

[5.5.17] Taxation of Guardian's Payment (Contributory) and Guardian's Payment (Non-Contributory) [up to July 2006 known as, the Orphan's (contributory) Allowance and the Orphan's (non-contributory) Pension, respectively]

Updated October 2015

1. Introduction

The 1988 High Court judgement in the "O'Carroll" case establishes the terms and conditions which must be satisfied before a child's pension payable under a pension scheme may be regarded, for income tax purposes, as the income of the child. **Manual [5.1.22](#)** sets out the tax treatment of children's pensions following that High Court judgement.

2. Further payments which satisfy the "O'Carroll" conditions

The Guardian's Payment (Contributory) and the Guardian's Payment (Non-contributory) are paid either to the guardian of the orphan in respect of whom the allowance/pension is payable or to some other person for the benefit of the orphan. The Guardian's Payment (Non-contributory) is subject to a means test. The amount payable depends on the means of the child.

The conditions and terms under which the Guardian's Payment (Contributory) and the Guardian's Payment (Non-contributory) are paid were reviewed. These payments are to be regarded as beneficial property of the children and should be taxed accordingly.

The change in tax treatment applies to the foregoing Social Insurance / Assistance payments only and does not apply to any Social Insurance / Assistance payments which include additional amounts in respect of dependent children, for example, the Widow's (Contributory) Pension and the Widow's (Non-contributory) Pension.

3. Revised Tax Treatment

The Guardian's Payment (Contributory) and the Guardian's Payment (Non-contributory) should be regarded as the income of and assessable on the children. Accordingly, these payments are not chargeable as income of the guardian or such other person who is in receipt of the allowance/pension.

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4. Procedures to be followed in Districts

4.1 PAYE

All cases whether open or not should be dealt with in accordance with this instruction. When the cases are identified, the guardian's (or such other person's) tax credits should be examined as soon as possible and revised where necessary.

District Managers should, in the cases affected, write to the guardian or such other person who is in receipt of the payment and explain the change of tax treatment in respect of the Guardian's Payment (Contributory) and Guardian's Payment (Non-contributory) and where appropriate, the reasons for the revision of her/his certificate of tax free credits.

4.2 Assessment Cases

- (a) **Self-assessment** Guardian's Payment (Contributory) or Guardian's Payment (Non-contributory) included in a guardian's etc. return of income should be omitted when processing the return.