

## SCHEDULES

### FIFTH SCHEDULE

Section 22.

#### MODIFICATIONS OF LOCAL GOVERNMENT SUPERANNUATION ACT, 1937, IN RELATION TO JUSTICES' CLERKS AND THEIR STAFF

#### PART I

##### GENERAL MODIFICATIONS

- 1 (1) Paragraph (b) of subsection (2) of section three of the 1937 Act (which relates to the servants and part time officers who are to be contributory employees) shall not apply, but a justices' clerk who is a part time officer shall be a contributory employee if—
  - (a) he is a justices' clerk of any such class or description as may be specified for the purposes of this paragraph by order of the Secretary of State; or
  - (b) the magistrates' courts committee appointing him determine, with the prior approval of the council, that he shall be a contributory employee.
- (2) A statutory instrument containing an order made for the purposes of this paragraph shall be subject to annulment by resolution of either House of Parliament.
- 2 The appropriate superannuation fund in relation to any employment shall be that in the benefits of which contributory employees of the council are entitled to participate, and subsections (1) and (2) of section four of the 1937 Act shall not apply.
- 3 (1) There shall be paid by the council—
  - (a) the equivalent contributions of the employing authority under subsection (2) of section six of the 1937 Act and any payment required from the employing authority under that subsection by virtue of any scheme under section twenty-two of that Act;
  - (b) the sums required by subsection (4) of section eight of the 1937 Act to be repaid to the appropriate superannuation fund in respect of any resolution of the magistrates' courts committee under subsection (2) of that section increasing a person's superannuation allowance;
  - (c) any gratuity granted by the magistrates' courts committee under section eleven of the 1937 Act;and references to the employing authority in those sections and in paragraph (b) of subsection (2) of section twenty-one of the 1937 Act shall be construed accordingly.
- (2) The council may make the same deductions (if any) under subsection (3) of section six of the 1937 Act from a person's remuneration for any employment as if they were the employing authority.
- (3) Subsection (4) of section six of the 1937 Act (which requires an employee to deliver a statement of remuneration received from outside sources) shall not apply.

- (4) Any regulations under subsection (6) of section thirty-six of the 1937 Act with respect to the administrative action to be taken by local authorities may provide for anything to be done by or to the council where apart from this provision they could provide for it to be done by or to the magistrates' courts committee.
- 4 (1) Where a justices' clerk on attaining the age of sixty-five years has not completed forty years' service, then (in relation to his employment as justices' clerk) for any reference to that age in the 1937 Act, except in subsection (1) of section eight (which relates to eligibility for pension whether on voluntary or compulsory retirement), there shall be substituted a reference to the age of seventy or the age at which he completes forty years' service, whichever is the earlier.
- (2) For the purposes of this paragraph, one half only of any non-contributing service shall be taken into account.
- 5 No gratuity shall be granted by a magistrates' courts committee under subsection (1) of section eleven of the 1937 Act to an employee on his ceasing to be employed by them in an employment in respect of which he was not immediately before he ceased to be employed therein a contributory employee.
- 6 A person's remuneration for any employment where he has more than one and does not receive separate remuneration for that employment, shall be taken to be that part of his entire remuneration which is paid by the council or, where the remuneration for more than one employment is paid by the same council, such part of that remuneration as may be agreed between him and the council or as, in default of agreement, may be determined by the Secretary of State.
- 7 (1) Any action taken by a magistrates' courts committee in increasing a person's superannuation allowance under the proviso to paragraph (b) of subsection (2) of section eight of the 1937 Act, or in directing any sum to be paid out of the appropriate superannuation fund in respect of a person's contributions thereto under subsection (4) of section ten of the 1937 Act, or in granting a gratuity under section eleven of the 1937 Act, shall forthwith be reported by them to the council.
- (2) If the council is dissatisfied with the action they may appeal against it to the Secretary of State whose decision shall be final.
- 8 Any provisions of a local Act which amend the 1937 Act may be adapted by order of the Minister of Health.
- 9 In this Part of this Schedule the expression " the council" in relation to any employment means the council paying a person's remuneration for that employment.

## PART II

### TRANSITIONAL PROVISIONS

- 10 Where under the proviso to subsection (1) of section twenty of the 1937 Act notice was given by a justices' clerk excluding the application of that Act in relation to his clerkship, the notice shall have the same effect to exclude the 1937 Act as applied by this Act.
- 11 An existing clerk or employee shall be entitled to the benefit of subsection (1) of section thirteen of the 1937 Act on becoming by virtue of subsection (1) of section

twenty-three of this Act a contributory employee of a magistrates' courts committee without giving the information required by the proviso to that subsection.

- 12 (1) In relation to an existing clerk or employee, subsections (2) and (3) of section seven of the 1937 Act (which relate to extensions of service after the retiring age) shall have effect with the substitution for any reference to the appointed day in subsection (2) of a reference to the date of the coming into force of section nineteen of this Act and with the omission of any such reference in subsection (3):

Provided that if, in the case of a justices' clerk who is a part time officer, it is not possible to determine on the said date whether he then becomes a contributory employee of the magistrates' courts committee by virtue of any order of the Secretary of State under paragraph 1 of this Schedule (whether because his salary under section nineteen of this Act has not then been fixed or because the order gives him an option exercisable after that date or for similar reasons), the reference to be substituted in the said subsection (2) shall be a reference to the date on which it becomes possible to determine that question.

- (2) In relation to an existing clerk or employee who immediately before the coming into force of section nineteen of this Act has attained the age of sixty-five years and is not a contributory employee by virtue of section twenty of the 1937 Act, subsection (5) of section eight of that Act (which relates to the remuneration to be taken into account in fixing the rate of pension) shall have effect with the following modifications:—
- (a) the expression " service " in that subsection shall include any service rendered after attaining the said age which it would have included if rendered before attaining it; and
  - (b) for any reference to the appointed day in proviso (a) to that subsection there shall be substituted a reference to the date of the coming into force of section nineteen of this Act.
- 13 (1) In relation to an existing or former clerk or employee, the expression " service " shall include, in addition to any service within the meaning assigned to that expression by Part III of the 1937 Act or which he is otherwise entitled to reckon apart from this paragraph, any service rendered after attaining the age of eighteen years and before attaining the age of sixty-five years, being either—
- (a) service as a justices' clerk; or
  - (b) service in the employment of a justices' clerk or clerks during which he devoted substantially the whole of his time to assisting the justices' clerk or clerks in the performance of the duties appertaining to his or their clerkship or clerkships or partly to that and partly to duties under a local authority; or
  - (c) service as collecting officer or in the employment of a collecting officer or officers during which he devoted substantially the whole of his time to performing or assisting in the performance of the duties of collecting officer or partly to that and partly to duties under a local authority:

Provided that—

- (i) paragraph 4 of this Schedule shall apply to the reference in this sub-paragraph to the age of sixty-five years as it applies to references to that age in the 1937 Act (except subsection (1) of section eight); and
- (ii) paragraph (c) of this sub-paragraph shall apply only in the case of an existing clerk or employee.

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*Status: This is the original version (as it was originally enacted).*

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- (2) Where this paragraph has applied to a person, and he is at any time a contributory employee otherwise than in the capacity in which it applied to him, the expression "service" shall include any service which it included in relation to him in that capacity.
- (3) Where a person is entitled to reckon any period as service by virtue only of proviso (i) to sub-paragraph (1) of this paragraph, he shall be entitled to reckon that period as contributing service if—
- (a) he would have been required to pay contributions in respect of that period had he not attained the age of sixty-five years; and
  - (b) within three months after the date of the coming into force of section nineteen of this Act he pays to the council to whom he pays contributions immediately after that date a sum equal to the contributions which he would have been required to pay as aforesaid;
- and, where he does so, the sum shall be deemed to be contributions in respect of that period.
- (4) In this and the two next following paragraphs, references to a justices' clerk include a clerk to the justices of a liberty.
- 14 Where an existing or former clerk or employee has been collecting officer of any court, or employed by the collecting officer of any court to assist him in the performance of his duties as such the time devoted by him thereto and his remuneration in respect thereof during any period when he was clerk of that court, or was employed by that clerk to assist him in the duties appertaining to his clerkship, shall be treated in reckoning his service under the last foregoing paragraph and the remuneration in respect of that service as time devoted to and remuneration in respect of the duties of the clerkship or the employment by the clerk in connection with those duties, as the case may be.
- 15 A person's remuneration as justices' clerk for any period for which he is not or was not paid a salary determined in accordance with section twenty-six of this Act, and a person's remuneration as collecting officer for any period, shall be taken to be or have been the salary and other payments paid or made to him as such and retained by him for his own use, after deducting the amount of any salaries or other sums paid by him to persons employed by him in connection with his duties as clerk or collecting officer, and after deducting the amount of his office expenses (if any).
- 16 In relation to an existing clerk or employee, paragraph (A) of Part III of the Second Schedule to the 1937 Act (which confers special rights on persons superannuable before that Act) shall continue to apply if it applied in relation to him immediately before he ceased to be a contributory employee by virtue of section twenty of that Act.
- 17 (1) Every administering authority maintaining a superannuation fund to which employees of any relevant council contribute shall obtain from an actuary a certificate as to the amount necessary to be paid by the council into the fund annually during a period not exceeding twenty years on account of the burden imposed on the fund by this Act in respect of existing clerks or employees who become by virtue of subsection (1), (5) or (6) of section twenty-three thereof contributory employees of the magistrates' courts committee set up to act for the area of the council.
- (2) The certificate shall be obtained as soon as may be after the date on which section nineteen of this Act comes into force and the period of twenty years shall run from that date.

- (3) In certifying the said amount the actuary shall take into account any transfer values payable in respect of any of the existing clerks or employees who were previously liable to contribute to some other fund and make a corresponding allowance in respect of those who were previously liable to contribute to the same fund.
  - (4) The amount certified shall be paid to the fund by the council.
  - (5) The relevant councils for the purposes of this paragraph are the councils of any county, any county borough and any borough named in the Third Schedule to this Act.
- 18      In this Part of this Schedule the expression " existing or former clerk or employee " means any such person as is mentioned in subsection (8) of section twenty-three of this Act and the expression " existing clerk or employee " means any such person as aforesaid who by virtue of subsection (1), (5) or (6) of that section becomes a contributory employee of a magistrates' courts committee.