

Regulations made by the Department for Communities and to be laid before the Assembly under section 51(3)(a) of the Pensions Act (Northern Ireland) 2015 for approval of the Assembly before the expiration of 6 months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2017 No. 203

SOCIAL SECURITY

**The Bereavement Support Payment (No.
2) Regulations (Northern Ireland) 2017**

Made - - - - 27th September 2017

Coming into operation 5th October 2017

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 29(1)(c), (2), (3), (4)(a) and (7), 31(1) and (3), and 51(6) of the Pensions Act (Northern Ireland) 2015⁽¹⁾.

These Regulations have not been referred to the Social Security Advisory Committee because they are made before the end of the period of six months beginning with the coming into operation of the provisions of the Pensions Act (Northern Ireland) 2015 under which they are made⁽²⁾.

Citation and commencement

1. These Regulations may be cited as the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2017 and come into operation on the 5th October 2017.

Period for which bereavement support payment is payable

2.—(1) The period for which bereavement support payment is payable is as follows.

(2) The period starts—

- (a) on the date the person's spouse or civil partner died, where the person claims the payment three months or less after that date; or
- (b) at the beginning of the period of three months preceding the date the person claims the payment, where the person claims the payment—
 - (i) more than three months after the date the person's spouse or civil partner died; and
 - (ii) no more than three months after the date the period finishes under paragraph (3).

(1) 2015 c.5 (N.I.). See section 1(7) of the Departments Act (Northern Ireland) 2016 (c.5 (N.I.))

(2) See section 150(5) of the Social Security Administration (Northern Ireland) Act 1992 (c.8)

(3) The period finishes at the end of the period of 18 months beginning with the day after the date the person's spouse or civil partner died.

Rate of bereavement support payment

3.—(1) The higher rate of bereavement support payment is £350 for each monthly recurrence of the day of the month on which the person's spouse or civil partner died during the period for which bereavement support payment is payable (see regulation 2).

(2) Where the person claims bereavement support payment 12 months or less after the date their spouse or civil partner died, the higher rate of bereavement support payment is £3,500 for the first month of the period for which bereavement support payment is payable.

(3) Any higher rate mentioned in paragraph (2) is in addition to any higher rate mentioned in paragraph (1).

(4) The standard rate of bereavement support payment is £100 for each monthly recurrence of the day of the month on which the person's spouse or civil partner died during the period for which bereavement support payment is payable.

(5) Where the person claims bereavement support payment 12 months or less after the date their spouse or civil partner died, the standard rate of bereavement support payment is £2,500 for the first month of the period for which bereavement support payment is payable.

(6) Any standard rate mentioned in paragraph (5) is in addition to any standard rate mentioned in paragraph (4).

(7) Where a person's spouse or civil partner died on the 31st day of a month, the monthly recurrence of the day of death is to be treated for the purposes of paragraphs (1) and (4) as falling on the last day of the month.

(8) Where a person's spouse or civil partner died on the 29th or 30th day of a month, the monthly recurrence of the day of death in February is to be treated for those purposes as falling on the last day of February.

Persons entitled to the higher rate of bereavement support payment

4.—(1) A person falling within any of paragraphs (2) to (4) is entitled to the higher rate of bereavement support payment under regulation 3(1) to (3).

(2) A person who was pregnant when their spouse or civil partner died.

(3) A person who was entitled to child benefit under section 137 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (child benefit)(3) when their spouse or civil partner died.

(4) A person who, after their spouse or civil partner died, becomes entitled to child benefit under section 137 of that Act for a child or qualifying young person who was residing with the person or their deceased spouse or civil partner immediately before the spouse or civil partner died.

(5) Paragraph (4) applies to a person whether or not they later cease to be entitled to child benefit for that child or qualifying young person.

(6) In this regulation, "child" and "qualifying young person" have the same meaning as in section 138 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(4) (definitions of "child" and "qualifying young person")

(3) 1992 c. 7; section 137 was amended by section 2 of the Child Benefit Act 2005 (c.6)

(4) Section 138(2) was substituted by section 2(2) of the Child Benefit Act 2005

Persons entitled to the standard rate of bereavement support payment

5. A person is entitled to the standard rate of bereavement support payment under regulation 3(4) to (6) if they are not entitled to the higher rate of bereavement support payment.

Prisoners who are not to be paid bereavement support payment

6.—(1) Subject to regulation 7, a person is not to be paid a bereavement support payment for any period during which the person is a prisoner⁽⁵⁾.

(2) Except where paragraph (3) applies, a person is a prisoner for the purposes of paragraph (1) where the person is—

- (a) a prisoner in Northern Ireland or elsewhere who is imprisoned or detained in legal custody in connection with, or as a result of, criminal proceedings;
- (b) a prisoner in Northern Ireland or elsewhere who is unlawfully at large;
- (c) a prisoner in Northern Ireland who is being detained—
 - (i) under Article 53 of the Mental Health (Northern Ireland) Order 1986 (removal to hospital of persons serving sentences of imprisonment, etc.)⁽⁶⁾; and
 - (ii) on or before the day which the Minister of Justice certifies to be the person's release date (if any) within the meaning of Article 56(3) of that Order (further provisions as to prisoners under sentence).

(3) Where a person outside Northern Ireland is a prisoner within paragraph (2)(a) or (b) and, in similar circumstances in Northern Ireland, the person would not have been a prisoner, the person is not a prisoner within paragraph (2)(a) or (b).

Paying bereavement support payment to persons who are remanded in custody

7.—(1) Where a person is remanded in custody for an offence, regulation 6(1) does not apply unless a sentence described in paragraph (2) is later imposed on the person for the offence.

(2) Subject to paragraph (3), the sentences described for the purposes of paragraph (1) are—

- (a) a sentence of imprisonment or detention in legal custody as a result of criminal proceedings;
- (b) a sentence of detention where the provision mentioned in regulation 6(2)(c)(i) applies;
- (c) a suspended sentence within the meaning in section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 ⁽⁷⁾(suspended sentences of imprisonment).

(3) A sentence described in paragraph (2)(a) which is imposed outside Northern Ireland is not a sentence described for the purposes of paragraph (1) if, in similar circumstances in Northern Ireland, a sentence described in paragraph (2)(a) would not have been imposed.

Territory in which a person may be entitled to bereavement support payment

8. For the purposes section 29(1)(c) of the Pensions Act (Northern Ireland) 2015 (bereavement support payment), the territory specified is any part of the Channel Islands which is not subject to an Order made under section 155 of the Social Security Administration (Northern Ireland) Act 1992 (reciprocal agreement with countries outside the United Kingdom)⁽⁸⁾.

(5) See section 31(2) of the Pensions Act (Northern Ireland) 2015

(6) S.I. 1986/595 (NI 4)

(7) 1968 c. 29 (N.I.); section 18 was amended by Article 9(1) of the Treatment of Offenders (Northern Ireland) Order 1989 (S.I. 1989/1344 (N.I. 15))

(8) Section 155 was amended by section 30 and paragraph 31 to Schedule 16 to the Pensions Act (Northern Ireland) 2015

Revocation

9. The Bereavement Support Payment Regulations (Northern Ireland) 2017(9) are revoked.

Sealed with the Official Seal of the Department for Communities on 27th September 2017

(L.S.)

Anne McCleary
A senior officer of the Department for
Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact the provisions of the Bereavement Support Payment Regulations (Northern Ireland) 2017 (S.R. 2017 No. 65) which would otherwise cease to have effect by virtue of section 51(3)(b) of the Pensions Act (Northern Ireland) 2015 (c.5).

The Pensions Act (Northern Ireland) 2015 (c.5) creates a new bereavement support payment for people whose spouse or civil partner dies on or after the date these Regulations come into operation. It replaces the existing social security benefits for the bereaved (bereavement allowance, widow's pension, widowed mother's allowance, widowed parent's allowance and bereavement payment). These Regulations set out some of the detailed rules relating to the new bereavement support payment.

Regulation 2 specifies the period for which bereavement support payment is payable. The period lasts a maximum of 18 months. If the person claims within three months of the death of their spouse or civil partner, the period starts on the date of death and lasts 18 months. If the person claims more than three months after the death, the period starts three months before the claim and ends 18 months after the date of death. Therefore, if the person claims 20 months after the date of death, the period only lasts for one month.

Regulation 3 sets the rate of bereavement support payment. There are two rates, the standard rate and the higher rate. The standard rate is £100 per month and the higher rate is £350 per month. In addition, if the person has claimed 12 months or less after the date of the death of their spouse or civil partner, there is an extra £3,500 at the higher rate for the first month and an extra £2,500 at the standard rate for the first month.

Regulation 4 lists the persons who are entitled to the higher rate. These are pregnant women and certain persons who are entitled to child benefit. It also includes persons who become entitled to child benefit after the date of death and later cease to be entitled to child benefit. A person who is not entitled to the higher rate is entitled to the standard rate (regulation 5).

Regulations 6 and 7 contain provisions about prisoners. For these purposes, prisoners are people who are imprisoned, detained in legal custody or unlawfully at large. They can be a prisoner in Northern Ireland or abroad. These prisoners may not be entitled to be paid any bereavement support payment under the Pensions Act (Northern Ireland) 2015. Regulation 6 lists the prisoners who are not entitled to be paid bereavement support payment. It provides that some prisoners abroad can be paid if they would not have been imprisoned in Northern Ireland. Regulation 7 provides that prisoners on remand are not to be paid if they later receive certain types of sentence.

Regulation 8 adds any part of the Channel Islands (currently Sark) which is not covered by an order under section 155 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (which concerns social security reciprocal agreements) to the territories in which a person must be ordinarily resident in order to be entitled to bereavement support payment. Section 29(1)(c) provides the other territory is Northern Ireland.

Regulation 9 revokes the Bereavement Support Payment Regulations (Northern Ireland) 2017 (S.R. 2017 No. 65).