

Chapter 58 - Widows Benefits

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Chapter 58 - Widow's Benefits

Introduction

58001 This Chapter gives brief guidance on Widow's Benefits (WMA and WP) that have been replaced by BB where the late spouse died on or after 9.4.01¹. Detailed guidance on BB can be found in DMG Chapter 63.

1 WRP Act 99

58002 In addition to the guidance in this Chapter, for guidance on

1. decision making, revision and supersession - see DMG Chapter 01
2. claims and payments - see DMG Chapter 02
3. absence from GB - see DMG Chapter 07
4. marriage, death and presumption of death - see DMG Chapter 10
5. LTAMC - see DMG Chapter 11
6. dependency increases - see DMG Chapter 16
7. overlapping benefits - see DMG Chapter 17
8. forfeiture - see DMG Chapter 76.

58003 - 58015

Widowed mother's allowance

- 58016 A widow is entitled to WMA if her husband died before 9.4.01 **and**
1. her late husband satisfied the contribution conditions¹, or as a result of an IA or PD the contribution conditions are treated as satisfied² **and**
 2. she
 - 2.1 is entitled to CHB for a child or qualifying young person (see DMG 58018 - 58019) who satisfies DMG 58200 **or**
 - 2.2 is pregnant by her late husband **or**
 - 2.3 was living with her husband immediately before he died and is pregnant by
 - 2.3.a artificial insemination with the semen of some person other than her husband³ **or**
 - 2.3.b the implantation of an egg or embryo⁴.

1 SS CB Act 92, Sch 3, Part I, para 5; 2 s 60; 3 s 37(1)(c); 4 s 37(1)(c)

Note: There is no upper age limit for entitlement to WMA.

58017

Meaning of child

- 58018 A child is a person who has not attained age 16¹.

1 SS CB Act 92, s 122(1) & 142(1)

Meaning of qualifying young person

- 58019 A qualifying young person is a person, other than a child, who
1. has not attained a prescribed age¹ which is
 - 1.1 age 17² **or**
 - 1.2 age 18³ **or**
 - 1.3 age 20⁴ **and**
 2. satisfies other conditions⁵.

However, a person who attained age 19 before 10.4.06 cannot be a qualifying young person⁶.

1 SS CB Act 92, s 122(1) & 142(2)(a); 2 CHB (Gen) Regs, reg 4(1); 3 reg 5(1); 4 reg 3(1), 6(1), 7(1) & 8(1); 5 SS CB Act 92, s 122(1) & 142(2)(b); CHB (Gen) Regs, regs 2 - 8; 6 reg 2(5)

58020

Gender recognition certificate issued

58021 From 4.4.05 a female to male transsexual claimant who, immediately before a full GRC is issued

1. was entitled to WMA **or**
2. would have been entitled to WMA had a claim been made

ceases to be entitled to WMA and instead becomes entitled to WPA¹. If entitlement to WMA has already been decided no further claim to WPA is necessary².

1 GR Act 04, Sch 5, para 1 & 3(1); 2 Sch 5, para 3(2)

Pregnancy

58022 A widow may have been entitled to WMA if she is pregnant by her late husband or by artificial insemination or implantation¹. Entitlement under this provision stops when the pregnancy ends, whether by confinement, miscarriage or abortion.

1 SS CB Act 92, s 37(1)(b) & (c)

58023 If the pregnancy results in a birth of a child there will be entitlement to WMA on the basis that the child is, or in the case of artificial insemination is treated as, a child of the widow and her late husband¹.

1 SS CB Act 92, s 37(2)(a)

58024 The DM should note that there is a presumption in law that a child born in wedlock to a married woman is a child of the husband. Evidence which shows that it is more probable that the child is not the child of the husband¹ needs to be strong for the DM to disallow.

1 R(G) 1/92

58025 - 58199

Entitlement to child benefit for a child or qualifying young person

58200 For the purposes of DMG 58016 **2.1** a woman is entitled to CHB for a child or qualifying young person if the child or qualifying young person is a

1. son or daughter of the woman and her late husband¹ **or**

2. child or qualifying young person in respect of whom her late husband was immediately before his death entitled to CHB² **or**
3. child or qualifying young person for whom the woman was entitled to CHB before her husband's death if they were living together immediately before his death³.

Note: Before 7.10.08 a woman entitled to CHB for a child who did not live with her was not entitled to WMA unless she also made additional contributions for the cost of providing for that child at a rate not less than the rate of GA.

1 SS CB Act 92, s 37(2)(a); 2 s 37(2)(b); 3 s 37(2)(c)

58201 For the purpose of DMG 58200 **2.** where fertilisation occurs after the deceased husband's death using the husband's sperm, and he consented, the child is that of the deceased spouse and surviving spouse¹. Where fertilisation occurs after the deceased husband's death using the sperm of a third party, the child is not treated as being that of the deceased spouse and surviving spouse.

1 Human Fertility and Embryology Act 1990 s 28(5A)

58202 If a claim for CHB is decided after the husband died and entitlement starts from a date before his death, the condition in DMG 58200 **2.** is satisfied.

Decisions on entitlement to child benefit

58203 WMA (except pregnancy cases) and the increase of WMA for a child depend on the claimant being entitled to CHB. Decisions on entitlement to CHB are now given by HMRC. DMs should seek evidence from HMRC about entitlement to CHB.

Treating as entitled to child benefit where married more than once

58204 For the purposes of DMG 58200 **2.**, the late husband is treated as entitled to CHB in respect of any child or qualifying young person where¹

1. the widow has a child or qualifying young person by a previous marriage **and**
2. the previous marriage ended by the death of her previous husband **and**
3. that previous husband was entitled or treated as entitled to CHB for the child or qualifying young person immediately before death **and**
4. the widow was entitled or treated as entitled to CHB immediately before the death of the recently deceased husband.

1 SS (WB & RP) Regs, reg 16(2)

58205 DMG 58204 applies where the

1. surviving spouse has been married more than once **and**

2. they were not residing with the deceased spouse immediately before their death.

58206 - 58240

Payment

- 58241 WMA is paid from the first day of entitlement and with WPT. WMA is not affected by the widow's earnings.

Rate

- 58242 The weekly rate of WMA may consist of

1. a BP **and**
2. an AP¹.

Note: The weekly rate of WMA is no longer linked automatically to the weekly rate of RP. Instead the weekly rate will be prescribed².

1 SS CB Act 92, s 39(1); 2 s 39(2A)

Basic pension

- 58243 Entitlement to a standard rate BP is subject to the late husband satisfying two contribution conditions¹.

1 SS CB Act 92, Sch 3, Part 1, para. 5

- 58244 The first contribution condition is satisfied by

1. the payment of sufficient class 1, 2 or 3 contributions in any one year¹ **or**
2. being entitled to IBLT at anytime during the year
 - 2.1 in which the late husband died **or**
 - 2.2 immediately before the year in which they died² **or**
3. being entitled to ESA(Cont)³ or ESA(IR)⁴ which includes the support component or WRAC⁵ at anytime during the year
 - 3.1 during the year in which they reached pensionable age or died under that age **or**
 - 3.2 immediately before the year in which they died⁶ **or**
4. the payment of not less than 50 contributions before 6.4.75⁷.

1 SS CB Act 92, Sch 3, Part 1, para. 5(2); 2 Sch 3, Part 1, para. 5(6);

3 WR Act 07, s 2(1)(b); 4 s 4(2)(b); 5 SS CB Act 92, Sch 3, Part 1, para 5(6B);

6 Sch 3, Part 1, para 5(6A); 7 SS (WB, RP & OB) (Trans) Regs, reg 6(1)

58245 The second contribution condition is satisfied by

1. the
 - 1.1 payment of, or being credited with, contributions **or**
 - 1.2 crediting of earnings from 6.4.87for a specified number of years **and**
2. having an earnings factor equal to, or greater than, the qualifying earnings factor for each of those years¹.

However, if the second contribution condition is not fully satisfied, there may be entitlement to a BP at a reduced rate as long as at least 25% of the working years are also qualifying years².

1 SS CB Act 92, Sch 3, Part I, para 5(3); 2 s 60(1), SS (WB & RP) Regs, reg 6

58246 Where

1. class 1 contributions have been paid or treated as paid in any tax year from 1987/88 **and**
2. the amount paid, plus any class 2 or class 3 contributions paid or credited, is not enough to make the year a qualifying year by £50 or less

the earnings factor is increased by the amount required to make the year a qualifying year¹. This applies to both the first and second contribution condition.

1 Social Security (Earnings Factor) Regulations 1979, Sch 1, para 4

58247 Where the husband died on or after 11.4.88 as a result of an IA or PD the contribution conditions are treated as fully satisfied¹.

1 SS CB Act 92, s 60(2) & (8)

Additional pension

58248 AP is earnings-related. It is calculated by using any surpluses in the late husband's earnings for the tax years from 1978/79 and ends with the last complete tax year before he would have reached pensionable age up to a maximum of 49 years¹. For WMA purposes an AP consists of SERPS (see DMG 58250).

1 SS CB Act 92, s 39, 45(1) & 46

58249 To be entitled to AP the first contribution condition must be satisfied. However, there may be entitlement to AP even if there is no entitlement to the BP because of a failure to satisfy the second contribution condition¹.

Note: The first contribution condition can be satisfied by the payment of voluntary class 3 contributions (see DMG 58244).

1 SS (WB & RP) Regs, reg 6(2) & (3A)

State earnings related pension scheme

58250 SERPS is based on earnings during the period from 6.4.78. From and including 6.4.97 people had to be contracted-in¹. Before 6.4.97 a person who was contracted out could continue to receive an AP but it was subject to the normal GMP reduction².

1 PS Act 93, s 48A; 2 s 46, R(P) 1/04

58251 - 58253

Increase for children

58254 Increases to the weekly rate of WMA through entitlement to CDIs were abolished from 6.4.03. However, where a claimant is entitled to and being paid a CDI on 5.4.03, the CDI entitlement and payability will continue¹. Guidance on CDIs can be found in DMG Chapter 16.

1 Tax Credit Commencement No 3 Order, art. 3(1) & 3(2)

58255 - 58260

Widow's pension

Entitlement to widow's pension

58261 A widow is entitled to WP if

1. her husband died before 9.4.01 **and**
2. her late husband satisfied the contribution conditions¹ or as a result of an IA or PD the contribution conditions are treated as satisfied² **and**
3. she was over the age of 45, but under the age of 65³, when
 - 3.1 her husband died **or**
 - 3.2 she ceased to be entitled to WMA.

Note: From 6.12.18⁴, for the purpose of **3.2** a widow would have to be under pensionable age.

1 SS CB Act 92, Sch 3, Part 1, para 5; 2 s 60; 3 s 38(1); 4 Pensions Act 07, s 13(3)

58262 When deciding the date WMA ceases the DM should note that

1. any period for which the widow was entitled to WMA but disqualified from receiving payment remains a period of entitlement to WMA¹
2. entitlement to WMA based on the widow's entitlement to CHB will end when CHB entitlement ends even though payment of WMA continues up to and including the last day of the benefit week².

1 SS (Gen Ben) Regs, reg 10(1) & Sch 1; 2 SS (C&P) Regs, reg 16(1)

Gender recognition certificate issued

58263 From 4.4.05 a female to male transsexual claimant is not entitled to WP if they¹

1. are issued with a full GRC **and**
2. were entitled to WP immediately before the full GRC was issued.

1 GR Act 04, Sch 5, para 1 & 4

58264

Age of widow

58265 The full rate of WP was payable if all other conditions were satisfied and the widow had reached age 55 at the date when she would have been entitled. The WP rate was reduced where the widow was under the age of 55 but over 45 when her

1. entitlement to WMA ceased **or**
2. late husband died if she had not been entitled to WMA.

The amount of the reduction is 7% of the rate to which she would otherwise have been entitled, multiplied by the number of years by which her age was less than 55. Any fraction of a year counts as a year¹. This is known as WP (Age Related).

1 SS CB Act 92, s 39(4) & (5)

58266 Both BP and AP are reduced in this way¹.

1 SS CB Act 92, s 39(4)

58267 - 58279

Transitional protection for women widowed before 11.4.88

58280 **Before 11.4.88** a woman could establish entitlement to WP if she was over the age of 40 but under the age 65

1. at the time her husband died **or**
2. when she ceased to be entitled to WMA¹.

1 SS CB Act 92, s 38(4)

58281 Women widowed before 11.4.88 continue to have their entitlement to WP based on the age conditions in force at that time. The rate of WP (Age Related) is based on the age range 40 - 50 as opposed to 45 - 55¹.

1 SS CB Act 92, s 39(6)

58282 The rate of WP (age related) is based on the same calculation as DMG 58265, however, with the age range of 40 - 50 rather than 45 - 55.

58283 - 58288

Payment

58289 WP can be paid from the outset and with WPT. There is no entitlement to WP after the widow reaches age 65¹ and is not payable

1. when the widow is entitled to WMA² **or**
2. when the widow although entitled, is disqualified from receiving WMA.

Note: From 6.12.18³ there is no entitlement to WP after a widow reaches pensionable age⁴ (see DMG Chapter 75).

1 SS CB Act 92, s 38(2); 2 s 38(3)(b); 3 Pensions Act 07, s 13(3); 4 SS CB Act 92, s 38(2)

58290 Payment of WP is not affected by the widow's earnings.

Rate

58291 The weekly rate of WP may consist of

1. a BP **and**
2. an AP¹.

Note: The weekly rate of WP is no longer linked automatically to the weekly rate of RP. Instead the weekly rate will be prescribed².

1 SS CB Act 92, s 39; 2 s 39(2A)

Basic pension

58292 Entitlement to a standard rate BP is set out in DMG 58243 et seq.

58293 Where the late husband died on or after 11.4.88 as a result of an IA or PD the contribution conditions are treated as satisfied¹ (see DMG 58247).

1 SS CB Act 92, s 60(2) & 60(8)

Additional pension

58294 AP is earnings-related. It is calculated from the late husband's earnings in complete tax years between 6.4.78 and the date of death up to a maximum of 49 years¹. For WP purposes an AP consists of SERPS (see DMG 58296).

1 SS CB Act 92, s 39(3), 45(1) & 46

58295 To be entitled to AP the first contribution condition must be satisfied. However, there may be entitlement to AP even if there is no entitlement to BP because of a failure to satisfy the second contribution condition¹.

Note: The first contribution condition can be satisfied by the payment of voluntary class 3 contributions (see DMG 58244).

1 SS (WB & RP) Regs, reg 6(2) & (3A)

State earnings related pension scheme

58296 SERPS is based on earnings during the period from 6.4.78. From and including 6.4.97 people had to be contracted-in¹. Before 6.4.97 a person who was contracted out could continue to receive an AP but it was subject to the normal GMP reduction².

1 PS Act 93, s 48A; 2 s 46, R(P) 1/04

58297 - 58299

Reduction in the rate of basic pension and additional pension

58300 The rate of BP and AP may also be reduced on account of the widow's age (see DMG 58265, 58281 and 58282).

Increase for children and qualifying young people

58301 There are no provisions to pay an increase of WP for children and qualifying young people.

58302 - 58319

Common questions for widows benefit

Claims for WB

58320 It is a condition of entitlement to WB that a claim is made¹. A claim for WB was a claim for all types of WB. As a result of her initial claim a widow may have become entitled to

1. WPT
2. WMA
3. WP.

1 SSA Act 92, s 1

58321 - 58324

Entitlement to benefit

58325 Entitlement to WMA may cease when entitlement to CHB ceases but payment of WMA continues up to the end of the benefit week.

58326 Before any payment is made, a widow may apply to have her benefit adjusted so that it is made up of IB plus any balance of WB if she is entitled to¹

1. IB and
2. WMA or WP.

1 SS (OB) Regs, reg 4(5)(b) SS CB Act 92, s 40(5) PS Act 93; s 46(3)

58327 Where no application is made the payment is adjusted so that payment is made up of WB plus any balance of IB¹.

1 SS (OB) Regs, reg 4(5)

58328 - 58330

Deeming of contribution conditions - industrial causation

58331 Where the spouse died on or after 11.4.88 as a result of an IA or PD¹ the DM will treat the contribution conditions, where not fully satisfied, as satisfied for entitlement to

1. WMA
2. WP.

1 SS CB Act 92, s 60(2) & (8)

- 58332 Before the claim for a WB is decided, the DM should determine the issue of industrial causation of death where
1. a surviving spouse claims the late spouse died as a result of an IA or PD **and**
 2. the contribution conditions are not fully satisfied.
- 58333 Where local knowledge or other evidence suggests industrial causation, the DM should make enquiries even if there is no suggestion from the claimant.
- 58334

Reinstatement of benefit

- 58335 Where payment of WB ends or the rate is reduced, the widow may give further details which allow the benefit to be reinstated, either from the date it ended or later.
- 58336
- 58337 Where WB is withdrawn following a DM's decision, it can be reinstated by revision or by fresh claim depending upon the time elapsed following the withdrawal decision (see DMG Chapter 03 for guidance on revision and DMG Chapter 02 for guidance on claims).
- 58338 A widow whose entitlement to WMA depends on entitlement to CHB will lose that entitlement when CHB entitlement ends. If entitlement to CHB arises again a fresh claim is needed.
- 58339 If a widow stops LTAMC and applies for reinstatement, benefit may be reinstated as in DMG 58337.
- 58340 The FtT can reinstate benefit if a claimant successfully appeals against the DM's decision that WB is not payable because of LTAMC.

Widow over pensionable age

- 58341 A widow over pensionable age may have entitlement to
1. RP and WP **or**
 2. RP and WMA.
- The overlapping benefits provisions prevent her from receiving both benefits at **1.** and **2.** for the same period. The amount payable will be the higher of the two¹.

1 SS (OB) Regs, reg 4(5)(c)

Effect of guaranteed minimum pension

- 58342 Entitlement to a GMP from a contracted-out occupational pension scheme may affect the rate at which WMA and WP is payable. References to GMP include amounts treated as GMP, entitlement to which arises under the provisions of

1. personal pensions beginning on 1.7.88¹ **and**
2. money purchase schemes beginning on 6.4.88².

1 Personal Pension Schemes (Appropriate Schemes) Regs, reg 5; 2 Personal & Occupational Pension Schemes (Consequent Provisions) Regs, reg 4(3)

58343 If the widow is entitled to receive a GMP from her late husband's occupational pension scheme, her WMA or WP is reduced by the lower¹ of

1. the amount of the AP **or**
2. the total amount of any GMP.

1 PS Act 93, s 46(1)

58344 A widow over pensionable age may be entitled to a GMP in her own right. If she does not claim RP her WMA or WP will, from age 60, be reduced by

1. her late husband's GMP **and**
2. her own GMP¹

1 PS Act 93, s 46(1)(a) & (b)

58345 WMA or WP is reduced to take account of GMP **after** any adjustment for the widow's age (see DMG 58265 and 58282).

58346 Female pensionable age is changing (see DMG Chapter 75). However, WMA and WP claimants continue to be entitled to their own GMP at age 60¹. This means that deductions should be made in respect of both

1. personal GMP **and**
2. any inherited GMP (see DMG 56338)

of WMA and WP claimants from age 60, unless they are in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme (see DMG 58347).

1 PS Act 93, s 46(1) & 181(1)

58347 There can be entitlement to WMA and WP after pensionable age has been reached (see DMG 58016 and 58289). Deductions in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme will apply from female pensionable age¹.

Note: See DMG Chapter 74 for guidance on pensionable age for women who reach that age on or after 6.4.16 and DMG Chapter 75 for guidance on pensionable age for women who reach that age before 6.4.16.

1 PS Act 93, s 48; Pensions Act 1995, Sch 4, Part I, para 1

58348 Therefore, if a widow remains entitled to WMA or WP after she reaches female pensionable age there may be

1. a deduction at age 60 **and**

2. a further deduction in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme when female pensionable age is reached.

58349 - 58354

Marriage

- 58355 References in legislation to “a widow” require the existence of a legal marriage. Guidance is given in DMG Chapter 10.

58356 - 58359

Remarriage or the formation of a civil partnership

- 58360 A widow is not entitled to WMA or WP for any period after she remarries or forms a civil partnership¹ although it will remain payable until the end of the pay week in which she remarried or formed a civil partnership².

1 SS CB Act 92, s 37(3) & 38(2); 2 SS (C&P) Regs, reg 16(2)

- 58361 A widow who has remarried or formed a civil partnership may seek reinstatement of her WMA or WP if her remarriage or civil partnership has been declared void or voidable. It is possible to reinstate WMA or WP following a void marriage or civil partnership. Such action is not possible, except in Scotland, in the case of a voidable marriage or civil partnership. Guidance on void and voidable marriages and civil partnerships is in DMG Chapter 10.

58362 - 58364

Living together as married couple

- 58365 WMA or WP, including an increase for a child or children, is not payable for any period when the widow is LTAMC¹. Legislation does not define LTAMC. Guidance is in DMG Chapter 11.

1 SS CB Act 92, 37(4)(b) & 38(3)(c)

- 58366 Where the DM decides that a widow is LTAMC, the DM should revise or supersede the decision awarding WB as appropriate (see DMG Chapters 03 and 04).

58367 – 58999

The content of the examples in this document (including use of imagery) is for illustrative purposes only