

---

STATUTORY INSTRUMENTS

---

**2017 No. 522**

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

**PART 6**

**DEATH BENEFITS**

**Interpretation**

**35.** In these Regulations—

- (a) “surviving adult”, in relation to a deceased member (“P”), means P’s surviving spouse or surviving civil partner;
- (b) “surviving spouse”, in relation to P, means a person who—
  - (i) was married to P on the date of P’s death, and
  - (ii) if P retired before death, entered into the marriage before P retired;
- (c) “surviving civil partner”, in relation to P, means a person who—
  - (i) was in a civil partnership with P on the date of P’s death, and
  - (ii) if P retired before death, entered into the civil partnership before P retired;
- (d) “surviving adult’s pension” means a pension payable to a surviving adult under this Part.

**Entitlement to a surviving adult’s pension**

**36.**—(1) This regulation applies where a member (“P”) dies (whether before, on or after the commencement day) leaving a surviving adult.

(2) On the pension start day, the surviving adult becomes entitled to the payment for life of a pension.

(3) For the purposes of paragraph (2) the “pension start day” means—

- (a) the day after the day on which P dies; or
- (b) if later, the commencement day.

(4) Where the surviving adult marries or enters into a civil partnership, the Treasury may, at any time, direct that payment of the pension be withheld.

(5) The Treasury may, at any time, direct that payment of a pension withheld under paragraph (4) be resumed.

**Annual rate of surviving adult’s pension**

**37.**—(1) The annual rate of a pension to which a person becomes entitled under regulation 36 is equal to one half of the rate of the pension of the deceased member (“P”).

(2) For the purposes of this regulation the rate of P’s pension is determined as follows.

(3) Where P dies on or after the commencement day after having retired, the rate of P’s pension is the annual rate of the pension to which P was entitled under Part 3 on the day on which P died.

(4) Where P dies on or after the commencement day without having retired, the rate of P's pension is the annual rate of the pension to which P would have become entitled under Part 3 on the day after that on which P died if—

- (a) on the day on which P died, P had not died but had instead retired, and
- (b) the ill-health certification condition were met in relation to P.

(5) Where P dies before the commencement day after having retired, the rate of P's pension is the annual rate of the pension to which P would have become entitled under Part 3 on the commencement day if P were still alive on that day.

(6) Where P dies before the commencement day without having retired, the rate of P's pension is the annual rate of the pension to which P would have become entitled under Part 3 on the commencement day if—

- (a) on the day on which P died, P had not died but had instead retired,
- (b) the ill-health certification condition were met in relation to P, and
- (c) P were still alive on the commencement day.

#### **Annual rate of surviving adult's pension: special provision for surviving civil partners**

**38.**—(1) Paragraph (2) applies where—

- (a) the surviving civil partner in relation to a member ("P") becomes entitled to a pension under regulation 36;
- (b) P held a judicial office before, and on, 5th December 2005; and
- (c) P elects in writing to the administrators, within the period of 6 months beginning with the relevant day, that the annual rate of the surviving civil partner's pension under regulation 37 should be calculated as if P first held a judicial office on 5th December 2005.

(2) The rate of P's pension, for the purposes of regulation 37, is to be determined on the basis that P first held a judicial office on 5th December 2005.

(3) In this regulation "the relevant day" means—

- (a) the commencement day, or
- (b) if later, the day on which the civil partnership is entered into.

(4) An election under this regulation is irrevocable.

#### **Payment of a surviving adult's pension**

**39.** A surviving adult's pension is payable at such intervals, not exceeding 3 months, as the Treasury may determine.

#### **Meaning of "eligible child"**

**40.**—(1) In these Regulations, "eligible child", in relation to a deceased member, means a person who meets the age condition or the occupation condition (see regulation 41) and who is—

- (a) a natural child of the deceased member,
- (b) a person who was adopted by the deceased member before the deceased member retired or, where paragraph (2) applies, after the deceased member retired,
- (c) a person who is a child of the deceased member by virtue of a parental order made before the deceased member retired or, where paragraph (2) applies, after the deceased member retired, or
- (d) a step-child of the deceased member.

(2) This paragraph applies where the Treasury have issued a direction to the effect that they are satisfied that—

- (a) the deceased member had, before the deceased member retired, formed the intention of adopting, or applying for a parental order in respect of, the person; and
- (b) immediately before the deceased member retired, the person was wholly or mainly dependent on the deceased member.

(3) In a case where the deceased member died while holding an eligible fee-paid judicial office, the references in paragraphs (1) and (2) to things done before the deceased member's retirement are to be read as references to things done before the deceased member's death.

(4) For the purposes of this regulation a person ("C") is a "natural child" of person ("P") if P is C's genetic father or mother (including anyone who is to be treated as C's father, mother or parent under Part 2 of the Human Fertilisation and Embryology Act 2008<sup>(1)</sup> ("the 2008 Act"), but not including anyone who is not to be so treated under that Part of that Act).

(5) For the purposes of this regulation a person ("C") is a "step-child" of a person ("P") if C—

- (a) is not a natural child of P, adopted by P or a child of P by virtue of a parental order, and
- (b) meets any of the following conditions.

(6) The first condition is that C—

- (a) is a natural child of a person who was at any time the spouse or civil partner of P, and
- (b) at the time the marriage or civil partnership was entered into, had been born or conceived.

(7) The second condition is that C—

- (a) was adopted by a person who was at any time the spouse or civil partner of P; and
- (b) was so adopted—
  - (i) before the time the marriage or civil partnership was entered into, or
  - (ii) after the time the marriage or civil partnership was entered into in a case where the adoption proceedings were pending at the time of the marriage or civil partnership.

(8) The third condition is that—

- (a) C is, by virtue of a parental order, a child of a person who was at any time the spouse or civil partner of P; and
- (b) the parental order was made—
  - (i) before the time the marriage or civil partnership was entered into, or
  - (ii) after the time the marriage or civil partnership was entered into in a case where the parental order proceedings were pending at the time of the marriage or civil partnership.

(9) In this regulation a "parental order" means an order made under section 54 of the 2008 Act<sup>(2)</sup>.

### **Meaning of "eligible child": the age condition and the occupation condition**

**41.**—(1) The age condition is that the person has not reached the age of 16.

(2) The occupation condition is that the person ("C") has, at all times since reaching the age of 16, been—

- (a) in full-time education, or
- (b) undergoing eligible training for a trade, profession or vocation.

---

(1) [2008 c.22](#).

(2) Section 54 was amended by paragraph 206 of Schedule 11 to the Crime and Courts Act [2013 \(c.22\)](#).

- (3) For the purposes of this regulation training is “eligible” if—
- (a) it is full-time;
  - (b) its duration is at least 2 years; and
  - (c) the rate of pay (if any) receivable by C, or payable by the employer in respect of C, in relation to the training does not exceed the specified maximum.
- (4) In this regulation—
- “pay” means any salary, fees, wages, perquisites, profits or gains and includes the value of any free board, lodging or clothing;
- “the specified maximum” at any time means an annual rate equal to that at which a pension of £250 a year—
- (a) first awarded under the Principal Civil Service Pension Scheme on 1st June 1972; and
  - (b) increased from time to time by the amount of increase that would be applied under the Pensions (Increase) Act 1971(3) to such a pension,
- would (as so increased) be payable at that time.
- (5) Where a premium has been paid in respect of C’s training, all emoluments receivable by C, or payable by the employer in respect of C, are to be taken, for the purposes of paragraph (3)(c), as receivable or payable by way of return of the premium, unless and to the extent that the amount of those emoluments exceeds the amount of the premium.
- (6) Where the Treasury are satisfied that C’s full-time education ought not be regarded as completed, the Treasury may direct that any period during which a person is not in full-time education and is not undergoing eligible training for a trade, profession or vocation, is to be disregarded for the purposes of this regulation.

#### **Entitlement to an eligible child’s pension**

- 42.**—(1) This regulation applies if a member (“P”) dies (whether before, on or after the commencement day) leaving one or more eligible children.
- (2) On the pension start day, and until such time as there are no more eligible children, the relevant person becomes entitled to the payment of a pension.
- (3) In this regulation, the “pension start day” means—
- (a) the day after the day on which P dies; or
  - (b) if later, the commencement day.
- (4) In this regulation, “the relevant person” means such person or persons as the Treasury may from time to time direct, and different parts of the pension may be directed to be paid to different persons.

#### **Annual rate of eligible child’s pension**

- 43.**—(1) The annual rate of a pension to which a person becomes entitled under regulation 42, where P dies without leaving a surviving adult, is—
- (a) in relation to any period during which there is only one eligible child, an annual rate equal to one third of the rate of P’s pension;
  - (b) in relation to any period during which there are two or more eligible children, an annual rate equal to two thirds of the rate of P’s pension.

(2) The annual rate of a pension to which a person becomes entitled under regulation 42, where P dies leaving a surviving adult, is—

- (a) in relation to any period during which there is only one eligible child and the surviving adult is still alive, an annual rate equal to one quarter of the rate of P's pension;
- (b) in relation to any period during which there is only one eligible child and the surviving adult is dead, an annual rate equal to one third of the rate of P's pension;
- (c) in relation to any period during which there are two or more eligible children and the surviving adult is still alive, an annual rate equal to one half of the rate of P's pension;
- (d) in relation to any period during which there are two or more eligible children and the surviving adult is dead, an annual rate equal to two thirds of the rate of P's pension.

(3) The Treasury may direct, where the deceased member leaves a surviving adult who marries or enters into a civil partnership, that the annual rate of the pension is to be calculated under paragraph (1) as if there were no surviving adult in respect of any period during which the surviving adult has a spouse or a civil partner.

(4) The Treasury may, at any time, cancel a direction given under paragraph (3).

(5) For the purposes of this regulation the "rate of P's pension" is determined as follows.

(6) Where P dies on or after the commencement day after having retired, the rate of P's pension is the annual rate of the pension to which P was entitled under Part 3 on the day on which P died.

(7) Where P dies on or after the commencement day without having retired, the rate of P's pension is the annual rate of the pension to which P would have become entitled under Part 3 on the day after that on which P died if—

- (a) on the day on which P died, P had not died but had instead retired, and
- (b) the ill-health certification condition were met in relation to P.

(8) Where P dies before the commencement day after having retired, the rate of P's pension is the annual rate of the pension to which P would have become entitled under Part 3 on the commencement day if P were still alive on that day.

(9) Where P dies before the commencement day without having retired, the rate of P's pension is the annual rate of the pension to which P would have become entitled under Part 3 on the commencement day if—

- (a) on the day on which P died, P had not died but had instead retired,
- (b) the ill-health certification condition were met in relation to P, and
- (c) P had survived until the commencement day.

#### **Payment and application of an eligible child's pension**

**44.**—(1) A pension to which a person is entitled under regulation 42 is payable at such intervals, not exceeding 3 months, as the Treasury may determine.

(2) A person to whom a pension or part of a pension under regulation 42 is paid must apply the pension for the benefit of—

- (a) all eligible children of the deceased member; or
- (b) such eligible children of the deceased member as the Treasury may direct.

#### **Lump sum on death: death in service**

**45.**—(1) Paragraph (2) applies where—

- (a) a member ("P") dies (on or after the commencement day) without having retired; and

- (b) P is (immediately before death) an active member of the principal scheme.
- (2) On the day after that on which P dies, the relevant person becomes entitled to a lump sum.
- (3) The amount of the lump sum to which the relevant person becomes entitled under paragraph (2) is determined under paragraph (5), (7) or (9), whichever applies).
- (4) Paragraph (5) applies where, on P's death, P has reckonable service in only one eligible fee-paid judicial office ("the relevant office").
- (5) The amount of the lump sum is to be determined in accordance with the following formula—

$$S \times 2 \times \frac{M \div N}{JS}$$

where—

- (a) S is the appropriate annual salary of the judicial office held by P immediately before P's death, determined as if P had retired on the date of P's death;
- (b) M is P's qualifying fee-paid service in the relevant office; and
- (c) N is the annual divisor for that office specified in column 2 of the Schedule;
- (d) JS is P's qualifying judicial service after 6th April 2000, expressed in years and any fraction of a year.
- (6) Paragraph (7) applies where—
- (a) on P's death, P has reckonable service in more than one eligible fee-paid judicial office; and
- (b) P did not, at any time before death, hold more than one eligible fee-paid judicial office simultaneously.
- (7) The amount of the lump sum is to be determined in accordance with the following formula—

$$S \times 2 \times \frac{AM \div N}{JS}$$

where—

- (a) S is the appropriate annual salary of the judicial office held by P immediately before P's death, determined as if P had retired on the date of P's death;
- (b) AM is the aggregate length of P's qualifying fee-paid service in eligible fee-paid judicial offices;
- (c) JS is P's qualifying judicial service after 6th April 2000, expressed in years and any fraction of a year.
- (8) Paragraph (9) applies where—
- (a) immediately before death P held more than one eligible fee-paid judicial office ("the relevant offices"), and
- (b) at any time before retirement, P held two or more eligible fee-paid judicial offices simultaneously.
- (9) The amount of the lump sum is determined by taking the following steps.

*Step 1*

Determine the lump sum under paragraph (5) in relation to each relevant office which P held simultaneously, as if that office were the only eligible fee-paid relevant office held by P.

*Step 2*

Determine the lump sum under paragraph (7) in relation to those relevant offices which P did not hold simultaneously, and for these purposes, in paragraph (7)(a), S is—

- (i) where P held a single eligible fee-paid judicial office immediately before P's death, the appropriate annual salary of that judicial office, determined as if P had retired on the date of P's death;
- (ii) where P held more than one eligible fee-paid judicial office immediately before P's death, the highest appropriate annual salary of those offices, determined as if P had retired on the date of P's death.

*Step 3*

Add together each of the lump sums found under Step 1 and the lump sum found under Step 2.

(10) Paragraph (11) applies where—

- (a) during one or more parts of the period for which P held an eligible fee-paid judicial office ("office A"), P held one or more other eligible fee-paid judicial offices simultaneously, and
- (b) during one or more parts of that period P held no eligible fee-paid judicial office other than office A.

(11) For the purposes of paragraph (9)—

- (a) office A is to be treated as two different relevant offices—
  - (i) the first of which ("the first office") is held for the period (or the aggregate of the periods) mentioned in paragraph (10)(a), and accordingly, is taken into consideration in Step 1 in paragraph (9), and
  - (ii) the second of which ("the second office") is held for the period (or the aggregate of the periods) mentioned in paragraph (10)(b) and, accordingly is taken into consideration in Step 2 in paragraph (9), and
- (b) P's reckonable service in office A is to be apportioned between the first and the second offices in the same proportion as that between the period P held the first office and the period P held the second office.

(12) In this regulation "the relevant person" means—

- (a) the person nominated by P for the purpose of this regulation by notice in writing to the administrators; or
- (b) in default of such nomination, P's personal representatives, on behalf of P's estate.

**Lump sum on death: death after retirement of member with preserved pension**

**46.**—(1) Paragraph (2) applies if—

- (a) a member ("P") dies (on or after the commencement day) having retired (whether before, on or after the commencement day);
- (b) where P retires on or after the commencement day, P is not, on retirement, an opted-out member; and
- (c) if P had not died P would, on reaching normal pension age have become entitled to a pension under regulation 17.

(2) On the day after that on which P dies, P's personal representatives become entitled to a lump sum on behalf of P's estate.

(3) The amount of the lump sum is to be determined in accordance with the following formula—

$$A \times 2.25$$

where A is a notional annual rate of pension determined in accordance with regulation 18 as though P had reached normal pension age on the day P died.

**Lump sum on death: death soon after retirement of member entitled to pension**

47.—(1) Paragraph (2) applies if—

- (a) a member (“P”) dies (on or after the commencement day) having retired (whether before, on or after the commencement day);
- (b) where P retires on or after the commencement day, P is not, on retirement, an opted-out member;
- (c) immediately before death, P was entitled to the payment of a pension under Part 3 (retirement benefits); and
- (d) the total benefits received are less than the minimum benefits amount.

(2) On the day after that on which P dies, P’s personal representatives become entitled on behalf of P’s estate to a lump sum equal to the difference between the total benefits received and the minimum benefits amount.

(3) In this regulation “the total benefits received” means the amount determined in accordance with the following formula—

$$A + B + C - D$$

where—

- (a) A is the interim payments amount (if any) in relation to P;
- (b) B is the amount (if any) paid or payable to P under regulation 50;
- (c) C is the total of the sums paid or payable to P under Part 3 on account of the pension (including any increases under the Pensions (Increase) Act 1971<sup>(4)</sup>), and by way of lump sum, in relation to the period after commencement day;
- (d) D is the amount (if any) paid or payable by P under regulation 51.

(4) In this regulation “the minimum benefits amount” means the amount determined in accordance with the following formula—

$$E \times 5$$

where E is the annual rate of the pension payable to P under Part 3 immediately before P’s death.

(4) 1971 c.56.