

1978 No. 1358

TRANSPORT

PENSIONS AND COMPENSATION

The British Railways Board (Winding up of Closed Pension Funds) Order 1978*Made - - - - 17th September 1978**Laid before Parliament 20th September 1978**Coming into Operation 11th October 1978*

The Secretary of State for Transport, in exercise of the powers conferred by section 74 of the Transport Act 1962(a), and now vested in him(b), and of all other enabling powers, hereby makes the following Order:—

Commencement, citation and interpretation

1.—(1) This Order shall come into operation on 11th October 1978, shall have effect from 6th April 1978 and may be cited as the British Railways Board (Winding up of Closed Pension Funds) Order 1978.

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

“the Act of 1975” means the Social Security Pensions Act 1975(c);

“the Amalgamated Fund” means the British Railways Superannuation Fund (Amalgamated Sections) as constituted by the British Transport (Amalgamation of Railways’ Pension Funds) (No. 1) Order 1970(d) and as amended by a Trust Deed made by the Board under the Railway Clearing System Superannuation Fund Act 1976(e);

“the Board” means the British Railways Board;

“friendly society” means a friendly society enabled under regulations made under section 71(1) of the Social Security Act 1973(f) as amended by section 4 of the Social Security Amendment Act 1974(g), or under Article 67 of the Social Security Pensions (Northern Ireland) Order 1975(h) to conduct such business as is described in that section or that Article;

“guaranteed minimum pension” has the meaning given in section 26(2) of the Act of 1975 and “accrued rights” to such a pension shall be construed in accordance with section 38(3) of that Act;

“the G.W.R. Fund” means the Great Western Railway Supplemental Pensions Reserve Fund;

“insurance company” means an insurance company to which Part II of the Insurance Companies Act 1974(i) or the Insurance Companies (Northern Ireland) Order 1976(j) applies and which is authorised by or under section 3 of that Act or Article 7 of that Order to carry on ordinary long-term insurance business as defined in that Act or that Order;

(a) 1962 c. 46.

(d) S.I. 1970/477.

(g) 1974 c. 58.

(j) S.I. 1976/59 (N.I. 3).

(b) S.I. 1970/1681.

(e) 1976 c. viii.

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

(c) 1975 c. 60.

(f) 1973 c. 38.

(i) 1974 c. 49.

“member” means—

- (a) in relation to the Amalgamated Fund, a person who is, or at any time has been, a contributory member of that Fund and who is an actual or prospective beneficiary thereof,
- (b) in relation to the G.W.R. Fund, a person who, by reason of his own employment, is an actual or prospective beneficiary of that fund;

“minimum pension age” means—

- (a) in relation to a member of the Amalgamated Fund—
 - (i) where he is a member of the L.N.E.R. section of that fund—
 - (A) if he became a member of the London and North Eastern Railway Superannuation Fund before 1st June 1957, the age of 60 (if a man) or of 55 (if a woman),
 - (B) if he became a member of that Superannuation Fund on or after that date, the age of 62 (if a man) or of 57 (if a woman),
 - (ii) where he is a member of one of the other sections of that fund, the age of 60 (if a man) or of 55 (if a woman);
- (b) in relation to a member of the G.W.R. Fund—
 - (i) where he is also, or has also been, a member of the Great Western Railway Enginemen and Firemen’s Mutual Assurance, Sick and Superannuation Society, the age of 60,
 - (ii) where he is also, or has also been, a member of the Great Western Railway Pension Society, the age of 65;

“the persons administering”, in relation to a pension fund, means the persons responsible for administering the fund under the terms thereof, and includes the trustees (if any) of the fund;

“the requisite benefits” has the meaning given in section 26(2) of the Act of 1975;

“the service” means employment with the Board or with a subsidiary of the Board or with any other publicly owned transport body (as defined in Article 1(4) of the British Transport (Pensions of Employees) (No. 1) Order 1969(a)) or with any other person whose employees are members of a pension fund to which this Order applies;

“term”, in relation to a pension fund to which this Order applies, includes any rule or other provision (whether statutory or otherwise) of, or applicable or relating to, the fund;

“winding up date”, in relation to a pension fund to which this Order applies, means the date on which the fund is wound up for any reason whatsoever.

(3) A reference in this Order to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

(4) The Interpretation Act 1889(b) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(a) S.I. 1969/1824.

(b) 1889 c. 63.

Application of Order

2.—(1) This Order applies to the following pension funds of the Board:—

- (a) the Amalgamated Fund, and
- (b) the G.W.R. Fund,

and makes provision in relation to each of those funds in the event of the winding up of the fund for any reason whatsoever.

(2) A pension fund to which this Order applies shall be construed and have effect as if the relevant provisions of this Order were terms of, or applicable to, the fund, any other term thereof, whether expressed or implied, to the contrary notwithstanding.

(3) Without prejudice to the generality of paragraph (2) above, the provisions of this Order with respect to the order and mode of distribution of the assets of a pension fund in the event of the winding up of the fund shall, in relation to the G.W.R. fund, replace the corresponding provisions of Rule 6 of the rules of that fund.

Entitlement of members of pension fund on winding up

3.—(1) On the winding up date of pension fund to which the Order applies every member of that fund who is then in the service but who has not attained the age of 70 (if a man) or 65 (if a woman) shall be deemed to leave the service on that date for the purposes of that fund, notwithstanding that he may actually remain in the service after that date.

(2) A member of a pension fund who is by virtue of paragraph (1) above deemed to leave the service on the winding up date of that fund shall—

- (a) if he has attained minimum pension age, be entitled to receive benefit from that fund as if he had retired from the service on that date,
- (b) if he has not attained minimum pension age, be entitled to receive benefit from that fund as if he had left the service on that date and, in a case where the pension fund is the Amalgamated Fund, had (unless the Board in their sole discretion otherwise decide) elected to take all his benefits in the form of a deferred pension (including, to the extent sanctioned by the relevant terms of the Amalgamated Fund, a deferred lump sum).

Order of application of assets on winding up of pension fund

4.—(1) In the event of the winding up of a pension fund to which this Order applies the persons administering that fund shall, subject to the payment from that fund of all costs, charges and expenses of the winding up, first make provision (so far as the assets of the fund will permit) in one or more of the ways mentioned in paragraph (3) below for the payment, in the order set out in this paragraph, of—

- (a) the pensions and annuities then payable from the fund,
- (b) any guaranteed minimum pensions of members of the fund not then payable,
- (c) the accrued rights of the members of the fund to guaranteed minimum pensions not then payable from the fund but reduced, in the case of any member who then has accrued pension rights in the BR (1974) Fund, by any sum to which he would be entitled from that Fund, under the provisions thereof relating to the preservation of guaranteed minimum pensions, if that Fund were wound up on the same day as the fund to which this Order applies,

- (d) in the case of the Amalgamated Fund, the equivalent pension benefits for the purposes of Part III of the National Insurance Act 1965(a) and the enactments which that Act replaced, in respect of the members of that fund,
- (e) any premiums payable to the Secretary of State under section 42 (premium on termination of contracted-out employment) or 44 (premium on termination of contracted-out scheme) of the Act of 1975 in respect of the members of the fund.
- (2) After provision has been made in accordance with paragraph (1) above for the payments mentioned in that paragraph the balance (if any) of the fund shall be applied in one or more of the ways mentioned in paragraph (3) below in making provision for—
- (a) benefits for or in respect of the members of the fund, determined on the advice of an actuary appointed by the Board, by reference to the accrued proportion of the benefits to which such members or their dependants would have been entitled from the fund if it had not been wound up, but adjusted so as to take account of benefits provided under paragraph (1) above, and
- (b) such further benefits for members and other beneficiaries as the persons administering the fund may determine to be equitable and as the Commissioners of Inland Revenue may approve.
- (3) The ways in which the assets of a fund may be applied for the purposes of this Article are (so far as the law for the time being in force may allow)—
- (a) subject to paragraph (4) below, the payment of transfer values to another pension fund fully approved by the Commissioners of Inland Revenue under the Income and Corporation Taxes Act 1970(b) or as an exempt approved scheme under the Finance Act 1970(c), or to a retirement benefits scheme which is approved by the said Commissioners for the purposes of this Article;
- (b) the effecting or purchase from an insurance company or friendly society of a non-transferable and non-commutable policy of insurance or annuity contract;
- (c) the payment to the Secretary of State of any sums payable under section 42 or 44 of the Act of 1975.
- (4) Payment under paragraph (3)(a) of a transfer value in respect of a member of a pension fund to which this Order applies, to another pension fund or to a retirement benefits scheme, shall not be made unless—
- (a) the member in question consents, or the other pension fund or retirement benefits scheme relates to the employment of the member by the same employer, or the case is one where the accrued rights to the requisite benefits of all the members of a fund or of a specified group of such members (of whom the member is one) are being transferred together, and
- (b) except where the Occupational Pensions Board otherwise agree, the other pension fund or retirement benefits scheme, as the case may be, is one in respect of which there is in force under section 31 of the Act of 1975 (contracting-out certificates) a contracting-out certificate which is applicable to the member's employment, and

(a) 1965 c. 51.

(b) 1970 c. 10.

(c) 1970 c. 24.

(c) except where the member in question has specifically consented to the transfer, the other pension fund or retirement benefits scheme will secure to him rights to benefit which are at least equal in value to the rights which he enjoyed in the fund from which the transfer value payment is being made.

(5) Any balance remaining in a pension fund to which this Order applies, after provision has been duly made in accordance with the foregoing paragraphs of this Article, shall be paid to the Board for the benefit of their undertaking.

Guarantee by Board

5. The Board shall, by making payments directly to the persons concerned or in such other way as may be appropriate in the circumstances (being payments additional to those otherwise required to be made by the Board) secure that no person who is, or may at any time be, entitled to benefit from a pension fund to which this Order applies, is placed in a worse position by reason of the provisions of this Order.

Adaptation with respect to Northern Ireland

6. For the purpose of the application of this Order in relation to a person who is a member of a pension fund to which this Order applies and whose social security pension benefits are secured under the provisions of the Social Security (Northern Ireland) Act 1975(a)—

(a) a reference in this Order to a provision of the Act of 1975 specified in column (1) of the Table below shall be construed as a reference to the corresponding provision of the Social Security Pensions (Northern Ireland) Order 1975(b) specified, against that provision, in column (2) of that Table:

TABLE	
(1) <i>Provision of the Act of 1975</i>	(2) <i>Corresponding provision of the Northern Ireland Order</i>
Section 26(2)	Article 28(2)
Section 31	Article 33
Section 38(3)	Article 40(3)
Section 42	Article 44
Section 44	Article 46;

(b) the reference in Article 4(1)(d) of this Order to Part III of the National Insurance Act 1965 and the enactments which that Act replaced shall be construed as a reference to Part III of the National Insurance Act (Northern Ireland) 1966(c) and the enactments which that Act replaced; and

(c) the references in Article 4(1) and (3) of this Order to the Secretary of State shall be construed as references to the Department of Health and Social Services (Northern Ireland).

William Rodgers,
Secretary of State for Transport.

17th September 1978.

(a) 1975 c. 15.

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

(c) 1966 c. 6. N.I.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends the terms of the British Railways Superannuation Fund (Amalgamated Sections) and the Great Western Railway Supplemental Pensions Reserve Fund so as to permit the employment of any member of either fund to be contracted-out of the earnings-related component of the State pension scheme provided for in the Social Security Pensions Act 1975. For this purpose it is necessary for the rules of a pension fund to accord priority to certain liabilities in the event of the winding up of the fund. The present Order provides for this priority.

Article 2 specifies the pension funds to which the Order applies, Article 3 gives specific rights to members of these pension funds in the event of winding up and Article 4 sets out the order in which the assets of the funds are to be applied in the event of winding up and, in particular, provides for the priority required, for contracting-out purposes, by the Social Security Pensions Act 1975.

Article 5 requires the British Railways Board to secure that no person entitled to benefit from either fund shall be placed in a worse position by reason of the provisions of the Order.

Article 6 contains an adaptation of the Order to cover the case of a fund member whose social security pension benefits are secured under the relevant Northern Ireland legislation.

This Order has effect from 6th April 1978 by virtue of section 74(7) of the Transport Act 1962.

SI 1978/1358
ISBN 0-11-084358-4

