



Superannuation Act 1965

1965 CHAPTER 74

PART I

SUPERANNUATION BENEFITS

*Service in civil service preceded or followed by
service in other public office or approved employment*

38 Employment in more than one public office.

- (1) [^{F1}The Minister for the Civil Service] may make rules with respect to the superannuation benefits payable to or in respect of persons who have been employed in more than one public office.
- (2) Rules under this section may in particular in relation to such persons—
 - (a) modify [^{F2}any] enactments forming part of the law of the United Kingdom or any part thereof ^{F3}. . . which are for the time being in force and under which pensions are payable in respect of employment in a public office,
 - (b) apply the provisions of [^{F4}the civil service scheme, with or without modifications, in substitution for any] enactments forming part of the law of the United Kingdom or any part thereof ^{F3}. . ., notwithstanding that [^{F4}that scheme] is not otherwise applicable in relation to any of those public offices,
 - (c) make provisions as to the manner in which any pensions are to be defrayed, and in particular make provision for the payment of a transfer value by one pension authority to another, including the payment of a transfer value out of the Exchequer,
 - (d) define the kinds of public offices which are to be treated for the purposes of the rules as different public offices,

and rules under this section may include such supplemental and incidental provisions as appear to [^{F1}the Minister for the Civil Service] to be expedient.

- (3) Rules under this section may provide either for separate pensions under the respective enactments relating to the different employments or for a single pension under the

Changes to legislation: There are currently no known outstanding effects for the Superannuation Act 1965, Cross Heading: Service in civil service preceded or followed by service in other public office or approved employment. (See end of Document for details)

enactments relating to the later or latest employment (or by virtue of subsection (2) (b) of this section under [^{F5}the civil service scheme] or employ partly the one method and partly the other:

Provided that if the rules provide for separate pensions in relation to different public offices the rules shall not modify [^{F5}the civil service scheme] or any other enactments so as to include as reckonable service in computing one of the separate pensions service in a public office in respect of which another of those separate pensions is payable.

- (4) Rules under this section may be so framed as to apply to persons ceasing to be employed in one public office and becoming employed in another notwithstanding that the cessation of the first employment or the commencement of the second employment was before the date of the making of the rules:

Provided that no rules shall be framed so as to apply when the cessation of the first employment took place before the making of the rules unless the rules are only to apply with the consent of the person ceasing to be employed, or that person is by the rules given an opportunity to elect that they shall not apply to him.

- (5) If the application of the rules in force under this section would put a particular individual in a position less advantageous than that in which he would have been if the rules did not apply in relation to him, they shall not be so applied.

[^{F6}(5A) References in this section to enactments shall be construed as including references to the civil service scheme, and in this section "the civil service scheme" means the principal civil service pension scheme within the meaning of section 2 of the ^{M1}Superannuation Act 1972 and for the time being in force].

- (6) In this section "pension", in relation to any person, means a pension of any kind whatsoever payable to or in respect of him, and includes a lump sum or gratuity so payable.

Textual Amendments

- F1** Words substituted by virtue of S.I. 1968/1656, arts. 2(1)(6), 3(2)
F2 Word substituted by Superannuation Act 1972 (c. 11), Sch. 6 para. 56(a)
F3 Words in s.38(2)(a)(b) repealed (19.11.1998) by 1998 c. 43, s. 1(1), Sch. 1, Pt. IV, Group. 5
F4 Words substituted by Superannuation Act 1972 (c. 11), Sch. 6 para. 56(b)
F5 Words substituted by Superannuation Act 1972 (c. 11), Sch. 6 para. 56(c)
F6 S. 38(5A) inserted by Superannuation Act 1972 (c. 11), Sch. 6 para. 56(d)

Modifications etc. (not altering text)

- C1** S. 38 has effect as if any reference to the Minister for the Civil Service were a reference to the Treasury: S.I. 1981/1670, arts. 2(1)(c), 3(5)

Marginal Citations

- M1** 1972 c. 11.

39 Meaning of "public office" and supplementary provisions.

- (1) In the last foregoing section references to employment in a public office shall be construed as references to employment of the following kinds, and "public office" shall be construed accordingly,—

- (1) Employment in the civil service (whether or not in an established capacity).

Changes to legislation: There are currently no known outstanding effects for the Superannuation Act 1965, Cross Heading: Service in civil service preceded or followed by service in other public office or approved employment. (See end of Document for details)

- (2) Employment in any other capacity remunerated out of moneys provided by Parliament or the Consolidated Fund or the Post Office Fund or the revenue of the Isle of Man, but not including employment in the armed forces of the Crown.
 - (3) Subject to subsection (5) of this section, employment in the civil service of the Government of Northern Ireland (whether or not in an established capacity).
 - (4) Subject to subsection (5) of this section, employment in any other capacity remunerated out of moneys provided by the Parliament of Northern Ireland or the Consolidated Fund of Northern Ireland.
 - (5) Employment in the civil service of the government of any colony, or of any country or place outside Her Majesty's dominions in which for the time being Her Majesty has jurisdiction, or of any territory consisting partly of one or more colonies and partly of one or more such countries or places.
 - (6) Employment as an officer to whom the ^{M2}Overseas Service Act 1958 applies (if not employment within any of the other paragraphs in this subsection).
 - (7) Employment which is remunerated out of any of the following funds, or out of the revenues of any of the following bodies—
 - The Agricultural Research Council.
 - The Church Commissioners.
 - [^{F7}The Countryside Council for Wales.]
 - ^{F8}
 - The Development Fund.
 - ^{F9}
 - ^{F10} [The Forestry Commissioners.]
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 - The funds of the Branches of the Royal Mint at Melbourne and Perth.
 - The General Lighthouse Fund.
 - The Greenwich Hospital Fund.
 - The land revenues managed by the Crown Estate Commissioners.
 - The Metropolitan Police Fund.
 - ^{F11} . . . [^{F12}The Nature Conservancy Council for Scotland]
 - The Overseas Audit Department [^{F13}Scottish Natural Heritage.]
- (2) [^{F14}The Minister for the Civil Service] may by order—
 - (a) designate any employment as employment in a public office for the purposes of this section, and
 - (b) add to, amend or repeal any of the provisions of subsection (1) of this section, and an order under this subsection—
 - (i) may include transitional and other supplemental provisions, and
 - (ii) may vary or revoke a previous order made under this subsection.
 - (3) The last foregoing section and this section shall have effect subject to the transitional provisions in paragraphs 10 and 11 of Schedule 10 to this Act.
 - (4) ^{F15}
 - (5) Rules in force under the last foregoing section shall not apply in relation to any person if the only public offices in which he has been employed have been employments in a capacity remunerated out of moneys provided by the Parliament of Northern Ireland or the Consolidated Fund of Northern Ireland.

Changes to legislation: There are currently no known outstanding effects for the Superannuation Act 1965, Cross Heading: Service in civil service preceded or followed by service in other public office or approved employment. (See end of Document for details)

- (6) Nothing in this or the last foregoing section shall authorise any department of the Government of Northern Ireland to incur any expenses attributable to the provisions of those sections until provision has been made by the Parliament of Northern Ireland for those expenses to be defrayed out of moneys provided by that Parliament.

Textual Amendments

- F7** Words inserted by [Environmental Protection Act 1990](#) (c. 43, SIF 46:4), s. 128, **Sch. 6 para. 22(a)**
- F8** Entry repealed by [Crown Agents Act 1979](#) (c. 43), ss. 1(1), 32(3), **Sch. 7**
- F9** S. 39(1): entry repealed (1.10.2006) by [Natural Environment and Rural Communities Act 2006](#) (c. 16), s. 107, **Sch. 11 para. 37, Sch. 12**; S.I. 2006/2541, art. 2 (with Sch.)
- F10** Words in s. 39(1) inserted (16.3.2000) by S.I. 2000/746, art. 2, **Sch. para. 4**
- F11** Words in s. 39(1) repealed (30.1.2001) by 2000 c. 37, ss. 73(4), 102, 103(2), **Sch. 8 para. 2(b), Sch. 16 Pt. III**
- F12** Entry in s. 39(1) para. 7 repealed (E.W.S.) (1.4.1992) by [Natural Heritage \(Scotland\) Act 1991](#) (c. 28), s. 27(1)(2), **Sch. 10 para. 2, Sch. 11**; S.I. 1991/2633, **art. 4**.
- F13** Entry in s. 39(1) para. 7 inserted (E.W.S.) (27.11.1991) by [Natural Heritage \(Scotland\) Act 1991](#) (c. 28), s. 27(1), **Sch. 10 para. 2**; S.I. 1991/2633, art. 3, **Sch.**
- F14** Words substituted by virtue of S.I. 1968/1656, **arts. 2(1)(6), 3(2)**
- F15** S. 39(4) repealed by [Northern Ireland Constitution Act 1973](#) (c. 36), **Sch. 6 Pt. I**

Modifications etc. (not altering text)

- C2** S. 39(2) has effect as if any reference to the Minister for the Civil Service were a reference to the Treasury: S.I. 1981/1670, **arts. 2(1)(c), 3(5)**
- C3** References to moneys provided by Parliament of Northern Ireland to be construed now as references to moneys appropriated by Measure of the Northern Ireland Assembly: [Northern Ireland Constitution Act 1973](#) (c. 36), **Sch. 5 para. 2(1)**

Marginal Citations

- M2** 1958 c. 14.

[^{F16}39A

- (1) The Lord Chancellor may with the consent of the Minister for the Civil Service make rules with respect to the superannuation benefits payable to or in respect of persons who have been employed—
- (a) in two or more offices falling within paragraphs (a) to (i) of subsection (3) of this section, or
 - (b) in one or more such offices and in one or more judicial offices remunerated out of central funds.
- (2) The Secretary of State may with the consent of the Minister for the Civil Service make rules with respect to the superannuation benefits payable to or in respect of persons who have been employed—
- (a) in two or more offices falling within paragraphs (j) and (k) of subsection (3) of this section, or
 - (b) in one or more such offices and in one or more judicial offices remunerated out of central funds.
- (3) The offices referred to in subsections (1)(a) and (2)(a) of this section are the following, that is to say—
- (a) Recorder of London;

Changes to legislation: There are currently no known outstanding effects for the Superannuation Act 1965, Cross Heading: Service in civil service preceded or followed by service in other public office or approved employment. (See end of Document for details)

- (b) Common Serjeant;
 - (c) additional judge of the Central Criminal Court;
 - (d) recorder of Liverpool;
 - (e) recorder of Manchester;
 - (f) assistant judge of the Mayor’s and City of London Court;
 - (g) presiding judge of the Court of Passage of the City of Liverpool;
 - (h) chairman or deputy chairman of a court of quarter sessions where under any enactment (whether passed before or after this Act) a person may qualify for a pension by virtue of service in that office;
 - (i) stipendiary magistrate in England or Wales, other than metropolitan stipendiary magistrate;
 - (j) stipendiary magistrate appointed under section 455 of the ^{M3}Burgh Police (Scotland) Act 1892;
 - (k) stipendiary magistrate appointed under section 24 of the ^{M4}Glasgow Corporation and Police Act 1895.
- (4) Subsections (2) to (5) of section 38 of this Act shall have effect in relation to rules made under this section as they have effect in relation to rules under that section, as if—
- (a) in subsection (2) of that section any reference to a public office were a reference to an office which is either an office specified in subsection (3) of this section or a judicial office remunerated out of central funds, and the reference to such supplemental and incidental provisions as are mentioned in that subsection were a reference to such supplemental and incidental provisions as appear to the Lord Chancellor or to the Secretary of State (as the case may be) to be expedient, and
 - (b) in subsections (3) and (4) of that section any reference to different public offices, or to ceasing to be employed in one public office and becoming employed in another, were a reference to different offices or (as the case may be) to ceasing to be employed in one office and becoming employed in another (“office” for this purpose being taken to mean any office which is either an office specified in subsection (3) of this section or a judicial office remunerated out of central funds).
- (5) Where any rules under this section make provision for any pension to be defrayed partly by one authority and partly by one or more other authorities, whether by way of contribution or otherwise, nothing in section 10(2) of the ^{M5}Criminal Justice Administration Act 1956 (which requires contributions to be paid by the city councils of Liverpool and Manchester in respect of the Crown Courts and recorders of those cities) shall be construed as preventing the rules from applying that provision to, or making any such provision specially in respect of, persons whose employment includes employment as recorder of Liverpool or recorder of Manchester.

[In this section—

^{F17}(6)

“judicial office” means

- (a) [^{F18}any qualifying judicial office, within the meaning of the Judicial Pensions and Retirement Act 1993, and]
- (b) any judicial office as defined in section 16 of the Judicial Pensions Act 1981, with paragraphs 5, 6 and 10 of Schedule 2 to that Act and any office to which Part II of that Act applies as it applies to a judicial office so defined,

Changes to legislation: There are currently no known outstanding effects for the Superannuation Act 1965, Cross Heading: Service in civil service preceded or followed by service in other public office or approved employment. (See end of Document for details)

“judicial office remunerated out of central funds” means any judicial office with the exception of stipendiary magistrate pensionable under section 33 of the Justices of the Peace^{M6} Act 1949, or recorder of Liverpool or Manchester, “pension” has the meaning assigned to it by section 38(6) of this Act.]]

Textual Amendments

- F16** S. 39A added by [Administration of Justice Act 1969 \(c. 58\), s. 30](#)
F17 S. 39A(6) substituted by [Judicial Pensions Act 1981 \(c. 20, SIF 71:2\), s. 36, Sch. 3 para. 2](#)
F18 In s. 39A(6) in the definition of “judicial office” (a)(b) inserted (31.3.1995) by [1993 c. 8, ss. 31\(2\)\(3\), Sch. 8 para.6; S.I. 1995/631, art.2](#)

Modifications etc. (not altering text)

- C4** S. 39A has effect as if any reference to the Minister for the Civil Service were a reference to the Treasury: [S.I. 1981/1670, arts. 2\(1\)\(c\), 3\(5\)](#)
C5 References to moneys provided by Parliament of Northern Ireland to be construed now as references to moneys appropriated by Measure of the Northern Ireland Assembly: [Northern Ireland Constitution Act 1973 \(c. 36\), Sch. 5 para. 2\(1\)](#)

Marginal Citations

- M3** 1892 c. 55.
M4 1895 c. xliii.
M5 1956 c. 34.
M6 1949 c. 101(82)

40, 41. ^{F19}

Textual Amendments

- F19** Ss. 40, 41, 42(2)(3), 43-94, 95(3), 96, 97(3), 99-103, 104(2), 105, Schs. 1-7, Sch. 9, Sch. 10 paras. 1-9, 12-19, Sch. 11 repealed by [Superannuation Act 1972 \(c. 11\), s. 29\(4\), Sch. 8](#)

42 Application of certain provisions of Act to persons employed in public office, etc. or approved employment.

- (1) The provisions of [^{F20}the principal civil service scheme within the meaning of section 2 of the ^{M7}Superannuation Act 1972 and for the time being in force] shall, in relation to persons who, whether before or after they are civil servants, serve in a public office (not in the civil service) within the meaning of section 38 of this Act, or as members of a police force within the meaning of [^{F21}the ^{M8}Police Pensions Act 1976], or in service by virtue of which they are deemed for the purposes of that Act to be members of such a force, or who, having been civil servants, become Governors within the meaning of the ^{M9}Governors’ Pensions Act 1957, have effect subject to such adaptations and modifications as may be prescribed by rules made by the Treasury; and where rules are made under this subsection, they may contain provisions modifying, in relation to the persons affected by the rules, any other enactment relating to the pensions and other benefits payable to or in respect of them.

(2) ^{F22}

Changes to legislation: *There are currently no known outstanding effects for the Superannuation Act 1965, Cross Heading: Service in civil service preceded or followed by service in other public office or approved employment. (See end of Document for details)*

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Textual Amendments

- F20** Words substituted by [Superannuation Act 1972 \(c. 11\)](#), **Sch. 6 para. 57**
- F21** Words substituted by virtue of [Police Pensions Act 1976 \(c. 35\)](#), **s. 12(3)**
- F22** [Ss. 40, 41, 42\(2\)\(3\), 43-94, 95\(3\), 96, 97\(3\), 99-103, 104\(2\), 105, Schs. 1-7, Sch. 9, Sch. 10 paras. 1-9, 12-19, Sch. 11](#) repealed by [Superannuation Act 1972 \(c. 11\)](#), s. 29(4), **Sch. 8**
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Marginal Citations

- M7** [1972 c. 11](#).
- M8** [1976 c. 35](#).
- M9** [1957 c. 62](#).

43, 44. **F23**

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Textual Amendments

- F23** [Ss. 40, 41, 42\(2\)\(3\), 43-94, 95\(3\), 96, 97\(3\), 99-103, 104\(2\), 105, Schs. 1-7, Sch. 9, Sch. 10 paras. 1-9, 12-19, Sch. 11](#) repealed by [Superannuation Act 1972 \(c. 11\)](#), s. 29(4), **Sch. 8**

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