
STATUTORY INSTRUMENTS

2016 No. 199

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

Amendment of the State Pension Regulations 2015

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)⁽¹⁾ 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—

(1) 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](#).

- (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⁽²⁾ 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
 - (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

(2) 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 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)(3).

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⁽⁴⁾, 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⁽⁵⁾.

(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;

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

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

- (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;
 - (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⁽⁶⁾ 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⁽⁷⁾ 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).

(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⁽⁸⁾; 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⁽⁹⁾.

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.

(6) See section 22(1) of the Pensions Act 2014 for the meaning of "up-rating increases".

(7) 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](#).

(8) 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.

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

(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.

(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).”.