



STATUTORY INSTRUMENTS.

S.I. No. 40 of 2019



SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL)
(AMENDMENT) (NO. 2) (STATE PENSION (CONTRIBUTORY)) REGULATIONS
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I, REGINA DOHERTY, Minister for Employment Affairs and Social Protection, in exercise of the powers conferred on me by sections 4 (amended by section 96 of the Minister and Secretaries (Amendment) Act (No. 10 of 2011)), 108(2B) (inserted by section 9 of the Social Welfare, Pensions and Civil Registration Act 2018 (No. 37 of 2018)) and 109(8) of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), with the consent of the Minister for Public Expenditure and Reform, hereby make the following Regulations:

Citation and construction

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (State Pension (Contributory)) Regulations 2019.

(2) These Regulations and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2019 shall be construed together as one and may be cited together as the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2019.

Interpretation

2. In these Regulations “Principal Regulations” means the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

3. The Principal Regulations are amended—

(a) in article 59 by the insertion of the following definitions:

“ ‘aggregated contributions method’ has the meaning assigned to it by section 108(2);

‘home caring period’ has the meaning assigned to it by section 108(2);”

(b) by the insertion of the following articles after article 60:

“Home carers

60A. Subject to articles 60C and 60D, a person shall, for the purpose of section 108(2) of the Act, be regarded as a home carer—

(a) for any week that person, being over the age of 16 years, is or was residing with and exercising full parental responsibility for a child under the age of 12 years,

(b) for any week that person is or was in receipt of carer’s benefit, carer’s allowance or domiciliary care allowance,

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 15th February, 2019.*

or

- (c) or any week that person, being over the age of 16 years, is or was providing continuous supervision and regular assistance throughout the day to a person aged 12 years or over with the activities of daily living, including, but not limited to, those linked to personal care, food provision and nursing care, subject to the person receiving the assistance not receiving full time assistance within his or her own residence from a person other than the applicant, for the week in question.

Classes of person in respect of whom a home carer may provide care

60B. Subject to articles 60C and 60D, the following persons shall be regarded as persons to whom continuous supervision and regular assistance may be provided by a home carer:

- (a) a child under the age of 12 years at the time of the provision of the home care,
- (b) a person, in respect of whom carer's benefit, carer's allowance or domiciliary care allowance is or was payable at the time of the provision of the home care,

or

- (c) a person aged 12 years or over requiring continuous supervision and regular assistance throughout the day with the activities of daily living, including, but not limited to, assistance with personal care, food provision and nursing care, at the time of the provision of the home care.

Circumstances in which a home carer may be regarded as providing continuous supervision and regular assistance

60C. (1) A home carer may be regarded as providing continuous supervision and regular assistance to a person where—

- (a) either the home carer, or the person to whom continuous supervision and regular assistance is or was being provided, is or was undergoing medical or other treatment of a temporary nature in an institution for a period not longer than 13 weeks,
- (b) the person to whom continuous supervision and regular assistance is or was being provided is or was attending—
 - (i) a non-residential course of rehabilitation training provided by an organisation (being an organisation recognised by the Minister for Health for the purposes of the provision of such training), or
 - (ii) a non-residential place of day care approved by the Minister for Health, or

- (c) subject to sub-article (2), where it is shown to the satisfaction of the Minister that adequate provision is being made or was made, as the case may be, for the care of the person to whom continuous supervision and regular assistance is or was being provided,

the home carer —

- (i) may engage or have engaged, as the case may be, in employment,
- (ii) may engage or have engaged, as the case may be, in self-employment, or
- (iii) may undertake or have undertaken such training or courses of education, as the case may be, as the Minister may from time to time determine, or as the case may be, have so previously determined.

(2) The aggregate duration of the activities outside the home referred to in subparagraphs (i), (ii) and (iii) of sub-article (1)(c) shall not exceed 15 hours per week.

(3) In this article, “institution” means—

- (a) a hospital, convalescent home or home for persons suffering from physical or mental disability, or accommodation ancillary thereto, and any other similar establishment providing residence, maintenance or care for the persons therein,

or

- (b) a private dwelling wherein a person is boarded out under an arrangement with the Executive.

Application to be regarded as a home carer.

60D. Other than in the case of a person who is entitled to or in receipt of carer’s benefit, carer’s allowance or domiciliary care allowance, an application to be regarded as a home carer for the purposes of section 108(2) shall be made in the manner approved by the Minister.

Evidence demonstrating the nature, extent and duration of home caring

60E. A person who makes application to be regarded as a home carer for the purposes of section 108(2) shall furnish such certificates, documents, information and evidence as may be required by the Minister for the purposes of deciding such application.”,

- (c) by the insertion of the following article after article 62B:

“Aggregated contributions method – increase for qualified adult

62C. (1) In the case of a claimant who, in accordance with section 109(6B), has their pension calculated under the aggregated contributions method, any increase payable under section 297 shall be—

- (a) where his or her spouse, civil partner or cohabitant has attained pensionable age and the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 2 to these Regulations—

that percentage, which equates to the percentage rate obtained in respect of the claimant in accordance with section 109(6B), of the amount specified in column (2) of Schedule 2 to these Regulations opposite the relevant band of income in column (1) of that Schedule that corresponds to the weekly income of that spouse, civil partner or cohabitant,

and

- (b) where his or her spouse, civil partner or cohabitant has not attained pensionable age and the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 3 to these Regulations—

that percentage, which equates to the percentage rate obtained in respect of the claimant in accordance with section 109(6B), of the amount specified in column (2) of Schedule 3 to these Regulations opposite the relevant band of income in column (1) of that Schedule that corresponds to the weekly income of that spouse, civil partner or cohabitant.”,

- (d) by the insertion of the following article after article 63:

“Entitlement to pro-rata State pension (contributory), where a person has modified contributions, under the aggregated contributions method

63A. In the case of a person to whom section 109(16) applies, and who, in accordance with section 109(6B), has their pension calculated under the aggregated contributions method, he or she shall be entitled to a State pension (contributory) at the rate calculated in accordance with article 64A.”,

and

- (e) by the insertion of the following article after article 64:

“Calculation of rate of pro-rata State pension (contributory), where a person has modified contributions, under the aggregated contributions method

64A.(1) The rate of State pension (contributory) payable to a relevant person referred to in article 63A shall be calculated in accordance with the formula –

$$A \times \frac{B}{C}$$

where –

A is the rate of State pension (contributory) which would be payable to the relevant person if –

(a) all of the contributions specified at **C**

and

(b) all of the home caring periods determined in accordance with section 108(2)

in respect of that person during the relevant period are reckonable for State pension (contributory) purposes,

subject to –

(i) the number of credited contributions not exceeding 520,

(ii) the number of home caring periods not exceeding 1040, and

(iii) the aggregate number of credited contributions referred to in subparagraph (i) and home caring periods referred to in subparagraph (ii) not exceeding in any event 1040.

B is the number of –

(i) employment contributions paid in respect of or credited to the relevant person,

(ii) self-employment contributions paid by him or her,

(iii) voluntary contributions paid by him or her, and

(iv) all of the home caring periods determined in accordance with section 108(2)

during the relevant period, which are reckonable for the purposes of the contribution conditions for entitlement to State pension (contributory), and

C is the total number of –

(i) all of the employment contributions (other than employment contributions payable by a person who becomes an insured person by virtue of section 12(1)(b) only) paid in respect of or credited to the relevant person,

(ii) all of the self-employment contributions paid by him or her,

(iii) all of the voluntary contributions paid by him or her, and

(iv) all of the home caring periods determined in

accordance with section 108(2)

during the relevant period.

(2) Notwithstanding sub-article (1), any increase payable under section 112(2), (4), (5) or (6) shall be the same as if the contribution condition set out in section 109(1)(c) had been fully satisfied.”

The Minister for Public Expenditure and Reform consents to the making of the foregoing Regulations.



GIVEN under the Official Seal,
9 February 2019

PASCHAL DONOHOE,
Minister for Public Expenditure and Reform.



GIVEN under the Official Seal,
12 February 2019

REGINA DOHERTY,
Minister for Employment Affairs and Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Section 9 of the Social Welfare, Pensions and Civil Registration Act 2018 provides for an alternative method – the Aggregated Contributions Method – for determining entitlement to the State pension (contributory) for persons who attained pensionable age on or after 1 September 2012, and who, under the existing ‘yearly average’ method, are not entitled to a State pension (contributory) at the full rate.

Section 9 also defines and inserts “home caring period” into section 108(2) of the Social Welfare Consolidation Act 2005. Home caring periods may be taken into account in determining the rate of pension payable to a person under the Aggregated Contributions Method.

Section 9 also provided for Regulations setting out the conditions to be satisfied in order to qualify for home caring periods.

These Regulations specify –

- the persons who may be regarded as a home carer,
- the classes of person in respect of whom a home carer may provide care, and
- the evidence that may be offered by a person to demonstrate the nature, extent and duration of home caring.

The Regulations also provide for consequential amendments to the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, arising from the introduction of the aggregated contributions method to provide for–

- the rate of payment of the increase applicable for a qualified adult with income, where the aggregated contributions method is used, and
- the manner in which a pension is calculated under the aggregated contributions method where modified contributions are involved.

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