

1979 No. 43

FISHERIES

Foyle Area (Pension) (Amendment) Regulations 1979

Made 25th January 1979

Coming into operation 31st January 1979

The Foyle Fisheries Commission, hereinafter referred to as “the Commission”, in exercise of its powers under section 13 of the Foyle Fisheries Act, 1952(a) and paragraph 16 of the Third Schedule to that Act as amended by the Foyle Fisheries (Amendment) Act 1961(b) and section 13 of the Foyle Fisheries Act (Northern Ireland) 1952(c) and paragraph 16 of the Third Schedule to that Act as amended by the Foyle Fisheries (Amendment) Act (Northern Ireland) 1962(d) hereby makes the following regulations:

1.—(1) These regulations may be cited as the Foyle Area (Pension) (Amendment) Regulations 1979

(2) These regulations shall come into operation on 31st January 1979 and shall have effect as from 6th April 1975.

2. The provisions of the pension scheme contained in the Schedule hereto shall, subject to the conditions therein specified, apply to those persons employed in a whole time capacity by the Commission or who are in receipt of a pension from the Commission.

SCHEDULE

Pension Scheme*Short Title*

1. This scheme may be cited as the Foyle Fisheries Commission Pension (Amendment) Scheme 1979 and is hereinafter referred to as “the Scheme”.

Definitions

2. In the Scheme—

“A deferred pension or gratuity” means a pension or gratuity granted in pursuance of Paragraph 12 of the Scheme the payment of which is deferred.

“Normal Pension Age” means 60 years of age.

“Pensionable Salary” means the annual rate of remuneration for the time being paid by the Commission to a member, excluding any payment made by the Commission to such member over and above the annual basic rate of remuneration, as specified in his contract of service other than cost of living bonus, if any.

“Qualifying Service” means in relation to a member of the Scheme the aggregate of the following periods namely:—

(1) service with the Commission, whether or not continuous which is pensionable under the Scheme;

(a) No. 5 of 1952 (Republic of Ireland)

(b) No. 44 of 1961 (Republic of Ireland)

(c) 1952 c.5 (N.I.)

(d) 1962 c. 5 (N.I.)

(2) years of service whilst a member of another scheme relating to the same or any other employment in respect of which additional rights to long service benefit have been granted under the Scheme in substitution for accrued rights under such other scheme provided that:—

- (a) no account shall be taken of any period which does not qualify the member of the Scheme for long service benefit;
- (b) no period shall be reckoned twice;
- (c) a member's service shall not be treated as terminated if any break in employment does not exceed one month, or where he returns to other employment covered by the Scheme within one month. The earlier service, but not any break, shall count for qualifying purpose even if he had received a benefit under the Scheme.

“Pensionable Service” means—

- (a) in the case of members of the former scheme other than those in receipt of a pension, the whole period of service with the Commission;
- (b) in the case of officers and servants of the Commission who were not members of the former scheme on the establishment date the whole of their service in respect of which contributions have been paid from that date.

“Retirement on Medical Grounds” means retirement from the Commission's service on the issue of a certificate by the Commission's medical consultant that the member is incapable of performing his duties by reason of infirmity of mind or body, which in the opinion of the consultant is likely to be permanent.

“Retiring Salary” means the salary in whichever of the last three years of pensionable service gives the highest figure.

“The Establishment Date” means 6th April 1975.

“The former scheme” means the scheme set out in the Schedule in the Foyle Area (Pension) Regulations 1963(e).

Establishment

3. The Scheme shall come into operation on the Establishment Date as a scheme constituted under paragraph 16 of the Third Schedule to the Foyle Fisheries Act 1952, as amended and paragraph 16 of the Third Schedule to the Foyle Fisheries Act (Northern Ireland) 1952, as amended and the provisions of the said Acts shall apply to the Scheme accordingly.

Membership

4. Membership of the Scheme shall consist of:—

- (a) all members of the former scheme other than members who elect not to have the Scheme applied to them;
- (b) all those wholetime officers and servants of the Commission who on the establishment date were not members of the former scheme;
- (c) all wholetime officers and servants of the Commission who join the Commission's staff on or after the establishment date;
- (d) all former officers and servants of the Commission who on the establishment date were in receipt of a pension from the Commission.

Member's Retention in Service with Commission

5. A member of the Scheme who has reached the normal pension age may at the option of the Commission and with his own consent, be retained in the Commission's service for any period up to his 65th birthday, and shall pay contributions during such period and be entitled to have his service during such period reckoned as pensionable service.

Contributions

6. (a) An officer or servant of the Commission who becomes a member of the Scheme on the establishment date shall pay contributions at the rate of 6% of his pensionable salary from that date.
- (b) An officer or servant of the Commission who is appointed after the establishment date shall pay a contribution of 6% of his pensionable salary from the date of his appointment.
- (c) Contributions will be deducted from salary or wages at source.

Secondment

7. (a) A member seconded temporarily to some other employment shall continue to contribute to the Scheme and the period of his secondment shall, for the purposes of the Scheme, be deemed to be pensionable service with the Commission.
- (b) The contributions payable by a member so seconded shall be calculated on the salary which he would have received had he remained in the employment of the Commission.

Ordinary Retirement Benefits

8. Subject to the other provisions of the Scheme the following benefits shall be paid to a member who retires on or after reaching normal pension age:—

- (1) an annual pension of $\frac{1}{80}$ th of his retiring salary multiplied by the length of his pensionable service in years and fractions of a year subject to a maximum of $\frac{40}{80}$ ths of his retiring salary;
- (2) a lump sum of $\frac{3}{80}$ ths of his retiring salary multiplied by the length of his pensionable service in years and fractions of a year subject to a maximum of one and a half years retiring salary.

Benefits for Retirement on Medical Grounds

9. (a) A member of the Scheme with five or more year's qualifying service who retires or is retired on medical grounds before reaching normal pension age shall subject to sub-paragraph (c) be paid an ill-health annual pension and a lump sum each calculated as in paragraph 8 of the Scheme and in any case the pensionable service shall be deemed to be increased as follows:—
 - (1) if it is less than ten years, it will be deemed to be increased to double its length;
 - (2) if it is ten years or more it will be deemed to be increased either to 20 years or by 6 years, whichever is greater.
- (b) A member of the Scheme with less than five year's qualifying service who retires or is retired on medical grounds before reaching normal pension age shall subject to sub-paragraph (c) be paid an ill-health lump sum payment amounting to $\frac{3}{80}$ ths of his retiring salary multiplied by the length of his pensionable service in years and fractions of a year, plus one twelfth of his retiring salary multiplied by the length of his pensionable service in years and fractions of a year. He shall also be eligible to receive, as from his attainment of normal pension age, the guaranteed minimum pension in accordance with paragraph 17.
- (c) No award under (a) shall be permitted to exceed a notional award calculated by reference to the pensionable service which the member could have completed had he continued to serve to normal pension age and no award under (b) shall be permitted to exceed a notional award of $\frac{3}{80}$ ths of the member's retiring salary multiplied by the length of the pensionable service which he could have completed had he continued to serve to normal pension age.

Death Benefits

- 10.(a) If a member dies while in the employment of the Commission his legal personal representatives shall be entitled to receive a lump sum payment of whichever of the following amounts is the greater:—
- (1) one year's retiring salary; or
 - (2) $\frac{3}{80}$ ths of retiring salary for each year of his pensionable service subject to a maximum of $\frac{120}{80}$ ths.
- (b) If an unmarried member of the former scheme who has elected to join the Scheme dies before he has received the full amount of five years pension payable to him, payment of his pension shall be continued to his legal personal representatives until the total sum paid to the member and such legal representatives equals the amount of five years pension. Provided further that, if requested by the legal personal representatives so to do, the Commission may, if it thinks fit, commute the balance so payable for a single payment of such an amount as represents the then present value of the annual payment due at the date of death.

Widows' Benefits

- 11.(a) If a member dies while in the employment of the Commission and has completed five or more years qualifying service his widow shall be entitled to receive a pension equal to one half of the pension to which the member would have been entitled if he had retired on medical grounds on the date of his death, provided that for the first 91 days after the death of the member the pension payable to the widow shall be increased so that it equals the whole rate of pension which the member would have received if he had retired on medical grounds on the date of his death.
- (b) If a member of the Scheme dies after retirement on pension or after leaving the Commission's service before reaching normal pension age his widow shall be entitled to receive an annual pension equal to one half of the member's pension or deferred pension provided that the first 91 days after the death of a member who has retired on pension the pension payable to the widow shall be increased so that it equals the whole rate of pension which was payable to the member immediately prior to his death.
- (c) If a member of the Scheme dies while in the employment of the Commission having completed less than five years' qualifying service his widow shall receive an annual pension of $\frac{1}{160}$ th of his retiring salary multiplied by the length of his pensionable service in years and fractions of a year.
- (d) Any pension awarded to a widow in accordance with the Scheme shall be payable from the day after the death of her husband until the date of her death, provided that if after attaining the age of 60 she remarries or cohabits with a man the pension will be restricted to half the guaranteed minimum pension which would have been payable to the member under the Social Security Pensions (Northern Ireland) Order 1975(f) and if before attaining the age of 60 she remarries or cohabits with a man the pension will cease to be payable unless the Commission is satisfied that there are compassionate grounds for restoring it. If the second marriage or cohabitation comes to an end the Commission may, if it thinks fit, restore the pension; provided that a widow's pension will remain payable as long as she is receiving a pension from a State Pension Scheme by virtue of her husband's contributions to such scheme.
- (e) The restriction in paragraph 2 on the amount of service which may be regarded as pensionable service shall not apply to the computation of service for the purpose of calculating a widow's pension. No widow's pension will be less than $\frac{1}{160}$ th of her husband's retiring salary multiplied by the length of his pensionable service.

Termination of Service before reaching Normal Pension Age

- 12.(a) A member who leaves the Commission's service before normal pension age and who has completed five or more years of qualifying service shall be entitled to a deferred pension and lump sum. This pension and lump sum will be paid when the member reaches the normal pension age, and will be calculated in the manner set out in paragraph 8 of the Scheme. The deferred pension benefits will, subject to the reasonable satisfaction of the Commission exceed or compare favourably with the amount contributed by the member of the Scheme. Members of the Scheme may, however, opt for a refund of contributions plus 5% compound interest paid in respect of pensionable service before 6th April 1975. Where a member opts for a refund of contributions service after 5th April 1975 shall count for the calculation of an award under the Scheme and service before 6th April 1975 in respect of which a refund of contributions has been taken shall be regarded as qualifying service.
- (b) A member who leaves the Commission's service before reaching normal pension age and who has completed less than five years qualifying service shall be entitled to a lump sum of 3/80ths of retiring salary for each year of his pensionable service. Members of the Scheme may, however, opt for a refund of contributions plus 5% compound interest paid in respect of pensionable service before 6th April 1975. Where a refund of contributions is taken service after 5th April 1975 shall count for the calculation of an award under the Scheme and service before 6th April 1975 in respect of which a refund of contributions has been taken shall be regarded as qualifying service. He shall also be eligible to receive, as from his attainment of normal pension age, the guaranteed minimum pension in accordance with paragraph 17.

Payment of Pensions

13. A pension which becomes payable in accordance with these Regulations shall be paid monthly in arrear.

Forfeiture of Benefits and Charges on Benefits

- 14.(a) A pension which becomes payable in accordance with these regulations will be terminated by the Commission if the pensioner is convicted of an offence of treason or for one or more offences under the Official Secrets Act 1911 to 1939 (United Kingdom) or the Official Secrets Act 1963 (Republic of Ireland)(g) for which the pensioner was sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least ten years.
- (b) The Commission shall have the right to exercise a charge or lien on, or right of set-off against that part of a member's benefit arising under the Scheme which exceeds his guaranteed pension as described in paragraph 17 in respect of any debt being due by the member to the Commission arising out of a criminal, negligent or fraudulent act or omission by the member provided that
- (1) any charge must be made only against the benefits provided by the Scheme;
 - (2) the amount recovered must not be greater than the amount of the debt, nor greater than the actuarial value of the member's actual or prospective benefits at the time with the balance of benefits, if any, being subject to the provisions of paragraph 12 of the Scheme;
 - (3) if the member agrees in writing some other method of recovery of the debt from benefits received under the Scheme shall be approved by the Commission;
 - (4) the member against whom a charge or lien is being made against his benefits arising under the Scheme shall be given a certificate by the Commission showing the amount recovered from him and its effect on his benefits.

(g) No. 1 of 1963 (Republic of Ireland)

- (5) in the event of a dispute about the amount due by any member to the Commission under the provisions of the Scheme, the Commission shall not exercise the lien on the member's benefits until the debt has become enforceable under a court order or the award of an arbitrator appointed by the Minister for Fisheries and Forestry, Dublin, and the Department of Agriculture for Northern Ireland.

Declarations

15. Payment of a pension under the Scheme shall be subject to the making by the pensioner of a declaration in such form and at such time as the Commission may require for the purpose of such payment.

Review of Pensions

16. Pensions and death benefits in pension form which are paid in accordance with the Scheme shall be reviewed annually, but so that no pension or gratuity payable to any person under the former scheme shall be terminated or reduced as a result of such review. The amount of any increase will be decided by the Commission with the approval of the Minister for Fisheries and Forestry and the Department of Agriculture for Northern Ireland provided that the same proportional increase will be added to all forms of pensions.

Guaranteed Minimum Pensions

17. The provisions of this paragraph shall apply if any employment becomes contracted-out employment by reference to the Scheme and they shall over-ride any other provisions of the Scheme which are inconsistent with them. The words and expressions used in this paragraph shall have the same meaning as in the Social Security Pensions (Northern Ireland) Order 1975.

- (a) If a member has a guaranteed minimum in relation to the pension for him under the scheme in accordance with article 37 of the Social Security Pensions (Northern Ireland) Order 1975 then—
- (1) the weekly rate of pension from age 65 for a man and 60 for a woman shall not be less than the guaranteed minimum; and
 - (2) if he dies at any time and leaves a widow, the weekly rate of the pension provided for her under the Scheme shall not be less than half that guaranteed minimum.
- (b) If the commencement of any member's minimum pension is postponed for any period his guaranteed minimum shall be increased to the extent, if any, specified in article 37(6) of the Social Security Pensions (Northern Ireland) Order 1975 as amended from time to time.
- (c) In the event of any employee leaving contracted-out employment before normal pension age the guaranteed minimum pension to which he will be entitled at pensionable age will be calculated on the basis that the guaranteed minimum pension which has accrued up to termination will be increased:
- (1) by 5% compound for each tax year after that in which service terminated, up to and including the last complete tax year before pensionable age; or
 - (2) in accordance with orders made under article 23 of the Social Security Pensions (Northern Ireland) Order 1975 and coming into force in the same period;
- whichever makes the lesser increase.
- (d) If an employee who has completed less than five years qualifying service leaves the Commission's service before reaching normal pension age his entitlement to guaranteed minimum pension will be secured by the payment of a contribution equivalent premium under article 44 of the Social Security Pensions (Northern Ireland) Order 1975.

Appeals

- 18.(a) If a person is aggrieved by the failure or refusal of the Commission to make an award under the Scheme or by the amount of any award made, he may appeal jointly to the Minister for Fisheries and Forestry, Dublin, and the Department of Agriculture for Northern Ireland.
- (b) An appeal against a failure to make an award must be made within eight months after the occasion in respect of which the award is claimed, and any other appeal must be made within six months after the decision to which it relates.

Tax

19. The Commission shall be entitled to deduct from any benefits payable under the Scheme an amount equal to any tax for which it is liable in respect thereof to the Revenue Commissioners or the Commissioners of Inland Revenue.

Assignments

20. A pension under the Scheme may not be assigned or charged but if the pensioner becomes incapable of giving a receipt for payments due, such payments may be made, at the discretion of the Commission to any institution having care of him or to such person or persons as the Commission shall think fit. No rights to any benefit provided or to be provided under the Scheme whether or not the accrual of the benefit is dependent on a contingency shall be surrendered in whole or in part.

Suspensions of Pensions

21. If a person to whom a pension is payable under the Scheme holds a post remunerated out of monies provided by the Oireachtas or by Parliament (United Kingdom) or otherwise out of State funds or by a local authority or by a board or body established by Statute, or any employment in which he had rendered service at any time in pursuance of secondment or other arrangement made with the consent of the Commission, then—

- (a) No payment in excess of the guaranteed minimum pension shall be payable for any period during which the current remuneration equals or exceeds the salary by reference to which the pension was computed.
- (b) If for any period the sum of the pension and current remuneration exceeds the said salary the pension shall be reduced for that period by the amount of the excess, providing that it shall not be reduced below the level of the guaranteed minimum pension.

Where a member who has left the employment of the Commission returns to that employment within six months and a contribution equivalent premium is payable but has either not been paid or has been paid and has been subsequently refunded then for the purposes of the Scheme service in the first period of employment shall be linked with subsequent service in the second period of employment.

Given under the Common Seal of the Foyle Fisheries Commission on
25th January 1979.

(L.S.) *James Power*
Member of the Commission
nominated by the Minister for
Fisheries and Forestry.

The Minister for Fisheries and
Forestry hereby approves of the
foregoing regulations.

K. Vickers
Member of the Commission
nominated by the Department of
Agriculture for Northern Ireland.

The Department of Agriculture for
Northern Ireland hereby approves
of the foregoing regulations.

Sealed with the Official Seal of the Minister for Fisheries and Forestry on 26th January 1979.

(L.S.)

C. D. Ryan

A person authorised by the Minister for Fisheries and Forestry to authenticate the Official Seal of the Minister.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 30th January 1979.

(L.S.)

E. G. Sherrard

Assistant Secretary
Department of Agriculture for
Northern Ireland.

EXPLANATORY NOTE

(This is not part of the regulations but is intended to indicate their general purport.)

These regulations establish a new pension scheme for the staff of the Commission with retrospective effect from 6 April 1975 in accordance with paragraph 16 of the Third Schedule to the Foyle Fisheries Act 1952, as amended by the Foyle Fisheries (Amendment) Act 1961, and paragraph 16 of the Third Schedule to the Foyle Fisheries Act (Northern Ireland) Act 1952 as amended by the Foyle Fisheries (Amendment) (Northern Ireland) Act 1962. The new pension scheme will apply to those persons employed in a whole time capacity by the Commission. It does not replace the existing scheme established under the Foyle Area (Pension) Regulations 1963 which remains in force and will continue to apply to those members of the staff who do not elect to join the new scheme.

The new pension scheme provides for improved retirement benefits, including widows benefits arising from retirement on reaching the normal pension age or on medical grounds. In addition the regulations contain provisions which comply with the requirements of the Social Security Pensions (Northern Ireland) Order 1975 in respect of the preservation of benefit rights for members of the scheme who leave the Commission's service before reaching the normal pension age.