

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (RETIREMENT PENSIONS AND GRADUATED
RETIREMENT BENEFIT) (WIDOWERS AND CIVIL PARTNERSHIP)
REGULATIONS 2005**

2005 No. 3078

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend legislation relating to Graduated Retirement Benefit and claims made on behalf of a deceased person, in order to:

- i) extend to civil partners the same inheritance rights as apply to widowers;
- ii) clarify the rights of a widower who attains pensionable age before 6th April 2010 to inherit in respect of his deceased spouse's deferred GRB; and
- iii) preserve the rights of a widower who will not attain pensionable age before 6th April 2010 to claim arrears on behalf of his deceased spouse.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Graduated Retirement Benefit ("GRB") is an increase in the weekly rate of retirement pension based on graduated contributions paid between 1961 and 1975.¹ Following the passing of the Civil Partnership Act 2004 in November 2004 (which comes fully into effect on 5th December 2005) amendments have already been made to the legislation relating to retirement pension to extend to surviving civil partners comparable rights to those of widowers. This Instrument is required to effect the same changes to the inheritance rules in GRB. It also aligns the rules on inheritance by a widower of a pension increase or lump sum derived from the deceased spouse's deferred GRB with the rule that applies to retirement pension.

4.2 This Instrument also amends existing legislation in order to preserve the right of a widower who will attain pensionable age before 6th April 2010 to claim arrears of retirement pension or GRB where his late wife had deferred her entitlement. This right would otherwise be lost from 6th April 2006. Finally, it amends these same "posthumous claims" provisions to ensure parity of treatment between married couples and civil partners.

¹ The primary legislation for GRB is contained in sections 36 and 37 of the 1965 National Insurance Act, which are now continued in force by regulations. The power to amend those sections is contained in section 62 of the Social Security Contributions and Benefits Act 1992. Section 62 was amended by the Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005 (SI 2005/3029) to provide the power under which regulations 2 and 3 of this Instrument are made.

5. Extent

- 5.1 This Instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

Lord Hunt of Kings Heath OBE has made the following statement regarding Human Rights:

In my view the provisions of the Social Security (Retirement Pensions and Graduated Retirement Benefit) (Widowers and Civil Partnership) Regulations 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The policy background to the amendments made by these Regulations is the Civil Partnership Act 2004 which will enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. Civil partners will have similar legal rights and responsibilities as spouses. In the context of retirement pension and GRB inheritance, the intention is that a surviving civil partner will be treated the same way as a widower.
- 7.2 At present, the inheritance rules are not the same for men and women; in particular, a widower may only inherit GRB from his late wife if he is also over pension age at the time of her death. This mirrors the equivalent rule in retirement pension. A widow, by contrast, is entitled to inherit GRB from her late husband when she claims her own pension, regardless of her age at the date of his death. A similar rule applies to what may be inherited by a surviving spouse where the deceased had deferred entitlement to retirement pension; this means that a widower may only inherit increments or a lump sum if he is also over pension age when his wife dies.²
- 7.3 This unequal position will change from 6th April 2010; men who reach state pension age on or after that date will then have the same inheritance rights as women do now.
- 7.4 The amendments made by regulations 2 and 3 of these Regulations will ensure that: i) the rules relating to what a widower may inherit where his late wife had deferred her GRB will be aligned with the main GRB and retirement pension rule as intended; and ii) the inheritance provisions relating to GRB will be extended to cover civil partners on the same basis as they apply to widowers. That is, that for surviving civil partners who reach state pension age before 6th April 2010, they will be entitled to inherit GRB, or increments or a lump sum from deferred GRB, only where they have attained that age before their late civil partner died. Thus, until 2010, in the case of a female civil partnership, the surviving partner must already be over the age of 60 in order to be able to inherit; in the case of a male civil partnership, the surviving partner must already be over the age of 65.

² The Pensions Act 2004 introduced the choice of a pension increase (“increments”) or lump sum payment where a person has deferred entitlement to retirement pension or GRB for at least 12 months.

After 2010, the surviving partner will also be able to inherit (on claiming their own pension) if he or she is under their respective pension age at the time their partner died.

- 7.5 This alignment of the rule for civil partners with the widower's inheritance position rather than that of widows mirrors the policy as reflected in amendments made to other state pensions legislation. The policy underpinning this is to avoid creating new inequalities in the state pension scheme.
- 7.6 The Social Security (Claims and Payments) Regulations 1987 enable a claim to be made on behalf of a person who has died, for benefits left unclaimed at the date of the person's death. This provision was amended with effect from 6th April 2006³ to preclude such claims in respect of unclaimed retirement pension or GRB where the deceased had deferred their entitlement and was married at the date of death. This was in order to avoid potential conflict with the legislation entitling a surviving spouse to inherit an increase to their pension or a lump sum in respect of the deceased's deferment. Those amendments also maintained the intention that only a surviving spouse may have access to an inheritable lump sum, by restricting what could be claimed under the Claims and Payments provisions to a maximum of 3 months' arrears.
- 7.7 The amendments made by regulation 4 of this Instrument do two things: firstly, they apply the same rules where the deceased was a civil partner at the date of death, and secondly, they allow a widower who will not attain pensionable age before April 2010, and who would not, therefore, be able to inherit increments or a lump sum under the primary legislation, to make a claim for up to 3 months' arrears of unclaimed pension under the "posthumous claims" provision under the 1987 Regulations.
- 7.8 The proposals contained in these Regulations were considered by the Social Security Advisory Committee by correspondence in week commencing 11th October 2005. The Committee was content with the proposals and agreed not to consult on them.

8. Impact

- 8.1 A Regulatory Impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 There is no impact on the public sector.

9. Contact

Harry Cunniffe at the Department for Work and Pensions can answer any queries regarding the instrument. Tel: 020 7712 2491 or e-mail:

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³ By SI 2005/455