1989 No. 122

PENSIONS

Pensions (Requisite Benefits) Order (Northern Ireland) 1989

Made	*31st March 1989*
Coming into operation . .	*6th April 1989*

The Department of Finance and Personnel, in exercise of the powers conferred by Article 61 of the Social Security Pensions (Northern Ireland) Order 1975(**a**), as read with Article 60 of that Order, and now vested in it as the appropriate authority designated for that purpose(**b**), hereby makes the following Order:—

PART I

INTRODUCTORY

Citation and commencement

1. This Order may be cited as the Pensions (Requisite Benefits) Order (Northern Ireland) 1989 and shall come into operation on 6th April 1989.

Interpretation

2.—(1) In this Order—

"the Order of 1975" means the Social Security Pensions (Northern Ireland) Order 1975;

"final salary" has the meaning given by Article 11;

"normal pension age", in relation to member of an occupational pension scheme, means the earliest age at which that member can become entitled to receive a pension under the scheme, apart from any special provision as to early retirement on grounds of ill-health or otherwise;

"office-holder" means a person who is or has been the holder of any scheduled office;

"pensionable age" means the age of 65 for a man and 60 for a woman;

"relevant enactment" means an enactment under or in accordance with which an office-holder might be granted a pension in respect of any relevant service and, in the case of a person who has held more than one office, includes any enactment relating to the payment of superannuation benefits to or in respect of such a person;

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

"scheduled office" means an office listed in column 1 of Schedule 1;

(**a**) S.I. 1975/1503 (N.I. 15)

(**b**) Functions transferred from the Department of the Civil Service by S.I. 1982/338 (N.I. 6) Art. 4

"scheme" means, in relation to any office-holder, the public service pension scheme established by a relevant enactment; and

other expressions have the same meanings as in the Social Security (Northern Ireland) Act 1975(a).

PART II

GENERAL

General effect of Order

3.—(1) This Order applies in relation to any such office-holder 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, 9 and 10 (which relate to guaranteed minimum pensions) shall apply in relation to any such office-holder as is mentioned in Article 4 notwithstanding any other provision in any enactment, including the other provisions of this Order.

Office-holders to whom the order applies

4. This Order shall have effect in relation to a person under pensionable age who holds a scheduled office on 6th April 1989, or who is appointed to such an office when under pensionable age on or after that date:—

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

Ceasing to hold office and relevant service

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

(2) Subject to paragraph (3), an office-holder's service in a scheduled office 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 in a scheduled office.

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

(4) For the purposes of paragraphs (1) and (2):—

(*a*) it is immaterial whether—

(a) 1975 c. 15

(i) the office-holder has served at any time in any other office (including an office in relation to which he ceases to hold office for the purposes of this Order);

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

(iii) any election in respect of the office-holder is available, or, if available, has been made; and

(iv) the superannuation benefits payable under the relevant enactment relating to one office would, in the circumstances of the case, be unaffected by adding the other service into the reckoning; and

(*b*) service in an earlier office shall be treated as reckonable with service in a later scheduled office if it would have been so reckonable but for the office-holder's having left the later (or a subsequent) office before reaching compulsory retirement age.

PART III

REQUISITE BENEFITS

Office-holder's benefit

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

(2) Subject to paragraphs (3) and (4), the annual rate of the office-holder's pension under paragraph (1) shall be 1¼ per cent. of his final salary multiplied by the number of years of relevant service completed by him before he attained pensionable age.

(3) Paragraph (2) above shall not apply in relation to an office-holder who—

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

(*b*) has completed less than five years' qualifying service for the purposes of Schedule 3 to the Order of 1975 (preservation)(**a**).

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

Widow's benefits

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

(2) Subject to paragraphs (3) and (4), the annual rate of the widow's pension under paragraph (1) shall be ⅝ths per cent. of the final salary (or last salary before death) of the office-holder multiplied by the number of years of relevant service completed by him before he attained pensionable age.

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

(3) Paragraph (2) above shall apply for any such period as is mentioned in Article 38(6) of the Order of 1975.

(4) Paragraph (2) above shall not apply in relation to an office-holder who dies after ceasing to hold office and who has completed less than five years' qualifying service for the purposes of Schedule 3 to the Order of 1975 (preservation)(a).

Office-holder's guaranteed minimum pension

8.—(1) As from his attainment of pensionable age an office-holder 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, not less than the guaranteed minimum pension, the weekly rate of which shall be calculated in accordance with Article 37(2), (3), (4), (5) and (9) of the Order of 1975, unless his accrued rights thereto are extinguished under Article 45(7) of that Order.

(2) Where an office-holder continues to serve after pensionable age, then—

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

(*b*) as from the date (if earlier) when he ceases to hold office,

he shall, subject to paragraph (3), be entitled to receive, in relation to the pension provided for him by a scheme, not less than the guaranteed minimum pension, the weekly rate of which shall be calculated in the manner provided by paragraph (1) and Article 37(6) of the Order of 1975.

(3) Entitlement to payment of a guaranteed minimum pension by virtue of paragraph (1) or (2) above shall not arise in respect of any period during which the consent of the office-holder under Article 35(3)(*a*) or (*b*) of the Order of 1975 is in force and not revoked, and, when the pension which has accordingly been postponed commences, paragraph (1) shall apply as if it contained a reference to Article 37(6) of that Order.

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

Widow's guaranteed minimum pension

9.—(1) As from the death (whether before or after attaining pensionable age) of an office-holder, 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 her guaranteed minimum as ascertained in accordance with Article 38(3) of the Order of 1975.

(2) Paragraph (1) above shall apply for any such period as is mentioned in Article 38(6) of the Order of 1975.

(3) Paragraph (1) above shall not apply if—

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

(*a*) at the date of his death the office-holder's accrued rights to a guaranteed minimum pension have been extinguished under Article 45(7) of the Order of 1975; or

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

Widower's guaranteed pension

10.—(1) As from the death on or after 6th April 1989 (whether before or after attaining pensionable age) of a female office-holder, her widower shall, subject to paragraphs (2) and (3) be entitled to receive a guaranteed minimum pension the weekly rate of which shall be his guaranteed minimum as ascertained in accordance with Article 38(3) of the Order of 1975.

(2) Paragraph (1) shall apply in the circumstances prescribed under Article 38(7A)(**a**) of the Order of 1975 and for the period so prescribed.

(3) Paragraph (1) shall not apply if—

(*a*) at the date of her death the office-holder's accrued rights to a guaranteed minimum pension have been extinguished under Article 45(7) of the Order of 1975; or

(*b*) the widower's accrued rights are extinguished under that Article.

PART IV

MISCELLANEOUS

Ascertainment of salary for requisite benefits

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

(2) Where—

(*a*) an office-holder has two or more periods of relevant service; and

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

then, for the purposes of this Order, the final salary of that office-holder (or his last salary before death) shall be that which would have been arrived at under paragraph (1) if he had continued to hold the earlier office until the date when he ceased to hold office; and, if that office had ceased to exist at that date, that salary shall be taken to be such as the relevant department with (in the case of the Department of Economic Development or the Department of Health and Social Services) the concurrence of the Department of Finance and Personnel may determine it would have been had the office continued to exist.

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

(3) For the purposes of Articles 6, 7 and 12(3) there shall be excluded from the salary by reference to which the annual rate of the office-holder'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.

(5) For the purposes of paragraph (2) the relevant department in relation to any scheduled office is the department specified opposite to that office in column 2 of Schedule 1.

Contribution in event of marriage during retirement

12.—(1) Where, on the date when he ceases to hold office, an office-holder is unmarried, he may be required to undertake, in return for payment to him of a lump sum under or in accordance with whichever of the enactments mentioned in paragraph (2) is applicable to him, that he will, on his first marriage thereafter, pay a contribution in respect of benefits that may become payable to his widow by virtue of Articles 7 and 9.

(2) The enactments referred to in paragraph (1) are—

(*a*) Section 5 of the Judicial Pensions Act (Northern Ireland) 1951(**a**);

(*b*) Section 3 of the Resident Magistrates' Pensions Act (Northern Ireland) 1960(**b**);

(*c*) Article 5 of the Lands Tribunal (Salaries and Superannuation) Order (Northern Ireland) 1964(**c**);

(*d*) Section 2 of the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969(**d**);

(*e*) Article 6 of the Parliamentary Commissioner for Administration and Commissioner for Complaints (Pension) Order (Northern Ireland) 1973(**e**).

(3) The contribution referred to in paragraph (1) shall be equal to 1⅞ths per cent. of the office-holder's final salary multiplied by the number of whole years of relevant service of his which were—

(*a*) completed by him before he attained pensionable age; and

(*b*) not years—

(i) during any part of which he was a married man, or

(ii) preceding a marriage of his contracted before he ceased to hold office.

Marriage shortly before death

13. Where the marriage of a woman to an office-holder takes place after he has ceased to hold office and not more than six months before his death,

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(**a**) 1951 c. 20 (N.I.)
(**b**) 1960 c. 2 (N.I.)
(**c**) S.R. & O. (N.I.) 1964 No. 191 (p. 867)
(**d**) 1969 c. 7 (N.I.)
(**e**) S.R. & O. (N.I.) 1973 No. 455 (II, p. 2677)

any pension to be paid to her as his widow by virtue of this Order shall be limited to her guaranteed minumum pension.

Time of payment

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

Relationship to other benefits

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

Savings

16.—(1) Nothing in this Order shall affect the meaning of "normal pension age" in any relevant enactment.

(2) This Order shall not apply in relation to an office-holder with respect to whose relevant service the provisions of the principal civil service pension scheme, within the meaning of Article 4 of the Superannuation (Northern Ireland) Order 1972(**a**) and for the time being in force, apply.

Modification of enactments

17. The enactments mentioned in Schedule 2 shall have effect subject to the modifications in this Order.

Revocation and transitional provisions

18.—(1) Subject to paragraph (2) the Pensions (Requisite Benefits) Order (Northern Ireland) 1978(**b**) is hereby revoked.

(2) The Pensions (Requisite Benefits) Order (Northern Ireland) 1978 shall continue to apply in relation to any office-holder who ceased to hold office before 6th April 1989.

Sealed with the Official Seal of the Department of Finance and Personnel on 31st March 1989.

(L.S.) *F. P. Smyth*
Assistant Secretary

(a) S.I. 1972/1073 (N.I. 10)
(b) S.R. 1978 No. 307 as amended by S.I. 1980/1959 (N.I. 17) Art. 7(2) and Sch. 3

SCHEDULE 1 Article 2

Column 1 *The Scheduled Offices*	Column 2 *Relevant Departments*
Northern Ireland Parliamentary Commissioner for Administration	Department of Finance and Personnel
Northern Ireland Commissioner for Complaints	Department of Finance and Personnel
President of Industrial Court	Department of Economic Development
President of Industrial Tribunals	Department of Economic Development
Whole-time Chairman of Industrial Tribunals	Department of Economic Development
President of Lands Tribunal	Department of Finance and Personnel
Member of Lands Tribunal	Department of Finance and Personnel
President of Social Security Appeal Tribunals and Medical Appeal Tribunals	Department of Health and Social Services
Chairman of Social Security Appeal Tribunals and Medical Appeal Tribunals	Department of Health and Social Services

Enactments

The Lands Tribunal (Salaries and Superannuation) Order (Northern Ireland) 1964.

The Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969, Section 2.

The Parliamentary Commissioner for Administration and Commissioner for Complaints (Pension) Order (Northern Ireland) 1973, Part II.

The Judicial Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1978(**a**).

The Pensions (Preservation of Benefits) Order (Northern Ireland) 1989(**b**).

(a) S.R. 1978 No. 15
(b) S.R. 1989 No. 121

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order revokes and replaces the Pensions (Requisite Benefits) Order (Northern Ireland) 1978 (''the earlier Order'') which modified the pension schemes relating to holders of the judicial offices listed in column 1 of Schedule 1 so as to make the changes required in order to meet the contracting-out requirements laid down by the Social Security Pensions (Northern Ireland) Order 1975 (''the 1975 Order''). Articles 6 and 7 confer on an office-holder and on his widow entitlement to pensions based on the final salary of the office-holder and in his years of service up to pensionable age (65 for men, 60 for women) after 6th April 1978. The pensions are not to be less than the minimum guaranteed by Articles 8 and 9, and there will be occasions where the guaranteed minimun only will be payable (such as under Article 13). Article 10 confers entitlement to guaranteed minimum pensions to the widowers of female office-holders who die after 5th April 1989, in order to meet the further contracting-out requirement inserted into the 1975 Order by the Social Security (Northern Ireland) Order 1986. Article 11 provides a mode of ascertainment of final salary for the purposes of the Order, and Article 12 provides arrangements for the payment of contributions in respect of widows' pensions that may become payable by virtue of the Order where the office-holder marries after retirement. The remaining Articles are explanatory and supplementary.

The rights under Articles 6 and 7 of office-holders appointed after 6th April 1989 and of the widows of office-holders who die after that date will be equal to their entitlement to guaranteed minimum pensions. The right conferred by Article 10 will apply to widowers of office-holders who die after 5th April 1989. The offices of President and Chairman of Social Security Appeal Tribunals and Medical Appeal Tribunals are added to the list of office-holders whose pension schemes are modified. Apart from these changes the Order makes no change of substance.

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