

1978 No. 392

SOCIAL SECURITY

**The Social Security (Widow's Benefit and Retirement Pensions)
Amendment Regulations 1978**

<i>Made - - - -</i>	<i>9th March 1978</i>
<i>Laid before Parliament</i>	<i>16th March 1978</i>
<i>Coming into Operation</i>	<i>6th April 1979</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 30(3) and 33(2) and (3) of the Social Security Act 1975(a) and section 20 of and paragraphs 2(2)(a) and 3 of Schedule 1 to the Social Security Pensions Act 1975(b), as amended by section 3 of the Social Security (Miscellaneous Provisions) Act 1977(c) and of all other powers enabling him in that behalf, hereby makes the following regulations, which only make provision consequential on the passing of the Social Security Pensions Act 1975 and which accordingly, by virtue of section 61(1)(e) of that Act, are not subject to the requirements of section 139(1) of the Social Security Act 1975 for prior reference to the National Insurance Advisory Committee:—

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Social Security (Widow's Benefit and Retirement Pensions) Amendment Regulations 1978, and shall come into operation on 6th April 1979.

(2) In these regulations "the principal regulations" means the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1974(d) as amended(e).

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(f) shall apply in relation to this instrument and the regulations revoked by it as if this instrument and the regulations revoked by it were Acts of Parliament and the revocations were repeals.

Substitution in the principal regulations relating to interpretation

2.—(1) In regulation 1(2) of the principal regulations for the words following the definition of "the Act" there shall be substituted—

“the 1975 Act” means the Social Security Act 1975;

“the Pensions Act” means the Social Security Pensions Act 1975;

“husband” or “spouse” in relation to any person who has been married more than once means the last husband or last spouse respectively;

(a) 1975 c. 14.

(b) 1975 c. 60.

(c) 1977 c. 5.

(d) S.I. 1974/2059.

(e) The relevant amending instruments are 1975/566, 1977/1509.

(f) 1889 c. 63.

“home responsibility year” means a year in which the person in question was precluded from regular employment by responsibilities at home within the meaning of regulations under paragraph 5(6) and (7) of Schedule 3 to the 1975 Act as amended by section 19 of the Pensions Act;

“a period of at least 10 years” means a period of, or periods amounting in the aggregate to, at least 3,652 days;

“period of deferment” has the meaning assigned to it in paragraphs 2(2)(b) and 5(1) of Schedule 1 to the Pensions Act;

“qualifying year” in relation to any person means a year for which his earnings factor is sufficient for satisfaction of paragraph (b) of the second contribution condition specified in paragraph 5 of Schedule 3 to the 1975 Act, but not including (except for the purposes of regulation 5) a year which is treated as such a year by virtue of regulation 5B(4) and not including any home responsibility year;

“the determining authority” means, as the case may require, an insurance officer, a local tribunal or a Commissioner by whom the relevant question falls to be determined by virtue of Part III of the 1975 Act;

“section 9(2), 9(3) or 10(2) increase” means an increase under section 9(2), 9(3) or 10(2) respectively of the Pensions Act of a person’s Category A retirement pension attributable to his spouse’s contributions;

“unemployability supplement” has the extended meaning assigned to it in regulation 2 of the Social Security (Overlapping Benefits) Regulations 1975(a) as amended(b) and further includes benefit corresponding to an unemployability supplement under regulations under section 159(3)(a) of the 1975 Act;

“year” means tax year;

and other expressions have the same meaning as in the 1975 Act.”.

(2) After regulation 1(2) of the principal regulations there shall be inserted the following paragraph:—

“(2A) For the purposes of these regulations a person who has obtained a decree absolute of presumption of death and dissolution of marriage under the Matrimonial Causes Act 1973(c) shall, notwithstanding that the spouse whose death has been presumed is dead, be treated as a person whose marriage has been terminated otherwise than by the death of his spouse unless the date of his death is established to the satisfaction of the Secretary of State or the determining authority whichever is appropriate; and, in relation to a person who is so treated, the marriage in question shall be treated as having been terminated on the date of the decree absolute.”

Amendment of the principal regulations relating to elections to be treated as not having retired

3.—(1) Regulations 2 and 3 of the principal regulations, as amended(d) shall be further amended in accordance with the following provisions of this regulation.

(a) S.I. 1975/554.

(b) There is no relevant amending instrument.

(c) 1973 c. 18.

(d) The relevant amending instrument is S.I. 1977/1509.

(2) In regulations 2(2)(b) and (5) and 3(a) and (c) after the words “Category B retirement pension” wherever they occur there shall be inserted the words “or section 10(2) increase”, and in regulation 3(a) after the words “no Category A” there shall be inserted the words “or B”.

(3) For paragraph (6) of regulation 2 there shall be substituted the following paragraph:—

“(6) Where a woman entitled to a Category B retirement pension under section 29(4) of the 1975 Act has, on or after 6th April 1979, made an election and has not revoked it, then, for the purposes only of determining her right to increments under paragraph 2 of Schedule 1 to the Pensions Act, her election shall be treated as if it took effect from 6th April 1979 or, if later, the date of the death of her husband by virtue of whose contributions she is so entitled.”

Substitution in the principal regulations relating to days to be treated as days of increment

4.—(1) For paragraph (1) of regulation 4 of the principal regulations, as amended(a) there shall be substituted the following paragraph:—

“4.—(1) For the purposes of paragraph 2 of Schedule 1 to the Pensions Act as amended by section 3 of the Social Security (Miscellaneous Provisions) Act 1977, a day shall be treated as a day of increment in relation to any person if it is a day in that person’s period of deferment, other than a Sunday, in respect of which—

(a) if that person had retired on attaining pensionable age or, in the case of a married woman and her Category B retirement pension or section 10(2) increase, if she and her husband had retired on attaining pensionable age, that person would have been entitled to a Category A or a Category B retirement pension (and would not have been disqualified for receiving it by reason of his imprisonment or detention in legal custody); and

(b) that person had not received any of the following benefits:—

(i) any benefit under Chapters I and II of Part II of the 1975 Act other than child’s special allowance, attendance allowance, mobility allowance and guardian’s allowance; or

(ii) injury benefit or an unemployability supplement; and

(c) in the case of a married woman who would have been entitled to a Category B retirement pension or section 10(2) increase, her husband had not received an increase of any of the benefits mentioned in paragraph (1)(b) in respect of her.”

(2) In regulation 4(3) of the principal regulations as amended(a)—

(a) after the words “paragraph (1)(b)” there shall be inserted the words “or (c)”; and

(b) for the words following “‘relevant date’ means’ there shall be substituted—

“(i) where a person’s entitlement to increments under paragraph 2 of Schedule 1 to the Pensions Act is in question, the end of his period of deferment; or

(a) The relevant amending instrument is 1977/1509.

- (ii) where a person's entitlement to increments under paragraph 4 of that Schedule in relation to the deferred retirement of a deceased spouse is in question, the date of the death of that spouse."

Insertion into the principal regulations of regulation 4A

5. After regulation 4 of the principal regulations there shall be inserted the following regulations:—

"Modification of paragraph 2(1) to (3) of Schedule 1 to the Pensions Act

4A.—(1) This regulation applies to a person referred to in paragraph 1 of Schedule 1 to the Pensions Act during whose period of deferment there has been an increase, other than an increase made by such an order as is mentioned in sub-paragraph (5) of paragraph 2 of that Schedule, in the rate of the Category A or Category B retirement pension to which he would have been entitled if he had retired from regular employment on attaining pensionable age.

(2) In relation to a person to whom this regulation applies paragraph 2(1) to (3) of the said Schedule 1 shall have effect with the additions, omissions and amendments prescribed below.

(3) In paragraph 2(1) for the words after "incremental period" there shall be substituted—

"(a) in his period of deferment; and

(b) in each period beginning with the day on which an increase in the weekly rate of his pension took place and ending with the day before that of his retirement."

(4) After paragraph 2(2)(b) there shall be added—

"and

(c) "weekly rate of his pension" means the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled if he had retired on attaining pensionable age; and

(d) "increase" means an increase in the weekly rate of his pension other than an increase made by such an order as is mentioned in sub-paragraph (5) below."

(5) In paragraph 2(3) for the words after "incremental period" there shall be substituted—

"—

(a) in the case of an incremental period specified in paragraph 2(1)(a) above, shall be 1/7th per cent. of the weekly rate of his pension immediately after he attained pensionable age; and

(b) in the case of an incremental period specified in paragraph 2(1)(b) above, shall be 1/7th per cent. of that increase."

Substitution for regulation 5 of the principal regulations

6. For regulation 5 of the principal regulations there shall be substituted the following regulation:—

“Benefit at reduced rates for those who do not satisfy the contribution conditions in full

5.—(1) Where a person would be entitled to a Category A or Category B retirement pension, a widow’s pension or a widowed mother’s allowance but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the 1975 Act is not satisfied, he shall be entitled—

(a) to the basic component in that benefit at a reduced rate calculated, in accordance with paragraph (3), as a percentage of the rate specified in section 6(1)(a) of the Pensions Act; and

(b) to the additional component in that benefit,

but where that percentage is less than 25 per cent. no basic component shall be payable under this paragraph.

(2) Where a person, who would be entitled to an increase of benefit under sections 41, 45 or 46 of the 1975 Act but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the 1975 Act is not satisfied, is entitled to benefit under paragraph (1)(a), the latter benefit shall be increased—

(a) in the case of a child dependant, by the appropriate increase specified in Part IV of Schedule 4 to the 1975 Act;

(b) in the case of an adult dependant, by a percentage, calculated in accordance with paragraph (3), of the appropriate increase there specified.

(3) Subject to paragraph (4) the percentage referred to in paragraphs (1) and (2) shall be ascertained by taking the number of qualifying years in the working life of the contributor concerned, expressing that number as a percentage of the requisite number of years specified for that working life in paragraph 5(4) of Schedule 3 to the 1975 Act and rounding up that percentage to the next whole number.

(4) For the purposes of paragraph (3) the requisite number of years shall be taken to be that number apart from this paragraph reduced by the number of home responsibility years of the contributor concerned but not to below—

(a) in relation to a Category A or Category B retirement pension, 20 years; or

(b) in relation to a widow’s pension or a widowed mother’s allowance, 20 years or, where the requisite number apart from this paragraph is less than 40, half that requisite number.

(5) Where a person is entitled by virtue of this section to a Category A retirement pension and also to a section 9(2), 9(3) or 10(2) increase an up-rating order shall have the effect of increasing—

(a) the basic component in that pension

(i) where there is a section 9(2) increase, in proportion to the increase under that order of the sum specified in section 6(1)(a) of the Pensions Act; and

- (ii) where there is a section 10(2) increase, in proportion to the increase under that order of the sum specified in paragraph 9 of Part I of Schedule 4 to the 1975 Act;
- (b) the additional component in that pension, where there is a section 9(3) increase, by the percentage specified in that order for an increase of the sums specified in section 23(1)(b) of the Pensions Act.”.

Insertion of regulation 5B into the principal regulations

7. After regulation 5A of the principal regulations there shall be inserted the following regulation:—

“Substitution of former spouse’s contribution record to give entitlement to a Category A retirement pension

5B.—(1) This regulation applies to—

- (a) any person whose last marriage terminated before he attained pensionable age and who did not remarry before that date;
- (b) any man widowed on or after attaining pensionable age, his former spouse being under pensionable age when she died; and
- (c) any person whose last marriage terminated on or after the date on which he attained pensionable age otherwise than by the death of his spouse,

and any such person shall be referred to in this regulation as “the beneficiary”.

(2) Where the beneficiary does not in respect of the year in which marriage terminated or any previous year with his own contributions satisfy the contribution conditions for a Category A retirement pension, then, for the purpose of enabling him to satisfy those conditions, the contributions of his former spouse may, if it is advantageous to him, be treated to the extent specified in paragraphs (3) to (6) as though they were his own.

(3) The beneficiary shall be treated as satisfying the first contribution condition if his former spouse has satisfied that condition as respects any year of his working life up to (inclusive) the year in which the marriage terminated.

(4) The beneficiary shall be treated as satisfying the second contribution condition as respects the number of years arrived at under paragraph 2 or 3 of the Schedule to these regulations whichever is the more beneficial.

(5) Where a person is entitled for any period to any basic component in his Category A retirement pension by virtue of this regulation and regulation 5, he shall not be entitled for that period to a section 9(2) increase.

(6) Where any of a person’s home responsibility years falls in a period in respect of which his spouse’s contributions are treated as his own under this regulation, that year shall not be taken into account in the determination of his pension entitlement either for the purposes of paragraph 5(6) and (7) of Schedule 3 to the 1975 Act as amended by section 19 of the Pensions Act or for the purposes of regulation 5.”.

Insertion of Schedule into the principal regulations

8. At the end of the principal regulations there shall be inserted the following Schedule:—

Regulation 5B

“SCHEDULE

Method of treating former spouse's contributions as those of the beneficiary so as to entitle him to Category A retirement pension

1. In this Schedule—
 - (a) A is the number of the former spouse's qualifying years up to (exclusive) the year in which the marriage terminated;
 - (b) B is the number of years in the former spouse's working life up to (exclusive) the year in which the marriage terminated.
2. The number of years arrived at under this paragraph is that which is obtained by—
 - (a) taking the number of years in the beneficiary's working life between (inclusive) the first year in that working life and (inclusive) the year in which the marriage terminated, multiplying it by $\frac{A}{B}$ and rounding up the result to the next whole number; and
 - (b) adding to the number of years arrived at under sub-paragraph (a) the number of the beneficiary's qualifying years falling after the year in which the marriage terminated.
3. The number of years arrived at under this paragraph is that which is obtained by—
 - (a) taking the number of years in the beneficiary's working life between (inclusive) the year in which the marriage took place and (inclusive) the year in which the marriage terminated, multiplying it by $\frac{A}{B}$ and rounding up the result to the next whole number; and
 - (b) adding to the number of years arrived at under sub-paragraph (a) the number of the beneficiary's qualifying years falling—
 - (i) before the year in which the marriage took place; and
 - (ii) after that in which the marriage terminated.”

Revocations

9. Regulations 2(2)(c) and 4(2) of the principal regulations are hereby revoked.

David Ennals,

Secretary of State for Social Services.

9th March 1978.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1974 by making modifications and insertions consequential on the passing of the Social Security Pensions Act 1975. The modifications and insertions relate to elections to be treated as not having retired, increments to retirement pensions for deferred retirement, benefit at reduced rates for those who do not satisfy the contribution conditions in full and substitution in certain cases of the contribution record of a former spouse to give title to Category A retirement pension.

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