

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(a), 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(b), the remainder of this Instrument containing only regulations made under provisions introduced by section 297 of, and Schedule 11 to, the Pensions Act 2004(c) and being made before the end of the period of 6 months beginning with the coming into force of those provisions(d), hereby makes the following Regulations:

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 4(2) and (3) and 14(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.

Words in reg. 1(2) substituted by reg. 2 of S.I. 2005/846 as from 6.4.05.

(3) In these Regulations—

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

“the Administration Act” means the Social Security Administration Act 1992(f);

“the Benefits Act” means the Social Security Contributions and Benefits Act 1992 and references to Schedule 5 are to Schedule 5 to that Act(g);

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

(a) 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).

(b) See sections 170 and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

(c) 2004 c. 35.

(d) See section 173(5)(a) of the Social Security Administration Act 1992.

(e) 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 Section 36 was repealed by the Social Security Act 1973 (c. 38) with effect from 6th April 1975 but continues in force by virtue of regulations made under Schedule 3 to the Social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).

(f) 1992 c. 5.

(g) Schedule 5 was amended by the Pensions Acts 1995 and 2004.

[Regulation 2 makes various amendments to the National Insurance Act 1965.]

[Regulation 3(1) makes amendments to Schedule 2 of S.I. 1978/393.]

(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.

3rd March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

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(a).

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 ▶◀—

- (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.

Words omitted in para. 2(1) by reg. 7(2)(a) of S.I. 2005/2677 as from 6.4.06.

(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 1/5th 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 in respect of such an increase shall be 1/5th per cent. of its weekly rate for

(a) 1965 c. 51.

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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(a).

(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(b) 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.

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(c), 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—

$$(A + P) \times \sqrt[52]{\frac{1 + R}{100}}$$

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 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.

(a) 1993 c. 48.

(b) S.I. 1979/642; the relevant amending instruments are S.I. 1989/1642, 1991/2742, 1992/1695.

(c) S.I. 1987/1968; the relevant amending instruments are S.I. 2000/1483 and 2002/2441.

(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 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(a) 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.

Increase or lump sum where pensioner's deceased spouse or civil partner◀ has deferred entitlement

Words in heading to paras. 7 & 8 inserted and words substituted & inserted in para. 7(1)(a) & (b) & 8(1) by reg. 3(2) - (3) of S.I. 2005/3078 as from 5.12.05.

7.—(1) This paragraph applies where—

- (a) a widow, widower or surviving civil partner◀ (“W”) is entitled to a Category A or Category B retirement pension;
- (b) W was married to or in a civil partnership with◀ the other party to the marriage 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.

Increase where pensioner's deceased spouse or civil partner◀ has referred entitlement

8.—(1) This paragraph applies where a widow, widower or surviving civil partner◀ is entitled to a Category A or Category B retirement pension, was married to or in a civil partnership with◀ the other party to the marriage 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(b) as continued in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975(c) or under Schedule 3 to the Social Security (Consequential Provisions) Act 1992(d).

(a) S.I.2005/453
(b) 1965 c. 51.
(c) 1975 c. 18.
(d) 1992 c. 6.

Words in headings to paras. 9 and 10 and in sub-paras. 9(2), 10(1) and (10)(2) inserted by regs. 3(4) and 3(5) of S.I. 2005/3078 as from 5.12.05.

Entitlement to lump sum where pensioner's deceased spouse 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 or surviving civil partner's lump sum”).

Calculation of widowed person's or surviving civil partner's lump sum

10. —(1) The widowed person's 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 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(a), 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—

$$(A + P) \times \sqrt[52]{\frac{1 + R}{100}}$$

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(b) 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) S.I.1987/1968; the relevant amending instruments are S.I.2000/1483 and 2002/2441.

(b) S.I. 2005/453.

- (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.

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^(a).

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 after claiming graduated retirement benefit prescribed in paragraph 20B,

and in the manner prescribed in paragraph 20C. ◀

(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, manner and within the period prescribed, in paragraph 20D. ◀

Sub-para. (2) and words in sub-para. (4) of para. 12 substituted by reg. 7(2)(b) of S.I. 2005/2677 as from 6.4.06.

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 1/5th 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.

(a) 1965 c. 51.

(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 1/5th 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 ½p 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 ½p, the amount shall be taken to be zero, notwithstanding any provision of the Benefits Act, the Administration Act or the Pension Schemes Act 1993(a).

(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.

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 (Claims and Payments) Regulations 1987(b), 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—

$$(A + P) \times \sqrt[52]{\frac{1 + R}{100}}$$

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) 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

(a) 1993 c. 48.

(b) S.I.1987/1968; the relevant amending instruments are S.I.2000/1483 and 2002/2441.

- (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(a) 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.

Choice between increase and lump sum where person's deceased spouse or civil partner has deferred entitlement to graduated retirement benefit

(a) Words in heading to paras. 17 & 18 inserted and words substituted and inserted in para. 17(1)(a) & (b) & 18(1) and sub-para. (b) by reg. 3(6) & (7) of S.I. 2005/3078 as from 5.12.05.

17.—(1) This paragraph applies where—

- (a) a widow, widower or surviving civil partner (“W”) is entitled to a Category A or Category B retirement pension;
- (b) W was married to or in a civil partnership with the other party to the marriage or civil partnership (“S”) when S died;
- (c) S’s entitlement to graduated retirement benefit 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) W shall elect either that—

- (a) paragraph 18; or
- (b) 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 within the period prescribed in paragraph 20B and in the manner prescribed in paragraph 20C.

Regs. 17(3) & (5) and words in reg. 17(4) substituted by reg. 7(1)(c) of S.I. 2005/2677 as from 6.4.06.

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

(5) A person who has made an election under sub-paragraph (2) (including one that the person is treated by sub-paragraph (4) as having made) may change the election in the circumstances, manner and within the period prescribed in paragraph 20D.

Increase where person's deceased spouse or civil partner has deferred entitlement to graduated retirement benefit

See note (a) above.

18.—(1) This paragraph applies where a widow, widower or surviving civil partner is entitled to graduated retirement benefit, was married to or in a civil partnership with the other party to the marriage 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, widower or surviving civil partner 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(b) or under Schedule 3 to the Social Security (Consequential Provisions) Act 1992(c).

(a) S.I.2005/453.
(b) 1975 c. 18.
(c) 1992 c. 6.

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Words in headings to paras. 19 and 20 and in paras. 19 and 20(1) and (2) inserted by reg. 3(8) and (9)(a)-(b) of S.I. 2005/3078 as from 5.12.05.

Entitlement to lump sum where person's deceased spouse 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 or surviving civil partner's lump sum”).

Calculation of widowed person's or surviving civil partner's lump sum

20.—(1) The widowed person's 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 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—

$$(A + P) \times \sqrt[52]{1 + \frac{R}{100}}$$

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
- (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(a) 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,

(a) S.I.2005/453

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

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

Paras. 20ZA & 20ZB inserted in Sch. 1 by reg. 3(10) of S.I. 2005/3078 as from 6.4.06.

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.

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. ◀

PART 2A

ELECTIONS UNDER PART 2

Paras. 20A to 20D inserted in Sch. 1 by reg. 7(2)(d) of S.I. 2005/2678 as from 6.4.06.

Scope and interpretation

20A.—(1) This Part applies in respect of elections which a person makes or is treated as having made under Part 2.

(2) In this Part, “elector” means the person who may make an election under paragraph 12(1) or 17(2).

Timing of election

20B.—(1) The period for making an election under paragraph 12(1) is, subject to sub-paragraph (4), three months starting on the date shown on the notice issued by the Secretary of State following the claim for graduated retirement benefit, confirming that the elector is required to make that election.

(2) The period for making an election under paragraph 17(2) is, subject to sub-paragraph (4), three months starting on the date shown on the notice issued by the Secretary of State following W's claim for a Category A or Category B retirement pension or, if later, the date of S's death, confirming that the elector is required to make that election(a).

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

(4) The periods specified in sub-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 paragraph shall prevent the making of an election on or after claiming graduated retirement benefit or, as the case may be, Category A or Category B retirement pension, but before the issue of the notice referred to in sub-paragraph (1) or (2).

Manner of making election

20C. An election under paragraph 12(1) or 17(2) 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

(a) “W” and “S” have the same meaning for the purposes of this sub-paragraph as for the purposes of paragraph 17 of Schedule 1 to these Regulations.

election must be made in accordance with sub-paragraph (a), by telephone call to the telephone number specified by the Secretary of State.

Change of election

20D.—(1) Subject to sub-paragraphs (2) and (6), this paragraph applies in the case of an election which—

- (a) has been made under paragraph 12(1) or 17(2); or
- (b) has been treated as made under paragraph 12(3) or 17(4).

(2) This paragraph 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 Social Security (Claims and Payments) Regulations 1987.

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

(4) The period specified for the purposes of sub-paragraph (3) is, subject to sub-paragraph (5), three months after 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 sub-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 sub-paragraph (1) may not be changed where—

- (a) there has been a previous change of election under this paragraph in respect of the same period of deferment;
- (b) the application is to change the election to one under paragraph 12(1)(a) or 17(2)(a) and any amount paid to him by way of, or on account of, a lump sum pursuant to paragraph 15 or 19, has not been repaid in full to the Secretary of State within the period specified in sub-paragraph (4) or, as the case may be, (5); or
- (c) the application is to change the election to one under paragraph 12(1)(b) or 17(2)(b) and the amount actually paid by way of an increase of graduated retirement benefit, 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.

(7) For the purposes of sub-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 12(1)(b) or 17(2)(b) and sub-paragraph (6)(c) does not apply, any amount paid by way of an increase of graduated retirement benefit, 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 15 or 19.

(9) An application under sub-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 paragraph (a), by telephone call to the telephone number specified by the Secretary of State.◀

Words in para.
20D(2)(b) of Sch. 1
substituted by reg. 5 of
S.I. 2005/454 as from
6.4.06.

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 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. ▶◀

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—

Para. 5 omitted by reg.
7(3) of S.I. 2005/2677
as from 6.4.06.

“(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.”.

Para. 10 omitted by reg.
7(3) of S.I. 2005/2677
as from 6.4.06.

10. ►◄

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 1/5th 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 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.

