# Contents

# Part 1: Entitlement

## Description of Scheme

**Widow's, Widower's or Surviving Civil Partner's Contributory Pension** is a social insurance based payment made on the death of a spouse or civil partner. It is not means-tested so entitlement is not affected by other income a person may have such as earnings, savings or an occupational pension.

The pension was introduced for widows on 1 January 1936, extended to widowers on 28 October 1994 and extended to surviving civil partners on 1 January 2011.

For the purpose of this document, any reference to ‘pension’ means a Widow’s, Widower’s or Surviving Civil Partner’s Contributory Pension, unless otherwise stated.

## Legislation

The legislative provisions relating to Widow's, Widower's or Surviving Civil Partner's Contributory Pension are contained in Chapter 18 of Part 2 of the Social Welfare (Consolidation) Act, 2005 as amended, and in Chapter 10 of Part II of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007, (Statutory Instrument 142 of 2007), as amended.

Appendix 1 lists the main legislative provisions, where relevant, in more detail.

The principal EU legislation governing social security for migrant workers is Regulation (EC) 883/04. Chapter 5 of this Regulation contains the provisions for old age and survivor’s pensions.

This Regulation is accompanied by implementing Regulation (EC) 987/09, which covers the practical implementation of Regulation (EC) 883/04, dealing with such matters as competent national authorities, administrative formalities, etc.

The legislation governing Ireland’s Bilateral Agreements is listed in Appendix 2.

## Administration

The pension is administered by Social Welfare Services, College Road, Sligo.

### Qualifying conditions

A person must:

- be widowed or a surviving civil partner **or**
- be divorced from their late spouse before their spouse's death and not remarried **or**
- have had their civil partnership dissolved before their partner’s death and have not entered into a new civil partnership

**and**

- not be cohabiting with another person as a couple

**and**

- satisfy certain social insurance contribution conditions.

A person may automatically qualify for a Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension if their late spouse or civil partner was getting State Pension (Contributory), which included an increase for a dependent spouse or civil partner (or would have included an increase but for the fact that they were getting State Pension (Non-Contributory), Blind Pension or Carer's Allowance).

There is no automatic qualification if the late spouse or civil partner was getting a mixed insurance pro-rata, EU/Bilateral Agreement pro-rata or Pre-53 pension.

If there is no automatic entitlement to pension, then there are a number of social insurance (PRSI) contribution conditions which must be satisfied.

## Widow, Widower or Surviving Civil Partner

Where a person has been married or registered as a civil partner more than once, the condition of being widowed or a surviving civil partner relates only to the last spouse of the person.

## Divorce

A person who is divorced from their late spouse and has not remarried or registered as a civil partner with another person, will qualify for pension, provided the divorce is recognised as valid in the State and all other qualifying conditions are satisfied.

A person who divorced their former spouse before 21 April 1997 will not qualify for pension for any period before that date. This was the date on which Social Welfare legislation was changed to ensure that a spouse would not be disadvantaged in terms of their social welfare entitlements as a result of their legal status being changed from married, separated or deserted to divorced. The relevant legislation is contained in Statutory Instrument No. 194 of 1997.

## Dissolved Civil Partnership

Similarly, a person whose civil partnership was dissolved before 1 January 2011 will not qualify for pension for any period before that date.

## Annulment

Widow's, Widower's or Surviving Civil Partner's Contributory Pension is not payable to a person whose marriage or civil partnership has been annulled in civil law by the State. Where a State annulment has occurred, the marriage or civil partnership is deemed never to have taken place.

A church annulment does not affect the status of a widow or widower for pension purposes.

## Social insurance contribution conditions

A Widow's, Widower's or Surviving Civil Partner's Contributory Pension is based on the social insurance record of either the person concerned or their late spouse or civil partner. The two records cannot be combined when calculating entitlement. All contributions must have been made before the death of the spouse or civil partner.

PRSI contribution classes A, B, C, D, E, F, G, H, P, N and S are reckonable for this pension. Voluntary contributions are also taken into account.

The contribution conditions to be satisfied by whichever social insurance record is being used are as follows:

a. 260 weeks of employment or self-employment contributions must be paid before either the date the spouse or civil partner died or the date of their 66th birthday, whichever is earlier (this is called the 'relevant date')

**and**

b. there must be a yearly average of either
   - 39 or more **paid or credited** social insurance contributions in the 3 or 5 tax years before the year of the relevant date (this is called the Short Yearly Average). This gives entitlement to a maximum rate pension.

   **or**

   - 24 or more **paid or credited** social insurance contributions from the year of first entry into social insurance until either the year of the relevant date (this is called the Long Yearly Average). The rate of pension payable in these cases depends on the yearly average.

**Note:** In cases where the date of death of spouse or civil partner is before 27 December 2013, only 156 weeks of employment or self-employment contributions are required to satisfy condition a. above.

### *Additional information on reckonable contributions*

Before 1953, coverage for social insurance-type benefits was provided by way of three different types of contributions which gave specific entitlement only to the benefits of the schemes under which they were paid, namely:

- Widow's and Orphan's Insurance, which provided cover for Contributory Widow's and Orphan's Pensions, and
- National Health Insurance, which provided cover for Sickness Benefit, Maternity Benefit and Disablement Benefit,
- Unemployment Insurance, which provided cover for Unemployment Benefit.

The Social Welfare Act, 1952 replaced these separate schemes with a single, co-ordinated social insurance scheme.

The following contributions are reckonable for Widow's, Widower's or Surviving Civil Partner's Contributory Pension:

- Social insurance contributions paid under the National Health Insurance Acts (before 1936) can be used to satisfy the 260 paid contributions condition only.
- Social insurance contributions paid and credited under the Widow's and Orphan's Pensions Act (1935 to 1952); every two contributions prior to 1953 are counted as three, and any odd contribution is counted as two.
- Most social insurance contributions paid and credited between 1953 and 1979.

- From April 1979, PRSI contributions classes A, B, C, D, E, F, G, H, N and S. (PRSI was introduced in April 1979 and Class S PRSI was introduced for self-employed people in April 1988)
- Voluntary Contributions can only be used to satisfy the yearly average condition.
- Credits - credited contributions are awarded by the Department in certain circumstances, generally in respect of periods of unemployment and illness and can only be used to satisfy the yearly average condition.

(Because contributions paid before 1953 under the Widows and Orphans Insurance scheme are reckonable for pension, the calculation of the yearly average is made from the year in which the insured person entered social insurance.)

See separate guidelines "PRSI – Voluntary Contributions" and "Credited Social insurance Contributions" for more information.

**Rounding up:** In calculating the yearly average, a fraction of a whole number consisting of one-half or more is rounded up to the nearest whole number. For example, 19.5 is rounded up to 20, 47.5 is rounded up to 48.

### *Self-employed insurance contributions*

If entitlement to pension is based on the social insurance record of someone who started paying Class S PRSI contributions on 6 April 1988 (the date of introduction of PRSI for the self-employed) then entitlement can be calculated based on the social insurance record from that date (even if there are employment contributions paid before that date).

In these cases, at least one year's Class S PRSI must have been paid before the relevant date and all outstanding Class S PRSI liabilities must be paid before a pension can be awarded.

## Death Benefit under the Occupational Injuries Benefits Scheme

If a person's spouse or civil partner died as a result of an accident at work or from an occupational disease there is a separate pension payable. This is a Death Benefit which is payable at a higher rate than the Widow's, Widower's or Surviving Civil Partner's Contributory Pension. However, both are not paid at the same time.

See separate guideline "Occupational Injuries Benefit – Death Benefit" for more information.

## Payments Rates Structure

The personal standard rate of pension depends on the yearly average.

If, for the three to five years before the relevant date, the yearly average is greater than or equal to 39, the person qualifies for maximum rate pension

If, from the date of entry into social insurance, the yearly average is greater than or equal to 48, the person qualifies for maximum rate pension.

If, from the date of entry into social insurance, the yearly average is between 24 and 37, inclusive, the person qualifies for a reduced rate pension.

If, from the date of entry into social insurance, the yearly average is between 5 and 23, inclusive, the person may qualify for a special partial pension, but only if they satisfy the conditions described below in "Special Partial Pension".

## Special Partial Pension

Before 1 April 1974, non-manual employees were not liable for payment of social insurance contributions where their salary was over a certain amount, called the “insurable limit”. This limit was abolished on 1 April 1974. (See below for more information.)

In cases where

i) a widow, widower or surviving civil partner or their late spouse or civil partner paid social insurance contributions early in their career **and**
ii) they resumed paying social insurance contributions on 1 April 1974 **and**
iii) the yearly average is too low to qualify them for a standard rate pension,

the person may qualify for a partial pension if they have a yearly average of at least 5 contributions a year.

This Special Partial Pension was introduced on 14 October 1988.

The other qualifying conditions for payment of this pension are the same as for the standard rate pension, except that a partial pension is paid where the yearly average is between 5 and 23.

### Insurable limit

The insurable limit in the pre-1974 era applied to non-manual workers whose annual income exceeded the following amounts:

- from 15/07/1912 - £160 a year
- from 13/06/1919 - £250 a year
- from 07/04/1947 - £500 a year
- from 05/01/1953 - £600 a year
- from 29/12/1958 - £800 a year
- from 06/09/1965 - £1,200 a year
- from 03/05/1971 - £1,600 a year
- from 01/04/1974 – insurable limit abolished (under section 12 of the Social Welfare Act 1973)

As successive Social Welfare Acts raised the insurable limit, people re-entered insurance as their earnings were below the new limit. When this happened, credits were awarded for the purpose of helping those people to qualify for short term benefits. Some of these credits are reckonable for the purpose of pension and some are not. See below for more information.

Social Welfare Act 58 credits are reckonable for all pensions - Section 3 of the Social Welfare (Amendment) Act 1958

Social Welfare Act 65 credits are **not** reckonable for widow’s contributory pension – Social Welfare (Crediting of Contributions) Regulations 1965 (S.I. 193 of 1965)

Social Welfare Act 71 credits are **not** reckonable for widow’s contributory pension – Social Welfare (Crediting of Contributions) Regulations 1971 (S.I. 180 of 1971)

Social Welfare Act 74 credits are **not** reckonable for widow’s contributory pension – Social Welfare (Crediting of Contributions) Regulations 1974 (S.I. 17 of 1974)

## EU or Bilateral Agreement (BA) Pro-Rata Pension

This pension is based on a combination of Irish social insurance contributions and reckonable social insurance in either those countries covered by EU Regulations or other countries with which Ireland has a Bilateral Social Security Agreement.

The pension is paid at a pro-rata rate, based on the proportion of Irish social insurance contributions to the total number of (Irish and other) contributions paid and credited.

### Legislation

The EU pro-rata pension is governed by Council Regulation (EEC) No 1408/71 and No 574/72, as amended.

Bilateral Agreement pro-rata pensions are governed by formal agreements with the relevant countries, and the legislation is contained in Statutory Instruments.

### Social insurance contribution conditions

The Irish and foreign insurance record of either the widow, widower or surviving civil partner **or** their late spouse or civil partner may be used to satisfy the following conditions:

- a minimum of 52 weeks Irish social insurance contributions must be paid or credited, of which at least 1 must be a paid contribution

**and**

- 260 weeks social insurance contributions must be paid before the relevant date (This condition can be satisfied on the Irish social insurance record, the foreign social insurance record, or on a combination of both.)

**and**

- a yearly average of 39 or more weeks social insurance contributions paid or credited in the 3 or 5 tax years before the relevant date

*or*

- a yearly average of 24 or more weeks social insurance contributions paid or credited since starting work, up to the end of the tax year before the relevant date. (This condition can be satisfied on a combination of both Irish and foreign insurance contributions.)

Countries covered by EU Regulations are:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece

- Hungary
- Iceland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Romania

Countries covered by Bilateral Agreements are:

- Australia
- Austria
- Canada
- Japan
- Korea
- New Zealand
- Switzerland
- United Kingdom (including the Isle of Man and the Channel Islands)
- United States of America

Appendix 2 lists the legislation governing these Bilateral Agreements.

Ireland also has a Social Security Understanding with Québec which came into effect on 1 October 1994.

## Making an application

A person should normally make a claim for pension in the country where they are living. A person living in Ireland should apply to the Department of Social Protection. If the person declares that they were insured* in any of the countries listed above,a claim for pension in that country is made by the Department on the person’s behalf. The date of claim in Ireland is taken as the date of claim by the other country. This same procedure applies in reverse, if the claim to pension is made in another country but the person has social insurance contributions in Ireland.

* Note: in certain countries, residence alone provides cover for social insurance

## Calculation of entitlement

The rate of pension is calculated as follows:

**Step 1:**

The notional pension is calculated. Notional pension is that which would be payable if all social insurance contributions, both Irish and non-Irish, were treated as Irish contributions. The Irish and non-Irish reckonable contributions are added together and the total is then divided by the number of years to get the yearly average number of contributions.

**Step 2:**

The following formula is used to calculate the rate of pension:

$$\frac{\textit{Notional rate of pension x No. of Irish contributions}}{\textit{No. of Irish contributions} + \textit{No. of foreign contributions}}$$

## Allowances

In these cases, the over 80 and over 66 increases are paid at a pro-rata rate, but the other allowances (qualified child increase, living alone allowance and fuel allowance) are payable at the standard rate. Qualified child increase is payable in one country only - see below for more information.

## Extra Allowances or Benefits

A person in receipt of a Widow's, Widower's or Surviving Civil Partner's Contributory Pension may be entitled to one or more of the following allowances or benefits:

### Family Income Supplement

This supplement is payable to persons working for an employer and on low income. Certain conditions apply in relation to hours of work, duration of employment. A means test also applies and Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension is assessable as means.

### Increase for Qualified Child

An increase in pension is payable in respect of each qualified child who normally resides with the pensioner. A child is regarded as a qualified child up to age 18, or, if they are in full-time education by day at any university, college, school or other educational establishment, up to the end of the academic year in which the qualified child reaches age 22.

Payment of this increase automatically stops when the child turns 18. It can only be paid past the age of 18 when the child remains in full-time education and the necessary documentary evidence is provided by the person receiving the pension. In such cases, the increase can be paid at most up to the date the child ceases full-time education or age 22, whichever is the earliest. If a child reaches the age of 22 during the academic year, the increase is paid to the end of that academic year.

The Department may, in the case of qualified children aged 18 or over, suspend payment of this increase over the summer and issue a form to be completed and stamped by the educational institution concerned, affirming that the child remains in full-time education, before re-instating the increase from the date of suspension.

If a person is getting a pension from both Ireland and one or more of the EU or Bilateral Agreement countries listed above, an increase for qualified child is paid by one country only. It is normally paid by the country where the person receiving the pension lives.

See "Increase for a Qualified Child" for more information.

### Over 66 Allowance

An additional allowance is payable on reaching age 66 - there is no need to apply for this allowance as it is paid automatically.

### Over 80 Allowance

An additional allowance is payable on reaching age 80 - there is no need to apply for this allowance as it is paid automatically.

### Living Alone Increase

A living alone increase is a weekly payment which is paid to people who are aged 66 or over and living alone. See "Living Alone Increase" for more information.

### Fuel Allowance

A fuel allowance is a means-tested payment, payable during certain months, to assist pensioners with heating costs. To qualify, a person must be in receipt of a payment for the Department and they must live alone or only with certain specified people and the household must satisfy a means test. Only one allowance is payable per household. A person must apply for the allowance. See “Fuel Allowance Scheme” for more information.

### Household Benefits Package

In certain circumstances a pensioner may also qualify for:

- Free Electricity or Natural Gas Allowance
- Free Television Licence

A person in receipt of pension aged 66 or over should apply for Household Benefits if they believe they satisfy the qualifying conditions.

A person in receipt of pension aged 60 to 65 may qualify for these benefits if their late spouse or civil partner was getting any of the household benefits listed above, before they died. These are not automatically transferred (because the utility bills must first be transferred to the person’s name) so the person needs to apply for them.

A person transferring from Invalidity Pension to Widow's, Widower's or Surviving Civil Partner's Contributory Pension will keep any of the household benefits they had when they were getting Invalidity Pension.

See “Household Benefits Package” for more information.

### Free Travel

People aged 66 or over and living in the State are entitled to a Free Travel pass. Where a person aged 66 or over qualifies for pension, a Free Travel Pass is issued automatically by the Department.

A person aged 60 to 65 in receipt of pension may qualify for a Free Travel Pass if their late spouse or civil partner held a Free Travel Pass before they died, and they were both living together permanently. In these cases, the Pass is not issued automatically and the person needs to apply.

See “Free Travel” for more information.

### Carer's Allowance

A person in receipt of pension may also qualify for half-rate Carer's Allowance, if they are caring for someone; this is a means-tested payment. See “Carer’s Allowance” for more information.

### Supplementary Welfare Allowance

A person in receipt of pension may qualify for additional payments under the Supplementary Welfare Allowance scheme. See www.welfare.ie for more information.

### Increase for living on a Specified Island

This is payable if a pensioner is age 66 or over and ordinarily resident on one of a list of specified islands off the coast of Ireland (It is paid automatically - there is no need to apply)

See “Increase for Living on a Specified Island” for more information.

### After death benefits

The Department should be notified as soon as possible if a person receiving pension or a qualified child dies. Payment of an increase for a qualified child may continue for six weeks after the death of the child in certain circumstances.

## Multiple Payments

Widow's, Widower's or Surviving Civil Partner's Contributory Pension is not payable at the same time as other social welfare payments, except in the following circumstances:

i. A person may receive Child Benefit as the same time as pension
ii. A person may receive Guardian's Payment (Contributory) or Guardian's Payment (Non-Contributory) at the same time as the pension.
iii. A person receiving maximum rate pension may also receive half the personal rate of one of the following payments, as long as they satisfy the relevant qualifying conditions for that payment:
    - Health and Safety Benefit
    - Adoptive Benefit (for up to 24 weeks)
    - Maternity Benefit (for up to 26 weeks)
    - Carer's Allowance
iv. A person in receipt of reduced rate pension may also receive one of the payments listed at iii) above, as long as their total payment does not exceed the sum of the maximum rate of pension plus half the personal rate of the relevant benefit or allowance.
v. A person may receive a payment under the Occupational Injuries Scheme at the same time as the pension if the death of their spouse or civil partner was due to an occupational injury or disease.
vi. An employed person on low income may receive Family Income Supplement at the same time as the pension but the pension is assessed as means when the rate of Family Income Supplement is being calculated.
vii. A person may receive Blind Pension at the same time as Widow's, Widower's or Surviving Civil Partner's Contributory Pension, but in such cases, none of the following benefits can be received at the same time:
    - Jobseeker's Benefit
    - Illness Benefit
    - Occupational Injury Benefit
    - Health and Safety Benefit
    - Adoptive Benefit
    - Maternity Benefit
    - Incapacity Supplement
viii. A person may receive personal rate Disablement Benefit at the same time as the pension.

A person who was receiving Invalidity Pension before 1 February 2012 and who also satisfies the qualifying conditions for Widow's, Widower's or Surviving Civil Partner's Contributory Pension, may receive, instead of Invalidity Pension, half the relevant personal rate of Illness Benefit at the same time as the pension, for no longer than 390 days. If they were receiving Household Benefits when they were on Invalidity Pension, they can keep these benefits.

Where a person is in receipt of Back to Work Allowance and becomes widowed or their civil partner dies, personal rate Back to Work Allowance and Widow's, Widower's or Surviving Civil Partner's Contributory Pension are payable at the same time.

# Disqualifications

## Cohabitation

Widow's, Widower's or Surviving Civil Partner's Contributory Pension is not payable while a person cohabits i.e. lives with someone as a couple. See "Cohabitation" for more information.

## Remarriage or Registration of new Civil Partnership

Where a person in receipt of pension remarries or enters into a new civil partnership, payment of pension stops from the date of remarriage or date of registration of new civil partnership.

If the person subsequently divorces their second spouse, they are not entitled to pension while that ex-spouse is still alive as, under Social Welfare legislation, the definition of widowhood only applies to the person's most recent marriage. Section 123 of the Social Welfare Consolidation Act 2005, as amended, is the relevant legislation in these cases.

If the second spouse or civil partner dies, the entitlement to pension is based on the social insurance record of either the last spouse or civil partner or the person themselves.

If neither social insurance record satisfies the qualifying conditions, or if the rate of pension payable is lower than the person was getting before they re-married or entered the second civil partnership, the person will receive the pension they were getting after the death of their first spouse or civil partner.

## Divorce or Dissolution of a Civil Partnership

A person who divorced their former spouse before 21 April 1997 will not qualify for pension for any period before that date. See "Divorce" above for more information.

A person whose civil partnership was dissolved before 1 January 2011 will not qualify for pension for any period before that date. See "Dissolved Civil Partnership" above..

## Imprisonment

A Widow's, Widower's or Surviving Civil Partner's Contributory Pension is not payable while a person is undergoing penal servitude, imprisonment, or detention in legal custody. An increase in respect of qualified child or children may be made to another person during the time of detention or imprisonment.

Payment of pension may resume when the person is released from imprisonment, provided they continue to satisfy the qualifying conditions.

See Part 3 below and "Payment Related Issues" for more information on payment arrangements while imprisoned.

## Community Employment

Any person who is employed on a Community Employment scheme is disqualified from receiving Widow's, Widower's or Surviving Civil Partner's Contributory Pension. This provision was introduced by Section 12 of the Social Welfare Act 2011 and took effect from 16 January 2012.

# Part 2: Claims, Investigation and Decision Procedures

## Claims

A person must apply to the Department for Widow's, Widower's or Surviving Civil Partner's Contributory Pension. The application form WCP1, is available

- by texting FORM WCP followed by your name and address to 51909
- by calling the LoCall Leaflet Line on 1890 20 23 25
- for download from the Department’s website - http://www.welfare.ie/en/pdf/wcp1.pdf
- by calling the Department on (071) 915 7100 or LoCall 1890 500 000
- at local Post Offices, Citizens Information Centres, Intreo Centres and Social Welfare Local and Branch Offices

The person should complete the form in full and **sign it**. Where the person is not able to sign the form, they can make their mark instead but this must be witnessed.

The completed from, along with all necessary supporting documents, should be sent to:

Social Welfare Services
Department of Social Protection
College Road
Sligo

Telephone (071) 915 7100

LoCall 1890 500 000

It is an offence for a person to knowingly make a false or misleading statement or to provide documents or information which they know to be false in some respect for the purpose of obtaining or establishing entitlement to pension, or pension at a higher rate.

A person found guilty of such an offence could be liable to a substantial fine or a term of imprisonment of up to 12 months or both. Any overpayment of pension would also be repayable to the Department.

When a claim for pension is received, an acknowledgement is issued by the Department.

A person may, depending on financial circumstances, claim Supplementary Welfare Allowance while awaiting a decision on their pension entitlement.

## Documentation

Evidence of births, marriages, civil partnerships and deaths which occurred in the State is available to the Department and such certificates are not required.

Where the birth, marriage, civil partnership or death occurred outside the State, the person must provide the relevant certificates as evidence. If these are not immediately available, they can be provided after the person has applied for pension, but this may delay the processing of the application.

A claim cannot be awarded without evidence that a person is the legal widow, widower or surviving civil partner or would have been but for the fact that they were divorced or the civil partnership was dissolved **and** the divorce or dissolution is recognised as valid in the State.

# Late Claims

A claim for Widow's, Widower's or Surviving Civil Partner's Contributory Pension should be made within three months of date of entitlement, that is, the date their spouse or civil partner died. A failure to claim on time may result in loss of pension payment.

A person is disqualified from receiving payment for any period more than 6 months before the date on which the claim is made. This limit also applies to any claim for an increase in payment or allowance.

## Claims received on or after 6 April 2012

Where a claim is received on or after 6 April 2012, payment of pension can be backdated up to 6 months from the date of receipt. Payment can be backdated further only where it is shown to the satisfaction of a Deciding Officer that the delay in claiming pension was due to

- false or misleading information provided by the Department or
- the person having been incapacitated by illness or infirmity.

## Claims received between 1 January 1997 and 5 April 2012

Where a claim was received between 1 January 1997 and 5 April 2012, payment of pension can be backdated up to 12 months from the date of receipt. If the claim was made more than 12 months late, payment is backdated to the first 12 months and proportionately for the remainder of the delay period.

Payment can be backdated further only where it is shown to the satisfaction of a Deciding Officer that the delay in claiming pension was due to

- false or misleading information provided by the Department or
- the person having been incapacitated by illness or infirmity or
- the person having suffered an event which was a 'force majeure'

Payment may also be backdated further in cases where the person had a level of financial indebtedness which they could not reasonably finance.

## Claims received before 1 January 1997

Extra statutory provisions allowed for backdating of late claims received before 1 January 1997. Where a claim to pension was made late, payment of pension can be backdated up to 6 months from the date of receipt. If the claim was made more than 6 months late, payment is backdated to the first 6 months and proportionately for the remainder of the delay period.

Payment can be backdated further where it is shown to the satisfaction of a Deciding Officer that the delay in claiming pension was due to

- false or misleading information provided by the Department or
- the person having been incapacitated by illness or infirmity or
- the person having suffered an event which was a 'force majeure'

Payment may also be backdated further in cases where the person had a level of financial indebtedness which they could not reasonably finance.

The above provisions also apply to claims for any increase or allowance.

## Examination of Claim

A person's social insurance contribution record is inspected by a Deciding Officer to establish if the qualifying conditions are satisfied. If they are, then entitlement to any associated increases claimed is also examined.

Social insurance records in respect of most employments are held by the Department. However, the social insurance records of people employed by Government Departments and Semi-State Bodies before 1979 are held by the relevant Department or body. Foreign social insurance records are held by the Social Security Department in the relevant country.

If a Deciding Officer needs additional information or clarification regarding any aspect of a person's claim, they may contact the person and/or their former employer. Sometimes it may be necessary to ask a Social Welfare Inspector to contact the person or a former employer. This usually only happens if there are unexplained gaps in a person's social insurance record.

When all the relevant information and evidence is in place the claim is then decided by a Deciding Officer.

## Decisions

Deciding Officers are responsible for deciding on entitlement to social welfare payments. They are appointed by the Minister for Social Protection and are independent in the exercise of their role.

When a Deciding Officer has made a decision on entitlement to pension, they send a letter to the person, notifying them of the outcome of their claim.

If the pension has been awarded, the letter lists the range of circumstances which could affect the person's continuing entitlement to the pension and asks them to advise the Department of any changes in these circumstances.

Any certificates or documents which have been submitted in support of the claim are returned with the letter, if not already returned earlier.

If the claim has been disallowed or if the pension has been awarded but not at the maximum rate, the letter explains the basis for the decision and also advises the person of their right to appeal against the Deciding Officer's decision. The appeal must be lodged within 21 days of the date of the notification letter. See 'Appeals' below.

## Revised Decisions

Any decision of a Deciding Officer may be revised by a Deciding Officer if new information or evidence comes to light **or** if the original Deciding Officer made a mistake in relation to the law or facts of the case. A person has the right of appeal against a revised decision.

See "Decision Making and Natural Justice" and "Revised Decisions and Their Date of Effect" for more information.

## Appeals

If a person is not satisfied with the decision of a Deciding Officer they can appeal directly to the Social Welfare Appeals Office, by writing to that Office within 21 days, outlining the grounds of their appeal.

Social Welfare Appeals Office
D'Olier House
D'Olier Street
Dublin 2

Telephone (01) 673 2800

LoCall: 1890 74 74 34

www.socialwelfareappeals.ie

# Part 3: Procedures following Award

## Payment day

A Widow's, Widower's or Surviving Civil Partner's Contributory Pension is paid on Friday, weekly in advance. See "Payment Related Issues" for more information.

## Payment methods

People living in the Republic of Ireland can have their pension paid by one of the following methods:

- Electronic Fund Transfer – pension is paid one week in advance directly into an account in a financial institution (for example, in a Bank, Building Society or into an An Post Savings Account)
- Electronic Information Transfer – pension is paid weekly using a Social Services Card at a chosen Post Office

Arrears of pension may be included in the normal method of payment or paid by cheque.

A person may change their payment method, Post Office, financial institution or account by writing to the Department.

People living outside the Republic of Ireland can only be paid by Electronic Fund Transfer into an account. If that account is in an institution in the Republic of Ireland, they are paid weekly, as described above. Otherwise they are paid every four weeks (one week in advance and three weeks in arrears).

## Duration of payment

Widow's, Widower's or Surviving Civil Partner's Contributory Pension is paid for the lifetime of the pensioner, provided they do not cohabit with another person as a couple, remarry or enter into a new civil partnership. Allowances are paid as long as the person continues to satisfy the relevant qualifying conditions.

Where a qualified child dies, payment of an increase in respect of that child continues for a period of 6 weeks after death.

## Lost or stolen cheques

Lost or stolen Department of Social Protection cheques should be reported to the Department immediately. The Gardaí should also be notified if the cheque was stolen.

## Lost or stolen EIT card

Lost or stolen EIT cards should be reported to the Department immediately. The lost or stolen card will be cancelled and a replacement will issue. The Gardaí should also be notified if the card was stolen.

## Payment to an agent

A person who is unable to collect their pension may nominate another person to collect it on their behalf. See "Payment Related Issues" for more information.

## Change of address or change of payment arrangements

A person receiving pension must notify the Department in writing if they change address or if they want to change their Post Office or bank account to which their pension is paid.

## Absence from the State

A Widow's, Widower's or Surviving Civil Partner's Contributory Pension is payable outside the Republic of Ireland. If a person receiving the pension is leaving the country for more than a few weeks, they should tell the Department the date they are leaving the country and their new address.

If they are being paid by EIT, they must return their card to the Department and provide details of the bank account into which they wish the pension to be paid.

## Imprisonment

A person is disqualified from receiving pension, or any increases, for any period during which they are undergoing penal servitude, imprisonment or detention in legal custody.

There is one exception to this disqualification; increase for qualified children may be paid to another person during this period.

## Possible entitlement to State Pension (Contributory)

Where a person has a social insurance record and is paying Class A,E,H,S contributions, they may qualify for State Pension (Contributory) at age 66, at a higher rate than Widow's, Widower's or Surviving Civil Partner's Contributory Pension.

Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension is not paid at the same time as State Pension (Contributory).

## Certification of ongoing entitlement

The Department has a duty to ensure that it pays the right person the right amount of money at the right time.

There is an onus on all customers of the Department to assist with this process when requested, confirming identity and other necessary details which may affect their entitlement to pension.

When a person is awarded a pension, they are sent a letter which includes a list of the range of circumstances which could affect the person’s continuing entitlement to the pension and asks them to advise the Department of any changes in these circumstances.

The following are some of the circumstances and events which may affect a person's entitlement to pension:-

- Cohabitation with another person
- Remarriage or registration of a Civil Partnership
- Change of address
- Change of Post Office
- Death of the person or a qualified child
- A qualified child no longer living with or being maintained by the person
- A qualified child who reaches 18 years (or between 18 and 22) and is not continuing in full-time education
- Imprisonment or detention of the person or a qualified child

- Person or a qualified child leaves the State
- Change in household composition including the birth of an additional child
- Participation in a Community Employment scheme
- Receipt of a Training Allowance from SOLAS (formerly FÁS)

Failure to notify the Department of any of the above events may result in overpayment of pension and any overpayment may be recovered by the Department either by way of lump sum repayment or deductions from pension payment. See "Overpayment Recovery" for more information.

## Review

The Department may carry out a review of any person's pension at any time.

A review is always carried out when the Department is notified of any change in circumstances which may affect entitlement. This review may involve a visit from a Social Welfare Inspector and/or direct correspondence or phone contact with the person.

Periodic reviews are also carried out by the Department to confirm that the pension is correctly in payment, and that the qualifying conditions for receipt of pension continue to be fulfilled.

There is an onus on all customers of the Department to assist with the review process when asked to do so, confirming their identity and other necessary details.

## Suspension, revocation, reduction of payment

Where, despite the efforts of a Deciding Officer, including written communication to the person, it is not possible to establish the facts of a case as a result of failure on the part of the person to provide evidence or information, payment of the pension, increase or allowance may be suspended until the relevant evidence or information has been provided by the person or a person acting on their behalf.

Payment of pension or any increase or allowance on pension will be stopped if the person no longer satisfies the qualifying conditions.

In cases where a Deciding Officer proposes to decide that a person is no longer entitled to pension or an associated increase **and** where that proposed decision is based on evidence of which the person is not aware, the Deciding Officer may write a letter to the person, outlining the reasons for their proposed decision and giving them an opportunity to respond to the letter and, if they wish, provide other evidence. This letter is called a Natural Justice Letter.

The person is given 21 days in which to reply to a Natural Justice Letter. The Deciding Officer will re-examine the case if the person provides new evidence or information.

If no new evidence or information is provided or if the evidence or information provided is considered by the Deciding Officer to have no material bearing on the case, the Deciding Officer will make a decision revoking the pension, increase or allowance. The person has the right of appeal against this decision.

The process outlined in the paragraphs above does not apply where the decision to reduce or revoke pension or an associated increase is based on information provided by the person or a person acting on their behalf.

See "Decision Making and Natural Justice" and "Revised Decisions and Their Date of Effect" for more information.

If an overpayment of pension has occurred it may be recovered by the Department. See "Overpayment Recovery" for more information.

## Credits

Credited contributions are awarded by the Department in certain circumstances, generally in respect of periods of unemployment and illness.

Credited contributions are not awarded to recipients of Widow's, Widower's or Surviving Civil Partner's Contributory Pension for periods for which persons are widows, widowers or surviving civil partners alone. However, where a person was in receipt of another Social Welfare benefit, which entitles them to credited contributions, immediately before qualifying for Widow's, Widower's or Surviving Civil Partner's Contributory Pension, they may continue to receive credits, provided they continue to satisfy the conditions of entitlement to the other benefit i.e. by providing evidence of continuing illness or unemployment.

See “Credited Social insurance Contributions” for more information.

# Appendix 1 – Legislation

***This Appendix is intended as a guide only and is not a definitive list of all social welfare legislation in this area.***

The main legislative provisions relating to Widow's, Widower's or Surviving Civil Partner's Contributory Pension are contained in

> Chapter 18 of Part 2 of the Social Welfare (Consolidation) Act, 2005 as amended, (Sections 123 to 129) and in
>
> Chapter 10 of Part II of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007, (Statutory Instrument 142 of 2007), as amended, (Articles 79-82).

In this Appendix, any reference to “Section” means a Section of the Social Welfare (Consolidation) Act, 2005 as amended and any reference to “Article” means an Article of the Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007, as amended, unless otherwise stated.

All Acts and Statutory Instruments listed in this Appendix can be viewed online at www.irishstatutebook.ie.

## Social Welfare Consolidation Act 2005, as amended

### Section 123

defines the following terms for the purpose of this pension

- Civil partner
- Pension
- Relevant time
- Spouse
- Widow
- Widower
- Yearly average

### Section 124

(1) specifies the qualifying conditions for pension

(2) excludes those who marry, re-marry or who enter into a civil partnership

(3) excludes those who cohabit

(4) provides a “saver” for those who marry, re-marry or enter into a civil partnership and who are subsequently bereaved for a second time

### Section 125

(1) specifies the contribution conditions for pension:

> (a) 260 contributions must be paid, and
>
> (b) specifies that yearly average must be:
>
> > (i) 39 over three or five year period, or
> >
> > (ii) 48 from date of entry to relevant time,

but, where these conditions are not satisfied on the widow(er)’s or surviving civil partner’s record, the deceased’s record can be used, but the two cannot be combined

(1A) allows 156 contributions to satisfy 125(1)(a) where the date of death was before 27 December 2013

(2) provides for regulations to re-define yearly average or contribution conditions

(3) provides for regulations to allow payment of pension to someone who has a yearly average of less than 39

(4) says that any such payment cannot be at maximum rate and can vary with respect to yearly average but any increase for a qualified child will be payable at the full rate

(5) provides for regulations to allow payment of pension to someone who does not have a yearly average because their pre-1974 earnings may have gone over the insurable limit

(6) states that any such payment cannot be at max rate and can vary with respect to yearly average

(7) states that where a person’s first entry into insurance is at the occupational injuries benefit rate only, then that date cannot be taken as date of entry

(8) states that where a person became a self-employed contributor on 6th April 1988, and had a previous date of entry, then the most favourable of the two dates shall be regarded as the date of entry

## Section 126

provides that the weekly rate of pension is set out in Part 1 of Schedule 2

## Section 127

provides that the weekly rates of the following are also set out in Part 1 of Schedule 2

- Increase for a Qualified Child
- Increase for Living Alone
- Over-80 Increase and
- Island Allowance

## Section 128

(1) states that, where a person’s self-employed contributions are being used to establish entitlement, the contribution conditions specified in Section 125 shall not be satisfied unless the person has

paid self-employment contributions for at least one year before the relevant time **and**

all self-employment contributions payable have been paid

(2) states that pension can only be payable from the date the last self-employment contribution was paid

(3) provides that self-employment contributions for the last contribution year before the relevant time can be disregarded for the purpose of 128(1)

(4) provides that 128(2) does not apply to claims made on or before 31 December 2009

## Section 129

contains “saver” provisions which refer to the lowering of pension age during the 1970s from 70 to 66. These historical provisions are similar to provisions contained in the State Pension (Contributory) primary legislation.

## Section 247B

provides that any person who is employed on a Community Employment scheme is disqualified from receiving Widow's, Widower's or Surviving Civil Partner's Contributory Pension. This provision was introduced by Section 12 of the Social Welfare Act 2011 and took effect from 16 January 2012.

# Social Welfare (Consolidated Claims, Payments and Control) Regulations, 2007, as amended

### Article 79

defines the following for the purpose of this pension

- Existing pensions contributor
- Pension
- Relevant contribution condition
- Relevant period

### Article 80

provides for the payment of pension at less than maximum rate. Increase for a qualified child, increase for living alone, Over-80 and Island Allowance are payable at standard rate, however.

### Article 81

provides for the payment of the Special Partial Pension (see above).

### Article 82

defines how contributions paid under the (pre-1953) Widows' and Orphans' Pensions Acts are treated for the purpose of calculating entitlement to this pension.

# Appendix 2 – Bilateral Agreements – Relevant Legislation

| Country | Regulations | S.I. No. | Date of effect |
|---|---|---|---|
| **Australia** | Social Welfare (Revised Agreement with Australia on Social Security) Order, 2005 | 799 of 2005 | 01/01/2006 |
| **Australia** | Social Welfare (Agreement with Australia on Social Security) Order, 1992 | 84 of 1992 | 01/04/1992 |
| **Austria** | Social Welfare (Agreement with the Republic of Austria on Social Security) Order, 1989 | 307 of 1989 | 01/12/1989 |
| **Canada** | Social Welfare (Agreement with Canada on Social Security) Order, 1991 | 317 of 1991 | 01/01/1992 |
| **Japan** | Social Welfare (Agreement with the Government of Japan on Social Security) Order 2010 | 527 of 2010 | 01/12/2010 |
| **Korea** | Social Welfare (Agreement with the Republic of Korea on Social Security) Order 2008 | 552 of 2008 | 01/01/2009 |
| **New Zealand** | Social Welfare (Agreement with New Zealand on Social Security) Order, 1994 | 57 of 1994 | 01/03/1994 |
| **Switzerland** | Social Welfare (Agreement with the Swiss Confederation on Social Security) Order, 1999 | 206 of 1999 | 01/07/1999 |
| **United Kingdom** | Social Welfare (Bilateral Agreement with the United Kingdom on Social Security) Order 2007 | 701 of 2007 | 01/10/2007 |
| **United States of America** | Social Welfare (Agreement with the United States of America on Social Security) Order, 1993 | 243 of 1993 | 01/09/1993 |

All Statutory Instruments listed in this Appendix can be viewed online at www.irishstatutebook.ie