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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**The Judicial Pensions Regulations 2015**

**PART 8**

**Death benefits**

**CHAPTER 1**

**Pensions for surviving adults**

**Surviving adults**

**91.** In these Regulations—

“surviving adult”, in relation to a deceased member of this scheme, means the member’s surviving spouse, surviving civil partner or surviving nominated partner;

“surviving civil partner”, in relation to a deceased member of this scheme, means a person who was in a civil partnership with the member as at the date of the member’s death; and

“surviving spouse”, in relation to a deceased member of this scheme, means a person who was married to the member as at the date of the member’s death.

**Meaning of “surviving nominated partner”**

**92.—**(1) A person (P) is a surviving nominated partner of a deceased member of this scheme if—

- (a) the member nominated P to receive a pension on the member’s death;
- (b) the nomination is made by a written declaration signed by both the member and P in a form required by the scheme manager; and
- (c) P satisfies the scheme manager that immediately before the member’s death—
  - (i) P and the member were cohabiting as partners in an exclusive, committed long-term relationship;
  - (ii) P and the member were not prevented from entering into a marriage or a civil partnership; and
  - (iii) either P was financially dependent on the member or P and the member were financially interdependent.

(2) The member or P may revoke a declaration under paragraph (1)(b) at any time by notice to the scheme manager in a form required by the scheme manager.

**Meaning of “surviving adult’s pension”**

**93.** In these Regulations, “surviving adult’s pension” means any of the following pensions payable to a surviving adult under this Chapter—

- (a) a dependant’s earned pension;
- (b) a dependant’s ill-health pension;

- (c) a dependant's added pension.

#### **Meaning of dependant's earned pension**

**94.** A dependant's earned pension is a pension payable on the death of a member of this scheme if the member was a pensioner member or would have become entitled to a full retirement earned pension had the member not died.

#### **Meaning of dependant's ill-health pension**

**95.** A dependant's ill-health pension is a pension payable on the death of a member of this scheme if the member was entitled to the immediate payment of an ill-health pension as at the date of the member's death.

#### **Meaning of "dependant's added pension"**

**96.** A dependant's added pension is a pension payable on the death of a member of this scheme if the member—

- (a) was entitled to the immediate payment of a full retirement added (all beneficiaries) pension as at the date of the member's death; or
- (b) would have become entitled to such a pension had the member not died.

#### **Entitlement to surviving adult's pension**

**97.—(1)** This regulation applies in relation to a member who, at the date of the member's death is—

- (a) an active member of this scheme, or an existing scheme, in relation to a continuous period of pensionable service of at least 12 months;
- (b) a deferred member of this scheme; or
- (c) a pensioner member of this scheme.

(2) If the member is a transition member with continuity of service, the continuous period of pensionable service mentioned in paragraph (a) includes the member's period of pensionable service under an existing scheme before the closing date.

(3) The surviving adult of the member is entitled to payment for life of a surviving adult's pension as follows—

- (a) if the member was a pensioner member or would have become entitled to a full retirement earned pension had the member not died, a dependant's earned pension;
  - (b) if an ill-health pension was payable as at the date of the member's death, a dependant's ill-health pension;
  - (c) if the member was entitled to the immediate payment of a full retirement added (all beneficiaries) pension as at the date of the member's death or would have become entitled to such a pension had the member not died, a dependant's added pension.
- (4) The scheme manager may withhold a surviving adult's pension as follows—
- (a) for a pension that would otherwise be payable to the surviving spouse, if the member and the surviving spouse married less than 6 months before the member's death;
  - (b) for a pension that would otherwise be payable to a surviving civil partner, if the civil partnership was formed less than 6 months before the member's death.
- (5) Paragraph (4) is subject to regulation 110.

**Annual rate of surviving adult’s pensions payable on death of pensioner member**

- 98.**—(1) This regulation applies on the death of a pensioner member of this scheme (P).
- (2) The annual rate of a dependant’s earned pension is an amount equal to 37.5% of the sum of—
- (a) the amount of full retirement earned pension specified in P’s full retirement account as at the date of P’s death; and
  - (b) the amount of partial retirement earned pension specified in P’s partial retirement account as at the date of P’s death.
- (3) The annual rate of a dependant’s ill-health pension is an amount equal to 37.5% of the annual rate of ill-health pension, calculated without subtracting the commutation amount (if any) and the total allocation amount (if any).
- (4) The annual rate of a dependant’s added pension is an amount equal to 37.5% of the sum of—
- (a) the amount of full retirement added (all beneficiaries) pension specified in P’s full retirement account as at the date of P’s death; and
  - (b) the amount of partial retirement added (all beneficiaries) pension specified in P’s partial retirement account as at the date of P’s death.
- (5) In accordance with section 7(4) of PIA 1971, for the purposes of this scheme there is to be disregarded any increase in the annual rate of a pension since the beginning date for that pension.

**Annual rate of surviving adult’s pensions payable on death of deferred member**

- 99.**—(1) This regulation applies on the death of a deferred member of this scheme.
- (2) The annual rate of a dependant’s earned pension is an amount equal to 37.5% of the sum of the provisional amount of deferred earned pension specified in the deferred member’s account.
- (3) The annual rate of a dependant’s added pension is an amount equal to 37.5% of the provisional amount of deferred added (all beneficiaries) pension specified in the deferred member’s account.

**Annual rate of surviving adult’s pensions payable on death of active member (death in service)**

- 100.**—(1) This regulation applies on the death of an active member of this scheme in relation to a continuous period of pensionable service of at least 12 months.
- (2) If the member is a transition member with continuity of service, the continuous period of pensionable service mentioned in paragraph (1) includes the member’s period of pensionable service under an existing scheme before the closing date.
- (3) The annual rate of a dependant’s earned pension is an amount equal to 37.5% of the amount of full retirement earned pension that would have been specified in the member’s full retirement account under regulation 48(2) had P become entitled to the immediate payment of a full retirement pension on the date of P’s death.
- (4) The annual rate of a dependant’s added pension is an amount equal to 37.5% of the amount of full retirement added (all beneficiaries) pension that would have been specified in the member’s full retirement account under regulation 48(2) had P become entitled to the immediate payment of a full retirement pension on the date of P’s death.
- (5) When calculating the amount of a member’s full retirement earned pension (except in relation to a member who before the member’s death was entitled under regulation 63(a) to the immediate payment of a partial retirement pension)—
- (a) the accrued earned pension includes an additional amount equal to the lesser of—

- (i) the amount of accrued earned pension not attributable to a transfer value payment; and
- (ii) the enhancement fraction of the amount mentioned in paragraph (i);
- (b) if the member is a transition member with continuity of service, the accrued earned pension includes an additional amount equal to the lesser of—
  - (i) the total amount of accrued earned pension under this scheme which is not attributable to a transfer value payment and the equivalent of accrued earned pension earned under an existing scheme which is not attributable to a transfer value payment; and
  - (ii) the enhancement fraction of the amount mentioned in paragraph (a)(i); and
- (c) the early payment reduction (if any), the commutation amount (if any) and the total allocation amount (if any) are not subtracted.
- (6) In this regulation—

“the enhancement fraction” means  $\frac{X}{Y}$  where—

$X$  is the lower of—

- (a) the member’s assumed period of pensionable service (expressed in years); and
- (b) 10;

$Y$  is the lower of—

- (a) the number of years for which the member has been an active member of this scheme; and
- (b) the number of scheme years in relation to which an amount of earned pension was specified in the active member’s account; and

“the member’s assumed period of pensionable service” means the period (expressed in years)

—

- (a) beginning with the day after the date of the member’s death; and
- (b) ending with—
  - (i) for a member appointed for a fixed term, the day on which that term would have ended; and
  - (ii) for all other appointments, the day before the day on which the member would have reached prospective normal pension age if the member had lived until that age.

### **Reduction in pensions in cases of wide age disparity**

**101.**—(1) This regulation applies if, on the death of a member of this scheme, a surviving adult’s pension is payable to a person (“the dependant”) who is more than 12 years younger than the member.

(2) The annual rate of the surviving adult’s pension is reduced by the lower of—

- (a) 50% of the amount of the annual rate of the pension so calculated under regulation 98, 99 or 100 as applicable; and
- (b)  $2.5 \times (N - 12)\%$  of the amount of the annual rate of the pension so calculated,

where  $N$  is the number of whole years by which the dependant is younger than the member.

## CHAPTER 2

### Pensions for eligible children

#### Meaning of “eligible child’s pension”

**102.** In these Regulations, “eligible child’s pension” means any of the following pensions payable under this Part—

- (a) a child’s earned pension;
- (b) a child’s ill-health pension;
- (c) a child’s added pension.

#### Meaning of “eligible child”

**103.**—(1) In these Regulations, “eligible child”, in relation to a deceased member of this scheme, means—

- (a) a natural child of the member where—
  - (i) the child meets any of conditions A to C; and
  - (ii) at the date of the member’s death the child was born or the child’s mother was pregnant with the child;
- (b) an adopted child of the member who meets any of the conditions A to C; or
- (c) any other child or young person who—
  - (i) meets any of the conditions A to C; and
  - (ii) in the opinion of the scheme manager, was financially dependent on the member as at the date of the member’s death.

(2) Condition A is that the person is under the age of 18.

(3) Condition B is that the person is in full-time education or vocational training and is under the age of 23.

(4) Condition C is that in the opinion of the scheme manager the person is unable to engage in gainful employment because of physical or mental impairment and either—

- (a) the person is under the age of 23; or
- (b) that impairment is likely to be permanent and the person is dependent on the member as at the date of the member’s death because of physical or mental impairment.

(5) For the purpose of Condition B, a person who is under the age of 19 on the date on which the person stops full-time education or vocational training is taken to be in full-time education until the first of the following dates after the person stops full-time education or vocational training—

- (a) the second Monday in January;
- (b) the second Monday after Easter Monday;
- (c) the second Monday in September;
- (d) the date on which the person becomes engaged full-time in gainful employment;
- (e) the person’s 19th birthday.

(6) For the purpose of Condition B, a person who is under the age of 22 at the date of the member’s death is taken to be in full-time education or vocational training if the person has temporarily stopped full-time education or vocational training for a period of up to 15 months (“gap period”).

(7) Nothing in paragraph (6) requires an eligible child’s pension to be paid to a person during a gap period.

### Eligible child's pension

- 104.**—(1) This regulation applies if a member of this scheme dies leaving an eligible child.
- (2) An eligible child's pension is only payable in respect of such period or periods during which a child or young person is an eligible child.
- (3) An eligible child's pension is not payable in respect of any period before a child's birth.
- (4) An eligible child's pension is payable in respect of an eligible child as follows—
- (a) a child's earned pension is payable if the member was entitled to the immediate payment of a full retirement pension as at the date of the member's death or the member would have become entitled to such a pension had the member not died;
  - (b) a child's ill-health pension is payable if an ill-health pension was payable to the member as at the date of the member's death;
  - (c) a child's added pension is payable if the member was entitled to the immediate payment of an added (all beneficiaries) pension as at the date of the member's death or would have become entitled to such a pension had the member not died.

### Annual rate of eligible child's pension

- 105.**—(1) The annual rate of an eligible child's pension is determined by reference to the annual rate of the corresponding surviving adult's pension (disregarding any reduction falling to be made under regulation 101) whether or not a surviving adult's pension is payable on the death of the member.
- (2) For the purposes of this regulation, the corresponding surviving adult's pensions are—
- (a) for a child's earned pension, a dependant's earned pension;
  - (b) for a child's ill-health pension, a dependant's ill-health pension;
  - (c) for a child's added pension, a dependant's added pension.
- (3) If a surviving adult's pension is payable on the death of the member—
- (a) if an eligible child's pension is payable in respect of only one eligible child, the annual rate of eligible child's pension is equal to 80% of the annual rate of the corresponding surviving adult's pension; and
  - (b) if an eligible child's pension is payable in respect of 2 or more eligible children, the annual rate of eligible child's pension payable to each eligible child is equal to the appropriate fraction of 80% of the annual rate of the corresponding surviving adult's pension.
- (4) If a surviving adult's pension is not payable on the death of the member—
- (a) if an eligible child's pension is payable in respect of only one eligible child, the annual rate of eligible child's pension is equal to the annual rate of the corresponding surviving adult's pension multiplied by 4 and divided by 3; and
  - (b) if an eligible child's pension is payable in respect of 2 or more eligible children, the annual rate of eligible child's pension payable to each eligible child is equal to the appropriate fraction of the annual rate of the corresponding surviving adult's pension multiplied by 4 and divided by 3.

- (5) In this regulation, "the appropriate fraction" means  $\frac{2}{Y}$  where—
- Y* is the number of eligible children in respect of whom an eligible child's pension is payable immediately after the date of the member's death.

## CHAPTER 3

### Payment of pensions for surviving adults and eligible children

#### **Payment of pensions under this Part**

**106.**—(1) A surviving adult's pension or eligible child's pension is payable from the day after the date of the member's death.

(2) Unless the scheme manager directs otherwise, an eligible child's pension payable in respect of an eligible child aged under the age of 18 must be paid—

- (a) if the child is in the care of the member's surviving adult, to the surviving adult; and
- (b) in any other case, to the child's guardian.

#### **Stopping payment and recovery of pensions paid under this Part**

**107.**—(1) This regulation applies if—

- (a) on a member's death a pension has been awarded and paid under this Part; and
- (b) it later appears to the scheme manager that the member or the person to whom the pension has been paid made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) The scheme manager may—

- (a) stop paying the pension; and
- (b) recover any payment made under the award.

#### **Provisional awards of eligible child's pensions: later adjustments**

**108.**—(1) This regulation applies where—

- (a) an active member, deferred member or pensioner member of this scheme has died;
- (b) a pension is paid in respect of one or more persons under this Part on the basis that they were eligible children as at the date of the member's death and that there were then no other eligible children; and
- (c) it later appears that—
  - (i) a person in respect of whom such a pension has been paid was not an eligible child on the date of death;
  - (ii) on that date a further person was an eligible child; or
  - (iii) a child who was born after the member's death is an eligible child.

(2) The scheme manager may adjust the amount of pension payable in respect of each eligible child to take account of matters referred to in paragraph (1)(c) as applicable.

#### **Adjustment of benefits to comply with FA 2004 where members die over the age of 75**

**109.**—(1) This regulation applies if—

- (a) a member of this scheme dies after reaching the age of 75; and
- (b) apart from this regulation, any part of a pension to which any person becomes entitled under this Part on the death would not qualify as a dependants' scheme pension for the purposes of section 167 (the pension death benefit rules) of FA 2004.

(2) The benefit payable to the person may be adjusted in any way as determined by the scheme manager so that it qualifies as a dependants' scheme pension for the purposes of section 167 (the pension death benefit rules) of FA 2004.

### **Guaranteed minimum pensions for surviving spouses and civil partners**

**110.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17(1) (minimum pensions for widows and widowers) of PSA 1993 in relation to benefits in respect of the deceased member under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person;
- (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person; and
- (c) paragraph (2) is without prejudice to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the surviving spouse or civil partner under this Part; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Paragraph (2) does not apply to a pension that is forfeited—

- (a) as a result of a conviction for treason; or
- (b) under regulation 151, in a case where the relevant offence within the meaning of regulation 151 is an offence under the Official Secrets Acts 1911 to 1989(2).

## **CHAPTER 4**

### **Payment of lump sum death benefits**

#### **Payment of lump sum death benefit**

**111.**—(1) A lump sum death benefit is payable in respect of—

- (a) an active, deferred or pensioner member of this scheme who dies; or
- (b) a pension credit member of this scheme who dies before any benefits attributable (directly or indirectly) to a pension credit become payable.

(2) But a lump sum death benefit is not payable in respect of—

- (a) a pensioner member who is not also an active member who dies more than 5 years after the member's full retirement pension or ill-health pension becomes payable; or
- (b) a member who has reached the age of 75.

(3) Payment of a lump sum death benefit must be made within the period of 2 years beginning with the earlier of—

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(1) Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) Schedule 1 paragraph 39, the Child Support, Pensions and Social Security Act 2000 (c. 19) Schedule 5 paragraph 1, the Pensions Act 2004 (c. 35) section 284(2), the Pensions Act 2007 (c. 22) section 14(2), the Marriage (Same Sex Couples) Act 2013 (c. 30) Schedule 4 paragraphs 18 and 20 and S.I. 2005/2050 and 2014/560.

(2) 1989 c. 6; see section 16(2) for the meaning of "Official Secrets Acts 1911 to 1989".



- (a) the day on which the scheme manager first knew of the member's death; and
  - (b) the day on which the scheme manager could reasonably be expected to have known of the member's death.
- (4) The scheme manager may decide not to pay a lump sum death benefit if it is impracticable to pay it.

### **Nominations for lump sum death benefits**

**112.**—(1) A member of this scheme may nominate a person or persons to receive a lump sum death benefit.

(2) The member may nominate—

- (a) one or more individuals;
- (b) one incorporated or unincorporated body; or
- (c) one or more individuals and one incorporated or unincorporated body.

(3) A nomination may specify how payments are to be apportioned between—

- (a) 2 or more individuals; or
- (b) one or more individuals and one incorporated or unincorporated body.

(4) A nomination may only be made by notice to the scheme manager in a form required by the scheme manager.

(5) A member may revoke or alter a nomination by notice to the scheme manager in a form required by the scheme manager.

### **Invalid nominations of individuals**

**113.**—(1) If the nomination of an individual is invalid, any lump sum death benefit that would have been payable to the individual is payable to the member's personal representatives.

(2) A nomination of an individual is invalid if—

- (a) the individual nominated is the member's spouse or civil partner and the individual is not the member's spouse or civil partner when the member dies;
- (b) the individual predeceases the member; or
- (c) the individual is convicted of the offence of murder of the member.

(3) The scheme manager may determine that the nomination of an individual is invalid if the individual is convicted of manslaughter of the member or any other offence (apart from murder) of which the unlawful killing or wounding of the member is an element.

### **Payment of lump sum death benefit to nominees or personal representatives**

**114.**—(1) The scheme manager may pay a lump sum death benefit to—

- (a) the person or persons nominated by the member under regulation 112 ("the nominees");
- (b) the member's personal representatives; or
- (c) both the nominees and the member's personal representatives.

(2) If the scheme manager decides to pay all or part of the lump sum death benefit to the nominees and more than one individual has been nominated, the payment is to be made to them—

- (a) in the proportions specified by the member in the nomination; or
- (b) if the member has not specified proportions, in the proportions the scheme manager considers appropriate.

(3) If the scheme manager decides to pay the lump sum death benefit to both the nominees and the personal representatives, the payment is to be made to them in the proportions the scheme manager considers appropriate.

### **Members affected by court orders to former spouses and civil partners on death**

**115.**—(1) This regulation applies if on a member’s death the scheme manager is required under a court order to pay any part of a lump sum death benefit to the member’s former spouse or civil partner.

(2) The amount of lump sum death benefit payable under regulation 114 is first determined as if no such order had been made, and then this Part applies as if the amount payable under regulation 114 were reduced by the amount payable under the court order.

### **Pension protection lump sum death benefit**

**116.**—(1) A lump sum death benefit is treated for the purposes of FA 2004 as a pension protection lump sum death benefit if and to the extent that—

- (a) the member has given written notice to the scheme manager that the lump sum death benefit is to be so treated; and
- (b) any other conditions that are required to be met for the lump sum death benefit to be so treated are met (see paragraph 14 of Part 2 (lump sum death benefit rule) of Schedule 29 to FA 2004(3)).

(2) Tax may be deducted from the lump sum death benefit if the scheme manager is liable for tax under section 206 (special lump sum death benefits charge) of FA 2004(4) in respect of a pension protection lump sum death benefit.

### **Recovery of payments**

**117.** The scheme manager may recover a lump sum death benefit paid to any person if the person’s nomination is subsequently found to be invalid.

### **Payment of pension instead of lump sum for members who have reached the age of 75**

**118.**—(1) This regulation applies if a member dies—

- (a) after reaching the age of 75, and
- (b) before the fifth anniversary of the date on which a pension became payable to the member.

(2) The scheme manager may pay the pension to—

- (a) the person or persons nominated by the member under regulation 112 (“the nominees”);
- (b) the member’s personal representatives; or
- (c) both the nominees and the member’s personal representatives.

(3) The scheme manager is to pay the pension in the proportions the scheme manager considers appropriate if—

- (a) the scheme manager decides to pay all or part of the pension to the nominees and more than one individual has been nominated; or
- (b) the scheme manager decides to pay the pension to both the nominees and the personal representatives.

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(3) Paragraph 14 was amended by the Finance Act 2011 (c. 11) Schedule 16 paragraphs 32 and 34.

(4) Section 206 was amended by the Finance Act 2011 (c. 11) Schedule 16 paragraph 41 and the Finance Act 2013 (c. 29) Schedule 46 paragraphs 119 and 123.

- (4) A pension payable under this regulation—
- (a) is payable for the pension protection period; and
  - (b) must be equal to the sum of—
    - (i) the pension that would have been payable to the member had the member lived until the end of the pension protection period; and
    - (ii) any increases in the annual rate of that pension under PIA 1971 during that period.
- (5) In this rule “the pension protection period” means the period from the date of the member’s death until the fifth anniversary of the date on which the member’s pension became payable.

## CHAPTER 5

### Amount of lump sum death benefits

#### Meaning of “final pay”

**119.**—(1) In this Chapter, “final pay” in relation to a continuous period of pensionable service means the greater of the following amounts—

- (a) the amount of a member’s pensionable earnings payable in respect of the 12 months ending with the last day of pensionable service;
  - (b) the amount of a member’s pensionable earnings payable in respect of any scheme year (“the earnings year”) in the 10 scheme years immediately before the last active scheme year.
- (2) For the purpose of determining which of the amounts mentioned in paragraph (1) is the greater—
- (a) if the member’s continuous period of pensionable service was less than 12 months, the amount in paragraph (1)(a) is an amount equal to the member’s annualised final pay; and
  - (b) the amount in paragraph (1)(b) is adjusted for inflation in accordance with paragraph (3).
- (3) The amount of pensionable earnings payable in respect of the earnings year is adjusted for inflation by increasing it by the same amount as that by which the annual rate of a pension of an amount equal to the amount of pensionable earnings would have been increased under PIA 1971 by the day following the last day of pensionable service if—
- (a) that pension was eligible to be so increased; and
  - (b) the beginning date for that pension was the first day of the next scheme year after the earnings year.
- (4) In this regulation, if the member is a transition member with continuity of service, “pensionable earnings” in respect of any period includes the member’s pensionable earnings under an existing scheme before the closing date.

#### Meaning of “annualised final pay”

**120.**—(1) For the purposes of this Chapter, for a continuous period of pensionable service that is less than 12 months, a member’s annualised final pay is—

$$FP \times \frac{365}{N}$$

where—

*FP* is the amount of the member’s pensionable earnings payable in respect of that period of service; and

*N* is the number of days in that period.

(2) If the continuous period of pensionable service includes the day 29th February, paragraph (1) has effect with the substitution for “365” of “366”.

(3) In this regulation, if the member is a transition member with continuity of service, “pensionable earnings” payable in respect of any period includes the member’s pensionable earnings under an existing scheme before the closing date.

#### **Amount payable on death of active member (death in service)**

**121.**—(1) This regulation applies in relation to a continuous period of pensionable service under this scheme (“period of service”).

(2) If the member is a transition member with continuity of service, the period of service includes the member’s period of pensionable service under an existing scheme before the closing date.

(3) For the purpose of this regulation, a person dies in service if the person dies while an active member of this scheme in relation to a period of service.

(4) The amount of the lump sum death benefit payable in respect of a person who dies in service (P) is the amount in paragraph (5) or (6), whichever is the greater.

(5) The amount in this paragraph is an amount equal to  $X - Y$  where—

*X* is—

- (a) if P’s period of service was at least 12 months, twice the amount that would have been P’s final pay if P had ceased to be in pensionable service at the time of death; or
- (b) if P’s period of service was less than 12 months, twice P’s annualised final pay; and

*Y* is—

- (c) any lump sum paid under this scheme to P before P’s death; and
- (d) any lump sum death benefit payable under this scheme or under a partnership pension account death benefits scheme in respect of P after P’s death.

(6) The amount in this paragraph is an amount equal to  $X - Y$  where—

*X* is the total annual amount of P’s full retirement pensions in relation to that period of service, multiplied by 5;

*Y* is the total amount of any payments of retirement pension made to P under this scheme; and “total annual amount” in relation to P’s full retirement pensions means the total of—

- (a) the annual rate of each description of full retirement pension calculated as if the beginning date for that pension were the date of P’s death, but without subtracting the early payment reduction (if any); and
- (b) the amount of increase (if any) in the annual rate of that pension under PIA 1971 payable as at the date of P’s death.

(7) For the purpose of this regulation, any amounts paid or payable to or in respect of P in the capacity of a pension credit member are disregarded.

#### **Amount payable on death of deferred member or pensioner member (death out of service)**

**122.**—(1) This regulation applies in relation to a continuous period of pensionable service under this scheme (“period of service”).

(2) If the member is a transition member with continuity of service, the period of service includes the member’s period of pensionable service under an existing scheme before the closing date.

(3) For the purpose of this regulation, a person dies out of service if the person—

- (a) dies while a deferred member or pensioner member of this scheme in relation to that period of service; and
  - (b) is not an active member of the scheme when the person dies.
- (4) The amount of the lump sum death benefit payable in respect of a person who dies out of service (P) is equal to—
- (a) the total annual amount of P’s full retirement pensions in relation to the period of service, multiplied by 5; less
  - (b) the total amount of any payments of retirement pension made to P under this scheme.
- (5) In paragraph (4)(a), “total annual amount” in relation to P’s full retirement pensions means the total of—
- (a) the annual rate of each description of full retirement pension calculated as if the beginning date for that pension were—
    - (i) if P died while a deferred member of the scheme, the date of P’s death; or
    - (ii) if P died while a pensioner member of the scheme, the day P’s pension was deemed to begin for the purposes of section 8(2) (meaning of “pension” and other supplementary provisions) of the PIA 1971(5); and
  - (b) the amount of increase (if any) in the annual rate of that pension under PIA 1971 payable as at the date of P’s death.
- (6) For the purpose of this regulation any amounts paid or payable to or in respect of the member in the capacity of a pension credit member are disregarded.

#### **Amount payable on death of pension credit member**

**123.**—(1) Paragraph (2) applies if a pension credit member of this scheme dies before any benefits derived from a pension credit have become payable to the member.

(2) The amount of the lump sum death benefit is equal to 25% of the cash equivalent that would have been payable under Chapter 2 of Part 4A (requirements relating to pension credit benefit: transfer values) of PSA 1993(6) in respect of the member’s right to benefits under this scheme attributable (directly or indirectly) to a pension credit if—

- (a) the member had been entitled to require the payment of that amount; and
- (b) the amount had been payable as at the date of the member’s death.

(3) Paragraph (4) applies if a pension credit member dies after the pension credit member’s pension becomes payable.

(4) The amount of the lump sum death benefit is equal to the amount of pension credit member’s pension that would have been payable to the member during so much of the period of 5 years beginning with the date on which the pension became payable as falls after the date of the member’s death.

- (5) In paragraph (4), “amount of pension credit member’s pension” means the total of—
- (a) the annual rate of that pension as at the date the pension was deemed to begin for the purposes of section 8(2A) (meaning of “pension” and other supplementary provisions) of PIA 1971(7); and
  - (b) the amount of increase (if any) in the annual rate of that pension under that Act payable as at the date of the member’s death.

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(5) Section 8(2) was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) section 1(5) and the Welfare Reform and Pensions Act 1999 (c. 30) section 39(1) and (4).

(6) Part 4A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30) section 37.

(7) Subsection (2A) was inserted by the Welfare Reform and Pensions Act 1999 (c. 30) section 39(1) and (4).

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made  
as a UK Statutory Instrument: The Judicial Pensions Regulations 2015 No. 182

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