

# WELFARE REFORM AND PENSIONS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY

#### *Commentary*

#### **Section 54: Bereavement Payment**

*Subsection (1)* replaces the Widow's Payment with a new benefit, which will be payable to both men and women – to be known as the "Bereavement Payment".

Section 36 of the Contributions and Benefits Act which provided for the Widow's Payment is therefore substituted by a *new section*, which refers to "person" and "spouse" rather than "woman" and "husband". It enables the Bereavement Payment to be paid to men or women whose spouse dies on or after the date on which the provision comes into force ("the appointed day").

*The inserted section 36(1)-(2)* set out the entitlement conditions for the Bereavement Payment. These duplicate the existing conditions for a Widow's Payment.

*The inserted section 36(2)* preserves the principle that prevented a widow from receiving a Widow's Payment if, at the time of her husband's death, she was living together with another man as husband and wife.

That same principle will apply with Bereavement Payment where the surviving spouse is, at the time of the late spouse's death, living together as husband and wife with a person of the opposite sex. There is no definition of "living together as husband and wife" in legislation, but the concept has been well developed in social security case law.

*Subsection (2)* replaces Part II of Schedule 4 to the Contributions and Benefits Act, so that the amount of the Bereavement payment will be £2,000. Widow's Payment is worth £1,000.

#### **Section 55: New allowances for bereaved spouses**

This section introduces two new benefits for bereaved spouses – Widowed Parent's Allowance and Bereavement Allowance. It does so by inserting four new sections into the Contributions and Benefits Act: sections 36A, 39A, 39B and 39C (the current benefits are defined at sections 37-40). All references below are to sections of the Contributions and Benefits Act.

*The inserted section 36A* sets out when the new benefits, and when the existing scheme, should apply. It provides that:

as a transitional provision, the existing arrangements will continue to apply for all people whose spouses die *before* "the appointed day" (when the new benefits come into force):

If they are women, they will still be able to claim Widowed Mother's Allowance, Widow's Pension and Incapacity Benefit (on the basis of their husbands' contributions), under the current rules. Then, if a widow is aged 45 or over when her Widowed Mother's

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Allowance ends, she will still be entitled to receive Widow's Pension and/or Incapacity Benefit. If she is under 45, she will still be entitled to receive Incapacity Benefit;

If they are men, they will still be entitled to Incapacity Benefit on the basis of their wives' contributions (as provided by the existing section 41), if they meet the qualifying conditions;

The one difference is that existing widowed fathers will be entitled to the new Widowed Parent's Allowance, if they satisfy the qualifying conditions on the appointed day.

the two new benefits (defined in the new sections 39A, 39B and 39C) will apply for all people whose spouses die *on or after* the appointed day. These people will not be entitled to Incapacity Benefit on the basis of their spouses' contributions.

### **Widowed Parent's Allowance**

The *inserted section 39A* provides for the Widowed Parent's Allowance. It reproduces the rules that currently apply to Widowed Mother's Allowance (set out in section 37), but extends the new benefit to widowers.

### **Bereavement Allowance**

The *inserted section 39B* provides for the Bereavement Allowance. Most of the entitlement conditions of Widow's Pension (in section 38) are retained, but with the following exceptions:

the benefit is available for widowers who meet the conditions of entitlement;

the benefit is only payable for a maximum period of 52 weeks, beginning with the date of death;

no additional pension (State Earnings Related Pension – SERPS) will be paid with the benefit (though note the provisions for SERPS in Retirement Pension for widows and widowers in section 56).

The *inserted section 39C* provides for the rates at which the two new benefits are payable.

Under *subsection (1)*, the weekly rate of Widowed Parent's Allowance will be calculated in the same way as for Widowed Mother's Allowance now.

This means that the inclusion of an additional pension (SERPS) will continue to be made on the basis of existing legislation. The 50% reduction in the value of SERPS from April 2000—which was provided for in the Social Security Act 1986—will remain unchanged (*subsection (4)*). However, see commentary on section 52.

*Subsection (2)* makes provision for the weekly rate of a Bereavement Allowance. It is to be paid at a basic rate only with no additional pension.

*Subsection (5)* preserves for Bereavement Allowance the rules which vary the amount of benefit according to the age of the widow when her husband dies or when her entitlement to Widowed Mother's Allowance ends.

There is a 7% deduction from the full rate of benefit for each year she is aged under 55 at that date—and, once determined, the amount stays fixed. The same rule applies to all surviving spouses for Bereavement Allowance.

### **Section 56: Additional Pension**

Section 56 inserts a new section – section 48BB – into the Contributions and Benefits Act. This provides for the amount of Additional Pension (State Earnings Related Pension – SERPS) that widows and widowers should receive when they reach pensionable age, based on their spouses' contributions.

Legislation is already in place to ensure that those who are widowed, whether men or women, are able to use “substitution” provisions to help them achieve a basic Retirement Pension if their own contribution record during the period of marriage is inferior to that of their spouse. Section 48 of the Contributions and Benefits Act provides for circumstances in which a former spouse’s contributions can be treated as if they were those of the pensioner, and section 52 contains additional provision for surviving spouses.

Under the existing scheme, widows who receive Widowed Mother’s Allowance or Widow’s Pension are paid an amount of Additional Pension with their weekly benefit, based on their husbands’ contribution records. This benefit continues until they reach pensionable age. They are then entitled to a “Category B” Retirement Pension (i.e. a pension based on their husband’s National Insurance contributions) paid at the same level.

The new scheme is different, in that Bereavement Allowance is to be paid for 52 weeks only, and without any Additional Pension (see commentary on section 55 of this Act). So, unless they are still receiving Bereavement Allowance or Widowed Parent’s Allowance when they reach pensionable age, future widows and widowers will have a period before retirement when they are not receiving any bereavement benefit or Additional Pension.

But the intention is that, once they do reach pensionable age, and provided they have not remarried, they should have the same amount of Category B Retirement Pension *as if they had* been receiving a benefit with Additional Pension continuously since their date of bereavement. That is to say, their Retirement Pension should be exactly the same as if they had been claiming under the current system. Therefore, this section provides for the same entitlement rules, but by reference to the new bereavement benefits.

#### **Commentary: the inserted section 48BB**

The *inserted subsections (1) and (2)* relate to widows and widowers who are still receiving Widowed Parent’s Allowance when they reach pensionable age. The subsections entitle them to a Category B Retirement Pension, on the basis of their spouses’ contributions, at the same weekly level as their Widowed Parent’s Allowance.

The *inserted subsections (3) and (4)* relate to widows and widowers who were previously entitled to Bereavement Allowance or were aged over 45 when they stopped being entitled to Widowed Parent’s Allowance. When they reach pensionable age, they will also be entitled to a Category B Retirement Pension on the basis of their spouses’ contributions—calculated by the same rules as if they had been receiving Widow’s Pension. The *inserted subsections (5) to (8)* provide these rules.

The *inserted subsection (7)* corresponds to the new section 39C(4) inserted by section 55 (above), and provides the 50% reduction in Additional Pension for cases where the spouse dies after 5<sup>th</sup> April 2000 (see also commentary on section 52 of this Act).

The *inserted subsections (8) and (9)* contain the same age-related calculation as new section 39C(5). They reduce the amount of Additional Pension by 7% for every year the bereaved spouse was aged below 55 either

when their spouse died and they became entitled to Bereavement Allowance; or

when they stopped being entitled to Widowed Parent’s Allowance.

In both cases they must have been at least 45 years old to qualify (so the maximum reduction is by 10 years, or 70%).

The *inserted subsection (10)* raises the amount of Additional Pension to the same level as if it had been increased by the annual uprating order every year since the date of the spouse’s death.

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***Schedule 8: Consequential amendments***

Part I of Schedule 8 makes the necessary amendments to the Contributions and Benefits Act, the Administration Act, the Pensions Schemes Act 1993, and the Income and Corporation Taxes Act 1988, so that they refer correctly to the new bereavement benefits.

***Sections 57-58: Work-Focused Interviews***

***Section 57: Work-focused interviews***

This section supports the creation of a single entry-point into the benefit system, focused on work and the help needed to enable people to return to the labour market. It does this by giving powers to require claimants of certain social security benefits to take part in work-focused interviews. It provides for the circumstances in which work-focused interviews may be required and sets out what will happen if people do not take part in the interviews.