

1978 No. 393

SOCIAL SECURITY

**The Social Security (Graduated Retirement Benefit)
(No. 2) Regulations 1978**

<i>Made</i> - - - -	9th March 1978
<i>Laid before Parliament</i>	16th March 1978
<i>Coming into Operation— regulations 1 and 2</i>	6th April 1978
<i>remainder, for the purpose specified in regulation 1(3)</i>	6th December 1978
<i>remainder, for all other purposes</i>	6th April 1979

The Secretary of State for Social Services, in exercise of the powers conferred on him by section 2(1) of and paragraphs 3, 7 and 9 of Schedule 3 to the Social Security (Consequential Provisions) Act 1975(a) and section 24(1) of the Social Security Pensions Act 1975(b), and of all other powers enabling him in that behalf, hereby makes the following regulations, which only make provision consequential on the passing of the last-mentioned Act and accordingly by virtue of section 61(1)(e) of that Act are exempt from the requirements of section 139(1) of the Social Security Act 1975(c) (duty to consult National Insurance Advisory Committee about proposed regulations):—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978.

(2) This regulation and regulation 2 below shall come into operation on 6th April 1978.

(3) The remainder of these regulations shall, for the purpose only of determining, before 6th April 1979, claims for, or questions arising as to, benefit for any period after 5th April 1979, come into operation on 6th December 1978.

(4) Except as mentioned in paragraphs (2) and (3) above, these regulations shall come into operation on 6th April 1979.

(a) 1975 c. 18.
(c) 1975 c. 14.

(b) 1975 c. 60.

(5) In these regulations—

“the Act” means the Social Security Act 1975;

“the Pensions Act” means the Social Security Pensions Act 1975;

“the 1965 Act” means the National Insurance Act 1965(a);

“the 1975 regulations” means the Social Security (Graduated Retirement Benefit) Regulations 1975(b), as amended (c);

“the 1978 regulations” means the Social Security (Graduated Retirement Benefit) Regulations 1978(d);

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

(6) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far 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.

(7) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(e) shall apply in relation to this instrument and in relation to the revocations effected by it as if this instrument and the regulations revoked by it were Acts of Parliament and as if the revocations were repeals.

Application of provisions of sections 124 to 126 of the Act

2.—(1) Subject to the provisions of paragraph (2) below, the provisions of sections 124 to 126 of the Act (increases in rates of benefit) shall apply to the amount of graduated retirement benefit payable for each unit of graduated contributions and to increases of such benefit under the provisions of Schedule 2 hereto.

(2) The provisions of section 125(2) shall apply as they apply to a sum specified in a provision mentioned in section 125(2)(a) or (b); and the provisions of section 126(4) shall apply as they apply to a sum specified in a provision mentioned in section 125(1)(a) or (b).

Continuation in force of sections 36, 37 and 118(1) of the 1965 Act

3.—(1) The provisions of this regulation shall have effect for the purpose of securing continuity between the Act and the 1965 Act in the case of persons who had, immediately before 6th April 1975, rights or prospective rights to or expectations of graduated retirement benefit under sections 36 and 37 of the 1965 Act, by preserving those rights and temporarily retaining the effect of those sections for transitional purposes.

(2) Paragraph (3) below shall have effect so that notwithstanding their repeal by the Social Security Act 1973(f) those sections shall, for the purpose aforesaid, continue in force subject to the making in them of the modifications required—

(a) to bring them into conformity with the provisions of the Act and the Pensions Act and to enable them to have effect as if contained in the scheme of social security benefits established by those Acts;

(a) 1965 c. 51.
(c) S.I. 1976/409.
(e) 1889 c. 63.

(b) S.I. 1975/557.
(d) S.I. 1978/391.
(f) 1973 c. 38.

- (b) to replace section 36(4) of the 1965 Act (increase of graduated retirement benefit in cases of deferred retirement) with provisions corresponding to those of paragraphs 1 to 3 of Schedule 1 to the Pensions Act; and
- (c) to extend section 37 of the 1965 Act (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to men and their late wives.

(3) On and after 6th April 1979 those sections shall continue in force in the modified form in which they are set out in Schedule 1 to these regulations, but not so as to save the National Insurance (Graduated Retirement Benefit and Consequential Provisions) Regulations 1961(a), so far as deemed to have been made under those sections (b), from being invalidated by the repeal; and section 118(1) of the 1965 Act (short title) shall also continue in force.

Modification of regulations concerning graduated retirement benefit

4. The provisions of regulations 2 and 3 of the 1978 regulations (which were made under sections 36 and 37 of the 1965 Act) shall continue in force in the modified form set out in Schedule 3 to these regulations; and paragraphs (1) (so far as it relates to citation), (2) and (3) (interpretation) of regulation 1 of the 1978 regulations shall also continue in force.

Revocations

5. The 1975 regulations and regulation 18 of and Schedule 2 to the Social Security (Invalid Care Allowance) Regulations 1976(c) are hereby revoked.

David Ennals,

Secretary of State for Social Services.

9th March 1978.

(a) S.I. 1961/557.

(b) See National Insurance Act 1965 (c. 51) s. 117(1).

(c) S.I. 1976/409.

SCHEDULES

Regulation 3(3)

SCHEDULE 1

SECTIONS 36 AND 37 OF THE NATIONAL INSURANCE ACT 1965 AS CONTINUED
IN FORCE BY THESE REGULATIONS*Graduated retirement benefit*

Graduated retirement benefit 36.—(1) Subject to the provisions of the Act, graduated retirement benefit shall be payable to any person who is over pensionable age and who (except as mentioned in section 37(1) below) has retired from regular employment, and shall be an increase in the weekly rate of his retirement pension equal to $2\frac{1}{2}$ pence for each unit, ascertained in accordance with subsections (2) and (3) of this section, of the graduated contributions properly paid by him as an insured person, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$ p as nearest to the next whole penny above.

(2) For the purpose of graduated retirement benefit the units of graduated contributions shall be £7.50 for men and £9.00 for women.

(3) Where a person's graduated contributions calculated at the said rate do not make an exact number of units any incomplete fraction of a unit shall, if it is one-half or more, be treated as a complete unit.

(4) Where a person defers his retirement from regular employment after attaining pensionable age or has made an election by virtue of section 30(3) of the Act and has not revoked it, then, for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement, there shall be applied the provisions of Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978, and those provisions shall be construed and have effect as if they were part of this subsection.

(5) For the purposes of subsection (4) of this section, the Secretary of State may by regulations provide for treating all or any of the graduated contributions paid by a person in the tax year in which he attained pensionable age as having been paid before, or as having been paid after, the day on which he attained that age, whether or not the contribution in question was so paid.

(7) A person who has attained pensionable age and retired from regular employment, but is not entitled to a retirement pension, shall be treated for the purposes of the foregoing provisions of this section as receiving a retirement pension at a nominal weekly rate:

Provided that—

(a) this subsection shall not confer any right to graduated retirement benefit on a person who would be entitled to a retirement pension but for some provision of the Act or of regulations disqualifying him for receipt of it; and

(b) regulations may provide that any right by virtue of this subsection to benefit at less than a specified weekly rate shall be satisfied either altogether or for a specified period by the making of a single payment of the prescribed amount.

(8) In this section and in section 37 below—

“graduated contributions” means graduated contributions under the National Insurance Act 1965 or the National Insurance Act 1959(a);

“insured person” means insured person under the National Insurance Act 1965 or the National Insurance Act 1946(b);

“retirement pension” means retirement pension of any category;

“the Act” means the Social Security Act 1975;

and any reference in section 37 below to “section 36 of this Act” or to any of its subsections is a reference to that section or subsection as it is here set out.

(a) 1959 c. 47.

(b) 1946 c. 67.

(9) This section and section 37 below and the Act shall be construed and have effect as if this section and section 37 below were included in Chapter I of Part II of that Act (contributory benefits); and references to that Chapter, that Part or that Act in any other enactment or in any instrument shall be construed accordingly:

Provided that nothing in this subsection shall affect the construction of any reference to section 36 or 37 of this Act or of that Act or to any of the subsections of those sections; and any increase in the weekly rate of a person's retirement pension, to the extent that it is attributable to subsection (4) of this section, shall be left out of account in determining the weekly rate of that pension for the purposes of sections 14(6) and 15(4) of the Act (rate of unemployment benefit, sickness benefit or invalidity pension for persons over pensionable age).

(10) The provisions of Part III of the Act (determination of claims and questions) relating to contributions shall be construed and have effect as if graduated contributions were contributions under the Act.

37.—(1) Subject to the provisions of this section—

- (a) where a man, having paid graduated contributions as an insured person, dies leaving a widow, and she either has attained pensionable age at the time of his death or remains his widow when she attains that age; or
- (b) where a woman, having paid graduated contributions as an insured person, dies after 5th April 1979 leaving a widower, and she and he have both attained pensionable age at the time of her death,

Special provisions as to graduated retirement benefit for widows and widowers.

then section 36 of this Act shall apply as if the increase in the weekly rate of the retirement pension of the widow or widower, as the case may be, provided for by subsection (1) thereof were the amount there specified by reference to his or her graduated contributions with the addition of one-half of the weekly rate of the graduated retirement benefit of his or her former spouse (any amount including $\frac{1}{2}p$ being rounded to the next whole penny above); and where a man, having paid graduated contributions as an insured person, dies after 5th April 1979 leaving a widow and she has attained pensionable age at the time of his death but has not retired from regular employment, section 36 shall apply as if the increase in the weekly rate of her retirement pension provided for by subsection (1) thereof were one-half of the weekly rate of the graduated retirement benefit of her former husband (any amount including $\frac{1}{2}p$ being rounded to the next whole penny above).

(2) For the purposes of subsection (1) of this section, the weekly rate of the deceased spouse's graduated retirement benefit shall (whether or not he or she was receiving or entitled to receive any such benefit) be taken to have been the weekly rate appropriate to the amount of graduated contributions paid by him or her (determined as if any orders which have come into force under section 124 of the Act (increases in rates of benefit) since the date of the deceased spouse's death had come into force before that date), excluding any addition under section 37(1) of this Act, but including any addition under section 36(4) thereof (and for the purpose of calculating the addition under section 36(4), taking into account any addition under section 37(1)); and where at his or her death he or she had attained pensionable age but had neither retired from regular employment nor otherwise become entitled to graduated retirement benefit, that addition shall be computed as if he or she had retired from regular employment or otherwise become entitled to graduated retirement benefit immediately before his or her death.

(3) A person's right to graduated retirement benefit by virtue of this section shall be brought into account under section 36(4) of this Act in determining the graduated retirement benefit payable to him or her under the said section 36:

Provided that, if the termination of the marriage by death occurred after he or she attained pensionable age, he or she shall for the purposes of this subsection be treated as not having attained pensionable age until the date of that termination.

(4) A person's right to graduated retirement benefit by virtue of this section in respect of a spouse he or she marries after attaining pensionable age shall be subject to such additional conditions as may be prescribed; and except as may be provided by regu-

lations a person more than once married shall not be entitled for the same period to any graduated retirement benefit by virtue of this section in respect of more than one of his or her spouses.

(5) Regulations may provide that where a woman is entitled to graduated retirement benefit and to a widowed mother's allowance the graduated retirement benefit shall be an increase in the weekly rate of that allowance; and where the benefit is such an increase, section 36(7) of this Act shall not apply.

Regulation 3(3)

SCHEDULE 2

PROVISIONS REPLACING SECTION 36(4) OF THE NATIONAL INSURANCE ACT 1965

1. Where a person defers his retirement from regular employment after attaining pensionable age, or has made an election by virtue of section 30(3) of the Act and has not revoked it, then for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement—

(a) there shall be added to the amount of the graduated contributions properly paid by him as an insured person one-half of the aggregate graduated retirement benefit which would have been payable to him for any period before 6th April 1979 (disregarding the effect of any order made under section 124 of the Act) if he had retired from regular employment on attaining pensionable age and had received that benefit for the whole of the period without any interruption or abatement:

Provided that, in computing the addition to be made in accordance with this paragraph in the case of a person who has made an election by virtue of section 30(3) of the Act (re-entry into regular employment) or the corresponding provisions of any earlier Act, no account shall be taken of any period between 6th April 1975 and 5th April 1979 (both dates inclusive) which falls between the date of that election and the date of his previous retirement; and

(b) the rate of his graduated retirement benefit shall be increased by an amount equal to the increments to which he is entitled under paragraph 3 below, but only if either—

(i) that amount is enough to increase the rate of the benefit by at least 1 per cent., or

(ii) he has attained pensionable age before 6th April 1979, and has either deferred his retirement before that date, or made an election by virtue of section 30(3) of the Act taking effect before that date or both.

2. Where a woman who is over pensionable age but has not retired from regular employment is entitled by virtue of section 37(1) of the National Insurance Act 1965 to graduated retirement benefit, and she has, on or after 6th April 1979, made an election by virtue of section 30(3) of the Act and has not revoked it, then, for the purpose only of determining her right to increments under this Schedule, her election shall be treated as if it took effect from 6th April 1979, or, if later, the date of the death of her husband by virtue of whose graduated contributions she is so entitled.

3.—(1) Subject to paragraph 4 below, a person is entitled to an increment under this paragraph for each complete incremental period (beginning not earlier than 6th April 1979) in his period of deferment.

(2) In this Schedule—

(a) "incremental period" means any period of 6 days which are treated by the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations 1978(a) as days of increment for the purposes of Schedule 1 to the Social Security Pensions Act 1975(b) as amended by section 3 of the Social Security (Miscellaneous Provisions) Act 1977(c) in relation to the person and the pension in question; and

(a) S.I. 1978/392.
(c) 1977 c. 5.

(b) 1975 c. 60.

(b) "period of deferment", in relation to any person, means the period beginning with the day on which he attains pensionable age and ending with the day before that of his retirement.

(3) Subject to paragraph 4 below, the amount of the increment for any such incremental period shall be 1/7th per cent. of the weekly rate of the graduated retirement benefit to which that person would have been entitled for the period if he had retired on attaining pensionable age, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$ p as nearest to the next whole penny above.

(4) Where one or more orders have come into force under section 124 of the Act (increases in rates of benefit) during the period of deferment the rate of the benefit for any incremental period shall be determined as if the order or orders had come into force before the beginning of the period of deferment.

4.—(1) Where during a person's period of deferment there are one or more increases (other than any made by such an order as is mentioned in paragraph 3(4) above) in the weekly rate of graduated retirement benefit which would have been payable to him during that period if he had not deferred his retirement from regular employment or made an election by virtue of section 30(3) of the Act, the total amount of increment for the period of deferment shall be—

- (a) 1/7th per cent., for each incremental period in the period of deferment, of the weekly rate of the graduated retirement benefit to which he would have been entitled immediately after his retirement if he had retired on attaining pensionable age; plus
- (b) in respect of each such increase, 1/7th per cent. of its weekly rate for each incremental period in the period beginning with the day on which that increase occurred and ending with the day before that of the person's retirement.

(2) Where one or more orders have come into force under section 124 of the Act during the period of deferment the weekly rates mentioned in sub-paragraph (1) above shall be determined as if the order or orders had come into force before the beginning of the period of deferment.

SCHEDULE 3

Regulation 4

REGULATIONS 2 AND 3 OF THE 1978 REGULATIONS AS MODIFIED BY THESE REGULATIONS

Graduated retirement benefit when retirement is deferred

2. For the purposes of paragraph 1(a) of Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 (provision, where a person attains pensionable age before 6th April 1979 but does not retire from regular employment until after 5th April 1979, for calculating the graduated retirement benefit payable to him from the date of his retirement) all the graduated contributions paid by a person in the income tax year in which he attained pensionable age shall be treated as having been paid before the day on which he attained that age:

Provided that where, in any case, the aggregate amount of the graduated contributions paid by him in that year exceeded the aggregate amount of graduated contributions which would have been payable by him in that part of the year which ended with the income tax week in which he attained pensionable age if, in each income tax week beginning in that part of the year, a graduated contribution as for a non-participating employment had been payable by him in respect of a weekly payment of remuneration made in that week at a level equal to the upper limit on the amount of weekly pay then taken into account under section 4(1)(c)

of the 1965 Act as amended (a), the excess shall be treated as having been paid after the day on which he attained that age.

Graduated retirement benefit for persons who have been married more than once

3. For the purposes of section 37 of the 1965 Act (special provisions as to graduated retirement benefit for widows and widowers) a person who has been married more than once and who is entitled to graduated retirement benefit for any period by virtue of the provisions of that section in respect of a second or subsequent spouse shall not be precluded from entitlement to graduated retirement benefit for that period by virtue of that section in respect of a former spouse, but shall be so entitled to the extent only that it is payable to him or her by the application of section 36(4) of the 1965 Act in respect of any period before the death of the first-mentioned spouse.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations revoke the Social Security (Graduated Retirement Benefit) Regulations 1975 and contain provision, as did those Regulations, for the continuance in force, with modifications, of the provisions of sections 36 and 37 (relating to graduated retirement benefit) of the National Insurance Act 1965 and related provisions of regulations. The statutory provisions, as modified, are set out in Schedule 1 and the provisions of regulations in Schedule 3.

The principal differences between the statutory provisions as modified by the regulations of 1975 and the statutory provisions as modified by these Regulations are as follows. First, section 36(4) (increase of graduated retirement benefit in cases of deferred retirement) is replaced with provisions corresponding to those of paragraphs 1 to 3 of Schedule 1 to the Social Security Pensions Act 1975; the replacing provisions are set out in Schedule 2 to these Regulations. Secondly, section 36(6) (provisions of sections 36(1) to (5) to have effect subject to provisions for reduction on account of earnings) is no longer continued in force. Thirdly, section 37 (increase of a woman's retirement pension by reference to her late husband's graduated retirement benefit) is extended to men and their late wives.

The provisions of the regulations continued in force by virtue of these Regulations no longer include any provision of the National Insurance (Graduated Retirement Benefit and Consequential Provisions) Regulations 1961 but include provisions of the Social Security (Graduated Retirement Benefit) Regulations 1978.

These Regulations also provide for sections 124 to 126 of the Social Security Act 1975 (increases in rates of benefit) to apply to graduated retirement benefit.

(a) See section 13(1) of, and paragraph 1 of Schedule 3 to, the National Insurance Act 1966 (c. 6), section 1(2) of the National Insurance Act 1969 (c. 44), section 1(3) of the National Insurance Act 1971 (c. 50), section 3(2) of the National Insurance Act 1972 (c. 57), section 2(2) of the National Insurance and Supplementary Benefit Act 1973 (c. 42) and section 2(2) of the National Insurance Act 1974 (c. 14).

SI 1978/393
ISBN 0-11-083393-7

