

*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.

Part 2: Occupational and personal pension schemes

Contracting-out

Section 12: Conversion of guaranteed minimum pensions

Section 9(1) of the Pension Schemes Act requires a contracted-out scheme to make provision to pay a pension to a member from pensionable age of an amount no less than his guaranteed minimum, as specified under sections 10 to 12 of that Act. Section 13(1) of that Act contains a requirement for the payment of a guaranteed minimum pension to a widow, widower or surviving civil partner.

Section 12(1) allows a scheme to omit provision for a guaranteed minimum pension, as required under section 9(1) of that Act, where certain conditions are satisfied.

Subsection (2) similarly allows a scheme to omit provision for a survivor’s guaranteed minimum pension under section 13(1) of that Act, where the specified conditions are met.

Subsection (3) inserts new sections 20A to 20H into the Pension Schemes Act which set out the conditions which a scheme must meet in order to be relieved of the liability to pay guaranteed minimum pensions (as well as the rules applying to transfers, scheme amendments and enforcement).

Section 20A sets out definitions of terms used in sections 20A to 20H.

Section 20B specifies the conditions which a converting scheme must satisfy: actuarial equivalence of the value of members' conversion benefits with those they possessed pre-conversion; no reduction of pensions in payment; conversion benefits not to include money purchase benefits; survivors' benefits to be provided (see section 20D), and specified procedural requirements to be met (see section 20E).

Section 20C provides a power for regulations to be made concerning how actuarial equivalence is to be determined.

Section 20D sets out the detailed requirement for the scheme to provide conversion benefits which include provision for pension to be paid to a widow, widower or surviving civil partner following the death of the member.

Section 20E sets out requirements in relation to obtaining the agreement of the scheme's sponsoring employer, and providing information to members and survivors and to the Commissioners for Her Majesty's Revenue and Customs about the guaranteed minimum pension conversion.

Section 20F provides a power for regulations to be made concerning conditions for transfers of pension rights out of a guaranteed minimum pension-converted scheme and provides that the trustees of a scheme which is not guaranteed minimum pension-converted are allowed, for the purpose of transferring a member's rights out of the scheme, to adjust the member's guaranteed cash equivalent to reflect rights that would have accrued on guaranteed minimum pension conversion, providing the member consents.

Section 20G provides powers for trustees to amend schemes to facilitate guaranteed minimum pension conversion and makes it clear that trustees may adjust rights under a scheme which is being wound up in order to reflect what would have happened on guaranteed minimum pension conversion.

Section 20H provides powers for the Pensions Regulator in respect of enforcing the conditions for guaranteed minimum pension conversion, and provides for the power under Article 10 of the 1995 Order (civil penalties) to apply to trustees undertaking a guaranteed minimum pension conversion.

Subsection (5) amends section 43 of the Pension Schemes Act in order to make clear that a person who has had his guaranteed minimum pension converted shall continue to be treated as entitled to that guaranteed minimum pension for the purpose of calculating entitlement to additional state pension (the "contracted-out deduction").

Subsections (8) and (9) ensure the continuation of the partial protection against inflation of guaranteed minimum pension increases included in the payments of state retirement pension where a person has their guaranteed minimum pension converted.

Subsection (10) concerns the situation where a person with an increase to his guaranteed minimum pension such as is mentioned in *subsection (8)* has his guaranteed minimum pension converted prior to his death. This subsection ensures that his widow, widower or surviving civil partner will continue to have entitlement to certain guaranteed minimum pension additions awarded with the survivor's state retirement pension, and that these additions will be protected against inflation.

Subsection (12) provides that regulations made under the new section 20B(5) are subject to the confirmatory resolution procedure in the Assembly.

Section 13: Abolition of contracting-out for defined contribution pension schemes

Section 13(1) provides that contracting-out certificates for money purchase occupational pension schemes and appropriate scheme certificates (i.e. contracting-out certificates for personal pension schemes) will be cancelled from the date that this subsection is brought into operation ("the abolition date").

Subsections (4) to (9) contain provision regarding regulations which may be made under *this section*. Regulations which amend or repeal any relevant statutory provision (as defined in *subsection (13)*) are subject to the confirmatory procedure in the Assembly. Other regulations are subject to the negative resolution procedure unless they are made together with regulations subject to confirmatory procedure (*subsections (9) and (10)*).

Dispute resolution

Section 14: Dispute resolution arrangements

Section 14 amends Article 250 of the 2005 Order which substitutes Articles 50 to 50B of the 1995 Order for Article 50 of that Order. Article 250 has not yet been brought into operation.

Subsection (4) inserts paragraph (4A) into the new Article 50 to provide trustees or managers of an occupational pension scheme with the option of adopting two-stage dispute resolution arrangements. Schemes must provide for disputes to be considered by the trustees or managers, but the trustees or managers can choose for disputes to be considered by another person first. Any decision by the trustees or managers will confirm or replace any first-stage decision.

Subsection (5) inserts paragraph (5A) into the new Article 50 to ensure that the requirements of new Article 50(5) apply equally to any first-stage arrangements. This means any decision on an application made under a discretionary first stage must be made and notified to the applicant within a reasonable period.

Subsections (6) and (7) make minor amendments to make clear that the requirements of Article 50B relating to the dispute resolution procedure apply only to applications to the trustees or managers, and not any discretionary first-stage process.

Subsection (8) substitutes a new version of Article 50B(3) which replaces references to a fixed six-month time limit for applications to the trustees or managers for certain applicants with reference to a reasonable period. This will give the trustees or managers the flexibility to adopt time limits to suit either one or two-stage arrangements.

Subsection (10) inserts a new paragraph (4A) into Article 50B to make clear that a decision by the trustees or managers can be made by one or more of the trustees on behalf of the whole board.

Actuarial Guidance

Section 15: Removal of Department's role in approving actuarial guidance

Section 15 introduces amendments detailed in Schedule 5 relating to the removal of powers conferred on the Department to approve actuarial guidance.

Part 3: Personal Accounts Delivery Authority

Section 16: Initial function of the Personal Accounts Delivery Authority

The Personal Accounts Delivery Authority (“the Authority”) is a body established by section 20 of the 2007 Act. It may do what it thinks appropriate to prepare for the implementation of, or for advising on the modification of, any relevant proposals about personal accounts.

In *this section* the phrase “advising on the modification of any relevant proposals about personal accounts” relates to the Authority’s advisory role in helping to understand the commercial and operational implications on implementation of policy proposals. This could amount to suggesting additions, omissions or variations in the proposals to reflect, for example, industry best practice.

Subsection (2) defines the meaning of “relevant proposals” as being any proposals made by the Department or Secretary of State for Work and Pensions connected with the establishment of a national low-cost portable pensions savings scheme, and any additional proposals that relate to this subject matter, or relate to matters that are incidental or supplemental to the proposals or to consequential or transitional matters. Proposals are to be considered relevant whether or not the Assembly or Parliament has given the approval on which their implementation would depend. However, by virtue of *subsection (4)* the Authority will not be able to implement any proposals requiring the approval of the Assembly or Parliament in advance of approval being given.

Subsection (3) provides the Authority with incidental powers in connection with the discharge of its main function.

Section 17: Management of the Authority

Section 17 places the Authority under a duty, when managing its affairs, to have regard to such guidance concerning the management of public bodies as it

considers appropriate and, subject to such guidance and insofar as it is applicable to the Authority, to generally accepted principles of good corporate governance.

Guidance on the running of public bodies includes that provided by the Cabinet Office, for example the *Guidance on Codes of Practice for Board Members of Public Bodies* (October 2004). Principles of good corporate governance are currently set out in the *Combined Code* published by the Financial Reporting Council in June 2006.

Part 4: General

Section 18: Review of operation of Act

Section 18 places a statutory obligation on the Department to report to the Assembly on the operation of the Act. This creates a formal mechanism by which the Department may be held to account for the way in which the Act's provisions have been implemented or, in the case of those not yet in force by the latest date for the report (end of 2014), for the preparations for implementation. Subsection (2) allows the Department to make further such reports and subsection (3) provides that any report must be laid before the Assembly.

Section 19: Consequential etc. provision, repeals and revocations

Section 19(1) provides the Department with the power to make provision for the purpose of giving full effect to the Act. Subsections (2) to (6) detail when the repeals and revocations in Schedule 6 come into effect. Subsection (8) amends Article 17 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 to add the Act to the list of enactments covered by that provision.

Section 20: Interpretation

Section 20 lists definitions used throughout the Act.

Section 21: Commencement

Section 21 provides that certain provisions in the Act shall come into operation on a day appointed by the Department.