

**Version
as at 11 May 2023**



Judicial Officers Superannuation Determination 2019

(LI 2019/5)

Determination title: amended (with effect on 1 January 2020), on 5 March 2020, by clause 4 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

Pursuant to section 12B(2) of the Remuneration Authority Act 1977, the Remuneration Authority makes the following determination (to which is appended an explanatory memorandum).

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Determination

1 Title

This determination is the Judicial Officers Superannuation Determination 2019.

Clause 1: amended (with effect on 1 January 2020), on 5 March 2020, by clause 4 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

2 Commencement

- (1) This determination is deemed to have come into force on 1 January 2019 (except as provided in subclause (2)).
- (2) Clauses 3A and 5(1)(a) and (ab), (2)(b)(iii) and (iv), and (3) and Schedule 1 are deemed to have come into force on 1 January 2020.

Clause 2(1): amended (with effect on 1 January 2020), on 5 March 2020, by clause 5(1) of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

Clause 2(2): inserted (with effect on 1 January 2020), on 5 March 2020, by clause 5(2) of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

Clause 2(2): amended (with effect on 1 January 2020), on 11 June 2020, by clause 4 of the Judicial Officers Superannuation Amendment Determination (No 2) 2020 (LI 2020/116).

3 Interpretation

- (1) In this determination, unless the context otherwise requires,—

Act means the Government Superannuation Fund Act 1956

appointed Judge of the Court Martial Appeal Court means a Judge of the Court Martial Appeal Court appointed under section 3(1)(b) of the Court Martial Appeals Act 1953

Judge of the Court Martial includes a Deputy Chief Judge but does not include the Chief Judge of that court

judicial officer means a judicial officer specified in section 12B(1) of the Remuneration Authority Act 1977

new GSF scheme means the new Government service superannuation scheme established under Part 2A of the Act

retirement scheme means a retirement scheme as defined in section 6(1) of the Financial Markets Conduct Act 2013, other than the new GSF scheme

year means a period of 12 months ending on 31 December.

- (2) For the purposes of this determination, the length of a person's period of service as a judicial officer is calculated as follows:
 - (a) a period of service that began or ended before 1 July in any year is treated as having begun or ended, as the case may be, at the beginning of that year:
 - (b) a period of service that began or ended on or after 1 July in any year is treated as having begun or ended, as the case may be, at the end of that year.

Clause 3(1) **appointed Judge of the Court Martial Appeal Court**: inserted (with effect on 1 January 2020), on 11 June 2020, by clause 5 of the Judicial Officers Superannuation Amendment Determination (No 2) 2020 (LI 2020/116).

Clause 3(1) **Judge of the Court Martial**: inserted (with effect on 1 January 2020), on 11 June 2020, by clause 5 of the Judicial Officers Superannuation Amendment Determination (No 2) 2020 (LI 2020/116).

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Clause 3A: inserted (with effect on 1 January 2020), on 5 March 2020, by clause 6 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

4 Judicial officers to whom this determination applies

This determination applies to the following judicial officers:

- (a) judicial officers who elect, under section 81OA of the Act, to cease to be a contributor under Part 5A of the Act; and
- (b) judicial officers who were first appointed or reappointed as judicial officers on or after 1 July 1992, and who are not entitled or required to contribute under Part 4 or 5A of the Act.

5 Maximum subsidy on annual superannuation contribution

- (1) The maximum subsidy (inclusive of any income tax payable on it) on contributions paid, in any year, to a retirement scheme by a judicial officer is,—
 - (a) in the case of a chief coroner, deputy chief coroner, or coroner (other than a chief coroner or deputy chief coroner who is a Judge), 37.5% of the gross salary and National Duty Coroner allowance actually paid to the chief coroner, deputy chief coroner, or coroner in that year; and
 - (ab) in the case of an appointed Judge of the Court Martial Appeal Court or the Chief Judge or any other Judge of the Court Martial (other than a Judge of the Court Martial who is a District Court Judge), 37.5% of the gross salary and allowances actually paid to the judicial officer in that year; and
 - (b) in the case of any other judicial officer to whom this determination applies, 37.5% of the judicial officer's salary.
- (2) However,—
 - (a) if the judicial officer is also a contributor to the new GSF scheme, then the maximum subsidy per year on contributions to the retirement scheme, inclusive of any income tax payable on that subsidy, is 23.75% of the judicial officer's salary; and
 - (b) the following persons are not entitled to a superannuation subsidy under this determination:
 - (i) a former coroner appointed under section 103(5) of the Coroners Act 2006; and
 - (ii) a relief coroner appointed under section 104 of the Coroners Act 2006; and
 - (iia) an associate coroner appointed under section 104A of the Coroners Act 2006; and

- (iii) an appointed Judge of the Court Martial Appeal Court appointed in an acting, fixed-term, or temporary capacity; and
 - (iv) the Chief Judge or any other Judge of the Court Martial appointed in an acting, fixed-term, or temporary capacity.
- (3) *[Revoked]*
- Clause 5: replaced (with effect on 1 January 2020), on 5 March 2020, by clause 7 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).
- Clause 5(1)(ab): replaced (with effect on 1 October 2021), on 24 March 2022, by clause 4(1) of the Judicial Officers Superannuation Amendment Determination 2022 (SL 2022/78).
- Clause 5(2)(b)(iia): inserted (with effect on 11 April 2023), on 11 May 2023, by clause 4 of the Judicial Officers Superannuation Amendment Determination 2023 (SL 2023/76).
- Clause 5(2)(b)(iii): replaced (with effect on 1 October 2021), on 24 March 2022, by clause 4(2) of the Judicial Officers Superannuation Amendment Determination 2022 (SL 2022/78).
- Clause 5(2)(b)(iv): replaced (with effect on 1 October 2021), on 24 March 2022, by clause 4(2) of the Judicial Officers Superannuation Amendment Determination 2022 (SL 2022/78).
- Clause 5(3): revoked (with effect on 1 October 2021), on 24 March 2022, by clause 4(3) of the Judicial Officers Superannuation Amendment Determination 2022 (SL 2022/78).

6 Ratio of superannuation subsidy to judicial officer's contribution

- (1) In order for a judicial officer to qualify for a superannuation subsidy, the contribution that the judicial officer must make to the retirement scheme, when expressed as a ratio of the superannuation subsidy to that person's contribution, is 7.5 to 1.
- (2) However, if the judicial officer is also a contributor to the new GSF scheme, then for the purposes of subclause (1) the ratio is 23.75 to 1.

7 Limit on service for which superannuation subsidy payable

- (1) This clause applies to a judicial officer who has contributed under Part 4 or Part 5 or Part 5A of the Act.
- (2) The maximum period of service as a judicial officer (whether continuous or in 2 or more separate periods) for which a subsidy of contributions to a retirement scheme will be paid is 16 years less the period during which the judicial officer was a contributor under Part 4 or Part 5 or Part 5A of the Act.

8 Revocations

The following determinations are revoked:

- (a) Judicial Superannuation Determination 2004 (SR 2004/459):
- (b) Judicial Superannuation Determination 2006 (SR 2006/37).

Schedule 1

Transitional, savings, and related provisions

cl 3A

Schedule 1: inserted (with effect on 1 January 2020), on 5 March 2020, by clause 8 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

Part 1

Provisions relating to Judicial Officers Superannuation Amendment Determination 2020

Schedule 1 Part 1: inserted (with effect on 1 January 2020), on 5 March 2020, by clause 8 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

1 References to previous Title

Every reference in any enactment and in any document to the Judicial Superannuation Determination 2019 must, unless the context otherwise provides, be read as a reference to the Judicial Officers Superannuation Determination 2019.

Schedule 1 clause 1: inserted (with effect on 1 January 2020), on 5 March 2020, by clause 8 of the Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30).

Dated at Wellington this 22nd day of January 2019.

Fran Wilde,
Chairperson.

Len Cook,
Member.

Explanatory memorandum

Note: The following explanatory memorandum should be read in conjunction with the explanatory memorandum(s) appended to the:

- **Judicial Officers Superannuation Amendment Determination 2023**
- **Judicial Officers Superannuation Amendment Determination 2022**
- **Judicial Officers Superannuation Amendment Determination (No 2) 2020**
- **Judicial Officers Superannuation Amendment Determination 2020**

This memorandum is not part of the determination, but is intended to indicate its general effect.

This determination is deemed to have come into force on 1 January 2019. It revokes and replaces the Judicial Superannuation Determination 2006 and an earlier determination that that determination superseded. It sets out the percentage of salary contributions made to a retirement scheme by judicial officers that will qualify them for a superannuation subsidy.

In 2006 the Remuneration Authority (the **Authority**) completed a major review of judicial superannuation. During the last 18 months the Authority has undertaken a more comprehensive review of its approach to setting the remuneration, allowances, and superannuation entitlements for judicial officers specified under section 12B of the Remuneration Authority Act 1977. This determination implements the outcome of that part of the review that relates to the provision of employer superannuation subsidies to judicial officers.

The capital fund for judicial officers' retirement income is based on their salary. The current approach to providing retirement income was introduced in 1992. The same rate of contribution was applied to all judicial officers until 2006, when Judges of the senior courts received a larger increase than those of other courts. The Authority notes that the length of service as a member of the judiciary is not significantly different for any of the courts. The Authority has therefore determined that the maximum subsidy rate payable for superannuation will be set at the same rate for all judicial officers.

Remunerating the judiciary extends into retirement. Once appointed, judicial officers no longer have all of the same options that may be available to other callings. Providing an appropriate level of income into retirement for judicial officers is an important way in which the Authority supports the State to ensure the independence of the judiciary.

Until 1992, judicial officers received an annual pension through a defined benefit scheme under the Government Superannuation Fund Act 1956. The 1992 change meant that the retirement provision for judicial officers is now made by contributions paid annually into a fund management scheme. These contributions are primarily funded by the government and include a smaller contribution from the individual judicial officer. Judicial officers are required to arrange for the management of their retirement funds during their tenure. This defined contribution scheme is comparable in form to but more extensive than similar schemes now predominant in New Zealand, and it carries with it risks to retirement income that the defined benefit scheme did not bring. These risks are borne by individual judicial officers, and their final accumulated retirement fund will vary with the economic cycles. The amount contributed to fund retirement income is now determined by the judicial officers' annual salary and the length of their tenure.

In the explanatory memorandum to the Judicial Superannuation Determination 1992, the then Higher Salaries Commission noted that "in principle the Commission would favour compulsory superannuation for the judiciary and the underpinning of defined

pension entitlements by Crown guarantee”. The Authority considers that this remains the most appropriate means of providing pensions entitlements for judicial officers after examining the first 25 years of the defined contributions regime. The Authority believes that a defined benefit scheme tailored to the judiciary should be explored.

The Authority sought and received advice from an independent firm of actuaries when reviewing its approach to determining judicial officers’ superannuation entitlements.

Note: The preceding explanatory memorandum should be read in conjunction with the explanatory memorandum(s) appended to the:

- **Judicial Officers Superannuation Amendment Determination 2023**
- **Judicial Officers Superannuation Amendment Determination 2022**
- **Judicial Officers Superannuation Amendment Determination (No 2) 2020**
- **Judicial Officers Superannuation Amendment Determination 2020**

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 24 January 2019.

Notes

1 *General*

This is a consolidation of the Judicial Officers Superannuation Determination 2019 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Judicial Officers Superannuation Amendment Determination 2023 (SL 2023/76)

Judicial Officers Superannuation Amendment Determination 2022 (SL 2022/78)

Judicial Officers Superannuation Amendment Determination (No 2) 2020 (LI 2020/116)

Judicial Officers Superannuation Amendment Determination 2020 (LI 2020/30)