STATUTORY RULES OF NORTHERN IRELAND

2006 No. 104

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006

Made - - - -	*9th March 2006*
Coming into operation	*6th April 2006*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 62(1)(a) and (c), 132(4)(a) and (b) and 171(1) and (3) to (5) of, and paragraphs A1(1) and (3) and 3C(2) and (4) of Schedule 5 and paragraph 1(1) and (3) of Schedule 5A to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), sections 5(1)(j) and 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**), Articles 10, 11(3) and (6), 12(1), 18(1) and 74(1) of the Social Security (Northern Ireland) Order 1998(**3**) and now vested in it(**4**) and paragraphs 3(1), 4(3) and (5) and 20(1) and (3) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**5**), sections 15(6)(a) and (b) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(**6**) and paragraph 22 of Schedule 9 to the Pensions (Northern Ireland) Order 2005(**7**).

Regulation 11 is made with the consent of the Department of Finance and Personnel(**8**).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 10 and 11 should not be referred to it(**9**).

(**1**) 1992 c. 7; section 62(1)(a) was amended by paragraph 7(a) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I.1995/3213 (N.I. 22)) and paragraph 16(a) of Schedule 9 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); paragraph (c) was inserted by paragraph 16(b) of Schedule 9 to the Pensions (Northern Ireland) Order 2005 and amended by paragraph 5 of the Schedule to S.R. 2005 No. 434; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21); paragraphs A1 and 3C of Schedule 5 were inserted and Schedule 5A added respectively by paragraphs 3, 8 and 14 of Schedule 9 to the Pensions (Northern Ireland) Order 2005; *see also* regulations 2 and 3 of S.R. 2005 No. 123

(**2**) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**3**) S.I. 1998/1506 (N.I. 10); Article 18(1) was amended by paragraph 23 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and Article 74(1) was amended by paragraph 17 of Schedule 4 to the Tax Credits Act 2002

(**4**) *See* Article 8(b) of S.R. 1999 No. 481

(**5**) 2000 c. 4 (N.I.)

(**6**) 2002 c. 14 (N.I.)

(**7**) S.I. 2005/255 (N.I. 1)

(**8**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); *see also* Article 6(b) of S.R. 1999 No. 481

(**9**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006.

(2) In these Regulations "the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**10**).

PART 2

DEFERRAL OF RETIREMENT PENSIONS AND SHARED ADDITIONAL PENSION

Interpretation

2.—(1) In this Part—

"elector" means the person who may make an election under paragraph A1(1) or 3C(2) of Schedule 5 or paragraph 1(1) of Schedule 5A;

"retirement pension" means a Category A or Category B retirement pension.

(2) In this Part, references to Schedule 5 and Schedule 5A are to Schedule 5 and Schedule 5A to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Timing of election

3.—(1) Subject to paragraph (4), the period for making an election under—

(a) paragraph A1(1) of Schedule 5 (choice between increase of pension and lump sum where pensioner's entitlement is deferred); and

(b) paragraph 1(1) of Schedule 5A (choice between pension increase and lump sum where entitlement to shared additional pension is deferred),

is 3 months beginning on the date shown on the notice issued by the Department following the claim for retirement pension or shared additional pension, confirming that the elector is required to make that election.

(2) Subject to paragraph (4), the period for making an election under paragraph 3C(2) of Schedule 5 (choice between increase of pension and lump sum where pensioner's deceased spouse or civil partner has deferred entitlement) is 3 months beginning on the date shown on the notice issued by the Department following W's claim for retirement pension or, if later, the date of S's death, confirming that the elector is required to make that election(**11**).

(**10**) S.R. 1987 No. 465; relevant amending Regulations are S.R. 2005 No. 541

(**11**) "W" and "S" have the same meaning as in paragraph 3C of Schedule 5 to the Social Security Contribution and Benefits (Northern Ireland) Act 1992

(3) Where more than one notice has been issued by the Department in accordance with paragraph (1) or (2), the periods prescribed in those paragraphs shall only begin from the date shown on the latest such notice.

(4) The periods specified in paragraphs (1) and (2) may be extended by the Department if it considers it reasonable to do so in any particular case.

(5) Nothing in this regulation shall prevent the making of an election on or after claiming retirement pension or shared additional pension but before the issue of the notice referred to in paragraph (1) or (2).

Manner of making election

4. An election under paragraph A1(1) or 3C(2) of Schedule 5 or paragraph 1(1) of Schedule 5A may be made—

(a) in writing to an office specified by the Department for accepting such elections; or

(b) except where the Department directs in any particular case that the election must be made in accordance with paragraph (a), by telephone call to the telephone number specified by the Department.

Change of election

5.—(1) Subject to paragraphs (2) and (6), this regulation applies in the case of an election which—

(a) has been made under paragraph A1(1) or 3C(2) of Schedule 5 or under paragraph 1(1) of Schedule 5A; or

(b) has been treated as made under paragraph A1(2) or 3C(3) of Schedule 5 or under paragraph 1(2) of Schedule 5A.

(2) This regulation does not apply in the case of an election which is—

(a) made, or treated as made, by an elector who has subsequently died; or

(b) treated as having been made by virtue of regulation 30(5E) or (5G) of the Claims and Payments Regulations(**12**).

(3) An election specified in paragraph (1) may be changed by way of application made no later than the last day of the period specified in paragraph (4).

(4) Subject to paragraph (5), the period specified for the purposes of paragraph (3) is 3 months beginning on the date shown on the written notification issued by the Department to the elector, confirming the election which the elector has made or is treated as having made.

(5) The period specified in paragraph (4) may be extended by the Department if it considers it reasonable to do so in any particular case.

(6) An election specified in paragraph (1) may not be changed where—

(a) there has been a previous change of election under this regulation in respect of the same period of deferment;

(b) the application is to change the election to one under paragraph A1(1)(a) or 3C(2)(a) of Schedule 5 or paragraph 1(1)(a) of Schedule 5A and any amount paid to the elector by way of, or on account of, a lump sum pursuant to Schedule 5 or 5A, has not been repaid in full to the Department within the period specified in paragraph (4) or (5); or

(c) the application is to change the election to one under paragraph A1(1)(b) or 3C(2)(b) of Schedule 5 or paragraph 1(1)(b) of Schedule 5A and the amount actually paid by way of an increase of retirement pension or shared additional pension, or actually paid on account

(**12**) Paragraphs (5A) to (5G) were substituted by regulation 3(b) of S.R. 2005 No. 541

of such an increase, would exceed the amount to which the elector would be entitled by way of a lump sum.

(7) For the purposes of paragraph (6)(b), repayment in full of the amount paid by way of, or on account of, a lump sum shall only be treated as having occurred if repaid to the Department in the currency in which that amount was originally paid.

(8) Where the application is to change the election to one under paragraph A1(1)(b) or 3C(2)(b) of Schedule 5 or paragraph 1(1)(b) of Schedule 5A and paragraph (6)(c) does not apply, any amount paid by way of an increase of retirement pension or shared additional pension, or on account of such an increase, in respect of the period of deferment for which the election was originally made, shall be treated as having been paid on account of the lump sum to which the elector is entitled under paragraph 3A or 7A of Schedule 5(**13**) or paragraph 4 of Schedule 5A.

(9) An application under paragraph (3) to change an election may be made—

(a) in writing to an office specified by the Department for accepting such applications; or

(b) except where the Department directs in any particular case that the application must be made in accordance with sub-paragraph (a), by telephone call to the telephone number specified by the Department.

Amendment of the Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations

6. In regulation 2(6) of the Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations (Northern Ireland) 2005(**14**) (modification of Schedule 5 to the Act), sub-paragraph (a) shall be omitted.

PART 3

DEFERRAL OF GRADUATED RETIREMENT BENEFIT

Amendment of the Social Security (Graduated Retirement Benefit) Regulations

7.—(1) The Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005(**15**) shall be amended in accordance with paragraphs (2) and (3).

(2) In Schedule 1 (increases of graduated retirement benefit and lump sums)—

(a) in paragraph 2(1), ", on claiming his pension either" shall be omitted;

(b) in paragraph 12 (choice between increase and lump sum)—

(i) for sub-paragraph (2) there shall be substituted the following sub-paragraph—

"(2) The election referred to in sub-paragraph (1) shall be made—

(a) on the date on which he claims graduated retirement benefit; or

(b) within the period after claiming graduated retirement benefit prescribed in paragraph 20D,

and in the manner prescribed in paragraph 20E.",

(**13**) Paragraphs 3A and 7A were inserted respectively by paragraphs 7(1) and 10(1) of Schedule 9 to the Pensions (Northern Ireland) Order 2005

(**14**) S.R. 2005 No. 123

(**15**) S.R. 2005 No. 121 as amended by S.R 2005 No. 541. Schedule 1 has effect by virtue of section 35(4) of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)). Sections 35 and 36 were repealed by the Social Security Act 1973 (c. 38) but are continued in force by regulation 2 of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 (S.R. 1978 No. 105)

(ii) in sub-paragraph (4), for "and within the time specified in regulations made under paragraph A1(4) of Schedule 5" there shall be substituted ", manner and within the period prescribed, in paragraph 20F";

(c) in paragraph 17 (choice between increase and lump sum where person's deceased spouse or civil partner has deferred entitlement to graduated retirement benefit)—

(i) for sub-paragraph (3) there shall be substituted the following sub-paragraph—

"(3) The election referred to in sub-paragraph (2) shall be made within the period prescribed in paragraph 20D and in the manner prescribed in paragraph 20E.";

(ii) in sub-paragraph (4), for "(3)(b)" there shall be substituted "(3)";

(iii) for sub-paragraph (5) there shall be substituted the following sub-paragraph—

"(5) A person who has made an election under sub-paragraph (2) (including one that the person is treated by sub-paragraph (4) as having made) may change the election in the circumstances, manner and within the period prescribed in paragraph 20F.".

(d) after paragraph 20B(**16**), there shall be inserted the following—

"PART 2A

ELECTIONS UNDER PART 2

Scope and interpretation

20C.—(1) This Part applies in respect of elections which a person makes or is treated as having made under Part 2.

(2) In this Part, "elector" means the person who may make an election under paragraph 12(1) or 17(2).

Timing of election

20D.—(1) Subject to sub-paragraph (4), the period for making an election under paragraph 12(1) is 3 months beginning on the date shown on the notice issued by the Department following the claim for graduated retirement benefit, confirming that the elector is required to make that election.

(2) Subject to sub-paragraph (4), the period for making an election under paragraph 17(2) is 3 months beginning on the date shown on the notice issued by the Department following W's claim for a Category A or Category B retirement pension or, if later, the date of S's death, confirming that the elector is required to make that election.

(3) Where more than one notice has been issued by the Department in accordance with sub-paragraph (1) or (2), the periods prescribed in those sub-paragraphs shall only begin from the date shown on the latest such notice.

(4) The periods specified in sub-paragraphs (1) and (2) may be extended by the Department if it considers it reasonable to do so in any particular case.

(5) Nothing in this paragraph shall prevent the making of an election on or after claiming graduated retirement benefit or Category A or Category B retirement pension, but before the issue of the notice referred to in sub-paragraph (1) or (2).

(**16**) Paragraphs 20A and 20B were inserted by regulation 4(10) of S.R. 2005 No. 541