
Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the The Social Security (Graduated Retirement Benefit) Regulations 2005. (See end of Document for details)

STATUTORY INSTRUMENTS

2005 No. 454

SOCIAL SECURITY

The Social Security (Graduated Retirement Benefit) Regulations 2005

<i>Made</i>	- - - -	<i>3rd March 2005</i>
<i>Laid before Parliament</i>		<i>10th March 2005</i>
<i>Coming into force</i>	- -	<i>6th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 62(1)(a) and (c) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992 ^{M1}, and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of regulations 3 and 4, and paragraphs 2, 3, 7, 13, 14 and 18 of Schedule 1 in so far as they apply to regulation 4, should not be referred to it ^{M2}, the remainder of this Instrument containing only regulations made under provisions introduced by section 297 of, and Schedule 11 to, the Pensions Act 2004 ^{M3} and being made before the end of the period of 6 months beginning with the coming into force of those provisions ^{M4}, hereby makes the following Regulations:

Marginal Citations

- M1** 1992 c. 4. Section 62(1) was amended by section 131(1) of, and paragraph 7 of Schedule 4 to, the [Pensions Act 1995 \(c. 26\)](#) and by section 297 of, and paragraph 17 of Schedule 11 to, the [Pensions Act 2004 \(c. 35\)](#).
- M2** See sections 170 and 173(1)(b) of the [Social Security Administration Act 1992 \(c. 5\)](#).
- M3** 2004 c. 35.
- M4** See section 173(5)(a) of the Social Security Administration Act 1992.

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Social Security (Graduated Retirement Benefit) Regulations 2005 and shall come into force on 6th April 2005.

(2) Regulation 4 and paragraphs 3(2) and (3) and 13(2) and (3) of Schedule 1 in so far as they apply to that regulation, shall not have effect in relation to incremental periods beginning before 6th April 2005.

(3) In these Regulations—

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“the 1965 Act” means the National Insurance Act 1965 ^{M5};

“the Administration Act” means the Social Security Administration Act 1992 ^{M6};

“the Benefits Act” means the Social Security Contributions and Benefits Act 1992 and references to Schedule 5 are to Schedule 5 to that Act ^{M7};

“incremental period” shall have the meaning ascribed to it in paragraph 4(6) of Schedule 1.

Marginal Citations

M5 1965 c. 51. Section 36 was repealed by the [Social Security Act 1973 \(c. 38\)](#) with effect from 6th April 1975 but continues in force by virtue of regulations made under Schedule 3 to the [Social Security \(Consequential Provisions\) Act 1975 \(c. 18\)](#) or under Schedule 3 to the [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#).

M6 1992 c. 5.

M7 [Schedule 5](#) was amended by the Pensions Acts 1995 and 2004.

Amendment of the 1965 Act

2.—(1) The 1965 Act shall be amended in accordance with the following paragraphs.

(2) In section 36 (graduated retirement benefit)—

(a) for subsection (4), there shall be substituted the following—

“(4) Where a person's entitlement to graduated retirement benefit is deferred—

(a) Schedule 2 to the Social Security (Graduated Retirement Benefit) (No.2) Regulations 1978 ^{M8}; and

(b) Schedule 1 to the 2005 Regulations,

shall have effect and both those Schedules shall be construed and have effect as if they were part of this subsection.

(4A) For the purposes of subsection (4), a person's entitlement to graduated retirement benefit is deferred—

(a) where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement is deferred within the meaning in section 55(3) of the Social Security Contributions and Benefits Act 1992 ^{M9}, if and so long as his entitlement to such a pension is deferred;

(b) where he is treated under subsection (7) as receiving a Category A or a Category B retirement pension at a nominal weekly rate, if and so long as he does not become entitled to graduated retirement benefit by reason only of not satisfying the conditions in section 1 of the Social Security Administration Act 1992 (entitlement to benefit dependent on claim),

and in relation to graduated retirement benefit, “period of deferment” shall be construed accordingly.”

(b) in subsection (8), after the definition of “the Act”, there shall be inserted the following definition—

““the 2005 Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005 ^{M10}.”

(3) In section 37(1) (special provisions as to graduated retirement benefit for widows and widowers), after the words “Subject to the provisions of this section” there shall be inserted the words “and to Schedule 1 to the 2005 Regulations”.

Marginal Citations

M8 [S.I.1978/393](#); the relevant amending instrument is [S.I.1989/1642](#).

M9 [Section 55](#) was substituted by the Pensions Act 2004, section 297(1).

M10 [S.I.2005/454](#).

Amendment of Schedule 2 to the Social Security (Graduated Retirement Benefit) (No.2) Regulations 1978 and saving

3.—(1) Subject to paragraph (2), in Schedule 2 to the Social Security (Graduated Retirement Benefit) (No.2) Regulations 1978—

- (a) the word “and” at the end of paragraph 1(a) and paragraph 1(b); and
- (b) paragraphs 2 to 4,

shall be omitted.

(2) Schedule 2 to those Regulations shall have effect as if the amendments made by paragraph (1) had not been made in the case of—

- (a) periods of deferment (as defined by section 36(4A) of the 1965 Act) ending before 6th April 2005; and
- (b) incremental periods beginning before that date.

Schedule 1

4. Schedule 1 to these Regulations (which makes further provision replacing section 36(4) of the 1965 Act) shall have effect.

Modification of Schedule 1 in transitional cases

5. Schedule 1 shall be modified by Schedule 2 in relation to transitional cases and in this regulation, a “transitional case” means a case where a person's entitlement to graduated retirement benefit is deferred and the period of deferment begins before 6th April 2005 and continues on or after that day.

Signed by authority of the Secretary of State for Work and Pensions.

Malcolm Wicks
Minister of State, Department for Work and
Pensions

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SCHEDULE 1

Regulation 4

FURTHER PROVISIONS REPLACING SECTION 36(4) OF THE NATIONAL INSURANCE ACT 1965: INCREASES OF GRADUATED RETIREMENT BENEFIT AND LUMP SUMS

PART 1

INCREASE AND LUMP SUM WHERE ENTITLEMENT TO RETIREMENT PENSION IS DEFERRED

Scope

1. This Part applies only in respect of a person who is deferring entitlement to graduated retirement benefit by virtue of section 36(4A)(a) of the 1965 Act ^{M11}.

Marginal Citations

M11 1965 c. 51.

Increase or lump sum where pensioner's entitlement is deferred

2.—(1) Where a person's entitlement to a Category A or Category B retirement pension is deferred and that person elects, on claiming his pension either—

- (a) that paragraph 1 of Schedule 5 (increase of pension) is to apply in relation to the period of deferment, paragraph 3 of this Schedule shall also apply in relation to that period;
- (b) that paragraph 3A of Schedule 5 (lump sum) is to apply in relation to the period of deferment, paragraph 5 of this Schedule shall also apply in relation to that period.

(2) The reference to an election in sub-paragraph (1) includes an election a person is treated as having made under paragraph A1(2) of Schedule 5.

Increase where pensioner's entitlement is deferred

3.—(1) This paragraph applies where—

- (a) entitlement to a Category A or Category B retirement pension is deferred and the period of deferment is less than 12 months; or
- (b) paragraph 2(1)(a) applies.

(2) The rate of the person's graduated retirement benefit shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 4 but only if that amount is enough to increase the rate of the benefit by at least 1 per cent.

Calculation of increment

4.—(1) A person is entitled to an increment under this paragraph for each complete incremental period in his period of deferment.

(2) The amount of the increment for an incremental period shall be #th per cent. of the weekly rate of the graduated retirement benefit to which the person would have been entitled for the period if his entitlement to a Category A or Category B retirement pension had not been deferred.

(3) For the purposes of sub-paragraph (2), the weekly rate of graduated retirement benefit shall be taken to include any increase in the weekly rate of that benefit and the amount of the increment

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in respect of such an increase shall be #th per cent. of its weekly rate for each incremental period in the period of deferment beginning on the day the increase occurred.

(4) Amounts under sub-paragraphs (2) and (3) shall be rounded to the nearest penny, taking any $\frac{1}{2}p$ as nearest to the next whole penny.

(5) Where an amount under sub-paragraph (2) or (3) would, apart from this sub-paragraph, be a sum less than $\frac{1}{2}p$, the amount shall be taken to be zero, notwithstanding any provision of the Benefits Act, the Administration Act or the Pension Schemes Act 1993 ^{M12}.

(6) In this paragraph, “incremental period” means any period of six days which are treated by the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 ^{M13} as days of increment for the purposes of paragraph 2 of Schedule 5 in relation to the person and pension in question.

(7) Where one or more orders have come into force under section 150 of the Administration Act during the period of deferment, the rate 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.

Marginal Citations

M12 1993 c. 48.

M13 S.I.1979/642; the relevant amending instruments are S.I.1989/1642, 1991/2742, 1992/1695, 1996/1345 and 1999/2422.

Lump sum where pensioner's entitlement is deferred

5.—(1) This paragraph applies where paragraph 2(1)(b) applies.

(2) The person is entitled to an amount calculated in accordance with paragraph 6 (a “lump sum”).

Calculation of lump sum

6.—(1) The lump sum is the accrued amount for the last accrual period beginning during the period of deferment.

(2) In this paragraph—

“accrued amount” means the amount calculated in accordance with sub-paragraph (3);

“accrual period” means any period of seven days beginning with the day of the week on which Category A or Category B retirement pension would have been payable to a person in accordance with regulation 22(3) of, and paragraph 5 of Schedule 6 to, the Social Security (Claims and Payments) Regulations 1987 ^{M14}, if his entitlement to a retirement pension had not been deferred, where that day falls within the period of deferment.

(3) The accrued amount for an accrual period for a person is—

$$(A + P) \times \left(1 + \frac{R}{100}\right)$$

where—

A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period of deferment, zero);

P is, subject to sub-paragraph (5), the amount of graduated retirement benefits to which the person would have been entitled for the accrual period if his entitlement to a Category A or Category B retirement pension had not been deferred;

R is—

(a) a percentage rate two per cent. higher than the Bank of England base rate; or

(b) if a higher rate is prescribed for the purposes of paragraphs 3B and 7B of Schedule 5, that higher rate.

(4) For the purposes of sub-paragraph (3), any change in the Bank of England base rate is to be treated as taking effect—

(a) at the beginning of the accrual period immediately following the accrual period during which the change took effect; or

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(b) if regulations under paragraph 3B(4) of Schedule 5 so provide, at such other time as may be prescribed in those Regulations.

(5) Regulation 3 of the Social Security (Deferral of Retirement Pensions) Regulations 2005^{M15} shall have effect for the purposes of this paragraph in like manner to graduated retirement benefit as it does to retirement pension in the calculation of the lump sum under paragraph 3B of Schedule 5.

Marginal Citations

M14 [S.I.1987/1968](#); the relevant amending instruments are [S.I.2000/1483](#) and 2002/2441.

M15 [S.I.2005/453](#).

Increase or lump sum where pensioner's deceased spouse [^{F1}or civil partner] has deferred entitlement

7.—(1) This paragraph applies where—

- (a) a [^{F2}widow, widower or surviving civil partner] (“W”) is entitled to a Category A or Category B retirement pension;
- (b) W was married to [^{F3}or in a civil partnership with] the other party to the marriage [^{F4}or civil partnership] (“S”) when S died;
- (c) S's entitlement to a Category A or Category B retirement pension was deferred when S died; and
- (d) S's entitlement had been deferred throughout the period of 12 months ending with the day before S's death.

(2) Where W elects—

- (a) that paragraph 4 of Schedule 5 (increase of pension) is to apply in relation to the period of deferment, paragraph 8 of this Schedule shall also apply in relation to that period;
- (b) that paragraph 7A of Schedule 5 (lump sum) is to apply in relation to the period of deferment, paragraph 9 of this Schedule shall also apply in relation to that period.

(3) The reference to an election in sub-paragraph (2) includes an election W is treated as having made under paragraph 3C(3) of Schedule 5.

Textual Amendments

F1 Words in Sch. 1 para. 7 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(2)(a)**

F2 Words in Sch. 1 para. 7(1)(a) substituted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(2)(b)**

F3 Words in Sch. 1 para. 7(1)(b) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(2)(c)(i)**

F4 Words in Sch. 1 para. 7(1)(b) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(2)(c)(ii)**

Increase where pensioner's deceased spouse [^{F5}or civil partner] has deferred entitlement

8.—(1) This paragraph applies where a [^{F6}widow, widower or surviving civil partner] is entitled to a Category A or Category B retirement pension, was married to [^{F7}or in a civil partnership with] the other party to the marriage [^{F8}or civil partnership] when S died and one of the following conditions is met—

- (a) S was entitled to graduated retirement benefit with an increase under this Schedule;
- (b) paragraph 7(2)(a) applies; or
- (c) paragraph 7 would apply to W but for the fact that the condition in sub-paragraph (1)(d) of that paragraph is not met.

(2) The increase in the weekly rate of W's graduated retirement benefit shall, in a case to which sub-paragraph (1) applies, be determined in accordance with section 37 of the 1965 Act ^{M16} as continued in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975 ^{M17} or under Schedule 3 to the Social Security (Consequential Provisions) Act 1992 ^{M18}.

Textual Amendments

- F5** Words in Sch. 1 para. 8 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(3)(a)**
- F6** Words in Sch. 1 para. 8(1) substituted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(3)(b)(i)**
- F7** Words in Sch. 1 para. 8(1) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(3)(b)(ii)**
- F8** Words in Sch. 1 para. 8(1) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(3)(b)(iii)**

Marginal Citations

- M16** 1965 c. 51.
- M17** 1975 c. 18.
- M18** 1992 c. 6.

Entitlement to lump sum where pensioner's deceased spouse [^{F9}or civil partner] has deferred entitlement

9.—(1) This paragraph applies where paragraph 7(2)(b) applies.

(2) W is entitled to an amount calculated in accordance with paragraph 10 (a “widowed person's [^{F10}or surviving civil partner's] lump sum”).

Textual Amendments

- F9** Words in Sch. 1 para. 9 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(4)(a)**

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F10 Words in Sch. 1 para. 9(2) inserted (5.12.2005) by Social Security (Retirement Pensions and Graduated Retirement Benefit) (Widowers and Civil Partnership) Regulations 2005 (S.I. 2005/3078), regs. 1(1)(c), 3(4)(b)

Calculation of widowed person's [^{F11}or surviving civil partner's] lump sum

10.—(1) The widowed person's [^{F12}or surviving civil partner's] lump sum is the accrued amount for the last accrual period beginning during the period which—

- (a) began at the beginning of S's period of deferment; and
- (b) ended on the day before S's death.

(2) In this paragraph—

“S” means the other party to the marriage [^{F13}or civil partnership];

“accrued amount” means the amount calculated in accordance with sub-paragraph (3);

“accrual period” means any period of seven days beginning with the day of the week on which Category A or Category B retirement pension would have been payable to S in accordance with regulation 22(3) of, and paragraph 5 of Schedule 6 to, the Social Security (Claims and Payments) Regulations 1987 ^{M19}, if his entitlement to a retirement pension had not been deferred, where that day falls within S's period of deferment.

(3) The accrued amount for an accrual period for W is—

(3) The accrued amount for an accrual period for W is—

$$(A + P) \times \sqrt[5]{1 + \frac{R}{100}}$$

where—

A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period mentioned in sub-paragraph (1), zero);

P is, subject to sub-paragraph (5), one-half of the graduated retirement benefit to which S would have been entitled for the accrual period if his entitlement had not been deferred during the period mentioned in sub-paragraph (1);

R is—

- (a) a percentage rate two per cent. higher than the Bank of England base rate; or
- (b) if a higher rate is prescribed for the purposes of paragraphs 3B and 7B of Schedule 5, that higher rate.

(4) For the purposes of sub-paragraph (3), any change in the Bank of England base rate is to be treated as taking effect—

- (a) at the beginning of the accrual period immediately following the accrual period during which the change took effect; or
- (b) if regulations under paragraph 7B(4) of Schedule 5 so provide, at such other time as may be prescribed.

(5) Regulation 3 of the Social Security (Deferral of Retirement Pensions) Regulations 2005 ^{M20} shall have effect for the purposes of this paragraph in like manner to graduated retirement benefit as it does to retirement pension in the calculation of the lump sum under paragraph 7B of Schedule 5.

(6) In any case where—

- (a) there is a period between the death of S and the date on which W becomes entitled to a Category A or Category B retirement pension; and
- (b) one or more orders have come into force under section 150 of the Administration Act during that period,

the amount of the lump sum shall be increased in accordance with that order or those orders.

Textual Amendments

- F11** Words in Sch. 1 para. 10 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(5)(a)**
- F12** Words in Sch. 1 para. 10(1) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(5)(b)**
- F13** Words in Sch. 1 para. 10(2) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(5)(c)**

Marginal Citations

- M19** [S.I.1987/1968](#); the relevant amending instruments are [S.I.2000/1483](#) and [2002/2441](#).
- M20** [S.I.2005/453](#).

PART 2

INCREASE OR LUMP SUM WHERE PERSON IS TREATED AS RECEIVING RETIREMENT PENSION AT A NOMINAL WEEKLY RATE

Scope

11. This Part applies only in respect of a person who is deferring entitlement to graduated retirement benefit by virtue of section 36(4A)(b) of the 1965 Act ^{M21}.

Marginal Citations

- M21** [1965 c. 51](#).

Choice between increase and lump sum

12.—(1) Where the period of deferment is at least 12 months, a person shall, on becoming entitled to graduated retirement benefit, elect that—

- (a) paragraph 13; or
- (b) paragraph 15,

is to apply in respect of that period.

(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 prescribed in regulations under paragraph A1(1) of Schedule 5.

(3) If no election under sub-paragraph (1) is made within the period referred to in sub-paragraph (2)(b), the person is to be treated as having made an election under sub-paragraph (1)(b).

(4) A person who has made an election under sub-paragraph (1) (including one that the person is treated by sub-paragraph (3) as having made) may change the election in the circumstances and within the time specified in regulations made under paragraph A1(4) of Schedule 5.

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Increase

13.—(1) This paragraph applies where—

- (a) the period of deferment is less than 12 months; or
- (b) the person has made an election under paragraph 12(1)(a) in respect of the period of deferment.

(2) The rate of the person's graduated retirement benefit shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 14 but only if that amount is enough to increase the rate of the benefit by at least one per cent.

Calculation of increment

14.—(1) A person is entitled to an increment under this paragraph for each complete incremental period in the period of deferment.

(2) The amount of the increment for an incremental period shall be #th per cent. of the weekly rate of the graduated retirement benefit to which the person would have been entitled for the period if his entitlement to graduated retirement benefit had not been deferred.

(3) For the purposes of sub-paragraph (2), the weekly rate of graduated retirement benefit shall be taken to include any increase in the weekly rate of that benefit and the amount of the increment in respect of such an increase shall be #th per cent. of its weekly rate for each incremental period in the period of deferment beginning on the day the increase occurred.

(4) Amounts under sub-paragraphs (2) and (3) shall be rounded to the nearest penny, taking any $\frac{1}{2}$ p as nearest to the next whole penny.

(5) Where an amount under sub-paragraph (2) or (3) would, apart from this sub-paragraph, be a sum less than $\frac{1}{2}$ p, the amount shall be taken to be zero, notwithstanding any provision of the Benefits Act, the Administration Act or the Pension Schemes Act 1993 ^{M22}.

(6) Where one or more orders have come into force under section 150 of the Administration Act during the period of deferment, the rate 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.

Marginal Citations

M22 1993 c. 48.

Lump sum

15.—(1) This paragraph applies where paragraph 12(1)(b) applies.

(2) The person is entitled to an amount calculated in accordance with paragraph 16 (a “lump sum”).

Calculation of lump sum

16.—(1) The lump sum is the accrued amount for the last accrual period beginning during the period of deferment.

(2) In this paragraph—

“accrued amount” means the amount calculated in accordance with sub-paragraph (3);

“accrual period” means any period of seven days beginning with the day of the week on which Category A or Category B retirement pension would have been payable to a person in accordance with regulation 22(3) of, and paragraph 5 of Schedule 6 to, the Social Security

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(Claims and Payments) Regulations 1987^{M23}, if he had been entitled to it, where that day falls within the period of deferment.

(3) The accrued amount for an accrual period for a person is—

(3) The accrued amount for an accrual period for a person is—

$$(A + P) \times \sqrt[n]{1 + \frac{R}{100}}$$

where—

A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period of deferment, zero);

P is, subject to sub-paragraph (5), the amount of graduated retirement benefit to which the person would have been entitled for the accrual period if he had been entitled to it;

R is—

- a percentage rate two per cent. higher than the Bank of England base rate; or
- if a higher rate is prescribed for the purposes of paragraphs 3B and 7B of Schedule 5, that higher rate.

(4) For the purposes of sub-paragraph (3), any change in the Bank of England base rate is to be treated as taking effect—

- at the beginning of the accrual period immediately following the accrual period during which the change took effect; or
- if regulations under paragraph 3B(4) of Schedule 5 so provide, at such other time as may be prescribed in those Regulations.

(5) Regulation 3 of the Social Security (Deferral of Retirement Pensions) Regulations 2005^{M24} shall have effect for the purposes of this paragraph in like manner to graduated retirement benefit as it does to retirement pension in the calculation of the lump sum under paragraph 3B of Schedule 5.

Marginal Citations

M23 [S.I.1987/1968](#); the relevant amending instruments are [S.I.2000/1483](#) and [2002/2441](#).

M24 [S.I.2005/453](#).

Choice between increase and lump sum where person's deceased spouse [^{F14}or civil partner] has deferred entitlement to graduated retirement benefit

17.—(1) This paragraph applies where—

- a [^{F15}widow, widower or surviving civil partner] (“W”) is entitled to a Category A or Category B retirement pension;
- W was married to [^{F16}or in a civil partnership with] the other party to the marriage [^{F17}or civil partnership] (“S”) when S died;
- S's entitlement to graduated retirement benefit was deferred when S died; and
- S's entitlement had been deferred throughout the period of 12 months ending with the day before S's death.

(2) W shall elect either that—

- paragraph 18; or
- paragraph 19,

is to apply in respect of S's period of deferment.

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

- on the date W claims her Category A or Category B retirement pension; or
- within the period prescribed in regulations under paragraph A1(1) of Schedule 5.

(4) If no election under sub-paragraph (2) is made within the period referred to in sub-paragraph (3)(b), the person is to be treated as having made an election under sub-paragraph (2)(b).

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(5) A person who has made an election under sub-paragraph (1) (including one that the person is treated by sub-paragraph (3) as having made) may change the election in the circumstances and within the time specified in regulations made under paragraph A1(4) of Schedule 5.

Textual Amendments

- F14** Words in Sch. 1 para. 17 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(6)(a)**
- F15** Words in Sch. 1 para. 17(1)(a) substituted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(6)(b)**
- F16** Words in Sch. 1 para. 17(1)(b) substituted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(6)(c)(i)**
- F17** Words in Sch. 1 para. 17(1)(b) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(6)(c)(ii)**

Increase where person's deceased spouse [^{F18} or civil partner] has deferred entitlement to graduated retirement benefit

18.—(1) This paragraph applies where a [^{F19}widow, widower or surviving civil partner] is entitled to graduated retirement benefit, was married to [^{F20}or in a civil partnership with] the other party to the marriage [^{F21}or civil partnership] when S died and one of the following conditions is met—

- (a) S was entitled to graduated retirement benefit with an increase under this Schedule;
- (b) W is a widow or widower to whom paragraph 17 applies and has made an election under paragraph 17(2)(a); or
- (c) paragraph 17 would apply to W but for the fact that the condition in sub-paragraph (1)(d) of that paragraph is not met.

(2) The increase in the weekly rate of W's graduated retirement benefit shall, in a case to which sub-paragraph (1) applies, be determined in accordance with section 37 of the 1965 Act as continued in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975^{M25} or under Schedule 3 to the Social Security (Consequential Provisions) Act 1992^{M26}.

Textual Amendments

- F18** Words in Sch. 1 para. 18 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(7)(a)**
- F19** Words in Sch. 1 para. 18(1) substituted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(7)(b)(i)**
- F20** Words in Sch. 1 para. 18(1) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(7)(b)(ii)**
- F21** Words in Sch. 1 para. 18(1) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(7)(b)(iii)**

Marginal Citations

M25 1975 c. 18.

M26 1992 c. 6.

Entitlement to lump sum where person's deceased spouse [^{F22}or civil partner] has deferred entitlement to graduated retirement benefit

19.—(1) This paragraph applies where paragraph 17(2)(b) applies.

(2) W is entitled to an amount calculated in accordance with paragraph 20 (a “widowed person's [^{F23}or surviving civil partner's] lump sum“).

Textual Amendments

F22 Words in Sch. 1 para. 19 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), 3(8)(a)

F23 Words in Sch. 1 para. 19(2) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), 3(8)(b)

Calculation of widowed person's [^{F24}or surviving civil partner's] lump sum

20.—(1) The widowed person's [^{F25}or surviving civil partner's] lump sum is the accrued amount for last accrual period beginning during the period which—

- (a) began at the beginning of S's period of deferment; and
- (b) ended on the day before S's death.

(2) In this paragraph—

“S” means the other party to the marriage [^{F26}or civil partnership];

“accrued amount” means the amount calculated in accordance with sub-paragraph (3);

“accrual period” means any period of seven days beginning with the day of the week on which Category A or Category B retirement pension would have been payable to S in accordance with regulation 22(3) of, and paragraph 5 of Schedule 6 to, the Social Security (Claims and Payments) Regulations 1987, if he had been entitled to it, where that day falls within S's period of deferment.

(3) The accrued amount for an accrual period for W is—

(3) The accrued amount for an accrual period for W is—

$$(A + P) \times \sqrt[7]{1 + \frac{R}{100}}$$

where—

A is the accrued amount for the previous accrual period (or, in the case of the first accrual period beginning during the period mentioned in sub-paragraph (1), zero);

P is, subject to sub-paragraph (5), one-half of the graduated retirement benefit to which S would have been entitled for the accrual period if he had been entitled to it during the period mentioned in sub-paragraph (1);

R is—

- (a) a percentage rate two per cent. higher than the Bank of England base rate; or
- (b) if a higher rate is prescribed for the purposes of paragraphs 3B and 7B of Schedule 5, that higher rate.

(4) For the purposes of sub-paragraph (3), any change in the Bank of England base rate is to be treated as taking effect—

- (a) at the beginning of the accrual period immediately following the accrual period during which the change took effect; or

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(b) if regulations under paragraph 7B(4) of Schedule 5 so provide, at such other time as may be prescribed.

(5) Regulation 3 of the Social Security (Deferral of Retirement Pensions) Regulations 2005 ^{M27} shall have effect for the purposes of this paragraph in like manner to graduated retirement benefit as it does to retirement pension in the calculation of the lump sum under paragraph 7B of Schedule 5.

(6) In any case where—

(a) there is a period between the death of S and the date on which W becomes entitled to graduated retirement benefit; and

(b) one or more orders have come into force under section 150 of the Administration Act during that period,

the amount of the lump sum shall be increased in accordance with that order or those orders.

Textual Amendments

F24 Words in Sch. 1 para. 20 inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(9)(a)**

F25 Words in Sch. 1 para. 20(1) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(9)(a)**

F26 Words in Sch. 1 para. 20(2) inserted (5.12.2005) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), regs. 1(1)(c), **3(9)(b)**

Marginal Citations

M27 [S.I.2005/453](#).

[^{F27} **Transitional provision relating to widower's entitlement to increase of graduated retirement benefit or lump sum**

20ZA. In the case of a widower who attains pensionable age before 6th April 2010, paragraphs 17 to 19 shall not apply unless he was over pensionable age when his wife died.

Textual Amendments

F27 Sch. 1 paras. 20ZA-20ZB inserted (5.12.2005 in so far as not already in force) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), reg. 1(1)(a)(c), **3(10)**

Transitional provision relating to civil partner's entitlement to increase of graduated retirement benefit or lump sum

20ZB. In the case of a civil partner who attains pensionable age before 6th April 2010, paragraphs 17 to 19 shall not apply unless he or she was over pensionable age when his or her civil partner died.]

Textual Amendments

- F27** Sch. 1 paras. 20ZA-20ZB inserted (5.12.2005 in so far as not already in force) by [Social Security \(Retirement Pensions and Graduated Retirement Benefit\) \(Widowers and Civil Partnership\) Regulations 2005 \(S.I. 2005/3078\)](#), reg. 1(1)(a)(c), **3(10)**

PART 3

SUPPLEMENTARY

Supplementary

21. Any lump sum calculated under paragraph 6, 10, 16 or 20 must be rounded to the nearest penny, taking any $\frac{1}{2}$ p as nearest to the next whole penny above.

SCHEDULE 2

Regulation 5

MODIFICATION OF SCHEDULE 1

1. In paragraph 2(1), for paragraph (b) there shall be substituted the following paragraph—
 - “(b) that paragraph 1 of Schedule 5 is to apply in relation to so much of the period of deferment which falls before the first day of the first accrual period (as defined by paragraph 3B(2) of that Schedule) beginning on or after 6th April 2005 (“the first part”) and that paragraph 3A of that Schedule is to apply in relation to the remainder of the period of deferment (“the second part”), paragraph 3 of this Schedule shall apply in relation to the first part and paragraph 5 of this Schedule shall apply in relation to the second part.”.
2. In paragraph 3(2), for the words from “that amount” to the end of the sub-paragraph, there shall be substituted—
 - “(a) there are at least 7 incremental periods in the period of deferment;
 - (b) there are at least 5 incremental periods in the period of deferment and the amount of the increment for at least one of those periods is calculated in accordance with paragraph 4(2); or
 - (c) paragraph 2(1)(b) applies and there is at least one incremental period before the first day of the first accrual period.”.
3. At the end of paragraph 6(1), there shall be added the words “ or, if greater, the amount equal to the total amount of graduated retirement benefit which would have been payable to the person during the period of 12 months ending with the last day of the period of deferment if his entitlement had not been deferred ”.
4. In paragraph 7—
 - (a) at the end of sub-paragraph (1)(d), there shall be added the words “ and throughout the period of 12 months falling after 5th April 2005 ”;
 - (b) for sub-paragraph (2)(b) there shall be substituted the following sub-paragraph—
 - “(b) that paragraph 4 of Schedule 5 is to apply in relation to so much of S's period of deferment which falls before the first day of the first accrual period (as defined

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by paragraph 7B(2) of that Schedule) beginning on or after 6th April 2005 (“the first part”) and that paragraph 7A of that Schedule is to apply in relation to the remainder of the period of deferment (“the second part”), paragraph 8 of this Schedule shall apply in relation to the first part and paragraph 9 of this Schedule shall apply in relation to the second part.”.

5. At the end of paragraph 10(1), there shall be added the words “ or, if greater, the amount equal to the total amount of graduated retirement benefit which would have been payable to S during the period of 12 months ending with the day before his death if his entitlement had not been deferred ”.

6. In paragraph 12(1)—

(a) after the words “12 months” there shall be inserted the words “ and at least 12 months of that period falls after 5th April 2005 ”;

(b) for sub-paragraph (b), there shall be substituted the following sub-paragraph—

“(b) that paragraph 13 is to apply in relation to so much of the period of deferment which falls before the first day of the first accrual period (as defined in paragraph 16(2)) for the purposes of paragraph 15 and that paragraph 14 is to apply in relation to the remainder of the period of deferment.”.

7. In paragraph 13(2), for the words from “that amount” to the end of the sub-paragraph, there shall be substituted—

“(a) there are at least 7 incremental periods in the period of deferment;

(b) there are at least 5 incremental periods in the period of deferment and the amount of the increment for at least one of those periods is calculated in accordance with paragraph 14(2); or

(c) the person has made (or is treated as having made) an election under paragraph 12(1) (b) and there is at least one incremental period before the first day of the first accrual period.”.

8. At the end of paragraph 16(1), there shall be added the words “ or, if greater, the amount equal to the total amount of graduated retirement benefit to which the person would have been entitled for the period of 12 months ending with the last day of the period of deferment if his entitlement had not been deferred ”.

9. In paragraph 17—

(a) at the end of sub-paragraph (1)(d), there shall be added the words “ and throughout the period of 12 months falling after 5th April 2005 ”;

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

“(b) that paragraph 18 is to apply in relation to so much of S's period of deferment which falls before the first day of the first accrual period (as defined in paragraph 20(2)) for the purposes of paragraph 19 and that paragraph 19 is to apply in relation to the remainder of that period of deferment.”.

10. At the end of paragraph 20(1), there shall be added the words “ or, if greater, the amount equal to the total amount of graduated retirement benefit which would have been payable to S during the period of 12 months ending with the day before his death if his entitlement had not been deferred ”.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make provision relating to the deferment of graduated retirement benefit arising from changes in the rules relating to the deferment of retirement pension made by the Pensions Acts 1995 (c. 26) and 2004 (c. 35) (“the 2004 Act”).

Regulations 2 to 4 and Schedule 1 repeal and re-enact the existing rules relating to increments of graduated retirement benefit where entitlement to either retirement pension or to graduated retirement benefit alone is deferred, so that they correspond with the rules for deferment of entitlement to retirement pension enacted in Schedule 5 to the Social Security Contributions and Benefits Act 1992 (c. 4) as amended by Schedule 11 to the 2004 Act.

The two changes introduced by Schedule 1 are an increase in the incremental rate from 1/7th per cent. to #th per cent. and the introduction of a new reward of a lump sum, both for those who have deferred entitlement to their graduated retirement benefit for at least 12 months and for widows and widowers where their deceased spouses deferred entitlement to their graduated retirement benefit for at least 12 months as at the date of death. Those who also had deferred entitlement to retirement pension for at least 12 months can only get the same reward for graduated retirement benefit as they elected to receive for their retirement pension, otherwise, an election can be made. The election is to be made in the manner and within the time specified in regulations made under powers introduced by the 2004 Act. The lump sum is to be calculated on the basis of the amount of graduated retirement benefit foregone in the period of deferment with interest accrued on it at a rate 2% above the Bank of England base rate.

Regulation 1(2) provides that the increase in the incremental rate is to not to take effect in relation to incremental periods beginning before 6th April 2005.

Regulation 5 and Schedule 2 modify Schedule 1 in so far as it applies to cases where a person was deferring his graduated retirement benefit before 6th April 2005 and continued deferring it on or after that date.

A full Regulatory Impact Assessment has not been produced for this Instrument as it has no impact on the costs of business.

Status:

Point in time view as at 05/12/2005.

Changes to legislation:

There are currently no known outstanding effects for the The Social Security (Graduated Retirement Benefit) Regulations 2005.