsection (1) above shall have effect as if after "tuberculosis" (in both places) there were inserted "emphysema or chronic bronchitis", but only in relation to a person the extent of whose disablement resulting from pneumoconiosis, or from pneumoconiosis

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accompanied by tuberculosis, would (if his physical condition were otherwise normal) be assessed at not less than 50 per cent.

- (3) A person found to be suffering from pneumoconiosis shall be treated for the purposes of this Act as suffering from a loss of faculty such that the assessed extent of the resulting disablement amounts to not less than 1 per cent.

#### *Old cases*

### **111 Workmen’s compensation, etc.**

Schedule 8 to this Act shall have effect—

- (a) to continue workmen’s compensation;
- (b) to enable regulations—
  - (i) to supplement workmen’s compensation; and
  - (ii) to provide for the payment of allowances or other benefits for industrial diseases in respect of employment before 5th July 1948; and
- (c) to enable regulations to confer rights to payments in respect of such employment.

## **PART VI**

### MISCELLANEOUS PROVISIONS RELATING TO PART I TO V

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

**C55** Pt. VI (ss. 112-121): power to apply conferred (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), ss. 161(1), 168(4), **Sch. 6 para. 1(3)(a)**.

#### *Earnings*

### **112 Certain sums to be earnings.**

- (1) Regulations may provide—
- (a) that any employment protection entitlement shall be deemed for the purposes of Parts I to V of this Act to be earnings payable by and to such persons as are prescribed and to be so payable in respect of such periods as are prescribed; and
  - (b) that those periods shall, so far as they are not periods of employment, be deemed for those purposes to be periods of employment.
- (2) In subsection (1) above “employment protection entitlement” means—
- (a) any sum, or a prescribed part of any sum, mentioned in subsection (3) below; and
  - (b) prescribed amounts which the regulations provide are to be treated as related to any of those sums.
- (3) The sums referred to in subsection (2) above are the following—

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- (a) a sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the <sup>M30</sup>Industrial Relations (Northern Ireland) Order 1976 ;
- (b) a sum payable by way of pay in pursuance of an order under that Order for the continuation of a contract of employment;
- (c) a sum payable by way of remuneration in pursuance of a protective award under that Order.

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

**C56** S. 112 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, art. 2

**Marginal Citations**

**M30** S.I. 1976/1043 (N.I. 16).

*Disqualification and suspension*

**113 General provisions as to disqualification and suspension.**

- (1) Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit under Parts II to V of this Act, and an increase of such benefit shall not be payable in respect of any person as the beneficiary's wife or husband, for any period during which the person—
  - (a) is absent from Northern Ireland; or
  - (b) is undergoing imprisonment or detention in legal custody.
- (2) Regulations may provide for suspending payment of such benefit to a person during any period in which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.
- (3) Regulations may provide for a person who would be entitled to any such benefit but for the operation of any provision of this Act or the Administration Act to be treated as if entitled to it for the purposes of any rights or obligations (whether his own or another's) which depend on his entitlement, other than the right to payment of the benefit.

*Persons maintaining dependants, etc.*

**114 Persons maintaining dependants, etc.**

- (1) Regulations may provide for determining the circumstances in which a person is or is not to be taken, for the purposes of Parts II to V of this Act—
  - (a) to be wholly or mainly, or to a substantial extent, maintaining, or to be contributing at any weekly rate to the maintenance of, another person; or
  - (b) to be, or have been, contributing at any weekly rate to the cost of providing for a child.
- (2) Regulations under this section may provide, for the purposes of the provisions relating to an increase of benefit under Parts II to V of this Act in respect of a wife or other adult dependant, that where—



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- (a) a person is partly maintained by each of two or more beneficiaries, each of whom would be entitled to such an increase in respect of that person if he were wholly or mainly maintaining that person, and
  - (b) the contributions made by those two or more beneficiaries towards the maintenance of that person amount in the aggregate to sums which would, if they had been contributed by one of those beneficiaries, have been sufficient to satisfy the requirements of regulations under this section,that person shall be taken to be wholly or mainly maintained by such of those beneficiaries as may be prescribed.
- (3) Regulations may provide for any sum or sums paid by a person by way of contribution towards either or both of the following, that is to say—
  - (a) the maintenance of his or her spouse, and
  - (b) the cost of providing for one or more children,to be treated for the purposes of any of the provisions of this Act specified in subsection (4) below as such contributions, of such respective amounts equal in the aggregate to the said sum or sums, in respect of such persons, as may be determined in accordance with the regulations so as to secure as large a payment as possible by way of benefit in respect of the dependants.
- (4) The provisions in question are sections 56, 81 to 84 <sup>F124</sup> . . . and paragraphs 5 and 6 of Schedule 7 to this Act.

#### Textual Amendments

**F124** Words in s. 114(4) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(2), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

### *Special cases*

#### **115 Crown employment - Parts I to VI.**

- (1) Subject to the provisions of this section, Parts I to V and this Part of this Act apply to persons employed by or under the Crown in like manner as if they were employed by a private person.
- (2) Subsection (1) above does not apply to persons serving as members of Her Majesty's forces in their capacity as such.
- (3) Employment as a member of Her Majesty's forces and any other prescribed employment under the Crown are not, and are not to be treated as, employed earner's employment for any of the purposes of Part V of this Act.
- (4) The references to Parts I to V of this Act in this section and sections 116, 117, 119 and 120 below do not include references to section 111 above.

#### **116 Her Majesty's forces.**

- (1) Subject to section 115(2) and (3) above and to this section, a person who is serving as a member of Her Majesty's forces shall, while he is so serving, be treated as an employed earner, in respect of his membership of those forces, for the purposes—

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- (a) of Parts I to V and this Part of this Act; and
  - (b) of any provision of the Administration Act in its application to him as an employed earner.
- (2) The Secretary of State may make regulations modifying Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been members of Her Majesty's forces; and regulations under this section may in particular provide—
- (a) in the case of persons who are employed earners in respect of their membership of those forces, for reducing the rate of the contributions payable in respect of their employment and for determining—
    - (i) the amounts payable on account of those contributions by the Secretary of State and the time and manner of payment, and
    - (ii) the deductions (if any) to be made on account of those contributions from the pay of those persons;
  - (b) for preventing a person who is discharged from Her Majesty's forces at his own request from being thereby disqualified for receiving unemployment benefit on the ground that he has voluntarily left his employment without just cause.
- (3) For the purposes of Parts I to V and this Part of this Act, Her Majesty's forces shall be taken to consist of such establishments and organisations as may be prescribed by regulations made by the Secretary of State being establishments and organisations in which persons serve under the control of the Defence Council.

#### **Extent Information**

**E1** S. 116 extends to Northern Ireland only, with the exception of s.116(2) which extends to United Kingdom.

### **117 Mariners, airmen, etc.**

- (1) The Department may make regulations modifying provisions of Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as the Department thinks proper, in their application to persons who are or have been, or are to be, employed on board any ship, vessel, hovercraft or aircraft.
- (2) Regulations under subsection (1) above may in particular provide—
- (a) for any such provision to apply to such persons, notwithstanding that it would not otherwise apply;
  - (b) for excepting such persons from the application of any such provision where they neither are domiciled nor have a place of residence in Northern Ireland;
  - (c) for requiring the payment of secondary Class 1 contributions in respect of such persons, whether or not they are (within the meaning of Part I of this Act) employed earners;
  - (d) for the taking of evidence, for the purposes of any claim to benefit, in a country or territory other than Northern Ireland, by a British consular official or such other person as may be prescribed;

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- (e) for enabling persons who are or have been so employed to authorise the payment of the whole or any part of any benefit to which they are or may become entitled to such of their dependants as may be prescribed.

#### **118 Married women and widows.**

The Department may make regulations modifying any of the following provisions of this Act, namely—

- (a) Part I;
- (b) Part II (except section 60); and
- (c) Parts III and IV,

in such manner as the Department thinks proper, in their application to women who are or have been married.

#### **119 Persons outside Northern Ireland.**

The Department may make regulations modifying Parts I to V of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as the Department thinks proper, in their application to persons who are or have been outside Northern Ireland at any prescribed time or in any prescribed circumstances.

#### **120 Treatment of certain marriages.**

(1) Regulations may provide—

- (a) for a voidable marriage which has been annulled, whether before or after the date when the regulations come into force, to be treated for the purposes of the provisions to which this subsection applies as if it had been a valid marriage which was terminated by divorce at the date of annulment;
- (b) as to the circumstances in which, for the purposes of the enactments to which this section applies—
  - (i) a marriage celebrated under a law which permits polygamy; or
  - (ii) any marriage during the subsistence of which a party to it is at any time married to more than one person,

is to be treated as having, or not having, the consequences of a marriage celebrated under a law which does not permit polygamy.

(2) Subsection (1) above applies—

- (a) to any enactment contained in Parts I to V or this Part of this Act; and
- (b) to regulations under any such enactment.

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

C57 S. 120 applied (7.2.1994) by 1993 c. 49, s. 163(5); S.R. 1994/17, art. 2

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## *Interpretation*

### **121 Interpretation of Parts I to VI and supplementary provisions.**

(1) In Parts I to V above and this Part of this Act, unless the context otherwise requires—  
“beneficiary”, in relation to any benefit, means the person entitled to that benefit;

“benefit” means—

- (a) benefit under Parts II to V of this Act other than Old Cases payments;
- (b) as respects any period before 1st July 1992 but not before 6th April 1975, benefit under Part II of the 1975 Act; or
- (c) as respects any period before 6th April 1975, benefit under—
  - (i) the <sup>M31M32</sup>National Insurance Act (Northern Ireland) 1946 or 1966; or
  - (ii) the <sup>M33M34</sup>National Insurance (Industrial Injuries) Act (Northern Ireland) 1946 or 1966;

“child” means a person under the age of 19 who would be treated as a child for the purposes of Part IX of this Act or such other person under that age as may be prescribed;

“claim” is to be construed in accordance with “claimant”;

“claimant”, in relation to benefit other than industrial injuries benefit, means a person who has claimed benefit;

“claimant”, in relation to industrial injuries benefit, means a person who has claimed industrial injuries benefit;

“contract of service” means any contract of service or apprenticeship whether written or oral and whether express or implied;

“current”, in relation to the lower and upper earnings limits under section 5(1) above, means for the time being in force;

[<sup>F125</sup>“day of interruption of employment” has the meaning assigned by section 25A(1)(c) above;]

“deferred” and “period of deferment” have the meanings assigned to them by section 55 above;

“earner” and “earnings” are to be construed in accordance with sections 3, 4 and 112 above;

“employed earner” has the meaning assigned to it by section 2 above;

“employment” includes any trade, business, profession, office or vocation and “employed” has a corresponding meaning;

“entitled”, in relation to any benefit, is to be construed in accordance with—

- (a) the provisions specifically relating to that benefit;
- (b) in the case of a benefit specified in section 20(1) above, section 21 above; and
- (c) sections 1 to 3 and 66 of the Administration Act;

“government department” means, or as the case may require, includes, a Northern Ireland department;

“industrial injuries benefit” means benefit under Part V of this Act, other than under Schedule 8 to this Act;

“initial primary percentage” is to be construed in accordance with section 8(1) and (2) above and as referring to the percentage rate from time to time specified in section 8(2)(a) above as the initial primary percentage;

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“the Inland Revenue” means the Commissioners of Inland Revenue;

“late husband”, in relation to a woman who has been more than once married, means her last husband;

“long-term benefit” has the meaning assigned to it by section 20(2) above;

“loss of physical faculty” includes disfigurement whether or not accompanied by any loss of physical faculty;

“lower earnings limit” and “upper earnings limit” are to be construed in accordance with section 5(1) above and references to the lower or upper earnings limit of a tax year are to whatever is (or was) for that year the limit in force under that subsection;

“medical examination” includes bacteriological and radiographical tests and similar investigations and “medically examined” has a corresponding meaning;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting himself to medical treatment are to be construed accordingly;

“Old Cases payments” means payments under Part I of Schedule 8 to this Act;

“payments by way of occupational or personal pension” means, in relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him—

- (a) out of money provided wholly or partly by the employer or under arrangements made by the employer;
- (b) out of money provided under an enactment or instrument having the force of law in any part of the United Kingdom or elsewhere;
- (c) under a personal pension scheme as defined in Article 2(2) of the 1986 Order;
- (d) under a contract or trust scheme approved under Chapter III of Part XIV of the <sup>M35</sup>Income and Corporation Taxes Act 1988; or
- (e) under a personal pension scheme approved under Chapter IV of that Part of that Act,

and such other payments as are prescribed;

“pensionable age” means—

- (a) the age of 65, in the case of a man; and
- (b) the age of 60, in the case of a woman;

“pneumoconiosis” means fibrosis of the lungs due to silica dust, asbestos dust, or other dust, and includes the condition of the lungs known as dust-reticulation;

“prescribe” means prescribe by regulations;

“primary percentage” is to be construed in accordance with section 8(1) and (2) above;

“qualifying earnings factor” means an earnings factor equal to the lower earnings limit for the year in question multiplied by 52;

“relative” includes a person who is a relative by marriage and a person who would be a relative if some person born illegitimate had been born legitimate;

“relevant accident” means the accident in respect of which industrial injuries benefit is claimed or payable;

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“relevant injury” means the injury in respect of which industrial injuries benefit is claimed or payable;

“relevant loss of faculty” means—

- (a) in relation to severe disablement allowance, the loss of faculty which results in the disablement; or
- (b) in relation to industrial injuries benefit, the loss of faculty resulting from the relevant injury;

“self-employed earner” has the meaning assigned to it by section 2 above;

“short-term benefit” has the meaning assigned to it by section 20(2) above;

“tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in the case of a tax year ending in a leap year, the last two days) to be treated accordingly as a separate tax week;

“tax year” means the twelve months beginning with 6th April in any year, the expression “1978-79” meaning the tax year beginning with 6th April 1978, and any correspondingly framed reference to a pair of successive years being construed as a reference to the tax year beginning with 6th April in the earlier of them;

“trade or business” includes, in relation to a public or local authority, the exercise and performance of the powers and duties of that authority;

“trade union” means an association of employed earners;

“week”, except in relation to disability working allowance, means a period of 7 days beginning with Sunday.

- (2) Regulations may make provision modifying the meaning of “employment” for the purposes of any provision of Parts I to V and this Part of this Act.
- (3) Provision may be made by regulations as to the circumstances in which a person is to be treated as residing or not residing with another person for any of the purposes of Parts I to V and this Part of this Act and as to the circumstances in which persons are to be treated for any of those purposes as residing or not residing together.
- (4) A person who is residing with his spouse shall be treated for the purposes of Parts I to V of this Act and this Part as entitled to any child benefit to which his spouse is entitled.
- (5) Regulations may, for the purposes of any provision of those Parts under which the right to any benefit or increase of benefit depends on a person being or having been entitled to child benefit, make provision whereby a person is to be treated as if he were or had been so entitled or as if he were not or had not been so entitled.
- (6) For the purposes of Parts I to V of this Act and this Part a person is “permanently incapable of self-support” if (but only if) he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for the remainder of his life.

#### Textual Amendments

**F125** Definition in s. 121(1) substituted (13.4.1995) by [S.I. 1994/1898 \(N.I. 12\)](#), art. 13(1), [Sch. 1 Pt. I para. 30](#); [S.R. 1994/450](#), art. 2(d), [Sch. Pt. IV](#)

#### Marginal Citations

**M31** [1946 c. 23 \(N.I.\)](#).

**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.

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- M32** 1966 c. 6 (N.I.).
- M33** 1946 c. 21 (N.I.).
- M34** 1966 c. 9 (N.I.).
- M35** 1988 c. 1.

## PART VII

### INCOME-RELATED BENEFITS

#### *General*

#### **122 Income-related benefits.**

- (1) Prescribed schemes shall provide for the following benefits (in this Act referred to as “income-related benefits”)—
  - (a) income support;
  - (b) family credit;
  - (c) disability working allowance;
  - (d) housing benefit.
- (2) The Department shall make copies of schemes prescribed under subsection (1)(a), (b) or (c) above available for public inspection at social security offices of the Department at all reasonable hours without payment.
- (3) The Department of the Environment and the Executive—
  - (a) shall take such steps as appear to them appropriate for the purpose of securing that persons who may be entitled to housing benefit become aware that they may be entitled to it; and
  - (b) shall make copies of the housing benefit scheme available for public inspection at their offices at all reasonable hours without payment.

#### *Income support*

#### **123 Income support.**

- (1) A person in Northern Ireland is entitled to income support if—
  - (a) he is of or over the age of 18 or, in prescribed circumstances and for a prescribed period, of or over the age of 16 or he is a person to whom section 124(1) below applies;
  - (b) he has no income or his income does not exceed the applicable amount;
  - (c) he is not engaged in remunerative work and, if he is a member of a married or unmarried couple, the other member is not so engaged; and
  - (d) except in such circumstances as may be prescribed—
    - (i) he is available for, and actively seeking, employment;
    - (ii) he is not receiving relevant education.
- (2) In subsection (1)(a) above “period” includes—
  - (a) a period of a determinate length;
  - (b) a period defined by reference to the happening of a future event; and



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- (c) a period of a determinate length but subject to earlier determination upon the happening of a future event.
- (3) Circumstances may be prescribed in which a person must not only satisfy the condition specified in subsection (1)(d)(i) above but also be registered in the prescribed manner for employment.
- (4) Subject to subsection (5) below, where a person is entitled to income support, then—
  - (a) if he has no income, the amount shall be the applicable amount; and
  - (b) if he has income, the amount shall be the difference between his income and the applicable amount.
- (5) Where a person is entitled to income support for a period to which this subsection applies, the amount payable for that period shall be calculated in such manner as may be prescribed.
- (6) Subsection (5) above applies—
  - (a) to a period of less than a week which is the whole period for which income support is payable; and
  - (b) to any other period of less than a week for which it is payable.

#### **124 Severe hardship cases.**

- (1) If it appears to the Department—
  - (a) that a person of or over the age of 16 but under the age of 18 is not entitled to income support; and
  - (b) that severe hardship will result to that person unless income support is paid to him,
 the Department may direct that this subsection shall apply to him.
- (2) Any such direction may specify a period for which subsection (1) above is to apply to the person to whom the direction relates.
- (3) The person to whom such a direction relates shall be treated in accordance with it, but if at any time it appears to the Department that there has been a change of circumstances as a result of which failure to receive income support need no longer result in severe hardship to him, the Department may revoke the direction.
- (4) The Department may also revoke the direction if—
  - (a) it is satisfied that the direction was given in ignorance of some material fact or was based on a mistake as to some material fact; and
  - (b) it considers that but for its ignorance or mistake it would not have determined that failure to receive income support would result in severe hardship.
- (5) In this section “period” includes—
  - (a) a period of a determinate length;
  - (b) a period defined by reference to the happening of a future event; and
  - (c) a period of a determinate length but subject to earlier determination upon the happening of a future event.

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## 125 Trade disputes.

- (1) This section applies to a person, other than a child or a person of a prescribed description—
  - (a) who is disqualified under section 27 above for receiving unemployment benefit; or
  - (b) who would be so disqualified if otherwise entitled to that benefit, except during any period shown by the person to be a period of incapacity for work<sup>F126</sup> . . . or to be within the maternity period.
- (2) In subsection (1) above “the maternity period” means the period commencing at the beginning of the 6th week before the expected week of confinement and ending at the end of the 7th week after the week in which confinement takes place.
- (3) For the purpose of calculating income support—
  - (a) so long as this section applies to a person who is not a member of a family, the applicable amount shall be disregarded;
  - (b) so long as it applies to a person who is a member of a family but is not a member of a married or unmarried couple, the portion of the applicable amount which is included in respect of him shall be disregarded;
  - (c) so long as it applies to one of the members of a married or unmarried couple—
    - (i) if the applicable amount consists only of an amount in respect of them, it shall be reduced to one-half; and
    - (ii) if it includes other amounts, the portion of it which is included in respect of them shall be reduced to one-half and any further portion of it which is included in respect of the member of the couple to whom this section applies shall be disregarded;
  - (d) so long as it applies to both the members of a married or unmarried couple—
    - (i) if neither of them is responsible for a child or person of a prescribed description who is a member of the same household, the applicable amount shall be disregarded; and
    - (ii) in any other case, the portion of the applicable amount which is included in respect of them and any further portion of it which is included in respect of either of them shall be disregarded.
- (4) Where a reduction under subsection (3)(c) above would not produce a sum which is a multiple of 5p, the reduction shall be to the nearest lower sum which is such a multiple.
- (5) Where this section applies to a person for any period, then, except so far as regulations provide otherwise—
  - (a) in calculating the entitlement to income support of that person or a member of his family the following shall be treated as his income and shall not be disregarded—
    - (i) any payment which he or a member of his family receives or is entitled to obtain by reason of the person to whom this section applies being without employment for that period; and
    - (ii) without prejudice to the generality of sub-paragraph (i) above, any amount which becomes or would on an application duly made become available to him in that period by way of repayment of income tax deducted from his emoluments in pursuance of section 203 of the<sup>M36</sup> Income and Corporation Taxes Act 1988 (PAYE); and

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- (b) any payment by way of income support for that period or any part of it which apart from this paragraph would be made to him, or to a person whose applicable amount is aggregated with his—
- (i) shall not be made if the weekly rate of payment is equal to or less than the relevant sum; or
  - (ii) if it is more than the relevant sum, shall be at a weekly rate equal to the difference.
- (6) In respect of any period less than a week, subsection (5) above shall have effect subject to such modifications as may be prescribed.
- (7) Subject to subsection (8) below, “the relevant sum” for the purposes of subsection (5) above shall be [<sup>F127</sup>£25.00].
- (8) If an order under section 132 of the Administration Act (annual up-rating) has the effect of increasing payments of income support, from the time when the order comes into operation there shall be substituted, in subsection (5)(b) above, for the references to the sum for the time being mentioned in it references to a sum arrived at by—
- (a) increasing that sum by the percentage by which the personal allowance under paragraph 1(1) of Part I of Schedule 2 to the <sup>M37</sup>Income Support (General) Regulations (Northern Ireland) 1987 for a single person aged not less than 25 has been increased by the order; and
  - (b) if the sum as so increased is not a multiple of 50p, disregarding the remainder if it is 25p and, if it is not, rounding it up or down to the nearest 50p,
- and the order shall state the substituted sum.

#### Textual Amendments

**F126** Words in s. 125(1) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 31, Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV

**F127** Sum in s. 125(7) substituted (with effect as mentioned in art. 1(1)(h) of the amending S.R.) by S.R. 1995/71, arts. 1(1)(h), 20

#### Marginal Citations

**M36** 1988 c. 1.

**M37** S.R. (N.I.) 1987 No. 459.

## 126 Effect of return to work.

If a person returns to work with the same employer after a period during which section 125 above applies to him, and whether or not his return is before the end of any stoppage of work in relation to which he is or would be disqualified for receiving unemployment benefit—

- (a) that section shall cease to apply to him at the commencement of the day on which he returns to work; and
- (b) until the end of the period of 15 days beginning with that day, section 123(1) above shall have effect in relation to him as if the following paragraph were substituted for paragraph (c)—

“(c) in the case of a member of a married or unmarried couple, the other member is not engaged in remunerative work; and”; and

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- (c) any sum paid by way of income support for that period of 15 days to him or, where he is a member of a married or unmarried couple, to the other member of that couple, shall be recoverable in accordance with the regulations from the person to whom it was paid or from any prescribed person or, where the person to whom it was paid is a member of a married or unmarried couple, from the other member of the couple.

### *Family credit*

## **127 Family credit.**

- (1) Subject to regulations under section 5(1)(a) of the Administration Act, a person in Northern Ireland is entitled to family credit if, when the claim for it is made or is treated as made—
  - (a) his income—
    - (i) does not exceed the amount which is the applicable amount at such date as may be prescribed; or
    - (ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which subsection (2)(b) below provides is made;
  - (b) he or, if he is a member of a married or unmarried couple, he or the other member of the couple, is engaged and normally engaged in remunerative work;
  - (c) except in such circumstances as may be prescribed, neither he nor any member of his family is entitled to a disability working allowance; and
  - (d) he or, if he is a member of a married or unmarried couple, he or the other member, is responsible for a member of the same household who is a child or a person of a prescribed description.
- (2) Where a person is entitled to family credit, then—
  - (a) if his income does not exceed the amount which is the applicable amount at the date prescribed under subsection (1)(a)(i) above, the amount of the family credit shall be the amount which is the appropriate maximum family credit in his case; and
  - (b) if his income exceeds the amount which is the applicable amount at that date, the amount of the family credit shall be what remains after the deduction from the appropriate maximum family credit of a prescribed percentage of the excess of his income over the applicable amount.
- (3) Family credit shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of family credit and the rate at which it is payable shall not be affected by any change of circumstances during that period or by any order under section 132 of the Administration Act.
- (4) Regulations may provide that an award of family credit shall terminate—
  - (a) if a person who was a member of the family at the date of the claim becomes a member of another family and some member of that family is entitled to family credit; or
  - (b) if income support or a disability working allowance becomes payable in respect of a person who was a member of the family at the date of the claim for family credit.

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- (5) Regulations shall prescribe the manner in which the appropriate maximum family credit is to be determined in any case.
- (6) The provisions of this Act relating to family credit apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

### *Disability working allowance*

## **128 Disability working allowance.**

- (1) A person in Northern Ireland who has attained the age of 16 and [<sup>F128</sup>qualifies under subsection (2) or (2A) below] is entitled to a disability working allowance if, when the claim for it is made or is treated as made—
  - (a) he is engaged and normally engaged in remunerative work;
  - (b) he has a physical or mental disability which puts him at a disadvantage in getting a job;
  - (c) his income—
    - (i) does not exceed the amount which is the applicable amount at such date as may be prescribed; or
    - (ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which subsection (5)(b) below provides is made; and
  - (d) except in such circumstances as may be prescribed, neither he nor, if he has a family, any member of it, is entitled to family credit.
- (2) Subject to subsection (4) below, a person qualifies under this subsection if—
  - (a) for one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made there was payable to him one or more of the following—
    - [<sup>F129</sup>(i) the higher rate of short-term incapacity benefit or long-term incapacity benefit;]
    - (ii) a severe disablement allowance;
    - (iii) income support or housing benefit,
 or a corresponding benefit under any statutory provision having effect in Great Britain;
  - (b) when the claim for a disability working allowance is made or is treated as made, there is payable to him one or more of the following—
    - (i) an attendance allowance;
    - (ii) a disability living allowance;
    - (iii) an increase of disablement pension under section 104 above;
    - (iv) an analogous pension increase under a war pension scheme or the industrial injuries regulations;
 or a corresponding benefit under any statutory provision having effect in Great Britain; or
  - (c) when the claim for a disability working allowance is made or is treated as made, he has an invalid carriage or other vehicle provided under Article 30(1) of the <sup>M38</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>M39</sup>National

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Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the<sup>M40</sup>National Health Service (Scotland) Act 1978.

- [<sup>F130</sup>(2A) A person qualifies under this subsection if—
- (a) on one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made he was engaged in training for work; and
  - (b) a relevant benefit was payable to him for one or more of the 56 days immediately preceding—
    - (i) the first day of training for work falling within the 56 days mentioned in paragraph (a) above; or
    - (ii) an earlier day of training for work which formed part of the same period of training for work as that day.
- (2B) For the purposes of subsection (2A) above—
- (a) the following are relevant benefits—
    - (i) the higher rate of short-term incapacity benefit;
    - (ii) long-term incapacity benefit;
    - (iii) a severe disablement allowance;or a corresponding benefit under any enactment having effect in Great Britain;
  - (b) “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed; and
  - (c) a period of training for work means a series of consecutive days of training for work, there being disregarded for this purpose such days as may be prescribed.]
- (3) For the purposes of subsection (1) above a person has a disability which puts him at a disadvantage in getting a job only if he satisfies prescribed conditions, or prescribed circumstances exist in relation to him.
- (4) If the only benefit mentioned in paragraph (a) of subsection (2) above which is payable to a person as there mentioned is—
- (a) a benefit mentioned in sub-paragraph (iii) of that paragraph; or
  - (b) a corresponding benefit under any statutory provision having effect in Great Britain,
- he only qualifies under that subsection in prescribed circumstances.
- (5) Where a person is entitled to a disability working allowance, then—
- (a) if his income does not exceed the amount which is the applicable amount at the date prescribed under subsection (1)(c)(i) above, the amount of the disability working allowance shall be the amount which is the appropriate maximum disability working allowance in his case; and
  - (b) if his income exceeds that amount, the amount of the disability working allowance shall be what remains after the deduction from the appropriate maximum disability working allowance of a prescribed percentage of the excess of his income over that amount.
- (6) A disability working allowance shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of a disability working allowance and the rate at which it is payable shall not be affected by any

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change of circumstances during that period or by any order under section 132 of the Administration Act.

- (7) Regulations may provide that an award of a disability working allowance to a person shall terminate if—
- (a) a disability working allowance becomes payable in respect of some other person who was a member of his family at the date of his claim for a disability working allowance; or
  - (b) income support or family credit becomes payable in respect of a person who was a member of the family at that date.
- (8) Regulations shall prescribe the manner in which the appropriate maximum disability working allowance is to be determined in any case.
- (9) The provisions of this Act relating to disability working allowance apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

#### Textual Amendments

- F128** Words in s. 128(1) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 12(2)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F129** S. 128(2)(a)(i) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 32**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**
- F130** S. 128(2A)(2B) inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 12(3)**; S.R. 1994/450, art. 2(b)(d), **Sch. Pts. II, IV**

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

- C58** S. 128(1)(b) modified (1.7.1992) by **Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 9(2), 168(4)**.
- C59** S. 128(2) modified (1.7.1992) by **Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 6, 7(2), Sch. 4, Pt. II para. 16**
- C60** S. 128(2A) amended (13.4.1995) by S.R. 1992/78, **reg. 7A** (as inserted by S.R. 1995/67, **reg. 1(1)(b)(3), 3(2)**)
- C61** S. 128(2A)(b) modified (13.4.1995) by S.R. 1995/67, **regs. 1(1)(b)(3), 6(2)**
- C62** S. 128(2B) amended (13.4.1995) by S.R. 1992/78, **reg. 7B** (as inserted by S.R. 1995/67, **regs. 1(1)(b)(3), 3(2)**)

#### Marginal Citations

- M38** S.I. 1972/1265 (N.I. 14).
- M39** 1977 c. 49.
- M40** 1978 c. 29.

### *Housing benefit*

#### **129 Housing benefit.**

- (1) A person is entitled to housing benefit if—
- (a) he is liable to make payments in respect of a dwelling in Northern Ireland which he occupies as his home;
  - (b) there is an appropriate maximum housing benefit in his case; and



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- (c) either—
- (i) he has no income or his income does not exceed the applicable amount; or
  - (ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which subsection (3)(b) below provides is made.
- (2) In subsection (1) above “payments in respect of a dwelling” means such payments as may be prescribed, but the power to prescribe payments does not include power to prescribe mortgage payments.
- (3) Where a person is entitled to housing benefit, then—
- (a) if he has no income or his income does not exceed the applicable amount, the amount of the housing benefit shall be the amount which is the appropriate maximum housing benefit in his case; and
  - (b) if his income exceeds the applicable amount, the amount of the housing benefit shall be what remains after the deduction from the appropriate maximum housing benefit of prescribed percentages of the excess of his income over the applicable amount.
- (4) Regulations shall prescribe the manner in which the appropriate maximum housing benefit is to be determined in any case.

#### General

### 130 Exclusions from benefit.

- (1) No person shall be entitled to an income-related benefit if his capital or a prescribed part of it exceeds the prescribed amount.
- (2) Except in prescribed circumstances the entitlement of one member of a family to any one income-related benefit excludes entitlement to that benefit for any other member for the same period.
- (3) Where the amount of any income-related benefit would be less than a prescribed amount, it shall not be payable except in prescribed circumstances.

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

**C63** S. 130(1)(2): certain functions transferred (5.10.1999) by 1999 c. 10, ss. 2(1)(a), 20(2), Sch. 2 para. 3(e)

### 131 The applicable amount.

- (1) The applicable amount, in relation to any income-related benefit, shall be such amount or the aggregate of such amounts as may be prescribed in relation to that benefit.
- (2) The power to prescribe applicable amounts conferred by subsection (1) above includes power to prescribe nil as an applicable amount.
- <sup>F131</sup>(3) In prescribing, for the purposes of income support, amounts under subsection (1) above in respect of accommodation in any area for qualifying persons in cases where prescribed conditions are fulfilled, the Department shall take into account—

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- (a) the amounts which the Department has agreed to pay, and
  - (b) information provided by the Board or other prescribed persons with respect to the amounts which the Board or such persons have agreed to pay,
- for the provision of accommodation in relevant premises in that area.
- (4) In subsection (3) above—
- “accommodation” includes any board or care;
  - “the Board” means the Health and Social Services Board for that area;
  - [<sup>F132</sup>“qualifying persons” means any person who falls within paragraph (1) of Article 36A of the Health and Personal Social Services (Northern Ireland) Order 1972 (persons ordinarily resident in residential care or nursing homes immediately before the coming into operation of that Article) or who would fall within that paragraph apart from any regulations under paragraph (2) of that Article;
  - “relevant premises” means premises mentioned in paragraph (1) of the said Article 36A.]]
- (5) In relation to income support and housing benefit, the applicable amount for a severely disabled person shall include an amount in respect of his being a severely disabled person.
- (6) Regulations may specify circumstances in which persons are to be treated as being or as not being severely disabled.

#### Textual Amendments

**F131** S. 131(3)(4) omitted (temp. from 1.7.1992) by virtue of [Social Security \(Consequential Provisions\) \(Northern Ireland\) Act 1992 \(c. 9\)](#), ss. 6, 7(2), Sch. 4 Pt. I paras. 1, 4

**F132** Definitions in s. 131(4) substituted (1.4.1993) by [S.I. 1992/3204 \(N.I. 20\)](#), art. 37, [Sch. 1](#), para. 5; [S.R. 1993/75](#), [art.2](#)

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

**C64** S. 131(1)(2): certain functions transferred (5.10.1999) by [1999 c. 10](#), ss. 2(1)(a), 20(2), [Sch. 2 para. 3\(f\)](#)

**C65** S. 131(1) modified (1.7.1998) by [S.I. 1998/1506 \(N.I. 10\)](#), [arts. 1\(3\)](#), 73(8)

**C66** S. 131(1) restricted (26.3.2002) by [Personal Social Services \(Preserved Rights\) Act \(Northern Ireland\) 2002 \(c. 5 \(N.I.\)\)](#), [s. 3\(a\)](#)

## 132 Income and capital.

- (1) Where a person claiming an income-related benefit is a member of a family, the income and capital of any member of that family shall, except in prescribed circumstances, be treated as the income and capital of that person.
- (2) Regulations may provide that capital not exceeding the amount prescribed under section 130(1) above but exceeding a prescribed lower amount shall be treated, to a prescribed extent, as if it were income of a prescribed amount.
- (3) Income and capital shall be calculated or estimated in such manner as may be prescribed.
- (4) Circumstances may be prescribed in which—

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- (a) a person is treated as possessing capital or income which he does not possess;
- (b) capital or income which a person does possess is to be disregarded;
- (c) income is to be treated as capital;
- (d) capital is to be treated as income.

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

C67 S. 132: certain functions transferred (5.10.1999) by 1999 c. 10, ss. 2(1)(a), 20(2), Sch. 2 para. 3(g)

### 133 Interpretation of Part VII and supplementary provisions.

(1) In this Part of this Act—

“child” means a person under the age of 16;

[<sup>F133</sup>“dwelling” means any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;]

“the Executive” means the Northern Ireland Housing Executive;

“family” means—

- (a) a married or unmarried couple;
- (b) a married or unmarried couple and a member of the same household for whom one of them is or both are responsible and who is a child or a person of a prescribed description;
- (c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

“industrial injuries regulations” means the regulations made under Schedule 8 to this Act or section 150 of the 1975 Act or under the Old Cases Act;

“married couple” means a man and woman who are married to each other and are members of the same household;

“prescribed” means specified in or determined in accordance with regulations;

“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances;

“war pension scheme” means a scheme under which war pensions (as defined in section 25(4) of the <sup>M41</sup>Social Security Act 1989) are provided.

(2) Regulations may make provision for the purposes of this Part of this Act—

- (a) as to circumstances in which a person is to be treated as being or not being in Northern Ireland;
- (b) continuing a person’s entitlement to benefit during periods of temporary absence from Northern Ireland;
- (c) as to what is or is not to be treated as remunerative work or as employment;
- (d) as to circumstances in which a person is or is not to be treated as—
  - (i) engaged or normally engaged in remunerative work;
  - (ii) available for employment; or

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- (iii) actively seeking employment;
- (e) as to what is or is not to be treated as relevant education;
- (f) as to circumstances in which a person is or is not to be treated as receiving relevant education;
- (g) specifying the descriptions of pension increases under war pension schemes or the industrial injuries regulations that are analogous to the benefits mentioned in section 128(2)(b)(i) to (iii) above;
- (h) as to circumstances in which a person is or is not to be treated as occupying a dwelling as his home;
- (i) for treating any person who is liable to make payments in respect of a dwelling as if he were not so liable;
- (j) for treating any person who is not liable to make payments in respect of a dwelling as if he were so liable;
- (k) for treating as included in a dwelling any land used for the purposes of the dwelling;
- (l) as to circumstances in which persons are to be treated as being or not being members of the same household;
- (m) as to circumstances in which one person is to be treated as responsible or not responsible for another.

#### Textual Amendments

**F133** Definition of "dwelling" in s. 133(1) inserted (retrospectively) by [S.I. 1993/1579 \(N.I. 8\)](#), [art. 3\(2\)\(4\)](#)

#### Marginal Citations

**M41** [1989 c. 24](#).

## PART VIII

### THE SOCIAL FUND

#### 134 Payments out of the social fund.

- (1) Payments may be made out of the social fund, in accordance with this Part of this Act—
  - (a) of prescribed amounts, whether in respect of prescribed items or otherwise, to meet, in prescribed circumstances, maternity expenses and funeral expenses; and
  - (b) to meet other needs in accordance with directions given or guidance issued by the Department.
- (2) Payments may also be made out of that fund, in accordance with this Part of this Act, of a prescribed amount or a number of prescribed amounts to prescribed descriptions of persons, in prescribed circumstances to meet expenses for heating which appear to the Department to have been or to be likely to be incurred in cold weather.
- (3) The power to make a payment out of the social fund such as is mentioned in subsection (1)(b) above may be exercised by making a payment to a third party with a

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view to the third party providing, or arranging for the provision of, goods or services for the applicant.

- (4) In this section “prescribed” means specified in or determined in accordance with regulations.

### **135 Awards by social fund officers.**

- (1) The questions whether a payment such as is mentioned in section 134(1)(b) above is to be awarded and how much it is to be shall be determined by a social fund officer.
- (2) A social fund officer may determine that an award shall be payable in specified instalments at specified times.
- (3) A social fund officer may determine that an award is to be repayable.
- (4) An award that is to be repayable shall be repayable upon such terms and conditions as before the award is paid the Department notifies to the person by or on behalf of whom the application for it was made.
- (5) Payment of an award shall be made to the applicant unless the social fund officer determines otherwise.

### **136 Principles of determination.**

- (1) In determining whether to make an award to the applicant or the amount or value to be awarded a social fund officer shall have regard, subject to subsection (2) below, to all the circumstances of the case and, in particular—
- (a) the nature, extent and urgency of the need;
  - (b) the existence of resources from which the need may be met;
  - (c) the possibility that some other person or body may wholly or partly meet it;
  - (d) where the payment is repayable, the likelihood of repayment and the time within which repayment is likely;
  - (e) any relevant allocation under section 147(1) to (4) of the Administration Act.
- (2) A social fund officer shall determine any question in accordance with any general directions issued by the Department and in determining any question shall take account of any general guidance issued by the Department.
- (3) Without prejudice to the generality of subsection (2) above, the Department may issue directions under that subsection for the purpose of securing that a social fund officer or group of social fund officers shall not in any specified period make awards of any specified description which in the aggregate exceed the amount, or a specified portion of the amount, allocated to that officer or group of officers under section 147(1) to (4) of the Administration Act for payments under awards of that description in that period.
- (4) Without prejudice to the generality of subsection (2) above, the power to issue general directions conferred on the Department by that subsection includes power to direct—
- (a) that in circumstances specified in the direction a social fund officer shall not determine an application and, without prejudice to the generality of this paragraph, that a social fund officer shall not determine an application which is made before the end of a specified period after the making of an application by the same person for a payment such as is mentioned in section 134(1)

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- (b) above to meet the same need and without there having been any relevant change of circumstances since the previous application;
- (b) that for a category of need specified in the direction a social fund officer shall not award less than an amount specified in the direction;
- (c) that for a category of need specified in the direction a social fund officer shall not award more than an amount so specified;
- (d) that payments to meet a category of need specified in the direction shall in all cases or in no case be made by instalments;
- (e) that payments to meet a category of need specified in the direction shall in all cases or in no case be repayable; and
- (f) that a payment such as is mentioned in section 134(1)(b) above shall only be awarded to a person if either—
  - (i) he is in receipt of a benefit which is specified in the direction and the circumstances are such as are so specified; or
  - (ii) in a case where the conditions specified in sub-paragraph (i) above are not satisfied, the circumstances are such as are specified in the direction,

and the power to issue general guidance conferred on the Department by that subsection includes power to give social fund officers guidance as to any matter to which directions under that subsection may relate.

- (5) In determining a question a social fund officer shall take account (subject to any directions or guidance issued by the Department under this section) of any guidance issued by the social fund officer nominated for his area under section 62(3) of the Administration Act.

## PART IX

### CHILD BENEFIT

#### 137 Child benefit.

A person who is responsible for one or more children in any week shall be entitled, subject to the provisions of this Part of this Act, to a benefit (to be known as “child benefit”) for that week in respect of the child or each of the children for whom he is responsible.

#### 138 Meaning of “child”.

- (1) For the purposes of this Part of this Act a person shall be treated as a child for any week in which—
- (a) he is under the age of 16;
  - (b) he is under the age of 18 and not receiving full-time education and prescribed conditions are satisfied in relation to him; or
  - (c) he is under the age of 19 and receiving full-time education either by attendance at a recognised educational establishment or, if the education is recognised by the Department, elsewhere.
- (2) The Department may recognise education provided otherwise than at a recognised educational establishment for a person who, in the opinion of the Department, could

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reasonably be expected to attend such an establishment only if the Department is satisfied that education was being so provided for that person immediately before he attained the age of 16.

- (3) Regulations may prescribe the circumstances in which education is or is not to be treated for the purposes of this Part of this Act as full-time.
- (4) In determining for the purposes of paragraph (c) of subsection (1) above whether a person is receiving full-time education as mentioned in that paragraph, no account shall be taken of such interruptions as may be prescribed.
- (5) Regulations may provide that a person who in any week ceases to fall within subsection (1) above shall be treated as continuing to do so for a prescribed period; but no person shall by virtue of any such regulations be treated as continuing to fall within that subsection for any week after that in which he attains the age of 19.

### 139 Meaning of “person responsible for child”.

- (1) For the purposes of this Part of this Act a person shall be treated as responsible for a child in any week if—
  - (a) he has the child living with him in that week; or
  - (b) he is contributing to the cost of providing for the child at a weekly rate which is not less than the weekly rate of child benefit payable in respect of the child for that week.
- (2) Where a person has had a child living with him at some time before a particular week he shall be treated for the purposes of this section as having the child living with him in that week notwithstanding their absence from one another unless, in the 16 weeks preceding that week, they were absent from one another for more than 56 days not counting any day which is to be disregarded under subsection (3) below.
- (3) Subject to subsection (4) below, a day of absence shall be disregarded for the purposes of subsection (2) above if it is due solely to the child’s—
  - (a) receiving full-time education by attendance at a recognised educational establishment;
  - (b) undergoing medical or other treatment as an in-patient in a hospital or similar institution; or
  - (c) being, in such circumstances as may be prescribed, in residential accommodation pursuant to arrangements made under Article 7 of the <sup>M42</sup>Health and Personal Social Services (Northern Ireland) Order 1972.
- (4) The number of days that may be disregarded by virtue of subsection (3)(b) or (c) above in the case of any child shall not exceed such number as may be prescribed unless the person claiming to be responsible for the child regularly incurs expenditure in respect of the child.
- (5) Regulations may prescribe the circumstances in which a person is or is not to be treated—
  - (a) as contributing to the cost of providing for a child as required by subsection (1) (b) above; or
  - (b) as regularly incurring expenditure in respect of a child as required by subsection (4) above;

and such regulations may in particular make provision whereby a contribution made or expenditure incurred by two or more persons is to be treated as made or incurred



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by one of them or whereby a contribution made or expenditure incurred by one of two spouses residing together is to be treated as made or incurred by the other.

#### Marginal Citations

M42 [S.I. 1972/1265 \(N.I. 14\)](#).

### 140 Exclusions and priority.

- (1) Regulations may provide that child benefit shall not be payable by virtue—
  - (a) of paragraph (b) of section 138(1) above and regulations made under that paragraph; or
  - (b) of paragraph (c) of that subsection,in such cases as may be prescribed.
- (2) Schedule 9 to this Act shall have effect for excluding entitlement to child benefit in other cases.
- (3) Where, apart from this subsection, two or more persons would be entitled to child benefit in respect of the same child for the same week, one of them only shall be entitled; and the question which of them is entitled shall be determined in accordance with Schedule 10 to this Act.

### 141 Rate of child benefit.

- (1) Child benefit shall be payable by the Department at such weekly rate as may be prescribed.
- (2) Different rates may be prescribed in relation to different cases, whether by reference to the age of the child in respect of whom the benefit is payable or otherwise.
- (3) The power to prescribe different rates under subsection (2) above shall be exercised so as to bring different rates into force on such day as the Department may by order specify.
- (4) No rate prescribed in place of a rate previously in force shall be lower than the rate that it replaces.
- (5) Regulations under this section shall be made by the Department in conjunction with the Department of Finance and Personnel.

### 142 Persons outside Northern Ireland.

- (1) Regulations may modify the provisions of this Part of this Act in their application to persons who are or have been outside Northern Ireland at any prescribed time or in any prescribed circumstances.
- (2) Subject to any regulations under subsection (1) above, no child benefit shall be payable in respect of a child for any week unless—
  - (a) he is in Northern Ireland in that week; and
  - (b) either he or at least one of his parents has been in Northern Ireland for more than 182 days in the 52 weeks preceding that week.

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- (3) Subject to any regulations under subsection (1) above, no person shall be entitled to child benefit for any week unless—
- (a) he is in Northern Ireland in that week; and
  - (b) he has been in Northern Ireland for more than 182 days in the 52 weeks preceding that week.

VALID FROM 19/08/1996

<sup>F134</sup>**142A** Persons subject to immigration control.

No person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 shall be entitled to child benefit for any week unless he satisfies prescribed conditions.]

**Textual Amendments**

**F134** S. 142A inserted (19.8.1996 for the purpose only of prescribing conditions and 7.10.1996 otherwise) by 1996 c. 49, s. 10(1)(2); S.I. 1996/2127, art. 2, Sch. Pts. I, II

**143 Interpretation of Part IX and supplementary provisions.**

- (1) In this Part of this Act—
- “prescribed” means prescribed by regulations;
  - “recognised educational establishment” means an establishment recognised by the Department as being, or as comparable to, a university, college or school;
  - “voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;
  - “week” means a period of 7 days beginning with a Monday.
- (2) Subject to any provision made by regulations, references in this Part of this Act to any condition being satisfied or any facts existing in a week shall be construed as references to the condition being satisfied or the facts existing at the beginning of that week.
- (3) References in this Part of this Act to a parent, father or mother of a child shall be construed—
- (a) as including references to the natural parent, father or mother of an illegitimate child;
  - (b) as including references to a step-parent, step-father or step-mother.
- (4) Regulations may prescribe the circumstances in which persons are or are not to be treated for the purposes of this Part of this Act as residing together.
- (5) Regulations may make provision as to the circumstances in which—
- (a) a marriage celebrated under a law which permits polygamy; or
  - (b) a marriage during the subsistence of which a party to it is at any time married to more than one person,

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is to be treated for the purposes of this Part of this Act as having, or not having, the consequences of a marriage celebrated under a law which does not permit polygamy.

- (6) Nothing in this Part of this Act shall be construed as conferring a right to child benefit on any body corporate; but regulations may confer such a right on voluntary organisations and for that purpose may make such modifications as the Department thinks fit—
- (a) of any provision of this Part of this Act; or
  - (b) of any provision of the Administration Act relating to child benefit.

## PART X

### CHRISTMAS BONUS FOR PENSIONERS

#### **144 Entitlement of pensioners to Christmas bonus.**

- (1) Any person who in any year—
  - (a) is present or ordinarily resident in the United Kingdom or any other member State at any time during the relevant week; and
  - (b) is entitled to a payment of a qualifying benefit in respect of a period which includes a day in that week or is to be treated as entitled to a payment of a qualifying benefit in respect of such a period,
 shall, subject to the following provisions of this Part of this Act and to section 1 of the Administration Act, be entitled to payment under this subsection in respect of that year.
- (2) Subject to the following provisions of this Part of this Act, any person who is a member of a couple and is entitled to a payment under subsection (1) above in respect of a year shall also be entitled to payment under this subsection in respect of that year if—
  - (a) both members have attained pensionable age not later than the end of the relevant week; and
  - (b) the other member satisfies the condition mentioned in subsection (1)(a) above; and
  - (c) either—
    - (i) he is entitled or treated as entitled, in respect of the other member, to an increase in the payment of the qualifying benefit; or
    - (ii) the only qualifying benefit to which he is entitled is income support.
- (3) A payment under subsection (1) or (2) above—
  - (a) is to be made by the Department; and
  - (b) is to be of £10 or such larger sum as the Department may by order specify.
- (4) Where the only qualifying benefit to which a person is entitled is income support, he shall not be entitled to a payment under subsection (1) above unless he has attained pensionable age not later than the end of the relevant week.
- (5) Only one sum shall be payable in respect of any person.

#### **145 Provisions supplementary to s. 144.**

- (1) For the purposes of section 144 above the Channel Islands, the Isle of Man and Gibraltar shall be treated as though they were part of the United Kingdom.

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- (2) A person shall be treated for the purposes of section 144(1)(b) above as entitled to a payment of a qualifying benefit if he would be so entitled—
- (a) in the case of a qualifying benefit other than income support, but for the fact that he or, if he is a member of a couple, the other member is entitled to receive some other payment out of public funds;
  - (b) in the case of income support, but for the fact that his income or, if he is a member of a couple, the income of the other member was exceptionally of an amount which resulted in his having ceased to be entitled to income support.
- (3) A person shall be treated for the purposes of section 144(2)(c)(i) above as entitled in respect of the other member of the couple to an increase in a payment of a qualifying benefit if he would be so entitled—
- (a) but for the fact that he or the other member is entitled to receive some other payment out of public funds;
  - (b) but for the operation of any provision of section 83(2) or (3) above or paragraph 6(4) of Schedule 7 to this Act or any regulations made under paragraph 6(3) of that Schedule whereby entitlement to benefit is affected by the amount of a person's earnings in a given period.
- (4) For the purposes of section 144 above a person shall be taken not to be entitled to a payment of a war disablement pension unless not later than the end of the relevant week he has attained the age of 70 in the case of a man or 65 in the case of a woman.
- (5) A sum payable under section 144 above shall not be treated as benefit for the purposes of any enactment or instrument under which entitlement to the relevant qualifying benefit arises or is to be treated as arising.
- (6) A payment and the right to receive a payment—
- (a) under section 144 above or any enactment corresponding to it in Great Britain;  
or
  - (b) under regulations relating to widows which are made by the Secretary of State under any enactment relating to police and which contain a statement that the regulations provide for payments corresponding to payments under that section,
- shall be disregarded for all purposes of income tax and for the purposes of any enactment or instrument under which regard is had to a person's means.

## 146 Interpretation of Part X.

- (1) In this Part of this Act “qualifying benefit” means—

- (a) a retirement pension;
- [<sup>F135</sup>(b) long-term incapacity benefit;]
- (c) a widowed mother's allowance or widow's pension;
- (d) a severe disablement allowance;
- (e) an invalid care allowance;
- (f) industrial death benefit;
- (g) an attendance allowance;
- (h) an unemployability supplement or allowance;
- (i) a war disablement pension;
- (j) a war widow's pension;

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(k) income support.

(2) In this Part of this Act—

“attendance allowance” means—

- (a) an attendance allowance;
- (b) a disability living allowance;
- (c) an increase of disablement pension under section 104 or 105 above;
- (d) a payment under regulations made in exercise of the powers in section 150(3)(b) of the 1975 Act or paragraph 4(2) of Schedule 8 to this Act;
- (e) an increase of allowance under Article 8 of the <sup>M43</sup>Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983 (constant attendance allowance for certain persons to whom that Scheme applies) or under the corresponding provision of any Scheme which may replace that Scheme;
- (f) an allowance in respect of constant attendance on account of disablement for which a person is in receipt of war disablement pension, including an allowance in respect of exceptionally severe disablement;

“pensionable age” means—

- (a) in the case of a man, the age of 65;
- (b) in the case of a woman, the age of 60;

“retirement pension” includes graduated retirement benefit, if paid periodically;

“unemployability supplement or allowance” means—

- (a) an unemployability supplement payable under Part I of Schedule 7 to this Act; or
- (b) any corresponding allowance payable—
  - (i) by virtue of paragraph 6(4)(a) of Schedule 8 to the Great Britain Contributions and Benefits Act;
  - (ii) by way of supplement to retired pay or pension exempt from income tax under section 315(1) of the <sup>M44</sup>Income and Corporation Taxes Act 1988;
  - (iii) under the <sup>M45</sup>Personal Injuries (Emergency Provisions) Act 1939; or
  - (iv) by way of supplement to retired pay or pension under the <sup>M46</sup>Polish Resettlement Act 1947;

“war disablement pension” means—

- (a) any retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the <sup>M47</sup>Air Force (Constitution) Act 1917, the <sup>M48</sup>Personal Injuries (Emergency Provisions) Act 1939, the <sup>M49</sup>Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, the <sup>M50</sup>Polish Resettlement Act 1947, or Part VII or section 151 of the <sup>M51</sup>Reserve Forces Act 1980;
- (b) without prejudice to paragraph (a) of this definition, any retired pay or pension to which subsection (1) of section 315 of the <sup>M52</sup>Income and Corporation Taxes Act 1988 applies;

“war widow’s pension” means any widow’s pension or allowance granted in respect of a death due to service or war injury and payable by virtue of any enactment mentioned in paragraph (a) of the preceding definition or a pension or allowance for a widow granted under any scheme mentioned in subsection (2)(e) of the said section 315;

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and each of the following expressions, namely “attendance allowance”, “unemployability supplement or allowance”, “war disablement pension” and “war widow’s pension”, includes any payment which the Department accepts as being analogous to it.

- (3) References in this Part of this Act to a “couple” are references to a married or unmarried couple; and for this purpose “married couple” and “unmarried couple” are to be construed in accordance with Part VII of this Act and any regulations made under it.
- (4) In this Part of this Act “the relevant week”, in relation to any year, means the week beginning with the first Monday in December or such other week as may be specified in an order made by the Department.

#### Textual Amendments

**F135** S. 146(1)(b) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 33**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### Marginal Citations

**M43** S.I.1983/136.  
**M44** 1988 c. 1.  
**M45** 1939 c. 82.  
**M46** 1947 c. 19.  
**M47** 1917 c. 51.  
**M48** 1939 c. 83.  
**M49** 1939 c. 83.  
**M50** 1947 c. 19.  
**M51** 1980 c. 9.  
**M52** 1988 c. 1.

## PART XI

### STATUTORY SICK PAY

#### 147 Employer’s liability.

- (1) Where an employee has a day of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 148 to 150 below are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (to be known as “statutory sick pay”) in respect of that day.
- (2) Any agreement shall be void to the extent that it purports—
  - (a) to exclude, limit or otherwise modify any provision of this Part of this Act, or
  - (b) to require an employee to contribute (whether directly or indirectly) towards any costs incurred by his employer under this Part of this Act.
- (3) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory sick pay which the employer is liable to pay

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- to the employee in respect of any period shall not be void by virtue of subsection (2) (a) above if the employer—
- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
  - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.
- (4) For the purposes of this Part of this Act [<sup>F136</sup>a day of incapacity for work in relation to a contract of service means a day on which] the employee concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.
- (5) In any case where an employee has more than one contract of service with the same employer the provisions of this Part of this Act shall, except in such cases as may be prescribed and subject to the following provisions of this Part of this Act, have effect as if the employer were a different employer in relation to each contract of service.
- (6) Circumstances may be prescribed in which, notwithstanding the provisions of subsections (1) to (5) above, the liability to make payments of statutory sick pay is to be a liability of the Department.

#### Textual Amendments

**F136** Words in s. 147(4) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 34**; S.R. 1994/450, art. 2, **Sch. Pt. IV**

#### *The qualifying conditions*

#### **148 Period of incapacity for work.**

- (1) The first condition is that the day in question forms part of a period of incapacity for work.
- (2) In this Part of this Act “period of incapacity for work” means any period of four or more consecutive days, each of which is a day of incapacity for work in relation to the contract of service in question.
- (3) Any two periods of incapacity for work which are separated by a period of not more than 8 weeks shall be treated as a single period of incapacity for work.
- (4) The Department may by regulations direct that a larger number of weeks specified in the regulations shall be substituted for the number of weeks for the time being specified in subsection (3) above.
- (5) No day of the week shall be disregarded in calculating any period of consecutive days for the purposes of this section.
- (6) A day may be a day of incapacity for work in relation to a contract of service, and so form part of a period of incapacity for work, notwithstanding that—
  - (a) it falls before the making of the contract or after the contract expires or is brought to an end; or



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- (b) it is not a day on which the employee concerned would be required by that contract to be available for work.

#### **149 Period of entitlement.**

- (1) The second condition is that the day in question falls within a period which is, as between the employee and his employer, a period of entitlement.
- (2) For the purposes of this Part of this Act a period of entitlement, as between an employee and his employer, is a period beginning with the commencement of a period of incapacity for work and ending with whichever of the following first occurs—
  - (a) the termination of that period of incapacity for work;
  - (b) the day on which the employee reaches, as against the employer concerned, his maximum entitlement to statutory sick pay (determined in accordance with section 151 below);
  - (c) the day on which the employee's contract of service with the employer concerned expires or is brought to an end;
  - (d) in the case of an employee who is, or has been, pregnant, the day immediately preceding the beginning of the disqualifying period.
- (3) Schedule 11 to this Act has effect for the purpose of specifying circumstances in which a period of entitlement does not arise in relation to a particular period of incapacity for work.
- (4) A period of entitlement as between an employee and an employer of his may also be, or form part of, a period of entitlement as between him and another employer of his.
- (5) The Department may by regulations—
  - (a) specify circumstances in which, for the purpose of determining whether an employee's maximum entitlement to statutory sick pay has been reached in a period of entitlement as between him and an employer of his, days falling within a previous period of entitlement as between the employee and any person who is or has in the past been an employer of his are to be counted; and
  - (b) direct that in prescribed circumstances an employer shall provide a person who is about to leave his employment, or who has been employed by him in the past, with a statement in the prescribed form containing such information as may be prescribed in relation to any entitlement of the employee to statutory sick pay.
- (6) Regulations may provide, in relation to prescribed cases, for a period of entitlement to end otherwise than in accordance with subsection (2) above.
- (7) In a case where the employee's contract of service first takes effect on a day which falls within a period of incapacity for work, the period of entitlement begins with that day.
- (8) In a case where the employee's contract of service first takes effect between two periods of incapacity for work which by virtue of section 148(3) above are treated as one, the period of entitlement begins with the first day of the second of those periods.
- (9) In any case where, otherwise than by virtue of section 6(1)(b) above, an employee's earnings under a contract of service in respect of the day on which the contract takes effect do not attract a liability to pay secondary Class 1 contributions, subsections (7) and (8) above shall have effect as if for any reference to the contract first taking effect

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there were substituted a reference to the first day in respect of which the employee's earnings attract such a liability.

- (10) Regulations shall make provision as to an employer's liability under this Part of this Act to pay statutory sick pay to an employee in any case where the employer's contract of service with that employee has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory sick pay.
- (11) Subsection (2)(d) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement.
- (12) In this section—
- “confinement” is to be construed in accordance with section 167(1) below;
  - “disqualifying period” means—
    - (a) in relation to a woman entitled to statutory maternity pay, the maternity pay period; and
    - (b) in relation to a woman entitled to maternity allowance, the maternity allowance period;
  - “maternity allowance period” has the meaning assigned to it by section 35(2) above, and
  - “maternity pay period” has the meaning assigned to it by section 161(1) below.

## 150 Qualifying days.

- (1) The third condition is that the day in question is a qualifying day.
- (2) The days which are for the purposes of this Part of this Act to be qualifying days as between an employee and an employer of his (that is to say, those days of the week on which he is required by his contract of service with that employer to be available for work or which are chosen to reflect the terms of that contract) shall be such day or days as may, subject to regulations, be agreed between the employee and his employer or, failing such agreement, determined in accordance with regulations.
- (3) In any case where qualifying days are determined by agreement between an employee and his employer there shall, in each week (beginning with Sunday), be at least one qualifying day.
- (4) A day which is a qualifying day as between an employee and an employer of his may also be a qualifying day as between him and another employer of his.

*Limitations on entitlement, etc.*

## 151 Limitations on entitlement.

- (1) Statutory sick pay shall not be payable for the first three qualifying days in any period of entitlement.
- (2) An employee shall not be entitled, as against any one employer, to an aggregate amount of statutory sick pay in respect of any one period of entitlement which exceeds his maximum entitlement.

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- (3) The maximum entitlement as against any one employer is reached on the day on which the amount to which the employee has become entitled by way of statutory sick pay during the period of entitlement in question first reaches or passes the entitlement limit.
- (4) The entitlement limit is an amount equal to 28 times [<sup>F137</sup>the weekly rate applicable in accordance with] section 153 below.
- (5) Regulations may make provision for calculating the entitlement limit in any case where an employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of entitlement.

#### Textual Amendments

**F137** Words in s. 151(4) substituted (6.4.1995) by S.I. 1994/1898 (N.I. 12), art. 10(4); S.R. 1994/450, art. 2, Sch. Pt. 3

### 152 Notification of incapacity for work.

- (1) Regulations shall prescribe the manner in which, and the time within which, notice of any day of incapacity for work is to be given by or on behalf of an employee to his employer.
- (2) An employer who would, apart from this section, be liable to pay an amount of statutory sick pay to an employee in respect of a qualifying day (the “day in question”) shall be entitled to withhold payment of that amount if—
  - (a) the day in question is one in respect of which he has not been duly notified in accordance with regulations under subsection (1) above; or
  - (b) he has not been so notified in respect of any of the first three qualifying days in a period of entitlement (a “waiting day”) and the day in question is the first qualifying day in that period of entitlement in respect of which the employer is not entitled to withhold payment—
    - (i) by virtue of paragraph (a) above; or
    - (ii) in respect of an earlier waiting day by virtue of this paragraph.
- (3) Where an employer withholds any amount of statutory sick pay under this section—
  - (a) the period of entitlement in question shall not be affected; and
  - (b) for the purposes of calculating his maximum entitlement in accordance with section 151 above the employee shall not be taken to have become entitled to the amount so withheld.

*Rate of payment, etc.*

### 153 Rate of payment.

- (1) Statutory sick pay shall be payable by an employer at the weekly rate of [<sup>F138</sup>£52.50].
- (2) The Department may by order—
  - [<sup>F139</sup>(a) amend subsection (1) above so as to substitute different provision as to the weekly rate or rates of statutory sick pay; and]
  - (b) make such consequential amendments as appear to the Department to be required of any provision contained in this Part of this Act.

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- (3) The amount of statutory sick pay payable by any one employer in respect of any day shall be the weekly rate applicable on that day divided by the number of days which are, in the week (beginning with Sunday) in which that day falls, qualifying days as between that employer and the employee concerned.

**Textual Amendments**

**F138** Words in s. 153(1) substituted (6.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 10(1)**; S.R. 1994/450, **art. 2, Sch. Pt. III** and by S.I. 1995/71, **art. 9**, the sum specified (6.4.1995) is £52.50.

**F139** S. 153(2)(a) substituted (6.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 10(3)**; S.R. 1994/450, **art. 2, Sch. Pt. III**

<sup>F140</sup>**154** .....

**Textual Amendments**

**F140** S. 154 repealed (6.4.1995) (subject to savings made by regulations under s. 155A(4) of this Act) by S.R. 1995/69, **art. 5**

<sup>F141</sup>**155** .....

**Textual Amendments**

**F141** S. 155 repealed (6.4.1995 subject to savings made by regulation under s. 155A(4) of this Act) by S.R. 1995/69, **art. 5(a)**

<sup>F142</sup>**155A** **Power to provide for recovery by employers of sums paid by way of statutory sick pay.**

- (1) The Department may by order provide for the recovery by employers, in accordance with the order, of the amount (if any) by which their payments of, or liability incurred for, statutory sick pay in any period exceeds the specified percentage of the amount of their liability for contributions payments in respect of the corresponding period.
- (2) An order under subsection (1) above may include provision—
  - (a) as to the periods by reference to which the calculation referred to above is to be made,
  - (b) for amounts which would otherwise be recoverable but which do not exceed the specified minimum for recovery not to be recoverable,
  - (c) for the rounding up or down of any fraction of a pound which would otherwise result from a calculation made in accordance with the order, and
  - (d) for any deduction from contributions payments made in accordance with the order to be disregarded for such purposes as may be specified,
 and may repeal sections 154 and 155 above and make any amendments of other statutory provisions which are consequential on the repeal of those sections.

(3) In this section—

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“contributions payments” means payments which a person is required by or under any statutory provision to make in discharge of any liability of his as an employer in respect of primary or secondary Class 1 contributions; and

“specified” means specified in or determined in accordance with an order under subsection (1).

- (4) The Department may by regulations make such transitional and consequential provision, and such savings, as it considers necessary or expedient for or in connection with the coming into operation of any order under subsection (1) above.]

#### Textual Amendments

F142 S. 155A inserted (22.3.1994) by S.I. 1994/766 (N.I. 5), arts. 1(2), 5(1)

### Miscellaneous

#### 156 Relationship with benefits and other payments, etc.

Schedule 12 to this Act has effect with respect to the relationship between statutory sick pay and certain benefits and payments.

#### 157 Crown employment - Part XI.

- (1) Subject to subsection (2) below, the provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.
- (2) The provisions of this Part of this Act do not apply in relation to persons serving as members of Her Majesty’s forces, in their capacity as such.
- (3) For the purposes of this section Her Majesty’s forces shall be taken to consist of such establishments and organisations as may be prescribed by regulations made by the Secretary of State, being establishments and organisations in which persons serve under the control of the Defence Council.

#### 158 Special classes of persons.

- (1) The Department may make regulations modifying this Part of this Act in such manner as the Department thinks proper in their application to any person who is, has been or is to be—
  - (a) employed on board any ship, vessel, hovercraft or aircraft; or
  - (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances.
- (2) Regulations under subsection (1) above may in particular provide—
  - (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;

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- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory other than Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

## 159 Interpretation of Part XI and supplementary provisions.

- (1) In this Part of this Act—

“contract of service” (except in paragraph (a) of the definition below of “employee”) includes any arrangement providing for the terms of appointment of an employee;

“employee” means a person who is—

- (a) gainfully employed in Northern Ireland either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and  
(b) over the age of 16;

but subject to regulations, which may provide for cases where any such person is not to be treated as an employee for the purposes of this Part of this Act and for cases where any person who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

“employer”, in relation to an employee and a contract of service of his, means a person who under section 6 above is, or but for subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract;

“period of entitlement” has the meaning given by section 149 above;

“period of incapacity for work” has the meaning given by section 148 above;

“period of interruption of employment” has the same meaning as it has in the provisions of this Act relating to unemployment benefit<sup>F143</sup> . . . by virtue of section [F14425A(1)(d)] above;

“prescribed” means prescribed by regulations;

“qualifying day” has the meaning given by section 150 above;

“week” means any period of 7 days.

- (2) For the purposes of this Part of this Act an employee’s normal weekly earnings shall, subject to subsection (4) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under his contract of service with the employer in question.
- (3) For the purposes of subsection (2) above, the expressions “earnings” and “relevant period” shall have the meaning given to them by regulations.
- (4) In such cases as may be prescribed an employee’s normal weekly earnings shall be calculated in accordance with regulations.
- (5) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or such of its provisions as may be prescribed—
- (a) two or more employers are to be treated as one;
- (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

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- (6) Where, in consequence of the establishment of one or more Health and Social Services trusts under the <sup>M53</sup>Health and Personal Social Services (Northern Ireland) Order 1991, a person's contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person's employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract;
- and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.
- (7) Regulations may provide for periods of work which begin on one day and finish on the following day to be treated, for the purposes of this Part of this Act, as falling solely within one or other of those days.

#### Textual Amendments

**F143** Words in definition in s. 159(1) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 35(a), Sch. 2; S.R. 1994/450, art. 2, Sch. Pt. IV

**F144** Words in definition in s. 159(1) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 35(b); S.R. 1994/450, art. 2, Sch. Pt. IV

#### Marginal Citations

**M53** S.I. 1991/194 (N.I. 1).

## PART XII

### STATUTORY MATERNITY PAY

#### 160 Statutory maternity pay - entitlement and liability to pay.

- (1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as “statutory maternity pay”.
- (2) The conditions mentioned in subsection (1) above are—
  - (a) that she has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but

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- has ceased to work for him, wholly or partly because of pregnancy or confinement;
- (b) that her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and
- (c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.
- (3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.
- (4) Except in such cases as may be prescribed, a woman shall be entitled to payments of statutory maternity pay only if—
- (a) she gives the person who will be liable to pay it notice that she is going to be absent from work with him, wholly or partly because of pregnancy or confinement; and
- (b) the notice is given at least 21 days before her absence from work is due to begin or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.
- (6) Any agreement shall be void to the extent that it purports—
- (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
- (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.
- (7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—
- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.
- (8) Regulations shall make provision as to a former employer's liability to pay statutory maternity pay to a woman in any case where the former employer's contract of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.
- (9) The Department may by regulations—
- (a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;



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- (b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability of the Department;
- (c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;
- (d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—
  - (i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
  - (ii) those contracts were not continuous;
- (e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications—
  - (i) where a woman has been dismissed from her employment;
  - (ii) where a woman is confined before the beginning of the 14th week before the expected week of confinement; and
  - (iii) in such other cases as may be prescribed;
- (f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and
- (g) provide that—
  - (i) the amount of a woman’s earnings for any period, or
  - (ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.

- (10) The provisions mentioned in subsection (9)(e) above are—
  - (a) subsection (2)(a) and (b) above; and
  - (b) section 162(2), <sup>F145</sup> . . . below.

#### Textual Amendments

**F145** Words in s. 160(10)(b) omitted (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by virtue of S.R. 1994/176, regs. 1(3), 6(1)

### 161 The maternity pay period.

- (1) Statutory maternity pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (“the maternity pay period”) of a duration not exceeding 18 weeks.
- (2) Subject to subsections (3) and (7) below, the first week of the maternity pay period shall be the 11th week before the expected week of confinement.
- (3) Cases may be prescribed in which the first week of the period is to be a prescribed week later than the 11th week before the expected week of confinement, but not later than <sup>F146</sup>the week immediately following the week in which she is confined].

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- (4) Statutory maternity pay shall not be payable to a woman by a person in respect of any week during any part of which she works under a contract of service with him.
- (5) It is immaterial for the purposes of subsection (4) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the maternity pay period or a contract of service which did not so exist.
- (6) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman in respect of any week after she has been confined and during any part of which she works for any employer who is not liable to pay her statutory maternity pay.
- (7) Regulations may provide that this section shall have effect subject to prescribed modifications in relation—
  - (a) to cases in which a woman has been confined before the 11th week before the expected week of confinement; and
  - (b) to cases in which—
    - (i) a woman is confined [<sup>F147</sup>at any after the end of the week immediately preceding the 11th week], before the expected week of confinement; and
    - (ii) the maternity pay period has not then commenced for her.

**Textual Amendments**

**F146** Words in s. 161(3) substituted (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by S.R. 1994/176, regs. 1(3), 3(2)

**F147** Words in s. 161(7) substituted (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by S.R. 1994/176, regs. 1(3), 3(3)

**162 Rates of payment.**

- (1) There shall be two rates of statutory maternity pay, in this Act referred to as “the higher rate” and “the lower rate”.
- (2) The higher rate is a weekly rate equivalent to nine-tenths of a woman’s normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement or the weekly rate prescribed under subsection (3) below, whichever is the higher.
- (3) The lower rate is such weekly rate as may be prescribed [<sup>F148</sup>which must not be less than the weekly rate of statutory sick pay for the time being specified in section 153(1) above or, if two or more such rates are for the time being so specified, the higher or highest of those rates.]

[<sup>F149</sup>(4) Statutory maternity pay shall be payable to a woman—  

- (a) at the higher rate in respect of the first 6 weeks in respect of which it is payable; and
- (b) at the lower rate in respect of the portion of the maternity pay period after the end of that 6 week period.]

<sup>F150</sup>(5) .....

<sup>F150</sup>(6) .....

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F150(7) .....

F150(8) .....

#### Textual Amendments

**F148** Words in s. 162(3) added (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by S.R. 1994/176, regs. 1(3), 4(2)

**F149** S. 162(4) substituted (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by S.R. 1994/176, regs. 1(3), 4(3)

**F150** S. 162(5)-(8) omitted (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by virtue of S.R. 1994/176, regs. 1(3), 4(4)

### 163 Recovery of amounts paid by way of statutory maternity pay.

(1) Regulations shall make provision—

(a) entitling, except in prescribed circumstances, any person who has made a payment of statutory maternity pay to recover [F151]an amount equal to the sum of—

(i) the aggregate of such of those payments as qualify for small employers' relief, and

(ii) an amount equal to 92 per cent., of the aggregate of such of those payments as/do not so qualify.

by making one or more deductions from his contributions payments;]

(b) for the payment, in prescribed circumstances, by the Department or by the Commissioners of Inland Revenue on behalf of the Department, of sums to persons who are unable so to recover the whole, or any part, of [F152]amounts which they are entitled to recover by virtue of paragraph (a) above];

(c) giving any person who has made a payment of statutory maternity pay [F153]qualifying for small employers' relief] a right, except in prescribed circumstances, to an amount, determined in such manner as may be prescribed;

(d) providing for the recovery, in prescribed circumstances, of the whole or any part of any such amount from contributions payments;

(e) for the payment, in prescribed circumstances, by the Department or by the Commissioners of Inland Revenue on behalf of the Department, of the whole or any part of any such amount.

[F154(1A) For the purposes of this section, a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers' relief if, in relation to that woman's maternity pay period, the person liable to make the payment is a small employer.

(1B) For the purposes of this section "small employer", in relation to a woman's maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—

(a) may define that expression by reference to the amount of a person's contributions payments for any prescribed period; and

(b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—

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- (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument, and
  - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.]
- (2) In this section “contributions payments”, in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.
- (3) Regulations under subsection (1) above may, in particular, provide for any deduction made in accordance with the regulations to be disregarded for prescribed purposes.
- (4) Where, in accordance with any provision of regulations made under this section, an amount has been deducted from an employer’s contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any statutory provision in relation to primary or secondary Class 1 contributions as having been—
- (a) paid (on such date as may be determined in accordance with the regulations); and
  - (b) received by the Department,
- towards discharging the employer’s liability in respect of such contributions.

#### **Textual Amendments**

- F151** Words in s. 163(1)(a) substituted (with effect in relation to payments of statutory maternity pay due on or after 4.9.1994) by S.R. 1994/176, **regs. 1(3), 5(2)(a)**
- F152** Words in s. 163(1)(b) substituted (with effect in relation to payments of statutory maternity pay due on or after 4.9.1994) by S.R. 1994/176, **regs. 1(3), 5(2)(b)**
- F153** Words in s. 163(1)(c) inserted (with effect in relation to payments of statutory maternity pay due on or after 4.9.1994) by S.R. 1994/176, **regs. 1(3), 5(2)(c)**
- F154** S. 163(1A)(1B) inserted (with effect in relation to payments of statutory maternity pay due on or after 4.9.1994) by S.R. 1994/176, **regs. 1(3), 5(3)**

#### **164 Relationship with benefits and other payments, etc.**

Schedule 13 to this Act has effect with respect to the relationship between statutory maternity pay and certain benefits and payments.

#### **165 Crown employment - Part XII.**

The provisions of this Part of this Act apply in relation to women employed by or under the Crown as they apply in relation to women employed otherwise than by or under the Crown.

#### **166 Special classes of persons.**

- (1) The Department may make regulations modifying this Part of this Act in such manner as the Department thinks proper in their application to any person who is, has been or is to be—

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- (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations.
- (2) Regulations under subsection (1) above may in particular provide—
- (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Northern Ireland;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory other than Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.
- (3) In this section “continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (6) of section 23 of the <sup>M54</sup>Oil and Gas (Enterprise) Act 1982 (application of civil law to certain off-shore activities) were omitted, would nevertheless fall within subsection (2) of that section.

#### Marginal Citations

M54 1982 c. 23.

### 167 Interpretation of Part XII, etc.

- (1) In this Part of this Act—
- “confinement” means—
- (a) labour resulting in the issue of a living child, or
  - (b) labour after [<sup>F155</sup>24 weeks] of pregnancy resulting in the issue of a child whether alive or dead,
- and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them;
- “dismissed” is to be construed in accordance with Article 21(2) to (5) of the <sup>M55</sup>Industrial Relations (Northern Ireland) Order 1976;
- “employee” means a woman who is—
- (a) gainfully employed in Northern Ireland either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
  - (b) over the age of 16;

but subject to regulations which may provide for cases where any such woman is not to be treated as an employee for the purposes of this Part of this

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Act and for cases where a woman who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

“employer”, in relation to a woman who is an employee, means a person who under section 6 above is, or but for subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of her earnings;

“maternity pay period” has the meaning assigned to it by section 161(1) above;

“modifications” includes additions, omissions and amendments, and related expressions shall be construed accordingly;

“prescribed” means specified in or determined in accordance with regulations;

“week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

- (2) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—
- (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same woman is an employee are to be treated as one.
- (3) Where, in consequence of the establishment of one or more Health and Social Services trusts under the <sup>M56</sup>Health and Personal Social Services (Northern Ireland) Order 1991, a woman’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling her to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—
- (a) the conditions that must be satisfied if a woman is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the woman’s employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one contract;
- and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.
- (4) For the purposes of this Part of this Act a woman’s normal weekly earnings shall, subject to subsection (6) below, be taken to be the average weekly earnings which in the relevant period have been paid to her or paid for her benefit under the contract of service with the employer in question.
- (5) For the purposes of subsection (4) above “earnings” and “relevant period” shall have the meanings given to them by regulations.

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- (6) In such cases as may be prescribed a woman's normal weekly earnings shall be calculated in accordance with regulations.

#### Textual Amendments

**F155** Words in s. 167(1) substituted (1.10.1992) by S.I. 1992/1310, art. 4(b).

#### Marginal Citations

**M55** S.I. 1976/1043 (N.I. 16).

**M56** S.I. 1991/194 (N.I. 1).

VALID FROM 08/12/2002

## [<sup>F156</sup>PART XIIZA

### STATUTORY PATERNITY PAY

#### Textual Amendments

**F156** Pt. XIIZA (ss. 167ZA-167ZK) inserted (8.12.2002) by The Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), arts. 1(2), 5; S.R. 2002/356, art. 2(2), Sch. 1 Pt. II

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

**C68** Pt. XIIZA (ss. 167ZA-167ZK) modified (8.12.2002) by Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002 (S.R. 2002/378), regs. 31-47

Pt. XIIZA (ss. 167ZA-167ZK) modified (8.12.2002) by Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (S.R. 2002/382), regs. {3}, 4, 7-9 (with reg. 2)

**C69** Pt. XIIZA (ss. 167ZA-167ZK) modified (8.12.2002) by Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (S.R. 2002/382), regs. 1, 4, 7-9 (with reg. 2)

#### 167ZA Entitlement: birth

- (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as “statutory paternity pay”.
- (2) The conditions are—
- (a) that he satisfies prescribed conditions—
    - (i) as to relationship with a newborn child, and
    - (ii) as to relationship with the child's mother;
  - (b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
  - (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week; and



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- (d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is born.
- (3) The references in subsection (2) above to the relevant week are to the week immediately preceding the 14th week before the expected week of the child's birth.
- (4) A person's entitlement to statutory paternity pay under this section shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.
- (5) In this section, "newborn child" includes a child stillborn after twenty-four weeks of pregnancy.

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

- C70** S. 167ZA modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(Persons Abroad and Mariners\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/382\)](#), **reg. 5(1)** (with reg. 2)
- C71** S. 167ZA(2)(b)-(d) modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **reg. 5**

**167ZB Entitlement: adoption**

- (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as "statutory paternity pay".
- (2) The conditions are—
- (a) that he satisfies prescribed conditions—
- (i) as to relationship with a child who is placed for adoption, under the law of any part of the United Kingdom, and
- (ii) as to relationship with a person with whom the child is so placed for adoption;
- (b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week;
- (d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is placed for adoption; and
- (e) where he is a person with whom the child is placed for adoption, that he has elected to receive statutory paternity pay.
- (3) The references in subsection (2) above to the relevant week are to the week in which the adopter is notified of being matched with the child for the purposes of adoption.
- (4) A person may not elect to receive statutory paternity pay if he has elected in accordance with section 167ZL below to receive statutory adoption pay.



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- (5) Regulations may make provision about elections for the purposes of subsection (2) (e) above.
- (6) A person's entitlement to statutory paternity pay under this section shall not be affected by the placement for adoption of more than one child as part of the same arrangement.
- (7) In this section, "adopter", in relation to a person who satisfies the condition under subsection (2)(a)(ii) above, means the person by reference to whom he satisfies that condition.

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

- C72** S. 167ZB modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(Persons Abroad and Mariners\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/382\)](#), **reg. 5(2)** (with [reg. 2](#))

**167ZC Entitlement: general**

- (1) A person shall be entitled to payments of statutory paternity pay in respect of any period only if—
  - (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory paternity pay to begin; and
  - (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (2) The notice shall be in writing if the person who is liable to pay the statutory paternity pay so requests.
- (3) The Department may by regulations—
  - (a) provide that subsection (2)(b), (c) or (d) of section 167ZA or 167ZB above shall have effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide that subsection (1) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
  - (c) impose requirements about evidence of entitlement;
  - (d) specify in what circumstances employment is to be treated as continuous for the purposes of section 167ZA or 167ZB above;
  - (e) provide that a person is to be treated for the purposes of section 167ZA or 167ZB above as being employed for a continuous period of at least 26 weeks where—
    - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
    - (ii) those contracts were not continuous;
  - (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 167ZA or 167ZB above;
  - (g) provide that—
    - (i) the amount of a person's earnings for any period, or
    - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,

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shall be calculated or estimated for the purposes of section 167ZA or 167ZB above in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings.

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

**C73** S. 167ZC(1) applied (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), regs. {6}, {12}

**167ZD Liability to make payments**

- (1) The liability to make payments of statutory paternity pay, under section 167ZA or 167ZB above is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (d) of that section.
- (2) Regulations shall make provision as to a former employer's liability to pay statutory paternity pay to a person in any case where the former employee's contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory paternity pay.
- (3) The Department may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory paternity pay is to be a liability of the Board.

**167ZE Rate and period of pay**

- (1) Statutory paternity pay shall be payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory paternity pay shall be payable in respect of—
  - (a) a period of two consecutive weeks within the qualifying period beginning on such date within that period as the person entitled may choose in accordance with regulations, or
  - (b) if regulations permit the person entitled to choose to receive statutory paternity pay in respect of—
    - (i) a period of a week, or
    - (ii) two non-consecutive periods of a week,
 such week or weeks within the qualifying period as he may choose in accordance with regulations.
- (3) For the purposes of subsection (2) above, the qualifying period shall be determined in accordance with regulations, which shall secure that it is a period of at least 56 days beginning—
  - (a) in the case of a person to whom the conditions in section 167ZA(2) above apply, with the date of the child's birth, and
  - (b) in the case of a person to whom the conditions in section 167ZB(2) above apply, with the date of the child's placement for adoption.

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- (4) Statutory paternity pay shall not be payable to a person in respect of a statutory pay week if it is not his purpose at the beginning of the week—
  - (a) to care for the child by reference to whom he satisfies the condition in subparagraph (i) of section 167ZA(2)(a) or 167ZB(2)(a) above; or
  - (b) to support the person by reference to whom he satisfies the condition in subparagraph (ii) of that provision.
- (5) A person shall not be liable to pay statutory paternity pay to another in respect of a statutory pay week during any part of which the other works under a contract of service with him.
- (6) It is immaterial for the purposes of subsection (5) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.
- (7) Except in such cases as may be prescribed, statutory paternity pay shall not be payable to a person in respect of a statutory pay week during any part of which he works for any employer who is not liable to pay him statutory paternity pay.
- (8) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory paternity pay in respect of a statutory pay week.
- (9) Where more than one child is born as a result of the same pregnancy, the reference in subsection (3)(a) above to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.
- (10) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (3)(b) above to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- (11) In this section—

“statutory pay week”, in relation to a person entitled to statutory paternity pay, means a week chosen by him as a week in respect of which statutory paternity pay shall be payable;

“week” means any period of seven days.

#### **167ZF Restrictions on contracting out**

- (1) Any agreement shall be void to the extent that it purports—
  - (a) to exclude, limit or otherwise modify any provision of this Part of this Act, or
  - (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.
- (2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory paternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—
  - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or

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- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

#### **167ZG Relationship with contractual remuneration**

- (1) Subject to subsections (2) and (3) below, any entitlement to statutory paternity pay shall not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to subsection (3) below—
- (a) any contractual remuneration paid to a person by an employer of his in respect of any period shall go towards discharging any liability of that employer to pay statutory paternity pay to him in respect of that period; and
- (b) any statutory paternity pay paid by an employer to a person who is an employee of his in respect of any period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that period.
- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2) above.

#### **167ZH Crown employment—Part XIIIA**

The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

#### **167ZI Special classes of person**

- (1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as the Department thinks proper in its application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft;
- (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
- (c) in prescribed employment in connection with continental shelf operations.
- (2) Regulations under subsection (1) above may, in particular, provide—
- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

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- (3) In this section “continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (8) of section 11 of the Petroleum Act 1998 (application of civil law to certain offshore activities) were omitted would nevertheless fall within subsection (2) of that section.

#### **167ZJ Part XIIZA: supplementary**

- (1) In this Part of this Act—
- “the Board” means the Commissioners of Inland Revenue;
  - “the Department” means the Department for Employment and Learning;
  - “employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;
  - “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
  - “prescribed” means prescribed by regulations.
- (2) In this Part of this Act, “employee” means a person who is—
- (a) gainfully employed in Northern Ireland either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
  - (b) over the age of 16.
- (3) Regulations may provide—
- (a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act; and
  - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—
- (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part of this Act, except section 67ZE, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part of this Act, a person’s normal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.

**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.

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- (8) In such cases as may be prescribed, a person's normal weekly earnings shall be calculated in accordance with regulations.
- (9) Where in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person's contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.
- (10) Regulations under subsection (9) above may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory paternity pay as his employer under the contract.
- (11) The powers under subsections (9) and (10) above are without prejudice to any other power to make regulations under this Part of this Act.
- (12) In this Part of this Act "regulations" means regulations made by the Department and in relation to any such regulations sections 171 and 172 below have effect as if references to the Department were references to the Department for Employment and Learning.
- (13) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

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

**C74** [S. 167ZJ\(6\)](#) modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **reg. 39(1)**

**167ZK Power to apply Part XIIZA to adoption cases not involving placement**

The Department may by regulations provide for this Part of this Act to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.]



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VALID FROM 08/12/2002

## [<sup>F157</sup>PART XIIIZB

### STATUTORY ADOPTION PAY

#### Textual Amendments

**F157** Pt. XIIIZB (ss. 167ZL-167ZT) inserted (8.12.2002) by [The Employment \(Northern Ireland\) Order 2002 \(S.I. 2002/2836 \(N.I. 2\)\)](#), arts. 1(2), 6; S.R. 2002/356, **art. 2(2)**, Sch. 1 Pt. II

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

**C75** Pt. XIIIZB (ss. 167ZL-167ZT) modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **regs. 31-47**

Pt. XIIIZB (ss. 167ZL-167ZT) modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(Persons Abroad and Mariners\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/382\)](#), regs. {3}, 4, 7-9 (with reg. 2)

**C76** Pt. XIIIZB (ss. 167ZL-167ZT) restricted (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(Persons Abroad and Mariners\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/382\)](#), **reg. 8(3)** (with reg. 2)

#### 167ZL Entitlement

- (1) Where a person who is, or has been, an employee satisfies the conditions in subsection (2), he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as “statutory adoption pay”.
- (2) The conditions are—
  - (a) that he is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom;
  - (b) that he has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
  - (c) that he has ceased to work for the employer;
  - (d) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week; and
  - (e) that he has elected to receive statutory adoption pay.
- (3) The references in subsection (2)(b) and (d) above to the relevant week are to the week in which the person is notified that he has been matched with the child for the purposes of adoption.
- (4) A person may not elect to receive statutory adoption pay if—
  - (a) he has elected in accordance with section 167ZB above to receive statutory paternity pay; or
  - (b) where the child is, or is expected to be, placed for adoption with him as a member of a married couple and his spouse is a person to whom the conditions in subsection (2) above apply, his spouse has elected to receive statutory adoption pay.

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- (5) A person's entitlement to statutory adoption pay shall not be affected by the placement, or expected placement, for adoption of more than one child as part of the same arrangement.
- (6) A person shall be entitled to payments of statutory adoption pay only if—
- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory adoption pay to begin; and
  - (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (7) The notice shall be in writing if the person who is liable to pay the statutory adoption pay so requests.
- (8) The Department may by regulations—
- (a) provide that subsection (2)(b), (c) or (d) above shall have effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide that subsection (6) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
  - (c) impose requirements about evidence of entitlement;
  - (d) specify in what circumstances employment is to be treated as continuous for the purposes of this section;
  - (e) provide that a person is to be treated for the purposes of this section as being employed for a continuous period of at least 26 weeks where—
    - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
    - (ii) those contracts were not continuous;
  - (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of this section;
  - (g) provide that—
    - (i) the amount of a person's earnings for any period, or
    - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,
 shall be calculated or estimated for the purposes of this section in, such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings;
  - (h) make provision about elections for statutory adoption pay.

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

- C77** S. 167ZL modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(Persons Abroad and Mariners\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/382\)](#), **reg. 6** (with **reg. 2**)
- C78** S. 167ZL(6) applied (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **reg. 21(6)**
- C79** S. 167ZL(6) restricted (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **reg. 29(2)**



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### 167ZM Liability to make payments

- (1) The liability to make payments of statutory adoption pay is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 167ZL(2)(b) above.
- (2) Regulations shall make provision as to a former employer's liability to pay statutory adoption pay to a person in any case where the former employee's contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.
- (3) The Department may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory adoption pay is to be a liability of the Board.

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

- C80** S. 167ZM excluded (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **reg. 44**

### 167ZN Rate and period of pay

- (1) Statutory adoption pay shall be payable at such fixed or earnings-related weekly rate as the Department may prescribe by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory adoption pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period ("the adoption pay period") of a duration not exceeding 26 weeks.
- (3) A person shall not be liable to pay statutory adoption pay to another in respect of any week during any part of which the other works under a contract of service with him.
- (4) It is immaterial for the purposes of subsection (3) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the adoption pay period or a contract of service which did not so exist.
- (5) Except in such cases as may be prescribed statutory adoption pay shall not be payable to a person in respect of any week during any part of which he works for any employer who is not liable to pay him statutory adoption pay.
- (6) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory adoption pay in respect of a week.
- (7) In subsection (2) above, "week" means any period of seven days.
- (8) In subsections (3), (5) and (6) above, "week" means a period of seven days beginning with the day of the week on which the adoption pay period begins.

### 167ZO Restrictions on contracting out

- (1) Any agreement shall be void to the extent that it purports—
  - (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or

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- (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.
- (2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory adoption pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—
- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period; or
  - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

#### **167ZP Relationship with benefits and other payments, etc.**

- (1) Except as may be prescribed, a day which falls within the adoption pay period shall not be treated as a day of incapacity for work for the purposes of determining, for this Act, whether it forms part of a period of incapacity for work for the purposes of incapacity benefit.
- (2) Regulations may provide that in prescribed circumstances a day which falls within the adoption pay period shall be treated as a day of incapacity for work for the purposes of determining entitlement to the higher rate of short-term incapacity benefit or to long-term incapacity benefit.
- (3) Regulations may provide that an amount equal to a person's statutory adoption pay for a period shall be deducted from any such benefit in respect of the same period and a person shall be entitled to such benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.
- (4) Subject to subsections (5) and (6) below, any entitlement to statutory adoption pay shall not affect any right of a person in relation to remuneration under any contract of service ("contractual remuneration").
- (5) Subject to subsection (6) below—
  - (a) any contractual remuneration paid to a person by an employer of his in respect of a week in the adoption pay period shall go) towards discharging any liability of that employer to pay statutory adoption pay to him in respect of that week; and
  - (b) any statutory adoption pay paid by an employer to a person who is an employee of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that week.
- (6) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (4) and (5) above.
- (7) In subsection (5) above, "week" means a period of seven days beginning with the day of the week on which the adoption pay period begins.

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### **167ZQ Crown employment—Part XIIIB**

The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

### **167ZR Special classes of person**

- (1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as the Department thinks proper in its application to any person who is, has been or is to be—
  - (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations.
- (2) Regulations under subsection (1) above may, in particular, provide—
  - (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.
- (3) In this section “continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (8) of section 11 of the Petroleum Act 1998 (application of civil law to certain offshore activities) were omitted would nevertheless fall within subsection (2) of that section.

### **167ZS Part XIIIB: supplementary**

- (1) In this part of this Act—
  - “adoption pay period” has the meaning given by section 167ZN(2) above;
  - “the Board” means the Commissioners of Inland Revenue
  - “the Department” means the Department for Employment and Learning;
  - “employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;
  - “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
  - “prescribed” means prescribed by regulations.
- (2) In this Part of this Act, “employee” means a person who is—

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- (a) gainfully employed in Northern Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
  - (b) over the age of 16.
- (3) Regulations may provide—
- (a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act; and
  - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—
- (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part of this Act, except sections 167ZN and 167ZP, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part of this Act, a person’s nominal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.
- (8) In such cases as may be prescribed, a person’s normal weekly earnings shall be calculated in accordance with regulations.
- (9) Where in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.
- (10) Regulations under subsection (9) above may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;

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(f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory adoption pay as his employer under the contract.

(11) The powers under subsections (9) and (10) above are without prejudice to any other power to make regulations under this Part of this Act.

(12) In this Part of this Act, except section 167ZP(1) to (3), "regulations" means regulations made by the Department; and in relation to any such regulations sections 171 and 172 below have effect as if references to the Department were references to the Department for Employment and Learning.

(13) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

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

**C81** S. 167ZS(6) modified (8.12.2002) by [Statutory Paternity Pay and Statutory Adoption Pay \(General\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/378\)](#), **reg. 39(1)**

**167ZT Power to apply Part XII ZB to adoption cases not involving placement**

The Department may by regulations provide for this Part of this Act to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.]

[<sup>F158</sup>**PART XIII**

**INCAPACITY FOR WORK]**

**Textual Amendments**

**F158** Pt. XIII (ss. 167A-167C) inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by [S.I. 1994/1898 \(N.I. 12\)](#), **arts. 7, 8**; [S.R. 1994/450 \(N.I. 12\)](#), art. 2(b), Sch. Pt. II

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

**C82** Pt. XIII (ss. 167A-167C) applied (13.4.1995) by [S.R. 1995/35](#), **regs. 29, 30**

**C83** Pt. XIII (ss. 167A-167C) applied (with modifications) (5.2.1996 for the purpose of authorising the making of regulations and 7.10.1996 otherwise) by [S.I. 1995/2705 \(N.I. 15\)](#), art. 23, **Sch. 1 para. 2**; [S.R. 1996/26](#), art. 2(d), **Sch.**; [S.R. 1996/401](#), **art. 2**

[<sup>F159</sup>**167A**Test of incapacity for work.

(1) For the purposes of this Act, save as otherwise expressly provided, whether a person is capable or incapable of work shall be determined in accordance with this Part of this Act.

(2) Regulations may make provision as to—

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(a) the information or evidence required for the purpose of determining whether a person is capable or incapable of work; and

(b) the manner in which that information or evidence is to be provided;

and may provide that if a person without good cause fails to provide that information or evidence, or to do so in the manner required, he shall be treated as capable of work.

(3) Regulations may provide that in any case where a question arises as to whether a person is capable of work—

(a) he may be called to attend for such medical examination as may be required in accordance with regulations; and

(b) if he fails without good cause to attend for or submit himself to such examination, he shall be treated as capable of work.

(4) Regulations may prescribe for the purposes of this section—

(a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or

(b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.]

#### Textual Amendments

**F159** Pt. XIII (ss. 167A-167C) inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 7, 8; S.R. 1994/450, art. 2(b), Sch. Pt. II

#### [<sup>F160</sup>167B] The own occupation test.

(1) Where a person has been engaged in remunerative work for more than 8 weeks in the 21 weeks immediately preceding the day with respect to which it falls to be determined whether he is or was incapable of work, the test applicable is the own occupation test.

(2) The own occupation test is whether he is incapable by reason of some specific disease or bodily or mental disablement of doing work which he could reasonably be expected to do in the course of the occupation in which he was so engaged.

(3) Where for any purpose of this Act it is determined in relation to a person—

(a) that the test applicable with respect to any day is the own occupation test; and

(b) that he is on that test incapable of work,

that test remains applicable in his case until the end of the spell of incapacity beginning with that day or, as the case may be, in which that day falls, or until the 197th day of incapacity for work in that spell, whichever is the earlier.

For this purpose a “spell of incapacity” means a series of 4 or more consecutive days of incapacity for work; and any two such spells not separated by a period of more than 8 weeks shall be treated as one spell of incapacity.

(4) For the purposes of subsection (3) above a day of incapacity for work means a day—

(a) with respect to which it has been determined for any purpose of this Act that the person in question was incapable of work; or

(b) in respect of which he was entitled to statutory sick pay; or

(c) in the case of a woman, which falls within the maternity allowance period; or



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- (d) which in accordance with regulations is to be treated for those purposes as a day of incapacity for work.
- (5) Any provision of this Act apart from subsection (4) above under or by virtue of which a day is or is not to be treated for any purpose as a day of incapacity for work shall be disregarded for the purposes of this section.
- (6) Provision may be made by regulations defining for the purposes of this section what is meant by “remunerative work”.

The regulations may, in particular, provide—

- (a) for “remunerative work” to be defined by reference to the number of hours worked per week; and
- (b) for training of any prescribed description to be treated as if it were remunerative work.
- (7) Provision may be made by regulations as to the application of this section in cases where a person engages in more than one occupation or in different kinds of work.
- (8) Regulations may provide that subsection (3) above shall have effect as if—
- (a) the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be prescribed; and
- (b) for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be prescribed.]

#### Textual Amendments

**F160** Pt. XIII (ss. 167A-167C) inserted (21.11.1994) for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 7, 8; S.R. 1994/450, art. 2, Sch. Pt. II

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

**C84** S. 167B(3) modified (13.4.1995) by S.R. 1995/41, reg. 13(4) (with reg. 3)

**C85** S. 167B(3)(4) modified (13.4.1995) by S.R. 1995/35, reg. 32

#### [<sup>F161</sup>167C] The all work test.

- (1) Where in any case the own occupation test is not applicable, or has ceased to apply, the test applicable is the all work test.
- (2) Provision shall be made by regulations—
- (a) defining the all work test by reference to the extent of a person’s incapacity by reason of some specific disease or bodily or mental disablement to perform such activities as may be prescribed; and
- (b) as to the manner of assessing whether the all work test is satisfied.
- (3) Regulations may provide that where the all work test applies the test shall, if the prescribed conditions are met, be treated as satisfied until the person has been assessed or he falls to be treated as capable of work in accordance with regulations under section 167A(2) or (3) above or section 167E below.



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The prescribed conditions may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question is or is to be treated as capable of work.]

#### Textual Amendments

**F161** Pt. XIII A (ss. 167A-167C) inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 6, 7; S.R. 1994/450, art. 2, Sch. Pt. II

#### <sup>F162</sup>167D Incapacity for work: persons to be treated as incapable or capable of work.

- (1) Regulations may provide that a person shall be treated as capable of work, or as incapable of work, in such cases or circumstances as may be prescribed.
- (2) Regulations may, in particular, provide that a person shall be treated as capable of work if he does work of a prescribed description, or more than the prescribed amount of work of a prescribed description.

Accordingly regulations may provide that a person shall not be treated as capable of work by reason only of his doing such work as may be prescribed, or no more than the prescribed amount of work of a prescribed description.

#### Textual Amendments

**F162** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), ss. 6, 8; S.R. 1994/450, art. 2, Sch. Pt. II

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

**C86** S. 167D modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), arts. 1(3), 73(7)

#### <sup>F163</sup>167E Incapacity for work: disqualification, etc.

- (1) Regulations may provide for disqualifying a person for receiving any benefit, allowance or other advantage under any provision for the purposes of which this Part of this Act applies, or, in such cases as may be prescribed, provide that a person shall be treated as capable of work, if—
  - (a) he has become incapable of work through his own misconduct;
  - (b) he fails without good cause to attend for or submit himself to such medical or other treatment as may be required in accordance with the regulations; or
  - (c) he fails without good cause to observe any prescribed rules of behaviour.
- (2) Regulations shall provide that any such disqualification shall be, or as the case may be that the person shall be treated as capable of work, for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act.
- (3) Regulations may prescribe for the purposes of this section—
  - (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
  - (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.]

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#### Textual Amendments

**F163** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **arts. 6, 8**; S.R. 1994/450, **art. 2**, **Sch. Pt. II**

#### [<sup>F164</sup>167H] **Incapacity for work: work as councillor to be disregarded.**

- (1) In determining whether a person is capable or incapable of work, there shall be disregarded any work which that person has undertaken as a councillor.
- (2) For this purpose “councillor” means a member of a district council.
- (3) The reference in subsection (1) above to the work which a person undertakes as a councillor shall be taken to include any work which he undertakes as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.
- (4) In making any such determination as is mentioned in subsection (1) above a person shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
  - (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
  - (b) would not have been so treated apart from this subsection.

The “pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into operation of paragraph 2 of Schedule 8 to the Social Security (Northern Ireland) Order 1989, which made provision corresponding to the provision made by this section).]

#### Textual Amendments

**F164** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **arts. 6, 8**; S.R. 1994/450, **art. 2**, **Sch. Pt. II**

#### [<sup>F165</sup>167G] **Incapacity for work: supplementary provisions.**

- (1) The provisions of this Part of this Act do not apply—
  - (a) for the purposes of Part V of this Act (benefit for industrial injuries: see section 94(6) above);
  - (b) for the purposes of Part XI of this Act (statutory sick pay: see section 147(4) above); or
  - (c) for such other purposes as may be prescribed.
- (2) In this Part of this Act—

“prescribed” means specified in or determined in accordance with regulations;  
and  
“week” means any period of 7 days.]

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### Textual Amendments

**F165** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **arts. 6, 8**; S.R. 1994/450, **art. 2**, **Sch. Pt. II**

## PART XIII

### GENERAL

#### *Interpretation*

### 168 Application of Act in relation to territorial waters.

In this Act—

- (a) any reference to Northern Ireland includes a reference to the territorial waters of the United Kingdom adjacent to Northern Ireland;
- (b) any reference to the United Kingdom includes a reference to the territorial waters of the United Kingdom.

### Modifications etc. (not altering text)

**C87** S. 168 applied (2.12.2002 for certain purposes and otherwise prosp.) by State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), **ss. 17(3)(a)**, 21(2); S.R. 2002/366, **art. 2(1)(o)**

### 169 Age.

For the purposes of this Act a person—

- (a) is over or under a particular age if he has or, as the case may be, has not attained that age; and
- (b) is between two particular ages if he has attained the first but not the second.

### Modifications etc. (not altering text)

**C88** S. 169 applied (2.12.2002 for certain purposes and otherwise prosp.) by State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), **ss. 17(3)(b)**, 21(2); S.R. 2002/366, **art. 2(1)(o)**

### 170 Interpretation.

In this Act—

- “the 1975 Act” means the <sup>M57</sup>Social Security (Northern Ireland) Act 1975;
- “the 1986 Order” means the <sup>M58</sup>Social Security (Northern Ireland) Order 1986;
- “the Administration Act” means the <sup>M59</sup>Social Security Administration (Northern Ireland) Act 1992;
- “the Consequential Provisions Act” means the <sup>M60</sup>Social Security (Consequential Provisions) (Northern Ireland) Act 1992;

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“the Department” means the Department of Health and Social Services for Northern Ireland;

“the Department of Economic Development” means the Department of Economic Development in Northern Ireland;

“the Department of the Environment” means the Department of the Environment for Northern Ireland;

“the Department of Finance and Personnel” means the Department of Finance and Personnel in Northern Ireland;

“the Great Britain Administration Act” means the <sup>M61</sup>Social Security Administration Act 1992;

“the Great Britain Contributions and Benefits Act” means the <sup>M62</sup>Social Security Contributions and Benefits Act 1992;

“the National Insurance Fund” means the Northern Ireland National Insurance Fund;

“the Old Cases Act” means the <sup>M63</sup>Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975; <sup>F166</sup> “the Pensions Act” means the Pension Schemes (Northern Ireland) Act 1993;]

“the Pensions Order” means the <sup>M64</sup>Social Security Pensions (Northern Ireland) Order 1975;

“statutory provision” has the meaning assigned by section 1(f) of the <sup>M65</sup>Interpretation Act (Northern Ireland) 1954.

#### Textual Amendments

**F166** S. 170: by 1993 c. 49, s. 184, **Sch. 7 para. 35** (commenced on 7.2.1994 by S.R. 1994/17, **art. 2**) it is provided that the definition of "the Pensions Act" [as reproduced here] shall be inserted before the definition of "the Pensions Order" in s. 174 of this Act. By S.I. 1995/3213 (N.I. 22), arts. 165, 168, **Sch. 4, para. 15, Sch. 5, Pt. IV** (commenced on 19.12.1995 by S.R. 1995/477, **art. 2(a), Sch. Pt. I**), Sch. 7 para. 35 of the 1993 Act is repealed and by art. 165, Sch. 4, para. 2 of that 1995 S.I. (also commenced on 19.12.1995 by S.R. 1995/477, **art. 2(a), Sch. Pt. I**) the same definition of "the Pensions Act" is inserted in s. 170 of this Act

#### Marginal Citations

**M57** 1975 c.15.  
**M58** S.I. 1986/1888 (N.I. 18).  
**M59** 1992 c. 8.  
**M60** 1992 c. 9.  
**M61** 1992 c. 5.  
**M62** 1992 c. 4.  
**M63** 1975 c. 17.  
**M64** S.I. 1975/1503 (N.I. 15).  
**M65** 1954 c. 33 (N.I.).

### *Subordinate legislation*

#### **171 Regulations and orders - general.**

(1) Subject to any specific provision of this Act, regulations and orders under this Act shall be made by the Department.

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- (2) Any power conferred by this Act to make regulations (except regulations made by the Secretary of State under section 116 or 157 [<sup>F167</sup>and regulations made by the Chief Registrar of friendly societies under paragraph 10(2) of Schedule 1 to this Act.] or orders is exercisable by statutory rule for the purposes of the <sup>M66</sup>Statutory Rules (Northern Ireland) Order 1979.
- (3) Except in the case of an order under section 141(3) above and in so far as this Act otherwise provides, any power conferred by this Act to make regulations or an order may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case;
  - (b) so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act,
    - (iii) any such provision either unconditionally or subject to any specified condition;

and where such a power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes; and powers to make regulations or an order for the purposes of any one provision of this Act are without prejudice to powers to make regulations or an order for the purposes of any other provision.
- (4) Without prejudice to any specific provision of this Act, any power conferred by this Act to make regulations or an order (other than the power conferred by section 141(3)) includes power to make thereby such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient for the purposes of the regulations or order.
- (5) Without prejudice to any specific provision of this Act, a power conferred by any provision of this Act except—
- (a) sections [<sup>F168</sup>25B(2)(a),]30, 47(6) <sup>F169</sup>. . . and 141(3) and paragraph 3(9) of Schedule 7; and
  - (b) section 121(1) in relation to the definition of “payments by way of occupational or personal pension”; and
  - (c) Part XI,
- to make regulations or an order includes power to provide for a person to exercise a discretion in dealing with any matter.
- (6) Any power conferred by this Act to make regulations relating to housing benefit shall include power to make different provision for different areas.
- [<sup>F170</sup>(6A) Regulations under Part VII of this Act relating to housing benefit administered by the Department of the Environment under section 126(3)(b) of the Administration Act shall not be made without the consent of that Department.]
- (7) Any power of the Department under any provision of this Act, except the provisions mentioned in subsection (5)(a) and (b) above and Part IX, to make any regulations

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or order, where the power is not expressed to be exercisable with the consent of the Department of Finance and Personnel shall if that Department so directs be exercisable only in conjunction with it.

- (8) Any power under any of sections 116 to 119 above to modify provisions of this Act or the Administration Act extends also to modifying so much of any other provision of this Act or that Act as re-enacts provisions of the 1975 Act which replaced provisions of the National Insurance (Industrial Injuries) Measures (Northern Ireland) 1966 to 1974.
- (9) A power to make regulations under any of sections 116 to 119 above shall be exercisable in relation to any enactment passed or made after this Act which is directed to be construed as one with this Act, but this subsection applies only so far as a contrary intention is not expressed in the enactment, and is without prejudice to the generality of any such direction.
- (10) Any power of the Secretary of State under section 116 or 157 above to make regulations is exercisable by statutory instrument; and subsections (3) to (5) above apply to those regulations as they apply to regulations made by the Department.
- (11) Any power of the Secretary of State under section 116 or 157 above to make regulations shall if the Treasury so direct be exercisable only in conjunction with them.
- (12) Any reference in this section or section 172 below to an order or regulations under this Act includes a reference to an order or regulations made under any provision of an enactment passed or made after this Act which is directed to be construed as one with this Act; but this subsection applies only so far as a contrary intention is not expressed in the enactment, and is without prejudice to the generality of any such direction.

#### Textual Amendments

**F167** Words in s. 171(2) inserted (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(1), **Sch. 21 Pt. I para. 18**; S.I. 1993/3226, art. 2(1), **Sch. 2**

**F168** Words in s. 171(5) inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 36**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F169** Words in s. 171(5) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), **Sch. 1 Pt. I para. 36**, **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F170** S. 171(6A) inserted (*retrospectively*) by S.I. 1993/1579 (N.I. 8), **art. 3(3)(4)**

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

**C89** S. 171(3)(4) applied (23.3.1994) by S.I. 1994/766 (N.I. 5), **arts. 1(2), 4(2)** (with art. 4(6))

S. 171(3)(4) applied (21.11.1994) by S.I. 1994/1898 (N.I. 12), **arts. 6(11), 14(3)**; S.R. 1994/450, art. 2(a), **Sch. Pt. I**

#### Marginal Citations

**M66** S.I. 1979/1573 (N.I. 12).

## 172 Assembly, etc. control of regulations and orders.

- (1) The regulations and orders to which this subsection applies shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations or order, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations or a new order) cease to have effect

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upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have, or the order has, been approved by a resolution of the Assembly.

- (2) Subsection (1) above applies to—
- (a) regulations made by the Department under section 11(3), 18(1), 19(4) to (6), 28(3), <sup>F171</sup> . . . 104(3), 117, 118 [<sup>F172</sup> or 141] above;
  - (b) regulations prescribing payments for the purposes of the definition of “payments by way of occupational or personal pension” in section 121(1) above;
  - (c) an order made by the Department under section [<sup>F173</sup> 25B(1),] 28(2), <sup>F171</sup> . . . 144(3)(b), 153(2) <sup>F174</sup> . . . [<sup>F175</sup> or 155A(1)] above.
- (3) Subsection (1) above does not apply to—
- (a) regulations under section 117 which states that they are made for the purpose of making provision consequential on the making of an order under section 129 of the Administration Act;
  - (b) regulations under any provision mentioned in subsection (2)(a) above <sup>F176</sup> . . . which are to be made for the purpose of consolidating regulations thereby revoked;
  - (c) regulations which, in so far as they are made under any provision mentioned in subsection (2)(a) above (other than section 141 <sup>F177</sup> . . .), only replace provisions of previous regulations with new provisions to the same effect.
- (4) Subject to subsection (7) below, all regulations and orders made by the Department under this Act, other than regulations or orders to which subsection (1) above applies, shall be subject to negative resolution.
- (5) Section 41(3) of the <sup>M67</sup> Interpretation Act (Northern Ireland) 1954 (laying statutory instruments or statutory documents before the Assembly) shall apply in relation to any instrument or document which by virtue of any provision of this Act is required to be laid before the Assembly as if it were a statutory instrument or statutory document within the meaning of that Act.
- (6) This subsection applies to any regulations or order made under this Act which—
- (a) but for subsection (7) below, would be subject to negative resolution, and
  - (b) are or is contained in a statutory rule which includes any regulations or order subject to the confirmatory procedure.
- (7) Any regulations or order to which subsection (6) above applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.
- (8) During the interim period (as defined by section 1(4) of the <sup>M68</sup> Northern Ireland Act 1974), subsections (1) and (4) above have effect subject to paragraph 3 of Schedule 1 to that Act.
- (9) Subject to subsection (10) below, regulations made under this Act by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) This subsection applies to any regulations made under this Act which—
- (a) but for subsection (11) below, would be subject to annulment in pursuance of a resolution of either House of Parliament, and



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- (b) are, or is, contained in an instrument which is subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament.
- (11) Any regulations to which subsection (9) above applies shall not be subject as mentioned in paragraph (a) of that subsection, but shall be subject to the procedure described in paragraph (b) of that subsection.
- (12) In this section—
- “the Assembly” means the Northern Ireland Assembly;
  - “the confirmatory procedure” means the procedure described in subsection (1) above;
  - “subject to negative resolution” has the meaning assigned by section 41(6) of the <sup>M69</sup>Interpretation Act (Northern Ireland) 1954 (but as if the regulations or orders in question were statutory instruments within the meaning of that Act).

#### Textual Amendments

- F171** Words in s. 172(2)(a)(c) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 37, Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F172** Words in s. 172(2)(a) substituted (6.4.1995) by S.R. 1995/69, art. 6(1)(a)(i)
- F173** Words in s. 172(2)(c) inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 37(b); S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F174** Words in s. 172(2)(c) omitted (6.4.1995) by virtue of S.R. 1995/69, art. 6(1)(a)(ii)
- F175** Words in s. 172(2)(c) substituted (23.3.1994) by S.I. 1994/766 (N.I. 5), arts. 1(2), 5(2) (with art. 4(6))
- F176** Words in s. 172(3)(b) omitted (6.4.1995) by virtue of S.R. 1995/69, art. 6(1)(a)(iii)
- F177** Words in s. 172(3)(c) omitted (6.4.1995) by virtue of S.R. 1995/69, art. 6(1)(a)(iv)

#### Marginal Citations

- M67** 1954 c. 33 (N.I.).
- M68** 1974 c. 28.
- M69** 1954 c. 33 (N.I.).

### Supplementary

#### 173 Short title, commencement and extent.

- (1) This Act may be cited as the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (2) This Act is to be read, where appropriate, with the Administration Act and the Consequential Provisions Act.
- (3) The enactments consolidated by this Act are repealed, in consequence of the consolidation, by the Consequential Provisions Act.
- (4) Except as provided in Schedule 4 to the Consequential Provisions Act, this Act shall come into force on 1st July 1992.
- (5) Except as provided by this section, this Act extends to Northern Ireland only.
- (6) Section 116(2) and this section also extend to Great Britain.

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## SCHEDULES

### SCHEDULE 1

Section 1(4).

#### SUPPLEMENTARY PROVISIONS RELATING TO CONTRIBUTIONS OF CLASSES 1, 1A, 2 AND 3

##### *Class 1 contributions where earner employed in more than one employment*

- 1 (1) For the purposes of determining whether Class 1 contributions are payable in respect of earnings paid to an earner in a given week and, if so, the amount of the contributions—
- (a) all earnings paid to him or for his benefit in that week in respect of one or more employed earner's employments under the same employer shall, except as may be provided by regulations, be aggregated and treated as a single payment of earnings in respect of one such employment; and
  - (b) earnings paid to him or for his benefit in that week by different persons in respect of different employed earner's employments shall in prescribed circumstances be aggregated and treated as a single payment of earnings in respect of one such employment;
- and regulations may provide that the provisions of this sub-paragraph shall have effect in cases prescribed by the regulations as if for any reference to a week there were substituted a reference to a period prescribed by the regulations.
- (2) Where earnings in respect of employments which include any contracted-out employment and any employment which is not a contracted-out employment are aggregated under sub-paragraph (1) above and the aggregated earnings are not less than the current lower earnings limit, then, except as may be provided by regulations—
- (a) the amount of the primary Class 1 contribution in respect of the aggregated earnings shall be determined in accordance with sub-paragraph (3) below; and
  - (b) the amount of the secondary Class 1 contribution in respect of the aggregated earnings shall be determined in accordance with sub-paragraph (6) below.
- (3) The amount of the primary Class 1 contribution shall be the aggregate of the amounts obtained—
- (a) by applying the rates of primary Class 1 contributions that would apply if the aggregated earnings were all attributable to contracted-out employments—
    - (i) to the part of the aggregated earnings attributable to any such employments, or
    - (ii) if that part exceeds the current upper earnings limit, to so much of that part as does not exceed that limit; and
  - (b) if that part is less than that limit, by applying the rate of primary Class 1 contributions that would apply if the aggregated earnings were all attributable to employments which are not contracted-out to so much of the

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remainder of the aggregated earnings as, when added to that part, does not exceed that limit.

- (4) In relation to earners paid otherwise than weekly, any reference in sub-paragraph (2) or (3) above to the lower or upper earnings limit shall be construed as a reference to the prescribed equivalent of that limit.
- (5) The power under sub-paragraph (4) above to prescribe an equivalent of a limit includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that limit.
- (6) The amount of the secondary Class 1 contribution shall be the aggregate of the amounts obtained—
  - (a) by applying the rates of secondary Class 1 contributions that would apply if the aggregated earnings were all attributable to contracted-out employments to the part of the aggregated earnings attributable to any such employments; and
  - (b) by applying the rate of secondary Class 1 contributions that would apply if the aggregated earnings were all attributable to employments which are not contracted-out to the remainder of the aggregated earnings.
- (7) Where any single payment of earnings is made in respect of two or more employed earner's employments under different employers, liability for Class 1 contributions shall be determined by apportioning the payment to such one or more of the employers as may be prescribed, and treating a part apportioned to any employer as a separate payment of earnings by him.
- (8) Where earnings are aggregated under sub-paragraph (1)(b) above, liability (if any) for the secondary contribution shall be apportioned, in such manner as may be prescribed, between the secondary contributors concerned.

#### *Earnings not paid at normal intervals*

- 2 Regulations may, for the purposes of Class 1 contributions, make provision as to the intervals at which payments of earnings are to be treated as made.

#### *Method of paying Class 1 contributions*

- 3 (1) Where earnings are paid to an employed earner and in respect of that payment liability arises for primary and secondary Class 1 contributions, the secondary contributor shall (except in prescribed circumstances), as well as being liable for his own secondary contribution, be liable in the first instance to pay also the earner's primary contribution, on behalf of and to the exclusion of the earner; and for the purposes of this Act and the Administration Act contributions paid by the secondary contributor on behalf of the earner shall be taken to be contributions paid by the earner.
- (2) Notwithstanding any contract to the contrary, no secondary contributor shall be entitled—
  - (a) to make, from earnings paid by him, any deduction in respect of his own or any other person's secondary Class 1 contributions, or

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- (b) otherwise to recover such contributions from any earner to whom he pays earnings.
- (3) A secondary contributor shall be entitled, subject to and in accordance with regulations, to recover from an earner the amount of any primary Class 1 contribution paid or to be paid by him on behalf of the earner; and notwithstanding anything in any enactment, regulations under this sub-paragraph shall provide for recovery to be made by deduction from the earner's earnings, and for it not to be made in any other way.

VALID FROM 28/07/2000

*[<sup>F178</sup> Prohibition on recovery of employer's contributions*

**Textual Amendments**

**F178** Sch. 1: cross-headings and paras. 3A, 3B inserted (28.7.2000) by 2000 c. 19, ss. 81(2)

- <sup>F179</sup>3A (1) Subject to sub-paragraph (2) below, a person who is or has been liable to pay any secondary Class 1 or any Class 1A or Class 1B contributions shall not—
- (a) make, from earnings paid by him, any deduction in respect of any such contributions for which he or any other person is or has been liable;
  - (b) otherwise recover any such contributions (directly or indirectly) from any person who is or has been a relevant earner; or
  - (c) enter into any agreement with any person for the making of any such deduction or otherwise for the purpose of so recovering any such contributions.
- (2) Sub-paragraph (1) above does not apply to the extent that an agreement between—
- (a) a secondary contributor, and
  - (b) any person (“the earner”) in relation to whom the secondary contributor is, was or will be such a contributor in respect of the contributions to which the agreement relates,
- allows the secondary contributor to recover (whether by deduction or otherwise) the whole or any part of any secondary Class 1 contribution payable in respect of a gain that is treated as remuneration derived from that earner's employment by virtue of section 4(4)(a) above.
- (3) Sub-paragraph (2) above does not authorise any recovery (whether by deduction or otherwise)—
- (a) in pursuance of any agreement entered into before 19th May 2000; or
  - (b) in respect of any liability to a contribution arising before the day of the passing of the Child Support, Pensions and Social Security Act 2000.
- (4) In this paragraph—
- “agreement” includes any arrangement or understanding (whether or not legally enforceable); and
- “relevant earner”, in relation to a person who is or has been liable to pay any contributions, means an earner in respect of whom he is or has been so liable.]

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### Textual Amendments

**F179** Sch. 1 paras. 3A, 3B inserted (28.7.2000) by 2000 c. 19, ss. 81(2)

VALID FROM 28/07/2000

### *F180* Transfer of liability to be borne by earner

### Textual Amendments

**F180** Sch. 1: cross-headings and paras. 3A, 3B inserted (28.7.2000) by 2000 c. 19, ss. 81(2)

**F181** 3B (1) This paragraph applies where—

- (a) an election is jointly made by—
  - (i) a secondary contributor, and
  - (ii) a person (“the earner”) in relation to whom the secondary contributor is or will be such a contributor in respect of contributions on share option gains by the earner, for the whole or a part of any liability of the secondary contributor to contributions on any such gains to be transferred to the earner; and
- (b) the election is one in respect of which the Inland Revenue have, before it was made, given by notice to the secondary contributor their approval to both—
  - (i) the form of the election; and
  - (ii) the arrangements made in relation to the proposed election for securing that the liability transferred by the election will be met.

(2) Any liability which—

- (a) arises while the election is in force, and
- (b) is a liability to pay the contributions on share option gains by the earner, or the part of them, to which the election relates,

shall be treated for the purposes of this Act, the Administration Act and Part III of the <sup>M70</sup>Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 as a liability falling on the earner, instead of on the secondary contributor.

(3) Subject to sub-paragraph (7)(b) below, an election made for the purposes of sub-paragraph (1) above shall continue in force from the time when it is made until whichever of the following first occurs, namely—

- (a) it ceases to have effect in accordance with its terms;
- (b) it is revoked jointly by both parties to the election;
- (c) notice is given to the earner by the secondary contributor terminating the effect of the election.

(4) An approval given to the secondary contributor for the purposes of sub-paragraph (1)(b) above may be given either—

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- (a) for an election to be made by the secondary contributor and a particular person; or
  - (b) for all elections to be made, or to be made in particular circumstances, by the secondary contributor and particular persons or by the secondary contributor and persons of a particular description.
- (5) The grounds on which the Inland Revenue shall be entitled to refuse an approval for the purposes of sub-paragraph (1)(b) above shall include each of the following—
- (a) that it appears to the Inland Revenue that adequate arrangements have not been made for securing that the liabilities transferred by the proposed election or elections will be met by the person or persons to whom they would be so transferred; and
  - (b) that it appears to the Inland Revenue that they do not have sufficient information to determine whether or not grounds falling within paragraph (a) above exist.
- (6) If, at any time after they have given an approval for the purposes of sub-paragraph (1)(b) above, it appears to the Inland Revenue—
- (a) that the arrangements that were made or are in force for securing that liabilities transferred by elections to which the approval relates are met are proving inadequate or unsatisfactory in any respect, or
  - (b) that any election to which the approval relates has resulted, or is likely to result, in the avoidance or non-payment of the whole or any part of any secondary Class 1 contributions,
- the Inland Revenue may withdraw the approval by notice to the secondary contributor.
- (7) The withdrawal by the Inland Revenue of any approval given for the purposes of sub-paragraph (1)(b) above—
- (a) may be either general or confined to a particular election or to particular elections; and
  - (b) shall have the effect that the election to which the withdrawal relates has no effect on contributions on share option gains in respect of any right to acquire shares obtained after—
    - (i) the date on which notice of the withdrawal of the approval is given; or
    - (ii) such later date as the Inland Revenue may specify in that notice.
- (8) Where the Inland Revenue have refused or withdrawn their approval for the purposes of sub-paragraph (1)(b) above, the person who applied for it or, as the case may be, to whom it was given may appeal to the Special Commissioners against the Inland Revenue's decision.
- (9) On an appeal under sub-paragraph (8) above the Special Commissioners may—
- (a) dismiss the appeal;
  - (b) remit the decision appealed against to the Inland Revenue with a direction to make such decision as the Special Commissioners think fit; or
  - (c) in the case of a decision to withdraw an approval, quash that decision and direct that that decision is to be treated as never having been made.
- (10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of gains realised before it was made.

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- (11) Regulations made by the Inland Revenue may make provision with respect to the making of elections for the purposes of this paragraph and the giving of approvals for the purposes of sub-paragraph (1)(b) above; and any such regulations may, in particular—
- (a) prescribe the matters that must be contained in such an election;
  - (b) provide for the manner in which such an election is to be capable of being made and of being confined to particular liabilities or the part of particular liabilities; and
  - (c) provide for the making of applications for such approvals and for the manner in which those applications are to be dealt with.
- (12) Where—
- (a) an election is made under this paragraph before the end of the period of three months beginning with the date of the passing of the Child Support, Pensions and Social Security Act 2000, and
  - (b) that election is expressed to relate to liabilities for contributions arising on or after 19th May 2000 and before the making of the election, this paragraph shall have effect in relation to those liabilities as if sub-paragraph (2) above provided for them to be deemed to have fallen on the earner (instead of on the secondary contributor); and the secondary contributor shall accordingly be entitled to reimbursement from the earner for any payment made by that contributor in or towards the discharge of any of those liabilities.
- (13) In this paragraph references to contributions on share option gains by the earner are references to any secondary Class 1 contributions payable in respect of a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above.
- (14) In this paragraph “the Special Commissioners” means the Commissioners for the special purposes of the Income Tax Acts.

**Textual Amendments**

**F181** Sch. 1 paras. 3A, 3B inserted (28.7.2000) by 2000 c. 19, ss. 81(2)

**Marginal Citations**

**M70** S.I. 1999/671.

*General provisions as to Class 1 contributions*

- 4 Regulations may, in relation to Class 1 contributions, make provision—
- (a) for calculating the amounts payable according to a scale prepared from time to time by the Department or otherwise adjusting them so as to avoid fractional amounts or otherwise facilitate computation;
  - (b) for requiring that the liability in respect of a payment made in a tax week, in so far as the liability depends on any conditions as to a person’s age or retirement, shall be determined as at the beginning of the week or as at the end of it;



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- (c) for securing that liability is not avoided or reduced by a person following in the payment of earnings any practice which is abnormal for the employment in respect of which the earnings are paid; and
- (d) without prejudice to sub-paragraph (c) above, for enabling the Department, where it is satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of Class 1 contributions is avoided or reduced by means of irregular or unequal payments, to give directions for securing that such contributions are payable as if that practice were not followed.

*Class 1A contributions where car made available by reason of more than one employment*

- 5 Regulations may modify section 10 above in relation to cases where a car is made available by reason of two or more employed earner's employment under different employers.

VALID FROM 09/09/1998	
<i><sup>F182</sup>Class 1B contributions</i>	
<p><b>Textual Amendments</b></p> <p><b>F182</b> Cross-heading inserted (9.9.1998 for the purpose only of making regulations or orders and for all other purposes on 6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), <b>Sch. 6 para. 58(7)</b>; S.R. 1998/312, art. 2(b), <b>Sch. Pt. II</b></p>	
<sup>F183</sup> 5A	Regulations may make provision for calculating the amount of Class 1B contributions so as to avoid fractional amounts.
<p><b>Textual Amendments</b></p> <p><b>F183</b> <b>Sch. 1 para. 5A</b> inserted (9.9.1998 for the purpose only of making regulations or orders and for all other purposes on 6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), <b>Sch. 6 para. 58(7)</b>; S.R. 1998/312, art. 2(b), <b>Sch. Pt. II</b></p>	

*Power to combine collection of contributions with tax*

- 6 (1) Regulations made with the concurrence of the Inland Revenue may—
- (a) provide for Class 1, Class 1A or Class 2 contributions to be paid, accounted for and recovered in like manner as income tax deducted from the emoluments of an office or employment by virtue of regulations under section 203 of the <sup>M71</sup>Income and Corporation Taxes Act 1988 (PAYE);

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- (b) apply or extend with or without modification in relation to such contributions any of the provisions of the Income Tax Acts or of regulations under that section;
  - (c) make provision for the appropriation of the payments made by any person between his liabilities in respect of income tax and contributions.
- (2) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be made by virtue of paragraph (a) of that sub-paragraph includes in relation to Class 1 or Class 1A contributions—
  - (a) provision for requiring the payment of interest on sums due in respect of Class 1 or Class 1A contributions which are not paid by the due date, for determining the date (being, in the case of Class 1 contributions, not less than 14 days after the end of the tax year in respect of which the sums are due) from which such interest is to be calculated and for enabling the repayment or remission of such interest;
  - (b) provision for requiring the payment of interest on sums due in respect of Class 1 or Class 1A contributions which fall to be repaid and for determining the date (being not less than one year after the end of the tax year in respect of which the sums are due) from which such interest is to be calculated;
  - (c) provision for, or in connection with, the imposition and recovery of penalties in relation to any returns required to be made which relate to Class 1 or Class 1A contributions, but subject to sub-paragraph (7) and paragraph 7 below;and any reference to contributions or income tax in paragraph (b) or (c) of sub-paragraph (1) above shall be construed as including a reference to any interest or penalty in respect of contributions or income tax, as the case may be.
- (3) The rate of interest applicable for any purpose of this paragraph shall be—
  - (a) the rate from time to time prescribed for that purpose under section 178 of the <sup>M72</sup>Finance Act 1989 for the purpose of any enactment (whether or not extending to Northern Ireland) if prescribed by regulations made by virtue of this paragraph; or
  - (b) such other rate as may be prescribed by such regulations.
- (4) Regulations under this paragraph may require the payment of interest on sums due in respect of contributions, notwithstanding that a question arising in relation to the contributions has not been determined under section 15 of the Administration Act by the Department, except that where—
  - (a) any such question arises which affects a person's liability for, or the amount of, any such interest, and
  - (b) either—
    - (i) that person requires the question to be determined under section 15, or
    - (ii) a question of law arising in connection with the determination of the question is, or is to be, referred to the Court of Appeal under section 16 of the Administration Act,the regulations shall not require the payment of any such interest until the question has been determined under section 15 of the Administration Act by the Department or the reference has been finally disposed of under section 16 of that Act, as the case may be; but, subject to that, this paragraph is without prejudice to sections 15 to 17 of the Administration Act.

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- (5) The power to make regulations under this paragraph includes power to make such provision as the Department considers expedient in consequence of any provision made by or under [<sup>F184</sup>section 155A] or 163 above.
- (6) Provision made in regulations under this paragraph, by virtue of sub-paragraph (5) above, may in particular require the inclusion—
- (a) in returns, certificates and other documents; or
  - (b) in any other form of record;
- which the regulations require to be kept or produced or to which those regulations otherwise apply, of such particulars relating to statutory sick pay, statutory maternity pay or deductions or payments made by virtue of section 163(1) above as may be prescribed by those regulations.
- (7) Section 98 of the <sup>M73</sup>Taxes Management Act 1970 shall apply in relation to regulations made by virtue of this paragraph as it applies in relation to regulations made under section 203 of the <sup>M74</sup>Income and Corporation Taxes Act 1988 (PAYE).
- (8) The Inland Revenue shall, at such times and in such manner as the Department of Finance and Personnel may direct, account to the Department for, and pay to it—
- (a) the sums estimated by the Inland Revenue, in such manner as may be so directed, to have been received by them as contributions in accordance with regulations made by virtue of this paragraph; and
  - (b) so much of any interest recovered by the Inland Revenue by virtue of this paragraph as remains after the deduction by them of any administrative costs attributable to its recovery.

#### Textual Amendments

**F184** Words in Sch. 1 para. 6(5) substituted (6.4.1995) by S.R. 1995/69, art. 6(1)(b)

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

**C90** Sch. 1 para. 6(3)(a) applied (19.4.1993) by S.R. 1979/186, regs. 28A(1), 28B(1) (as inserted (19.4.1993) by S.R. 1993/130, reg. 2)

#### Marginal Citations

**M71** 1988 c. 1.

**M72** 1989 c. 26.

**M73** 1970 c. 9.

**M74** 1988 c. 1.

### *Special penalties in the case of certain returns*

- 7 (1) This paragraph applies where regulations under paragraph 6 above make provision requiring any return which is to be made in accordance with a specified provision of regulations under that paragraph (the “contributions return”) to be made—
- (a) at the same time as any specified return required to be made in accordance with a provision of regulations made by the Inland Revenue under section 203(2) (PAYE) or 566(1) (sub-contractors) of the <sup>M75</sup>Income and

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Corporation Taxes Act 1988 to which section 98A of the <sup>M76</sup>Taxes Management Act 1970 applies (the “tax return”); or

- (b) if the circumstances are such that the return mentioned in paragraph (a) above does not fall to be made, at a time defined by reference to the time for making that return, had it fallen to be made;

and, in a case falling within paragraph (b) above, any reference in the following provisions of this paragraph to the tax return shall be construed as a reference to the return there mentioned.

- (2) Where this paragraph applies, regulations under paragraph 6 above may provide that section 98A of the <sup>M77</sup>Taxes Management Act 1970 (penalties for late, fraudulent or negligent returns) shall apply in relation to any specified provision of regulations in accordance with which the contributions return is required to be made; and where they so provide then, subject to the following provisions of this paragraph—

- (a) that section shall apply in relation to the contributions return as it applies in relation to the tax return; and
- (b) sections 100 to 100D and 102 to 104 of that Act shall apply in relation to a penalty under section 98A of that Act to which a person is liable by virtue of this sub-paragraph as they apply in relation to any other penalty under that section.

- (3) Where a person is liable to a penalty under paragraph (a) of subsection (2) of section 98A of that Act (first 12 months’ default) in consequence of a failure in respect of a tax return, he shall not also be liable to a penalty under that paragraph in respect of any failure in respect of the associated contributions return.

- (4) In any case where—

- (a) a person is liable to a penalty under subsection (2)(b) or (4) of that section (tax-related penalties) in respect of both a tax return and its associated contributions return, and
- (b) an officer of the Inland Revenue authorised for the purposes of section 100 of that Act has determined that a penalty is to be imposed under that provision in respect of both returns,

the penalty so imposed shall be a single penalty of an amount not exceeding the limit determined under sub-paragraph (5) below.

- (5) The limit mentioned in sub-paragraph (4) above is an amount equal to the sum of—

- (a) the maximum penalty that would have been applicable under subsection (2) (b) or (4) of section 98A of that Act (as the case may be) for a penalty in relation to the tax return only; and
- (b) the maximum penalty that would have been so applicable in relation to the associated contributions return only.

- (6) So much of any single penalty imposed by virtue of sub-paragraph (4) above as is recovered by the Inland Revenue shall, after the deduction of any administrative costs of the Inland Revenue attributable to its recovery, be apportioned between the Inland Revenue and the Department in the ratio T:C, where—

T is the maximum penalty that could have been imposed under the provision in question in relation to the tax return only; and

C is the maximum penalty that could have been so imposed in relation to the associated contributions return only.

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- (7) The Inland Revenue shall, at such times and in such manner as the Department of Finance and Personnel may direct, account to the Department for, and pay to it—
- (a) the amounts apportioned to the Department under sub-paragraph (6) above in respect of such penalties as are there mentioned; and
  - (b) so much of any penalty otherwise imposed by virtue of this paragraph and recovered by the Inland Revenue as remains after the deduction by them of any administrative costs attributable to its recovery.
- (8) Sub-paragraphs (6) and (7) above shall have effect notwithstanding any provision which treats a penalty under section 98A of that Act as if it were tax charged in an assessment and due and payable.
- (9) In the application of section 98A of that Act by virtue of this paragraph, any reference to a year of assessment shall be construed, in relation to a contributions return, as a reference to the tax year corresponding to that year of assessment.
- (10) In the application of section 100D of that Act (court proceedings for penalties in cases of fraud) by virtue of this paragraph—
- (a) subsection (2) shall have effect with the omission of the words “England, Wales or” and paragraphs (a) and (b); and
  - (b) subsection (3) shall have effect with the omission of the words from “instituted in England and Wales” to “and any such proceedings” and the substitution for “that Part of that Act” of “Part II of the Crown Proceedings Act 1947”.
- (11) In the application of section 103 of that Act (time limit for recovery) by virtue of this paragraph—
- (a) any reference in subsection (1) to tax shall be taken to include a reference to Class 1 and Class 1A contributions;
  - (b) any penalty by virtue of sub-paragraph (4) above shall be regarded as a penalty in respect of the tax return in question; and
  - (c) where, by virtue of subsection (2) (death), subsection (1)(b) does not apply in relation to a penalty under section 98A(2)(b) or (4) of that Act in respect of a tax return, it shall also not apply in relation to a penalty so imposed in respect of the associated contributions return.
- (12) A penalty under section 98A of that Act as it applies by virtue of this paragraph may be imposed notwithstanding that a question arising in relation to contributions has not been determined under section 15 of the Administration Act by the Department except that where—
- (a) any such question arises which affects a person’s liability for, or the amount of, the penalty, and
  - (b) either—
    - (i) that person requires the question to be determined under section 15, or
    - (ii) a question of law arising in connection with the determination of the question is, or is to be, referred to the Court of Appeal under section 16 of the Administration Act,
 the penalty shall not be imposed until the question has been determined under section 15 of the Administration Act by the Department or the reference has been finally disposed of under section 16 of that Act, as the case may be; but, subject to

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that, this paragraph is without prejudice to sections 15 to 17 of the Administration Act.

- (13) For the purposes of this paragraph—
- (a) “contributions return” and “tax return” shall be construed in accordance with sub-paragraph (1) above; and
  - (b) a contributions return and a tax return are “associated” if the contributions return is required to be made—
    - (i) at the same time as the tax return, or
    - (ii) where sub-paragraph (1)(b) above applies, at a time defined by reference to the time for making the tax return.

#### Marginal Citations

**M75** 1988 c. 1.

**M76** 1970 c. 9.

**M77** 1970 c. 9.

VALID FROM 10/03/1999

<sup>F185</sup>7A(1) This paragraph applies where paragraph 7 above applies; and in this paragraph “contributions return” has the same meaning as in that paragraph.

- (2) Without prejudice to paragraph 7(2) above or to the powers of the Inland Revenue to penalise omissions or errors in returns, regulations may provide for the Department to impose penalties in respect of a person who, in making a contributions return, fraudulently or negligently—
- (a) fails to provide any information or computation that he is required to provide; or
  - (b) provides any such information or computation that is incorrect.
- (3) Regulations under sub-paragraph (2) above shall—
- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
  - (b) provide for the penalty to be imposed by the Department within 6 years after the date on which the penalty is incurred;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.]

#### Textual Amendments

**F185** Sch. 1 para. 7A inserted (10.3.1999 for specified purposes and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 53(2); S.R. 1999/102, art. 2(b), Sch. Pt. II

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VALID FROM 10/03/1999

*[<sup>F186</sup>Collection of contributions by the Department]*

**Textual Amendments**

**F186** Sch. 1: Cross-heading and para. 7B inserted (10.3.1999 for specified purposes and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 54; S.R. 1999/102, art. 2(b), Sch. Pt. II

[<sup>F187</sup>7B(1) Regulations may provide that, in such cases or circumstances as may be prescribed—

- (a) contributions payable under Part I of this Act shall be paid to the Department (and not to the Inland Revenue); and
- (b) the Department shall be responsible for the collection of such contributions, and generally for the relevant administration.

(2) Regulations under this paragraph may, in particular—

- (a) provide for returns to be made to the Department by such date as may be prescribed;
- (b) prescribe the form in which returns are to be made, or provide for returns to be made in such form as the Department may approve;
- (c) prescribe the manner in which contributions are to be paid, or provide for contributions to be paid in such manner as the Department may approve;
- (d) prescribe the due date for the payment of contributions;
- (e) subject to sub-paragraph (4) below, provide for interest to be charged by the Department on contributions that are not paid by the due date, and for enabling such interest to be remitted or repaid;
- (f) provide for interest to be paid on contributions that fall to be repaid;
- (g) provide for determining the date from which interest to be charged or paid pursuant to regulations under paragraph (e) or (f) above is to be calculated;
- (h) provide for penalties to be imposed in respect of a person who—
  - (i) fails to submit, within the time allowed, a return required to be made in accordance with regulations under paragraph (a) above;
  - (ii) in making such a return, fraudulently or negligently fails to provide any information or computation that he is required to provide;
  - (iii) in making such a return, fraudulently or negligently provides any incorrect information or computation; or
  - (iv) fails to pay Class 2 contributions by the due date;
- (i) provide for a penalty imposed pursuant to regulations under paragraph (h) above to carry interest from the date on which it becomes payable until payment.

(3) Where—

- (a) a decision relating to contributions falls to be made under Article 9, 10, 11, 13 or 15 of the Social Security (Northern Ireland) Order 1998 or section 22 of the Administration Act; and



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- (b) the decision will affect a person's liability for, or the amount of, any interest due in respect of those contributions,  
regulations under sub-paragraph (2)(e) above shall not require any such interest to be paid until the decision has been made.
- (4) Regulations under sub-paragraph (2)(e) above may provide that, in such cases or circumstances as may be prescribed, interest under those regulations may be charged by the Inland Revenue (instead of the Department) as if the regulations were made by virtue of paragraph 6 above.
- (5) Regulations under sub-paragraph (2)(h) above shall—
- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
  - (b) subject to sub-paragraph (6) below, provide for the penalty to be imposed by the Department—
    - (i) within 6 years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within 3 years after the final determination of the amount of those contributions;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.
- (6) Regulations under sub-paragraph (2)(h)(ii) or (iii) above may provide that, in such cases or circumstances as may be prescribed, penalties under those regulations may be imposed by the Inland Revenue (instead of the Department) as if the return in question were a contributions return within the meaning of paragraph 7 above.
- (7) Section 12 above shall not apply in relation to Class 2 contributions in respect of which the Department charges interest or imposes a penalty pursuant to regulations under paragraph (e) or (h) of sub-paragraph (2) above.
- (8) Interest or penalties may be charged by virtue of regulations under this paragraph in respect of a period before the coming into operation of Article 54 of the Social Security (Northern Ireland) Order 1998 but only to the extent that interest or penalties would have been chargeable if the contributions in question had been recoverable, in respect of that period, by virtue of regulations under paragraph 6 above.
- (9) Any reference to contributions in sub-paragraph (1) above shall be construed as including a reference to any interest or penalty payable, in respect of contributions, by virtue of regulations under paragraph (e) or (h) of sub-paragraph (2) above.
- (10) The rate of interest applicable for any purpose of this paragraph shall be—
- (a) the rate from time to time prescribed under section 178 of the Finance Act 1989 for the purpose of any enactment (whether or not extending to Northern Ireland) if prescribed by regulations made by virtue of this paragraph; or
  - (b) such other rate as may be prescribed by such regulations.]

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#### Textual Amendments

**F187** Sch. 1 para. 7B inserted (10.3.1999 for specified purposes and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 54; S.R. 1999/102, art. 2(b), Sch. Pt. II

VALID FROM 28/07/2000

[<sup>F188</sup>7BA The Inland Revenue may by regulations provide for amounts in respect of contributions or interest that fall to be paid or repaid in accordance with any regulations under this Schedule to be set off, or to be capable of being set off, in prescribed circumstances and to the prescribed extent, against any such liabilities under regulations under this Schedule of the person entitled to the payment or repayment as may be prescribed.]

#### Textual Amendments

**F188** Sch. 1 para. 7BA inserted (28.7.2000) by 2000 c. 19, s. 80(5)

*[<sup>F189</sup>Interest and penalties chargeable concurrently with Inland Revenue]*

#### Textual Amendments

**F189** Sch. 1: cross-heading and para. 7C inserted (*prosp.*) by S.I. 1998/1506 (N.I. 10), arts. 1(2), 55 (which inserting article was repealed (1.4.1999) by S.I. 1999/671, art. 24(3), Sch. 9 Pt. I (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6))

[<sup>F190</sup>7C(1) Any interest or penalty chargeable by the Inland Revenue by virtue of regulations under paragraph 6 or 7 above may also be charged by the Department.

- (2) To the extent that any interest or penalty is recovered by the Department by virtue of sub-paragraph (1) above, or by virtue of regulations under paragraph 7B above, it shall not be recoverable by the Inland Revenue by virtue of regulations under paragraph 6 or 7 above, and vice versa.
- (3) To the extent that any penalty is recovered by the Department by virtue of regulations under paragraph 7A above, it shall not be recoverable by the Inland Revenue by virtue of regulations under paragraph 7 above, and vice versa.]

#### Textual Amendments

**F190** Sch. 1 para. 7C inserted (*prosp.*) by S.I. 1998/1506 (N.I. 10), arts. 1(2), 55

*General regulation - making powers*

8 (1) Regulations may provide—

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- (a) for requiring persons to maintain, in such form and manner as may be prescribed, records—
  - (i) of the earnings paid by them to and in respect of earners, and
  - (ii) of the contributions paid or payable in respect of earnings so paid,for the purpose of enabling the incidence of liability for contributions of any class to be determined, and to retain the records for so long as may be prescribed;
- (b) for requiring persons to maintain, in such form and manner as may be prescribed, records of such matters as may be prescribed for the purpose of enabling the incidence of liability for Class 1A contributions to be determined, and to retain the records for so long as may be prescribed;
- (c) for treating primary Class 1 contributions, when payable on the primary contributor's behalf by the secondary contributor, but not paid, as actually paid where the failure to pay is shown not to have been with the consent or connivance of, or attributable to any negligence on the part of, the primary contributor and, in the case of contributions so treated, for treating them also as paid at a prescribed time or in respect of a prescribed period;
- (d) for treating, for the purpose of any entitlement to benefit, contributions paid at or after any prescribed time as paid at some other time (whether earlier or later) or, in the case of contributions paid after the due date for payment, or at such later date as may be prescribed, as not having been paid;
- (e) for enabling contributions to be treated as paid in respect of a tax year earlier or later than that in respect of which they were actually paid;
- (f) for treating (for the purposes of Class 2 contributions) a week which falls partly in one, and partly in another, tax year as falling wholly within one or the other of those tax years;
- (g) for treating contributions of the wrong class, or at the wrong rate, or of the wrong amount, as paid on account of contributions properly payable (notwithstanding section 14 above, in the case of Class 3 contributions) or as paid (wholly or in part) in discharge of a liability for a state scheme premium;
- (h) for the repayment, in prescribed cases, of the whole or a prescribed part of any contributions paid by reference to earnings which have become repayable;
- (i) for the repayment, in prescribed cases, of a prescribed part of any Class 1A contribution as to which the Department is satisfied in the light of information of a kind mentioned in section 10(6)(a), (b) or (c) above that has become available to it, that too much has been paid;
- (j) for the repayment, on the making of an application in the prescribed manner and within the prescribed time, of Class 2 contributions paid by a person in respect of a period which consists of, or falls within, a tax year for which his earnings from employment as a self-employed earner were, or were such as to be treated by regulations under subsection (4) of section 11 above as being, at a lower rate than the one specified in that subsection for that year;
- (k) for excepting a person from liability for contributions repaid by virtue of paragraph (j) above, to the extent that he would not have been so excepted by virtue of section 11(4) above;
- (l) without prejudice to paragraph (g) above, for enabling—
  - (i) the whole or part of any payment of secondary Class 1 contributions to be treated as a payment of Class 1A contributions;

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- (ii) the whole or part of any payment of Class 1A contributions to be treated as a payment of secondary Class 1 contributions or Class 2 contributions;
  - (iii) the whole or part of any payment of Class 2 contributions to be treated as a payment of secondary Class 1 contributions or Class 1A contributions;
  - (m) for the return of the whole or any prescribed part of any contributions paid either in error or in such circumstances that, under any provision of Part I of this Act or of regulations, they fall to be repaid;
  - (n) for treating a person as being an employed earner, notwithstanding that his employment is outside Northern Ireland;
  - (o) for treating a person's employment as continuing during periods of holiday, unemployment or incapacity for work and in such other circumstances as may be prescribed;
  - (p) for requiring persons to apply to the Department for the allocation of a national insurance number;
  - (q) for any other matters incidental to the payment, collection or return of contributions.
- (2) Regulations made by the Department under sub-paragraph (1) above providing for the payment of Class 2 or Class 3 contributions (at the option of the persons liable to pay) either—
- (a) by means of adhesive stamps; or
  - (b) by some alternative method, the use of which involves greater expense in administration to the government departments concerned than would be incurred if the contributions were paid by means of such stamps,
- may include provision for the payment to the Department by any person who adopts any alternative method, and for the recovery by the Department, of the prescribed fees in respect of any difference in the expense in administration.
- (3) Where under regulations made by virtue of sub-paragraph (1) above contributions are payable by means of adhesive stamps, the Department—
- (a) may, with the consent of the Department of Finance and Personnel, arrange for the preparation and sale of those stamps, and
  - (b) may by regulations provide for applying, with the necessary modifications as respects those stamps, all or any of the provisions of the <sup>M78</sup>Stamp Duties Management Act 1891, section 9 of the <sup>M79</sup>Stamp Act 1891 and section 63 of the <sup>M80</sup>Post Office Act 1953.

#### Marginal Citations

**M78** 1891 c. 38.

**M79** 1891 c. 39.

**M80** 1953 c. 36.

- 9 Regulations may provide that—
- (a) for the purpose of determining whether a contribution is payable in respect of any person, or
  - (b) for determining the amount or rate of any contribution,

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he is to be treated as having attained at the beginning of a week, or as not having attained until the end of a week, any age which he attains during the course of that week.

#### *Sickness payments counting as remuneration*

- 10 (1) Regulations may make provision as to the manner in which, and the person through whom, any sickness payment which, by virtue of section 4(1) above, is to be treated as remuneration derived from employed earner's employment is to be made.
- (2) In any case where regulations made under sub-paragraph (1) above have the effect of requiring a registered friendly society (within the meaning of the [<sup>F191</sup>Friendly Societies Act 1974]) to make amendments to its rules, the amendments may, notwithstanding any provision of those rules, be made in accordance with the procedure prescribed by regulations made by the [<sup>F191</sup>Chief Registrar of Friendly Societies] for the purposes of this paragraph.
- [<sup>F192</sup>(3) The power conferred by sub-paragraph (2) above on the Chief Registrar of Friendly Societies to make regulations shall be exercisable by statutory instrument, and—
- (a) the Statutory Instruments Act 1946 shall apply to that power as if the Chief Registrar were a Minister of the Crown, and
  - (b) section 171(3) to (5) above shall apply to those regulations as they apply to regulations made by the Department.]

#### **Textual Amendments**

**F191** Words in Sch. 1 para. 10(2) substituted (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(1), Sch. 21 Pt. I para. 19(1)(a)(b); S.I. 1993/3226, art. 2(1), Sch.2

**F192** Sch. 1 para. 10(3) substituted (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(1), Sch. 21 Pt. I para. 19(2); S.I. 1993/3226, art. 2(1), Sch.2

## SCHEDULE 2

Section 15(3).

### SCHEDULE 2 TO THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992: LEVY OF CLASS 4 CONTRIBUTIONS WITH INCOME TAX

#### *Interpretation*

- 1 In this Schedule—
- (a) “the Act of 1988” means the <sup>M81</sup>Income and Corporation Taxes Act 1988;
  - (b) “the Act of 1990” means the <sup>M82</sup>Capital Allowances Act 1990;
  - (c) “year” means year of assessment within the meaning of the Act of 1988.

#### **Marginal Citations**

**M81** 1988 c. 1.

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**M82** 1990 c. 1.

### *Method of computing profits or gains*

- 2 Subject to the following paragraphs, Class 4 contributions shall be payable in respect of the full amount of all profits or gains of any relevant trade, profession or vocation chargeable to income tax under Case I or II of Schedule D, subject to—
- (a) deductions for—
    - (i) allowances which under section 140(2) of the Act of 1990 fall to be made as a deduction in charging the profits or gains to income tax, and
    - (ii) any allowance the amount of which falls to be given by way of discharge or repayment of income tax under section 141 of that Act,

where in either case the allowance arises from activities of any relevant trade, profession or vocation; and
  - (b) additions for any such charges as under section 140(7) of that Act fall to be made for purposes of income tax on the profits or gains.

### *Reliefs*

- 3 (1) For the purposes of computing the amount of profits or gains in respect of which Class 4 contributions are payable, relief shall be available under, and in the manner provided by, the following provisions of the Act of 1988—
- (a) sections 380 and 381 (set-off of trade losses against general income), but only where loss arises from activities the profits or gains of which would be brought into computation for the purposes of Class 4 contributions;
  - (b) section 383 (extension of right of set-off to capital allowances);
  - (c) section 385 (carry-forward of loss against subsequent profits); and
  - (d) sections 388 and 389 (carry-back of terminal losses).
- (2) The following relief provisions of the Act of 1988 shall not apply, that is to say—
- (a) Chapter I of Part VII (personal reliefs);
  - (b) section 353 (relief for payment of interest);
  - (c) section 387 (carry-forward as losses of amounts to be taxed under section 350);
  - (d) section 390 (treatment of interest as a loss for purposes of carry-forward or carry-back);
  - (e) section 617(5) (relief for Class 4 contributions); and
  - (f) sections 619 and 620 (premiums or other consideration under annuity contracts and trust schemes).
- (3) Where in the year 1989-90 or any previous year of assessment for which a person claims and is allowed relief by virtue of sub-paragraph (1) above—
- (a) there falls to be made in computing his total income for income tax purposes, or that of his spouse, a deduction in respect of any loss, and

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- (b) the deduction or part of it falls to be so made from income other than profits or gains of a trade, profession or vocation,  
the amount of the deduction made from the other income shall be treated as reducing the person's profits or gains (that is to say the profits or gains of any relevant trade, profession or vocation as computed for the purpose of the charge to Class 4 contributions) for subsequent years (being deducted as far as may be from those of the immediately following year, whether or not he claims or is entitled to claim relief under this paragraph for that year, and, so far as it cannot be so deducted, then from those of the next year, and so on).
- (4) Where in the year 1990-1991 or any subsequent year of assessment for which a person claims and is allowed relief by virtue of sub-paragraph (1) above there falls to be made in computing his total income for income tax purposes a deduction in respect of any loss in any relevant trade, profession or vocation—
- (a) the amount of the deduction shall, as far as may be, be treated for the purpose of the charge to Class 4 contributions as reducing the person's profits or gains for that year of any relevant trade, profession or vocation, and
- (b) any excess shall be treated for that purpose as reducing such profits or gains for subsequent years (being deducted as far as may be from those of the immediately following year, whether or not the person claims or is entitled to claim relief under this paragraph for that year, and, so far as it cannot be so deducted, then from those of the next year, and so on).
- (5) Relief shall be allowed, in respect of—
- (a) payments under section 348 or 349(1) of the Act of 1988 (annuities and other annual payments, etc.); or
- (b) payments under section 353 of that Act (relief for payment of interest), being payments for which relief from income tax is or can be given,  
so far as incurred wholly or exclusively for the purposes of any relevant trade, profession or vocation, by way of deduction from or set-off against profits or gains chargeable to Class 4 contributions for the year in which the payments are made; and, in the case of any insufficiency of the profits or gains of that year, the payments shall be carried forward and deducted from or set off against the profits or gains of any subsequent year (being deducted or set off as far as may be from or against the profits or gains of the immediately following year, whether or not relief can be claimed under this paragraph for that year, and so far as it cannot be so deducted, from or against those of the next year, and so on).

### *Partnerships*

- 4 (1) Where a trade or profession is carried on by two or more persons jointly, the liability of any one of them in respect of Class 4 contributions shall arise in respect of his share of the profits or gains of that trade or profession (so far as immediately derived by him from carrying it on); and for this purpose his share shall be aggregated with his share of the profits or gains of any other trade, profession or vocation (so far as immediately derived by him from carrying it on or exercising it).
- (2) Where sub-paragraph (1) above applies, the Class 4 contributions for which a person is liable in respect of the profits or gains of the trade or profession carried on jointly (aggregated, where appropriate, as mentioned in that sub-paragraph) may either be charged on him separately or (to the extent only that the liability arises in respect



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of the profits or gains of that partnership) be the subject of a joint assessment to contributions made in the partnership name; and sections 111 to 115 of the Act of 1988 shall apply accordingly, but substituting this paragraph for section 111.

*Trustees, etc.*

- 5 In any circumstances in which apart from this paragraph a person would—
- (a) under section 72 of the <sup>M83</sup>Taxes Management Act 1970 be assessable and chargeable to Class 4 contributions as trustee, guardian, tutor, curator, or committee of an incapacitated person in respect of the profits or gains of a trade, profession or vocation, or
  - (b) by virtue of section 59 of the Act of 1988 be assessed and charged to such contributions in respect of profits or gains received or receivable by him in the capacity of trustee,
- such contributions shall not be payable either by him or by any other person.

**Marginal Citations**

**M83** 1970 c. 9.

*Other provisions*

- 6 (1) Sections 86 and 88(1), (4) and (5)(a) and (b) of the Taxes Management Act 1970 (interest on amounts overdue, and on tax recovered to make good loss due to taxpayer's fault) shall apply in relation to any amount due in respect of Class 4 contributions as they apply in relation to income tax; and section 824 of the Act of 1988 (repayment supplements) shall, with the necessary modifications, apply in relation to Class 4 contributions as it applies in relation to income tax.
- (2) The Inland Revenue shall have the same powers under section 1 of the Taxes Management Act 1970 (general functions of care and management) in relation to the remission of interest payable under section 86 or 88 of that Act by virtue of this paragraph as they have in relation to the remission of interest payable under either of those sections on tax.
- 7 Where an assessment has become final and conclusive for the purposes of income tax for any year, that assessment shall also be final and conclusive for the purposes of computing liability for Class 4 contributions; and no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in computing profits or gains chargeable to Class 4 contributions unless that allowance or adjustment has previously been made on an application under the special provisions of the Income Tax Acts relating to it, or falls to be allowed under paragraph 3(5) of this Schedule.
- 8 The provisions of Part V of the Taxes Management Act 1970 (appeals, etc.) shall apply with the necessary modifications in relation to Class 4 contributions as they apply in relation to income tax; but nothing in the Income Tax Acts shall apply with respect to the determination of any question arising—

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- (a) under subsection (1) of section 17 above or subsection (1) of section 17 of the Northern Ireland Contributions and Benefits Act as to whether by regulations under that subsection a person is excepted from liability for Class 4 contributions, or his liability is deferred; or
- (b) under regulations made by virtue of section 17(3) or (4) or 18 above or section 17(3) or (4) or 18 of the Northern Ireland Contributions and Benefits Act.

*Husband and wife - 1989-90 and previous years of assessment*

- 9 (1) For the year 1989-90 and previous years of assessment Chapter II of Part VII of the Act of 1988 shall apply for the purposes of Class 4 contributions as it applies for those of income tax; and an application by a husband or wife for separate assessment under section 283 of that Act, and an election by them under section 287 of that Act (separate taxation of wife's earnings) shall operate as respects liability for such contributions as it does for income tax, the wife being liable for Class 4 contributions in respect of her own profits or gains.
- (2) Such an application or election as is referred to in sub-paragraph (1) above shall not be made separately for the purposes of Class 4 contributions apart from those of income tax.
- (3) Where section 279 of the Act of 1988 applies and there is no separate assessment under section 283 of that Act and no election under section 287 of that Act, the wife's profits and gains are to be computed, for the purposes of Class 4 contributions as if section 279 did not apply, but the contributions shall be assessed on, and recoverable from, the husband.
- (4) In this paragraph "year of assessment" has the meaning assigned to it by section 832 of the Act of 1988.

SCHEDULE 3

Section 21(3) and (4).

CONTRIBUTION CONDITIONS FOR ENTITLEMENT TO BENEFIT

**PART I**

THE CONDITIONS

*Unemployment benefit*

- 1 (1) The contribution conditions for unemployment benefit are the following.
- (2) The first condition is that—
- (a) the claimant must have actually paid contributions of a relevant class in respect of one of the last two complete years before the beginning of the relevant benefit year, and those contributions must have been paid before the relevant time; and

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- (b) the earnings factor derived as mentioned in sub-paragraph (4) below must be not less than that year's lower earnings limit multiplied by 25.
- (3) The second condition is that—
  - (a) the claimant must in respect of the last two complete years before the beginning of the relevant benefit year have either paid or been credited with contributions of a relevant class or been credited (in the case of 1987-88 or any subsequent year) with earnings; and
  - (b) the earnings factor derived as mentioned in sub-paragraph (5) below must be not less in each of those years than the year's lower earnings limit multiplied by 50.
- (4) The earnings factor referred to in paragraph (b) of sub-paragraph (2) above is that which is derived—
  - (a) if the year in question is 1987-88 or any subsequent year from earnings upon which primary Class 1 contributions have been paid or treated as paid; or
  - (b) if the year in question is an earlier year, from the contributions paid as mentioned in paragraph (a) of that sub-paragraph.
- (5) The earnings factor referred to in paragraph (b) of sub-paragraph (3) above is that which is derived—
  - (a) if the year in question is 1987-88 or any subsequent year from earnings upon which primary Class 1 contributions have been paid or treated as paid or from earnings credited; or
  - (b) if the year in question is an earlier year, from the contributions referred to in paragraph (a) of that sub-paragraph.
- (6) For the purposes of these conditions—
  - (a) “the relevant time” is the day in respect of which benefit is claimed;
  - (b) “the relevant benefit year” is the benefit year in which there falls the beginning of the period of interruption of employment which includes the relevant time.

*[<sup>F193</sup>Short-term incapacity benefit]*

#### **Textual Amendments**

**F193** Cross-heading substituted (13.4.1995) by virtue of S.I. 1994/1898 (N.I. 12), **art. 3(2)** (with **art. 15(1)**); S.R. 1994/450, **art. 2(d)**, **Sch. Pt. IV**

- 2 (1) The contribution conditions for [<sup>F194</sup>short-term incapacity benefit] are the following.
- (2) The first condition is that—
  - (a) the claimant must have actually paid contributions of a relevant class in respect of any one year, and those contributions must have been paid before the relevant time; and
  - (b) the earnings factor derived as mentioned in sub-paragraph (4) below must be not less than that year's lower earnings limit multiplied by 25.
- (3) The second condition is that—

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- (a) the claimant must in respect of the last two complete years before the beginning of the relevant benefit year have either paid or been credited with contributions of a relevant class or been credited (in the case of 1987-88 or any subsequent year) with earnings; and
  - (b) the earnings factor derived as mentioned in sub-paragraph (5) below must be not less in each of those years than the year's lower earnings limit multiplied by 50.
- (4) The earnings factor referred to in paragraph (b) of sub-paragraph (2) above is that which is derived—
- (a) if the year in question is 1987-88 or any subsequent year—
    - (i) from earnings upon which primary Class 1 contributions have been paid or treated as paid; or
    - (ii) from Class 2 contributions; or
  - (b) if the year in question is an earlier year, from the contributions paid as mentioned in paragraph (a) of that sub-paragraph.
- (5) The earnings factor referred to in paragraph (b) of sub-paragraph (3) above is that which is derived—
- (a) if the year in question is 1987-88 or any subsequent year—
    - (i) from earnings upon which primary Class 1 contributions have been paid or treated as paid or from earnings credited; or
    - (ii) from Class 2 contributions; or
  - (b) if the year in question is an earlier year, from the contributions referred to in paragraph (a) of that sub-paragraph.
- (6) For the purposes of these conditions—
- (a) “the relevant time” is the day in respect of which benefit is claimed;
  - (b) “the relevant benefit year” is the benefit year in which there falls the beginning of the [<sup>F195</sup>period of incapacity for work] which includes the relevant time.
- [<sup>F196</sup>(7) Where a person makes a claim for incapacity benefit and does not satisfy the second contribution condition (specified in sub-paragraph (3) above) and, in a later benefit year in which he would satisfy that condition had no such claim been made, he makes a further claim for incapacity benefit, the previous claim shall be disregarded.]

#### Textual Amendments

- F194** Words in Sch. 3 para. 2(1) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 3(2) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F195** Words in Sch. 3 para. 2(6)(b) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 38(2) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV
- F196** Sch. 3 para. 2(7) added (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 5(2) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

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

- C91** Sch. 3 para. 2 modified (13.4.1995) by S.R. 1995/35, reg. 14(1)

**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Social Security Contributions and Benefits (Northern Ireland) Act 1992. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

### *Maternity allowance*

- 3 (1) Subject to sub-paragraph (2) below, the contribution condition for a maternity allowance is—
- (a) that the claimant must, in respect of at least 26 weeks in the [<sup>F197</sup>66 weeks immediately preceding] the expected week of confinement, have actually paid contributions of a relevant class; and
  - (b) in the case of Class 1 contributions, that they were not secondary contributions and were paid otherwise than at the reduced rate.
- (2) In the case of a claimant who is or has been paid otherwise than weekly, any week—
- (a) in respect of which she did not pay contributions of a relevant class; but
  - (b) for which her earnings were such that, had she been paid weekly, she would have been required to pay primary Class 1 contributions in respect of that week; and
  - (c) for which no such election as is mentioned in section 19(4)(a) above was in force in her case,
- shall be treated for the purposes of sub-paragraph (1) above as a week in respect of which she actually paid such contributions otherwise than at a reduced rate.
- (3) For the purposes of sub-paragraph (2) above, the amount of the claimant's earnings for any week shall be determined in accordance with regulations.

#### **Textual Amendments**

**F197** Words in [Sch. 3 para. 3\(1\)\(a\)](#) substituted (with effect in any case where the expected week of confinement begins on or after 16.10.1994) by [S.R. 1994/176](#), [regs. 1\(2\), 2\(4\)](#)

### *Widow's payment*

- 4 (1) The contribution condition for a widow's payment is that—
- (a) the contributor concerned must in respect of any one relevant year have actually paid contributions of a relevant class; and
  - (b) the earnings factor derived as mentioned in sub-paragraph (2) below must be not less than that year's lower earnings limit multiplied by 25.
- (2) The earnings factor referred to in paragraph (b) of sub-paragraph (1) above is that which is derived—
- (a) if the year in question is 1987-88 or any subsequent year, from earnings upon which primary Class 1 contributions have been paid or treated as paid and from Class 2 and Class 3 contributions, or
  - (b) if the year in question is an earlier year, from the contributions referred to in paragraph (a) of that sub-paragraph.
- (3) For the purposes of this condition a relevant year is any year ending before the date on which the contributor concerned attained pensionable age or died under that age.

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*Widowed mother's allowance and widow's pension; retirement pensions (Categories A and B)*

- 5 (1) The contribution conditions for a widowed mother's allowance, a widow's pension or a Category A or Category B retirement pension are the following.
- (2) The first condition is that—
- (a) the contributor concerned must in respect of any one relevant year have actually paid contributions of a relevant class; and
- (b) the earnings factor derived—
- (i) if that year is 1987-88 or any subsequent year, from earnings upon which such of those contributions as are primary Class 1 contributions were paid or treated as paid and any Class 2 or Class 3 contributions, or
- (ii) if that year is an earlier year, from the contributions referred to in paragraph (a) above,
- must be not less than the qualifying earnings factor for that year.
- (3) The second condition is that—
- (a) the contributor concerned must, in respect of each of not less than the requisite number of years of his working life, have paid or been credited with contributions of a relevant class; and
- (b) in the case of each of those years, the earnings factor derived as mentioned in sub-paragraph (4) below must be not less than the qualifying earnings factor for that year.
- (4) For the purposes of paragraph (b) of sub-paragraph (3) above, the earnings factor—
- (a) in the case of 1987-88 or any subsequent year, is that which is derived from—
- (i) any earnings upon which such of the contributions mentioned in paragraph (a) of that sub-paragraph as are primary Class 1 contributions were paid or treated as paid or earnings credited; and
- (ii) any Class 2 or Class 3 contributions for the year; or
- (b) in the case of any earlier year, is that which is derived from the contributions mentioned in paragraph (a) of that sub-paragraph.
- (5) For the purposes of the first condition, a relevant year is any year ending before that in which the contributor concerned attained pensionable age or died under that age; and the following table shows the requisite number of years for the purpose of the second condition, by reference to a working life of a given duration—

---

<i>Duration of working life</i>	<i>Requisite number of years</i>
10 years or less	The number of years of the working life, minus 1.
20 years or less (but more than 10)	The number of years of the working life, minus 2.
30 years or less (but more than 20)	The number of years of the working life, minus 3.
40 years or less (but more than 30)	The number of years of the working life, minus 4.

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More than 40 years	The number of years of the working life, minus 5.
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- (6) The first condition shall be taken to be satisfied if the contributor concerned was entitled to [<sup>F198</sup>long-term incapacity benefit] at any time during—
- (a) the year in which he attained pensionable age or died under that age, or
  - (b) the year immediately preceding that year.
- (7) The second condition shall be taken to be satisfied notwithstanding that paragraphs (a) and (b) of sub-paragraph (3) above are not complied with as respects each of the requisite number of years if—
- (a) those paragraphs are complied with as respects at least half that number of years (or at least 20 of them, if that is less than half); and
  - (b) in each of the other years the contributor concerned was, within the meaning of regulations, precluded from regular employment by responsibilities at home.
- (8) For the purposes of this paragraph a person's working life is the period between—
- (a) (inclusive) the tax year in which he attained the age of 16; and
  - (b) (exclusive) the tax year in which he attained pensionable age or died under that age.

#### Textual Amendments

**F198** Words in [Sch. 3 para. 5\(6\)](#) substituted (13.4.1995) by [S.I. 1994/1898 \(N.I. 12\)](#), art. 13(1), [Sch. 1 Pt. I para. 38\(3\)](#) (with art. 15(1)); [S.R. 1994/450](#), art. 2(d), [Sch. Pt. IV](#)

#### *Child's special allowance*

- 6 (1) The contribution condition for a child's special allowance is that—
- (a) the contributor concerned must in respect of any one relevant year have actually paid contributions of a relevant class; and
  - (b) the earnings factor derived from those contributions must be not less than that year's lower earnings limit multiplied by 50.
- (2) For the purposes of this condition, a relevant year is any year ending before the date on which the contributor concerned attained pensionable age or died under that age.

## PART II

### SATISFACTION OF CONDITIONS IN EARLY YEARS OF CONTRIBUTION

- 7 (1) Sub-paragraph (3) below shall apply where a claim is made for a widow's payment and the last complete year before the beginning of the benefit year in which the relevant time falls was either—
- (a) the year in which the contributor concerned first became liable for primary Class 1 or Class 2 contributions; or
  - (b) the year preceding that in which he first became so liable.



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- (2) The relevant time for the purposes of this paragraph is the date on which the contributor concerned attained pensionable age or died under that age.
- (3) For the purposes of satisfaction by the contributor concerned of paragraph (b) of the contribution condition for a widow's payment, all earnings factors falling within sub-paragraph (4) below may be aggregated and that aggregate sum shall be treated as his earnings factor for the last complete year before the beginning of the benefit year in which the relevant time falls.
- (4) The earnings factors referred to in sub-paragraph (3) above are—
- (a) the contributor's earnings factors for 1987-88 and each subsequent year derived from the aggregate of his earnings upon which primary Class 1 contributions were paid or treated as paid and from Class 2 contributions actually paid by him before the relevant time; and
  - (b) his earnings factors for each earlier year, derived from his contributions of a relevant class actually paid by him before the relevant time.
- 8 Where a person claims [<sup>F199</sup>short-term incapacity benefit], he shall be taken to satisfy the first contribution condition for the benefit if on a previous claim for any short-term benefit he has satisfied the first contribution condition for that benefit, by virtue of paragraph 8 of Schedule 3 to the 1975 Act, with contributions of a class relevant to [<sup>F199</sup>short-term incapacity benefit].

#### Textual Amendments

**F199** Words in Sch. 3 para. 8 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 38(4) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

- 9 Where a woman claims a widow's payment, the contributor concerned for the purposes of the claim shall be taken to satisfy the contribution condition for the payment if on a claim made in the past for any short-term benefit he has satisfied the first contribution condition for the benefit, by virtue of paragraph 8 of Schedule 3 to the 1975 Act, with contributions of a class relevant to widow's payment.

## SCHEDULE 4

Parts II to V.

### RATES OF BENEFITS, ETC.

*Note:* This Schedule is subject to alteration by orders made by the Department under section 132 of the Administration Act.

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## F200 **PART I**

### CONTRIBUTORY PERIODICAL BENEFITS

#### Textual Amendments

**F200** Sch. 4: it is provided (10.4.1995) by S.R. 1995/71, arts. 1(d), 3, 6, **Sch. 1** that the sums specified in Pts. I, III, IV, V of Sch. 4 shall be increased and that Sch. 4 Pt. I shall have effect as set out in Sch. 1 of the amending S.R.

Description of benefit	Weekly rate
1. Unemployment benefit.	£46.45.
[ <sup>F201</sup> 2. Short-term incapacity benefit.	(a) lower rate .....£44.40
	(b) higher rate .....£52.50.
2A. Long-term incapacity benefit.	£58.85.]
F202	F202
. . .	. . .
4. Maternity allowance (in cases not falling within section 35(1A)).	£45.55.
5. Category B retirement pension where section 50(1)(a)(i) applies.	£35.25.
6. Child's special allowance.	£11.05.

#### Textual Amendments

**F201** Sch. 4 Pt. I paras. 2, 2A substituted for Sch. 4 Pt. I para. 2 (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 4(2); S.R. 1994/450, art. 2, **Sch. Pt. IV**

**F202** Sch. 4 Pt. I para. 3 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 39(a), **Sch. 2**; S.R. 1994/450, art. 2, **Sch. Pt. IV**

## PART II

### WIDOWS PAYMENT

Widow's payment.	£1,000.00
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**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.

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### F203 PART III

#### NON-CONTRIBUTORY PERIODICAL BENEFITS

##### Textual Amendments

**F203** Sch. 4: it is provided (10.4.1995) by S.R. 1995/71, arts. 1(d), 3, 6, Sch. 1 that the sums specified in Pts. I, III, IV, V of Sch. 4 shall be increased and that Sch. 4 Pt. III shall have effect as set out in Sch. 1 of the amending S.R.

<i>Description of benefit</i>	<i>Weekly rate</i>
1. Attendance allowance.	(a) higher rate..... £46.70 (b) lower rate..... £31.20 (the appropriate rate being determined in accordance with section 65(3)).
2. Severe disablement allowance.	£35.55.
3. Age related addition.	(a) higher rate..... £12.40 (b) middle rate..... £7.80 (c) lower rate..... £3.90 (the appropriate rate being determined in accordance with section 69(1)).
4. Invalid care allowance.	£35.25.
5. Guardian's allowance.	£11.05.
6. Category C retirement pension.	(a) lower rate..... £21.10 (b) higher rate..... £35.25 (the appropriate rate being determined in accordance with section 78(5)).
7. Category D retirement pension.	The higher rate for Category C retirement pensions under paragraph 6 above.
8. Age addition (to a pension of any category, and otherwise under section 79).	£0.25.

### F204 PART IV

#### INCREASES FOR DEPENDANTS

##### Textual Amendments

**F204** Sch. 4: it is provided (10.4.1995) by S.R. 1995/71, arts. 1(d), 3, 6, Sch. 1 that the sums specified in Pts. I, III, IV, V of Sch. 4 shall be increased and that Sch. 4 Pt. IV shall have effect as set out in Sch. 1 of the amending S.R.

**Status:** Point in time view as at 13/04/1995. This version of this Act contains provisions that are not valid for this point in time.

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<b>Benefit to which increase applies</b>	<b>Increase for qualifying child</b>	<b>Increase for adult dependant</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
	<b>£</b>	<b>£</b>
1. Unemployment benefit—		
F205		
... benefit—		
(a) unemployment benefit, where the beneficiary is under pensionable age		28.65
(b) unemployment benefit, where the beneficiary is over pensionable age	11.05	35.25
F206	F206	F206
...	...	...
F206	F206	F206
...	...	...
[F <sup>207</sup> 1A. Short -term incapacity benefit—		
(a) where the beneficiary is under pensionable age	11.05	27.50
(b) where the beneficiary is over pensionable age	11.05	33.85]
[F <sup>208</sup> 2. Long-term incapacity benefit.	11.05	35.25]
3. Maternity allowance.		27.50
4. Widowed mother's allowance.	11.05	
5. Category A or B retirement pension.	11.05	35.25
6. Category C retirement pension.	11.05	21.10
7. Child's special allowance.	11.05	
8. Severe disablement allowance.	11.05	21.15
9. Invalid care allowance.	11.05	21.10

#### Textual Amendments

**F205** Words in Sch. 4 Pt. IV para. 1 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 39(b), Sch. 2; S.R. 1994/450, art. 2(d), Sch. Pt. IV

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**F206** Sch. 4 Pt. IV para. 1(c)(d) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 39(b), **Sch. 2**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F207** Sch. 4 Pt. IV para. 1A inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 4(5)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

**F208** Sch. 4 Pt. IV para. 2 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 4(5)**; S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

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

**C92** Sch. 4 Pt. IV para. 1A applied (13.4.1995) by S.R. 1994/485, **reg. 13**

**F209** PART V

RATE OF INDUSTRIAL INJURIES BENEFIT

**Textual Amendments**

**F209** Sch. 4: it is provided (10.4.1995) by S.R. 1995/71, arts. 1(d), 3, 6, **Sch. 1** that the sums specified in Pts. I, III, IV, V of Sch. 4 shall be increased and that Sch. 4 Pt. V shall have effect as set out in Sch. 1 of the amending S.R.

<i>Description of benefit, etc.</i>	<i>Rate</i>
1. Disablement pension (weekly rates).	For the several degrees of disablement set out in column (1) of the following Table, the respective amounts in that Table, using—  (a) column (2) for any period during which the beneficiary is over the age of 18 or is entitled to an increase of benefit in respect of a child or adult dependant;  (b) column (3) for any period during which the beneficiary is not over the age of 18 and not so entitled;

<i>Degree of disablement</i>	<i>Amount</i>	
	<i>(2)</i>	<i>(3)</i>
<i>(1)</i>	<i>£</i>	<i>£</i>
<i>Per Cent.</i>		
100	95.30	58.35
90	85.77	52.52
80	76.24	46.68
70	66.71	40.85
60	57.18	35.01
50	47.65	29.18
40	38.12	23.34

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	30	28.59	17.51
	20	19.06	11.67
2. Maximum increase of weekly rate of disablement pension where constant attendance needed.		(a) except in cases of exceptionally severe disablement.....	£38.20
		(b) in any case of exceptionally severe disablement.....	£76.40
3. Increase of weekly rate of disablement pension (exceptionally severe disablement).			£38.20
4. Maximum of aggregate of weekly benefit payable for successive accidents.		(a) for any period during which the beneficiary is over the age of 18 or is entitled to an increase in benefit in respect of a child or adult dependant.....	£95.30
		(b) for any period during which the beneficiary is not over the age of 18 and not so entitled.....	£58.35
5. Unemployability supplement under paragraph 2 of Schedule 7.			£58.85
6. Increase under paragraph 3 of Schedule 7 of weekly rate of unemployability supplement.		(a) if on the qualifying date the beneficiary was under the age of 35 or if that date fell before 5th July 1948.....	£12.40
		(b) if head (a) above does not apply and on the qualifying date the beneficiary was under the age of 40 and he had not attained pensionable age before 6th April 1979.....	£12.40
		(c) if heads (a) and (b) above do not apply and on the qualifying date the beneficiary was under the age of 45.....	£7.80
		(d) if heads (a), (b) and (c) above do not apply and on the qualifying date the beneficiary was under the age of 50 and had not attained pensionable age before 6th April 1979.....	£7.80
		(e) in any other case.....	£3.90
7. Increase under paragraph 4 of Schedule 7 of weekly rate of disablement pension.			£11.05
8. Increase under paragraph 6 of Schedule 7 of weekly rate of disablement pension.			£35.25
9. Maximum disablement gratuity under paragraph 9 of Schedule 7.			£6,330.00

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10. Widow's pension (weekly rates).	(a) initial rate..... £57.65
	(b) higher permanent rate..... £58.85
	(c) lower permanent rate 30 per cent. of the first sum specified in section 44(4) (Category A basic retirement pension)  (the appropriate rate being determined in accordance with paragraph 16 of Schedule 7).
11. Widower's pension (weekly rate).	£58.85
12. Weekly rate of allowance in respect of children under paragraph 18 of Schedule 7.	In respect of each qualifying child..... £11.05.

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

**C93** Sch. 4 Pt. V para. 6 modified (13.4.1995) by S.R. 1995/35, reg. 22(4)

SCHEDULE 4A

ADDITIONAL PENSION

SCHEDULE 5

Section 55.

INCREASE OF PENSION WHERE ENTITLEMENT IS DEFERRED

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

**C94** Sch. 5 amended (12.4.1993) by S.R. 1993/150, arts. 1(d), 4(1)(4)(b), 6

Sch. 5 amended (11.4.1994 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 1994/74, arts. 1(1), 4(1)(4)

Sch. 5 amended (10.4.1995 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 1995/71, arts. 1(1), 4(1)(4)

Sch. 5 amended (8.4.1996 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 1996/73, arts. 1(1), 4(1)(4)

Sch. 5 amended (7.4.1997 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 1997/113, arts. 1(1), 4(1)(4)

Sch. 5 amended (6.4.1998 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 1998/59, arts. 1(1), 4(1)(4)

Sch. 5 amended (12.4.1999 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 1999/50, arts. 1(1), 4(1)(4)



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Sch. 5 amended (10.4.2000 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 2000/38, arts. 1(1), 4(1)(4)

Sch. 5 amended (9.4.2001 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 2001/41, arts. 1(1), 4(1)(4) (which S.R. was revoked (11.4.2002) by S.R. 2002/99, arts. 1(1)(g), 23)

Sch. 5 amended (8.4.2002 with effect as mentioned in art. 6 of the amending S.R.) by S.R. 2002/99, arts. 1(1)(d)(2), 4(4)(b)

**C95** Sch. 5 modified (temp. from 1.12.1999 until 5.10.2002) by S.I. 1999/3147 (N.I. 11), arts. 1(4)(b), 49(7)(b) (the temp. modification lapsing on the coming into operation of S.R. 2001/441)

*Increase of pension where pensioner's entitlement is deferred*

- 1 Where a person's entitlement to a Category A or Category B retirement pension is deferred, the rate of his Category A or Category B retirement pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 2 below, but only if that amount is enough to increase the rate of the pension by at least 1 per cent.
  
- 2 (1) Subject to paragraph 3 below, a person is entitled to an increment under this paragraph for each complete incremental period in his period of enhancement.
  - (2) In this Schedule—
    - “incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this Schedule in relation to the person and the pension in question; and
    - “the period of enhancement”, in relation to that person and that pension, means the period which—
      - (a) begins on the same day as the period of deferment in question; and
      - (b) ends on the same day as that period or, if earlier, on the day before the 5th anniversary of the beginning of that period.
  - (3) Subject to paragraph 3 below, the amount of the increment for any such incremental period shall be 1/7th per cent. of the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled for the period if his entitlement had not been deferred.
  - (4) Where an amount is required to be calculated in accordance with the provisions of sub-paragraph (3) above—
    - (a) the amount so calculated shall be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny above; and
    - (b) where the amount so calculated would, apart from this sub-paragraph, be a sum less than 1/2p, that amount shall be taken to be zero, notwithstanding any other provision of this Act, the Pensions Order or the Administration Act.
  - (5) For the purposes of sub-paragraph (3) above the weekly rate of pension for any period shall be taken—
    - (a) to include any increase under section 47(1) above and any increase under paragraph 4, 5 or 6 below, but
    - (b) not to include any increase under section 80, 83 or 85 above or any graduated retirement benefit.

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- (6) The reference in sub-paragraph (5) above to any increase under subsection (1) of section 47 above shall be taken as a reference to any increase that would take place under that subsection if subsection (2) of that section and [F211 section 42(5) of the Pensions Act] were disregarded.
- (7) Where one or more orders have come into force under section 132 of the Administration Act during the period of enhancement the rate for any incremental period shall be determined as if the order or orders had come into force before the beginning of the period of enhancement.
- (8) Where a pensioner's rights premium is paid in respect of a person who is, or if his entitlement had not been deferred would be, entitled to a Category A or Category B retirement pension, then, in calculating any increment under this paragraph which falls to be paid to him in respect of such a pension after the date on which the premium is paid there shall be disregarded any guaranteed minimum pension to which the pensioner was entitled in connection with the employment to which the premium relates.

#### Textual Amendments

**F211** Words in [Sch. 5 para. 2\(6\)](#) substituted (7.2.1994) by [1993 c. 49, s. 184, Sch. 7 para. 36\(a\)](#); [S.R. 1995/17, art. 2](#)

- 3 (1) Regulations may provide that sub-paragraphs (1) to (3) of paragraph 2 above shall have effect with such additions, omissions and amendments as are prescribed in relation to a person during whose period of enhancement there has been a change, other than a change made by such an order as is mentioned in sub-paragraph (7) of that paragraph, in the rate of the Category A or Category B retirement pension to which he would have been entitled if his entitlement to the pension had commenced on attaining pensionable age.
- (2) Any regulations under this paragraph may make such consequential additions, omissions and amendments in paragraph 8(3) below as the Department considers are appropriate in consequence of any changes made by virtue of this paragraph in paragraph 2 above.

#### *Increase of pension where pensioner's deceased spouse has deferred entitlement*

- 4 (1) Subject to sub-paragraph (3) below, where a woman is entitled to a Category A or Category B retirement pension and—
  - (a) she has had a husband and he has died, and she was married to him when he died; and
  - (b) the husband either—
    - (i) was entitled to a Category A or Category B retirement pension with an increase under this Schedule; or
    - (ii) would have been so entitled if his period of deferment had ended on the day before his death,the rate of her pension shall be increased by an amount equal to the increase to which he was or would have been entitled under this Schedule apart from paragraph 6.

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- (2) Subject to sub-paragraph (3) below, where a man is entitled to a Category A or Category B retirement pension and—
- (a) he has had a wife and she has died, and he was married to her when she died;
  - (b) he was over pensionable age when she died; and
  - (c) the wife either—
    - (i) was entitled to a Category A or Category B retirement pension with an increase under this Schedule; or
    - (ii) would have been so entitled if her period of deferment had ended on the day before her death,
 the rate of his pension shall be increased by an amount equal to the increase to which she was or would have been entitled under this Schedule apart from paragraph 5.
- (3) If a married person dies after [<sup>F212</sup>5th October 2002], the rate of the retirement pension for that person's widow or widower shall be increased by an amount equivalent to the sum of—
- (a) the increase in the basic pension to which the deceased spouse was entitled; and
  - (b) one-half of the increase in the additional pension.
- (4) In any case where—
- (a) there is a period between the death of the former spouse and the date on which the surviving spouse becomes entitled to a Category A or Category B retirement pension, and
  - (b) one or more orders have come into force under section 132 of the Administration Act during that period,
- the amount of the increase to which the surviving spouse is entitled under this paragraph shall be determined as if the order or orders had come into force before the beginning of that period.
- (5) This paragraph does not apply in any case where the deceased spouse died before 6th April 1979 and the widow or widower attained pensionable age before that date.

#### Textual Amendments

**F212** Words in Sch. 5 para. 4(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(a)(2)(c)

- 4 (1) Subject to sub-paragraph (3) below, where a woman is entitled to a Category A or Category B retirement pension and—
- (a) she has had a husband and he has died, and she was married to him when he died; and
  - (b) the husband either—
    - (i) was entitled to a Category A or Category B retirement pension with an increase under this Schedule; or
    - (ii) would have been so entitled if his period of deferment had ended on the day before his death,
 the rate of her pension shall be increased by an amount equal to the increase to which he was or would have been entitled under this Schedule apart from paragraph 6.

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- (2) Subject to sub-paragraph (3) below, where a man is entitled to a Category A or Category B retirement pension and—
- (a) he has had a wife and she has died, and he was married to her when she died;
  - (b) he was over pensionable age when she died; and
  - (c) the wife either—
    - (i) was entitled to a Category A or Category B retirement pension with an increase under this Schedule; or
    - (ii) would have been so entitled if her period of deferment had ended on the day before her death,the rate of his pension shall be increased by an amount equal to the increase to which she was or would have been entitled under this Schedule apart from paragraph 5.
- (3) If a married person dies after 5th April 2000, the rate of the retirement pension for that person's widow or widower shall be increased by an amount equivalent to the sum of—
- (a) the increase in the basic pension to which the deceased spouse was entitled; and
  - (b) one-half of the increase in the additional pension.
- (4) In any case where—
- (a) there is a period between the death of the former spouse and the date on which the surviving spouse becomes entitled to a Category A or Category B retirement pension, and
  - (b) one or more orders have come into force under section 132 of the Administration Act during that period,
- the amount of the increase to which the surviving spouse is entitled under this paragraph shall be determined as if the order or orders had come into force before the beginning of that period.
- (5) This paragraph does not apply in any case where the deceased spouse died before 6th April 1979 and the widow or widower attained pensionable age before that date.
- 5 (1) Where a woman is entitled to a Category A or Category B retirement pension and—
- (a) she has had a husband and he has died, and she was married to him when he died; and
  - (b) the husband either—
    - (i) was entitled to a guaranteed minimum pension with an increase under [F213section 11(1) of the Pensions Act], or
    - (ii) would have been so entitled if he had retired on the date of his death,the rate of her pension shall be increased by an amount equal to the sum of the amounts set out in sub-paragraph (2) or, as the case may be, (3) below.
- (2) Where the husband dies before 6th April 2000, the amounts referred to in sub-paragraph (1) above are the following—
- (a) an amount equal to one-half of the increase mentioned in paragraph (b) of that sub-paragraph;
  - (b) the appropriate amount; and
  - (c) an amount equal to any increase to which he had been entitled under paragraph 6 below.

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- (3) Where the husband dies after 5th April 2000, the amounts referred to in sub-paragraph (1) above are the following—
- (a) one-half of the appropriate amount after it has been reduced by the amount of any increases under [<sup>F214</sup>section 105 of the Pensions Act]; and
  - (b) one-half of any increase to which the husband had been entitled under paragraph 6 below.

#### Textual Amendments

**F213** Words in Sch. 5 para. 5(1)(b)(i) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 36(b)

**F214** Words in Sch. 5 para. 5(3)(a) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 36(c)

VALID FROM 16/12/1995

[<sup>F215</sup>5A(1) This paragraph applies where W (referred to in paragraph 5 above) is a widow.

- (2) Where the husband dies before [<sup>F216</sup>6th October 2002], the amounts referred to in paragraph 5(2)(a) above are the following—
- (a) an amount equal to one-half of the increase mentioned in paragraph 5(1)(b) above,
  - (b) the appropriate amount, and
  - (c) an amount equal to any increase to which the husband had been entitled under paragraph 5 above.
- (3) Where the husband dies after [<sup>F216</sup>5th October 2002], the amounts referred to in paragraph 5(2)(a) above are the following—
- (a) one-half of the appropriate amount after it has been reduced by the amount of any increases under section 105 of the Pensions Act, and
  - (b) one-half of any increase to which the husband had been entitled under paragraph 5 above.]

#### Textual Amendments

**F215** Sch. 5 paras. 5, 5A, 6 substituted (16.12.1995) for Sch. 5 paras. 5 and 6 by S.I. 1995/3213 (N.I. 22), arts. 1, 123, Sch. 2 para. 18(15)(16)

**F216** Words in Sch. 5 para. 5A(2)(3) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(2)(c)

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

**C96** Sch. 5 paras. 4-7 modified (6.10.2002) by S.R. 2001/441, art. 2

- 6 (1) Where a man is entitled to a Category A or Category B retirement pension and—
- (a) he has had a wife and she has died, and he was married to her when she died;
  - (b) he was over pensionable age when she died; and
  - (c) the wife either—
    - (i) was entitled to a guaranteed minimum pension with an increase under [<sup>F217</sup>section 11(1) of the Pensions Act]; or

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(ii) would have been so entitled if she had retired on the date of her death,

the rate of his pension shall be increased by an amount equal to the sum of the amounts set out in sub-paragraph (2) or, as the case may be, (3) or (4) below.

- (2) Where the wife dies before 6th April 1989, the amounts referred to in sub-paragraph (1) above are the following—
- (a) an amount equal to the increase mentioned in paragraph (c) of that sub-paragraph;
  - (b) the appropriate amount; and
  - (c) an amount equal to any increase to which she had been entitled under paragraph 5 above.
- (3) Where the wife dies after 5th April 1989 but before [<sup>F218</sup>6th October 2002], the amounts referred to in sub-paragraph (1) above are the following—
- (a) the increase mentioned in paragraph (c) of that sub-paragraph, so far as attributable to employment before 6th April 1988;
  - (b) one-half of that increase, so far as attributable to employment after 5th April 1988;
  - (c) the appropriate amount reduced by the amount of any increases under [<sup>F219</sup>section 105 of the Pensions Act]; and
  - (d) any increase to which she had been entitled under paragraph 5 above.
- (4) Where the wife dies after [<sup>F218</sup>5th October 2002], the amounts referred to in sub-paragraph (1) above are the following—
- (a) one-half of the increase mentioned in paragraph (c) of that sub-paragraph, so far as attributable to employment before 6th April 1988;
  - (b) one-half of the appropriate amount after it has been reduced by the amount of any increases under [<sup>F219</sup>section 105 of the Pensions Act]; and
  - (c) one-half of any increase to which she had been entitled under paragraph 5 above.

#### Textual Amendments

**F217** Words in Sch. 5 para. 6(1)(c)(i) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 36(b)

**F218** Words in Sch. 5 para. 6(3)(4) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. 35(1)(2)(c)

**F219** Words in Sch. 5 para. 6(3)(c)(4)(b) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 36(c)

- 7 (1) For the purposes of paragraphs 5 and 6 above, the “appropriate amount” means the greater of—
- (a) the amount by which the deceased person’s Category A or Category B retirement pension had been increased [<sup>F220</sup>by virtue of] section 132 of the Administration Act corresponding to an order [<sup>F220</sup>by virtue of] section 150(1)(e) of the Great Britain Administration Act; or
  - (b) the amount by which his Category A or Category B retirement pension would have been so increased had he died immediately before his surviving spouse became entitled to a Category A or Category B retirement pension.

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- (2) Where an amount is required to be calculated in accordance with the provisions of paragraph 5 or 6 or sub-paragraph (1) above—
- (a) the amount so calculated shall be rounded to the nearest penny, taking any 1/2p as nearest to the next whole penny above; and
  - (b) where the amount so calculated would, apart from this sub-paragraph, be a sum less than 1/2p, that amount shall be taken to be zero, notwithstanding any other provision of this Act, the [<sup>F221</sup>Pensions Act] or the Administration Act.

#### Textual Amendments

- F220** Words in Sch. 5 para. 7(1)(a) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 para. 40**; S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F221** Words in Sch. 5 para. 7(2)(b) substituted (7.2.1994) by 1993 c. 49, ss. 184, 186(2), **Sch. 7 para. 36(d)**; S.R. 1994/17, **art. 2**

#### *Married women*

- 8 (1) For the purposes of paragraphs 1 to 3 above in their application to a Category B retirement pension to which a married woman is entitled by virtue of her husband's contributions, a married woman who would have become entitled to such a pension on an earlier day if her husband's entitlement to his Category A retirement pension had not been deferred shall be treated as having (in addition to any other period of enhancement) a period of enhancement which begins on that earlier day and ends on the same day as her husband's period of enhancement.
- (2) The reference in sub-paragraph (1) above to the day on which the woman's husband's period of enhancement ends shall, where the marriage is terminated before that day, be construed as a reference to the day on which the marriage is terminated.
- (3) In the case of—
- (a) a Category B retirement pension to which a married woman is entitled by virtue of her husband's contributions; or
  - (b) a married woman's Category A retirement pension with an increase under section 53(2) above attributable to her husband's contributions,
- the reference in paragraph 2(3) above to the pension to which a person would have been entitled if his entitlement had not been deferred shall be construed as a reference to the pension to which she would have been entitled if neither her nor her husband's entitlement to a retirement pension had been deferred.
- (4) Paragraph 4(2)(c) above shall not apply to a Category B retirement pension to which the wife was or would have been entitled by virtue of the man's contributions; and where the Category A retirement pension to which the wife was or would have been entitled includes an increase under section 53(2) above attributable to his contributions, the increase to which he is entitled under that paragraph shall be calculated as if there had been no increase under that section.



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### *Uprating*

- 9 The sums which are the increases in the rates of retirement pensions under this Schedule are subject to alteration by orders made by the Department under section 132 of the Administration Act.

## SCHEDULE 6

Sections 68(6) and 103(5).

### ASSESSMENT OF EXTENT OF DISABLEMENT

#### *General provisions as to method of assessment*

- 1 For the purposes of section 68 or 103 above and Part II of Schedule 7 to this Act, the extent of disablement shall be assessed, by reference to the disabilities incurred by the claimant as a result of the relevant loss of faculty, in accordance with the following general principles—
- (a) except as provided in paragraphs (b) to (d) below, the disabilities to be taken into account shall be all disabilities so incurred (whether or not involving loss of earning power or additional expense) to which the claimant may be expected, having regard to his physical and mental condition at the date of the assessment, to be subject during the period taken into account by the assessment as compared with a person of the same age and sex whose physical and mental condition is normal;
  - (b) except in the case of an assessment for the purposes of section 68 above, regulations may make provision as to the extent (if any) to which any disabilities are to be taken into account where they are disabilities which, though resulting from the relevant loss of faculty, also result, or without the relevant accident might have been expected to result, from a cause other than the relevant accident;
  - (c) the assessment shall be made without reference to the particular circumstances of the claimant other than age, sex, and physical and mental condition;
  - (d) the disabilities resulting from such loss of faculty as may be prescribed shall be taken as amounting to 100 per cent. disablement and other disabilities shall be assessed accordingly.
- 2 Provision may be made by regulations for further defining the principles on which the extent of disablement is to be assessed and such regulations may in particular direct that a prescribed loss of faculty shall be treated as resulting in a prescribed degree of disablement; and, in connection with any such direction, nothing in paragraph 1(c) above prevents the making of different provision, in the case of loss of faculty in or affecting hand or arm, for right-handed and for left-handed persons.
- 3 Regulations under paragraph 1(d) or 2 above may include provision—
- (a) for adjusting or reviewing an assessment made before the date of the coming into force of those regulations;
  - (b) for any resulting alteration of that assessment to have effect as from that date;
- so however that no assessment shall be reduced by virtue of this paragraph.



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### *Severe disablement allowance*

- 4 (1) In the case of an assessment of any person's disablement for the purposes of section 68 above, the period to be taken into account for any such assessment shall be the period during which that person has suffered and may be expected to continue to suffer from the relevant loss of faculty beginning not later than—
- (a) the first claim day if his entitlement to benefit falls to be determined in accordance with section 68(3)(b) above as modified by regulations under section 68(11)(b);
  - (b) where his disablement has previously been assessed for the purposes of section 68 above at a percentage which is not less than 80 per cent.—
    - (i) if the period taken into account for that assessment was or included the period of 196 days ending immediately before the first claim day, the first claim day, or
    - (ii) if the period so taken into account included any day falling within that period of 196 days, the day immediately following that day or, if there is more than one such day, the last such day;
  - (c) in any other case, 196 days before the first claim day;
- and, in any case, ending not later than the day on which that person attains the age of 65 <sup>F222</sup> . . . .
- (2) In this paragraph “the first claim day” means the first day in respect of which the person concerned has made the claim in question for a severe disablement allowance.

#### **Textual Amendments**

**F222** Words in [Sch. 6 para. 4\(1\)](#) omitted (28.10.1994) by virtue of [S.R. 1994/370, reg. 2\(4\)](#)

- 5 (1) An assessment of any person's disablement for the purposes of section 68 above shall state the degree of disablement in the form of a percentage and shall specify the period taken into account by the assessment.
- (2) For the purposes of any such assessment—
- (a) a percentage which is not a whole number shall be rounded to the nearest whole number or if it falls equally near two whole numbers shall be rounded up to the higher; and
  - (b) a percentage between 5 and 100 which is not a multiple of 10 shall be treated, if it is a multiple of 5, as being the next higher percentage which is a multiple of 10 and, in any other case, as being the nearest percentage which is a multiple of 10.
- (3) If on the assessment the person's disablement is found to be less than 5 per cent. that degree of disablement shall for the purposes of section 68 above be disregarded and, accordingly, the assessment shall state that he is not disabled.

### *Disablement benefit*

- 6 (1) Subject to sub-paragraphs (2) and (3) below, the period to be taken into account by an assessment for the purposes of section 103 above and Part II of Schedule 7 to

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this Act of the extent of a claimant's disablement shall be the period (beginning not earlier than the end of the period of 90 days referred to in section 103(6) above and in paragraph 9(3) of that Schedule and limited by reference either to the claimant's life or to a definite date) during which the claimant has suffered and may be expected to continue to suffer from the relevant loss of faculty.

- (2) If on any assessment the condition of the claimant is not such, having regard to the possibility of changes in that condition (whether predictable or not), as to allow of a final assessment being made up to the end of the period provided by sub-paragraph (1) above, then, subject to sub-paragraph (3) below—
  - (a) a provisional assessment shall be made, taking into account such shorter period only as seems reasonable having regard to his condition and that possibility; and
  - (b) on the next assessment the period to be taken into account shall begin with the end of the period taken into account by the provisional assessment.
- (3) Where the assessed extent of a claimant's disablement amounts to less than 14 per cent. then, subject to sub-paragraphs (4) and (5) below, that assessment shall be a final assessment and the period to be taken into account by it shall not end before the earliest date on which it seems likely that the extent of the disablement will be less than 1 per cent.
- (4) Sub-paragraph (3) above does not apply in any case where it seems likely that—
  - (a) the assessed extent of the disablement will be aggregated with the assessed extent of any present disablement, and
  - (b) that aggregate will amount to 14 per cent. or more.
- (5) Where the extent of the claimant's disablement is assessed at different percentages for different parts of the period taken into account by the assessment, then—
  - (a) sub-paragraph (3) above does not apply in relation to the assessment unless the percentage assessed for the latest part of that period is less than 14 per cent., and
  - (b) in any such case that sub-paragraph shall apply only in relation to that part of that period (and subject to sub-paragraph (4) above).

7 An assessment for the purposes of section 103 above and Part II of Schedule 7 to this Act shall—

- (a) state the degree of disablement in the form of a percentage;
- (b) specify the period taken into account by the assessment; and
- (c) where that period is limited by reference to a definite date, specify whether the assessment is provisional or final;

but the percentage and the period shall not be specified more particularly than is necessary for the purpose of determining in accordance with section 103 above and Parts II and IV of Schedule 7 to this Act the claimant's rights as to disablement pension and gratuity and reduced earnings allowance (whether or not a claim has been made).

*Special provision as to entitlement to constant attendance allowance, etc.*

- 8 (1) For the purpose of determining whether a person is entitled—
- (a) to an increase of a disablement pension under section 104 above; or
  - (b) to a corresponding increase of any other benefit by virtue of paragraph 4(2) (b) of Schedule 8 to this Act,

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regulations may provide for the extent of the person's disablement resulting from the relevant injury or disease to be determined in such manner as may be provided for by the regulations by reference to all disabilities to which that person is subject which result either from the relevant injury or disease or from any other injury or disease in respect of which there fall to be made to the person payments of any of the descriptions listed in sub-paragraph (2) below.

- (2) Those payments are payments—
- (a) by way of disablement pension;
  - (b) by way of benefit under paragraph 4(1) of Schedule 8 to this Act; or
  - (c) in such circumstances as may be prescribed by way of such other benefit as may be prescribed (being benefit in connection with any hostilities or with service as a member of Her Majesty's forces or of such other organisation as may be specified in the regulations).

## SCHEDULE 7

Section 106.

### INDUSTRIAL INJURIES BENEFITS

#### PART I

#### UNEMPLOYABILITY SUPPLEMENT

##### *Availability*

- 1 This Part of this Schedule applies only in relation to persons who were beneficiaries in receipt of unemployability supplement under section 58 of the 1975 Act immediately before 6th April 1987.

##### *Rate and duration*

- 2 (1) The weekly rate of a disablement pension shall, if as the result of the relevant loss of faculty the beneficiary is incapable of work and likely to remain so permanently, be increased by the amount specified in Schedule 4, Part V, paragraph 5.
- (2) An increase of pension under this paragraph is referred to in this Act as an "unemployability supplement".
- (3) For the purposes of this paragraph a person may be treated as being incapable of work and likely to remain so permanently, notwithstanding that the loss of faculty is not such as to prevent him being capable of work, if it is likely to prevent his earnings in a year exceeding a prescribed amount not less than £104.
- (4) An unemployability supplement shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.

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### *Increase of unemployability supplement*

- 3 (1) Subject to the following provisions of this paragraph, if on the qualifying date the beneficiary was—
- (a) a man under the age of 60, or
  - (b) a woman under the age of 55,
- the weekly rate of unemployability supplement shall be increased by the appropriate amount specified in Schedule 4, Part V, paragraph 6.
- (2) Where for any period the beneficiary is entitled to a Category A or Category B retirement pension <sup>F223</sup> . . . and the weekly rate of the pension includes an additional pension such as is mentioned in section 44(3)(b) above, for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under this paragraph and the beneficiary shall be entitled to an increase only if there is a balance after that deduction and, if there is such a balance, only of an amount equal to it.
- (3) In this paragraph “the relevant amount” means an amount equal to the additional pension reduced by the amount of any reduction in the weekly rate of the retirement <sup>F223</sup> . . . made by virtue of [<sup>F224</sup>section 42 of the Pensions Act].
- (4) In this paragraph references to an additional pension are references to that pension after any increase under section 52(3) above but without any increase under paragraphs 1 and 2 of Schedule 5 to this Act.
- (5) In this paragraph “the qualifying date” means, subject to sub-paragraphs (6) and (7) below, the beginning of the first week for which the beneficiary qualified for unemployability supplement.
- (6) If the incapacity for work in respect of which unemployability supplement is payable forms part of a period of interruption of employment which has continued from a date earlier than the date fixed under sub-paragraph (5) above, the qualifying date means the first day in that period which is a day of incapacity for work, or such earlier day as may be prescribed.
- (7) Subject to sub-paragraph (6) above, if there have been two or more periods for which the beneficiary was entitled to unemployability supplement, the qualifying date shall be, in relation to unemployability supplement for a day in any one of those periods, the beginning of the first week of that period.
- (8) For the purposes of sub-paragraph (7) above—
- (a) a break of more than 8 weeks in entitlement to unemployability supplement means that the periods before and after the break are two different periods; and
  - (b) a break of 8 weeks or less is to be disregarded.
- (9) Regulations may provide that sub-paragraph (8) above shall have effect as if for the references to 8 weeks there were substituted references to a larger number of weeks specified in the regulations.
- (10) In this paragraph “period of interruption of employment” has the same meaning as it has for the purposes of unemployment benefit.

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- (11) The provisions of this paragraph are subject to [F225 section 42(6) to (8) (entitlement to guaranteed minimum pensions and increases of unemployability supplement) of the Pensions Act].

#### Textual Amendments

**F223** Words in Sch. 7 para. 3(2)(3) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1, para. 41(2), Sch. 2; S.R. 1994/450, art. 2

**F224** Words in Sch. 7 para. 3(3) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 37(a); S.R. 1994/17, art. 2

**F225** Words in Sch. 7 para. 3(11) substituted (7.2.1994) by 1993 c. 49, s. 184, Sch. 7 para. 37(b); S.R. 1994/17, art. 2

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

**C97** Sch. 7 para. 3 modified (7.2.1994) by 1993 c. 49, s. 42(6)(7); S.R. 1994/17, art. 2

**C98** Sch. 7 para. 3(2) modified (7.2.1994) by 1993 c. 49, ss. 44(2); S.R. 1994/17, art. 2

#### *Increase for beneficiary's dependent children*

- 4 (1) Subject to the provisions of this paragraph and paragraph 5 below, the weekly rate of a disablement pension where the beneficiary is entitled to an unemployability supplement shall be increased for any period during which the beneficiary is entitled to child benefit in respect of a child or children.
- (2) The amount of the increase shall be as specified in Schedule 4, Part V, paragraph 7.
- (3) In any case where—
- (a) a beneficiary is one of two persons who are—
    - (i) spouses residing together, or
    - (ii) an unmarried couple, and
  - (b) the other person had earnings in any week,
- the beneficiary's right to payment of increases for the following week under this paragraph shall be determined in accordance with sub-paragraph (4) below.
- (4) No such increase shall be payable—
- (a) in respect of the first child where the earnings were [F226 £125] or more; and
  - (b) in respect of a further child for each complete [F227 £16] by which the earnings exceeded [F226 £125].
- (5) The Department may by order substitute larger amounts for the amounts for the time being specified in sub-paragraph (4) above.
- (6) In this paragraph “week” means such period of 7 days as may be prescribed by regulations made for the purposes of this paragraph.

#### Textual Amendments

**F226** Sums in Sch. 7 para. 4(4) substituted (10.4.1995) by S.R. 1995/73, art. 2

**F227** Sum in Sch. 7 para. 4(4) substituted (12.4.1993) by virtue of S.R. 1993/151, art. 2

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*Additional provisions as to increase under paragraph 4*

- 5 (1) An increase under paragraph 4 above of any amount in respect of a particular child shall for any period be payable only if during that period one or other of the following conditions is satisfied with respect to the child—
- (a) the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or
  - (b) the requisite contributions are being made to the cost of providing for the child.
- (2) The condition specified in paragraph (b) of sub-paragraph (1) above is to be treated as satisfied if, and only if—
- (a) such contributions are being made at a weekly rate not less than the amount referred to in that sub-paragraph—
    - (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 purposes of satisfying section 139(1)(b) above.

*Increase for adult dependants*

- 6 (1) The weekly rate of a disablement pension where the beneficiary is entitled to an unemployability supplement shall be increased under this paragraph for any period during which—
- (a) the beneficiary is—
    - (i) residing with his spouse, or
    - (ii) contributing to the maintenance of his spouse at the requisite rate; or
  - (b) a person—
    - (i) who is neither the spouse of the beneficiary nor a child, and
    - (ii) in relation to whom such further conditions as may be prescribed are fulfilled,has the care of a child or children in respect of whom the beneficiary is entitled to child benefit.
- (2) The amount of the increase under this paragraph shall be that specified in Schedule 4, Part V, paragraph 8 and the requisite rate for the purposes of sub-paragraph (1)(a) above is a weekly rate not less than that amount.
- (3) Regulations may provide that, for any period during which—
- (a) the beneficiary is contributing to the maintenance of his or her spouse at the requisite rate, and
  - (b) the weekly earnings of the spouse exceed such amount as may be prescribed,
- there shall be no increase of benefit under this paragraph.
- (4) Regulations may provide that, for any period during which the beneficiary is residing with his or her spouse and the spouse has earnings—
- (a) the increase of benefit under this paragraph shall be subject to a reduction in respect of the spouse's earnings; or
  - (b) there shall be no increase of benefit under this paragraph.

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- (5) Regulations may, in a case within sub-paragraph (1)(b) above in which the person there referred to is residing with the beneficiary and fulfils such further conditions as may be prescribed, authorise an increase of benefit under this paragraph, but subject, taking account of the earnings of the person residing with the beneficiary, other than such of that person's earnings from employment by the beneficiary as may be prescribed, to provisions comparable to those that may be made by virtue of sub-paragraph (4) above.
- (6) Regulations under this paragraph may, in connection with any reduction or extinguishment of an increase in benefit in respect of earnings, prescribe the method of calculating or estimating the earnings.
- (7) A beneficiary shall not be entitled to an increase of benefit under this paragraph in respect of more than one person for the same period.

*Earnings to include occupational and personal pensions for purposes of disablement pension*

- 7 (1) Except as may be prescribed, any reference to earnings in paragraph 4 or 6 above includes a reference to payments by way of occupational or personal pension.
- (2) For the purposes of those paragraphs, the Department may by regulations provide, in relation to cases where payments by way of occupational or personal pension are made otherwise than weekly, that any necessary apportionment of the payments shall be made in such manner and on such basis as may be prescribed.

*Dependency increases: continuation of awards in cases of fluctuating earnings*

- 8 (1) Where a beneficiary—
  - (a) has been awarded an increase of benefit under paragraph 4 or 6 above, but
  - (b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person (“the relevant earner”) exceed the amount of the increase or, as the case may be, some specified amount,
 then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.
- (2) In this paragraph the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this paragraph, would be taken into account in determining whether the beneficiary is entitled to the increase in question for that week.

## PART II

### DISABLEMENT GRATUITY

- 9 (1) An employed earner shall be entitled to a disablement gratuity, if—
  - (a) he made a claim for disablement benefit before 19th November 1986;
  - (b) he suffered as the result of the relevant accident from loss of physical or mental faculty such that the extent of the resulting disablement assessed in accordance with Schedule 6 to this Act amounts to not less than 1 per cent.; and

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- (c) the extent of the disablement is assessed for the period taken into account as amounting to less than 20 per cent.
- (2) A disablement gratuity shall be—
  - (a) of an amount fixed, in accordance with the length of the period and the degree of the disablement, by a prescribed scale, but not in any case exceeding the amount specified in Schedule 4, Part V, paragraph 9; and
  - (b) payable, if and in such cases as regulations so provide, by instalments.
- (3) A person shall not be entitled to disablement gratuity until after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident.

### PART III

#### INCREASE OF DISABLEMENT PENSION DURING HOSPITAL TREATMENT

- 10 (1) This Part of this Schedule has effect in relation to a period during which a person is receiving medical treatment as an in-patient in a hospital or similar institution and which—
- (a) commenced before 6th April 1987; or
  - (b) commenced after that date but within a period of 28 days from the end of the period during which he last received an increase of benefit under section 62 of the 1975 Act or this paragraph in respect of such treatment for the relevant injury or loss of faculty.
- (2) Where a person is awarded disablement benefit, but the extent of his disablement is assessed for the period taken into account by the assessment at less than 100 per cent., it shall be treated as assessed at 100 per cent. for any part of that period, whether before or after the making of the assessment or the award of benefit, during which he receives, as an in-patient in a hospital or similar institution, medical treatment for the relevant injury or loss of faculty.
- (3) Where the extent of the disablement is assessed for that period at less than 20 per cent., sub-paragraph (2) above shall not affect the assessment; but in the case of a disablement pension payable by virtue of this paragraph to a person awarded a disablement gratuity wholly or partly in respect of the same period, the weekly rate of the pension (after allowing for any increase under Part V of this Act) shall be reduced by the amount prescribed as being the weekly value of his gratuity.

### PART IV

#### REDUCED EARNINGS ALLOWANCE

- 11 (1) Subject to the provisions of this paragraph, an employed earner shall be entitled to reduced earnings allowance if—
- (a) he is entitled to a disablement pension or would be so entitled if that pension were payable where disablement is assessed at not less than 1 per cent.; and
  - (b) as a result of the relevant loss of faculty, he is either—
    - (i) incapable, and likely to remain permanently incapable, of following his regular occupation; and



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(ii) incapable of following employment of an equivalent standard which is suitable in his case,

or is, and has at all times since the end of the period of 90 days referred to in section 103(6) above been, incapable of following that occupation or any such employment;

but a person shall not be entitled to reduced earnings allowance to the extent that the <sup>M84</sup>relevant loss of faculty results from an accident happening on or after 1st October 1990 (the day on which Article 5 of the Social Security (Northern Ireland) Order 1990 came into operation).

(2) A person—

- (a) who immediately before that date is entitled to reduced earnings allowance in consequence of the relevant accident; but
- (b) who subsequently ceases to be entitled to that allowance for one or more days,

shall not again be entitled to reduced earnings allowance in consequence of that accident; but this sub-paragraph does not prevent the making at any time of a claim for, or an award of, reduced earnings allowance in consequence of that accident for a period which commences not later than the day after that on which the claimant was last entitled to that allowance in consequence of that accident.

(3) For the purposes of sub-paragraph (2) above—

- (a) a person who, apart from section 103(6) above, would have been entitled to reduced earnings allowance immediately before 1st October 1990 shall be treated as entitled to that allowance on any day (including a Sunday) on which he would have been entitled to it apart from that provision;
- (b) regulations may prescribe other circumstances in which a person is to be treated as entitled, or as having been entitled, to reduced earnings allowance on any prescribed day.

(4) The Department may by regulations provide that in prescribed circumstances employed earner's employment in which a claimant was engaged when the relevant accident took place but which was not his regular occupation is to be treated as if it had been his regular occupation.

(5) In sub-paragraph (1) above—

- (a) references to a person's regular occupation are to be taken as not including any subsidiary occupation, except to the extent that they fall to be treated as including such an occupation by virtue of regulations under sub-paragraph (4) above; and
- (b) employment of an equivalent standard is to be taken as not including employment other than employed earner's employment;

and in assessing the standard of remuneration in any employment, including a person's regular occupation, regard is to be had to his reasonable prospect of advancement.

(6) For the purposes of this Part of this Schedule a person's regular occupation is to be treated as extending to and including employment in the capacities to which the persons in that occupation (or a class or description of them to which he belonged at the time of the relevant accident) are in the normal course advanced, and to which, if he had continued to follow that occupation without having suffered the relevant loss of faculty, he would have had at least the normal prospects of advancement; and so

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long as he is, as a result of the relevant loss of faculty, deprived in whole or in part of those prospects, he is to be treated as incapable of following that occupation.

- (7) Regulations may for the purposes of this Part of this Schedule provide that a person is not to be treated as capable of following an occupation or employment merely because of his working thereat during a period of trial or for purposes of rehabilitation or training or in other prescribed circumstances.
- (8) Reduced earnings allowance shall be awarded—
- (a) for such period as may be determined at the time of the award; and
  - (b) if at the end of that period the beneficiary submits a fresh claim for the allowance, for such further period, commencing as mentioned in sub-paragraph (2) above, as may be determined.
- (9) The award may not be for a period longer than the period to be taken into account under paragraph 4 or 6 of Schedule 6 to this Act.
- (10) Reduced earnings allowance shall be payable at a rate determined by reference to the beneficiary's probable standard of remuneration during the period for which it is granted in any employed earner's employments which are suitable in his case and which he is likely to be capable of following as compared with that in the relevant occupation, but in no case at a rate higher than 40 per cent. of the maximum rate of a disablement pension or at a rate such that the aggregate of disablement pension (not including increases in disablement pension under any provision of this Act) and reduced earnings allowance awarded to the beneficiary exceeds 140 per cent. of the maximum rate of a disablement pension.
- (11) Sub-paragraph (10) above shall have effect in the case of a person who retired from regular employment before 6th April 1987 with the substitution for "140 per cent." of "100 per cent."
- (12) In sub-paragraph (10) above "the relevant occupation" means—
- (a) in relation to a person who is entitled to reduced earnings allowance by virtue of regulations under sub-paragraph (4) above, the occupation in which he was engaged when the relevant accident took place; and
  - (b) in relation to any other person who is entitled to reduced earnings allowance, his regular occupation within the meaning of sub-paragraph (1) above.
- [<sup>F228</sup>(12A) The reference in sub-paragraph (11) above to a person who has retired from regular employment includes a reference to—
- (a) a person who under subsection (3) of section 27 of the 1975 Act was treated for the purposes of that Act as having retired from regular employment; and
  - (b) a person who under subsection (5) of that section was deemed for those purposes to have retired from it.]

(13) On any award except the first the probable standard of his remuneration shall be determined in such manner as may be prescribed; and, without prejudice to the generality of this sub-paragraph, regulations may provide in prescribed circumstances for the probable standard of remuneration to be determined by reference—

    - (a) to the standard determined at the time of the last previous award of reduced earnings allowance; and
    - (b) to scales or indices of earnings in a particular industry or description of industries or any other data relating to such earnings.

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- (14) In this paragraph “maximum rate of a disablement pension” means the rate specified in the first entry in column (2) of Schedule 4, Part V, paragraph 1 and does not include increases in disablement pension under any provision of this Act.

#### Textual Amendments

**F228** Sch. 7 para. 11(12A) inserted (*temp.*) (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 6, 7(2), **Sch. 4 paras. 1,9**.

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

**C99** Sch. 7, para. 11(1) modified (10.10.1994) by S.R. 1986/179, **reg. 12A** (as inserted by S.R. 1994/347, **art. 3**)

#### Marginal Citations

**M84** S.I. 1990/1511 (N.I. 15).

### Supplementary

- 12 (1) A person who on 10th April 1988 or 9th April 1989 satisfies the conditions—
- (a) that he has attained pensionable age;
  - (b) that he has retired from regular employment; and
  - (c) that he is entitled to reduced earnings allowance,
- shall be entitled to that allowance for life.
- (2) In the case of any beneficiary who is entitled to reduced earnings allowance by virtue of sub-paragraph (1) above, the allowance shall be payable, subject to any enactment contained in Part V or VI of this Act or in the Administration Act and to any regulations made under any such enactment, at the weekly rate at which it was payable to the beneficiary on the relevant date or would have been payable to him on that date but for any such enactment or regulations.
- (3) For the purpose of determining under sub-paragraph (2) above the weekly rate of reduced earnings allowance payable in the case of a qualifying beneficiary, it shall be assumed that the weekly rate at which the allowance was payable to him on the relevant date was—
- (a) £25.84, where that date is 10th April 1988, or
  - (b) £26.96, where that date is 9th April 1989.
- (4) In sub-paragraph (3) above “qualifying beneficiary” means a person entitled to reduced earnings allowance by virtue of sub-paragraph (1) above who—
- (a) did not attain pensionable age before 6th April 1987, or
  - (b) did not retire from regular employment before that date,
- and who, on the relevant date, was entitled to the allowance at a rate which was restricted under paragraph 11(10) above by reference to 40 per cent. of the maximum rate of disablement pension.
- (5) For a beneficiary who is entitled to reduced earnings allowance by virtue of satisfying the conditions in sub-paragraph (1) above on 10th April 1988 the relevant date is that date.

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(6) For a beneficiary who is entitled to it by virtue only of satisfying those conditions on 9th April 1989 the relevant date is that date.

[<sup>F229</sup>(7) The reference in sub-paragraph (1) above to a person who has retired from regular employment includes a reference to—

- (a) a person who under subsection (3) of section 27 of the 1975 Act was treated for the purposes of that Act as having retired from regular employment; and
- (b) a person who under subsection (5) of that section was deemed for those purposes to have retired from it.]

#### Textual Amendments

**F229** Sch. 7 para. 12(7) inserted ( temp.) (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 6, 7(2), Sch. 4 paras. 1,10

## PART V

### RETIREMENT ALLOWANCE

- 13 (1) Subject to the provisions of this Part of this Schedule, a person who—
- (a) has attained pensionable age; and
  - (b) gives up regular employment on or after 10th April 1989; and
  - (c) was entitled to reduced earnings allowance (by virtue either of one award or of a number of awards) on the day immediately before he gave up such employment,
- shall cease to be entitled to reduced earnings allowance as from the day on which he gives up regular employment.
- (2) If the day before a person ceases under sub-paragraph (1) above to be entitled to reduced earnings allowance he is entitled to the allowance (by virtue either of one award or of a number of awards) at a weekly rate or aggregate weekly rate of not less than £2.00, he shall be entitled to a benefit, to be known as “retirement allowance”.
- (3) Retirement allowance shall be payable to him (subject to any enactment contained in Part V or VI of this Act or in the Administration Act and to any regulations made under any such enactment) for life.
- (4) Subject to sub-paragraph (6) below, the weekly rate of a beneficiary’s retirement allowance shall be—
- (a) 25 per cent. of the weekly rate at which he was last entitled to reduced earnings allowance; or
  - (b) 10 per cent. of the maximum rate of a disablement pension,
- whichever is the less.
- (5) For the purpose of determining under sub-paragraph (4) above the weekly rate of retirement allowance in the case of a beneficiary who—
- (a) retires or is deemed to have retired on 10th April 1989, and

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- (b) on 9th April 1989 was entitled to reduced earnings allowance at a rate which was restricted under paragraph 11(10) above by reference to 40 per cent. of the maximum rate of disablement pension,  
it shall be assumed that the weekly rate of reduced earnings allowance to which he was entitled on 9th April 1989 was £26.96.
- (6) If the weekly rate of the beneficiary's retirement allowance—
- (a) would not be a whole number of pence; and
  - (b) would exceed the whole number of pence next below it by 1/2p or more,
- the beneficiary shall be entitled to retirement allowance at a rate equal to the next higher whole number of pence.
- (7) The sums falling to be calculated under sub-paragraph (4) above are subject to alteration by orders made by the Department under section 132 of the Administration Act.
- (8) Regulations may—
- (a) make provision with respect to the meaning of “regular employment” for the purposes of this paragraph; and
  - (b) prescribe circumstances in which, and periods for which, a person is or is not to be regarded for those purposes as having given up such employment.
- (9) Regulations under sub-paragraph (8) above may, in particular—
- (a) provide for a person to be regarded—
    - (i) as having given up regular employment, notwithstanding that he is or intends to be an earner; or
    - (ii) as not having given up regular employment, notwithstanding that he has or may have one or more days of interruption of employment; and
  - (b) prescribe circumstances in which a person is or is not to be regarded as having given up regular employment by reference to—
    - (i) the level or frequency of his earnings during a prescribed period; or
    - (ii) the number of hours for which he works during a prescribed period calculated in a prescribed manner.
- (10) “Day of interruption of employment” has the same meaning for the purposes of this paragraph as it has for the purposes of provisions of this Act relating to unemployment benefit <sup>F230</sup> . . .
- (11) In this paragraph “maximum rate of a disablement pension” means the rate specified in the first entry in column (2) of Schedule 4, Part V, paragraph 1 and does not include increases in disablement pension under any provision of this Act.

#### Textual Amendments

**F230** Words in Sch. 7 para. 13(10) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 para. 41(3), Sch. 2; S.R. 1994/450, art. 2, Sch. Pt. IV

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

**C100** Sch. 7 para. 13(4) amended (12.4.1993) by S.R. 1993/150, arts. 1(1), 4(2), 6  
Sch. 7 para. 13(4) amended (11.4.1994) by S.R. 1994/74, arts. 1(1), 4(2), 6  
Sch. 7 para. 13(4) amended (10.4.1995) by S.R. 1995/71, arts. 1(1), 4(2), 6

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Sch. 7 para. 13(4) amended (8.4.1996) by S.R. 1996/73, arts. 1(1), 4(2), 6

## PART VI

### INDUSTRIAL DEATH BENEFIT

#### *Introductory*

- 14 (1) This Part of this Schedule only has effect in relation to deaths before 11th April 1988.
- (2) In this Part of this Schedule “the deceased” means the person in respect of whose death industrial death benefit is claimed or payable.

#### *Widow’s benefit (entitlement)*

- 15 (1) The widow of the deceased shall be entitled to death benefit if at his death either—
- (a) she was residing with him; or
  - (b) she was receiving or entitled to receive, or would but for the relevant accident have been receiving or entitled to receive, from him periodical payments for her maintenance of not less than the prescribed amount.
- (2) In the case of a widow, death benefit shall be a pension commencing from the death of the deceased and payable, at the weekly rate for the time being applicable under paragraph 16 below for life or until she remarries.
- (3) A pension under this paragraph shall not be payable for any period during which the beneficiary is living as husband and wife with a man not her husband.
- (4) In this paragraph—
- (a) references to a widow receiving or being entitled to receive payments from the deceased are only to her receiving or being entitled to receive (whether from him or from another) payments provided or procured by the deceased; and
  - (b) “entitled” means, in relation to any such payments, entitled under any order of a court, trust or agreement which the widow has taken reasonable steps to enforce.

#### *Widow’s benefit (rate)*

- 16 (1) The weekly rate of a pension payable under paragraph 15 above shall, for the period of 26 weeks next following the deceased’s death, be the initial rate specified in Schedule 4, Part V, paragraph 10.
- (2) The weekly rate of the pension shall, after the end of that period, be the higher permanent rate specified in that paragraph—
- (a) for any period for which the widow is entitled, or is treated by regulations as entitled, to an allowance for children under paragraph 18 below;
  - (b) where the widow was over the age of 50 at the deceased’s death or was over the age of 40 at the end of the period for which she was entitled to such an allowance;
  - (c) where the widow at the deceased’s death was permanently incapable of self-support; or

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(d) while the widow is pregnant by the deceased.

- (3) After the end of the period of 26 weeks referred to in sub-paragraph (1) above, the weekly rate of the pension shall, in any case not within sub-paragraph (2) above, be the lower permanent rate specified in Schedule 4, Part V, paragraph 10.

*Widower's benefit (entitlement and rate)*

- 17 (1) The widower of the deceased shall be entitled to death benefit if at her death he—
- (a) was being wholly or mainly maintained by her or would but for the relevant accident have been so maintained; and
  - (b) was permanently incapable of self-support.
- (2) In the case of a widower, death benefit shall be a pension at the weekly rate specified in Schedule 4, Part V, paragraph 11 commencing from the death of the deceased and payable for life.

*Children of deceased's family*

- 18 (1) Subject to paragraph 19 below, where at his death the deceased was entitled to child benefit in respect of a child or children, then, for any period for which—
- (a) the widow of the deceased is entitled—
    - (i) to death benefit (other than a gratuity) under paragraphs 15 and 16 above; and
    - (ii) to child benefit in respect of that child or one or more of those children; or
  - (b) such other person as may be prescribed is entitled to child benefit in respect of that child or one or more of those children,
- the widow or, as the case may be, the person so prescribed shall be entitled in respect of that child, or in respect of each respectively of those children, to death benefit by way of an allowance at the weekly rate specified in Schedule 4, Part V, paragraph 12.
- (2) Paragraph 5 above applies in relation to an allowance under this paragraph as it applies in relation to an increase of benefit under paragraph 4 above.

*Limits of entitlement to industrial death benefit in respect of children*

- 19 Where two or more persons satisfy the conditions, in respect of the same death, for receipt of an allowance or allowances under paragraph 18 above for any period—
- (a) not more than one of those persons shall be entitled for that period to such an allowance in respect of the same child;
  - (b) where the deceased leaves a widow or widower, then for any period for which she or he is entitled to death benefit as the deceased's widow or widower and satisfies the conditions for receipt of such an allowance in respect of a child, she or he shall be entitled to the allowance in respect of that child;
  - (c) subject to sub-paragraph (b) above, regulations may make provision as to the priority in any prescribed circumstances of two or more persons satisfying the said conditions.

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### *Death of person with constant attendance allowance*

- 20 (1) If a person dies at a time when—
- (a) he is entitled to an increase under section 104 above of a disablement pension and the amount of the increase is not less than the amount which at that time is specified in Schedule 4, Part V, paragraph 2(a); or
  - (b) he would have been so entitled but for having received medical or other treatment as an in-patient in a hospital or similar institution,
- he is to be regarded for the purposes of entitlement to industrial death benefit as having died as a result of the injury in respect of which the disablement pension was payable.
- (2) The reference in sub-paragraph (1) above to an increase under section 104 above includes only a payment by way of increase of a disablement pension, and in particular does not include any payment for constant attendance under paragraph 4(2)(b) of Schedule 8 to this Act.
- (3) Sub-paragraph (1) above does not affect death benefit where the death occurred before 26th July 1971.

### *Pulmonary disease*

- 21 (1) If a person dies as a result of any pulmonary disease and—
- (a) he was entitled, for a period which includes the date of his death, to disablement pension or gratuity in respect of pneumoconiosis or byssinosis or pneumoconiosis accompanied by tuberculosis; and
  - (b) the extent of the disablement in respect of which the benefit was payable was assessed for such a period at not less than 50 per cent.,
- then, subject to sub-paragraph (2) below, his death shall be treated, for the purposes of this Part of this Schedule, as having been caused by the disease in respect of which the benefit was payable.
- (2) Unless regulations provide otherwise, the requirements of paragraph (b) of sub-paragraph (1) above shall be treated as unsatisfied in a case where, had the physical condition of the deceased at the time of the assessment been normal, apart from the diseases mentioned in paragraph (a) of that sub-paragraph, the extent of the disablement in question would have been assessed at less than 50 per cent.
- (3) This paragraph does not affect death benefit where the death occurred before 30th March 1977.

## SCHEDULE 8

Section 111.

### INDUSTRIAL INJURIES AND DISEASES (OLD CASES)

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

**C101** Sch. 8 modified (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 161, 168(4), Sch. 6 para. 1(4)



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## PART I

### WORKMEN'S COMPENSATION AND INDUSTRIAL DISEASES BENEFIT IN RESPECT OF EMPLOYMENT BEFORE 5TH JULY 1948

#### *Continuation of workmen's compensation*

- 1 The Workmen's Compensation Acts and any other enactment repealed by section 88 of the <sup>M85</sup>National Insurance (Industrial Injuries) Act (Northern Ireland) 1946 shall continue to apply to any cases to which, if the Supplementation Act had not been passed, they would have applied by virtue of that section, being certain cases where a right to compensation arises or has arisen in respect of employment before 5th July 1948.

#### **Marginal Citations**

**M85** 1946 c. 21 (N.I.).

#### *Regulations to provide for supplementing workmen's compensation*

- 2 (1) The Department may, with the consent of the Department of Finance and Personnel, make regulations (in this Schedule referred to as "the regulations") conferring a right to allowances on persons who are, or have at any time after 23rd July 1951 been, entitled to weekly payments by way of workmen's compensation, other than a person whose entitlement to such payments—
- (a) arose in consequence of an accident happening after 31st December 1923; and
  - (b) ceased before 24th July 1956.
- (2) Subject to the provisions of this Schedule, the right to such an allowance or to a payment on account of such an allowance shall be subject to such conditions, and the rate of the allowance shall be such, as may be provided by the regulations.
- (3) The allowances for the payment of which the regulations may make provision shall be—
- (a) where the relevant accident happened before 1st January 1924, an allowance (in this paragraph referred to as a "basic allowance") in respect of any period such as is mentioned in sub-paragraph (8) below;
  - (b) an allowance in respect of any period such as is mentioned in sub-paragraph (8)(a) below (in this paragraph referred to as a "major incapacity allowance");
  - (c) subject to sub-paragraphs (4) and (5) below, an allowance in respect of any period such as is mentioned in sub-paragraph (8)(b) below (in this paragraph referred to as a "lesser incapacity allowance");
- and a major incapacity allowance or lesser incapacity allowance in respect of any period shall be payable whether or not a basic allowance is also payable in respect of that period.
- (4) A lesser incapacity allowance—

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- (a) shall not be payable to any person in respect of any period unless there is or may be expected to be (or, but for the cesser at a time after 28th February 1966 of that person's entitlement to workmen's compensation, would or might be expected to have been) payable to that person in respect of that period either a weekly payment by way of basic allowance or a weekly payment by way of workmen's compensation which is not a notional payment;
  - (b) except to a person who immediately before 1st March 1966 was receiving an allowance under a scheme made under the <sup>M86</sup>Workmen's Compensation (Supplementation) Act (Northern Ireland) 1951, shall not be payable if the relevant accident happened after 31st December 1923 and the claimant's entitlement to workmen's compensation in consequence of it ceased before 1st March 1966.
- (5) For the purposes of a lesser incapacity allowance, a weekly payment by way of workmen's compensation shall be treated as a notional payment if awarded or paid for the purpose of safeguarding a potential entitlement to compensation and not related to any existing loss of earnings; and the regulations may provide that—
- (a) in such circumstances or cases as may be specified in the regulations; and
  - (b) in particular, in cases where weekly payments by way of such compensation are being paid to a person to whom such payments were not made, or were made at a lower rate, during the period of 12 months immediately preceding such date not earlier than 30th November 1965 as may be specified in the regulations,
- a weekly payment by way of such compensation shall be deemed to be a notional payment unless the contrary is proved.
- (6) The weekly rate—
- (a) of a basic allowance shall not exceed £2 less the amount of the recipient's workmen's compensation and, in respect of a period such as is mentioned in sub-paragraph (8)(b) below which is a period of partial incapacity only, shall also not exceed the difference between 2/3rds of the amount representing his weekly loss of earnings determined in accordance with the regulations and the amount of his workmen's compensation;
  - (b) of a major incapacity allowance shall be the corresponding disablement pension rate;
  - (c) of a lesser incapacity allowance shall not exceed [<sup>F231</sup>£35.25].
- (7) Sub-paragraph (6)(b) above shall have effect in relation to any person who has retired, or is treated as having retired, from regular employment, for the purposes of Parts I to VI of this Act, for so long as he continues to be treated as retired for those purposes, as if at the end of the paragraph there were added the words “ less the amount of the recipient's workmen's compensation and less the amount of his basic allowance, if any ”.
- (8) The periods referred to in sub-paragraph (3) above are—
- (a) any period during which the person claiming or receiving an allowance under this paragraph—
    - (i) being or having been entitled to his workmen's compensation in respect of any injury or disease, is as a result of that injury or disease totally incapable of work and likely to remain so incapable for a considerable period; or

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- (ii) being or having been entitled to his workmen’s compensation in respect of two or more injuries or diseases, is as the joint result of those injuries or diseases totally incapable of work and likely to remain so incapable for a considerable period;
- (b) any period which, not being a period such as is mentioned in paragraph (a) above, is a period of total or partial incapacity for work resulting from the relevant injury or disease.

#### Textual Amendments

**F231** Sum in Sch. 8 para. 2(6)(c) substituted (12.4.1995) by [S.R. 1995/71](#), [arts. 1\(f\), 7](#)

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

**C102** Sch. 8 para. 2 amended (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), ss. 161, 168(4), [Sch. 6 para. 1\(1\)](#).

**C103** Sch. 8 para. 2 extended (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), ss. 161, 168(4), [Sch. 6 paras. 2\(1\), 3](#).

#### Marginal Citations

**M86** 1951 c. 16 (N.I.).

#### *Provisions supplementary to paragraph 2*

- 3 (1) For the purposes of paragraph 2 above—
- (a) the expressions “relevant accident” and “relevant injury or disease” mean the accident in consequence of which or, as the case may be, the injury or disease in respect of which, an entitlement to weekly payments by way of workmen’s compensation arose;
  - (b) any reference to the happening of an accident shall, in relation to a case of disease, be construed in the same way as for the purposes of the Workmen’s Compensation Acts;
  - (c) a payment—
    - (i) under the <sup>M87M88</sup>Workmen’s Compensation (War Addition) Acts 1917 and 1919 ; or
    - (ii) under the <sup>M89</sup>Workmen’s Compensation (Supplementary Allowances) Act (Northern Ireland) 1940 as amended by the <sup>M90</sup>Workmen’s Compensation (Temporary Increases) Act (Northern Ireland) 1943 ,
 shall be treated as a weekly payment by way of workmen’s compensation.
- (2) For the purposes of paragraph 2(1) above, a person shall be deemed to be or have been entitled to weekly payments by way of workmen’s compensation at any time if he would be or, as the case may be, have been so entitled at that time if—
- (a) the amount of any payment, allowance or benefit received by him otherwise than by way of workmen’s compensation; or
  - (b) where the relevant accident happened before 1st January 1924, either that amount, or the amount he is earning or able to earn in some suitable employment or business, or both those amounts,
- were sufficiently reduced.

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- (3) Subject to sub-paragraph (7) below, for the purpose of the reference in paragraph 2(8)(b) above to a period of total incapacity for work resulting from the relevant injury or disease, a person who is or has been unable to obtain employment shall be treated as subject to such an incapacity if he is treated as being so for the purposes of his workmen's compensation in respect of the relevant injury or disease and in such other circumstances as may be provided by the regulations.
- (4) Any reference in paragraph 2 above or this paragraph to the amount of a person's workmen's compensation shall (subject to sub-paragraphs (5) to (7) below) be taken as referring to the amount, if any, of the weekly payments to which for the time being he is, or would but for the determination of his right be, entitled in respect of the relevant injury or disease so, however, that—
- (a) where in fixing the amount of those weekly payments under the provisions relating to them regard was had to any payment, allowance or benefit which he might receive during the period of his incapacity from the person liable for the compensation, and the amount is shown to have been reduced in consequence, the amount of those weekly payments shall for the purposes of this sub-paragraph be taken to be the reduced amount so fixed with the addition of the amount of the reduction; and
  - (b) where the amount of those weekly payments has not been fixed under the said provisions, it shall be fixed for the purposes of this sub-paragraph without regard to any such payment, allowance or benefit.
- (5) The regulations may include provision that, in such special circumstances or cases and for such purposes as may be specified in the regulations, any reference in paragraph 2 above or this paragraph to the amount of a person's workmen's compensation shall be taken as referring to such amount as it may be determined in manner provided by the regulations ought reasonably and properly to have been the amount of the weekly payments referred to in sub-paragraph (4) above.
- (6) Where a person is, or has at any time after 23rd July 1951 been, entitled to payments under the enactments referred to in sub-paragraph (1)(c)(i) or (ii) above but ceased before 24th July 1951 to be entitled to any other weekly payments by way of workmen's compensation in respect of the relevant injury or disease, the amount of his workmen's compensation shall for the purposes of paragraph 2 above be calculated as if he had not ceased to be entitled to such other payments.
- (7) The regulations may provide for modifying the operation of sub-paragraphs (3) to (5) above in relation to a person whose workmen's compensation is or was compensation under a contracting-out scheme in such manner as appears to the Department to be proper having regard to the provisions of the contracting-out scheme.

#### Marginal Citations

M87 1917 c. 42.

M88 1919 c. 83.

M89 1940 c. 18 (N.I.).

M90 1943 c. 13 (N.I.).

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## PART II

### REGULATIONS PROVIDING FOR BENEFIT FOR PRE-1948 CASES

- 4 (1) This paragraph applies to any person who is or has been at any time after 4th July 1948—
- (a) entitled in respect of any injury or disease to weekly payments by way of compensation under the Workmen’s Compensation Acts; or
  - (b) entitled to payments on account of an injury pension under or by virtue of any enactment in respect of an injury received or disease contracted by him before 5th July 1948 or in respect of his retirement in consequence of such an injury or disease.
- (2) Regulations may provide—
- (a) for conferring on persons to whom this paragraph applies who as a result of the injury or disease in question are, or could for the purpose of the provisions of this Act relating to unemployability supplement and any provisions of the Administration Act, so far as they so relate, be treated as being, incapable of work and likely to remain permanently so incapable—
    - (i) the like right to payments under Schedule 7 to this Act by way of unemployability supplement; and
    - (ii) the like right to payments under Schedule 7 to this Act in respect of a child or adult dependant,
 as if the injury or disease were one in respect of which a disablement pension were for the time being payable;
  - (b) for conferring on persons to whom this paragraph applies who as a result of the injury or disease in question require constant attendance—
    - (i) the like right to payments under this Act in respect of the need for constant attendance; and
    - (ii) the like right to an increase for exceptionally severe disablement,
 as if the injury or disease were one in respect of which a disablement pension were for the time being payable in respect of an assessment of 100 per cent.;
  - (c) for applying in relation to payments under this paragraph the provisions of this Act relating to industrial injuries benefit, in so far as those provisions apply in relation to—
    - (i) an unemployability supplement;
    - (ii) an increase of a disablement pension in respect of a child or adult dependant; or
    - (iii) an increase of a disablement pension in respect of the need for constant attendance or exceptionally severe disablement,
 (as the subject to any additions or modifications.
    - case
    - may
    - be)

## PART III

### INTERPRETATION

- 5 (1) In this Schedule, except where the context otherwise requires—

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“corresponding disablement pension rate” means the weekly rate for the time being of a disablement pension in respect of an assessment of 100 per cent.;

“injury pension” includes any pension or similar benefit payable in respect of a person’s employment or former employment, being a pension or benefit which would not be payable or would be payable at a less rate but for an injury or disease referable to that employment;

“the regulations” has the meaning given by paragraph 2(1) above;

“the Supplementation Act” means the <sup>M91</sup>Workmen’s Compensation (Supplementation) Act (Northern Ireland) 1966;

“workmen’s compensation” means compensation under any of the Workmen’s Compensation Acts or under any contracting-out scheme duly certified under any of those Acts;

“the Workmen’s Compensation Acts” means the <sup>M92</sup>Workmen’s Compensation Acts (Northern Ireland) 1927 to 1943, or the enactments repealed by the Workmen’s Compensation Act (Northern Ireland) 1927 or the enactments repealed by the <sup>M93</sup>Workmen’s Compensation Act 1906 .

(2) For the purposes of this Schedule—

- (a) a period shall be treated as considerable if it lasts or can be expected to last for not less than 13 weeks;
- (b) a person may be treated as being, as the result of an injury or disease or as the joint result of two or more injuries or diseases, totally incapable of work and likely to remain so incapable for a considerable period notwithstanding that the disability resulting from the injury or disease or, as the case may be, from the injuries or diseases taken together is not such as to prevent him from being capable of work, if it is likely to prevent his earnings (including any remuneration or profit derived from a gainful occupation) exceeding in a year such amount as is for the time being prescribed for purposes of unemployment supplement.

(3) For the purposes of paragraph 4 above, paragraph 4 of Schedule 3 to the 1986 Order and paragraph 1 of Schedule 7 to this Act shall be deemed not to have been enacted.

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**Marginal Citations**

**M91** 1966 c. 14 (N.I.).

**M92** 1927 c. 16 (N.I.).

**M93** 1906 c. 58.

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## SCHEDULE 9

Section 140(2).

## EXCLUSIONS FROM ENTITLEMENT TO CHILD BENEFIT

*Children in detention, care, etc.*

- 1 (1) Except where regulations otherwise provide, no person shall be entitled to child benefit in respect of a child for any week if in that week the child—
- (a) is undergoing imprisonment or detention in a young offenders centre;
  - (b) is authorised under—
    - (i) any provision of the <sup>M94</sup>Children and Young Persons Act (Northern Ireland) 1968; or
    - (ii) paragraph 7 of Schedule 13 to the <sup>M95</sup>Education and Libraries (Northern Ireland) Order 1986;
 to be detained in a training school, and is not absent from the school on licence;
  - (c) is liable to be detained by virtue of section 73 of that Act of 1968 and is not discharged on licence;
  - (d) is the subject of an order under that Act of 1968 committing him to custody in any place to which he may be committed on remand;
  - (e) is subject to a provision of a supervision order made under that Act of 1968 requiring him to reside in an institution;
  - (f) is—
    - (i) in the care of the Department; or
    - (ii) the subject of a parental rights order under section 104 of that Act of 1968,
 in such circumstances as may be prescribed.
- (2) In sub-paragraph (1) above the reference to a child in the care of the Department includes a reference to a child in the care of a Health and Social Services Board.

**Marginal Citations**

**M94** 1968 c. 34 (N.I.).

**M95** S.I. 1986/594 (N.I. 3).

*Employed trainees, etc.*

- 2 (1) No person shall be entitled to child benefit by virtue of section 138(1)(c) above in respect of a child if the education in question is received by that child by virtue of his employment or of any office held by him.
- (2) Regulations may specify the circumstances in which a child is or is not to be treated as receiving education as mentioned in sub-paragraph (1) above.

*Married children*

- 3 Except where regulations otherwise provide, no person shall be entitled to child benefit in respect of a child who is married.

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#### *Persons exempt from tax*

- 4 Except where regulations otherwise provide, no person shall be entitled to child benefit in respect of a child if either that person or such other person as may be prescribed is exempt from tax under such provisions as may be prescribed.

#### *Children entitled to severe disablement allowance*

- 5 Except where regulations otherwise provide, no person shall be entitled to child benefit in respect of a child for any week in which the child is entitled to a severe disablement allowance.

### SCHEDULE 10

Section 140(3).

#### PRIORITY BETWEEN PERSONS ENTITLED TO CHILD BENEFIT

##### *Person with prior award*

- 1 (1) Subject to sub-paragraph (2) below, as between a person claiming child benefit in respect of a child for any week and a person to whom child benefit in respect of that child for that week has already been awarded when the claim is made, the latter shall be entitled.
- (2) Sub-paragraph (1) above shall not confer any priority where the week to which the claim relates is later than the third week following that in which the claim is made.

##### *Person having child living with him*

- 2 Subject to paragraph 1 above, as between a person entitled for any week by virtue of paragraph (a) of subsection (1) of section 139 above and a person entitled by virtue of paragraph (b) of that subsection the former shall be entitled.

##### *Husband and wife*

- 3 Subject to paragraphs 1 and 2 above, as between a husband and wife residing together the wife shall be entitled.

##### *Parents*

- 4 (1) Subject to paragraphs 1 to 3 above, as between a person who is and one who is not a parent of the child the parent shall be entitled.
- (2) Subject as aforesaid, as between two persons residing together who are parents of the child but not husband and wife, the mother shall be entitled.

##### *Other cases*

- 5 As between persons not falling within paragraphs 1 to 4 above, such one of them shall be entitled as they may jointly elect or, in default of election, as the Department may in its discretion determine.



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### *Supplementary*

- 6 (1) Any election under this Schedule shall be made in the prescribed manner.
- (2) Regulations may provide for exceptions from and modifications of the provisions of paragraphs 1 to 5 above in relation to such cases as may be prescribed.

## SCHEDULE 11

Section 149(3).

### CIRCUMSTANCES IN WHICH PERIODS OF ENTITLEMENT TO STATUTORY SICK PAY DO NOT ARISE

- 1 A period of entitlement does not arise in relation to a particular period of incapacity for work in any of the circumstances set out in paragraph 2 below or in such other circumstances as may be prescribed.

VALID FROM 24/03/1999

[<sup>F232</sup>1A Regulations under paragraph 1 above must be made with the concurrence of the Treasury.]

#### **Textual Amendments**

**F232** Sch. 11 para. 1A inserted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), **Sch. 1 para. 23** (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)

- 2 The circumstances are that—
- (a) at the relevant date the employee is [<sup>F233</sup>over the age of 65];
  - (b) the employee's contract of service was entered into for a specified period of not more than three months;
  - (c) at the relevant date the employee's normal weekly earnings are less than the lower earnings limit then in force under section 5(1)(a) above;
  - [<sup>F234</sup>(d) in the period of 57 days ending immediately before the relevant date the employee had at least one day on which—
    - (i) he was entitled to incapacity benefit (or would have been so entitled had he satisfied the contribution conditions mentioned in section 30A(2)(a) above); or
    - (ii) she was entitled to a maternity allowance; or
    - (iii) he was entitled to a severe disablement allowance;]
  - (f) the employee has done no work for his employer under his contract of service;
  - (g) on the relevant date there is, within the meaning of section 27 above, a stoppage of work due to a trade dispute at the employee's place of employment;
  - (h) the employee is, or has been, pregnant and the relevant date falls within the disqualifying period (within the meaning of section 149(12) above).

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### Textual Amendments

**F233** Words in Sch. 11 para. 2(a) substituted (23.3.1994) by S.I. 1994/766 (N.I. 5), arts. 1(2), 3(2)

**F234** Sch. 11 para. 2(d) substituted for Sch. 2 para. 2(d)(e) (13.4.1995) by S.I. 1994/1898, art. 13(1), Sch. 1 Pt. I para. 42(2) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

- 3 In this Schedule “relevant date” means the date on which a period of entitlement would begin in accordance with section 149 above if this Schedule did not prevent it arising.
- 4 (1) Paragraph 2(b) above does not apply in any case where—
- (a) at the relevant date the contract of service has become a contract for a period exceeding three months; or
  - (b) the contract of service (the “current contract”) was preceded by a contract of service entered into by the employee with the same employer (the “previous contract”) and—
    - (i) the interval between the date on which the previous contract ceased to have effect and that on which the current contract came into effect was not more than 8 weeks; and
    - (ii) the aggregate of the period for which the previous contract had effect and the period specified in the current contract (or, where that period has been extended, the specified period as so extended) exceeds 13 weeks.
- (2) For the purposes of sub-paragraph (1)(b)(ii) above, in any case where the employee entered into more than one contract of service with the same employer before the current contract, any of those contracts which came into effect not more than 8 weeks after the date on which an earlier one of them ceased to have effect shall be treated as one with the earlier contract.

F235<sup>5</sup> .....

### Textual Amendments

**F235** Sch. 11 para. 5 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 42(3), Sch. 2 (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

- 6 For the purposes of paragraph 2(f) above, if an employee enters into a contract of service which is to take effect not more than 8 weeks after the date on which a previous contract of service entered into by him with the same employer ceased to have effect, the two contracts shall be treated as one.
- 7 Paragraph 2(g) above does not apply in the case of an employee who proves that at no time on or before the relevant date did he have a direct interest in the trade dispute in question.
- 8 Paragraph 2(h) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement (as defined for the purposes of statutory maternity pay in section 167(1) above).

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## SCHEDULE 12

Section 156.

### RELATIONSHIP OF STATUTORY SICK PAY WITH BENEFITS AND OTHER PAYMENTS, ETC.

#### *The general principle*

- 1 Any day which—
- (a) is a day of incapacity for work in relation to any contract of service; and
  - (b) falls within a period of entitlement (whether or not it is also a qualifying day),
- shall not be treated for the purposes of this Act as a day of incapacity for work for the purposes of determining whether a period is a period of interruption of employment [<sup>F236</sup>for the purposes of unemployment benefit or a period of incapacity for work for the purposes of incapacity benefit].

#### **Textual Amendments**

**F236** Words in Sch. 12 para. 1 inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 43(2) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

#### *Contractual remuneration*

- 2 (1) Subject to sub-paragraphs (2) and (3) below, any entitlement to statutory sick pay shall not affect any right of an employee in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to sub-paragraph (3) below—
- (a) any contractual remuneration paid to an employee by an employer of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay statutory sick pay to that employee in respect of that day; and
  - (b) any statutory sick pay paid by an employer to an employee of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay contractual remuneration to that employee in respect of that day.
- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of sub-paragraph (1) or (2) above.

#### *[<sup>F237</sup>Incapacity benefit]*

#### **Textual Amendments**

**F237** Cross-heading substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 43(3) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

- [<sup>F238</sup>3 (1) This paragraph and paragraph 4 below have effect to exclude, where a period of entitlement as between an employee and an employer of his comes to an end, the

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provisions by virtue of which short-term incapacity benefit is not paid for the first three days.

(2) If the first day immediately following the day on which the period of entitlement came to an end—

- (a) is a day of incapacity for work in relation to that employee; and
- (b) is not a day in relation to which paragraph 1 above applies by reason of any entitlement as between the employee and another employer,

that day shall, except in prescribed cases, be or form part of a period of incapacity for work notwithstanding section 30C(1)(b) above (by virtue of which a period of incapacity for work must be at least 4 days long).

(3) Where each of the first two consecutive days, or the first three consecutive days, following the day on which the period of entitlement came to an end is a day to which paragraphs (a) and (b) of sub-paragraph (2) above apply, that sub-paragraph has effect in relation to the second day or, as the case may be, in relation to the second and third days, as it has effect in relation to the first.]

#### Textual Amendments

**F238** Sch. 12 para. 3 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 43(3) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

[<sup>F239</sup>4 (1) Where a period of entitlement as between an employee and an employer of his comes to an end, section 30A(3) above (exclusion of benefit for first 3 days of period) does not apply in relation to any day which—

- (a) is or forms part of a period of incapacity for work (whether by virtue of paragraph 3 above or otherwise); and
- (b) falls within the period of 57 days immediately following the day on which the period of entitlement came to an end.

(2) Where sub-paragraph (1) above applies in relation to a day, section 30A(3) above does not apply in relation to any later day in the same period of incapacity for work.]

#### Textual Amendments

**F239** Sch. 12 para. 4 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 43(3) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

[<sup>F240</sup> *Incapacity benefit for widows and widowers*]

#### Textual Amendments

**F240** Cross-heading substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 43(4) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

[<sup>F241</sup>5 Paragraph 1 above does not apply for the purpose of determining whether the conditions specified in section 40(3) or (4) or section 41(2) or (3) above are satisfied.]

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#### Textual Amendments

**F241** Sch. 12 para. 5 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 43(4)** (with art. 15(1)); S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### *Unemployability supplement*

- 6 Paragraph 1 above does not apply in relation to paragraph 3 of Schedule 7 to this Act and accordingly the references in paragraph 3 of that Schedule to a period of interruption of employment shall be construed as if the provisions re-enacted in this Part of this Act had not been enacted.

### SCHEDULE 13

Section 158:

#### RELATIONSHIP OF STATUTORY MATERNITY PAY WITH BENEFITS AND OTHER PAYMENTS, ETC.

#### *The general principle*

- [<sup>F242</sup>1 Except as may be prescribed, a day which falls within the maternity pay period shall not be treated for the purposes of this Act—
- (a) as a day of unemployment for the purpose of determining whether it forms part of a period of interruption of work; or
  - (b) as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work for the purposes of incapacity benefit.]

#### Textual Amendments

**F242** Sch. 13 para. 1 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 44(1)** (with art. 15(1)); S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

#### *[<sup>F243</sup> Incapacity benefit]*

#### Textual Amendments

**F243** Cross-heading and para. 2 in Sch. 13 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 44(3)** (with art. 15(1)); S.R. 1994/450, art. 2(d), **Sch. Pt. IV**

- [<sup>F244</sup>2 (1) Regulations may provide that in prescribed circumstances a day which falls within the maternity pay period shall be treated as a day of incapacity for work for the purpose of determining entitlement to the higher rate of short-term incapacity benefit or to long-term incapacity benefit.
- (2) Regulations may provide that an amount equal to a woman's statutory maternity pay for a period shall be deducted from any such benefit in respect of the same period and

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a woman shall be entitled to such benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.]

#### Textual Amendments

**F244** Sch. 13 para. 2 substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), Sch. 1 Pt. I para. 44(3) (with art. 15(1)); S.R. 1994/450, art. 2(d), Sch. Pt. IV

#### Contractual remuneration

- 3 (1) Subject to sub-paragraphs (2) and (3) below, any entitlement to statutory maternity pay shall not affect any right of a woman in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to sub-paragraph (3) below—
- (a) any contractual remuneration paid to a woman by an employer of hers in respect of a week in the maternity pay period shall go towards discharging any liability of that employer to pay statutory maternity pay to her in respect of that week; and
- (b) any statutory maternity pay paid by an employer to a woman who is an employee of his in respect of a week in the maternity pay period shall go towards discharging any liability of that employer to pay contractual remuneration to her in respect of that week.
- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of sub-paragraphs (1) and (2) above.

#### TABLE OF DERIVATIONS

*Note:*

1. The following abbreviations are used in this Table:—

1975	= The Social Security (Northern Ireland) Act 1975 (c. 15)
1975OC	= The Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975 (c.17)
1975P	= The Social Security Pensions (Northern Ireland) Order 1975 (NI 15)
1975CB	= The Child Benefit (Northern Ireland) Order 1975 (NI 16)
1976	= The Social Security and Family Allowances (Northern Ireland) Order 1976 (NI 9)

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1976IR	= The Industrial Relations (Northern Ireland) Order 1976 (NI 16)
1977	= The Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (NI 11)
1977A	= The Social Security (Miscellaneous Provisions) Act 1977 (c. 5)
1977SB	= The Supplementary Benefits (Northern Ireland) Order 1977 (NI 27)
1979	= The Social Security (Northern Ireland) Order 1979 (NI 5)
1980	= The Social Security (Northern Ireland) Order 1980 (NI 8)
1980(2)	= The Social Security (No. 2) (Northern Ireland) Order 1980 (NI 13)
1980A	= The Social Security Act 1980 (c. 30)
1981C	= The Social Security (Contributions) (Northern Ireland) Order 1981 (NI 9)
1981	= The Social Security (Northern Ireland) Order 1981 (NI 25)
1981MC	= The Magistrates' Courts (Northern Ireland) Order 1981 (NI 26)
1982	= The Social Security (Northern Ireland) Order 1982 (NI 16)
1982A	= The Social Security and Housing Benefits Act 1982 (c. 24)
1982SR	= The Social Security (Contributions, Re-rating) Order (Northern Ireland) 1982 (SR 1982 No. 413)
1983	= The Social Security Adjudications (Northern Ireland) Order 1983 (NI 17)
1984	= The Health and Social Security (Northern Ireland) Order 1984 (NI 8)
1984F	= The Fines and Penalties (Northern Ireland) Order 1984 (NI 3)
1985	= The Social Security (Northern Ireland) Order 1985 (NI 16)
1985SR	= The Social Security (Contributions and Credits) (Transitional and Consequential Provisions) Regulations (Northern Ireland) 1985 (SR 1985 No. 260)
1986	= The Social Security (Northern Ireland) Order 1986 (NI 18)

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1986A	= The Social Security Act 1986 (c. 50)
1987	= The Social Fund (Maternity and Funeral Expenses) (Northern Ireland) Order 1987 (NI 8)
1988	= The Social Security (Northern Ireland) Order 1988 (NI 2)
1988E	= The Employment and Training (Amendment) (Northern Ireland) Order 1988 (NI 10)
ICTA 1988	= The Income and Corporation Taxes Act 1988 (c. 1)
1989	= The Social Security (Northern Ireland) Order 1989 (NI 13)
1990	= The Social Security (Northern Ireland) Order 1990 (NI 15)
1991C	= The Social Security (Contributions) (Northern Ireland) Order 1991 (NI 22)
1991D	= The Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (NI 17)
1991R	= The Social Security (Contributions) (Re-rating) (No. 2) Order (Northern Ireland) 1991 (SR 1991 No. 542)
1991RF	= The Redundancy Fund (Abolition) (Northern Ireland) Order 1991 (NI 2)
1991SP	= The Statutory Sick Pay (Northern Ireland) Order 1991 (NI 9)
1992CP	= The Social Security (Consequential Provisions) Act 1992 (c. 6)
1992U	= The Social Security Benefits Up-rating Order (Northern Ireland) 1992 (SR 1992 No. 18)
M (followed by a number)	= The paragraph in the Memorandum under the Consolidation of Enactments (Procedure) Act 1949

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2 The Table does not contain any entries in respect of Article 2(3) of the Social Security Pensions (Northern Ireland) Order 1975 (NI 15) under which, with certain exceptions, that Order and the Social Security (Northern Ireland) Act 1975 (c. 15) have effect as if the provisions of the Order were contained in the Social Security (Northern Ireland) Act 1975. The effect is that the general provisions of the Social Security (Northern Ireland) Act 1975 apply to the provisions of that Order.

3 The Table does not show the effect of transfer of functions orders.



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Provision	Derivation
1(1)	1975 s. 1(1); Industrial Relations (No. 2) (NI) Order 1976 (NI 28) art. 20(2); 1986 Sch. 10; 1989 Sch. 9; 1990 art. 18(1), (2); 1991RF Sch. 2
(2)	1975 s. 1(2); 1991C art. 3(2)
(3)	1975 s. 1(3)
(4)	1975 s. 1(4); 1991C art. 4(1)
(5)	1975 s. 1(4A); 1990 art. 18(2); 1991SP art. 3(4)
(6)	1975 s. 1(6); 1991C art. 3(3)
2	1975 s. 2
3	1975 s. 3(1), (2), (3)
4(1)	1975 s. 3(1A); 1982 arts. 25, 30(1); 1986 Sch. 4 para. 10
(2), (3)	1975 s. 3(1B), (1C); 1982 art. 30(1)
(4)	1975 s. 3(1D); 1989 Sch. 8 para. 1
(5)	1975 s. 3(4); 1982 Sch. 4 para. 4
5(1)	1975 s. 4(1); 1975P art. 3(1), Sch. 5 para. 18(a); 1985 art. 9(1), Sch. 5 para. 7
(2), (3)	1975P art. 3(2), (3); 1986 art. 75(4)
6(1)	1975 s. 4(2); 1976 art. 3(1); 1982 Sch. 5
(2)	1975P art. 6(1); 1984 Sch. 5 para. 4
(3)	1975 s. 4(3); 1989 Sch. 7 para. 1(1)
(4)	1975 s. 4(2)
(5)	1975 s. 4(7); 1979 art. 11(2); 1985 art. 10
(6)	1986 art. 75(3)
7	1975 s. 4(4), (5)
8(1) - (3)	1975 s. 4(6), (6A), (6B); 1989 art. 3(1)
(4)	1986 art. 75(3)
9(1) - (3)	1975 s. 4(6C) - (6E); 1985 art. 9(2); 1989 Sch. 7 para. 1(2); SR 1991 No. 73 art. 2; 1991R art. 2
(4)	1975 s. 4(6C), (6E); 1985 art. 9(2)
(5)	1986 art. 75(3)
10	1975 s. 4A; 1991C art. 3(5)

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11(1)	1975 s. 7(1); 1976 art. 3(1); 1984 art. 11(1); 1991R art. 3(a)
(2)	1975P art. 6(2)
(3)	1975 s. 7(4)
(4)	1975 s. 7(5); 1991R art. 3(b)
(5)	1975 s. 7(6)
12	1975 s. 7A; 1984 art. 11(2); 1985SR reg. 4(2); 1989 Sch. 7 para. 2, Sch. 9
13(1)	1975 s. 8(1); 1976 art. 3(1); 1984 art. 12(1)(a); 1991R art. 4
(2)	1975 s. 8(2); 1975P Sch. 6
(3)	1975 s. 8(2)(a); 1975P Sch. 6
(4)	1975 s. 8(2A); 1984 art. 12(1)(b), (3)
(5) - (7)	1975 s. 8(2B) - (2D); 1984 art. 12(3); 1985SR reg. 4(3); 1989 Sch. 7 para. 3
14(1)	1975P art. 7(1); 1986 Sch. 8 para. 4
(2)	1975P art. 7(3)
(3)	1975P art. 7(2)
(4)	1975P art. 7(2); 1977 art. 3(6)
15(1), (2)	1975 s. 9(1); 1989 Sch. 7 para. 4(a), (b)
(3)	1975 s. 9(2); 1982SR art. 5(a); 1991R art. 5
(4)	ICTA 1988 Sch. 29 para. 14
(5)	1975 s. 9(1); 1989 Sch. 7 para. 4(c)
16	1975 s. 9(3)
17(1)	1975 s. 9(4)
(2)	1975 s. 9(5); 1975P Sch. 6
(3) - (6)	1975 s. 9(6)
18	1975 s. 10; 1982SR art. 5(a); 1991R art. 5
19(1) - (3)	1975 s. 11
(4) - (6)	1975P art. 5(2) - (4); 1986 Sch. 8 para. 3
20	1975 s. 12; 1975P Sch. 5 para. 19; 1980 art. 6(1)(i); 1984 Sch. 3 para. 1; 1986 art. 41, Sch. 9 para. 39, Sch. 10; 1989 Sch. 7 para. 5
21(1), (2)	1975 s. 13(1); 1980 art. 6(1)(ii); 1986 Sch. 9 para. 40, Sch. 10

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(3)	1975 s. 13(6)
(4)	1975 s. 13(8); 1986 Sch. 9 para. 46(b)
(5)	1975 s. 13(6); 1986 Sch. 8 para. 1(6)
(6)	1975 s. 13(7)
22(1)	1975 s. 13(2); 1986 Sch. 8 para. 1(1)
(2)	1975 s. 13(2); 1975P Sch. 5 para. 20(a); 1980(2) Sch.; 1986 Sch. 9 para. 46(a)
(3)	1975 s. 13(5); 1986 Sch. 8 para. 1(4)(c); 1989 Sch. 7 para. 6
(4)	1975 s. 13(3); 1975P Sch. 5 para. 20(b); 1986 Sch. 8 para. 1(2)
(5)	1975 s. 13(4); 1980(2) Sch.; 1986 Sch. 8 para. 1(3)
(6)	1975 s. 13(5AA); 1989 art. 6(3)
(7)	1977 art. 18(25)
23(1)	1975 s. 13(5); 1979 Sch. 3 para. 4; 1986 Sch. 8 para. 1(4)(a); 1988 Sch. 2 para. 1(1)(a)
(2)	1975 s. 13(5ZA); 1988 Sch. 2 para. 1(1)(b)
(3)	1975 s. 13(5); 1989 art. 6(2)
(4)	1975 s. 13(5A); 1985 Sch. 5 para. 1(b); M1, M12
24(1)	1975 s. 13(5B); 1986 Sch. 8 para. 1(5)
(2)	1975 s. 13(5C); 1989 art. 6(4)
25(1)	1975 s. 14(1)
(2)	1975 s. 14(2); 1989 Sch. 1 para. 4(1)
(3)	1975 s. 14(3)
(4)	1975 s. 14(4); 1975P art. 20(1); 1982 Sch. 4 para. 5
(5), (6)	1975 s. 14(6); 1975P Sch. 5 para. 21(b); 1979 Sch. 3 para. 5; 1986 Sch. 9 para. 53; 1989 Sch. 9
(7)	1975 s. 14(8)
26(1)	1975 s. 18(1)
(2) - (4)	1975 s. 18(2) - (2B); 1989 art. 13
(5)	1975 s. 18(3)
(6)	1975 s. 18(4); 1986 art. 44(1); 1989 Sch. 7 para. 7

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27(1), (2)	1975 s. 19(1), (1A); 1986 art. 45(1)
(3)	1975 s. 19(2)
28(1)	1975 s. 20(1); 1986 art. 44(2) (a); Unemployment Benefit (Disqualification Period) Order (NI) 1988 (SR 1988 No. 83) art. 2; 1988E arts. 5(2), 6(a); 1989 art. 14(1)
(2)	1975 s. 20(1A); 1986 art. 44(3)(a); 1989 Sch. 9
(3)	1975 s. 20(3)
(4)	1975 s. 20(3A); 1985 art. 12
(5)	1975 s. 20(4); 1989 art. 14(3)
(6)	1975 s. 20(5); 1988E art. 5(3)
29	1975 s. 20A; 1989 art. 14(4)
30(1)	1980(2) art. 5(1); 1988 art. 8; 1989 art. 11(1)
(2)	1980(2) art. 5(1A); 1982 Sch. 4 para. 19
(3)	1980(2) art. 5(2); 1989 art. 11(1)
(4)	1980(2) art. 5(3)
31(1)	1975 s. 14(1)
(2)	1975 s. 14(2); 1989 Sch. 1 para. 4(1)
(3)	1975 s. 14(2A); 1982 art. 32(3)
(4)	1975 s. 14(3)
(5)	1975 s. 14(4); 1975P art. 20; 1982 Sch. 4 para. 5
(6), (7)	1975 s. 14(6); 1975P Sch. 5 para. 21(b); 1979 Sch. 3 para. 5; 1986 Sch. 9 para. 53; 1989 Sch. 9
(8)	1975 s. 14(8)
32(1), (2)	1975 s. 20(2), (3)
(3)	1975 s. 20(5)(c)
33(1)	1975 s. 15(1); 1989 Sch. 1 para. 5(1)
(2)	1975 s. 15(2); 1989 Sch. 1 para. 5(2)
(3)	1975 s. 15(3); 1975P art. 16, Sch. 5 para. 22(b); 1990 art. 6(1)
(4), (5)	1975 s. 15(4); 1975P Sch. 5 para. 22(c); 1979 Sch. 1 para. 1, Sch. 3 para. 6; 1986 Sch. 9 para. 53
(6)	1975 s. 15(5)

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(7), (8)	1975 s. 15(5A), (5B); 1991D art. 11(1)
(9)	1975 s. 15(6); 1982 Sch. 4 para. 6
(10), (11)	1975 s. 15A(1), (2); 1985 art. 18(3)
34(1), (2)	1975 s. 16(1); 1985 art. 11(1)(a)
(3)	1975 s. 16(2); 1979 Sch. 1 para. 10
(4) - (6)	1975 s. 16(2B) - (2D); 1985 art. 11(1)(b); 1986 art. 19(1)(b)
(7)	1975 s. 16(3); 1985 art. 11(1)(c)
35(1) - (3)	1975 s. 22(1) - (3); 1986 Sch. 4 para. 13
(4)	1975 s. 22(4A); 1988 Sch. 4 para. 2(b)
(5) - (7)	1975 s. 22(5) - (7); 1986 Sch. 4 para. 13
36(1), (2)	1975 s. 24(1), (2); 1986 art. 37(1)
(3)	1975 s. 24(3); 1989 Sch. 7 para. 8
37(1)	1975 s. 25(1); 1975P Sch. 5 para. 23; 1975CB Sch. 4 para. 10(a); Human Fertilisation and Embryology Act 1990 (c. 37) Sch. 4 para. 3
(2)	1975 s. 25(2); 1975CB Sch. 4 para. 10(b)
(3), (4)	1975 s. 25(3), (4); 1989 Sch. 8 para. 4(1)
38(1)	1975 s. 26(1); 1975P Sch. 5 para. 24; 1986 art. 37(3)
(2), (3)	1975 s. 26(3), (4); 1989 Sch. 8 para. 4(2)
(4)	1989 art. 8(1)
39(1)	1975P art. 15(1), (3)
(2)	1975P art. 15(2)
(3)	1986 art. 20(1)(c)
(4), (5)	1975 s. 26(2); 1986 art. 37(3)(b)
(6)	1989 art. 8(1)
40(1)	1975P art. 17(1); 1986 Sch. 9 para. 45(a)
(2)	1975P art. 17(1A); 1989 Sch. 7 para. 17
(3)	1975P art. 17(2); 1986 Sch. 9 para. 45(b)
(4)	1975P art. 17(3)
(5)	1975P art. 17(4); 1986 Sch. 9 para. 45(c); 1990 art. 6(2)

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(6)	1977 art. 13(6)
(7)	1975P art. 17(5); 1977 art. 5(4); 1989 Sch. 1 para. 10(1)
(8)	1975P art. 17(6)
41(1)	1975P art. 18(1); 1979 Sch. 1 para. 18
(2), (3)	1975P art. 18(2), (3)
(4), (5)	1975P art. 18(4); 1990 art. 6(3)
(6)	1986 art. 20(1)(d)
(7)	1975P art. 18(5); 1977 art. 5(4); 1989 Sch. 1 para. 10(2)
(8)	1975P art. 18(6)
42	1975P art. 18A; 1991D art. 11(3)
43(1)	1975 s. 27(6)
(2)	1977 art. 5(1); 1979 Sch. 1 para. 8
(3) - (5)	1975P art. 27
44(1)	1975 s. 28(1); 1975P Sch. 5 para. 25; 1989 Sch. 8 para. 4(3)
(2)	1975 s. 28(1A); 1989 Sch. 8 para. 4(4)
(3), (4)	1975P art. 8(1); 1992U art. 4(2)
(5)	1975P art. 8(4); 1979 Sch. 3 para. 16
(6)	1975P art. 8(5); 1986 Sch. 8 para. 5(1)
(7)	1975P art. 8(6)
(8)	Transitional
45(1)	1975P art. 8(2); 1986 art. 19(2)
(2), (3)	1975P art. 8(2A); 1986 art. 19(3)
(4), (5)	1975P art. 8(2B); 1986 art. 19(3)
(6), (7)	1975P arts. 8(3), 70A; 1979 art. 14; 1986 art. 19(4)
(8)	Drafting
46(1)	1986 art. 19(6)
(2)	1986 art. 19(5)
47(1)	1975 s. 28(7); 1980(2) art. 3(3); 1985 art. 11(2)(a), (b)
(2) - (4)	1975 s. 28(7A) - (7C); 1985 art. 11(2)(c); 1986 art. 19(1)(b)
(5)	1975 s. 28(8)
(6)	1980(2) art. 3(4)

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48(1)	1975P art. 22(1); 1979 Sch. 1 para. 5
(2)	1979 Sch. 1 para. 20
(3)	1975P art. 22(2)
49(1)	1975 s. 29(1)
(2), (3)	1975 s. 29(2), (3); 1989 art. 9(3)(a)
(4)	1975 s. 29(4)
(5)	1975 s. 29(5); 1989 art. 9(3)(b)
(6)	1975 s. 29(6)
(7), (8)	1975 s. 29(9), (9A); 1989 Sch. 8 para. 4(5)
50(1)	1975 s. 29(7); 1975P Sch. 5 para. 26
(2)	1975 s. 29(8); 1985 art. 11(3)
(3), (4)	1975P art. 9
(5)	1986 art. 20(1)(a)
51(1)	1975P art. 10(1); 1979 Sch. 1 paras. 4, 14
(2)	1975P art. 10(2)
(3)	1986 art. 20(1)(b)
(4)	1975P art. 10(3); 1989 Sch. 1 para. 9(2)
52(1) - (3)	1975P art. 11(1) - (3); 1986 art. 19(1)
(4)	1979 Sch. 1 para. 15
53(1), (2)	1975P art. 12; 1986 art. 19(1)(a)
(3)	1979 Sch. 1 para. 16
54(1), (2)	1975 s. 30(3); 1989 Sch. 9
(3)	1975 s. 30(4); 1975P Sch. 5 para. 27
(4)	1975 s. 30(5); 1989 Sch. 1 para. 2(2)
55	1975P art. 14; 1989 art. 9(4)
56(1), (2)	1975 s. 31; 1975CB Sch. 4 para. 11; 1977 art. 18(2)
(3), (4)	1975 s. 43(1); 1975CB Sch. 4 para. 16(a)
(5)	1975 s. 43(2); 1975CB Sch. 4 para. 16(b); 1977 art. 18(3)
(6)	1986 art. 41
57(1)	1975 s. 17(1); 1980(2) art. 3(1); 1989 art. 12(2)

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(2)	1975 s. 22(4); 1986 Sch. 4 para. 13; 1988 Sch. 4 para. 2(a)
(3)	1975 s. 17(2); 1989 art. 12(3); M2
(4)	1975 s. 17(2A); 1988 Sch. 4 para. 1
(5)	1975 s. 17(2B); 1989 art. 12(4)
(6), (7)	1975 s. 17(2C), (2D); 1989 Sch. 8 para. 3
(8)	1975 s. 17(3)
(9), (10)	1975 s. 17(4), (5); 1980(2) art. 3(4); 1981 art. 6
58(1)	1989 Sch. 8 para. 2(1)
(2)	1989 Sch. 8 para. 2(2); 1990 Sch. 6 para. 19(2)
(3)	1989 Sch. 8 para. 2(3)
(4)	1989 Sch. 8 para. 2(6); 1990 Sch. 6 para. 19(3)
(5)	1989 Sch. 8 para. 2(7)
59(1), (2)	1975 s. 20(2), (3)
(3)	1975 s. 20(5)(c)
60(1)	1975 s. 33(1), (2)
(2), (3)	1986 Sch. 3 para. 10; 1988 Sch. 1 para. 5
(4) - (6)	1975 s. 33(3); 1975P Sch. 5 para. 28; 1990 Sch. 6 para. 1(1)
(7)	1975 s. 33(4); 1975P art. 21(5); 1986 art. 19(1)
(8)	1986 Sch. 3 para. 10; 1988 Sch. 1 para. 5
61(1)	1977 art. 7(1); 1986 art. 19(1)(a); 1990 Sch. 6 para. 1(3)
(2)	1977 art. 7(2); 1986 art. 19(1)(a); 1990 Sch. 6 para. 1(4)
62	1975P art. 26
63	1975 s. 34; 1975P Sch. 5 para. 29; 1984 Sch. 2 para. 2; 1990 art. 4(3); 1991D art. 3(1), Sch. 4
64	1975 s. 35(1); 1988 art. 3; 1991D art. 4(1)
65(1)	1975 s. 35(2); 1979 art. 3(2); 1989 Sch. 8 para. 5(2)



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(2)	1975 s. 35(2A); 1979 art. 3(3)
(3)	1975 s. 35(3); 1991D Sch. 2 para. 2(2)
(4)	1975 s. 35(4); 1989 Sch. 8 para. 5(3)(a); 1991D Sch. 2 para.2(3)
(5)	1975 s. 35(4A); 1980 Sch. 1 para. 8; 1989 Sch. 8 para. 5(4); 1991D Sch. 2 para. 2(3)
(6)	1975 s. 35(4); 1979 art. 3(5); 1989 Sch. 8 para. 5(3)(b); 1990 art. 3(2); 1991D Sch. 4
66	1975 s. 35(2B), (2C); 1990 art. 3(1); 1991D Sch. 2 para. 2(1)
67(1)	1975 s. 35(5A); 1979 art. 3(6)
(2)	1975 s. 35(6)
68(1) - (4)	1975 s. 36(1) - (4); 1984 art. 5(1)
(5)	1975 s. 36(4A); 1985 Sch. 4 para. 2
(6), (7)	1975 s. 36(5), (6); 1984 art. 5(1)
(8), (9)	1975 s. 36(6A), (6B); 1989 Sch. 8 para. 6
(10)	1975 s. 36(6C); 1991D art. 11(2)
(11)	1975 s. 36(7); 1984 art. 5(1); 1989 Sch. 8 para. 2(5); 1990 Sch. 6 para. 19(4)
(12)	1989 Sch. 8 para. 2(4)
(13)	1975 s. 36(8); 1984 art. 5(1); 1989 Sch. 8 para. 2(6) (part), (7)
69	1975 s. 36A; 1990 art. 4(1)
70(1)	1975 s. 37(1)
(2)	1975 s. 37(2); 1991D Sch. 2 para. 3
(3) - (5)	1975 s. 37(3) - (5)
(6)	1975 s. 37(6)
(7) - (9)	1975 s. 37(7) - (9)
(10)	1975 s. 37(6)
71	1975 s. 37ZA; 1991D art. 3(2)
72	1975 s. 37ZB; 1991D art. 3(2)
73	1975 s. 37ZC; 1991D art. 3(2)
74(1)	1977 art. 10(1); 1991D Sch. 2 para. 7
(2)	1977 art. 10(3)
75	1975 s. 37ZD; 1991D art. 3(2)

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76	1975 s. 37ZE; 1991D art. 3(2)
77(1)	1975 s. 38(1); 1975CB Sch. 4 para. 13(a)
(2), (3)	1975 s. 38(2), (3)
(4), (5)	1975 s. 43(1); 1975CB Sch. 4 para. 16(a)
(6)	1975 s. 43(2); 1975CB Sch. 4 para. 16(b); 1977 art. 18(3)
(7)	1975 s. 38(1)
(8)	1975 s. 38(4)
(9)	1975 s. 38(5); 1975CB Sch. 4 para. 13(c)
(10)	1975 s. 38(6); 1986 art. 46(a)
(11)	1975 s. 38(7); 1986 art. 46(b)
78(1), (2)	1975 s. 39(1)(a), (b)
(3), (4)	1975 s. 39(1)(c); 1979 Sch. 1 para. 2; 1986 art. 19(1)(b)
(5)	1975 s. 39(2)
(6)	1975 s. 39(2A); 1985 art. 14(1)(b)
(7), (8)	1975 s. 39(3), (3A); 1989 Sch. 8 para. 4(6)
(9)	1975 s. 39(4)
79	1975 s. 40
80(1)	1975 s. 41(1); 1975CB Sch. 4 para. 14(a)
(2)	1975 s. 41(2); 1984 Sch. 3 para. 2(a)
(3)	1975 s. 41(2A); 1984 Sch. 3 para. 2(c)
(4)	1975 s. 41(2B); 1984 Sch. 3 para. 2(c); 1992U art. 11
(5), (6)	1975 s. 41(4), (5); 1975CB Sch. 4 para. 14(b), (c)
(7)	1975 s. 41(2D); 1984 Sch. 3 para. 2(c)
81(1), (2)	1975 s. 43(1); 1975CB Sch. 4 para. 16
(3)	1975 s. 43(2); 1975CB Sch. 4 para. 16(b); 1977 art. 18(3)
82(1)	1975 s. 44(1); 1975CB Sch. 4 para. 17(a); 1980 Sch. 1 para. 5(2); 1988 Sch. 4 para. 3(a)

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(2)	1975 s. 44(2); 1975CB Sch. 4 para. 17(a); 1980 Sch. 1 para. 5(2)
(3)	1975 s. 44(3)(a); 1988 Sch. 4 para. 3(b)
(4)	1975 s. 44(3)(c); 1975CB Sch. 4 para. 17(b); 1980 Sch. 1 para. 4
(5)	1975 s. 44(4)
83(1)	1975 s. 45(1)
(2)	1975 s. 45(2); 1975CB Sch. 4 para. 18; 1988 Sch. 4 para. 4(a)
(3)	1975 s. 45(2A); 1985 art. 15(1)
84(1)	1975 s. 45A(1); 1984 art. 6; 1985 art. 15(2)(a)
(2)	1975 s. 45A(2); 1985 art. 15(2)(b); 1988 Sch. 4 para. 5(a)
(3)	1975 s. 45A(3); 1985 art. 15(2)(b)
85(1)	1975 s. 46(1)
(2)	1975 s. 46(2); 1975CB Sch. 4 para. 19; 1980 Sch. 1 para. 4(b)
(3)	1975 s. 46(3)
(4)	1975 s. 46(4); 1985 art. 15(3)
86(1)	1975 s. 47(1); 1975CB Sch. 4 para. 20; 1980 Sch. 1 para. 5(2); 1989 Sch. 8 para. 7(1)
(2)	1975 s. 47(1A); 1985 art. 15(4)(b)
87(1)	1975 s. 47A; 1980 Sch. 1 para. 5; 1990 Sch. 6 para. 1(2)
(2)	1975 s. 47A; 1990 Sch. 6 para. 1(2)
88	1975 s. 48(1)
89	1975 s. 47B; 1984 art. 8(a); 1989 art. 11(3)
90	1975 s. 49; 1984 Sch. 2 para. 2
91	1975 s. 49A; 1986 art. 45(2)
92	1975 s. 84A; 1989 Sch. 8 para. 7(2)
93	1991D art. 11(5)
94(1)	1975 s. 50(1); 1986 Sch. 3 para. 2
(2)	1975 s. 50(1A); 1988 Sch. 4 para. 8
(3)	1975 s. 50(3)
(4)	1975 s. 50(4); 1982 Sch. 4 para. 8(2)

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(5)	1975 s. 50(5)
(6)	1975 s. 50(6); 1982 Sch. 4 para. 8(3)
(7)	1986 Sch. 10
95(1) - (3)	1975 s. 51
(4), (5)	1977 art. 13(3)
96	1975 s. 148
97	1975 s. 147
98 - 101	1975 ss. 52 - 55
102(1), (2)	1975 s. 50A(1), (2); 1982 art. 32(4)
(3)	1975 s. 50A(3); 1982 art. 32(4); 1989 Sch. 1 para. 8(1)
103(1)	1975 s. 57(1); 1986 Sch. 3 para. 3(1)
(2) - (4)	1975 s. 57(1A) - (1C); 1986 Sch. 3 para. 3(2)
(5)	1975 s. 57(3)
(6)	1975 s. 57(4); 1982 art. 32(2); 1989 Sch. 7 para. 11
(7), (8)	1975 s. 57(6); 1986 Sch. 3 para. 3(4)
104(1), (2)	1975 s. 61(1), (2)
(3), (4)	1975 s. 61(3), (4); 1986 Sch. 3 para. 6
105	1975 s. 63
106	Drafting
107	1975 s. 91; 1982 Sch. 4 para. 11, Sch. 5; M4
108(1) - (4)	1975 s. 76(1) - (4)
(5)	1975 s. 76(4A); 1990 Sch. 6 para. 2(1)
(6)	1975 s. 76(5)
109(1), (2)	1975 s. 77(1), (2); 1990 art. 5(7), Sch. 6 para. 2(2)
(3)	1975 s. 77(3)
(4) - (6)	1975 s. 77(4); 1986 Sch. 3 para. 13
(7)	1975 s. 77(5); 1986 Sch. 3 para. 13
110	1975 s. 78
111	Drafting
112(1), (2)	1977 art. 14(1); 1977SB Sch. 7; 1986 Sch. 10

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(3)	1977 art. 14(2); 1986 Sch. 9 para. 49, Sch. 10
113(1), (2)	1975 s. 82(5), (6)
(3)	1975 s. 83; 1985 Sch. 5 para. 3
114(1), (2)	1975 s. 84(1), (2)
(3)	1975 s. 84(4); 1985 art. 15(6)
(4)	1975 s. 84(5); 1985 art. 15(8); 1986 Sch. 3 paras. 4, 15
115(1), (2)	1975 s. 122(1), (2)
(3)	1975 s. 122(2)
(4)	Drafting
116	1975 s. 123
117 - 119	1975 ss. 124 - 126
120	1975 s. 152
121	1975 Sch. 17; 1975P Sch. 5 para. 44; 1975CB Sch. 4 para. 37; 1977 art. 18(1); 1980 Sch. 1 para. 7; 1984 Sch. 2 para. 9; 1985 Sch. 5 para. 6; 1986 Sch. 10; 1989 arts. 3(3), 11(2), 14(5), Sch. 1 para. 3(11); 1990 Sch. 6 para. 9; 1991D art. 11(4); drafting
122(1), (2)	1986 art. 21(1), (2); 1991D art. 8(2), (3)
(3)	1986 art. 32(4)
123(1)	1986 art. 21(3); 1988 art. 6(1); 1989 art. 15(1)
(2)	1986 art. 21(4N); 1988 art. 6(2)
(3)	1986 art. 21(4)
(4)	1986 art. 22(1); 1988 Sch. 4 para. 16(1)
(5), (6)	1986 art. 22(1A), (1B); 1988 Sch. 4 para. 16(2)
124(1) - (4)	1986 art. 21(4A) - (4D); 1988 art. 6(2)
(5)	1986 art. 21(4N); 1988 art. 6(2)
125(1) - (4)	1986 art. 24(1) - (4)
(5)	1986 art. 24(5); ICTA 1988 Sch. 29 para. 32
(6)	1986 art. 24(5A); 1988 Sch. 4 para. 17(1)
(7)	1986 art. 24(6); 1990 Sch. 6 para. 12(2); 1992U art. 15

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(8)	1986 art. 24(7); 1990 Sch. 6 para. 12(3)
126	1986 art. 24A; 1988 Sch. 4 para. 18; 1989 Sch. 8 para. 15
127(1)	1986 art. 21(5), (5A); 1988 art. 5(1); 1991D art. 10(1)
(2)	1986 art. 22(2), (3)
(3)	1986 art. 21(6); 1989 Sch. 8 para. 14
(4)	1986 art. 21(10); 1991D art.10(2)
(5)	1986 art. 22(6)(a)
(6)	1986 art. 79(3)
128(1)	1986 art. 21(6A), (6D); 1991D art. 8(4)
(2), (3)	1986 art. 21(6B), (6C); 1991D art. 8(4)
(4)	1986 art. 21(6E); 1991D art. 8(4)
(5)	1986 art. 22(3A), (3B); 1991D art. 8(8)
(6)	1986 art. 21(6F); 1991D art. 8(4)
(7)	1986 art. 28B(4); 1991D art. 9(1)
(8)	1986 art. 22(6); 1991D art. 8(9)
(9)	1986 art. 79(3); 1991D Sch. 3 para. 6
129(1), (2)	1986 art. 21(7), (8)
(3)	1986 art. 22(4), (5)
(4)	1986 art. 22(6)(b)
130(1)	1986 art. 23(6)
(2)	1986 art. 21(9)
(3)	1986 art. 22(7)
131(1), (2)	1986 art. 23(1), (2)
(3), (4)	1986 art. 23(2A), (2B); 1990 art. 11
(5), (6)	1986 art. 23(3), (4)
132(1)	1986 art. 23(5)
(2), (3)	1986 art. 23(7), (8)
(4)	1986 art. 23(9)
133(1)	1986 arts. 2(2), 21(11), 29(1)(b); 1991D art. 8(6); drafting
(2)	1986 art. 21(12); 1989 art. 15(2); 1991D art. 8(7)
134(1)	1986 art. 33(2); 1987 art. 3
(2)	1986 art. 33(2A); 1988 Sch. 3 para. 1

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(3)	1986 art. 34(1A); 1988 Sch. 3 para. 8
(4)	1986 art. 2(2)
135(1) - (3)	1986 art. 34(2) - (4)
(4)	1986 art. 34(4A); 1988 Sch. 3 para. 9
(5)	1986 art. 34(11)
136(1)	1986 art. 34(9); 1988 Sch. 3 para. 10
(2)	1986 art. 34(10)
(3)	1986 art. 34(10ZA); 1990 art. 12(3)
(4)	1986 art. 34(10A); 1988 Sch. 3 para. 11; 1990 art. 12(4)
(5)	1986 art. 33(11); 1988 Sch. 3 para. 6
137	1975CB art. 3(1)
138(1)	1975CB art. 4(1); 1986 art. 71(1)(a); 1988 art. 6(3)
(2), (3)	1975CB art. 4(1A), (1B); 1986 art. 71(1)(b)
(4), (5)	1975CB art. 4(2), (3)
139	1975CB art. 5
140(1), (2)	1975CB art. 6(1); 1988 art. 6(4)
(3)	1975CB art. 6(2)
141(1) - (4)	1975CB art. 7(1) - (4)
(5)	1975CB art. 24(1)(a)
142	1975CB art. 15
143(1)	1975CB art. 2(2)
(2) - (4)	1975CB art. 2(3) - (5)
(5)	1975CB art. 11
(6)	1975CB art. 2(6)
144	1986 Sch. 6 para. 2
145	1986 Sch. 6 para. 3
146(1)	1986 Sch. 6 para. 1(1)
(2)	1986 art. 2(2), Sch. 6 para. 1(2); ICTA 1988 Sch. 29 para. 32; 1991D Sch.2 para. 12
(3)	1986 Sch. 6 para. 1(2)
(4)	1986 Sch. 6 para. 1(3)
147(1), (2)	1982 art. 3(1), (2)
(3)	1982 art. 25A(1); 1984 Sch. 5 para. 8

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(4), (5)	1982 art. 3(3), (4)
(6)	1982 art. 3(5); 1986 art. 69
148(1), (2)	1982 art. 4(1), (2)
(3)	1982 art. 4(3); Statutory Sick Pay (General) (Amendment) Regulations (NI) 1986 (SR 1986 No. 83) reg. 2(1)
(4)	1982 art. 4(3A); 1985 art. 18(4)
(5), (6)	1982 art. 4(4), (5)
149(1) - (4)	1982 art. 5(1) - (4)
(5)	1982 art. 5(4A); 1985 art. 18(5)
(6), (7)	1982 art. 5(5), (6)
(8), (9)	1982 art. 5(6A), (6B); 1985 Sch. 4 para. 4
(10), (11)	1982 art. 5(7), (8)
(12)	1982 art. 5(9); 1986 Sch. 9 para. 50
150(1)	1982 art. 6(1)
(2)	1982 art. 6(2); 1984 Sch. 5 para. 7
(3), (4)	1982 art. 6(3), (4)
151(1) - (3)	1982 art. 7(1) - (3)
(4)	1982 art. 7(4); 1985 art. 18(1)
(5)	1982 art. 7(5)
152	1982 art. 8
153(1)	1982 art. 9(1); Statutory Sick Pay (Rate of Payment) Order (NI) 1992 (SR 1992 No. 27) art. 2
(2)	1982 art. 9(1A); 1986 art. 68(1); 1990 Sch. 6 para. 11(1)
(3)	1982 art. 9(2)
154(1)	1982 art. 11(1); 1991SP art. 3(1)
(2)	1982 art. 11(1B); 1991SP art. 4(1)
(3)	1982 art. 11(1D); 1991SP art. 4(1)
(4)	1982 art. 11(2); 1985 art. 19(1)(b); 1991SP art. 4(2)
(5)	1982 art. 11(3)(b), (c); 1991SP art. 3(3)
(6)	1982 art. 11(6)
(7)	1991SP art. 4(5)
155	1982 art. 11(1C); 1991SP art. 4(1)



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156	Drafting
157	1982 art. 29(1) - (3); 1989 Sch. 7 para. 20
158	1982 art. 24; M9
159(1)	1982 art. 28(1); 1985 Sch. 4 para. 6
(2)	1982 art. 28(2); 1985 Sch. 4 para. 7
(3) - (5)	1982 art. 28(3) - (5)
(6)	1982 art. 28(5A); Health and Personal Social Services (NI) Order 1991 (NI 1) Sch. 5 Part II
(7)	1982 art. 28(6)
160(1) - (6)	1986 art. 47(1) - (6)
(7)	1982 art. 25A(1); 1984 Sch. 5 para. 8; 1986 art. 47(6)
(8)	1986 art. 47(7)
(9)	1986 art. 47(8); 1988 Sch. 4 para. 12(1)
(10)	1986 art. 47(9); 1988 Sch. 4 para. 12(2)
161	1986 art. 48; 1989 Sch. 7 para. 22
162(1)	1986 art. 49(1)
(2)	1986 art. 49(2); 1988 Sch. 4 para. 13
(3) - (8)	1986 art. 49(3) - (8)
163(1)	1986 Sch. 4 para. 1
(2)	M11
(3)	1986 Sch. 4 para. 2
(4)	1986 Sch. 4 para. 5
164	Drafting
165	1986 art. 79(4)
166	1986 art. 80; M9
167(1), (2)	1986 arts. 2(1), 51(1), (2); 1988 Sch. 5; 1989 Sch. 9
(3)	1986 art. 51(2A); Health and Personal Social Services (NI) Order 1991 (NI 1) Sch. 5 Part II
(4) - (6)	1986 art. 51(3) - (5)
168	1982 arts. 28(7), 35(1)(b), (d), (2)(a), (b); 1986 art. 2(4)
169	1975 Sch. 17
170	Drafting

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171(1)	1975 Sch. 17; 1986 Sch. 5 para. 17
(2)	1975 s. 155(1); Statutory Rules (NI) Order 1979 (NI 12) Sch. 4 para. 16; 1988 art. 15A; 1990 Sch. 6 para. 6(9)
(3)	1975 s. 155(2); 1977A Sch. 2
(4)	1975 s. 155(3); 1977A Sch. 2; 1989 Sch. 8 para. 9
(5)	1975 s. 155(3A); 1975CB art. 24(5A); 1986 art. 63(1), (2)
(6)	1986 art. 81(2)
(7)	1975 s. 155(5); 1986 Sch. 10; 1991RF Sch. 2
(8)	1975 s. 155(6)
(9)	1975 s. 155(7); 1977A Sch. 2
(10)	1975 s. 155(8); 1982 art. 29(4); 1986 Sch. 9 para. 70; 1989 Sch. 7 para. 20
(11)	1975 s. 155(4A); 1992CP Sch. 2 para. 11
(12)	1975 s. 157(4); 1977A Sch. 2
172(1)	1975 s. 156(1)
(2)	1975 s. 156(2); 1975P Sch. 6; 1979 art. 5(2); 1981C art. 6(1); 1986 arts. 44(3)(b), 63(3), Sch. 9 para. 41, Sch. 10; 1989 Sch. 9; 1991RF Sch. 2; M3
(3)	1975 s. 156(3); 1990 Sch. 6 para. 6(1)
(4)	1975 s. 156(4)
(5)	1975 s. 156(5)
(6)	1990 Sch. 6 para. 6(12), (17)
(7)	1990 Sch. 6 para. 6(13)
(8)	1975 s. 156(6)
(9)	1975 s. 155A; 1992CP Sch. 2 para. 12
(10)	1990 Sch. 6 para. 6(14), (17)
(11)	1990 Sch. 6 para. 6(15)
(12)	1975 s. 156(4); 1990 Sch. 6 para. 6(12); drafting
173(1)	Short title, etc.
(2)	Commencement
(3), (4)	1975 s. 158(2), (2A); 1992CP Sch. 2 para. 12

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Sch. 1	
para. 1(1)	1975 Sch. 1 para. 1(1); 1977 art. 3(4)
(2)	1975 Sch. 1 para. 1(1A); 1980 Sch. 1 para. 15; 1985 Sch. 5 para. 5(a)
(3), (4)	1975 Sch. 1 para. 1(1B), (1C); 1985 Sch. 5 para. 5(b)
(5)	1986 art. 75(3)
(6)	1975 Sch. 1 para. 1(1D); 1985 Sch. 5 para. 5(b)
(7), (8)	1975 Sch. 1 para. 1(2), (3)
para. 2	1975 Sch. 1 para. 2
para. 3	1975 Sch. 1 para. 3
para. 4	1975 Sch. 1 para. 4; 1977 art. 3(5)
para. 5	1975 Sch. 1 para. 4A; 1991C art. 4(2)
para. 6(1)	1975 Sch. 1 para. 5(1); 1991C art. 4(3)(a)
(2) - (4)	1975 Sch. 1 para. 5(1A) - (1C); 1990 art. 19(3); 1991C art. 4(3)(b)
(5)	1982 art. 11(4); 1986 Sch. 4 para. 3
(6)	1982 art. 11(5); 1986 Sch. 4 para. 4
(7)	1975 Sch. 1 para. 5(2)
(8)	1975 Sch. 1 para. 5(3); 1990 art. 19(4)
para. 7	1975 Sch. 1 para. 5A; 1990 Sch. 5; 1991C art. 4(4)
para. 8	1975 Sch. 1 para. 6; 1975P Sch. 5 para. 41; 1986 Sch. 9 para. 1; 1989 art. 4; 1990 Sch. 6 para. 7; 1991C art. 4(5)
paras. 9, 10	1975 Sch. 1 paras. 7, 8; 1982 art. 30(2)
Sch. 2	
paras. 1 - 3	1975 Sch. 2 paras. 1-3; ICTA 1988 Sch. 29 para. 32; Finance Act 1988 (c. 39) Sch. 3 para. 31; Capital Allowances Act 1990 (c. 1) Sch. 1 para. 2
paras. 4, 5	1975 Sch. 2 paras. 5, 6; ICTA 1988 Sch. 29 para. 32
para. 6	1975 Sch. 2 para. 7; ICTA 1988 Sch. 29 para. 32; Social Security Act 1990 (c. 27) s. 17(8), (9)
paras. 7, 8	1975 Sch. 2 paras. 8, 9

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para. 9	1975 Sch. 2 para. 4; ICTA 1988 Sch. 29 para. 32; Finance Act 1988 (c. 39) Sch. 14 Part VIII and Note 6
Sch. 3	
para. 1(1)	1975 Sch. 3 para. 1(1)
(2)	1975 Sch. 3 para. 1(2); 1986 Sch. 8 para. 2(1); 1988 art. 7(2)(a)
(3)	1975 Sch. 3 para. 1(3); 1986 Sch. 8 para. 2(2), (3); 1988 art. 7(2)(b)
(4)	1975 Sch. 3 para. 1(2)(b); 1986 Sch. 8 para. 2(1)
(5)	1975 Sch. 3 para. 1(3)(b); 1986 Sch. 8 para. 2(3)
(6)	1975 Sch. 3 para. 1(4)
para. 2(1)	1975 Sch. 3 para. 1(1)
(2)	1975 Sch. 3 para. 1(2); 1986 Sch. 8 para. 2(1); 1988 art. 7(2)(a)
(3)	1975 Sch. 3 para. 1(3); 1986 Sch. 8 para. 2(2), (3); 1988 art. 7(2)(b)
(4)	1975 Sch. 3 para. 1(2)(b); 1986 Sch. 8 para. 2(1)
(5)	1975 Sch. 3 para. 1(3)(b); 1986 Sch. 8 para. 2(3)
(6)	1975 Sch. 3 para. 1(4)
para. 3	1975 Sch. 3 para. 3; 1986 Sch. 4 para. 14; 1990 Sch. 6 para. 8
para. 4(1)	1975 Sch. 3 para. 4(1); 1986 Sch. 9 para. 42(a)
(2)	1975 Sch. 3 para. 4(1)(b); 1986 Sch. 8 para. 2(4)
(3)	1975 Sch. 3 para. 4(2)
para. 5(1)	1975 Sch. 3 para. 5(1)
(2)	1975 Sch. 3 para. 5(2); 1975P art. 21(2); 1986 Sch. 8 para. 2(5)
(3), (4)	1975 Sch. 3 para. 5(3); 1986 Sch. 8 para. 2(6)
(5), (6)	1975 Sch. 3 para. 5(4), (5)
(7)	1975 Sch. 3 para. 5(6); 1979 Sch. 1 para. 3
(8)	1975 s. 27(2)

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para. 6	1975 Sch. 3 para. 6
para. 7(1)	1975 Sch. 3 para. 8(1); 1989 Sch. 7 para. 14
(2)	1975 Sch. 3 para. 8(2); 1986 Sch. 9 para. 42(b)
(3), (4)	1975 Sch. 3 para. 8(3); 1979 Sch. 3 para. 10; 1986 Sch. 8 para. 2(7), Sch. 9 para. 42(b)
para. 8	1975 Sch. 3 para. 10
para. 9	1975 Sch. 3 para. 13; 1986 Sch. 9 para. 42(c)
Sch. 4	
Part I	
para. 1	1975 Sch. 4 Part I para. 1(a); 1992U Sch. 1
para. 2	1975 Sch. 4 Part I para. 1(b); 1992U Sch. 1
para. 3	1975 Sch. 4 Part I para. 3; 1992U Sch. 1
para. 4	1975 Sch. 4 Part I para. 4; 1992U Sch. 1
para. 5	1975 Sch. 4 Part I para. 9; 1975P Sch. 5 para. 42; 1992U Sch. 1
para. 6	1975 Sch. 4 Part I para. 10; 1992U Sch. 1
Part II	1975 Sch. 4 Part IA; 1986 art. 37(2)
Part III	
para. 1	1975 Sch. 4 Part III para. 1; 1992U Sch. 1
para. 2	1975 Sch. 4 Part III para. 2; 1984 Sch. 2 para. 2; 1992U Sch. 1
para. 3	1975 Sch. 4 Part III para. 2A; 1990 art. 4(2); 1992U Sch. 1
para. 4	1975 Sch. 4 Part III para. 3; 1992U Sch. 1
para. 5	1975 Sch. 4 Part III para. 4; 1992U Sch. 1
para. 6	1975 Sch. 4 Part III para. 5; 1992U Sch. 1
para. 7	1975 Sch. 4 Part III para. 5A; 1985 art. 14(2)

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para. 8	1975 Sch. 4 Part III para. 6
Part IV	
col. (1)	1975 Sch. 4 Part IV col. (1); 1984 Sch. 2 para. 2; 1986 Sch. 10
col. (2)	1975 Sch. 4 Part IV col. (2); 1975CB Sch. 4 para. 35(a); 1986 Sch. 10; 1992U Sch. 1
col. (3)	1975 Sch. 4 Part IV col. (4); 1975CB Sch. 4 para. 35(b), (c); 1992U Sch. 1
Part V	
para. 1	1975 Sch. 4 Part V para. 3; 1992U Sch. 1
para. 2	1975 Sch. 4 Part V para. 7; 1992U Sch. 1
para. 3	1975 Sch. 4 Part V para. 8; 1992U Sch. 1
para. 4	1975 Sch. 4 Part V para. 16; 1992U Sch. 1
para. 5	1975 Sch. 4 Part V para. 4; 1986 Sch. 3 paras. 4, 15; 1992U Sch. 1
para. 6	1975 Sch. 4 Part V para. 5; 1979 Sch. 1 para. 13; 1986 Sch. 3 paras. 4, 15; 1992U Sch. 1
para. 7	1975 Sch. 4 Part V para. 10; 1986 Sch. 3 paras. 4, 15; 1992U Sch. 1
para. 8	1975 Sch. 4 Part V para. 12; 1986 Sch. 3 paras. 4, 15; 1992U Sch. 1
para. 9	1975 Sch. 4 Part V para. 2; 1986 Sch. 3 para. 3(3); 1992U Sch. 1
para. 10	1975 Sch. 4 Part V para. 13; 1986 Sch. 3 para. 8; 1988 Sch. 1 para. 2; 1992U Sch. 1
para. 11	1975 Sch. 4 Part V para. 14; 1986 Sch. 3 para. 11; 1988 Sch. 1 para. 1; 1992U Sch. 1
para. 12	1975 Sch. 4 Part V para. 15; 1986 Sch. 3 para. 8; 1988 Sch. 1 para. 2; 1992U Sch. 1
Sch. 5	
para. 1	1975P Sch. 1 para. 1; 1989 Sch. 1 para. 3(1)

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para. 2(1)	1975P Sch. 1 para. 2(1); 1989 Sch. 1 para. 3(2)
(2)	1975P Sch. 1 para. 2(2); 1989 Sch. 1 para. 3(3)
(3)	1975P Sch. 1 para. 2(3); 1977 art. 4(1)(b); 1989 Sch. 1 para. 3(4)
(4)	1975P art. 70A; 1979 art. 14
(5)	1975P Sch. 1 para. 2(4); 1977 art. 4(1)(c); 1980 art. 4(10)
(6)	1975P Sch. 1 para. 2(4A); 1985 art. 11(5)
(7)	1975P Sch. 1 para. 2(5); 1986 Sch. 9 para. 59(a); 1989 Sch. 1 para. 3(5)
(8)	1975P Sch. 1 para. 2(6); 1977 art. 4(1)(d); 1989 Sch. 1 para. 3(6)
para. 3	1975 Sch. 1 para. 3; 1977 art. 4(1)(e); 1989 Sch. 1 para. 3(7)
para. 4(1)	1975P Sch. 1 para. 4(1); 1979 Sch. 3 para. 22; 1986 art. 20(2); 1989 Sch. 1 para. 3(8)
(2)	1975P Sch. 1 para. 4(2); 1979 Sch. 3 para. 22; 1986 art. 20(2); 1989 Sch. 1 para. 3(8)
(3)	1975P Sch. 1 para. 4(2A); 1986 art. 20(2)
(4)	1975P Sch. 1 para. 4(3); 1979 Sch. 1 para. 6; 1986 Sch. 9 para. 59(a)
(5)	1975P Sch. 1 para. 4(4); 1979 Sch. 1 para. 22
para. 5(1), (2)	1975P Sch. 1 para. 4A(1); 1979 Sch. 1 para. 7; 1986 art. 20(3)
(3)	1975P Sch. 1 para. 4A(1A); 1986 art. 20(4)
para. 6(1), (2)	1975P Sch. 1 para. 4A(2); 1979 Sch. 1 para. 7; 1986 art. 20(5)
(3)	1975P Sch. 1 para. 4A(2A)(a); 1986 art. 20(6)
(4)	1975P Sch. 1 para. 4A(2A)(b); 1986 art. 20(6)
para. 7(1)	1975P Sch. 1 para. 4A(3); 1979 Sch. 1 para. 7; 1986 Sch. 9 para. 59(b)
(2)	1975P art. 70A; 1979 art. 14

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para. 8(1), (2)	1975P Sch. 1 para. 5(1), (2); 1989 Sch. 1 para. 3(9)
(3)	1975P Sch. 1 para. 5(3); 1989 Sch. 1 para. 3(10)
(4)	1975P Sch. 1 para. 5(4)
para. 9	Drafting
Sch. 6	
para. 1	1975 Sch. 8 para. 1; 1984 Sch. 2 para. 8(a)
paras. 2, 3	1975 Sch. 8 paras. 2, 3
para. 4	1975 Sch. 8 para. 4A; 1984 Sch. 2 para. 8(b)
para. 5	1975 Sch. 8 para. 5A; 1984 Sch. 2 para. 8(c)
para. 6(1)	1975 Sch. 8 para. 4(1); 1982 Sch. 4 para. 12
(2)	1975 Sch. 8 para. 4(1) proviso
(3) - (5)	1975 Sch. 8 para. 4(2) - (4); 1989 Sch. 3 para. 13(1)
para. 7	1975 Sch. 8 para. 5; 1989 Sch. 3 para. 13(2)
para. 8	1975 Sch. 8 para. 6
Sch. 7	
para. 1	1986 Sch. 3 para. 4
para. 2	1975 s. 58
para. 3(1)	1975 s. 59(1); 1985 art. 11(4)(a)
(2) - (4)	1975 s. 59(1A) - (1C); 1985 art. 11(4)(b)
(5) - (7)	1975 s. 59(2) - (4)
(8)	1975 s. 59(4); 1980(2) art. 3(3)
(9)	1980(2) art. 3(4)
(10)	1975 s. 59(5)
(11)	Drafting
para. 4(1)	1975 s. 64(1); 1975CB Sch. 4 para. 22(a); 1986 Sch. 3 para. 4
(2)	1975 s. 64(2)
(3)	1975 s. 64(1A); 1984 Sch. 3 para. 3
(4)	1975 s. 64(1B); 1984 Sch. 3 para. 3; Social Security (Industrial Injuries)



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	(Dependency) (Permitted Earnings Limits) Order (NI) 1991 (SR 1991 No. 72) art. 2
(5), (6)	1975 s. 64(1C), (1D); 1984 Sch. 3 para. 3
para. 5(1)	1975 s. 65(1); 1975CB Sch. 4 para. 23(a)
(2)	1975 s. 65(2); 1975CB Sch. 4 para. 23(b); 1977 art. 18(3)
para. 6(1)	1975 s. 66(1); 1975CB Sch. 4 para. 24; 1980 Sch. 1 paras. 4, 6; 1986 Sch. 3 paras. 4, 15
(2)	1975 s. 66(2)
(3) - (6)	1975 s. 66(3) - (6); 1985 art. 15(5)
(7)	1975 s. 66(7)
para. 7	1975 s. 66A; 1984 art. 8(b); 1989 art. 11(3)
para. 8	1975 s. 84A; 1989 Sch. 8 para. 7(2)
para. 9(1), (2)	1975 s. 57(1), (5); 1986 Sch. 3 para. 3(3)
(3)	1975 s. 57(4); 1982 art. 32(2); 1989 Sch. 7, para. 11
para. 10(1)	1986 Sch. 3 para. 7
(2), (3)	1975 s. 62
para. 11(1)	1975 s. 59A(1), (10B); 1986 Sch. 3 para. 5(1); 1989 Sch. 7 para. 12; 1990 art. 5(1), (4)
(2), (3)	1975 s. 59A(1A), (1B), (10B); 1990 art. 5(2), (4)
(4) - (7)	1975 s. 59A(2) - (5); 1986 Sch. 3 para. 5(1)
(8)	1975 s. 59A(6); 1986 Sch. 3 para. 5(1); 1990 art. 5(3)
(9)	1975 s. 59A(7); 1986 Sch. 3 para. 5(1)
(10)	1975 s. 59A(8); 1986 Sch. 3 para. 5(1); 1988 Sch. 4 para. 9(a)
(11)	1988 art. 4(2)
(12)	1975 s. 59A(9); 1986 Sch. 3 para. 5(1)
(13)	1975 s. 59A(10); 1986 Sch. 3 para. 5(1)
(14)	1975 s. 59A(10A); 1988 Sch. 4 para. 9(b)

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para. 12(1)	1988 art. 4(3)
(2)	1988 art. 4(4)
(3), (4)	1988 art. 4(4A), (4B); 1989 art. 19(5)
(5), (6)	1988 art. 4(5), (6); 1989 art. 19(6)
para. 13(1)	1975 s. 59B(1); 1988 art. 4(1); 1989 Sch. 1 para. 8(2)
(2)	1975 s. 59B(2); 1988 art. 4(1)
(3)	1975 s. 59B(3); 1988 art. 4(1)
(4)	1975 s. 59B(5); 1988 art. 4(1); 1989 Sch. 1 para. 8(5)
(5)	1975 s. 59B(5A); 1989 art. 19(3)
(6)	1975 s. 59B(6); 1988 art. 4(1)
(7)	Drafting
(8), (9)	1975 s. 59B(7), (8); 1989 Sch. 1 para. 8(6)
(10)	1975 s. 59B(9); 1990 art. 5(6)
(11)	1975 s. 59A(10A); 1988 Sch. 4 para. 9(b)
para. 14(1)	1988 Sch. 1 paras. 2, 3
(2)	1975 Sch. 17
para. 15	1975 s. 67; 1977 art. 18(4); 1986 Sch. 3 para. 8(a); 1988 Sch. 1 para. 2
para. 16	1975 s. 68; 1975CB Sch. 5; 1986 Sch. 3 para. 8(a); 1988 Sch. 1 para. 2
para. 17	1975 s. 69; 1986 Sch. 3 para. 11; 1988 Sch. 1 para. 3
para. 18	1975 s. 70; 1984 Sch. 3 para. 4; 1986 Sch. 3 para. 8(b); 1988 Sch. 1 para. 2
para. 19	1975 Sch. 9 para. 1; 1986 Sch. 3 para. 8(c); 1988 Sch. 1 para. 2
para. 20	1975 s. 75; 1986 Sch. 3 para. 8(b); 1988 Sch. 1 paras. 2, 6(2)(a)
para. 21	1977 art. 8; 1986 Sch. 10; 1988 Sch. 1 para. 6(2)(b)
Sch. 8	
para. 1	1975OC s. 1
para. 2	1975OC s. 2; 1990 art. 18(7)(a); 1992U art. 6
para. 3	1975OC s. 3

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para. 4(1)	1975 s. 150(1)
(2)	1975 s. 150(3)
para. 5(1)	1975 s. 150(2); 1975OC s. 9(1)
(2)	1975OC s. 9(2); 1977 art. 9(1)
(3)	1986 Sch. 3 para. 15
Sch. 9	1975CB Sch. 1; 1980 art. 5(6); Treatment of Offenders (NI) Order 1980 (NI 10) art. 3, Sch. 1 para. 1; 1984 Sch. 2 para. 11
Sch. 10	1975CB Sch. 2
Sch. 11	1982 Sch. 1; 1984 Sch. 2 para. 13(2)
Sch. 12	
para. 1	1982 Sch. 2 para. 1; 1985 art. 18(6)(a)
paras. 2 - 4	1982 Sch. 2 paras. 2 - 4
para. 5	1982 Sch. 2 para. 1A; 1985 art. 18(6)(b)
para. 6	1982 Sch. 2 para. 6
Sch. 13	
para. 1	1986 Sch. 4 para. 11; 1988 Sch. 4 para. 15(1)
para. 2	1986 Sch. 4 para. 11A; 1988 Sch. 4 para. 15(2)
para. 3	1986 Sch. 4 para. 12

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