

Draft Regulations laid before Parliament under section 186(3)(a) of the Pension Schemes Act 1993 and section 54(2)(a) and (b) of the Pensions Act 2014, for approval by resolution of each House of Parliament.

Regulation 6 has been made in consequence of a defect in [S.I. 2015/1452](#) and this Statutory Instrument is being issued free of charge to all known recipients of that Statutory Instrument.

DRAFT STATUTORY INSTRUMENTS

2016 No.

SOCIAL SECURITY PENSIONS

The State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016

*Made - - - -
Coming into force in accordance with regulation 1(2)
to (4)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 24B(5) and 181(1) of the Pension Schemes Act 1993⁽¹⁾ and sections 10, 18(2), (3) and (4), 20, 22(1) and 54(5) and (6) of the Pensions Act 2014⁽²⁾.

In relation to regulation 6, the Secretary of State has consulted such persons as the Secretary of State considers appropriate, in accordance with section 185(1) of the Pension Schemes Act 1993⁽³⁾.

The remainder of these Regulations have not been referred to the Social Security Advisory Committee because they are made before the end of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2014 under which they are made⁽⁴⁾.

A draft of these Regulations has been laid before Parliament in accordance with section 186(3)(a) of the Pension Schemes Act 1993⁽⁵⁾ and section 54(2)(a) and (b) of the Pensions Act 2014 and approved by resolution of each House of Parliament.

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- (1) [1993 c.48](#). Section 24B was inserted by section 14(3) of the Pensions Act [2007 \(c.22\)](#) and section 181(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (2) [2014 c.19](#). Section 22(1) is cited for the meaning it gives to “regulations”.
- (3) Relevant amendments to section 185(1) were made by paragraph 46 of Schedule 3 to, and paragraph 80 of Schedule 5 to, and Part I of Schedule 7 to, the Pensions Act [1995 \(c.26\)](#).
- (4) See section 173(5) of the Social Security Administration Act [1992 \(c.5\)](#).
- (5) Section 186(3) was amended by section 14(12) of the Pensions Act 2007.

Citation, commencement and application

1.—(1) These Regulations may be cited as the State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016.

(2) This regulation and regulation 6(2) come into force 21 days after the day on which these Regulations are made.

(3) Regulation 6(1) and (3) comes into force on 6th April 2016.

(4) The remainder of these Regulations come into force on 6th April 2016, immediately after the State Pension Regulations 2015(6).

(5) These Regulations, except regulation 6, do not apply to a person who reaches pensionable age (within the meaning in section 22(1) of the Pensions Act 2014 (general definitions etc)) before 6th April 2016.

Amendment of the State Pension Regulations 2015

2. For regulation 1(4) of the State Pension Regulations 2015 (interpretation), substitute—

“(4) In these Regulations—

“the 1965 Act” means the National Insurance Act 1965(7);

“the 2014 Act” means the Pensions Act 2014;

“deferral period” means the period during which a person’s entitlement to a state pension under Part 1 of the 2014 Act is deferred;

“graduated retirement benefit” means any benefit under section 36 (graduated retirement benefit) or 37 (special provisions as to graduated retirement benefit for widows) of the 1965 Act(8).”.

3. In Part 3 of the State Pension Regulations 2015, 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 (“a non-uprating change”).

(2) Section 17(4) of the 2014 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—

(a) immediately before the end of the deferral period, where there is no subsequent non-uprating change; or

(6) S.I. 2015/173.

(7) 1965 c.51.

(8) Sections 36 and 37 were repealed by Schedule 28 to the Social Security Act 1973 (c.38) but continue in force by virtue of S.I. 1978/393.

- (b) immediately before the date of the subsequent non-uprating change, where there is a subsequent non-uprating change.”.

4. After Part 5 of the State Pension Regulations 2015, insert—

“PART 6

Graduated Retirement Benefit

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

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

(2) Such a person is entitled to a state pension if—

- (a) that person has reached pensionable age;
- (b) that person’s spouse died while they were married or that person’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) that person 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 is entitled to an inherited amount if—

- (a) their spouse or civil partner died before 6th April 2016;
- (b) they were under pensionable age when their spouse or civil partner died; and
- (c) they have not married or formed a civil partnership after the death and before the time they reach pensionable age.

(2) For the purposes of regulation 15(2)(d), a person is entitled to an inherited amount if—

- (a) their spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016;
- (b) they were under pensionable age when their spouse or civil partner died; and
- (c) they have not married or formed a civil partnership after the death and before the time they reach pensionable age.

(3) For the purposes of regulation 15(2)(d), a person is entitled to an inherited amount if—

- (a) their spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016; and
- (b) they were over pensionable age when their 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 150 of the Administration Act (annual up-rating of benefits)⁽⁹⁾ which—
 - (i) increase that weekly rate; and
 - (ii) have come into force since the date of the deceased’s death, had come into force before that date; and
 - (c) excluding any addition under—
 - (i) section 36(4) of the 1965 Act; or
 - (ii) section 37(1) of that Act.
- (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 as follows.

- (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 2014 Act (in the case of a state pension under section 7 of the 2014 Act);
 - (b) taking into account any reduction under section 14 (pension sharing: reduction in the sharer’s section 4 pension) of the 2014 Act (in the case of a state pension under section 4 of the 2014 Act); and
 - (c) without any increase under section 17 of the 2014 Act.
- (3) The rate of the 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 2014 Act (entitlement to state pension at various rates), is equal to or less than the full rate⁽¹⁰⁾ of the state pension; and
 - (b) the full rate of the state pension is increased at any time.
- (4) Where paragraph (3) applies—
- (a) the rate of the person’s state pension is increased by the same percentage as the increase in the full rate; and

⁽⁹⁾ 1992 c.5. See section 22(1) of the Pensions Act 2014 for the definition of “the Administration Act”. Relevant amendments were made to section 150 by section 131(2) of the Pensions Act 1995 and S.I. 2006/2839.

⁽¹⁰⁾ See section 22(1) of the Pensions Act 2014 for the definition of “full rate”.

- (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 the 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 the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act, exceeds the full rate of the state pension; and
 - (ii) 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 2014 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 uprating order comes into force.
- (6) Where paragraph (5)(a) and (b)(i) applies, the rate of the 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 the person's state pension is increased—
 - (a) by an amount equal to the appropriate percentage of the excess immediately before the uprating order mentioned in paragraph (5)(b)(ii) comes into force ("the appropriate percentage" means the percentage specified in that uprating order); and
 - (b) at the same time as that uprating order comes into force.
- (8) The rate of the person's state pension is increased in accordance with paragraph (9) where—
 - (a) 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 2014 Act is equal to or higher than the full rate of the state pension; and
 - (b) an uprating order comes into force at any time.
- (9) Where paragraph (8) applies—
 - (a) the rate of the person's state pension is increased by the percentage specified in the uprating order mentioned in paragraph (8)(b); and
 - (b) that increase of the person's state pension is to be made at the same time as that uprating order comes into force.
- (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 the person is entitled under section 7 and section 2, 4 or 12 of the 2014 Act, exceeds the full rate;
 - "the shortfall" means the amount by which 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 2014 Act, is less than the full rate;

“uprating order” means an order under section 151A of the Administration Act (uprating of transitional state pensions under the 2014 Act)(11).

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

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

- (a) that person has reached pensionable age;
- (b) that person’s spouse died while they were married or that person’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) that person 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 that person reached pensionable age; or
 - (ii) that person was over pensionable age when the spouse or civil partner died.

(2) The person 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 a person may make a late choice after that period where—

- (a) the Secretary of State 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 Secretary of State—
 - (i) in full; and
 - (ii) in the currency in which that amount was originally paid.

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

(6) The amount of any lump sum to be paid to the person under regulation 19 is reduced to nil where the 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), and for that purpose—

- (a) regulation 6(3) applies where the circumstance in regulation 6(2)(f) applies;
- (b) any references in regulation 6(2) and (3) to section 8 of the 2014 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 2014 Act are to be read as references to regulation 20.

(8) A person is not entitled to a choice under this regulation if they are entitled to a choice under section 8(2) of the 2014 Act.

(9) Where paragraph (1) applies to a person and that person makes a choice under—

(a) section 8(2)(a) of the 2014 Act, they are to be paid a lump sum under regulation 19 (subject to paragraph (10));

(b) section 8(2)(b) of the 2014 Act, they are to be paid a state pension under regulation 20 (subject to paragraph (10)).

(10) Where paragraph (1) applies to a person and that person alters a choice under regulation 6—

(a) they are to be paid a lump sum under regulation 19 where their new choice is to be paid a lump sum under section 8 of the 2014 Act;

(b) they are to be paid a state pension under regulation 20 where their new choice is to be paid a state pension under section 9 of the 2014 Act.

(11) Where paragraph (1) applies to a person and that person fails to make a choice under section 8(2) of the 2014 Act⁽¹²⁾, they are 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 is to be paid a lump sum by virtue of regulation 18, they are entitled to a lump sum calculated in accordance with paragraph 10 or, where appropriate, paragraph 20 of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005⁽¹³⁾.

(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 is entitled to a state pension under this regulation if—

(a) that person has reached pensionable age;

(b) that person's spouse died while they were married or that person's civil partner died while they were civil partners of each other;

(c) either—

(i) that person 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 that person reached pensionable age; or

(ii) that person was over pensionable age when the spouse or civil partner died;

(d) either—

(i) that person's spouse or civil partner was entitled to an increase in graduated retirement benefit; or

(ii) that person's spouse's or civil partner's entitlement to graduated retirement benefit was deferred when the spouse or civil partner died;

⁽¹²⁾ See section 8(4) of the Pensions Act 2014.

⁽¹³⁾ S.I. 2005/454. Paragraphs 10 and 20 were amended by S.I. 2005/3078.

- (e) in the case of a person entitled to a choice under regulation 18, that person has chosen to be paid a state pension under this regulation; and
 - (f) in the case of a person who is not entitled to a choice under regulation 18 because regulation 18(8) applies to them, that person 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 they 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 their death.
- (3) For the purposes of paragraph (2), if at any time an order under section 151A of the Administration Act comes into force, the rate of the person’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 150 of the Administration Act which—
 - (i) increase the weekly rate of the graduated retirement benefit; and
 - (ii) have come into force between the date of the deceased’s death and the date on which the person reaches pensionable age, had come into force 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 37(1) of the 1965 Act.
- (5) In this regulation, “increase in graduated retirement benefit” means an increase determined in accordance with section 36(4) of the 1965 Act.

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 2014 Act is not entitled to up-rating increases⁽¹⁴⁾ 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 150A (annual up-rating) or 151A of the Administration Act⁽¹⁵⁾ 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 made as mentioned in sub-paragraph (a).

⁽¹⁴⁾ See section 22(1) of the Pensions Act 2014 for the meaning of “up-rating increases”.

⁽¹⁵⁾ Section 150A was inserted by section 5 of the Pensions Act 2007 and amended by paragraphs 19 and 82 of Schedule 12 to the Pensions Act 2014 and [S.I. 2014/2888](#).

- (3) Paragraph (4) applies in a case where—
- (a) a person’s entitlement to a state pension under Part 1 of the 2014 Act has been deferred for a period⁽¹⁶⁾; and
 - (b) when the deferral period ends, that person is—
 - (i) entitled to a state pension under Part 1 of the 2014 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 force, they were—
- (a) entitled to a state pension under Part 1 of the 2014 Act; and
 - (b) an overseas resident.
- (6) For the purposes of sections 18(4) and 20(2) and (3) of the 2014 Act, the territory specified is any part of the Channel Islands which is not subject to an Order made under section 179 of the Administration Act⁽¹⁷⁾.

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 Great Britain or a territory specified in regulation 21(6), section 17(4) of the 2014 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 2014 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.

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 2014 Act falls to be modified under both regulations 12A and 22 at the same time.

⁽¹⁶⁾ See section 17(7) and (8) of the Pensions Act 2014 for when a person’s entitlement to a state pension under that Act has been deferred.

⁽¹⁷⁾ Section 179, to which there are amendments not relevant to these Regulations.

(2) Section 17(4) of the 2014 Act is modified to provide that the amount of an increment is determined as set out in the following paragraphs.

(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 Great Britain 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).”.

Amendment of the Pensions Act 2014

5.—(1) The Pensions Act 2014 is amended as follows.

(2) In section 22(1) (general definitions) in the definition of “up-rating increase”—

- (a) at the end of paragraph (a), omit “or”; and
- (b) after paragraph (b) insert—

“, or

- (c) an increase in the rate of the state pension because of regulations under section 10 which make provision corresponding or similar to section 9(3) or Schedule 4;”.

(3) In paragraph 3(1) of Schedule 9 (pension sharing: up-rating state pension under section 13)—

- (a) at the end of paragraph (b), omit “and”; and
- (b) after paragraph (b) insert—

“(ba) the rate of any state pension to which the person is entitled under regulations made under section 10 which make provision corresponding or similar to section 7 and Schedules 3 and 4, and”.

Amendments relating to occupational pension schemes and contracting-out

6.—(1) Regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (conversion of guaranteed minimum pensions into other benefits: survivors’ benefits)(**18**) is revoked.

(2) The following provisions of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015(**19**) are revoked—

- (a) regulation 28 (conversion into other benefits: survivors’ benefits); and
- (b) regulation 32 (revocations taking effect on the second abolition date) in so far as it revokes regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996.

(3) After regulation 27 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015 (conversion into other benefits: actuarial equivalence)(**20**), insert—

(18) S.I. 1996/1172. Regulation 69B was inserted by S.I. 2009/846 and amended by S.I.s 2014/107, 560 and 3229.

(19) S.I. 2015/1452.

(20) S.I. 2015/1677.

“Conversion into other benefits: survivors’ benefits

27A.—(1) For the purposes of Condition 4 of section 24B of the 1993 Act, the circumstances in which, and periods during which, the converted scheme must provide survivors’ benefits are the circumstances set out in paragraph (2) and the periods set out in paragraph (3).

(2) The circumstances are—

- (a) an earner’s pre-conversion benefits include a guaranteed minimum pension; and
- (b) the scheme before conversion provided that—
 - (i) if the earner died (whether before or after attaining pensionable age) leaving a widow, widower or surviving civil partner, the widow, widower or surviving civil partner would be entitled to a guaranteed minimum pension; and
 - (ii) in a case where section 17(6) of the 1993 Act (minimum pensions for widows, widowers and surviving civil partners)(**21**) applies, a widower’s, widow’s or surviving civil partner’s guaranteed minimum pension would be payable in the circumstances set out in regulation 21(1).

(3) The periods are—

- (a) for widows, widowers and surviving civil partners, any period mentioned in section 17(4A)(a), (aa), (ab) or (b) of the 1993 Act(**22**);
- (b) subject to paragraph (4), for widows, widowers and surviving civil partners whose entitlement by virtue of the earner’s contributions to a widowed parent’s allowance or bereavement allowance has come to an end at a time after the widow, widower or surviving civil partner attained the age of 45, so much of the period beginning with the time when that entitlement came to an end as neither—
 - (i) comprises a period during which the widow, widower or surviving civil partner and another person are living together as a married couple; nor
 - (ii) falls after the time of any—
 - (aa) marriage; or
 - (bb) formation of a civil partnership,by the widow, widower or surviving civil partner which takes place after the earner’s death;
- (c) for widows whose spouse was a man, any period for which a widowed mother’s allowance or widow’s pension is payable to the widow by virtue of the earner’s contributions; and
- (d) for widowers, widows whose spouse was a woman and surviving civil partners, any period for which a scheme must make provision for the payment of a widow’s, widower’s or surviving civil partner’s pension, by virtue of section 17(6) of the 1993 Act and regulation 22.

(4) For the purposes of paragraph (3)(b), the following provisions do not apply where the earner died before 5th December 2005—

- (a) paragraph (3)(b)(i) so far as it relates to the living together of two people of the same sex;

(21) Section 17(6) was amended by paragraph 1(3) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19), paragraph 20(5) of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (c.30) and S.I.s 2005/2050 and 2014/3229.

(22) Section 17(4A) was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 and amended by paragraph 17(2) of Schedule 13 to the Pensions Act 2014 and S.I.s 2005/2050 and 2014/560 and 3229.

- (b) paragraph (3)(b)(ii)(aa) so far as it relates to a marriage involving two people of the same sex; and
- (c) paragraph (3)(b)(ii)(bb).”.

Signed by authority of the Secretary of State for Work and Pensions.

Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce further detailed rules relating to the new state pension. The Pensions Act 2014 (c.19) (“the 2014 Act”) creates the new state pension for people reaching pensionable age on or after 6th April 2016 (see Part 1 of that Act). It replaces the existing state pension for those people.

These Regulations also make amendments relating to the abolition of contracting-out of the state additional pension for salary related pension schemes as a consequence of a defect in the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 (S.I. 2015/1452) (“the Contracted-out Regulations”). These Regulations are being issued free of charge to all known recipients of those defective Regulations.

Regulations 2 to 4 of these Regulations amend the State Pension Regulations 2015 (S.I. 2015/173). Regulation 2 inserts some new definitions into those Regulations.

Regulation 3 inserts a new regulation 12A into the State Pension Regulations 2015. This makes further provision about deferral. A person may defer their state pension by choosing not to claim it when they are first entitled to it or by suspending receipt of it after they first claim it. If they defer, they may receive more state pension when they later choose to claim it. Regulation 12A sets out how any extra state pension they receive is calculated in certain circumstances. These are where the weekly rate of the state pension the person would have received if they had not deferred would have changed otherwise than as a result of an annual up-rating increase. For example, it might have changed as a result of becoming entitled to an inherited amount upon the death of the person’s spouse or civil partner.

Regulation 4 of these Regulations inserts a new Part 6 into the State Pension Regulations 2015, which contains provisions about inheritance of graduated retirement benefit. A person can be entitled to graduated retirement benefit if they made certain National Insurance contributions between 1961 and 1975. Where such a person dies, the provisions in new Part 6 provide that their surviving spouse or civil partner can be entitled to a state pension based on the inheritable graduated retirement benefit. This is a state pension under Part 1 of the 2014 Act.

Inserted regulations 15 and 16(1) to (3) set out the circumstances in which a person is entitled to a state pension based on the inheritable graduated retirement benefit. Regulation 16(4) to (6) determines the amount of such a state pension. Regulation 17 provides for annual up-rating increases of that state pension. Regulation 18 applies where a person has died while deferring their entitlement to a graduated retirement benefit. It allows their surviving partner to make a choice between taking the inheritable payment as a one-off lump sum or as a weekly pension and it includes provisions about making that choice. Regulation 19 sets out how to calculate the lump sum. Regulation 20 sets out who is eligible for the weekly pension, how to calculate it and when annual up-rating increases apply to it.

Regulation 4 of these Regulations also inserts a new Part 7 into the State Pension Regulations 2015, which contains provisions about state pensions for persons who are overseas residents. New regulation 21 sets out when overseas residents are not entitled to up-rating increases of their state pension. This includes at regulation 21(3) and (4) rules for persons who have deferred and are an overseas resident. Regulation 21(6) makes provision about whether a person in part of the Channel Islands is an overseas resident. Regulation 22 makes similar provision to regulation 12A for overseas residents who have deferred. Regulation 23 sets out how to determine the extra state pension when both regulations 12A and 22 apply.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016 No. 199

Regulation 5 of these Regulations amends the 2014 Act so that it includes state pension based on inheritance of graduated retirement benefit.

Regulation 6 amends the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677). The amendment sets out the requirements for the provision of survivors' benefits to members of a former contracted-out pension scheme who have accrued rights to a guaranteed minimum pension ("GMP"), where the scheme has converted GMPs into other benefits. The requirements are the same as the requirements for survivors' benefits in legislation governing the provision of GMPs (see sections 13 to 25 of the Pension Schemes Act 1993 (c.48)). This amendment is made as a consequence of the abolition of contracting-out. It replaces regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172), which is revoked by regulation 6 of these Regulations. Regulation 6 also revokes other provisions in the Contracted-out Regulations.

An analysis of the impact of regulation 6 of these Regulations has been made as part of the analysis of the 2014 Act. A full impact assessment has not been published for the remainder of these Regulations as they have no impact on the private sector or civil society organisations. An assessment has been made of the impact of the introduction of the new state pension. Copies of that impact assessment and the analysis of the impact of regulation 6 may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1 9NA or from the DWP website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311316/pensions-act-ia-annex-a-single-tier-state-pension.pdf. (Annex A contains the assessment for new state pension.)