



Social Security Contributions and Benefits (Northern Ireland) Act 1992

1992 CHAPTER 7

PART II

CONTRIBUTORY BENEFITS

[^{F1}Bereavement benefits: deaths before the day on which section 29 of the Pensions Act (Northern Ireland) 2015 comes into operation]

Textual Amendments

- F1** S. 36 cross-heading substituted (6.4.2017) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(1\), Sch. 16 para. 7](#); S.R. 2017/44, art. 2(2) (with arts. 3, 4)

^{F2}36 Bereavement payment.

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Textual Amendments

- F2** S. 36 repealed (6.4.2017) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(1\), Sch. 16 para. 8](#); S.R. 2017/44, art. 2(2) (with arts. 3, 4)

^{F3}36A Cases in which sections 37 to 41 apply.

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Textual Amendments

- F3** S. 36A repealed (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 9**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)

37 Widowed mother's allowance^[F4]: deaths before 9 April 2001].

^[F5](A1) This section applies only in cases where a woman's husband has died before 9 April 2001.]

- (1) A woman who has been widowed shall be entitled to a widowed mother's allowance at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widowed mother's allowance specified in Schedule 3, Part I, paragraph 5 and either—
 - (a) the woman is entitled to child benefit in respect of a child ^[F6]or qualifying young person] falling within subsection (2) below;
 - (b) the woman is pregnant by her late husband; or
 - (c) if the woman and her late husband were residing together immediately before the time of his death, the woman is pregnant as the result of being artificially inseminated before that time with the semen of some person other than her husband, or as the result of the placing in her before that time of an embryo, of an egg in the process^[F7] of fertilisation, or of sperm and eggs.
- (2) A child ^[F7]or qualifying young person] falls within this subsection if ^[F8]... the child ^[F9]or qualifying young person] is either—
 - (a) a son or daughter of the woman and her late husband;
 - (b) a child ^[F10]or qualifying young person] in respect of whom her late husband was immediately before his death entitled to child benefit; or
 - (c) if the woman and her late husband were residing together immediately before his death, a child ^[F10]or qualifying young person] 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 ^[F11]or forms a civil partnership], but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1) (a), (b) or (c) above.
- (4) A widowed mother's allowance shall not be payable—
 - (a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(l) of the Administration Act; ^[F12]or
 - (b) for any period during which she, and a person who is neither her spouse nor her civil partner, are living together as if spouses of each other].

Textual Amendments

- F4** Words in s. 37 heading inserted (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 10(3)**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)
- F5** S. 37(A1) inserted (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 10(2)**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)
- F6** Words in s. 37(1)(a) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 28(2)**

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- F7** Words in s. 37(2) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 28(3)(a)**
- F8** Words in s. 37(2) repealed (7.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), ss. 46, 60(1), **Sch. 8**; S.R. 2008/339, art. 2(3)(a) (with art. 3(3))
- F9** Words in s. 37(2) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 28(3)(b)**
- F10** Words in s. 37(2) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 28(3)(c)**
- F11** Words in s. 37(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 72(2)**; S.I. 2005/3255, art. 2(1), Sch.
- F12** S. 37(4)(b) and preceding word substituted for s. 37(4)(b)(c) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **66(2)** (with regs. 6-9)

38 **Widow's pension**^{F13}: **deaths before 9 April 2001**].

^{F14}(A1) This section applies only in cases where a woman's husband has died before 9 April 2001.]

- (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—
- she was, at the husband's death, over the age of 45 but under the age of 65; or
 - 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 ^{F15}or forms a civil partnership], but, subject to that, she shall continue to be entitled to it until she attains ^{F16}pensionable age].
- (3) A widow's pension 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;
 - for any period for which she is entitled to a widowed mother's allowance; ^{F17}or
 - for any period during which she, and a person who is neither her spouse nor her civil partner, are living together as if spouses of each other].
- (4) In the case of a widow whose late husband died before 11th April 1988 and who either—
- was over the age of 40 but under the age of 55 at the time of her husband's death; or
 - 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 ”.

Textual Amendments

- F13** Words in s. 38 heading inserted (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 11(3)**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)
- F14** S. 38(A1) inserted (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 11(2)**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)

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- F15** Words in s. 38(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 73(2)**; S.I. 2005/3255, art. 2(1), Sch.
- F16** Words in s. 38(2) substituted (6.12.2018) by Pensions Act (Northern Ireland) 2008 (c. 1), s. 11(3), **Sch. 1 para. 37** (as amended, in the case of s. 11, by Pensions Act (Northern Ireland) 2012 (c. 3), s. 34(2), Sch. 1 para. 5(b))
- F17** S. 38(3)(c) and preceding word substituted for s. 38(3)(c)(d) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **66(3)** (with regs. 6-9)

39 Rate of widowed mother's allowance and widow's pension.

(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 [^{F18}[^{F19}sections 44 to][^{F20}45B]] below ^{F21}... 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 [^{F22}46] below.

(2) In the application of [^{F18}[^{F19}sections 44 to][^{F20}45B]] below ^{F21}... 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.

[^{F23}(2A) In its application by virtue of subsection (1) above, section 44(4) below is to be read as if for the first amount specified in that provision there were substituted a reference to the amount prescribed for the purposes of this subsection.]

^{F24}(3)

(4) Where a widow's pension is payable to a woman who was under the age of 55 at the time when the applicable qualifying condition was fulfilled, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which her age at that time was less than 55 (any fraction of a year being counted as a year).

(5) For the purposes of subsection (4) above, the time when the applicable qualifying condition was fulfilled is the time when the woman's late husband died or, as the case may be, the time when she ceased to be entitled to a widowed mother's allowance.

(6) In the case of a widow whose late husband died before 11th April 1988 and who either—

- (a) was over the age of 40 but under the age of 55 at the time of her husband's death; or
- (b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,

subsection (4) above shall have effect as if for "55" there were substituted " 50 ".

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Textual Amendments

- F18** Words in s. 39(1)(2)(3) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 124(2)-(5)**
- F19** Words in s. 39(1)(2)(3) amendment continued (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 39**; S.I. 2003/962, art. 2(3)(d)(iii)
- F20** Words in s. 39(1)(2)(3) substituted (1.12.2000) by S.I. 1999/3147 (N.I. 11), art. 74, **Sch. 9 para. 7**; S.R. 2000/133, art. 2(3), **Sch. Pt. IV**
- F21** Words in s. 39 repealed (11.2.2008) by Pensions Act (Northern Ireland) 2008 (c. 1), Sch. 2 para. 3(a), **Sch. 6 Pt. 4**
- F22** Figure in s. 39(1) substituted (3.1.2012) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), s. 118(1), **Sch. 3 para. 3** (with s. 73); S.R. 2011/441, art. 2(c)(ii)
- F23** S. 39(2A) inserted (with effect in relation to the tax year 2010–11 and subsequent tax years) by Pensions Act (Northern Ireland) 2008 (c. 1), s. 6(1) (with s. 6(3)); S.I. 2010/2650
- F24** S. 39(3) repealed (11.2.2008) by Pensions Act (Northern Ireland) 2008 (c. 1), Sch. 2 para. 3(b), **Sch. 6 Pt. 4**

[^{F25}39A Widowed parent's allowance.

[^{F26}(1) This section applies where—

- (a) a person's [^{F27}spouse, civil partner or cohabiting partner] has died before the day on which section 29 of the Pensions Act (Northern Ireland) 2015 comes into operation (but see subsection (1A)),
- (b) the person has not married or formed a civil partnership [^{F28}or a cohabiting partnership] after the death but before that day, and
- (c) the person is under pensionable age on that day.]

[This section does not apply in cases where a woman's husband has died before 9 April ^{F26}(1A) 2001.]

(2) The surviving [^{F27}spouse, civil partner or cohabiting partner] shall be entitled to a widowed parent's allowance at the rate determined in accordance with section 39C below if the deceased [^{F27}spouse, civil partner or cohabiting partner] satisfied the contribution conditions for a widowed parent's allowance specified in Schedule 3, Part I, paragraph 5 and—

- (a) the surviving [^{F27}spouse, civil partner or cohabiting partner] is entitled to child benefit in respect of a child [^{F29}or qualifying young person] falling within subsection (3) below; ^{F30} ...
- (b) the surviving spouse [^{F31}or cohabiting partner] is a woman who either—
 - (i) is pregnant by her late husband [^{F32}or the deceased cohabiting partner], 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 [^{F33}(which is to be read as if the references to her late husband included a reference to the deceased cohabiting partner)]; [^{F34}or
- (c) the surviving civil partner [^{F35}or cohabiting partner] is a woman who—
 - (i) was residing together with the deceased civil partner [^{F35}or cohabiting partner] immediately before the time of the death, and
 - (ii) is pregnant as the result of being artificially inseminated before that time with the semen of some person, or as a result of the placing in her

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before that time of an embryo, of an egg in the process of fertilisation, or of sperm and eggs].

- (3) A child [^{F36}or qualifying young person] falls within this subsection if ^{F37}... the child [^{F38}or qualifying young person] is either—
- (a) a son or daughter of the surviving [^{F27}spouse, civil partner or cohabiting partner] and the deceased [^{F27}spouse, civil partner or cohabiting partner]; or
 - (b) a child [^{F39}or qualifying young person] in respect of whom the deceased [^{F27}spouse, civil partner or cohabiting partner] was immediately before his or her death entitled to child benefit; or
 - (c) if the surviving [^{F27}spouse, civil partner or cohabiting partner] and the deceased spouse [^{F40}or civil partner] were residing together immediately before his or her death, a child [^{F39}or qualifying young person] in respect of whom the surviving [^{F27}spouse, civil partner or cohabiting partner] was then entitled to child benefit.

^{F41}(3A) [Only one person is entitled to a widowed parent's allowance in respect of one death.

(3B) Where, apart from subsection (3A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (3C) and (3D).

(3C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(3D) Where there is more than one person who is a member of the same household as the deceased and would (apart from subsection (3A)) be entitled—

- (a) if one of those persons is the deceased's spouse or civil partner and is pregnant or entitled to child benefit in accordance with subsection (2), that person is entitled;
- (b) if there is no spouse or civil partner entitled under paragraph (a), the deceased's cohabiting partner who is pregnant or entitled to child benefit in accordance with subsection (2) is entitled (but this is subject to paragraphs (c) and (d));
- (c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;
- (d) if there is more than one cohabiting partner within paragraph (b) and each partner has been a member of the same household as the deceased for the same length of time, the Department must determine who is entitled.]

(4) The surviving spouse shall not be entitled to the allowance for any period after she or he remarries [^{F42}or forms a civil partnership][^{F43}or a cohabiting partnership], 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.

^{F44}(4A) [The surviving civil partner shall not be entitled to the allowance for any period after she or he forms a subsequent civil partnership [^{F45}or a cohabiting partnership] or marries, but, subject to that, the surviving civil partner 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

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(b) is under pensionable age.]

[The surviving cohabiting partner shall not be entitled to the allowance for any period ^{F46}(4B) after she or he forms a subsequent cohabiting partnership or a civil partnership or marries, but, subject to that, the surviving cohabiting partner shall continue to be entitled to it for any period throughout which she or he—

- (a) satisfies the requirements of subsection (2)(a), (b) or (c) above; and
- (b) is under pensionable age.]

(5) A widowed parent’s allowance shall not be payable—

- (a) for any period falling before the day on which the surviving [^{F47}spouse’s, civil partner’s or cohabiting partner’s] entitlement is to be regarded as commencing by virtue of section 5(1)(l) of the Administration Act; [^{F48}or

^{F49}(b) for any period during which—

- (i) the surviving spouse or civil partner, and
- (ii) a person who is neither the spouse, nor the civil partner, of the surviving spouse or civil partner,,
are living together as if spouses of each other].

[For the purposes of this section, the Department may by regulations prescribe—

- ^{F50}(6) (a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;
- (b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other (or as marrying or forming a civil partnership or a cohabiting partnership);
- (c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(7) For the purposes of this section and section 39C, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or in a civil partnership (and “cohabiting partnership” is to be read accordingly).

(8) The Department must issue a statement of its policy with respect to making determinations under subsection (3D)(d).]]

Textual Amendments

- F25** 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**
- F26** S. 39A(1)(1A) substituted for s. 39A(1) (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 12**; S.R. 2017/44, **art. 2(2)** (with arts. 3, 4)
- F27** Words in s. 39A substituted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), **arts. 1(3)**, **8(2)(a)**
- F28** Words in s. 39A(1)(b) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), **arts. 1(3)**, **8(2)(b)**
- F29** Words in s. 39A(2)(a) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 29(2)**
- F30** Word in s. 39A(2) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b)(d), **Sch. 30**; S.I. 2005/3255, **art. 2(1)**, **Sch.**
- F31** Words in s. 39A(2)(b) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), **arts. 1(3)**, **8(2)(c)(i)**

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- F32** Words in s. 39A(2)(b)(i) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(c)(ii)**
- F33** Words in s. 39A(2)(b)(ii) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(c)(iii)**
- F34** S. 39A(2)(c) and preceding word inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 74(4)**; S.I. 2005/3255, art. 2(1), Sch.
- F35** Words in s. 39A(2)(c) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(d)**
- F36** Words in s. 39A(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 29(3)(a)**
- F37** Words in s. 39A(3) repealed (7.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), ss. 47, 60(1), **Sch. 8**; S.R. 2008/339, art. 2(3)(a) (with art. 3(3))
- F38** Words in s. 39A(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 29(3)(b)**
- F39** Words in s. 39A(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 29(3)(c)**
- F40** Words in s. 39A inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 74(2)**; S.I. 2005/3255, art. 2(1), Sch.
- F41** S. 39A(3A)-(3D) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(e)**
- F42** Words in s. 39A(4) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 74(5)**; S.I. 2005/3255, art. 2(1), Sch.
- F43** Words in s. 39A(4) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(f)**
- F44** S. 39A(4A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 74(6)**; S.I. 2005/3255, art. 2(1), Sch.
- F45** Words in s. 39A(4A) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(g)**
- F46** S. 39A(4B) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(h)**
- F47** Words in s. 39A(5)(a) substituted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(i)**
- F48** S. 39A(5)(b) and preceding word substituted for s. 39A(5)(b)(c) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **66(4)** (with regs. 6-9)
- F49** By The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(a)** it is provided (retrospectively to 30.8.2018) that the words “spouse or civil partner” are substituted by the words “spouse, civil partner or cohabiting partner” in each place they appear
- F50** S. 39A(6)-(8) inserted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(2)(j)**

F51 39B Bereavement allowance where no dependent children.

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Textual Amendments

- F51** S. 39B repealed (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 13**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)

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[^{F53}**39C** **Rate of widowed parent's allowance** ^{F52}...

(1) The weekly rate of a widowed parent's allowance shall be determined in accordance with the provisions of sections 44 to [^{F54}45AA and Schedules 4A and 4B 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 [^{F55}46] below.

[In its application by virtue of subsection (1) above, section 44(4) below is to be read ^{F56}(1A) as if for the first amount specified in that provision there were substituted a reference to the amount prescribed for the purposes of this subsection.]

^{F57}(2)

(3) In the application of sections 44 to [^{F58}45AA and Schedules 4A and 4B below by virtue of subsection (1) above]—

(a) where the deceased [^{F59}spouse, civil partner or cohabiting partner] was over pensionable age at his or her death, references in those [^{F60}provisions] to the pensioner shall be taken as references to the deceased [^{F59}spouse, civil partner or cohabiting partner], and

(b) where the deceased [^{F59}spouse, civil partner or cohabiting partner] was under pensionable age at his or her death, references in those [^{F61}provisions] to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the deceased [^{F59}spouse, civil partner or cohabiting partner] and the tax year in which he or she died.

(4) Where a widowed parent's allowance is payable to a person whose [^{F62}spouse, civil partner or cohabiting partner] dies after [^{F63}5th October 2002], the additional pension falling to be calculated under sections 44 to [^{F64}45AA and Schedules 4A and 4B below] by virtue of subsection (1) above shall be one half of the amount which it would be apart from this subsection.

^{F65}(5)]

Textual Amendments

- F52** Words in s. 39C heading omitted (6.4.2017) by virtue of [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(1\), Sch. 16 para. 14\(4\)](#); S.R. 2017/44, art. 2(2) (with arts. 3, 4)
- F53** 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
- F54** Words in s. 39C(1) substituted (6.4.2016) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(3\), Sch. 12 para. 77\(2\)](#)
- F55** Figure in s. 39C(1) substituted (3.1.2012) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\), s. 118\(1\), Sch. 3 para. 4\(2\)\(c\)](#) (with s. 73); S.R. 2011/441, art. 2(c)(iv)
- F56** S. 39C(1A)(2) substituted for s. 39C(2) (with effect in relation to the tax year 2010–11 and subsequent tax years) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\), s. 6\(2\)\(a\)](#) (with s. 6(3)); S.I. 2010/2650
- F57** S. 39C(2) omitted (6.4.2017) by virtue of [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(1\), Sch. 16 para. 14\(2\)](#); S.R. 2017/44, art. 2(2) (with arts. 3, 4)
- F58** Words in s. 39C(3) substituted (6.4.2016) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\), s. 53\(3\), Sch. 12 para. 77\(3\)](#)
- F59** Words in s. 39C(3) substituted (retrospective to 30.8.2018) by [The Bereavement Benefits \(Remedial\) Order 2023 \(S.I. 2023/134\), arts. 1\(3\), 8\(3\)\(a\)](#)
- F60** Word in s. 39C(3)(a) substituted (11.2.2008) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\), Sch. 2 para. 4\(3\)](#)

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- F61** Word in s. 39C(3)(b) substituted (11.2.2008) by Pensions Act (Northern Ireland) 2008 (c. 1), **Sch. 2 para. 4(3)**
- F62** Words in s. 39C(4) substituted (retrospective to 30.8.2018) by The Bereavement Benefits (Remedial) Order 2023 (S.I. 2023/134), arts. 1(3), **8(3)(b)**
- F63** Words in s. 39C(4) substituted (*retrospectively*) by virtue of 2000 c. 4 (N.I.), s. **35(1)(a)(2)(a)**
- F64** Words in s. 39C(4) substituted (6.4.2016) by virtue of Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(3), **Sch. 12 para. 77(4)**
- F65** S. 39C(5) omitted (6.4.2017) by virtue of Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 16 para. 14(3)**; S.R. 2017/44, art. 2(2) (with arts. 3, 4)

Modifications etc. (not altering text)

- C1** S. 39C modified (6.10.2002) by S.R. 2001/441, **art. 2**

[^{F66}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.

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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.

- (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

F66 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)

- C2** S. 40 excluded (1.10.2010) by [The Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010](#) (S.R. 2010/312), regs. 1, **22(a)** (with reg. 3)
- C3** S. 40(8) applied (1.5.1995) by 1994 c. 9, s. **139(6)** (as inserted by 1995 c. 4, s. **141(3)**)

[^{F67}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.

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- (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.
- (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 [^{F68}the contributions of his wife], 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

F67 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**

F68 Words in s. 41(5)(a) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), arts. 1(3), 123, **Sch. 2 Pt. III para. 18(4)**

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Modifications etc. (not altering text)

- C4** S. 41 excluded (1.10.2010) by [The Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\)](#), regs. 1, [22\(a\)](#) (with reg. 3)
- C5** S. 41(7) applied (1.5.1995) by [1994 c. 9, s. 139\(6\)](#) (as inserted by [1995 c. 4, s. 141\(3\)](#))

[^{F69}**42 Entitlement under s. 40 or 41 after period of employment or training for work.**

[^{F70}(1) Where a person claims incapacity benefit under section 40 or 41 above for a period commencing after he has ceased to be in qualifying remunerative work (within the meaning of Part 1 of the Tax Credits Act 2002) and—

- (a) the day following that on which he so ceased was a day of incapacity for work for him,
- (b) he has been entitled to incapacity benefit under that section within the period of two years ending with that day of incapacity for work, and
- (c) he satisfied the relevant tax credit conditions on the day before he so ceased, every day during that period on which he satisfied those conditions is to be treated for the purposes of the claim as a day of incapacity for work for him.

(1A) A person satisfies the relevant tax credit conditions on a day if—

- (a) he is entitled for the day to the disability element of working tax credit (on a claim made by him or by him jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act 2002) in his or their case is such that he is not so entitled, and
- (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.]

(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

- F69** 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](#)
- F70** S. 42(1)(1A) substituted for [s. 42\(1\)](#) (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 3 para. 42](#); [S.I. 2003/962](#), art. 2(3)(d)(iii)

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Modifications etc. (not altering text)

- C6 S. 42 modified (31.3.2003) by [The Tax Credits Act 2002 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2003 \(S.I. 2003/962\)](#), **art. 5(3)**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act modified by [S.R. 2019/211 art. 2\(2\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Affecting Order revoked (19.12.2020) without ever being in force by S.R. 2020/347, arts. 1(1), 2)
- Act modified by [S.R. 2024/21 art.002\(2\)\(b\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 167ZZ10(5) inserted by [2022 c. 5 \(N.I.\) s. 4 Sch. Pt. 2 para. 38](#)
- s. 1(6)(aa) inserted by [S.I. 2024/377 reg. 5\(2\)](#)
- s. 4C(5)(i)(j) repealed by [2008 c. 1 \(N.I.\) Sch. 4 para. 41\(3\)\(c\)Sch. 6 Pt. 7](#)
- s. 5A para. 2 sum modified by [S.R. 2022/231 art. 4\(4\)](#)
- s. 11A(eb) inserted by [2021 c. 26 Sch. 27 para. 14](#)
- s. 30B(3)(b) word substituted by [S.I. 1995/3213 \(N.I.\) Sch. 2 Pt. 3 para. 14\(b\)](#)
- s. 30B(4)(aa) inserted by [S.I. 2015/2006 \(N.I.\) Sch. 9 para. 3](#)
- s. 30B(4)(aa) word repealed by [S.I. 2015/2006 \(N.I.\) Sch. 12 Pt. 8](#)
- s. 35(1)(e) and word inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(2\)\(a\)](#)
- s. 35(3)(za) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(2\)\(b\)](#)
- s. 45(2A)(a) words substituted by [2012 c. 3 \(N.I.\) Sch. 3 para. 1\(3\)\(b\)](#)
- s. 45(2A)(b) substituted by [2012 c. 3 \(N.I.\) Sch. 3 para. 1\(3\)\(c\)](#)
- s. 46(5)(6) added by [2008 c. 13 \(N.I.\) Sch. 3 para. 6\(3\)](#)
- s. 46(5)(a) words substituted by [2012 c. 3 \(N.I.\) Sch. 3 para. 2](#)
- s. 47(4A) inserted by [2008 c. 13 \(N.I.\) s. 81\(6\)](#)
- s. 83A substituted for ss. 83, 84 by [S.I. 1995/3213 \(N.I.\) Sch. 2 Pt. 2 para. 2](#)
- s. 83A(1) words substituted by [2004 c. 33 Sch. 24 para. 90\(a\)](#)
- s. 83A(2) words inserted by [2004 c. 33 Sch. 24 para. 90\(b\)](#)
- s. 83A(3) words inserted by [2004 c. 33 Sch. 24 para. 90\(b\)](#)
- s. 123(1)(ea) inserted by [S.I. 2015/2006 \(N.I.\) art. 65\(2\)\(a\)](#)
- s. 123(1)(ga) inserted by [2010 c. 13 \(N.I.\) s. 5\(1\)\(a\)](#)
- s. 123(1C) inserted by [S.I. 2015/2006 \(N.I.\) art. 65\(2\)\(b\)](#)
- s. 123(6A)(6B) inserted by [2010 c. 13 \(N.I.\) s. 5\(1\)\(b\)](#)
- s. 123A inserted by [S.I. 2015/2006 \(N.I.\) art. 65\(3\)](#)
- s. 123A transfer of functions by [S.R. 2016/76 Sch. 4 Pt. 1](#)
- s. 123A(2) words omitted by [S.R. 2016/76 Sch. 6 para. 38](#)
- s. 123A(4)(b) words omitted by [S.R. 2016/76 Sch. 6 para. 38](#)
- s. 129B-129F inserted (temp. until 31.12.2010) by [2007 c. 2 \(N.I.\) s. 31\(1\)](#)
- s. 134(2A) inserted by [2010 c. 13 \(N.I.\) s. 15\(2\)](#)
- s. 136(4)(ca) inserted by [2010 c. 13 \(N.I.\) s. 15\(6\)](#)
- s. 136(4A) inserted by [2010 c. 13 \(N.I.\) s. 15\(7\)](#)
- s. 146(2A) inserted by [S.I. 2015/2006 \(N.I.\) Sch. 3 para. 3\(c\)](#)
- s. 160(2)(aa) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(3\)\(a\)](#)
- s. 160(9)(da) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(3\)\(b\)](#)
- s. 167ZA(2)(ba) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(4\)\(a\)](#)
- s. 167ZA(3A) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(4\)\(b\)](#)
- s. 167ZB(2)(ba) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(5\)\(a\)](#)
- s. 167ZB(3A) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(5\)\(b\)](#)
- s. 167ZE(2A) inserted by [2015 c. 1 \(N.I.\) s. 12\(3\)\(b\)](#)
- s. 167ZE(2B) inserted by [2015 c. 1 \(N.I.\) s. 12\(3\)\(c\)](#)
- s. 167ZL(2)(ba) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(6\)\(a\)](#)
- s. 167ZL(8)(za) inserted by [S.I. 2015/2006 \(N.I.\) art. 68\(6\)\(c\)](#)
- s. 167ZU(2)(ca) inserted by [S.I. 2015/2006 \(N.I.\) art. 69\(2\)](#)

- s. 167ZU(4)(da) inserted by S.I. 2015/2006 (N.I.) art. 69(3)
- s. 167ZW(2)(ca) inserted by S.I. 2015/2006 (N.I.) art. 69(4)
- s. 167ZW(4)(da) inserted by S.I. 2015/2006 (N.I.) art. 69(5)
- s. 167ZY(5) words repealed by 2022 c. 18 (N.I.) Sch. 5
- s. 167ZZ9(2)(ba) inserted by 2022 c. 5 (N.I.) s. 4 Sch. Pt. 2 para. 37
- s. 169A inserted by S.I. 2015/2006 (N.I.) art. 68(7)
- s. 172(4B) inserted by 2012 c. 3 (N.I.) Sch. 3 para. 4(4)
- Sch. 4 Pt. 1 para. 2 repealed by 2007 c. 2 (N.I.) Sch. 8
- Sch. 4 Pt. 1 para. 2A repealed by 2007 c. 2 (N.I.) Sch. 8
- Sch. 4 Pt. 3 para. 5 sum substituted by S.I. 2024/247 reg. 7
- Sch. 4 Pt. 4 para. 1A repealed by 2007 c. 2 (N.I.) Sch. 8
- Sch. 4 Pt. 4 para. 2 repealed by 2007 c. 2 (N.I.) Sch. 8
- Sch. 4C inserted by 2008 c. 13 (N.I.) Sch. 2
- Sch. 4C para. 7(2)(c) inserted by 2012 c. 3 (N.I.) Sch. 3 para. 6(7)(b)
- Sch. 4C para. 7(3) inserted by 2012 c. 3 (N.I.) Sch. 3 para. 6(8)
- Sch. 4C para. 3 omitted by 2012 c. 3 (N.I.) Sch. 3 para. 6(3)
- Sch. 4C para. 7(2)(b) word inserted by 2012 c. 3 (N.I.) Sch. 3 para. 6(7)(a)
- Sch. 4C para. 1 words substituted by 2012 c. 3 (N.I.) Sch. 3 para. 6(2)
- Sch. 4C para. 2 words substituted by 2012 c. 3 (N.I.) Sch. 3 para. 6(2)
- Sch. 4C para. 5(b) words substituted by 2012 c. 3 (N.I.) Sch. 3 para. 6(4)
- Sch. 4C para. 6 words substituted by 2012 c. 3 (N.I.) Sch. 3 para. 6(5)
- Sch. 4C para. 7(1) words substituted by 2012 c. 3 (N.I.) Sch. 3 para. 6(4)
- Sch. 4C para. 7(1) words substituted by 2012 c. 3 (N.I.) Sch. 3 para. 6(6)
- Sch. 5 para. 000A1(4) omitted by 2012 c. 3 (N.I.) Sch. 2 para. 3(2)
- Sch. 5 para. 7(A) sum modified by S.R. 2024/69 art. 004(3)(b)
- Sch. 5 para. 7(A) sum modified by S.R. 2024/73 art. 4(4)(b)
- Sch. 11 para. 2(i) inserted by S.I. 2015/2006 (N.I.) art. 68(8)(a)
- Sch. 11 para. 9 inserted by S.I. 2015/2006 (N.I.) art. 68(8)(b)