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STATUTORY INSTRUMENTS

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**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART III**

**STATE PENSIONS**

**Equalisation of pensionable age and of entitlement to certain benefits**

**123.**—(1) Schedule 2, of which—

- (a) Part I has effect to equalise pensionable age for men and women progressively over a period of ten years beginning with (and including) 6th April 2010,
- (b) Part II makes provision for bringing equality for men and women to certain pension and other benefits, and
- (c) Part III makes consequential amendments of enactments, has effect.

**Enhancement of additional pension, etc. where family credit or disability working allowance paid**

**124.**—(1) After section 45 of the Contributions and Benefits Act (additional pension in a Category A retirement pension) insert—

**““Effect of family credit and disability working allowance on earnings factor.”**

**45A.**—(1) For the purpose of calculating additional pension under sections 44 and 45 above where, in the case of any relevant year, family credit is paid in respect of any employed earner, or disability working allowance is paid to any employed earner, section 44(6)(a)(i) above shall have effect as if—

- (a) where that person had earnings of not less than the qualifying earnings factor for the year, being earnings upon which primary Class 1 contributions were paid or treated as paid ('qualifying earnings') in respect of that year, the amount of those qualifying earnings were increased by the aggregate amount (call it 'AG') of family credit or, as the case may be, disability working allowance paid in respect of that year, and
  - (b) in any other case, that person had qualifying earnings in respect of that year and the amount of those qualifying earnings were equal to AG plus the qualifying earnings factor for that year.
- (2) The reference in subsection (1) above to the person in respect of whom family credit is paid—
- (a) where it is paid to one of a married or unmarried couple, is a reference to the prescribed member of the couple, and
  - (b) in any other case, is a reference to the person to whom it is paid.

(3) A person's qualifying earnings in respect of any year cannot be treated by virtue of subsection (1) above as exceeding the upper earnings limit for that year multiplied by fifty-three.

(4) Subsection (1) above does not apply to any woman who has made, or is treated as having made, an election under regulations under section 19(4) above, which has not been revoked, that her liability in respect of primary Class 1 contributions shall be at a reduced rate.

(5) In this section—

“married couple” and “unmarried couple” (defined in section 133 below) have the same meaning as in Part VII, and

“relevant year” has the same meaning as in section 44 above.”

(2) Accordingly, in sections 39(1) to (3) and 51(2) and (3) of the Contributions and Benefits Act, for “sections 44 and 45” substitute “sections 44 to 45A”.

(3) Subject to paragraphs (4) and (5), this Article applies to a person (“the pensioner”) who attains pensionable age after 5th April 1999 and, in relation to such persons, has effect for 1995—96 and subsequent tax years.

(4) Where the pensioner is a woman, this Article has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Contributions and Benefits Act by virtue of section 39 of that Act (widowed mother's allowance and widow's pension), including Category B retirement pension payable under section 48B(4), if her husband—

(a) dies after 5th April 1999, and

(b) has not attained pensionable age on or before that date.

(5) This Article has effect where additional pension falls to be calculated under sections 44 and 45 of the Contributions and Benefits Act as applied by sections 48A or 48B(2) of that Act (other Category B retirement pension) if—

(a) the pensioner attains pensionable age after 5th April 1999, and

(b) the pensioner's spouse has not attained pensionable age on or before that date.

#### **Additional pension: calculation of surpluses**

**125.**—(1) In section 44 of the Contributions and Benefits Act (Category A retirement pension), for subsection (5) (surplus on which additional pension is calculated) substitute—

“(5A) For the purpose of this section and section 45 below—

(a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for that year, and

(b) the amount of the surplus is the amount of that excess, as increased by the last order under section 130 of the Administration Act to come into operation before the end of the final relevant year.”.

(2) In subsection (6) of that section (calculation of earnings factors), for paragraphs (a)(ii) and (b) substitute—

“(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of that year, or, if less, the qualifying earnings factor for that year; and

(b) where the relevant year is an earlier tax year, to the aggregate of—

(i) his earnings factors derived from Class 1 contributions actually paid by him in respect of that year; and

(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid by him in respect of that year, or, if less, the qualifying earnings factor for that year.”.

(3) In section 130 of the Administration Act (revaluation of earnings factors in Northern Ireland) for from “directing” to the end substitute “(revaluation of earnings factors), the Department may make a corresponding order for Northern Ireland”.

(4) Subject to paragraphs (5) and (6), this Article has effect in relation to a person (“the pensioner”) who attains pensionable age after 5th April 2000.

(5) Where the pensioner is a woman, this Article has effect in the case of additional pension falling to be calculated under sections 44 and 45 of the Contributions and Benefits Act by virtue of section 39 of that Act (widowed mother’s allowance and widow’s pension), including Category B retirement pension payable under section 48B(4), if her husband—

- (a) dies after 5th April 2000, and
- (b) has not attained pensionable age on or before that date.

(6) This Article has effect where additional pension falls to be calculated under sections 44 and 45 of the Contributions and Benefits Act as applied by section 48A or 48B(2) of that Act (other Category B retirement pension) if—

- (a) the pensioner attains pensionable age after 5th April 2000, and
- (b) the pensioner’s spouse has not attained pensionable age on or before that date.

#### **Contribution conditions**

**126.** In Schedule 3 to the Contributions and Benefits Act (contribution conditions), in paragraph 5(3)(a) (conditions for widowed mother’s allowance, widow’s pension and Category A and Category B retirement pension), after “class” insert “or been credited (in the case of 1987—88 or any subsequent year) with earnings”.

#### **Up-rating of pensions increased under section 52 of Contributions and Benefits Act**

**127.** For section 136 of the Administration Act substitute—

##### **“Up-rating under section 132 of pensions increased under section 52(3) of Contributions and Benefits Act.**

**136.—(1)** This section applies in any case where a person is entitled to a Category A retirement pension with an increase, under section 52(3) of the Contributions and Benefits Act, in the additional pension on account of the contributions of a spouse who has died.

(2) Where in the case of any up-rating order under section 132 above—

- (a) the spouse’s final relevant year is the tax year preceding the tax year in which the up-rating order comes into force, but
- (b) the person’s final relevant year was an earlier tax year,

then the up-rating order shall not have effect in relation to that part of the additional pension which is attributable to the spouse’s contributions.

(3) Where in the case of any up-rating order under section 132 above—

- (a) the person’s final relevant year is the tax year preceding the tax year in which the up-rating order comes into force, but
- (b) the spouse’s final relevant year was an earlier tax year,

then the up-rating order shall not have effect in relation to that part of the additional pension which is attributable to the person’s contributions.”.

**Graduated retirement benefit**

**128.** In section 62(1) of the Contributions and Benefits Act (graduated retirement benefit) after paragraph (a) insert—

- “(aa) for amending section 35(7) of that Act (persons to be treated as receiving nominal retirement pension) so that where a person has claimed a Category A or Category B retirement pension but—
- (i) because of an election under section 54(1) above, or
  - (ii) because he has withdrawn his claim for the pension,
- he is not entitled to such a pension, he is not to be treated for the purposes of the preceding provisions of that section as receiving such a pension at a nominal weekly rate;”.

**Extension of Christmas bonus for pensioners**

**129.**—(1) Section 146 of the Contributions and Benefits Act (Christmas bonus: interpretation) is amended as follows.

- (2) In subsection (1), after paragraph (k) insert—
  - “(l) a mobility supplement”.
- (3) In subsection (2)—
  - (a) after the definition of “attendance allowance” insert—
    - ““mobility supplement” means a supplement awarded in respect of disablement which affects a person’s ability to walk and for which the person is in receipt of war disablement pension;”.
  - (b) in the definition of “retirement pension”, omit “, if paid periodically”,
  - (c) in paragraph (b) of the definition of “unemployability supplement or allowance”, after sub-paragraph (iv) insert
    - “or
    - (v) under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939;”.

**Contributions paid in error**

**130.** After section 61 of the Contributions and Benefits Act insert—

**“Contributions paid in error.**

- 61A.**—(1) This section applies in the case of any individual if—
- (a) the individual has paid amounts by way of primary Class 1 contributions which, because the individual was not an employed earner, were paid in error, and
  - (b) prescribed conditions are satisfied.
- (2) Regulations may, where—
- (a) this section applies in the case of any individual, and
  - (b) the Department is of the opinion that it is appropriate for the regulations to apply to the individual,

provide for entitlement to, and the amount of, additional pension to be determined as if the individual had been an employed earner and, accordingly, those contributions had been properly paid.

(3) The reference in subsection (2) above to additional pension is to additional pension for the individual or the individual's spouse falling to be calculated under section 45 above for the purposes of—

- (a) Category A retirement pension,
- (b) Category B retirement pension for widows or widowers,
- (c) widowed mother's allowance and widow's pension, and
- (d) incapacity benefit (except in transitional cases).

(4) Regulations may, where—

- (a) this section applies in the case of any individual, and
- (b) the Department is of the opinion that it is appropriate for regulations made by virtue of Article 6(8) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (provision during transition from invalidity benefit to incapacity benefit for incapacity benefit to include the additional pension element of invalidity pension) to have the following effect in the case of the individual,

provide for the regulations made by virtue of that Article to have effect as if, in relation to the provisions in force before the commencement of that Article with respect to that additional pension element, the individual had been an employed earner and, accordingly, the contributions had been properly paid.

(5) Where such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual, regulations under paragraph 8(1)(m) of Schedule 1 to this Act may not require the amounts paid by way of primary Class 1 contributions to be repaid.

(6) Regulations may provide, where—

- (a) such provision made by regulations as is mentioned in subsection (2) or (4) above applies in respect of any individual,
- (b) prescribed conditions are satisfied, and
- (c) the amount calculated by reference to the contributions in question has been paid in respect of that individual by way of minimum contributions under section 39 of the Pensions Act (contributions to personal pension schemes),

for that individual to be treated for the purposes of that Act as if that individual had been an employed earner and, accordingly, the amount had been properly paid.”.

### **Minor amendments**

**131.**—(1) In section 23(1) of the Contributions and Benefits Act (contribution conditions: supplemental), for “22(1)(a)” substitute “22(1)”.

(2) Omit section 54(4) of that Act (effect on advance claims for retirement pension of deferral of entitlement).

(3) For section 55 of that Act substitute—

#### **“Increase of retirement pension where entitlement is deferred.**

**55.**—(1) Where a person's entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of pension.

(2) For the purposes of this Act a person's entitlement to a Category A or Category B retirement pension is deferred if and so long as that person—

(a) does not become entitled to that pension by reason only—

(i) of not satisfying the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim), or

(ii) in the case of a Category B retirement pension payable by virtue of a spouse's contributions, of the spouse not satisfying those conditions with respect to his Category A retirement pension; or

(b) in consequence of an election under section 54(1) above, falls to be treated as not having become entitled to that pension;

and, in relation to any such pension, "period of deferment" shall be construed accordingly."

(4) In section 121(1) of that Act (interpretation of Parts I to VI), after the definition of "week" insert—

""working life" has the meaning given by paragraph 5(8) of Schedule 3 to this Act."

(5) In paragraph 5(8) of Schedule 3 to that Act (contribution conditions: meaning of "working life") for "this paragraph" substitute "Parts I to VI of this Act".