

English

Les Livrets
Thématiques

Legal guardianship and estate

United Nations
Joint Staff Pension Fund

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Introduction

The United Nations Joint Staff Pension Fund (UNJSPF) is receiving an increasing number of queries concerning its policy and procedures with regard to retirees and adult beneficiaries, who are less autonomous or can no longer manage their pension affairs, child beneficiaries, and payment of benefits to the estates of late participants or retirees. The purpose of this booklet is to provide information to retirees, beneficiaries and their families on these subjects. However, this booklet does not attempt to cover all possible aspects and scenarios, as it is impossible to foresee the circumstances of every individual case that may arise. Family members facing circumstances not covered by this booklet are therefore encouraged to consult the Fund's secretariat.

The information in this booklet is made available for the convenience of UNJSPF retirees, beneficiaries and their families. If there is any ambiguity, inconsistency or conflict between the information provided and the UNJSPF Regulations, Rules and Pension Adjustment System, any decisions will be based on the Regulations, Rules and Pension Adjustment System, and not the information contained in this booklet.

The information in this booklet is divided into the following sections:

- Terms and acronyms used in this booklet;
- Retirees and adult beneficiaries who are unable to manage their affairs due to ill health or infirmity emanating from advanced age;
- Legal guardians for beneficiaries of child benefits who are under the age of 21 or disabled;
- Payment to the estate of a late participant or retiree;
- Relevant provisions of the UNJSPF regulations and administrative rules.

Terms and Acronyms used in this booklet

Participant: refers to an active staff member contributing to the Fund in accordance with articles 21 and 25 of the Regulations of the Fund.

Retiree: refers to a participant who has officially separated from the service of his/her employing organization and is in receipt of a periodic benefit payment from the Fund.

Beneficiary: refers to a person entitled to a survivor's benefit (widow/widower, child, disabled child, divorced surviving spouse or secondary dependant).

Guardian: refers to a third party appointed by the appropriate judicial authority in the retiree's or beneficiary's country of residence to manage his/her financial and/or pension affairs.

UNJSPF: United Nations Joint Staff Pension Fund also referred to as "the Fund".

Retirees and adult beneficiaries who are unable to manage their affairs due to ill health or infirmity emanating from advanced age



The Fund requires that retirees and beneficiaries affix an original signature on all the Fund's forms, including requests for change of address, annual Certificate of Entitlement (CE) forms, as well as on all letters addressed to the Fund. Changes to information about a retiree or beneficiary can be made only based on a document carrying the date, pension or retirement number, as well as the retiree's or beneficiary's full name and original signature that must match the original signature the Fund has on file for the retiree or beneficiary.

The Fund's requirements are intended to ensure that benefits are duly paid to the right person, and to minimize the risk of fraud. Similarly, the Fund's policies and procedures with regard to retirees and beneficiaries who are less autonomous or can no longer manage their pension/financial affairs, as detailed below, are designed to ensure to the extent possible that benefits are paid to those that are entitled to receive them, and that there is proper management and accountability for the administration of the benefits.

The Fund recognizes that its policies and requirements may lead to proceedings that can be costly and lengthy. All efforts are being made to alleviate unnecessary burden to retirees and beneficiaries. However, in this respect the Fund has to balance its practice with its fiduciary obligation to all Fund participants and beneficiaries. Certain safeguards are necessary in order to protect the Fund's assets and minimize potential abuse of benefits paid to those who cannot manage their own pension affairs.

When does the Fund require the appointment of a legal guardian for a retiree or adult beneficiary?

As a general rule, where a retiree or adult beneficiary is unable to manage his/her affairs due to ill health and/or infirmity emanating from advanced age, the Fund requires the appointment of a legal guardian to act on behalf of the retiree or beneficiary.

What documentation is required by the Fund to recognize a legal guardian appointed to act on behalf of a retiree or adult beneficiary?

The Fund's policy requires that the guardian be appointed by the appropriate judicial authority in the retiree's or beneficiary's country of residence. Therefore the guardian must submit to the Fund:

- (a)** a full copy of the decision of the appropriate judicial authority in the retiree's or beneficiary's country of residence to appoint him/her as the guardian of the Fund's retiree or beneficiary. The mandate of the legal guardian pursuant to the decision must include the management of the retiree's or beneficiary's financial affairs and/or pension related affairs.
- (b)** the contact details of the legally appointed guardian. If more than one guardian is appointed, the Fund must receive the contact details of each legal guardian.
- (c)** a copy of the passport of the legally appointed guardian or another official identification document that bears the owner's photograph and signature. If more than one guardian is appointed, the Fund must receive a copy of the official identification document of each legal guardian with their photograph and signature.
- (d)** if the legal guardian is an organization, an agency or trust, it must inform the Fund of the name of the employee or trustee who is authorized to sign documents on behalf of the retiree or beneficiary as his/her legal guardian, and provide the Fund with a copy of his/her passport or another official identification document that bears the owner's photograph and signature.
- (e)** all documents must be in English or French, which are the working languages of the UNJSPF, or accompanied by a professional translation into one of these languages.

Does the Fund only recognize court-appointed legal guardians or does it also recognize court appointments under other protection regimes?

Although this booklet refers solely to the term “guardian”, this term is used by the Fund in its generic form, and covers court appointments under different types of protection regimes available under different jurisdictions, including tutorship, conservatorship and curatorship.

Does the Fund recognize appointments that are not made by a court but registered by a governmental authority?

The Fund’s policy is that the third party (guardian) must be appointed by the appropriate judicial authority in the retiree’s or beneficiary’s country of residence. However, where the national law provides for alternative arrangements, including a mechanism under which a governmental authority oversees or approves the arrangement, such appointment is also recognized for the Fund’s purposes. Examples of such arrangements can be found in the UK (e.g. registered lasting or enduring powers of attorney), Ireland and Canada (Quebec), where there are simplified processes for registration of powers of attorney under the national law managed by a central authority, such as the Office of the Public Guardian or the Office of Wards of Court. In such cases, the third party must submit to the Fund a full copy of the document which appoints the attorney or guardian of the retiree or beneficiary, registered and issued by the relevant authority. The document must be in English or French, which are the working languages of the UNJSPF, or accompanied by a professional translation into one of these languages.

Does the Fund accept third parties appointed under a power of attorney or affidavit?

The Fund does not recognize appointments of third parties by means of powers of attorney or affidavits (even if the affidavits were approved by a national court).

What are the powers of the legal guardian acting on behalf of a retiree or beneficiary in relation to UNJSPF benefits?

A guardian who acts on behalf of a retiree or beneficiary must act within the scope of his/her appointment by the judicial authority and the limitations thereof. He/she can sign the Fund’s forms in areas where he/she is authorized to act on behalf of the retiree or beneficiary and send questions and requests for information to the Fund.

A UNJSPF benefit can only be paid to a bank account in the name of the retiree or beneficiary. Therefore, a guardian appointed to manage the monies of a retiree or beneficiary, that does not have access to his/her bank account, should open

a guardianship/trust bank account in the name of or on behalf of the retiree or beneficiary, or a joint bank account in the name of the guardian and the retiree or beneficiary, and fill out and send to the Fund the Payment Instruction Form accordingly, together with a copy of the bank account statement or a letter from the bank that confirms the name(s) on the bank account.

What information is required by the Fund on forms and correspondence sent on behalf of the retiree or beneficiary?

The Fund's forms or letters sent by the guardian must include the full name of the retiree or beneficiary, his/her retirement number, the full name of the guardian, his/her title (i.e. guardian of (name of retiree/beneficiary)) and the date.

What should be done if the appointment of the legal guardian has been cancelled, his/her mandate has been amended, or he/she has been replaced by another guardian?

The guardian must send to the Fund immediately any decisions or other documents, which amend or cancel his/her appointment as the guardian of the retiree or beneficiary.

What if the legal guardian has been appointed on a temporary basis or for a limited duration?

The requirements listed above concerning legal guardians apply also to those appointed on a temporary basis or for a limited duration. The Fund recognizes that such appointments are only for the duration specified in the decision of the appropriate judicial authority. It is, therefore, the legal guardian's obligation to send to the Fund immediately any decisions or other documents which extend, amend or cancel the appointment or appoints a permanent legal guardian to the retiree or beneficiary.

If a court decision to appoint a temporary guardian does not specify the length of the appointment, the temporary guardian must inform the Fund when court proceedings concerning the appointment of a permanent guardian are expected to take place, and send to the Fund any decisions issued thereof. If it is clear that the appointment is only temporary, the Fund will normally review the appointment six months after the initial guardianship appointment to determine whether or not payment should be suspended.

Under what circumstances does the Fund accept that a retiree or beneficiary, who can no longer affix his/her original signature on documents, will affix his/her thumbprint instead?

In cases where a retiree or beneficiary can no longer sign documents due to ill health, the Fund accepts that in lieu of an original signature the retiree or beneficiary may affix his/her original thumbprint on a document, provided it is duly authenticated as specified below. Note that authentication is required for each document on which a thumbprint is affixed.

This arrangement can be exercised under the following conditions:

- (a)** the thumbprint of the retiree or beneficiary has to be duly authenticated by an official of the retiree's former employing organization or officer of any UNJSPF member organization (such as a Human Resources Officer), a UNJSPF Official, a Government Official, a Notary Public or an attending physician. The person authenticating the retiree's or beneficiary's thumbprint must affix on the document their full name and title, the date, their stamp/seal of office, and, if applicable, also their license or index number, as well as an original signature.
- (b)** when the retiree or beneficiary uses his/her thumbprint in lieu of a signature for the first time, the Fund must receive a medical certificate or statement in English or French (or accompanied by a professional translation into English or French) on official stationery from his/her attending physician indicating the nature of the retiree's or beneficiary's medical condition, which prevents him/her from signing.

The above arrangement cannot be used in order to amend the retiree's or beneficiary's payment instructions or the "Designation of recipient of residual settlement" form (known as UNJSPF A/2 form).

Furthermore, the Fund recommends that during the period when this arrangement is used, the retiree/beneficiary or his/her family or friends should start the proceedings for the appointment of a legal guardian for the retiree or beneficiary.

What if a retiree or beneficiary can still sign documents, however, given the passage of time the signature differs notably from the original signature the Fund has on file?

In cases where the signature of the retiree or beneficiary differs notably from the original signature the Fund has on file, the Fund will request the beneficiary or retiree to have his/her signature duly authenticated by an official in the retiree's former employing organization or officer of any UNJSPF member organization (such as a Human Resources Officer), a UNJSPF Official, a Government Official or a Notary Public. The person authenticating the retiree's or beneficiary's signature

must affix on the document their full name and title, the date, their stamp/seal of office, and, if applicable, also their license or index number, as well as an original signature. Signatures affixed by the retiree or beneficiary from that point onwards will have to match the authenticated signature.

Furthermore, the Fund recommends that during the period when this arrangement is used, the retiree/beneficiary or his/her family or friends should start the proceedings for the appointment of a legal guardian for the retiree or beneficiary.



Legal guardians for beneficiaries of child benefits who are under the age of 21 or disabled

A UNJSPF benefit payable to the child of a former participant or retiree of the Fund, when the child is under the age of 21 (minor) or disabled, is usually paid on the child's behalf to the former participant or retiree, in accordance with UNJSPF Administrative Rule J.2(e). However, if the child resides with a parent who is not the former participant or retiree of the Fund, payment of the UNJSPF child benefit will be made to the parent with whom the child resides. When the parents of the child are no longer alive or the child is in custody of a third party, the child's benefit will be paid, on his/her behalf, to a legal guardian appointed for the child by the appropriate judicial authority in the child's country of residence.

As part of the Fund's policy to ensure that benefits are paid to the person who is entitled to receive them under the Fund's Regulations, the benefit of a minor or disabled child can only be paid to a guardianship/trust account in the name of or on behalf of the child, an account in the name of the child, or a joint account in the name of the legal guardian and the child.

Furthermore, when a minor child turns 16 or when a disabled child can manage his/her financial affairs, the child's benefit can be remitted directly to him/her.

What documentation is required by the Fund to recognize a legal guardian of a minor or disabled child beneficiary?

To be recognized as the legal guardian for a minor or disabled child beneficiary the third party must submit to the Fund:

- (a) a full copy of the decision of the appropriate judicial authority in the child's country of residence to appoint a guardian for the child.
- (b) the contact details of the legally appointed guardian. If more than one guardian is appointed, the Fund must receive the contact details of each legal guardian.
- (c) a copy of the passport of the legally appointed guardian or another official identification document that bears the owner's photograph and signature. If more than one guardian is appointed, the Fund must receive a copy of the official identification document of each legal guardian with their photograph and signature.
- (d) a UNJSPF Payment Instruction Form signed by the legal guardian and stating the name of the child, the details of the guardianship/trust account in the name of or on behalf of the child, the child's account, or the joint account in the name of the guardian and the child, and the name of the legal guardian.
- (e) a copy of the bank account statement or a letter from the bank that confirms the name(s) on the bank account.
- (f) all documents must be in English or French, which are the working languages of the UNJSPF, or accompanied by a professional translation into one of these languages.

For more information about the UNJSPF child benefit and UNJSPF disabled child benefit please see other UNJSPF booklets, such as the booklets on Survivor's Benefits, Information for Beneficiaries, Separation and Disability.

Payment to the estate of a late participant or retiree

When does the Fund make a payment to the estate of a late participant or retiree?

Upon the participant's or retiree's death the Fund first determines whether there is a survivor's benefit payable under the Fund's Regulations to the widow(er), divorced surviving spouse, children or secondary dependants. As long as there is a benefit payable to one or more of the above-beneficiaries by the Fund, no

other payments are due under the Regulations (e.g. of a residual settlement).

If there is no survivor's benefit payable, the Fund will examine whether there is entitlement to payment of a residual settlement pursuant to Article 38 of the UNJSPF Regulations. A residual settlement is payable only if the total amount of the benefits paid to and on account of the late participant or retiree (including any survivor's benefit) is less than the late participant's or retiree's own contributions to the Fund. In that event, the difference would be paid to the person(s) and/or institution designated as a recipient by the late participant or retiree on the Fund's form entitled "Designation of recipient of residual settlement" (known as UNJSPF A/2 form). The benefit is paid as a one-time lump sum payment. For more information about the payment of a residual settlement see UNJSPF booklet on Survivor's Benefits and UNJSPF booklet on Information for Beneficiaries.

If there is no duly filled out and signed UNJSPF A/2 form in the Fund's records, an amount will be paid to the late participant's or retiree's estate as a residual settlement.

Note that in the case of a retiree's death, there will not be a residual settlement payment due to his/her estate if he/she had elected to be paid, upon separation from service, the maximum lump-sum commutation of the benefit allowed (equivalent to the greater of the actuarial equivalent of 1/3 of the benefit or total contributions with compound interest), and the balance as a reduced monthly pension.

What documents must the Fund receive in order to make a payment to the estate of a late participant or retiree?

The Fund must be provided with the following documents:

- (a)** a full copy of the decision to appoint an administrator or executor of the estate of the late participant or retiree issued by the judicial authorities.
- (b)** the contact details of the legally appointed administrator(s) or executor(s) of the estate. If more than one administrator or executor of the estate is appointed, the Fund must receive the contact details of each legally appointed administrator or executor.
- (c)** a copy of the passport of each legally appointed administrator or executor of the estate or another official identification document that bears the owner's photograph and signature.

- (d) normally the executor or administrator of the estate is requested to open an estate bank account or a legal guardianship/trust bank account. The Fund requires that the executor or administrator submit to the Fund a copy of the bank account statement or a letter from the bank that confirms the name(s) on the bank account.
- (e) the UNJSPF Payment Instruction Form filled out and signed by the executor(s) or administrator(s) of the estate. If more than one administrator or executor to the estate is appointed, and the appointed administrators or executors request that payment be made in the name of only one of them, the Fund requires that the other administrator(s) or executor(s) submit his/her authorization for such a payment.
- (f) all documents must be in English or French, which are the working languages of the UNJSPF, or accompanied by a professional translation into either of these languages.

Can the Fund recover overpayments from the estate of the late participant, retiree or beneficiary?

The Fund can recover from the estate of a late participant, retiree or beneficiary or from benefits payable to the survivors of a late participant or retiree any erroneous payments or overpayments that were made to the late participant, retiree or beneficiary (Article 43 of the UNJSPF Regulations and UNJSPF Administrative Rule J.9).

Relevant provisions of the UNJSPF regulations

Article 36

Child's Benefit

(a) A child's benefit shall, subject to (b) and (c) below, be payable for each child of a participant who is entitled to a retirement, early retirement or disability benefit or who has died in service, while the child remains under the age of 21.

(b) A benefit shall be payable for a child who is over the age of 21 if the child is found by the Board to have been incapacitated by illness or injury for substantial gainful employment:

(i) On reaching the age of 21, if immediately prior thereto a child's benefit was payable; or

(ii) At the time of the death in service or entitlement to a benefit of the participant.

A benefit payable as above shall continue for as long as the child remains incapacitated.

(c) A child's benefit shall, notwithstanding (a) above, not become payable, if the participant has chosen an early retirement benefit, until the participant dies or reaches the normal retirement age, except to a child under the age of 21 found by the Board to be disabled.

[...]

Article 38

Residual Settlement

(a) A residual settlement shall be payable if, upon the death of a participant and the exhaustion, as the case may be, of any entitlements due under these Regulations to his or her survivors, the total amount of the benefits paid to and on account of the participant is less than the participant's own contributions.

(b) The settlement shall be payable to a beneficiary designated by the participant and alive when the payment is due; failing such beneficiary, the settlement shall be paid to the estate of the participant.

(c) The settlement shall consist of the participant's own contributions at the date of his or her separation or death in service, reduced by the total amount of the benefits paid to and on account of the participant.

Article 43

Recovery of Indebtedness to the Fund

The Board may deduct from any benefit payable under these Regulations to a participant, or on his or her account, the amount of any indebtedness to the Fund by the participant or by any beneficiary or third person to whom payment has been made otherwise than in accordance with these Regulations, including interest and costs, where appropriate.

Relevant provisions of the UNJSPF administrative rules

Section I

Entitlement to Benefits

I.1 Entitlement to a benefit shall, subject to rules I.3 and I.4 below but without further action by an organ of the Fund other than as may be required to determine eligibility for a disability or incapacitated child's benefit under these Rules, vest in a participant and in the child of a participant on the day succeeding the last day of contributory service; it shall vest in the widow, widower, secondary dependant, designated beneficiaries or estate of a participant on the day succeeding the day of the participant's death in service, and on the first day of the month succeeding the death if the participant died while in receipt of a periodic benefit.

I.2 Entitlement to a benefit under article 36(a) of the Regulations shall continue to the end of the month in which the child reaches the age of twenty-one.

[...]

Section J

Computation and Payment of Benefits

[...]

J.2 (e) Benefits payable under the Regulations to the children of a participant shall, unless there are exceptional circumstances, be paid on their behalf to the participant and, upon the participant's death, to the surviving parent or legal guardian of each child, in accordance, mutatis mutandis, with (a), (b), (c) and (d) above.

[...]

J.9 (a) Any payments made by the Fund to a participant, beneficiary of a participant or third person otherwise than in accordance with the Regulations of the Fund may be deducted from any future benefits payable to or on account of the participant under these Regulations or may be recovered directly from the person or estate of the person to whom any such payments were made. The Chief Executive Officer may, where such an overpayment had been attributable to the submission of incorrect information to the Fund, recover interest, as well as administrative costs of 10 per cent of the overpayment.

[...]



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Obtain more information on the Pension Fund Web Site
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***The secretariat of the
Staff Pension Committee will assist participants from member
organisations.***