1975 No. 12

SOCIAL SECURITY

The Social Security (Widow's Benefit and Retirement Pensions) (Northern Ireland) Regulations 1975

Made . . . . . *23rd January* 1975

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

The Department of Health and Social Services for Northern Ireland, in exercise of powers conferred by sections 24(4)(*b*), 26(2), 27(1) and (4), 28(2), 32(4) and 37 of, and paragraph 3 of Schedule 10, paragraph 14 of Schedule 22, and paragraph 2 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 (Widow's Benefit and Retirement Pensions) (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 Act of 1970" means the National Insurance Act (Northern Ireland) 1970(**b**);

"husband" in relation to any woman who has been married more than once means her last husband;

"a period of at least 10 years" means a period of, or periods amounting in the aggregate to, at least 3,652 days;

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

"the determining authority" means, as the case may require, an insurance officer, a local tribunal or a National Insurance Commissioner by whom the relevant question falls to be determined by virtue of section 84(5) of the Act;

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

"the former principal Act" means the National Insurance Act (Northern Ireland) 1966(**d**),

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

(3) For the purposes of regulations 8(1)(*d*), 9(3) and 10(2) a person shall be deemed to be entitled to a pension or benefit if he would have been so entitled had he made a claim for it.

(a) 1973 c. 38
(b) 1970 c. 28 (N.I.)
(c) 1966 c. 9 (N.I.)
(d) 1966 c. 6 (N.I.)

(4) Any reference in these regulations to any provision made by or contained in an enactment or instrument shall, except insofar as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(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 rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(e) 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.

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))—

(*a*) has retired for the purposes of the Act 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 to a Category B retirement pension by virtue of his contributions and who does not consent to his election unless that consent is unreasonably withheld; and

(*c*) a woman who is entitled to a Category B retirement pension by virtue of the contributions of the husband to whom she is married.

(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 paragraph (5), 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 to a Category B retirement pension by virtue of his contributions—

(e) 1889 c. 63

(*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.

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 paragraph 8(2)(*a*) of Schedule 10 to the Act, no Category A retirement pension shall be payable to a person and no Category B retirement pension shall be payable to his wife, by virtue of his contributions for any period on or after the date of his election and before he subsequently retires for the purposes of the Act from regular employment or dies; and

(*b*) where the person who made the election was 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 for the purposes of the Act as if she had not become entitled to such a retirement pension.

Days to be treated as days of increment

4.—(1) For the purposes of section 24(4) of the Act, a day shall be treated as a day of increment in relation to any person if it is a day in respect of which—

(*a*) if he had been treated as having retired from regular employment, he would have been entitled to a Category A retirement pension (and would not have been disqualified from receiving such a pension by reason of his imprisonment or detention in legal custody); and

(*b*) he has not received any of the following benefits:

(i) sickness benefit, an invalidity pension, unemployment benefit, widow's benefit, benefit under section 27(4) of the Act corresponding to a widow's pension or a widowed mother's allowance, or a retirement pension of any category, or

(ii) injury benefit under the Industrial Injuries Act, or

(iii) an unemployability supplement under the Industrial Injuries Act, a Service Pensions Instrument or the Polish Resettlement Act 1947(f).

(2) In this regulation—

"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 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;

(f) 1947 c. 19

"1914-1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914(g) or under the Injuries in War Compensation Act 1914 (Session 2)(h) 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.

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

5.—(1) Where a person, other than a woman whose marriage has terminated (whether by the death of her husband or otherwise), would be entitled to a Category A or a Category B retirement pension but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the Act is not satisfied, he shall be entitled to that benefit at a reduced rate calculated as a percentage of the rate specified in relation to the benefit in question in Part I of Schedule 4 to the Act and the said percentage shall be ascertained in accordance with paragraph (3); but where the percentage so ascertained is less than 25 per cent. no such benefit shall be payable under this paragraph.

(2) Where a person, who would be entitled to an increase of benefit under section 31 or 35 of the Act but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the Act is not satisfied, is entitled to benefit under paragraph (1) above, the latter benefit shall be increased—

(*a*) in the case of a child dependant, by the amount specified in Part III of Schedule 4 to the Act as the amount of an increase of the benefit in question for an only, elder, eldest or additional qualifying child, as the case may be; and

(*b*) in the case of an adult dependant, by a percentage of the amount specified in Part III of Schedule 4 to the Act as the amount of an increase of the benefit in question for an adult dependant, the percentage being ascertained in accordance with paragraph (3).

(3) The percentage referred to in paragraphs (1) and (2) shall be ascertained by taking the number of reckonable years in the working life of the contributor concerned and expressing that number as a percentage of the requisite number of years specified for that working life in paragraph 5(4) of Schedule 3 to the Act; and where the percentage so expressed is not a whole number it shall be rounded up to the nearest whole number; for the purposes of this paragraph, a "reckonable year" is an income tax year in which the contributor concerned has paid or been credited with contributions of the 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.

Conditions for entitlement to a Category C retirement pension

6. The conditions for entitlement to a Category C retirement pension shall be that the person concerned—

(*a*) was resident in Northern Ireland for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and

(*b*) was ordinarily resident in Northern Ireland on 2nd November 1970 or on the date of his claim for that pension.

(g) 1914 c. 30 (h) 1914 c. 18 (5 & 6 Geo. 5)

Conditions for entitlement to a Category D retirement pension

7. The conditions for entitlement to a Category D retirement pension shall be that the person concerned—

(*a*) was resident in Northern Ireland for a period of at least 10 years in the period of 20 years ending on the day before he attained the age of 80; and

(*b*) was ordinarily resident in Northern Ireland either—

(i) on the day he attained the age of 80; or

(ii) if he was not so ordinarily resident on that day and the date of his claim for the pension was later than that day, on the date of his claim, so however that where a person satisfies this condition under this head he shall be deemed to have satisfied it on the date that he became so ordinarily resident.

Category C retirement pension for widows of persons over pensionable age on 5th July 1948

8.—(1) Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to a Category C retirement pension at a rate ascertained in accordance with paragraph (3) if—

(*a*) she is over pensionable age; and

(*b*) she has retired from regular employment; and

(*c*) she was over the age of 40 either—

(i) when her husband died; or

(ii) if she was entitled under regulation 11 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled; and either

(*d*) her husband was at any time entitled to a Category C retirement pension or a retirement pension under section 1(1)(*a*) of the Act of 1970; or

(*e*) he died before 2nd November 1970 and—

(i) she was resident in Northern Ireland for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and

(ii) she was ordinarily resident in Northern Ireland on 2nd November 1970 or on the date of her claim for a Category C retirement pension; and

(iii) her husband was ordinarily resident in Northern Ireland on the date of his death.

(2) A pension payable under paragraph (1) shall commence on 6th April 1975 or the date on which the requirements of sub-paragraphs (*a*) to (*c*) and either (*d*) or (*e*) of that paragraph are satisfied in relation to the beneficiary, whichever is the later, and shall be payable for life.

(3) The pension under paragraph (1) shall be at the higher rate specified in relation to a Category C retirement pension in Part I of Schedule 4 to the Act, so however that—

(*a*) in the case of a widow who was under the age of 50 either when her husband died, or, if she was entitled under regulation 11 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled, the rate of such pension shall be reduced as if the provisions of section 21(2) of the Act applied to it;