STATUTORY INSTRUMENTS

1974 No. 44

PENSIONS

The Judicial Pensions (Widows' and Children's Benefits) Regulations 1974

Made - - - -	10*th January* 1974
Laid before Parliament	24*th January* 1974
Coming into Operation	1*st February* 1974

The Lord Chancellor and the Secretary of State for Scotland, in exercise of the powers conferred on them by section 10(7) of the Administration of Justice Act 1973**(a)** and with the concurrence of the Minister for the Civil Service, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Judicial Pensions (Widows' and Children's Benefits) Regulations 1974 and shall come into operation on 1st February 1974.

Interpretation

2.—(1) In these Regulations—

"the Act of 1950" means the Administration of Justice (Pensions) Act 1950**(b)**;

"the Act of 1973" means the Administration of Justice Act 1973;

"contribution" means a contribution towards the cost of a widows' or children's pension;

"lump sum" means the lump sum payable, under section 2(1) or (2) of the Act of 1950, on the retirement or death of an office-holder;

"office-holder" means a person serving after 17th April 1973 in an office in respect of which a widow's or children's pension may be granted under or by virtue of the Act of 1950;

"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 he dies in office, would have become eligible had he retired on the ground of infirmity at the time of his death);

"relevant service" has the same meaning as in section 26(1) of the Act of 1950;

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

references to a widow's pension include references to a children's pension;

(a) 1973 c. 15.

(b) 14 & 15 Geo. 6. c. 11.

"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.

(2) The Interpretation Act 1889**(a)** shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Elections by persons serving at passing of Act of 1973

3.—(1) An office-holder to whom this regulation applies may elect—

(*a*) that subsection (2) of section 10 of the Act of 1973 shall apply to him as if the whole of his relevant service were service after 17th April 1973; or

(*b*) that subsections (1) to (3) of section 10 of the Act of 1973 shall not apply to him and that the Act of 1950 shall apply as if the said section 10 had not been passed.

(2) An election under sub-paragraph 1(*a*) or (*b*) above may be made by notice in writing given to the responsible authority not later than 30th June 1974.

4.—(1) An office-holder to whom this regulation applies, who elected under section 11(1) or (2) of the Act of 1950 for his eligibility for pension not to satisfy the conditions for the grant of a widow's pension, may revoke that election by notice in writing given to the responsible authority not later than 30th June 1974.

(2) Revocation of an election under paragraph (1) above shall have the same effect in relation to the treatment of the office-holder's service before 18th April 1973 as an election under regulation 3(1)(*a*) and references in these Regulations to an office-holder's having made such an election shall be construed accordingly.

Persons entitled to elect or revoke an election

5.—(1) Regulations 3 and 4 shall apply to an office-holder who was serving before 18th April 1973.

(2) If an office-holder to whom regulations 3 and 4 apply dies on or before 30th June 1974 without having made an election under regulation 3 or without having revoked an earlier election under regulation 4, his widow may, not later than 31st July 1974, exercise any right her husband might have exercised under those regulations.

Extension of time

6. 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.

(a) 1889 c. 63.

Contributions

7.—(1) These Regulations shall govern the making of contributions by an office-holder, other than an office-holder who has made an election under regulation 3(1)(*b*), in lieu of subsections (1) to (3) of section 8 of the Act of 1950 and, accordingly, that section shall be modified by the insertion therein, after subsection (3), of the following new subsection:—

"(3A) The foregoing provisions of this section shall not apply in the case of a man continuing to serve after 17th April 1973 in any of the capacities listed in Schedule 1 to this Act unless, in pursuance of regulations made under section 10 of the Administration of Justice Act 1973, he elects that this Act shall apply to him as if that section had not been passed.".

(2) Contributions towards the cost of the liabilities assumed under the Act of 1950, as modified by section 10 of the Act of 1973, for the benefit of a man's wife and children shall be made in the form of a reduction in his lump sum, or in the form of periodical payments, or partly in the one of those forms and partly in the other.

(3) The Schedule to these Regulations shall have effect for determining—

(*a*) the amounts of any contributions;

(*b*) the conditions subject to which contributions may be made in the form of periodical payments; and

(*c*) the circumstances in, and the conditions subject to, which contributions made in the form of periodical payments may be refunded in whole or in part.

(4) Where the personal pension is or would be payable to a woman, section 8(4) of the Act of 1950 shall continue to govern the making of a contribution in respect of benefits for her children.

Dated 9th January 1974.

Hailsham of St. Marylebone, C.

Dated 10th January 1974.

Gordon Campbell,
One of Her Majesty's Principal Secretaries of State.

Concurrence of the Minister for the Civil Service given under his official seal on 10th January 1974.

(L.S.)

K. H. McNeill,
Authorised by the Minister for the Civil Service.

SCHEDULE

Contribution made entirely out of lump sum

1.—(1) This paragraph 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) If, for the purpose of his widow's pension, the whole of an office-holder's service is (or, by virtue of an election made under regulations 3(1)(*a*), is treated as being) service after 17th April 1973, the amount of the contribution shall be three quarters of the lump sum.

(3) If, in the case of an office-holder who has not made an election under regulation 3(1)(*a*) or (*b*), a widow's pension is (in accordance with sub-sections (3) and (5) of section 10 of the Act of 1973) to be regarded as attributable partly to a period of service before 18th April 1973 and partly to a period of service after 17th April 1973, the amount of the contribution shall depend on the proportions those periods bear to the whole period of service to which the widow's pension is attributable and shall be determined by applying the formula—

$$C = L \times \frac{2P + 3Q}{4S}, \text{ where}$$

"C" represents the amount of the contribution;

"L" represents the office-holder's lump sum;

"P" represents the number of months of such service before 18th April 1973;

"Q" represents the number of months of such service after 17th April 1973; and

"S" represents the total number of months of such service.

(4) Where an office-holder last had a wife at a time before the end of his relevant service, the amount of the contribution shall, instead of being the amount arrived at by applying sub-paragraph (2) or (if appropriate) sub-paragraph (3) above, be—

(*a*) if either he made an election under regulation 3(1)(*a*) or none of his relevant service' was service before 18th April 1973, that amount multiplied by the number of months of his relevant service before the time at which he last had a wife and divided by the total number of months of his relevant service; or

(*b*) in any other case, that amount multiplied by the sum of—

(i) the number of months of his relevant service before the time he last had a wife and before the 18th April 1973; and

(ii) one and a half times the number of months (if any) of his relevant service before that time and after 17th April 1973;

and divided by the sum of—

(i) the total number of months of his relevant service before the 18th April 1973; and

(ii) one and a half times the total number of months of his relevant service after 17th April 1973.

(5) No contribution by way of reduction in his lump sum shall be made in the case of a man who at no time during his relevant service had a wife.

(6) For the purpose of determining the amount of any contribution payable under this paragraph in the form of a reduction in an office-holder's lump sum, there shall be disregarded any amount by which (in consequence of the operation of section 2(2) of the Act of 1950) that sum may exceed twice the annual amount of the personal pension.

Election to make periodical payments

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

(2) An office-holder who elects to make periodical payments must do so by notice in writing given to the responsible authority not later than 30th June 1974 or, if he

is first appointed to his office after 31st January 1974, not later than six months after his appointment:

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 his marriage or re-marriage, as the case may be.

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

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

(5) An election made under this paragraph shall, so long as it is in force, constitute an instruction to the responsible authority to make deductions at the standard rate (as defined in paragraph 4 below) from the office-holder's salary.

(6) Deductions made in pursuance of an election under this paragraph shall be made from each instalment of the office-holder's salary as it becomes due:

Provided that, if the office-holder so requests, deductions at the appropriate rate may also be made in respect of salary paid between the beginning of the income tax year of assessment in which the relevant election was made and the date of that election, 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 for that year.

(7) For the purpose of sub-paragraph (2) above, the appointment of an office-holder to another office (for example, the appointment to the Court of Appeal of a puisne judge of the High Court) shall be treated as a first appointment.

Rate of periodical payments

3.—(1) In this paragraph—

"back service" means—

(*a*) service before 1st February 1974, and

(*b*) in the case of an office-holder who marries or remarries after 31st January 1974, service after that date for any period during which he made no periodical payments;

"previous service" means back service before 18th April 1973.

(2) Without prejudice to sub-paragraphs (3) to (5) below or to paragraph 4(6), periodical payments may be made only 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 has back service and who elects to make periodical payments at the standard rate may also elect to make, in respect of that service, additional payments at such one of the following rates as he may specify:—

(*a*) if he is serving in a 15-year office, 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);

(*b*) if he is serving in a 20-year office, 3 per cent., 6 per cent., 9 per cent. or 12 per cent. of his salary for the time being (that is to say, at the standard rate, or at twice, three times or four times that rate).

(4) An election under sub-paragraph (3) above may be made by notice in writing given to the responsible authority—

(*a*) not later than 30th June 1974; or

(*b*) in the case of an office-holder marrying (or remarrying) after 31st January 1974 and while still serving, not later than six months after his marriage or remarriage, as the case may be.

(5) An office-holder who has made an election under sub-paragraph (3) above may at any time, by notice in writing given 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 (*a*) or (*b*), as the case may be, of sub-paragraph (3) above.

(6) An election made under sub-paragraph (3) 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 and paragraph 2(6) shall apply to such deductions as it applies to deductions made in pursuance of an election under paragraph 2(2).

(7) An election made under sub-paragraph (3) above 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, subject to sub-paragraph (8) below, 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).

(8) If an office-holder's back service includes previous service but he has made no election under regulation 3(1)(*a*), then for any period during which he has made additional payments at the standard rate (or, in accordance with sub-paragraph 3(*a*) or (*b*) above, at twice, two and three quarters times, three times or four times that rate, he shall be treated for the purpose of sub-paragraph (7) above—

(*a*) as having made those payments for one and a half times, three times, four and one eighth times, four and one half times or, as the case may be, six times such part of that period as, so multiplied, does not exceed in length his previous service; and

(*b*) in respect of the remainder (if any) of that period, as having made the payments for the remainder or for twice, two and three quarters times, three times or four times the remainder of that period, according as the payments were made at the standard rate or at one of the higher rates specified in sub-paragraph 3(*a*) or (*b*) above.

Effect of making periodical payments

4.—(1) In this paragraph—

"appropriate fraction" means 1/240 in the case of the holder of a 15-year office and 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 a holder of a 20-year office;

"gross reduction" means the amount by which an office-holder's lump sum would, under paragraph 1, be reduced if he had made no periodical payments.

(2) Subject to sub-paragraph (6) below, 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 sub-paragraph (2) above, an office-holder shall be treated, for every period of service during which he has made additional payments in accordance with paragraph 3(3) 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 paragraph 3(7) or (8) 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 sub-paragraph (5) below.

(5) The amount of the reduction referred to in sub-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 paragraph 3(7) and without regard to paragraph 3(8) above, as having made) periodical payments at the standard rate, the appropriate fraction of his last annual salary.

(6) An office-holder with previous service who—

(*a*) has elected to make periodical payments but has made no election under regulation 3(1)(*a*); and

(*b*) is by virtue of the combined effect of paragraph 3(8) and sub-paragraph (3) above, entitled to be treated as having made periodical payments at the standard rate for the full period; and

(*c*) continues in service after having become so entitled,

shall, notwithstanding anything in sub-paragraph (2) above and without prejudice to any right under paragraph 2(3) to revoke his election to make periodical payments, remain while so serving liable to continue making periodical payments at a rate equivalent to one third of the standard rate until he has completed 15, or as the case may be 20, years' service after the 17th April 1973.

Non-aggregable service

5.—(1) In this paragraph—

"primary office" means the office in respect of which entitlement to the personal pension arises;

"secondary office" means an office other than the primary office;

references to an election by an office-holder include references to any election that may, if he has died, be made by another person in respect of him.

(2) This paragraph applies to an office-holder whose successive periods of service in different offices are not aggregable 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 him during service in a secondary office if that service is to be disregarded for the purpose of determining the personal pension for which he elects and any such payments shall, in accordance with paragraph 6 below, 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 purposes of paragraph 4 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 he 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 $\frac{4}{3}$; 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 $\frac{3}{4}$.

Refunds of periodical payments

6.—(1) Periodical payments made by an office-holder shall (subject to sub-paragraph (2) below) be refunded, with compound interest added at a rate of 3 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 widow's pension;

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

(*c*) in the circumstances mentioned in paragraph 5(3) above.

(2) The responsible authority shall, in making any refund in pursuance of this paragraph, deduct the appropriate amount in respect of tax charged under paragraph 2 of Schedule 5 to the Finance Act 1970(a).

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations provide for the contributions to be made by holders of certain judicial and other offices towards the increased superannuation benefits for widows and children under section 10 of the Administration of Justice Act 1973.

Regulations 3 and 4 enable an office-holder who was serving before the passing of the Act to adopt one of three courses:—

(*a*) he can elect that his widow's pension shall continue to be governed by the Administration of Justice (Pensions) Act 1950;

(*b*) he can make no election, which will result in his widow becoming entitled to a pension intermediate between one-third (the former rate) and one-half (the new rate) of his own pension; or

(*c*) he can elect that she shall be entitled to a half-rate pension notwithstanding that some of his service has taken place before the passing of the Act of 1973.

In either of the last two events he will be required to pay correspondingly increased contributions.

The rate of contributions and the methods by which they may be made are governed by Regulation 7 and the Schedule. Contributions may, at the election of the office-holder concerned, be paid either wholly out of his lump sum benefit on retirement or in the form of deductions from his salary which, if made for a sufficiently long period, will exclude any reduction in his lump sum. If no deductions are made from salary, the contribution for a widow's pension at half the rate of the personal pension will be three-quarters of the lump sum. The rate at which deductions from salary may be made will be either 4% or 3% of the salary for the time being, dependent on the period of service required to earn a full personal pension. Those who have been serving before the commencement of the Regulations will be entitled to contribute out of salary at a higher rate in order to cover earlier service.

The Regulations come into force on 1st February 1974.

(a) 1970 c. 24.

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