

1988 No. 1418

**PENSIONS**

**The Judicial Pensions (Preservation of Benefits)  
Order 1988**

<i>Made</i> - - - -	<i>5th August 1988</i>
<i>Laid before Parliament</i>	<i>10th August 1988</i>
<i>Coming into force</i>	<i>1st September 1988</i>

The Lord Chancellor (in relation to England and Wales) and the Secretary of State for Scotland (in relation to Scotland), as the appropriate authorities designated for the purposes of section 65 of the Social Security Act 1973(a) as having responsibility for the public service pension schemes established under the enactments listed in Schedule 1, in exercise of the powers conferred by the said section 65, hereby make the following Order:

**PART I  
INTRODUCTORY**

**Citation and Commencement**

1. This Order may be cited as the Judicial Pensions (Preservation of Benefits) Order 1988 and shall come into force on 1st September 1988.

**Interpretation**

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

“the Act of 1981” means the Judicial Pensions Act 1981(b);

“full rate” means the rate at which a pension might have been granted to an office-holder if his service had continued to normal pension age, but calculated by reference to the annual salary attaching, at the date he ceased (within the meaning of article 4(1)) to hold office, to —

(a) his last office; or

(b) an earlier office of his where the amount of pension would have been based on that salary, but if that office had ceased to exist before the date on which he ceased to hold his last office, the annual salary shall be taken to be such as the Lord Chancellor or the Secretary of State, as the case may be, with the concurrence of the Treasury may determine it would have been had the office continued to exist;

“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 holds, or has held, a 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 office, includes an enactment relating to the payment of superannuation benefits to or in respect of such a person;

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

“scheduled office” means an office listed in Schedule 2;

(2) References in this Order to eligibility for a pension are, in relation to an office service in which carries entitlement to a pension, references to such entitlement, and references to the grant of a pension or to the rate at which a pension might be payable shall be construed accordingly.

## PART II GENERAL

### Office-holders to whom Order applies

3. This Order shall apply to, but only to, an office-holder who ceases to hold office after 31st August 1988.

### 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 (or which might have been so reckoned but for his having left that other (or a subsequent) office before reaching compulsory retirement age).

(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 in accordance with paragraph (1) together with service of his in a scheduled office –

Provided that, where an office-holder is entitled to make an election under this Order, then, whether or not he makes that election, his relevant service shall not include any service of his which would have fallen to be disregarded for the purpose of superannuation benefits had he made (or, as the case may be, not made) a corresponding election under a relevant enactment.

(3) For the purposes of paragraphs (1) and (2) above it is immaterial whether –

- (a) 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) the earlier and the later offices are the same; or
- (c) any election available in respect of an office-holder has been made; or
- (d) the superannuation benefits payable under the relevant enactment relating to one office would, in the circumstances, be unaffected by adding the other service into the reckoning.

## PART III PRESERVED BENEFITS

### Office-holder’s pension

5.—(1) An office-holder who has completed two years of relevant service, but who has ceased to hold office before normal pension age, becomes eligible for a pension when he reaches whichever is the later of age 60 and –

- (a) in the case of an office-holder who has made an election under article 7(1), retirement age: or
- (b) in any other case, normal pension age.

(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 until –

(a) in the case of an office-holder who has made an election under article 7(1), retirement age; or

(b) in any other case, normal pension age.

(3) In this article, “retirement age” means the age at which an election would have been available to the office-holder under the relevant enactment applicable to him.

#### **Lump Sum and Widow’s and Children’s Pensions**

6. Section 17 (except subsections (2)(b) and (3)) and sections 18 to 23 of the Act of 1981 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 would 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.

### **PART IV SUPPLEMENTARY**

#### **Election in respect of two or more periods of service**

7.—(1) Where an office-holder who has served in more than one office has ceased to hold office before normal pension age, then, if he would have been entitled on his retirement, had his service continued to compulsory retirement age, 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 at an age at which an election under that enactment would have been available to him.

(2) A provision in any enactment such as is referred to in paragraph (1) above, by virtue of which an authority, liable to pay benefits payable in consequence of an election made under that enactment, is entitled to recover a contribution from any other authority, shall apply to benefits payable in consequence of an election made under this article.

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

#### **Provisions about early retirement**

8. Any provision in a relevant enactment about early retirement on the grounds of ill-health shall, without prejudice to its operation in other respects, be disregarded for the purpose of this Order.

#### **Inalienability**

9. Any assignment (or, in Scotland, assignation) of, or charge on, 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 a dependant of his) be void.

#### **Relationship to other benefits**

10.—(1) Any benefit granted by virtue of this Order in respect of any relevant service shall be payable notwithstanding that other benefits are, otherwise than by virtue of this Order, payable to or in respect of the office-holder

(a) under a relevant enactment; or

(b) under an enactment relating to superannuation benefits in respect of an office to which Part II of the Act of 1981 applies;

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 office in respect of which the other benefits are payable.

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

#### **Revocation of existing order**

11. The Judicial Pensions (Preservation of Benefits) Order 1987(a) is hereby revoked, but without prejudice to its continued application in relation to any person who ceased for the purposes of this Order to hold office before 1st September 1988.

Dated 29th July 1988

*Mackay of Clashfern, C*

Dated 5th August 1988

*Malcolm Rifkind*  
One of Her Majesty's Principal Secretaries of State

---

## **SCHEDULE 1**

### **SCHEMES**

The Judicial Pensions Act 1959(b).

The Sheriffs' Pensions (Scotland) Act 1961(c).

Section 1 of the Judicial Pensions Act 1981(d) so far as it relates to the offices of Lord of Appeal in Ordinary, Judge of the Supreme Court of England and Wales, other than Lord Chancellor, and Judge of the Court of Session.

Sections 5, 7, 9 and 13 of and Schedule 1 to the Judicial Pensions Act 1981(d).

Sections 10, 16, 17 and 18 of the Judicial Pensions Act 1981(d) in so far as they relate to the offices of Circuit Judge and Stipendiary Magistrate in England and Wales, Member of the Lands Tribunal and the offices in paragraph 1 of Schedule 1 to that Act.

## **SCHEDULE 2**

Article 2

Lord of Appeal in Ordinary

Judge of the Supreme Court

Judge of the Court of Session

Circuit Judge in England and Wales

Recorder of London

Common Serjeant

Sheriff principal or salaried sheriff in Scotland

Stipendiary magistrate in England and Wales

Judge Advocate General who has elected that Section 9 of the Act of 1981 shall apply to him

Chairman of the Scottish Land Court

President of the Transport Tribunal

Social Security Commissioner

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

Registrar, High Court in Bankruptcy

Registrar of the Principal Registry, Family Division

Registrar of Criminal Appeals

Registrar of Civil Appeals

County court registrar in England and Wales

---

(a) S.I. 1987/374. (b) 1959 c.9 (8 & 9 Eliz. 2). (c) 1961 c.42. (d) 1981 c.20.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order supersedes the Judicial Pensions (Preservation of Benefits) Order 1987, (which consolidated existing Orders modifying pension schemes applicable to holders of the judicial offices listed in schedule 1). This Order provides for a reduced pension and derivative benefits (lump sum and widows' and children's pensions) to be preserved, and to become payable, in the case of an office-holder who ceases to hold office before reaching normal pension age.

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 (or at which he might elect for service in successive offices to be aggregated for pension purposes) 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 widows' 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 provides for the rules relating to successive service in more than one judicial office to be applied, if the office-holder so elects, to benefits preserved by virtue of the Order.

The Order reduces from five to two, the number of years relevant service which must be completed for benefits to be preserved. It makes no other change of substance; it does not apply in the case of an office-holder who ceases to hold office before it comes into force on 1st September 1988: in such a case, the previous Order will continue to apply.