STATUTORY INSTRUMENTS

1974 No. 2059

SOCIAL SECURITY

The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1974

Made - - -	*6th December* 1974
Laid before Parliament	*18th December* 1974
Coming into Operation	*6th April* 1975

The Secretary of State for Social Services, in exercise of powers conferred by sections 24(4)(*b*), 26(2), 27(1) and (4), 28(2), 32(4) and 37 of the Social Security Act 1973(**a**), paragraph 3 of Schedule 10, paragraph 14 of Schedule 22 and paragraphs 2, 4 and 6 of Schedule 26 to that Act and of all other powers enabling her in that behalf, hereby makes the following regulations :—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1974 and shall come into operation on 6th April 1975.

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

"the Act" means the Social Security Act 1973;

"husband" in relation to any woman who has been married more than once means her last husband;

"a period of at least 10 years" means a period of, or periods amounting in the aggregate to, at least 3,652 days;

"the determining authority" means, as the case may require, an insurance officer, a local tribunal or a National Insurance Commissioner by whom the relevant question falls to be determined by virtue of section 84(5) of the Act,

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

(**a**) 1973 c.38.

(3) For the purposes of regulations 8(1)(*d*), 9(3) and 10(2) a person shall be deemed to be entitled to a pension or benefit if he would have been so entitled had he made a claim for it.

(4) Any reference in these regulations to any provision made by or contained in an 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.

(5) Unless the context otherwise requires, any reference in these regulations to a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(6) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(a)** shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Election to be treated as not having retired

2.—(1) Subject to the provisions of these regulations, where any person (other than one mentioned in paragraph (2))—

(*a*) has retired for the purposes of the Act from regular employment or has otherwise become entitled to either a Category A or a Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and

(*b*) elects that this regulation shall apply in his case,

the Act shall have effect as if that person had not retired or become entitled as aforesaid.

(2) Paragraph (1) shall not apply to:—

(*a*) a person who has previously made such an election;

(*b*) in relation to a Category A retirement pension, a husband whose wife is entitled to a Category B retirement pension by virtue of his contributions and who does not consent to his election unless that consent is unreasonably withheld; and

(*c*) a woman who is entitled to a Category B retirement pension by virtue of the contributions of the husband to whom she is married.

(3) Notice of election for the purpose of this regulation shall be given to the Secretary of State in writing on the form approved by him for the

---

(a) 1889 c.63.

purpose, or in such other manner, being in writing, as he may accept as sufficient in the circumstances of any particular case or class of cases; and if any such notice is sent by post, it shall be deemed to have been given on the date it was posted.

(4) Subject to paragraph (5), an election shall take effect—

(*a*) where the notice does not specify a date as the date of the person's election, on the date on which the notice is given; or

(*b*) where the notice specifies a date as the date of the person's election, being not earlier than the date on which the notice is given and not later than the expiration of 28 days after that date, on the date so specified.

(5) In the case of a man whose wife is entitled to a Category B retirement pension by virtue of his contributions—

(*a*) if she consents in writing to the election, the election shall not take effect earlier than the date of her consent; or

(*b*) if she does not so consent and the determining authority decides that her consent has been unreasonably withheld, the election shall take effect in accordance with the provisions of paragraph (4) or on such later date (if any) as that authority, having regard to all the circumstances of the case, may determine.

Provisions applying after election

3. Where an election has been made in accordance with regulation 2—

(*a*) subject to the provisions of regulations made under paragraph 8(2)(*a*) of Schedule 10 to the Act, no Category A retirement pension shall be payable to a person and no Category B retirement pension shall be payable to his wife by virtue of his contributions for any period on or after the date of his election and before he subsequently retires for the purposes of the Act from regular employment or dies; and

(*b*) where the person who made the election was a woman who became entitled to a Category B retirement pension otherwise than by virtue of having retired from regular employment, and she revokes her election, she shall cease to be treated for the purposes of the Act as if she had not become entitled to such a retirement pension.

Days to be treated as days of increment

4.—(1) For the purposes of section 24(4) of the Act, a day shall be treated as a day of increment in relation to any person if it is a day in respect of which—

(*a*) if he had been treated as having retired from regular employment, he would have been entitled to a Category A retirement pension (and would not have been disqualified for receiving such a pension by reason of his imprisonment or detention in legal custody); and

(*b*) he has not received any of the following benefits: —

(i) sickness benefit, an invalidity pension, unemployment benefit, widow's benefit, benefit under section 27(4) of the Act corresponding to a widow's pension or a widowed mother's allowance, or a retirement pension of any category, or

(ii) injury benefit under the Industrial Injuries Act, or

(iii) an unemployability supplement under the Industrial Injuries Act, a Service Pensions Instrument, the Polish Resettlement Act 1947**(a)**, or a corresponding allowance under the Old Cases Act.

(2) In this regulation—

"Service Pensions Instrument" means a provision and only a provision of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a disablement pension (not including a pension calculated by reference to length of service) may be paid out of public funds in respect of any disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council, or the Air Council;

"1914-1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914**(b)** or under the Injuries in War Compensation Act 1914 (Session 2) **(c)** or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 war.

Benefit at reduced rates for persons who do not satisfy the contribution conditions in full

5.—(1) Where a person, other than a woman whose marriage has terminated (whether by the death of her husband or otherwise), would be entitled to a Category A or a Category B retirement pension but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the Act is not satisfied, he shall be entitled to that benefit at a reduced rate calculated as a percentage of the rate specified in relation to the benefit in question in Part I of Schedule 4 to the Act and the said percentage shall be ascertained in accordance with paragraph (3); but where the percentage so ascertained is less than 25 per cent. no such benefit shall be payable under this paragraph.

(2) Where a person, who would be entitled to an increase of benefit under section 31 or 35 of the Act but for the fact that the second contribution condition specified in paragraph 5 of Schedule 3 to the Act is not satisfied, is entitled to benefit under paragraph (1), the latter benefit shall be increased—

(*a*) in the case of a child dependant, by the amount specified in Part III of Schedule 4 to the Act as the amount of an increase of the benefit in question for an only, elder, eldest or additional qualifying child, as the case may be; and

---

(a) 1947 c.19.
(b) 1914 c.30.
(c) 1914 (5 & 6 Geo.5) c.18.

(*b*) in the case of an adult dependant, by a percentage of the amount specified in Part III of Schedule 4 to the Act as the amount of an increase of the benefit in question for an adult dependant, the percentage being ascertained in accordance with paragraph (3).

(3) The percentage referred to in paragraphs (1) and (2) shall be ascertained by taking the number of reckonable years in the working life of the contributor concerned and expressing that number as a percentage of the requisite number of years specified for that working life in paragraph 5(4) of Schedule 3 to the Act; and where the percentage so expressed is not a whole number it shall be rounded up to the nearest whole number; for the purposes of this paragraph a "reckonable year" is an income tax year in which the contributor concerned has paid or been credited with contributions of a relevant class and in which the earnings factor derived from those contributions amounts to not less than that year's lower earnings limit multiplied by 50.

Conditions for entitlement to a Category C retirement pension

6.—The conditions for entitlement to a Category C retirement pension shall be that the person concerned—

(*a*) was resident in Great Britain for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and

(*b*) was ordinarily resident in Great Britain on 2nd November 1970 or on the date of his claim for that pension.

Conditions for entitlement to a Category D retirement pension

7.—The conditions for entitlement to a Category D retirement pension shall be that the person concerned—

(*a*) was resident in Great Britain for a period of at least 10 years in the period of 20 years ending on the day before he attained the age of 80; and

(*b*) was ordinarily resident in Great Britain either—

(i) on the day he attained the age of 80; or

(ii) if he was not so ordinarily resident on that day and the date of his claim for the pension was later than that day, on the date of his claim, so however that where a person satisfies this condition under this head he shall be deemed to have satisfied it on the date that he became so ordinarily resident.

Category C retirement pension for widows of persons over pensionable age on 5th July 1948

8.—(1) Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to a Category C retirement pension at a rate ascertained in accordance with paragraph (3) if she—

(*a*) is over pensionable age; and

(*b*) has retired from regular employment; and

(*c*) was over the age of 40 either—

(i) when her husband died; or

(ii) if she was entitled under regulation 11 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled; and either

(*d*) her husband was at any time entitled to a Category C retirement pension or a retirement pension under section 1(1)(*a*) of the National Insurance Act 1970**(a)**; or

(*e*) he died before 2nd November 1970 and—

(i) she was resident in Great Britain for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and

(ii) she was ordinarily resident in Great Britain on 2nd November 1970 or on the date of her claim for a Category C retirement pension; and

(iii) that her husband was ordinarily resident in Great Britain on the date of his death.

(2) A pension payable under paragraph (1) shall commence on 6th April 1975 or the date on which the requirements of sub-paragraphs (*a*) to (*c*) and either (d) or (e) of that paragraph are satisfied in relation to the beneficiary, whichever is the later, and shall be payable for life.

(3) The pension under paragraph (1) shall be at the higher rate specified in relation to a Category C retirement pension in Part I of Schedule 4 to the Act, so however that—

(*a*) in the case of a widow who was under the age of 50 either when her husband died, or, if she was entitled under regulation 11 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled, the rate of such pension shall be reduced as if the provisions of section 21(2) of the Act applied to it;

(*b*) the provisions of section 26(1) of the Act (which provides for a Category A or B retirement pension to be reduced on account of earnings) shall apply to a pension payable under this regulation as they apply to a Category A or B retirement pension.

Category C retirement pension for certain women whose marriage has been terminated otherwise than by death

9.—(1) Subject to the provisions of these regulations, a woman whose marriage to a husband who was over pensionable age on 5th July 1948 was terminated otherwise than by his death shall be entitled to a Category C retirement pension at the higher rate specified in relation to such a pension in Part I of Schedule 4 to the Act if—

(a) 1970 c.51.

(*a*) she had attained pensionable age before the date of the termination of the marriage; and

(*b*) she has retired from regular employment; and

(*c*) the conditions set out in paragraph (2) or (3), as the case may be, are satisfied.

(2) The conditions applicable in the case of a woman whose marriage was terminated before 2nd November 1970 shall be—

(*a*) that she was resident in Great Britain for a period of at least 10 years between 5th July 1948 and 1st November 1970, inclusive of both dates; and

(*b*) that she was ordinarily resident in Great Britain on 2nd November 1970 or on the date of her claim for a Category C retirement pension; and

(*c*) that her husband was ordinarily resident in Great Britain on the date of the termination of the marriage; and

(*d*) that she did not remarry between the date of that termination and 2nd November 1970.

(3) The condition applicable in the case of a woman whose marriage was terminated on or after 2nd November 1970 shall be that her husband was entitled to a Category C retirement pension or a retirement pension under section 1(1)(*a*) of the National Insurance Act 1970.

(4) A pension payable under paragraph (1) shall commence on 6th April 1975 or the date on which the requirements of sub-paragraphs (a) to (c) of that paragraph are satisfied in relation to the beneficiary, whichever is the later, and shall be payable for life so however that the provisions of section 26(1) of the Act shall apply to a pension payable under this regulation as they apply to a Category A or B retirement pension.

(5) For the purposes of this regulation, a voidable marriage which has been annulled shall be treated as if it had been a valid marriage which was terminated at the date of the annulment otherwise than by the death of the husband.

Benefit corresponding to a widow's pension for widows of persons over pensionable age on 5th July 1948

10.—(1) Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to benefit corresponding to a widow's pension at a rate ascertained in accordance with paragraph (3) if—

(*a*) she was over the age of 40 but under the age of 65 either—

(i) when her husband died; or

(ii) if she was entitled under regulation 11 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled; and

(*b*) the requirements of sub-paragraph (*d*) or (*e*) of regulation 8(1) are satisfied in her case.

(2) The period for which benefit is payable under paragraph (1) shall be any period commencing on the date on which the requirements of sub-paragraph (*d*) or (*e*) of regulation 8(1) are first satisfied in the case of the widow, and during which she is under the age of 65 and for which she is not entitled under regulation 11 to benefit corresponding to a widowed mother's allowance; so however that the benefit shall not be payable for any period after the widow's remarriage or for any period during which she is cohabiting with a man as his wife.

(3) The benefit under paragraph (1) shall be at the higher rate specified in relation to a Category C retirement pension in Part I of Schedule 4 to the Act, so however that in the case of a widow who was under the age of 50 either when her husband died, or, if she was entitled under regulation 11 to benefit corresponding to a widowed mother's allowance, when she ceased to be so entitled, the rate of such benefit shall be reduced as if the provisions of section 21(2) of the Act applied to it.

Benefit corresponding to a widowed mother's allowance for widows of persons over pensionable age on 5th July 1948

11.—(1) Subject to the provisions of these regulations, a widow whose husband was over pensionable age on 5th July 1948 shall be entitled to benefit corresponding to a widowed mother's allowance, which shall be at the higher rate specified in relation to a Category C retirement pension in Part I of Schedule 4 to the Act, for any period commencing on the date on which the requirements of sub-paragraph (*d*) or (*e*) of regulation 8(1) are first satisfied in her case and during which she would have been entitled to such an allowance under section 20 of the Act (which relates to widowed mother's allowance) had her husband satisfied the contribution conditions set out in paragraph 5 of Schedule 3 to the Act so however that the benefit shall not be payable for any period after the widow's remarriage or for any period during which she is cohabiting with a man as his wife.

(2) The provisions of section 31(4) of the Act (which relates to increases in widowed mother's allowance in respect of children) shall apply to benefit payable under this regulation as they apply to an allowance payable under section 20(1)(*a*) of the Act.

Restriction on benefit in certain cases

12.—(1) In the case of a widow of a member of a police force or of a special constable who, as such a widow, is in receipt of a pension under regulations from time to time in force made under—

(*a*) the Police Pensions Act 1948**(a)**;

(*b*) section 34 of the Police Act 1964**(b)**;

(*c*) section 26 of the Police (Scotland) Act 1967**(c)**,

(a) 1948 c.24.
(b) 1964 c.48.
(c) 1967 c.77.

benefit under regulation 10 or 11 corresponding to a widow's pension or a widowed mother's allowance shall not be payable in respect of any week during which she is receiving an increase in the said pension under either—

(i) the provisions of regulation 12 or 15 of the Police Pensions Regulations 1966**(a)**, as amended **(b)**, or of any corresponding regulations from time to time in force and made as mentioned in sub-paragraph (*a*); or

(ii) those provisions as applied by regulations from time to time in force and made as mentioned in sub-paragraph (*b*) or (*c*).

(2) For the purposes of paragraph (1), any reference in that paragraph to an enactment or regulation shall include a reference to any corresponding Northern Ireland legislation, or, as the case may be, any order or regulation having effect by virtue of such legislation, being in each case passed or made for purposes similar to the purposes of the enactment or regulation specified in that paragraph.

Priority between a man and his wife to increase of retirement pension in respect of a child

13.—(1) Where, but for section 32(4)(a)(i) of the Act (which prevents a man and his wife from both being entitled for the same period to an increase of retirement pension, being a Category A or Category C pension in his case and a Category B or Category C pension in hers, in respect of the same child or in respect of different children), a man and his wife would both be entitled to an increase in respect of the same child or, in respect of different children, to such an increase at the rate applicable to an only, elder or eldest child, the following provisions shall apply:—

(*a*) if and so long as the man and his wife are living together, that man shall, and his wife shall not, be entitled to the increase or, as the case may be, to the increase at the rate applicable to an only, elder or eldest child;

(*b*) if and so long as the man and his wife are not living together such one of them shall, and such other of them shall not, be entitled to the increase or, as the case may be, to the increase at the rate applicable to an only, elder or eldest child, as the Secretary of State may in his discretion from time to time determine.

(2) For the purpose of this regulation, a man and his wife shall not be deemed to be living otherwise than together unless they are permanently living in separation either by agreement or under an order of the Court, or one of them has deserted the other and the separation which is incident to the desertion has not come to an end.

(a) S.I. 1966/1582 (1966 III, p.4894).

(b) The relevant amending instruments are S.I. 1969/1484, 1971/232, 1971/1330, 1973/432 (1969 III, p. 4745; 1971 I, p. 700; II, p. 3813; 1973 I, p. 1520).

Special provisions applying to certain women who remarry when over pensionable age

14.—(1) Subject to the provisions of paragraph (2)—

(*a*) where a widow who is entitled to a Category B retirement pension remarries after attaining pensionable age, she shall continue to be entitled to receive any increase of that pension under section 25(10) of the Act as if she had remained the widow of the man by virtue of whose contributions she became entitled to the Category B retirement pension;

(*b*) where a widow who is entitled to a Category A retirement pension remarries after pensionable age, she shall continue to be entitled to receive any increase of that pension under section 24(5) of the Act as if she had remained the widow of the man in relation to whom entitlement to the increase of that pension arose;

(*c*) where a widow, who has remarried after attaining pensionable age, becomes a widow for a second or subsequent time, she shall, during any period in which she is a widow and is entitled to a Category A retirement pension, continue to be entitled if that is more favourable to her to any increase of that pension under section 24(5) of the Act as if she were not the widow of her last husband but had remained the widow of the man in relation to whom entitlement to the increase of that pension arose and entitlement to the increase is to continue during any further marriage.

(2) Those provisions of paragraph (1) which are—

(*a*) in sub-paragraph (*a*) shall only apply if the man referred to in it was insured under the National Insurance Act 1965**(a)**;

(*b*) in sub-paragraph (*b*) or (*c*) shall only apply if the woman concerned was insured under that Act.

Provisions relating to age addition for persons not in receipt of a retirement pension

15.—(1) For the purposes of section 28(2) of the Act (age addition for persons over the age of 80 who are not entitled to a retirement pension but are in receipt of certain other payments) the prescribed enactments and instruments shall be—

(*a*) the Industrial Injuries Act;

(*b*) any scheme made under section 5 of the Old Cases Act;

(*c*) any Service Pensions Instrument as defined in regulation 4(2);

(*d*) any scheme made under the Personal Injuries (Emergency Provisions) Act 1939**(b)** or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939**(c)**;

(*e*) any 1914—1918 War Injuries Scheme as defined in regulation 4(2);

(a) 1965 c.51. **(b)** 1939 c.82.
(c) 1939 c.83.

(2) The following shall be additional conditions of entitlement to age addition under section 28(2) of the Act:—

(*a*) that the person concerned is in receipt of a payment under an enactment or instrument specified in paragraph (1), by reference to which the amount of a retirement pension would, if it were otherwise payable to him, be extinguished by virtue of any regulations made under paragraph 3 of Schedule 10 to the Act (which relates to overlapping benefits); and

(*b*) that had he made a claim for it, he would have been entitled to a retirement pension of any category by virtue of any provision of the Act or any regulations made under it.

Transitional provision relating to widow's pension for certain widows

16.—(1) Where before 5th January 1957 a widow ceased to be entitled to a widow's pension under the National Insurance Act 1965 and when she so ceased she was incapable of self-support by reason of an infirmity, she shall for any subsequent period during which she is under the age of 65 and is incapable of self-support by reason of that infirmity have the same right (if any) to a widow's pension in respect of the marriage in respect of which she was entitled to the widow's benefit as if she was over the age of 50 when her husband died.

(2) The following provisions shall apply in the case of a widow who claims a widow's pension under paragraph (1):—

(*a*) the widow shall from time to time, as required by the Secretary of State, furnish evidence by means of a certificate (in such form as the Secretary of State may approve) that by reason of an infirmity she is incapable of self-support, and shall at any time, if so directed by the Secretary of State, submit herself to medical examination by a medical board appointed by him consisting of two or more medical practitioners; and

(*b*) for the purpose of the determination by the determining authority of any questions as to the nature of the infirmity or whether an infirmity is the same infirmity as that by reason of which the widow was previously incapable of self-support, a certificate given by any such medical board shall be conclusive evidence.

(3) In this regulation, the determining authority shall not include the National Insurance Commissioners.

Amendment of the Widow's Benefit, Retirement Pension and Other Benefits (Transitional) Regulations 1974

17.—The Widow's Benefit, Retirement Pension and Other Benefits (Transitional) Regulations 1974**(a)** shall be amended as follows—

(*a*) in regulation 7(8), after the words "the first year of the woman's working life" there shall be inserted the words "and paragraph 3(*a*) of that Schedule shall apply with the addition after the words 'married the husband' of the words 'or, if later, the first year of her working life' ";

(*b*) in regulation 12(4), for the words "that beneficiary" there shall be substituted the words "a former beneficiary";

(a) S.I. 1974/1757 (1974 III, p. 6264).

(*c*) in the Schedule, at the end of column (1) there shall be added the benefits described in column A below and opposite to each such benefit there shall be added in column (2) of the Schedule the benefit appearing opposite to it in column B below.

Column A	Column B
Widow's pension by virtue of section 1(1) of the National Insurance Act 1970.	Benefit by virtue of section 27(4) of the Act corresponding to a widow's pension.
Widowed mother's allowance by virtue of the said section 1(1).	Benefit by virtue of the said section 27(4) corresponding to a widowed mother's allowance.

Barbara Castle,

Secretary of State for Social Services.

6th December 1974.

EXPLANATORY NOTE

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

These Regulations contain provisions relating to widow's benefit, retirement pensions and age addition under the Social Security Act 1973.

The principal provisions relate to: elections to be treated as not having retired (regulations 2 and 3); increments for Category A pensioners (regulation 4); benefit at reduced rates for persons who do not satisfy the contribution conditions in full (regulation 5); conditions for entitlement to Category C and D retirement pensions (regulations 6 and 7); Category C retirement pensions and benefit corresponding to widow's pension and widowed mother's allowance for the wives and widows of persons over pensionable age on 5th July 1948 (regulations 8 to 12); priority between husband and wife to increase of a retirement pension for a child (regulation 13); increments for women who remarry when over pensionable age (regulation 14); and an age addition for persons not in receipt of a retirement pension (regulation 15).

The Regulations also contain transitional provisions and amend the Widow's Benefit, Retirement Pension and Other Benefits (Transitional) Regulations 1974.

SI 1974/2059
ISBN 0-11-042059-4

