

1989 No. 1642

SOCIAL SECURITY

**The Social Security (Abolition of Earnings Rule)
(Consequential) Regulations 1989**

Made - - - - - *7th September 1989*

Laid before Parliament *8th September 1989*

Coming into force - *1st October 1989*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 30(1) and 31(3) of the Social Security Act 1989(a), and of all other powers enabling him in that behalf, by this instrument, which contains only Regulations consequential upon section 7 of that Act and which is made before the end of the period of 6 months beginning with the coming into force of that section, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security (Abolition of Earnings Rule) (Consequential) Regulations 1989 and shall come into force on 1st October 1989.

Amendment of the Social Security (Claims and Payments) Regulations 1987

2.—(1) Regulation 15 of the Social Security (Claims and Payments) Regulations 1987(b) (advance notice of retirement and claim for and award of benefit) shall be amended in accordance with paragraphs (2) and (3) below.

(2) For paragraphs (5) and (6) of regulation 15 there shall be substituted the following paragraphs:—

“(5) Where a person claims a Category A or Category B retirement pension and is, or but for that claim would be, in receipt of sickness, invalidity or unemployment benefit for a period which includes the first day to which the claim relates, then if that day is not the appropriate day for the payment of retirement pension in his case, the claim shall be treated as if the first day of the claim was instead the next following such pay day.

(6) Where the spouse of such a person as is mentioned in paragraph (5) above claims a Category A or Category B retirement pension and the first day of that claim is the same as the first day of the claim made by that person, the provisions of that paragraph shall apply also to the claim made by the spouse.”

(3) In paragraph (7) of regulation 15 for the words “does not intend to retire from regular employment”, there shall be substituted the words “intends to defer his entitlement to a Category A or Category B retirement pension”, and the words “other than the question of retirement” shall be omitted.

(a) 1989 c.24; section 30(1) is cited because of the meaning ascribed to the word “regulations”.
(b) S.I. 1987/1968, to which there are amendments not relevant to these Regulations.

(4) Where a person claims a Category A or Category B retirement pension as from a day falling before 1st October 1989 then, in his case—

- (a) paragraphs (2), (3) and (4) of regulation 15 of the Social Security (Claims and Payments) Regulations 1987 shall apply as though section 27(4) of the Social Security Act 1975 had not been repealed(a), and
- (b) paragraphs (5), (6) and (7) of that regulation shall apply as though the amendments to those paragraphs contained in this regulation had not been made.

Amendment of the Social Security Benefit (Computation of Earnings) Regulations 1978

3. In regulation 5(4)(a) of the Social Security Benefit (Computation of Earnings) Regulations 1978(b) (calculation of earnings of certain retired pensioners and adult dependants of pensioners) after the words “his accounting period” there shall be inserted the words “but in a case to which section 30(1) of the Act applies, does not include any day falling after 30th September 1989”.

Amendment of the Social Security Benefit (Dependency) Regulations 1977

4. In regulations 2(1)(a), 10(2)(b)(ii) and 11(1)(a)(c) of the Social Security Benefit (Dependency) Regulations 1977(d) for the words “retired from regular employment” there shall be substituted the words “entitled to a Category A or Category B retirement pension” and in regulation 2(1)(b) of those Regulations for the word “retired” there shall be substituted the word “entitled”.

Amendment of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978

5.—(1) The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978(e) shall be amended in accordance with the following provisions of this regulation.

(2) In Schedule 1 (which sets out sections 36 and 37 of the National Insurance Act 1965(f) as continued in force by the Regulations)—

- (a) section 36 shall be amended by substituting—
 - (i) in subsection (1)(g) the words “is entitled to a retirement pension” for the words “(except as mentioned in section 37(1) below) has retired from regular employment”;
 - (ii) in subsection (4) the words “defers his entitlement to a Category A or Category B retirement pension” for the words “defers his retirement from regular employment”;
 - (iii) in subsection (7) the words “has claimed” for the words “retired from regular employment”;
- (b) section 37 shall be amended—
 - (i) by omitting from subsection (1) the words “but has not retired from regular employment” and from subsection (2) the words “retired from regular employment or otherwise”, and
 - (ii) by substituting in subsection (2) the word “not” for the words “neither retired from regular employment nor otherwise”.

(3) In Schedule 2 (which contains provisions to be applied in calculating the graduated retirement pension payable)—

- (a) in paragraph 1, the words “defers his entitlement to a Category A or Category B retirement pension” shall be substituted for the words “defers his retirement from regular employment” and the word “entitlement” shall be substituted for the word “retirement”;

(a) See the Social Security Act 1989 (c.24), Schedule 1, paragraph 1, and Schedule 9.

(b) S.I. 1978/1698.

(c) Regulation 11(1)(a) was amended by S.I. 1984/1698.

(d) S.I. 1977/343.

(e) S.I. 1978/393.

(f) 1965 c.51.

(g) Section 36(1) was amended by S.I. 1989/43.

- (b) in paragraph 2, the words “but has not retired from regular employment” shall be omitted;
- (c) in paragraph 3–
 - (i) in sub-paragraph (1) the words “period of enhancement” shall be substituted for the words “period of deferment”;
 - (ii) for head (b) in sub-paragraph (2) there shall be substituted the following head–
 - “(b) ‘period of enhancement’ in relation to any person means the period which begins on the same day as the period of deferment and ends on the same day as that period ends or, if earlier, on the day before the fifth anniversary of the beginning of that period.”;
 - (iii) in sub-paragraph (3) the words “had not deferred his entitlement to a Category A or Category B retirement pension” shall be substituted for the words “had retired on attaining pensionable age”.
 - (iv) in paragraph 4, the words “period of enhancement” shall be substituted for the words “period of deferment”;
- (d) in paragraph 4, the words “period of enhancement” shall be substituted for the words “period of deferment” on each occasion on which those words occur, and
 - (i) in sub-paragraph (1) the words “deferred his entitlement to a Category A or Category B retirement pension” shall be substituted for the words “deferred his retirement from regular employment”,
 - (ii) in head (a) of that sub-paragraph, the words “after attaining pensionable age if he had not deferred his entitlement to a Category A or Category B retirement pension” shall be substituted for the words “after his retirement if he had retired on attaining pensionable age”, and
 - (iii) in head (b) of that sub-paragraph the words “the same day the period of enhancement ends” shall be substituted for the words “the day before that of the person’s retirement.”.

Amendment of the Social Security (Benefit) (Married Women and Widows’ Special Provisions) Regulations 1974

6. In regulation 3A(1) of the Social Security (Benefit) (Married Women and Widows’ Special Provisions) Regulations 1974(a) the words “woman’s deceased husband’s entitlement to a Category A or Category B retirement pension was deferred” shall be substituted for the words “woman’s deceased husband had deferred retirement”.

Amendment of the Social Security (Maximum Additional Pension) Regulations 1978

7. Regulation 2(a) of the Social Security (Maximum Additional Pension) Regulations 1978(b) shall be amended by–

- (a) omitting the words “and retired”, and
- (b) substituting the words “had not deferred his entitlement to a Category A or Category B retirement pension” for the words “had retired”.

Amendment of the Social Security Benefit (Persons Abroad) Regulations 1975

8.—(1) The Social Security Benefit (Persons Abroad) Regulations 1975(c) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 4(3)(d) for sub-paragraph (a) there shall be substituted the following sub-paragraph–

- “(a) the date on which the person whose pension falls to be so increased first became entitled to that pension; or”.

(a) S.I. 1974/2010; regulation 3A was inserted by regulation 2 of S.I. 1980/1168.

(b) S.I. 1978/949; regulation 2 was substituted by regulation 2 of S.I. 1979/1428; *see* also section 18(1)(b) of the Social Security Act 1986 (c.50) for references to additional pension.

(c) S.I. 1975/563.

(d) Paragraph (3) of regulation 4 was inserted by regulation 2(b) of S.I. 1979/1432; *see* also section 18(1) of the Social Security Act 1986.

(3) In regulation 5 (application of disqualification in respect of up-rating of benefit)–

(a) in paragraph (3)–

(i) in sub-paragraph (a) the words “was not entitled to a Category B retirement pension” shall be substituted for the words “had not retired”, and the words “was entitled to a Category A retirement pension” shall be substituted for the words “had retired”;

(ii) in sub-paragraph (c), the words “retired or had otherwise” shall be omitted; and

(iii) in sub-paragraph (d), the words “had become entitled to a Category A retirement pension or had” shall be substituted for the words “had retired or”;

(b) in paragraph (5)(i) the words “was entitled to a Category A retirement pension” shall be substituted for the words “had retired from regular employment”;

(c) in paragraph (6)(i) the words “was entitled to a Category A retirement pension” shall be substituted for the words “had retired from regular employment”; and

(d) in paragraph (7) the words “was not entitled to a Category A retirement pension” shall be substituted for the words “had not retired”.

(4) In regulation 6 (modification of right to defer entitlement to a Category A or Category B retirement pension) the words “(election to be treated as not having retired)” shall be omitted.

Amendment of the Social Security and Family Allowances (Polygamous Marriages) Regulations 1975

9. In regulation 3(1)(a) of the Social Security and Family Allowances (Polygamous Marriages) Regulations 1975(a) the words “and in respect of which neither of them has an entitlement to a Category A or Category B retirement pension which is deferred” shall be substituted for the words “and retired from regular employment”.

Amendment of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983

10. In regulation 31(1)(c) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983(b) the words “but not more than 5 years over pensionable age” shall be substituted for the words “pensionable age and has not retired from regular employment”.

Amendment of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979

11.—(1) The Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979(c) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1(2), for the entry relating to “period of deferment” there shall be substituted the following entry–

“‘period of enhancement’ has the meaning assigned to it in paragraphs 2(2) and 5(1) of Schedule 1 to the Pensions Act, as amended by sub-paragraphs (3) and (9) respectively of paragraph 3 of Schedule 1 to the Social Security Act 1989”(d).

(3) In regulation 2(1) (election to be treated as not entitled) the words in sub-paragraph (a) “retired from regular employment or has otherwise”, and the words “retired or” shall be omitted.

(4) In regulation 3 (provisions applying after election)–

(a) in paragraph (a), the words “becomes entitled to a Category A or Category B

(a) S.I. 1975/561.

(b) S.I. 1983/1598.

(c) S.I. 1979/642.

(d) 1989 c.24.

- retirement pension" shall be substituted for the words "retires from regular employment";
- (b) in paragraph (b), the words "in accordance with section 29(4) of the Act" shall be substituted for the words "otherwise than by virtue of having retired from regular employment"; and
- (c) in paragraph (c), the words "retires from regular employment and" shall be omitted.
- (5) In regulation 4 (days to be treated as days of increment)—
- (a) in paragraph (1), the words "period of enhancement" shall be substituted for the words "period of deferment";
- (b) for sub-paragraph (a) of that paragraph, there shall be substituted the following sub-paragraph—
- “(a) if that person had not deferred his entitlement to a Category A or Category B retirement pension, or, in the case of a married woman and her Category B retirement pension or section 10(2) increase, if both she and her husband had not deferred their entitlement to, respectively, a Category A and a Category B retirement pension, that person would have been entitled to such a pension (and would not have been disqualified for receiving it by reason of imprisonment or detention in legal custody); and”;
- (c) in paragraph (2)(i) the words "period of enhancement" shall be substituted for the words "period of deferment" and in paragraph (2)(ii) the words "deferred entitlement" shall be substituted for the words "deferred retirement".
- (6) In regulation 5 (which modifies Schedule 1 to the Social Security Pensions Act 1975(a))—
- (a) in paragraphs (1) and (3), the words "period of enhancement" shall be substituted for the words "period of deferment" in each place where those words occur;
- (b) in paragraph (1), the words "if his entitlement to the pension had commenced on the day on which he attained pensionable age" shall be substituted for the words "if he had retired from regular employment on attaining pensionable age";
- (c) in paragraph (3), the words "his entitlement arose" shall be substituted for the words "that of his retirement"; and
- (d) in paragraph (4) the words "if he had retired" shall be omitted.
- (7) In regulation 11 (Category C retirement pensions for widows of men over pensionable age on 5th July 1948), sub-paragraph (b) in both paragraph (1) and paragraph (3) shall be omitted.
- (8) In regulation 12 (Category C retirement pension for certain women whose marriage has been terminated otherwise than by death), in paragraph (1), sub-paragraph (b) shall be omitted and in paragraph (4), the words from "so however that" to the end of the paragraph shall be omitted.

Amendment of the Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979

12.—(1) The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979(b) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 12 (which relates to an increase of retirement pension where pensioner's deceased spouse had deferred entitlement) the words "would at his death have been entitled if his entitlement had not been deferred" shall be substituted for the words "would have been entitled if he had retired on the date of his death".

(3) In regulation 17(1) (which provides entitlement to widow's pension in place of

(a) 1975 c.60.
(b) S.I. 1979/643.

widow's basic pension under former legislation) the words "is entitled to a Category A or Category B retirement pension" shall be substituted for the words "retires or attains the age of 65".

(4) In regulation 18 (alternative benefit rights in place of contributory old age pension) paragraph (2) shall be omitted.

Signed by authority of the Secretary of State for Social Security.

Nicholas Scott
Minister of State,

7th September 1989

Department of Social Security.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations contained in this instrument are consequential upon the abolition in section 7 of the Social Security Act 1989 (c.24) ("the 1989 Act") of the earnings rule for retirement pensions. The instrument is made before the end of the period of 6 months beginning with the coming into force of section 7; the regulations in it are therefore exempted by section 61(5) of the Social Security Act 1986 (c.50) (as amended by the 1989 Act, Schedule 8, paragraph 12(3)) from the requirement under section 10 of the Social Security Act 1980 (c.30) to refer the proposals to the Social Security Advisory Committee and are made without reference to that Committee.

Section 7 of and Schedule 1 to the 1989 Act provide in particular that—

- (a) the earnings rule for Category A and Category B retirement pensions be abolished (section 7(1));
- (b) it no longer be a requirement for entitlement to a Category A or Category B retirement pension that a person has retired from regular employment;
- (c) a person may nevertheless defer his entitlement to a Category A or Category B retirement pension; and
- (d) where entitlement is deferred a person may earn increments to his pension during a period referred to as the "period of enhancement" (Schedule 1, paragraph 3).

The amendments made in these Regulations are consequential upon those changes. In particular they amend—

- the Social Security (Claims and Payments) Regulations 1987, regulation 15;
- the Social Security Benefit (Computation of Earnings) Regulations 1978, regulation 5(4);
- the Social Security Benefit (Dependency) Regulations 1977, regulations 2, 10 and 11;
- the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978, Schedules 1 and 2;
- the Social Security (Benefit) (Married Women and Widows' Special Provisions) Regulations 1974, regulation 3A;
- the Social Security (Maximum Additional Pension) Regulations 1978, regulation 2;
- the Social Security Benefit (Persons Abroad) Regulations 1975, regulations 4, 5 and 6;
- the Social Security and Family Allowances (Polygamous Marriages) Regulations 1975, regulation 3;
- the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983, regulation 31(1);
- the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979, regulations 1, 2, 4, 5, 11 and 12;

the Social Security (Widow's Benefit, Retirement Pensions and other Benefits) (Transitional) Regulations 1979, regulations 12, 17 and 18.

Regulation 2(4) also contains a saving provision for regulation 15 of the Social Security (Claims and Payments) Regulations 1987 where a person claims a Category A or Category B retirement pension as from a day before 1st October 1989.