1975 No. 19

SOCIAL SECURITY

The Social Security (Benefit) (Married Women and Widows Special Provisions) (Northern Ireland) Regulations 1975

Made . . . . . *5th February* 1975

Coming into operation . . . *6th April* 1975

The Department of Health and Social Services for Northern Ireland, in exercise of powers conferred by sections 9(7), 37 and 42 of, and paragraph 14 of Schedule 22 and paragraphs 2 and 4 of Schedule 26 to the Social Security Act 1973(a), 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 (Benefit) (Married Women and Widows Special Provisions) (Northern Ireland) Regulations 1975, and shall come into operation on 6th April 1975.

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

"the Act" means the Social Security Act 1973;

"the Industrial Injuries Act" means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(b);

"appropriate weekly rate" means, in relation to any benefit, the weekly rate of personal benefit by way of benefit of that description which is appropriate in the case of the person in relation to whom the provision containing that expression is to be applied;

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

"the determining authority" means, as the case may require, the Chief National Insurance Commissioner appointed under paragraph 13(1) of Schedule 25 to the Act or any other National Insurance Commissioner so appointed or any tribunal constituted under paragraph 13(2) of that Schedule, a local tribunal constituted under section 76 of the National Insurance Act (Northern Ireland) 1966(c) as amended by Schedule 25 to the Act, or an insurance officer appointed under section 67(1) of the National Insurance Act (Northern Ireland) 1966 as so amended;

"marriage" includes any remarriage, and the word "married", wherever it occurs, shall be construed accordingly;

"personal benefit" means that benefit, pension or allowance (whether under the Act or otherwise) which, apart from the provisions of regulations made under paragraph 3 of Schedule 10 to the Act (overlapping benefits), is payable to a person otherwise than in respect of another person who is a child or an adult dependant;

(a) 1973 c. 38
(b) 1966 c. 9 (N.I.)
(c) 1966 c. 6 (N.I.)

"Personal Injuries Scheme" means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939(**d**) or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**e**);

"reckonable year", for the purposes of the contribution conditions for any benefit, means a year in which the contributor concerned has paid or has been credited with contributions of a relevant class and in which the earnings factor derived from those contributions amounts to not less than that year's lower earnings limit multiplied by 50;

"Service Pensions Instrument" means those provisions and only those provisions of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a death or a disablement pension (not including a pension calculated by reference to length of service) and allowances for dependants payable with either such pension may be paid out of public funds in respect of any death or 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 in 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(**f**) or under the Injuries in War Compensation Act 1914 (Session 2)(**g**) 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;

"year" means an income tax year,

and other expressions have the same meanings as in the Act.

(3) References in these regulations to any enactment or regulations shall, except in so far as the context otherwise requires, be construed as references to such enactment or regulations as amended or extended by or under any other enactment, order or regulations and as including references to any enactment or regulations thereby consolidated.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**h**) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Special credits where a woman's marriage has been terminated

2. Where a woman's marriage has been terminated by the death of her husband or otherwise, and she has in respect of any one year (not being a year before that in which the marriage took place, and being either the last year before that in which the marriage was terminated or any subsequent year) paid Class 1 or Class 2 contributions or both, and the earnings factor derived from those contributions is not less than the lower earnings limit for that year multiplied by 25, there shall be credited to her, in respect of any year during the whole or any part of which the marriage subsisted, and for the purpose only of enabling her to satisfy the second contribution condition for unemployment benefit, sickness benefit or maternity allowance specified in paragraph 1 or 3, as the case may be, of Schedule 3 to the Act, such Class

(**d**) 1939 c. 82
(**e**) 1939 c. 83
(**f**) 1914 c. 30
(**g**) 1914 c. 18 (5 & 6 Geo. 5)
(**h**) 1889 c. 63

1 contributions (if any) as are required to enable her to satisfy that condition, so however that she shall not be entitled by virtue of this provision to benefit in respect of any period before the marriage was terminated or before she paid contributions as aforesaid.

Modifications, in relation to widows, of provisions with respect to unemployment and sickness benefit, maternity allowance and Category A retirement pension

3.—(1) Subject to the following provisions of this regulation, where, otherwise than by reason of remarriage or cohabitation with a man as his wife, a woman ceases to be entitled either to a widow's allowance or to a widowed mother's allowance—

(*a*) she shall be deemed to have satisfied the first contribution condition for unemployment benefit, sickness benefit, maternity allowance or Category A retirement pension specified in paragraph 1, 3 or 5, as the case may be, of Schedule 3 to the Act;

(*b*) for the purpose only of enabling her to satisfy the second contribution condition for unemployment benefit, sickness benefit or maternity allowance specified in paragraph 1 or 3, as the case may be, of Schedule 3 to the Act, there shall be credited to her, for every year up to and including that in which she ceased to be entitled as aforesaid, such Class 1 contributions (if any), as are required to enable her to satisfy that condition; and

(*c*) for the purposes of the provisions of section 13(1) of the Act (exhaustion of, and requalification for, unemployment benefit) if the day on which she ceases to be entitled as aforesaid falls during a period of interruption of employment, any part of that period before that day shall be left out of account and, if on that day her right to unemployment benefit is exhausted, she shall be deemed to have requalified therefor on that day.

(2) When a husband who is entitled to a Category C retirement pension dies and his wife has not attained pensionable age, the provisions of paragraph (1) of this regulation shall, subject to paragraph (6), apply to the widow as if she had then ceased to be entitled to a widow's allowance.

(3) Where a woman ceases to be entitled to a widowed mother's allowance as is mentioned in paragraph (1) of this regulation at a time when she is entitled to personal benefit by way of a widow's pension under the Industrial Injuries Act or any Personal Injuries Scheme or any Service Pensions Instrument or any 1914-1918 War Injuries Scheme at a weekly rate which is equal to or exceeds the weekly rate of widow's pension under the Act specified in the second column of Part I of Schedule 4 thereto, and thereafter that personal benefit, while continuing to be payable, falls to be reduced to a weekly rate which is less than the said weekly rate of widow's pension under the Act, paragraph (1) of this regulation shall apply to her both when she so ceases and when that personal benefit so falls to be reduced.

(4) In relation to a widow who, at her husband's death, would be entitled to a widow's allowance but for the fact that neither condition for a widow's allowance specified in section 19(1)(*a*) of the Act is satisfied, paragraph (1)(*a*) of this regulation shall, subject to the provisions of paragraph (6) of this regulation and so far only as it relates to Category A retirement pension, apply as if she had then ceased to be entitled to a widow's allowance.

(5) Subject to paragraph (9) of this regulation, where a woman is entitled to personal benefit by way of a widow's pension under the Industrial Injuries Act or any Personal Injuries Scheme or any Service Pensions Instrument or any 1914-1918 War Injuries Scheme—

(*a*) if the weekly rate of that personal benefit is equal to or exceeds the appropriate weekly rate of unemployment benefit or sickness benefit or maternity allowance, the provisions of sub-paragraphs (*a*) to (*c*) of paragraph (1) of this regulation shall not operate to entitle her to unemployment benefit or sickness benefit or maternity allowance for any period before she has satisfied the following contribution condition, namely that she has in respect of any one year beginning after her husband's, or, as the case may be, her last husband's, death, paid Class 1 or Class 2 contributions or both, and the earnings factor derived from those contributions is not less than that year's lower earnings limit multiplied by 25; and

(*b*) if the weekly rate of that personal benefit is less than the said appropriate weekly rate, the said provisions shall not operate to entitle her to unemployment benefit or sickness benefit or maternity allowance, for any period such as is mentioned in the last foregoing subparagraph, at a weekly rate which exceeds the difference between the said appropriate weekly rate and the weekly rate of that personal benefit.

(6) For the purposes of a Category A retirement pension, the provisions of sub-paragraph (*a*) of paragraph (1) of this regulation—

(*a*) shall not, in the case of a woman who, having ceased to be entitled as is mentioned in that paragraph, remarries before she attains pensionable age, apply by reason of her ceasing to be entitled as aforesaid before her remarriage;

(*b*) shall not apply in the case of a woman who is entitled when she attains pensionable age to personal benefit by way of a widow's pension under the Industrial Injuries Act or any Personal Injuries Scheme or any Service Pensions Instrument or any 1914-1918 War Injuries Scheme at a weekly rate which is equal to or exceeds the weekly rate of widow's pension under the Act which is specified in the second column of Part I of Schedule 4 thereto; and

(*c*) shall not operate, in the case of any other woman who is entitled when she attains pensionable age to such personal benefit as aforesaid, to entitle her to a retirement pension at a weekly rate which exceeds the difference between the weekly rate of widow's pension under the Act which is so specified and the weekly rate of that personal benefit:

Provided that a woman affected by sub-paragraph (*b*) or sub-paragraph (*c*) of this paragraph shall cease to be so affected if and when she remarries.

(7) For the purpose of determining whether a woman ceases to be entitled as is mentioned in paragraph (1) of this regulation, a woman in whose case the Department is satisfied that she would be or would have been entitled to widow's benefit for any period but for any one or more of the following factors, namely—

(*a*) her failure to make, or delay in making, a claim to the benefit;

(*b*) her disqualification for the receipt of benefit for any other reason than her cohabitation with a man as his wife;

(*c*) the operation of the provisions of regulations made under paragraph 3 of Schedule 10 to the Act (overlapping benefits);

shall be treated as if she is or was, as the case may be, entitled thereto throughout that period.

(8) For the purpose of determining whether a woman would be entitled to a widow's allowance but for the fact mentioned in paragraph (4) of this regulation, a woman in whose case the Department is satisfied that she would be so entitled but for that fact and for any one or more of the factors mentioned in paragraph (7) of this regulation shall be treated as if she would be so entitled but for that fact.

(9) A woman who ceases to be entitled as is mentioned in paragraph (1) of this regulation on more than one occasion shall be entitled to the benefit of the provisions of that paragraph, subject as therein mentioned, on each such occasion, and if, on one such occasion, she satisfies the contribution condition set out in paragraph (5)(*a*) of this regulation, that paragraph shall not apply to her on any subsequent occasion.

(10) Where, but for this paragraph, the provisions of regulation 2 of these regulations and the provisions of this regulation would be applicable for the purpose of determining a woman's right to unemployment benefit or sickness benefit or maternity allowance for any day, her right thereto shall be determined by reference to the provisions of that one of those two regulations which is more favourable to her, to the exclusion of the provisions of the other.

Retirement pensions for women whose marriages have been dissolved

4.—(1) Where a woman's marriage (being, in the case of a woman who has been married more than once, her last marriage before attaining pensionable age) has been terminated otherwise than by the death of her husband and she was under pensionable age on the date of that termination, and she does not with her own contributions satisfy the second contribution condition for a Category A retirement pension specified in paragraph 5 of Schedule 3 to the Act, then the contributions of her husband (being, if she has been married more than once, her last husband) may, to the extent provided by the Schedule to these regulations, be treated as if they were contributions of her own.

(2) Where a woman's last or only marriage has been terminated otherwise than by death and she was not under pensionable age on the date of that termination, she shall, subject to the provisions of the Act, be entitled to a Category B retirement pension as if her husband by that marriage had died on the date of that termination.

(3) A woman whose last or only marriage has been terminated otherwise than by death and who was under pensionable age on the date of that termination shall, for the purpose of her right to a Category A retirement pension, be deemed to have satisfied the first contribution condition specified in paragraph 5 of Schedule 3 to the Act if, at the date of that termination, her husband by that marriage had satisfied it.

Death grant in respect of the death of a woman whose marriage was dissolved

5. Where a woman, whose last or only marriage was terminated otherwise than by the death of her husband, dies and the contribution condition for a death grant in respect of her death (specified in paragraph 7(1) of Schedule 3 to the Act) is not satisfied by her, she shall be deemed to have satisfied that condition if her husband by that marriage had satisfied it in respect of any year falling wholly before either the date of the termination of that marriage or the date of his attaining pensionable age, whichever is the earlier.