

## 1989 No. 117

## PENSIONS

**The Social Security Commissioners' Pensions  
(Preservation of Benefits) Order  
(Northern Ireland) 1989**

*Made* . . . . . 23rd March 1989

*Coming into operation* . . . . . 6th April 1989

The Lord Chancellor, as the appropriate authority designated by the Treasury(a) for the purposes of Article 61(1) of the Social Security Pensions (Northern Ireland) Order 1975(b) as having responsibility for the public service pension scheme established under the enactments listed in the Schedule, in exercise of the powers conferred by the said Article 61(1), hereby makes the following Order:—

## PART I

## INTRODUCTORY

*Citation and commencement*

1. This Order may be cited as the Social Security Commissioners' Pensions (Preservation of Benefits) Order (Northern Ireland) 1989 and shall come into operation on 6th April 1989.

*Interpretation*

2.—(1) In this Order, unless the context otherwise requires—

“the Act” means the Social Security (Northern Ireland) Act 1975(c);

“Commissioner” means the Chief Social Security Commissioner and any other Social Security Commissioner appointed under section 97(3) of the Act;

“full rate” means the rate at which a pension might have been granted to a Commissioner if his service had continued to normal pension age;

“normal pension age” means the earliest age at which, if his service had continued until retirement at that age, a Commissioner might have been granted a pension under the Act;

“relevant enactment” means the Act, Part II of the Judicial Pensions Act (Northern Ireland) 1951(d) so far as it relates to the office of Commissioner, and any enactment relating to the payment of

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(a) Substituted for the Minister for the Civil Service by S.I. 1981/1670

(b) S.I. 1975/1503 (N.I. 15)

(c) 1975 c. 15

(d) 1951 c. 20 (N.I.); amended by section 82 of and Parts II and III of Schedule 9 to the Social Security Act 1986 (c. 50)

superannuation benefits to or in respect of a Commissioner by virtue of any other judicial office held by him;

“relevant service” has the meaning given by Article 4(2).

(2) References in this Order to eligibility for a pension are, in relation to an office service in which carries entitlement to a pension, references to such entitlement, and references to the grant of a pension or to the rate at which a pension might be payable shall be construed accordingly.

## PART II

### GENERAL

#### *Commissioners to whom Order applies*

3. This Order shall apply to, but only to, a Commissioner who ceases to hold office after 5th April 1989.

#### *Ceasing to hold office and relevant service*

4.—(1) A Commissioner does not cease to hold office for the purposes of this Order if, after ceasing to hold office as a Commissioner but before reaching normal pension age, he starts to hold another office service in which may, under any relevant enactment, be reckoned on any basis together with service as a Commissioner for the purpose of superannuation benefits (or which might have been so reckoned but for his having left that other (or a subsequent) office before reaching compulsory retirement age).

(2) A Commissioner’s service as such is relevant service for the purposes of this Order and his relevant service may include any earlier service of his which may, under any enactment, be reckoned on any basis together with service of his as a Commissioner.

(3) For the purposes of paragraphs (1) and (2) above it is immaterial whether—

- (a) the Commissioner has served at any time in any other office (including an office in relation to which he ceases to hold office for the purposes of this Order); or
- (b) the earlier and the later offices are the same; or
- (c) any election available in respect of the Commissioner has been made; or
- (d) the superannuation benefits payable under the relevant enactment relating to one office would, in the circumstances, be unaffected by adding the other service into the reckoning.

(4) For the purpose of assessing a Commissioner’s eligibility for a preserved benefit under this Order he shall be deemed not to have held office at any time when an election under paragraph 7A of Schedule 10 to the Act(a) was in force in respect of him.

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(a) As modified by the Personal Pension Option (No. 1) Regulations (Northern Ireland) 1989, S.R. 1989 No. 100

## PART III

## PRESERVED BENEFITS

*Commissioner's pension*

5.—(1) A Commissioner who has completed two years of relevant service, but who has ceased to hold office before normal pension age, becomes eligible for a pension when he reaches whichever is the later of age 60 and—

(a) in the case of a Commissioner who has made an election under Article 7(1), retirement age; or

(b) in any other case, normal pension age.

(2) The annual rate at which that pension may be paid shall bear to the full rate the same proportion as the number of completed years of relevant service bears to the number of completed years which the Commissioner would have served if his service had continued until—

(a) in the case of a Commissioner who has made an election under Article 7(1), retirement age; or

(b) in any other case, normal pension age.

(3) In this Article, “retirement age” means the age at which an election would have been available to the Commissioner under the relevant enactment applicable to him.

*Lump Sum and Widows' and Children's Pensions*

6. Sections 5 (other than subsections (2)(b) and (3)), 6 to 11 and 14 to 16 of the Judicial Pensions Act (Northern Ireland) 1951, and any regulations made in relation to those provisions in exercise of the powers conferred by section 10(8) of and Schedule 3 to the Administration of Justice Act 1973(a), shall apply in relation to a Commissioner who becomes eligible for a pension by virtue of this Order (or who dies before becoming so eligible but would have become so eligible had he survived) as they apply in relation to a Commissioner who becomes eligible for a pension on retirement at normal pension age or who dies in service; so, however, that no lump sum granted under any of those provisions shall exceed twice the annual amount of the pension for which the Commissioner would have been eligible.

## PART IV

## SUPPLEMENTARY

*Provisions about early retirement*

7. Any provision in a relevant enactment about early retirement on the grounds of ill-health shall, without prejudice to its operation in other respects, be disregarded for the purposes of this Order.

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(a) 1973 c. 15; amended and repealed in part by section 36 of and Schedules 3 and 4 to the Judicial Pensions Act 1981 (c. 20). The power to make regulations is vested in the Lord Chancellor by paragraph 3(1)(b) of Schedule 9 to the Social Security Act 1986 (c. 50)

*Inalienability*

8. Any assignment of, or charge on, and any agreement to assign or charge, any pension or lump sum which may be granted by virtue of this Order shall (unless made by a Commissioner in favour of his widow or a dependant of his) be void.

*Relationship to other benefits*

9.—(1) Any benefit granted by virtue of this Order in respect of any relevant service shall be payable notwithstanding that other benefits are, otherwise than by virtue of this Order, payable to or in respect of the Commissioner—

- (a) under a relevant enactment; or
- (b) under an enactment relating to superannuation benefits in respect of an office to which Part II of the Judicial Pensions Act 1981(a) applies; or
- (c) under the County Courts Act (Northern Ireland) 1959(b); or
- (d) under the Resident Magistrates' Pensions Act (Northern Ireland) 1960(c);

so, however, that any benefits granted by virtue of this Order shall be abated to the extent that they exceed the amount, if any, by which the other benefits might have been increased if the relevant service in respect of which benefits are granted under this Order had been service in the office in respect of which the other benefits are payable.

(2) Where the other benefits, for the purposes of paragraph (1) above, are payable to or in respect of a Commissioner by virtue of service of his in more than one office, the amount referred to in that paragraph may be arrived at in the manner most favourable to him.

*Saving for other pension schemes*

10. This Order does not apply in relation to a Commissioner who is, or has been, a resident magistrate included in Schedule 5 to the Superannuation (Northern Ireland) Order 1972(d).

*Revocation*

11. The Pensions (Preservation of Benefits) Order (Northern Ireland) 1977(e) is revoked in its application to the office of Commissioner, but without prejudice to its continued application in relation to any person who ceased for the purposes of this Order to hold office before 6th April 1989.

Dated 23rd March 1989

*Mackay of Clashfern, C.*

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(a) 1981 c. 20; amended by section 152(1) of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54)  
(b) 1959 c. 25 (N.I.)  
(c) 1960 c. 2 (N.I.)  
(d) S.I. 1972/1073 (N.I. 10)  
(e) S.R. 1977 No. 167

**Commissioners' Pension Scheme**

Section 97(4) of and Schedule 10 to the Social Security (Northern Ireland) Act 1975.

Part II of the Judicial Pensions Act (Northern Ireland) 1951 so far as it relates to the office of Commissioner.

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**EXPLANATORY NOTE**

*(This note is not part of the Order.)*

This Order supersedes an earlier Order which modified the pension scheme applicable to Social Security Commissioners in Northern Ireland. The effect of the Order is to provide for a reduced pension and derivative benefits (lump sum and widows' and children's pensions) to be preserved, and to become payable, in the case of a Commissioner who ceases to hold office before reaching normal pension age.

Article 5 provides that the reduced pension may be paid at the age at which the Commissioner would normally become eligible to be granted a pension (or at which he might elect for service in successive offices to be aggregated for pension purposes) and provides the proportion on the basis of which the pension is to be calculated. Article 6 enables a reduced lump sum to be paid to a Commissioner who becomes eligible for a pension by virtue of the Order. It also enables reduced widows' and children's pensions to be paid whether the Commissioner dies before or after reaching the age at which he would otherwise have become eligible to be granted a pension.

The Order provides that any period during which a Commissioner has elected under the Personal Pension Option (No. 1) Regulations (Northern Ireland) 1989 (S.R. 1989 No. 100) to take a personal pension shall not count as relevant service in connection with the preservation of benefits under this Order (Article 4(4)). The Order also reduces from five to two the number of years relevant service which must be completed for benefits to be preserved (Article 5(1)). Apart from these changes, the Order makes no change of substance.

The Order does not apply in the case of a Commissioner who ceases to hold office before it comes into force on 6th April 1989; in such a case, the existing Order will continue to apply.