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STATUTORY INSTRUMENTS

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**2005 No. 3078**

**SOCIAL SECURITY**

**The Social Security (Retirement Pensions and  
Graduated Retirement Benefit) (Widowers  
and Civil Partnership) Regulations 2005**

*Made* - - - - *3rd November 2005*

*Laid before Parliament* *9th November 2005*

*Coming into force in accordance with regulation 1(1)*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 62(1)(a), (ac) and (c), 122(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1) and paragraph 27 of Schedule 11 to the Pensions Act 2004(2), sections 5(1)(g) and 189(1), (4) and (5) of the Social Security Administration Act 1992(3) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(4), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Retirement Pensions and Graduated Retirement Benefit) (Widowers and Civil Partnership) Regulations 2005 and shall come into force—

- (a) for the purposes of regulation 3(10), in so far as it applies in relation to paragraphs 17 and 19 of Schedule 1 to the 2005 Regulations, on 6th April 2006;
- (b) for the purposes of regulation 4, on 6th April 2006 immediately after regulation 4 of the Social Security (Claims and Payments) Amendment Regulations 2005(5) and regulation 3

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(1) 1992 c. 4. Section 62(1) was amended by paragraph 7 of Schedule 4 to the Pensions Act 1995 (c. 26); by paragraph 17(b) of Schedule 11 to the Pensions Act 2004 (c. 35); by paragraph 33 of Schedule 24 to the Civil Partnership Act 2004 (c. 33); by paragraph 4 of the Schedule to the Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order 2005/2053 and by paragraph 1 of Schedule 1 to the Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005/3029.

(2) 2004 c. 35.

(3) 1992 c. 5.

(4) See section 173(1)(b) of the Social Security Administration Act 1992.

(5) S.I. 2005/455.

of the Social Security (Shared Additional Pension) (Miscellaneous Amendments) Regulations 2005(6) have come into force; and

(c) for all other purposes, on 5th December 2005.

(2) In these Regulations “the 2005 Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005(7).

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

2.—(1) The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978(8) shall be amended in accordance with the following paragraphs.

(2) In paragraph (c) of regulation 2 (application of sections 150 and 155 of the Social Security Administration Act 1992)(9), for “widows and widowers” substitute “widows, widowers and surviving civil partners”.

(3) In paragraph (2) of regulation 3 (continuation in force of sections 36, 37 and 118(1) of the 1965 Act)—

(a) omit “and” at the end of sub-paragraph (b); and

(b) at the end of sub-paragraph (c), add—

“; and

(d) to extend section 37 of the 1965 Act (increase of women’s retirement pension by reference to her late husband’s graduated retirement benefit) to civil partners and surviving civil partners”.

(4) In Schedule 1 (sections 36 and 37 of the National Insurance Act 1965 as continued in force by these Regulations) in section 37 (inherited graduated retirement benefit)—

(a) in subsection (1)—

(i) in paragraph (b), after “time of her death” insert—

“; or

(c) where a person, having paid graduated contributions as an insured person, dies on or after 5th December 2005 leaving a surviving civil partner, and they have both attained pensionable age at the time of his or her death,”; and

(ii) in the full-out words—

(aa) for “widow or widower” substitute “widow, widower or surviving civil partner”; and

(bb) after “former spouse” insert “or civil partner”;

(b) in subsection (2), after “spouse's” (in each place) insert “or civil partner's”;

(c) in subsection (3), after “marriage” insert “or civil partnership”; and

(d) in subsection (4)—

(i) after “marries” insert “, or as the case may be, a civil partner he or she forms a civil partnership with,”;

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(6) S.I. 2005/1551.

(7) S.I. 2005/454. This instrument was amended by S.I. 2005/2677.

(8) S.I.1978/393. The relevant amending instrument is S.I.2005/454. Sections 36 and 37 of the National Insurance Act 1965 (c. 51) (“the 1965 Act”) were repealed by the Social Security Act 1975 (c. 38) with effect from 6th April 1975 but are continued in force by virtue of those Regulations which were made under Schedule 3 to the Social Security Act (Consequential Provisions) Act 1975 (c. 18) (now the Social Security (Consequential Provisions) Act 1992 (c. 6)).

(9) Regulation 2 was substituted by S.I.1995/2606.

- (ii) after “married” insert “or who has formed a civil partnership more than once or who has been both married and a civil partner”; and
- (iii) after “spouses” insert “or civil partners”.

(5) In paragraph 3 (graduated retirement benefit of persons who have been married more than once) of Schedule 3 (regulations 2 and 3 as modified by these Regulations)—

- (a) after “who has been married more than once” insert “or has formed more than one civil partnership or who has been both married and a civil partner”; and
- (b) after “spouse” insert (in each place) “or civil partner”.

### **Amendment of the 2005 Regulations**

**3.—**(1) Schedule 1 to the 2005 Regulations(10) shall be amended in accordance with the following paragraphs.

(2) In paragraph 7 (increase or lump sum where pensioner’s deceased spouse has deferred entitlement)—

- (a) in the heading preceding it, after “spouse” insert “or civil partner”;
- (b) in head (a) of sub-paragraph (1), for “widow or widower” substitute “widow, widower or surviving civil partner”; and
- (c) in head (b) of sub-paragraph (1)—
  - (i) after “married to” insert “or in a civil partnership with”; and
  - (ii) after “marriage” insert “or civil partnership”.

(3) In paragraph 8 (entitlement where pensioner’s deceased spouse has deferred entitlement)—

- (a) in the heading preceding it, after “spouse” insert “or civil partner”; and
- (b) in sub-paragraph (1)—
  - (i) for “widow or widower” substitute “widow, widower or surviving civil partner”;
  - (ii) after “married to” insert “or in a civil partnership with”; and
  - (iii) after “marriage” insert “or civil partnership”.

(4) In paragraph 9 (entitlement to lump sum where pensioner’s deceased spouse has deferred entitlement)—

- (a) in the heading preceding it, after “spouse” insert “or civil partner”; and
- (b) in sub-paragraph (2), after “widowed person's” insert “or surviving civil partner's”.

(5) In paragraph 10 (calculation of the widowed person’s lump sum)—

- (a) in the heading preceding it, after “widowed person's” insert “or surviving civil partner's”;
- (b) in sub-paragraph (1), after “widowed person's” insert “or surviving civil partner's”; and
- (c) in sub-paragraph (2), in the definition of “S” after “marriage” insert “or civil partnership”.

(6) In paragraph 17 (choice between increase and lump sum where person’s deceased spouse had deferred entitlement to graduated retirement benefit)—

- (a) in the heading preceding it, after “spouse” insert “or civil partner”;
- (b) in head (a) of sub-paragraph (1)—
  - (i) for “widow or widower” substitute “widow, widower or surviving civil partner”; and
- (c) in head (b) of sub-paragraph (1)—

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(10) [S.I.2005/454](#). Schedule 1 has effect by virtue of section 36(4) of the 1965 Act as amended by [S.I. 1978/393](#).

- (i) after “married to” substitute “or in a civil partnership with”; and
  - (ii) after “marriage” insert “or civil partnership”.
- (7) In paragraph 18 (increase where person’s deceased spouse has deferred entitlement to graduated retirement benefit)—
- (a) in the heading preceding it, after “spouse” insert “or civil partner”;
  - (b) in sub-paragraph (1)—
    - (i) for “widow or widower” substitute (in each place) “widow, widower or surviving civil partner”;
    - (ii) after “married to” insert “or in a civil partnership with”; and
    - (iii) after “marriage” insert “or civil partnership”.
- (8) In paragraph 19 (entitlement to lump sum where person’s deceased spouse has deferred entitlement to graduated retirement pension)—
- (a) in the heading preceding it, after “spouse” insert “or civil partner”; and
  - (b) in sub-paragraph (2), after “widowed person's” insert “or surviving civil partner's”.
- (9) In paragraph 20 (calculation of widowed person’s lump sum)—
- (a) in the heading preceding it and in sub-paragraph (1), after “widowed person's” insert “or surviving civil partner's”; and
  - (b) in sub-paragraph (2), in the definition of “S” after “other party to the marriage” insert “or civil partnership”.
- (10) After paragraph 20(11) insert—

**“Transitional provision relating to widower’s entitlement to increase of graduated retirement benefit or lump sum**

**20ZA.** In the case of a widower who attains pensionable age before 6th April 2010, paragraphs 17 to 19 shall not apply unless he was over pensionable age when his wife died.

**Transitional provision relating to civil partner’s entitlement to increase of graduated retirement benefit or lump sum**

**20ZB.** In the case of a civil partner who attains pensionable age before 6th April 2010, paragraphs 17 to 19 shall not apply unless he or she was over pensionable age when his or her civil partner died.”.

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

- 4.** In regulation 30 of the Social Security (Claims and Payments) Regulations 1987(12) (payments on death)—
- (a) in paragraph (5) (posthumous claims) for “(5F)” substitute “(5G)”; and
  - (b) for paragraphs (5A) to (5F)(13) substitute—
    - “(5A) Subject to paragraphs (5B) to (5G), a claim may be made in accordance with paragraph (5) on behalf of the deceased for a Category A or Category B retirement pension or graduated retirement benefit provided that the deceased was not married or in a civil partnership on the date of his death.

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(11) Paragraphs 20A to 20D are inserted by [S.I. 2005/2677](#).

(12) [S.I. 1987/1968](#).

(13) Paragraphs (5A) to (5F) were inserted by [S.I. 2005/455](#) and amended by [S.I. 2005/1551](#).

(5B) But, subject to paragraphs (5C) to (5G), a claim may be made in accordance with paragraph (5) on behalf of the deceased for a Category A or Category B retirement pension or graduated retirement benefit where the deceased was a married woman or a civil partner on the date of death if the deceased's widower or surviving civil partner was under pensionable age on that date and due to attain pensionable age before 6th April 2010.

(5C) Where a claim is made for a shared additional pension under paragraph (5) or for a retirement pension or graduated retirement benefit under paragraphs (5) and (5A) or (5B), in determining the benefit to which the deceased would have been entitled if he had claimed within the prescribed time, the prescribed time shall be the period of three months ending on the date of his death and beginning with any day on which, apart from satisfying the condition of making a claim, he would have been entitled to the pension or benefit.

(5D) Paragraph (5E) applies where, throughout the period of 12 months ending with the day before the death of the deceased person, his entitlement to a Category A or a Category B retirement pension, shared additional pension or graduated retirement benefit was deferred in accordance with, as the case may be—

- (a) section 55 of the Contributions and Benefits Act(14) (pension increase or lump sum where entitlement to retirement pension is deferred);
- (b) section 55C of that Act(15) (pension increase or lump sum where entitlement to shared additional pension is deferred); or
- (c) section 36(4A) of the National Insurance Act 1965(16) (deferment of graduated retirement benefit).

(5E) Where a person claims under paragraph (5) or under paragraphs (5) and (5A) or (5B) the deceased shall be treated as having made an election in accordance with, as the case may be—

- (a) paragraph A1(1)(a) of Schedule 5 to the Contributions and Benefits Act(17) (electing to have an increase of pension), where paragraph (5D)(a) applies;
- (b) paragraph 1(1)(a) of Schedule 5A to that Act(18) (electing to have an increase of a shared additional pension) where paragraph (5D)(b) applies; or
- (c) paragraph 12(1)(a) of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005(19) (electing to have an increase of benefit), where paragraph (5D)(c) applies.

(5F) Paragraph (5G) applies where—

- (a) the deceased person was a widow, widower or surviving civil partner (“W”) who was married to, or in a civil partnership with, the other party of the marriage or civil partnership (“S”) when S died;
- (b) throughout the period of 12 months ending with the day before S's death, S's entitlement to a Category A or a Category B retirement pension or graduated retirement benefit was deferred in accordance with, as the case may be, paragraph (5D)(a) or (c); and
- (c) W made no statutory election in consequence of the deferral.

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(14) Section 55 was substituted by the Pensions Act 2004 (c. 35), section 297.

(15) Section 55C was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 6, paragraphs 1 and 3, and substituted by the Pensions Act 2004, section 297.

(16) 1965 c. 51; section 36 is continued in force and modified by S.I. 1978/393; subsection (4A) was inserted by S.I. 2005/454.

(17) Paragraph A1 was inserted by the Pensions Act 2004, Schedule 11, paragraph 4.

(18) Schedule 5A was inserted by the Pensions Act 2004, Schedule 11, paragraph 15.

(19) S.I. 2005/454; Schedule 1 has effect by virtue of section 36(4) of the National Insurance Act 1965 as amended by S.I. 2005/454.

(5G) Where a person claims under paragraphs (5) and (5A) the deceased (“W”) shall be treated as having made an election in accordance with, as the case may be—

- (a) paragraph 3C(2)(a) of Schedule 5 to the Contributions and Benefits Act<sup>(20)</sup> (electing to have an increase of pension), where paragraph (5D)(a) applies; or
- (b) paragraph 17(2)(a) of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005 (electing to have an increase in benefit), where paragraph (5D)(c) applies.”.

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

3rd November 2005

*Philip A. Hunt*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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<sup>(20)</sup> Paragraph 3C was inserted by the Pensions Act 2004, Schedule 11, paragraph 9.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision relating to widowers, civil partners and surviving civil partners. Regulations 2 and 3 amend, respectively, the Social Security (Graduated Retirement Benefit) (No.2) Regulations 1978 and the Social Security (Graduated Retirement Benefit) Regulations 2005. These amendments extend to civil partners the same inheritance rights as apply to widowers in respect of a deceased person's graduated retirement benefit, including any increments or lump sum in a case where the deceased had deferred his or her entitlement.

Regulation 4 amends paragraphs (5A) to (5F) of regulation 30 of the Social Security (Claims and Payments) Regulations 1987 (claims for a Category A or B retirement pension, shared additional pension or graduated retirement benefit made on behalf of a person who has died where the person had deferred entitlement to the pension or benefit). The amendments extend these provisions to civil partners and they enable a claim for a Category A or B retirement pension or graduated retirement benefit to be made where a widower is under pension age at the time of his wife's death.

A full Regulatory Impact Assessment has not been provided for this Instrument as it has no impact on the costs of business, charities and voluntary bodies.