1980 No. 91

FIRE SERVICES

The Firemen's Pension Schemes (War Service) Order (Northern Ireland) 1980

Made . . . . . *6th March 1980*

Coming into operation . . . *1st May 1980*

The Department of the Environment in exercise of the powers conferred by section 17 of the Fire Services Act (Northern Ireland) 1969(**a**) and now vested in it(**b**) and of every other power enabling it in that behalf and with the approval of the Department of the Civil Service(**c**) hereby makes the following Order:

PART I

CITATION, OPERATION, INTERPRETATION ETC

Citation

1. This Order may be cited as the Firemen's Pension Schemes (War Service) Order (Northern Ireland) 1980.

Commencement and effect

2. This Order shall come into operation on 1st May 1980 and shall have effect as from 1st April 1975.

Interpretation

3.—(1) In this Order—

(*a*) references to the Scheme of 1973 are references to the Firemen's Pension Scheme (Northern Ireland) 1973 set out in Appendix 2 to the Firemen's Pension Scheme Order (Northern Ireland) 1973(**d**); and

(*b*) references to firemen are to be construed as references to regular firemen or members of a fire brigade or fire force or firemen employed in a wholetime capacity.

(2) Subject to the provisions of this Article, this Order shall be construed as one with the Scheme of 1973, except that in relation to a fireman who has not served as such on or after 1st April 1972 it shall be construed as one with that pension scheme mentioned in Part I of Schedule 1 which is applicable to his case.

(3) In the application of this Order to the case of a fireman who has not served as such on or after 1st April 1972 a reference to the Scheme of 1973 shall be construed as a reference to that pension scheme mentioned in Part I of Schedule 1 which is applicable to his case, and a reference to a particular provision of the Scheme of 1973 shall be construed as a reference to the corresponding provision specified in Part II of Schedule 1 which is applicable to his case or, if no corresponding provision is specified, shall be disregarded.

(**a**) 1969 c. 13 (N.I.) as amended by S.I. 1973/601 (N.I. 9) Article 7
(**b**) S.R. & O. (N.I.) 1973 No. 504 Article 5(*b*) (II, p. 2992)
(**c**) Formerly a function of the Department of Finance S.R. 1976 No. 281 (II, p. 1339)
(**d**) S.R. & O. (N.I.) 1973 No. 393 (II, p. 2187) as amended by S.R. 1975 No. 358 (II, p. 1767), 1976 No. 216 (I, p. 997), 1978 Nos. 24 (I, p. 37) and 100 (I, p. 278) and 1979 Nos. 88, 310 and 387

Definition of war service

4.—(1) In this Order any reference to a person's war service is, subject to paragraph (2), a reference to whole time service on or after 3rd September 1939 but before 1st July 1950 in the armed forces of the Crown, in the merchant navy or the mercantile marine, or in any of the women's services specified in Schedule 1 to the Superannuation Act (Northern Ireland) 1947(e).

(2) For the purposes of this Order no account shall be taken of a person's period of war service, or that part thereof—

(*a*) that was performed before he attained the age of 18 years, or

(*b*) in respect of which he received non-effective pay or excess remuneration, within the meaning of paragraph (3), which he has not repaid, or

(*c*) by virtue of which an armed forces pension or retired pay is payable to him in pursuance of any Royal Warrant or other instrument otherwise than in respect of disablement, or

(*d*) by virtue of which he is entitled to reckon a period of pensionable service otherwise than in pursuance of this Order, or

(*e*) which he has reckoned or has had the opportunity to reckon for the purposes of a public service pension scheme within the meaning of section 51(3)(*b*) of the Social Security Act 1973(f).

(3) In paragraph (2)(*b*)—

(*a*) the expression "non-effective pay" includes naval, military or air force pensions, retired pay or gratuities (other than war gratuities to which section 23 of the Finance (No. 2) Act 1945(g) applied);

(*b*) the expression "excess remuneration" means, in relation to a retired officer of the armed forces of the Crown who is re-employed in those forces, any service pension drawn in respect of such period of re-employment or any addition to the normal pay attaching to the post in which the officer is re-employed which is granted by reason of the officer's former employment in those forces,

and, for the purposes of paragraph (2)(*b*), the Authority shall be entitled to rely upon a certificate, signed by a duly authorised officer of the Ministry of Defence, that non-effective pay or excess remuneration was, or was not, paid in respect of any period and as to the sufficiency of any repayment.

Notice to Authority

5. Any notice for the purposes of this Order shall be given in writing to the Authority.

Qualified fireman

6.—(1) This Order shall have effect in the case of a fireman, other than one who died before 1st April 1975 or retired before that date without a pension—

(*a*) who completed a period of war service;

(*b*) who after completing his war service and before 1st July 1950 served as a fireman, and

(*c*) who is (or, immediately before his death, was) entitled to reckon pensionable service by virtue of that period of service as a fireman.

(2) In this Order any reference to a qualified fireman is a reference to such a fireman as is mentioned in paragraph (1).

(e) 1947 c. 18 (N.I.)
(f) 1973 c. 38
(g) 9 & 10 Geo. 6 c. 13 (repealed by 1952 c. 10)

Limitation on effect of reckoning war service

7.—(1) Nothing in this Order shall affect the calculation of a pension payable in respect of a period ending before 1st April 1975 and no payment shall be made in respect of such a period in the case of a pension which would not have been payable (on account of that or some other pension) but for this Order.

(2) Nothing in this Order shall affect the calculation of a transfer value other than one payable under Article 65A of the Scheme of 1973 in the case of a fireman who ceased to serve as such on or after 1st April 1975.

PART II

RECKONING OF WAR SERVICE

Fireman's election

8.—(1) A qualified fireman may, in accordance with this Article, by notice elect to reckon pensionable service by virtue of such period of war service as he may specify in the notice ("the specified period of war service") for all the purposes of the Scheme of 1973 except for the purposes of the calculation of a widow's pension or child's allowance (whether or not by reference to his own pension or notional pension).

(2) A qualified fireman who elects under paragraph (1) may also so elect to reckon pensionable service by virtue of the specified period of war service for the purposes excepted in paragraph (1).

(3) Subject to the payment conditions contained in Article 9 being satisfied, in the case of a qualified fireman who elects as mentioned in paragraph (1) or in paragraphs (1) and (2), the Scheme of 1973 shall have effect as though he had been entitled, immediately before his retirement (or death while serving) to reckon an additional period of pensionable service equal to a half of his specified period of war service so, however, that where a qualified fireman elects only as mentioned in paragraph (1), this paragraph shall not have effect for the purposes excepted in paragraph (1) and for those purposes his pension shall be deemed to be the pension to which he would be entitled without his additional period of pensionable service under this paragraph, but that period shall count for the purposes of the provisions mentioned in Part III of Schedule 1 (being provisions for the calculation of the rate of widow's ordinary pension by reference to husband's pensionable service).

(4) Notice for the purposes of paragraph (1) or (2)—

(*a*) shall be given by a qualified fireman not earlier than three months before his intended retirement nor later than three months, or such longer period as the Authority may allow in the circumstances of his case, after his retirement, and

(*b*) shall be of no effect if he dies while serving or if it is given more than three months before his actual retirement:

Provided that a qualified fireman who retired before 1st May 1980 may give notice for the said purposes within three months of that date or within such longer period as the Authority may allow in the circumstances of his case.

(5) Where under paragraph (4) the Authority allow notice to be given more than three months after 1st May 1980 or the date on which the qualified fireman retires, as the case may be, then, unless the Authority are satisfied that the delay was due to circumstances beyond his control—

(*a*) he shall not be entitled to any payment under this Order in respect of the period before his application is received by the Authority;

(*b*) paragraph 2 of Part I of Schedule 2 shall apply to him with the omission of sub-paragraph (*a*) and the words "in any other case"; and

(*c*) Articles 13 and 14 shall not apply to him.

(6) Where a notice for the purposes of paragraph (1) or (2) specifies the whole of a qualified fireman's period of war service and a shorter period of war service would be sufficient to produce the benefits which are sought, the notice shall be deemed to specify that period.

Fireman's method of payment

9.—(1) Subject to paragraph (5), the payment conditions referred to in Article 8(3) shall be satisfied if, within three months of the fireman concerned exercising his right of election, or within such longer period as the Authority may allow in the circumstances of his case, there is paid to the Authority the appropriate sum calculated—

(*a*) so far as concerns an election under Article 8(1), in accordance with Part I of Schedule 2;

(*b*) so far as concerns an election under Article 8(2), in accordance with Part II of that Schedule.

(2) Where the fireman concerned ceased to serve as such before 1st May 1980 and, on that date he was in receipt of a pension then, without prejudice to paragraph (1), the payment conditions shall be satisfied if, within the three month period mentioned in paragraph (1) by notice he undertakes to pay the appropriate sum by regular instalments of such amount that the payment of the sum will be completed within a period of five years:

Provided that—

(*a*) he may at any time discharge his liability under the undertaking, in whole or in part, by paying the whole or part of the balance then outstanding;

(*b*) if he dies before discharging his liability under the undertaking, the balance shall be payable immediately.

(3) Where the fireman concerned is entitled to a deferred pension which has not come into payment within the three month period referred to in paragraph (1), the payment conditions shall be satisfied if, within three months of the pension coming into payment there is paid to the Authority the appropriate sum.

(4) Where the fireman concerned has commuted a portion of his pension for a lump sum of an amount not less than that of the appropriate sum and payment of the lump sum has not been made he may by notice instruct the Authority to deduct the appropriate sum from the lump sum before making payment thereof; and in such case the giving of the notice shall be treated for the purposes of this Article and of Schedule 2 as if it were the payment of the appropriate sum.

(5) Where the fireman concerned is retiring in circumstances in which a transfer value is payable under Article 65A of the Scheme of 1973, the payment condition referred to in Article 8(3) shall be satisfied if the appropriate sum, calculated as provided in paragraph (1), is paid to the Authority before he retires or is deducted by the Authority from the amount of the transfer value which would otherwise be payable under the said Article 65A.

Widow's election and method of payment

10.—(1) This Article shall apply where a qualified fireman died before 1st May 1980 or dies while serving or while entitled to give notice for the purposes of Article 8, not having elected thereunder or having elected only as mentioned in Article 8(1).

(2) The widow of a fireman to whom this Article applies who has not elected as mentioned in Article 8(1) may, in accordance with this Article, by notice request that he be deemed to have so elected and to have specified the period of war service specified in the notice.

(3) The widow of a fireman to whom this Article applies who has, or is deemed to have, elected as mentioned in Article 8(1), may by notice request that he be deemed to have elected as mentioned in Article 8(2).

(4) Effect shall be given to requests under paragraphs (2) and (3) and, subject to paragraphs (5) and (6), Articles 8(3) and 9(1) and (2) and Schedule 2 shall have effect accordingly.

(5) Article 9 shall have effect—

(*a*) as if the reference in paragraph (1) thereof to the fireman exercising his right of election were a reference to the widow giving the relevant notice;

(*b*) as if in paragraph (2) thereof the words preceding the words "without prejudice" were omitted.

(6) Part II of Schedule 2 shall have effect—

(*a*) as if in paragraph 1(1) thereof there were omitted the words following the words "widow's pension";

(*b*) as if the word "hypothetical" were omitted wherever it occurs in paragraphs 1(2) and 2 thereof;

(*c*) as if in paragraph 2(*b*) thereof, for the reference to 1st April 1975 there were substituted a reference to the date of the death of the fireman concerned.

(7) Notice for the purposes of paragraph (2) or (3) shall be given by a widow within three months of 1st May 1980 or the date of her husband's death, whichever is the later, or such longer period as the Authority may allow in the circumstances of her case.

(8) A notice of election which is of no effect by reason of Article 8(4)(*b*) shall be disregarded for the purposes of this Article.

Exclusion of war service from reduction of pension provisions

11. For the purposes of Part VIII of Schedule 1 to the Scheme of 1973 there shall be disregarded the pensionable service mentioned in Article 8(3).

Reckoning of war service for widow's and child's benefits

12.—(1) This Article shall apply where a widow or child of a qualified fireman is entitled to an accrued pension or allowance under the Scheme of 1973 and Article 8(3) has effect for the purposes of its calculation; and in this Article any reference to half-rate service or to mixed-rate service is a reference to such service for the purposes of Part IV of Schedule 2 to the Scheme of 1973.

(2) Where this Article applies, Part IV of Schedule 2 and Part III of Schedule 3 to the Scheme of 1973 shall have effect—

(*a*) where the fireman concerned has half-rate service, other than such service as is mentioned in sub-paragraphs (*a*) and (*b*) of paragraph 1(1) of the said Part IV, as if both his half-rate service and mixed-rate service included the pensionable service mentioned in Article 8(3);

(*b*) where the preceding sub-paragraph does not apply but the fireman concerned has mixed-rate service, as if his mixed-rate service included the pensionable service so mentioned.

Allocation

13.—(1) Where a qualified fireman has allocated a portion of his pension under Article 37 of the Scheme of 1973 and subsequently receives an increased pension on account of the additional period of pensionable service which he is entitled to reckon by virtue of Article 8(3), the amount of pension so allocated shall not be affected (without prejudice to the allocation of a further portion).

(2) The following paragraph shall apply to a qualified fireman who—

(*a*) when entitled to reckon less than 25 years' pensionable service, retired with a short-service or deferred pension a portion of which he allocated as provided in Article 37 of the Scheme of 1973, and