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## SCHEDULES

### SCHEDULE 9

#### TRIBUNALS: TRANSITIONAL PROVISION

#### PART 3

#### JUDGES AND OTHER MEMBERS OF FIRST-TIER AND UPPER TRIBUNALS: PENSIONS WHERE OFFICE ACQUIRED UNDER SECTION 31(2)

##### *Interpretation of Part 3 of Schedule*

- 10 For the purposes of this Part of this Schedule—
- (a) “new office” means—
    - (i) the office of judge of the First-tier Tribunal by virtue of being a transferred-in judge of the First-tier Tribunal,
    - (ii) the office of other member of the First-tier Tribunal by virtue of being a transferred-in other member of the First-tier Tribunal,
    - (iii) the office of judge of the Upper Tribunal by virtue of being a transferred-in judge of the Upper Tribunal, and
    - (iv) the office of other member of the Upper Tribunal by virtue of being a transferred-in other member of the Upper Tribunal;
  - (b) a person holds an office “on a salaried basis” if and so long as, and to the extent that—
    - (i) the person's service in the office is remunerated by payment of a salary, and
    - (ii) the salary is not subject to terms which preclude rights to pensions and other benefits accruing by reference to it;
  - (c) a person shall be regarded as holding “qualifying judicial office” at any time when he holds, on a salaried basis, any one or more of the offices specified in Schedule 1 to the 1993 Act, and any reference to a “qualifying judicial office” is a reference to any office specified in that Schedule if it is held on a salaried basis;
  - (d) “the 1993 Act” means the Judicial Pensions and Retirement Act 1993 (c. 8).

##### *Right to opt in to Part 1 of the 1993 Act where qualifying judicial office not previously held*

- 11 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a person becomes, as a result of provision under section 31(2), the holder of a new office,
  - (b) before that, the person has never held qualifying judicial office, and
  - (c) the person, on becoming the holder of the new office, holds the new office on a salaried basis.

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- (2) Section 1(1)(a) of the 1993 Act (Part 1 of the 1993 Act applies to a person who first holds qualifying judicial office on or after 31st March 1995) does not have effect in relation to the person.
- (3) The person is entitled, subject to paragraph 12, to elect for Part 1 of the 1993 Act (judicial pensions) to apply to him.
- (4) Part 1 of the 1993 Act applies to a person who makes an election under sub-paragraph (3).
- (5) Sub-paragraph (4) is subject to sections 1(5) and 13 of the 1993 Act (where person has opted out of Part 1 of the 1993 Act then, except as provided by section 13 of that Act, that Part does not apply to the person).

*Election under paragraph 11(3) for pension under Part 1 of the 1993 Act*

- 12 (1) In this paragraph “opt-in election” means an election under paragraph 11(3).
- (2) An opt-in election may be made only in such circumstances, within such time and in such manner as the Lord Chancellor may by regulations prescribe.
- (3) An opt-in election is irrevocable.
- (4) Regulations under sub-paragraph (2) may permit the making of an opt-in election even though the person in respect of whom the opt-in election is made—
  - (a) has ceased (whether by virtue of dying or otherwise) to hold the office mentioned in paragraph 11(1)(a), or
  - (b) has ceased to hold that office on a salaried basis without having ceased to hold that office.
- (5) Where regulations under sub-paragraph (2) permit the making of an opt-in election in respect of a person who has died, the right to make that election is exercisable by the person's personal representatives.
- (6) The Lord Chancellor may by regulations provide for a person in respect of whom an opt-in election is made to be treated for such purposes as may be prescribed by the regulations as if the person had, at such times as may be prescribed by the regulations, been a person to whom Part 1 of the 1993 Act applies.
- (7) An opt-in election may not be made in respect of a person at any time when an election made under section 13 of the 1993 Act (election to opt out of Part 1 of the 1993 Act) is in force in respect of the person.

**Commencement Information**

- II** Sch. 9 para. 12 wholly in force at 3.11.2008; Sch. 9 para. 12 not in force at Royal Assent see s. 148(5); Sch. 9 para. 12(2) in force at 19.9.2007 by S.I. 2007/2709, art. 2(d); Sch. 9 para. 12(1)-(3)-(7) in force at 3.11.2008 by S.I. 2008/2696, art. 5(d)

*Continuation of existing public service pension arrangements in certain cases*

- 13 (1) Sub-paragraph (2) applies if—
  - (a) a person, as a result of provision under section 31(2), becomes the holder of a new office,

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- (b) either—
    - (i) the person held qualifying judicial office immediately before 31st March 1995, or
    - (ii) before becoming the holder of the new office, the person has never held qualifying judicial office,
  - (c) immediately before the person becomes the holder of the new office—
    - (i) the person holds an office within paragraph (a), (b) or (c) of section 31(2) (the “old office”), and
    - (ii) the person's service in the old office is subject to a public service pension scheme,
  - (d) the person, on becoming the holder of the new office, holds the new office on a salaried basis, and
  - (e) immediately after the person becomes the holder of the new office, the person—
    - (i) is not a person to whom Part 1 of the 1993 Act applies, and
    - (ii) is not a person to whom that Part would apply but for section 13 of that Act.
- (2) The person's service in the new office, so far as it is service during the continuity period—
- (a) shall be subject to that public service pension scheme, and
  - (b) shall be subject to that scheme in a way that corresponds to the way in which the person's service in the old office was subject to that scheme.
- (3) In sub-paragraph (2) “the continuity period” means the period—
- (a) that begins when the person becomes the holder of the new office on a salaried basis, and
  - (b) that ends with whichever of the following first happens after that—
    - (i) the person's ceasing to hold the new office,
    - (ii) the person's ceasing to hold the new office on a salaried basis without ceasing to hold the new office,
    - (iii) the person's becoming a person to whom Part 1 of the 1993 Act applies, and
    - (iv) the person's becoming a person to whom Part 1 of the 1993 Act would apply but for section 13 of that Act.
- (4) For the purposes of sub-paragraph (1)(c)(ii), the person's service in the old office is not to be treated as subject to a public service pension scheme at a time when the scheme does not apply to him as a result of his having exercised a right to elect for the scheme not to apply to him.
- (5) A public service pension scheme which, apart from sub-paragraph (2), would not be a judicial pension scheme for the purposes of the 1993 Act does not become a judicial pension scheme for those purposes if it is only as a result of sub-paragraph (2) that pensions and other benefits are payable under the scheme in respect of service in qualifying judicial office.
- (6) In this paragraph “public service pension scheme” means any public service pension scheme, as defined in—
- (a) section 1 of the Pension Schemes Act 1993 (c. 48), or
  - (b) section 1 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49).

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