

1988 No. 1420

PENSIONS

The Judicial Pensions (Requisite Benefits) Order 1988

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| <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 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 (Requisite Benefits) Order 1988 and shall come into force on 1st September 1988.

Interpretation

2. In this Order, unless the context otherwise requires-
- “the Act” means the Social Security Pensions Act 1975(b);
 - “the Act of 1973” means the Social Security Act 1973;
 - “final salary” has the meaning given by article 11;
 - “normal pension age”, in relation to a member of an occupational pension scheme, means the earliest age at which that member can become entitled to receive a pension under the scheme, apart from any special provision as to early retirement on grounds of ill-health or otherwise;
 - “office-holder” means a person who is or has been the holder of any scheduled office;
 - “pensionable age” means the age of 65 for a man and 60 for a woman;
 - “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 any enactment relating to the payment of superannuation benefits to or in respect of such a person;
 - “relevant service” has the meaning given by article 5(2) and (3);
 - “scheduled office” means an office listed in Schedule 2;

(a) 1973 c.38.
(b) 1975 c.60.

“scheme” means, in relation to any office-holder, the public service pension scheme established by a relevant enactment;
other expressions used in the Act or in the Social Security Act 1975(a) have the same meanings in this Order as in the Act in question.

PART II

GENERAL

General effect of order

3.—(1) This Order applies in relation to any such office-holder as is mentioned in article 4 so as to modify, or further modify, the scheme which is applicable in relation to him to make provision for his benefit, or otherwise in relation to him, which accords with the following provisions of this Order.

(2) Articles 8, 9 and 10 of this Order (which relate to guaranteed minimum pensions) apply in relation to any such office-holder as is mentioned in article 4 notwithstanding any other provision in any enactment, including the other provisions of this Order.

Office-holders to whom Order applies

4. This Order shall have effect in relation to, but only to, an office-holder who is holding a scheduled office on 1st September 1988, or who is appointed to such an office when under pensionable age on or after that date:—

Provided that neither article 6 nor article 7 shall entitle an office-holder appointed to a scheduled office on or after 1st April 1987, or his widow, to a pension other than the minimum guaranteed under article 8 or article 9, unless his service in that office may be reckoned, for the purpose of superannuation benefits, together with service of his in an earlier office wholly or partly before that date (or might have been so reckoned but for his having left the later office before reaching compulsory retirement age).

Ceasing to hold office and relevant service

5.—(1) An office-holder does not cease to hold office for the purpose of this Order so long as he holds any scheduled office or an office service in which may, under any enactment, be reckoned on any basis together with earlier service of his in a scheduled office for the purpose of superannuation benefits.

(2) Subject to paragraph (3) below, 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) Service is not relevant service for the purposes of this Order if it is service before 6th April 1978.

(4) For the purposes of paragraphs (1) and (2) above:—

(a) it is immaterial whether—

(i) 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);

(ii) the earlier and the later offices are the same;

(iii) any election in respect of the office-holder is available, or, if available, has been made; and

(iv) 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; and

(a) 1975 c.14.

- (b) service in an earlier office shall be treated as reckonable with service in a later scheduled office if it would have been so reckonable but for the office-holder's having left the later (or a subsequent) office before reaching compulsory retirement age.

PART III

REQUISITE BENEFITS

Office-holder's benefits

6.—(1) As from his attainment of pensionable age, an office-holder shall be entitled for the purposes of this Order to a pension under a scheme for his life.

(2) Subject to paragraphs (3) and (4) below, the annual rate of the officer-holder's pension under paragraph (1) shall be $1\frac{1}{4}$ per cent of his final salary multiplied by the number of years of relevant service completed by him before he attained pensionable age.

(3) Paragraph (2) above shall not apply in relation to an officer-holder who—

- (a) ceases to hold office before normal pension age, and
- (b) has completed less than five years' qualifying service for the purposes of Schedule 16 to the Act of 1973 (preservation) as originally enacted^(a).

(4) Any part of the pension under paragraph (1) above in excess of the office-holder's guaranteed minimum pension shall be postponed for any period for which he continues in employment (whether or not employment to which the scheme relates) after attaining pensionable age.

Widow's benefits

7.—(1) As from the death of an office-holder (whether before or after attaining pensionable age) his widow shall be entitled for the purposes of this Order to a pension under a scheme.

(2) Subject to paragraphs (3) and (4) below, the annual rate of the widow's pension under paragraph (1) shall be $\frac{2}{3}$ per cent of the final salary (or last salary before death) of the office-holder multiplied by the number of years of relevant service completed by him before he attained pensionable age.

(3) Paragraph (2) above shall apply for any such period as is mentioned in section 36(6) of the Act.

(4) Paragraph (2) above shall not apply in relation to an office-holder who dies after ceasing to hold office and who has completed less than five years' qualifying service for the purposes of Schedule 16 to the Act of 1973 (preservation) as originally enacted.

Office-holder's guaranteed minimum pension

8.—(1) As from his attainment of pensionable age an office-holder who has ceased to hold office shall, subject to paragraph (3) below, be entitled to receive not less than the guaranteed minimum pension, the weekly rate of which shall be calculated in accordance with section 35(2), (3), (4), (5) and (9) of the Act, unless his accrued rights thereto are extinguished under section 43(7).

(2) Where an office-holder continues to serve after pensionable age, then—

- (a) as from the expiration of five years from the date on which he attains pensionable age, or
- (b) as from the date (if earlier) when he ceases to hold office,

he shall, subject to paragraph (3) below, be entitled to receive not less than the guaranteed minimum pension, the weekly rate of which shall be calculated in the manner provided by paragraph (1) above and section 35(6) of the Act.

(3) Entitlement to payment of a guaranteed minimum pension by virtue of paragraph

^(a) For the purpose of articles 6 and 7 of this Order not as amended by section 10 of the Social Security Act 1986 (c.50).

(1) or (2) above shall not arise in respect of any period during which the consent of the office-holder under section 33(3)(a) or (b) of the Act is in force and not revoked, and, when the pension which has accordingly been postponed commences, paragraph (1) above shall apply as if it contained a reference to section 35(6).

Widow's guaranteed minimum pension

9.—(1) As from the death (whether before or after attaining pensionable age) of an office-holder, his widow shall, subject to paragraphs (2) and (3), be entitled to receive a guaranteed minimum pension the weekly rate of which shall be not less than her guaranteed minimum as ascertained in accordance with section 36(3) of the Act.

(2) Paragraph (1) above shall apply for any such period as is mentioned in section 36(6) of the Act.

(3) Paragraph (1) above shall not apply if

- (a) at the date of his death the office-holder's accrued rights to a guaranteed minimum pension have been extinguished under section 43(7) of the Act, or
- (b) the widow's accrued rights are extinguished under that subsection.

Widower's guaranteed pension

10.—(1) As from the death on or after 6th April 1989 (whether before or after attaining pensionable age) of a female office-holder, her widower shall, subject to paragraphs (2) and (3) be entitled to receive a guaranteed minimum pension the weekly rate of which shall be his guaranteed minimum as ascertained in accordance with section 36(3) of the Act.

(2) Paragraph (1) above shall apply in the circumstances prescribed under section 36(7A) of the Act and for the period prescribed under that subsection.

(3) Paragraph (1) above shall not apply if:

- (a) at the date of her death the office-holder's accrued rights to a guaranteed minimum pension have been extinguished under section 43(7) of the Act; or
- (b) the widower's accrued rights are extinguished under that subsection.

PART IV

MISCELLANEOUS

Ascertainment of salary for requisite benefits

11.—(1) Subject to paragraphs (2) and (3) below, for the purposes of this Order the final salary of an officer-holder (or his last salary before death) shall be the annual rate of salary which he was receiving immediately before he ceased to hold office together with any sum which is reckoned as an additional part of his salary for pension purposes.

(2) Where—

- (a) an office-holder has two or more periods of relevant service, and
- (b) an election is made by or in respect of him, pursuant to an enactment relating to the payment of superannuation benefits in respect of persons who have served continuously in more than one office, in favour of the receipt of benefits payable under the relevant enactment which relates to an office held by him other than the last,

then, for the purposes of this Order, the final salary of that officer-holder (or his last salary before death) shall be that which would have been arrived at under paragraph (1) above if he had continued to hold the earlier office until the date when he ceased to hold office; and, if that office had ceased to exist at that date, that 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.

(3) For the purposes of articles 6, 7 and 12(3) there shall be excluded from the salary by reference to which the annual rate of the office-holder's or widow's pension is to be calculated any amount of earnings except so much (if any) as would, if expressed as a weekly rate, exceed one and a half times the lower earnings limit but would not exceed the upper earnings limit.

(4) In paragraph (3) above, references to the lower and upper earnings limits, in relation to any earnings, are references to those limits as in force when the earnings are paid.

Contribution in event of marriage during retirement

12.—(1) Where, on the date when he ceases to hold office, an office-holder is unmarried, he may be required to undertake, in return for payment to him of a lump sum under or by virtue of whichever of the enactments mentioned in paragraph (2) below is applicable to him, that he will, on his first marriage thereafter, pay a contribution in respect of benefits that may become payable to his widow by virtue of articles 7 and 9.

(2) The enactments referred to in paragraph (1) above are—

Section 7 of the City of London (Courts) Act 1964(a); and Section 17 of the Judicial Pensions Act 1981(b).

(3) The contribution referred to in paragraph (1) above shall be equal to $\frac{1}{8}$ ths per cent of the office-holder's final salary multiplied by the number of whole years of relevant service of his which were—

(a) completed by him before he attained pensionable age, and

(b) not years—

(i) during any part of which he was a married man, or

(ii) preceding a marriage of his contracted before he ceased to hold office.

Marriage shortly before death

13. Where the marriage of a woman to an office-holder takes place after he has ceased to hold office and not more than six months before his death, any pension to be paid to her as his widow by virtue of this Order shall be limited to her guaranteed minimum pension.

Time of payment

14. Any pension to which there is entitlement by virtue of this Order shall be payable at intervals of not more than three months.

Relationship to other benefits

15. Any pension to which there is entitlement by virtue of this Order shall be reckoned towards and treated as part of any pension which is paid in relation to an office-holder under any relevant enactment.

Revocation of earlier Order

16. The Judicial Pensions (Requisite Benefits) Order 1987(c) is hereby revoked, but without prejudice to its continued application in relation to any person who ceases 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

(a) 1964 c.iv.
(b) 1981 c.20.
(c) S.I. 1987/373.

SCHEDULE 1

SCHEMES

The Judicial Pensions Act 1959(a).

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

Section 1 of the Judicial Pensions Act 1981(c) 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(c).

Sections 10, 16, 17 and 18 of the Judicial Pensions Act 1981(c) 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

OFFICE

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 Judicial Pensions Act 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) 1959 c.9 (8 & 9 Eliz. 2).

(b) 1961 c.42.

(c) 1981 c.20.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order supersedes the Judicial Pensions (Requisite Benefits) Order 1987 which consolidated existing Orders which modified the schemes relating to certain judicial pensions so as to make the changes required in order to meet the contracting-out requirements laid down by the Social Security Pensions Act 1975 ("the 1975 Act").

Articles 6 and 7 confer on an office-holder and on his widow entitlement to pensions based on the final salary of the office-holder and his years of service up to pensionable age (65 for men, 60 for women) after 6th April 1978. The pensions are not to be less than the minimum guaranteed by articles 8 and 9, and there will be occasions where the guaranteed minimum only will be payable (such as under article 8(2)(a) or 13).

Article 10 confers entitlement to guaranteed minimum pensions to the widowers of female office-holders who die after 5th April 1989, in order to meet the further contracting-out requirement inserted into the 1975 Act by the Social Security Act 1986.

Article 11 provides a mode of ascertainment of final salary for the purposes of the Order, and article 12 provides arrangements for the payment of contributions in respect of widows' pensions that may become payable by virtue of the Order where the office-holder marries after retirement. The remaining Articles are explanatory and supplementary. Save that the right conferred by article 10 will apply to widowers of office-holders who die after 5th April 1989, the Order makes no change of substance.

The Order does not apply in the case of any person who ceases to hold office before 1st September 1988, the date on which it comes into operation. The earlier Order will continue to apply in such a case.