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STATUTORY INSTRUMENTS

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**1979 No. 642**

**SOCIAL SECURITY**

**The Social Security (Widow'S Benefit and Retirement Pensions) Regulations 1979**

<i>Made</i>	- - - -	<i>11th June 1979</i>
<i>Laid before Parliament</i>		<i>19th June 1979</i>
<i>Coming into Operation</i>		<i>10th July 1979</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 29(5), 30(3), 33, 39(1) and (4), 40(2), 85(1) and 162 of, and Schedule 20 to, the Social Security Act 1975, section 20 of, and paragraphs 2(2)(a) and 3 of Schedule 1 to, the Social Security Pensions Act 1975(1) and of all other powers enabling him in that behalf, hereby makes the following regulations which only consolidate the regulations herein revoked and which accordingly, by virtue of paragraph 20 of Schedule 15 to the Social Security Act 1975, are not subject to the requirement of section 139(1) of that Act for prior reference to the National Insurance Advisory Committee:—

**Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 and shall come into operation on 10th July 1979.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1975;

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

“home responsibilities year” means a year in which the person in question was precluded from regular employment by responsibilities at home within the meaning of the Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Regulations 1978;

“husband”, “wife” or “spouse” in relation to any person who has been married more than once means the last husband, last wife or last spouse respectively;

“a period of at least 10 years” means a period of, or periods amounting in the aggregate to, at least 3,652 days;

“period of deferment” has the meaning assigned to it in paragraphs 2(2)(b) and 5(1) of Schedule 1 to the Pensions Act;

“qualifying year” in relation to any person means a year for which his earnings factor is sufficient for satisfaction of paragraph (b) of the second contribution condition specified in paragraph 5 of Schedule 3 to the Act, but not including (except for the purposes of regulation 6) a year which is treated as such a year by virtue of regulation 8(4) and not including any home responsibilities year;

“the determining authority” means, as the case may require, an insurance officer, a local tribunal or a Commissioner;

“section 9(2), 9(3) or 10(2) increase” means an increase under section 9(2), 9(3) or 10(2), respectively, of the Pensions Act of a person's Category A retirement pension attributable to his spouse's contributions;

“Service Pensions Instrument” means a provision and only a provision of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a disablement pension (not including a pension calculated or determined by reference to length of service) may be paid out of public funds in respect of any disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council, or the Air Council;

“1914-1918 War Injuries Scheme” means any scheme made under the Injuries in War (Compensation) Act 1914 or under the Injuries in War Compensation Act 1914 (Session 2) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 war;

“unemployability supplement” has the extended meaning assigned to it in regulation 2 of the Social Security (Overlapping Benefits) Regulations 1979 and further includes benefit corresponding to an unemployability supplement by virtue of regulations under section 159(3) (a) of the Act;

“year” means tax year.

(3) For the purposes of these regulations a person who has obtained a decree absolute of presumption of death and dissolution of marriage under the Matrimonial Causes Act 1973 shall, notwithstanding that the spouse whose death has been presumed is dead, be treated as a person whose marriage has been terminated otherwise than by the death of his spouse unless the date of his death is established to the satisfaction of the Secretary of State or the determining authority, whichever is appropriate; and, in relation to a person who is so treated, the marriage in question shall be treated as having been terminated on the date of the decree absolute.

(4) For the purposes of regulations 11(1)(d), 12(3) and 13(2) a person shall be deemed to be, or to have been, entitled to a pension or benefit if he would have been so entitled had he made a claim for it.

### **Election to be treated as not having retired**

2.—(1) Subject to the provisions of these regulations, where any person (other than one mentioned in paragraph (2))—

- (a) has retired from regular employment or has otherwise become entitled to either a Category A or a Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and
- (b) elects that this regulation shall apply in his case,

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

(2) Paragraph (1) shall not apply to:—

- (a) a person who has previously made such an election;

- (b) in relation to a Category A retirement pension, a husband whose wife is entitled, by virtue of his contributions, to a Category B retirement pension or a section 10(2) increase and who does not consent to his election, unless that consent is unreasonably withheld.
- (3) Notice of election for the purpose of this regulation shall be given to the Secretary of State in writing on the form approved by him for the purpose, or in such other manner, being in writing, as he may accept as sufficient in the circumstances of any particular case or class of cases; and if any such notice is sent by post, it shall be deemed to have been given on the date it was posted.
- (4) Subject to paragraphs (5) and (6) an election shall take effect—
  - (a) where the notice does not specify a date as the date of the person's election, on the date on which the notice is given; or
  - (b) where the notice specifies a date as the date of the person's election, being not earlier than the date on which the notice is given and not later than the expiration of 28 days after that date, on the date so specified.
- (5) In the case of a man whose wife is entitled, by virtue of his contributions, to a Category B retirement pension or a section 10(2) increase—
  - (a) if she consents in writing to the election, the election shall not take effect earlier than the date of her consent; or
  - (b) if she does not so consent and the determining authority decides that her consent has been unreasonably withheld, the election shall take effect in accordance with the provisions of paragraph (4) or on such later date (if any) as that authority, having regard to all the circumstances of the case, may determine.
- (6) Where a woman entitled to a Category B retirement pension under section 29(4) of the Act has, on or after 6th April 1979, made an election and has not revoked it, then, for the purpose only of determining her right to increments under paragraph 2 of Schedule 1 to the Pensions Act, 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 contributions she is so entitled.

### **Provisions applying after election**

- 3. Where an election has been made in accordance with regulation 2—
  - (a) subject to the provisions of regulations made under section 81(2)(a) of the Act (adjustment to prevent payments for periods of less than a week or at different rates for different parts of a week), no Category A or B retirement pension shall be payable to a person and no Category B retirement pension or section 10(2) increase shall be payable to a man's wife by virtue of his contributions for any period on or after the date of his election and before he subsequently retires from regular employment or dies; and
  - (b) where the person who has made the election is a woman who became entitled to a Category B retirement pension otherwise than by virtue of having retired from regular employment, and she revokes her election, she shall cease to be treated as if she had not become entitled to such a retirement pension; and
  - (c) where the person who has made the election is a man whose wife is entitled to a Category B retirement pension or a section 10(2) increase by virtue of his contributions and he subsequently retires from regular employment and claims a retirement pension, his claim may be treated as including a claim by his wife, by virtue of his contributions, for a Category B retirement pension or a section 10(2) increase.

### **Days to be treated as days of increment**

4.—(1) For the purposes of paragraph 2 of Schedule 1 to the Pensions Act a day shall be treated as a day of increment in relation to any person if it is a day in that person's period of deferment, other than a Sunday, in respect of which—

- (a) if that person had retired from regular employment on attaining pensionable age or, in the case of a married woman and her Category B retirement pension or section 10(2) increase, if she and her husband had retired from regular employment on attaining pensionable age, that person would have been entitled to a Category A or a Category B retirement pension (and would not have been disqualified for receiving it by reason of imprisonment or detention in legal custody); and
- (b) that person had not received any of the following benefits:—
  - (i) any benefit under Chapters I and II of Part II of the Act other than child's special allowance, attendance allowance, mobility allowance and guardian's allowance; or
  - (ii) injury benefit or an unemployability supplement; and
- (c) in the case of a married woman who would have been entitled to a Category B retirement pension or a section 10(2) increase, her husband had not received an increase of any of the benefits mentioned in paragraph (1)(b) in respect of her.

(2) Subject to the following paragraph, for the purposes of this regulation, where in respect of any day—

- (a) a person has received one or more of the benefits mentioned in paragraph (1)(b) or (c), and
- (b) either—
  - (i) the Secretary of State or the determining authority, whichever is appropriate, has determined that in respect of that day he was not entitled to that benefit; or
  - (ii) by virtue of the provisions of the Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977 the Secretary of State has recovered from that person's employer sums on account of unemployment benefit received by that person in respect of that day; and
- (c) the whole of the benefit or sum on account of benefit in respect of that day has been repaid or, as the case may be, recovered before the relevant date,

that day shall be treated as a day in respect of which he did not receive that benefit; and in this paragraph “relevant date” means —

- (i) where a person's entitlement to increments under paragraph 2 of Schedule 1 to the Pensions Act is in question, the end of his period of deferment; or
- (ii) where a person's entitlement to increments under paragraph 4 or 4A of that Schedule in relation to the deferred retirement of a deceased spouse is in question, the date of the death of that spouse.

(3) Where the benefit or sum on account of benefit in respect of a day to which paragraph (2) (a) and (b) applies is repaid or, as the case may be, recovered on or after the said relevant date, that day shall not be treated as a day in respect of which that person did not receive that benefit until the benefit has been repaid or, as the case may be, sums on account of the benefit have been recovered in respect of all the days to which those sub-paragraphs relate and which fall within the period to which this regulation applies.

### **Modification of paragraph 2(1) to (3) of Schedule 1 to the Pensions Act**

5.—(1) This regulation applies to a person referred to in paragraph 1 of Schedule 1 to the Pensions Act during whose period of deferment there has been an increase, other than an increase made

by an order under section 124 of the Act, in the rate of the Category A or Category B retirement pension to which he would have been entitled if he had retired from regular employment on attaining pensionable age.

(2) In relation to a person to whom this regulation applies, paragraph 2(1) to (3) of the said Schedule 1 shall have effect with the additions, omissions and amendments prescribed below.

(3) In paragraph 2(1) for the words after “incremental period” there shall be substituted—

“(a) in his period of deferment; and

(b) in each period beginning with the day on which an increase in the weekly rate of his pension took place and ending with the day before that of his retirement.”.

(4) After paragraph 2(2)(b) there shall be added—

“and

(c) ‘weekly rate of his pension’ means the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled if he had retired on attaining pensionable age; and

(d) ‘increase’ means an increase in the weekly rate of his pension other than an increase made by such an order as is mentioned in sub-paragraph (5) below.”.

(5) In paragraph 2(3) for the words after “incremental period” there shall be substituted—

“(a) in the case of an incremental period specified in paragraph 2(1)(a) above, shall be 1/7th per cent of the weekly rate of his pension immediately after he attained pensionable age; and

(b) in the case of an incremental period specified in paragraph 2(1)(b) above, shall be 1/7th per cent of that increase.”.

### **Benefit at reduced rates for those who do not satisfy the contribution conditions in full**

6.—(1) Where a person would be entitled to a Category A or a Category B retirement pension, a widow's pension or a widowed mother's allowance but for the fact that the second contribution condition specified in paragraph 5(3) of Schedule 3 to the Act is not satisfied, he shall be entitled—

(a) to the basic component in that benefit at a reduced rate calculated, in accordance with paragraph (3) of this regulation, as a percentage of the rate specified in section 6(1)(a) of the Pensions Act; and

(b) to the additional component in that benefit,

but where the percentage under paragraph (1)(a) of this regulation is less than 25 per cent, no basic component shall be payable under this paragraph.

(2) Where a person, who would be entitled to an increase of benefit under sections 41, 45 or 46 of the Act but for the fact that the second contribution condition specified in paragraph 5(3) of Schedule 3 to the Act is not satisfied, is entitled to a basic component under paragraph (1)(a) of this regulation the benefit shall be increased—

(a) in the case of a child dependant, by the appropriate increase specified in Part IV of Schedule 4 to the Act;

(b) in the case of an adult dependant, by a percentage, calculated in accordance with paragraph (3) of this regulation, of the appropriate increase there specified.

(3) Subject to paragraph (4) of this regulation the percentage referred to in paragraphs (1)(a) and (2)(b) of this regulation shall be ascertained by taking the number of qualifying years in the working life of the contributor concerned, expressing that number as a percentage of the requisite number of

years specified for that working life in paragraph 5(4) of Schedule 3 to the Act and rounding up that percentage to the next whole number.

(4) For the purposes of paragraph (3) of this regulation the requisite number of years shall be taken to be that number, apart from this paragraph, reduced by the number of home responsibilities years of the contributor concerned but not to below—

- (a) in relation to a Category A or a Category B retirement pension, 20 years; or
- (b) in relation to a widow's pension or a widowed mother's allowance, 20 years or, where the requisite number apart from this paragraph is less than 40, half that requisite number.

(5) Where a person is entitled by virtue of this regulation to a Category A retirement pension and also to a section 9(2), 9(3) or 10(2) increase, an uprating order shall have the effect of increasing—

- (a) the basic component in that pension
  - (i) where there is a section 9(2) increase, in proportion to the increase under that order of the sum specified in section 6(1)(a) of the Pensions Act; and
  - (ii) where there is a section 10(2) increase, in proportion to the increase under that order of the sum specified in paragraph 9 of Part I of Schedule 4 to the Act;
- (b) the additional component in that pension, where there is a section 9(3) increase, by the percentage specified in that order for an increase of the sums specified in section 23(1)(b) of the Pensions Act.

#### **Category B retirement pension for certain widows by virtue of husband's contributions**

7. For the purposes of a woman's entitlement to a Category B retirement pension under section 29(5) of the Act, she shall be treated as being entitled to a widow's pension if she would have been so entitled but for any one or more of the following circumstances:—

- (a) her failure to make, or delay in making, a claim for that widow's pension;
- (b) her entitlement to a widow's allowance or a widowed mother's allowance;
- (c) the operation of section 82 of the Act (disqualification and suspension) or section 85 of the Act (overlapping benefits and hospital in-patients) or any regulations made under either of those sections, except for the operation of section 82(5)(a) of the Act (absence from Great Britain);
- (d) the operation of any provision of the Act or any regulations made under the Act disqualifying her for the receipt of that widow's pension for any period, except for the operation of the said section 82(5)(a);
- (e) her having attained the age of 65;
- (f) her remarriage after 4th April 1971,

and for the purposes of section 29(7)(c) of the Act the weekly rate of the widow's pension shall be the weekly rate to which she would have been entitled but for any one or more of the said circumstances.

#### **Substitution of former spouse's contribution record to give entitlement to a Category A retirement pension**

8.—(1) This regulation applies to—

- (a) any person whose last marriage terminated before he attained pensionable age and who did not remarry before that date;
- (b) any man widowed on or after attaining pensionable age, his former spouse being under pensionable age when she died; and

(c) any person whose last marriage terminated on or after the date on which he attained pensionable age otherwise than by the death of his spouse,

and any such person shall be referred to in this regulation as “the beneficiary”.

(2) Where the beneficiary does not, in respect of the year in which his marriage terminated or any previous year, with his own contribution satisfy the contribution conditions for a Category A retirement pension specified in paragraph 5 of Schedule 3 to the Act, then, for the purpose of enabling him to satisfy those conditions, the contributions of his former spouse may, if it is advantageous to him, be treated to the extent specified in paragraphs (3) to (6) as though they were his own.

(3) The beneficiary shall be treated as satisfying the first contribution condition if his former spouse had satisfied that condition as respects any year of his working life up to (inclusive) the year in which the marriage terminated.

(4) The beneficiary shall be treated as satisfying the second contribution condition as respects the number of years arrived at under paragraph 2 or 3 of Schedule 1 to these regulations, whichever is the more beneficial to him.

(5) Where a person is entitled for any period to any basic component in his Category A retirement pension by virtue of this regulation and regulation 6, he shall not be entitled for that period to a section 9(2) increase.

(6) Where any of a person's home responsibilities years falls in a period in respect of which his spouse's contributions are treated as his own under this regulation, no such year shall be taken into account in the determination of his pension entitlement either for the purposes of paragraph 5(6) of Schedule 3 to the Act or for the purposes of regulation 6.

### **Conditions for entitlement to a Category C retirement pension**

**9.** The conditions for entitlement to a Category C retirement pension shall be that the person concerned—

- (a) was resident in Great Britain for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and
- (b) was ordinarily resident in Great Britain on 2nd November 1970 or on the date of his claim for that pension.

### **Conditions for entitlement to a Category D retirement pension**

**10.** The conditions for entitlement to a Category D retirement pension shall be that the person concerned—

- (a) was resident in Great Britain for a period of at least 10 years in the period of 20 years ending on the day before he attained the age of 80; and
- (b) was ordinarily resident in Great Britain either—
  - (i) on the day he attained the age of 80; or
  - (ii) if he was not so ordinarily resident on that day and the date of his claim for the pension was later than that day, on the date of his claim, so however that where a person satisfies this condition under this head he shall be deemed to have satisfied it on the date that he became so ordinarily resident.

### **Category C retirement pension for widows of men over pensionable age on 5th July 1948**

**11.—(1)** Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to a Category C retirement pension at a rate ascertained in accordance with paragraph (3) if—

- (a) she is over pensionable age; and
- (b) she has retired from regular employment; and
- (c) she was over the age of 40 either—
  - (i) when her husband died; or
  - (ii) if she was entitled under regulation 14 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled; and either
- (d) her husband was at any time entitled to a Category C retirement pension or a retirement pension under section 1(1)(a) of the National Insurance Act 1970; or
- (e) her husband died before 2nd November 1970 and—
  - (i) she was resident in Great Britain for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and
  - (ii) she was ordinarily resident in Great Britain on 2nd November 1970 or on the date of her claim for a Category C retirement pension; and
  - (iii) he was ordinarily resident in Great Britain on the date of his death.

(2) A pension payable under paragraph (1) shall commence on 6th April 1975 or the date on which the requirements of sub-paragraphs (a) to (c) and either (d) or (e) of that paragraph are satisfied in relation to the beneficiary, whichever is the later, and shall be payable for life.

(3) The pension under paragraph (1) shall be at the higher rate specified in relation to a Category C retirement pension in Part III of Schedule 4 to the Act, so however that—

- (a) in the case of a widow who was under the age of 50 either when her husband died, or, if she was entitled under regulation 14 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled, the rate of such pension shall be reduced as if the provisions of section 26(2) of the Act applied to it;
- (b) the provisions of section 30(1) of the Act (earnings rule) shall apply to a pension payable under this regulation as they apply to a Category A or B retirement pension.

### **Category C retirement pension for certain women whose marriage has been terminated otherwise than by death**

**12.**—(1) Subject to the provisions of these regulations, a woman whose marriage to a husband who was over pensionable age on 5th July 1948 was terminated otherwise than by his death shall be entitled to a Category C retirement pension at the higher rate specified in relation to such a pension in Part III of Schedule 4 to the Act if—

- (a) she had attained pensionable age before the date of the termination of the marriage; and
- (b) she has retired from regular employment; and
- (c) the conditions set out in paragraph (2) or (3), as the case may be, are satisfied.

(2) The conditions applicable in the case of a woman whose marriage was terminated before 2nd November 1970 shall be—

- (a) that she was resident in Great Britain for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and
- (b) that she was ordinarily resident in Great Britain on 2nd November 1970 or on the date of her claim for a Category C retirement pension; and
- (c) that her husband was ordinarily resident in Great Britain on the date of the termination of the marriage; and
- (d) that she did not remarry between the date of that termination and 2nd November 1970.



(3) The condition applicable in the case of a woman whose marriage was terminated on or after 2nd November 1970 shall be that her husband was entitled to a Category C retirement pension or a retirement pension under section 1(1)(a) of the National Insurance Act 1970.

(4) A pension payable under paragraph (1) shall commence on 6th April 1975 or the date on which the requirements of sub-paragraphs (a) to (c) of that paragraph are satisfied in relation to the beneficiary, whichever is the later, and shall be payable for life; so however that the provisions of section 30(1) of the Act (earnings rule) shall apply to a pension payable under this regulation as they apply to a Category A or B retirement pension.

### **Benefit corresponding to a widow's pension for widows of men over pensionable age on 5th July 1948**

**13.**—(1) Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to benefit corresponding to a widow's pension at a rate ascertained in accordance with paragraph (3) if—

- (a) she was over the age of 40 but under the age of 65 either—
  - (i) when her husband died; or
  - (ii) if she was entitled under regulation 14 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled; and
- (b) the requirements of sub-paragraph (d) or (e) of regulation 11(1) are satisfied in her case.

(2) The period for which benefit is payable under paragraph (1) shall be any period commencing on the date on which the requirements of sub-paragraph (d) or (e) of regulation 11(1) are first satisfied in the case of the widow, and during which she is under the age of 65 and for which she is not entitled under regulation 14 to benefit corresponding to a widowed mother's allowance; so however that the benefit shall not be payable for any period after the widow's remarriage or for any period during which she and a man to whom she is not married are living together as husband and wife.

(3) The benefit under paragraph (1) shall be at the higher rate specified in relation to a Category C retirement pension in Part III of Schedule 4 to the Act; so however that in the case of a widow who was under the age of 50 either when her husband died, or, if she was entitled under regulation 14 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled, the rate of such benefit shall be reduced as if the provisions of section 26(2) of the Act applied to it.

### **Benefit corresponding to a widowed mother's allowance for widows of men over pensionable age on 5th July 1948**

**14.**—(1) Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to benefit corresponding to a widowed mother's allowance, which shall be at the higher rate specified in relation to a Category C retirement pension in Part III of Schedule 4 to the Act, for any period commencing on the date on which the requirements of sub-paragraph (d) or (e) of regulation 11(1) are first satisfied in her case and during which she would have been entitled to a widowed mother's allowance under section 25 of the Act had her husband satisfied the contribution conditions set out in paragraph 5 of Schedule 3 to the Act; so however that the benefit shall not be payable for any period after the widow's remarriage or for any period during which she and a man to whom she is not married are living together as husband and wife.

(2) The provisions of section 41(4) of the Act (which relates to increases of widowed mother's allowance in respect of children) shall apply to benefit payable under this regulation as they apply to an allowance payable under section 25(1)(a) of the Act.

### **Restriction on benefit under regulations 13 and 14 in certain cases**

**15.**—(1) In the case of a widow of a member of a police force or of a special constable who, as such a widow, is in receipt of a pension under regulations from time to time in force made under—

- (a) the Police Pensions Act 1976;
- (b) section 34 of the Police Act 1964;
- (c) section 26 of the Police (Scotland) Act 1967,

benefit under regulation 13 or 14 corresponding to a widow's pension or a widowed mother's allowance shall not be payable in respect of any week during which she is receiving an increase of the said pension under either—

- (i) the provisions of regulation 12 or 15 of the Police Pensions Regulations 1971(2), or of any corresponding regulations from time to time in force and made as mentioned in sub-paragraph(a) ; or
- (ii) those provisions as applied by regulations from time to time in force and made as mentioned in sub-paragraph (b) or (c).

(2) For the purposes of paragraph (1), any reference in that paragraph to an enactment or regulation shall include a reference to any corresponding Northern Ireland legislation, or, as the case may be, any order or regulation having effect by virtue of such legislation, being in each case passed or made for purposes similar to the purposes of the enactment or regulation specified in that paragraph.

### **Provision in relation to entitlement to child benefit for the purposes of a widowed mother's allowance**

**16.**—(1) For the sole purpose of determining whether a woman who has been widowed satisfies the requirements of section 25(1)(a) of the Act (entitlement to a widowed mother's allowance)—

- (a) any person under the age of 19 residing with the widow shall be deemed to be a child falling within section 25(2) of the Act if the requirement in section 25(2)(a) thereof is satisfied in his case, or if the requirement in section 25(2)(b) or (c) thereof is so satisfied, or could have been so satisfied had he, immediately before the death of the widow's late husband, been under the age of 16 or not absent from Great Britain; and
- (b) a widow shall be treated as entitled to child benefit in respect of any person deemed, in accordance with sub-paragraph (a), to be a child falling within the said section 25(2).

(2) In determining whether a woman who has been more than once married and who was not residing with her late husband immediately before his death is entitled to a widowed mother's allowance under section 25 of the Act, her late husband shall, for the purposes of section 25(2)(b) of the Act, be treated as having been entitled to child benefit in respect of any child in respect of whom—

- (a) a previous husband of that woman by a marriage which ended with that husband's death was, immediately before his death, entitled or treated as entitled to child benefit; and
- (b) that woman was entitled or treated as entitled to child benefit immediately before the death of her late husband.

(3) For the purposes of paragraph (2)(a) or (b), if the death there referred to occurred before 4th April 1977 the previous husband or, as the case may be, the woman, shall be treated as entitled to child benefit in respect of the child in question if he or she satisfied the relevant requirement in section 25(2)(c) of the Act as originally enacted.

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(2) relevant amending instruments are S.I. 1973/428 , 1973/432.

### **Provisions relating to age addition for persons not in receipt of a retirement pension**

17.—(1) For the purposes of section 40(2) of the Act (age addition for persons over the age of 80 who are not entitled to a retirement pension but are in receipt of certain other payments) the prescribed enactments and instruments shall be—

- (a) Chapter IV or V of Part II of the Act;
- (b) any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975;
- (c) any Service Pensions Instrument;
- (d) any scheme made under the Personal Injuries (Emergency Provisions) Act 1939 or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939;
- (e) any 1914-1918 War Injuries Scheme;
- (f) section 36 of the Act (non-contributory invalidity pension);
- (g) section 37 of the Act (invalid care allowance).

(2) The following shall be additional conditions of entitlement to age addition under section 40(2) of the Act:—

- (a) that the person concerned is in receipt of a payment under an enactment or instrument specified in paragraph (1), by reference to which the amount of a retirement pension would, if it were otherwise payable to him, be extinguished by virtue of any regulations made under section 85(1)(a) of the Act (overlapping benefits); and
- (b) that had he made a claim for it, he would have been entitled to a retirement pension of any category by virtue of any provision of the Act or any regulations made under it.

### **Revocations**

18. The Regulations specified in column (1) of Schedule 2 to these regulations are hereby revoked to the extent stated in column (3) of that Schedule.

11th June 1979

*Patrick Jenkin*  
Secretary of State for Social Services

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## SCHEDULE 1

Method of treating former spouse's contributions as those of the beneficiary so as to entitle him to a Category A retirement pension

1. In this Schedule—
  - (a) A is the number of the former spouse's qualifying years up to (exclusive) the year in which the marriage terminated;
  - (b) B is the number of years in the former spouse's working life up to (exclusive) the year in which the marriage terminated.
2. The number of years arrived at under this paragraph is that which is obtained by—
  - (a) taking the number of years in the beneficiary's working life between (inclusive) the first year in that working life and (inclusive) the year in which the marriage terminated, multiplying it by
 
$$\frac{A}{B}$$
 and rounding up the result to the next whole number;
 and
  - (b) adding to that number of years the number of the beneficiary's qualifying years falling after the year in which the marriage terminated.
3. The number of years arrived at under this paragraph is that which is obtained by—
  - (a) taking the number of years in the beneficiary's working life between (inclusive) the year in which the marriage took place and (inclusive) the year in which the marriage terminated, multiplying it by
 
$$\frac{A}{B}$$
 and rounding up the result to the next whole number; and
  - (b) adding to that number of years the number of the beneficiary's qualifying years falling—
    - (i) before the year in which the marriage took place; and
    - (ii) after that in which the marriage terminated.

## SCHEDULE 2

Regulation 18

### REGULATIONS REVOKED

<i>Regulations revoked</i> (1)	<i>Reference</i> (2)	<i>Extent of revocation</i> (3)
The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1974	S.I. 1974/2059	The whole of the regulations
The Social Security (Miscellaneous Amendments and Transitional Provisions) Regulations 1975	S.I. 1975/566	Regulation 3

<i>Regulations revoked (1)</i>	<i>Reference (2)</i>	<i>Extent of revocation (3)</i>
The Social Security (Non-Contributory Invalidity Pension) Regulations 1975	S.I. 1975/1058	Regulation 14
The Social Security (Non-Contributory Invalidity Pension) Amendment Regulations 1975	S.I. 1975/1166	Regulation 2
The Social Security (Invalid Care Allowance) Regulations 1976	S.I. 1976/409	Regulation 21
The Social Security (Miscellaneous Amendments) Regulations 1976	S.I. 1976/1736	Regulation 2
The Social Security (Child Benefit Consequential) Regulations 1977	S.I. 1977/342	Regulation 4
The Social Security (Miscellaneous Amendments) Regulations 1977	S.I. 1977/1509	Regulation 2
The Social Security (Widow's Benefit and Retirement Pensions) Amendment Regulations 1978	S.I. 1978/392	The whole of the regulations
The Social Security (Benefit) (Transitional) Regulations 1979	S.I. 1979/345	Regulation 6

### EXPLANATORY NOTE

These Regulations are made for the purpose only of consolidating the Regulations they revoke and, accordingly, no reference of them has been made to the National Insurance Advisory Committee.

These Regulations contain provisions relating to widow's benefits, retirement pensions and age addition under the Social Security Act 1975 and the Social Security Pensions Act 1975.

These Regulations relate to: elections to be treated as not having retired (regulations 2 and 3); days to be treated as days of increment when retirement has been deferred (regulation 4); modification of certain provisions of the Social Security Pensions Act 1975 concerning deferred retirement (regulation 5); entitlement to benefit at reduced rates where contribution conditions are not fully satisfied (regulation 6); circumstances in which a widow shall be treated as entitled to a widow's pension for purposes of entitlement to a Category B retirement pension ( regulation 7); substitution in certain cases of the contribution record of a former spouse to give title to a Category A retirement pension (regulation 8); conditions for entitlement to Category C and Category D retirement pensions (regulations 9 and 10); benefits for wives and widows of men over pensionable age on 5th July 1948 (regulations 11 to 15); provision in relation to entitlement to child benefit for the purposes of a widowed mother's allowance (regulation 16); and age addition for persons not in receipt of a retirement pension ( regulation 17).

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