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## STATUTORY INSTRUMENTS

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# 1972 No. 1073

## Superannuation (Northern Ireland) Order 1972

### Introductory

#### **Title and commencement**

1. This Order may be cited as the Superannuation (Northern Ireland) Order 1972 ...  
*Commencement ...*

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Parliament of Northern Ireland.

(2) In this Order—

“civil service” means the civil service of Northern Ireland;

“district council” means a district council established under the Local Government Act (Northern Ireland) 1972 ;

“government department” means a department of the Government of Northern Ireland;

“local authority <sup>F1</sup>” means—

(a) before the date of the first coming into office of members of district councils, the council of a county, a county or other borough, or an urban or rural district, a new town commission, the Belfast City and District Water Commissioners or the Northern Ireland Local Government Officers' Superannuation Committee;

(b) on and after that date but before [<sup>F2</sup> 1st October 1973], any authority such as is mentioned in paragraph ( a ) or a district council;

(c) on and after [<sup>F2</sup> 1st October 1973], a district council, a new town commission, or the Northern Ireland Local Government Officers' Superannuation Committee;

“the Ministry” means the Ministry of Finance;

“statutory provision” has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 ;

“transferred provision” has the meaning assigned to it by section 1( *g* ) of the Interpretation Act (Northern Ireland) 1954.

(3) References in this Order to a transferred provision include a transferred provision contained in or made under a local or personal Act or an Act confirming a provisional order, and any reference in this Order to any transferred provision includes a reference to that transferred provision as extended or applied by or under any other transferred provision, including such a provision contained in this Order.

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**F1** 1981 NI 3

**F2** 1972 NI 21

*Status: Point in time view as at 09/02/2013.*

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## Persons employed in the civil service, etc.

### Superannuation schemes as respects civil servants, etc.

#### 3.—<sup>F3</sup>(1) The Ministry—

- (a) may make, maintain, and administer schemes (whether contributory or not) whereby provision is made with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the scheme, are to be paid, or may be paid, by the Ministry to or in respect of such of the persons to whom this Article applies as it may determine;
- (b) may, in relation to such persons as any such scheme may provide, pay or receive transfer values;
- (c) may make, in such circumstances as any such scheme may provide, payments by way of a return of contributions, with or without interest; and
- (d) may make such payments as it thinks fit towards the provision, otherwise than by virtue of such a scheme, of superannuation benefits for or in respect of such of the persons to whom this Article applies as it may determine.

<sup>F4</sup>(1A) Where a money purchase scheme under this Article includes provision enabling a member to elect for the benefits which are to be provided to or in respect of him to be purchased from any authorised provider whom he may specify, then—

- (a) notwithstanding paragraph (1)(a), the scheme may make provision for the making of such an election to have the effect, in such cases as the scheme may specify, of discharging any liability of the Department to pay those benefits to or in respect of that member, but
- (b) the scheme shall not be so framed as to have the effect that benefits under it may only be provided in a manner which discharges that liability of the Department.]

(2) Before making any scheme under this Article the Ministry shall consult with persons appearing to the Ministry to represent persons likely to be affected by the proposed scheme or with the last-mentioned persons.

#### (3) This Article applies to persons serving—

- (a) in employment in the civil service; or
- (b) in employment of any of the kinds listed in Schedule 1; or
- (c) in an office so listed.

#### (4) Subject to paragraph (5), the Ministry may by order—

- (a) add any employment to those listed in Schedule 1, being employment by a body or in an institution specified in the order; or
- (b) add any office so specified to the offices so listed; or
- (c) remove any employment or office from the employments or offices so listed.

(5) No employment or office shall be added to those listed in Schedule 1 unless the remuneration of persons serving in that employment or office is paid out of moneys appropriated by a transferred provision or out of the Consolidated Fund.

(6) Notwithstanding paragraph (5), the Ministry may by order provide that this Article shall apply to persons serving in employment which is remunerated out of a fund specified in the order, being a fund established by or under a transferred provision.

#### (7) An order under paragraph (4) or (6)—

- (a) may be made so as to have effect as from a date before the making of the order;
- (b) may include transitional and other supplemental provisions; and

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(c) shall be subject to negative resolution.

[<sup>F4</sup>(8) In this article—  
[<sup>F5</sup>“authorised provider”, in relation to the investment of any sums paid by way of voluntary contributions or the provision of any benefit, means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to invest such sums or, as the case may be, to provide that benefit;
- (b) an EEA firm of a kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to invest such sums or, as the case may be, to provide that benefit and which satisfies the conditions applicable to it which are specified in paragraph (8B), (8C) or (8D); or
- (c) an EEA firm of a kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to invest such sums or, as the case may be to provide that benefit;]

“money purchase scheme” means a scheme under which all the benefits that may be provided are money purchase benefits, as defined in [<sup>F6</sup> section 176(1) of the Pension Schemes (Northern Ireland) Act 1993].]

[<sup>F5</sup>(8A) In paragraph (8), the definition of "authorised provider" must be read with—

- (a) section 22 to the Financial Services and Markets Act 2000;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act.

(8B) If the EEA firm concerned is of the kind mentioned in paragraph 5(a) of Schedule 3 to the Financial Services and Markets Act 2000, the conditions are—

- (a) that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on a service falling within section A or C of the Annex to the Investment Services Directive; and
- (b) that firm is authorised by its home state authorisation to carry on that service.

(8C) If the EEA firm concerned is of the kind mentioned in paragraph 5(b) of that Schedule, the conditions are—

- (a) that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within Annex 1 to the Banking Consolidation Directive; and
- (b) that the activity in question is one in relation to which an authority in the firm's home State has regulatory functions.

(8D) If the EEA firm concerned is of the kind mentioned in paragraph 5(c) of that Schedule, the conditions are—

- (a) that, in investing of the sums in question, or in providing the benefit in question, the firm is carrying on an activity falling within Annex 1 to the Banking Consolidation Directive;
- (b) that the activity in question is one in relation to which an authority in the firm's home State has regulatory functions; and
- (c) that the firm also carries on the activity in question in its home State.

(8E) Expressions used in paragraphs (8B) to (8D) which are also used in Schedule 3 to the Financial Services and Markets Act 2000 have the same meanings in those paragraphs as they have in that Schedule.]

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- F4** 1990 NI 13  
**F5** SI 2002/1555  
**F6** 1993 c. 49

**Modifications etc. (not altering text)**

- C1** Art. 3 extended (15.2.2007) by Victims and Survivors (Northern Ireland) Order 2006 (S.I. 2006/2953 (N.I. 17)), arts. 1(3), 4(3), **Sch. para. 5(6)**; S.R. 2007/96, art. 2
- C2** Art. 3 extended by Police (Northern Ireland) Act 1998 (c. 32), Sch. 3 para. 3(2A) (as inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 5, **Sch. 3 para. 39(5)(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**)
- C3** Art. 3 extended by Justice (Northern Ireland) Act 2002 (c. 26), Sch. 8 para. 3(2A) (as inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 11, **Sch. 13 para. 24(4)(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**)
- C4** Art. 3 extended by Justice (Northern Ireland) Act 2002 (c. 26), Sch. 9 para. 4(2A) (as inserted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 11, **Sch. 13 para. 25(4)(b)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**)
- C5** Art. 3 extended by Judicature (Northern Ireland) Act 1978 (c. 23), s. 75(8) (as amended (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 21** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**)

**Further provisions relating to schemes under Article 3**

4.—(1) A scheme under Article 3 which makes provision with respect to the pensions, allowances or gratuities which are to be, or may be, paid to or in respect of a person to whom that Article applies and who is incapacitated or dies as a result of an injury sustained, or disease contracted, in circumstances prescribed by the scheme may make the like provision in relation to any other person, being a person who is employed for the purposes of the Government of Northern Ireland, whether temporarily or permanently and whether for reward or not, or is a person holding office in that Government and who is incapacitated or dies as a result of an injury or disease so sustained or contracted.

(2) Any scheme under Article 3 may make provision for the payment by the Ministry of pensions, allowances or gratuities by way of compensation to or in respect of persons—

- (a) to whom that Article applies; and
- (b) who suffer loss of office or employment, or loss or diminution of emoluments, in such circumstances, or by reason of the happening of such an event, as may be prescribed by the scheme.

[<sup>F7</sup>(3) [<sup>F8</sup>Subject to paragraph (3A),] No scheme under Article 3 shall make any provision which would have the effect of reducing the amount of any pension, allowance or gratuity, in so far as that amount is directly or indirectly referable to rights which have accrued (whether by virtue of service rendered, contributions paid or any other thing done) before the coming into operation of the scheme, unless the persons consulted in accordance with Article 3(2) have agreed to the inclusion of that provision.]

[<sup>F9</sup>(3A) Paragraph (3) does not apply to a provision which would have the effect of reducing the amount of a compensation benefit except in so far as the compensation benefit is one provided in respect of a loss of office or employment which is the consequence of—

- (a) a notice of dismissal given before the coming into operation of the scheme which would have that effect, or
- (b) an agreement made before the coming into operation of that scheme.

(3B) In this Article—

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““compensation benefit”” means so much of any pension, allowance or gratuity as is provided under the civil service compensation scheme by way of compensation to or in respect of a person by reason only of the person's having suffered a loss of office or employment;

““the civil service compensation scheme”” means so much of any scheme under Article 3 (whenever made) as provides by virtue of paragraph (2) for benefits to be provided by way of compensation to or in respect of persons who suffer loss of office or employment.

(3C) In paragraph (3B) a reference to suffering loss of office or employment includes a reference to suffering loss or diminution of emoluments as a consequence of suffering loss of office or employment.]

(4) Subject to paragraph (3), any scheme under Article 3, or any provision thereof, may be framed—

- (a) so as to have effect as from a date earlier than the date on which the scheme is made; or
- (b) so as to apply in relation to the pensions, allowances or gratuities paid or payable to or in respect of persons who, having been persons to whom Article 3 applies, have died or ceased to be persons to whom that Article applies before the scheme comes into operation; or
- (c) so as to require or authorise the payment of pensions, allowances or gratuities to or in respect of such persons.

(5) Where an order has been made under Article 3(6), any scheme under that Article may provide for the payment to the Ministry out of the fund specified in the order of benefits or other sums paid by it in accordance with the scheme to or in respect of persons to whom that Article applies by virtue of the order, together with any administrative expenses incurred in connection with the payment of those sums, and for the payment into that fund of contributions paid in accordance with the scheme by or in respect of those persons and of any transfer values received in respect of them.

(6) Any scheme under Article 3 may provide for the determination by the Ministry of questions arising under the scheme and may provide that the decision of the Ministry on any such question shall be final.

(7) Where under any such scheme any question falls to be determined by the Ministry, then, at any time before the question is determined, the Ministry may (and if so directed by the Court of Appeal shall) state in the form of a special case for determination by the Court of Appeal any question of law arising out of the question which falls to be determined by the Ministry.

(8) Before a scheme made under Article 3, being the principal civil service pension scheme or a scheme amending or revoking that scheme, comes into operation the Ministry shall lay a copy of the scheme before Parliament.

(9) Notwithstanding any repeal made by this Order, the existing civil service superannuation provisions, that is to say, the transferred provisions listed in Schedule 2, shall, with the necessary adaptations and modifications, have effect as from the commencement of this Order as if they constituted a scheme made under Article 3 in relation to the persons to whom that Article applies, being the principal civil service pension scheme, and coming into operation on the said commencement and may be revoked or amended accordingly.

(10) In this Article “the principal civil service pension scheme” means the principal scheme made under Article 3 relating to persons serving in employment in the civil service.

**F7** 1990 NI 13

**F8** Words in art. 4(3) inserted (with application in accordance with s. 1(4)-(6) of the amending Act) by [Superannuation Act \(Northern Ireland\) 2013 \(c. 1\), ss. 1\(2\), 4\(3\)](#)

**F9** Art. 4(3A)-(3C) inserted (with application in accordance with s. 1(4)-(6) of the amending Act) by [Superannuation Act \(Northern Ireland\) 2013 \(c. 1\), ss. 1\(3\), 4\(3\)](#)

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## **Recovery in certain circumstances of payments by way of injury allowances**

5.—(1) The following provisions of this Article shall have effect where a scheme under Article 3 provides for the payment of a pension, allowance or gratuity to or in respect of a person who is incapacitated or dies as a result of an injury sustained or disease contracted in circumstances prescribed by the scheme, and a pension, allowance or gratuity is paid in accordance with the scheme to or in respect of a person in consequence of an injury or disease so sustained or contracted or of a death resulting from such injury or disease.

(2) If the scheme requires the Ministry to take into account, as against any sums otherwise payable under the scheme, any damages which are recovered or recoverable by or on behalf of the recipient of the pension, allowance or gratuity granted in consequence of the injury, disease or death, being damages in respect of that injury, disease or death, and the Ministry makes any payments without taking such damages into account, then if and when the Ministry is satisfied that there are any damages to be so taken into account, the Ministry shall have the right to recover from the recipient—

- (a) where the amount of the payments made by the Ministry is less than the net amount of the damages, the amount of those payments;
- (b) where the amount of those payments is not less than the net amount of the damages, such part of those payments as is equal to the net amount of the damages.

(3) So far as any amount recoverable under this Article represents a payment made by the Ministry from which income tax has been deducted before payment, the proper allowance shall be made in respect of the amount so deducted, and in this Article “the net amount of the damages” means the amount of the damages after deducting any tax payable in the United Kingdom or elsewhere to which the damages are subject.

(4) No proceedings shall be brought to recover any amount under this Article—

- (a) after the death of the recipient of the payments; or
- (b) after the expiration of two years from the date on which the amount of the damages taken into account in arriving at the amount so recoverable is finally determined (whether in court proceedings or in arbitration proceedings or by agreement between the parties) or from the date on which the final determination of that amount first came to the knowledge of the Ministry, whichever date is the later.

(5) A certificate issued by the Ministry and stating the date on which the final determination of any amount of damages first came to the knowledge of the Ministry shall be admissible in any proceedings as sufficient evidence of that date.

(6) The provisions of this Article are without prejudice to any right of the Ministry under any such scheme to take damages into account by withholding or reducing any further sums otherwise payable to the recipient of the pension, allowance or gratuity.

## **Payments due to deceased persons**

6<sup>F10</sup>.—<sup>F11</sup>(1) Where on the death of any person there is due to the deceased or his personal representatives from a government department a sum, not exceeding £500<sup>F12</sup>, in respect of salary, wages or other emoluments or of superannuation benefits payable by virtue of a scheme made under Article 3, probate or other proof of the title of the personal representatives of the deceased may be dispensed with, and the appropriate authority may pay the whole or any part of that sum to those representatives or to the person, or to or among any one or more of any persons, appearing to that authority to be beneficially entitled to the estate of the deceased, and any person to whom such a payment is made, and not the appropriate authority, shall thereafter be liable to account for the amount paid to him under this paragraph.

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(2) Paragraph (1) shall be included among the provisions with respect to which the Ministry may make an order under section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967 substituting for references to £500 such higher amount as may be specified in the order.

(3) The reference to a government department in paragraph (1) shall be construed as including a reference to a body or institution employment by or in which is listed in Schedule 1.

(4) In this Article “the appropriate authority”, in relation to any sum, means the government department, the body, or the trustees or other authority responsible for the institution, as the case may be, from whom that sum is due.

**F10** mod by SR 1985/9  
**F11** mod by SR 2004/68  
**F12** SR 1985/9

### **Benefits under civil service superannuation schemes not assignable**

7.—(1) Any assignment of or charge on, and any agreement to assign or charge, any benefit payable under a scheme made under Article 3 shall be void.

(2) Nothing in paragraph (1) shall affect the powers of a court under<sup>F13</sup> Article 283 of the Insolvency (Northern Ireland) Order 1989].

**F13** 1989 NI 19

### **Power to repeal or amend transferred provisions**

8.—(1) The Ministry may by order repeal or amend any transferred provision where it appears to the Ministry that that provision is inconsistent with, or has become unnecessary or requires modification in consequence of, any provision of Article 3 or 4 or of any scheme made under Article 3 or any repeal made by this Order in consequence of the coming into operation of those Articles.

(2) An order under this Article—

- (a) may be made so as to have effect as from a date before the making of the order; and
- (b) shall be subject to negative resolution.

Persons employed in local government service, etc.

### **Superannuation of persons employed in local government service, etc.**

9.—(1) The Ministry of Development<sup>F14</sup> may by regulations make provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the regulations, are to be, or may be, paid to or in respect of such persons, or classes of persons, as may be so prescribed, being—

- (a) persons, or classes of persons, employed by local authorities; and
- (b) other persons, or classes of persons, for whom it is appropriate, in the opinion of that Ministry, to provide pensions, allowances or gratuities under the regulations.

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may include all or any of the provisions referred to in Schedule 3.

<sup>F15</sup>(2A) Regulations under this Article may—

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- (a) require any financial statement relating to any fund maintained under the regulations to be prepared in accordance with guidance for the time being by the Department of Finance and Personnel; and
  - (b) regulate the issue of such guidance by that Department.]
- (3) <sup>F16</sup> Notwithstanding anything in the Pensions (Increase) Act (Northern Ireland) 1971 , regulations under this Article may provide—
- (a) that increases under that Act of such of the pensions, allowances or gratuities payable under the regulations as may be prescribed by the regulations, or such part of those increases as may be so prescribed, shall be paid out of such of the superannuation funds established under the regulations as the regulations may provide; and
  - (b) that the cost of those increases or of that part thereof, as the case may be, shall be defrayed by contributions from the persons to whom any services in respect of which the pensions, allowances or gratuities are or may become payable were or are being rendered or by such of those persons as may be so prescribed;

and any provisions of the said Act of 1971, or of regulations made under section 5 thereof, relating to liability for the cost of increases under that Act of pensions, allowances or gratuities payable under the regulations shall have effect subject to the provisions of any regulations made by virtue of this paragraph and for the time being in force.

(4) Before making any regulations under this Article the Ministry of Development<sup>F14</sup> shall consult with—

- (a) such associations of local authorities as appear to that Ministry to be concerned;
- (b) any local authority with whom consultation appears to that Ministry to be desirable; and
- (c) such representatives of other persons likely to be affected by the proposed regulations as appear to that Ministry to be appropriate.

**F14** [1976 NI 6](#)

**F15** [2005 NI 18](#)

**F16** [1974 NI 2](#)

## Local schemes

**10.**—(1) The Ministry of Development<sup>F17</sup> may make regulations providing for—

- (a) the revocation of any local scheme administered by a local authority;
- (b) the winding-up of any superannuation fund maintained under that scheme and the transfer of its assets and liabilities to such superannuation fund or scheme as may be specified in the regulations;
- (c) the modification of any transferred provision for the purpose of securing that rights enjoyed by and in respect of the persons who were entitled to participate in the benefits of the local scheme which is revoked or of the superannuation fund which is to be wound up are preserved;
- (d) such other consequential and incidental matters as appear to that Ministry to be necessary or expedient.

(2) In this Article “local scheme” in relation to a local authority means a superannuation scheme that applies only to that authority.

**F17** [1976 NI 6](#)



## Teachers

### Superannuation of teachers

11.—(1) The Ministry of Education may, by regulations made with the consent of the Ministry, make provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the regulations, are to be, or may be, paid<sup>[F18]</sup> to or in respect of teachers by the Department of Education or, in the case of injury benefit, by the Department of Education, an employer of teachers or such other person as the Department of Education may consider appropriate and may specify in the regulations].

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may include all or any of the provisions referred to in Schedule 3.

<sup>[F18]</sup>(2A) Where regulations under this Article make provision with respect to money purchase benefits, they may also—

- (a) include provision enabling a person to elect for such money purchase benefits as are to be provided to or in respect of him under the regulations to be purchased from any authorised provider whom he may specify; and
- (b) notwithstanding paragraph (1), provide that the making of such an election shall have the effect, in such cases as may be specified in the regulations, of discharging any liability of the Department of Education to pay those benefits to or in respect of that person;

but no regulations under this Article shall be so framed as to have the effect that any money purchase benefits to be provided under them may only be provided in a manner which discharges that liability of that Department.]

(3) Where the regulations provide for the making of any such payment as is referred to in paragraph 3, 5 or 6 of Schedule 3, they may also provide for the payment to be made by the Ministry of Education.

<sup>[F18]</sup>(3A) Notwithstanding anything in the Pensions (Increase) Act (Northern Ireland) 1971, regulations under this Article may provide that the cost of increases under that Act of such of the pensions, allowances or gratuities payable under the regulations as may be prescribed by the regulations, or such part of those increases as may be so prescribed, shall be defrayed—

- (a) by contributions from employers of teachers or from such other persons or classes of person (apart from teachers) as the Department of Education may consider appropriate and may specify in the regulations; or
- (b) by contributions from such of those employers or other persons as may be so specified;

and any provisions of the said Act of 1971, or of regulations made under section 5 thereof, relating to liability for the cost of increases under that Act of pensions, allowances or gratuities payable under the regulations shall have effect subject to the provisions of any regulations made by virtue of this paragraph and for the time being in force.]

(4) Where regulations under this Article provide for the establishment of a superannuation fund, the regulations may also provide for the payment by the Ministry of Education—

- (a) of the administrative expenses of the persons by whom, in accordance with the regulations, the fund is to be administered; and
- (b) of such travelling, subsistence and other allowances to those persons as the Ministry of Education may, with the consent of the Ministry, determine.

(5) Before making any such regulations the Ministry of Education shall consult with representatives of local education authorities and of teachers and with such representatives of other persons likely to be affected by the proposed regulations as appear to that Ministry to be appropriate.

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(6) In this Article

[<sup>F18</sup>[<sup>F19</sup>“authorised provider” has the meaning given in Article 3;]

“injury benefit” means a pension, allowance or gratuity payable under the regulations to or in respect of a teacher in consequence of any injury sustained, or disease contracted, by him in the course of his employment in that capacity;

“money purchase benefits” has the meaning given by [<sup>F20</sup> section 176(1) of the Pension Schemes (Northern Ireland) Act 1993];]

“teachers” includes such persons as may be prescribed by regulations made under this Article, being persons employed otherwise than as teachers—

- (a) in a capacity connected with education which to a substantial extent involves the control or supervision of teachers; or
- (b) in employment which involves the performance of duties in connection with the provision of education or services ancillary to education.

**F18** 1990 NI 13

**F19** SI 2002/1555

**F20** 1993 c. 49

Persons engaged in health services, etc.

**Superannuation of persons engaged in [<sup>F21</sup>health care], etc.**

**12.**—(1) The Ministry of Health and Social Services may, by regulations made with the consent of the Ministry, make provision with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the regulations, are to be, or may be, paid by the Ministry of Health and Social Services to or in respect of such persons, or classes of persons, as may be so prescribed [<sup>F22</sup> (in this Article referred to as “health staff”)], being—

- (a) persons, or classes of persons, engaged in [<sup>F23</sup>health care] or [<sup>F24</sup>social care] other than services provided by a local authority; and
- (b) other persons, or classes of persons, for whom it is appropriate, in the opinion of the Ministry of Health and Social Services, to provide pensions, allowances or gratuities under the regulations.

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may include all or any of the provisions referred to in Schedule 3.

[<sup>F22</sup>(2A) Where regulations under this Article make provision with respect to money purchase benefits, they may also—

- (a) include provision enabling a person to elect for such money purchase benefits as are to be provided to or in respect of him under the regulations to be purchased from any authorised provider whom he may specify; and
- (b) notwithstanding paragraph (1), provide that the making of such an election shall have the effect, in such cases as may be specified in the regulations, of discharging any liability of the Department of Health and Social Services to pay those benefits to or in respect of that person;

but no regulations under this Article shall be so framed as to have the effect that any money purchase benefits to be provided under them may only be provided in a manner which discharges that liability of that Department.]

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(3) Where the regulations provide for the making of any such payment as is referred to in paragraph 3, 5 or 6 of Schedule 3, they may also provide for the payment to be made by the Ministry of Health and Social Services.

[<sup>F22</sup>(3A) Notwithstanding anything in the Pensions (Increase) Act (Northern Ireland) 1971, regulations under this Article may provide that the cost of increases under that Act of such of the pensions, allowances or gratuities payable under the regulations as may be prescribed by the regulations, or such part of those increases as may be so prescribed, shall be defrayed—

(a) by contributions from employers of health staff or from such other persons or classes of person (apart from health staff) as the Department of Health and Social Services may consider appropriate and may specify in the regulations; or

(b) by contributions from such of those employers or other persons as may be so specified;

and any provisions of the said Act of 1971, or of regulations made under section 5 thereof, relating to liability for the cost of increases under that Act of pensions, allowances or gratuities payable under the regulations shall have effect subject to the provisions of any regulations made by virtue of this paragraph and for the time being in force.]

(4) Before making any such regulations the Ministry of Health and Social Services shall consult with such representatives of persons likely to be affected by the proposed regulations as appear to that Ministry to be appropriate.

(5) The Ministry of Health and Social Services may direct that regulations made under this Article shall, subject to such modifications as may be provided in the direction, apply to any person specified in the direction—

(a) who is wholly or mainly engaged in [<sup>F25</sup>health care] or [<sup>F26</sup>social care], whether provided under the Health Services Act (Northern Ireland) 1971 <sup>F27</sup> or otherwise, but not provided by a local authority; and

(b) who, if he were in the employment of an employing authority within the meaning of the regulations, would be an officer within the meaning of those regulations,

as if the person were, within the meaning of the regulations, an officer in the employment of the employing authority.

(6) The Ministry of Health and Social Services may direct that regulations made under this Article shall, subject to such modifications as may be provided in the direction, apply to any person specified in the direction who, while continuing in or within twelve months after leaving employment in which he was entitled to participate in the benefits for which the regulations provide (any period spent by that person on an approved course of study or training within the meaning of the regulations being left out of account), enters such other employment as may be approved by that Ministry for the purposes of this paragraph as if, while in that other employment, that person were, within the meaning of the regulations, an officer in the employment of an employing authority, and, in that event, the regulations shall apply accordingly to that person.

(7) A direction under paragraph (6) may be expressed to take effect as from the date of a person's entry into employment notwithstanding that the direction or the approval of that employment for the purposes of that paragraph was not given until after that date.

(8) A direction under paragraph (6) shall not be varied or revoked by a subsequent direction so as to exclude from the benefits for which the regulations provide any person previously entitled thereto, unless—

(a) the Ministry of Health and Social Services is satisfied that other suitable superannuation arrangements are available for that person; and

(b) that person consents to his being so excluded;

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and, where any subsequent direction results in such an exclusion of any such person, it may contain provision for the payment of a transfer value in respect of that person.

(9) The Ministry of Health and Social Services may enter into an agreement with the governing body of any hospital not vested in that Ministry for admitting officers of the hospital of such classes as may be provided in the agreement to participate, on such terms and conditions as may be so provided, in the benefits for which regulations made under this Article provide in like manner as officers of any corresponding class to whom the regulations apply, and the regulations shall apply accordingly in relation to the officers so admitted subject to such modifications as may be provided in the agreement.

(10) The governing body of any such hospital as is referred to in paragraph (9) shall have all such powers as may be necessary for the purpose of giving effect to any terms and conditions on which its officers are admitted to such participation as aforesaid.

[<sup>F22</sup>(11) In this Article—

[<sup>F28</sup>“authorised provider” has the meaning given in Article 3;]

“money purchase benefits” has the meaning given by [<sup>F29</sup>section 176(1) of the Pension Schemes (Northern Ireland) Act 1993].]

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|------------|---|
| <b>F21</b> | Art. 12: words in heading substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(b)</a> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <b>art. 2</b> |
| <b>F22</b> | 1990 NI 13  |
| <b>F23</b> | Words in art. 12(1)(a) substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(b)</a> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <b>art. 2</b>    |
| <b>F24</b> | Words in art. 12(1)(a) substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(a)</a> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <b>art. 2</b>    |
| <b>F25</b> | Words in art. 12(5)(a) substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(b)</a> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <b>art. 2</b>    |
| <b>F26</b> | Words in art. 12(5)(a) substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(a)</a> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <b>art. 2</b>    |
| <b>F27</b> | 1972 NI 14  |
| <b>F28</b> | SI 2002/1555  |
| <b>F29</b> | 1993 c. 49  |

## Provisions ancillary to Articles 9 to 12

### Statement of case by government department

13. Where under any regulations made under Article 9, 11 or 12 any question falls to be determined by a government department, then, at any time before the question is determined, that department may (and if so directed by the Court of Appeal shall) state in the form of a special case for determination by the Court of Appeal any question of law arising out of the question which falls to be determined by that department.

### Further provisions as to regulations

14.—(1) Any regulations made under Article 9, 11 or 12 may be framed so as to have effect as from a date earlier than the making of the regulations.

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- (2) Subject to paragraph (3), any regulations made under Article 9, 11 or 12 may be framed—
- (a) so as to apply in relation to the pensions which are being paid or may become payable under the regulations to or in respect of persons who, having served in an employment or office service in which qualifies persons to participate in the benefits for which the regulations provide, have ceased to serve therein<sup>F30</sup> (whether or not they have subsequently recommenced any such service)] or died before the regulations come into operation; or
  - (b) so as to require or authorise the payment of pensions to or in respect of such persons.

(3) No provision shall be made by any regulations by virtue of paragraph (2) unless any person who is placed in a worse position than he would have been in if the provision had not applied in relation to any pension which is being paid or may become payable to him is by the regulations given an opportunity to elect that the provision shall not so apply<sup>F30</sup> in relation to that pension except as provided by paragraph (3A)].

<sup>F30</sup>(3A) If, at the coming into operation of the provision mentioned in paragraph (3), a person who makes such an election as is mentioned in that paragraph is serving in an employment or office to which the regulations governing the pension apply, or if he subsequently recommences service in such an employment or office, then—

- (a) the election shall have effect in relation to the pension only to the extent that it accrues or has accrued—
  - (i) by virtue of periods of service rendered before the cessation referred to in paragraph (2) (or, if there has been more than one such cessation, the last of them before the coming into operation of the provision in question); or
  - (ii) by virtue of contributions paid in respect of any such periods of service; and
- (b) in determining entitlement to, or the amount of, the pension to that extent, he shall (without prejudice to the application of this paragraph) be treated as if he had never recommenced service in such an employment or office at any time after the cessation referred to in sub-paragraph (a);

and the provision in question shall apply accordingly.]

- (4) In the foregoing provisions of this Article “pension” includes allowance and gratuity.
- (5) Regulations made under Article 9, 10, 11 or 12 shall be subject to negative resolution.

**F30** [1990 NI 13](#)

## Other classes of persons

### Police

- 15.** Article 14 (except paragraph (5)) shall apply in relation to—
- (a) orders under section 4 of the Constabulary and Police (Ireland) Act 1919 (as applied to members of the Royal Ulster Constabulary by section 2 of the Constabulary Act (Northern Ireland) 1922 , extended by the Constabulary (Pensions) Act (Northern Ireland) 1949 and continued by section 33(2) of the Police Act (Northern Ireland) 1970 );
  - (b) regulations under the Special Constables Act 1914 (as applied to members of the Ulster Special Constabulary by section 8 of the Constabulary Act (Northern Ireland) 1922 and continued by section 33(2) of the Police Act (Northern Ireland) 1970);
  - <sup>F31</sup>(c) regulations relating to pensions under section 25 or 26 of the Police (Northern Ireland) Act 1998]

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as it applies in relation to regulations under Article 9, 11 or 12.

**F31** 1998 c. 32

*Art.16 rep. by 1981 NI 8*

### **Removal of Ministerial supervision of certain pension schemes**

17. Any body specified in column 1 of Schedule 4 may make any determination relating to, or connected with, the provision of pensions, gratuities or other like benefits to or in respect of persons employed by it which it has power to make under the transferred provision specified in relation to that body in column 2 of that Schedule without obtaining the approval or agreement of any government department whose approval of, or agreement to, that determination is required by virtue of that transferred provision.

### **Superannuation Acts to continue to apply to certain persons**

18. The repeal by this Order of any provisions of the Superannuation Acts (Northern Ireland) 1967 and 1969 shall not affect the continued operation of those Acts so far as immediately before the repeal takes effect they apply in relation to any of the persons listed in Schedule 5.

### Miscellaneous and supplemental

#### **Compensation for loss of office, etc.**

19.—(1) Subject to paragraph (2), the appropriate government department may, with the consent of the Ministry, by regulations provide for the payment by such person as may be prescribed by or determined under the regulations of pensions, allowances or gratuities by way of compensation to or in respect of the following persons, that is to say, persons—

- (a) in relation to whom regulations may be made under Article 9, 11 or 12; and
- (b) who suffer loss of office or employment, or loss or diminution of emoluments, in such circumstances, or by reason of the happening of such an event, as may be prescribed by the regulations.

(2) Regulations under this Article relating to persons in relation to whom regulations may be made under Article 9 may be made without the consent of the Ministry.

(3) Regulations under this Article may—

- (a) include provision as to the manner in which and the person to whom any claim for compensation is to be made, and for the determination of all questions arising under the regulations;
- (b) authorise the appropriate government department to make exceptions and conditions; and
- (c) be framed so as to have effect from a date earlier than the making of the regulations,

but so that regulations having effect from a date earlier than the date of their making shall not place any individual who is qualified to participate in the benefits for which the regulations provide in a worse position than he would have been in if the regulations had been so framed as to have effect only from the date of their making.

(4) Regulations under this Article may include all or any of the provisions referred to in paragraphs 8, 9 and 13 of Schedule 3.

(5) Regulations under this Article shall be subject to negative resolution.

(6) In this Article “the appropriate government department” in relation to regulations under this Article providing for the payment of compensation to or in respect of any persons means the

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department which, under Article 9, 11 or 12 has power to make regulations in relation to those persons.

*Art. 20 rep. by 1975 NI 15*

*Art. 21 rep. by SLR 1976*

*Art. 22 repeals s.9 of 1950 c. 3 (NI)*

### **Amendments, savings, transitional provisions and repeals**

*Para. (1), with Schedule 6, effects amendments*

(2) The savings and transitional provisions contained in Schedule 7 shall have effect.

*Para. (3), with Schedule 8, effects repeals*

**Status:**

Point in time view as at 09/02/2013.

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