

Reference No: ; Date: 28/01/82

28/01/1982 LP:- Preservation of Superannuation Benefits by Established Civil Servants

A Chara

I am directed by the Minister for the Public Service to refer to paragraph 12 of Circular 46/75 about the preservation of superannuation benefits and to Article 7 of the Civil Service Superannuation Regulations 1980, which gives the necessary statutory cover. Preservation and the arrangements for transfer of service are connected - because ultimate retiring benefits would be based on higher salary it would normally be more beneficial for an officer to transfer service than to have it preserved - so issue of instructions on preservation was deferred pending finalisation of the transfer arrangements. The latter has not yet been achieved but since the arrangements have now reached an advanced stage and are, in fact, being implemented in many areas, it has been decided not to delay any further the issue of instructions on preservation. This Letter on the subject, if read in conjunction with the Letter dated 30 January 1981 to Personnel Officers about the transfer arrangements, will enable any relevant cases to be dealt with.

2. Qualifying conditions

Preserved superannuation benefits may be awarded only where the officer -

(a) is serving in an established capacity on or after 1 June 1973 and resigns before the minimum retiring age;

(b) has at least 5 years actual pensionable service;

(c) has given service in respect of which the Head of his Department is prepared to give a certificate of diligence and fidelity (whether unqualified or qualified) in accordance with section 8 of the Superannuation Act 1859;

(d) (i) has not been paid a marriage gratuity, being a person eligible for such gratuity under Circular 37/75 (except that a person who, having been awarded a marriage gratuity, has refunded the gratuity on subsequent reappointment in a pensionable capacity (under the terms of Circular 37/75), would qualify for preserved benefit on eventual resignation) or

(ii) has not transferred service for pension purposes to another organisation or service under section 4 of the Superannuation and Pensions Act 1963 or sections 11 or 34 of the Local Government (Superannuation) Act 1956 or under arrangements amending those provisions, or

(iii) is not eligible, under a provision such as section 11(7) of the Law Reform Commission Act, 1975, to be awarded benefits equivalent to Civil Service benefits.

In the case of officers otherwise eligible for a marriage gratuity who decide, instead, to opt for preservation, the application for preserved benefits must be accompanied by a waiver of entitlement to marriage gratuity (see par. 8).

3. Benefits

The following benefits are payable:

(a) If the officer survives to age 60, a pension and lump-sum calculated in accordance with paragraph 4 below.

(b) If, before attaining age 60, the officer's state of health deteriorates to such extent that the Minister for the Public Service is satisfied that the immediate payment of the preserved benefits is justified, a pension and lump sum calculated in accordance with paragraph 4 below.

(c) If the officer dies before age 60, a death gratuity, together with (if he was a member of the Spouses' and Children's Contributory Pension Scheme and leaves a widow whom he married before he resigned), a pension in accordance with the terms of the Scheme for her and any children conceived or adopted before his resignation.

4. The preserved benefits will be calculated as follows:

(a) A preserved pension will be 1/80th of pensionable remuneration per year of pensionable service (see paragraph 5 below) subject to a maximum of one half of pensionable remuneration.

(b) A preserved lump sum will be 3/80ths of pensionable remuneration per year of pensionable service, subject to a maximum of one and one half times pensionable remuneration.

(c) A preserved death gratuity will be 3/80ths of pensionable remuneration per year of pensionable service, subject to a maximum of one and one half times pensionable remuneration.

(d) A preserved spouse's pension will be one half of the preserved pension which would have been payable to the member had his own preserved pension been brought into payment on ill health grounds on the date of his death (but see paragraph 5(1)(a) and 5(2) below). Any additions in respect of children will be calculated in accordance with the terms of the Spouses' Scheme but based, of course, on the actual rate of preserved spouse's pension.

5. For purposes of the calculations in paragraph 4 above, the terms "pensionable service" and "pensionable remuneration" are to be interpreted as follows:-

(1) "pensionable service" means the officers actual pensionable service at date of resignation. It should be noted that this means that, where the pension and lump-sum are brought into payment before age 60 because of ill health

(a) the ill-health added years granted to serving officers who retire on ill health are not granted;

(b) spouse's pension takes no account of notional service after the date of resignation;

(c) the preserved gratuity is not subject to the usual minimum of one year's pay.

Pensionable service does include

(i) actual pensionable service given in the civil service,

(ii) service transferred from another organisation under approved transfer arrangements (including any service purchased under that organisation's Purchase Scheme),

(iii) service purchased under the Civil Service Purchase Scheme (Circular 16/79 but see paragraph 4(2) of the Circular in relation to computation of the appropriate credit). Purchased service does not, however, count towards the qualifying minimum of five year's pensionable service.

In the case of an officer who is pensionable in accordance with the terms of the Superannuation (Prison Officers) Act 1919, the preserved benefits will be calculated by reference to forty years or, if less, the figure obtained by the formula $A/B \times C$ where

A is the actual pensionable service,

B is thirty years (i.e. the minimum actual service required for maximum pension), or the actual pensionable service the officer would have had if he had continued to serve up to the age of 55 years, whichever is less, and

C is, in case B is not more than twenty years (i.e. a non-doubling of service case), a period equivalent to B, or in case B is more than twenty years (i.e. a doubling of service case), a period equivalent to $2B - 20$.

This formula is designed to apply the principle of "uniform accrual" (which is used in the Transfer Scheme) to preservation cases.

(2) "pensionable remuneration" means the amount $A \times B$ where -

A is the pensionable salary and emoluments of the officer at date of resignation, calculated in accordance with sections 12 and 28 of the Superannuation Act 1834 as amended by section 8 of the Superannuation and Pensions Act 1963 and Article 11 of the Civil Service Superannuation Regulations 1980 (i.e. the remuneration by reference to which the officer's pension and lump sum would fall to be calculated if, on the date of resignation, he was allowed to retire on age grounds),

B is the total of the annual pensions increases granted under the Pensions (Increase) Regulations in the interval between the date of resignation and the effective date for payment of the preserved benefits (if they come into payment before the officer attains age 60) or the date on which the person attains age 60 (in other case).

It should be noted that, if averaging would normally apply e.g. because of a promotion during the last 3 years of civil service, the officer is not exempted from averaging by virtue of paragraph 13(1) (b) of Circular 46/75, if, for example, his preserved benefits are brought into payment before age 60 because of ill-health.

6. Subject generally to requirements of this letter the benefits will be payable on application by the officer concerned (in the case of a death gratuity) and by his spouse, or, as appropriate, the guardian of his children (in the case of Spouses' and Children's pension). The benefits will take effect from the date of attaining age 60 (in the case of normal preserved pension and lump-sum), the date of the Minister's determination (in a case where the benefits are being brought into payment before age 60 because of ill-health) or the date of the officer's death (in the case of death gratuity and Spouses' and Children's pension).

7. Spouses' and Children's Contributory Pension Scheme

Any contributions due in respect of reckonable service for which periodic contributions were not paid under the above scheme will be deducted from the preserved lump-sum or preserved death gratuity and will be based on the uprated pensionable remuneration by reference to which the lump-sum (or death gratuity) was calculated. It should be noted that receipt of a partial or total refund of contributions under the Spouses' Scheme, where such refund is due because the officer was not a married person for any period of his membership of the Scheme, does not debar the payment of preserved personal benefits (no spouses or children's preserved pensions would, of course, be payable since the member was not a married person for any period of his membership). Where the officer is married at date of resignation, of course, no refund of contributions is allowed because there is a contingent entitlement to spouse's preserved pension.

8. Marriage Gratuity

It has generally been the experience that an individual who qualifies for marriage gratuity under Circular 37/75 will opt for the gratuity rather than preserved benefits. This is understandable having regard to the fact that the gratuity is payable immediately and the rate of accrual is faster than the rate of accrual of lump-sum. Where, however, the service prior to marriage is substantial the officer concerned should be advised that the preserved benefits may be of considerably higher value than the marriage gratuity. There is, of course, no question of allowing an officer who takes a marriage gratuity to decide subsequently to opt for preserved benefits in lieu of that gratuity. An officer who received a gratuity and is subsequently re-employed in a pensionable capacity may qualify for preserved benefits on her aggregate service since she is required by the terms of Circular 37/75 to refund the gratuity; the preserved benefits would fall to be reduced appropriately where the gratuity had not been refunded

in full by the time of the second resignation.

9. The allocation provisions of the Superannuation Act 1956 do not apply in relation to preserved pensions.

10. Where a benefit has been brought into payment in accordance with paragraph 3(b) above, the preserved pension will only continue in payment if the Minister remains satisfied that the person's state of health justifies it.

11. Where an officer has resigned with entitlement to preserved benefit and subsequently, before attaining 60 years of age, becomes an established civil servant or takes up a position which is pensionable under the Pension Scheme for Non-Established State Employees, his entitlement to preserved benefits will cease, and the service by reference to which those benefits would have been calculated will be aggregated with his subsequent service for the purposes of whatever award subsequently becomes payable.

12. The preserved benefit shall be reduced by reference to the uprated amount of any loss to the State caused by the officer in question, including any overtaken annual leave. Any such cases should be referred to this Department.

13. The fact that officers' superannuation benefits have been preserved does not, of course, imply any right to re-employment following resignation.

14. Departments which have delegated authority to pay lump-sums and gratuities may award preserved benefits in accordance with the terms of this Letter to former officers of their Department who satisfy the requisite requirements, irrespective of whether or not resignation occurred between 1 July 1973 and the date of this Letter, or subsequently. The grant of benefit under paragraph 3(b) will, however, continue to be subject to the approval of this Department. When any such case arises, it should be forwarded to this Department, together with appropriate medical evidence and details of the officer's employments and income since the date of resignation from the Department.

15. Where an officer proposes to resign in due course with preserved benefits his Department should complete a form E Gen. 24 in respect of him and advise him in writing of the need to submit an application for the appropriate preserved benefit as indicated in paragraph 6 above. In order to enable consideration to be given to the possibility of transferring his service rather than preserving his benefits, the employment being taker, up by the officer should be ascertained.

16. A list of officers who resign with entitlement to preserved benefits should be forwarded to this Department each September.

17. Any queries about preservation should be referred in writing to the Pensions Section of this Department.

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M.B. Murphy