

1989 No. 345

LOCAL GOVERNMENT

**Local Government (Superannuation) (Amendment)
Regulations (Northern Ireland) 1989**

Made 21st August 1989

Coming into operation 1st October 1989

The Department of the Environment, in exercise of the powers conferred by Articles 9(1) and 14(1) of the Superannuation (Northern Ireland) Order 1972(a) and now vested in it(b) and of every other power enabling it in that behalf and after consultation with the Association of Local Authorities for Northern Ireland, the district councils, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the regulations as appear to it to be appropriate, hereby makes the following regulations:

Citation, commencement and retrospection

1.—(1) These regulations may be cited as the Local Government (Superannuation) (Amendment) Regulations (Northern Ireland) 1989 and shall come into operation on 1st October 1989 and, except as provided in paragraphs (2) and (3), shall have effect from that date.

(2) Regulation 6 shall have effect from 17th May 1989.

(3) Regulations 10, 11 and 14 shall have effect from 1st December 1984.

(4) The Local Government (Superannuation) Regulations (Northern Ireland) 1981 to 1986(c) and these regulations may be cited together as the Local Government (Superannuation) Regulations (Northern Ireland) 1981 to 1989.

Interpretation

2. In these regulations "the principal regulations" means the Local Government (Superannuation) Regulations (Northern Ireland) 1981(d).

Definitions in principal regulations

3. Regulation 2(1) of the principal regulations is amended by inserting after the definition of "contracted-out employment" the following definitions:

(a) S.I. 1972/1073 (N.I. 10)

(b) S.R. & O. (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6) Article 3(1)

(c) S.R. 1981 No. 96, S.R. 1982 No. 58, S.R. 1984 No. 175, S.R. 1984 No. 355, S.R. 1985 No. 315 and S.R. 1986 No. 294

(d) S.R. 1981 No. 96 relevant amending regulations are S.R. 1982 No. 58, S.R. 1984 No. 355, S.R. 1985 No. 315 and S.R. 1986 No. 294

“ “contractual hours” means the number of hours the employing authority is entitled to require the employee to work in each of the contractual weeks, but where there is any cyclical variation in those hours the contractual hours are the average of those hours over the cycle;

“contractual weeks” means the number of weeks in every period of 12 months for which (assuming that there will be no unpaid leave of absence) wages or salary is payable to the employee;”.

Application

4. Regulation 11 of the principal regulations is amended—

(a) in paragraph (1)(b) by substituting for the words “sub-paragraph (e)” the words “sub-paragraphs (e) or (f)”;

(b) in paragraph (1)(c) by substituting for the words “schedule 2” the words “Part I of schedule 2”;

(c) by deleting the word “and” between paragraphs (1)(d) and (e);

(d) by inserting after paragraph (1)(e) the following sub-paragraphs:

“(f) every part-time officer who satisfies the requirements of paragraph 1(1) of Part II of schedule 2; and

(g) every officer as is mentioned in paragraph 5(2) of Part II of schedule 2;” and

(e) by inserting after paragraph (2) the following paragraph:

“(2A) A person who falls within paragraph (2)(e) but who would otherwise be an officer by virtue of paragraph (1)(b) may at any time, by notice in writing given to the authority by whom he is employed, elect to become an officer from the day after the date to which the next payment of wages or salary will be calculated.”.

Admission of other persons to participation in superannuation benefits

5. Regulation 13 of the principal regulations is amended by adding after paragraph (6) the following paragraphs—

“(7) Subject to paragraph (8) any agreement under this regulation made before 1st October 1989 which made provision for any part-time officers to be admitted to participate in the benefits provided by these regulations is to be treated as having been varied on 1st October 1989 so as to comply with paragraph (9).

(8) Paragraph (7) does not affect the position of any person who was admitted under any agreement made before 1st October 1989.

(9) An agreement made under this regulation may not provide for the admission of any part-time employee otherwise than as provided in Part II of schedule 2.”.

Treatment of certain additional functions performed by clerks of district councils

6. The principal regulations are amended by inserting after regulation 14(2A) the following paragraph—

“(2B) For the purposes of these regulations a clerk of a district council who performs functions under Article 9(2) (conduct of elections) of the Electoral Law (Northern Ireland) Order 1972(a) shall in relation to those functions be treated as if he were employed by that council and any remuneration paid to him in connection with those functions shall be treated as remuneration paid to him by that council.”.

Contributions

7. Regulation 14 of the principal regulations is amended by inserting after paragraph (10) the following paragraph—

“(11) For the purposes of this regulation the remuneration of a part-time officer for any period, except a period during which he was on leave of absence from duty by reason of illness or injury with reduced remuneration or without remuneration, is to be taken to be the remuneration he would have received if during that period he had worked no more and no less than the contractual hours.”.

Method of calculating service, contributing service and non-contributing service

8. Regulation 40 of the principal regulations is amended by adding after paragraph (3) the following paragraphs—

“(4) A person who—

- (a) has become an officer by virtue of an election under paragraph 1(1) of Part II of schedule 2 made before 1st October 1990 or by virtue of paragraph 4 of that Part, or
- (b) has become an officer in a whole-time employment at any time after 31st March 1974 and before 1st October 1990 and had previously been in a part-time employment under an employing authority,

is entitled to reckon as service in relation to the employment in which he is an officer, any previous period of employment under an employing authority after the material date, except a period which was followed by one of 12 months or more during which he was not employed by an employing authority.

(5) In paragraph (4)—

- (a) service means service for determining whether any benefit is payable to or in respect of the officer under these regulations; and
- (b) the material date is the earliest date from which, if Part II of schedule 2 had come into force on 1st April 1974, an election or, as the case may be, an election deemed to have been made by him could have had effect.

(6) For the purpose of calculating the amount of any benefit, a period of part-time service under an employing authority shall be treated as though it had been whole-time service for a proportionately reduced period.

(7) For the purpose of calculating the amount of any benefit, service during any period which became reckonable as contributing service by virtue of paragraph 5(2)(a), or an election under paragraph 5(2)(b), of Part II of schedule 2 (whole-time employment in which the contractual weeks are fewer than 45) shall be multiplied by $\frac{52}{C}$ where C is the number of contractual weeks.”.

Added years in certain cases

9. Regulation 43 of the principal regulations is amended by inserting after paragraph (3) the following paragraph—

“(3A) In the case of an employee who is a part-time officer by virtue of an election under Part II of schedule 2 and in respect of whom a consent has been given under paragraph (1) after 30th September 1989 the remuneration referred to in paragraph (3)(a) shall be construed as remuneration which would have been paid for a single comparable whole-time employment.”.

Notice of election as to war service

10. In regulation 100(2)(b) of the principal regulations the words “(or for any reduced percentage substituted under paragraph (7))” shall be omitted.

Contributing service and benefits

11. Regulation 101 of the principal regulations is amended—

(a) in paragraph (2)(b) by inserting after the word “before” the words “1st December 1984”; and

(b) in paragraph (8) by inserting after the word “death” on the 7th line the word “benefit”.

Application

12. Schedule 2 to the principal regulations is amended—

(a) by substituting for the words “Regulation 11(1)(c)” and “Whole-time officers employed in a manual capacity” the following words—
“Requirements to be satisfied by whole-time officers employed in a manual capacity, officers in a qualifying part-time employment and officers in any whole-time employment in which the contractual weeks are fewer than 45.

PART I

Regulation 11(1)(c)

WHOLE-TIME OFFICERS EMPLOYED IN A MANUAL CAPACITY”; and
 (b) by inserting after Part I the following words—

“PART II

Regulations 11(1)(f)
 and (g), 13(9), 40(4)(a),
 (5) and (7)

PERSONS EMPLOYED IN QUALIFYING PART-TIME
 EMPLOYMENT OR ANY WHOLE-TIME EMPLOYMENT IN
 WHICH THE CONTRACTUAL WEEKS ARE FEWER THAN 45

1.—(1) Subject to sub-paragraphs (2) to (6), the requirements to be satisfied for the purposes of regulation 11(1)(f) are that a person is in a qualifying part-time employment and that he shall have elected to become a part-time officer.

(2) Subject to sub-paragraphs (3) and (4), a qualifying part-time employment is an employment under an employing authority in which the contractual weeks are 35 or more and the contractual hours are 15 or more but fewer than 30.

(3) If a person is in two or more employments under one, or more than one, employing authority and—

(a) in each of the employments the contractual weeks are 35 or more and the contractual hours are fewer than 30, and

(b) the total of the contractual hours in all the employments is 15 or more,

then each of the employments is a qualifying part-time employment, but any election under sub-paragraph (1) must be made in respect of all of them.

(4) An employment is not a qualifying part-time employment if it is an employment in which the person is a manual worker, unless, subject to sub-paragraph (5), he has completed 12 months' continuous employment with the same employing authority in which the contractual hours were 15 or more.

(5) An employment which would but for sub-paragraph (4) be a qualifying part-time employment becomes one if the employee—

(a) became employed by the employing authority in question as a manual worker after ceasing to be employed in non-local government employment, and

(b) provides that employing authority with a declaration in writing that his pension rights under his non-local government scheme will be preserved or that he has applied, or will apply, for their transfer to the Committee.

(6) An election under sub-paragraph (1) may be made at any time by giving notice in writing to the employing authority which will become the person's employing authority and—

(a) has effect from the day after the date to which the next payment of wages or salary will be calculated, and

(b) so long as there is no break in service, and subject to sub-paragraph (7), has effect in relation to any subsequent qualifying part-time employment under that employing authority even though not made in respect of it.

(7) If the contractual hours in the employment, or as the case may be, the total of the contractual hours in all the employments in relation to which the election has effect, fall below 15, the person may elect to cease to be an officer in the employment or employments.

2. If a person who is in a part-time employment under an employing authority was, immediately before the commencement of that

employment, an officer in a whole-time employment under that employing authority, he remains an officer in the part-time employment unless he elects to cease to be one.

3. An election under paragraph 1(7) or 2—

- (a) must be made, by giving notice in writing to the employing authority, within 6 months after the date on which the provision in question becomes applicable or such longer period as the Committee may allow, and
- (b) has effect from the day after the date to which the next payment of wages or salary will be calculated,

and the person making it is to be treated for the purposes of these regulations as if he had on that day ceased to hold the employment or employments.

4. Where—

- (a) at any time after 31st March 1974 an employing authority decided that a person in a part-time employment under them was in that employment an officer, and
- (b) he was not at that time an officer by virtue of regulation 11(1), and
- (c) if this Part had then been in force he could have made an election under paragraph 1(1),

he is to be treated as if this Part had then been in force and he shall be deemed to have made such an election.

5.—(1) Subject to sub-paragraph (2), a person who is in a whole-time employment under an employing authority in which the contractual weeks are fewer than 45 is not in that employment an officer.

(2) Where a person is in such employment—

- (a) if he was in the employment immediately before 1st October 1989 and the employing authority had decided that he was in the employment an officer, he remains so unless he otherwise elects, and
- (b) in any other case, he may elect to become an officer in the employment.

(3) An election under sub-paragraph (2) may be made at any time by giving notice in writing to the employing authority and has effect from the day after the date to which the next payment of wages or salary will be calculated.”.

Amount to be paid for an additional period

13. Schedule 9 to the principal regulations is amended by inserting after paragraph 5 the following paragraph—

“6. For the purposes of paragraphs 1 to 4, where the employee is an officer by virtue of—

- (a) an election under paragraph 1(1) of Part II of schedule 2 (elections by part-time employees); or

- (b) paragraph 2 of that Part (part-time employee remaining an officer if previously whole-time), or
 - (c) an election deemed to have been made under paragraph 4 of that Part (part-time employees becoming officers between 1st April 1974 and the coming into operation of these regulations),
- and the election under regulation 44 or 45 was made after 30th September 1989 references to his remuneration in paragraphs 2 and 4 are to be construed as references to the remuneration that would have been paid for a single comparable whole-time employment.”

Application of Part XI (war service) to existing officers

14. Schedule 11 to the principal regulations is amended by inserting after paragraph 9 the following paragraph—

“10. In the case of an existing officer who under regulation 23 of the 1950 regulations or the corresponding provision of the Belfast Corporation Superannuation Scheme availed himself of the benefits of those regulations or that Scheme and who has remained since 1st July 1950 an officer without a break in employment of 12 months or more, regulations 100(2)(b) and 101(1)(a), (6), (8) and (9)(a) shall have effect as if for the words “47 per cent.” mentioned therein there were substituted the words “50 per cent.””

Retrospective effect

15. Where—

- (a) if these regulations had come into operation on 1st April 1986, a person would at any time before 1st October 1989 have been entitled to make an election under regulation 11(2A) of the principal regulations or under paragraph 1(1) or (7), 2 or 5(2) of Part II of schedule 2 to those regulations; and
- (b) he gives notice of such an election within 6 months after 30th September 1989,

the election may be expressed to have effect as if these regulations had come into operation on 1st April 1986 and the notice had been given on the first day on which he would in that case have been entitled to give notice of the election or, where that day is 1st April 1986, to have effect from that date.

Sealed with the Official Seal of the Department of the Environment on
21st August 1989.

(L.S.)

Rosemary R. Brown
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations, which are concerned principally with employees who work less than a full week or year, further amend the Local Government (Superannuation) Regulations (Northern Ireland) 1981 (the principal regulations). The principal changes are:—

- (a) Regulation 6 provides that for the purposes of the principal regulations the functions performed by the clerk of a district council as deputy returning officer under Article 9(2) of the Electoral Law (Northern Ireland) Order 1972 and the fees paid for those functions are to be treated respectively as employment under that council and as remuneration paid to him by that council.
- (b) Regulation 9 clarifies the provisions relating to the amount to be paid by a part-time officer in respect of whom a consent has been given under regulation 43(1) of the principal regulations to the adding of a number of years to his service.
- (c) Regulations 10 and 11, which relate to war service, correct a number of minor defects appearing in the principal regulations. Regulation 14 increases from 47 per cent. to 50 per cent. the period of his war service which an existing officer may count in the calculation of his retirement benefits.
- (d) Regulation 12 adds a new Part II to schedule 2 to the principal regulations. Paragraphs 1 to 4 of that Part, with related provisions in regulations 3, 4, 5, 7, 8 and 15 make provision for part-time employees to elect to become pensionable. The basic qualification for making an election is that the employee has a contractual obligation to work at least 15 hours a week for at least 35 weeks a year. In some circumstances part-time employees remain or become pensionable without an election, and elections to cease to be pensionable may be made in certain cases.
Paragraph 5 of Part II of schedule 2 provides that a whole-time employee with an obligation to work fewer than 45 weeks a year is pensionable only if his employing authority has so decided in the past or if he elects to be pensionable.
- (e) Regulation 13 corrects an anomaly in schedule 9 to the principal regulations whereby a part-time employee who elects to purchase added years may become entitled to benefits disproportionate to the amount of his contributions.

Article 14 of the Superannuation (Northern Ireland) Order 1972 confers express power to make regulations retrospective in effect. These regulations are to a certain extent retrospective but do not adversely affect rights in relation to former employees or their widows or dependents.