



Social Security Act 1975

1975 CHAPTER 14

PART II

BENEFIT AND ITS ADMINISTRATION

CHAPTER II

NON-CONTRIBUTORY BENEFITS

34 Descriptions of non-contributory benefits

- (1) Non-contributory benefits under this Chapter are of the following descriptions, namely—
- (a) attendance allowance;
 - (b) non-contributory invalidity pension (with increase for adult and child dependants);
 - (c) invalid care allowance (with increase for adult and child dependants);
 - (d) guardian's allowance;
 - (e) retirement pensions of the following categories—
 - Category C, payable to certain persons who were over pensionable age on 5th July 1948 and their wives and widows (with increase for adult and child dependants), and
 - Category D, payable to persons over the age of 80;
 - (f) age addition payable, in the case of persons over the age of 80, by way of increase of a retirement pension of any category or of some other pension or allowance from the Secretary of State.
- (2) The rates of benefits given in this Chapter and the other figures in this Part which affect those rates or the entitlement of any beneficiary shall, to the extent provided for by sections 124 to 126 below be subject to alteration by up-rating orders made by the Secretary of State from year to year.

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35 Attendance allowance

- (1) A person shall be entitled to an attendance allowance if he satisfies prescribed conditions as to residence or presence in Great Britain and either—
 - (a) he is so severely disabled physically or mentally that, by day, he requires from another person either—
 - (i) frequent attention throughout the day in connection with his bodily functions, or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
 - (b) he is so severely disabled physically or mentally that, at night, he requires from another person either—
 - (i) prolonged or repeated attention during the night in connection with his bodily functions, or
 - (ii) continual supervision throughout the night in order to avoid substantial danger to himself or others.
- (2) Subject to the following provisions of this section, the period for which an attendance allowance is payable to any person shall be that specified in a certificate issued in respect of him by the Attendance Allowance Board as being—
 - (a) a period throughout which he has satisfied or is likely to satisfy the condition mentioned in subsection (1)(a) above or that mentioned in (1)(b), or both ; and
 - (b) a period immediately preceded by one of not less than 6 months throughout which he satisfied, or is likely to satisfy, one or both of those conditions.
- (3) The weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in relation thereto in Schedule 4, Part III, paragraph 1, if the certificate states both as regards that period and as regards the preceding 6 months that he has satisfied or is likely to satisfy both those conditions, and shall be the lower rate so specified if the certificate does not so state.
- (4) An attendance allowance shall not be payable to a person for any period preceding the date on which he makes a claim for it; but except in so far as regulations otherwise provide—
 - (a) a claim for an attendance allowance may be made during the period of 6 months mentioned in subsection (2)(b) above, and an award may be made in pursuance of the claim subject to the condition that throughout that period the person to whom the claim relates satisfies the conditions there mentioned or, if the award is at the lower rate, one of those conditions; and
 - (b) an award so made may be reviewed if at any time it is found that during the period of the award or the interval between the making of the award and the beginning of that period the conditions so mentioned were at some time not both satisfied or, in the case of an award at the lower rate, were at some time not either of them satisfied.
- (5) Regulations may provide that subsections (1) to (4) above, and any other provision of this Act so far as the provision relates to any of those subsections, shall have effect, in relation to any severely disabled person who is under the age of 16, subject to such modifications as may be prescribed; but nothing in this subsection authorises any increase in the rate of an attendance allowance.
- (6) Regulations may provide that an attendance allowance shall not be payable in respect of a person for any period when he is a person for whom accommodation is provided—

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- (a) in pursuance of Part III of the National Assistance Act 1948, section 12 of the Health Services and Public Health Act 1968 or Part IV of the Social Work (Scotland) Act 1968 ; or
- (b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

36 Non-contributory invalidity pension

- (1) Subject to the provisions of this section, a person shall be entitled to a non-contributory invalidity pension for any day on which he is incapable of work, if he has been so incapable for a period of not less than 196 consecutive days ending immediately before that day.
- (2) A person shall not be entitled to such a pension if he is under the age of 16 or receiving full-time education; and a woman shall not be so entitled if—
 - (a) she is married and either—
 - (i) she is residing with her husband, or
 - (ii) he is contributing to her maintenance at a weekly rate not less than the weekly rate of such a pension; or
 - (b) she is cohabiting with a man as his wife, except where she is incapable of performing normal household duties.
- (3) A person shall not be entitled to such a pension unless he satisfies prescribed conditions as to residence or presence in Great Britain.
- (4) Subject to subsection (5) below, a person who has attained pensionable age shall not be entitled to a pension under this section unless he was so entitled (or is treated by regulations as having been so entitled) immediately before attaining that age.
- (5) Regulations may make provision whereby a person who has attained retiring age (meaning 70 in the case of a man and 65 in the case of a woman) and was entitled to a pension under this section immediately before attaining that age continues to be so entitled notwithstanding that he is not incapable of work or no longer satisfies the requirements of subsection (1) above as to the period for which a person must have been incapable of work.
- (6) Regulations may make provision whereby, in the case of a person who has previously been entitled to a pension under this section, the requirements of subsection (1) above as to the period for which a person must have been incapable of work may be satisfied by reference to a period not ending immediately before the day there mentioned, or not consisting of consecutive days.
- (7) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as incapable of work, as incapable of performing normal household duties or as receiving full-time education.
- (8) A pension under this section shall be payable at the weekly rate specified in relation thereto in Schedule 4, Part III, paragraph 2.
- (9) Regulations may provide for disqualifying a person for receiving non-contributory invalidity pension for such period not exceeding 6 weeks as may be determined in accordance with sections 97 to 104 of this Act if—

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- (a) he has become incapable of work through his own misconduct; or
- (b) he fails without good cause to attend for, or to submit himself to, such medical or other examination or treatment as may be required in accordance with the regulations, or to observe any prescribed rules of behaviour.

37 Invalid care allowance

- (1) Subject to the provisions of this section, a person shall be entitled to an invalid care allowance for any day on which he is engaged in caring for a severely disabled person if—
 - (a) he is regularly and substantially engaged in caring for that person; and
 - (b) he is not gainfully employed ; and
 - (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.
- (2) In this section, " severely disabled person " means a person in respect of whom there is payable either an attendance allowance or such other payment out of public funds on account of his need for attendance as may be prescribed.
- (3) A person shall not be entitled to an allowance under this section if he is under the age of 16 or receiving full-time education ; and a woman shall not be entitled to any such allowance if—
 - (a) she is married and either—
 - (i) she is residing with her husband, or
 - (ii) he is contributing to her maintenance at a weekly rate not less than the weekly rate of such an allowance; or
 - (b) she is cohabiting with a man as his wife.
- (4) A person shall not be entitled to an allowance under this section unless he satisfies prescribed conditions as to residence or presence in Great Britain.
- (5) Subject to subsection (6) below, a person who has attained pensionable age shall not be entitled to an allowance under this section unless he was so entitled (or is treated by regulations as having been so entitled) immediately before attaining that age.
- (6) Regulations may make provision whereby a person who has attained retiring age (meaning 70 in the case of a man and 65 in the case of a woman), and was entitled to an allowance under this section immediately before attaining that age, continues so be so entitled notwithstanding that he is not caring for a severely disabled person or no longer satisfies the requirements of subsection (1)(a) or (b) above.
- (7) No person shall be entitled for the same day to more than one allowance under this section; and where, apart from this subsection, two or more persons would be entitled for the same day to such an allowance in respect of the same severely disabled person, one of them only shall be entitled, being such one of them as they may jointly elect in the prescribed manner or as may, in default of such election, be determined by the Secretary of State in his discretion.
- (8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education.

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- (9) An invalid care allowance shall be payable at the weekly rate specified in relation thereto in Schedule 4, Part III, paragraph 3.

38 Guardian's allowance

- (1) Subject to the provisions of this Act (and in particular to those of section 43 imposing limitations on payment of benefit in respect of children), a person shall be entitled to a guardian's allowance at the weekly rate specified in relation thereto in Schedule 4, Part III, paragraph 4, in respect of a child of his family, where the circumstances are any of those specified in subsection (2) below.
- (2) The circumstances referred to in subsection (1) are—
- (a) that both of the child's parents are dead; or
 - (b) that one of the child's parents is dead and the person claiming a guardian's allowance shows that he was at the date of the death unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent; or
 - (c) that one of the child's parents is dead and the other is in prison.
- (3) There shall be no entitlement to a guardian's allowance in respect of a child unless at least one of the child's parents satisfies, or immediately before his death satisfied, such conditions as may be prescribed as to nationality, residence, place of birth or other matters.
- (4) Regulations—
- (a) may modify subsection (2) or (3) above in relation to cases in which a child has been adopted or is illegitimate, or the marriage of a child's parents has been terminated by divorce;
 - (b) shall prescribe the circumstances in which a person is to be treated for the purposes of this section as being in prison (by reference to his undergoing a sentence of imprisonment for life or of a prescribed minimum duration, or to his being in legal custody in prescribed circumstances); and
 - (c) may, for cases where entitlement to a guardian's allowance is established by reference to a person being in prison, provide—
 - (i) for requiring him to pay to the National Insurance Fund sums paid by way of a guardian's allowance;
 - (ii) for suspending payment of an allowance where a conviction, sentence or order of a court is subject to appeal, and for matters arising from the decision of an appeal;
 - (iii) for the cases in which a child is to be treated as a child of the claimant's family; and
 - (iv) for reducing the rate of an allowance in cases where the person in prison contributes to the cost of providing for the child.
- (5) In the case of a child who is a child of the family of a man and his wife, the wife only shall be entitled to a guardian's allowance; but subsections (2) to (6) of section 4 of the Family Allowances Act (which specify the persons who are to receive an allowance under that Act payable in respect of such a child) shall apply in relation to a guardian's allowance as they apply in relation to an allowance under that Act.
- (6) No person shall be entitled to a guardian's allowance in respect of a child of which he or she is the parent.

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39 Retirement benefits for the aged

- (1) Subject to the provisions of this Act—
- (a) a person who was over pensionable age on 5th July 1948 and satisfies such conditions as may be prescribed shall be entitled to a Category C retirement pension at the appropriate weekly rate;
 - (b) a woman whose husband is entitled to a Category C retirement pension shall, if she is over pensionable age and has retired from regular employment and satisfies such other conditions as may be prescribed, be entitled to such a pension at the appropriate weekly rate; and
 - (c) a person who is over the age of 80 and satisfies such conditions as may be prescribed shall be entitled to a Category D retirement pension at the appropriate weekly rate if—
 - (i) he is not entitled to a Category A, Category B or Category C retirement pension; or
 - (ii) he is entitled to such a pension but it is payable at a weekly rate which, disregarding any increase (for dependants) under section 41, 45 or 46, is less than the appropriate weekly rate.
- (2) The appropriate weekly rate of a Category C or Category D retirement pension—
- (a) shall be the lower rate specified in relation thereto in Schedule 4, Part III, paragraph 5, where—
 - (i) the pensioner is a married woman, and
 - (ii) she has not, at any time since she became entitled to her pension, ceased to be a married woman; and
 - (b) shall be the higher rate so specified in any other case.
- (3) A Category C or Category D retirement pension shall be payable for the pensioner's life.
- (4) Regulations may provide for the payment—
- (a) to a widow whose husband was over pensionable age on 5th July 1948 ; or
 - (b) to a woman whose marriage to a husband who was over pensionable age on that date was terminated otherwise than by his death,
- of a Category C retirement pension, or of benefit corresponding to a widow's pension or a widowed mother's allowance; and any such pension or benefit shall be at the prescribed rate.

40 Age addition

- (1) A person who is over the age of 80 and entitled to a retirement pension of any category shall be entitled to an increase of the pension, known as age addition.
- (2) Where a person is in receipt of a pension or allowance payable by the Secretary of State by virtue of any prescribed enactment or instrument (whether passed or made before or after this Act) and—
- (a) he is over the age of 80; and
 - (b) he fulfils such other conditions as may be prescribed,
- he shall be entitled to an increase of that pension or allowance, also known as age addition.

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- (3) Age addition shall be payable for the life of the person entitled, at the weekly rate specified in relation thereto in Schedule 4, Part III, paragraph 6.