



Judicial Pensions and Retirement Act 1993

1993 CHAPTER 8

PART II

MISCELLANEOUS, GENERAL AND SUPPLEMENTARY PROVISIONS

Retirement date for certain judicial officers etc

26 Retirement date for holders of certain judicial offices etc.

- (1) Subject to the following provisions of this section, a person holding any of the offices for the time being specified in Schedule 5 to this Act (a “relevant office”) shall vacate that office on the day on which he attains the age of 70 or such lower age as may for the time being be specified for the purpose in the enactments and instruments relating to that office, whenever passed or made.
- (2) Any reference in this section to a person’s holding an office includes a reference to his being a member of, or otherwise included in, any panel or list of persons appointed, nominated, approved or otherwise selected to serve from time to time in that office (whether or not the panel or list is required by or under any enactment); and any reference in this section or Schedule 5 to this Act to any particular office or to an office of any class or description, or to a person’s appointment to, or vacation of, an office, shall be construed accordingly.
- (3) Subject to the transitional provision referred to in subsection (11) below, subsection (1) above applies whether the person was appointed to the office before or after the coming into force of this section; but nothing in this Act, or in any amendment made by it, shall be taken—
 - (a) to preclude a person from vacating his office before the compulsory retirement date for that office in his case; or
 - (b) to prevent a person’s appointment to an office coming to an end before that date, in accordance with the terms on which he was appointed.

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- (4) Subsections (5) and (6) below apply in relation to any holder (whenever appointed) of a relevant office for which the compulsory retirement date in his case falls on or after the day on which he attains the age of 70, except—
- (a) [F¹Judge of the Supreme Court];
 - (b) judge of the [F²Senior Courts] of England and Wales;
 - (c) Lord President of the Court of Session, Lord Justice Clerk or other judge of the Court of Session;
 - (d) Lord Chief Justice of Northern Ireland or Lord Justice of Appeal, or judge of the High Court, in Northern Ireland.
- (5) If, in a case where this subsection applies, the [F³appropriate person] considers it desirable in the public interest that the holder of a relevant office should continue in that office after his compulsory retirement date, he may authorise the person to continue in office, either generally or for such purpose as he may notify to the person, for a period not exceeding one year and not extending beyond the day on which the person attains the age of 75.
- (6) If, on the expiration of the period for which a person is authorised to continue in office—
- (a) by virtue of subsection (5) above, or
 - (b) by any previous exercise of the power conferred by this subsection,
- the [F³appropriate person] considers it desirable in the public interest to retain the person in office for a further period, he may authorise him to continue in office, either generally or for such purpose as he may notify to the person, for a further period not exceeding one year and not extending beyond the day on which the person attains the age of 75.
- (7) After the day on which a person attains the age of 75, he shall not hold any relevant office nor shall he—
- (a) be a member of the Judicial Committee of the Privy Council ^{F4}. . . ;
 - [F⁵(b) act as a judge of the Supreme Court under section 38 of the Constitutional Reform Act 2005;]
 - (c) act as a judge under or by virtue of section 9(1) of the ^{M1}[F⁶ Senior Courts Act 1981];
 - (d) hold office as a deputy Circuit judge, within the meaning of section 24 of the ^{M2}Courts Act 1971;
 - (e) sit and act as a judge under or by virtue of section 7 of the ^{M3}Judicature (Northern Ireland) Act 1978;
 - (f) act as a deputy, or as a temporary additional officer, under subsection (1) of section 91 of the ^{M4}[F⁶ Senior Courts Act 1981] by virtue of subsection (3) of that section [F⁷(holders of relevant office);]
 - [F⁸(g) hold office as a deputy district judge if either section 102(1B) of that Act (former district judge appointed as deputy in the High Court) or section 8(1ZB) of the County Courts Act 1984 (former district judge appointed as deputy in the county courts) applied to the appointment;]
 - [F⁹(ga) hold office as a deputy judge of the Upper Tribunal if—
 - (i) section 94B of the Constitutional Reform Act 2005 applied to the appointment, and
 - (ii) his corresponding qualifying office was listed in section 6(1) of the Tribunals, Courts and Enforcement Act 2007;]

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- (h) hold any office—
 - (i) to which appointments are made by or under any Act or statutory instrument;
 - (ii) for which there would, apart from this paragraph, be no compulsory retirement date; and
 - (iii) for appointment to which only persons who have held relevant office are eligible;

and this subsection applies whether or not the person was invited to act as a judge, or was appointed to the office in question, or to some other office by virtue of which he would (apart from this subsection) hold the office in question, before the appointed day.

- (8) After the day on which a person attains the age of 70, he shall not be appointed or re-appointed as—

- (a) ^{F10}
- (b) the person, or one of the persons, constituting a tribunal for the purposes of section 150(3) of the ^{M5}Mines and Quarries Act 1954, or as an assessor assisting such a tribunal;
- (c) an assessor assisting with an inquiry under section [^{F11} 61 of the Merchant Shipping Act 1995];
- ^{F12}(d)
- ^{F13}(e)
- ^{F13}(f)
- (g) an arbitrator, or (in Scotland) an arbiter, under paragraph 9(2) of Schedule 10 to the ^{M6}Electricity Act 1989;
- (h) chairman of a tribunal constituted under [^{F14}Schedule 3 to the Education Act 2005];
- ^{F13}(j)

- (9) The appropriate Minister may by order—

- (a) amend Schedule 5 to this Act by adding offices to those for the time being specified in that Schedule; or
- (b) amend subsection (8) above by adding offices to those for the time being specified in that subsection.

- (10) As from the appointed day, the enactments and instruments mentioned in Schedule 6 to this Act shall have effect with the amendments specified in that Schedule; but those amendments are subject to section 27 below and Schedule 7 to this Act.

- (11) Schedule 7 to this Act shall have effect for the purpose of making transitional provision in relation to persons holding relevant offices immediately before the appointed day; and—

- (a) subsections (1) and (3) above are subject to the provisions of that Schedule; and
- (b) any reference in this section to the compulsory retirement date for an office shall be construed in accordance with those provisions.

- (12) In this section—

“the appointed day” means the day appointed under section 31 below for the coming into force of this section;

[^{F15}“the appropriate person” means—

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- (a) the appropriate Minister in a case which falls within paragraph (a) of the definition of the expression in section 30;
- (b) in relation to any judicial office whose jurisdiction is exercised exclusively in relation to England and Wales, the Lord Chief Justice of England and Wales;
- (c) in relation to any judicial office whose jurisdiction is exercised exclusively in relation to Northern Ireland, the Lord Chief Justice of Northern Ireland^{F16};
- (d) the Senior President of Tribunals in the case of a person who holds a judicial office that—
 - (i) is specified in subsection (12A) below, and
 - (ii) is not in the person's case an office to which any of paragraphs (a) to (c) above applies;
- (e) the Lord Chief Justice of England and Wales in the case of a person who holds a judicial office that is not in the person's case an office to which any of paragraphs (a) to (d) applies;]]

“the compulsory retirement date” for an office means the day on which a holder of that office is or, apart from any continuation power, would be required by any enactment or statutory instrument to vacate that office, being either—

- (a) the day on which he attains a particular age; or
- (b) a day falling to be determined by reference to his attaining a particular age;

“continuation power” means a power conferred by an enactment or statutory instrument on a Minister of the Crown to authorise the holder of an office to continue in that office until a later day than that on which, apart from any exercise of the power, he would be required by any enactment or statutory instrument to vacate that office;

and any reference to vacating an office includes a reference to retiring from it.

^{F17}(12A) The judicial offices mentioned in paragraph (d) of the definition of “appropriate person” in subsection (12) above are—

- (a) Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal;
- (b) judge, or other member, of the First-tier Tribunal or of the Upper Tribunal appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3 to the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”);
- (c) deputy judge of the Upper Tribunal appointed under paragraph 7(1) of Schedule 3 to the 2007 Act, except in a case where the holding of the office by the person in question falls within subsection (7)(ga) above;
- (d) transferred-in judge, or transferred-in other member, of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of the 2007 Act);
- (e) deputy judge of the Upper Tribunal by virtue of an order under section 31(2) of the 2007 Act;
- (f) an office held by a person if the person's holding of the office results in the person being a member of, or person who is, a tribunal in a list in Schedule 6 to the 2007 Act that has effect for the purposes of section 30 of that Act (but only if the office is specified in Schedule 5 to this Act);
- (g) ^{F18}

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- (h) member of the Employment Appeal Tribunal appointed under section 22(1) (c) of the Employment Tribunals Act 1996;
 - (i) member of a panel of [^{F19}Employment Judges] .
- (12B) Neither paragraph (d) nor paragraph (e) of the definition of “appropriate person” in subsection (12) above applies to an office held by a person if provision about that person's continuation in the office after the compulsory retirement date for the office—
- (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or
 - (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.]
- [^{F20}(13) Where the Lord Chief Justice of England or Wales ^{F21}... [^{F22}or the Senior President of Tribunals] is the appropriate person, he must obtain the concurrence of the Lord Chancellor before exercising any functions under this section.
- [Where the Lord Chief Justice of Northern Ireland is the appropriate person—
- ^{F23}(13A) (a) in cases where the relevant office is one specified in paragraph 11 of Schedule 2 to the Northern Ireland Act 1998, the concurrence of the Lord Chancellor must be obtained before any function under this section is exercised;
- (b) in any other case, the concurrence of the Department of Justice in Northern Ireland must be obtained before any function under this section is exercised.]
- (14) The Lord Chief Justice of England or Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (15) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under this section—
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

Textual Amendments

- F1** Words in s. 26(4)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 35\(3\)](#), 148; [S.I. 2009/1604, art. 2\(a\)](#)
- F2** Words in s. 26(4)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59](#), 148, [Sch. 11 para. 4](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F3** Words in s. 26(5)(6) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15](#), 148, [Sch. 4 para. 228\(2\)](#); [S.I. 2006/1014, art. 2\(a\)](#), Sch. 1 para. 11
- F4** Words in s. 26(7)(a)(b) repealed (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15](#), 146, 148, [Sch. 4 para. 228\(3\)](#), [Sch. 18 Pt. 2](#); [S.I. 2006/1014, art. 2\(a\)](#), Sch. 1 paras. 11, 30
- F5** S. 26(7)(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 38\(3\)](#), 148; [S.I. 2009/1604, art. 2\(a\)](#)
- F6** Words in s. 26 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59](#), 148, [Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604, art. 2\(d\)](#)
- F7** Words in s. 26(7)(f) substituted (19.9.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), ss. 48\(1\)](#), 148(5), [Sch. 8 para. 31\(3\)](#); [S.I. 2007/2709, art. 2\(c\)\(i\)](#)
- F8** S. 26(7)(g) substituted (19.7.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), ss. 56](#), 148(5), [Sch. 11 para. 12](#)

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- F9** S. 26(7)(ga) inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148(5), **Sch. 8 para. 31(4)**; S.I. 2008/2696, **art. 5(c)(i)** (with art. 3)
- F10** S. 26(8)(a) repealed (25.7.2003 for specified purposes and 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2), **Sch. 19(1)**, Note 1 (with Sch. 18); S.I. 2003/1900, **arts. 2(1), 3**, Sch. 1; S.I. 2003/3142, **art. 3**
- F11** Words in s. 26(8)(c) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para.93(a)** (with s. 312(1))
- F12** S. 26(8)(d) repealed (29.11.1999) by S.I. 1998/1506 (N.I. 10), art. 78(2), **Sch. 7**; S.R. 1999/472, art. 2(1)(a)(2), **Sch. 1**
- F13** S. 26(8)(e)(f)(j) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 113
- F14** Words in s. 26(8) substituted (1.9.2006) by Education Act 2005 (c. 18), ss. 61, 125, **Sch. 9 para. 7**; S.I. 2006/1338, **art. 4(1)**, Sch. 2
- F15** S. 26(12): definition of "the appropriate person" inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 228(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11
- F16** S. 26(12): paras. (d)(e) in definition of "the appropriate person" inserted (19.9.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), **ss. 54(2)**, 148(5); S.I. 2007/2709, **art. 2(a)**
- F17** S. 26(12A)(12B) inserted (19.9.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), **ss. 54(3)**, 148(5); S.I. 2007/2709, **art. 2(a)**
- F18** S. 26(12A)(g) omitted (15.2.2010) by virtue of The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), art. 5(1)(4), **Sch. 1 para. 11** (with Sch. 4)
- F19** Words in s. 26(12A)(i) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 13(1)**; S.I. 2013/2200, art. 3(g)
- F20** S. 26(13)-(15) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 228(5)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11
- F21** Words in s. 26(13) omitted (18.10.2012) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **6(2)** (with arts. 24-28)
- F22** Words in s. 26(13) inserted (19.9.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), **ss. 54(4)**, 148(5); S.I. 2007/2709, **art. 2(a)**
- F23** S. 26(13A) inserted (18.10.2012) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2012 (S.I. 2012/2595), arts. 1(2), **6(3)** (with arts. 24-28)

Modifications etc. (not altering text)

- C1** S. 26 modified (27.9.1999) by 1999 c. 22, ss. 105, 108(3), **Sch. 14 Pt. V para. 25** (with Sch. 14 para. 7(2))
- C2** S. 26 applied (28.4.2003) by Land Registration Act 2002 (c. 9), ss. 107(3), 136(2), **Sch. 9 para. 1(3)** (with s. 129); S.I. 2003/1028, **art. 2(a)**
- C3** S. 26(1) applied (1.1.1996) by S.I. 1995/3192, **art. 4(a)**
- C4** S. 26(1) modified (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(2), 148(5), **Sch. 9 para. 5(3)**; S.I. 2008/2696, **art. 5(d)** (with art. 3)
- C5** S. 26(3)(11) restricted (1.1.1996) by S.I. 1995/3192, **art. 4(b)(i)(ii)**
- C6** S. 26(4)-(6) restricted (1.1.1996) by S.I. 1995/3192, **art. 5**
- C7** S. 26(5)(6) applied (18.3.2008) by Charities Act 1993 (c. 10), Sch. 1B para. 4 (as inserted by Charities Act 2006 (c. 50), ss. 8, 79, **Sch. 3 para. 1**; S.I. 2008/751, {art. 2,} Sch. (subject to arts. 3-12))
- C8** S. 26(5)(6) applied (N.I.) (25.9.2009) by Charities Act (Northern Ireland) 2008 (c. 12) (N.I.), ss. 12(2), 185, {Sch. 2 para. 4(2)}; S.R. 2009/324, **art. 2**

Marginal Citations

- M1** 1981 c. 54.
M2 1971 c. 23.
M3 1978 c. 23.
M4 1981 c. 54.
M5 1954 c. 70.

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M6 1989 c. 29.

27 Completion of proceedings after retirement.

- (1) Notwithstanding that a person has vacated or otherwise ceased to hold an office to which this section applies—
- (a) he may act as if he had not ceased to hold the office for the purpose of continuing to deal with, giving judgment in, or dealing with any ancillary matter relating to, any case begun before him before he ceased to hold that office; and
 - (b) for that purpose, and for the purpose of any proceedings arising out of any such case or matter, he shall be treated as being or, as the case may be, as having been a holder of that office;
- but nothing in this subsection shall authorise him to do anything if he ceased to hold the office by virtue of his removal from it.
- (2) Where a person has vacated or otherwise ceased to hold a qualifying judicial office but the office in question is one to which this section applies, then, notwithstanding anything in subsection (1) above, any remuneration that may be paid in respect of service of his in that office by virtue of that subsection shall be remuneration by payment of fees (and not a salary) and accordingly that service shall not be regarded as service in qualifying judicial office.
- (3) The offices to which this section applies are—
- (a) any relevant office, within the meaning of section 26 above;
 - (b) any office falling within any of the paragraphs of subsection (7) of that section;
 - (c) Queen’s Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals;
 - (d) Vice Judge Advocate General;
 - (e) Assistant Judge Advocate General;
 - ^{F24}(f)
 - [^{F25}(ff) a part-time sheriff;]
 - (g) Chairman of the Criminal Injuries Compensation Board.
- (4) If and to the extent that any prohibition imposed by subsection (7) of section 26 above would not, apart from this subsection, be regarded as a prohibition on the holding of an office, it shall be treated for the purposes of this section as if it were such a prohibition, and references in this section to office, or to vacating or otherwise ceasing to hold office, shall be construed accordingly.

Textual Amendments

- F24** S. 27(3)(f) repealed (1.10.2001) by 2001 c. 19, ss. 34, 38, Sch. 6 Pt. 2 para. 10, Sch. 7 Pt. 3; S.I. 2001/3234, art. 2 (subject to art. 3)
- F25** S. 27(3)(ff) inserted (S.) (9.8.2000) by 2000 asp 9, s. 12, Sch. para. 5(2)

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