

2006 No. 104

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Deferral of Retirement Pensions, Shared
Additional Pension and Graduated Retirement Benefit)
(Miscellaneous Provisions) Regulations (Northern Ireland) 2006**

Made - - - - - *9th March 2006*

Coming into operation - *6th April 2006*

ARRANGEMENT OF REGULATIONS

**PART 1
GENERAL**

1. Citation, commencement and interpretation

PART 2

DEFERRAL OF RETIREMENT PENSIONS AND SHARED ADDITIONAL PENSION

2. Interpretation
3. Timing of election
4. Manner of making election
5. Change of election
6. Amendment of the Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations

PART 3

DEFERRAL OF GRADUATED RETIREMENT BENEFIT

7. Amendment of the Social Security (Graduated Retirement Benefit) Regulations

**PART 4
PAYMENTS**

8. Amendment of the Claims and Payments Regulations

**PART 5
DECISIONS**

9. Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

10. Amendment of the Housing Benefit (Decisions and Appeals) Regulations

PART 6
AMENDMENT OF BENEFIT REGULATIONS

11. Amendment of the Housing Benefit Regulations

12. Amendment of the State Pension Credit Regulations

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 62(1)(a) and (c), 132(4)(a) and (b) and 171(1) and (3) to (5) of, and paragraphs A1(1) and (3) and 3C(2) and (4) of Schedule 5 and paragraph 1(1) and (3) of Schedule 5A to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), sections 5(1)(j) and 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(b), Articles 10, 11(3) and (6), 12(1), 18(1) and 74(1) of the Social Security (Northern Ireland) Order 1998(c) and now vested in it(d) and paragraphs 3(1), 4(3) and (5) and 20(1) and (3) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(e), sections 15(6)(a) and (b) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(f) and paragraph 22 of Schedule 9 to the Pensions (Northern Ireland) Order 2005(g).

Regulation 11 is made with the consent of the Department of Finance and Personnel(h).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 10 and 11 should not be referred to it(i).

PART 1
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006.

(2) In these Regulations “the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(j).

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- (a) 1992 c. 7; section 62(1)(a) was amended by paragraph 7(a) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and paragraph 16(a) of Schedule 9 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); paragraph (c) was inserted by paragraph 16(b) of Schedule 9 to the Pensions (Northern Ireland) Order 2005 and amended by paragraph 5 of the Schedule to S.R. 2005 No. 434; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21); paragraphs A1 and 3C of Schedule 5 were inserted and Schedule 5A added respectively by paragraphs 3, 8 and 14 of Schedule 9 to the Pensions (Northern Ireland) Order 2005; *see also* regulations 2 and 3 of S.R. 2005 No. 123
- (b) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
- (c) S.I. 1998/1506 (N.I. 10); Article 18(1) was amended by paragraph 23 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and Article 74(1) was amended by paragraph 17 of Schedule 4 to the Tax Credits Act 2002
- (d) *See* Article 8(b) of S.R. 1999 No. 481
- (e) 2000 c. 4 (N.I.)
- (f) 2002 c. 14 (N.I.)
- (g) S.I. 2005/255 (N.I. 1)
- (h) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); *see also* Article 6(b) of S.R. 1999 No. 481
- (i) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992
- (j) S.R. 1987 No. 465; relevant amending Regulations are S.R. 2005 No. 541

PART 2

DEFERRAL OF RETIREMENT PENSIONS AND SHARED ADDITIONAL PENSION

Interpretation

2.—(1) In this Part—

“elector” means the person who may make an election under paragraph A1(1) or 3C(2) of Schedule 5 or paragraph 1(1) of Schedule 5A;

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

(2) In this Part, references to Schedule 5 and Schedule 5A are to Schedule 5 and Schedule 5A to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Timing of election

3.—(1) Subject to paragraph (4), the period for making an election under—

(a) paragraph A1(1) of Schedule 5 (choice between increase of pension and lump sum where pensioner’s entitlement is deferred); and

(b) paragraph 1(1) of Schedule 5A (choice between pension increase and lump sum where entitlement to shared additional pension is deferred),

is 3 months beginning on the date shown on the notice issued by the Department following the claim for retirement pension or shared additional pension, confirming that the elector is required to make that election.

(2) Subject to paragraph (4), the period for making an election under paragraph 3C(2) of Schedule 5 (choice between increase of pension and lump sum where pensioner’s deceased spouse or civil partner has deferred entitlement) is 3 months beginning on the date shown on the notice issued by the Department following W’s claim for retirement pension or, if later, the date of S’s death, confirming that the elector is required to make that election(a).

(3) Where more than one notice has been issued by the Department in accordance with paragraph (1) or (2), the periods prescribed in those paragraphs shall only begin from the date shown on the latest such notice.

(4) The periods specified in paragraphs (1) and (2) may be extended by the Department if it considers it reasonable to do so in any particular case.

(5) Nothing in this regulation shall prevent the making of an election on or after claiming retirement pension or shared additional pension but before the issue of the notice referred to in paragraph (1) or (2).

Manner of making election

4. An election under paragraph A1(1) or 3C(2) of Schedule 5 or paragraph 1(1) of Schedule 5A may be made—

(a) in writing to an office specified by the Department for accepting such elections; or

(b) except where the Department directs in any particular case that the election must be made in accordance with paragraph (a), by telephone call to the telephone number specified by the Department.

(a) “W” and “S” have the same meaning as in paragraph 3C of Schedule 5 to the Social Security Contribution and Benefits (Northern Ireland) Act 1992

Change of election

5.—(1) Subject to paragraphs (2) and (6), this regulation applies in the case of an election which—

- (a) has been made under paragraph A1(1) or 3C(2) of Schedule 5 or under paragraph 1(1) of Schedule 5A; or
- (b) has been treated as made under paragraph A1(2) or 3C(3) of Schedule 5 or under paragraph 1(2) of Schedule 5A.

(2) This regulation does not apply in the case of an election which is—

- (a) made, or treated as made, by an elector who has subsequently died; or
- (b) treated as having been made by virtue of regulation 30(5E) or (5G) of the Claims and Payments Regulations^(a).

(3) An election specified in paragraph (1) may be changed by way of application made no later than the last day of the period specified in paragraph (4).

(4) Subject to paragraph (5), the period specified for the purposes of paragraph (3) is 3 months beginning on the date shown on the written notification issued by the Department to the elector, confirming the election which the elector has made or is treated as having made.

(5) The period specified in paragraph (4) may be extended by the Department if it considers it reasonable to do so in any particular case.

(6) An election specified in paragraph (1) may not be changed where—

- (a) there has been a previous change of election under this regulation in respect of the same period of deferment;
- (b) the application is to change the election to one under paragraph A1(1)(a) or 3C(2)(a) of Schedule 5 or paragraph 1(1)(a) of Schedule 5A and any amount paid to the elector by way of, or on account of, a lump sum pursuant to Schedule 5 or 5A, has not been repaid in full to the Department within the period specified in paragraph (4) or (5); or
- (c) the application is to change the election to one under paragraph A1(1)(b) or 3C(2)(b) of Schedule 5 or paragraph 1(1)(b) of Schedule 5A and the amount actually paid by way of an increase of retirement pension or shared additional pension, or actually paid on account of such an increase, would exceed the amount to which the elector would be entitled by way of a lump sum.

(7) For the purposes of paragraph (6)(b), repayment in full of the amount paid by way of, or on account of, a lump sum shall only be treated as having occurred if repaid to the Department in the currency in which that amount was originally paid.

(8) Where the application is to change the election to one under paragraph A1(1)(b) or 3C(2)(b) of Schedule 5 or paragraph 1(1)(b) of Schedule 5A and paragraph (6)(c) does not apply, any amount paid by way of an increase of retirement pension or shared additional pension, or on account of such an increase, in respect of the period of deferment for which the election was originally made, shall be treated as having been paid on account of the lump sum to which the elector is entitled under paragraph 3A or 7A of Schedule 5^(b) or paragraph 4 of Schedule 5A.

(9) An application under paragraph (3) to change an election may be made—

- (a) in writing to an office specified by the Department for accepting such applications; or
- (b) except where the Department directs in any particular case that the application must be made in accordance with sub-paragraph (a), by telephone call to the telephone number specified by the Department.

^(a) Paragraphs (5A) to (5G) were substituted by regulation 3(b) of S.R. 2005 No. 541

^(b) Paragraphs 3A and 7A were inserted respectively by paragraphs 7(1) and 10(1) of Schedule 9 to the Pensions (Northern Ireland) Order 2005

Amendment of the Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations

6. In regulation 2(6) of the Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations (Northern Ireland) 2005(a) (modification of Schedule 5 to the Act), sub-paragraph (a) shall be omitted.

PART 3

DEFERRAL OF GRADUATED RETIREMENT BENEFIT

Amendment of the Social Security (Graduated Retirement Benefit) Regulations

7.—(1) The Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005(b) shall be amended in accordance with paragraphs (2) and (3).

(2) In Schedule 1 (increases of graduated retirement benefit and lump sums)—

(a) in paragraph 2(1), “, on claiming his pension either” shall be omitted;

(b) in paragraph 12 (choice between increase and lump sum)—

(i) for sub-paragraph (2) there shall be substituted the following sub-paragraph—

“(2) The election referred to in sub-paragraph (1) shall be made—

(a) on the date on which he claims graduated retirement benefit; or

(b) within the period after claiming graduated retirement benefit prescribed in paragraph 20D,

and in the manner prescribed in paragraph 20E.”,

(ii) in sub-paragraph (4), for “and within the time specified in regulations made under paragraph A1(4) of Schedule 5” there shall be substituted “, manner and within the period prescribed, in paragraph 20F”;

(c) in paragraph 17 (choice between increase and lump sum where person’s deceased spouse or civil partner has deferred entitlement to graduated retirement benefit)—

(i) for sub-paragraph (3) there shall be substituted the following sub-paragraph—

“(3) The election referred to in sub-paragraph (2) shall be made within the period prescribed in paragraph 20D and in the manner prescribed in paragraph 20E.”;

(ii) in sub-paragraph (4), for “(3)(b)” there shall be substituted “(3)”;

(iii) for sub-paragraph (5) there shall be substituted the following sub-paragraph—

“(5) A person who has made an election under sub-paragraph (2) (including one that the person is treated by sub-paragraph (4) as having made) may change the election in the circumstances, manner and within the period prescribed in paragraph 20F.”.

(d) after paragraph 20B(c), there shall be inserted the following—

(a) S.R. 2005 No. 123

(b) S.R. 2005 No. 121 as amended by S.R. 2005 No. 541. Schedule 1 has effect by virtue of section 35(4) of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.)). Sections 35 and 36 were repealed by the Social Security Act 1973 (c. 38) but are continued in force by regulation 2 of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 (S.R. 1978 No. 105)

(c) Paragraphs 20A and 20B were inserted by regulation 4(10) of S.R. 2005 No. 541

“PART 2A
ELECTIONS UNDER PART 2

Scope and interpretation

20C.—(1) This Part applies in respect of elections which a person makes or is treated as having made under Part 2.

(2) In this Part, “elector” means the person who may make an election under paragraph 12(1) or 17(2).

Timing of election

20D.—(1) Subject to sub-paragraph (4), the period for making an election under paragraph 12(1) is 3 months beginning on the date shown on the notice issued by the Department following the claim for graduated retirement benefit, confirming that the elector is required to make that election.

(2) Subject to sub-paragraph (4), the period for making an election under paragraph 17(2) is 3 months beginning on the date shown on the notice issued by the Department following W’s claim for a Category A or Category B retirement pension or, if later, the date of S’s death, confirming that the elector is required to make that election.

(3) Where more than one notice has been issued by the Department in accordance with sub-paragraph (1) or (2), the periods prescribed in those sub-paragraphs shall only begin from the date shown on the latest such notice.

(4) The periods specified in sub-paragraphs (1) and (2) may be extended by the Department if it considers it reasonable to do so in any particular case.

(5) Nothing in this paragraph shall prevent the making of an election on or after claiming graduated retirement benefit or Category A or Category B retirement pension, but before the issue of the notice referred to in sub-paragraph (1) or (2).

Manner of making election

20E. An election under paragraph 12(1) or 17(2) may be made—

- (a) in writing to an office specified by the Department for accepting such elections; or
- (b) except where the Department directs in any particular case that the election must be made in accordance with sub-paragraph (a), by telephone call to the telephone number specified by the Department.

Change of election

20F.—(1) Subject to sub-paragraphs (2) and (6), this paragraph applies in the case of an election which—

- (a) has been made under paragraph 12(1) or 17(2); or
- (b) has been treated as made under paragraph 12(3) or 17(4).

(2) This paragraph does not apply in the case of an election which is—

- (a) made, or treated as made, by an elector who has subsequently died; or
- (b) treated as having been made by virtue of regulation 30(5E) or (5G) of the Claims and Payments Regulations.

(3) An election specified in sub-paragraph (1) may be changed by way of application made no later than the last day of the period specified in sub-paragraph (4).

(4) Subject to sub-paragraph (5), the period specified for the purposes of sub-paragraph (3) is 3 months after the date shown on the written notification issued by the Department to the elector, confirming the election which the elector has made or is treated as having made.

(5) The period specified in sub-paragraph (4) may be extended by the Department if it considers it reasonable to do so in any particular case.

(6) An election specified in sub-paragraph (1) may not be changed where—

- (a) there has been a previous change of election under this paragraph in respect of the same period of deferment;
- (b) the application is to change the election to one under paragraph 12(1)(a) or 17(2)(a) and any amount paid to him by way of, or on account of, a lump sum pursuant to paragraph 15 or 19, has not been repaid in full to the Department within the period specified in sub-paragraph (4) or (5); or
- (c) the application is to change the election to one under paragraph 12(1)(b) or 17(2)(b) and the amount actually paid by way of an increase of graduated retirement benefit, or actually paid on account of such an increase, would exceed the amount to which the elector would be entitled by way of a lump sum.

(7) For the purposes of sub-paragraph (6)(b), repayment in full of the amount paid by way of, or on account of, a lump sum shall only be treated as having occurred if repaid to the Department in the currency in which that amount was originally paid.

(8) Where the application is to change the election to one under paragraph 12(1)(b) or 17(2)(b) and sub-paragraph (6)(c) does not apply, any amount paid by way of an increase of graduated retirement benefit, or on account of such an increase, in respect of the period of deferment for which the election was originally made, shall be treated as having been paid on account of the lump sum to which the elector is entitled under paragraph 15 or 19.

(9) An application under sub-paragraph (3) to change an election may be made—

- (a) in writing to an office specified by the Department for accepting such applications; or
- (b) except where the Department directs in any particular case that the application must be made in accordance with paragraph (a), by telephone call to the telephone number specified by the Department.”.

(3) In Schedule 2 (modification of Schedule 1), paragraphs 5 and 10 shall be omitted.

PART 4 PAYMENTS

Amendment of the Claims and Payments Regulations

8. In the Claims and Payments Regulations(a) after regulation 21 (direct credit transfer) there shall be inserted the following regulation—

“Delayed payment of lump sum

21A.—(1) This regulation applies where—

- (a) a person (“P”) is entitled to a lump sum under—
 - (i) Schedule 5 to the Contributions and Benefits Act(b)(pension increase or lump sum where entitlement to retirement pension is deferred),
 - (ii) Schedule 5A to that Act(c)(pension increase or lump sum where entitlement to shared additional pension is deferred), or

(a) S.R. 1987 No. 465

(b) 1992 c. 7; relevant amendments to Schedule 5 were made by paragraphs 2 to 13 of Schedule 9 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and paragraph 6 of the Schedule to S.R. 2005 No. 434

(c) Schedule 5A was inserted by paragraph 14 of Schedule 9 to the Pensions (Northern Ireland) Order 2005

(iii) Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005 (further provisions replacing section 35(4) of the 1966 Act: increases of graduated retirement benefit and lump sums); or

(b) the Department decides to make a payment on account of such a lump sum.

(2) Subject to paragraph (3), for the purposes of section 7 of the Finance (No. 2) Act 2005(a) (charge to income tax on lump sum), P may elect to be paid the lump sum in the tax year (“the later year of assessment”) next following the tax year which would otherwise be the applicable year of assessment by virtue of section 8 of that Act(b) (meaning of “applicable year of assessment” in section 7).

(3) P may not elect in accordance with paragraph (2) (“a tax election”) unless he elects on the same day as he chooses a lump sum in accordance with—

(a) paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act(c);

(b) paragraph 1 of Schedule 5A to that Act; or

(c) paragraph 12 or 17 of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005,

or within a month of that day.

(4) A tax election may be made in writing to an office specified by the Department for accepting such elections or, except where in any particular case the Department directs that the election must be made in writing, it may be made by telephone call to the telephone number specified by the Department.

(5) If P makes a tax election, payment of the lump sum, or any payment on account of the lump sum, shall be made in the first month of the later year of assessment or as soon as reasonably practicable after that month, unless P revokes the tax election before the payment is made.

(6) If P makes no tax election in accordance with paragraphs (2) and (3), or revokes a tax election, payment of the lump sum or any payment on account of the lump sum shall be made as soon as reasonably practicable after P—

(a) elected for a lump sum, or was treated as having so elected; or

(b) revoked a tax election.

(7) If P dies before the beginning of the later year of assessment—

(a) any tax election in respect of P’s lump sum shall cease to have effect; and

(b) no person appointed under regulation 30(d) to act on P’s behalf may make a tax election.

(8) In this regulation “the later year of assessment” has the meaning given by section 8(5) of the Finance (No. 2) Act 2005.”.

(a) 2005 c. 22

(b) Section 8(5) provides that subsections (6) and (7) apply where social security regulations make provision enabling the making of an election for a pension lump sum to be paid in the later year of assessment

(c) Paragraphs A1 and 3C were inserted respectively by paragraphs 3 and 8 of Schedule 9 to the Pensions (Northern Ireland) Order 2005

(d) Regulation 30 was amended by regulation 3(6) of S.R. 1988 No. 369, regulation 7(5) of S.R. 1990 No. 398, regulation 15 of S.R. 1992 No. 7, regulation 3(7) of S.R. 1993 No. 375, regulation 2(5) of S.R. 1994 No. 345, regulation 2(15) of S.R. 1996 No. 354, regulation 2(7) of S.R. 2000 No. 365, regulation 2(7) of S.R. 2002 No. 297, S.R. 2003 No. 191 and regulation 5(6) of S.R. 2005 No. 46

PART 5

DECISIONS

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

9.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999^(a) shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “the date of notification” there shall be inserted the following definition—

““the Deferral of Retirement Pensions etc. Regulations” means the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006;”;
and

(b) after the definition of “financially qualified panel member” there shall be inserted the following definition—

““the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005;”.

(3) In regulation 3 (revision of decisions), after paragraph (7C)^(b) there shall be inserted the following paragraphs—

“(7D) Where—

(a) a person elects for an increase of—

- (i) a Category A or Category B retirement pension in accordance with paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act (pension increase or lump sum where entitlement to retirement pension is deferred),
- (ii) a shared additional pension in accordance with paragraph 1 of Schedule 5A to that Act (pension increase or lump sum where entitlement to shared additional pension is deferred), or
- (iii) graduated retirement benefit in accordance with paragraph 12 or 17 of Schedule 1 to the Graduated Retirement Benefit Regulations (further provisions replacing section 35(4) of the 1966 Act: increases of graduated retirement benefit and lump sums);

(b) the Department decides that the person or his partner is entitled to state pension credit and takes into account the increase of pension or benefit in making or superseding that decision; and

(c) the person’s election for an increase is subsequently changed in favour of a lump sum in accordance with regulation 5 of the Deferral of Retirement Pensions etc. Regulations or paragraph 20F of Schedule 1 to the Graduated Retirement Benefit Regulations,

the Department may revise the state pension credit decision.

(7E) Where—

(a) a person is awarded a Category A or Category B retirement pension, shared additional pension or graduated retirement benefit;

(b) an election is made, or treated as made, in respect of the award in accordance with paragraph A1 or 3C of Schedule 5 or paragraph 1 of Schedule 5A to the Contributions and Benefits Act or in accordance with paragraph 12 or 17 of Schedule 1 to the Graduated Retirement Benefit Regulations; and

^(a) S.R. 1999 No. 162; relevant amending Regulations are S.R. 2005 No. 46

^(b) Paragraph (7C) was inserted by regulation 7(2)(b) of S.R. 2005 No. 46

- (c) the election is subsequently changed in accordance with regulation 5 of the Deferral of Retirement Pensions etc. Regulations or paragraph 20F of Schedule 1 to the Graduated Retirement Benefit Regulations,

the Department may revise the award.”.

(4) In regulation 6(2) (supersession of decisions), after sub-paragraph (m)(a) there shall be added the following sub-paragraph—

“(n) is a decision that a person is entitled to state pension credit and—

- (i) the person or his partner makes, or is treated as having made, an election for a lump sum in accordance with—
 - (aa) paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act,
 - (bb) paragraph 1 of Schedule 5A to that Act, or
 - (cc) paragraph 12 or 17 of Schedule 1 to the Graduated Retirement Benefit Regulations, or
- (ii) such a lump sum is repaid in consequence of an application to change an election for a lump sum in accordance with regulation 5 of the Deferral of Retirement Pensions etc. Regulations or paragraph 20F of Schedule 1 to the Graduated Retirement Benefit Regulations.”.

(5) In regulation 7 (date from which a decision superseded under Article 11 takes effect), after paragraph (7) there shall be inserted the following paragraph—

“(7A) Where a decision is superseded in accordance with regulation 6(2)(n), the superseding decision shall take effect from the day on which a lump sum, or a payment on account of a lump sum, is paid or repaid if that day is the first day of the benefit week but, if it is not, from the next following such day.”.

(6) After regulation 13 there shall be inserted the following regulation—

“Retirement pension after period of deferment

13A.—(1) This regulation applies where—

- (a) a person claims a Category A or Category B retirement pension, shared additional pension or graduated retirement benefit;
- (b) an election is required by—
 - (i) paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act,
 - (ii) paragraph 1 of Schedule 5A to that Act, or
 - (iii) paragraph 12 or 17 of Schedule 1 to the Graduated Retirement Benefit Regulations; and
- (c) no election is made when the claim is made.

(2) In the circumstances specified in paragraph (1) the Department may decide the claim before any election is made, or is treated as made, for an increase or lump sum.

(3) Where an election is made, or is treated as made, the Department shall revise the decision made in pursuance of paragraph (2).”.

Amendment of the Housing Benefit (Decisions and Appeals) Regulations

10.—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(b) shall be amended in accordance with paragraphs (2) to (4).

(a) Sub-paragraph (m) was added by regulation 7(4)(a)(iii) of S.R. 2005 No. 46

(b) S.R. 2001 No. 213; relevant amending Regulations are S.R. 2003 Nos. 224 and 418

(2) In regulation 4 (revision of decisions), after paragraph (6C)(a) there shall be inserted the following paragraph—

“(6D) Where—

- (a) a person elects for an increase of—
 - (i) a Category A or Category B retirement pension in accordance with paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act (pension increase or lump sum where entitlement to retirement pension is deferred),
 - (ii) a shared additional pension in accordance with paragraph 1 of Schedule 5A to that Act (pension increase or lump sum where entitlement to shared additional pension is deferred), or
 - (iii) graduated retirement benefit in accordance with paragraph 12 or 17 of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005 (further provisions replacing section 35(4) of the 1966 Act: increases of graduated retirement benefit and lump sums);
- (b) the relevant authority decides that the person or his partner is entitled to housing benefit and takes into account the increase of pension or benefit in making or superseding that decision; and
- (c) the person’s election for an increase is changed so that he is entitled to a lump sum, the relevant authority may revise the housing benefit decision.”.

(3) In regulation 7(2) (decisions superseding earlier decisions), after sub-paragraph (h)(b) there shall be added the following sub-paragraph—

“(i) where—

- (i) the claimant or his partner makes, or is treated as having made, an election for a lump sum in accordance with—
 - (aa) paragraph A1 or 3C of Schedule 5 to the Contributions and Benefits Act,
 - (bb) paragraph 1 of Schedule 5A to that Act, or
 - (cc) paragraph 12 or 17 of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005, or
- (ii) such a lump sum is repaid in consequence of an application to change an election for a lump sum in accordance with regulation 5 of the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006 or paragraph 20F of Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005.”.

(4) In regulation 8 (date from which decision superseding an earlier decision takes effect), after paragraph (10)(c) there shall be inserted the following paragraph—

“(10A) Where a decision is superseded in accordance with regulation 7(2)(i), the superseding decision shall take effect from the day on which a lump sum, or a payment on account of a lump sum, is paid or repaid if that day is the first day of the benefit week but, if it is not, from the next following such day.”.

(a) Paragraph (6C) was inserted by regulation 4(3) of S.R. 2003 No. 418
(b) Sub-paragraph (h) was added by regulation 4(4) of S.R. 2003 No. 418
(c) Paragraph (10) was inserted by regulation 4(3) of S.R. 2003 No. 224

PART 6

AMENDMENT OF BENEFIT REGULATIONS

Amendment of the Housing Benefit Regulations

11.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(a), as modified in their application to persons to whom regulation 2(1) of the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003(b) applies, shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) (interpretation), after the definition of “the Fund”(c) there shall be inserted the following definition—

““the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005;”.

(3) In regulation 36 (notional income)—

(a) in paragraph (6), at the beginning there shall be inserted “Subject to paragraph (6A),”;

(b) after paragraph (6) there shall be inserted the following paragraphs—

“(6A) Paragraph (6) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act(d) or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(6B) In paragraph (6A), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations.”.

(4) In Schedule 5ZA(e) (capital to be disregarded), after paragraph 25A(f) there shall be inserted the following paragraph—

“**25B.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

(a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;

(b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.”.

Amendment of the State Pension Credit Regulations

12.—(1) The State Pension Credit Regulations (Northern Ireland) 2003(g) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation), after the definition of “the Fund” there shall be inserted the following definition—

(a) S.R. 1987 No. 461; relevant amending Regulations are S.R. 1992 No. 201 and S.R. 2003 No. 197

(b) S.R. 2003 No. 197; relevant amending Regulations are S.R. 2003 No. 418

(c) The definition of “the Fund” was inserted by regulation 4(2)(a) of S.R. 1992 No. 201

(d) 1992 c. 7; relevant amendments to Schedule 5 were made by paragraphs 2 to 13 of Schedule 9 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and paragraph 6 of the Schedule to S.R. 2005 No. 434 and Schedule 5A was inserted by paragraph 14 of Schedule 9 to the Pensions (Northern Ireland) Order 2005

(e) See paragraph 1(c) of Schedule 2 to S.R. 2003 No. 197

(f) Paragraph 25A was inserted by regulation 2(14) of S.R. 2003 No. 418

(g) S.R. 2003 No. 28

““the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005;”.

(3) In regulation 18 (notional income)—

- (a) in paragraph (6), at the beginning there shall be inserted “Subject to paragraph (7),”;
- (b) after paragraph (6) there shall be added the following paragraphs—

“(7) Paragraph (6) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(8) In paragraph (7), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations.”.

(4) In Schedule 5 (capital disregarded for the purpose of calculating income), after paragraph 23 there shall be inserted the following paragraph—

“**23ZA.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.”.

Sealed with the Official Seal of the Department for Social Development on 9th March 2006.



John O'Neill

A senior officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to regulation 11 of the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 10th March 2006.



Jack Layberry

A senior officer of the Department Finance and Personnel

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 introduced by the Pensions (Northern Ireland) Order 2005 which provide for a choice between increments and a lump sum for those who have deferred their entitlement to retirement pension, shared additional pension or graduated retirement benefit, for 12 months or more.

Part 1 provides for the citation, commencement and interpretation of the Regulations.

Part 2 makes provision in relation to deferral of retirement pension and shared additional pension. Regulation 3 prescribes the period within which an election between increments and lump sums of retirement pension and shared additional pension must be made and regulation 4 prescribes the manner in which such elections must be made. Regulation 5 prescribes the circumstances and manner in which and time within which changes to such elections can be made. Regulation 6 omits regulation 2(6)(a) of the Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations (Northern Ireland) 2005.

Part 3 makes equivalent provision to Part 2 in relation to deferral of graduated retirement benefit.

Part 4 relates to payments. Regulation 8 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987. It provides that when a person chooses a lump sum he may elect to be paid it in the tax year following the tax year which would otherwise be the year for assessing tax on the lump sum.

Part 5 relates to decisions. Regulation 9 amends the Child Support and Social Security (Decisions and Appeals) Regulations (Northern Ireland) 1999. Paragraphs (3), (4) and (5) provide for the revision or supersession of a state pension credit decision when a person becomes entitled to a lump sum. Paragraph (3) also provides for revision of a retirement pension decision, or shared additional pension or graduated retirement benefit decision when an election is changed pursuant to provision made in Parts 2 and 3 of these Regulations. Paragraph (6) provides that a claim for such a pension or benefit following deferment may be decided pending an election for increments or a lump sum.

Regulation 10 amends the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 to provide for the revision or supersession of a housing benefit decision when a person becomes entitled to a lump sum.

Part 6 amends various benefit regulations in so far as they relate to deferral of retirement pension, shared additional pension and graduated retirement benefit. Regulation 11 amends the Housing Benefit (General) Regulations (Northern Ireland) 1987 as modified by the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003 for persons who have attained the qualifying age for state pension credit. Regulation 12 amends the State Pension Credit Regulations (Northern Ireland) 2003.

In regulations 11 and 12, paragraph (2) prescribes a definition of the Graduated Retirement Benefit Regulations for the purposes of those benefits, paragraph (3) provides an exception to the notional income rule in those benefits where a person having deferred their pension or benefit in favour of an increase of pension or benefit, changes that election in favour of a lump sum and paragraph (4) provides that an amount of capital equal to the amount of a lump sum or a payment on account of a lump sum, is to be disregarded in the calculation of income in the case of state pension credit and capital in the case of housing benefit.

In so far as these Regulations are required, for the purposes of regulations 10 and 11, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland 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, that Act, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.

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