

1978 No. 105

SOCIAL SECURITY

**The Social Security (Graduated Retirement Benefit) (No. 2)
Regulations (Northern Ireland) 1978**

Made 17th April 1978

Coming into operation—

*for the purpose
specified in regulation 1(2)* 6th December 1978
for all other purposes 6th April 1979

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by paragraphs 3, 7 and 9 of Schedule 3 to the Social Security (Consequential Provisions) Act 1975(a) and Article 26(1) of the Social Security Pensions (Northern Ireland) Order 1975(b), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 and, subject to paragraph (2) below, shall come into operation on 6th April 1979.

(2) For the purpose only of determining, before 6th April 1979, claims for, or questions arising as to, benefit for any period after 5th April 1979, these regulations shall come into operation on 6th December 1978.

(3) In these regulations—

“the Act” means the Social Security (Northern Ireland) Act 1975(c);

“the Pensions Order” means the Social Security Pensions (Northern Ireland) Order 1975;

“the Act of 1966” means the National Insurance Act (Northern Ireland) 1966(d);

“the 1975 regulations” means the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 1975(e), as amended(f);

“the 1978 regulations” means the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 1978(g);

and other expressions have the same meanings as in the Act.

(4) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except insofar as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(a) 1975 c. 18
(b) S.I. 1975/1503 (N.I. 15)
(c) 1975 c. 15
(d) 1966 c. 6 (N.I.)

(e) S.R. 1975 No. 96 (I, p. 574)
(f) S.R. 1976 No. 99 (I, p. 415)
(g) S.R. 1978 No. 78

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(h) shall apply in relation to this statutory rule and in relation to the revocations effected by it as if this statutory rule and the regulations revoked by it were Acts of Parliament and as if the revocations were repeals.

Continuation in force of sections 35, 36 and 110(1) of the Act of 1966

2.—(1) The provisions of this regulation shall have effect for the purpose of securing continuity between the Act and the Act of 1966 in the case of persons who had, immediately before 6th April 1975, rights or prospective rights to or expectations of graduated retirement benefit under sections 35 and 36 of the Act of 1966, by preserving those rights and temporarily retaining the effect of those sections for transitional purposes.

(2) Paragraph (3) below shall have effect so that notwithstanding their repeal by the Social Security Act 1973(i) those sections shall, for the purpose aforesaid, continue in force subject to the making in them of the modifications required—

- (a) to bring them into conformity with the provisions of the Act and the Pensions Order and to enable them to have effect as if contained in the scheme of social security benefits established by that Act and that Order;
- (b) to replace section 35(4) of the Act of 1966 (increase of graduated retirement benefit in cases of deferred retirement) with provisions corresponding to those of paragraphs 1 to 3 of Schedule 1 to the Pensions Order; and
- (c) to extend section 36 of the Act of 1966 (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to men and their late wives.

(3) On and after 6th April 1979 those sections shall continue in force in the modified form in which they are set out in Schedules 1 and 2 to these regulations, but not so as to save the National Insurance (Graduated Retirement Benefit and Consequential Provisions) Regulations (Northern Ireland) 1961(j), so far as deemed to have been made under those sections(k), from being invalidated by the repeal; and section 110(1) of the Act of 1966 (short title) shall also continue in force.

Modification of regulations concerning graduated retirement benefit

3. The provisions of regulations 2 and 3 of the 1978 regulations (which were made under sections 35 and 36 of the Act of 1966) shall continue in force in the modified form set out in Schedule 3 to these regulations; and paragraphs (1) (so far as it relates to citation), (2) and (3) (interpretation) of regulation 1 of the 1978 regulations shall also continue in force.

Revocations

4. The 1975 regulations and regulation 18 of, and Schedule 2 to, the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(l) are hereby revoked.

(h) 1889 c. 63

(i) 1973 c. 38

(j) S.R. & O. (N.I.) 1961 No. 86 (p. 388)

(k) See National Insurance Act (Northern Ireland) 1966 (c. 6) s. 109

(l) S.R. 1976 No. 99 (I, p. 415)

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 17th April 1978.

(L.S.)

C. G. Oakes
Senior Assistant Secretary

SCHEDULE 1

Regulation 2(3)

**Sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966
as continued in force by these regulations**

Graduated retirement benefit

Graduated
retirement
benefit.

35.—(1) Subject to the provisions of the Act, graduated retirement benefit shall be payable to any person who is over pensionable age and who (except as mentioned in section 36(1) below) has retired from regular employment, and shall be an increase in the weekly rate of his retirement pension equal to $2\frac{1}{2}$ pence for each unit, ascertained in accordance with subsections (2) and (3) of this section, of the graduated contributions properly paid by him as an insured person, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$ p as nearest to the next whole penny above.

(2) For the purpose of graduated retirement benefit the units of graduated contributions shall be £7·50 for men and £9·00 for women.

(3) Where a person's graduated contributions calculated at the said rate do not make an exact number of units any incomplete fraction of a unit shall, if it is one-half or more, be treated as a complete unit.

(4) Where a person defers his retirement from regular employment after attaining pensionable age or has made an election by virtue of section 30(3) of the Act and has not revoked it, then, for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement, there shall be applied the provisions of Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978, and those provisions shall be construed and have effect as if they were part of this subsection.

(5) For the purposes of subsection (4) of this section, the Department may by regulations provide for treating all or any of the graduated contributions paid by a person in the tax year in which he attained pensionable age as having been paid before, or as having been paid after, the day on which he attained that age, whether or not the contribution in question was so paid.

(7) A person who has attained pensionable age and retired from regular employment, but is not entitled to a retirement pension, shall be treated for the purposes of the foregoing provisions of this section as receiving a retirement pension at a nominal weekly rate:

Provided that—

- (a) this subsection shall not confer any right to graduated retirement benefit on a person who would be entitled to a retirement pension but for some provision of the Act or of regulations disqualifying him for receipt of it; and
- (b) regulations may provide that any right by virtue of this subsection to benefit at less than a specified weekly rate shall be satisfied either altogether or for a specified period by the making of a single payment of the prescribed amount.

(8) In this section and in section 36 below—

“graduated contributions” means graduated contributions under the Act of 1966 or the National Insurance Act (Northern Ireland) 1959(m);

“insured person” means insured person under the Act of 1966 or the National Insurance Act (Northern Ireland) 1946(n);

“retirement pension” means retirement pension of any category;

“the Act” means the Social Security (Northern Ireland) Act 1975;

and any reference in section 36 below to “section 35 of this Act” or to any of its subsections is a reference to that section or subsection as it is here set out.

(9) This section and section 36 below and the Act shall be construed and have effect as if this section and section 36 below were included in Chapter I of Part II of that Act (contributory benefits); and references to that Chapter, that Part or that Act in any other enactment or in any instrument shall be construed accordingly:

Provided that nothing in this subsection shall affect the construction of any reference to section 35 or 36 of this Act or of that Act or to any of the subsections of those sections; and any increase in the weekly rate of a person’s retirement pension, to the extent that it is attributable to subsection (4) of this section, shall be left out of account in determining the weekly rate of that pension for the purposes of sections 14(6) and 15(4) of the Act (rate of unemployment benefit, sickness benefit or invalidity pension for persons over pensionable age).

(10) The provisions of Part III of the Act (determination of claims and questions) relating to contributions shall be construed and have effect as if graduated contributions were contributions under the Act.

36.—(1) Subject to the provisions of this section—

- (a) where a man, having paid graduated contributions as an insured person, dies leaving a widow, and she either has attained pensionable age at the time of his death or remains his widow when she attains that age; or
- (b) where a woman, having paid graduated contributions as an insured person, dies after 5th April 1979 leaving a widower, and she and he have both attained pensionable age at the time of her death,

Special provisions as to graduated retirement benefit for widows and widowers.

then section 35 of this Act shall apply as if the increase in the weekly rate of the retirement pension of the widow or widower, as the case may be, provided for by subsection (1) thereof were the amount there specified by reference to his or her graduated contributions with the addition of one-half of the weekly rate of the graduated retirement benefit of his or her former spouse (any amount including $\frac{1}{2}p$ being rounded to the next whole

(m) 1959 c. 21 (N.I.)

(n) 1946 c. 23 (N.I.)

penny above); and where a man, having paid graduated contributions as an insured person, dies after 5th April 1979 leaving a widow and she has attained pensionable age at the time of his death but has not retired from regular employment, section 35 shall apply as if the increase in the weekly rate of her retirement pension provided for by subsection (1) thereof were one-half of the weekly rate of the graduated retirement benefit of her former husband (any amount including $\frac{1}{2}$ p being rounded to the next whole penny above).

(2) For the purposes of subsection (1) of this section, the weekly rate of the deceased spouse's graduated retirement benefit shall (whether or not he or she was receiving or entitled to receive any such benefit) be taken to have been the weekly rate appropriate to the amount of graduated contributions paid by him or her (determined as if any orders which have come into force under section 120(a) of the Act (increases in rates of benefit) since the date of the deceased spouse's death had come into force before that date), excluding any addition under section 36(1) of this Act, but including any addition under section 35(4) thereof (and for the purpose of calculating the addition under section 35(4), taking into account any addition under section 36(1)); and where at his or her death he or she had attained pensionable age but had neither retired from regular employment nor otherwise become entitled to graduated retirement benefit, that addition shall be computed as if he or she had retired from regular employment or otherwise become entitled to graduated retirement benefit immediately before his or her death.

(3) A person's right to graduated retirement benefit by virtue of this section shall be brought into account under section 35(4) of this Act in determining the graduated retirement benefit payable to him or her under the said section 35:

Provided that, if the termination of the marriage by death occurred after he or she attained pensionable age, he or she shall for the purposes of this subsection be treated as not having attained pensionable age until the date of that termination.

(4) A person's right to graduated retirement benefit by virtue of this section in respect of a spouse he or she marries after attaining pensionable age shall be subject to such additional conditions as may be prescribed; and except as may be provided by regulations a person more than once married shall not be entitled for the same period to any graduated retirement benefit by virtue of this section in respect of more than one of his or her spouses.

(5) Regulations may provide that where a woman is entitled to graduated retirement benefit and to a widowed mother's allowance the graduated retirement benefit shall be an increase in the weekly rate of that allowance; and where the benefit is such an increase, section 35(7) of this Act shall not apply.

(a) As extended by Article 25 of the Social Security Pensions (Northern Ireland) Order 1975

SCHEDULE 2

Regulation 2(3)

**Provisions replacing section 35(4) of the National Insurance Act
(Northern Ireland) 1966**

1. Where a person defers his retirement from regular employment after attaining pensionable age, or has made an election by virtue of section 30(3) of the Act and has not revoked it, then for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement—

- (a) there shall be added to the amount of the graduated contributions properly paid by him as an insured person one-half of the aggregate graduated retirement benefit which would have been payable to him for any period before 6th April 1979 (disregarding the effect of any order made under section 120 of the Act) if he had retired from regular employment on attaining pensionable age and had received that benefit for the whole of the period without any interruption or abatement:

Provided that, in computing the addition to be made in accordance with this paragraph in the case of a person who has made an election by virtue of section 30(3) of the Act (re-entry into regular employment) or the corresponding provisions of any earlier Act, no account shall be taken of any period between 6th April 1975 and 5th April 1979 (both dates inclusive) which falls between the date of that election and the date of his previous retirement; and

- (b) the rate of his graduated retirement benefit shall be increased by an amount equal to the increments to which he is entitled under paragraph 3 below, but only if either—
- (i) that amount is enough to increase the rate of the benefit by at least 1 per cent., or
- (ii) he has attained pensionable age before 6th April 1979, and has either deferred his retirement before that date, or made an election by virtue of section 30(3) of the Act taking effect before that date or both.

2. Where a woman who is over pensionable age but has not retired from regular employment is entitled by virtue of section 36(1) of the Act of 1966 to graduated retirement benefit, and she has, on or after 6th April 1979, made an election by virtue of section 30(3) of the Act and has not revoked it, then, for the purpose only of determining her right to increments under this Schedule, her election shall be treated as if it took effect from 6th April 1979, or, if later, the date of the death of her husband by virtue of whose graduated contributions she is so entitled.

3.—(1) Subject to paragraph 4 below, a person is entitled to an increment under this paragraph for each complete incremental period (beginning not earlier than 6th April 1979) in his period of deferment.

(2) In this Schedule—

- (a) “incremental period” means any period of 6 days which are treated by the Social Security (Widow’s Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1978(p) as days of increment for the purposes of Schedule 1 to the Pensions Order as amended by Article 4 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(q) in relation to the person and the pension in question; and

(p) S.R. 1978 No. 101

(q) S.I. 1977/610 (N.I. 11)

(b) "period of deferment", in relation to any person, means the period beginning with the day on which he attains pensionable age and ending with the day before that of his retirement.

(3) Subject to paragraph 4 below, the amount of the increment for any such incremental period shall be $1/7$ th per cent. of the weekly rate of the graduated retirement benefit to which that person would have been entitled for the period if he had retired on attaining pensionable age, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$ p as nearest to the next whole penny above.

(4) Where one or more orders have come into force under section 120 of the Act (increases in rates of benefit) during the period of deferment the rate of the benefit for any incremental period shall be determined as if the order or orders had come into force before the beginning of the period of deferment.

4.—(1) Where during a person's period of deferment there are one or more increases (other than any made by such an order as is mentioned in paragraph 3(4) above) in the weekly rate of graduated retirement benefit which would have been payable to him during that period if he had not deferred his retirement from regular employment or made an election by virtue of section 30(3) of the Act, the total amount of increment for the period of deferment shall be—

- (a) $1/7$ th per cent., for each incremental period in the period of deferment, of the weekly rate of the graduated retirement benefit to which he would have been entitled immediately after his retirement if he had retired on attaining pensionable age; plus
- (b) in respect of each such increase, $1/7$ th per cent. of its weekly rate for each incremental period in the period beginning with the day on which that increase occurred and ending with the day before that of the person's retirement.

(2) Where one or more orders have come into force under section 120 of the Act during the period of deferment the weekly rates mentioned in subparagraph (1) above shall be determined as if the order or orders had come into force before the beginning of the period of deferment.

SCHEDULE 3

Regulation 3

Regulations 2 and 3 of the 1978 Regulations as modified by these Regulations*Graduated retirement benefit when retirement is deferred*

2. For the purposes of paragraph 1(a) of Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 (provision, where a person attains pensionable age before 6th April 1979 but does not retire from regular employment until after 5th April 1979, for calculating the graduated retirement benefit payable to him from the date of his retirement) all the graduated contributions paid by a person in the tax year in which he attained pensionable age shall be treated as having been paid before the day on which he attained that age:

Provided that where, in any case, the aggregate amount of the graduated contributions paid by him in that year exceeded the aggregate amount of graduated contributions which would have been payable by him in that part of the year which ended with the tax week in which he attained pensionable age if, in each tax week beginning in that part of the year, a graduated contribution as for an employment which was not a non-participating employment had been payable by him in respect of a weekly payment of remuneration made in that week at a level equal to the upper limit on the amount of weekly pay then taken into account under section 4(1)(c) of the Act of 1966 as amended(r), the excess shall be treated as having been paid after the day on which he attained that age.

Graduated retirement benefit for persons who have been married more than once

3. For the purposes of section 36 of the Act of 1966 (special provisions as to graduated retirement benefit for widows and widowers) a person who has been married more than once and who is entitled to graduated retirement benefit for any period by virtue of the provisions of that section in respect of a second or subsequent spouse shall not be precluded from entitlement to graduated retirement benefit for that period by virtue of that section in respect of a former spouse, but shall be so entitled to the extent only that it is payable to him or her by the application of section 35(4) of the Act of 1966 in respect of any period before the death of the first-mentioned spouse.

(r) See section 1(2) of the National Insurance (No. 2) Act (Northern Ireland) 1966 (c. 16), section 1(2) of the National Insurance &c. (No. 2) Act (Northern Ireland) 1969 (c. 19), Article 1(2) of the Social Services (Parity) Order (Northern Ireland) 1971 (S.R. & O. (N.I.) 1971 No. 224 (p. 1052)), section 3(2) of the National Insurance Act 1972 (c. 57) as adapted for Northern Ireland by Schedule 5 to that Act, section 2(2) of the National Insurance and Supplementary Benefit Act 1973 (c. 42) as adapted for Northern Ireland by Schedule 5 to that Act, and section 2(2) of the National Insurance Measure (Northern Ireland) 1974 (c. 4)

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

These regulations revoke the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 1975 and contain provision, as did those regulations, for the continuance in force, with modifications, of the provisions of sections 35 and 36 (relating to graduated retirement benefit) of the National Insurance Act (Northern Ireland) 1966 and related provisions of regulations. The statutory provisions, as modified, are set out in Schedules 1 and 2 and the provisions of regulations in Schedule 3.

The principal differences between the statutory provisions as modified by the said Regulations of 1975 and the statutory provisions as modified by these regulations are as follows. First, section 35(4) (increase of graduated retirement benefit in cases of deferred retirement) is replaced with provisions corresponding to those of paragraphs 1 to 3 of Schedule 1 to the Social Security Pensions (Northern Ireland) Order 1975; the replacing provisions are set out in Schedule 2 to these regulations. Secondly, section 35(6) (provisions of sections 35(1) to (5) to have effect subject to provisions for reduction on account of earnings) is no longer continued in force. Thirdly, section 36 (increase of a woman's retirement pension by reference to her late husband's graduated retirement benefit) is extended to men and their late wives.

The provisions of the regulations continued in force by virtue of these regulations no longer include any provision of the National Insurance (Graduated Retirement Benefit and Consequential Provisions) Regulations (Northern Ireland) 1961 but include provisions of the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 1978.