Regulations made by the Department for Social Development and laid before the Assembly under section 51(3) of the Pensions Act (Northern Ireland) 2015 for approval of the Assembly before the expiration of 6 months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2016 No. 80

SOCIAL SECURITY

The State Pension (Amendment) Regulations (Northern Ireland) 2016

Made - - - - 26th February 2016

Coming into operation 6th April 2016

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 10, 18(2), (3) and (4), 20 and 51(6) of the Pensions Act (Northern Ireland) 2015(**1**).

Citation and commencement

1. These Regulations may be cited as the State Pension (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on 6th April 2016, immediately after the coming into operation of the State Pension Regulations (Northern Ireland) 2015(**2**).

Amendment of the State Pension Regulations

2.—(1) The State Pension Regulations (Northern Ireland) 2015 are amended in accordance with paragraphs (2) to (4).

(2) For regulation 1(2) (interpretation) substitute—

"(2) In these Regulations—

"the 1966 Act" means the National Insurance Act (Northern Ireland) 1966(**3**);

"the Act" means the Pensions Act (Northern Ireland) 2015;

"deferral period" means the period during which a person's entitlement to a state pension under Part 1 of the Act is deferred;

(**1**) 2015 (c. 5 (N.I.))
(**2**) S.R. 2015 No. 315 to which there are amendments not relevant to these Regulations
(**3**) 1966 (c. 6 (N.I.))

"graduated retirement benefit" means any benefit under section 35 (graduated retirement benefit) or section 36 (special provisions as to graduated retirement benefit for widows) of the 1966 Act(**4**).".

(3) After regulation 12 (part weeks treated as whole weeks in determining the amount of entitlement during deferral) insert—

"**Modification of the amount of an increment for other cases during deferral**

12A.—(1) Subject to regulation 23, this regulation applies in cases where, at any time in the deferral period, the weekly rate of the person's state pension, had the person's entitlement not been deferred, would have changed otherwise than because of an up-rating increase(**5**) ("a non-uprating change").

(2) Section 17(4) of the Act (amount of an increment for pensioner postponing or suspending state pension) is modified to provide that the amount of an increment for each modification period is equal to a percentage specified in regulations of the weekly rate of the state pension to which the person, if their entitlement had not been deferred, would have been entitled immediately before the end of the modification period.

(3) The first modification period begins at the start of the deferral period and ends immediately before the date of the first or only non-uprating change.

(4) Further modification periods begin on the date of the most recent or only non-uprating change and end—

(a) immediately before the end of the deferral period, where there is no subsequent non-uprating change; or

(b) immediately before the date of the subsequent non-uprating change, where there is a subsequent non-uprating change.".

(4) After regulation 14 add—

"PART 6

Graduated Retirement Benefit

Survivor's state pension based on inheritance of graduated retirement benefit

15.—(1) A person ("P") whose deceased spouse or civil partner paid graduated contributions as an insured person is entitled to a state pension in accordance with this regulation.

(2) P is entitled to a state pension if—

(a) P has reached pensionable age;

(b) P's spouse died while they were married or P'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) P is entitled to an inherited amount under regulation 16(1), (2) or (3).

(**4**) Sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966 were repealed by Part II of Schedule 28 to the Social Security Act 1973 (c. 38) with effect from 6th April 1975 but are continued in force by regulation 2 of S.R. 1978 No. 105; relevant amending Regulations are S.R. 1989 No. 373, S.R. 2005 Nos. 121 and 541, S.R. 2010 No. 56 and S.R. 2015 No. 124

(**5**) *See* section 22(1) of the Pensions Act (Northern Ireland) 2015 for the definition of "up-rating increase" as amended by regulation 3 of these Regulations

(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 ("P") is entitled to an inherited amount if—

(a) P's spouse or civil partner died before 6th April 2016;

(b) P was under pensionable age when the spouse or civil partner died; and

(c) P has not married or formed a civil partnership after the death and before the time P reaches pensionable age.

(2) For the purposes of regulation 15(2)(d), P is entitled to an inherited amount if—

(a) P's spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016;

(b) P was under pensionable age when the spouse or civil partner died; and

(c) P has not married or formed a civil partnership after the death and before the time P reaches pensionable age.

(3) For the purposes of regulation 15(2)(d), P is entitled to an inherited amount if—

(a) the spouse or civil partner reached pensionable age before 6th April 2016 but died on or after 6th April 2016; and

(b) P was over pensionable age when the 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 132 of the Administration Act(**6**) (annual up-rating of benefits) which—

(i) increase that weekly rate; and

(ii) have come into operation since the date of the deceased's death,

had come into operation before that date; and

(c) excluding any addition under—

(i) section 35(4) of the 1966 Act(**7**) (graduated retirement benefit); or

(ii) section 36(1) of that Act(**8**) (special provisions as to graduated retirement benefit for widows, widowers and surviving civil partnerships).

(6) The date mentioned in paragraph (4) is—

(**6**) Section 132 was amended by paragraph 41 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49 (N.I.)); paragraph 9 of Schedule 4 to the Tax Credits Act 2002 (c. 21); section 3 of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and regulation 2(2) of S.R. 2012 No. 120

(**7**) Section 35(4) as modified was further amended by regulation 3 of, and Schedule 1 to, S.R. 2005 No. 121

(**8**) Section 36(1) as modified was amended by regulation 5(2)(b)(i) of S.R.1989 No. 373

(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 in accordance with the following paragraphs.

(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 Act (in the case of a state pension under section 7 of the Act);

(b) taking into account any reduction under section 14 (pension sharing: reduction in the sharer's section 4 pension) of the Act (in the case of a state pension under section 4 of the Act); and

(c) without any increase under section 17 of the Act.

(3) The rate of a person's state pension is increased in accordance with paragraph (4) where—

(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 Act (entitlement to state pension at various rates), is equal to, or less than, the full rate(**9**) 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 a 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 a 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 a person is entitled under section 7 and section 2, 4 or 12 of the Act, exceeds the full rate of the state pension; and

(ii) the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the 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 up-rating order comes into operation.

(6) Where paragraph (5)(a) and (b)(i) applies, the rate of a person's state pension is increased—

(**9**) *See* section 22(1) of the Pensions Act (Northern Ireland) 2015 for the definition of "full rate"

(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 a person's state pension is increased—

(a) by an amount equal to the appropriate percentage of the excess immediately before the up-rating order mentioned in paragraph (5)(b)(ii) comes into operation ("the appropriate percentage" means the percentage specified in that up-rating order); and

(b) at the same time as that up-rating order comes into operation.

(8) The rate of a person's state pension is increased in accordance with paragraph (9) where—

(a) the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act is equal to, or higher than, the full rate of the state pension; and

(b) an up-rating order comes into operation at any time.

(9) Where paragraph (8) applies—

(a) the rate of a person's state pension is increased by the percentage specified in the up-rating order mentioned in paragraph (8)(b); and

(b) that increase of a person's state pension is to be made at the same time as that up-rating order comes into operation.

(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 a person is entitled under section 7 and section 2, 4 or 12 of the Act, exceeds the full rate;

"the shortfall" means the amount by which the sum of the rate of any state pension to which a person is entitled under section 7 and section 2, 4 or 12 of the Act, is less than the full rate;

"up-rating order" means an order under section 132B of the Administration Act(**10**) (up-rating of transitional state pensions under Pensions Act (Northern Ireland) 2015).

Choice of lump sum or state pension based on inheritance of deferred graduated retirement benefit

18.—(1) Subject to paragraph (8), a person ("P") is entitled to a choice under this regulation if—

(a) P has reached pensionable age;

(b) P's spouse died while they were married or P'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—

(**10**) Section 132B is inserted by paragraph 17 of Schedule 12 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.))