1988 No. 293

PENSIONS

The Judicial Pensions (Preservation of Benefits) Order (Northern Ireland) 1988

Made . . . . . *29th July 1988*

Coming into operation . . *1st September 1988*

The Lord Chancellor, as the appropriate authority designated by the Treasury(**a**) for the purposes of Article 61(1) of the Social Security Pensions (Northern Ireland) Order 1975(**b**) as having responsibility for the public service pension schemes established under the enactments listed in Schedule 1, in exercise of the powers conferred by the said Article 61(1), hereby makes the following Order:—

PART I

INTRODUCTORY

Citation and commencement

1. This Order may be cited as the Judicial Pensions (Preservation of Benefits) Order (Northern Ireland) 1988 and shall come into operation on 1st September 1988.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

"full rate" means the rate at which a pension might have been granted to an office-holder if his service had continued to normal pension age, but calculated by reference to the annual salary attaching, at the date he ceased (within the meaning of Article 4(1)) to hold office, to—

(*a*) his last office; or

(*b*) an earlier office of his where the amount of pension would have been based on that salary, but if that office had ceased to exist before the date on which he ceased to hold his last office, the annual salary shall be taken to be such as the Lord Chancellor with the concurrence of the Treasury may determine it would have been had the office continued to exist;

"normal pension age" means the earliest age at which, if his service had continued until retirement at that age, an office-holder might have been granted a pension under a relevant enactment;

"office-holder" means a person who holds, or has held, a scheduled office;

(**a**) Substituted for the Minister for the Civil Service by S.I. 1981/1670
(**b**) S.I. 1975/1503 (N.I. 15)

"relevant enactment" means an enactment by virtue of which an office-holder might be granted a pension in respect of any relevant service and, in the case of a person who has held more than one office, includes any enactment relating to the payment of superannuation benefits to or in respect of such a person;

"relevant service" has the meaning given by Article 4(2);

"scheduled office" means an office listed in Schedule 2.

(2) References in this Order to eligibility for a pension are, in relation to an office service in which carries entitlement to a pension, references to such entitlement, and references to the grant of a pension or to the rate at which a pension might be payable shall be construed accordingly.

PART II

GENERAL

Office-holders to whom Order applies

3. This Order shall apply to, but only to, an office-holder who ceases to hold office after 31st August 1988.

Ceasing to hold office and relevant service

4.—(1) An office-holder does not cease to hold office for the purposes of this Order if, after ceasing to hold a scheduled office but before reaching normal pension age, he starts to hold another office service in which may, under any relevant enactment, be reckoned on any basis together with service in the earlier office for the purpose of superannuation benefits (or which might have been so reckoned but for his having left that other (or a subsequent) office before reaching compulsory retirement age).

(2) An office-holder's service in a scheduled office is relevant service for the purposes of this Order and his relevant service may include any earlier service of his which may, under any enactment, be reckoned in accordance with paragraph (1) together with service of his in a scheduled office:—

Provided that, where an office-holder is entitled to make an election under this Order, then, whether or not he makes that election, his relevant service shall not include any service of his which would have fallen to be disregarded for the purpose of superannuation benefits had he made (or, as the case may be, not made) a corresponding election under a relevant enactment.

(3) For the purposes of paragraphs (1) and (2) above it is immaterial whether—

(*a*) the office-holder has served at any time in any other office (including an office in relation to which he ceases to hold office for the purposes of this Order); or

(*b*) the earlier and the later offices are the same; or

(*c*) any election available in respect of an office-holder has been made; or

(*d*) the superannuation benefits payable under the relevant enactment relating to one office would, in the circumstances, be unaffected by adding the other service into the reckoning.

PART III

PRESERVED BENEFITS

Office-holder's pension

5.—(1) An office-holder who has completed two years of relevant service, but who has ceased to hold office before normal pension age, becomes eligible for a pension when he reaches whichever is the later of age 60 and—

(*a*) in the case of an office-holder who has made an election under Article 7(1), retirement age; or

(*b*) in any other case, normal pension age.

(2) The annual rate at which that pension may be paid shall bear to the full rate the same proportion as the number of completed years of relevant service bears to the number of completed years which the office-holder would have served if his service had continued until—

(*a*) in the case of an office-holder who has made an election under Article 7(1), retirement age; or

(*b*) in any other case, normal pension age.

(3) In this Article, ''retirement age'' means the age at which an election would have been available to the office-holder under the relevant enactment applicable to him.

Lump Sum and Widows' and Children's Pensions

6. In relation to an office-holder who has served in one of the offices listed in Column 1 of the Table below and who becomes eligible for a pension by virtue of this Order (or who dies before becoming so eligible but would have become so eligible had he survived) the enactments set out in Column 2 of that Table against that office shall apply as they apply in relation to an office-holder who becomes eligible for a pension on retirement at normal pension age or who dies in service; so, however, that no lump sum granted under any of those enactments shall exceed twice the annual amount of the pension for which the office-holder would have been eligible.

TABLE

Column 1	*Column 2*
1. Judge of the Supreme Court	Sections 17 (except subsections (2)(*b*) and (3)) and 18 to 23 of the Judicial Pensions Act 1981(**a**).
2. County court judge	Sections 121 (except subsections (2)(*b*) and (3)), 122 to 126 and 129 to 132 of the County Courts Act (Northern Ireland) 1959(**b**) and any regulations made in relation to those provisions by the Lord Chancellor in exercise of the powers conferred by section 10(8) of and Schedule 3 to the Administration of Justice Act 1973(**c**).
3. Resident magistrate	Sections 3 (except subsections (2)(*b*), (3) and (4)), 4 to 9 and 12 to 15 of the Resident Magistrates' Pensions Act (Northern Ireland) 1960(**d**) and any regulations made in relation to those provisions by the Lord Chancellor in exercise of the powers conferred by section 10(8) of and Schedule 3 to the Administration of Justice Act 1973.

PART IV

SUPPLEMENTARY

Election in respect of two or more periods of service

7.—(1) Where an office-holder who has served in more than one office has ceased to hold office before normal pension age, then, if he would have been entitled on his retirement, had his service continued to compulsory retirement age, to elect that the superannuation benefits payable to or in respect of him should be determined under an enactment relating to the payment of superannuation benefits to or in respect of persons who have served in more than one office, he shall, for the purposes of that enactment, have the same right of election, and that right may be exercised within an

(**a**) 1981 c. 20
(**b**) 1959 c. 25 (N.I.)
(**c**) 1973 c. 15; amended and repealed in part by section 36 of and Schedules 3 and 4 to the Judicial Pensions Act 1981. The power to make regulations is vested in the Lord Chancellor by Article 3(1) of and Schedule 2 to the Northern Ireland (Modification of Enactments — No. 1) Order 1973, S.I. 1973/2163
(**d**) 1960 c. 2 (N.I.)

equivalent period, as if he had retired at an age at which an election under that enactment would have been available to him.

(2) A provision in any enactment such as is referred to in paragraph (1) above, by virtue of which an authority, liable to pay benefits payable in consequence of an election made under that enactment, is entitled to recover a contribution from any other authority, shall apply to benefits payable in consequence of an election made under this Article.

(3) Any election made in reliance on this Article by a person who had not ceased to hold office shall be of no effect.

Provisions about early retirement

8. Any provision in a relevant enactment about early retirement on the grounds of ill-health shall, without prejudice to its operation in other respects, be disregarded for the purpose of this Order.

Inalienability

9. Any assignment of, or charge on, and any agreement to assign or charge, any pension or lump sum which may be granted by virtue of this Order shall (unless made by an office-holder in favour of his widow or a dependant of his) be void.

Relationship to other benefits

10.—(1) Any benefit granted by virtue of this Order in respect of any relevant service shall be payable notwithstanding that other benefits are, otherwise than by virtue of this Order, payable to or in respect of the office-holder—

(*a*) under a relevant enactment; or

(*b*) under an enactment relating to superannuation benefits in respect of an office to which Part II of the Judicial Pensions Act 1981(**a**) applies; or

(*c*) under Schedule 10 to the Social Security (Northern Ireland) Act 1975(**b**) or Part II of the Judicial Pensions Act (Northern Ireland) 1951(**c**);

so, however, that any benefits granted by virtue of this Order shall be abated to the extent that they exceed the amount, if any, by which the other benefits might have been increased if the relevant service in respect of which benefits are granted under this Order had been service in the office in respect of which the other benefits are payable.

(2) Where the other benefits, for the purposes of paragraph (1) above, are payable to or in respect of an office-holder by virtue of service of his in more than one office, the amount referred to in that paragraph may be arrived at in the manner most favourable to him.

(**a**) 1981 c. 20; amended by section 152(1) of, and Schedule 5 to, the Supreme Court Act 1981 (c. 54)
(**b**) 1975 c. 15; amended by section 82 of, and Parts II and III of Schedule 9 to, the Social Security Act 1986 (c. 50)
(**c**) 1951 c. 20 (N.I.); amended as at (**b**) above

Saving for other pension schemes

11. This Order does not apply in relation to an office-holder who is, or has been, a resident magistrate included in Schedule 5 to the Superannuation (Northern Ireland) Order 1972(**a**).

Revocation of existing orders

12. The orders specified in column 1 of Schedule 3 are hereby revoked to the extent stated in column 2, but without prejudice to their continued application in relation to any person who ceased for the purposes of this Order to hold office before 1st September 1988.

Dated 29th July 1988 *Mackay of Clashfern,* C.

(a) S.I. 1972/1073 (N.I. 10)

SCHEDULE 1 Recital

Judicial Pension Schemes

Sections 116 and 119-135 of and Part I of the Second Schedule to the County Courts Act (Northern Ireland) 1959 as modified and amended.

The Resident Magistrates' Pensions Act (Northern Ireland) 1960 as modified and amended.

Section 1 of the Judicial Pensions Act 1981 so far as it relates to the office of Judge of the Supreme Court of Northern Ireland.

SCHEDULE 2 Article 2

The Scheduled Offices

Judge of the Supreme Court.

County court judge.

Resident magistrate.

SCHEDULE 3 Article 12

Revocations

Column 1 *Orders revoked*	Column 2 *Extent of revocation*
The Judicial Pensions (Preservation of Benefits) (No. 2) Order 1977: S.I. 1977/2102	In its application to the Judges of the Supreme Court
The Judicial Pensions (Preservation of Benefits) Order (Northern Ireland) 1987: S.R. 1987 No. 106	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order consolidates and supersedes earlier Orders which modify pension schemes applicable to holders of the judicial offices listed in Schedule 1 and which provide for a reduced pension and derivative benefits (lump sum and widows' and children's pensions) to be preserved, and to become payable, in the case of an office-holder who ceases to hold office before reaching normal pension age.

Article 5 provides that the reduced pension may be paid at the age at which the office-holder would normally become eligible to be granted a pension (or at which he might elect for service in successive offices to be aggregated for pension purposes) and provides the proportion on the basis of which the pension is to be calculated. Article 6 enables a reduced lump sum to be paid to an office-holder who becomes eligible for a pension by virtue of the Order. It also enables reduced widows' and children's pensions to be paid whether the office-holder dies before or after reaching the age at which he would otherwise have become eligible to be granted a pension. Article 7 provides for the rules relating to successive service in more than one judicial office to be applied, if the office-holder so elects, to benefits preserved by virtue of the Order.

The Order reduces from five to two the number of years relevant service which must be completed for benefits to be preserved (Article 5(1)). Apart from this change, the Order makes no change of substance.

The Order does not apply in the case of an office-holder who ceases to hold office before it comes into force on 1st September 1988; in such a case, the existing Orders will continue to apply.