

EXPLANATORY MEMORANDUM TO
THE PENSIONS (2015 ACT) (CONSEQUENTIAL AND SUPPLEMENTARY
AMENDMENTS) ORDER (NORTHERN IRELAND) 2016

S.R. 2016 No. 78

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under the powers conferred by section 50 of the Pensions Act (Northern Ireland) 2015 (“the 2015 Act”) and is subject to the confirmatory resolution procedure before the Assembly.

2. Purpose

- 2.1 The Order makes consequential and supplementary amendments to primary legislation in connection with the introduction of the new State pension. The most significant of these relate to the calculation of a State pension under the pre-2016 scheme for a widowed person who reached pensionable age before 6 April 2016 but whose deceased spouse or civil partner was in the new State pension.

3. Background

- 3.1 People who reach State pension age before 6 April 2016 will continue to receive their State pension under the old State pension system. Such a person who is widowed after the new system starts will therefore still be able to qualify for a “Category B” pension – an old State pension based on their late spouse or civil partner’s National Insurance contributions. For a person widowed over pension age, a survivor’s Category B pension can consist of both additional State pension (AP) and basic pension. The legislation provides for the Category B pension to be calculated in the same way as the deceased’s Category A pension (an old State pension based on a person’s own National Insurance contributions) but modified to reflect the inheritable proportion of AP payable to a survivor.
- 3.2 Where the late spouse or civil partner is in the new system (and is therefore not eligible for a Category A pension), the Category B pension will be calculated by reference to a notional rate of Category A pension. The 2015 Act amends the Category B provisions to exclude any contributions the deceased made for tax years after the old scheme closed on 5 April 2016 from the calculation. This Order makes further consequential amendments relating to the calculation of the survivor’s inheritable AP in such cases.

- 3.3 In order to calculate the earnings-related part of a person's AP, their earnings for past years are re-valued in line with the growth in average earnings to bring them up to current values. The percentage increases to be applied to the earnings in each tax year from 1978/79 onwards to achieve this are set out in the Social Security Revaluation of Earnings Factors Order (Northern Ireland), made under section 130 of the Social Security Administration (Northern Ireland) Act 1992 ("the Administration Act").
- 3.4 From April 2016, people will no longer accrue AP. However, for the purposes of calculating a Category B pension where the deceased spouse or civil partner was in the new State pension, the AP the deceased had accrued, including the flat-rate amounts accrued from 2012/13 to 2015/16, will still need to be re-valued up to when they would, in the old scheme, have become entitled to the AP or died, if earlier.
- 3.5 The earnings-related part of the AP will continue to be re-valued using the existing mechanism (the Revaluation of Earnings Factor Order, referred to in paragraph 3.3). Article 2(5) provides for the flat-rate amount of the deceased's AP to be re-valued by reference to the cumulative percentage increase specified in that Order for earnings in tax year 2015/16. This has the same effect as the existing arrangements but removes the need to make a separate Order under section 130AA of the Administration Act. Paragraph (4)(a) makes a supplementary amendment to ensure that the flat-rate amount is included in a Category B pension for widowers and surviving civil partners who reached State pension age before April 2010.
- 3.6 There will therefore be no need to make any further Orders setting a new flat-rate accrual amount or the level of the low earnings threshold.
- 3.7 Paragraphs (3) and (4)(b) of Article 2 ensure that where the deceased dies over State pension age, the calculation of the inheritable AP includes any up-rating increases to reflect price inflation that occurred in the interval between the deceased reaching that age and their death, as would be the case if the Category A pension were actually in payment to the deceased in that period.

Amendments to do with the new State pension system

- 3.8 The remaining provisions made by the Order are mainly consequential amendments that extend various existing arrangements to the new State pension.
- 3.9 Article 2(2) relates to the calculation of a person's "starting amount" – the comparison of their State pension under the old and new rules based on their National Insurance contributions up to 5 April 2016. The amendment ensures that where a person is awarded National Insurance credits after April 2016 in respect of a period of parental or caring responsibility falling before that date, the credits can be included in the calculation of their old-rules valuation. This mirrors the equivalent provision for other types of National Insurance credits made by paragraph 3(7) of Schedule 1 to the 2015 Act.
- 3.10 The amendment of the Pensions (Northern Ireland) Order 1995 made by Article 3 is to ensure that the exception to the equal treatment rule in occupational pensions contained in Article 64(2) of that Order also applies where the member of the occupational scheme will be entitled to a new State pension. Paragraph 2 allows an

exception to the general rule that occupational pension schemes must treat men and women equally. The exception relates to what is commonly known as a “bridging pension”. This arrangement typically means that where the scheme member retires before State pension age, the tax regime allows their occupational pension to be paid at a higher rate initially and then reduced when their State pension becomes payable.

- 3.11 The exception allows a different amount of occupational pension to be paid to a man who has not reached State pension age but would have done so had he been a woman. This difference is permissible only to the extent that it is attributable to the difference in male and female State pension ages. As women’s State pension age does not reach male State pension age until November 2018, it is necessary to include the new State pension in this exception rule.
- 3.12 Article 4 amends Article 16 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999. Article 16 enables Her Majesty’s Revenue and Customs (HMRC) to make decisions about entitlement to National Insurance credits on behalf of the Department. The 2015 Act creates a new power (subsection (5ZA) of section 22 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992) to make regulations setting out when people may qualify for National Insurance credits for the purposes of entitlement to the new State pension. The effect of the amendment is simply to extend HMRC’s decision-making function to include decisions on those credits.

4. Consultation

- 4.1 There is no requirement to consult on this Rule.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for this Rule. The Department has concluded that those proposals would not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

- 6.1 The Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 The new State Pension has been designed to cost no more overall than the current system.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Order –

- (a) is not incompatible with any of the Convention rights,
- (b) is not incompatible with Community law,
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Order (S.I. 2016/224) will come into force on 6 April 2016. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.