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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 120**

**SOCIAL SECURITY**

**The Social Security (Deferral of Retirement Pensions) Regulations (Northern Ireland) 2005**

*Made* - - - - *16th March 2005*

*Coming into operation* *6th April 2005*

The Department for Social Development, in exercise of the powers conferred by sections 54(1) and 171(3) of, and paragraphs 2(2), 3(1), 3B(2) and (5)(b)(iii) and 7B(2) and (5)(b)(iii) of Schedule 5 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(1)</sup>, and now vested in it<sup>(2)</sup>, and of all other powers enabling it in that behalf, by this statutory rule which contains regulations made by virtue of, or consequential upon, Article 273(3) of, and Schedule 9 to, the Pensions (Northern Ireland) Order 2005<sup>(3)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Deferral of Retirement Pensions) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) In these Regulations –

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“retirement pension” means a Category A or Category B retirement pension.

**Beginning of accrual period**

2. For the purposes of paragraphs 3B and 7B of Schedule 5 to the Contributions and Benefits Act (calculation of lump sum), the accrual period shall begin on the day of the week on which retirement pension would have been payable to a person in accordance with regulation 22(3) of, and paragraph 5

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(1) 1992 c. 7; section 54(1) was amended by paragraph 12 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and is amended by paragraph 6(1) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)), paragraphs 2(2) and 3(1) of Schedule 5 are amended by paragraph 6(2) of Schedule 2 to the Pensions (Northern Ireland) Order 1995, *see* Article 273(3) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), and paragraphs 3B and 7B of Schedule 5 were inserted by paragraphs 7 and 10 of Schedule 9 to the Pensions (Northern Ireland) Order 2005 respectively

(2) *See* Article 8(b) of S.R. 1999 No. 481

(3) S.I. 2005/255 (N.I. 1)

of Schedule 6 to, the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(4), if his entitlement to a retirement pension had not been deferred.

### **Amount of retirement pension not included in the calculation of the lump sum**

**3.—(1)** For the purposes of the calculation of the lump sum under paragraphs 3B and 7B of Schedule 5 to the Contributions and Benefits Act, the amount of retirement pension to which the person (“the deferrer”) would have been entitled for the accrual period if his entitlement had not been deferred shall not include any such pension where, for the entire accrual period –

- (a) the deferrer has received any of the following benefits –
  - (i) any benefit under Parts II and III of the Contributions and Benefits Act other than child’s special allowance, attendance allowance, disability living allowance and guardian’s allowance;
  - (ii) any severe disablement allowance under sections 68 and 69 of the Contributions and Benefits Act as in force before 6th April 2001(5);
  - (iii) any unemployability supplement within the extended meaning in regulation 2(1) of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(6) and including benefit corresponding to an unemployability supplement by virtue of regulations under paragraph 4(2) of Schedule 8 to the Contributions and Benefits Act;
- (b) an increase of any of the benefits specified in sub-paragraph (a) is being paid to a married man in respect of his wife where the wife is a deferrer whose period of deferment began before 6th April 2005 and who would have been entitled to a Category B retirement pension or to an increase under section 51A(2) of the Contributions and Benefits Act(7);
- (c) an increase of any of the benefits specified in sub-paragraph (a) is being paid to any person in respect of a deferrer whose period of deferment began on or after 6th April 2005 except where that deferrer is neither married to, nor residing with, that person;
- (d) the deferrer would have been disqualified for receiving retirement pension by reason of imprisonment or detention in legal custody.

(2) Where any of the benefits referred to in paragraph (1)(a) or an increase referred to in paragraph (1)(b) or (c) has been received for part only of an accrual period, the amount of retirement pension not included by paragraph (1) shall be reduced by 1/7th for each day of the accrual period in respect of which the benefit or increase has not been received.

(3) Where the deferrer would have been disqualified for receiving retirement pension as specified in paragraph (1)(d) for part only of an accrual period, the amount of retirement pension not included by paragraph (1) shall be reduced by 1/7th for each day of the accrual period for which he would not have been so disqualified.

(4) Subject to paragraph (5), where –

- (a) a person has, in respect of any day in an accrual period, received one or more of the benefits referred to in paragraph (1)(a) or increases referred to in paragraph (1)(b) and (c) or both;
- (b) the determining authority has determined that in respect of that day, he was not entitled to the benefit or increase; and

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(4) [S.R. 1987 No. 465](#); paragraph 5 of Schedule 6 was amended by regulation 10(6)(a) of [S.R. 2001 No. 108](#) and regulation 2(10)(a) and (b) of [S.R. 2002 No. 297](#)

(5) Sections 68 and 69 were repealed by Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999; *see* Article 4 of the Welfare Reform and Pensions (1999 Order) (Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000 ([S.R. 2000 No. 332 \(C. 14\)](#))

(6) [S.R. 1979 No. 242](#), to which there are amendments not relevant to these Regulations

(7) Section 51A was inserted by paragraph 18(6) of Schedule 2 to the Pensions (Northern Ireland) Order 1995

(c) the whole of the benefit or increase in respect of that day has been repaid or, as the case may be, recovered on or before the relevant date,

that day shall be treated as a day in respect of which he did not receive that benefit or increase or both.

(5) Where the benefit or increase in respect of a day to which paragraph (4)(a) and (b) applies is repaid or, as the case may be, recovered on or after the relevant date, that day shall only be treated as a day in respect of which that person did not receive that benefit or increase once the benefit or increase has been repaid in respect of all the days to which those sub-paragraphs relate and which fall within the period of deferment.

(6) In paragraph (4), “the determining authority” means as the case may require, the Department, an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998<sup>(8)</sup> or a Commissioner, or a tribunal consisting of two or more such Commissioners constituted in accordance with Article 16(7) of that Order.

(7) In paragraphs (4) and (5), “relevant date” means –

- (a) the last day of the period of deferment; or
- (b) where entitlement to a lump sum arises under paragraph 7A of Schedule 5 to the Contributions and Benefits Act<sup>(9)</sup>, the date of S’s death.

(8) Any amount of retirement pension not included in the calculation of the lump sum in accordance with this regulation must be rounded to the nearest penny, taking any  $\frac{1}{2}$ p as nearest to the next whole penny above.

#### **Amendment of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations**

4.—(1) The Social Security (Widow’s Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979<sup>(10)</sup> shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2)<sup>(11)</sup> (interpretation) the definition of “period of enhancement” shall be omitted.

(3) In regulation 2 (election to be treated as not having retired) –

- (a) in paragraph (1)(a) the words from “but is” to “70” shall be omitted;
- (b) for paragraphs (3)<sup>(12)</sup> and (4) there shall be substituted the following paragraphs –

“(3) Notice of election for the purposes of this regulation may be given by telephone call to the telephone number specified by the Department unless the Department directs in any particular case that the notice or consent must be given in writing.

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

- (a) on the date on which it is given; or
- (b) on such other date specified by the person making the election, being no earlier than the date on which it is given and no later than 28 days after the date on which it is given.”; and

(c) in paragraph (5)(a) the words “in writing” shall be omitted.

(4) In regulation 4 (days to be treated as days of increment) –

- (a) in paragraphs (1) and (2)(i)<sup>(13)</sup> for “enhancement” there shall be substituted “deferment”;
- (b) in paragraph (1) –

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<sup>(8)</sup> S.I. 1998/1506 (N.I. 10)

<sup>(9)</sup> Paragraph 7A was inserted by paragraph 10 of Schedule 9 to the Pensions (Northern Ireland) Order 2005

<sup>(10)</sup> S.R. 1979 No. 243; the relevant amending regulations are S.R. 1987 No. 404, S.R. 1989 Nos. 193 and 373

<sup>(11)</sup> The definition of “period of enhancement” was substituted by regulation 8(2) of S.R. 1989 No. 373

<sup>(12)</sup> Paragraph (3) was amended by regulation 3 of S.R. 1989 No. 193

<sup>(13)</sup> Paragraphs (1) and (2)(i) were amended by regulation 8(5) of S.R. 1989 No. 373

- (i) in sub-paragraph (c) after “Article 12(2) increase” there shall be inserted “and whose period of deferment began before 6th April 2005”, and
  - (ii) after sub-paragraph (c) there shall be inserted – “and
    - (d) in the case of a person who would have been entitled to a Category A or Category B retirement pension (“the deferrer”) and whose period of deferment begins on or after 6th April 2005 –
      - (i) no other person has received an increase of any of the benefits mentioned in sub-paragraph (b) in respect of the deferrer, or
      - (ii) another person has received such an increase in respect of the deferrer and the deferrer is neither married to, nor residing with, that other person.”.
- (5) In regulation 5(14) (which modifies Schedule 1 to the Pensions Order) –
- (a) in paragraphs (1) and (3)(a) for “enhancement” there shall be substituted “deferment”; and
  - (b) in paragraph (5) for “1/7th per cent”, in both places where it occurs, there shall be substituted “#;th per cent.”.

#### **Revocations**

5. Regulation 3 of the Social Security (Miscellaneous Provisions) Regulations (Northern Ireland) 1989(15) and regulation 8(2) of the Social Security (Abolition of Earnings Rule) (Consequential) Regulations (Northern Ireland) 1989(16) are hereby revoked.

Sealed with the Official Seal of the Department for Social Development on 16th March 2005.

L.S.

*John O'Neill*  
A senior officer of the  
Department for Social Development

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(14) Regulation 5 was amended by regulation 2(2) of S.R. 1987 No. 404 and regulation 8(6) of S.R. 1989 No. 373  
(15) S.R. 1989 No. 193  
(16) S.R. 1989 No. 373

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations make provision relating to changes to the regime for deferring entitlement to state pension made and brought forward by the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) which provide, in particular, for an increased incremental rate for those deferring their state pension and for a choice between increments and a lump sum for those who have deferred their entitlement for 12 months or more and also amend the Social Security (Widow’s Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979 (“the 1979 Regulations”).

Regulation 2 prescribes the day on which the accrual period for the lump sum is to start.

Regulation 3 prescribes the circumstances in which the amount of retirement pension which the deferrer would have received in an accrual period shall not be included in the calculation of the lump sum. These include receipt of certain benefits or increases in benefits or imprisonment. It also allows for a reduction where those circumstances apply for part only of an accrual period.

Regulation 4 amends the 1979 Regulations in consequence of changes to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 made originally by the Pensions (Northern Ireland) Order 1995 and which were due to come into operation in 2010 but are now to come into operation this year (paragraphs (2), (3)(a) and (4)(a)), to allow for both elections and consents to elections to be treated as not entitled to a retirement pension to be made by telephone (paragraph (3) (b) and (c)) and to make further provision in relation to the calculation of days of increment for those who start deferring their state pension on or after 6th April 2005 (paragraph (4)(b)).

Regulation 5 makes consequential revocations.

Article 273 of, and Schedule 9 to, the 2005 Order, under which some of these Regulations are made, were brought into operation, for the purpose of authorising the making of regulations, on 16th February 2005 and for all other purposes on 6th April 2005.

Regulation 4 of these Regulations makes in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee. Otherwise they are made by virtue of, or consequential upon provisions of the 2005 Order and are made before the end of the period of six months of the commencement of those provisions and accordingly are exempt by virtue of section 150(5)(b) of that Act from prior reference to the Social Security Advisory Committee.

These Regulations do not impose a charge on business.