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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 80**

**The State Pension (Amendment)  
Regulations (Northern Ireland) 2016**

**Amendment of the State Pension Regulations**

**2.**—(1) The State Pension Regulations (Northern Ireland) 2015 are amended in accordance with paragraphs (2) to (4).

(2) For regulation 1(2) (interpretation) substitute—

“(2) In these Regulations—

“the 1966 Act” means the National Insurance Act (Northern Ireland) 1966<sup>(1)</sup>;

“the Act” means the Pensions Act (Northern Ireland) 2015;

“deferral period” means the period during which a person’s entitlement to a state pension under Part 1 of the Act is deferred;

“graduated retirement benefit” means any benefit under section 35 (graduated retirement benefit) or section 36 (special provisions as to graduated retirement benefit for widows) of the 1966 Act<sup>(2)</sup>.”

(3) After regulation 12 (part weeks treated as whole weeks in determining the amount of entitlement during deferral) insert—

**“Modification of the amount of an increment for other cases during deferral**

**12A.**—(1) Subject to regulation 23, this regulation applies in cases where, at any time in the deferral period, the weekly rate of the person’s state pension, had the person’s entitlement not been deferred, would have changed otherwise than because of an up-rating increase<sup>(3)</sup> (“a non-uprating change”).

(2) Section 17(4) of the Act (amount of an increment for pensioner postponing or suspending state pension) is modified to provide that the amount of an increment for each modification period is equal to a percentage specified in regulations of the weekly rate of the state pension to which the person, if their entitlement had not been deferred, would have been entitled immediately before the end of the modification period.

(3) The first modification period begins at the start of the deferral period and ends immediately before the date of the first or only non-uprating change.

(4) Further modification periods begin on the date of the most recent or only non-uprating change and end—

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(1) [1966 \(c. 6 \(N.I.\)\)](#)

(2) Sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966 were repealed by Part II of Schedule 28 to the Social Security Act 1973 (c. 38) with effect from 6th April 1975 but are continued in force by regulation 2 of [S.R. 1978 No. 105](#); relevant amending Regulations are [S.R. 1989 No. 373](#), [S.R. 2005 Nos. 121 and 541](#), [S.R. 2010 No. 56](#) and [S.R. 2015 No. 124](#)

(3) See section 22(1) of the Pensions Act (Northern Ireland) 2015 for the definition of “up-rating increase” as amended by regulation 3 of these Regulations

- (a) immediately before the end of the deferral period, where there is no subsequent non-uprating change; or
  - (b) immediately before the date of the subsequent non-uprating change, where there is a subsequent non-uprating change.”
- (4) After regulation 14 add—

## “PART 6

### Graduated Retirement Benefit

#### **Survivor’s state pension based on inheritance of graduated retirement benefit**

**15.—**(1) A person (“P”) whose deceased spouse or civil partner paid graduated contributions as an insured person is entitled to a state pension in accordance with this regulation.

- (2) P is entitled to a state pension if—
- (a) P has reached pensionable age;
  - (b) P’s spouse died while they were married or P’s civil partner died while they were civil partners of each other;
  - (c) the marriage took place, or the civil partnership was formed, before 6th April 2016; and
  - (d) P is entitled to an inherited amount under regulation 16(1), (2) or (3).

(3) A state pension under this regulation is payable at a weekly rate equal to the inherited amount determined in accordance with regulation 16(4) to (6).

(4) The rate of the state pension for a person under this regulation is to be increased from time to time in accordance with regulation 17.

#### **Survivor’s state pension under regulation 15: inherited amount**

**16.—**(1) For the purposes of regulation 15(2)(d), a person (“P”) is entitled to an inherited amount if—

- (a) P’s spouse or civil partner died before 6th April 2016;
  - (b) P was under pensionable age when the spouse or civil partner died; and
  - (c) P has not married or formed a civil partnership after the death and before the time P reaches pensionable age.
- (2) For the purposes of regulation 15(2)(d), P is entitled to an inherited amount if—
- (a) P’s spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016;
  - (b) P was under pensionable age when the spouse or civil partner died; and
  - (c) P has not married or formed a civil partnership after the death and before the time P reaches pensionable age.
- (3) For the purposes of regulation 15(2)(d), P is entitled to an inherited amount if—
- (a) the spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016; and
  - (b) P was over pensionable age when the spouse or civil partner died.

(4) The inherited amount is half of the weekly rate of the deceased spouse's or civil partner's graduated retirement benefit, determined in accordance with paragraph (5), on the date referred to in paragraph (6) (whether or not the deceased was receiving, or entitled to receive, any such benefit).

(5) The determination for the purposes of paragraph (4) is carried out by—

- (a) taking the weekly rate of graduated retirement benefit appropriate to the amount of graduated contributions paid by the deceased;
- (b) determining that weekly rate as if any provisions in orders under section 132 of the Administration Act(4) (annual up-rating of benefits) which—
  - (i) increase that weekly rate; and
  - (ii) have come into operation since the date of the deceased's death, had come into operation before that date; and
- (c) excluding any addition under—
  - (i) section 35(4) of the 1966 Act(5) (graduated retirement benefit); or
  - (ii) section 36(1) of that Act(6) (special provisions as to graduated retirement benefit for widows, widowers and surviving civil partnerships).

(6) The date mentioned in paragraph (4) is—

- (a) where the person falls within paragraph (1) or (2), the date on which the person reaches pensionable age; or
- (b) where the person falls within paragraph (3), the date on which the person's spouse or civil partner died.

### **Survivor's state pension under regulation 15: up-rating**

17.—(1) The rate of a person's state pension under regulation 15 is to be increased in accordance with the following paragraphs.

(2) In this regulation, a reference to the rate of a person's state pension is to the rate—

- (a) without any reduction under regulations made under section 7(4) (survivor's pension based on inheritance of additional old state pension) of the Act (in the case of a state pension under section 7 of the Act);
- (b) taking into account any reduction under section 14 (pension sharing: reduction in the sharer's section 4 pension) of the Act (in the case of a state pension under section 4 of the Act); and
- (c) without any increase under section 17 of the Act.

(3) The rate of a person's state pension is increased in accordance with paragraph (4) where—

- (a) that rate, when added to the sum of the rate of any state pension to which the person is entitled under section 7 and section 2, 4 or 12 of the Act (entitlement to state pension at various rates), is equal to, or less than, the full rate(7) of the state pension; and
- (b) the full rate of the state pension is increased at any time.

(4) Where paragraph (3) applies—

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(4) Section 132 was amended by paragraph 41 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49 (N.I.)); paragraph 9 of Schedule 4 to the Tax Credits Act 2002 (c. 21); section 3 of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and regulation 2(2) of S.R. 2012 No. 120

(5) Section 35(4) as modified was further amended by regulation 3 of, and Schedule 1 to, S.R. 2005 No. 121

(6) Section 36(1) as modified was amended by regulation 5(2)(b)(i) of S.R.1989 No. 373

(7) See section 22(1) of the Pensions Act (Northern Ireland) 2015 for the definition of "full rate"

- (a) the rate of a person's state pension is increased by the same percentage as the increase in the full rate; and
  - (b) that increase of the person's state pension is to be made at the same time as the increase in the full rate.
- (5) The rate of a person's state pension is increased in accordance with either or both of paragraphs (6) and (7) where—
- (a) both—
    - (i) that rate, when added to the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act, exceeds the full rate of the state pension; and
    - (ii) the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act is less than the full rate of the state pension; and
  - (b) either or both of the following occurs at any time—
    - (i) the full rate of the state pension is increased;
    - (ii) an up-rating order comes into operation.
- (6) Where paragraph (5)(a) and (b)(i) applies, the rate of a person's state pension is increased—
- (a) by an amount equal to the appropriate percentage of the shortfall immediately before the full rate of the state pension is increased ("the appropriate percentage" means the percentage by which the full rate is increased); and
  - (b) at the same time as paragraph (5)(b)(i) applies.
- (7) Where paragraph (5)(a) and (b)(ii) applies, the rate of a person's state pension is increased—
- (a) by an amount equal to the appropriate percentage of the excess immediately before the up-rating order mentioned in paragraph (5)(b)(ii) comes into operation ("the appropriate percentage" means the percentage specified in that up-rating order); and
  - (b) at the same time as that up-rating order comes into operation.
- (8) The rate of a person's state pension is increased in accordance with paragraph (9) where—
- (a) the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act is equal to, or higher than, the full rate of the state pension; and
  - (b) an up-rating order comes into operation at any time.
- (9) Where paragraph (8) applies—
- (a) the rate of a person's state pension is increased by the percentage specified in the up-rating order mentioned in paragraph (8)(b); and
  - (b) that increase of a person's state pension is to be made at the same time as that up-rating order comes into operation.
- (10) In this regulation—
- "the excess" means the amount by which the rate of the state pension, when added to the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act, exceeds the full rate;

“the shortfall” means the amount by which the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act, is less than the full rate;

“up-rating order” means an order under section 132B of the Administration Act<sup>(8)</sup> (up-rating of transitional state pensions under Pensions Act (Northern Ireland) 2015).

### **Choice of lump sum or state pension based on inheritance of deferred graduated retirement benefit**

**18.**—(1) Subject to paragraph (8), a person (“P”) is entitled to a choice under this regulation if—

- (a) P has reached pensionable age;
- (b) P’s spouse died while they were married or P’s civil partner died while they were civil partners of each other;
- (c) the spouse’s or civil partner’s entitlement to graduated retirement benefit was deferred at the time of death and throughout the period of 12 months ending with the day before the death; and
- (d) either—
  - (i) P was under pensionable age when the spouse or civil partner died and did not marry or form a civil partnership between the date of death and the date P reached pensionable age; or
  - (ii) P was over pensionable age when the spouse or civil partner died.

(2) P may choose to be paid—

- (a) a lump sum under regulation 19; or
- (b) a state pension under regulation 20.

(3) The manner in which that choice is to be made is the manner set out in regulation 5(2) and (3).

(4) The period within which that choice is to be made is the period set out in regulation 4(2) and (3) and P may make a late choice after that period where—

- (a) the Department considers it is reasonable in any particular case; and
- (b) any amount paid by way of (or on account of) a lump sum under regulation 19 has been repaid to the Department—
  - (i) in full; and
  - (ii) in the currency in which that amount was originally paid.

(5) Where P fails to make a choice within the period set out in regulation 4(2) and (3), P is to be paid a lump sum under regulation 19.

(6) The amount of any lump sum to be paid to a person under regulation 19 is reduced to nil where that person makes a late choice under paragraph (4) to be paid a state pension under regulation 20.

(7) A choice under this regulation may be altered in the circumstances specified in regulation 6(2)<sup>(9)</sup>, and for that purpose—

- (a) regulation 6(3) applies where the circumstance in regulation 6(2)(f) applies;

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<sup>(8)</sup> Section 132B is inserted by paragraph 17 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.))

<sup>(9)</sup> Regulation 6(2) was amended by regulation 28 of S.R. 2015 No. 411

- (b) any references in regulation 6(2) and (3) to “section 8 of the Act” are to be read as references to regulation 19; and
  - (c) any references in regulation 6(2) and (3) to “section 9 of the Act” are to be read as references to regulation 20.
- (8) P is not entitled to a choice under this regulation if P is entitled to a choice under section 8(2) of the Act.
- (9) Where paragraph (1) applies to P and P makes a choice under—
- (a) section 8(2)(a) of the Act, P is to be paid a lump sum under regulation 19 (subject to paragraph (10));
  - (b) section 8(2)(b) of the Act, P is to be paid a state pension under regulation 20 (subject to paragraph (10)).
- (10) Where paragraph (1) applies to P and P alters a choice under regulation 6—
- (a) P is to be paid a lump sum under regulation 19 where P’s new choice is to be paid a lump sum under section 8 of the Act;
  - (b) P is to be paid a state pension under regulation 20 where P’s new choice is to be paid a state pension under section 9 of the Act.
- (11) Where paragraph (1) applies to P and P fails to make a choice under section 8(2)(10) of the Act, P is to be paid a lump sum under regulation 19.

#### **Survivor’s lump sum based on inheritance of deferred graduated retirement benefit**

**19.**—(1) Where a person (“P”) is to be paid a lump sum by virtue of regulation 18, P is entitled to a lump sum calculated in accordance with paragraph 10 or, where appropriate, paragraph 20 (calculation of widowed person’s or surviving civil partner’s lump sum) of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005<sup>(11)</sup>.

(2) In paragraphs 10(6) and 20(6) of Schedule 1 to those Regulations as they apply for the purposes of this regulation, the references to the date on which the person becomes entitled to a Category A or Category B retirement pension or to graduated retirement benefit are to be read as a reference to the date on which the person becomes entitled to make a choice under regulation 18.

#### **Survivor’s state pension based on inheritance of deferred graduated retirement benefit**

- 20.**—(1) A person (“P”) is entitled to a state pension under this regulation if—
- (a) P has reached pensionable age;
  - (b) P’s spouse died while they were married or P’s civil partner died while they were civil partners of each other;
  - (c) either—
    - (i) P was under pensionable age when the spouse or civil partner died and did not marry or form a civil partnership between the date of death and the date P reached pensionable age; or
    - (ii) P was over pensionable age when the spouse or civil partner died;
  - (d) either—

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<sup>(10)</sup> See section 8(4) of the Pensions Act (Northern Ireland) 2015

<sup>(11)</sup> S.R. 2005 No. 121; paragraphs 10 and 20 were amended by regulation 4(5) and (9) of S.R. 2005 No. 541

- (i) P's spouse or civil partner was entitled to an increase in graduated retirement benefit; or
  - (ii) P's spouse's or civil partner's entitlement to graduated retirement benefit was deferred when the spouse or civil partner died;
  - (e) where P is entitled to a choice under regulation 18, P has chosen to be paid a state pension under this regulation; and
  - (f) where P is not entitled to a choice under regulation 18 because regulation 18(8) applies to P, P is to be paid a state pension under this regulation by virtue of regulation 18(9)(b) or (10)(b).
- (2) Subject to paragraph (3), a state pension under this regulation is payable at a weekly rate equal to half of the weekly rate of—
- (a) the deceased spouse's or civil partner's increase in graduated retirement benefit; or
  - (b) where the deceased spouse's or civil partner's entitlement to graduated retirement benefit was deferred when the deceased died, the increase in graduated retirement benefit, determined in accordance with paragraph (4), that would have been payable if the deferral had ended immediately before the deceased's death.
- (3) For the purposes of paragraph (2), if at any time an order under section 132B of the Administration Act comes into operation, the rate of P's state pension under this regulation is increased (at that time) by the percentage specified in the order.
- (4) For the purposes of paragraph (2), the increase is to be determined as if—
- (a) any provisions in orders under section 132 of the Administration Act which—
    - (i) increase the weekly rate of the graduated retirement benefit; and
    - (ii) have come into operation between the date of the deceased's death and the date on which P reaches pensionable age,had come into operation before the date of death; and
  - (b) the weekly rate of the deceased spouse's or civil partner's increase did not include any addition under section 36(1) of the 1966 Act (special provisions as to graduated retirement benefit for widows, widowers and surviving civil partnerships).
- (5) In this regulation, "increase in graduated retirement benefit" means an increase determined in accordance with section 35(4) of the 1966 Act (graduated retirement benefit).

## PART 7

### Overseas Residents

#### Entitlement to state pension for overseas residents

**21.—**(1) An overseas resident who is entitled to a state pension under Part 1 of the Act is not entitled to up-rating increases<sup>(12)</sup> in accordance with this regulation.

(2) This regulation—

(a) applies in relation to an up-rating increase if Regulations are made—

(i) in consequence of an order under section 132A (annual up-rating) or 132B (up-rating of transitional state pensions under Pensions Act (Northern Ireland))

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<sup>(12)</sup> See section 22(1) of the Pensions Act (Northern Ireland) 2015 for the definition of "up-rating increase" as amended by regulation 3 of these Regulations

- 2015) of the Administration Act(13) or in consequence of any other legislation; and
- (ii) which provide that this regulation applies to that up-rating increase; and
- (b) is subject to the Regulations referred to in sub-paragraph (a).
- (3) Paragraph (4) applies in a case where—
- (a) a person’s entitlement to a state pension under Part 1 of the Act has been deferred for a period(14); and
- (b) when the deferral period ends, that person is—
- (i) entitled to a state pension under Part 1 of the Act; and
- (ii) an overseas resident.
- (4) Where this paragraph applies, the person mentioned in paragraph (3) is not entitled to any up-rating increases—
- (a) in respect of the deferral period if—
- (i) the person was an overseas resident at the time of that increase; and
- (ii) the person continued to be an overseas resident until the deferral period ended; and
- (b) after the deferral period ended if the person is an overseas resident at the time of that increase.
- (5) In all other cases, a person is not entitled to up-rating increases where, immediately before the up-rating increase comes into operation, the person was—
- (a) entitled to a state pension under Part 1 of the Act; and
- (b) an overseas resident.
- (6) For the purposes of sections 18(4) and 20(2) and (3) of the Act, the territory specified is any part of the Channel Islands in respect of which an order made under section 155 of the Administration Act(15) is not in operation.

### **Modification of the amount of an increment for an overseas resident**

**22.**—(1) Subject to regulation 23, this regulation applies in cases where, during any part of the deferral period, a person has been an overseas resident.

(2) For any part of the deferral period during which the person was an overseas resident and was not in Northern Ireland or a territory specified in regulation 21(6), section 17(4) of the Act is modified to provide that the amount of an increment is equal to a percentage specified in regulations of the weekly rate of the state pension to which the person would have been entitled immediately before the start of that part of the deferral period if the person’s entitlement had not been deferred.

(3) For any part of the deferral period during which the person was not an overseas resident, section 17(4) of the Act is modified to provide that the amount of an increment is equal to a specified percentage of the weekly rate of the state pension to which the person would have been entitled immediately before the end of that part of the deferral period if the person’s entitlement had not been deferred.

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(13) Section 132A was inserted by section 5(1) of the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)), subject to section 5(3) and (4); *see also* S.I. 2010/2650: section 132B is inserted by paragraph 17 of Schedule 12 to the Pensions Act (Northern Ireland) 2015

(14) *See* section 17(7) and (8) of the Pensions Act (Northern Ireland) 2015 for when a person’s entitlement to a state pension under that Act has been deferred

(15) Section 155 is amended by paragraph 21 of Schedule 12 to the Pensions Act (Northern Ireland) 2015; there are other amendments not relevant to these Regulations



**Modification of the amount of an increment where regulations 12A and 22 both apply**

**23.**—(1) This regulation applies in a case where section 17(4) of the Act falls to be modified under both regulations 12A and 22 at the same time.

(2) Section 17(4) of the Act is modified to provide that the amount of an increment is determined in accordance with paragraphs (3) to (5).

(3) The amount of the increment is first determined in accordance with the modifications set out in regulation 22.

(4) The amount of the increment is then determined in accordance with the modifications set out in regulation 12A as if the reference in regulation 12A(2) to the weekly rate of the state pension were a reference to the weekly rate referred to in—

- (a) regulation 22(2), for any part of the deferral period during which the person was an overseas resident and was not in Northern Ireland or a territory specified in regulation 21(6); and
- (b) regulation 22(3), for any part of the deferral period during which the person was not an overseas resident.

(5) Any increase or decrease of the increment as determined in accordance with paragraph (4) is then added to, or subtracted from, the amount of the increment as determined in accordance with paragraph (3).”