
STATUTORY INSTRUMENTS

1991 No. 2731

PENSIONS

**The Judicial Pensions (Widowers' and
Children's Benefits) Regulations 1991**

Made - - - - *3rd December 1991*
Laid before Parliament *11th December 1991*
Coming into force - - *1st January 1992*

The Lord Chancellor and the Secretary of State for Scotland, in exercise of the powers conferred on them by section 23 of the Judicial Pensions Act 1981(1), and with the concurrence of the Treasury, hereby make the following Regulations:

PART 1
GENERAL

Citation and commencement

1. These Regulations may be cited as the Judicial Pensions (Widowers' and Children's Benefits) Regulations 1991 and shall come into force on 1st January 1992.

Interpretation and scope of Regulations

2. –

(1) In these Regulations–

“the Act” means the Judicial Pensions Act 1981;

“contribution” means a contribution towards the cost of a widower's or children's pension;

“lump sum” means the lump sum payable, under section 17(1), (2) or (3) of the Act, on the retirement or death of an office-holder;

“office-holder” means a female person serving in an office in respect of which a widower's or children's pension may be granted under or by virtue of Part II of the Act;

(1) 1981 c. 20; amended by section 118(4) of the Courts and Legal Services Act 1990 (c. 41).

“periodical payment” means a contribution in the form of a deduction from an office-holder’s salary;

“personal pension” means the pension for which an office-holder becomes eligible on retirement (or, if she dies in office, would have become eligible had she retired on the ground of infirmity at the time of her death);

“relevant service” has, in relation to the holder of an office referred to in section 16 of the Act, the same meaning as in that section;

“responsible authority” means, in relation to an office-holder, the person or body responsible for paying her salary;

references to a widower’s pension include references to a children’s pension;

“15-year office” and “20-year office” mean an office service in which for 15 or 20 years, as the case may be, is a condition of eligibility for an annual personal pension at the rate of one half of the last annual salary payable in respect of that office; references to service in a 15-year or a 20-year office include references to successive periods of service in two or more such offices, being periods which are aggregable for the purposes of eligibility for pension;

“standard rate” in relation to periodical payments, has the meaning given by regulation 8(2).

(2) References in these Regulations to eligibility for pension are, in relation to service in an office which carries entitlement to a pension, references to such entitlement, and references to the grant of a pension shall be construed accordingly.

(3) Section 28 of the Act (effect of certain nullity decrees) applies for the purposes of these Regulations.

(4) These Regulations apply in relation to the office of Lord Chancellor subject to the Schedule.

(5) These Regulations do not apply in respect of

- (a) an office-holder whose relevant service was wholly before 1st January 1992; or
- (b) an office-holder whose relevant service was partly before 1st January 1992 and who has not opted under paragraph 27(1) of Schedule 2 to the Act for her husband to be entitled to a widower’s pension on her death.

Application of Parts II and III

3. Contributions towards the cost of the liability for any pension or pensions under sections 16 to 20 of the Act in respect of a woman’s relevant service shall be made in accordance with Parts II and III of these Regulations.

PART II

CONTRIBUTION MADE ENTIRELY OUT OF LUMP SUM

Application of Part II

4. –

(1) This Part shall have effect for determining the amount of the contribution (if any) to be made, by way of reduction in her lump sum, in the case of an office-holder who has made no periodical payments.

(2) No contribution by way of reduction in her lump sum shall be made in the case of a woman who at no time during her relevant service had a husband.

Relevant service wholly after 31st December 1991

5. –

(1) If the whole of the office-holder's relevant service is or, by virtue of an option exercised under paragraph 27(1) and (2)(b) of Schedule 2 to the Act is treated as, service after 31st December 1991 the amount of the contribution shall be three quarters of the lump sum.

(2) If the office-holder last had a husband at a time before the end of her relevant service, the amount of the contribution shall (instead of that in paragraph (1)) be three quarters of the lump sum multiplied by the fraction:

$$\frac{R}{S}$$

where–

R represents the number of months of her relevant service before the time at which she last had a husband, and

S represents the total number of months of her relevant service.

Relevant service partly before 1st January 1992

6. –

(1) If the office-holder's relevant service is not, or is not treated as, wholly after 31st December 1991, the amount of the contribution shall be three quarters of the lump sum multiplied by the fraction

$$\frac{Q}{S}$$

where–

Q represents the number of months of her relevant service after 31st December 1991

S represents the total number of months of her relevant service.

(2) If the office-holder last had a husband at a time before the end of her relevant service, and after 31st December 1991 the amount of the contribution shall (instead of that in paragraph (1)) be that arrived at under paragraph (1) multiplied by the following fraction–

$$\frac{T}{Q}$$

where–

T represents the number of months relevant service before the time she last had a husband and after 31st December 1991

Q represents the number of months of her relevant service after 31st December 1991

(3) If the office-holder last had a husband at a time before the end of her relevant service, and before 1st January 1992 no contribution by way of reduction in her lump sum shall be made.
Supplemental

7. –

(1) For the purpose of determining the amount of any contribution payable under this Part, there shall be disregarded any amount by which (in consequence of the operation of section 17(2) of the Act) that sum may exceed twice the annual amount of the personal pension.

(2) No period of service when an election under section 14A of the Act is in force in respect of the office-holder concerned shall be taken into account for the purposes of any calculation under this Part.

PART III

PERIODICAL PAYMENTS

Election to make periodical payments

8. –

(1) Subject to the following provisions of this regulation, an office-holder may elect to make periodical payments.

(2) Without prejudice to regulation 9, periodical payments may only be made at the standard rate, that is to say–

- (a) in the case of a 15-year office, 4 per cent.; and
- (b) in the case of a 20-year office, 3 per cent. of the office-holder’s salary for the time being.

(3) An office-holder who elects to make periodical payments must do so by notice in writing to the responsible authority not later than six months after her first appointment to her office–

Provided that an office-holder who marries (or remarries) while in office and who is not then making periodical payments may elect to do so by giving notice in writing to the responsible authority not later than six months after her marriage or remarriage, as the case may be.

(4) An election made under this regulation shall be irrevocable, save that an office-holder who ceases to be married after having made such an election may revoke her election by notice in writing to the responsible authority not later than six months after her so ceasing.

(5) Nothing in this regulation shall be construed as preventing an office-holder who is not married from electing to make periodical payments.

(6) For the purposes of paragraph (3) above the appointment of an office-holder to another office (for example, the appointment to the circuit bench of a stipendiary magistrate or to the Court of Appeal of a puisne judge of the High Court) shall be treated as a first appointment.

Additional payments for back service

9. –

(1) In this regulation–
“back service” means–

- (a) in the case of an office-holder who has specified that the annual value of the widower’s pension is to be calculated on the assumption under paragraph 27(2)(b) of Schedule 2 to the Act, service before 1st January 1992; and
- (b) in the case of an office-holder who has married on or after that date, service on or after that date for any period during which she has made no periodical payments;

(2) An office-holder who has back service and who elects to make periodical payments at the standard rate may also elect to make, in respect of that back service, additional payments at such of the following rates as she may specify–

- (a) if she is serving in a 15-year office, 4 per cent., 8 per cent. or 11 per cent. of her salary for the time being (that is to say, at the standard rate, or at twice, or at two and three quarters times that rate);
- (b) if she is serving in a 20-year office, 3 per cent., 6 per cent. 9 per cent., or 12 per cent., of her salary for the time being (that is to say at the standard rate, or at twice, three times or four times that rate).

(3) An election under this regulation must have been made, or be made–

- (a) not later than 1st July 1992; or
 - (b) in the case of an office-holder marrying (or remarrying) after 31st December 1991 and while still serving, not later than six months after her marriage or remarriage.
- (4) An office-holder who has made an election under this regulation may at any time by notice in writing to the responsible authority, either–
- (a) revoke her election; or
 - (b) vary its effect by specifying a different rate of additional payments, being one of the rates mentioned in (a) or (b), as the case may be, of paragraph (2) above.
- (5) An election made under this regulation shall, if it has not been previously revoked, cease to have effect when the office-holder has made additional payments for a period equal in length to her back service and for this purpose, for any period during which she has made additional payments at a rate higher than the standard rate, she shall be treated as having made such payments for a correspondingly longer period (so that, for example, if she has made additional payments at twice the standard rate for one year she shall be treated as having made additional payments for two years).

Method of payment

10. –

- (1) An election under regulation 8 or 9 shall, so long as it is in force, constitute an instruction to the responsible authority to deduct the appropriate amounts from the office-holder's salary.
- (2) Deductions under this regulation–
- (a) shall be made from each instalment of the office-holder's salary as it becomes due; and
 - (b) may, if the office-holder so requests, also be made at the appropriate rate in respect of the office-holder's earlier salary specified in paragraph (3) below, and for this purpose, the responsible authority may require the office-holder to repay such sum, if any, as may be necessary to make up the total deduction.
- (3) The earlier salary mentioned above is the salary paid to the office-holder before the date of the relevant election–
- (a) during the income tax year of assessment in which the relevant election was made, or
 - (b) during that year and during so much of the preceding year of assessment as elapsed after the relevant appointment, marriage or remarriage.
- (4) No instruction under paragraph (1) above shall be taken to require the responsible authority to deduct, in any income tax year of assessment, more than 15 per cent. of the salary paid to the office-holder during that year.

Effect of making periodical payments

11. –

- (1) In this regulation–
- “appropriate fraction” means $\frac{1}{240}$ in the case of the holder of a 15-year office and $\frac{1}{320}$ in the case of the holder of a 20-year office;
- “full period” means 15 years in the case of the holder of a 15-year office and 20 years in the case of the holder of a 20-year office;
- “gross reduction” means the amount by which an office-holder's lump sum would, under Part II, be reduced if she had made no periodical payments.

(2) An office-holder who makes periodical payments at the standard rate for the full period shall not be liable to make any further contribution notwithstanding that she continues in service for a further period.

(3) For the purposes of paragraph (2) above, an office-holder shall be treated, for every period of service during which she has made additional payments in accordance with regulation 9(2), as having made payments at the standard rate for an additional period equal to the period during which she has made (or is to be treated under regulation 9(5) (6) as having made) such additional payments.

(4) If an office-holder retires or dies after having made periodical payments at the standard rate for less than the full period, the deficiency in her contributions shall be made up by a reduction in her lump sum, the amount of such reduction depending on the rate of personal pension she has earned and the length of the period during which she has made periodical payments and being calculated in accordance with paragraph (5) below.

(5) The amount of the reduction referred to in paragraph (4) above shall be arrived at by deducting from the gross reduction, for every month in respect of which the office-holder has made (or is to be treated, by virtue of regulation 9(5) as having made) periodical payments at the standard rate, the appropriate fraction of her last annual salary.

Non-aggregable service

12. –

(1) In this regulation–

- (a) “primary office” means the office in respect of which eligibility for the personal pension arises;
- (b) “secondary office” means an office other than the primary office;
- (c) references to an election made by an office-holder include references to any election that may, if she has died, be made by another person in respect of her.

(2) This regulation applies to an office-holder whose successive periods of service in different offices are not aggregable (so as to be treated as service wholly in the latest office) for the purposes of eligibility for pension and who, under any relevant enactment is entitled to elect between a pension based on service in a later office and one based on service in an earlier office.

(3) In determining the amount of any contribution to be made out of such office-holder’s lump sum, no account shall be taken of any periodical payments made by her during service in a secondary office if that service is to be disregarded for the purpose of determining the personal pension for which she elects and any such payments shall, in accordance with regulation 13, be refunded.

(4) If account is to be taken of service in a secondary office for the purpose of determining the personal pension for which the office-holder elects, then for the purpose of regulation 11 above–

- (a) if the primary and secondary offices were both 15-year offices or both 20-year offices, any period of service in the secondary office during which she made periodical payments shall be treated as if it had been a period of service in the primary office;
- (b) if the primary office was a 20-year office and the secondary office a 15-year office, any such period shall be treated as if it had been a corresponding period of service in the primary office multiplied by a factor of $\frac{2}{3}$; and
- (c) if the primary office was a 15-year office and the secondary office a 20-year office, any such period shall be treated as if it had been a corresponding period of service in the primary office multiplied by a factor of $\frac{3}{4}$.

periodical payments

13. –

(1) Periodical payments made by an office-holder shall (subject to paragraph (2) below) be refunded, with compound interest added at a rate of 4 per cent. a year, by the responsible authority to her (or, if she has died, to her personal representatives)–

- (a) if her service proves to have been insufficient to earn any widower's pension;
- (b) if and insofar as the payments exceed those required to avoid any deficiency in her contribution being made up by a reduction in her lump sum; or
- (c) in the circumstances mentioned in regulation 12(3).

(2) The responsible authority shall, in making any refund in pursuance of this regulation, deduct the appropriate amount in respect of tax charged under section 598 of the Income and Corporation Taxes Act 1988(2).

Time limit for elections

14. The responsible authority may, if satisfied in any particular case that it would be reasonable to do so, extend the time for giving any notice under these Regulations or for exercising any option under paragraph 27 of Schedule 2 to the Act.

PART IV AMENDMENTS

15. In regulation 2 of the Judicial Pensions (Widows' and Children's Benefits) Regulations 1987(3) in the definition of "office-holder" before the word "person" there shall be inserted "male".

16. In sub-paragraph (1) of paragraph 1 of the First Schedule to those Regulations (office of the Lord Chancellor) before the word "holder" there shall be inserted "male".

Dated 21st November 1991

Mackay of Clashfern, C.

Dated 28th November 1991

Ian Lang
One of Her Majesty's Principal Secretaries of
State

We concur

Dated 3rd December 1991

Thomas Sackville
Nicholas Baker
Two of the Lords Commissioners of Her
Majesty's Treasury

(2) 1988 c. 1.
(3) S.I.1987/375.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 2(4)

OFFICE OF THE LORD CHANCELLOR

1. –

(1) Parts II and III of these Regulations shall apply to the female holder of the office of Lord Chancellor as they apply to the female holder of a 15-year office, and subject to the modifications in this paragraph.

(2) For the purposes of regulation 8(3), and of sub-paragraph (3) below, appointment as Lord Chancellor for a second or subsequent term shall be treated as a first appointment.

(3) A Lord Chancellor may, whether or not she has back service, elect to make additional payments under regulation 9(2) by notice in writing given to the responsible authority not later than six months after her first appointment.

(4) An election under regulation 9(2) shall, if it has not been revoked under regulation 9(4), cease to have effect when the office-holder has made (or is to be treated by virtue of regulation 9(5) as having made) periodical payments at the standard rate for the full period.

(5) For the purpose of arriving at the amount of the reduction referred to in regulation 11(4), regulation 11(5) shall have effect as if, for the words “last annual salary” there were substituted the words “lump sum determined in accordance with regulation 7(1)”.

2. Any reference in these Regulations to retirement shall in relation to a Lord Chancellor be taken as a reference to resignation of office.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the contributions to be made by women who are holders of certain judicial offices towards pensions for widowers and children under Part II of the Judicial Pensions Act 1981. That Act formerly provided for the payment of pensions to widows of men who were holders of those judicial offices, but there was no provision for widowers' pensions, which were first introduced by the Courts and Legal Services Act 1990. These Regulations have similar effect to the Judicial Pensions (Widows' and Childrens' Benefits) Regulations 1987, which continue to apply to the contributions made by male office-holders.

The contributions may be made out of the office-holder's lump sum paid on retirement or death (Part II), or, if the office-holder so elects, by periodical payments (Part III).

The amount of the pensions towards which the contributions are made depends on whether part of the office-holder's service was before 1st January 1992 (the date when the widower's pension provisions came into force), and, if it was, the basis on which she has specified that the annual value of widower's pension shall be calculated. There are corresponding variations in the amount of the contributions.

The arrangements for making periodical payments by way of contribution, and for making additional periodical payments to reflect service before the widower's pension provisions were introduced, are parallel to the arrangements which already apply to contributions for widows' pensions.

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The regulations do not apply to an office-holder who has retired or died before 1st January 1992, or to an office-holder whose service began before 1st January 1992 and who has not opted for her husband to be entitled to a widower's pension.