STATUTORY RULES OF NORTHERN IRELAND

2005 No. 541

SOCIAL SECURITY

The Social Security (Retirement Pensions and Graduated Retirement Benefit) (Widowers and Civil Partnership) Regulations (Northern Ireland) 2005

Made - - - - 2nd December 2005

Coming into operation in accordance with regulation 1

The Department for Social Development, in exercise of the powers conferred by sections 62(1)(a), (ac) and (c) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and sections 5(1)(g) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(**2**), and now vested in it(**3**), and paragraph 22 of Schedule 9 to the Pensions (Northern Ireland) Order 2005(**4**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security (Retirement Pensions and Graduated Retirement Benefit) (Widowers and Civil Partnership) Regulations (Northern Ireland) 2005 and shall come into operation—

(a) for the purposes of regulations 3 and 5, on 6th April 2006 immediately after regulation 2(4) of the Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 2005(**5**) and regulation 2(8) of the Social Security (Shared Additional Pension) (Miscellaneous Amendments) Regulations (Northern Ireland) 2005(**6**) have come into operation;

(**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 (ac) was inserted by paragraph 1 of the Schedule to S.R. 2005 No. 471 and 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)

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

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

(**5**) S.R. 2005 No. 122

(**6**) S.R. 2005 No. 299

(b) for the purposes of regulation 4(10), in so far as it applies in relation to paragraphs 17 and 19 of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005(**7**), on 6th April 2006; and

(c) for all other purposes, on 5th December 2005.

Amendment of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations

2.—(1) The Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978(**8**) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 1A(c)(**9**) (application of section 135 of the Administration Act), for "widows and widowers" there shall be substituted "widows, widowers and surviving civil partners".

(3) In regulation 2(2) (continuation in force of sections 35, 36 and 110(1) of the Act of 1966)—

(a) at the end of sub-paragraph (b), "and" shall be omitted; and

(b) after sub-paragraph (c) there shall be added—

"; and

(d) to extend section 36 of the Act of 1966(**10**) (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to civil partners and surviving civil partners".

(4) In Schedule 1 (which sets out sections 35 and 36 of the National Insurance Act (Northern Ireland) 1966 as continued in force by those regulations), in section 36 (special provisions as to graduated retirement benefit for widows and widowers)—

(a) in subsection (1)(**11**)—

(i) after paragraph (b) there shall be inserted—

"; or

(c) where a person, having paid graduated contributions as an insured person, dies on or after 5th December 2005 leaving a surviving civil partner, and they have both attained pensionable age at the time of his or her death",

(ii) for "widow or widower" there shall be substituted "widow, widower or surviving civil partner", and

(iii) after "former spouse" there shall be inserted "or former civil partner";

(b) in subsection (2)(**12**), after "deceased spouse's" (in each place where it occurs) there shall be inserted "or deceased civil partner's";

(c) in subsection (3), after "marriage" there shall be inserted "or civil partnership"; and

(d) in subsection (4)—

(i) after "marries" there shall be inserted ", or as the case may be, a civil partner he or she forms a civil partnership with,",

(ii) after "married" there shall be inserted "or who has formed a civil partnership more than once or who has been both married and formed a civil partnership", and

(iii) after "spouses" there shall be inserted "or civil partners".

(**7**) S.R. 2005 No. 121
(**8**) S.R. 1978 No. 105; relevant amending Regulations are S.R. 1989 No. 373 and S.R. 1995 No. 483; *see also* S.R. 2005 No.121
(**9**) Regulation 1A was inserted by regulation 2 of S.R. 1995 No. 483
(**10**) 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 S.R. 1978 No. 105
(**11**) Subsection (1) was amended by regulation 5(2)(b)(i) of S.R. 1989 No. 373
(**12**) Subsection (2) was amended by regulation 5(2)(b)(ii) of S.R. 1989 No. 373

(5) In Schedule 3 (which sets out regulations 2 and 3 of the 1978 Regulations as modified by those regulations), in regulation 3 (graduated retirement benefit for persons who have been married more than once)—

(a) in the heading, after "persons who have been married more than once" there shall be inserted "or have formed more than one civil partnership or who have been both married and formed a civil partnership";

(b) after "person who has been married more than once" there shall be inserted "or has formed more than one civil partnership or who has been both married and formed a civil partnership";

(c) after "second or subsequent spouse" there shall be inserted "or second or subsequent civil partner";

(d) after "first-mentioned spouse" there shall be inserted "or first-mentioned civil partner".

Amendment of the Social Security (Claims and Payments) Regulations

3. In regulation 30 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**13**) (payments on death)—

(a) in paragraph (5)(**14**) (posthumous claims), for "(5F)" there shall be substituted "(5G)"; and

(b) for paragraphs (5A) to (5F)(**15**) there shall be substituted the following paragraphs—

"(5A) Subject to paragraphs (5B) to (5G), a claim may be made in accordance with paragraph (5) on behalf of the deceased for a Category A or Category B retirement pension or graduated retirement benefit provided that the deceased was not married or in a civil partnership on the date of his death.

(5B) Subject to paragraphs (5C) to (5G), a claim may be made in accordance with paragraph (5) on behalf of the deceased for a Category A or Category B retirement pension or graduated retirement benefit where the deceased was a married woman or a civil partner on the date of death if the deceased's widower or surviving civil partner was under pensionable age on that date and due to attain pensionable age before 6th April 2010.

(5C) Where a claim is made for a shared additional pension under paragraph (5) or for a retirement pension or graduated retirement benefit under paragraphs (5) and (5A) or (5B), in determining the benefit to which the deceased would have been entitled if he had claimed within the prescribed time, the prescribed time shall be the period of 3 months ending on the date of his death and beginning with any day on which, apart from satisfying the condition of making a claim, he would have been entitled to the pension or benefit.

(5D) Paragraph (5E) applies where, throughout the period of 12 months ending with the day before the death of the deceased person, his entitlement to a Category A or a Category B retirement pension, shared additional pension or graduated retirement benefit was deferred in accordance with, as the case may be—

(a) section 55 of the Contributions and Benefits Act(**16**) (pension increase or lump sum where entitlement to retirement pension is deferred);

(**13**) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1988 No.369, S.R. 1990 No. 398, S.R. 1992 No. 7, S.R. 1996 No. 354, S.R. 2003 No. 191 and S.R. 2005 No. 122

(**14**) Paragraph (5) was amended by regulation 3(6) of S.R. 1988 No. 369, regulation 7(5)(a) of S.R. 1990 No. 398, regulation 15 of S.R. 1992 No. 7, regulation 2(15) of S.R. 1996 No. 354, regulation 10 of S.R. 2003 No. 191 and regulation 2(4)(a) of S.R. 2005 No. 122

(**15**) Paragraphs (5A) to (5F) were inserted by regulation 2(4)(b) of S.R. 2005 No. 122

(**16**) Section 55 was substituted by Article 273(1) of the Pensions (Northern Ireland) Order 2005 and amended by paragraph 4 of the Schedule to S.R. 2005 No. 434