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STATUTORY INSTRUMENTS

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**2017 No. 522**

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

**PART 2**

**PRINCIPAL SCHEME MEMBERSHIP**

**Members**

**8.—(1)** A person (“P”) is a member of the principal scheme if P held a fee-paid judicial office at any time in the period beginning with 7th April 2000 and ending with 31st March 2015 and either—

- (a) P did not cease to hold that office before the relevant date;
- (b) P ceased to hold that office before the relevant date and condition A is met; or
- (c) P died before the relevant date without having ceased to hold that office and condition B is met.

(2) Condition A is that—

- (a) P presented a claim under the Part-time Worker (Prevention of Less Favourable Treatment) Regulations 2000<sup>(1)</sup> that P is entitled to a pension by virtue of holding that office (“a relevant claim”) to an employment tribunal or an industrial tribunal, and—
  - (i) the claim was presented before the end of the period of 3 months beginning with the date on which P ceased to hold that office; or
  - (ii) the tribunal has determined, or the appropriate Minister has accepted, that it is just and equitable to extend time for the presentation of the claim; or
- (b) the appropriate Minister has accepted that if P presented a relevant claim, that claim would be in time (taking into account any extension of time).

(3) Condition B is that—

- (a) P’s personal representatives made a claim to an employment tribunal or an industrial tribunal before the end of the period of 3 months beginning with the date on which P died that benefits are payable in respect of P’s death by virtue of P having held that office and that claim has not been rejected before the commencement day, or
- (b) an employment tribunal or an industrial tribunal has determined, or the appropriate Minister has accepted, that P’s personal representatives are entitled to bring a claim that benefits are payable in respect of P’s death by virtue of P having held that office.

(4) Where P ceased to hold a fee-paid judicial office before the relevant date and also died before the relevant date, but—

- (a) P had presented a relevant claim which would have satisfied paragraph (2)(a) before death, Condition A is to be treated as satisfied, or
- (b) P’s personal representatives had made a claim before the end of the period of 3 months beginning with the date on which P ceased to hold that office that benefits are payable in

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<sup>(1)</sup> S.I. 2001/1107.

respect of P's death by virtue of P having held that office, Condition B is to be treated as satisfied.

- (5) P is also a member of the principal scheme if—
- (a) P did not hold a fee-paid judicial office before 1st April 2015;
  - (b) P is a person in whose case section 18(1) of the 2013 Act or section 18(1) of the 2014 Act (restriction of existing pension schemes) does not apply in relation to an existing scheme by virtue of provision made under section 18(5) or (5A)(2) of the 2013 Act or section 18(5) or (6) of the 2014 Act (transitional protection under existing schemes); and
  - (c) within the period of 5 years beginning with the final day of service in respect of which P is entitled to benefits under the existing scheme mentioned in sub-paragraph (b), P is appointed to a fee-paid judicial office.
- (6) In paragraph (5)—
- “the 2013 Act” is the Public Service Pensions Act 2013(3);
  - “the 2014 Act” is the Public Service Pensions Act (Northern Ireland) 2014(4);
  - “existing scheme” has the meaning given by section 18(2) of the 2013 Act and section 18(2) of the 2014 Act.
- (7) For the purposes of this regulation, “the relevant date” is—
- (a) 1st February 2013 where P only held a fee-paid judicial office—
    - (i) whose jurisdiction is exercised exclusively in relation to Northern Ireland,
    - (ii) which is not one of the offices referred to in paragraph 11 of Schedule 2 to the Northern Ireland Act 1998(5);
  - (b) 2nd December 2012 in all other cases.

### **Opted-out members and active members**

- 9.—(1) A member (“P”) is an “opted-out member” of the principal scheme on any day if P—
- (a) has, on or before that day, opted out of the principal scheme under regulation 10; and
  - (b) has not opted back in under regulation 11.
- (2) If P retired before these Regulations came into force and opts out under regulation 10(1)(b), P is treated as always having been an opted-out member.
- (3) P is an “active member” of the principal scheme on any day if—
- (a) P is not an opted-out member;
  - (b) P holds an eligible fee-paid judicial office on that day; and
  - (c) if P had received a fee in P's capacity as a holder of that office in respect of that day, the day would have been a qualifying fee-paid day.

### **Opting out**

- 10.—(1) A member who—
- (a) has not retired, or
  - (b) retired before these Regulations came into force,

(2) Subsection (5A) of section 18 was inserted by section 512 of the Pensions Act 2014.

(3) 2013 c.25.

(4) 2014 c.2 (N.I.).

(5) 1998 c.47. Paragraph 11 was amended by section 82(a) of and Schedule 13 to the Justice (Northern Ireland) Act 2002 (c.26), by paragraph 33 of Schedule 11 to the Constitutional Reform Act 2005 (c.4), and by S.R. 2010/52.

may opt out by sending a notice to the appropriate Minister.

(2) The notice—

(a) must be in the form determined by the appropriate Minister, and

(b) must (unless regulation 9(2) applies) specify the date on which the member wishes to opt out.

(3) Subject to regulation 9(2), the member opts out on the date specified under paragraph (2) or, if earlier, 3 months after the date on which the appropriate Minister receives the notice.

### **Opting back in**

**11.**—(1) A member (“P”) who has opted out and who has not retired may apply to the appropriate Minister, in the form determined by the appropriate Minister, to opt back in.

(2) The application must be accompanied by such evidence relating to P’s health as the appropriate Minister may require.

(3) P must submit to any medical examination as the appropriate Minister may require in connection with the application.

(4) If the appropriate Minister is satisfied that P is in good health, the appropriate Minister must allow the application.

(5) The appropriate Minister must, within the period of 3 months beginning with the date on which the application is received, send a notice to P specifying—

(a) whether the appropriate Minister has allowed the application; and

(b) the date on which the decision was made.

(6) If the appropriate Minister has allowed the application, the member opts back in on the date specified under paragraph (5)(b), or (if earlier), the date three months after the date on which the application was received.