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SCHEDULES

SCHEDULE 9

Section 48(2)

TRIBUNALS: TRANSITIONAL PROVISION

PART 1

GENERAL AND MISCELLANEOUS

Introductory

- 1 The following provisions of this Schedule are to be taken not to prejudice the generality of sections 31(9) and 145(1).

Membership of Tribunal Procedure Committee

- 2 (1) The Lord Chancellor may by order make provision for a person—
- (a) who is a scheduled tribunal, or
 - (b) who is a member of a scheduled tribunal,
- to be treated for the purposes of sub-paragraph (1) of paragraph 22 of Schedule 5 as falling within paragraph (a), (b) or (c) of that sub-paragraph.
- (2) In sub-paragraph (1) “scheduled tribunal” means a tribunal in a list in Schedule 6 that has effect for the purposes of section 30.
- (3) The power under sub-paragraph (1) may not be exercised so as to provide for the Secretary of State to be treated as mentioned in that sub-paragraph.

PART 2

JUDGES AND OTHER MEMBERS OF FIRST-TIER AND UPPER TRIBUNALS: RETIREMENT DATES

Interpretation of Part 2 of Schedule

- 3 (1) For the purposes of this Part of this Schedule—
- (a) “relevant judicial office” means—
 - (i) the office of transferred-in judge, or transferred-in other member, of the First-tier Tribunal or of the Upper Tribunal (see section 31(2)),
 - (ii) an office to which a person is appointed under paragraph 1(1) or 2(1) of Schedule 2 or 3 (judge, or other member, of the First-tier Tribunal or of the Upper Tribunal),
 - (iii) the office of deputy judge of the Upper Tribunal (whether under section 31(2) or under paragraph 7 of Schedule 3),

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- (iv) the office of Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of the Upper Tribunal, or
 - (v) the office of Senior President of Tribunals;
 - (b) “relevant day”, in relation to a person who holds a relevant judicial office, means the day when he was appointed to that office or, if he holds that office as the latest in an unbroken succession of different relevant judicial offices, the day when he was appointed to the first of the offices in that succession;
 - (c) an office is a “qualifying office” at any particular time (but see sub-paragraph (2)) if—
 - (i) the office is that of member of a tribunal which at that time is in a list in Schedule 6, or
 - (ii) the office itself is at that time in a list in Schedule 6,
 and (in either case) the list has effect at that time for the purposes of section 30;
 - (d) “the 1993 Act” means the Judicial Pensions and Retirement Act 1993 (c. 8).
- (2) Where—
- (a) a person held two or more qualifying offices (“the actual offices”) immediately before the relevant day, and
 - (b) at that time the person held at least one of the actual offices on a salaried basis and held at least one of the actual offices on a non-salaried basis,
- the person shall be treated for the purposes of paragraphs 6 and 7 as not having held immediately before the relevant day any of the actual offices that the person held on a non-salaried basis at that time.
- (3) For the purposes of sub-paragraph (2)—
- (a) a person holds an office on a salaried basis at any particular time if, at that time, the person's service in the office is remunerated by payment of a salary, and
 - (b) a person holds an office on a non-salaried basis at any particular time if, at that time, the person's service in the office—
 - (i) is remunerated by the payment of fees,
 - (ii) is remunerated by the payment of a supplement to the salary payable to him in respect of his service in another office, or
 - (iii) is unremunerated.

Retirement from First-tier and Upper Tribunals: application of paragraphs 5 to 8

4 Paragraphs 5 to 8 apply where a person holds a relevant judicial office.

Retirement later than age 70 in certain cases where office previously held in another tribunal

- 5 (1) Subject to paragraph 8(1) (persons who held certain judicial offices on 30th March 1995), sub-paragraphs (3) and (4) apply where the person has a personal retirement date under either or both of paragraphs 6 and 7.
- (2) In sub-paragraphs (3) and (4) and paragraph 8(1) and (2)—
- (a) if the person has a personal retirement date under just one of paragraphs 6 and 7 or has the same personal retirement date under each of those paragraphs, “the special date” means that date;

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- (b) if the person has a personal retirement date under each of those paragraphs and those dates are different, “the special date” means the later of those dates.
- (3) Subsection (1) of section 26 of the 1993 Act shall have effect (subject to the following provisions of that section) as if it provided for the person to vacate the relevant judicial office on the special date.
- (4) The special date is to be taken for the purposes of that section to be the compulsory retirement date for the relevant judicial office in the person's case.

Cases where retirement from existing office would be after age 70

- 6 (1) Sub-paragraphs (2) and (3) apply where, immediately before the relevant day, the person—
 - (a) held a qualifying office, and
 - (b) was required to vacate the qualifying office on a day later than the day on which he attains the age of 70.
 - (2) The person's personal retirement date under this paragraph is the later day mentioned in sub-paragraph (1)(b), subject to sub-paragraph (3).
 - (3) If—
 - (a) there are two or more qualifying offices each of which is one that, immediately before the relevant day, the person—
 - (i) held, and
 - (ii) was required to vacate on a day later than the day on which he attains the age of 70, and
 - (b) the later day mentioned in paragraph (a)(ii) is not the same for each of those offices,
- the person's personal retirement date under this paragraph is the latest (or later) of those later days.

Cases where no requirement to retire from existing office

- 7 (1) Sub-paragraph (2) applies where—
 - (a) immediately before the relevant day, the person held, on an unlimited basis, a qualifying office or two or more qualifying offices, and
 - (b) the relevant day falls after the day on which the person attains the age of 69.
- (2) The person's personal retirement date under this paragraph is the last day of the 12 months beginning with the day after the relevant day.
- (3) For the purposes of this paragraph, a person holds an office on an unlimited basis at a particular time if at that time he is not required to vacate the office at any particular later time.

Interaction between rules under paragraph 5, and rules under Schedule 7 to the 1993 Act, in cases where office held on 30th March 1995

- 8 (1) If—
 - (a) sub-paragraph (2) of paragraph 2 of Schedule 7 to the 1993 Act (transitional provision where person held salaried relevant office on 30th March 1995)

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has effect in relation to retirement from the relevant judicial office in the person's case, and

- (b) the date that, for the purposes of that paragraph, is the person's potential retirement date by reference to his pre-commencement office ("the retirement date preserved in 1995") is the same as, or later than, the special date,

paragraph 5(3) and (4) do not apply.

- (2) If the special date is later than the retirement date preserved in 1995, paragraph 2(2) (b) of Schedule 7 to the 1993 Act does not have effect in relation to the relevant judicial office in the person's case.

- (3) Accordingly, in paragraph 1 of Schedule 7 to the 1993 Act, after sub-paragraph (5) insert—

“(6) Paragraph 2(2) has effect subject to paragraph 8(2) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2007 (certain cases where the post-commencement office is that of judge, or other member, of the First-tier Tribunal or the Upper Tribunal).”

Eligibility for appointment after having attained age of 70

- 9 (1) Sub-paragraph (3) applies in respect of a person on each day that—
- (a) is, or is later than, the day on which the person attains the age of 70,
 - (b) is a day on which the person holds a qualifying office, and
 - (c) is earlier than the day on which the person is required to vacate the qualifying office.
- (2) Sub-paragraph (3) also applies in respect of a person on each day that—
- (a) is, or is later than, the day on which the person attains the age of 70, and
 - (b) is a day on which the person holds, on an unlimited basis, a qualifying office.
- (3) Where this sub-paragraph applies in respect of a person on a day, the fact that the person has attained the age of 70 shall not (by itself) render him ineligible for appointment (or re-appointment) on that day to a relevant judicial office.
- (4) For the purposes of this paragraph, a person holds an office on an unlimited basis at a particular time if at that time he is not required to vacate the office at any particular later time.

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,

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- (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.
- (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—

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- (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,
 - (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

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- (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).

PART 4

AMENDMENTS TO THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993

- 14 The Judicial Pensions and Retirement Act 1993 (c. 8) is amended as follows.
- 15 (1) Section 1 (application of Part 1: judicial pensions) is amended as follows.
- (2) In subsection (1) (persons to whom Part 1 of the 1993 Act applies), after paragraph (d) insert “and
 - (e) to any person appointed to a qualifying judicial office in circumstances falling within subsection (4A) below;”.
 - (3) In subsection (1), after “but this subsection is subject to the following provisions of this Act” insert “ and to Part 3 of Schedule 9 to the Tribunals, Courts and Enforcement Act 2007 (transitional arrangements for pensions of certain judges and other members of the First-tier Tribunal and Upper Tribunal) ”.
 - (4) After subsection (4) insert—
 - “(4A) The circumstances of a person's appointment to a qualifying judicial office (“the subsequent office”) fall within this subsection if—

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- (a) the person, immediately before being appointed to the subsequent office, holds an office within subsection (4B) below (“the replacement tribunal office”);
 - (b) the person held the replacement tribunal office on a salaried basis from when he became its holder until immediately before being appointed to the subsequent office; and
 - (c) the person, before becoming the holder of the replacement tribunal office, had never held qualifying judicial office.
- (4B) The offices within this subsection are—
- (a) the office of judge of the First-tier Tribunal by virtue of being a transferred-in judge of the First-tier Tribunal,
 - (b) the office of other member of the First-tier Tribunal by virtue of being a transferred-in other member of the First-tier Tribunal,
 - (c) the office of judge of the Upper Tribunal by virtue of being a transferred-in judge of the Upper Tribunal, and
 - (d) the office of other member of the Upper Tribunal by virtue of being a transferred-in other member of the Upper Tribunal.”
- 16 In section 9(4) (contribution towards cost of surviving spouse's, surviving civil partner's and surviving children's pension), for “or (d) above,” substitute “, (d) or (e) above or in the case of persons to whom this Part applies by virtue of paragraph 11(4) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2007, ”.
- 17 (1) In section 12(1) (transfer of accrued benefits under judicial pension schemes in certain cases where person held qualifying judicial office before 31st March 1995)—
- (a) for “or (d)” substitute “, (d) or (e) ”,
 - (b) after “of section 1(1) above” insert “ or by virtue of paragraph 11(4) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2007 ”, and
 - (c) omit paragraph (b) (which is superseded by the new section 12B inserted by this Part of this Schedule).
- (2) In the sidenote to section 12, for the words after “Transfer of rights” substitute “ under judicial pension schemes ”.
- 18 After section 12 insert—

“12A Transfer of rights under other public service pension schemes

- (1) Where this Part—
- (a) begins, on or after the day on which this section comes into force, to apply to a person by virtue of section 1(1)(d) above, or
 - (b) begins to apply to a person—
 - (i) by virtue of section 1(1)(e) above, or
 - (ii) by virtue of paragraph 11(4) of Schedule 9 to the Tribunals, Courts and Enforcement Act 2007,
 any relevant public service pension rights of his shall be transferred to the scheme constituted by this Part.
- (2) Where a person's rights under a public service pension scheme are transferred under subsection (1) above—
- (a) that scheme shall no longer have effect in relation to him, and

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- (b) no pension or lump sum under the scheme shall be paid to or in respect of him.
- (3) Regulations may make provision—
 - (a) for calculating, whether by actuarial assessment or otherwise, the amount or value of the rights transferred under subsection (1) above, and
 - (b) prescribing the manner in which those rights are to be given effect under this Part.
- (4) Without prejudice to the generality of paragraph (b) of subsection (3) above, regulations under that paragraph may provide for rights transferred under subsection (1) above to be given effect by crediting the person in question with such service, on or after the day on which this Part first applies to the person, as may be prescribed.
- (5) For the purposes of this section, a persons's “relevant public service pension rights” are the person's accrued rights to benefit under any public service pension scheme, but this is subject to subsections (6) to (8) below.
- (6) A person's rights under a public service pension scheme are not “relevant public service pension rights” if the scheme is a judicial pension scheme other than—
 - (a) the principal civil service pension scheme, or
 - (b) the principal civil service pension scheme for the civil service of Northern Ireland.
- (7) A person's rights—
 - (a) under the principal civil service pension scheme, or
 - (b) under the principal civil service pension scheme for the civil service of Northern Ireland,are not “relevant public service pension rights” if they are transferred under section 12 above.
- (8) A person's rights under a public service pension scheme are not “relevant public service pension rights” unless at least some of his service which was subject to the scheme was qualifying tribunal service and, in that event, all of his rights under the scheme shall be regarded as relevant public service pension rights.
- (9) In this section—
 - “prescribe” means prescribe in regulations;
 - “public service pension scheme” means any public service pension scheme, as defined in—
 - (a) section 1 of the Pension Schemes Act 1993, or
 - (b) section 1 of the Pension Schemes (Northern Ireland) Act 1993;
 - “qualifying tribunal service” means—
 - (a) service as, or as a member of, a tribunal specified in a list in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 that has effect for the purposes of section 30 of that Act, or
 - (b) service as an authorised decision-maker for a tribunal, within the meaning given by section 31(4) of that Act;

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“regulations” means regulations made by the Lord Chancellor with the concurrence of the Treasury.

12B Rate of pension etc. where rights transferred under section 12 or 12A

Entitlement to, and the rate or amount of, any judicial pension or derivative benefit payable under this Part to or in respect of a person whose rights are transferred under section 12 or 12A above shall be determined by reference to—

- (a) any rights of his that are transferred under section 12 above,
- (b) any rights of his that are transferred under section 12A above, and
- (c) his service in qualifying judicial office on or after the day on which this Part first applies to him.”

19 In section 23 (which provides that Schedule 2 does not apply to transfers under section 12), after “section 12” insert “ or 12A ”.

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