STATUTORY INSTRUMENTS

1978 No. 1123

SOCIAL SECURITY

The Social Security Benefits Up-rating Regulations 1978

Made - - - -	1*st August* 1978
Laid before Parliament	9*th August* 1978
Coming into Operation—	
except regulation 8 -	13*th November* 1978
regulation 8 - -	6*th April* 1979

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 17(2)(*a*), 36(9)(*b*), 58(3) and 131 of, and paragraph 2(1) of Schedule 14 to, the Social Security Act 1975**(a)** and section 2(1) of, and paragraph 7 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975**(b)** and of all other powers enabling him in that behalf, by this instrument, which contains only provisions in consequence of the Social Security Benefits Up-rating Order 1978**(c)**, hereby makes the following regulations which, by virtue of section 139(2) of, and paragraph 17 of Schedule 15 to, the Social Security Act 1975, are not subject to the requirements of section 139(1) of that Act for prior reference to the National Insurance Advisory Committee:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefits Up-rating Regulations 1978.

(2) Regulation 8 shall come into operation on 6th April 1979 and the remainder of these regulations on 13th November 1978.

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

"the Act" means the Social Security Act 1975;

"the up-rating order" means the Social Security Benefits Up-rating Order 1978.

(4) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except 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.

(5) 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 were Acts of Parliament and as if each revocation were a repeal.

(a) 1975 c. 14. **(b)** 1975 c. 18. **(c)** S.I. 1978/912.
(d) 1889 c. 63.

Conditions relating to payment of additional benefit under awards made before the appointed or prescribed day

2.—(1) This regulation applies to a case where—

(*a*) either—

(i) an award of any benefit under Chapters I to III of Part II of the Act has been made before the day appointed or prescribed for the payment of the benefit in question at a higher rate provided in or by virtue of the up-rating order, or

(ii) an award of any benefit under Part II of the Act has been made before the day appointed or prescribed for the payment of the benefit in question at a lower rate provided in or by virtue of the up-rating order;

(*b*) the period to which the award relates has not ended before that day; and

(*c*) the award does not, in accordance with the provisions of paragraph 2(2) of Schedule 14 to the Act, provide for the payment of the benefit at the higher or lower rate (as the case may be) as from that day.

(2) In a case to which this regulation applies, paragraphs 1 and 2 of Schedule 14 to the Act shall have effect subject to the condition that if a question arises as to either—

(*a*) the weekly rate at which the benefit is payable by virtue of the up-rating order; or

(*b*) whether the conditions for the receipt of the benefit at the altered rate are satisfied,

the benefit shall, until the question has been determined in accordance with the provisions of the Act, be or continue to be payable at the weekly rate specified in paragraph (3) below.

(3) The weekly rate referred to in paragraph (2) above is the weekly rate specified in the award or the weekly rate at which the benefit would have been paid if the question had not arisen, whichever is the lower.

Amendment of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975

3. Regulation 7 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975**(a)**, as amended**(b)** (days not to be treated as days of unemployment or incapacity for work), shall be further amended by the substitution in paragraph (1)(*g*) for "£10·00" of "£11·00".

Amendment of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975

4. Regulation 12 of the Social Security (Non-Contributory Invalidity Pension) Regulations 1975**(c)**, as amended**(b)** (disqualification for non-contributory invalidity pension), shall be further amended by the substitution in paragraph (*d*)(iii) for "£10·00" of "£11·00".

Amendment of the Social Security (Industrial Injuries) (Benefit) Regulations 1975

5. Regulation 8 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975**(d)**, as amended**(e)** (earnings level for the purposes of unemployability supplement under section 58 of the Act), shall be further amended by the substitution for "£520" of "£572".

(a) S.I. 1975/564.
(b) The relevant amending instrument is S.I. 1977/1362.
(c) S.I. 1975/1058.
(d) S.I. 1975/559.
(e) The relevant amending instrument is S.I. 1977/1362.

Persons not ordinarily resident in Great Britain

6. Regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975**(a)**, as amended**(b)** (application of disqualification in respect of up-rating of benefit), shall apply to any additional benefit payable by virtue of the up-rating order.

Continuation in force of sections 36(1) *and* (4) *and* 37(1) *of the National Insurance Act* 1965

7.—(1) The provisions of this regulation shall have effect for the purpose of securing continuity between the Social Security Act 1975 and the National Insurance Act 1965**(c)** 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 said Act of 1965, by preserving those rights and temporarily retaining the effect of those sections for transitional purposes.

(2) Notwithstanding their repeal by the Social Security Act 1973**(d)** subsections (1) and (4) of section 36 and subsection (1) of section 37 of the said Act of 1965 shall, for the purpose aforesaid, continue in force subject to the making in them of the modifications required to bring them into conformity with the provisions of the said Act of 1975 and to enable them to have effect as if contained in the scheme of social security benefits established by the Act; and on or after the 13th November 1978 those subsections shall accordingly continue in force in the modified form in which they are set out in the Schedule to these regulations.

Amendment of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978

8. Schedule 1 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978**(e)**, so far as it relates to section 36(1) of the National Insurance Act 1965, shall be amended by the substitution for "2½ pence" of "2·59 pence".

Regulations revoked and ceasing to have effect

9.—(1) The Social Security Benefits Up-rating Regulations 1977**(f)** are hereby revoked.

(2) Regulation 2(2) of and Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 1975**(g)**, to the extent only that they provide for the continuation in force, in a modified form, of subsections (1) and (4) of section 36 and subsection (1) of section 37 of the National Insurance Act 1965, are hereby revoked.

(3) Regulation 7 of these regulations shall cease to have effect on 6th April 1979.

Signed by authority of the Secretary of State for Social Services.

Stanley Orme,
Minister for Social Security,
Department of Health and Social Security.

1st August 1978.

(a) S.I. 1975/563.
(b) The relevant amending instrument is S.I. 1977/342.
(c) 1965 c. 51.
(d) 1973 c. 38.
(e) S.I. 1978/393.
(f) S.I. 1977/1362.
(g) S.I. 1975/557.

Regulation 7(2) SCHEDULE

SECTIONS 36(1) AND (4) AND 37(1) OF THE NATIONAL INSURANCE ACT 1965 AS CONTINUED IN FORCE BY THESE REGULATIONS

36(1) Subject to the provisions of the Act, graduated retirement benefit shall be payable to any person who is over pensionable age and has retired from regular employment, and shall be an increase in the weekly rate of his retirement pension equal to 2·59 pence 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 ½p as nearest to the next whole penny above.

36(4) Where a person does not retire from regular employment on attaining pensionable age, then for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement there shall be added to the amount of the graduated contributions properly paid by him one-half of the aggregate graduated retirement benefit which would have been payable to him for the period before that date (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 subsection 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 on or after 6th April 1975 which falls between the date of that election and the date of his previous retirement.

37(1) Subject to the provisions of this section, 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, then section 36 of this Act shall apply as if the increase in the weekly rate of her retirement pension provided for by subsection (1) thereof were the amount there specified by reference to her graduated contributions plus 2·59 pence for every 2 units or part of 2 units of graduated contributions by reference to which the weekly rate of his graduated retirement benefit was calculated (the additional amount being rounded to the nearest whole penny, taking ½p as nearest to the next whole penny above).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations are made in consequence of the Social Security Benefits Up-rating Order 1978. They specify circumstances in which the rate of benefit which is awarded before the date from which altered rates become payable is not automatically altered by virtue of paragraph 2 of Schedule 14 to the Social Security Act 1975. They apply the provisions of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975, relating to the position of persons who are absent from and not ordinarily resident in Great Britain when the weekly rate of certain benefits is increased, to the increases of benefit provided by virtue of the Up-rating Order. They amend the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, the Social Security (Non-Contributory Invalidity Pension) Regulations 1975 and the Social Security (Industrial Injuries) (Benefit) Regulations 1975 so as to raise to £11 a week or £572 a year, as the case may be, the earnings limits in respect of work which a person in receipt of benefit to which those regulations apply may do in certain circumstances. The Regulations also further modify the provisions of sections 36 and 37 of the National Insurance Act 1965, which relate to graduated retirement benefit.

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