

1978 No. 393

SOCIAL SECURITY

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

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

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

**Citation, commencement and interpretation**

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

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

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

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

(5) In these regulations—

“the Act” means the Social Security Act 1975;

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

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

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(a) 1975 c. 18.  
(b) 1975 c. 60.  
(c) 1975 c. 14.  
(d) 1965 c. 51.

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

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

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

(6) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

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

<sup>1</sup>Reg. 2 substituted by reg. 2 of S.I. 1995/2606 as from 1.11.95.

►<sup>1</sup>**Application of sections 150 and 155 of the Social Security Administration Act 1992**

2. The provisions of sections 150 and 155 of the Social Security Administration Act 1992(e), (annual up-rating of benefits and effect of alteration of rates of benefit) shall apply to—

- (a) the amount of graduated retirement benefit payable for each unit of graduated contributions;
- (b) increases of such benefit under the provisions of Schedule 2 to these Regulations; and
- (c) any addition under section 37(1) of the 1965 Act (addition to weekly rate of retirement pension for ►<sup>2</sup>widows, widowers and surviving civil partners◄ to the amount of such benefit,

<sup>2</sup>Words in reg. 2(c) substituted by reg. 2(2) of S.I. 2005/3078 as from 5.12.05.

as if that amount, those increases and that addition were included in the sums mentioned in section 150(1) and (3) and graduated retirement benefit were a benefit referred to in section 155(2).◄

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

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

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

- (a) to bring them into conformity with the provisions of the Act and the Pensions Act and to enable them to have effect as if contained in the scheme of social security benefits established by those Acts;
- (b) to replace section 36(4) of the 1965 Act (increase of graduated retirement benefit in cases of deferred retirement) with provisions corresponding to those of paragraphs 1 to 3 of Schedule 1 to the Pensions Act; ►<sup>3</sup>◄
- (c) to extend section 37 of the 1965 Act (increase of woman’s retirement pension by reference to her late husband’s graduated retirement benefit) to men and their late wives ►<sup>3</sup>; ►<sup>4</sup>◄

<sup>3</sup>Words omitted in reg. 3(2)(b), word & reg 3(2)(d) inserted by reg. 2(3) of S.I. 2005/3078 as from 5.12.05.

<sup>4</sup>Word in reg. 3(2)(c) omitted by reg. 3(a) of S.I. 2014/76 as from 13.3.14.

(a) S.I. 1975/557.

(b) S.I. 1976/409.

(c) S.I. 1978/391.

(d) 1889 c. 63.

(e) 1992 c. 5.

(f) 1973 c. 38. [repeal took effect (6.4.75) by virtue of art. 2(1) of S.I. 1974/163 (c. 3) as amended by art. 2(4)(a) of S.I.1974/823 (c. 14).]

- (d) to extend section 37 of the 1965 Act (increase of women's retirement pension by reference to her late husband's graduated retirement benefit) to civil partners and surviving civil partners◀ ▶<sup>1</sup>and
- (e) to extend section 37 of the 1965 Act to men and their late husbands, and women and their late wives.◀

<sup>1</sup>Word & sub-para. (e) inserted by reg. 3(b) of S.I. 2014/76 as from 13.3.14.

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

#### **Modification of regulations concerning graduated retirement benefit**

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

#### **Revocations**

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

9th March 1978

*David Ennals*  
Secretary of State for Social Services

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(a) S.I. 1961/557.

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

(c) S.I. 1976/409.

## SCHEDULES

## SCHEDULE 1

Regulation 3(3)

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

**36.**—(1) Subject to the provisions of the Act, graduated retirement benefit shall be payable to any person who is over pensionable age and who <sup>1</sup>is entitled to a retirement pension<sup>◀</sup>, and shall be an increase in the weekly rate of his retirement pension equal to <sup>2</sup>12.79 pence<sup>◀</sup> for each unit, ascertained in accordance with subsections (2) and (3) of this section, of the graduated contributions properly paid by him as an insured person, the result being rounded to the nearest whole penny, taking  $\frac{1}{2}$ p as nearest to the next whole penny above.

<sup>1</sup>Words substituted in s. 36(1) by reg. 5(2)(a)(i) of S.I. 1989/1642 as from 1.10.89.

<sup>2</sup>Amount in s. 36(1) substituted by art. 12(1)(b) of S.I. 2013/574 as from 8.4.13.

<sup>3</sup>Words substituted in s. 36(2) by reg. 3(1) of S.I. 2009/2206 as from 6.4.10.

(2) For the purpose of graduated retirement benefit <sup>3</sup>, a unit of graduated contributions shall be £7.50<sup>◀</sup> of graduated contributions shall be £7.50 for men and £9.00 for women.

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

<sup>4</sup>S. 36(4) substituted and 36(4A) inserted by reg. 2(2)(a) of S.I. 2005/454 as from 6.4.05.

<sup>4</sup>(4) Where a person's entitlement to graduated retirement benefit is deferred—

- (a) Schedule 2 to the Social Security (Guaranteed Retirement Benefit) (No. 2) Regulations 1978<sup>(a)</sup>; 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<sup>(b)</sup>, 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.<sup>◀</sup>

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

<sup>5</sup>Words substituted in s. 36(7) by reg. 5(2)(a)(iii) of S.I. 1989/1642 as from 1.10.89.

<sup>6</sup>Words inserted in s. 36(7) by reg. 3 of S.I. 1995/2606 as from 1.11.95.

(7) A person who has attained pensionable age and <sup>5</sup>has claimed<sup>◀</sup> but is not entitled to a retirement pension <sup>6</sup>(except a person who is not so entitled because of an election under section 54(1) of the Social Security Contributions and Benefits Act 1992 or because he has withdrawn his claim)<sup>◀</sup>, shall be treated for the purposes of the foregoing provisions of this section as receiving a retirement pension at a nominal weekly rate:

(a) S.I. 1978/393; the relevant amending instrument is S.I. 1989/1642.

(b) Section 55 was substituted by the Pensions Act 2004, section 297(1).

Provided that—

- (a) this subsection shall not confer any right to graduated retirement benefit on a person who would be entitled to a retirement pension but for some provision of the Act or of regulations disqualifying him for receipt of it; and
- (b) regulations may provide that any right by virtue of this subsection to benefit at less than a specified weekly rate shall be satisfied either altogether or for a specified period by the making of a single payment of the prescribed amount.

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

- “graduated contributions” means graduated contributions under the National Insurance Act 1965 or the National Insurance Act 1959(a);
- “insured person” means insured person under the National Insurance Act 1965 or the National Insurance Act 1946(b);
- “retirement pension” means retirement pension of any category;
- “the Act” means the Social Security Act 1975;
- ▶<sup>1</sup>“the 2005 Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005(c)◀

<sup>1</sup>Defn. in s. 36(8) inserted by reg. 2(2)(b) of S.I. 2005/454 as from 6.4.05.

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

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

Provided that nothing in this subsection shall affect the construction of any reference to section 36 or 37 of this Act or of that Act or to any of the subsections of those sections; and any increase in the weekly rate of a person’s retirement pension, to the extent that it is attributable to subsection (4) of this section, shall be left out of account in determining the weekly rate of that pension for the purposes of ▶<sup>2</sup>section 30B(3) of the Social Security Contributions and Benefits Act 1992(d) regulations 11(1) and 18(7) of the Social Security (Incapacity Benefit) (Transitional Regulations 1995(e) and ▶<sup>3</sup>regulation 10(6) of the Jobseeker’s Allowance (Transitional Provisions) Regulations 1996◀(f) (rates of incapacity benefit and jobseeker’s allowance in transitional cases for persons over pensionable age).◀

<sup>2</sup>Words substituted by reg. 18(a) of S.I. 1996/1345 as from 7.10.96.

<sup>3</sup>Words substituted in s. 36(9) by reg. 5 of S.I. 1997/454 as from 21.3.97.

<sup>4</sup>S. 36(10) omitted by art. 3(3) of S.I. 1999/2422 as from 6.9.99. Special provisions as to graduated retirement benefit for widows and widowers.

<sup>5</sup>Words inserted in s. 37(1) by reg. 2(3) of S.I. 2005/454 as from 6.4.05.

<sup>6</sup>Paras. (a) to (c) substituted & words omitted in s. 37(1) by reg. 4(2) & (3) of S.I. 2009/2206 as from 6.4.10.

<sup>7</sup>Words inserted in s. 37(1) by reg. 2(1) of S.I. 2014/76 as from 13.3.14.

<sup>8</sup>Words inserted and words substituted in s. 37(1) by reg. 2(4)(a)(i) & (ii) of S.I. 2005/3078 as from 5.12.05.

(10) ▶<sup>4</sup>◀

**37.—**(1) Subject to the provisions of this section ▶<sup>5</sup>and to Schedule 1 to the 2005 Regulations◀<sup>6</sup>, where a person, having paid graduated contributions as an insured person, dies leaving a widow, widower▶<sup>7</sup>, surviving same sex spouse◀ or surviving civil partner and the survivor—

- (a) has attained pensionable age at the time of the death; or
- (b) remains that person’s widow, widower▶<sup>7</sup>, surviving same sex spouse◀ or surviving civil partner (as the case may be) when attaining pensionable age,◀

then section 36 of this Act shall apply as if the increase in the weekly rate of the retirement pension of the ▶<sup>8</sup>widow, widower▶<sup>7</sup>, surviving same sex spouse◀ or surviving civil partner◀ as the case may be, provided for by subsection (1) thereof were the amount there specified by reference to his or her graduated contributions with the addition of one-half of the weekly rate of the graduated retirement benefit of his or her former spouse ▶<sup>8</sup>or civil partner◀ (any amount including ½p being rounded to the next whole penny above); ▶<sup>6</sup>◀

*For uprating percentage applying to additions to graduated retirement benefit under s. 37(1) above, see table in volume 1 at page 1.7753.*

(a) 1959 c. 47.

(b) 1946 c. 67.

(c) S.I. 2005/454

(d) 1992 c. 4; section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(e) S.I. 1995/3276.

(f) S.I. 1996/2567.

## Sch. 1

*Para. 37(1) is reproduced as it remains in force "where the survivor attained pensionable age before 6th April 2010". See S.I. 2009/2206 for details at page 3.8701.*

<sup>1</sup>Words inserted in s. 37(1) by reg. 2(3) of S.I. 2005/454 as from 6.4.05.

37.—(1) Subject to the provisions of this section ►<sup>1</sup>and to Schedule 1 to the 2005 Regulations◀—

- (a) where a man, having paid graduated contributions as an insured person, dies leaving a widow, and she either has attained pensionable age at the time of his death or remains his widow when she attains that age; or
- (b) where a woman, having paid graduated contributions as an insured person, dies after 5th April 1979 leaving a widower, and she and he have both attained pensionable age at the time of her death ►<sup>2</sup>; or
- (c) where a person, having paid graduated contributions as an insured person, dies on or after 5th December 2005 leaving a surviving civil partner, and they have both attained pensionable age at the time of his or her death, ►<sup>3</sup>or
- (d) where a man, having paid graduated contributions as an insured person, dies leaving a widower, and they have both attained pensionable age at the time of his death; or
- (e) where a woman, having paid graduated contributions as an insured person, dies leaving a widow, and they have both attained pensionable age at the time of her death,◀◀

<sup>2</sup>Para. (c) inserted and words substituted and inserted in s. 37(1) by reg. 2(4)(a)(i) & (ii) of S.I. 2005/3078 as from 5.12.05.

<sup>3</sup>Reg. 37(1)(d)(e) inserted by S.I. 2014/76 as from 13.3.14.

then section 36 of this Act shall apply as if the increase in the weekly rate of the retirement pension of the ►<sup>2</sup>widow, widower or surviving civil partner◀ as the case may be, provided for by subsection (1) thereof were the amount there specified by reference to his or her graduated contributions with the addition of one-half of the weekly rate of the graduated retirement benefit of his or her former spouse ►<sup>2</sup>or civil partner◀ (any amount including ½p being rounded to the next whole penny above); and where a man, having paid graduated contributions as an insured person, dies after 5th April 1979 leaving a widow and she has attained pensionable age at the time of his death ►<sup>4</sup>◀, section 36 shall apply as if the increase in the weekly rate of her retirement pension provided for by subsection (1) thereof were one-half of the weekly rate of the graduated retirement benefit of her former husband (any amount including ½p being rounded to the next whole penny above).

<sup>4</sup>Words omitted in s. 37(1) by reg. 4(3) of S.I. 2009/2206 as from 6.4.10.

(2) For the purposes of subsection (1) of this section, the weekly rate of the deceased spouse's ►<sup>5</sup>or civil partner's◀ graduated retirement benefit shall (whether or not he or she was receiving or entitled to receive any such benefit) be taken to have been the weekly rate appropriate to the amount of graduated contributions paid by him or her (determined as if any orders which have come into force under section 124 of the Act (increases in rates of benefit) since the date of the deceased spouse's ►<sup>5</sup>or civil partner's◀ death had come into force before that date), excluding any addition under section 37(1) of this Act, but including any addition under section 36(4), thereof (and for the purpose of calculating the addition under section 36(4) taking into account any addition under section 37(1)); and where at his or her death he or she had attained pensionable age but had ►<sup>6</sup>not◀ become entitled to graduated retirement benefit, that addition shall be computed as if he or she had ►<sup>6</sup>◀ become entitled to graduated retirement benefit immediately before his or her death.

<sup>5</sup>Words inserted in s. 37(2), (3) and (4) by reg. 2(4)(a)-(d) of S.I. 2005/3078 as from 5.12.05.

<sup>6</sup>Words substituted & deleted in s. 37(2) by reg. 5(2)(b) of S.I. 1989/1642 as from 1.10.89.

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

Provided that, if the termination of the marriage ►<sup>4</sup>or civil partnership◀ by death occurred after he or she attained pensionable age, he or she shall for the purposes of this subsection be treated as not having attained pensionable age until the date of that termination.

(4) A person's right to graduated retirement benefit by virtue of this section in respect of a spouse he or she marries ►<sup>5</sup>, or as the case may be, a civil partner he or she forms a civil partnership with,◀ after attaining pensionable age shall be subject to such additional conditions as may be prescribed; and except as may be provided by regulations a person more than once married ►<sup>5</sup>or who has formed a civil partnership more than once or who has been both married and a civil partner◀ shall not be entitled for the same period to any graduated retirement benefit by virtue of this section in respect of more than one of his or her spouses ►<sup>5</sup>or civil partners◀

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

## SCHEDULE 2

Regulation 3(3)

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

† The provisions of this Schedule are applied under, and as part of, s. 36(4) as set out in Sch. 1 above, in replacement, as from 6.4.79, of the provisions of the former section 36(4) applying before that date.

1. Where a person ▶<sup>1</sup>defers his entitlement to a Category A or Category B retirement pensions◀ after attaining pensionable age, or has made an election by virtue of section 30(3) of the Act and has not revoked it, then for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement\*.-

<sup>1</sup>Words substituted in para. 1 by reg. 5(3)(a) of S.I. 1989/1642 as from 1.10.89.

- (a) there shall be added to the amount of the graduated contributions properly paid by him as an insured person one-half of the aggregate graduated retirement benefit which would have been payable to him for any period before 6th April 1979 (disregarding the effect of any order made under section 124 of the Act) if he had retired from regular employment on attaining pensionable age and had received that benefit for the whole of the period without any interruption or abatement:  
Provided that, in computing the addition to be made in accordance with this paragraph in the case of a person who has made an election by virtue of section 30(3) of the Act (re-entry into regular employment) or the corresponding provisions of any earlier Act, no account shall be taken of any period between 6th April 1975 and 5th April 1979 (both dates inclusive) which falls between the date of that election and the date of his previous retirement\*; ▶<sup>2</sup>◀ -

<sup>2</sup>Paras. 1b-4 deleted by reg. 3(1) of S.I. 2005/454, but are reproduced under new explanatory text for certain cases as per reg. 3(2) *ibid*.

\*Under reg. 5(3)(a) of S.I. 1989/1642, the word "entitlement" is required to be substituted (1.10.89) for the word "retirement" in paragraph 1 of Schedule 2.

*paras 1(b) - 4 were omitted (6.4.05) by S.I. 2005/454, reg. 3(i), but are reproduced below for certain cases - see reg. 3(2) *ibid*.*

and

- (b) the rate of his graduated retirement benefit shall be increased by an amount equal to the increments to which he is entitled under paragraph 3 below, but only if either-
- (i) that amount is enough to increase the rate of the benefit by at least 1 per cent., or
- (ii) he has attained pensionable age before 6th April 1979, and has either deferred his retirement\* before that date, or made an election by virtue of section 30(3) of the Act taking effect before that date or both;

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

<sup>3</sup>Words deleted from para. 2 by reg. 5(3)(b) of S.I. 1989/1642 as from 1.10.89.

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

<sup>4</sup>Words substituted in para. 3 by reg. 5(3)(c) of S.I. 1989/1642 as from 1.10.89.

(2) In this Schedule-

- (a) "incremental period" means any period of 6 days which are treated by the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations 1978(a)

(a) S.I. 1978/392.

as days of increment for the purposes of Schedule 1 to the social Security Pensions Act 1975(a) as amended by section 3 of the Social Security (Miscellaneous Provisions) Act 1977(b) in relation to the person and the pension in question; and

<sup>1</sup>Head (2)(b) substituted in para. 3 by reg. 5(3)(c) of S.I. 1989/1642 as from 1.10.89.

▶<sup>1</sup>(b) 'period of enhancement' in relation to any person means the period which begins on the same day as the period of deferment and ends on the same day as that period ends or, if earlier, on the day before the fifth anniversary of the beginning of that period.◀

(3) Subject to paragraph 4 below, the amount of the increment for any such incremental period shall be 1/7th per cent. of the weekly rate of the graduated retirement benefit to which that person would have been entitled for the period if he ▶<sup>2</sup>had not deferred his entitlement to a Category A or Category B retirement pension◀, the result being rounded to the nearest whole penny, taking 1/2p as nearest to the next whole penny above.

<sup>2</sup>Words substituted in paras. 3 & (4) by reg. 5(3)(c) & (d) of S.I. 1989/1642 as from 1.10.89.

(4) Where one or more orders have come into force under section 124 of the Act (increases in rates of benefit) during the ▶<sup>2</sup>period of enhancement◀ the rate of the benefit for any incremental period shall be determined as if the order of orders had come into force before the beginning of the ▶<sup>2</sup>period of enhancement◀.

4.—(1) Where during a person's ▶<sup>2</sup>period of enhancement◀ there are one or more increases (other than any made by such an order as is mentioned in paragraph 3(4) above) in the weekly rate of graduated retirement benefit which would have been payable to him during that period if he had not ▶<sup>2</sup>deferred his entitlement to a Category A or Category B retirement pension◀ or made an election by virtue of section 30(3) of the act, the total amount of increment for the ▶<sup>2</sup>period of enhancement◀ shall be—

- (a) 1/7th per cent., for each incremental period in the ▶<sup>2</sup>period of enhancement◀, of the weekly rate of the graduated retirement benefit to which he would have been entitled immediately ▶<sup>2</sup>after attaining pensionable age if he had not deferred his entitlement to a Category A or Category B retirement pension◀; plus
- (b) in respect of each such increase, 1/7th per cent., of its weekly rate for each incremental period in the period beginning with the day on which that increase occurred and ending with ▶<sup>2</sup>the same day the period of enhancement ends◀.

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

*Uprating percentages applicable to increments of graduated retirement benefit under successive Uprating Orders are included in the table in volume 1 at pages 1.7751-3.*

## SCHEDULE 3

Regulation 4

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

#### Graduated retirement benefit when retirement is deferred

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

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- (a) 1975 c. 60.
  - (b) 1977 c. 5.

Provided that where, in any case, the aggregate amount of the graduated contributions paid by him in that year exceeded the aggregate amount of graduated contributions which would have been payable by him in that part of the year which ended with the income tax week, in which he attained pensionable age if, in each income tax week beginning in that part of the year, a graduated contribution as for an employment which was not a non-participating employment had been payable by him in respect of a weekly payment of remuneration made in that week at a level equal to the upper limit on the amount of weekly pay then taken into account under section 4(1)(c) of the 1965 Act as amended<sup>(a)</sup>, the excess shall be treated as having been paid after the day on which he attained that age.

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

3. For the purposes of section 37 of the 1965 Act (special provisions as to graduated retirement benefit for widows and widowers) a person who has been married more than once ►<sup>1</sup>or has formed more than one civil partnership or who has been both married and a civil partner◄ and who is entitled to graduated retirement benefit for any period by virtue of the provisions of that section in respect of a second or subsequent spouse ►<sup>1</sup>or civil partner◄ shall not be precluded from entitlement to graduated retirement benefit for that period by virtue of that section in respect of a former spouse ►<sup>1</sup>or civil partner◄, but shall be so entitled to the extent only that it is payable to him or her by the application of section 36(4) of the 1965 Act in respect of any period before the death of the first-mentioned spouse ►<sup>1</sup>or civil partner◄.

<sup>1</sup>Words inserted in para. 3 of s. 3 by reg. 2(5)(a) & (b) of S.I. 2005/3078 as from 5.12.05.

### **EXPLANATORY NOTE**

*(This Note is not part of the Regulations.)*

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

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

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

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

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

