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STATUTORY INSTRUMENTS

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**2017 No. 522**

**The Judicial Pensions (Fee-Paid Judges) Regulations 2017**

PART 11

TRANSFERS

CHAPTER 1

GENERAL

**Interpretation**

**70.**—(1) In this Part—

“authorised insurer” means—

- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000<sup>(1)</sup> to effect or carry out contracts of long-term insurance (within the meaning of article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(2)</sup>), or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule<sup>(3)</sup>) to effect or carry out contracts of long-term insurance;

“last day of reckonable service” has the meaning given in regulation 72;

“market level adjustment” has the meaning given in regulation 78;

“normal pension age” means the earliest age at which, if a person’s qualifying judicial service had continued until retirement at that age, a member might have been entitled to receive a pension under the principal scheme, otherwise than by reason of meeting the ill-health certification condition;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993<sup>(4)</sup> or, in relation to Northern Ireland, section 1 of the Pension Schemes (Northern Ireland) Act 1993<sup>(5)</sup>;

“the option” has the meaning given by regulation 74(1);

“P” means a member;

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 or, in relation to Northern Ireland, section 1 of Pension Schemes (Northern Ireland) Act 1993;

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(1) 2000 c.8. Part 4A was substituted for Part 4 by section 1 of the Financial Services Act 2012 (c.21).

(2) S.I. 2001/544, to which there are amendments not relevant to these Regulations.

(3) Paragraph 15 of Schedule 3 was amended by S.I. 2003/2066; 2007/3253; 2012/1906; 2013/1881; 2015/575. Paragraph 12 was amended by S.I. 2007/126; 2007/3253; 2012/1906.

(4) 1993 (c. 48). Section 1 was amended by section 239 of the Pensions Act 2004 (c.35); paragraph 23(1) of Schedule 20, and Part 3(2) of Schedule 27 to the Finance Act 2007 (c.11); S.I. 1999/1820 and S.I. 2007/3014.

(5) 1993 (c.49). Section 1 was amended by S.I. 1999/3147 (N.I.11); S.R. 2000/133.

“relevant date”—

- (a) when used in Chapter 2, has the meaning given by regulation 73;
- (b) when used in Chapter 3, has the meaning given by regulation 83;

“relevant schemes” means the principal scheme, the FPJAYS and the JASAPS.

(2) In this Part, references to numbered Tables are to the Tables in Schedule 2 to the Judicial Pensions (Transfer of Accrued Benefits) Regulations 1995(6).

(3) The definition of “authorised insurer” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section;
- (c) Schedule 2 to that Act(7).

### **Disapplication of other provisions about transfers**

71. Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 (transfer rights: general)(8) and Chapter 1 of Part 4ZA of the Pension Schemes (Northern Ireland) Act 1993 (transfer rights: general)(9) do not apply in relation to the relevant schemes.

## CHAPTER 2

### TRANSFERS OUT

#### **Transfers out**

72.—(1) Where the conditions set out in paragraph (2) are met, regulations 73 to 82 apply to P—

- (a) to or in respect of whom benefits are payable under one or more of the relevant schemes; and
- (b) the last day which counts towards P’s reckonable service (“last day of reckonable service”) or the last day on which P held an eligible fee-paid judicial office is on or after the commencement day.

(2) The conditions are that—

- (a) P has not retired;
- (b) on P’s last day of reckonable service—
  - (i) P has accrued rights to benefits under the principal scheme; or
  - (ii) P would have such rights if P’s qualifying judicial service had also ended on that date, and
- (c) either—
  - (i) P’s age on 6th February 2013 was more than one year under normal pension age, and P exercises the option within twelve months of the commencement day; or
  - (ii) P’s age on the date P exercises the option is at least one year under normal pension age.

(6) [S.I. 1995/637](#). The tables in Schedule 12 to the Regulations were amended by [S.I. 2005/3325](#).

(7) Schedule 2 was amended by paragraph 1 of Schedule 2 to the Dormant Bank and Building Society Accounts Act 2008 (c.31).

(8) Part 4ZA was inserted by paragraph 8 of Schedule 4 to the Pension Schemes Act 2015 (c.8).

(9) Chapter 4 of Part 4 of the Pension Schemes (Northern Ireland) Act 1993 was renumbered as Chapter 1 of Part 4 ZA of that Act by paragraph 50 of Schedule 4 to the Pension Schemes Act 2015.

### **Qualifying member's right to a transfer payment**

**73.**—(1) On P's last day of reckonable service, P acquires a right to the cash equivalent at the relevant date of any benefits which have accrued to, or in respect of P, under the relevant schemes.

(2) In this Chapter "the relevant date" means the date of any application which P has made under regulation 80 and which has not been cancelled.

### **Method of taking cash benefit**

**74.**—(1) P may only exercise the right in regulation 73(1) by exercising the option conferred by this paragraph ("the option").

(2) The option is that of requiring the Treasury to use the cash equivalent in whichever of the following ways P chooses—

- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
  - (i) whose trustees or managers are able and willing to accept the transfer; and
  - (ii) which satisfies the requirements in regulation 75;
- (b) for acquiring rights allowed under the rules of a personal pension scheme—
  - (i) whose trustees or managers are able and willing to accept the transfer; and
  - (ii) which satisfies the requirements in regulation 75;
- (c) for purchasing one or more annuities satisfying the requirements in regulation 75 from one or more authorised insurers—
  - (i) chosen by P, and
  - (ii) willing to accept payment on P's account from the Treasury;
- (d) for subscribing to other pension arrangements which satisfy the requirements in regulation 75.

(3) P may exercise the option in different ways in relation to different portions of P's cash equivalent.

(4) If P exercises the option P must do so in relation to the whole of P's cash equivalent.

(5) In this regulation, "transfer credits" has the meaning given by section 181(1) of the Pension Schemes Act 1993, or in relation to Northern Ireland, section 176(1) of the Pension Schemes (Northern Ireland) Act 1993<sup>(10)</sup>.

### **Requirements to be satisfied by schemes**

**75.** The requirements to be satisfied by an occupational pension scheme, personal pension scheme, annuity or other pension arrangement referred to in regulation 74(2) are that the scheme, annuity or arrangement is—

- (a) a registered pension scheme, or
- (b) a pension arrangement that is a qualifying recognised overseas pensions scheme for the purposes of Part 4 (pension schemes etc) of the Finance Act 2004.

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<sup>(10)</sup> Sections 181(1) of the Pension Schemes Act 1993 and 176(1) of the Pension Schemes (Northern Ireland) Act 1993 have been amended, but the amendments are not relevant to these Regulations.

### Calculation of cash equivalents

76.—(1) The cash equivalent of accrued benefits is to be calculated in accordance with the formula—

(a)  $MLA \times (p \times PF + I \times L + w \times SF - (2 \times g78 + g88) \times GMP)$  where P is married or a civil partner at the date of leaving the relevant schemes; or

(b)  $MLA \times (p \times PF + I \times L + (g78 + 2 \times g88) \times SF - (2 \times g78 + g88) \times GMP)$  where P is male and neither married nor a civil partner at the date of leaving the relevant schemes;

(c)  $MLA \times (p \times PF + I \times L + g88 \times SF - (2 \times g78 + g88) \times GMP)$  where P is female and neither married nor a civil partner at the date of leaving the relevant schemes.

(2) For the purpose of the calculations in paragraph (1)—

- (a) MLA is the market level adjustment;
- (b) p is the accrued annual pension to which P would be entitled under these Regulations, together with pensions increases under the Pensions (Increase) Acts 1971(11) and 1974(12) and the Pensions (Increase) Act (Northern Ireland) 1971(13) between the date of leaving the relevant schemes and the relevant date;
- (c) PF is the pension factor set out in Table 3 applicable to P's age last birthday as at the relevant date;
- (d) I is the accrued lump sum under the relevant schemes of P (less any deductions in respect of unpaid contributions payable under Part 9 of these Regulations, or any other sum payable under these Regulations), together with pensions increases under the Pensions (Increase) Acts 1971 and 1974 and the Pensions (Increase) Act (Northern Ireland) 1971 between the date of leaving the relevant schemes and the relevant date;
- (e) L is the lump sum factor set out in Table 3 applicable to P's age last birthday as at the relevant date;
- (f) w is the accrued annual surviving adult's pension which would apply under the relevant schemes if P were dead, together with pensions increases under the Pensions (Increase) Acts 1971 and 1974 and the Pensions (Increase) Act (Northern Ireland) 1971 between the date of leaving the relevant schemes and the relevant date;
- (g) SF is the spouse's or civil partner's factor applicable to P's age last birthday as at the relevant date set out under the heading—
  - (i) WM in Table 3 where P is married or a civil partner at the date of leaving the relevant schemes;
  - (ii) GSM in Table 3 where P is male and neither married nor a civil partner at the date of leaving the relevant schemes;
  - (iii) GSF in Table 3 where P is female and neither married nor a civil partner at the date of leaving the relevant schemes;
- (h) g78 is the guaranteed minimum pension per annum accrued prior to 6th April 1988, together with any increases under section 148 of the Social Security Administration Act 1992(14) or, in relation to Northern Ireland, section 130 of the Social Security

(11) 1971 c.56.

(12) 1974 c.9.

(13) 1971 c.35 (N.I.).

(14) 1992 c.5. Section 148 was amended by paragraph 27 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and section 37 of the Child Support, Pensions and Social Security Act 2000 (c.19).

Administration (Northern Ireland) Act 1992<sup>(15)</sup> in the period between leaving the relevant scheme and the relevant date;

- (i) g88 is the guaranteed minimum pension per annum accrued on or after 6th April 1988, together with any increases under section 148 of the Social Security Administration Act 1992 or, in relation to Northern Ireland, section 130 of the Social Security Administration (Northern Ireland) Act 1992 in the period between leaving the relevant scheme and the relevant date;
- (j) GMP is the guaranteed minimum pension factor applicable to P's age last birthday as at the relevant date set out in the column under the heading—
  - (i) GM in Table 5 where P is male; and
  - (ii) GF in Table 5 where P is female.

### **Delayed payments**

77. When the transfer payment is, without good reason, not made within 6 months of the relevant date, the transfer payment is the greater of—

- (a) the value of the cash equivalent as at the relevant date increased with interest on a daily basis over the period from the relevant date to the date of payment at the rate set out in regulation 10(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(16)</sup> or, in relation to Northern Ireland, regulation 10(2) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(17)</sup>, as amended from time to time; and
- (b) the value of the cash equivalent recalculated as if the date of payment had been the relevant date.

### **Calculation of market level adjustment**

78.—(1) For the purposes of regulations 76 and 88 the market level adjustment is the figure calculated in accordance with the formula—

$$A \times B + (1 - A) \times C$$

rounded up to four decimal places, where—

- (a) A is the decimal part of the yield on index-linked stocks;
- (b) B is the adjustment factor set out in Table 1 in the row relating to P's age last birthday as at the relevant date and in the column headed by the full percentage figure immediately above the percentage figure for the yield on index-linked stocks; and
- (c) C is the adjustment factor set out in Table 1 which is in the row relating to P's age last birthday as at the relevant date and which appears in the column headed by the full percentage figure which is equal to or immediately below the percentage figure for the yield on index linked stocks.

(2) In this regulation “the yield on index-linked stocks” means the real yield to redemption on the Financial Times-Actuaries Index of index-linked Government securities with 5 or more years to redemption assuming 5% inflation, in respect of the first working day of the month in which the relevant date falls as published in the Financial Times.

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<sup>(15)</sup> 1992 c.8. Section 130 was amended by S.I. 1995/3213 (N.I.22).

<sup>(16)</sup> S.I. 1996/1847.

<sup>(17)</sup> S.I. 1996/619.

**Time within which option must be exercised**

- 79.**—(1) P may only exercise the option on or before the last option date.
- (2) The last option date is the later of—
- (a) the date which falls one year before the date on which P reaches normal pension age;
  - (b) the last day of the period of 6 months beginning with the day after P’s last day of reckonable service.
- (3) P loses the right to any cash equivalent under this Chapter if—
- (a) P’s pension under these Regulations becomes payable before P reaches normal pension age; or
  - (b) P fails to exercise the option on or before the last option date.

**Option to be exercised in writing**

- 80.**—(1) P may only exercise the option by making an application in writing to the administrators for submission to the Treasury.
- (2) If the Treasury receive an application under this regulation, the Treasury must do what is needed to comply with the choice made by P in exercising the option—
- (a) within 12 months of the date on which it receives P’s application, or
  - (b) no later than the date on which P attains normal pension age,
- whichever is earlier.

**Options: discharge of responsibility**

- 81.** In any case where—
- (a) P has exercised the option, and
  - (b) the Treasury have done what is needed to comply with the choice made by P in exercising the option,

the Treasury are discharged from any obligation to provide benefits to which the cash equivalent related.

**Cancellation of exercise of option**

- 82.**—(1) P may cancel the exercise of the option by giving the Treasury notice in writing that P no longer wishes it to be exercised.
- (2) A notice given under paragraph (1) does not have effect if it is given to the Treasury at a time when, in order to comply with the choice made by P in exercising the option, the Treasury have entered into an agreement with a third party to use the whole or part of P’s cash equivalent in a way specified in regulation 74(2).
- (3) The cancellation of the exercise of an option by P under paragraph (1) does not affect P’s right to make another application under regulation 80.

CHAPTER 3  
TRANSFERS IN

**Application of Chapter and interpretation**

- 83.**—(1) This Chapter applies in relation to P if—

- (a) P has accrued rights under a registered pension scheme, and
  - (b) P's age on 6th February 2013 was more than one year under normal pension age.
- (2) In this Chapter—
- “additional pension” has the meaning given in regulation 88;
  - “derivative benefit” has the meaning given in regulation 87;
  - “the relevant date” means the date on which a transfer payment is received by the administrators;
  - “transfer payment” has the meaning given by regulation 84.

### **Application to accept payment into scheme**

- 84.**—(1) P may ask the administrators to accept a payment into the principal scheme (“a transfer payment”) representing the cash equivalent of P's accrued rights in any registered pension scheme.
- (2) The administrators may refuse to accept the payment or any part of it.
  - (3) A request under paragraph (1) must be made—
    - (a) in writing;
    - (b) before P has reached normal pension age; and
    - (c) not less than one year before P becomes entitled to a pension under these Regulations on retirement from P's eligible fee-paid judicial office.

### **Cancellation of request**

- 85.**—(1) P may, by notice in writing given to the administrators, cancel a request made under regulation 84 at any time before it has been accepted.
- (2) If P cancels a request, P may make another.

### **Manner of accepting payment**

**86.** Payments into the principal scheme must be made directly from the trustees or administrators of the registered pension scheme and in no other manner.

### **Benefits to be provided**

- 87.**—(1) The benefits to be provided to P in respect of a transfer payment into the principal scheme are—
- (a) an annual pension payable to P from the same date and at the same intervals as P's pension under the principal scheme; and
  - (b) derivative benefits payable at the same intervals and to the same persons as the benefits under the principal scheme are payable.
- (2) In this Chapter, “derivative benefit” means—
- (a) a lump sum under regulation 25,
  - (b) a surviving adult's pension under regulation 36, and
  - (c) a children's pension under regulation 42.

### Calculation of benefits in respect of transfer payments

**88.**—(1) This regulation applies for the purposes of calculating the annual pension and derivative benefits to be provided to P to reflect a transfer payment into the principal scheme (“the additional pension”).

(2) In this regulation—

- (a) the guaranteed minimum pension used in the calculations is that provided by the Department for Work and Pensions, or, in relation to Northern Ireland, the Department for Communities which corresponds to the application of revaluation orders under section 148 of the Social Security Administration Act 1992<sup>(18)</sup> or section 130 of the Social Security Administration (Northern Ireland) Act 1992<sup>(19)</sup>;
- (b) the transfer payment is to include the amount of any limited revaluation premium (as defined in section 55 of the Pension Schemes Act 1993<sup>(20)</sup> and section 51 of the Pension Schemes (Northern Ireland) Act 1993<sup>(21)</sup>) paid by a previous scheme (as those provisions had effect before they were repealed).

(3) The additional pension in respect of a transfer payment is to be calculated in accordance with the formula—

$$(a) \quad \left( \frac{TP}{MLA} + (2 \times g78 + g88) \times GMP \right) \div (PF + 2.25 \times L + 0.5 \times SF1)$$

where P  
is married or a civil partner at the relevant date; or

$$\left( \frac{TP}{MLA} - (g78 + 2 \times g88) \times SF2 + (2 \times g78 + g88) \times GMP \right) \div (PF + 2.25 \times L + 0.5 \times SF1)$$

where  
P is male and neither married nor a civil partner at the relevant date; or

$$(c) \quad \left( \frac{TP}{MLA} - g88 \times SF2 + (2 \times g78 + g88) \times GMP \right) \div (PF + 2.25 \times L + 0.5 \times SF1)$$

where P is female and neither married nor a civil partner at the relevant date.

(4) For the purpose of the calculations in paragraph (3)—

- (a) TP is the transfer payment from the scheme from which P is transferring;
- (b) MLA is the market level adjustment;
- (c) PF is the pension factor set out in Table 5 applicable to P’s age last birthday as at the relevant date;
- (d) L is the lump sum factor set out in Table 5 applicable to P’s age last birthday as at the relevant date;
- (e) SF1 is the spouse’s or civil partner’s factor applicable to P’s age last birthday as at the relevant date set out in the column under the heading—
  - (i) WM in Table 5 where P is married or a civil partner at the relevant date;
  - (ii) WS in Table 5 where P is neither married nor a civil partner at the relevant date;
- (f) SF2 is the spouse’s or civil partner’s factor applicable to P’s age last birthday as at the relevant date set out in the column under the heading—

<sup>(18)</sup> 1992 (c.5). Section 148 was amended by paragraph 27 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and section 37 of the Child Support, Pensions and Social Security Act 2000 (c.19).

<sup>(19)</sup> 1992 (c.8). Section 130 was amended by S.I. 1995/3213 (N.I.22).

<sup>(20)</sup> Section 55 was repealed by paragraph 37 of Schedule 13 to the Pensions Act 2014 (c.19).

<sup>(21)</sup> Section 51 was repealed by paragraph 37 of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c.5).



- (i) GSM in Table 5 where P is male and neither married nor a civil partner at the relevant date;
  - (ii) GSF in Table 5 where P is female and neither married nor a civil partner at the relevant date;
  - (g) g78 is the guaranteed minimum pension per annum accrued prior to 6th April 1988;
  - (h) g88 is the guaranteed minimum pension per annum accrued on or after 6th April 1988;
  - (i) GMP is the guaranteed minimum pension factor applicable to P's age last birthday as at the relevant date set out in the column under the heading—
    - (i) GM in Table 5 where P is male; and
    - (ii) GF in Table 5 where P is female.
- (5) The lump sum payable under regulation 25 in respect of the transfer payment is  $2.25 \times$  the additional pension.
- (6) The surviving adult's pension payable under regulation 36 in respect of the transfer payment is  $0.5 \times$  the additional pension.
- (7) The children's pension payable under regulation 42 in respect of the transfer payment bears the same proportion to the additional pension as the rate of the children's pension payable under that regulation under the principal scheme bears to the rate of the P's pension under that scheme as set out in regulation 43.

### **Refusal to accept**

**89.** Where the additional pension available to be transferred into the scheme is less than twice the aggregate accrued annual rate of the guaranteed minimum pension (if any) of P at the relevant date, the transfer payment must be rejected by the administrators.