1989 No. 131

PENSIONS

The Social Security Commissioners' Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1989

Made . . . . . *23rd March 1989*

Coming into operation . . *6th April 1989*

To be laid before Parliament

The Lord Chancellor, in exercise of the powers conferred by section 10(8) of, and Schedule 3 to, the Administration of Justice Act 1973(**a**) and now vested in him(**b**), and of all other powers enabling him in that behalf, and with the concurrence of the Treasury(**c**), hereby makes the following Regulations:—

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Social Security Commissioners' Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1989 and shall come into operation on 6th April 1989.

Interpretation

2.—(1) In these Regulations—

"the Act of 1951" means the Judicial Pensions Act (Northern Ireland) 1951(**d**);

"the Act of 1973" means the Administration of Justice Act 1973;

"Commissioner" means the Chief Social Security Commissioner and any other Social Security Commissioner appointed under section 97(3) of the Social Security (Northern Ireland) Act 1975(**e**);

"contribution" means a contribution towards the cost of a widow's or children's pension;

"lump sum" means the lump sum payable under section 5(1) or (2) of the Act of 1951 on the retirement or death of an office-holder;

(a) 1973 c. 15; amended and repealed in part by section 36 of and Schedules 3 and 4 to the Judicial Pensions Act 1981 c. 20

(b) Function transferred by section 82 of, and paragraph 3(1)(*b*) of Schedule 9 to, the Social Security Act 1986 c. 50

(c) Function transferred by section 82 of, and paragraph 4(1) of Schedule 9 to, the Social Security Act 1986

(d) 1951 c. 20 (N.I.)

(e) 1975 c. 15

"office-holder" means a person serving after 17th April 1973 in office as a Commissioner in respect of which office a widow's or children's pension may be granted under or by virtue of Part II of the Act of 1951;

"periodical payment" means a contribution in the form of a deduction from the office-holder's salary;

"personal pension" means the pension for which an office-holder becomes eligible on retirement (or, if he dies in office, would have become eligible had he retired on the ground of infirmity at the time of his death);

"relevant service" means salaried service as a Commissioner in respect of which service a widow's or children's pension may be granted under or by virtue of Part II of the Act of 1951 and any other service which by virtue of regulations made under paragraph 6(3)(*b*) of Schedule 10 to the Social Security (Northern Ireland) Act 1975(**a**) counts as service as a Commissioner;

"responsible authority" means, in relation to an office-holder, the person or body responsible for paying his salary;

"15-year office" and "20-year office" means an office, service in which for 15 or 20 years, as the case may be, is a condition of eligibility for an annual personal pension at the rate of one half of the last annual salary payable in respect of that office;

references to service in a 15-year or 20-year office include references to successive periods of service in two or more such offices, being periods which are aggregable for the purposes of eligibility for personal pension;

references to a widow's pension include references to a children's pension.

(2) The Interpretation Act 1978(**b**) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Application of Regulations

3.—(1) These Regulations do not apply in respect of an office-holder whose relevant service was wholly before 6th April 1989.

(2) Subject to paragraphs (3) and (4), contributions towards the cost of the liability for any pension or pensions under Part II of the Act of 1951, as modified by Schedule 3 to the Act of 1973, for the benefit of a man's wife and children in respect of relevant service shall be made in accordance with Parts II and III of these Regulations.

(3) Parts II and III do not apply in relation to an office-holder in respect of whom there is in force an election under section 10(4)(*b*) of the Act of 1973(**c**) (election by person serving on 18th April 1973 against up-rating of widow's pension), in which case the contribution will, where section 11 of the Act of 1951 applies, be the amount prescribed by that section.

(**a**) For regulations made under this power *see* the Social Security Commissioners (Pensionable Service) Regulations (Northern Ireland) 1987, S.R. 1987 No. 61

(**b**) 1978 c. 30

(**c**) *See* regulation 3(1)(*b*) of the Judicial Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1978, S.R. 1978 No. 15

(4) No contribution shall be made by an office-holder for any period of service during which an election under paragraph 7A of Schedule 10 to the Social Security (Northern Ireland) Act 1975(**a**) is in force in respect of him.

Extension of time

4. The responsible authority may, if satisfied in any particular case that it would be reasonable so to do, extend the time for giving any notice under these regulations or for making any election under section 10(4) of the Act of 1973.

PART II

CONTRIBUTION MADE ENTIRELY OUT OF LUMP SUM

Application of Part II

5.—(1) This Part shall have effect for determining the amount of the contribution (if any) to be made, by way of reduction in his lump sum, in the case of an office-holder who has made no periodical payments.

(2) No contribution by way of reduction in his lump sum shall be made in the case of a man who at no time during his relevant service had a wife.

Relevant service wholly after 17th April 1973

6.—(1) If the whole of the office-holder's relevant service is or, by virtue of an election made under section 10(4)(*a*) of the Act of 1973, is treated as, service after 17th April 1973, the amount of the contribution shall be three quarters of the lump sum.

(2) If the office-holder last had a wife at a time before the end of his relevant service, the amount of the contribution shall (instead of that in paragraph (1)) be three quarters of the lump sum:—

(*a*) multiplied by the number of months of his relevant service before the time at which he last had a wife; and

(*b*) divided by the total number of months of his relevant service.

Relevant service partly before 18th April 1973

7.—(1) If the office-holder's relevant service is not, or is not treated as, wholly after 17th April 1973, the amount of the contribution shall be determined by applying the formula:—

$$C = L \times \frac{2P \text{ plus } 3Q}{4S}$$

where—

C represents the amount of the contribution;

L represents the office-holder's lump sum;

P represents the number of months of relevant service before 18th April 1973;

(a) As modified by the Personal Pension Option (No. 1) Regulations (Northern Ireland) 1989, S.R. 1989 No. 100

Q represents the number of months of relevant service after 17th April 1973;

S represents the total number of months of relevant service.

(2) If the office-holder last had a wife at a time before the end of his relevant service, the amount of the contribution shall (instead of that in paragraph (1)) be that arrived at under paragraph (1) multiplied by the following fraction:—

$$\frac{\text{A plus one and a half times B}}{\text{P plus one and a half times Q}}$$

where—

"A" is the number of months of relevant service before the time he last has a wife and before 18th April 1973;

"B" is the number of months (if any) of relevant service before that time and after 17th April 1973;

"P" and "Q" are the same as in paragraph (1) above.

Supplemental

8.—(1) For the purpose of determining the amount of any contribution payable under this Part, there shall be disregarded any amount by which (in consequence of the operation of section 5(2) of the Act of 1951) that sum may exceed twice the annual amount of the personal pension.

(2) If, under section 10(5) of the Act of 1973, as applied by Schedule 3 to that Act (widow's or children's pension not wholly attributable to service after 17th April 1973), all or part of an office-holder's service before 18th April 1973 is to be left out of account, that service, or that part of it, shall also be left out of account for the purposes of this Part.

PART III

PERIODICAL PAYMENTS

Election to make periodical payments

9.—(1) Subject to the following provisions of this regulation, an office-holder may elect to make periodical payments.

(2) Without prejudice to regulation 10 or 12(6), periodical payments may only be made at the standard rate, that is to say 4 per cent. of the office-holder's salary for the time being.

(3) An office-holder who elects to make periodical payments must do so by notice in writing to the responsible authority not later than six months after his first appointment to his office:—

Provided that an office-holder who marries (or remarries) while in office and who is not then making periodical payments may elect to do so by giving notice in writing to the responsible authority not later than six months after his marriage or remarriage, as the case may be.

(4) An election made under this regulation shall be irrevocable, save that an office-holder who ceases to be married after having made such an election

may revoke his election by notice in writing to the responsible authority not later than six months after his so ceasing.

(5) Nothing in this regulation shall be construed as preventing an office-holder who is not married from electing to make periodical payments.

Additional payments for back service

10.—(1) In this regulation:—

"back service" means:—

(*a*) service before 1st February 1978 (the date of the coming into force of the provisions reproduced in this Part), and

(*b*) in the case of an office-holder who has married on or after that date, service on or after that date for any period during which he has made no periodical payments;

"previous service" means back service before 18th April 1973.

(2) An office-holder who has back service and who elects to make periodical payments at the standard rate may also elect to make, in respect of that back service, additional payments at such one of the following rates as he may specify: 4 per cent., 8 per cent. or 11 per cent. of his salary for the time being (that is to say, at the standard rate, or at twice, or at two and three quarters times that rate).

(3) An election under this regulation must have been made, or be made by notice in writing to the responsible authority:—

(*a*) not later than 30th June 1978; or

(*b*) in the case of an office-holder marrying (or remarrying) after 31st January 1978 and while still serving, not later than six months after his marriage or remarriage.

(4) An office-holder who has made an election under this regulation may at any time, by notice in writing to the responsible authority, either:—

(*a*) revoke his election; or

(*b*) vary its effect by specifying a different rate of additional payments, being one of the rates mentioned in paragraph (2).

(5) An election made under this regulation shall, if it has not been previously revoked, cease to have effect when the office-holder has made additional payments for a period equal in length to his back service and for this purpose, subject to paragraph (6), for any period during which he has made additional payments at a rate higher than the standard rate, he shall be treated as having made such payments for a correspondingly longer period (so that, for example, if he has made additional payments at twice the standard rate for one year he shall be treated as having made additional payments for two years).

(6) If an office-holder's back service includes previous service, then, for any period for which he has made additional payments at the standard rate, or at a multiple of that rate in accordance with paragraph (2), he shall be treated for the purpose of paragraph (5):—

(*a*) as having made those payments for one and a half (or one and a half times the said multiple) times such part of that period as, so multiplied, does not exceed in length his previous service; and