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STATUTORY INSTRUMENTS

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**2022 No. 319**

**The Judicial Pensions Regulations 2022**

**PART 12**

**Supplementary**

**CHAPTER 1**

**Dual capacity members**

**Meaning of “dual capacity member”**

- 118.**—(1) A person (P) is a dual capacity member of this scheme if—
- (a) P is a member of this scheme in two or more of the following capacities—
    - (i) an active member;
    - (ii) a deferred member;
    - (iii) a pensioner member;
  - (b) P is both a pension credit member of this scheme and a member of this scheme in one or more of the following capacities—
    - (i) an active member;
    - (ii) a deferred member;
    - (iii) a pensioner member;
  - (c) P is a member of this scheme in relation to two or more continuous periods of pensionable service; or
  - (d) P is a pension credit member of this scheme entitled to two or more pension credits.
- (2) For the purpose of paragraph (1)(a) or (b)—
- (a) in determining whether a person who is an active member is also a pensioner member, the fact that the person is an active member and the person’s rights in that capacity are to be disregarded; and
  - (b) in determining whether a person who is an active member or pensioner member is also a deferred member, the fact that the person is an active member or pensioner member and the person’s rights in that capacity are to be disregarded.

**Payment of benefits to or in respect of a dual capacity member**

- 119.**—(1) If a person is a dual capacity member of this scheme—
- (a) the benefits that are payable to or in respect of the member in each of the member’s capacities are treated separately for the purposes of these Regulations; and
  - (b) the amounts payable to or in respect of the member in each of the member’s capacities are determined accordingly.

(2) In relation to payment of retirement benefits, paragraph (1) does not affect the interpretation of regulation 49 (exercise of partial retirement option) if a member is both an active member and a pensioner member by virtue of that regulation.

(3) In relation to payment of death benefits, paragraph (1) does not prevent—

- (a) the calculation under regulation 97 (payment of lump sum death benefit to nominees or personal representatives) of a lump sum payable on the death of an active member of this scheme being made by reference to amounts that are relevant to the member in another capacity;
- (b) the calculation under regulation 98 (members affected by court orders to former spouses and civil partners) on death of a lump sum payable on the death of a deferred member or pensioner member of this scheme being made by reference to amounts that are relevant to the member in both of those capacities; or
- (c) the calculation under regulation 98 of a lump sum payable on the death of—
  - (i) a deferred member of this scheme in relation to two or more continuous periods of pensionable service; or
  - (ii) a pensioner member of this scheme in relation to two or more continuous periods of pensionable service.

## CHAPTER 2

### Payment of benefits: general

#### **Late payment of retirement index adjustment**

**120.** Nothing in these Regulations requires any part of a pension attributable to a retirement index adjustment to be paid before the end of the last active scheme year.

#### **Commutation of small pensions**

**121.**—(1) This regulation applies if—

- (a) the pension entitlement of a single capacity member or the pension entitlement of a single capacity member's beneficiary does not exceed the small pensions commutation maximum; or
- (b) the total pension entitlement of a dual capacity member or the total pension entitlement of a dual capacity member's beneficiary does not exceed the small pensions commutation maximum.

(2) The scheme manager may, subject to paragraph (4), pay the member or the member's beneficiary a lump sum of an amount advised by the scheme actuary as representing the cash value of the pension if—

- (a) the member or the member's beneficiary consents to receipt of a lump sum in place of the pension; and
- (b) the requirements of the commutation provisions that apply in the circumstances, had this scheme been a registered pension scheme, are met.

(3) The lump sum under paragraph (2) may only be paid before the first payment of the pension is made.

(4) The scheme manager may not pay a lump sum under paragraph (2) which would be a trivial commutation lump sum had this scheme been a registered pension scheme where—

- (a) the member has been paid—

- (i) a trivial commutation lump sum under the 2015 Regulations or from any registered pension scheme; or
  - (ii) a lump sum from the FPJR 2017 which would have been a trivial commutation lump sum had that scheme been a registered pension scheme; and
- (b) a period of 12 months has elapsed from the date of that payment (or the earlier or earliest such payment where there is more than one).
- (5) The payment of a lump sum under this regulation in place of a pension discharges all liabilities under this scheme in respect of that pension.

(6) In this regulation—

“the commutation provisions” means the provisions permitting the commutation of pensions set out in—

- (a) paragraph 7 of Schedule 29 (registered pension schemes: authorised lump sums - supplementary) to FA 2004 (which defines trivial commutation lump sums for the purposes of Part 4 of that Act)(1) and, in relation to a pension payable under Part 8, paragraph 20 of that Schedule (which defines trivial commutation lump sum death benefit for the purposes of Part 4 of that Act)(2); and
- (b) Part 2 (commutation payments) of the Registered Pension Schemes (Authorised Payment) Regulations 2009(3);

“single capacity member” means a member of this scheme who is not a dual capacity member; and

“the small pensions commutation maximum” means the amount that is permitted to be commuted taking account of all sources of pension and having regard to the commutation provisions that apply in the circumstances, had this scheme been a registered pension scheme.

### **Commutation supplement: small pensions**

**122.**—(1) Where—

- (a) a member (P) ceases to be in pensionable service under this scheme (other than by death in service); and
- (b) P has exercised the option under regulation 121(2),

P is entitled to be paid an additional amount (a “commutation supplement”) calculated under paragraph (2).

(2) The sum payable to P is an amount sufficient, after deduction of any applicable income tax and national insurance payable by P arising as a result of such payment, to result in P receiving a net sum equal to—

- (a) the income tax payable by P on 25% of any lump sum payable under regulation 121(2) that relates only to uncrystallised rights under this scheme; plus
- (b) the national insurance contributions payable by P (if any) in relation to the lump sum received pursuant to regulation 121(2).

(3) The commutation supplement is payable at the same time as payment of the lump sum mentioned in regulation 121(2).

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(1) Paragraph 7 was amended by the Finance Act 2011 (c. 11), Schedule 16 paragraphs 23 and 29 and Schedule 18 paragraphs 1, 3 and 4 and S.I. 2006/572.

(2) Paragraph 20 was amended by the Finance Act 2011, Schedule 16 paragraphs 32 and 39 and Schedule 18 paragraphs 1, 3 and 6.

(3) S.I. 2009/1171, amended by the Finance Act 2014 (c. 26), section 42(6), the Taxation of Pensions Act 2014 (c. 30), Schedule 1 paragraph 73(3), S.I. 2011/1751 and 2013/1818.

(4) In this regulation, “uncrystallised rights” has the meaning given in section 212 of the FA 2004(4).

## CHAPTER 3

### Forfeiture and set-off

#### **Forfeiture: offences committed by members**

**123.**—(1) If a member is convicted of a relevant offence, the appropriate Minister may, in agreement with the relevant head of jurisdiction and to the extent that they both consider appropriate, withhold benefits payable under this scheme to or in respect of the member.

(2) In this regulation—

“forfeiture certificate” means a certificate stating that the appropriate Minister and relevant head of jurisdiction issuing the certificate consider that the offence—

- (a) has been gravely injurious to the administration of justice; or
- (b) is liable to lead to serious loss of confidence in the judiciary; and

“relevant offence” means—

- (a) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years; or
  - (ii) two or more consecutive terms of imprisonment which add up to at least 10 years;
- (b) offences committed in connection with service in a qualifying judicial office and in respect of which the appropriate Minister and relevant head of jurisdiction have issued a forfeiture certificate.

#### **Forfeiture: offences committed by a member’s beneficiary**

**124.**—(1) Where a member of this scheme (D) dies, and the beneficiary of D is convicted of a relevant criminal offence, the appropriate Minister may, in agreement with the relevant head of jurisdiction and to the extent that they both consider appropriate, withhold benefits payable to the beneficiary in respect of D.

(2) If the appropriate Minister withholds all of the benefits payable to a beneficiary, Part 8 applies as if the beneficiary had died before D.

(3) In this regulation, “relevant criminal offence” means—

- (a) the murder of D;
- (b) the manslaughter of D; or
- (c) any other offence of which the unlawful killing of D is an element.

#### **Forfeiture: relevant monetary obligations and relevant monetary losses**

**125.**—(1) If a member (P) owes a relevant monetary obligation or has caused a relevant monetary loss, the appropriate Minister may, in agreement with the relevant head of jurisdiction and to the extent that they both consider appropriate, withhold benefits payable to P under this scheme.

(2) The appropriate Minister may not withhold more than the lesser of—

- (a) the amount of the relevant monetary obligation or relevant monetary loss; and
- (b) the value of P’s entitlement to benefits.

- (3) The appropriate Minister may only withhold benefits if—
- (a) there is no dispute as to the amount of the relevant monetary obligation or relevant monetary loss; or
  - (b) the relevant monetary obligation or relevant monetary loss is enforceable as follows—
    - (i) under an order of a competent court;
    - (ii) in consequence of an award of an arbitrator;
    - (iii) in Scotland, in consequence of an award of an arbiter appointed (failing agreement between the parties) by the sheriff.
- (4) In this regulation—
- “relevant monetary obligation” means a monetary obligation which—
- (a) was incurred to the Crown or P’s employer (if different);
  - (b) was incurred after P became an active member of this scheme;
  - (c) arose out of P’s criminal or fraudulent act or omission; and
  - (d) arose out of or was connected with service in a qualifying judicial office in respect of which P is a member of this scheme.
- “relevant monetary loss” means a monetary loss which—
- (a) was caused to this scheme; and
  - (b) arose as a result of P’s criminal or fraudulent act or omission.

### **Set-off**

**126.**—(1) The appropriate Minister may, in agreement with the relevant head of jurisdiction, set off an applicable monetary obligation against a member’s entitlement to benefits under this scheme.

(2) In this regulation, an “applicable monetary obligation” is a monetary obligation owed by a member (P), which satisfies the conditions in paragraph (3), (4) or (5).

- (3) The conditions of this paragraph are that the monetary obligation—
- (a) was incurred to the Crown or P’s employer (if different);
  - (b) arose out of P’s criminal or fraudulent act or omission;
  - (c) was incurred after P became an active member of this scheme; and
  - (d) arose out of or was connected with service in a qualifying judicial office in respect of which P is a member of this scheme.
- (4) The conditions of this paragraph are that the monetary obligation—
- (a) was incurred to this scheme; and
  - (b) arose out of P’s criminal or fraudulent act or omission.
- (5) The conditions of this paragraph are that the monetary obligation—
- (a) was incurred to this scheme; and
  - (b) arose out of a payment made to P in error by the scheme manager.
- (6) The value of the set-off applied must not exceed the lesser of—
- (a) the amount of the relevant monetary obligation;
  - (b) the value of P’s entitlement to benefits.
- (7) The appropriate Minister may only set off a relevant monetary obligation against P’s entitlement to benefits if—
- (a) there is no dispute as to the amount of the relevant monetary obligation; or

- (b) the relevant monetary obligation is enforceable—
  - (i) under an order of a competent court;
  - (ii) in consequence of an award of an arbitrator;
  - (iii) in Scotland, in consequence of an award of an arbiter appointed (failing agreement between the parties) by the sheriff.

## CHAPTER 4

### General

#### Calculation of periods of membership and service

**127.**—(1) For the purposes of this scheme, periods of membership and service are to be expressed in the first instance in whole years, and days and fractions of a day, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.

(2) If, when all periods of membership or service that require to be aggregated have been aggregated, there is any excess part day over the number of whole days, that excess is rounded up to a full day.

(3) Paragraphs (1) and (2) are subject to paragraph (4).

(4) If membership or service is referred to in these Regulations as membership or service in years—

- (a) the days referred to in paragraph (1); and
- (b) the full days referred to in paragraph (2),

are converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to 4 decimal places.

(5) If a period of membership or service is less than one year, this regulation applies as if the words “whole years, and” were omitted from paragraph (1) and the words “in excess of the period of whole years” were omitted from paragraph (4).

#### Determination of questions

**128.**—(1) Except as otherwise provided by these Regulations, any question arising under this scheme is to be determined by the scheme manager, whose decision on it is final.

(2) The scheme manager must, in consultation with the Judicial Pension Board, establish a procedure for the determination of disputes relating to members or other persons with an interest in the scheme.

(3) A procedure established under paragraph (2) must meet the requirements of section 50 (requirement for dispute resolution arrangements) of the PA 1995(5).

#### Evidence of entitlement

**129.**—(1) The scheme manager may require any person who is receiving a pension under this scheme to provide evidence to establish—

- (a) the person’s identity; and
- (b) the person’s continuing entitlement to payment of any amount.

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(5) 1995 (c. 26); section 50 was substituted by the Pensions Act 2004 (c. 35) section 273 and amended by the Pensions Act 2007 (c. 22) section 16.

(2) If the person does not provide the required evidence, the scheme manager may withhold the whole or any part of any benefits payable under this scheme in respect of the person.

### **Provision of benefit information statements to members**

**130.**—(1) The scheme manager must provide benefit information statements to each active member of this scheme in accordance with—

- (a) section 14 (information about benefits) of the Act; and
- (b) directions given under that section (“Treasury directions”).

(2) The statement must contain the following information about the member’s benefits as at the date of the statement—

- (a) the amount of accrued pension specified in the each of the active member’s accounts as at that date;
- (b) the opening balance for that year and the index adjustment for that opening balance;
- (c) the amount of pension for that year as at that date; and
- (d) any other information required by Treasury directions.

### **Amendment to the Public Service Pensions Act 2013 (Judicial Offices) Order 2015**

**131.**—(1) In article 3 of the Public Service Pensions Act 2013 (Judicial Offices) Order 2015(6) (“the Judicial Offices Order”), for “the Schedule” substitute “Schedule 1 or Schedule 2”.

(2) The Schedule to the Judicial Offices Order is amended as follows—

- (a) after the entry for “Chair of the Health Service Products (Pricing, Cost Control and Information) Appeals Tribunal holding office on or after 1st April 2021” insert the following entries—

“Chair of the Police Appeals Tribunal”;

“Chair of the Plant Varieties and Seeds Tribunal”;

- (b) after the entry for “Master of the Rolls” insert the following entries—

“Member of a panel constituted under Article 7(1) of the Social Security (Northern Ireland) Order 1998 who is appointed to serve as a member of that panel and is a barrister or solicitor”;

“Member of a panel of chairmen appointed under Article 82 of the Fair Employment and Treatment (Northern Ireland) Order 1998”;

“Member of a panel of chairmen appointed under regulation 4(1)(a) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005”;

- (c) after the entry for “Other member of the Upper Tribunal, where the office is held by a person who sits as a Chairman in the Lands Chamber and is a Member or Fellow of the Royal Institution of Chartered Surveyors holding office on or after 1st April 2021” insert the following entries—

“Part-time Sheriff (Scotland)”;

“Part-time Stipendiary Magistrate (Scotland)”;

“Part-time Summary Sheriff (Scotland)”;

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(6) [S.I. 2015/580](#). The Public Service Pensions Act 2013 (Judicial Offices) Order 2015 has been amended by [S.I. 2015/1483](#); [S.I. 2018/186](#); [S.I. 2018/130](#) and [S.I. 2021/36](#).

- “President of appeals tribunals (within the meaning of Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998) appointed under Article 6 of that Order”;
- (d) after the entry “President of the Welsh Tribunals holding office on or after 1st April 2021” insert the following entries—
- “President or other member of the Lands Tribunal where that office is held on a salaried basis”;
- “President or Vice-President of the Industrial Tribunals and Fair Employment Tribunal appointed under Article 82 of the Fair Employment and Treatment (Northern Ireland) Order 1998”;
- (e) for the entry for “President or Chairman of the Special Educational Needs Tribunal for Wales” substitute—
- “President or member of the legal chair panel of the Education Tribunal for Wales”;
- (f) after the entry for “Temporary High Court Judge (Northern Ireland)” insert—
- “Temporary Judge (Scotland)”.
- (3) The existing Schedule to the Judicial Offices Order is renamed “Schedule 1”.
- (4) After Schedule 1 to the Judicial Offices Order, as so renamed, insert the Schedule set out in Schedule 2 to these Regulations.

#### **Information to be provided by employers**

- 132.** An employer of a member of this scheme must, by such date as the scheme manager may specify, provide the scheme manager with such information as the scheme manager may request—
- (a) in connection with the scheme manager’s or scheme administrator’s functions in relation to this scheme; or
- (b) to enable the scheme manager or Lord Chancellor to fulfil any obligations on the scheme manager or Lord Chancellor set out in or under legislation.

#### **Financial provision**

- 133.** Any pension or lump sum payable under this scheme to or in respect of a person who has held an office specified in Part 1 of Schedule 1 to the Judicial Pensions and Retirement Act 1993(7) is to be charged on, and paid out of, the Consolidated Fund.

#### **Transitional provisions**

- 134.** Schedule 1 has effect.

#### **Sitting in retirement offices**

- 135.** Schedule 2 has effect.

#### **Modifying provisions and amendments**

- 136.** Schedule 3 has effect.