1978 No. 408

PENSIONS

The National Insurance Commissioners' Pensions (Requisite Benefits) Order 1978

Made - - -	14*th March* 1978
Laid before Parliament	16*th March* 1978
Coming into Operation	6*th 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 (Requisite 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 Pensions Act 1975(**b**);

"Commissioner" means the Chief National Insurance Commissioner and any other National Insurance Commissioner appointed under section 97(3) of the Social Security Act 1975(**c**);

"final salary" has the meaning given by Article 10;

"relevant enactment" means section 97(4) of and paragraphs 5 and 6 of Schedule 10 to the Social Security Act 1975 and, in the case of a Commissioner who has held one or more other judicial offices, 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(3) and (4);

"scheme" means, in relation to a Commissioner, the public service scheme established by a relevant enactment;

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

(a) 1973 c. 38. (b) 1975 c. 60. (c) 1975 c. 14.

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.

(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.—(1) 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.

(2) Articles 8 and 9 of this Order (which relate to guaranteed minimum pensions) shall 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.

Commissioners to whom this Order applies

4. This Order shall have effect in relation to any Commissioner who is under pensionable age and who holds the office of Commissioner on 6th April 1978 or who is appointed to such an office when under that age on or after that date.

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 service of his in office as Commissioner.

(2) 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 pensionable 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.

(3) Subject to paragraph (4), 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.

(4) Service is not relevant service for the purposes of this Order if it is service before 6th April 1978.

(5) For the purposes of paragraphs (1) to (3) it is immaterial—

(*a*) whether 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);

(a) 1889 c. 63.

(*b*) whether the earlier and the later offices are the same; or

(*c*) whether any election in respect of the Commissioner is available, or, if available, 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.

REQUISITE BENEFITS

Commissioner's requisite benefits

6.—(1) As from his attainment of pensionable age a Commissioner who has ceased to hold office shall be entitled 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) shall not apply in relation to a Commissioner—

(*a*) who ceases to hold office before normal pension age; and

(*b*) who has completed less than five years' qualifying service for the purposes of Schedule 16 to the Social Security Act 1973 (preservation).

(4) Any part of the pension under paragraph (1) in excess of the Commissioner's guaranteed minimum 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, subject to paragraphs (2) and (3), be entitled under a scheme to a pension which shall be payable at the rate of $\frac{5}{8}$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.

(2) Paragraph (1) shall apply for any such period as is mentioned in section 36(6) of the Act.

(3) Paragraph (1) 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 16 to the Social Security Act 1973 (preservation).

Commissioner's guaranteed minimum

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, in relation to the pension provided for him by a scheme, a guaranteed minimum pension to be calculated in accordance with section 35(2), (3), (4), (5) and (9) of the Act unless his accrued rights thereto are extinguished under section 43(7) of the Act.

(2) Where a Commissioner continues to serve after attaining 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 a guaranteed minimum pension calculated in the manner provided by paragraph (1) of this Article and section 35(6) of the Act.

(3) Entitlement to 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 section 33(3)(*a*) or (*b*) of the Act 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 section 35(6) of the Act.

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

Widow's guaranteed minimum

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, in relation to the pension provided for her by a scheme, a guaranteed minimum pension the weekly rate of which shall be not less than half that of the Commissioner's guaranteed minimum.

(2) Paragraph (1) shall apply for any such period as is mentioned in section 36(6) of the Act.

(3) Paragraph (1) shall not apply—

(*a*) if at the date of his death the Commissioner's accrued rights to a guaranteed minimum pension have been extinguished under section 43(7) of the Act; or

(*b*) if the widow's accrued rights are extinguished under that subsection.

MISCELLANEOUS

Ascertainment of salary for requisite benefits

10.—(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 the Commissioner is receiving immediately before he ceases 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 any 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.

(3) For the purposes of Articles 6, 7 and 11(2) 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

11.—(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 2 of the Administration of Justice (Pensions) Act 1950(**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 $1\frac{7}{8}$ths per cent. of his 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

12. 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.

Time of payment

13. 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

14. 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 an office holder under any relevant enactment.

David Ennals,
Secretary of State for Social Services.

14th March 1978.

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

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). 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 (65 for men, 60 for women) and after 6th April 1978. The pensions are not to be less than the minimum pensions guaranteed by Articles 8 and 9, and there will be occasions when the guaranteed minimum only will be payable (for example under Article 12). Article 10 provides a mode of ascertainment of final salary for the purposes of the Order, and Article 11 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.

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