

## **EXPLANATORY MEMORANDUM TO**

### **THE SOCIAL SECURITY (STATE PENSION AND NATIONAL INSURANCE CREDITS) REGULATIONS (NORTHERN IRELAND) 2010**

**2010 No. 56**

#### **1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 22(5), 44C(3)(e), 48(1), 54(1), 60(1), 60A(2), 62(1)(a), (ab) and (b) and 171(1), (3) and (4) of, and paragraph 11 of Schedule 4B and paragraph 2(2) of Schedule 5 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1 The Regulations amend the National Insurance Act (Northern Ireland) 1966, the Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979 ("Widow's Benefit and Retirement Pensions Regulations"), the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations (Northern Ireland) 2001 ("the Additional Pension Regulations") and the Social Security (Credits) Regulations (Northern Ireland) 1975 ("the Credits Regulations") in consequence of changes to the State Pension scheme enacted by the Pensions (Northern Ireland) Order 1995 and the Pensions Act (Northern Ireland) 2008.
- 2.2 Part 1 provides for citation and commencement. It provides that the Regulations come into operation on 6 April 2010, except paragraphs (1) to (4) of regulation 4 which come into operation on 6 April of the flat rate introduction year (currently assumed to be 2012).
- 2.3 Part 2 amends the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 (which continue in force sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966) with respect to the equalisation of Graduated Retirement Benefit units for men and women. Regulation 2(2) amends section 35 of the National Insurance Act (Northern Ireland) 1966 to provide that from 6 April 2010 graduated contributions will be £7.50 for men and women.

- 2.4 Regulation 2(4) amends section 36 of that Act to provide that widowers and surviving civil partners reaching state pension age on or after 6 April 2010 may inherit their deceased wife's or civil partner's graduated retirement benefit under the same circumstances that currently apply to widows. Regulation 2(5) provides that the change does not apply where the surviving spouse or civil partner reached pensionable age before this date.
- 2.5 Part 3 amends secondary legislation in respect of state pension reform. Regulation 3(2) removes references to "home responsibilities year" and "qualifying year" in the Widow's Benefit and Retirement Pensions Regulations which become redundant as the result of the introduction of the National Insurance contribution credit for carers and parents.
- 2.6 Paragraphs (4) to (6) of regulation 3 remove redundant references to the need for a wife to give consent to her husband's decision to defer his State Pension where she would be entitled to a Category B pension based on his contributions.
- 2.7 Paragraph (9) of that regulation inserts regulation 6A into the Widow's Benefit and Retirement Pensions Regulations to provide that the amount of Category A or Category B basic pension payable where a contributor has fewer than the 30 qualifying years required for a full basic pension will be 1/30th of the weekly rate for each qualifying year. Paragraph (12) inserts regulation 8A to remove an anomaly that could prevent someone ("the beneficiary") whose marriage or civil partnership ends in divorce or dissolution from receiving a full basic State Pension under substitution rules based on their former spouse's or partner's contribution record. Under regulation 8A, where the former spouse or civil partner has 30 qualifying years, the beneficiary will be treated as satisfying the new 30 qualifying years rule.
- 2.8 Paragraphs (1) to (4) of regulation 4 amend the Additional Pension Regulations to make provision for those who have both contracted-out and non-contracted out working patterns within the same tax year. The amendments apply from the flat rate introduction year. Paragraph (5) inserts a new regulation 5A which provides that a pensioner who was entitled to employment and support allowance is eligible for earnings factor enhancement for the purposes of the State Second Pension.
- 2.9 Part 4 amends the Credits Regulations. Regulation 5(2) amends those Regulations to provide that any contributions or earnings credited will, in relation to a Category A or Category B retirement pension, enable a person to satisfy either the second contribution condition in paragraph 5 of Schedule 3 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or the single contribution condition in paragraph 5A(2) of that Schedule.
- 2.10 Paragraph (3) phases out credits which are automatically available to men approaching state pension age. From April 2010, they will only be

available to a man for the period between the start of the tax year in which a woman born on the same day as him would reach State Pension age and the end of the tax year in which he attains the age of 64.

### **3. Background**

- 3.1 The Regulations are consequential on provisions enacted in the Pensions (Northern Ireland) Order 1995 and the Pensions Act (Northern Ireland) 2008.
- 3.2 The Pensions (Northern Ireland) Order 1995 provides for the equalisation of State Pension age for men and women at 65. The change will be phased in between 2010 and 2020. The Order also makes provision relating to the removal of differences in treatment between men and women in the Graduated Retirement Benefit Scheme.
- 3.3 The Pensions Act (Northern Ireland) 2008 introduced measures to make the State Pension system fairer, simpler, more generous and sustainable in the long term, including:
  - a single contribution condition for entitlement to State Pension and a reduction in the number of qualifying years required for a full basic state Pension to 30 for both men and women;
  - a new National Insurance contribution credit for parents and carers replacing Home Responsibilities Protection from April 2010. Each complete tax year of Home Responsibilities Protection built up prior to April 2010 will be converted into credits;
  - entitlement to a Category B pension for women ceasing to be conditional on a spouse claiming his Category A pension;
  - simplification of the accrual structure of the Second State Pension.
- 3.4 The proposed Regulations make consequential changes to provisions in legislation to provide for:
  - the value of Graduated Retirement Benefit contributions for women reaching pension age from 6 April 2010 to be increased to equal that for men;
  - the Graduated Retirement Benefit inheritance rights available to widows to be extended to widowers and surviving civil partners reaching State Pension age on or after 6 April 2010;
  - the phasing-out of the automatic award of National Insurance credits for men aged between 60 and 64 in line with the increase in women's State Pension age;
  - a person who does not qualify for a full basic State Pension to be entitled to a basic pension of one-thirtieth of the weekly amount for each qualifying year accrued;
  - the removal of redundant provisions requiring a woman to consent to her husband deferring his pension where she is claiming a State Pension based on his contribution record;

- someone with a deficient contribution record to be treated as entitled to a full basic pension if their former spouse or civil partner qualifies for a full basic pension under the new single contribution condition (the substitution rule);
- a former spouse's or civil partner's years of Home Responsibilities Protection which have been converted to parents and carers credits to be disregarded as qualifying years for the purposes of the substitution rule where the marriage or civil partnership ends before 6 April 2010. This preserves the position of cases falling to be dealt with under existing rules;
- the calculation of State Second Pension where a person has been in contracted-in and contracted-out employments within the same tax year;
- a person reinstated to the State Pension system through the payment of a contributions equivalent premium to have their State Second Pension calculated under the new simplified rules;
- a person entitled to Employment and Support Allowance to accrue State Second Pension from 2010/11 by treating periods of entitlement as a condition of eligibility for the new deemed earnings factor credits.

#### **4. Consultation**

As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain they do not have to be submitted to the Social Security Advisory Committee.

#### **5. Equality Impact**

- 5.1 An equality screening has been carried out in respect of the proposals consequential on the Pensions (Northern Ireland) Order 1995. The Department is satisfied that they do not have an impact on equality of opportunity for any of the nine equality categories under section 75.
- 5.2 The proposals consequential on the Pensions Act (Northern Ireland) 2008 were the subject of a full Equality Impact Assessment published in October 2007.

#### **6. Regulatory Impact**

These Regulations do not require a Regulatory Impact Assessment as they do not impose any new costs on business, charities, social enterprise or voluntary bodies.

#### **7. Financial Implications**

Costs associated with the Pensions Act (Northern Ireland) 2008 were addressed in the Regulatory Impact Assessment for that Act. The benefit

costs of equalising Graduated Retirement Benefit are estimated to be £18,000 in 2010/11, rising to £270,000 by 2020.

#### **8. Section 24 of the Northern Ireland Act 1998**

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule is not incompatible with any of the Convention rights, is not incompatible with Community law, does not discriminate against a person or class of person on the ground of religious belief or political opinion, and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

#### **9. EU Implications**

Not applicable.

#### **10. Parity or Replicatory Measure**

The corresponding Great Britain Regulations are the Social Security (State Pension and National Insurance Credits) Regulations 2009 which come into force on 6th April 2010.