1972. No. 182 **[C]**

NATIONAL INSURANCE

Widow's Benefit and Retirement Pensions

REGULATIONS, DATED 4TH AUGUST 1972, MADE BY THE NATIONAL INSURANCE JOINT AUTHORITY IN CONJUNCTION WITH THE MINISTRY OF FINANCE, AND BY THE MINISTRY OF HEALTH AND SOCIAL SERVICES, UNDER THE NATIONAL INSURANCE ACT (NORTHERN IRELAND) 1966.

The National Insurance Joint Authority, in conjunction with the Ministry of Finance, on behalf of the Secretary of State, so far as relates to matters with regard to which the Ministry of Finance has so directed, in exercise of powers conferred by sections 32(1), 33(3), 40(4) and 44 of, and paragraph 4(**a**) of Schedule 9 to, the National Insurance Act (Northern Ireland) 1966(**b**), and the Ministry of Health and Social Services on behalf of the Secretary of State, in exercise of powers conferred by sections 30(2), 34 and 74(2) of that Act, and in exercise of all other powers enabling them in that behalf, hereby make the following regulations being regulations subject to negative resolution in accordance with section 101(3) of the said Act:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1972 and shall come into operation on 4th September 1972.

(2) In these regulations—

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

"contributions" has the same meaning as in the Act save that it does not include graduated contributions under the Act;

"determining authority" means, as the case may require, an insurance officer appointed under section 67 of the Act, or a local tribunal constituted under section 76 of the Act, or the Commissioner;

"the Existing Beneficiaries Regulations" means the National Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) Regulations (Northern Ireland) 1948(**c**);

"the Existing Contributors Regulations" means the National Insurance (Pensions, Existing Contributors) (Transitional) Regulations (Northern Ireland) 1948(**d**);

"the New Entrants Regulations" means the National Insurance (New Entrants Transitional) Regulations (Northern Ireland) 1948(**e**).

(**a**) See reg. 2(4) of S.R. & O. (N.I.) 1970, No. 295.
(**b**) 1966. c. 6 (N.I.).
(**c**) S.R. & O. (N.I.) 1948, No. 39.
(**d**) S.R. & O. (N.I.) 1948, No. 129.
(**e**) S.R. & O. (N.I.) 1948, No. 221.

PART II

MISCELLANEOUS PROVISIONS

Contributions to be disregarded in computing increase of retirement pension

2.—(1) Subject to the provisions of paragraph (2), a contribution paid by a woman over pensionable age in respect of any contribution week for the whole of which—

(*a*) she is entitled to and obtains payment of widow's benefit or a retirement pension by virtue of her husband's insurance; or

(*b*) her husband is entitled, in respect of her, to and obtains payment of, an increase of the weekly rate of a retirement pension;

shall be disregarded for the purposes of sections 30(1) and 33(2) of, and paragraph 8(2) of Schedule 9 to, the Act.

(2) This regulation shall not apply—

(*a*) to a woman who became entitled to a retirement pension by virtue of her husband's insurance before 5th August 1957; or

(*b*) in respect of a contribution week for which a woman obtains payment only of—

(i) a widowed mother's allowance (apart from any increase thereof) at a rate per week not exceeding 30 per cent. of the amount specified in paragraph 8 of Part I of Schedule 3 to the Act; or

(ii) a contributory old age pension (f).

Special conditions in relation to retirement pensions by virtue of the husband's insurance in the case of women marrying after pensionable age

3. Subject to the provisions of regulation 14, in the application of section 33(1) of, and paragraph 8(2) of Schedule 9 to, the Act (increase in rate of retirement pension for contributions paid after pensionable age) to a retirement pension payable to a woman by virtue of the insurance of a husband whom she married after attaining pensionable age, contributions paid by the husband for any contribution weeks terminating before the date of the marriage, and contributions paid by him for any contribution weeks terminating both before 5th April 1971 and also before the earliest date on which she would have been entitled to a retirement pension, if she and the husband had both then retired from regular employment, shall not be taken into account except for the purposes of section 33(1)(*b*) of the Act.

Special provisions applying to women who remarry when over pensionable age

4. Where a man dies leaving a widow who remarries after attaining pensionable age, the following provisions shall apply:

(1) Section 33(1) of, and paragraph 8(2) of Schedule 9 to, the Act (increase in rate of retirement pension for contributions paid after pensionable age) shall apply in relation to her as if she had remained his widow throughout any period after her remarriage for which she is entitled to a retirement pension by virtue of his insurance.

(f) See reg. 3 of S.R. & O. (N.I.) 1948, No. 39 as set out in Part I of the Sch. to S.R. & O. (N.I.) 1957, No. 180.

(2) Subject to the provisions of paragraph (3), paragraph (*b*) of the said section 33(1) shall apply in relation to her as if, throughout any period during the subsistence of that remarriage for which she is entitled to a retirement pension by virtue of her insurance, she had remained the widow of the man whose widow she would have remained but for that remarriage.

(3) If, having remarried after attaining pensionable age, she becomes a widow for a second or subsequent time, the said paragraph (*b*) shall, if she so elects, apply in relation to her as if throughout any period during which she is a widow and is entitled to a retirement pension by virtue of her insurance she were not the widow of her last husband but had remained the widow of any man whose widow she would have remained but for any remarriage after she had attained pensionable age; and, if she has so elected, the said paragraph (*b*) shall continue to apply in relation to her as if she had remained the widow of that man throughout any period, occurring during the subsistence of any remarriage next following the period of her last widowhood, for which she is so entitled to a retirement pension.

Choice of retirement pension by woman

5. A woman who, but for the provisions of section 32(1) of the Act (disentitlement of women to more than one retirement pension for the same period), would be entitled for the same period to more than one retirement pension may, by notice in writing to the Ministry, choose from time to time which pension she shall be entitled to for any week commencing after the date on which such notice is so given:

Provided that for any period in respect of which no such notice is given the woman shall be treated as if she had chosen the pension which, excluding any increase for a child, is payable at the higher or highest rate.

Priority between a man and his wife to increase of retirement pension for a child

6.—(1) Where, but for section 40(4)(*b*)(g) of the Act (which prevents a man and his wife both being entitled for the same period to an increase of retirement pension in respect of a child), a man and his wife would, for the same period, both be entitled to an increase under section 39(1) of the Act in respect of the same child or, in respect of different children, to such an increase at the rate applicable to an only, elder or eldest child, or to such an increase at the rate applicable to a second child, the following provisions shall apply:

(*a*) if and so long as the man and his wife are living together, the man shall, and his wife shall not, be entitled to the increase, or, as the case may be, to the increase at the rate applicable to an only, elder or eldest child or the increase at the rate applicable to a second child;

(*b*) if and so long as they are not living together such one of them shall, and such other of them shall not, be entitled to the increase or, as the case may be, to the increase at the rate applicable to an only, elder or eldest child or the increase at the rate applicable to a second child, as the Ministry may in its discretion from time to time determine.

(g) See Part II of Sch. 1 to 1968 c. 1 (N.I.) and reg. 10 of S.R. & O. (N.I.) 1970, No. 281.

(2) For the purpose of this regulation, a man and his wife shall not be deemed to be living otherwise than together unless they are permanently living in separation either by agreement or under an order of a court, or one of them has deserted the other and the separation which is incident to the desertion has not come to an end.

Partial satisfaction of contribution conditions and reduced rates of benefit

7.—(1) Where a person would be entitled to widow's benefit or retirement pension but for the fact that the relevant contribution conditions are not satisfied as respects the yearly average of contributions paid or credited, that person shall nevertheless be entitled to benefit in accordance with paragraph (2) or paragraph (3) if the yearly average of contributions paid or credited is not less than 13.

(2) Where the full weekly rate of widow's benefit (in a case to which paragraph (3) does not apply) or retirement pension or increase of retirement pension for an adult dependant under Schedule 3 to the Act (rates of periodical benefits and increases for dependants) is at one of the rates set out at the head of columns (2), (3) and (4) of Schedule 1 to these regulations, then the benefit or pension or increase shall be payable at the reduced rate specified in the appropriate column of the said Schedule 1 which corresponds with the yearly average of contributions paid or credited as shown in column (1) of that Schedule.

(3) In any case in which paragraph (1) applies to the widow's pension of such a widow as is mentioned in section 27(3A)(**h**) of the Act, the pension shall be payable, subject to the provisions of paragraph (4) and of regulation 2(1) of the Family Allowances, National Insurance, Industrial Injuries and Miscellaneous Provisions (Decimalisation of the Currency) Regulations (Northern Ireland) 1970(**i**) at the rate specified in column (3) of Schedule 1 to these regulations which corresponds with the yearly average of contributions paid or credited as shown in column (1) of that Schedule subject to a further reduction in accordance with the provisions of the said section 27(3A).

(4) In the case of a woman to whom paragraph (3) applies and who would have been entitled to a widow's basic pension or contributory old age pension (these expressions having the same respective meanings in this paragraph as in the Existing Beneficiaries Regulations) had she not become entitled to a widow's pension or a retirement pension payable at a reduced rate by virtue either of section 27(3A) or of the combined effect of sections 27(3A) and 31(3A)(**j**) of the Act, the weekly rate of the widow's pension or retirement pension (as the case may be) shall be the rate ascertained in accordance with paragraph (3), or the rate of the widow's basic pension or contributory old age pension (as the case may be) to which she would have been entitled, whichever is the greater.

PART III

PROVISIONS RELATING TO RE-ENTRY INTO REGULAR EMPLOYMENT AFTER RETIREMENT

Election to re-enter employment

8.—(1) Subject to the provisions of this Part, in the case of a person of any description specified in paragraph (2) who—

(**h**) See s. 2, 1970. c. 28 (N.I.).
(**i**) S.R. & O. (N.I.) 1970, No. 15.
(**j**) See reg. 5(3) of S.R. & O. (N.I.) 1970, No. 295.

(*a*) has retired for the purposes of the Act from regular employment or has otherwise become entitled to a 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 in the manner and in accordance with the conditions contained, in this Part that this Part shall apply in his case;

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

(2) The persons who may so elect are persons of any description who are entitled to retirement pensions, not being—

(*a*) married women who are entitled to retirement pensions by virtue of their husbands' insurance for any period which includes the date upon which their election would take effect in accordance with paragraph (4);

(*b*) persons who are not ordinarily resident in Northern Ireland; and

(*c*) persons (other than widows who are entitled to retirement pensions by virtue of their husbands' insurance) to whom there apply the provisions either of regulation 4(1)(*a*)(k) of the New Entrants Regulations or regulation 10(1)(*a*)(l) of the Existing Contributors Regulations (retirement pensions of, respectively, certain new entrants and certain existing contributors who entered into insurance while less than 10 years under pensionable age):

Provided that, where a husband and wife have both become entitled to retirement pensions by virtue of the husband's insurance, the husband shall not be entitled to elect as aforesaid without the consent of the wife, unless that consent is unreasonably withheld.

(3) Notice of election for the purpose of this Part shall be given to the Ministry in writing on the form approved by the Ministry for the purpose, or in such other manner, being in writing, as the Ministry may accept as sufficient in the circumstances of any particular case or class of cases.

(4) Notice under paragraph (3) 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; and

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

Provided that in the case of a man whose wife is entitled to a retirement pension by virtue of his insurance—

(i) if she consents in writing to the election, notice shall not take effect earlier than the date of her consent; and

(ii) if she does not so consent, notice shall not take effect unless the determining authority decides that her consent has been unreasonably withheld, and in that event shall take effect in accordance with the provisions of this paragraph, unless that authority, having regard to all the circumstances of the case, determines that it shall take effect on some later date.

(5) Any such notice, if sent by post, shall be deemed to be given on the date on which it was posted.

(k) See Sch. to S.R. & O. (N.I.) 1957, No. 182.
(l) See Part III of Sch. to S.R. & O. (N.I.) 1957, No. 181.