

ARTICLE 69A OF THE SOCIAL SECURITY PENSIONS (NORTHERN IRELAND) ORDER 1975

DIRECTION BY THE DEPARTMENT OF FINANCE

The Department of Finance¹, in exercise of the powers conferred by Article 69A of the Social Security Pensions (Northern Ireland) Order 1975² and now vested in it³, hereby makes the following direction.

1. In this direction, unless the context otherwise requires,

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992⁴;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁵;

"the Pensions Order" means the Social Security Pensions (Northern Ireland) Order 1975⁶;

"additional benefit" has the meaning given by regulation 5(2)(a) of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978⁷;

"additional pension" means the sums which are the additional pensions in long-term benefits as defined in section 20(2) of the Administration Act;

"official pension" has the meaning given by section 5(1) of the Pensions (Increase) Act (Northern Ireland) 1971⁸;

¹ The Department of Finance and Personnel was renamed the Department of Finance by section 1(4) of the Departments Act (Northern Ireland) 2016 (c.5).

² Article 69A was inserted by Article 10 of the Social Security (Northern Ireland) Order 1979 (N.I. 5). It was amended by Article 11(9) of the Social Security (Northern Ireland) Order 1986 (N.I. 18) and section 184, and Schedule 7, paragraph 15(2) to the Pension Schemes (Northern Ireland) Act 1993 (c.49).

³ See the Departments (Northern Ireland) Order 1982 (N.I. 6)

⁴ 1992 c. 8.

⁵ 1992 c. 7.

⁶ 1975 No. 1503(N.I 15).

⁷ *S.R. 1978 No. 114*

⁸ 1971 c.35

“pension authority” has the meaning given by section 7(1) of the Pensions (Increase) Act (Northern Ireland) 1971;

“pensioner” means a person to whom an official pension has become payable;

“Article 69 order” means an order made by the Department of Finance under Article 69 of the Pensions Order¹;

“section 105 order” means an order made by the Department of Finance under section 105 of the Pension Schemes (Northern Ireland) Act 1993²;

“surviving civil partner’s pension” means an official pension payable in respect of the services of the pensioner’s deceased civil partner;

“surviving spouse’s pension” means an official pension payable in respect of the services of the pensioner’s deceased spouse;

and other expressions bear the same meaning as in the Administration Act and in the Contributions and Benefits Act.

2. Paragraphs 3 to 6 apply in the case of a pensioner who reaches pensionable age on or before 5th April 2016.

3. Where the Department of Finance makes an Article 69 order increasing official pensions and the amount by reference to which the increase in an official pension under that order is to be calculated would, but for this direction, be reduced under Article 69(5) of the Pensions Order by an amount equal to the rate of a guaranteed minimum pension, if at the time the Article 69 order comes into operation-

- (a) the additional pension to which the pensioner is entitled is less than the amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions to which he or she is entitled; or
- (b) the pensioner has not claimed his or her retirement pension and is not treated as having claimed it by virtue of Regulations made under Part I of the Administration Act; or
- (c) the pensioner has made an election under regulation 2(1) of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979³; or

¹ Article 69 was amended by the Social Security (Northern Ireland) Order 1979 (No. 396), Article 10 by the Social Security (Northern Ireland) Order 1986 (No. 1888), section 11(9), by the Pensions (Miscellaneous Provisions) (Northern Ireland) Order 1990 (No. 1509) (N.I. 13), Articles 3(7) and 7, by the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c.9), Schedule 2, paragraph 19, by the Pension Schemes (Northern Ireland) Act 1993 (c. 49), sections 176 and 184, by the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), section 110.

² 1993 c. 49. Section 105 was amended by article 55 of the Pensions (Northern Ireland) Order 1995 (N.I. 22) and by the Pensions Act (Northern Ireland) 2015 (c. 5), section 24(1) and Schedule 13, Part 1, paragraph 1.

³ S.R. 1979/243. The relevant amending regulations are S.R. 1987 No. 404, S.R. 1989 Nos.193 and 373

- (d) the application of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978¹ is disqualifying the pensioner for the receipt of any additional benefit which would otherwise be payable to him or her by virtue of an order under section 132 of the Administration Act; or
- (e) section 113(1)(b) of the Contributions and Benefits Act is disqualifying the pensioner for the receipt of any benefit and the pensioner requests the pension authority in writing that the reduction under Article 69(5) of the Pensions Order should not be made; or
- (f) in respect of a surviving spouse's or surviving civil partner's pension, the pensioner is not entitled to a Category A retirement pension by virtue of section 41 of the Contributions and Benefits Act², or a Category B retirement pension by virtue of section 48B³ or section 51⁴ of the that Act;

the amount of that reduction shall be equal to the amount by which the pensioner's guaranteed minimum pension has been increased by virtue of a section 105 order in the tax year in which the Article 69 order comes into operation, and, subject to paragraphs 5 and 6, in any such case the increase shall, in respect of any period after the order comes into operation, be calculated in accordance with this direction notwithstanding Article 69(5).

4. Where the condition specified in paragraph 3(a), (b), (c), (e), or (f) does not apply to a pensioner at the time an Article 69 order comes into operation but does apply to the pensioner at any time thereafter the rate of the official pension for any period following the application of the relevant condition shall be calculated as if that condition had applied to the pensioner since he or she first became entitled to a guaranteed minimum pension arising from the employment which gave rise to the official pension.

¹ SR 1978 No. 114. Regulation 5 was amended by S.R. 1988 No. 77, S.R. 1989 No. 373, S.R. 1990 No. 123, S.R. 1992 No. 330, S.R. 1994 No. 269, S.R. 2001 No. 108, S.R. 2005 No.s 299 and 536 and S.R. 2010 No. 110.

² Section 41 was substituted by the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (N.I.12), Article 13(1) and Schedule 1, Part I, paragraph 9. Section 41(5) confers entitlement to a Category A retirement pension on certain men whose wife died on or after 6 April 1979. Section 41 has been repealed by the Welfare Reform Act (Northern Ireland) 2007 (c. 2), Schedule 8, from a date to be appointed.

³ Articles 48A, 48B and 48C were substituted for sections 49 and 50 by the Pensions (Northern Ireland) Order 1995 (N.I. 22), Article 123, Schedule 2, Part I. Section 48B(1), (1ZA), (1ZB), (1A) and (1B) were substituted by the Pensions Act (Northern Ireland) 2015 (c. 5), Schedule 12, Part 2, paragraphs 57 and 61 with effect from 6 April 2016. Section 48B confers a right to a category B retirement pension on certain persons whose spouse died while they were married or whose civil partner died while they were civil partners.

⁴ Section 51 was substituted by the Pensions Act (Northern Ireland) 2015 (c. 5), Schedule 12, Part 2, paragraphs 46 and 56 with effect from 6 April 2016. Section 51 confers a right to a category B retirement pension on certain persons who attained pensionable age before 6 April 2010 and whose spouse died while they were married or whose civil partner died while they were civil partners.

5. Where the condition specified in paragraph 3(b), (c), (d) or (e) has applied to a pensioner and ceases to apply to the pensioner at any time after the Article 69 order comes into operation the rate of his or her official pension for any period following the date on which the condition ceases to apply shall subject to paragraph 6 be calculated as if the direction in paragraph 3 had never applied in respect of that pension.

6. Where the condition specified in paragraph 3(d) becomes applicable to a pensioner at any time and the direction in paragraph 3 has previously applied to his or her official pension by reason of the same sub-paragraph (or its predecessor in an earlier direction) and this has ceased so to apply in accordance with paragraph 5, the rate of that pension shall be calculated as if the direction had been in operation at all times since the direction had first so applied, unless the pensioner has been ordinarily resident in Northern Ireland at any time after the direction first so applied.

7. Paragraph 8 applies in the case of a pensioner who reaches pensionable age in the period 6 April 2016 to 5 December 2018 inclusive.

8. Where the Department of Finance make an Article 69 order increasing official pensions and the amount by reference to which the increase in an official pension under that order is to be calculated would, but for this direction, be reduced under Article 69(5) of the Pensions Order by an amount equal to the rate of a guaranteed minimum pension, the amount of that reduction shall be equal to the amount by which the pensioner's guaranteed minimum pension has been increased by virtue of a section 105 order in the tax year in which the Article 69 order comes into operation, and in any such case the increase shall, in respect of any period after the order comes into operation, be calculated in accordance with this direction notwithstanding Article 69(5).

9. This direction comes into operation on 12 May 2016.

10. All previous directions made by the Department of Finance and Personnel under Article 69A of the Pensions Order are hereby revoked.

Signed

Grace Nesbitt

12 May 2016

A senior officer of the Department of Finance

EXPLANATORY NOTE

(This note is not part of the Direction)

The Pensions (Increase) Act (Northern Ireland) 1971 makes provision for the increase of the occupational pensions, defined as official pensions, payable to or in respect of many former public servants. Where the Department for Social Development makes a direction by virtue of section 132 of the Social Security Administration (Northern Ireland) Act 1992 to the effect that certain social security benefits are to be increased by reference to the increase in retail prices over a specified period, Article 69 of the Social Security Pensions (Northern Ireland) Order 1975 requires the Department of Finance to make a parallel direction increasing official pensions.

For those reaching pensionable age on or before 5 April 2016, the state retirement pension consists of two elements, namely a basic pension payable at a weekly rate and an earnings related pension commonly known as SERPS (state earnings related pension scheme). As a condition of contracting out of SERPS, an occupational pension scheme must pay to pensioners a guaranteed minimum pension (GMP) in respect of pensionable service in the tax years from 1978-79 until 1996-97 inclusive. The GMP approximates to the SERPS pension which the pensioner would have earned during such service had his or her occupational scheme not been contracted out. Even where a scheme is contracted out, under directions given by virtue of section 132 of the Social Security Administration (Northern Ireland) Act 1992, the Department for Social Development (DSD) pays in addition to the basic pension an increase to the SERPS element, calculated by reference to the increase in retail prices. DSD indexes in full the earnings related element earned in respect of the tax years 1978-79 to 1987-88 inclusive. In respect of the tax years 1988-89 to 1996-7, DSD indexes it to the extent of any increase in retail prices above 3%.

To avoid the double indexation of the GMP element of official pensions, Article 69(5) of the Social Security Pensions (Northern Ireland) Order 1975 requires the pension paying authority, before increasing a pension which includes a GMP, to deduct the amount of the GMP from the amount to be increased. This direction makes an exception to this requirement in the circumstances specified.

Paragraphs 3 to 6 apply to pensioners who reach state pensionable age on or before 5 April 2016. (Paragraph 1 has the effect that in this direction “pensionable age” has the meaning given by section 122(1) of the Contributions and Benefits Act).

Paragraph 3(a) specifies the case where DSD is not in effect indexing the GMP element in full because the SERPS pension to which the pensioner would be entitled if the occupational scheme were not contracted out is less than his or her GMP.

Paragraph 3(b) specifies the case where the pensioner does not receive a state retirement pension because he or she has not yet claimed it because, for example, he or she is in receipt of incapacity benefit, or he or she is not treated as having claimed it.

Paragraph 3(c) specifies the case where the pensioner does not receive a state pension because he or she has elected to be treated as not having retired.

Paragraph 3(d) specifies the case where a state retirement pension is in payment but DSD are not increasing it because the pensioner is resident in a country with which the United Kingdom does not have reciprocal arrangements for uprating social security pensions.

Paragraph 3(e) specifies the case where the pensioner is disqualified for receiving a state retirement pension because he or she is in prison.

Paragraph 3(f) specifies the case of a GMP paid to a surviving spouse or civil partner, unless he or she is entitled to a Category A or Category B state retirement pension by virtue of his or her late spouse or civil partner's National Insurance contributions.

Paragraphs 4, 5 and 6 prescribe how pensions increase is to be calculated when the conditions in sub-paragraphs 2(a), (b), (c), (d), (e) and (f) variously begin or cease to apply

Paragraph 8 specifies all pensioners who reach state pensionable age after 5 April 2016 and before 6 December 2018.

Because section 105 of the Pension Schemes (Northern Ireland) Act 1993 requires the occupational scheme to index the GMP earned in the tax years from 1988-89 to 1996-97 inclusive up to a limit of 3%, paragraph 3 requires the occupational scheme to deduct the amount of any increase under a section 105 order in the same tax year before calculating the increase due under an order under Article 69.

The direction comes into operation on 12 May 2016 and revokes all previous directions made under 69A of the Pensions Order.