

## 1989 No. 118

## PENSIONS

**The Social Security Commissioners' Pensions  
(Requisite 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 (Requisite Benefits) Order (Northern Ireland) 1989 and shall come into operation on 6th April 1989.

*Interpretation*

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

“Commissioner” means the Chief Social Security Commissioner and any other Social Security Commissioner appointed under section 97(3) of the Social Security (Northern Ireland) Act 1975(c);

“the Principal Order” means the Social Security Pensions (Northern Ireland) Order 1975;

“final salary” has the meaning given by Article 11;

“relevant enactment” means section 97(4) of and paragraphs 6 and 7 of Schedule 10 to the Social Security (Northern Ireland) 1975 and, in the case of a Commissioner who has held one or more other judicial offices, includes any enactment relating to the payment of superannuation benefits to or in respect of such a Commissioner by virtue of such an office;

“relevant service” has the meaning given by Article 5(2) and (3);

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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

“scheme” means, in relation to a Commissioner, the public service pension scheme established by a relevant enactment.

## PART II

### GENERAL

#### *General effect of Order*

3.—(1) This Order applies in relation to any such Commissioner as is mentioned in Article 4 so as to modify, or further modify, the scheme which is applicable in relation to him to make provision for his benefit, or otherwise in relation to him, which accords with the following provisions of this Order.

(2) Articles 8, 9 and 10 of this Order (which relate to guaranteed minimum pensions) apply in relation to any such Commissioner as is mentioned in Article 4 notwithstanding any other provision in any enactment, including the other provisions of this Order.

#### *Commissioner to whom this Order applies*

4. This Order shall have effect in relation to, but only to, any Commissioner who is holding office as Commissioner on 6th April 1989, or who is appointed to such an office when under pensionable age on or after that date:—

Provided that neither Article 6 nor Article 7 shall entitle a Commissioner appointed on or after 6th April 1989, or his widow, to a pension other than the minimum guaranteed under Article 8 or 9, unless his service in that office may be reckoned, for the purpose of superannuation benefits, together with service of his in an earlier office wholly or partly before that date (or might have been so reckoned but for his having left the later office before reaching compulsory retirement age).

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

5.—(1) A Commissioner does not cease to hold office for the purposes of this Order so long as he continues to hold office as Commissioner or an office service in which may, under any enactment, be reckoned on any basis together with earlier service of his in office as Commissioner for the purpose of superannuation benefits.

(2) Subject to paragraph (3), 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) Service is not relevant service for the purposes of this Order if it is service before 6th April 1978.

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

- (i) 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);
- (ii) the earlier and the later offices are the same;

- (iii) any election in respect of the Commissioner is available, or, if available, has been made; and
- (iv) the superannuation benefits payable under the relevant enactment relating to one office would, in the circumstances of the case, be unaffected by adding the other service into the reckoning.

### PART III

#### REQUISITE BENEFITS

##### *Commissioner's requisite benefits*

6.—(1) As from his attainment of pensionable age, a Commissioner shall be entitled for the purposes of this Order to a pension under a scheme for his life.

(2) Subject to paragraphs (3) and (4), the annual rate of the Commissioner's pension under paragraph (1) shall be  $1\frac{1}{4}$  per cent. of his final salary multiplied by the number of years of relevant service completed by him before he attained pensionable age.

(3) Paragraph (2) above shall not apply in relation to a Commissioner who—

- (a) ceases to hold office before normal pension age; and
- (b) has completed less than five years' qualifying service for the purposes of Schedule 3 (Requirements as to Preservation of Benefits Under Occupational Pension Schemes) to the Principal Order as originally enacted(a).

(4) Any part of the pension under paragraph (1) in excess of the Commissioner's guaranteed minimum pension shall be postponed for any period for which he continues in employment (whether or not employment to which the scheme relates) after attaining pensionable age.

##### *Widow's requisite benefits*

7.—(1) As from the death of a Commissioner (whether before or after attaining pensionable age) his widow shall be entitled for the purposes of this Order to a pension under a scheme.

(2) Subject to paragraphs (3) and (4), the annual rate of the widow's pension under paragraph (1) shall be  $\frac{5}{8}$ ths per cent. of the final salary (or last salary before death) of the Commissioner multiplied by the number of years of relevant service completed by him before he attained pensionable age.

(3) Paragraph (2) shall apply for any such period as is mentioned in Article 38(6) of the Principal Order.

(4) Paragraph (2) shall not apply in relation to a Commissioner who dies after ceasing to hold office and who has completed less than five years' qualifying service for the purposes of Schedule 3 to the Principal Order as originally enacted(a).

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(a) For the purpose of Articles 6 and 7 of this Order not as amended by Article 12 of the Social Security (Northern Ireland) Order 1986 S.I. 1986/1888 (N.I. 18)

*Commissioner's guaranteed minimum pension*

8.—(1) As from his attainment of pensionable age any Commissioner who has ceased to hold office shall, subject to paragraph (3), be entitled to receive not less than the guaranteed minimum pension, the weekly rate of which shall be calculated in accordance with Article 37(2), (3), (4), (5) and (9) of the Principal Order, unless his accrued rights thereto are extinguished under Article 45(7) of that Order.

(2) Where a Commissioner continues to serve after pensionable age, then—

(a) as from the expiration of five years from the date on which he attains pensionable age; or

(b) as from the date (if earlier) when he ceases to hold office, he shall, subject to paragraph (3), be entitled to receive not less than the guaranteed minimum pension, the weekly rate of which shall be calculated in the manner provided by paragraph (1) of this Article and Article 37(6) of the Principal Order.

(3) Entitlement to payment of a guaranteed minimum pension by virtue of paragraph (1) or (2) shall not arise in respect of any period during which the consent of the Commissioner under Article 35(3)(a) or (b) of the Principal Order is in force and not revoked, and, when the pension which has accordingly been postponed commences, paragraph (1) of this Article shall apply as if it contained a reference to Article 37(6) of that Order.

(4) Any entitlement by virtue of this Article shall continue for the life of the Commissioner.

*Widow's guaranteed minimum pension*

9.—(1) As from the death (whether before or after attaining pensionable age) of a Commissioner, his widow shall, subject to paragraphs (2) and (3), be entitled to receive a guaranteed minimum pension the weekly rate of which shall be not less than her guaranteed minimum as ascertained in accordance with Article 38(3) of the Principal Order.

(2) Paragraph (1) shall apply for any such period as is mentioned in Article 38(6) of the Principal Order.

(3) Paragraph (1) shall not apply if—

(a) at the date of his death the Commissioner's accrued rights to a guaranteed minimum pension have been extinguished under Article 45(7) of the Principal Order; or

(b) the widow's accrued rights are extinguished under that paragraph.

*Widower's guaranteed pension*

10.—(1) As from the death on or after 6th April 1989 (whether before or after attaining pensionable age) of a female Commissioner, her widower shall, subject to paragraphs (2) and (3) be entitled to receive a guaranteed minimum pension the weekly rate of which shall be his guaranteed minimum as ascertained in accordance with Article 38(3) of the Principal Order.

(2) Paragraph (1) shall apply in the circumstances prescribed under Article 38(7A)(a) of the Principal Order and for the period so prescribed.

(3) Paragraph (1) shall not apply if—

- (a) at the date of her death the Commissioner's accrued rights to a guaranteed minimum pension have been extinguished under Article 45(7) of the Principal Order; or
- (b) the widower's accrued rights are extinguished under that paragraph.

#### PART IV

#### MISCELLANEOUS

##### *Ascertainment of salary for requisite benefits*

**11.**—(1) Subject to paragraphs (2) and (3), for the purposes of this Order the final salary of a Commissioner (or his last salary before death) shall be the annual rate of salary which he was receiving immediately before he ceased to hold office together with any sum which is reckoned as an additional part of his salary for pension purposes.

(2) Where—

- (a) a Commissioner has two or more periods of relevant service; and
- (b) an election is made by or in respect of him, pursuant to an enactment relating to the payment of superannuation benefits in respect of persons who have served continuously in more than one office, in favour of the receipt of benefits payable under the relevant enactment which relates to an office held by him other than the last,

then, for the purposes of this Order, the final salary of that Commissioner (or his last salary before death) shall be that which would have been arrived at under paragraph (1) if he had continued to hold the earlier office until the date when he ceased to hold office; and, if that office had ceased to exist at that date, that salary shall be taken to be such as the Lord Chancellor with the concurrence of the Treasury may determine it would have been had the office continued to exist.

(3) For the purposes of Articles 6, 7 and 12(3) there shall be excluded from the salary by reference to which the annual rate of the Commissioner's or widow's pension is to be calculated any amount of earnings except so much (if any) as would, if expressed as a weekly rate, exceed one and a half times the lower earnings limit but would not exceed the upper earnings limit.

(4) In paragraph (3), references to the lower and upper earnings limits, in relation to any earnings, are references to those limits as in force when the earnings are paid.

##### *Contribution in event of marriage during retirement*

**12.**—(1) Where, on the date when he ceases to hold office, a Commissioner is unmarried, he may be required to undertake, in return for payment to him of a lump sum under section 5 of the Judicial Pensions Act

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(a) Paragraph (7A) was inserted in Article 38 by Article 11(3)(c) of the Social Security (Northern Ireland) Order 1986

(Northern Ireland) 1951(a), that he will, on his first marriage thereafter, pay a contribution in respect of benefits that may become payable to a widow of his by virtue of Articles 7 and 9.

(2) The contribution referred to in paragraph (1) shall be equal to 17/8ths per cent. of the Commissioner's final salary multiplied by the number of whole years of relevant service of his—

- (a) which were completed by him before he attained pensionable age; and
- (b) which were not years—
  - (i) during any part of which he was a married man, or
  - (ii) preceding a marriage of his contracted before he ceased to hold office.

#### *Marriage shortly before death*

13. Where the marriage of a woman to a Commissioner takes place after he has ceased to hold office and not more than six months before his death, any pension to be paid to her as his widow by virtue of this Order shall be limited to her guaranteed minimum pension.

#### *Time of payment*

14. Any pension to which there is entitlement by virtue of this Order shall be payable at intervals of not more than three months.

#### *Relationship to other benefits*

15. Any pension to which there is entitlement by virtue of this Order shall be reckoned towards and treated as part of any pension which is paid in relation to a Commissioner under any relevant enactment.

#### *Savings*

16. 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(b).

#### *Revocation of earlier Orders*

17. The Pensions (Requisite Benefits) Order (Northern Ireland) 1978(c) is revoked in its application to the office of Commissioner, but without prejudice to its continued application in relation to any person who ceased to hold office before 6th April 1989.

Dated 23rd March 1989

*Mackay of Clashfern, C.*

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(a) 1951 c. 20 (N.I.)  
(b) S.I. 1972/1073 (N.I. 10)  
(c) S.R. 1978 No. 307

**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 relating to Social Security Commissioners in Northern Ireland so as to make the changes required in order to meet the contracting-out requirements laid down by the Social Security Pensions (Northern Ireland) Order 1975. Articles 6 and 7 confer on a Commissioner and on his widow entitlement to pensions based on the final salary of the Commissioner and his years of service up to pensionable age after 6th April 1978. The pensions are not to be less than the minimum guaranteed by Articles 8 and 9, and there will be occasions where the guaranteed minimum only will be payable (such as under Article 8(2)(a) or 13). Article 10 confers entitlement to guaranteed minimum pensions to the widowers of female Commissioners who die after 5th April 1989, in order to meet the further contracting-out requirement inserted into the 1975 Order by the Social Security (Northern Ireland) Order 1986. Article 11 provides a mode of ascertainment of final salary for the purposes of the Order, and Article 12 provides arrangements for the payment of contributions in respect of widows' pensions that may become payable by virtue of the Order where the Commissioner marries after retirement. The remaining Articles are explanatory and supplementary.

Save that the right conferred by Article 10 will apply to widowers of Commissioners who die after 5th April 1989, the Order makes no change of substance.

The Order does not apply in the case of any person who ceases to hold office before 6th April 1989, the date on which it comes into operation. The earlier Order will continue to apply in such a case.