1979 No. 243

SOCIAL SECURITY

The Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979

Made . . . . . 3*rd July* 1979

Coming into operation . . . . 4*th September* 1979

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SCHEDULE 1—Method of treating former spouse's contributions as those of the beneficiary so as to entitle him to a Category A retirement pension

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The Department of Health and Social Services for Northern Ireland, in exercise of powers conferred on it by sections 29(5), 30(3), 33, 39(1) and (4), 40(2), 85(1) and 152 of, and Schedule 17 to, the Social Security (Northern Ireland) Act 1975(a), Article 22 of, and paragraphs 2(2)(*a*) and 3 of Schedule 1 to, the Social Security Pensions (Northern Ireland) Order 1975(b) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979 and shall come into operation on 4th September 1979.

(2) In these regulations, unless the context otherwise requires—

"the Act" means the Social Security (Northern Ireland) Act 1975;

"the Act of 1970" means the National Insurance Act (Northern Ireland) 1970(c);

"the Pensions Order" means the Social Security Pensions (Northern Ireland) Order 1975;

"the Department" means the Department of Health and Social Services for Northern Ireland;

"home responsibilities year" means a year in which the person in question was precluded from regular employment by responsibilities at home within the meaning of the Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Regulations (Northern Ireland) 1978(d);

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

"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 Order;

"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 Act, but not including (except for the purposes of regulation 6) a year which is treated as such a year by virtue of regulation 8(4) and not including any home responsibilities year;

"the determining authority" means, as the case may require, an insurance officer, a local tribunal or a Commissioner;

(a) 1975 c. 15
(b) S.I. 1975/1503 (N.I. 15), as amended by Article 4(1) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (S.I. 1977/610 (N.I. 11))
(c) 1970 c. 28 (N.I.)
(d) S.R. 1978 No. 102 (I, p. 290)

"Article 11(2), 11(3) or 12(2) increase" means an increase under Article 11(2), 11(3) or 12(2) respectively of the Pensions Order of a person's Category A retirement pension attributable to his spouse's contributions;

"Service Pensions Instrument" means a provision and only a provision of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a disablement pension (not being a pension calculated or determined by reference to length of service) may be paid out of public funds in respect of any disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council, or the Air Council;

"1914-1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914(**e**) or under the Injuries in War Compensation Act 1914 (Session 2)(**f**) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 War;

"unemployability supplement" has the extended meaning assigned to it in regulation 2 of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**g**), and further includes benefit corresponding to an unemployability supplement by virtue of regulations under section 150(3)(*a*) of the Act;

"year" means tax year.

(3) 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 (Northern Ireland) Order 1978(**h**) 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 Department 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.

(4) For the purposes of regulations 11(1)(*d*), 12(3) and 13(2) a person shall be deemed to be, or to have been, entitled to a pension or benefit if he would have been so entitled had he made a claim for it.

(5) Unless the context otherwise requires, any reference in these regulations to a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(6) The Interpretation Act 1978(**i**) shall apply to these regulations.

Election to be treated as not having retired

2.—(1) Subject to the provisions of these regulations, where any person (other than one mentioned in paragraph (2))—

(**e**) 1914 c. 30
(**f**) 1914 c. 18 (5 & 6 Geo. 5)
(**g**) S.R. 1979 No. 242
(**h**) S.I. 1978/1045 (N.I. 15)
(**i**) 1978 c. 30

(*a*) has retired from regular employment or has otherwise become entitled to either a Category A or a Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and

(*b*) elects that this regulation shall apply in his case,

the Act shall have effect as if that person had not retired or become entitled as aforesaid.

(2) Paragraph (1) shall not apply to—

(*a*) a person who has previously made such an election;

(*b*) in relation to a Category A retirement pension, a husband whose wife is entitled, by virtue of his contributions, to a Category B retirement pension or an Article 12(2) increase and who does not consent to his election unless that consent is unreasonably withheld.

(3) Notice of election for the purpose of this regulation shall be given to the Department in writing on the form approved by it for the purpose, or in such other manner, being in writing, as the Department may accept as sufficient in the circumstances of any particular case or class of cases; and if any such notice is sent by post, it shall be deemed to have been given on the date it was posted.

(4) Subject to paragraphs (5) and (6), an election shall take effect—

(*a*) where the notice does not specify a date as the date of the person's election, on the date on which the notice is given; or

(*b*) where the notice specifies a date as the date of the person's election, being not earlier than the date on which the notice is given and not later than the expiration of 28 days after that date, on the date so specified.

(5) In the case of a man whose wife is entitled, by virtue of his contributions, to a Category B retirement pension or an Article 12(2) increase—

(*a*) if she consents in writing to the election, the election shall not take effect earlier than the date of her consent; or

(*b*) if she does not so consent and the determining authority decides that her consent has been unreasonably withheld, the election shall take effect in accordance with the provisions of paragraph (4) or on such later date (if any) as that authority, having regard to all the circumstances of the case, may determine.

(6) Where a woman entitled to a Category B retirement pension under section 29(4) of the Act has, on or after 6th April 1979, made an election and has not revoked it, then, for the purpose only of determining her right to increments under paragraph 2 of Schedule 1 to the Pensions Order, 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.

Provisions applying after election

3. Where an election has been made in accordance with regulation 2—

(*a*) subject to the provisions of regulations made under section 81(2)(*a*) of the Act (adjustment to prevent payments for periods of less than a week and at different rates for different parts of a week), no Category A or B retirement pension shall be payable to a person and no Category B retirement pension or Article 12(2) increase shall be payable to a man's

wife, by virtue of his contributions for any period on or after the date of his election and before he subsequently retires from regular employment or dies; and

(*b*) where the person who has made the election is a woman who became entitled to a Category B retirement pension otherwise than by virtue of having retired from regular employment, and she revokes her election, she shall cease to be treated as if she had not become entitled to such a retirement pension; and

(*c*) where the person who has made the election is a man whose wife is entitled to a Category B retirement pension or an Article 12(2) increase by virtue of his contributions and he subsequently retires from regular employment and claims a retirement pension, his claim may be treated as including a claim by his wife, by virtue of his contributions, for a Category B retirement pension or an Article 12(2) increase.

Days to be treated as days of increment

4.—(1) For the purposes of paragraph 2 of Schedule 1 to the Pensions Order 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 from regular employment on attaining pensionable age, or, in the case of a married woman and her Category B retirement pension or Article 12(2) increase, if she and her husband had retired from regular employment 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 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 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 an Article 12(2) increase, her husband had not received an increase of any of the benefits mentioned in paragraph (1)(*b*) in respect of her.

(2) Subject to the following paragraph, for the purposes of this regulation, where in respect of any day—

(*a*) a person has received one or more of the benefits mentioned in paragraph (1)(*b*) or (*c*); and

(*b*) either—

(i) the Department or the determining authority, whichever is appropriate, has determined that in respect of that day he was not entitled to that benefit; or

(ii) by virtue of the provisions of the Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations (Northern Ireland) 1977(j) the Department has recovered from that person's employer sums on account of unemployment benefit received by that person in respect of that day; and

(j) S.R. 1977 No. 123 (I, p. 405)