

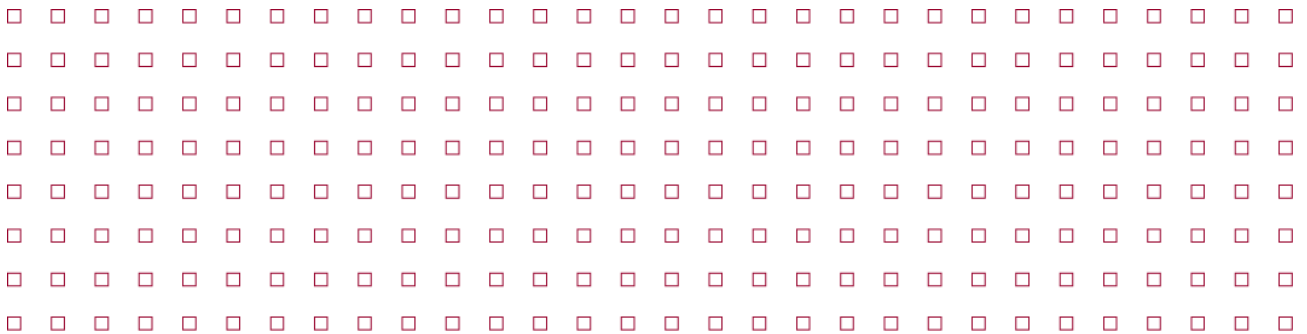


Ministry  
of Justice

# Judicial Pension Scheme 1993

## Scheme Guide

November 2014







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of Justice

## **Judicial Pension Scheme 1993**

Scheme Guide



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## Introduction

This guide explains the features of the **Judicial Pension Scheme 1993**, which was established under the Judicial Pensions and Retirement Act 1993 and the regulations made there-under. This scheme is referred to as 'JUPRA'. The document covers the basic design of the scheme, and other arrangements for members.

JUPRA is a defined benefit pension scheme, open to specified salaried members of the judiciary in England and Wales, Scotland and Northern Ireland. Pensions paid under JUPRA are determined by a Judge's final salary.

## Background

Prior to the introduction of JUPRA, the judiciary were pensioned under a number of pension schemes. JUPRA was established under the Judicial Pensions and Retirement Act 1993 ('The Act'). This was a consolidation Act aimed at bringing all the judicial arrangements under one Act.

The Government are in the process of reforming public service pensions, and in accordance with the Public Service Pensions Act 2013, all existing judicial pension schemes along with a number of other existing pension schemes for public servants will close on 31 March 2015, except where transitional provisions apply.

From 1 April 2015, certain judicial office holders will be able to accrue pension benefits under the New Judicial Pension Scheme (NJPS).

## Membership

All salaried judicial office holders whose judicial office is listed in Schedule 1 to the 1993 Act are automatically members of the pension scheme established by that Act on appointment. The Act also provides for a normal compulsory retirement age of 70.

A salaried Judge appointed to judicial office between 31 March 1995 and 31 March 2015 will have accrued benefits under JUPRA for the period of reckonable service between those dates.

A Judge first appointed to salaried office before 31 March 1995 may be accruing benefits in other judicial pension arrangements, generally all of these Judges reserve the right to transfer into JUPRA at any time.

Certain members of the salaried judiciary will be eligible to remain in JUPRA beyond 31<sup>st</sup> March 2015 if they qualify for any transitional provisions. The eligibility criteria of these transitional provisions are outlined in the June 2014 consultation document.

## Member contributions

Contributions are required from scheme members in respect of the cost towards their personal benefits (“Personal Pension Contributions”), and in respect of the cost towards spouses’, civil partners’ and children’s pensions (“Dependents’ Pension Contributions”).

### Personal Pension Contributions

Personal Pension Contributions are compulsory for all members of the scheme and are made by monthly deductions from the judicial office holder’s gross salary until retirement or the completion of 20 years’ reckonable pensionable service, whichever is the earlier. Contributions were introduced in April 2012 but service before this date counts towards the 20 year limit.

No Personal Pension Contributions are required in respect of any period in which service is enhanced on retirement on health grounds or in the event of death in service. Personal Pension Contributions will be deemed to have been made in respect of such periods of enhancement.

Alongside the implementation of the reformed scheme on 1 April 2015, the rates of member contributions for all members of the judiciary are also set to change. Member contributions for JUPRA members are amended to reflect the fact that unlike other judicial pension schemes, JUPRA is not registered for tax purposes. The contribution rates for members of JUPRA will be outlined in a Statutory Instrument laid in the New Year. The contribution rates are also summarised in the tables later in this section.

Members of JUPRA should note that the member contribution rates may change after a subsequent actuarial valuation of the Judicial Pension Schemes that shows a substantial change in the overall cost of the scheme, either up or down. At this point member contributions may be amended to reflect the changing cost of the scheme.

For those judicial office holders not working on a full time basis, the method of calculation of member contributions will continue to be calculated under an ‘actual earnings’ approach.

Under the ‘actual earnings’ approach, contributions would be assessed on the annual rate of pensionable earnings.

### Dependent Pension Contributions

Dependent Pension Contributions are compulsory for all members of the scheme and are made by monthly deductions of 1.8% of the judicial office holder’s gross pension capped salary (i.e. salary up to the level of the pension cap) until retirement or the completion of 20 years reckonable pensionable service, whichever is the earlier.

No Dependent Pension Contributions are required in respect of any period in which service is enhanced on retirement on health grounds or in the event of death in service. Dependent Pension Contributions will be deemed to have been made in respect of such periods of enhancement.

If at retirement, or in the event of death in service, an office-holder is married or has a civil partner, or has children eligible to receive benefits under the scheme, then he or she must



cover the maximum scheme liability, i.e. the equivalent of the length of service in judicial office to a maximum of 20 years.

Members should note that Dependent Pension Contributions are not paid on pensionable earnings above the Pensions Cap. Details on the Pensions Cap are provided later in the document.

### **Refunding of member contributions**

Dependent Pension Contributions made by a scheme member who at the time of retirement or death in service is unmarried, and who does not have a registered civil partner or children eligible to receive benefits under the scheme, and who at no time while holding judicial office has been married, or in a registered civil partnership or had eligible children, **will be refunded**.

Where a scheme member is unmarried at retirement, and does not at the time have a civil partner or children eligible to benefit under the scheme, but during some period of service has had a spouse, a registered civil partner or eligible children, Dependent Pension Contributions made from the date on which the scheme member last had a spouse, registered civil partner or eligible children will also be refunded.

Dependent Pension Contributions are refunded together with compound interest, the interest payable in these circumstances is liable for a deduction for tax. Tax will be deducted at source, i.e. before the refunded Dependent Pension Contributions and interest are paid out to the recipient.

**Member contribution rates under JUPRA (2015-2019)**

<b>Annual Rate of Pensionable Earnings 2015/16</b>	<b>Personal Pension Contribution</b>	<b>Dependent Pension Contribution</b>	<b>Total Member Contribution Rate</b>
Up to and including £15,000	0.96%	1.80%	2.76%
£15,001 - £21,000	0.96%	1.80%	2.76%
£21,001 - £47,000	1.47%	1.80%	3.27%
£47,001 - £150,000	2.61%	1.80%	4.41%
£150,001 and above	3.03%	1.80%	4.83%

<b>Annual Rate of Pensionable Earnings 2016/17</b>	<b>Personal Pension Contribution</b>	<b>Dependent Pension Contribution</b>	<b>Total Member Contribution Rate</b>
Up to and including £15,000	0.96%	1.80%	2.76%
£15,001 - £21,210	0.96%	1.80%	2.76%
£21,211 - £48,471	1.47%	1.80%	3.27%
£48,472 - £150,000	2.61%	1.80%	4.41%
£150,001 and above	3.03%	1.80%	4.83%

<b>Annual Rate of Pensionable Earnings 2017/18</b>	<b>Personal Pension Contribution</b>	<b>Dependent Pension Contribution</b>	<b>Total Member Contribution Rate</b>
Up to and including £15,000	0.96%	1.80%	2.76%
£15,001 - £21,422	0.96%	1.80%	2.76%
£21,423 - £51,005	1.47%	1.80%	3.27%
£51,006 - £150,000	2.61%	1.80%	4.41%
£150,001 and above	3.03%	1.80%	4.83%

<b>Annual Rate of Pensionable Earnings 2018/19</b>	<b>Personal Pension Contribution</b>	<b>Dependent Pension Contribution</b>	<b>Total Member Contribution Rate</b>
Up to and including £15,000	0.96%	1.80%	2.76%
£15,001 - £21,636	0.96%	1.80%	2.76%
£21,637 - £51,515	1.47%	1.80%	3.27%
£51,516 - £150,000	2.61%	1.80%	4.41%
£150,001 and above	3.03%	1.80%	4.83%

## Scheme features

This section will cover details of the key features of the design of the judicial pension scheme (JUPRA) and the method through which these pension benefits are calculated. This section also covers the tax status of the scheme as well as provisions for pension sharing on divorce.

Provided a scheme member retires having completed at least 5 years' service and is aged at least 65 a pension is immediately payable<sup>1</sup>.

### Scheme design

The key elements of the judicial pension scheme are as follows:

- A pension scheme design based on 'final salary' model
- Automatic lump sum on retirement at a rate of 2.25 times annual pension
- Service award payment on retirement equal to the tax paid on the automatic lump sum payment
- 20-year restriction on the number of accruing years in service
- An annual accrual rate of 2.50% of pensionable earnings (1/40)
- Revaluation of deferred and retired scheme members' benefits in line with the index set under the Pensions Increase Act 1971 (currently in line with CPI)
- Normal Pension Age of 65 years of age
- Scheme is not registered for tax purposes
- Pension for surviving spouses and surviving civil partners of 50% of member's pension and pensions for children

### Pension benefits

Pension benefits under JUPRA are constituted of three components:

- An annual pension payment; and
- An automatic lump sum payment.

In addition a service award salary payment equal to the tax paid on the automatic lump sum payment is made by the department.

### Annual pension

JUPRA is a final salary scheme, whereby the annual pension payment is calculated according to the pensionable pay of the Judge at retirement

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<sup>1</sup> In order to comply with the requirements of the Pensions Act 1993, benefits will be paid to judicial office holders who have reached the compulsory retirement age of 70 not having completed 5 years of service but having completed at least 2 years.

### **Annual pension calculation**

The annual pension is payable at the following rates:

- If the period of service under JUPRA, in the aggregate, amounts to 20 years or more, the annual pension will be one half of pensionable pay;
- If the period of service under JUPRA, in the aggregate, amounts to less than 20 years, the annual pension will be 1/40th of pensionable pay multiplied by the aggregate length of service (this is expressed in years and days).

### **Automatic lump sum**

In addition to the pension, an automatic lump sum is payable to the scheme member upon retirement.

### **Automatic lump sum calculation**

The automatic lump sum on retirement is calculated by multiplying the annual JUPRA pension by 2.25.

### **Service award**

The automatic lump sum payable on retirement is subject to tax, currently set at 45%. A sum equal to the tax paid on this lump sum payment will be paid to the scheme member as a 'service award' when he or she retires from office. This is paid with the member's final salary.

Members should note that the service award is only payable on earnings up to the Pension Cap.

A copy of the Lord Chancellor's Ministerial Statement relating to the payment of Service Awards is attached at Annex A.

### **Pension Cap**

The 'Pension Cap', or 'Earnings Cap' as it is sometimes known, within the meaning of Section 590C(1) of the Income and Corporation Taxes Act 1988, placed a limit on the amount of a person's salary by reference to which tax advantaged pension benefits could be determined.

Although since 6 April 2006 the cap ceased to be part of the general taxation system, the concept is retained within JUPRA order to govern the salary respectively attributable to earnings up to and above the cap<sup>2</sup>. The figure for the Pensions Cap is £145,800 for 2014/15 but is subject to annual adjustment.

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<sup>2</sup> These are known as Part 1 and Section 19 schemes respectively, in reference to the Act. The Part 1 scheme is in reference to earnings up to the Pension Cap, and the Section 19 scheme is in reference to earnings beyond the cap.

### **Pension Cap**

- Dependent Pension Contributions are not paid on earnings above the Pensions Cap. However, Personal Pension Contributions are paid on full gross salary.
- A member's pension entitlement is constituted of two components, in respect of earnings up to, and beyond, the Pensions Cap.
- The service award payment is only paid upon the automatic lump sum in respect of pension benefits accrued up to the Pensions Cap. There is no service award payment paid on an automatic lump sum payment paid in respect of earnings beyond the Pensions Cap.

### **Pensionable pay**

JUPRA is a 'final salary' scheme, and for this purpose, pensionable pay is defined as the largest amount of salary paid to a scheme member in any period of 12 consecutive months in the three years immediately preceding the day on which that person ceases to hold office.

The scheme does provide for the determination of the pensionable pay of a person who fails to serve for a period of 12 consecutive months in the three years preceding the last day in office.

In addition, where salary has been reduced in the three years immediately preceding the last day in office because of absence on sick leave or because of a move to salaried part time working, that reduction is ignored for the purpose of determining pensionable pay.

### **Reckonable service**

Each year and part-year of service is reckonable for judicial pension purposes except in the following circumstances:

- Non Reckonable Absences

Where a scheme member takes unpaid leave or a career break the period of such leave will not count towards service for pension benefits and neither Personal Pension Contributions or Dependent Pension Contributions will be payable.

- Salaried part-time working

Salaried part-time working provides a pro rata entitlement to the pension benefits using the pensionable pay that the scheme member would have received if he or she had been sitting on a full-time basis.

For a judicial office holder who serves for 20 years with full-time service before moving to part-time sitting later in their career this will have no implications for their eventual pension.

A judicial office holder who has less than 20 years full-time service will have to sit additional years of part-time service to receive a full pension as a year's part-time sitting does not equate to a full year for pension purposes.

### **Age at which pension is payable**

The age at which pension under JUPRA will become payable is 65 years of age and is not linked to the member's State Pension Age (SPA).

It is not possible for a pension to be drawn before retirement. It is also not possible for a pension to be drawn before the age of 60. If a Judge was to take early retirement before the age of 60, this pension award would be preserved until retirement age.

If a Judge was to take early retirement between the ages of 60 and 65, this pension award would be payable at the point of retirement, but subject to an actuarial reduction.

The statutory retirement age for the judiciary is 70 years of age.

### **State retirement benefits**

The judicial pension scheme is a Contracted-Out salary-related pension scheme for the purposes of the Pension Schemes Act 1993. As the scheme is 'Contracted-Out', a scheme member will pay reduced National Insurance contributions, but will not accrue additional state benefits beyond basic state pension entitlements. Contracting-Out will cease from April 2016 and the reduced rate of National Insurance will therefore cease.

This does not affect entitlement to the basic (flat-rate) state retirement pension and provided that their record of national insurance contributions is sufficient to meet the relevant conditions, holders of judicial office will be entitled to receive the basic state retirement pension from state retirement age.

### **Tax considerations**

JUPRA is for tax purposes a non-registered scheme. This means that none of the income tax advantages conferred by the legislation governing registered pension schemes apply, but nor do the Lifetime and Annual Allowances provisions under the Finance Act 2004.

In other words, benefits under the scheme do not count towards either the Annual Allowance or the Lifetime Allowance under the Finance Act 2004.

However, the additional voluntary contributions (AVC) facility, the Judicial Additional Voluntary Contributions Scheme (JAVCS) and Added Years (JAYS), are registered schemes for tax purposes and contributions therefore attract tax relief, but the Annual and Lifetime Allowances apply.

### **Pension sharing on divorce or dissolution**

Where a Pension Sharing on Divorce or Dissolution Order is made, the former spouse or civil partner becomes a member of the JUPRA in his or her own right. The value of the member's accrued judicial pension rights to be shared will be determined as at the date of the Decree Absolute or Final Order.

The Pension Credit, at the level determined by the Pension Sharing on Divorce Order, will consist of a personal annual pension and a lump sum both payable to the former spouse or civil partner from his or her 65th birthday. The lump sum will be subject to income tax, currently at a rate of 45%.

In cases where the Decree Absolute is granted on or after 6 April 2006, the administrators of the judicial pension scheme will not be responsible for covering this tax deduction and there will be no compensatory service award to the former spouse/civil partner in respect of it.

In cases where the Decree Absolute was granted before 6 April 2006, a service award will be paid to cover the tax deduction.

At the time the benefits come into payment they will be re-valued to in line with inflation.

The Pension Debit will require a reduction in the Judge's annual pension and lump sum and a consequent reduction in any pension payable to the surviving spouse or civil partner of any subsequent marriage or civil partnership.

The Pension Debit amounts will also be re-valued at the time of the judicial office holder's retirement to take account of inflation.

Any judicial office-holder involved in divorce proceedings where a pension sharing order is being considered should contact the Scheme Administrator for detailed information on how pension sharing will affect his or her judicial pension position

## Options for scheme members

Scheme members of JUPRA are able to supplement their pension savings under the scheme through the following methods:

- Judicial Added Voluntary Contribution Scheme (JAVC); and
- Judicial Added Years Scheme (JAYS) : and
- Judicial Additional Surviving Spouse's Pension Scheme (JASSPS): and
- Transfers of accrued pension rights.

### Added / Additional Contribution Schemes

Members of JUPRA were able to top-up their benefits through the above tax-registered arrangements (JAYS, JASSPS closed to new members since 6 April 2006) and JAVCS. The 'JAVCS' allows for judges to make additional contributions of up to a maximum of 15% of salary, inclusive of the dependent's contributions to JUPRA, to an account offered by a third party. AVC investments are managed by a third-party provider, and used to provide a mix of lump sum and pensions subject to HMRC rules.

There is no formal limit to the amount of benefit that may be accrued under the JAVCS but any benefits will count toward the lifetime allowance under the provisions of the Finance Act 2004.

### Transfers of accrued pension rights

Members of the scheme may elect to transfer non-judicial pension rights into the scheme or to elect to take a transfer of their judicial pension rights out of the scheme, subject to certain qualifying conditions. Where a transfer out is paid all rights to benefits under the judicial scheme will be extinguished.

Only pension rights that are accrued in a registered pension scheme before commencing judicial office can be transferred into the judicial scheme. It will be for the other scheme to determine whether it permits a transfer to the judicial scheme.

Where such a transfer is made a tax charge on the member will arise. Separately, the administrators of the pension fund from which the money is being transferred may have to pay a further charge.

The pension and lump sum created in the judicial pension scheme will be based on the net amount actually received by the judicial scheme and the benefits awarded will not increase in value during the time between when the transfer payment is received into the scheme and retirement.

If main scheme benefits are taken early they will be subject to actuarial reduction.

Any individual considering a transfer into or out of the judicial pension scheme is strongly advised to seek independent financial advice, including consideration of the tax implications of doing so.



## Leaving the scheme

### Early voluntary retirement before the age of 60

A preserved pension and lump sum will be awarded to a scheme member who has served for at least 2 years and who resigns without qualifying for an immediate pension.

The benefits would be calculated at the date of leaving office but would not become payable until the scheme member reached normal pension age (i.e. age 65) although the amounts calculated at retirement would be inflation-proofed throughout the period of preservation.

Preserved benefits and preserved derivative benefits (spouses', civil partners' and children's pensions, and the personal lump sum) are taken as accruing proportionately to the benefits to which the scheme member would have been entitled had he or she served to normal pension age.

Where a scheme member has retired with prospective entitlement to a preserved pension but dies before reaching the age when the pension is due to come into payment, the surviving spouse or civil partner is entitled immediately to a pension of one-half of the preserved judicial pension, and a lump-sum payable to the estate.

### Early voluntary retirement between the ages of 60 and 65 (Actuarially Reduced)

A scheme member who retires on or after his or her 60th birthday but before his or her 65th birthday and who has completed at least 5 years service is entitled to a pension and lump sum immediately payable but actuarially reduced.

The pension and lump sum are calculated as in paragraphs 19 and 20 (normal retirement) but actuarially reduced in accordance with a factor related to the scheme member's age at the date of retirement.

### Deferment

Deferment means a Judge who is no longer accruing benefits in the scheme, but is not yet eligible to draw their pension. If a Judge were to take early retirement under JUPRA, they would be classed as a deferred member.

Under JUPRA, if a member is in deferment, the member's pension will be preserved, and subject to enhancement in accordance with the Pension Increase Act 1971 only upon retirement.

### Partial retirement

Unlike the NJPS, JUPRA does not offer partial retirement. Under JUPRA, pensions are payable only on retirement from judicial office.

For the purpose of determining if an individual had sufficient qualifying service under the NJPS to take partial retirement however, service in JUPRA would be taken into account.

### Sitting in retirement

If a Judge is sitting in fee-paid office in retirement, the Judge will accrue further pension benefit in respect of their fee-paid service under the Fee-Paid Judicial Pension Scheme (FPJPS). A Judge will be able to accrue pension benefit under the FPJPS whilst in receipt of their JUPRA pension.

Any pension accrued under the FPJPS will be payable on the point of leaving fee-paid office.

If a Judge is sitting in retirement after accruing a maximum 20 years' worth of reckonable service as a salaried Judge under JUPRA, the Judge will not be able to accrue further credit under the FPJPS. This is explained in detail in the September 2014 consultation on the FPJPS.

### Medical retirement

A scheme member who retires at any time after appointment for reasons of ill health is entitled to the immediate payment of a pension and lump sum based on his or her actual service and calculated in accordance with the pension benefits section above.

If the scheme member has not reached his or her 65th birthday before the date of retirement, the length of service upon which the pension is calculated will be enhanced by a period equal in length to one-half of the time remaining between the day after the date of retirement and the 65th birthday.

### Death in service

When a scheme member dies whilst still holding office, a lump sum death benefit equal to **twice the amount of pensionable pay** is payable either to the personal representatives or if a nomination has been made to the person or persons so nominated. Nominations, including blank forms can be obtained from the pension scheme administrator.

Death in service lump sums payable under the judicial pension schemes will count as employment income for tax purposes. Tax must be deducted by the Department, but a supplementary payment equal to the amount of tax deducted will be made which will ensure that the beneficiary receives the full amount of the lump sum.

In addition to the lump sum, a pension is payable to the surviving spouse, or civil partner. Where there is an eligible child or children, a pension will also be paid.

### Death in retirement

In the event a member dies soon after retirement when the judicial pension has only been in payment for a short time, it may be that the scheme member's personal representatives are entitled to a lump sum payment.

A lump sum payment will be payable if the aggregate of the sums paid, or payable, on account of the pension together with the lump sum paid, or payable, falls short of an amount equal to five times the annual rate of the pension in force immediately before the date of death.

### Spouses' and civil partners' pensions

A pension will be payable to a surviving spouse or civil partner upon the death of a judicial office holder either during service, or after retirement if the judicial office holder had been in receipt of pension.

A pension will be payable to a surviving spouse or surviving civil partner upon the death of a Judge during service. This pension will be paid at a rate of one-half of the pension to which the Judge would have been entitled if he or she had retired on grounds of ill health at the time of death.

A pension will also be payable to a surviving spouse or surviving civil partner upon the death of a Judge after retirement, if the Judge had been in receipt of a judicial pension. This pension will be paid at a rate of one-half of the personal pension actually in payment at time of death.

### Children's pensions

In addition, a pension may also be payable in respect of a child or children under the age of 16, or over that age and in full-time education, at the time of the judicial office holder's death.

#### Children's pensions: Calculation

Where there is a surviving spouse, or a surviving civil partner, the pension is

- 1/4 of the judicial pension if there is one eligible child; or
- 1/2 of that pension if there is more than one eligible child.

In the event there is no surviving spouse, or surviving civil partner, the pension is

- 1/3 of the judicial pension if there is one eligible child and
- 2/3 of the pension if there is more than one eligible child;

The "judicial pension" in this context refers to either the pension in payment at the time of death, or, in the case of death in office, the pension to which there would have been entitlement if the judicial office holder had retired on health grounds at time of death.

### Nomination of beneficiaries

It is possible for scheme members to nominate individuals and trusts to receive death in service benefits. Further details on the nomination of beneficiaries to receive a pension, and copies of the necessary are provided on the judicial intranet or from the pension scheme administrator.

## Annex A – Ministerial statement regarding service awards

### Service Award

1. In accordance with the Statement laid before the House of Lords on 15<sup>th</sup> December 2005 (Official Report column WS151), and in exercise of the powers cited below,<sup>1</sup> with the agreement of the Treasury, the Lord Chancellor makes the following determination.
2. There shall be paid to a salaried judicial office-holder whose remuneration is determined by the Lord Chancellor<sup>2</sup>, in the final month of his service, where this terminates (otherwise than by death in service) on or after 6<sup>th</sup> April 2006, as a non-pensionable service award, salary of an amount which, when it has been subject to income tax and employees' national insurance contributions (if any), provides a sum equal to the difference between –
  - (a) the net lump sum<sup>3</sup> - excluding for this purpose any lump sum payable under s.19 of the Judicial Pensions and Retirement Act 1993<sup>4</sup> - receivable by the office-holder, in accordance with the provisions governing the judicial pension schemes, and
  - (b) the lump sum - again excluding any lump sum payable under s.19 of the Judicial Pensions and Retirement Act 1993<sup>4</sup> - which he would have received had the judicial pension schemes become registered pension schemes for the purpose of the Finance Act 2004 (on the assumption that no lifetime allowance charge had arisen in respect of it).
3. No entitlement to the award shall arise or accrue prior to the time specified for its payment in the determination.
4. This determination applies to an office-holder with an entitlement under a Judicial Pensions (Preservation of Benefits) Order to preserved judicial pension benefits which are due to come into payment at his normal pension age, where that is on or after 6<sup>th</sup> April 2006 (irrespective of the date of cessation of service), on the basis that the payment of the service award will be deferred until normal pension age.
5. In the event of the death in service of a salaried office-holder on or after 6<sup>th</sup> April 2006 there shall instead of the service award be payable as a bereavement allowance non-pensionable salary of an amount which, when it has been subject to income tax (and any other deductions), provides a sum equal to the difference (if any) between the net<sup>5</sup> death in service benefit receivable in respect of the office-holder by each beneficiary who is an individual,<sup>6</sup> in accordance with the provisions governing the judicial pension schemes, and the amount which that beneficiary would have had received had the judicial pension schemes become registered pension schemes for the purpose of the Finance Act 2004 (on the assumption that no lifetime allowance charge had arisen in respect of it).

*Palmer J*  
*Pharrell C*

Lord Chancellor

31 March 2006

<sup>1</sup> s.9 of the Administration of Justice Act 1973 (Lords of Appeal and District Judges (Magistrates Courts)), s.12 of the Supreme Court Act 1981 (Judges of the Supreme Court), s.18 of the Courts Act 1971 (Circuit Judges), s.6 of the County Courts Act 1984 (District Judges), s.89 of the Supreme Court Act 1981 (Masters and Registrars of the Supreme Court), s.106 of the County Courts Act (Northern Ireland) 1959 (County Court Judges), s. 12 of the Magistrates Courts Act (Northern Ireland) 1964 (Resident Magistrates) and all other powers applicable for this purpose.

<sup>2</sup> or in the case of certain Tribunal office-holders, the Secretary of State for Constitutional Affairs.

<sup>3</sup> i.e. after tax at the marginal rate applicable to the individual (in normal circumstances the higher tax rate) and any contributions liability have been determined and applied.

<sup>4</sup> and excluding any lump sum attributable to the payment of a transfer value into a judicial pension scheme on and after 6<sup>th</sup> April 2006 and any lump sum accrued under the Judicial Added Benefits Scheme (JABS) or the Judicial Added Years Scheme (JAYS).

<sup>5</sup> after tax at the marginal rate applicable to the beneficiary (in normal circumstances the higher tax rate) and contributions liability (if any) have been determined and applied.

<sup>6</sup> Within the meaning of s.394(1) of the Income Tax (Earnings and Pensions) Act 2003

## **Annex B – Note – Inheritance tax and lump sum death in service benefit (1996)**

### **Abbreviations**

‘The 1981 Act’ : the Judicial Pensions Act 1981

‘The 1993 Act’ : the Judicial Pensions and Retirement Act 1993

‘IHT’ : inheritance tax

### **Overview**

1. Judicial pension schemes, in common with public service pension schemes generally, have consistently provided that, if the judge dies in service, a lump sum benefit is payable. If the judge is a member of the scheme set up under the 1993 Act, the death in service benefit will be payable in one of two ways: (1) it may be payable to a person nominated by the judge in his or her lifetime; (2) if there has been no nomination, it is paid to the judge’s personal representatives. If the judge has made a nomination under (1), so that the lump sum is paid to his or her nominee, there is no IHT on the payment. However, it has recently been drawn to the attention of the Ministry of Justice that, if there has been no nomination so that the lump sum is paid to the personal representatives, the payment is in principle liable to IHT.
2. This is an unintended side effect of the replacement by the 1993 Act of the predecessor enactment, the 1981 Act. That Act (which still in general applies to judges appointed before 31 March 1995 – see further para 4 below) provided for a lump sum death in service benefit, but because of different statutory wording the benefit was not in any circumstances liable to IHT. The same applies to death in service benefits under other public service pension schemes. It was not part of the purpose of the 1993 Act that, by changing the terms in which provision was made for this particular benefit, the benefit should be brought within the scope of IHT. However, in the absence of a nomination made by the judge in his or her lifetime, the 1993 Act has brought about that result.
3. This note gives further information about the possible IHT liability in the case of death in service benefits under the 1993 Act; it offers some guidance about the nomination procedure, in the case of which no IHT liability arises; and it also explains the IHT position of death in service benefits payable on the deaths of pre-1995 judges who are still members of the judicial pension scheme under the 1981 Act.

### **The two judicial pension schemes: (1) under the 1981 Act, and (2) under the 1993 Act**

4. The possible IHT liability which has prompted this note arises solely under the 1993 Act. Therefore the main contents of this note apply only to judges who are members of the pension scheme under that Act. Those judges are principally ones who were appointed on or after 31 March 1995. In general judges who were appointed before 31 March 1995 are members of a pension scheme under (or in some cases by analogy with) the 1981 Act. As such they are not affected by the IHT point. There is a lump sum death in service benefit under the 1981 Act, but (as stated in 2 above) because of different statutory wording it is not liable to IHT (see further para 13.1 below). However, there is a provision under which a pre-1995 judge can elect to transfer from the 1981 Act pension scheme to the 1993 Act scheme. The election can also be made

by the judge's personal representatives after his or her death. Para 13 below contains observations on the implications of making an election so far as concerns IHT on the death in service benefit.

### **Section 4(3) of the 1993 Act**

5. This is the subsection which provides for the lump sum death in service benefit. The amount of the benefit is equal to twice 'pensionable pay', which in general means the salary actually paid to the judge in the twelve months ending with his or her death. By section 4(3)(a) the judge can in his or her lifetime nominate a person to receive it. If he or she does not do that, then by section 4(3)(b) the benefit is paid to his or her personal representatives.

### **IHT on the section 4(3)(b) lump sum**

6. This is where the IHT liability arises. Any amount which is payable to the personal representatives under section 4(3)(b) (because the judge did not nominate a recipient in his or her lifetime) is part of the judge's estate for IHT purposes, so that, depending on the judge's will and the size of the rest of his or her estate, it may be liable to IHT. If the judge has left his or her estate to the widow, widower or registered civil partner, the lump sum death in service benefit is not liable to IHT on the judge's death (like any property left to a surviving spouse or civil partner), but it will of course become part of the survivor's estate and could increase the IHT payable on the second death. If the judge's estate is not left to a widow, widower or registered civil partner, whether the lump sum will be liable to IHT on the judge's death depends on the size of the estate. If the rest of the estate is large enough to use up the 'nil rate band' (as in many cases it will be), the lump sum will suffer IHT at 40%.

### **No IHT where there is a section 4(3)(a) nomination**

7. However, if the judge in his or her lifetime nominates a person to receive the lump sum in the event of death in service, there is no IHT liability, either at the time of the nomination or on the judge's death. There are two points to be made here. (1) The act of nominating a beneficiary is not usually considered by the Revenue to attract IHT, whether or not the judge dies within seven years. (The Revenue might wish to reconsider this point if the judge was seriously ill at the time of the nomination, but otherwise it can be assumed that no argument will be advanced that the nomination of itself gives rise to IHT.) (2) If a judge who has made a nomination dies while still in service, the lump sum is paid by the pensions payroll administrators directly to the nominee. It is not part of the judge's estate and no IHT is payable on it. There are two types of nomination which might be made. The simplest is an outright nomination of a named person, as to which see paras 8 and 9 below. A more complicated but more flexible alternative would be a nomination in favour of a recipient who would hold the sum on a discretionary trust to pay it on to one or more beneficiaries within two years of the judge's death. As to this alternative, see paras 10 and 11 below. It is perhaps worth adding that there is another consequence of a nomination. The lump sum is paid to the nominee as soon as it has been formally approved, whereas if there has been no nomination, payment to the personal representatives is not made until a grant of probate or of letters of administration has been obtained and a copy supplied to the Judicial Pay & Pensions Branch.

**An outright nomination**

8. Form A attached to this note is a simple form of outright nomination of a named person or persons, but with provision for the judge to substitute a replacement nominee if he or she wishes. If the judge makes a nomination and then dies while still in service, the pension payroll administrators will pay the lump sum direct to the nominee. There is no IHT. There is some loss of flexibility in this procedure, but not much. If the nominee dies it is possible to nominate someone else. Further, Form A reserves to the judge power to change the nominee.
9. Many judges may wish to nominate their wife, husband or registered civil partner, which is wholly permissible. A nomination of the judge's wife, husband or civil partner does not offer any savings of IHT compared with the alternative of not making a nomination but instead making a will which leaves the estate (which would include the death in service benefit) to the judge's widow, widower or surviving civil partner. A nomination only achieves IHT savings if it is made in favour of someone other than a surviving spouse or civil partner, like the judge's children or grandchildren. However, there is no disadvantage in the judge nominating his or her wife or husband or registered civil partner, and, if the judge dies in service, it could be quicker and simpler for the benefit to be paid directly to the widow, widower or surviving civil partner rather than to pass through the hands of the personal representatives. (As to this, see the last sentence of para 7 above.)

**A trust nomination**

10. Form B attached provides for the lump sum payable on death in service to be paid to a nominee, but further provides that the nominee is to hold it on trust to distribute it within two years to one or more members of a discretionary class. The judge should exercise his or her own judgement as to the choice of nominee. In many cases an adult son or daughter would be a sensible choice. The form provides for a substitute nominee if the first-named one dies before the judge. The discretionary class should consist of such persons as the judge desires, and will normally include the members of his or her family, including his or her wife or husband or registered civil partner. There are default provisions which take effect if the nominee fails to perform the trust within two years.
11. A trust nomination like this is a little more complicated than an outright nomination (as in Form A), but it provides maximum flexibility. Further, as with an outright nomination, there is no IHT liability. There is no IHT when, on the judge's death in service, the pension payroll administrators pay the lump sum to the nominee. Further, under Inland Revenue practice relating to pension funds, there is no IHT payable on the distribution by the nominee to one or more beneficiaries provided that it happens within two years of the judge's death. The default provisions ensure that this condition is met.

**Other lump sum benefits under the 1993 Act**

12. This note is concerned only with the death in service lump sum benefit under section 4(3) of the 1993 Act. There are two other kinds of lump sum benefits which may arise under the Act, but they are not affected by the note, and neither Form A nor Form B is suitable for them. They are: (1) The lump sum payable to the judge on retirement under section 4(1). That is simply paid to the judge in his or her lifetime. (2) The lump sum payable under section 4(2) on the death of a retired judge who dies within a few years (unlikely to be more than five) of his or her retirement. That sum must be paid to

the personal representatives; there is no provision for it to be paid to a nominee instead. It will be included in the judge's estate for IHT.

### **Judges who are members of the pension scheme under the 1981 Act**

13. In the following sub-paragraphs such judges are referred to as '1981 scheme judges'. There are three points to be made.

13.1. If a 1981 scheme judge dies in service the 1981 Act provides for a death in service benefit. Section 17(2) provides that his or her personal representatives 'may' be granted a lump sum. There is no provision for the judge to nominate someone else as the recipient of the lump sum. So it can only be paid to the personal representatives. However, because the benefit is discretionary in form (the word used is 'may') it is not liable to IHT.

13.2. As mentioned in 4 above, a 1981 scheme judge can elect to transfer to the 1993 scheme. The principal considerations which are relevant to whether it is advantageous to transfer are outside the scope of this note, but the judge should be aware that, if he or she does transfer and dies in service without having made a nomination under section 4(3)(a) of the 1993 Act, the death in service benefit could be liable to IHT. The matters explained in the earlier paragraphs of this note are as relevant to 1981 scheme judges who transfer to the 1993 scheme as they are to judges who, having been appointed on or after 31 March 1995, were always members of the 1993 scheme.

13.3. If a 1981 scheme judge dies in service without having transferred to the 1993 scheme, the 1993 Act permits his or her personal representatives to elect to transfer after his or her death. The effect of electing will be that the amount of the death in service benefit will be determined under the 1993 Act, not the 1981 Act. It will probably be to the advantage of the deceased judge's family to transfer, for two reasons. (i) The amount under the 1993 Act is greater. (ii) There will be no IHT payable on the benefit. That is so even though, because the judge cannot have made a nomination under section 4(3)(a) of the 1993 Act, the lump sum cannot be paid direct to a nominee and must be paid to the personal representatives. This favourable result arises for technical reasons under the precise wording of the IHT legislation.

### **The Inland Revenue**

14. The Inland Revenue have read this note and agree with the statements in it about IHT.





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