1978 No. 101

SOCIAL SECURITY

The Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1978

Made . . . . . 10*th April* 1978
Coming into operation . . . . 6*th April* 1979

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 30(3) and 33(2) and (3) of the Social Security (Northern Ireland) Act 1975(**a**) and Article 22 of, and paragraphs 2(2)(*a*) and 3 of Schedule 1 to, the Social Security Pensions (Northern Ireland) Order 1975(**b**), as amended by Article 4 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**c**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, interpretation and commencement

1. These regulations, which may be cited as the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1978, shall be read as one with the Social Security (Widow's Benefit and Retirement Pensions) (Northern Ireland) Regulations 1975(**d**) (hereinafter referred to as "the principal regulations") and shall come into operation on 6th April 1979.

Substitution in the principal regulations relating to interpretation

2.—(1) In regulation 1(2) of the principal regulations for the words following the definition of "the Act of 1970" there shall be substituted—

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

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

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

'home responsibility year' means a year in which the person in question was precluded from regular employment by responsibilities at home within the meaning of regulations under paragraph 5(6) and (7) of Schedule 3 to the 1975 Act as inserted by Article 21(3) of the Pensions Order;

'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 sub-paragraph (*b*) of the second contribution condition specified in paragraph 5 of Schedule 3 to the 1975 Act, but not including (except for the purposes of regulation 5) a year which is treated as such a year by virtue of regulation 5B(4) and not including any home responsibility year;

(a) 1975 c. 15
(b) S.I. 1975/1503 (N.I. 15)
(c) S.I. 1977/610 (N.I. 11)
(d) S.R. 1975 No. 12 (I, p. 47)

'the determining authority' means, as the case may require, an insurance officer, a local tribunal or a Commissioner by whom the relevant question falls to be determined by virtue of Part III of the 1975 Act;

'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;

'unemployability supplement' has the extended meaning assigned to it in regulation 2 of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1975(**e**), as amended(**f**), and further includes benefit corresponding to an unemployability supplement under regulations made under section 150(3)(*a*) of the 1975 Act;

'year' means tax year;

'the Industrial Injuries Act' means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(**g**);

'the former principal Act' means the National Insurance Act (Northern Ireland) 1966(**h**);

and other expressions have the same meaning as in the 1975 Act.".

(2) After regulation 1(2) of the principal regulations there shall be inserted the following paragraph—

"(2A) 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 Act (Northern Ireland) 1939(**i**) 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.".

Amendment of the principal regulations relating to elections to be treated as not having retired

3.—(1) Regulations 2 and 3 of the principal regulations, as amended(**j**), shall be further amended in accordance with the following provisions of this regulation.

(2) In regulations 2(2)(*b*) and (5) and 3(*a*) and (*c*) after "Category B retirement pension" wherever it occurs there shall be inserted "or Article 12(2) increase", and in regulation 3(*a*) after "no Category A" there shall be inserted "or B".

(3) For paragraph (6) of regulation 2 there shall be substituted the following paragraph—

"(6) Where a woman entitled to a Category B retirement pension under section 29(4) of the 1975 Act has, on or after 6th April 1979, made an election and has not revoked it, then, for the purposes 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.".

(**e**) S.R. 1975 No. 94 (I, p. 561)
(**f**) There are no relevant amending regulations
(**g**) 1966 c. 9 (N.I.)
(**h**) 1966 c. 6 (N.I.)
(**i**) 1939 c. 13 (N.I.)
(**j**) The relevant amending regulations are S.R. 1975 No. 95 (I, p. 570) and S.R. 1977 No. 280

Substitution in the principal regulations relating to days to be treated as days of increment

4.—(1) For paragraph (1) of regulation 4 of the principal regulations there shall be substituted the following paragraph—

"**4.**—(1) For the purposes of paragraph 2 of Schedule 1 to the Pensions Order as amended by Article 4 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977, 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 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 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 his 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 1975 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 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) In regulation 4(3) of the principal regulations(k)—

(*a*) after "paragraph (1)(*b*)" there shall be inserted "or (*c*)"; and

(*b*) for the words following ' "relevant date" means' there shall be substituted—

"(i) where a person's entitlement to increments under paragraph 2 of Schedule 1 to the Pensions Order is in question, the end of his period of deferment; or

(ii) where a person's entitlement to increments under paragraph 4 of that Schedule in relation to the deferred retirement of a deceased spouse is in question, the date of the death of that spouse.".

Insertion into the principal regulations of regulation 4A

5. After regulation 4 of the principal regulations there shall be inserted the following regulation—

"*Modification of paragraph* 2(1) *to* (3) *of Schedule* 1 *to the Pensions Order*

4A.—(1) This regulation applies to a person referred to in paragraph 1 of Schedule 1 to the Pensions Order during whose period of deferment there has been an increase, other than an increase made by such an order as is mentioned in sub-paragraph (5) of paragraph 2 of that Schedule, in the rate of the Category A or Category B retirement pension to which he would have been entitled if he had retired from regular employment on attaining pensionable age.

(k) As inserted by S.R. 1977 No. 280

(2) In relation to a person to whom this regulation applies paragraph 2(1) to (3) of the said Schedule 1 shall have effect with the additions, omissions and amendments prescribed in the following paragraphs of this regulation.

(3) In paragraph 2(1) for the words after 'incremental period' there shall be substituted—

'(*a*) in his period of deferment; and

(*b*) in each period beginning with the day on which an increase in the weekly rate of his pension took place and ending with the day before that of his retirement.'.

(4) After paragraph 2(2)(*b*) there shall be added—

'and

(*c*) 'weekly rate of his pension' means the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled if he had retired on attaining pensionable age; and

(*d*) 'increase' means an increase in the weekly rate of his pension other than an increase made by such an order as is mentioned in sub-paragraph (5).'.

(5) In paragraph 2(3) for the words after 'incremental period' there shall be substituted—

'—

(*a*) in the case of an incremental period specified in paragraph 2(1)(*a*), shall be 1/7th per cent. of the weekly rate of his pension immediately after he attained pensionable age; and

(*b*) in the case of an incremental period specified in paragraph 2(1)(*b*), shall be 1/7th per cent. of that increase.'."

Substitution for regulation 5 of the principal regulations

6. For regulation 5 of the principal regulations there shall be substituted the following regulation—

"Benefit at reduced rates for those who do not satisfy the contribution conditions in full

5.—(1) Where a person would be entitled to a Category A or Category B retirement pension, a widow's pension or a widowed mother's allowance but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the 1975 Act is not satisfied, he shall be entitled—

(*a*) to the basic component in that benefit at a reduced rate calculated, in accordance with paragraph (3), as a percentage of the rate specified in Article 8(1)(*a*) of the Pensions Order; and

(*b*) to the additional component in that benefit,

but where that percentage is less than 25 per cent. no basic component shall be payable under this paragraph.

(2) Where a person, who would be entitled to an increase of benefit under sections 41, 45 or 46 of the 1975 Act but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the 1975 Act is not satisfied, is entitled to benefit under paragraph (1)(*a*), the latter benefit shall be increased—

(*a*) in the case of a child dependant, by the appropriate increase specified in Part IV of Schedule 4 to the 1975 Act;