

*These notes refer to the Pensions Act (Northern Ireland)
2008 (c.1) which received Royal Assent on 11 February 2008*

Pensions Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1: State pension

Entitlement to Category A and B retirement pensions

Section 1: Category A and B retirement pensions: single contribution condition

At present, the contribution conditions for basic state pension are set out in paragraph 5 of Schedule 3 to the Contributions and Benefits Act. *Section 1(3)* inserts a new paragraph 5A which sets out the new single contribution condition that will apply in certain cases from 6th April 2010.

New paragraph 5A(1) sets out the cases in which the new single contribution condition will apply, as determined by when the contributor concerned reaches state pension age:

- a person reaching state pension age on or after 6th April 2010 will be entitled to a Category A pension on satisfying that condition; and
- a spouse or civil partner of a person reaching state pension age on or after 6th April 2010 (or of a person who dies on or after that date without having reached that age) may substitute or inherit a Category B pension based on that person's national insurance record where the contributor concerned satisfied that condition.

Sub-paragraph (2) sets out the new condition which requires that, in order to qualify for a full basic state pension, the contributor concerned must have paid or been credited with Class 1, 2 or 3 national insurance contributions for at least 30 "qualifying years" in their working life. In the case of 1987-88 or a later year, it is also sufficient if the person has been credited with earnings. In addition, for each of those 30 years, the person's earnings factor must be not less than the qualifying earnings factor for that year.

Sub-paragraph (3) defines how earnings factors are to be calculated for these purposes. The earnings factor will be calculated with regard to Class 1 contributions paid or treated as paid, or earnings credited, up to the upper earnings limit, together with any Class 2 or 3 contributions for the year.

Sub-paragraph (4) enables regulations to be made which modify sub-paragraphs (2) and (3) so as not to prevent people insured under the [National Insurance Act \(Northern Ireland\) 1946 \(c. 23\)](#) or the [National Insurance Act \(Northern Ireland\) 1966 \(c. 6\)](#) who reach state pension age from 6th April 2010 qualifying for basic state pension (Category A and/or B) under the new single contribution condition.

Section 2: Category B retirement pension: removal of restriction on entitlement

Section 2(2) amends section 48A(2)(a) and (2B)(a) of the Contributions and Benefits Act to remove the restriction which currently prevents a person from becoming entitled to a Category B pension derived from their spouse's or civil partner's contributions where their spouse or civil partner has not made a claim for their Category A pension.

The effect of the amendment is to enable, subject to the relevant contribution condition being met, a married person or a person in a civil partnership to become entitled to a Category B pension from the point at which both they and their spouse or civil partner have reached state pension age, regardless of whether the spouse or civil partner has made a claim for their Category A pension.

Subsection (3) omits section 48A(5) of that Act which restricts payability of a Category B pension to periods after the spouse or civil partner's first payday for their Category A pension.

Subsection (4) introduces the consequential amendments in Part 2 of Schedule 1 and *subsection (5)* makes provision for *this section* and that Part of that Schedule to have effect from 6th April 2010.

Subsection (6) provides that the amendments to section 48A(2) and (2B) of that Act apply to a person who attains state pension age before that date as well as to a person who attains state pension age on or after that date.

Credits for basic state pension etc.

Section 3: Contributions credits for relevant parents and carers

Section 3(1) inserts a new section 23A into the Contributions and Benefits Act to replace the existing home responsibilities protection with new crediting arrangements for parents, approved foster parents and carers reaching state pension age on or after 6th April 2010.

New section 23A(1) provides that the new crediting arrangements for parents and carers apply to the following benefits:

- a Category A pension for a pensioner who reaches state pension age on or after 6th April 2010;

- a Category B pension for the spouse or civil partner of a person reaching state pension age on or after 6th April 2010 (or who dies on or after that date without reaching that age); and
- widowed parent's allowance or bereavement allowance payable to the surviving spouse of a person who dies on or after 6th April 2010.

Subsection (2) provides for the contributor to be credited with a Class 3 national insurance contribution for each week after 6th April 2010 in which they are a relevant carer as defined in subsection (3).

Subsection (3) defines a person as a relevant carer in respect of a week if they are:

- a person awarded child benefit in any part of that week for a child aged under age 12 ;
- a foster parent in any part of that week; or
- “engaged in caring” in that week.

Subsection (4) provides a regulation-making power to make entitlement to credits for foster parents and those engaged in caring to be conditional on the application process being complied with, and on the prescribed information being provided. The information which will be required is information that would confirm that a person is undertaking qualifying care.

Subsections (5) to (7) allow individuals reaching state pension age, or dying, on or after 6th April 2010 to have any complete years of home responsibilities protection, acquired before 6th April 2010, converted to an equivalent number of fully credited years for the purposes of entitlement to basic state pension and bereavement benefits. The number of home responsibilities protection years which may be converted to qualifying years will be subject to upper limits broadly along the lines of the existing rules. In the case of a Category A or B pension the limit is 22 years. In the case of widowed parent's allowance or bereavement allowance the limit is half the requisite number of years in the contributor's working life.

Subsection (8) provides that in circumstances where a week straddles two tax years, a credit for that week will be attributed to the tax year in which the week begins.

Subsection (9) enacts both definitions and regulation-making powers for the purposes of new section 23A. In particular, it enables “foster parent” to be defined in regulations.

Abolition of adult dependency increases

Section 4: Category A and C retirement pensions: abolition of adult dependency increases

Section 4(1) and (2) provides that sections 83, 84 and 85 of the Contributions and Benefits Act are to cease to apply from 6th April 2010. The Contributions and Benefits Act allows for the weekly rate of Category A or C pension to be increased in respect of a pensioner's wife (section 83), civil partner (section 83A), husband (section 84) or person having care of his or her child (section 85). Section 83A, which was intended by virtue of paragraph 2 of Schedule 2 to the 1995 Order to provide for increases in respect of spouses and civil partners to be on an equal footing from 6th April 2010, is omitted.

Subsections (5) to (7) provide that the repeal of sections 83, 84 and 85, and consequential amendments, are not to apply in certain cases before 6th April 2020. This saving will apply in relation to a person who has claimed an increase of pension under those provisions before 6th April 2010 and who immediately before that date is either:

- entitled to the increase; or
- has underlying entitlement to it by virtue of section 92 where the dependant's earnings fluctuate;

unless the person otherwise ceases to be entitled to the increase (other than as a result of a fluctuation in the dependant's earnings) or, in the case of an increase paid in respect of a wife, the wife reaches state pension age and becomes eligible for a Category B pension.

Up-rating of basic state pension and other benefits

Section 5: Up-rating of basic pension etc. and standard minimum guarantee by reference to earnings

Section 5 inserts a new section 132A into the Administration Act to provide that where the Secretary of State for Work and Pensions makes an order under section 150A of the [Social Security Administration Act 1992 \(c.5\)](#) the Department may make a corresponding order for Northern Ireland. This will allow the basic state pension and the standard minimum guarantee in state pension credit to be uprated annually in line with earnings.

Subsection (3) provides that an order made under new section 132A in relation to state pension and industrial death benefit will have effect in relation to the tax year designated by the Secretary of State for Work and Pensions under section 5(4) of the 2007 Act and subsequent tax years. Subsection (4) provides that an order made under new section 132A in relation to the standard minimum guarantee in pension credit has effect in the tax year in which this Act is passed and subsequent tax years.

Section 6: Preservation of link with prices in case of other benefits

Section 6(1) and (2) amends sections 39 and 39C of the Contributions and Benefits Act, respectively. The effect of the amendments is to empower the Department to prescribe by regulations the rate of widowed mother's allowance, widow's pension and widowed parent's allowance. The weekly amount of bereavement allowance will equal the prescribed rate of widowed parent's allowance. *Subsection (3)* provides that these amendments will have effect in relation to the tax year designated by the Secretary of State for Work and Pensions under section 5(4) of the 2007 Act and subsequent tax years.

Subsection (4) will ensure that those regulation-making powers are used to provide that the rate of widowed mother's allowance, widow's pension, widowed parent's allowance and bereavement allowance will equal the amount of the basic state pension up to the point at which the basic state pension is updated in line with earnings.

Additional pension: deemed earnings factors

Section 7: Deemed earnings factors for purposes of additional pension

Section 7(1) inserts new sections 44B and 44C into the Contributions and Benefits Act.

New section 44B(1) ensures that deemed earnings factors can only be accrued under the new provisions for tax years from 2010-11 onwards. This means that the new provisions only apply to those who have not yet reached state pension age at that time (a person cannot continue to build up entitlement to state second pension once they have reached state pension age).

Subsection (2) provides that an individual who satisfies any of the new Conditions A, B and C set out in subsections (3), (4) and (5) would be deemed to be earning at the low earnings threshold. Those Conditions are:

- Condition A which is satisfied if an individual has earnings at or above the qualifying earnings factor (52 times the lower earnings limit) but less than the low earnings threshold.
- Condition B which is satisfied if an individual has earnings at less than the qualifying earnings factor but has some of the new earnings factor credits (see commentary on new section 44C below) which may be added to their earnings to bring them up to the qualifying earnings factor.
- Condition C which is satisfied if an individual has 52 earnings factor credits by virtue of new section 44C. This would equate to the qualifying earnings factor.

Subsection (6) ensures that from the first year in which the flat rate of accrual is introduced for the additional pension ("flat rate introduction year"), the effect of section 44B will simply be to provide deemed earnings factors above the qualifying earnings factor but below the low earnings threshold, as that will be sufficient to enable them to accrue state second pension at the new weekly flat

rate. Condition A will not operate at that stage, since the persons to whom it applies will already have actual earnings over the qualifying earnings factor.

Subsection (7)(a) defines “the applicable limit”, which is the upper earnings limit until the flat rate introduction year. At that point, the applicable limit becomes the upper accrual point (see [section 10\(1\)\(b\)](#) and [\(2\)\(b\)](#)).

Subsection (7)(b) defines the low earnings threshold by reference to the definition in section 44A of the Contributions and Benefits Act.

Subsection (7)(c) makes it clear that the earnings factors described in Conditions A and B are derived from primary Class 1 employed earnings below the applicable limit.

New section 44C of the Contributions and Benefits Act applies for the purposes of Conditions B and C specified in section 44B(4) and (5) for tax years from 2010-11 onwards (subsection (1)).

Subsection (2) provides that an individual may enhance their earning factors in any tax year if, for any week in that year, the person is eligible (as specified by subsection (3)). For each week in which the person is eligible, they are entitled to an earnings factor credit equal to 1/52 of the qualifying earnings factor for that year (i.e. the lower earnings limit).

Subsection (3) specifies the persons who are eligible for earnings enhancement. They are:

- paragraph (a) - relevant carers (i.e. those entitled to credits for basic state pension purposes under new section 23A (see [section 3\(1\)](#));
- paragraph (b) - broadly, persons in receipt of carer’s allowance;
- paragraph (c) - persons to whom severe disablement allowance is payable;
- paragraph (d) - broadly, persons to whom long-term incapacity benefit is payable (incapacity benefit will be replaced by employment and support allowance under the [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\)](#)); and
- paragraph (e) - persons satisfying such conditions as may be set out in regulations. This power will allow persons receiving other benefits to be eligible for earnings enhancement. For example, this could be used to award earnings factor credits to employment support allowance recipients.

Subsection (5) ensures that an individual who has some earnings from paid contributions is only entitled to the number of earnings factor credits required to bring that person up to the qualifying earnings factor.

Subsection (6) provides that earnings factor credits which fall within a week straddling a change in tax years are attributed to the tax year in which the week begins.

Subsection (7) defines terms used in this section and in section 44B. In particular, it has the effect that one earnings factor credit is equal to 1/52 of the qualifying earnings factor (see subsection (2)).

Additional pension: simplification of accrual rates

Section 8: Additional pension: removal of accrual band from 2010-11

Section 8 amends Schedule 4A to the Contributions and Benefits Act, which contains the rules for the calculation of additional state pension. As the first step towards introducing a flat rate additional pension the Act provides for the Band 3 accrual rate (which is 20%) on earnings factors between the upper earnings threshold and the upper earnings limit currently used in calculating state second pension to be removed, starting from the 2010-11 tax year.

Subsection (2)(a) restricts the existing 3-band structure to accruals for tax years up to and including 2009-10. *Subsection (2)(b)* introduces the new two accrual band formulation for the calculation of an individual's annual surplus earnings factor from 2010-11. A surplus earnings factor for earnings between the lower earnings limit and the low earnings threshold will continue to be based on 40% of relevant earnings. However, surplus earnings factors for any subsequent earnings between the low earnings threshold and the "annual upper earnings limit" will be based on 10% of relevant earnings.

Subsections (3) and (4) replicate the provisions of *subsection (2)* in respect of the calculation of "contracted-out" state second pension entitlement and the amount available by way of top-up for members of an appropriate personal pension scheme (i.e. a contracted-out personal scheme) respectively.

Section 9: Additional pension: simplified accrual rates as from flat rate introduction year

Section 9(2) and (3) amends section 45 of the Contributions and Benefits Act to provide for the second stage in the calculation of the reformed state second pension, using the flat rate, which is set out in the new Schedule 4B to that Act.

Subsection (4) amends section 121 of that Act to define "the flat rate introduction year" - the year from which the reformed state second pension calculation will commence. It will be the tax year which is designated as such by the Department by order.

Section 10: Additional pension: upper accrual point

Section 10(1) amends section 22 of the Contributions and Benefits Act to replace the reference to "the upper earnings limit", which represents the current end point for additional pension accruals, with reference to "the applicable limit". Prior to the flat rate introduction year, the applicable limit will remain as the upper earnings limit. From the flat rate introduction year, however, the applicable limit will be the new "upper accrual point".

Subsection (2) amends section 44 of that Act in line with the provisions of *subsection (1)* to replace the upper earnings limit with the upper accrual point as the cap for earnings factors as from the beginning of the flat rate introduction year.

Subsection (3) amends section 121 of that Act to define the “upper accrual point”. This will be an amount equivalent to the upper earnings limit multiplied by 52 for the flat rate introduction year, except that there is power for the Department to specify by order a different amount should the forecast earnings growth not result in the low earnings threshold and the upper accrual point converging before 2030.

Subsections (5) and (6) allow the Department to make a corresponding order for Northern Ireland where the Secretary of State for Work and Pensions makes an order under section 12 of the 2007 Act. This order would abolish both the low earnings threshold and the upper accrual point when the two converge (expected around 2030).

Increase in state pension age

Section 11: Increase in pensionable age for men and women

Section 11 introduces changes being made to Article 123 of, and Part I of Schedule 2 to, the 1995 Order relating to the increase of pensionable age for men and women with effect from 6th April 2024.