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Statutory Instrument 71 of 2006.¹

[CAP. 7:08

Judges Pension Scheme Notice, 2006

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¹ Supplement to the Zimbabwean Government Gazette dated the 24th March, 2006.

SCHEDULE: Motor Vehicle Benefit: Calculation of Residual Value of Vehicle.

WHEREAS it is provided by section 4(2a) of the Judges Salaries, Allowances and Pensions Act [*Chapter 7:08*] that the Minister of Justice, Legal and Parliamentary Affairs shall as soon as practicable publish by notice in the *Gazette* the terms and conditions fixed by the President under section 4(1) of that Act subject to which pension benefits shall be paid to judges of the Supreme Court and the High Court;

NOW, THEREFORE, the Minister of Justice, Legal and Parliamentary Affairs makes the following notice (which may be cited as “the Judges’ Pension Scheme Notice, 2006”) publishing the said terms and conditions (hereinafter called “the scheme”) fixed by His Excellency on the 22nd October, 1997, as amended:—

Application of scheme.

- 1.(1) This scheme shall apply in respect of—
 - (a) every judge appointed to the High Court or Supreme Court on or after the 1st July, 1997; and
 - (b) every judge of the High Court or Supreme Court who held office immediately before the 1st July, 1997, and who makes an election in accordance with subsection (2) that this scheme will apply in his or her case, in place of the former scheme, with effect from that date.
- (2) An election referred to in paragraph (b) of subsection (1) shall be—
 - (a) made in writing and signed by the judge concerned; and
 - (b) addressed to the Secretary for Justice, Legal and Parliamentary Affairs and delivered to the Secretary not later than the 31st December, 1997:

Provided that the Secretary may accept an election delivered after that date if authorised to do so by the Minister of Justice, Legal and Parliamentary Affairs.
- (3) An election in accordance with subsection (2) shall be irrevocable.

Interpretation

- 2.(1) In this scheme—

“contributions” means amounts contributed to the Consolidated Revenue Fund in terms of this scheme or the corresponding contributory pension scheme for presidents of the Administrative Court;

“contributory service” means pensionable service in respect of which contributions have been paid;

“final pensionable emoluments”, in relation to a judge, means his or her pensionable emoluments at the date on which he or she retires, resigns or is removed from office, as the case may be;

“former scheme” means the pension conditions for Judges fixed by Cabinet Minute No. 127 of 1994;

“pension” means an annual pension payable during the lifetime of the recipient unless, in terms of this scheme, it is payable for a shorter period;

“pensionable emoluments”, in relation to a judge, means his or her annual salary together with such allowances as the Minister responsible for finance may from time to time determine;

“pensionable service” means—

- (a) continuous service as a judge, including non-contributory service before the 1st July, 1993; and
- (b) in the case of a person who, immediately before entering his or her office as a judge, was a president of the Administrative Court, his or her continuous service as such, but only on condition that any service as such on or after the 1st July, 1993, was contributory service under the corresponding contributory pension scheme for presidents of the Administrative Court;

“Pensions Officer” means the person performing the functions of the Pensions Officer under the Pensions Regulations;

“Pensions Regulations” means the Public Service (Pensions) Regulations, 1992, published in Statutory Instrument 124 of 1992, as amended at the 1st July, 1997;

“retire” means—

- (a) to retire in terms of subsection (1) of section 86 of the Constitution on attaining the age of sixty-five years or seventy years or such other age as may be fixed by the President in terms of that subsection, as the case may be; or
- (b) to be deemed to have retired in terms of subsection (1) of section 4; or
- (c) to retire on medical grounds in terms of subsection (1) of section 6.

(2) The Interpretation Act [*Chapter 1:01*], as for the time being amended, shall apply in respect of this scheme as if this scheme were a statutory instrument made in terms of the Judges Salaries, Allowances and Pensions Act [*Chapter 7:08*].

(3) Where this scheme provides for the application of specified provisions of the Pensions Regulations—

- (a) related definitions in section 2 of those regulations, such as the definitions of “child”, “dependant” and “surviving spouse”, and other related provisions shall also apply, *mutatis mutandis*, to the extent necessary for the proper application of the specified provisions; and
- (b) any reference in those regulations to the Public Service Commission shall be construed as a reference to the Pensions Officer, subject to review by the Judicial Service Commission.

Contributions

3. For the purpose of securing an entitlement to a pension and other benefits in terms of this scheme, a judge shall pay monthly contributions to the Consolidated Revenue Fund at the rate of seven and one-half *per centum* of his or pensionable emoluments with effect from—

- (a) the 1st July, 1997, in the case of a judge who held office immediately before that date and who makes an election in terms of subsection (2) of section 1;
- (b) the date on which he or she enters office as a judge, in the case of a judge appointed on or after the 1st July, 1997.

Voluntary retirement before retiring age

4.(1) Subject to subsection (2), a judge who has attained the age of sixty years and who resigns his office in terms of subsection (2) of section 86 of the Constitution shall be deemed to have retired for the purposes of this scheme.

(2) A judge shall not be deemed to have retired for the purposes of this scheme if his or her notice of resignation in terms of subsection (2) of section 86 of the Constitution is given or would expire while the question of his or her removal from office for misbehaviour is the subject of investigation or consideration in terms of section 87 of the Constitution.

Benefits on retirement, other than retirement on medical grounds

5.(1) A judge who retires, otherwise than on medical grounds in terms of section 6, shall be entitled—

- (a) if his or her pensionable service amounts to less than ten years, to a gratuity calculated at the rate of one-sixth of his final pensionable emoluments for each complete year of his or her pensionable service;
- (b) if his or her pensionable service amounts to ten years or more, to a pension calculated in accordance with subsection (2).

(2) The pension of a judge referred to in paragraph (b) of subsection (1) shall be calculated, if, at the date on which he retires, he or she has—

- (a) not attained the age of sixty-one years, at the rate of one two hundred and fortieth;
- (b) attained the age of sixty-one years but not attained the age of sixty-two years, at the rate of one two hundred and twenty-eighth;
- (c) attained the age of sixty-two years but not attained the age of sixty-three years, at the rate of one two hundred and sixteenth;
- (d) attained the age sixty-three years but not attained the age of sixty-four years, at the rate of one two hundred and fourth;
- (e) attained the age of sixty-four years but not attained the age of sixty-five years, at the rate of one one hundred and ninety-second;
- (f) attained the age of sixty-five years but not attained the age of sixty-six years, at the rate of one one hundred and eightieth;
- (g) attained the age of sixty-six years but not attained the age of sixty-seven years, at the rate of one one hundred and sixty-eighth;

- (h) attained the age of sixty-seven years but not attained the age of sixty-eight years, at the rate of one one hundred and fifty-sixth;
- (i) attained the age of sixty-eight years but not attained the age of sixty-nine years, at the rate of one one hundred and forty-fourth;
- (j) attained the age of sixty-nine years but not attained the age of seventy years, at the rate of one one hundred and thirty-second;
- (k) attained the age of seventy years, at the rate of one one hundred and twentieth;

of his or her final pensionable emoluments for each complete month of his pensionable service:

Provided that the pension shall not exceed his or her final pensionable emoluments.

Benefits on retirement or removal from office on medical grounds

6.(1) Subject to subsection (2), where the President is satisfied that a judge has given or intends to give notice of resignation in terms of subsection (2) of section 86 of the Constitution on account of continued ill-health or inability to discharge the functions of his or her office arising from infirmity of body or mind, the President may consent to the judge's resignation being regarded for the purposes of this scheme as a retirement on medical grounds, and thereupon the resignation shall be so regarded.

(2) Retirement on medical grounds in terms of subsection (1) shall be subject to the submission to and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to the judge's mental and physical fitness to continue in office, and the report shall be furnished by a medical practitioner approved for the purpose of this paragraph by the Minister responsible for health.

(3) A judge who—

- (a) retires on medical grounds in terms of subsection (1); or
- (b) is removed from office in terms of section 87 of the Constitution on account of continued ill-health or inability to discharge the functions of his or her office arising from infirmity of body or mind;

shall be entitled—

- (i) if his or her pensionable service amounts to less than two years, to a gratuity at the rate of one-sixth of his final pensionable emoluments for each complete year of his or her pensionable service;
- (ii) if his or her pensionable service amounts to two years or more, to a pension calculated at the rate of—
 - A. five *per centum* of his or her final pensionable emoluments for each complete year of pensionable service up to a maximum of ten years ; and
 - B. two *per centum* of his or her final pensionable emoluments for each complete year of pensionable service in excess of ten years:

Provided that the pension shall not exceed his retiring pensionable emoluments.

Motor vehicle benefit on retirement

7.(1) A judge who is entitled to a pension on retirement after ten or more years of pensionable service shall be entitled to purchase the vehicle which was allocated to him or her immediately before his or her retirement at a price equal to the residual value of the vehicle, calculated in accordance with the Schedule.

(2) An election to purchase a vehicle in terms of subsection (1) shall be made not later than the date on which the judge concerned retires.

Benefits on resignation

8. A judge who resigns his or her office before attaining the age of sixty years shall be entitled, if his or her pensionable service amounts to two years or more, to a gratuity calculated at the rate of one-sixth of his or her final pensionable emoluments for each complete year of his or her pensionable service:

Provided that if the judge's notice in terms of subsection (2) of section 86 of the Constitution is given or would expire while the question of his or her removal from office is the subject of investigation or consideration in terms of section 87 of the Constitution—

- (a) he or she shall not be entitled to a gratuity in terms of this section;
- (b) he or she shall be entitled to a refund of contributions in accordance with paragraph (b) of section 9.

Benefits on removal from office for misbehaviour

9. A judge who is removed from office for misbehaviour in terms of section 87 of the Constitution shall—

- (a) not be entitled to a pension or gratuity under this scheme;
- (b) be entitled to be paid—
 - (i) if his or her contributory service amounts to less than twenty years, the amount of his or her contributions, together with an amount obtained by multiplying two *per centum* of the amount of his or her contributions by the number of complete years of his or her contributory service;
 - (ii) if his or her contributory service amounts to twenty years or more but less than twenty-five years, double the amount of his or her contributions;
 - (iii) if his or her contributory service amounts to twenty-five years or more, double the amount of his or her contributions, together with an amount obtained by multiplying two *per centum* of double the amount of his or her contributions by the number of complete years of his or her contributory service.

Refund of contributions

10. A judge who resigns or retires and is not entitled to a pension in terms of this scheme shall be entitled to be paid, in addition to any gratuity—

- (a) if his or her contributory service amounts to less than twenty years, the amount of his or her contributions, together with an amount obtained by multiplying two *per*

centum of the amount of his or her contributions by the number of complete years of his or her contributory service;

- (b) if his or her contributory service amounts to twenty years or more but less than twenty-five years, double the amount of his or her contributions;
- (c) if his or her contributory service amounts to twenty-five years or more, double the amount of his or her contributions, together with an amount obtained by multiplying two *per centum* of double the amount of his or her contributions by the number of complete years of his or her contributory service.

Benefit for surviving spouse of deceased judge

11. If a judge whose pensionable service amounts to two years or more dies and leaves a spouse, there shall be paid to the surviving spouse a pension equal to two-thirds of—

- (a) the pension, if any, to which the judge would have been entitled in terms of section 5 had he or she retired immediately before his or her death; or
- (b) the pension to which the judge would have been entitled in terms of section 6 had he or she retired on medical grounds immediately before his or her death;

whichever is the greater.

Benefit for surviving spouse of deceased pensioner

12. If a former judge who is a pensioner under this scheme dies and leaves a spouse, there shall be paid to the surviving spouse a pension equal to two-thirds of the pension to which the former judge was entitled or would have been entitled had he or she not commuted a portion thereof in terms of section 20.

Pensions for children of deceased judge or pensioner

13.(1) If a judge whose pensionable service amounts to two years or more dies and leaves a spouse and one or more children, or one or more children but no spouse, there shall be paid in respect of the surviving children such children's pensions as would be payable, *mutatis mutandis*, in terms of the Pensions Regulations had the deceased judge been a contributor.

(2) If a former judge who is a pensioner under this scheme dies leaving a spouse and one or more children, or one or more children but no spouse, there shall be paid in respect of the surviving children such children's pensions as would be payable, *mutatis mutandis*, in terms of the Pensions Regulations had the deceased judge been a contributor.

Additional benefits payable to surviving spouse and children or dependants of deceased judge

14. If a judge whose pensionable service amounts to two years or more dies and leaves a spouse, or does not leave a spouse but leaves one or more dependants, there shall be paid to the surviving spouse or the dependant or dependants, as the case may be, in addition to any amount payable in terms of section 11 or 13, such amount as would be payable, *mutatis mutandis*, in terms of section 19 of the Pensions Regulations had the deceased judge been a contributor.

Supplementary benefits payable on death of judge

15. If a judge dies and leaves a spouse, or does not leave a spouse but leaves one or more dependants, there shall be paid to the surviving spouse or the dependant or dependants, as the case may be, such amount as would be payable, *mutatis mutandis*, in terms of section 20 of the Pensions Regulations had the deceased judge been a contributor.

Supplementary benefits payable on death of pensioner

16. If a former judge who is a pensioner under this scheme dies and leaves a spouse, or does not leave a surviving spouse but leaves one or more dependants, there shall be paid to the surviving spouse or the dependant or dependants, as the case may be, such amount as would be payable, *mutatis mutandis*, in terms of section 21 of the Pensions Regulations had the deceased former judge been a pensioner.

Benefits on death of judge where no pension payable

17. If, on the death of a judge, no pension is payable in terms of this scheme to his or her surviving spouse or in respect of a child, there shall be paid to the surviving spouse or, if there is no surviving spouse, to any dependants of the judge or, if there is no dependant, to the estate of the judge, such amount as would be payable, *mutatis mutandis*, in terms of section 23 of the Pensions Regulations had the deceased judge been a contributor.

*Benefits for dependants where deceased judge
or pensioner leaves more than one widow*

18. Section 24 of the Pensions Regulations shall apply, *mutatis mutandis*, where a male judge or pensioner dies and leaves more than one widow.

Payment of pension

19. A pension payable in terms of this scheme shall be paid monthly in arrears.

Commutation of pension

20.(1) A judge who is about to become a pensioner under this scheme, or a former judge who is already a pensioner under this scheme or the former scheme, may apply to the Pensions Officer for the commutation of a portion of his or her pension not exceeding one-third thereof.

(2) Section 37 of the Pensions Regulations shall apply, *mutatis mutandis*, in respect of an application made to the Pensions Officer in terms of subsection (1).

Increase in pension

21.(1) In each year the Minister shall inform the Pensions Officer of any increase in the salaries currently payable to judges, and the Pensions Officer shall forthwith take such steps as are necessary to increase proportionately the pensions payable to any person under this scheme.

(2) Any increase in a pension in terms of subsection (1) shall be payable with effect from the date on which the salary increase on which it is calculated was payable.

(3) This section shall be additional to any review of benefits prescribed in section 5 of the Act.

Recall to duty of former judges

22.(1) In this section—

“full pensioner” means a former judge who is a pensioner under this scheme and whose pension at the date of his or her retirement amounted to ninety *per centum* or more of his or her final pensionable emoluments.

(2) The President may at any time, on reasonable notice, call upon a full pensioner—

- (a) to serve as an acting judge in terms of section 85 of the Constitution; or
- (b) to serve on a commission or board or in an adjudicatory capacity compatible with the status of a former judge;

for one or more periods amounting to four months or less in any one year.

(3) A full pensioner—

- (a) who undertakes any service when called upon to do so in terms of subsection (2); or
- (b) who serves as a judge of the Supreme Court for one or more periods amounting to four months or less in any one year, after being appointed to act in that capacity by the Chief Justice in terms of subsection (3) of section 80 of the Constitution;

shall not be entitled to remuneration for that service, other than payment by way of travelling and subsistence allowances and out-of-pocket expenses and such other allowances as the President may specify.

(4) If a full pensioner refuses without just cause—

- (a) to undertake any service when called upon to do so in terms of subsection (2); or
- (b) to serve for up to four months in any one year as a judge of the Supreme Court in accordance with subsection (3) of section 80 of the Constitution;

the President, after consultation with the Judicial Service Commission, may direct the Pensions Officer to withhold any pension benefit to which the full pensioner was entitled under this scheme in respect of the period for which he or she was called upon to serve, and the Pensions Office shall take all necessary steps to comply with the direction.

(5) The fact that a full pensioner is engaged in some other employment or business shall not constitute a just cause for refusing to serve for the purposes of subsection (4), unless the nature of the employment or business would render it inappropriate for him or her to undertake the service.

SCHEDULE (Section 7)

The residual value of a motor vehicle is a percentage of its value when purchased by the Government as new, determined according to the table below with reference to the vehicle’s age. The first column of the table specifies the vehicle’s age (i.e. the period that has elapsed since the Government bought the vehicle as new). The second column specifies the percentage depreciation according to the vehicle’s age, and the third column the resultant residual value.

<i>Age of Vehicle (end of year)</i>	<i>Percentage depreciation</i>	<i>Residual value %</i>
1	10	90

2	20	80
3	35	65
4	50	50
5	65	35
6	85	15