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**1977 No. 2102**

**PENSIONS**

**The Judicial Pensions (Preservation of Benefits) (No. 2)  
Order 1977**

*Made* - - - - - *8th December 1977*

*Coming into Operation*                      *1st February 1978*

The Lord Chancellor, in exercise of the powers conferred on him by section 65 of the Social Security Act 1973(a), and Article 61(1) of the Social Security Pensions (Northern Ireland) Order 1975(b), as the appropriate authority designated for that purpose by the Minister for the Civil Service in accordance with the said provisions, hereby makes the following Order:—

INTRODUCTORY

*Citation and commencement*

**1.** This Order may be cited as the Judicial Pensions (Preservation of Benefits) (No. 2) Order 1977 and shall come into operation on 1st February 1978.

*Interpretation*

**2.**—(1) In this Order, unless the context otherwise requires—

“the Act of 1973” means the Administration of Justice Act 1973(c);

“listed office” means an office listed in the Schedule to this Order;

“normal pension age” means the earliest age at which, if his service had continued, an office holder would have become entitled to a pension under the Schedule;

“office holder” means a person who is or has been the holder of any listed office;

“relevant service” has the same meaning as in paragraph 3 of the Schedule;

“the Schedule” means Schedule 4 to the Act of 1973;

“Schedule rate” means a rate of pension arrived at—

(i) in the case of an office holder who would have completed 15 years or more of relevant service on or before attaining the age of 70 if his service had continued, in accordance with paragraph 2(1) of the Schedule;

(ii) in any other case, in accordance with paragraph 2(2) of the Schedule;

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(a) 1973 c. 38.

(b) S.I. 1975/1503 (N.I. 15).

(c) 1973 c. 15.

any reference to any enactment shall be construed as a reference to that enactment as amended, extended or applied by any other enactment, including this Order.

(2) The Interpretation Act 1889(a) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

#### GENERAL

##### *Office holders to whom Order applies*

3. This Order shall have effect in relation to any office holder who ceases to hold office on or after 1st February 1978.

##### *Ceasing to hold office*

4.—(1) An office holder does not cease to hold office for the purposes of this Order if, after ceasing to hold a listed office but before reaching normal pension age, he starts to hold another office service in which is to be or may be reckoned on any basis together with service in the earlier office for the purposes of superannuation benefits under any enactment.

(2) For the purposes of paragraph (1) it is immaterial—

- (a) whether the office holder has served at any time in any other office;
- (b) whether the earlier and the later offices are the same;
- (c) whether any election available in respect of the office holder has been made; or
- (d) whether the superannuation benefits payable under the enactment relating to one office would, in the circumstances of the case, be unaffected by adding the other service into the reckoning.

#### PRESERVED BENEFITS

##### *Office holder's pension*

5.—(1) Subject to the following provisions of this Order, an office holder who has completed five years of relevant service but who ceased to hold office before normal pension age shall be entitled to a pension under the Schedule when he reaches that age or the age of 60 whichever is the later.

(2) Where entitlement to a pension arises by virtue of paragraph (1) the annual rate at which that pension shall be payable shall bear to the appropriate Schedule rate the same proportion as the number of years of relevant service bears to the number of completed years which the office holder would have served if his service had continued to normal pension age.

##### *Lump sum and widow's and children's pension*

6. Sections 2 (other than subsections (2)(b) and (3)), 3 to 8 and 15 to 17 of the Administration of Justice (Pensions) Act 1950(b) (lump sums and widows' and children's pensions) shall apply in relation to an office holder who becomes entitled to a pension by virtue of this Order or who dies before becoming so entitled but would have become so entitled had he survived, as they apply in relation to an office holder who becomes entitled to a pension on retirement at normal pension age or who dies in service.

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(a) 1889 c. 63.

(b) 14 & 15 Geo. 6, c. 11.

## SUPPLEMENTARY

*Election in respect of two or more periods of service*

7.—(1) Where an office holder who has served in more than one judicial office has ceased to hold office (or, but for Article 4(1), would have ceased to hold office) then—

- (a) if his last period of service is service in a listed office, and
- (b) if he would have been entitled on his retirement to elect that the superannuation benefits payable to or in respect of him should be determined under an enactment relating to the payment of superannuation benefits to or in respect of persons who have served in more than one office,

he shall, for the purposes of that enactment, have the same right of election, and that right may be exercised within an equivalent period, as if he had retired from a listed office at an age at which an election under that enactment would have been available to him.

(2) Where an election is made in reliance upon this Article—

- (a) Article 5(1) shall not apply, and
- (b) the Judicial Pensions (Preservation of Benefits) Order 1977(a) shall apply to and in respect of the office holder—
  - (i) as if the Schedule to that Order contained a reference to each of the listed offices in which he has served, and
  - (ii) as if for the expression in Article 5 of that Order “normal pension age” there were substituted a reference to the earliest age at which that office holder might have become eligible for or entitled to receive superannuation benefits following an election by him under an enactment referred to in paragraph (1)(b) of this Article.

(3) Any election made in reliance upon this Article by a person who had not ceased to hold office shall be of no effect.

*Provisions about early retirement*

8. For the purposes of this Order there is to be disregarded the provision in the Schedule as to early retirement on grounds of permanent infirmity but this Order is without prejudice to that provision.

*Inalienability*

9. Any assignment of or charge on, and any agreement to assign or charge, any pension or lump sum which is to be or may be granted by virtue of this Order shall (unless made by an office holder in favour of his widow or dependant) be void.

*Revocation of Order*

10. The Pensions of the Higher Judiciary (Preservation of Entitlement) Order 1975(b) is hereby revoked.

Dated 8th December 1977.

*Elwyn-Jones, C.*

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(a) S.I. 1977/717 (1977 I, p. 2117).

(b) S.I. 1975/740 (1975 II, p. 2756).

Article 2(1)

## SCHEDULE

## LISTED OFFICE

Lord of Appeal in Ordinary

Judge of the Supreme Court in England and Wales other than the Lord Chancellor

Judge of the Supreme Court in Northern Ireland.

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## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order replaces the Pensions of the Higher Judiciary (Preservation of Entitlement) Order 1975 (Articles 5 and 10), and makes further modifications to the pension Scheme for the higher judiciary in the Schedule to the Order. Provision is made (Article 6) for derivative benefits (lump sum and widow's and children's pensions) to be preserved for the benefit of an office holder who ceases to hold office before becoming entitled to a pension under the Administration of Justice Act 1973. Article 7 makes provision for the payment of superannuation benefits in the case of an office holder who has held one or more offices before his appointment to the higher judiciary, and who then ceases to hold office before becoming entitled to a pension under the Act of 1973. The Article enables the office holder to elect to have his pension determined under the Judicial Pensions (Preservation of Benefits) Order 1977 as if that Order related to all the service of the office holder, including his service in the higher judiciary.

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