

## 2005 No. 2677

### SOCIAL SECURITY

#### The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005

*Made* - - - - - 26th September 2005

*Laid before Parliament* 3rd October 2005

*Coming into force* - 6th April 2005

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SOCIAL SECURITY (**DEFERRAL OF RETIREMENT PENSIONS, SHARED  
ADDITIONAL PENSION AND GRADUATED RETIREMENT BENEFIT**)  
(MISCELLANEOUS PROVISIONS) REGULATIONS 2005

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The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 62(1)(a) and (c), 122(1), 136(5)(a) and (b), 137(1) and 175(1) and (3) to (5) of, and paragraphs A1(1) and (3) and 3C(2) and (4) of Schedule 5 and paragraphs 1(1) and (3) of Schedule 5A to, the Social Security Contributions and Benefits Act 1992(**a**), sections 5(1)(i) and 189(1), (4) and (6) of the Social Security Administration Act 1992(**b**), sections 9(1), 10(3) and (6), 11(1), 18(1)(a), 79(1) and (4) and 84 of the Social Security Act 1998(**c**), paragraphs 3(1), 4(4) and (6), 20(1) and (3) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(**d**), sections 15(6)(a) and (b) and 17(1) of the State Pension Credit Act 2002(**e**) and paragraph 27 of Schedule 11 to the Pensions Act 2004(**f**), and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals to make regulations 2 to 5 and 7 to 13 should not be referred to it(**g**) and in so far as these Regulations concern housing benefit and council tax benefit, after consultation with organisations appearing to the Secretary of State to be representative of the authorities concerned(**h**), hereby makes the following Regulations:

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- (a) 1992 c. 4. Section 62(1) is amended by paragraph 7 of Schedule 4 to the Pensions Act 1995 (c. 26), paragraph 17 of Schedule 11 to the Pensions Act 2004 (c. 35) and by S.I. 2005/2053. Section 175(1) is amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer of Functions Act”). Section 175(1), (3) and (4) is applied to powers conferred by the State Pension Credit Act 2002 (c. 16) by section 19(1) of that Act. Paragraphs A1 and 3C of Schedule 5 are inserted and Schedule 5A added respectively by paragraphs 4, 9 and 15 of Schedule 11 to the Pensions Act 2004. Paragraph 3C of Schedule 5 is amended to apply to civil partners by S.I. 2005/2053. Sections 122(1) and 137(1) are cited for the definitions of “prescribe” and “prescribed” respectively.
  - (b) 1992 c. 5.
  - (c) 1998 c. 14. Section 18(1) is amended by paragraph 29 of Schedule 7 to the Transfer of Functions Act. Section 84 is cited for the definition of “prescribe”.
  - (d) 2000 c. 19. Paragraph 23(1) of Schedule 7 is cited for the definition of “prescribed”.
  - (e) Section 17(1) is cited for the definitions of “prescribed” and “regulations”.
  - (f) 2004 c. 35.
  - (g) See sections 170 and 173(1)(b) of the Social Security Administration Act 1992. Paragraph 104 of Schedule 7 to the Social Security Act 1998, section 73 of the Child Support, Pensions and Social Security Act 2000 and paragraph 20 of Schedule 2 to the State Pension Credit Act 2002 respectively added the relevant provisions of those Acts to the list of “relevant enactments” in respect of which regulations must normally be referred to the Committee. Section 173(7) defines “regulations”.
  - (h) See section 176(1)(a) of the Social Security Administration Act 1992.

## PART 1

### GENERAL

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005 and shall come into force on 6th April 2006.

(2) In these Regulations—

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(a);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(b).

## PART 2

### DEFERRAL OF RETIREMENT PENSIONS AND SHARED ADDITIONAL PENSION

#### Interpretation

2.—(1) In this Part—

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

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

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

#### Timing of election

3.—(1) The period for making an election under—

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

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

is, subject to paragraph (4), three months starting on the date shown on the notice issued by the Secretary of State following the claim for retirement pension or shared additional pension, confirming that the elector is required to make that election.

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

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

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(a) S.I.1987/1968.

(b) S.I. 1987/1971.

(c) “W” and “S” have the same meaning for the purposes of this sub-paragraph as for the purposes of paragraph 3C of Schedule 5.

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

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

#### **Manner of making election**

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

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

#### **Change of election**

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

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

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

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

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

(4) The period specified for the purposes of paragraph (3) is, subject to paragraph (5), three months starting on the date shown on the written notification issued by the Secretary of State to the elector, confirming the election which the elector has made or is treated as having made.

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

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

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

Words substituted in  
reg. 5(2)(b) by reg. 4 of  
S.I. 2006/516 as from  
6.4.06.

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

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

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

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

[Regulation 6 amends regulation 2 of S.I. 2005/469.]

[Regulation 7 amends Schedule 1 and 2 of S.I. 2005/454.]

[Regulation 8 inserts regulation 21A into S.I. 1987/1968.]

[Regulation 9 amends various regulations in S.I. 1999/991.]

[Regulation 10 amends regulations 4, 7 and 8 of S.I. 2001/1002.]

[Regulation 11 amends regulations 2, 36 and Schedule 5 of S.I. 1987/1971.]

[Regulation 12 amends regulations 2, 28 and Schedule 5 of S.I. 1992/1814.]

[Regulation 13 amends regulation 1 and 18 of S.I. 2002/1792.]

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

26th September 2005

*Stephen C. Timms*  
Minister of State,  
Department for Work and Pensions

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision relating to changes to the regime for deferring entitlement to state pension made by the Pensions Act 2004 (c. 35) which provide for a choice between increments and a lump sum for those who have deferred their entitlement to retirement pension, shared additional pension or graduated retirement benefit, for 12 months or more.

Part 2 makes provision in relation to deferral of retirement pension and shared additional pension. Regulation 3 prescribes the period within which an election between increments and lump sums of retirement pension and shared additional pension must be made and regulation 4 prescribes the manner in which such elections must be made. Regulation 5 prescribes the circumstances and manner in which, and time within which, changes to such elections can be made. Regulation 6 omits a transitional provision relating to deferral of retirement pension.

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

Part 4 relates to payments. Regulation 8 amends the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968). It provides that when a person chooses a lump sum he may elect to be paid it in the tax year following the tax year which would otherwise be the year for assessing tax on the lump sum.

Part 5 relates to decisions. Regulation 9 amends the Child Support and Social Security (Decisions and Appeals) Regulations 1999 (S.I. 1999/991). Paragraphs (3), (4) and (5) provide for the revision or supersession of a state pension credit decision when a person becomes entitled to a lump sum. Paragraph (3) also provides for revision of a retirement pension, shared additional pension or graduated retirement benefit decision when an election is changed pursuant to provision made in Parts 2 and 3 of these Regulations. Paragraph (6) provides that a claim for such a pension or benefit following deferment may be decided pending an election for increments or a lump sum.

Regulation 10 amends the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (S.I. 2001/1002) to provide for the revision or supersession of a housing benefit or council tax benefit decision when a person becomes entitled to a lump sum.

Part 6 amends various benefit regulations in so far as they relate to deferral of retirement pension, shared additional pension and graduated retirement benefit. Regulations 11 and 12 amend respectively the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) and the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) as modified by the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 (S.I. 2003/325) for persons who have attained the qualifying age for state pension credit and regulation 13 amends the State Pension Credit Regulations 2002 (S.I. 2002/1792).

In regulations 11 to 13, paragraph (2) prescribes a definition of the Graduated Retirement Benefit Regulations for the purposes of those benefits, paragraph (3) provides an exception to the notional income rule in those benefits where a person having deferred their pension or benefit in favour of an increase of pension or benefit, changes that election in favour of a lump sum and paragraph (4) provides that an amount of capital equal to the amount of a payment on account of a lump sum or the amount of the lump sum itself, is to be disregarded in the calculation of income in the case of state pension credit and capital in the case of housing benefit and council tax benefit.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities and voluntary bodies.