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STATUTORY INSTRUMENTS

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**1998 No. 2768**

**PENSIONS**

**The Judicial Pensions (European Court of Human Rights) Order 1998**

*Made* - - - - *12th November 1998*  
*Laid before Parliament* *13th November 1998*  
*Coming into force* - - *7th December 1998*

The Lord Chancellor and, in relation to any judicial office whose jurisdiction is exercisable exclusively in relation to Scotland, the Secretary of State, in exercise of the powers conferred on them by section 18 of, and Schedule 4 to, the Human Rights Act 1998<sup>(1)</sup>, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Judicial Pensions (European Court of Human Rights) Order 1998 and shall come into force on 7th December 1998.

**Interpretation**

2. In this Order:

“the Act” means the Human Rights Act 1998.

“the 1981 Act” means the Judicial Pensions Act 1981<sup>(2)</sup>.

“the 1993 Act” means the Judicial Pensions and Retirement Act 1993<sup>(3)</sup>.

“administrators”, in relation to a pension scheme, means the persons entrusted with the administration of the scheme.

“ECHR service” means the period of an ECHR judge’s appointment as an ECHR judge.

“UK judicial office”, in relation to an ECHR judge, means the judicial office (as defined by section 18(1) of the Act) which the ECHR judge holds from time to time.

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(1) 1998 c. 42; by virtue of paragraph 1 of Schedule 4, the power to make this Order is vested in “the appropriate Minister”. This expression is defined in paragraph 4 of that Schedule as the Secretary of State, in relation to any judicial office whose jurisdiction is exercisable exclusively in relation to Scotland, and, otherwise, as the Lord Chancellor.

(2) 1981 c. 20.

(3) 1993 c. 8.

3. Nothing in this Order shall prevent the operation of any provisions of the 1981 Act or the 1993 Act whereby (whether by election or otherwise) a person becomes, or ceases to be, a member of one of the judicial pension schemes constituted under the 1981 Act, or becomes, or ceases to be, a person to whom Part I of the 1993 Act applies.

4. (1) Subject to paragraph (3), articles 5 to 7 of this Order apply, for the purposes of the 1981 Act, to an ECHR judge who, immediately before his appointment as an ECHR judge, was or, but for an election under section 14A of the 1981 Act(4), would be, a member of one of the judicial pension schemes constituted under the 1981 Act.

(2) Articles 5, 6 and 8 of this Order apply, for the purposes of the 1993 Act, to an ECHR judge who, immediately before his appointment as an ECHR judge, was or, but for an election under section 13 of the 1993 Act, would be, a person to whom Part I of the 1993 Act applies.

(3) Where paragraph (1) applies to an ECHR judge and he becomes a person to whom Part I of the 1993 Act applies:

- (a) articles 5 to 7 of this Order apply to him, for the purposes of the 1981 Act, in respect of the period before the date on which he first becomes a person to whom Part I of the 1993 Act applies; and
- (b) articles 5, 6 and 8 of this Order apply to him, for the purposes of the 1993 Act, in respect of the period from the date on which he first becomes a person to whom Part I of the 1993 Act applies.

5. During the whole of his ECHR service, the ECHR judge's salary, for the purposes of the 1981 Act and the 1993 Act, shall be treated as being the salary which would be payable to him if he had not been appointed as an ECHR judge and had continued to perform the duties of his UK judicial office.

6. Contributions prescribed for the purposes of sections 23 and 33A of the 1981 Act(5) and sections 9 and 10 of the 1993 Act shall not be made by deduction from salary, but shall be collected in such manner as may be determined by the administrators.

### **Judicial Pensions Act 1981**

7. The ECHR judge shall be treated during the whole of his ECHR service as serving in his UK judicial office and, subject to the operation of any of the provisions referred to in article 3 of this Order, the whole of his ECHR service shall count as relevant service.

### **Judicial Pensions and Retirement Act 1993**

8. The ECHR judge shall, during the whole of his ECHR service, be treated as holding, and serving in, his UK judicial office, which shall be treated as a qualifying judicial office.

Dated 12th November 1998

*Irvine of Lairg, C.*

*Donald C. Dewar*

One of Her Majesty's Principal Secretaries of State

Dated 10th November 1998

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(4) Section 14A was inserted by 1988/1417.

(5) Section 33A was inserted by section 82(1) of the Courts and Legal Services Act 1990 (c. 41).

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is a pension order, as defined by Schedule 4 to the Human Rights Act 1998. It makes provision for a judge appointed to the European Court of Human Rights, who was a member, either of one of the judicial pension schemes constituted by the Judicial Pensions Act 1981, or of the judicial pension scheme constituted by Part I of the Judicial Pensions and Retirement Act 1993, to remain a member of that scheme on the terms that would have applied had he not been so appointed.