

1976 No. 1779**NORTHERN IRELAND****The Assembly Pensions (Northern Ireland) Order 1976**

Made - - - - 27th October 1976
Coming into Operation 10th November 1976

ARRANGEMENT OF ORDER

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SCHEDULES:

- Schedule 1—Provisions relating to the Trustees and the Fund.
- Schedule 2—Persons qualifying for children's pensions.

At the Court at Buckingham Palace, the 27th day of October 1976

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by sections 9 and 26 of the Northern Ireland Constitution Act 1973(a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1. This Order may be cited as the Assembly Pensions (Northern Ireland) Order 1976 and shall come into operation on 10th November 1976.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(b) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“aggregate period of reckonable service as a member”, “aggregate period of reckonable service as an office-holder” and “aggregate period of reckonable service (whether as a member or otherwise)” have the meanings assigned to them by Article 8;

“contribution”, in relation to a person, means any amount deducted from any salary of his under Article 5 or 6 (including any sum which, by virtue of any provisions of either of those Articles is to be treated as, or dealt with as if it were, a sum so deducted) and any reference to the payment of a contribution by a person shall be construed accordingly;

“the Department” means the Department of Finance;

“the Fund” has the meaning assigned to it by Article 3(1);

“interest” (where the reference is to the payment of any sum with interest) means compound interest at the rate of three per cent. per annum, calculated with annual rests;

“member” means a member of the Assembly;

“member’s salary” means salary payable to a member in respect of his membership of the Assembly;

“period of tenure of a qualifying office” and “qualifying office” have the meanings assigned to them by Article 4;

“the Trustees” has the meaning assigned to it by Article 3(2).

(3) In this Order “basic or prospective pension or pensions”, in relation to a person who has died and who at the time of his death was entitled to receive a pension under Article 9(1), Article 9(4) or Article 10 or under two or more of those provisions, means the annual amount of that pension calculated in accordance with Article 9 or Article 11, or the aggregate of the annual amounts of those pensions so calculated, as the case may be; and in relation to a person who has died and who had not before his death become entitled to receive a pension under either of those Articles, but had at the time of his death an aggregate period of reckonable service (whether as a member or otherwise) of not less than four years, it means the annual amount specified in whichever of the following sub-paragraphs is applicable in his case, or, if both those

(a) 1973 c. 36.

(b) 1954 c. 33 (N.I.).

paragraphs are applicable, it means the aggregate of the annual amounts specified in those sub-paragraphs, that is to say—

- (a) where the deceased was a member, the annual amount of the pension, calculated in accordance with Article 9(2), which he would have been entitled to receive under that Article if he had ceased to be a member immediately before his death and he had then fulfilled the conditions specified in sub-paragraphs (a) to (d) of paragraph (1) of that Article;
- (b) where the deceased had elected to be a participant under Article 4 in respect of one or more periods of tenure of a qualifying office, the annual amount of the pension, calculated in accordance with Article 11, which he would have been entitled to receive under Article 10 if immediately before his death he had fulfilled the conditions mentioned in the preceding sub-paragraph.

The Assembly Contributory Pension Fund

3.—(1) For the purposes of this Order there shall be constituted a fund to be known as the Assembly Contributory Pension Fund (in this Order referred to as “the Fund”) which shall, subject to the provisions of this Order, be under the control and management of the Trustees of the Fund and the Department.

(2) The Assembly shall have power to appoint Trustees of the Fund (in the following provisions of this Order referred to as “the Trustees”) and to remove any Trustee so appointed.

(3) Subject to paragraph (4) the provisions of Schedule 1 shall have effect with respect to the number, qualification, and proceedings of the Trustees, the distribution of functions between the Trustees and the Department and the administration of the Fund.

(4) Until the Assembly first appoints three or more Trustees under this Article, the Secretary of State shall be the sole trustee; and so long as the Secretary of State is the sole trustee paragraphs 1 to 5 of Schedule 1 shall not apply.

(5) Where, at any time after the first appointment of Trustees referred to in paragraph (4), there cease to be any Trustees (whether by reason of a dissolution of the Assembly or for any other reason) the Clerk to the Assembly shall be the sole trustee until such time as the Assembly next appoints three or more Trustees; and so long as the Clerk to the Assembly is the sole trustee paragraphs 1 to 5 of Schedule 1 shall not apply.

(6) All pensions and other sums payable under this Order by the Trustees or the Department shall be paid out of the Fund and all sums received by the Trustees under or for the purposes of this Order shall be paid into the Fund.

(7) The Department, with the consent of the Trustees, may invest any property held by it under or for the purposes of this Order whether at the time in a state of investment or not, in any investments whatsoever and wheresoever and may also from time to time vary any such investments.

(8) All dividends and interest received on investments made under paragraph (7) shall be paid into the Fund.

Voluntary participation by members of the Executive etc.

4.—(1) In this Order “qualifying office” means any office held under section 8 of the Northern Ireland Constitution Act 1973.

(2) Subject to paragraph (3), in respect of any continuous period for which a person is—

- (a) the holder of one and the same qualifying office, or

(b) the holder successively of two or more qualifying offices in respect of which the same salary is payable, he may elect to be, or not to be, a participant under this Article.

(3) A person who is or has at any time (whether before or after the coming into operation of this Order) been presiding officer of the Assembly may not elect to be a participant under this Article.

(4) In respect of any such period as is mentioned in paragraph (2) (in this Order referred to as a "period of tenure of a qualifying office")—

(a) if that period began before, or begins on the date of, the coming into operation of this Order, an election by a person not to be a participant under this Article must be made by notice in writing given to the Trustees before the end of the period of three months beginning with the coming into operation of this Order, and

(b) in any other case, such an election must be made by notice in writing given to the Trustees before the end of the period of three months beginning with the date on which the period of tenure of a qualifying office in question began;

and any person who, being entitled to make an election under paragraph (2) in respect of a period of tenure of a qualifying office, does not give notice in respect of that period in accordance with sub-paragraph (a) or sub-paragraph (b) shall be deemed to have elected to be a participant under this Article in respect of that period.

(5) In the following provisions of this Order any reference to a period of tenure of a qualifying office for which a person has elected to be a participant under this Article shall be construed as including any such period in respect of which, by virtue of paragraph (4), a person is to be deemed to have so elected.

Contributions from Assembly remuneration

5.—(1) Subject to the provisions of this Article, there shall be deducted from each payment of salary made to a member under section 1(5) of the Northern Ireland Assembly Act 1973^(a) or by virtue of an Order in Council under section 26(2) of the Northern Ireland Constitution Act 1973 a sum calculated at the rate of five per cent. per annum of such salary.

(2) All sums deducted in accordance with paragraph (1) shall be paid into the Fund.

(3) If any salary from which a deduction is required to be made under this Article is not drawn, there shall be set aside, out of moneys available for the payment, a sum equal to the relevant deduction, and any sum so set aside shall be dealt with as if it were a sum so deducted.

(4) Paragraph (1) does not apply to any payment of salary made under section 1(5) of the Northern Ireland Assembly Act 1973 to a member in respect of any period during which he was also a member of the House of Commons.

(5) In respect of any period before the coming into operation of this Order during which a person was a member, he may within three months of the coming into operation of this Order by notice in writing to the Trustees elect to pay into the Fund such sums as would, if this Article had been in operation during such period, have been deducted from his salary as a member; and any sum paid into the Fund under this paragraph shall be dealt with as if it were a sum deducted from salary under this Article.

(a) 1973 c. 17.

- (6) Any sum to be paid into the Fund under paragraph (5)—
- (a) shall be so paid within twelve months of the coming into operation of this Order or within such further period as the Trustees may in any particular case think fit; and
 - (b) may, with the consent of the Trustees, be paid by instalments.

Contributions from participants under Article 4

6.—(1) From each payment of salary made to any person for a period of tenure of a qualifying office in respect of which he has elected to be a participant under Article 4, or for any part of such a period, there shall (subject to paragraph (3)) be deducted a sum calculated at the rate of five per cent. per annum of such salary.

(2) All sums deducted in accordance with paragraph (1) shall be paid into the Fund.

(3) No sums shall be deducted under this Article from any salary payable to a person who is or has at any time (whether before or after the coming into operation of this Order) been presiding officer of the Assembly.

(4) If any salary from which a deduction is required to be made under this Article is not drawn, there shall be set aside, out of moneys available for the payment, a sum equal to the relevant deduction, and any sum so set aside shall be dealt with as if it were a sum so deducted.

(5) In respect of any period of tenure of a qualifying office before the coming into operation of this Order for which a person has elected to be a participant under Article 4, he may within three months of the coming into operation of this Order by notice in writing to the Trustees elect to pay into the Fund such sums as would, if this Article had been in operation during such period, have been deducted from his salary; and any sum paid into the Fund under this paragraph shall be dealt with as if it were a sum deducted from salary under this Article.

- (6) Any sum to be paid into the Fund under paragraph (5)—
- (a) shall be so paid within twelve months of the coming into operation of this Order or within such further period as the Trustees may in any particular case think fit; and
 - (b) may, with the consent of the Trustees, be paid by instalments.

(7) In this Article “salary” means salary payable to the holder of a qualifying office in respect of his tenure of that office.

Consolidated Fund contributions

7.—(1) In respect of the year beginning on 31st March 1976, a Consolidated Fund contribution of £5,000 shall be paid into the Fund out of moneys appropriated by Measure.

(2) In respect of the year beginning on 31st March 1977 and in respect of each year beginning with an anniversary of that date, a Consolidated Fund contribution of an amount recommended by an actuary in accordance with the following provisions of this Article shall be paid into the Fund out of moneys appropriated by Measure.

(3) The Department shall arrange for an actuary to make a report to the

Trustees and the Department on the general financial position of the Fund as at—

- (a) 31st March 1977;
- (b) the end of the period of three years beginning on that date; and
- (c) the end of each succeeding period of three years.

(4) Each report by an actuary under paragraph (3) on the general financial position of the Fund as at a particular date shall include his recommendation as to the Consolidated Fund contributions which should be paid under this Article in respect of each of the three years immediately following that date.

(5) A copy of every report made by an actuary under this Article shall be laid before the Assembly.

Reckonable service

8.—(1) Subject to paragraph (2) and to Articles 19(5), 22(4) and 23, for the purposes of this Order any period (whether before or after the coming into operation of this Order) during which a person was or is a member is a period of reckonable service as a member; and in this Order “aggregate period of reckonable service as a member”, in relation to a person, means the period during which he is or was a member or (if more than one) the aggregate of such periods.

(2) Any period before the coming into operation of this Order—

- (a) during which a person was a Member of the House of Commons;
- (b) in respect of which a person has not (for whatever reason) paid contributions under Article 5(5),

shall not be treated as a period of reckonable service as a member under paragraph (1).

(3) Subject to paragraph (4) and to Articles 19(5), 22(4) and 23, for the purposes of this Order any period which, in the case of a person, is a period of tenure of a qualifying office in respect of which he has elected to be a participant under Article 4 is a period of reckonable service as an office-holder; and in this Order “aggregate period of reckonable service as an office-holder”, in relation to a person, means his period (or, if more than one, the aggregate of his periods) of reckonable service as an office-holder.

(4) Any period before the coming into operation of this Order in respect of which a person has not (for whatever reason) paid contributions under Article 6(5) shall not be treated as a period of reckonable service as an office-holder under paragraph (3).

(5) In this Order “aggregate period of reckonable service (whether as a member or otherwise)”, in relation to a person, means whichever of the following is applicable to him, that is to say, his aggregate period of reckonable service as a member or his aggregate period of reckonable service as an office-holder, or, if both are applicable to him, means the first-mentioned of those periods together with so much (if any) of the other period as does not coincide with any part of the first-mentioned period.

Pensions of members

9.—(1) Subject to the provisions of this Order, a person who has ceased to be a member (whether before or after the coming into operation of this Order) shall be entitled to receive a pension under this paragraph as from the time

when the following conditions are fulfilled in respect of him, that is to say—

- (a) he is neither a member nor a candidate for election to the Assembly;
- (b) he is not the holder of a qualifying office;
- (c) his aggregate period of reckonable service (whether as a member or otherwise) is not less than four years; and
- (d) he has attained the age of sixty-five years.

(2) Subject to paragraph (3) and to Article 12, the annual amount of the pension payable to a person under paragraph (1) shall be a sum equal to the aggregate of the following amounts, that is to say—

- (a) an amount equal to one-sixtieth of the relevant terminal salary multiplied by the number of complete years comprised in his aggregate period of reckonable service as a member, and
- (b) an amount bearing the same proportion to one-sixtieth of the relevant terminal salary as the number of days comprised in that period after the end of the last complete year comprised in it bears to three hundred and sixty-five.

(3) Where a person has ceased to be a member (whether before or after the coming into operation of this Order) and the conditions specified in sub-paragraphs (a) to (c) of paragraph (1) are fulfilled in relation to him, and he has attained the age of sixty years but has not attained the age of sixty-five years, then if—

- (a) he applies to the Trustees for an immediate pension under this Article, and
- (b) the Trustees are satisfied that he does not intend to stand for re-election to the Assembly,

he shall be entitled to receive a pension under paragraph (1) as if he had attained the age of sixty-five years on the date of his application or, if later, such other date as may be there specified; but the annual amount of the pension to which he is so entitled both before and after he attains the age of sixty-five years, shall (subject to Article 12) be an amount calculated in accordance with paragraph (2), reduced by such amount as an actuary appointed by the Department determines to be appropriate, having regard to the length of the period beginning with the date of his application or, if later, such other date as may be there specified and ending with the date on which he would attain the age of sixty-five years.

(4) Where a member has been a member of the House of Commons and a sum by way of transfer value in respect of him has been received by the Trustees under Article 23 from the Members Contributory Pension (Northern Ireland) Fund and the conditions specified in sub-paragraphs (a) to (c) of paragraph (1) are fulfilled in relation to him, then if—

- (a) he applies to the Trustees for an ill-health pension under this paragraph, and
- (b) the Trustees, after considering medical evidence, are satisfied that he is by reason of bodily or mental infirmity incapable of earning his own living and that that infirmity is likely to be permanent,

he shall be entitled in addition to any other pension which may be payable under this Article to receive an ill-health pension under this paragraph.

(5) The annual amount of a pension payable to a person under paragraph (4) shall be the amount which, in accordance with section 6(2) of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965(a), would have

been the annual amount of the pension payable to him under section 6 of that Act, if he had fulfilled the conditions in section 6(1) of that Act and had not become a member.

(6) In this Article “the relevant terminal salary”—

(a) in relation to a person who has been a member for a period of not less than twelve months, or for two or more periods amounting in the aggregate to not less than twelve months, means the amount of a member’s salary for the last twelve months (whether continuous or discontinuous) during which that person was a member, and

(b) in relation to a person who has been a member, but whose aggregate period of service as such a member was less than twelve months, means an amount calculated by taking the aggregate amount of a member’s salary for the period (whether continuous or discontinuous) for which he was such a member and multiplying it by the appropriate figure;

and in sub-paragraph (b) “the appropriate figure” in relation to a person, means the figure (whether being a whole number or not) by which the number of days comprised in his period of service as a member must be multiplied in order to be equal to twelve months.

Pensions for participants under Article 4

10.—(1) A person who has elected to be a participant under Article 4 in respect of one or more periods of tenure of a qualifying office shall be entitled to receive a pension under this Article as from the time when the conditions specified in sub-paragraphs (a) to (d) of Article 9(1) are fulfilled in respect of him.

(2) No pension shall be payable under this Article to a person who is or has at any time (whether before or after the coming into operation of this Order) been presiding officer of the Assembly.

(3) The same person may be entitled to a pension or pensions under Article 9 and to a pension under this Article; and the amounts of the pensions shall be cumulative.

Amount of pension under Article 10

11.—(1) The provisions of this Article shall have effect for the purpose of calculating the annual amount of a pension payable to a person (in this Article referred to as “the pensioner”) under Article 10.

(2) For each year of which the whole or any part was comprised in the pensioner’s aggregate period of reckonable service as an office-holder the following amounts shall be calculated, that is to say—

(a) an amount equal to the sums deducted under Article 6 in respect of that year from the pensioner’s salary (within the meaning of that Article), and

(b) an amount equal to five per cent. of the aggregate amount which (in accordance with such statutory provisions relating to the remuneration of members as were in force during the whole or any part of that year) constituted a member’s salary in respect of that year;

and for each such year there shall be calculated the amount (in this Order referred to, in relation to any such year, as “the contribution factor” for that year) which is equal to the amount calculated under sub-paragraph (a) divided by the amount calculated under sub-paragraph (b).

(3) For each such year as is mentioned in paragraph (2) a contribution credit shall be calculated by multiplying one-sixtieth of the relevant terminal salary by the amount of the contribution factor for that year; and, subject to the next following paragraph and to Article 12, the annual amount of the pension payable to the pensioner under Article 10 shall be an amount equal to the aggregate of the contribution credits calculated under this paragraph.

(4) Where, on ceasing to hold a qualifying office at a time when he has attained the age of sixty years but has not attained the age of sixty-five years, a person would be entitled to a pension under Article 10 if he had then attained the last-mentioned age, then if—

- (a) he applies to the Trustees for an immediate pension under that Article, and
- (b) the Trustees are satisfied that he does not intend to stand for election to the Assembly or to accept any further appointment to a qualifying office,

he shall be entitled to receive a pension under that Article as if he had attained the age of sixty-five years on the date of his application or, if later, such other date as may be there specified but the annual amount of the pension to which he is so entitled, both before and after he attains the age of sixty-five years, shall (subject to Article 12) be an amount calculated in accordance with paragraphs (1) to (3), reduced by such amount as an actuary appointed by the Department determines to be appropriate, having regard to the length of the period beginning with the date of his application or, if later, such other date as may be there specified and ending with the date on which he would attain the age of sixty-five years.

(5) In paragraphs (2) and (3) “year” means a period of twelve months beginning with 31st March.

(6) In this Article “the relevant terminal salary”—

- (a) if the pensioner’s aggregate period of reckonable service as an office-holder was not less than twelve months, means the amount of a member’s salary for the last twelve months (whether continuous or discontinuous) comprised in that aggregate period of reckonable service, and
- (b) if the pensioner’s aggregate period of reckonable service as an office-holder was less than twelve months, means an amount calculated by taking the amount of a member’s salary for the period (whether continuous or discontinuous) which constituted that aggregate period of reckonable service and multiplying it by the appropriate figure;

and in sub-paragraph (b) “the appropriate figure” means the figure (whether being a whole number or not) by which the number of days comprised in the pensioner’s aggregate period of reckonable service as an office-holder must be multiplied in order to be equal to twelve months.

Commutation of part of pension

12.—(1) Any person who is entitled to receive a pension under Article 9(1) or Article 10 may, either before, or not later than one month after, the first instalment of the pension becomes payable, give notice to the Trustees that he desires to commute such part of the pension as is specified in the notice.

(2) Where a person has given notice under this Article, the Trustees shall determine—

- (a) what lump sum would be actuarially equivalent to the part of the pension specified in the notice, and

(b) what reduction of the annual amount of his pension would be appropriate in consideration of the payment of that lump sum; and, subject to the following provisions of this Article, a lump sum of the amount so determined shall be paid to that person and the annual amount of his pension shall be reduced accordingly.

(3) Any lump sum or reduction to be determined under paragraph (2) shall be a sum or reduction either certified by an actuary appointed by the Department or calculated in accordance with tables to be prepared from time to time by such an actuary, as fulfilling the conditions specified in sub-paragraph (a) or sub-paragraph (b) of that paragraph, as the case may be.

(4) If, in the case of any person who has given notice under this Article, the amount of the lump sum, determined in accordance with paragraphs (2) and (3), would exceed the permitted maximum—

- (a) the amount of the lump sum so determined shall be diminished by such proportion as is necessary to make it equal to the permitted maximum, and
- (b) the reduction of the annual amount of his pension under that paragraph (2) shall be diminished by the like proportion.

(5) For the purposes of paragraph (4) the permitted maximum—

- (a) in the case of a person entitled to a pension under Article 9(1), is three-eightieths of the relevant terminal salary (within the meaning of that Article) multiplied by the number of complete years comprised in his aggregate period of reckonable service as a member, together with an amount bearing the same proportion to three-eightieths of that salary as the number of days comprised in that period after the end of the last complete year comprised in it bears to three hundred and sixty-five, and
- (b) in the case of a person entitled to a pension under Article 10, is three-eightieths of the relevant terminal salary (as defined by Article 11(6)) multiplied by the aggregate of the contribution factors calculated in respect of him under Article 11(2).

Duration of pension under Articles 9 and 10

13.—(1) Subject to the following provisions of this Article, a pension under Article 9(1), Article 9(4) or Article 10 shall continue for the life of the person to whom it is payable.

- (2) No such pension shall be payable to a person—
 - (a) in respect of any period during which he is a member or a candidate for election to the Assembly; or
 - (b) in respect of any part of a period of tenure of a qualifying office.

(3) For the purposes of this Article a person who ceases to be a member in consequence of the dissolution of the Assembly (other than the dissolution under the Northern Ireland Assembly (Dissolution) Order 1975(a)) shall be treated as a candidate for election unless and until he gives notice in writing to the Trustees that he is not seeking re-election.

Pensions for widows

14.—(1) Subject to the provisions of this Article, the widow of a man who dies after the coming into operation of this Order shall be entitled to receive

(a) S.I. 1975/422 (1975 I, p. 1319).

a pension under this Article if her late husband, at the time of his death,—

- (a) was entitled to receive a pension under Article 9(1), Article 9(4) or Article 10, or under two or more of those provisions, or
- (b) was not so entitled, but had an aggregate period of reckonable service (whether as a member or otherwise) of not less than four years, and either had been a member or had elected to be a participant under Article 4 in respect of one or more periods of tenure of a qualifying office.

(2) The annual amount of a widow's pension under this Article shall be one-half of the basic or prospective pension or pensions of her late husband.

(3) Subject to the next following paragraph, a pension payable under this Article to a widow shall continue for her life or until her remarriage; but in the case of remarriage the Trustees may, if they think fit, at any time direct that the pension shall be restored if satisfied that the subsequent marriage has been terminated or that there are exceptional reasons for the payment of the pension notwithstanding the subsistence of that marriage.

(4) No pension shall be payable under this Article to a widow who, at her husband's death, was cohabiting with another person; and if a widow entitled to such a pension cohabits with another person, the pension shall cease to be payable:

Provided that the Trustees may, if they think fit, direct that the pension shall be paid or restored, as the case may be, if satisfied that the cohabitation has been terminated and that there are exceptional reasons for the payment of the pension.

(5) Where a man dies in circumstances in which, apart from this paragraph, a widow's pension would be payable to a woman married by him within the year ending with his death, then if—

- (a) there are no children of that marriage, and
- (b) it appears to the Trustees that his death within the year was to be foreseen by him at the date of the marriage,

the Trustees may direct that no widow's pension shall be payable under this Article.

Pensions for certain widowers

15.—(1) Subject to the provisions of this section, the widower of a woman who dies after the coming into operation of this Order shall be entitled to receive a pension under this Article if, at the time of her death, he was incapable by reason of age or bodily or mental infirmity of earning his own living and was wholly or mainly dependent on her, and at that time either—

- (a) she was entitled to receive a pension under Article 9(1), Article 9(4) or Article 10 or under two or more of those provisions, or
- (b) she was not so entitled, but had an aggregate period of reckonable service (whether as a member or otherwise) of not less than four years and either had been a member or had elected to be a participant under Article 4 in respect of one or more periods of tenure of a qualifying office.

(2) The annual amount of a widower's pension under this Article shall be one-half of the basic or prospective pension or pensions of his late wife.

(3) A pension under this Article shall, subject to the following provisions of this Article, continue for the life of the widower, but may be terminated by

direction of the Trustees in the event of his remarriage or of his ceasing to be incapable as mentioned in paragraph (1).

(4) A pension terminated under paragraph (3) may be restored by direction of the Trustees if at any time the marriage upon which it was terminated comes to an end or the pensioner again becomes incapable as mentioned in paragraph (1) or if the Trustees are satisfied that for exceptional reasons it is proper to restore the pension.

(5) Paragraphs (4) and (5) of Article 14 shall apply for the purposes of this Article with the necessary modifications.

Children's pensions

16.—(1) Subject to the provisions of this Article, a children's pension shall be payable for the benefit of any relevant child or children of a person who dies after the coming into operation of this Order and who is or has been married, if at the time of his death the condition specified in sub-paragraph (a) or in sub-paragraph (b) of Article 14(1) is fulfilled in his case.

(2) Subject to the next following paragraph the annual amount of a children's pension payable under this Article for the benefit of any relevant child or children of a person who has died in the circumstances mentioned in the preceding paragraph shall be a sum equal to one-eighth of the basic or prospective pension or pensions of the deceased for each relevant child not exceeding four.

(3) In any of the following circumstances, that is to say—

(a) where the deceased left no widow or widower, or

(b) where the deceased left a widow, or left a widower entitled to a pension under Article 15, and that widow or widower has died,

the annual amount of the children's pension shall be one-quarter of the basic or prospective pension or pensions of the deceased if there is only one relevant child, or, if there are two or more relevant children, shall be one-half of his basic or prospective pension or pensions.

(4) Where the deceased left a widow or widower who was (or, apart from the provision as to cohabitation, would have been) entitled to a pension under Article 14 or Article 15 and that pension—

(a) has ceased to be payable in consequence of the remarriage of the widow or widower, or

(b) was not payable, or has ceased to be payable, by reason of the provision as to cohabitation,

any children's pension under this Article shall cease to be payable or, as the case may be, shall not be payable unless and until the Trustees for exceptional reasons direct that the children's pension shall be payable; and if the Trustees so direct, they may, if they think fit, further direct that paragraph (3) of this Article shall apply as if the widow or widower had died.

(5) A children's pension under this Article shall be paid to or distributed between such person or persons as the Trustees may from time to time direct, and shall be applied by that person or those persons, without distinction, for the benefit of the relevant child or relevant children of the deceased or such of them as the Trustees may from time to time direct.

(6) In this Article "child", in relation to any person, includes an illegitimate child, a stepchild or an adopted child, and "relevant child" (subject to the

provisions of Schedule 2) means any child of the deceased, or of any wife or husband of the deceased, who—

- (a) is under sixteen years of age, or
- (b) is under twenty-two years of age and is within his period of full-time education as defined by that Schedule, or
- (c) was at the time of the death of the deceased wholly or mainly dependent on the deceased and was at that time and has at all times since been either a person falling within sub-paragraph (a) or sub-paragraph (b) of this paragraph or incapable, and likely to remain permanently incapable, by reason of bodily or mental infirmity, of earning his own living, and is not for the time being maintained out of moneys appropriated by Measure in a hospital or similar institution so maintained,

and “the provision as to cohabitation” means paragraph (4) of Article 14 or that paragraph as applied by Article 15.

Gratuity on death of member or office-holder

17.—(1) Where a person has died after the coming into operation of this Order at a time—

- (a) when he was a member, or
- (b) when he was not a member, but which brought to an end a period of tenure of a qualifying office in respect of which he had elected to be a participant under Article 4,

the Trustees may, if (subject to the next following paragraph) they think fit in their discretion to do so, grant to his personal representatives a gratuity under this Article.

(2) No such gratuity shall be granted in respect of a person unless immediately before his death his aggregate period of reckonable service (whether as a member or otherwise) amounted to not less than twelve months.

(3) The amount of a gratuity granted under this Article in respect of a person shall be whichever of the two following amounts is the greater, that is to say—

- (a) the amount of a member’s salary at the time of his death;
- (b) the aggregate of the contributions paid by that person, and not refunded to him, together with interest on each such contribution from the date on which it was paid.

Gratuity on death after retirement

18.—(1) Where a person dies after the coming into operation of this Order in circumstances where he has become entitled to receive a pension under Article 9(1), Article 9(4) or Article 10 or under two or more of those provisions and no pension in respect of him is payable under Article 14, Article 15 or Article 16, the Trustees may, if they think fit in their discretion to do so, grant to his personal representatives a gratuity under this Article.

(2) For the purpose of determining the amount of a gratuity which may be granted in respect of a person under this Article, there shall be calculated—

- (a) the amount of the gratuity which the Trustees could have granted to his personal representatives under Article 17 if he had died in the circumstances specified in paragraph (1) of that Article, and

(b) the aggregate amount of the payments made to him by way of pension under Article 9(1), Article 9(4) or Article 10 together with any lump sum paid to him under Article 12;

and the amount of the gratuity shall be the amount (if any) by which the amount calculated under sub-paragraph (a) exceeds the amount calculated under sub-paragraph (b).

Refund of contributions to contributor

19.—(1) Any contributions paid by a person, and not previously refunded to him, shall be refunded to him by the Trustees, with interest from the dates on which the contributions were paid respectively, if he requests the Trustees to refund the contributions to him and, on the date of that request, the conditions specified in the next following paragraph are fulfilled in relation to him.

(2) The conditions referred to in paragraph (1) are that—

- (a) either the contributor has ceased to be a member or a period of tenure of a qualifying office in respect of which he has elected to be a participant under Article 4 has come to an end;
- (b) he has not at any time since then been a member or entered upon a period of tenure of a qualifying office in respect of which he elects to be a participant under Article 4; and
- (c) his aggregate period of reckonable service (whether as a member or otherwise) is less than four years.

(3) If, after the refund of contributions to him under this Article, the contributor becomes, or (as the case may be) again becomes, a person liable to pay contributions under Article 5 or Article 6, he may—

(a) if he so desires, and makes the repayment before the end of the period of three months beginning with the date on which he becomes so liable, or

(b) after the end of that period, if the Trustees so allow, repay to the Trustees the sum so paid to him, with interest from the date on which it was paid to him; and any sum to be paid to the Trustees under this paragraph may, if the Trustees so allow, be paid by instalments over such period, not exceeding three years, as the Trustees think fit.

(4) Any amount (whether of principal or interest) paid by the contributor to the Trustees under paragraph (3) shall be treated for the purposes of this Article as if it were a contribution paid by him at the time when he makes that payment.

(5) For the purpose of calculating a person's aggregate period of reckonable service as a member or a person's aggregate period of reckonable service as an office-holder, no account shall be taken of any period in respect of which contributions paid by that person have been—

- (a) refunded to him under this Article, and
- (b) not subsequently repaid by him to the Trustees.

(6) Where any person—

- (a) has paid contributions under Article 6;
- (b) has subsequently become presiding officer of the Assembly; and
- (c) has ceased to hold the office of presiding officer or has died while holding that office,

any such contributions paid by him, and not previously refunded to him, shall

be refunded to him or (as the case may be) to his personal representatives by the Trustees, with interest from the dates on which the contributions were paid respectively.

Refund of contributions after death of contributor

20. Where a person has died after the coming into operation of this Order—

- (a) at a time when he was a member or which brought to an end a period of tenure of a qualifying office in respect of which he had elected to be a participant under Article 4, and which (in either case) was a time when his aggregate period of reckonable service (whether as a member or otherwise) amounted to less than twelve months, or
- (b) in circumstances where the conditions specified in sub-paragraphs (a) to (c) of paragraph (2) of Article 19 were fulfilled in relation to him, but where he had not made a request for a refund of contributions under that Article,

the Trustees shall refund to his personal representatives the contributions paid by the contributor and not previously refunded to him, with interest from the dates on which the contributions were paid respectively.

Application of pension

21.—(1) A pension under this Order shall not be assignable or chargeable with debts or other liabilities.

(2) Section 75 of the Mental Health Act (Northern Ireland) 1961(a) (which enables pay or pension of a person who is incapacitated by mental disorder from managing his affairs to be applied for the benefit of himself or his dependants instead of being paid to him) shall have effect in relation to any such pension as if it were payable directly out of moneys appropriated by Measure.

Transfers to other pension schemes

22.—(1) At the request of any person who—

- (a) has been, but has ceased to be, a member, or
- (b) has elected to be a participant under Article 4 in respect of a period of tenure of a qualifying office, but has ceased to be such a participant,

and who (in either case) has not become entitled to a pension under this Order, the Trustees may pay into or for the purposes of any fund or scheme to which this Article applies sums representing the value of that person's accrued pension rights under this Order.

(2) This Article applies—

- (a) to any scheme which is an exempt approved scheme within the meaning of section 21 of the Finance Act 1970(b), and
- (b) to any fund or scheme approved by the Commissioners of Inland Revenue for the purposes of this Article.

(3) For the purposes of this Article the value of a person's accrued pension rights under this Order shall be taken to be such sum as for those purposes may be certified by, or calculated in accordance with tables prepared by, an actuary appointed by the Department.

(a) 1961 c. 15 (N.I.).

(b) 1970 c. 24.

(4) Where any sums are paid by the Trustees under this Article in respect of any person, then—

- (a) for the purpose of calculating that person's aggregate period of reckonable service as a member, or his aggregate period of reckonable service as an office-holder, no account shall be taken of any period before the date of that payment, and
- (b) for the purposes of Articles 19 and 20 any contributions paid by him before that date shall be treated as not having been paid.

Transfers from other pension schemes

23.—(1) At the request, made in accordance with the next following paragraph, of any person who—

- (a) is for the time being a member or was a member at any time before the coming into operation of this Order, or
- (b) is not for the time being a member, but has elected to be a participant under Article 4 in respect of a period of tenure of a qualifying office,

the Trustees may receive any sums payable by way of transfer value in respect of him out of, or out of moneys held for purposes of, any fund or scheme to which Article 22 applies, or under any statutory provision for the time being in force which authorises the transfer of pension rights.

(2) A request made by a person under paragraph (1) shall not have effect unless it is made before the end of the period of three months beginning with whichever is the earliest of such one or more of the following dates as are applicable to him, that is to say—

- (a) the date of the coming into operation of this Order, if on that date he is a member or that date falls within a period of tenure of a qualifying office in respect of which he elects to be a participant under Article 4 or he was a member at any time before the coming into operation of this Order,
- (b) the earliest date (if any) after the coming into operation of this Order on which he is a member,
- (c) the earliest date (if any) after the coming into operation of this Order which falls within such a period as is mentioned in sub-paragraph (a) of this paragraph.

(3) Subject to paragraph (6), where any sums are received by the Trustees under paragraph (1) at the request of a person who is a member at the time when the request is made or was a member at any time before the coming into operation of this Order—

- (a) his aggregate period of reckonable service as a member shall be treated as increased by the addition of such period as may be determined by the Trustees, and
- (b) for the purposes of Articles 19 and 20 the sums so received by the Trustees, so far as in the opinion of the Trustees they represent his own contributory payments, shall be treated as if they were contributions paid by him, at the same times as those contributory payments were made, by deduction from his salary under Article 5.

(4) Where any sums are received by the Trustees under paragraph (1) at the request of a person who is not a member at the time when the request is made—

- (a) his aggregate period of reckonable service as an office-holder shall be treated as increased by the addition of such period as may be determined by the Trustees, and
- (b) for the purposes of Articles 19 and 20 the sums so received by the Trustees, so far as in the opinion of the Trustees they represent his own contributory payments, shall be treated as if they had been contributions paid by him, at the same times as those contributory payments were made, by deduction from his salary under Article 6.

(5) Subject to paragraph (6) any period determined by the Trustees under paragraph (3)(a) or paragraph (4)(a) shall be a period either certified by an actuary appointed by the Department as being appropriate in relation to the sums received by the Trustees at the request of the person in question or a period calculated, in accordance with tables prepared by such an actuary, as being appropriate in relation to those sums.

(6) Where any sums are received by the Trustees under paragraph (1) from the Members' Contributory Pension (Northern Ireland) Fund at the request of a person who has been a Member of the House of Commons—

- (a) paragraph (3) shall not apply if a pension has at any time been paid to that person under Article 9(4); and
- (b) the period determined by the Trustees under paragraph (3)(a) or paragraph (4)(a) shall be not less than the complete number of years of reckonable service (within the meaning of section 6(4) of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965) of that person as a member of the House of Commons.

Payments due to deceased persons

24.—(1) Where on the death of any person there is due to the deceased or his personal representatives from the Trustees a sum which (if any part of it due by way of interest is disregarded) does not exceed £1,500 probate or other proof of the title of the personal representatives of the deceased may be dispensed with, and the Trustees may pay the whole or any part of that sum to those representatives or to the person, or to or among any one or more of any persons, appearing to the Trustees to be beneficially entitled to the personal or movable estate of the deceased.

(2) Any person to whom a payment is made under the preceding paragraph, and not the Trustees, shall thereafter be liable to account for the amount paid to him under that paragraph.

(3) If the Trustees receive notice in writing of any claim against the estate of the deceased at any time before they have made a full payment under paragraph (1), then, except where the sum to be paid appears to them to be bona vacantia, they shall not make any, or (as the case may be) any further, payment under that paragraph to any person other than the personal representatives of the deceased until the claim is satisfied or withdrawn.

Deductions of tax from refunds of contributions

25. On making any repayment of contributions (including interest on contributions) under Article 19, the Trustees shall be entitled to deduct from the

repayment any tax to which they may become chargeable under paragraph 2 of Part II of Schedule 5 to the Finance Act 1970 (charge to tax on repayment of employee's contributions).

Abatement of pensions

26. Where a person to whom one or more pensions are payable under this Order is entitled to a pension under section 1 of the Ministerial Offices Act (Northern Ireland) 1952(a) or section 15 of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965, the payment of the pension or pensions under this Order shall, if the amount of the pension, or the aggregate amount of the pensions, payable under those provisions is greater than or equal to the amount of the pension, or the aggregate amount of the pensions, payable under this Order, be suspended and, if less, the amount of the pension, or the aggregate amount of the pensions, payable under this Order shall be diminished by the amount of the pension, or aggregate amount of the pensions, payable under those provisions.

N. E. Leigh

SCHEDULES

Article 3(3).

SCHEDULE 1

PROVISIONS RELATING TO THE TRUSTEES AND THE FUND

General Provisions

1. The Trustees shall be not more than five in number.
2. No person shall be appointed to be a Trustee unless he is a member and, on ceasing to be a member, a Trustee shall vacate his office.
3. The Trustees may act by a majority of those present at any meeting of the Trustees at which a quorum is present.
4. The procedure of the Trustees shall subject to the provisions of this Order be such as the Trustees may determine, and the quorum for any meeting of the Trustees shall be three.
5. A direction of the Trustees shall continue in force until revoked by a subsequent direction of the Trustees, notwithstanding any changes in the persons who are Trustees and notwithstanding that, by reason of a dissolution of the Assembly or any other reason, there are for a time no Trustees.

Distribution of Functions between the Trustees and the Department

6. The assets of the Fund shall be vested in the Department and all sums payable to or out of the income or capital of the Fund shall be paid to or by the Department.
7. The management of the Fund and the exercise of any power or discretion exercisable in relation thereto shall be vested in the Trustees.

(a) 1952 c. 15 (N.I.).

8. The Department shall have the custody of all securities and documents of title relating to the property of the Fund but the Trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom.

9. The Department shall concur in and perform all acts necessary to enable the Trustees to exercise their powers of management or any other power or discretion vested in them, unless the matter in which the Department is requested to concur is a breach of trust or involves a liability upon it in respect of calls or otherwise, but unless it so concurs the Department shall not be liable for any act or default on the part of the Trustees or any of them.

10. The Department, if it acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any statement of the Trustees as to any matter of fact, nor for acting upon any legal advice obtained by the Trustees independently of the Department, nor for acting in accordance with any directions given to the Department in writing and purporting to be signed by or on behalf of the Trustees.

Administrative Provisions

11. The Trustees may employ such officers and servants, if any, as they think necessary in connection with the management of the Fund; and the expenses of managing it, including any fee payable to the Comptroller and Auditor-General and the remuneration and pensions, or contributions towards the pensions, payable to or in respect of officers and servants employed by the Trustees, shall be defrayed out of the Fund.

12. The Trustees shall keep proper accounts and shall prepare in respect of each financial year of the Fund statements of account in such form and in such manner as the Department may direct.

13. The Comptroller and Auditor-General shall examine and certify every statement of account prepared under paragraph 12 of this Schedule and shall lay a copy of every such statement, together with his report on it, before the Assembly.

Article 16(6).

SCHEDULE 2

PERSONS QUALIFYING FOR CHILDREN'S PENSIONS

1. In this Schedule "the deceased" means the person on whose death a children's pension is or may be payable under Article 16, and "child" has the same meaning as in that Article.

2. For the purposes of Article 16 a child shall be treated as within his period of full-time education while—

- (a) he is receiving full-time instruction at any university, college, school or other educational establishment, or
- (b) he is undergoing full-time or substantially full-time training for any trade, profession or vocation;

and any question arising under this paragraph shall be determined by the Trustees.

3. A child shall not be treated as a relevant child for the purposes of Article 16—

- (a) as being an illegitimate or adopted child of the deceased, if he was born or adopted, as the case may be, after the termination of the marriage or last marriage of the deceased, or
- (b) as being the child of a wife of the deceased, if he was born or became her child after the termination of her marriage with the deceased,

unless, in the case of an adopted child falling within sub-paragraph (a) or sub-paragraph (b) of this paragraph, the Trustees, if satisfied that before the material event therein mentioned the deceased (or, as the case may be, the deceased and his wife) had already formed the intention of adopting the child, and that the child was then wholly or mainly dependent on the deceased, direct that the child shall be treated as a relevant child.

4. A child shall not be treated as a relevant child for the purposes of Article 16 as being—

(a) the illegitimate child of the deceased, or

(b) a child of a wife of the deceased,

unless the child was wholly or mainly dependent on the deceased at the time of his death.

5. A female child shall not be treated as a relevant child for the purposes of Article 16 if, at the date of the death of the deceased, she is married to or cohabiting with another person; and a female child who thereafter marries or cohabits with another person shall thereupon cease to be a relevant child unless and until the Trustees, being satisfied that the marriage or cohabitation has been terminated and that for exceptional reasons it is proper to do so, direct that she shall be so treated.

6. Where the deceased was a woman, no child of any marriage of hers shall be a relevant child for the purposes of Article 16 if the father of the child was living at the death of the deceased, unless the Trustees for exceptional reasons direct that the child shall be so treated.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides for the payment of pensions to persons who have been members of the Northern Ireland Assembly or have held office under section 8 of the Northern Ireland Constitution Act 1973.

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