

EXPLANATORY MEMORANDUM TO
THE STATE PENSION (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2016

S.R. 2016 No. 80

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by Pensions Act (Northern Ireland) 2015 and is subject to the confirmatory resolution procedure before the Assembly.

2. Purpose

- 2.1 The Pensions Act (Northern Ireland) 2015 (“the Act”) introduces a new state pension for people reaching state pension age on or after 6 April 2016. The Regulations implement further detailed features of the new scheme. In particular, they:
- set out how the pension increase earned through deferring the new state pension is to be calculated where the rate of pension changes during the deferral period;
 - contain the transitional arrangements for inheriting graduated retirement benefit where a person’s deceased spouse or civil partner reached state pension age or died before 6 April 2016; and
 - provide that a person who is an “overseas resident” is not entitled to up-rating increases, including such increases that came into effect while the person was deferring their new state pension.

3. Background

- 3.1 This Statutory Rule provides for the second tranche of confirmatory secondary legislation required to support the introduction of the new state pension. The Regulations insert additional provisions into the first set of new state pension regulations – the State Pension Regulations (Northern Ireland) 2015 (“the State Pension Regulations”). This is the first use of the regulation-making powers at sections 10, 18(2) to (4) and 20 of the Act.

Deferral of new state pension (regulation 2(3))

- 3.2 The option to defer claiming the state pension in order to receive a higher weekly rate when it is finally claimed will continue to be available to people in the new state pension scheme. Section 17 of the Act and regulations 10 to 12 of the State Pension Regulations set out how the increase will be calculated in a standard case where there are no changes of circumstances during the period of deferral that affect the weekly rate. The increase will be based on the weekly rate of pension the person would have been receiving immediately before the end of their deferral period, had they not deferred. This ensures that the increase reflects any up-rating that has occurred during the deferral period, as also applies in calculating deferral increases in the pre-2016 scheme.
- 3.3 However, the weekly rate may change during the deferral period for a reason other than up-rating. This is most likely to arise where the person becomes entitled to an inherited amount on the death of a spouse or civil partner part-way through the deferral period. Applying the standard calculation in such cases would give the wrong result as it would reflect the inherited amount from the start of the deferral period.
- 3.4 New regulation 12A, inserted into the State Pension Regulations by regulation 2(3), modifies the standard calculation so that the increase is based on the rates of pension that would have been applicable at the different stages of the deferral period.

Inheritance of Graduated Retirement Benefit (regulation 2(4))

- 3.5 Under the pre-2016 state pension scheme, a widowed person can be entitled to a percentage of their late spouse or civil partner's additional state pension ("AP") – also known as SERPS or State Second Pension). They may similarly "inherit" half the deceased's graduated retirement benefit ("GRB"). The GRB scheme was an early form of earnings-related state pension scheme which operated between 1961 and 1975. Most people who were over 18 and employed at that time will have paid enough graduated contributions to give entitlement to some GRB, albeit of low monetary value. For contributors who have accrued "units" of GRB based on graduated contributions, each GRB unit is currently worth 13.3 pence.
- 3.6 The new state pension will be an individual pension based solely on a person's own National Insurance contributions. State pension based on contributions made wholly under the new scheme – i.e. for tax years 2016/17 onwards – will not be inheritable. However, there are transitional provisions in the Act which will enable a person in the new scheme to qualify for a survivor's pension based on the AP built up by their late spouse or civil partner in the pre-2016 scheme. These

arrangements recognise that older couples are likely to have based their retirement plans on the expectation of AP inheritance being available to the surviving member.

- 3.7 The inheritable AP will be protected in full where the deceased spouse or civil partner had either died or reached state pension age before the start of the new scheme. Provided the marriage or civil partnership had begun before 6 April 2016 and the survivor would have met the entitlement conditions for the inheritable AP if the old scheme had continued, they will be paid a survivor's state pension of the equivalent amount. Where both members of the couple are in the new scheme, the survivor may inherit half of any protected payment, again, provided the marriage or civil partnership existed before 6 April 2016.
- 3.8 The survivor's pension will be payable in addition to the survivor's own state pension, or, if they are not entitled to a state pension in their own right, it will be paid on its own. Where the person's own state pension is less than the full rate, the Act provides for the total of the person's own plus their survivor's pensions up to the full rate to be up-rated at least in line with the percentage increase in average earnings, with any balance up-rated by price inflation. (Any increase from deferring the state pension is not included in the total and will be price up-rated in line with the existing policy on up-rating increments.)
- 3.9 The Act and the State Pension Regulations also include provisions which enable a person to inherit a deferral payment in line with the pre-2016 rules, irrespective of when the marriage or civil partnership began, where their deceased spouse or civil partner had reached state pension age before 6 April 2016 and deferred. This will include the choice available under the pre-2016 scheme of taking either a lump-sum payment or weekly pension if the deceased died while still deferring and had deferred for at least 12 months. The rationale for preserving these inheritance provisions is that the decision to defer is likely to have been influenced by the expectation that deferral benefits would be inheritable in the event that the deferrer died first.
- 3.10 Part 6 (Regulations 15 to 20) of the State Pension Regulations, inserted by regulation 2(4), makes the equivalent provisions for inheriting GRB as the Act makes for inheriting AP and deferral payments where the spouse or civil partner had either reached state pension age or died before the new scheme began.
- 3.11 Accordingly, regulations 15 and 16 provide a survivor's pension corresponding to the GRB the person would have inherited if the pre-2016 scheme had continued. This will be payable provided the marriage or civil partnership existed before 6 April 2016. The pension will be included in the sum of the survivor's other state pension entitlements for up-rating purposes, mirroring the arrangements described at paragraph 3.8 above. For example, a person entitled to a new state pension of

£140 based on their own National Insurance contributions becomes entitled to a survivor's pension of £30 inheritable AP and £1.50 GRB. Their total entitlement is £171.50. The first £155.65 will be up-rated at least in line with earnings growth; the balance of £15.85 will be price up-rated.

- 3.12 Regulations 18 to 20 provide for the survivor to inherit a deferral payment in respect of a deceased spouse or civil partner's deferred GRB. These provisions correspond to the arrangements for inheriting a deferral payment in respect of a deferrer's main state pension, including the provisions for choosing between a weekly pension and lump-sum payment, where applicable.
- 3.13 Although the legislative framework is complex, largely due to the complexity of the existing legislation underpinning GRB, the impact of these provisions will be minor, as the amounts involved will generally be small – on average, around £2.50 a week or less where the deceased is a man, and less than £1 a week where the deceased is a woman. However, excluding GRB from the transitional arrangements would have been inconsistent with the approach to protecting additional state pension inheritance where the deceased is in the pre-2016 scheme, and would not offer any significant benefits in terms of administrative simplicity.

Overseas Residents

- 3.14 Regulation 2(4) also inserts a new Part 7 into the State Pension Regulations. New regulation 21 sets out when overseas residents are not entitled to up-rating increases because of their state pension.
- 3.15 While the state pension has been payable world-wide since 1955, up-rating it for people who are not ordinarily resident in the UK is generally restricted to people who are living in another member state of the European Economic Area (EEA), Switzerland, Gibraltar or countries with which the UK has a reciprocal agreement that provides for up-rating. There are 16 such non-EEA countries, including the USA, Israel, Turkey and the republics of the former Yugoslavia. The agreements with Canada and New Zealand and the former agreement with Australia, do not provide for up-rating: between them these three countries account for around 80% of overseas residents who do not receive up-ratings. As at September 2014, there were 1.24 million people living overseas and in receipt of a United Kingdom state pension. Of these, around 560,000 were in countries where the state pension is not up-rated.
- 3.16 There are two main reasons for not paying annual up-ratings to non-residents. First, up-ratings are based on levels of earnings growth and price inflation in the UK which have no direct relevance where the pensioner is resident overseas. Second, the cost of up-rating state pensions would increase immediately by over £0.5 billion per year if all pensions in payment were increased to current levels,

and would increase in future years. Successive post-war Governments have taken the view that priority should be given to those living in UK in drawing up expenditure plans for pensioner benefits.

- 3.17 The provisions in Part 7 (Regulations 21 to 23) of the State Pension Regulations, inserted by regulation 2(4), continue the existing policy of not up-rating the state pension in payment to people who are “overseas residents” defined in section 20 of the Act as a person who is not ordinarily resident in Northern Ireland or any other territory specified in regulations.
- 3.18 Regulations 21 to 23 will be subject to the various reciprocal agreements and the EU social security coordination legislation, as is the case with the regulations about overseas residents that apply to the pre-2016 scheme. This has the effect of enabling up-ratings to be payable to people living in the areas covered by those arrangements notwithstanding the fact that the regulations make no express provision for them. The UK’s current reciprocal agreement with Jersey and Guernsey which provides for up-rating covers the residents of all the inhabited islands except Sark. Paragraph (6) of new regulation 21 therefore has the effect of designating Sark as a territory where up-ratings can be awarded.
- 3.19 Regulation 21(1) provides that an overseas resident who is entitled to a state pension under Part 1 of the Act is not entitled to up-rating increases. Provisions in Regulation 21(2) mirror the current mechanism that requires specific provision to be made in the annual Up-Rating Regulations before the disapplication of the increase can be triggered (for example, see regulation 3 of S.R. 2015 No. 139).
- 3.20 Regulations 21 and 22 also implement a change to the way deferral is treated in the existing arrangements.
- 3.21 In the pre-2016 scheme, when a person who has deferred finally claims, their weekly pension is awarded at the rate in operation at the date of claim i.e. the rate including any up-ratings that have come into effect during the deferral period. Their deferral benefit – their pension increase or lump-sum payment – is similarly based on the weekly rate they have deferred but with up-ratings included. This has the effect of giving a person resident in a country where the state pension is not up-rated a double benefit from deferral, as they would not have received the up-ratings had they not deferred.
- 3.22 This anomaly is removed for such people who defer the new state pension. Any up-ratings that have come into effect during the deferral period which they would not have been entitled to if their state pension had been in payment will be ignored in the calculation of both the deferral increase and the weekly rate payable when they claim.

3.23 The principal reason for making this change is to ensure that the deferral arrangements are applied consistently irrespective of where the deferrer is resident. It may also be noted that while people in the pre-2016 state pension scheme living overseas outside the EEA are excluded from the option to stop claiming their state pension in order to accrue a deferral payment, this exclusion will not apply to people claiming the new state pension.

3.24 Regulation 3 of these Regulations makes two consequential amendments to the Act as a result of the inserted GRB provisions. The first is to extend the definition of “up-rating increase” at section 22(1) of the Act to include an increase in the rate of the state pension derived from inheritable GRB. The second amendment provides for the amount of such a pension to be included in the sum of a person’s state pension for the purposes of calculating the up-rating increase applicable to a person’s shared state pension following divorce.

4. Consultation

4.1 There is no requirement to consult on this Rule.

5. Equality Impact

5.1 The provisions of the Act were the subject of a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for this Rule. The Department has concluded that those proposals would not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 The new state pension has been designed to cost no more overall than the current system.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Order –

(a) is not incompatible with any of the Convention rights,

(b) is not incompatible with Community law,

(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Instrument is S.I. 2016 No. 199 which comes into force on 6 April 2016. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.