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STATUTORY INSTRUMENTS

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**2019 No. 1514**

**The Marriage (Same-sex Couples) and Civil Partnership  
(Opposite-sex Couples) (Northern Ireland) Regulations 2019**

**PART 6**

**Amendments: Pensions and Social Security: Primary Legislation**

**Pension Schemes (Northern Ireland) Act 1993**

**68.**—(1) The Pension Schemes (Northern Ireland) Act 1993<sup>(1)</sup> is amended as follows.

(2) In section 4(2), in the definition of “guaranteed minimum pension”<sup>(2)</sup>, after “widower’s” insert “, surviving same sex spouse’s”.

(3) In section 13<sup>(3)</sup> (minimum pensions for surviving spouses and civil partners)—

(a) in subsection (2)(a), after “is a man” insert “, or a woman in a relevant gender change case,”,

(b) in subsection (2), after paragraph (c) insert—

“(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will not be less than the surviving same sex spouse’s guaranteed minimum;

(e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow’s pension will not be less than the surviving same sex spouse’s guaranteed minimum.”,

(c) in subsection (4), after “surviving civil partner’s” insert “or surviving same sex spouse’s”,

(d) in subsection (4A)(c), for sub-paragraph (i) substitute—

“(i) comprises a period during which—

(a) the widow, widower or surviving civil partner, and

(b) another person,

are living together as if spouses of each other, nor”,

(e) in subsection (5), at the beginning insert “In the case of a woman who is the widow of a man,”,

(f) in subsection (6)—

(i) at the beginning insert “In any other case,”, and

(ii) after “widower’s” insert “, widow’s”,

(g) omit subsection (9), and

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(1) 1993 c.49.

(2) A relevant amendment was made by S.R. (N.I.) 2005/433.

(3) Relevant amendments were made by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c.4 (N.I.)), S.R. (N.I.) 2005/433 and paragraph 17 of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c.5 (N.I.)).

- (h) after subsection (10) insert—
- “(11) This section is subject to regulations under section 34A.
- (12) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.”.

(4) In section 20D(4) (survivor benefits)—

    - (a) in subsection (2), after “if the earner” insert “is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner”,
    - (b) in subsection (3)—
      - (i) after “if the earner” insert “is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner”, and
      - (ii) after “widower” insert “, widow”, and
    - (c) after subsection (3) insert—
 

“(4) In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—

      - (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
      - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.

(5) This section is subject to regulations under section 34A.”.

(5) For section 33(4)(5) (alteration of rules of contracted-out schemes: when beneficiary includes widower or surviving civil partner) substitute—

“(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.

(5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—

    - (a) the widower of a female earner;
    - (b) the widower of a male earner;
    - (c) the widow of a female earner, except where it is a relevant gender change case; or
    - (d) the survivor of a civil partnership with an earner.

(6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—

    - (a) the earner is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
    - (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.

(7) This section is subject to regulations under section 34A.”.

(4) Section 20D was inserted by section 12(3) of the Pensions Act (Northern Ireland) 2008 (c.1 (N.I.)).

(5) Section 33 was substituted by S.I. 1995/3213 (N.I. 22), and section 33(4) was amended by S.R. (N.I.) 2005/433.

(6) Before section 35 (and after the italic heading preceding that section) insert—

**“Regulations about relevant gender change cases**

**34A.**—(1) The Department may, by regulations, make provision for—

- (a) section 13,
- (b) section 20D, or
- (c) section 33,

to have its special effect in relevant gender change cases only if conditions prescribed in the regulations are met.

(2) Regulations under subsection (1) may, in particular, prescribe conditions that relate to the provision of information by—

- (a) one or both of the members of married same sex couples, or
- (b) the survivors of such couples.

(3) The Department may by regulations make further provision about cases where (because of regulations under subsection (1))—

- (a) section 13,
- (b) section 20D, or
- (c) section 33,

does not have its special effect in relevant gender change cases.

(4) Regulations under subsection (3) may, in particular, provide for the section in question to have its ordinary effect in relevant gender change cases.

(5) Regulations under subsection (1) or (3) may, in particular, modify or disapply any enactment that concerns information relating to—

- (a) the gender or sex of a person, or
- (b) the change of gender or sex of a person,

including any enactment that concerns requests for, or disclosure of, such information.

(6) In this section, in relation to section 13, 20D or 33—

- (a) “relevant gender change case” has the same meaning as in that section;
- (b) “special effect” means the effect which the section has (if regulations under subsection (1) are ignored) in relation to relevant gender change cases, so far as that effect is different from the section’s ordinary effect;
- (c) “ordinary effect” means the effect which the section has in relation to same sex married couples in cases that are not relevant gender change cases.”.

(7) In section 43(1)(6) (provisions about guaranteed minimum pensions), after “widower” insert “, surviving same sex spouse”.

(8) In section 80 (revaluation method), as it has effect ignoring the substitution to be made by the Pension Schemes Act (Northern Ireland) 2016(7), in subsection (5)(8), after “widower” insert “, surviving same sex spouse”.

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(6) In section 43(1) a relevant amendment is made by [S.R. \(N.I.\) 2005/433](#).

(7) [2016 c.1 \(N.I.\)](#). See paragraph 4 of Schedule 1.

(8) In section 80(5) a relevant amendment is made by [S.R. \(N.I.\) 2005/434](#).

(9) In section 95(3)(b) (time limit for implementing section 91 option where there is a risk of forfeiture of benefits of the member or widow), for “his widow” substitute “the member’s surviving spouse or civil partner”.

(10) In paragraph 1(1E)(b)(9) of Schedule 2 (meaning of “accrued benefit”), after “widower” insert “, surviving same sex spouse”.