1993 No. 40

PENSIONS

Judicial Pensions (Spouses' and Children's Benefits) Regulations (Northern Ireland) 1993

Made	*1st February 1993*
Coming into operation . .	*15th February 1993*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by section 10 of, and Schedule 3 to, the Administration of Justice Act 1973(**a**) and of all other powers enabling it in that behalf, and with the consent of the Treasury(**b**), hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and revocation

1.—(1) These regulations may be cited as the Judicial Pensions (Spouses' and Children's Benefits) Regulations (Northern Ireland) 1993.

(2) These regulations shall come into operation on 15th February 1993.

(3) The Judicial Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1989(**c**) are hereby revoked in so far as they apply to the following offices, that is to say—

(*a*) President of the Industrial Court;

(*b*) President of the Industrial Tribunals;

(*c*) Whole-time member of a panel of Chairmen of Industrial Tribunals,

but without prejudice to their continued application in relation to an office-holder whose relevant service was wholly before the date of coming into operation of these regulations.

Interpretation

2.—(1) The Interpretation Act 1978(**d**) shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(**a**) 1973 c. 15; section 10 was repealed in part by Schedule 4 to the Judicial Pensions Act 1981 c. 20
(**b**) *See* Article 5 of S.I. 1973/2163 for transfer of functions from the Ministry of Finance for Northern Ireland to the Minister for the Civil Service and Article 2 of S.I. 1981/1670 for transfer of functions from the Minister for the Civil Service to the Treasury
(**c**) S.R. 1989 No. 144
(**d**) 1978 c. 30

(2) In these regulations, unless the context otherwise requires,—

"the Act of 1951" means the Judicial Pensions Act (Northern Ireland) 1951(**a**);

"the Act of 1969" means the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969(**b**);

"contribution" means a contribution towards the cost of a spouse's pension;

"dependent children" means a child or children of an office-holder for whose benefit a "children's pension" as defined in section 6 of the Act of 1951 can enure;

"lump sum" means the lump sum payable under section 5(1) or (2) of the Act of 1951 on the retirement or death of an office-holder;

"office-holder" means a person serving in an office specified in section 2(1) of the Act of 1969(**c**);

"periodical payment" means a contribution in the form of a deduction from the office-holder's salary;

"personal pension" means the superannuation allowance for which an office-holder becomes eligible on retirement (or, if he dies in office, would have become eligible had he retired on the ground of infirmity at the time of his death);

"the regulations of 1989" means the Judicial Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1989;

"relevant service" means service in an office in respect of which service a superannuation allowance may be granted under or by virtue of section 2 of the Act of 1969;

"responsible authority" means, in relation to an office-holder, the person or body responsible for paying his salary;

references to a "spouse's pension" include references to a children's pension;

"standard rate" in relation to periodical payments has the meaning given in regulation 10(2) below.

Application of regulations

3.—(1) These regulations do not apply in respect of an office-holder whose relevant service was wholly before the day on which they come into operation.

(2) Subject to paragraph (3) below, contributions towards the cost of the liability for any pension under Part II of the Act of 1951, as modified by

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(**a**) 1951 c. 20 (N.I.) to which the Fourth Schedule was added by Article 3(2) of S.I. 1991/2631 (N.I. 24). Section 2(6) of the Act of 1969 which applies sections 5, 6, 6A, 7 to 11A, 15 and 17A of the Act of 1951 to the offices to which these regulations apply was amended by Article 7(2) of S.I. 1991/2631 (N.I. 24)

(**b**) 1969 c. 7 (N.I.)

(**c**) Section 2(1) was amended by Article 7(1) of S.I. 1980/1959 (N.I. 17), by paragraph 1 of the Schedule to S.R. 1989 No. 123 and by Schedule 2, paragraph 1 of 1989 c. 32

Schedule 3 to the Administration of Justice Act 1973, for the benefit of a person's spouse and children in respect of relevant service shall be made in accordance with Parts II and III of these regulations.

(3) No contribution shall be made by an office-holder for any period of service during which an election under section 2A(**a**) of the Act of 1969 is in operation in respect of him.

Extension of time

4. The responsible authority may, if satisfied in any particular case that it would be reasonable so to do, extend the time for giving any notice under these regulations.

PART II

CONTRIBUTION MADE ENTIRELY OUT OF LUMP SUM

Application of Part II

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

(2) No contribution by way of reduction in his lump sum shall be made in the case of a person who at no time during his relevant service had a spouse or dependent children.

Male office-holders

6.—(1) Subject to paragraph (2) below, the amount of the contribution of a male office-holder shall be three quarters of the lump sum.

(2) If a male office-holder was married at any time during his relevant service, but is not married at the end of his relevant service, the amount of the contribution shall (instead of that in paragraph (1) above) be three quarters of the lump sum—

(*a*) multiplied by the total number of months of his relevant service during which he was married or had dependent children; and

(*b*) divided by the total number of months of his relevant service.

Female office-holders: relevant service wholly after 14th February 1993

7.—(1) Subject to paragraph (2) below, if the whole of a female office-holder's relevant service is, or by virtue of an option exercised under paragraph 4(1) and (2)(*b*) of the Fourth Schedule to the Act of 1951 is treated as, service after 14th February 1993 the amount of her contribution shall be three quarters of the lump sum.

(**a**) Section 2A was inserted by paragraph 3 of the Schedule to S.R. 1989 No. 123

(2) If a female office-holder was married at any time during her relevant service (and such service is treated as being wholly after 14th February 1993), but is not married at the end of her relevant service, the amount of the contribution shall (instead of that in paragraph (1) above) be three quarters of the lump sum—

(*a*) multiplied by the total number of months of her relevant service during which she was married or had dependent children; and

(*b*) divided by the total number of months of her relevant service.

Female office-holders: relevant service partly before 15th February 1993

8.—(1) Subject to paragraph (2) below, if a female office-holder's relevant service is not, or is not treated as, wholly after 14th February 1993, the amount of the contribution shall be three quarters of the lump sum—

(*a*) multiplied by the total number of months of her relevant service after 14th February 1993; and

(*b*) divided by the total number of months of her relevant service.

(2) If a female office-holder was married at any time during her relevant service and after 14th February 1993 (and such service is treated as being partly before and partly after 14th February 1993), but is not married at the end of her relevant service, the amount of the contribution shall (instead of that in paragraph (1) above) be that arrived at under paragraph (1) above—

(*a*) multiplied by the total number of months of her relevant service after 14th February 1993 during which she was married or had dependent children; and

(*b*) divided by the total number of months of her relevant service after 14th February 1993.

(3) If a female office-holder was married during her relevant service, but is neither married nor has dependent children on or after 15th February 1993 no contribution by way of reduction in her lump sum shall be made.

Supplemental

9. 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 5(2) of the Act of 1951) that sum may exceed twice the annual amount of the personal pension.

PART III

PERIODICAL PAYMENTS

Election to make periodical payments

10.—(1) Subject to paragraphs (2) to (7) below, an office-holder may elect to make periodical payments.

(2) Without prejudice to regulation 11 below, periodical payments may only be made at the standard rate of 4 per cent. of the office-holder's salary for the time being.

(3) Subject to paragraph (4) below, an office-holder who elects to make periodical payments must do so by notice in writing to the responsible authority not later than 6 months after the date of his first appointment to his office or, in the case of a female office-holder at the date of coming into operation of these regulations, within 6 months of that date.

(4) 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 6 months after his marriage or remarriage, as the case may be.

(5) An election made under this regulation shall be irrevocable, save that—

(*a*) an office-holder having no dependent children who ceases to be married; or

(*b*) an unmarried office-holder who ceases to have dependent children,

may revoke his election by notice in writing to the responsible authority not later than 6 months after his so ceasing.

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

(7) For the purpose of paragraph (3) above, the appointment of an office-holder to another office specified in section 2(1) of the Act of 1969 shall be treated as a first appointment.

Additional payments for back service

11.—(1) In this regulation "back service" means—

(*a*) in the case of a male office-holder, service before 1st February 1978 (the date of coming into operation of the provisions reproduced in Part III of the regulations of 1989 and now reproduced in this Part);

(*b*) in the case of a female office-holder, service before the date of coming into operation of these regulations; and

(*c*) in the case of an office-holder who has married on or after the date referred to in either paragraph (*a*) or (*b*) above, service on or after that date for any period during which he 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 one of the following rates as he may specify, namely, 4 per cent., 8 per cent. or 11 per cent. of his 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).

(3) An election under this regulation must have been made, or be made, by notice in writing to the responsible authority—

(*a*) in the case of a male office-holder, not later than 30th June 1978; or

(*b*) in the case of a female office-holder, not later than 6 months after the date of coming into operation of these regulations; or

(*c*) in the case of an office-holder marrying or remarrying after the date of coming into operation of these regulations and while still serving, not later than 6 months after his 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 his election; or

(*b*) vary its effect by specifying a different rate of additional payments, being one of the rates mentioned in 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 his back service and for this purpose for any period during which he has made additional payments at a rate higher than the standard rate, he shall be treated as having made such payments for a correspondingly longer period (so that, for example, if he has made additional payments at twice the standard rate for one year he shall be treated as having made additional payments for two years).

Method of payment

12.—(1) An election under regulation 10 or 11 above 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 in paragraph (2) above is the salary paid to the office-holder before the date of the election—

(*a*) during the income tax year of assessment in which the 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 the current 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

13.—(1) In this regulation—

"appropriate fraction" means 1/240;

"full period" means 15 years;

"gross reduction" means the amount by which an office-holder's lump sum would, under Part II of these regulations, be reduced if he 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 he 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 he has made additional payments in accordance with regulation 11(2) above, as having made payments at the standard rate for an additional period equal to the period during which he has made (or is to be treated under regulation 11(5) above 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 his contributions shall be made up by a reduction in his lump sum, the amount of such reduction depending on the rate of personal pension he has earned and the length of the period during which he has made, or is to be treated as having 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 11(5) above, as having made) periodical payments at the standard rate, the appropriate fraction of his last annual salary.

Refunds of periodical payments

14.—(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 him (or, if he has died, to his personal representatives)—

(*a*) if his service proves to have been insufficient to earn any spouse's pension; or

(*b*) if and in so far as the payments exceed those required to avoid any deficiency in his contribution being made up by a reduction in his lump sum; or

(*c*) (in the case of an office-holder who was not married and did not have dependent children at the end of his relevant service) in so far as the payments were made under an election or elections under regulation 10(6) above.

(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(**a**).

(a) 1988 c. 1

Transitional provisions

15.—(1) Regulation 14(1) above shall, in relation to any liability to refund arising in respect of service before 6th April 1989, have effect as if for "4 per cent." there were substituted "3 per cent.".

(2) Subject to paragraph (1) above, and without prejudice to section 17 of the Interpretation Act 1978(**a**), things done under the Judicial Pensions (Widows' and Children's Benefits) Regulations (Northern Ireland) 1978(**b**) or the regulations of 1989 before the coming into operation of these regulations shall, so far as the context permits, have effect as if done under the corresponding provision of these regulations.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 1st February 1993.

(L.S.) *A. Devlin*
Assistant Secretary

We consent

Tim Wood
Timothy Kirkhope
Two of the Lords Commissioners of Her Majesty's Treasury

Dated 3rd February 1993

(**a**) 1978 c. 30
(**b**) S.R. 1978 No. 15 amended by paragraph 2 of Schedule 3 to the Financial Provisions (Northern Ireland) Order 1980 (S.I. 1980/1959 (N.I. 17))

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations provide for contributions to be made towards pensions for widows, widowers and children by a person who holds any of the offices of the President of the Industrial Court, the President or Vice-President of the Industrial Tribunals and the Fair Employment Tribunal, a whole-time member of a panel of chairmen of industrial tribunals and a whole-time member of a panel of chairmen of the Fair Employment Tribunal.

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).

Regulation 3(3) provides that contributions will not be payable for any period during which an office-holder has elected, under section 2A of the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969, to join a personal pension scheme instead of the occupational pension scheme. Regulation 11 allows the office-holder to make additional periodical payments to reflect service before the arrangements were introduced. Regulation 12(3) extends the period in respect of which an office-holder may have deductions made from salary already received, by providing that the deductions may be made in respect of so much of the income tax year of assessment preceding that in which an election is made under regulation 10 or 11 as elapsed after the relevant appointment, marriage or remarriage. Regulation 12(4) makes a consequential adjustment to ensure that the rate of periodical payments cannot exceed 15 per cent. in any income tax year. Regulation 14 provides for compound interest on refunded periodical payments to be at a rate of 4 per cent. a year.

Regulation 3(1) provides that the regulations do not apply to an office-holder who has retired or died before the regulations come into operation.