
 S T A T U T O R Y I N S T R U M E N T S

1977 No. 717

PENSIONS

The Judicial Pensions (Preservation of Benefits) Order 1977

<i>Made</i>	- - -	18th April 1977
<i>Laid before Parliament</i>		29th April 1977
<i>Coming into Operation</i>		1st June 1977

The Lord Chancellor (in relation to England and Wales and Northern Ireland) and the Secretary of State for Scotland (in relation to Scotland), in exercise of the powers conferred on them by section 65 of the Social Security Act 1973(a) and Article 61(1) of the Social Security Pensions (Northern Ireland) Order 1975(b), as the appropriate authorities designated for that purpose by the Minister for the Civil Service in accordance with the said provisions, hereby make the following Order:—

INTRODUCTORY

Citation and commencement

1. This Order may be cited as the Judicial Pensions (Preservation of Benefits) Order 1977 and shall come into operation on 1st June 1977.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the Act of 1950” means the Administration of Justice (Pensions) Act 1950(c);

“full rate” means the rate at which a pension might have been granted to an office holder continuing to serve until reaching normal pension age;

“normal pension age” means the earliest age at which, if his service had continued until retirement at that age, an office holder might have been granted a pension under a relevant enactment;

“office holder” means a person who is or has been the holder of any scheduled office;

“relevant enactment” means an enactment by virtue of which an office holder might be granted a pension in respect of any relevant service and, in the case of a person who has held more than one judicial office, includes any enactment relating to the payment of superannuation benefits to or in respect of such a person;

(a) 1973 c. 38.

(b) S.I. 1975/1503 (N.I. 15).

(c) 14 & 15 Geo. 6. c. 11.

“relevant service” has the meaning given by Article 4(2);

“scheduled office” means an office listed in the Schedule to this Order;

any reference to any enactment shall be construed as a reference to that enactment as amended, extended or applied by any other enactment including this Order.

(2) The Interpretation Act 1889(a) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

GENERAL

Office holders to whom order applies

3. This Order shall have effect in relation to any office holder who ceases to hold office on or after 1st June 1977.

Ceasing to hold office and relevant service

4.—(1) An office holder does not cease to hold office for the purposes of this Order if, after ceasing to hold a scheduled office but before reaching normal pension age, he starts to hold another office, service in which may, under any relevant enactment, be reckoned on any basis together with service in the earlier office for the purpose of superannuation benefits.

(2) An office holder’s service in a scheduled office is relevant service for the purposes of this Order, and his relevant service may include any earlier service of his which may, under any enactment, be reckoned on any basis together with service of his in a scheduled office.

(3) For the purposes of paragraphs (1) and (2) it is immaterial—

- (a) whether the office holder has served at any time in any other office (including an office in relation to which he ceases to hold office for the purposes of this Order); or
- (b) whether the earlier and the later offices are the same; or
- (c) whether any election available in respect of the office holder has been made; or
- (d) whether the superannuation benefits payable under the relevant enactment relating to one office would, in the circumstances of the case, be unaffected by adding the other service into the reckoning.

PRESERVED BENEFITS

Office holder’s pension

5.—(1) Subject to the following provisions of this Order, an office holder who has completed five years of relevant service but who ceased to hold office before normal pension age may become eligible for a pension under the relevant enactment when he reaches that age or the age of 60 whichever is the later.

(2) The annual rate at which that pension may be paid shall bear to the full rate the same proportion as the number of completed years of relevant service bears to the number of completed years which the office holder would have served if his service had continued to normal pension age.

Lump sum and widow's and children's pension

6.—(1) Except as provided by paragraph (2) of this Article, sections 2 (other than subsections (2)(b) and (3)), 3 to 8 and 15 to 17 of the Act of 1950 (lump sums and widows' and children's pensions) shall apply in relation to an office holder who becomes eligible for a pension by virtue of this Order or who dies before becoming so eligible but could have become so eligible had he survived, as they apply in relation to an office holder who becomes eligible for a pension on retirement at normal pension age or who dies in service.

(2) In relation to a person who has held office as a county court judge in Northern Ireland, or a resident magistrate in Northern Ireland, sections 121 (other than subsections (2)(b) and (3)), 122 to 127 and 129 to 132 of the County Courts Act (Northern Ireland) 1959(a) or sections 3 (other than subsections (2)(b), (3) and (4)), 4 to 9 and 12 to 15 of the Resident Magistrates' Pensions Act (Northern Ireland) 1960(b), as the case may be, shall apply in place of the relevant provisions of the Act of 1950.

SUPPLEMENTARY

Election in respect of two or more periods of service

7.—(1) Where an office holder who has served in more than one judicial office has ceased to hold office (or, but for Article 4(1), would have ceased to hold office), then—

- (a) if his last period of service is relevant service, and
- (b) if he would have been entitled on his retirement to elect that the superannuation benefits payable to or in respect of him should be determined under an enactment relating to the payment of superannuation benefits to or in respect of persons who have served in more than one office,

he shall, for the purposes of that enactment, have the same right of election, and that right may be exercised within an equivalent period, as if he had retired from that office at normal pension age.

(2) Any election made in reliance upon this Article by a person who had not ceased to hold office shall be of no effect.

Provisions about early retirement

8. For the purposes of this Order there is to be disregarded any provision in any relevant enactment as to early retirement on grounds of ill-health or permanent incapacity but this Order is without prejudice to any such provision.

Inalienability

9.—(1) Any assignment of or charge on, and any agreement to assign or charge, any pension or lump sum which may be granted by virtue of this Order shall (unless made by an office holder in favour of his widow or dependant) be void.

(2) This Article shall have effect in relation to Scotland as if for the reference to assignment there were substituted a reference to assignation.

(a) 1959 c. 25 (N.I.).

(b) 1960 c. 2 (N.I.).

Relationship to other benefits

10.—(1) Any benefits granted by virtue of this Order in respect of any relevant service of an office holder shall be payable even though other benefits are payable to or in respect of him, otherwise than by virtue of this Order—

- (a) under a relevant enactment, or
- (b) under an enactment relating to superannuation benefits in respect of an office listed or treated by virtue of any enactment as listed in Schedule 1 to the Act of 1950,

so, however, that any benefits granted by virtue of this Order shall be abated to the extent that they exceed the amount, if any, by which the other benefits might have been increased if the relevant service in respect of which benefits are granted under this Order had been service in the other office.

(2) Where the other benefits, for purposes of paragraph (1), are payable to or in respect of an office holder by virtue of service of his in more than one judicial office, the amount for the purposes of that paragraph may be arrived at in the manner most favourable to him.

Saving for other pension schemes

11. This Order shall not apply in relation to an office holder with respect to whose relevant service the provisions of the principal civil service pension scheme within the meaning of section 2 of the Superannuation Act 1972(a) and for the time being in force apply or to any resident magistrate included in Schedule 5 to the Superannuation (Northern Ireland) Order 1972(b) (persons remaining subject to the Superannuation Acts (Northern Ireland) 1967(c) and 1969(d)).

Dated 5th April 1977.

Elwyn-Jones, C.

Dated 18th April 1977.

Bruce Millan,

One of Her Majesty's Principal
Secretaries of State.

SCHEDULE

Article 2 (1)

OFFICE

Judge of the Court of Session
Circuit judge
In Scotland, sheriff principal or salaried sheriff
County Court judge in Northern Ireland
Member of the Lands Tribunal or Lands Tribunal for Scotland
Chairman of the Scottish Land Court
Master of the Supreme Court (Queen's Bench Division)
Assistant Master of the Supreme Court (Queen's Bench Division)
Admiralty Registrar
Master of the Supreme Court (Chancery Division)
Master of the Supreme Court (Taxing Office)
Master of the Court of Protection
Lord Chancellor's Legal Visitor
Registrar, High Court in Bankruptcy
Registrar, Probate or Family Division (not including district probate registrar)
Registrar of Criminal Appeals
Assistant Registrar of Criminal Appeals
Judge Advocate General, where the office holder has elected that section 34(1) of the
Courts-Martial (Appeals) Act 1951(a) shall apply to him
County Court Registrar
Metropolitan or other stipendiary magistrate
Resident magistrate in Northern Ireland.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order modifies, by virtue of sections 64 and 65 of the Social Security Act 1973, the pensions schemes for the holders of the judicial offices listed in the Schedule to the Order. It enables a reduced pension and derivative benefits (lump sum and widow's and children's pensions) to be preserved for the benefit of an office holder who ceases to hold office before the age at which he would otherwise normally become eligible to be granted a pension, and to be paid to or in respect of him thereafter.

Article 5 provides that the reduced pension may be paid at the age at which the office holder would normally become eligible to be granted a pension and provides the proportion on the basis of which the pension is to be calculated. Article 6 enables a reduced lump sum to be paid to an office holder who becomes eligible for a pension by virtue of the Order. It also enables reduced widow's and children's pensions to be paid whether the office holder dies before or after reaching the age at which he would otherwise have become eligible to be granted a pension. Article 7, by permitting an immediate election, enables section 4 of the Judicial Pensions Act 1959 (8 & 9 Eliz. 2 c. 9) or, as appropriate, the Superannuation (Judicial Offices) Rules 1968 (S.I. 1968/1363) and 1970 (S.I. 1970/1021), which relate to certain office holders who have held more than one office, to be applied where such office holders cease to hold office under the Order. Article 9 prevents a pension from being assigned, except in favour of a widow or dependant. Article 10 provides for partial or total abatement where the office holder is otherwise eligible for a judicial pension. Article 11 excludes from the Order any service to which the principal civil service pension scheme applies.

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