



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART III

#### JUDICIAL AND OTHER OFFICES AND JUDICIAL PENSIONS

##### *Judicial appointments*

#### **71 Qualification for judicial and certain other appointments**

(1) In section 10(3) of the Supreme Court Act 1981—

- (a) in paragraph (b) (qualification for appointment as Lord Justice of Appeal) for the words “unless he is a barrister of at least fifteen years' standing or a judge of the High Court” there shall be substituted—

“unless—

(i) he has a 10 year High Court qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; or

(ii) he is a judge of the High Court;”;

- (b) in paragraph (c) (qualification for appointment as puisne judge of the High Court) for the words “unless he is a barrister of at least ten years' standing” there shall be substituted—

“unless—

(i) he has a 10 year High Court qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990; or

(ii) he is a Circuit judge who has held that office for at least 2 years.”

(2) Schedule 10 shall have effect for the purpose of making amendments to other enactments, measures and statutory instruments which relate to qualification for judicial and certain other appointments.

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- (3) For the purposes of this section, a person has—
- (a) a “Supreme Court qualification” if he has a right of audience in relation to all proceedings in the Supreme Court;
  - (b) a “High Court qualification” if he has a right of audience in relation to all proceedings in the High Court;
  - (c) a “general qualification” if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts;
  - (d) a “Crown Court qualification” if he has a right of audience in relation to all proceedings in the Crown Court;
  - (e) a “county court qualification” if he has a right of audience in relation to all proceedings in county courts;
  - (f) a “magistrates' court qualification” if he has a right of audience in relation to all proceedings in magistrates' courts.
- (4) References in subsection (3) to a right of audience are references to a right of audience granted by an authorised body.
- (5) Any reference in any enactment, measure or statutory instrument to a person having such a qualification of a particular number of years' length shall be construed as a reference to a person who—
- (a) for the time being has that qualification, and
  - (b) has had it for a period (which need not be continuous) of at least that number of years.
- (6) Any period during which a person had a right of audience but was not entitled to exercise it shall count towards the period mentioned in subsection (5)(b) unless he was prevented by the authorised body concerned from exercising that right of audience as a result of disciplinary proceedings.
- (7) For the purposes of subsection (5)(a), a solicitor who does not have a right of audience, by reason only of not having a practising certificate in force, shall be deemed to have such a right, unless his not having a practising certificate in force is the result of disciplinary proceedings.
- (8) For the purposes of subsection (5)(b), any period during which a solicitor did not have a right of audience, by reason only of not having a practising certificate in force, shall be deemed to be a period during which he had such a right, unless his not having a practising certificate in force was the result of disciplinary proceedings.

### *Judges*

## **72 Presiding Judges**

- (1) For each of the Circuits there shall be at least two Presiding Judges, appointed from among the puisne judges of the High Court.
- (2) There shall be a Senior Presiding Judge for England and Wales, appointed from among the Lords Justices of Appeal.
- (3) Any appointment under subsection (1) or (2) shall be made by the Lord Chief Justice with the agreement of the Lord Chancellor.

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- (4) In this section “the Circuits” means—
- (a) the Midland and Oxford Circuit;
  - (b) the North Eastern Circuit;
  - (c) the Northern Circuit;
  - (d) the South Eastern Circuit;
  - (e) the Western Circuit; and
  - (f) the Wales and Chester Circuit,
- or such other areas of England and Wales as the Lord Chancellor may from time to time, after consulting the Lord Chief Justice, direct.
- (5) A person appointed as a Presiding Judge or as the Senior Presiding Judge shall hold that office in accordance with the terms of his appointment.
- (6) In section 4 of the Supreme Court Act 1981 (composition of High Court)—
- (a) in subsection (1), after the words “Vice-Chancellor” there shall be inserted—  
“*(dd)* the Senior Presiding Judge”; and
  - (b) in subsection (6) for the words “or Vice-Chancellor” there shall be substituted “Vice-Chancellor or Senior Presiding Judge”.

### **73 Delegation of certain administrative functions of Master of the Rolls**

- (1) Where the Master of the Rolls expects to be absent at a time when it may be appropriate for any relevant functions of his to be exercised, he may appoint a judge of the Supreme Court to exercise those functions on his behalf.
- (2) Where the Master of the Rolls considers that it would be inappropriate for him to exercise any such functions in connection with a particular matter (because of a possible conflict of interests or for any other reason), he may appoint a judge of the Supreme Court to exercise those functions on his behalf in connection with that matter.
- (3) Where the Master of the Rolls is incapable of exercising his relevant functions, the Lord Chancellor may appoint a judge of the Supreme Court to exercise, on behalf of the Master of the Rolls, such of those functions as the Lord Chancellor considers appropriate.
- (4) Any appointment under this section shall be in writing and shall specify—
- (a) the functions which may be exercised by the appointed judge; and
  - (b) the period for which the appointment is to have effect.
- (5) In this section “relevant functions” means any functions of the Master of the Rolls under—
- (a) section 144A of the Law of Property Act 1922 (functions in relation to manorial documents);
  - (b) section 7(1) of the Public Records Act 1958 (power to determine where records of the Chancery of England are to be deposited);
  - (c) the Solicitors Act 1974 (which gives the Master of the Rolls various functions in relation to solicitors);
  - (d) section 9 of, and Schedule 2 to, the Administration of Justice Act 1985 (functions in relation to incorporated practices).

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## **74 District judges**

- (1) The offices of—
  - (a) registrar, assistant registrar and deputy registrar for each county court district; and
  - (b) district registrar, assistant district registrar and deputy district registrar for each district registry of the High Court,shall become the offices of district judge, assistant district judge and deputy district judge respectively.
- (2) The office of registrar of the principal registry of the Family Division of the High Court shall become the office of district judge of the principal registry of the Family Division.
- (3) Any reference in any enactment, instrument or other document to an office which is, or includes, one to which this section applies shall be construed as a reference to, or (as the case may be) as including a reference to, that office by its new name.
- (4) In section 14 of the County Courts Act 1984 (power of judge to impose penalty for an assault on an officer of the court) after subsection (2) there shall be inserted—

“(3) A district judge, assistant district judge or deputy district judge shall have the same powers under this section as a judge.”
- (5) In section 55 of that Act (power of judge to impose penalty for refusal to give evidence) after subsection (4) there shall be inserted—

“(4A) A district judge, assistant district judge or deputy district judge shall have the same powers under this section as a judge.”
- (6) In section 118 of that Act (power of judge to commit for contempt) after subsection (2) there shall be inserted—

“(3) A district judge, assistant district judge or deputy district judge shall have the same powers under this section in relation to proceedings before him as a judge.”
- (7) In section 42 of the Matrimonial and Family Proceedings Act 1984 (which allows certain county court proceedings to be taken in the principal registry of the Family Division) the following subsection shall be inserted after subsection (4)—

“(4A) Where a district judge of the principal registry is exercising jurisdiction in any matrimonial cause or matter which could be exercised by a district judge of a county court, he shall have the same powers in relation to those proceedings as if he were a district judge of a county court and the proceedings were in a county court.”

## **75 Judges etc. barred from legal practice**

No person holding as a full-time appointment any of the offices listed in Schedule 11 shall—

- (a) provide any advocacy or litigation services (in any jurisdiction);
- (b) provide any conveyancing or probate services;
- (c) practise as a barrister, solicitor, public notary or licensed conveyancer, or be indirectly concerned in any such practice;

- (d) practise as an advocate or solicitor in Scotland, or be indirectly concerned in any such practice; or
- (e) act for any remuneration to himself as an arbitrator or umpire.

## **76 Judicial oaths**

- (1) A person holding any of the following offices—
- (a) district judge, including district judge of the principal registry of the Family Division;
  - (b) Master of the Queen’s Bench Division;
  - (c) Master of the Chancery Division;
  - (d) Registrar in Bankruptcy of the High Court;
  - (e) Taxing Master of the Supreme Court;
  - (f) Admiralty Registrar,
- shall take the oath of allegiance and the judicial oath before a judge of the High Court or a Circuit judge.
- (2) The Promissory Oaths Act 1868 shall have effect as if the offices listed in the Second Part of the Schedule to that Act included those offices.

### *Supreme Court Officers*

## **77 Age for retirement of certain Supreme Court officers**

- (1) In section 92 of the Supreme Court Act 1981 (tenure of office) for subsection (2) there shall be substituted—
- “(2) Subsection (1) applies to the offices listed in column 1 of Part II of Schedule 2 except the office of Queen’s Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals.
- (2A) Subject to the following provisions of this section, a person who holds an office to which this subsection applies shall vacate it at the end of the completed year of service in the course of which he attains the age of sixty-two years.
- (2B) Subsection (2A) applies to the offices listed in column 1 of Part I of Schedule 2 and the office of Queen’s Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals.
- (2C) For the purposes of subsections (1) and (2A) a person who has successively held two or more offices listed in column 1 of Part I or II of Schedule 2 shall be treated as completing a year of service on the anniversary of his appointment to the first of them.”
- (2) After subsection (3) of that section (retirement age increased in certain circumstances to 75 years) there shall be inserted—
- “(3A) Where the Lord Chancellor considers it desirable in the public interest to retain in office a person who holds an office to which subsection (2A) applies after the time when he would otherwise retire in accordance with that subsection, the Lord Chancellor may from time to time authorise the continuance in office

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of that person until such date, not being later than the date on which he attains the age of sixty-five years, as he thinks fit.”

- (3) In subsection (4) of that section (person to hold office during good behaviour) after the words “subsection (1)” there shall be inserted “or (2A)”.

## **78 Registrar of Criminal Appeals**

- (1) The office of Registrar of Criminal Appeals shall be combined with the office of Queen’s Coroner and Attorney and Master of the Crown Office.
- (2) After section 13 of the Judicial Pensions Act 1981 there shall be inserted—

### **“13A Registrar of Criminal Appeals**

There may be paid to persons who have held the office of Queen’s Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals such superannuation allowances as the Lord Chancellor may, with the approval of the Treasury, determine.”

- (3) In Part I of Schedule 1 to that Act (which lists certain officers of the Supreme Court and has the effect of entitling them to pension benefits etc.) the entry relating to the Registrar of Criminal Appeals shall be omitted.
- (4) The offices of Assistant Registrar of Criminal Appeals and Deputy Assistant Registrar of Criminal Appeals are hereby abolished.

### *Judicial pensions*

## **79 Widowers' pensions**

- (1) The following section shall be inserted in the Judicial Pensions Act 1981, after section 18 (which sets out the conditions on which a widow’s pension is payable)—

### **“18A Widowers' pensions**

- (1) Section 18 above shall have effect in relation to the death of a female person as it has effect in relation to the death of a male person but as if—
- (a) for the words “widow”, “widow’s pension” and “wife” there were substituted “widower”, “widower’s pension” and “husband”; and
  - (b) for the words “his”, “he” and “him” there were substituted “hers”, “she” and “her”.
- (2) The transitional provisions in Part IV of Schedule 2 to this Act shall have effect in relation to widowers' pensions.”
- (2) The transitional provisions set out in Schedule 12 shall be inserted in the Act of 1981 as Part IV of Schedule 2 to that Act.

## **80 Widows' and widowers' pensions: supplemental**

For section 19 of the Judicial Pensions Act 1981 (determination of widow’s pension) there shall be substituted—

### **“19 Widows' and widowers' pensions**

- (1) No widow's or widower's pension may be granted if the marriage with the deceased took place after he or she retired from relevant service.
- (2) A widow's or widower's pension shall come to an end on the death of the widow or widower.
- (3) Where a widow's or widower's pension is payable the Treasury may, on or at any time after the re-marriage of the widow or widower, direct that it shall cease to be payable.
- (4) Where such a direction has been given the Treasury may at any time direct that payment of the pension is to be resumed.
- (5) The annual amount of a widow's or widower's pension may be one half of the annual amount of the personal pension.”

## **81 Transfer of accrued rights to and from judicial pension schemes**

Schedule 13 amends the Judicial Pensions Act 1981 by inserting a new Schedule 1A, which makes provision for the transfer of accrued rights into and out of the judicial pension schemes constituted by that Act and the Sheriffs' Pensions (Scotland) Act 1961.

## **82 Voluntary contributions**

- (1) In the Judicial Pensions Act 1981, the following section shall be inserted after section 33—

### **“33A Voluntary contributions**

- (1) Regulations shall make provision entitling any member of a judicial pension scheme constituted by this Act or the Sheriffs' Pensions (Scotland) Act 1961 to make voluntary contributions towards the cost of the provision of additional benefits under the scheme.
- (2) The regulations—
  - (a) may not prohibit the payment of voluntary contributions;
  - (b) may not impose any limit on the amount which any member may pay by way of voluntary contributions other than an upper limit corresponding to that for the time being fixed by or under section 594 of the Income and Corporation Taxes Act 1988 (exempt statutory schemes);
  - (c) must secure that any voluntary contributions paid by a member of a scheme are used to provide prescribed additional benefits for or in respect of him; and
  - (d) must secure that the value of such additional benefits is reasonable, having regard to—
    - (i) the amount paid by way of voluntary contributions;
    - (ii) the value of the other benefits provided under the scheme; and

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- (iii) the general value of benefits available to a person under any contract of life insurance entered into by him with an insurance company to which Part II of the Insurance Companies Act 1982 (regulation of insurance companies carrying on insurance business within the United Kingdom) applies.
- (3) The regulations may, in particular—
  - (a) provide that the value of additional benefits offered on payment of voluntary contributions shall be determined in accordance with prescribed rules based on tables prepared for the purposes of the regulations by the Government Actuary; and
  - (b) prescribe the manner in which it is to be determined in any case whether the amount of a person's contributions exceeds any limit imposed by virtue of subsection (2)(b) above.
- (4) Nothing in subsection (2) shall be taken to prevent the regulations from limiting the overall amount which a member may pay by way of voluntary contributions by reference to the maximum entitlement of members under the scheme.
- (5) Regulations made under this section may make provision for consequential and incidental matters, including, in particular, consequential provision with respect to any enactment referring or relating to lump sums payable under Part II of this Act.
- (6) Regulations under this section may be made—
  - (a) by the Lord Chancellor; or
  - (b) in relation to pensions for service in offices existing only in Scotland, by the Secretary of State,
 with the consent of the Treasury.
- (7) The power to make regulations under this section shall be exercisable by statutory instrument.
- (8) Any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 12 of the Social Security Act 1986 (voluntary contributions), the following subsection shall be inserted after subsection (10)—
  - “(10A) This section does not apply in relation to any pension payable under the Judicial Pensions Act 1981 or the Sheriffs' Pensions (Scotland) Act 1961.”
- (3) In Article 14 of the Social Security (Northern Ireland) Order 1986 (voluntary contributions in Northern Ireland) the following paragraph shall be inserted after paragraph (10)—
  - “(10A) This Article does not apply in relation to any pension payable under the Judicial Pensions Act 1981.”

### **83 Period of service to qualify for certain superannuation benefits**

- (1) In each of the following provisions (which among other things require a minimum number of years service for qualification for superannuation benefits)—



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- (a) section 7(1) of the Judicial Pensions Act 1981 (stipendiary magistrates);
  - (b) section 9(1) of that Act (Judge Advocate General);
  - (c) paragraph 4(1)(b) of Schedule 1 to that Act (Supreme Court officers etc); and
  - (d) section 1(1) of the Sheriffs' Pensions (Scotland) Act 1961,
- for the words “5 years”, or “five years”, there shall be substituted, in each case, “2 years”.
- (2) In section 7(3) of the Act of 1981 (rate of pension payable to a stipendiary magistrate) for “(a)” there shall be substituted—
- “(a) if the period of service amounts to less than 5 (but not less than 2) years, 6/80ths of his last annual salary,
  - (aa)”.
- (3) In section 9 of the Act of 1981 (rate of pension payable to Judge Advocate General) the following subsection shall be inserted after subsection (3)—
- “(3A) The annual rate of pension payable under this section to a person retiring after less than 5 (but not less than 2) years service shall be 6/80ths of his last annual salary.”
- (4) In paragraph 4(4) of Schedule 1 to the Act of 1981 (rate of pension payable to an officer of the Supreme Court etc.) for “(a)” there shall be substituted—
- “(a) if the period of relevant service amounts to less than 5 (but not less than 2) years, 6/80ths of his last annual salary,
  - (aa)”.
- (5) In subsections (2) and (3) of section 3 of the Sheriffs' Pensions (Scotland) Act 1961 (rate of pension payable to sheriff and salaried sheriff-substitute) for “(a)” there shall, in each case, be substituted—
- “(a) where the period of his relevant service exceeds two years but is less than five years, six eightieths of his last annual salary;
  - (aa)”.

#### **84 Abolition of abatement of salary rule for judges etc**

The following provisions (which provide for the abatement of salaries of holders of certain judicial and related offices who are in receipt of pensions payable in respect of public offices) shall cease to have effect—

- (a) section 3 of the Superannuation (Miscellaneous Provisions) Act 1967 (miscellaneous offices);
- (b) section 1 of the Superannuation (Miscellaneous Provisions) Act (Northern Ireland) 1969 (miscellaneous offices in Northern Ireland);
- (c) section 18(3) of the Courts Act 1971 (Circuit judges);
- (d) in section 1(2) of the Ministerial and other Salaries Act 1975 (Lord Chancellor), the words from “but” to the end;
- (e) section 9(4) of the Administration of Justice Act 1973 (Lords of Appeal in Ordinary, judges of the Court of Session, judges of the Supreme Court in Northern Ireland and stipendiary magistrates);
- (f) section 12(4) of the Supreme Court Act 1981 (judges of the Supreme Court other than the Lord Chancellor).