



Ministry
of Justice

Report to Parliament in respect of extending the current member contribution rates for the Judicial Pensions Regulations 2015

January 2019



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Presented to Parliament by the Lord Chancellor and Secretary of State for Justice under section 22 of the Public Service Pensions Act 2013

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Introduction

1. This report is laid before Parliament in accordance with section 22(2)(b) of the Public Service Pensions Act 2013 (“the 2013 Act”). It relates to a proposal to make regulations under section 3 of and paragraph 9 of Schedule 3 to the 2013 Act.
2. The purpose of the regulations is to amend the Judicial Pensions Regulations 2015 (“the JPR 2015”), which established the Judicial Pension Scheme (“the JPS 2015”) and include provision for the contributions payable by members of the scheme up to 31 March 2019.
3. The proposed regulations provide for the contribution rates applicable in the scheme year ending 31 March 2019 to continue to apply for the following year ending 31 March 2020. As this proposal involves a change to a protected element of the JPR 2015, we have consulted persons or representatives of those likely to be affected by the change with a view to reaching agreement with them and now lay this report before Parliament.

Background

4. In 2010, the Independent Public Service Pensions Commission was set up and chaired by Lord Hutton. His report, in 2011, made a number of recommendations on how to reform public service pensions.
5. The public service pension reforms legislated for under the 2013 Act are designed to last for at least 25 years. The provisions in this legislation are intended to ensure a high bar is set for those contemplating changing scheme features. There are enhanced procedural requirements for consultation and a report to Parliament when making changes to “protected elements” for a period of 25 years as the mechanism to support that aim. Member contribution rates under the respective scheme are one of the protected elements.
6. Section 22 sets out the procedure to be followed in the event that the responsible authority (the Lord Chancellor in relation to the JPR 2015), proposes to make changes that impact on elements of the scheme which are subject to enhanced protection. These elements are protected from modification until 31 March 2040 (the protected period), unless the prescribed procedure is followed. The requirements are twofold. Where a change is proposed to a protected element during the protected period, the responsible authority must consult those who appear likely to be affected, or representatives of those persons, with a view to reaching agreement and must lay a report before Parliament.

Policy objective

7. The reforms referred to above also led to the introduction of the JPS 2015. When the JPS 2015 was being developed, the Ministry of Justice set out proposed member contribution rates to be fixed until the next valuation of the JPS 2015. When the JPR 2015 were made, the member contribution rates were set for a four year period initially. This is because it was expected that there would be a valuation of the scheme which would establish what contributions would be required after that, taking account of the employer cost cap and HM Treasury directions. However, work is ongoing to consider the provisional results of the valuation and how to respond. Therefore, this proposal is required as an interim measure until the completion of the valuation process when contribution rates for the period until 31 March 2023 can be proposed.
8. The JPR 2015 require members to pay contributions to the scheme as a condition of membership. Regulation 124 of the JPR 2015 makes provision for member contribution rates from April 2015 to 31 March 2019.

Current and proposed member contribution rates

<i>Annualised rate of pensionable earnings</i>	<i>Current member contributions rate (1st April 2018 to 31st March 2019)</i>	<i>Proposed member contributions rate (1st April 2019 to 31st March 2020)</i>
Up to but not including £15,001	4.6%	4.6%
£15,001 to but not including £21,637	4.6%	4.6%
£21,637 to but not including £51,516	5.45%	5.45%
£51,516 to but not including £150,001	7.35%	7.35%
£150,001 and above	8.05%	8.05%

9. Having regard to the desirability of not making a change to the protected elements of a scheme within the protected period, the justification for this proposal is that the current legislative arrangements for member contribution rates will expire on 31 March 2019. It is therefore necessary to make further provision as proposed in sufficient time to continue having arrangements in place for member contributions to enable the effective operation of the scheme.

Consultation

10. As referred to above, in accordance with section 22(2)(a) of the 2013 Act, the Lord Chancellor consulted persons or representatives of such persons who appear likely to be affected by the proposed regulations with a view to reaching agreement with them.
11. A consultation was issued from 24 October to 21 November 2018 about the proposed one year extension of current member contribution rates and earnings thresholds. We received 23 responses from individual judges and representative judicial organisations. Of these 17 respondents agreed with the proposal or raised no objection. Two respondents did not agree with the proposal and also raised some wider issues that were outside the scope of the consultation. With a view to reaching agreement, we engaged with them regarding the points they had raised and to explain the rationale for the proposal as a necessary interim measure, but did not secure their support for the proposal. The other four respondents made some comments and observations, which were addressed in the consultation response issued by the Ministry of Justice on 11 December 2019.
12. Separately, in accordance with paragraph 2(2) of Schedule 2 to the 2013 Act, the Lord Chancellor has satisfied the requirement to consult the relevant Secretary of State before making judicial pension regulations affecting an office with jurisdiction exercised exclusively in Scotland. The Secretary of State for Scotland is content with the proposal.

Related matters

13. The Judicial Pension Scheme – The Lord Chancellor is responsible for administration of the overall Judicial Pensions Scheme. This comprises the following schemes:
 - **The 1981 Scheme.** Salaried Judges appointed prior to 31 March 1995 are eligible to belong to a scheme established under the Judicial Pensions Act 1981.
 - **The Judicial Pensions and Retirement Act 1993.** This scheme is for salaried judges. It is a final salary scheme and non-registered for tax purposes. It is closed to new members, but open for those members with transitional protection. (i.e. members remain in the scheme for a period of time based on age).
 - **Judicial Pensions Scheme 2015.** The JPS 2015 is for salaried and fee-paid judges. It is a career average scheme and registered for tax purposes. It is open for new joiners.
 - **Fee-Paid Judicial Pension Scheme 2017.** The FPJPS 2017 is for eligible fee-paid judges. It makes provision for pensionable service from 7 April 2000 to 31 March 2015 and, for those with transitional protection (i.e. members remain in the FPJPS for a period of time based on age). It is also for service from 1 April 2015 onwards. It is closed to new members.

14. Actuarial Valuation - Public service pension schemes conduct periodic valuations under the Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014, set by HM Treasury. Provisional results of the actuarial valuation of the Judicial Pension Schemes indicate there is a breach of the cost cap mechanism at the lower end. The Ministry of Justice is carefully considering the results and work is ongoing to assess potential options to remedy the breach. Following the outcome of the valuation process, consideration will be given to member contribution rates to apply from 1st April 2020.
15. Related provisions - The Judicial Pensions (Fee-Paid Judges) Regulations 2017, which established the FPJPS 2017, also make provision for the contributions payable by scheme members up to 31 March 2019. We propose to make the same change to this scheme with provision to do so concurrently under the same Statutory Instrument. The requirements under section 22 of the 2013 Act do not apply to making this change. However, we included this proposal in the consultation exercise referred to above.

Impact

16. For the year ending 31 March 2020, the proposal is to retain the contribution rates and earnings thresholds which are applicable up to 31 March 2019. The cost of accruing pension scheme benefits will remain the same for scheme members. An impact assessment has not been prepared as no impact on the private or voluntary sector is foreseen. There is no impact on business, charities or voluntary bodies and no significant impact on the public sector.
17. As at 31 March 2018, there were circa 3000 active members of the JPS 2015¹. As noted above, the Lord Chancellor considers that the effect of not implementing this proposal would mean a lapse in the continuity of arrangements for member contributions and a consequential impact on the operation of the scheme and potentially for members' benefits.

Conclusion

18. Parliament is invited to note the reason for proposing to extend to 31 March 2019, the current contribution rates in the JPR 2015 and that alongside this report, the related draft Judicial Pensions and Fee-Paid Judges' Pension Schemes (Amendment) Regulations 2019 have been laid in Parliament for approval under the affirmative resolution procedure.

Lord Chancellor and Secretary of State for Justice, David Gauke MP

Ministry of Justice, 7 January 2019

¹ Judicial Pensions Scheme Annual Report and Accounts 2017 – 18 (for the year ended 31 March 2018)

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