

1978 No. 407

PENSIONS

**The National Insurance Commissioners' Pensions
(Preservation of Benefits) Order 1978**

<i>Made</i> - - - -	14th March 1978
<i>Laid before Parliament</i>	16th March 1978
<i>Coming into Operation</i>	6th April 1978

The Secretary of State for Social Services, in exercise of the powers conferred by section 65 of the Social Security Act 1973(a), as read with section 64 of that Act, as the appropriate authority designated for that purpose by the Minister for the Civil Service in accordance with the said provisions, hereby makes the following order:—

Citation and commencement

1. This order may be cited as the National Insurance Commissioners' Pensions (Preservation of Benefits) Order 1978 and shall come into operation on 6th April 1978.

Interpretation

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

“the Act” means the Social Security Act 1975(b);

“Commissioner” means the Chief National Insurance Commissioner and any other National Insurance 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 continuing to serve until reaching 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 and any enactment relating to the payment of 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 5(2);

and other expressions have the same meanings as in the Act.

(2) Any reference in this Order to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(a) 1973 c. 38.

(b) 1975 c. 14.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(a) shall apply for the purposes of the interpretation of this Order as they apply for the purposes of the interpretation of an Act of Parliament.

GENERAL

General effect of the Order

3. This Order shall apply in relation to any such Commissioner as is mentioned in Article 4 so as to modify, or further modify, any relevant enactment in respect of him and, accordingly, the scheme which is applicable in relation to him shall make provision for his benefit or otherwise in relation to him which accords with the following provisions of this Order.

Commissioners to whom this Order applies

4. This Order shall have effect in relation to any Commissioner who dies or otherwise ceases to hold office on or after 6th April 1978.

Ceasing to hold office and relevant service

5.—(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.

(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; so, however, that where an office holder is entitled to make an election under this Order, then, whether he makes or does not make an election, his relevant service shall not include any service of his which would have fallen to be disregarded for the purposes of superannuation benefits had he made or, as the case may be, not made a corresponding election under the relevant enactment on his retirement.

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

- (a) whether the Commissioner has served at any time in any other office; or
- (b) whether the earlier and the later offices are the same; or
- (c) whether any election available in respect of the Commissioner has been made; or
- (d) whether 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.

PRESERVED BENEFITS

Commissioner's pension

6.—(1) Subject to the following provisions of this Order, a Commissioner who has completed five years of relevant service but who ceased to hold office as such before normal pension age may become eligible for a pension under the Act when he reaches that 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 to normal pension age.

Lump sum and widow's and children's pension

7. Sections 2 (other than subsections (2)(b) and (3)), 3 to 8 and 15 to 17 of the Administration of Justice (Pensions) Act 1950(a) (lump sums and widow's and children's pensions) 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 to normal pension age, 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.

SUPPLEMENTARY

Election in respect of two or more periods of service

8.—(1) Where a Commissioner who has previously served in one or more other judicial offices has ceased to hold office as Commissioner (or, but for Article 5(1), would have ceased to hold office), then—

- (a) if his last period of service is relevant service; and
- (b) if he would have been entitled on retirement to elect that the superannuation benefits payable to or in respect of him should be determined under an enactment relating to the payment of superannuation benefit to or in respect of persons who have served in more than one office,

he shall, for the purposes of that enactment, have the same right of election, and that right may be exercised within an equivalent period, as if he had retired from that office at an age at which an election under that enactment would have been available to him.

(2) Where an election is made in reliance upon this Article, this Order shall apply as if in Article 6 for the expression "normal pension age" there were substituted a reference to the earliest age at which the Commissioner might have become eligible for superannuation benefits following an election made by him under an enactment referred to in paragraph (1)(b) of this Article.

(3) Any election made in reliance upon this Article by a person who had not ceased to hold office shall be of no effect.

Provisions about early retirement

9. For the purposes of this Order there are to be disregarded the provisions of paragraph 5(1)(b) of Schedule 10 to the Act (early retirement on grounds of ill-health) but this Order is without prejudice to those provisions.

Inalienability

10.—(1) 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 dependant) be void.

(2) This Article shall have effect in relation to Scotland as if for the references to assignment and charge there were substituted references to assignation and the granting of a right in security.

(a) 1950 c. 11 (14 & 15 Geo. 6).

Relationship to other benefits

11.—(1) Any benefits granted by virtue of this Order in respect of any relevant service of a Commissioner shall be payable even though other benefits are payable to or in respect of him, otherwise than by virtue of this Order—

(a) under a relevant enactment; or

(b) under an enactment relating to superannuation benefit in respect of an office listed or treated by virtue of any enactment as listed in Schedule 1 to the Administration of Justice (Pensions) Act 1950,

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 other office.

(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 judicial office, the amount for the purposes of that paragraph may be arrived at in the manner most favourable to him.

David Ennals,

Secretary of State for Social Services.

14th March 1978.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order modifies, by virtue of sections 64 and 65 of the Social Security Act 1973, the pension scheme for the Chief and other National Insurance Commissioners appointed under section 97(3) of the Social Security Act 1975 (or earlier corresponding legislation). It enables a reduced pension and derivative benefits (lump sum and widow's and children's pensions) to be preserved for the benefit of a Commissioner who ceases to hold office before the age at which he would otherwise normally become eligible to be granted a pension, and to be paid to or in respect of him thereafter.

Article 6 provides that the reduced pension may be paid at the age at which the Commissioner would normally become eligible to be granted a pension and provides the proportion on the basis of which the pension is to be calculated. Article 7 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 widow's 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. Article 8, by permitting an immediate election, enables the Superannuation (Judicial Offices) Rules 1968 and 1970, which relate to certain office holders who have held more than one office, to be applied where such office holders cease to hold office under the Order. Article 10 prevents a pension from being assigned, except in favour of a widow or dependant. Article 11 provides for partial or total abatement where the Commissioner is otherwise eligible for a judicial pension.

SI 1978/407
ISBN 0-11-083407-0

