



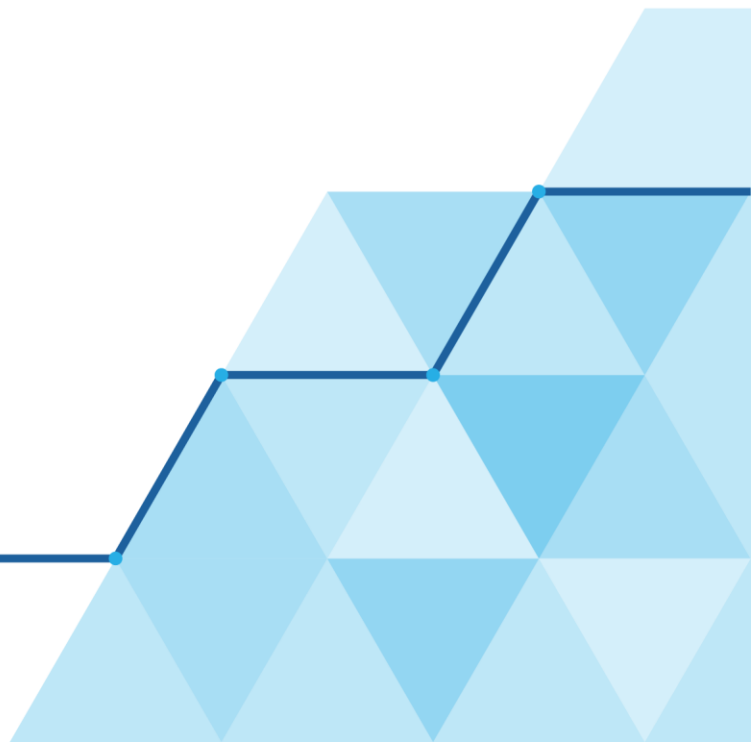
Ministry
of Justice

Amendments to the Fee-Paid Judicial Pension Scheme

Consultation

This consultation begins on 24 June 2020

This consultation ends on 18 September 2020





Ministry
of Justice

Amendments to the Fee-Paid Judicial Pension Scheme Consultation

A consultation produced by the Ministry of Justice.

About this consultation

- To:** This consultation is aimed primarily at judges who sat on a fee-paid basis prior to 7 April 2000, with judicial service continuing up to or beyond that date, though we also welcome the views of any other interested parties.
- Duration:** From 24 June 2020 to 18 September 2020
- Enquiries (including requests for the paper in an alternative format) to:** Paul Darby, Judicial Pay and Pensions
Email: feepaidconsultation@justice.gov.uk
- How to respond:** Please send your response by 18 September 2020 to:
Email: feepaidconsultation@justice.gov.uk
- Response paper:** We aim to publish a response to this consultation exercise in January 2021.

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List of consultees

This consultation is aimed at members of the judiciary, salaried and fee-paid, who are entitled to be members of a judicial pension scheme. We are also interested in the views of other stakeholders including legal professionals, pension industry professionals, and anyone with an interest in public service pensions in England and Wales, Scotland and Northern Ireland.

This consultation will run for 12 weeks from the date of issue, closing on 18 September 2020. Details of how to respond to the consultation are highlighted later in the document. Copies of the consultation papers are being sent to¹:

United Kingdom

- President of the UK Supreme Court
- Senior President of Tribunals

England and Wales

- Association of Fee-Paid Judges
- Association of Her Majesty's District Judges
- Association of High Court Judges
- Association of High Court Masters
- Association of Members of the Immigration & Asylum Tribunal
- Association of Regional Medical Members
- Association of Salaried Tribunal Judges for Health, Education and Social Care
- Association of the Special Educational Needs Tribunal
- Chamber President for War Pensions & Armed Forces Compensation Chamber
- Chief Coroner
- Council of Appeal Tribunal Judges
- Council of Employment Judges
- Council of Her Majesty's Circuit Judges
- Council of Her Majesty's District Judges (Magistrates' Courts)
- Council of Immigration Judges
- Council of Tribunal Members Association
- Council of Upper Tribunal Judges
- Employment Appeal Tribunal Lay Members Committee
- Forum of Tribunal Membership Associations

¹ <https://www.gov.uk/government/publications/judicial-pension-scheme-regulations-consultee-list>

- Judicial Pensions Committee (England)
- London Association of District Judges
- Lord Chief Justice of England and Wales
- Mental Health Tribunal Members Association
- President of Welsh Tribunals
- Salaried Tribunal Judges' Association
- The Bar Council (England and Wales)
- The Law Society (England and Wales)
- The Chartered Institute of Legal Executives
- The United Kingdom Association of Women Judges

Northern Ireland

- Minister of Justice Northern Ireland
- All devolved judicial office holders who are members of the Northern Ireland Judicial Pension Scheme
- Council of Employment Judges
- Judges' Council (Northern Ireland)
- Judicial Pensions Committee (Northern Ireland)
- Lord Chief Justice of Northern Ireland
- Northern Ireland Judicial Appointments Commission
- Office of the President of the Appeals Tribunal for Northern Ireland
- Office of the President of the Industrial and Fair Employment Tribunals Northern Ireland
- The Bar Council of Northern Ireland
- The Law Society of Northern Ireland
- Tribunal President's Group
- Secretary of State for Northern Ireland

Scotland

- Cabinet Secretary for Justice Scottish Government
- Judges' Council (Scotland)
- Judicial Council for Scotland
- Lord President of the Court of Session
- Part Time Sheriffs' Association
- President of the Lands Tribunal (Scotland)
- Sheriffs' Association
- Sheriffs Principal
- Summary Sheriffs' Association

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this consultation.

Executive summary

The litigation

The Fee-Paid Judicial Pension Scheme (FPJPS) commenced on 1 April 2017 following a decision in February 2013 by the Supreme Court in *O'Brien v Ministry of Justice* [2013] UKSC 6 that fee-paid judges had been treated less favourably than relevant full-time salaried judges because they had not been entitled to a pension. We refer to this decision as *O'Brien 1*. Pension benefits under FPJPS presently only accrue for fee-paid judicial service on or after 7 April 2000, the date by which the United Kingdom was required to transpose the Part-Time Work Directive (PTWD) into domestic law.

In November 2018, the Court of Justice of the European Union handed down judgment in the case of *O'Brien v Ministry of Justice* (Case C-432/17), concluding that part-time work undertaken before the deadline for transposing the PTWD on 7 April 2000 must be taken into account for the purposes of calculating a retirement pension. We refer to this judgment as *O'Brien 2*.

In December 2019 in the linked case of *Miller and others v Ministry of Justice* [2019] UKSC 60, the Supreme Court held that the three month time limit under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR) for claims to be made in relation to *O'Brien 1* and *O'Brien 2* runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment. We refer to this judgment as *Miller*.

Developing the remedy

We need to make changes to FPJPS to remedy the position for *O'Brien 2* and *Miller* so that, where judicial service continues up to or beyond 7 April 2000, membership is available in respect of eligible fee-paid judicial service for periods before that date and so that reckonable service can be accrued, and pension benefits paid, in respect of that service. We also need to amend the membership criteria in FPJPS to reflect the *Miller* judgment.

As FPJPS was designed to mirror as far as possible the scheme for salaried judges established under the Judicial Pensions and Retirement Act 1993 (JUPRA), the current provisions of FPJPS can be extended to cover the entire time period during which a relevant salaried judge would have joined JUPRA, i.e. from 31 March 1995 onwards. This is relatively straightforward.

For service prior to 31 March 1995, we propose to amend FPJPS to provide pro-rata pension entitlement based upon the benefits that were available to salaried judges in judicial schemes at the relevant time. Where the salaried judge would have been a member, either directly or by analogy, of a civil service scheme we propose to give judicial office holders a service credit in FPJPS for the period between their appointment and when the salaried judge became entitled to be a member of a judicial pension scheme.

We are also consulting on proposals to update the list of judicial offices in the schedule of fee-paid offices in the FPJPS Regulations.

Our proposals are based on the present position in the *O'Brien, Miller* and other related litigation but may be subject to change depending on ongoing litigation.

Other forthcoming proposals on judicial pensions policy

We are preparing to launch formal consultations on a number of other matters with implications for judicial pensions arrangements. We aim to publish the following consultations shortly:

- **McCloud remedy** – Proposals to rectify the discrimination identified in the *McCloud* litigation.
- **Future reform of the judicial pension scheme** – Proposals for a reformed judicial pension scheme to address judicial recruitment and retention issues.
- **Mandatory retirement age** – Options around changes to the mandatory retirement age for judicial offices.

Next steps and timing

This consultation will be open for 12 weeks to provide an opportunity for all those likely to be affected to comment on our proposals for changes to FPJPS.

Once the consultation has closed, we will consider all the responses received and then issue our formal response together with our plan for taking forward required changes to the FPJPS Regulations including the possible need for further consultation on the regulations themselves. The necessary statutory instrument will be subject to the affirmative resolution procedure and would need to be laid before both Houses of Parliament before it could come into effect. We anticipate that the amended regulations could come into force in 2022.

When the amended scheme commences all fee-paid judges eligible for a revised pension under FPJPS will be contacted by the department. In the interim, fee-paid judges who consider they have a claim are invited to contact the department's Judicial Claims Team (if

they have not already done so) at: JudicialClaimsTeam@justice.gov.uk providing, where available, records of their fee-paid service before 7 April 2000².

Interim arrangements for assessment of claims and payments in lieu of pension benefits

As a result of *O'Brien 2* and *Miller* there are approximately 4,600 judges who have new, or incremental, claims for fee-paid pension scheme eligibility. The Judicial Claims Team is in the process of agreeing service records with these judges. As an interim measure, pending the legislative changes to FPJPS that we are proposing, we have started making payments in lieu of pension to retired judges in this cohort, including lump-sum arrears payments where appropriate. We have been providing the Employment Tribunal with regular updates on this work.

² Additional information on the types of record that can be provided is available in this publication: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819415/moj-statement-in-fee-paid-judicial-litigation-jul-2019.pdf

Introduction

This document sets out our proposals to amend the Fee-Paid Judicial Pension Scheme (FPJPS) in light of the November 2018 judgment of the Court of Justice of the European Union in *O'Brien No. 2*³ on pre-7 April 2000 fee-paid judicial service and the December 2019 judgment of the Supreme Court in *Miller*⁴ on time limits. We propose to amend FPJPS to provide further pension remedy for eligible fee-paid judges in respect of pre-7 April 2000 service where judicial service continues up to or beyond 7 April 2000. We have included a series of worked examples in Annex A.

This consultation document also includes our proposals for updating the schedule of fee-paid offices in the FPJPS Regulations.

O'Brien 2 judgment

FPJPS was established under the Judicial Pensions (Fee-Paid Judges) Regulations 2017 (the FPJPS Regulations) and commenced on 1 April 2017. This followed a decision in February 2013 by the Supreme Court in *O'Brien v Ministry of Justice* [2013] UKSC 6 that fee-paid judges had been treated less favourably than relevant full-time salaried judges, contrary to Directive 97/81/EC, the Part-Time Work Directive (PTWD), because they had not been entitled to a pension. We refer to this decision as *O'Brien 1*. FPJPS is open to eligible fee-paid judicial office holders in England and Wales, Scotland and Northern Ireland.

Pension benefits under FPJPS presently only accrue for fee-paid judicial service on or after 7 April 2000. This was the date by which the United Kingdom was required to transpose the PTWD into domestic law.

However, in November 2018, the Court of Justice of the European Union handed down judgment in the case of *O'Brien v Ministry of Justice* (Case C-432/17), concluding that part-time work undertaken before the deadline for transposing the PTWD on 7 April 2000 must, where the judge continues in judicial service on or after 7 April 2000, be taken into account for the purposes of calculating a retirement pension. We refer to this judgment as *O'Brien 2*.

³ *O'Brien v Ministry of Justice* (Case C-432/17)

⁴ *Miller and others v Ministry of Justice* [2019] UKSC 60

Miller judgment

In December 2019, the Supreme Court held that the three month time limit under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR) for judicial pension claims to be made, only runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment (*Miller*). This has led to a significant increase in the number of judges able to make a claim for fee-paid pension benefits, bringing the total number of claimants to approximately 4,600.

We introduced a moratorium for *O'Brien* claims on 5 April 2013, taking effect from 2 December 2012. This moratorium is still in place and *Miller* judges nearing retirement will also be protected by it and do not need to issue proceedings at the Employment Tribunal. The moratorium also covers judges "in the gap" who went from fee-paid service to salaried service between 1 April 2012 and 1 December 2012 and did not put in a claim within three months of the end of their fee-paid service, provided they retired from salaried service on or after 2 December 2012.

1. Proposals for including fee-paid service from 31 March 1995 to 6 April 2000

The existing Fee-Paid Judicial Pension Scheme

1. FPJPS was created as a remedy to the earlier *O'Brien* judgment. It covers reckonable fee-paid service from 7 April 2000 for fee-paid judicial officer holders in England, Wales, Scotland and Northern Ireland who have been determined as eligible for a pension. Reckonable fee-paid service after 31 March 2015 then became pensioned under the Judicial Pension Scheme 2015, which came into effect on 1 April 2015, subject to transitional and tapering arrangements.
2. Following the *O'Brien 2* judgment in 2018, we acknowledged that eligible claimants would be entitled to further remedy in respect of service before 7 April 2000 in fee-paid appointments where the judge continues in judicial service on or after 7 April 2000⁵.
3. The current provisions of FPJPS mirror the provisions of JUPRA on a pro rata basis as far as is possible. We intend to replicate this approach for fee-paid service from 31 March 1995 (the date JUPRA came into effect for salaried judges) to 6 April 2000.
4. In section 2 we have set out our proposals for dealing with fee-paid judicial service before 31 March 1995, i.e. before JUPRA came into effect.
5. All of our proposals are aimed at ensuring that fee-paid judges are not subject to less favourable treatment on the grounds of their part-time status.

Proposals for including fee-paid service from 31 March 1995 to 6 April 2000

6. We propose to amend the FPJPS Regulations to allow membership of FPJPS for periods of service before 7 April 2000. In this section we address provisions for fee-paid service from 31 March 1995 to 6 April 2000.
7. A judge whose fee-paid appointment began on or after 31 March 1995 and whose pension remedy is properly referable to JUPRA will have their benefits calculated

⁵ Gaps in service before 7 April 2000 do not preclude eligibility.

according to provisions of the current FPJPS Regulations (current FPJPS provisions)⁶. Subject to the next paragraph appointments before 31 March 1995 will be subject to different provisions and these are addressed in section 2.

8. If a judge was appointed before 31 March 1995, benefits relating to fee-paid service before that date will be calculated under current FPJPS provisions in three sets of circumstances:
 - If the judge does not take up a new appointment after 31 March 1995, they will be able to elect, at the time of retirement, to have benefits for their fee-paid service calculated under current FPJPS provisions. This is explained in section 5.
 - If the judge does take up a new appointment after 31 March 1995, all of their fee-paid service up to the date of the new appointment will be included as a service credit under current FPJPS provisions, and subsequent service will accrue in FPJPS. This is explained in section 4.
 - If the relevant salaried judge had civil service pension arrangements applied directly or by analogy before 31 March 1995 and the relevant salaried judge became eligible to join JUPRA on or after 31 March 1995. The judge will be given a service credit in current FPJPS provisions based on previous pension arrangements and subsequent service will accrue under current FPJPS provisions.

Amendments to FPJPS membership requirements

9. Regulation 8(1) of the FPJPS Regulations presently says that a person is a member of FPJPS if they held fee-paid judicial office at any time in the period beginning 7 April 2000 and ending 31 March 2015, provided they did not cease to hold that office before 2 December 2012⁷.
10. We propose to amend the membership requirement so that it includes fee-paid service before 7 April 2000 where judicial service continued up to or beyond that date.

Amendments in respect of Miller

11. In December 2019, the Supreme Court overturned the decisions of the Employment Tribunal, Employment Appeals Tribunal and Court of Appeal and held that the three month time limit for *O'Brien* claims to be made only runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment (*Miller*). We accept that judges who are currently serving or who have retired from

⁶ The current provisions in the FPJPS Regulations will be unaffected by the proposed changes to include pre- 7 April 2000 service.

⁷ Subject to some provisions relating to death in service and some fee-paid judicial offices in Northern Ireland (see Regulation 8(1) and (7)).

judicial service on or after 2 December 2012 and are eligible for a judicial pension, should have previous fee-paid service included in their pension calculations. Following the *Miller* judgment, the following groups of judges are therefore in scope for the *O'Brien* remedy:

- those who successfully claimed pension benefits for fee-paid service as a result of the *O'Brien* litigation and who have a claim for an earlier fee-paid office;
- those who made claims which were rejected as out of time because the claim was not brought within three months of the end of fee-paid service in the relevant appointment; and
- those who made no claims but are now eligible and in time, i.e. still in service or retired from 2 December 2012.

12. We introduced a moratorium for *O'Brien* claims on 5 April 2013, taking effect from 2 December 2012⁸. This moratorium is still in place and *Miller* judges nearing retirement will be protected by it and do not need to issue proceedings at the Employment Tribunal. The moratorium also covers judges “in the gap” who went from fee paid service to salaried service between 1 April 2012 and 1 December 2012 and did not put in a claim within three months of the end of their fee paid service, provided they retired from salaried service on or after 2 December 2012.

13. The FPJPS Regulations are currently drafted to reflect the decisions of the lower courts. We propose to amend the membership criteria in the FPJPS Regulations to reflect the Supreme Court judgment.

Current FPJPS provisions

14. The remainder of this section sets out the key features of the pension provisions that apply for fee-paid appointments that began on or after 31 March 1995 and for appointments where any of the three sets of circumstances set out in paragraph 8 apply. The details of these provisions are not part of the consultation but are set out here for illustrative purposes for those judges who will accrue benefits under current FPJPS provisions.

15. Some of the key current features of FPJPS are as follows:

- It is an unfunded pension scheme based on a final pensionable earnings model with a requirement for members to make contributions⁹.

⁸ Different moratoriums applied for Scotland and Northern Ireland.

⁹ Personal pension contributions became payable from 1 April 2012 and are payable for a maximum of 20 years of reckonable service. Dependant contributions are payable for the entire period of reckonable service.

- It has a normal pension age of 65 and a 20-year cap on reckonable full-time equivalent years of service (across both salaried and fee-paid service).
- A pension is only payable on retirement from the judicial office to which the pension benefits relate.
- It is an unregistered scheme for tax purposes although the additional voluntary contribution schemes are registered.
- It provides an annual pension and an automatic lump sum on retirement of 2.25 times the annual pension.
- It features an accrual rate of 1/40th of pensionable earnings.
- It includes provisions for deferment of benefits, ill health retirement, death in service/retirement, and dependants' pensions.
- It provides revaluation of deferred and retired scheme members' benefits in line with inflation. This is set under the Pensions Increase Act 1971 (currently in line with the Consumer Price Index).
- Although not part of the scheme itself a service award payment on retirement equal to the tax paid on the automatic lump sum payment will also be paid.

16. Further information is available in the FPJPS Regulations¹⁰ and scheme guide¹¹.

Final salary link

17. The provisions in regulation 7 of the FPJPS Regulations (Appropriate annual salary) and regulation 13 (Annual rate of ordinary pension) set out how the final salary link is to be applied for single offices and multiple (different) offices where the offices are held consecutively, simultaneously or a mixture of the two.

Consecutively held offices

18. Where different offices have been held consecutively, the appropriate annual salary of the office held at retirement is used to calculate the benefits for service in all of the offices¹². Where the office held at retirement is a salaried office the appropriate annual salary to be used when calculating the fee-paid benefits is the pensionable pay of the salaried office (highest salary paid in respect of any continuous period of 12 months within the last 36 months ending on the date of retirement).

¹⁰ <https://www.legislation.gov.uk/ukdsi/2017/9780111154953/contents>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643917/fpjps-scheme-booklet.pdf

¹² Except where the judge has taken partial retirement from the earlier office or elected to preserve pension benefits calculated using the appropriate final salary for that earlier office.

Simultaneously held offices

19. Where different offices have been held simultaneously, two separate pensions are paid, with benefits calculated using the appropriate annual salary for each office.
20. Where more than one fee-paid office is given up when a judge takes up a salaried appointment, the appropriate annual salary for each office is the pensionable pay of the salaried office.

Mix of consecutively and simultaneously held offices

21. The approaches above hold true if a fee-paid judge has consecutive periods of service in different offices and simultaneous service where the appointments overlap.
22. For the consecutive (non-overlapping) periods the appropriate annual salary of the office held at retirement is used to calculate the benefits for service in both offices.
23. For the simultaneous (overlapping) periods separate pension benefits are calculated using the appropriate annual salary for each office.

Member contributions

24. The member contributions that will be due for reckonable service before 7 April 2000 will only be payable in respect of dependant benefits (at a rate of 1.8% of pensionable pay). Once the new arrangements are in place the arrears of contributions will be formally calculated. For retired members who are in receipt of a payment in lieu of pension, any necessary adjustment will be made to address any over/under payment of contributions. Members who are still in service will be given the option of paying the arrears of contributions from their lump sum on retirement; paying additional contributions from fees received; or alternatively making a lump sum payment. Applicable contribution rates are set out in tables 1.1 to 1.6 below.

Table 1.1 – Contribution rates for periods from 7 April 2000 to 31 March 2015

Time Period	Personal Contributions	Dependant Contributions	Total Member Contributions
From 7 April 2000 – to 31 March 2012	0.00%	1.8%	1.8%
From 1 April 2012 – to 31 March 2013	1.28%	1.8%	3.08%
From 1 April 2013 – to 31 March 2014	2.56%	1.8%	4.36%

Time Period	Personal Contributions	Dependant Contributions	Total Member Contributions
From 1 April 2014 – to 31 March 2015	3.2%	1.8%	5.00%

Table 1.2 – Contribution rates by earnings band for 2015-16

Annual Rate of Pensionable Earnings 2015-16	Personal Contributions	Dependant Contributions	Total Member Contributions
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	4.43%	0%	4.43%

Table 1.3 - Contribution rates by earnings band for 2016-17

Annual Rate of Pensionable Earnings 2016-17	Personal Contributions	Dependant Contributions	Total Member Contributions
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	4.43%	0%	4.43%

Table 1.4 - Contribution rates by earnings band for 2017-18

Annual Rate of Pensionable Earnings 2017-18	Personal Contributions	Dependant Contributions	Total Member Contributions
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	4.43%	0%	4.43%

Table 1.5 - Contribution rates by earnings band for 2018-19 and 2019-20

Annual Rate of Pensionable Earnings 2018-19 and 2019-20	Personal Contributions	Dependant Contributions	Total Member Contributions
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	4.43%	0%	4.43%

Table 1.6 - Contribution rates by earnings band for 2020-21

Annual Rate of Pensionable Earnings 2020-21	Personal Contributions	Dependant Contributions	Total Member Contributions
Up to but not including £22,005	0.96%	1.80%	2.76%
£22,005 to but not including £52,392	1.47%	1.80%	3.27%
£52,392 to but not including £150,001	2.61%	1.80%	4.41%
£150,001 and above	4.43%	0%	4.43%

Caps on reckonable service

25. A 20-year cap on reckonable service for pension entitlements applies in respect of fee-paid service. Service in salaried offices, that is pensionable under JUPRA, is also taken into account for reckonable service caps¹³.

Members who have already retired

26. Any retired scheme member who is already receiving pension payments under FPJPS or payments in lieu of pension will have their annual pension entitlement, associated lump sum, service award, and contributions liability recalculated to take account of earlier reckonable service, once the amended regulations are in place. The recalculation will take account of any payments in lieu of pension that have been made in the meantime.

27. Where a member has already bought added years using the Fee Paid Judicial Added Years Scheme (FPJAYS), the amount that can be purchased will be recalculated and, where necessary, contributions refunded and any overpaid benefits reclaimed. This is

¹³ For example, a judge with 12 years of pensionable service in JUPRA may only accrue a further 8 years in aggregate in FPJPS.

because an increase in reckonable service for the period before 7 April 2000 might mean that the purchase of added years has caused the 20-year cap on pensionable service to be exceeded.

28. Where a member has already purchased additional pension for their spouse or civil partner using the Fee-Paid Judicial Added Surviving Adult's Pension Scheme, the amount that can be purchased will be recalculated and where necessary contributions refunded and any overpaid benefits reclaimed.

Active members

29. Active FPJPS members will have their pension records updated to reflect any fee-paid service from 31 March 1995 to 6 April 2000. The amount of additional benefits that the member can purchase using FPJAYS will also be recalculated and, where applicable, contribution levels adjusted.

Multiple fee-paid appointments

30. Where a judge holds separate appointments in more than one eligible judicial office the scheme provides a pension entitlement for each of the appointments. Where multiple appointments are held at the time of retirement, or have been held at any time during service, pension benefits will be calculated for each office.

Partial retirement

31. Pensions are only payable on retirement from the judicial office to which the pension entitlement relates. However, where multiple fee-paid offices are held, a judge may, subject to eligibility, elect to take pension benefits from the offices being retired from whilst continuing to sit in the other office(s).
32. Where partial retirement is taken the benefits provided will depend upon the age of the member at the date of leaving, the amount of service, and the appropriate annual salary.

Options for scheme members

Fee-Paid Judicial Added Years Scheme (FPJAYS)

33. The existing Fee-Paid Judicial Added Years Scheme (FPJAYS) provides the opportunity for eligible scheme members of FPJPS who held an eligible fee-paid judicial office between 7 April 2000 and 5 April 2006 to purchase additional years (or part-years) of service.
34. We recognise that the circumstances of members with additional pensionable service before 7 April 2000 could change once the new FPJPS arrangements are in place. For

example, some members might then have increased appetite to purchase added years (as the fee income in scope for FPJAYS is higher), whereas others might have lower appetite to purchase added years once additional service periods are added to records.

Members (active or retired) with additional service between 31 March 1995 and 6 April 2000 only

35. We plan to offer any members with pensionable service before 7 April 2000, whether they have an existing FPJAYS contract or not, a second opportunity to apply to purchase added years under FPJAYS, subject to the relevant limits.
36. In addition, members who have an existing FPJAYS contract will have that FPJAYS contract tested against their new circumstances. If any of the limits on the number of years that can be purchased now bite¹⁴, the member will be given an automatic (partial) refund of the contributions paid, less the corresponding benefits received to date.
37. Members with an existing FPJAYS contract will also be offered the opportunity to receive a full refund of FPJAYS contributions, less benefits paid. This will enable any member who (because of their new circumstances) no longer wishes to purchase added years, the opportunity to “undo” their original FPJAYS contract. In such cases it will be the member’s responsibility to understand and accept any personal tax consequences. Any net refunds paid will include interest and will be subject to a tax deduction.

Fee-Paid Judicial Additional Surviving Adult’s Pension Scheme (FPJASAPS)

38. The existing Fee-Paid Judicial Additional Surviving Adult’s Pension Scheme (FPJASAPS) provides the opportunity for eligible scheme members of FPJPS who held an eligible fee-paid judicial office between 7 April 2000 and 5 April 2006 to purchase additional pension for their spouse or civil partner.
39. As for FPJAYS, we recognise that the circumstances of members with additional pensionable service before 7 April 2000 could change once the new FPJPS arrangements are in place.

Members (active or retired) with additional service between 31 March 1995 and 6 April 2000 only

40. We plan to offer any members with pensionable service before 7 April 2000, whether they have an existing FPJASAPS contract or not, a second opportunity to apply to

¹⁴ An increase in reckonable service for the period between 31 March 1995 and 6 April 2000 might mean that the previous purchase of added years has caused the 20-year cap on pensionable service to be exceeded.

purchase additional pension for their spouse or civil partner under FPJASAPS, subject to the relevant limits.

41. Where appropriate, members with an existing FPJASAPS contract will also be offered the opportunity to receive a refund of FPJASAPS contributions to reflect a change to their FPJASAPS contract. In such cases it will be the member's responsibility to understand and accept any personal tax consequences. Any net refunds paid will include interest and will be subject to a tax deduction.

Judicial Additional Voluntary Contribution Scheme (JAVCS)

42. FPJPS members can make additional voluntary contributions to be invested with an authorised independent pension provider (currently Prudential). The provider will invest the contributions as requested by the member according to a range of investment choices. When taking benefits, there are various options available.
43. We do not need to make any changes in respect of the JAVCS scheme because there is no limit to the amount of benefit that may be accrued under the scheme. However, because the scheme is registered for tax purposes, any benefits will count towards the Lifetime Allowance under the provisions of the Finance Act 2004 and contributions paid to the JAVCS scheme will count towards the Annual Allowance.

Assistant Recorders and First-tier Tribunal and/or Upper Tribunal appointments

Assistant Recorders

44. The fee-paid office of Assistant Recorder was a separate judicial office until it was abolished, but no relevant salaried office is available to allow pro-rating of benefits.
45. The information available indicates that the majority of Assistant Recorders subsequently became Recorders. In view of this, we propose to treat all service as an Assistant Recorder as if it were service as a Recorder for pension entitlement purposes (together with any other service as a Recorder).

First-tier Tribunal and/or Upper Tribunal appointments

46. Subject to the next paragraph, we propose that for fee-paid judges who hold a First-tier Tribunal and/or an Upper Tribunal appointment, we will calculate pension benefits based on the tribunal status of the office held at retirement even if that office, at some point, comprised separate appointments such as an appointment as a Social Security Chairman and Immigration Adjudicator.

47. In cases where a fee-paid judge retired from an office that later became a First-tier or Upper Tribunal Chamber, but before that change came into effect, pension benefits for the office concerned will be calculated as if the office had never become part of the tribunals system.

Authorisations (including those associated with Tribunal chambers)

48. Under FPJPS current provisions, where a fee-paid First-tier or Upper Tribunal Judge sits in more than one chamber, with different fees payable, a separate calculation of appropriate annual salary is made for each chamber.
49. We propose to extend where appropriate the separate calculation of appropriate annual salary approach to further instances in which a judge may properly receive more than one rate of pay.

Possible inclusion of facility for commutation of small pensions

50. In our February 2017 response to the consultation on Fee-Paid Judicial Pension Scheme Regulations¹⁵ we deferred a decision on whether to include a facility for trivial pension commutations. In the context of our *O'Brien 2* remedy proposals we believe that this possibility should be reconsidered.

Background

51. Some pension schemes allow members who would receive a relatively low annual pension to convert this to a single lump sum payment. Such arrangements have to comply with any conditions imposed under statutory requirements but the arrangements provided by particular schemes may include additional requirements and restrictions.
52. The Judicial Pension Scheme 2015 allows the commutation of small pensions in some circumstances, but FPJPS currently does not. FPJPS is a non-registered scheme for tax purposes, and this might affect whether a small pension commutation facility could be introduced and, if it could, the basis on which it could operate. It might alternatively be possible to provide for lump sums payments to be paid under “small pot” rules, which are again subject to a number of conditions.

¹⁵ <https://consult.justice.gov.uk/digital-communications/fee-paid-judicial-pension-scheme-draft-regulations/>

53. A facility for commutation of small pensions would apply to benefits accrued under both current and pre-95 FPJPS provisions.
54. We would be interested in receiving views from respondents on whether we should, if possible, consider including a facility for the commutation of small pensions when we propose amendments to the FPJPS Regulations.

Questions

1. Do you have any comments on our proposals for amending the FPJPS Regulations to include fee-paid service from 31 March 1995 to 6 April 2000 (where judicial service continues up to or beyond that date) in FPJPS provisions?
2. Do you have any views on the possibility of including a facility for the commutation of small pensions when we propose amendments to the FPJPS Regulations?

2. Proposals for fee-paid service before 31 March 1995

Amending FPJPS to allow service before 31 March 1995 to be included

55. In section 1 we explain our proposal for reckonable fee-paid service from 31 March 1995 to 6 April 2000 (where judicial service continues up to or beyond that date) to be subject to the current FPJPS provisions. This is because the current FPJPS provisions mirror the JUPRA scheme for salaried judges which was available for judicial service from 31 March 1995. We also explain that if a judge has reckonable fee-paid service before 31 March 1995, benefits relating to that fee-paid service will be included in current FPJPS provisions in three set of circumstances which we set out in section 1¹⁶.
56. However, we will need to add new provisions to FPJPS for service before 31 March 1995 (pre-95 FPJPS provisions). This is because, before that date, judicial pensions were provided under the Judicial Pensions Act 1981 (JPA81) and other statutory provisions for offices in Scotland and Northern Ireland. In addition, before 31 March 1995, some judges (in particular the tribunals judiciary) accrued benefits under civil service pension arrangements, or arrangements analogous to them.
57. A series of worked examples from the Government Actuary's Department is set out in Annex A.

The Judicial Pensions Act 1981

58. Salaried judges appointed prior to 31 March 1995 usually belonged to a scheme established under JPA81. This was a consolidation Act which brought together various pensions schemes, with the particular scheme a judge belonged to depending on the judicial office held. The main differences between the schemes related to:
- the accrual rate for each year of service;
 - the number of years' service required for a full pension (15 or 20 years); and

¹⁶ The circumstances are: 1) if the judge has taken up a new appointment after 31 March 1995; 2) if the judge has not taken up a new appointment after 31 March 1995 but elects at retirement to have benefits calculated under current FPJPS provisions; and 3) if the relevant salaried judge had civil service pension arrangements applied directly or by analogy before 31 March 1995.

In some cases relevant salaried offices were not eligible for JUPRA scheme benefits until on or after 31 March 1995 as explained in section 5.

- the age at which benefits are payable.

59. Not all judicial appointments before 31 March 1995 were covered by JPA81. There were broadly similar statutory arrangements that applied for some specific offices in Scotland (Sheriffs Principal and Sheriffs) and Northern Ireland (County Court Judges). However, since the benefit structures and accrual rates are broadly the same across all of the statutory arrangements, we are proposing to have only one set of FPJPS arrangements which will apply to pre-1995 service.

60. The appointment dates for some fee-paid judges may be earlier than 1981. However, as the provisions of JPA81 replicated earlier statutory provisions our proposals only consider the 1981 Act and not earlier provisions.

Eligible offices and accrual rates

61. The pre-95 FPJPS provisions that we are proposing will provide for offices where either a 15- or 20-year service requirement applied to the relevant salaried judge. The pre-95 FPJPS provisions will apply to the fee-paid offices in England and Wales, Scotland and Northern Ireland set out in Annex B, which also shows the age when a pension may be payable.

62. It should be noted that JPA81 schemes had no concept of part-time working, making it difficult to calculate fee-paid pension entitlement through them. Our proposals for the calculation of pension entitlements for fee-paid judges are detailed below. Nevertheless, the pre-95 FPJPS provisions we are proposing for fee-paid judges mirror as far as possible the benefits payable to a relevant salaried judge on a pro rata basis.

Particular relevant salaried offices for service before 31 March 1995

Sheriffs Principal and Sheriffs in Scotland

63. For Sheriffs Principal and Sheriffs in Scotland, JPA81 provided for lump sum payments and dependants' benefits, but the pension for the judicial office holder was provided for in the Sheriffs' Pensions (Scotland) Act 1961 and featured:

- a pension based on final salary and length of service;
- for a Sheriff Principal (subject to completion of 2 years' service) –
 - an accrual rate equivalent to that for a Circuit Judge under JPA81; and
 - a full pension of one-half of final salary payable on completion of 15 years' service.
- For a Sheriff –
 - an accrual rate equivalent to that for a District Judge under JPA81; and

- a full pension of one-half of final salary payable on completion of 20 years' service.

- For both – a pension at age of 65 or upon permanent incapacity.

64. As these pension provisions are broadly comparable to those under JPA81, and the lump sums and dependant benefits are provided under the provisions of JPA81, we propose that for the fee-paid equivalents of Sheriffs Principal and Sheriffs the pre-95 FPJPS provisions outlined below should apply.

County Court Judges

65. In Northern Ireland for County Court Judges pension benefits provisions are contained in the County Courts Act (Northern Ireland) 1959. The main provisions are for a pension at the completed year of service after attaining the age of 72, or upon permanent incapacity, or if retirement is at age 65 with 15 years of service. The rate of pension is based upon final salary and length of service. The accrual rate for a County Court Judge is the same as for a Circuit Judge under JPA81. A full pension of one-half of final salary is payable on completion of 15 years' service. A lump sum of 2 x the pension will be payable at retirement. Dependant pensions are also payable.

District Judges (Magistrates' Courts) in Northern Ireland

66. For District Judges (Magistrates' Courts) in Northern Ireland, previously known as Resident Magistrates, pension provisions are contained in the District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960¹⁷.

67. The pension provisions featured:

- a pension based on final salary and length of service;
- a pension at age 65 or upon permanent incapacity;
- an accrual rate equivalent to that for a District Judge under JPA81;
- a full pension of one-half of final salary payable on completion of 20 years' service;
- a lump sum of 2 x pension payable at retirement; and
- dependant pensions are provided for.

68. We propose that for the fee-paid equivalents of District Judges (Magistrates' Courts) and County Court Judges in Northern Ireland the pre-95 FPJPS provisions set out below should apply as the benefit structure and value are the same.

¹⁷ Previously named the Resident Magistrates' Pensions Act (NI) 1960.

Proposed new FJPS provisions for service before 31 March 1995

69. The key features of our proposed pre-95 FPJPS provisions are:

- non-registered for tax purposes;
- pension benefits linked to the entitlement of the relevant salaried judge;
- 15 or 20 years reckonable full-time equivalent for a full pension (depending on office);
- various accrual rates (depending on office);
- normal pension age linked to age and/or years of service (depending on office);
- automatic lump sum on retirement of 2 x annual pension;
- pension for surviving spouses and surviving civil partners of 50% of member's pension, and pensions for eligible children; and
- revaluation of deferred and retired scheme members' benefits in accordance with the Pensions (Increase) Act 1971 (currently in line with the Consumer Price Index).

Pensionable pay

70. The calculation of benefits does not use the fees that the scheme member has received but instead is based upon the pension entitlement (and therefore the pensionable pay) for the relevant salaried office which is then pro-rated to reflect the reckonable service of the scheme member.

Consecutively held offices

71. Where offices have been held consecutively (and partial retirement has not been taken in respect of the earlier office(s) held) then the relevant salary of the office held at retirement is used to calculate the benefits for service in all of the offices. Where the office held at retirement is a salaried office, the salary to be used when calculating the fee-paid benefits is the last annual salary of that salaried office.

Simultaneously held offices

72. Where offices have been held simultaneously, two separate pensions are paid based on the pensions that would be payable to the relevant salaried judges for each office, but pro-rated to reflect the reckonable service of the member.

73. Where more than one fee-paid office is given up when a judge takes up a salaried appointment, the salary to be used when calculating the fee-paid benefits for each office is the last annual salary of that salaried office.

Mix of consecutively and simultaneously held offices

74. The position where offices are held both for periods consecutively and simultaneously will mirror that of the current FPJPS Regulations.
75. For the consecutive (non-overlapping) periods, the relevant salary of the office held at retirement is used to calculate the benefits for service in both offices.
76. For the simultaneous (overlapping) periods, separate pension benefits are calculated based on the pensions that would be payable to the relevant salaried judges for each office, but pro-rated to reflect the reckonable service of the member.

Tax considerations

77. FPJPS is a non-registered scheme for tax purposes and this tax status will also apply to the pre-95 FPJPS provisions. This is consistent with the non-registered status of JPA81 schemes. Non-registration means that none of the income tax advantages conferred by the legislation governing registered pension schemes apply. This means that contributions paid to the scheme do not attract tax relief and the lump sum is taxed. On the other hand, benefits under the scheme do not count towards either the Annual Allowance or the Lifetime Allowance limits.
78. The Fee-Paid Judicial Added Benefits Scheme (see below) will be a registered scheme, like its salaried counterpart, and although contributions will attract tax relief, the Annual and Lifetime Allowances will apply.

Service award

79. As FPJPS is non-registered the automatic lump sum payable at retirement is subject to tax, currently at a rate of 45% for additional rate taxpayers (46% for judicial office holders who live in Scotland). 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.

Normal pension age

80. This is the age when a member may take their pension benefits. It is linked to age and/or years of service and is dependent on the office held. (See Annex B).

Annual pension and lump sum

81. The annual pension is paid monthly in arrears. Each year the annual pension is revalued in line with the index set under the Pensions Increase Act 1971 (currently in line with CPI).

82. In addition to the annual pension, an automatic lump sum is payable to every scheme member upon retirement. The lump sum calculation is the annual value of the pension multiplied by 2. For example, an annual pension of £12,000 would mean that a lump sum of £24,000 is payable.

Box 2.2 – Election at retirement

Subject to the change of office provisions set out in section 4, scheme members will be given a choice at retirement between the following benefits, in line with the choice available to the relevant salaried judge:

- Pro-rata benefits under pre-95 FPJPS provisions calculated with reference to the pension benefit entitlement of a relevant salaried judge under the provisions of JPA81, and other statutory schemes, but scaled by the fee-paid judge's reckonable service (i.e. number of days sat) as a proportion of qualifying service (i.e. length of time in post), in line with the pro-rata principle.
- Transferring reckonable service to the current FPJPS provisions in line with the provisions set out in the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995. Although the election is made at retirement, the transfer could take effect from any day on which an appropriate salaried judge would have been able to transfer accrued reckonable service to JUPRA.

The choice that is most beneficial for a given judge will depend on his or her personal circumstances, and the value that he or she places on different types of benefit entitlement.

Pension benefits calculation methodology

83. For judges who hold either one fee-paid office or multiple fee-paid offices eligible for benefits under the pre-95 part of FPJPS, pension benefits will be calculated using the formula set out in Box 2.3 below. Where a judge holds more than one fee-paid office separate pension entitlements will be calculated for each office held.

84. The number of years of service for the entitlement to a full pension is either 15 or 20 years, depending on office, and it is this number of years which determines the service cap appropriate to each office held. The service cap is applied to both reckonable service in the office for which benefits are being calculated and qualifying service across all offices, including salaried offices, where applicable. The formula for fee-paid pension entitlement is shown in Box 2.3.

Box 2.3 – Formula for fee-paid pension entitlement

Fee-paid pension entitlement for an office

$$= \text{Pension entitlement of relevant salaried judge} \times \frac{\text{Capped reckonable service in office}}{\text{Capped qualifying service across all offices}}$$

85. Pension entitlements for separate fee-paid offices will be added together to ascertain the total pension entitlement (subject to a check that the judge has not breached any service caps).

Reckonable service where more than one office is held

86. Where a single office is held both simultaneously and non-simultaneously with another appointment, we propose that an approach consistent with the current FPJPS provisions is taken. That is, the total sitting days in the office should be divided into simultaneous and non-simultaneous sitting days according to the calendar length of the simultaneous/non-simultaneous periods. The tranches of service will then be treated as separate offices and calculated as above.

87. Worked example 3 in Annex A shows how such calculations could be carried out.

Service cap

88. A check will need to be made across all of a judge's service in fee-paid and salaried offices (both before and after 31 March 1995) to ensure that service caps are not breached for pension entitlement purposes. In order to check whether a service cap has been breached it is proposed that, for each office held, the proportion of the service cap used by that office is calculated using the formula shown in Box 2.4.

Box 2.4 – Proportion of service cap used by office

$$\text{Cap usage} = \frac{\text{Capped reckonable service in office}}{\text{Service cap for the office}}$$

89. The formula will give a cap usage number of between 0 and 1 (or 0% and 100%) for each office. Generally, a judge will have breached their service cap if the total cap usage across all offices held is more than 1 (or more than 100%).

90. When a judge retires from an office, the cap usage of the pension coming into payment at that time will need to be compared to the judge's remaining cap available to use. The remaining amount of cap will be calculated as 1 minus the cap usage of any salaried

service and minus the cap usage of any fee-paid offices that are already in payment (in that order).

91. Where the pension from more than one office comes into payment at the same time and, when taken together, the total of the cap usage numbers for these offices causes the maximum cap usage to be breached, precedence for inclusion in the pension entitlement calculation will be given to the office where the relevant salaried office has the highest pension entitlement.

92. Where the cap is going to be breached the pension entitlements of all offices coming into payment will be capped using the formula shown in Box 2.5.

Box 2.5 – Formula for capped pension entitlement

Capped pension entitlement =

$$\text{Uncapped pension entitlement} \times \frac{\min(\text{remaining cap usage}, \text{cap usage for the office})}{\text{cap usage for the office}}$$

93. In summary the effect of the formula is that:

- Any office coming into payment where the cap usage of that office falls entirely within the remaining cap will be paid in full.
- The pension entitlement of the office that falls partially within the judge's remaining cap and partially outside is reduced in line with the remaining cap (in proportion to the cap usage of the office).
- The pension entitlement for any subsequent offices is reduced to zero.

94. Worked example 6 in Annex A illustrates the calculation for a capped pension entitlement.

Member contributions

95. Under pre-95 FPJPS provisions, contributions will be required from scheme members towards the cost of their personal benefits (personal pension contributions) and towards the cost of spouses', civil partners' and children's pensions (dependants' pension contributions). Contributions will be due for future pensionable service as well as pensionable service before the date the Regulations are amended.

Personal pension contributions

96. Personal pension contributions are compulsory for all members under pre-95 FPJPS provisions, including for pensionable service before the date the FPJPS Regulations are amended to bring the pre-95 FPJPS provisions into effect.

97. Contributions for service after FPJPS Regulations are amended will be made by deductions from the scheme member's gross pensionable earnings until retirement or the completion of either 15 or 20 years of reckonable service, depending on the office.
98. In respect of contributions relating to service before the date the FPJPS Regulations are amended, members will be given the choice of:
- clearing outstanding contributions by making a lump sum payment;
 - paying an increased level of contributions on an ongoing basis; and
 - having the outstanding contributions deducted from the lump sum payable on retirement.
99. Personal pension contributions became payable from 1 April 2012 and are payable for a maximum of 15 or 20 years of reckonable service, depending on office. However, for all reckonable service before that date the contributions are deemed to have been paid. For example, a member subject to a maximum of 20 years of contributions who had nine years of reckonable service before 1 April 2012 would have to pay the contributions for 11 reckonable years from that date.

Dependants' pension contributions

100. In respect of dependants' pension contributions relating to service before the date the FPJPS Regulations are amended, members will be given the choice of:
- clearing outstanding contributions by making a lump sum payment;
 - paying an increased level of contributions on an ongoing basis; and
 - having the outstanding contributions deducted from the lump sum payable on retirement.
101. Dependant pension contributions are payable for all years of the member's reckonable service up to a maximum of 15 or 20 years of reckonable service, depending on office.
102. A scheme member who has entered into a civil partnership can elect for the service prior to December 2005 not to count towards civil partner benefits. If the scheme member does elect for this service not to count, dependant contributions are not payable for this period.
103. We propose that a female scheme member who was in service before January 1992 should be able to elect for service prior to that date not to count towards spouses' benefits. If the scheme member does elect for this service not to count, dependant contributions are not payable for this period. This is a JPA81 legacy provision for salaried judges that we are adopting for our pre-95 FPJPS provisions.

104. The default position for contributions is that they will be deducted from pensionable earnings for all periods of service unless the individual elects for this not to be done.

Refunding of contributions

105. Dependant 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, and who at no time while holding judicial office has been married, or in a registered civil partnership, will be refunded. No contributions are required in respect of any period where there are only dependant children.
106. Where a scheme member is unmarried at retirement, and does not at the time have a registered civil partner, but during some period of service has had a spouse or a registered civil partnership the contributions made from the date on which the scheme member last had a spouse or a registered civil partner will be refunded.
107. Dependant pension contributions will be refunded together with compound interest (from the date payments were made). The interest payable in these circumstances is liable for a deduction for tax. Tax will be deducted at source, i.e. before the refund of contributions and interest are paid.

Rate of contributions

108. Prior to 6 April 2006, when the salaried schemes became non-registered, the rate of contributions for dependant benefits were 4% for the 15-year accrual schemes and 3% for the 20- year accrual schemes. As tax relief was no longer available on those contributions following the non-registration of the schemes, the rate was lowered to 2.4% for the 15-year schemes and 1.8% for the 20-year schemes.
109. From April 2015, the contribution rates for all members of the judiciary, both salaried and fee-paid, changed and are comparable to those paid in the Judicial Pension Scheme 2015. The rates payable up until 31 March 2021 are set out in Table 2.1 below.

Table 2.1 – Contribution rates payable up until 31 March 2021¹⁸

Time Period	Personal Contributions	Dependant Contributions (15 year accrual)	Dependant Contributions (20 year accrual)
Date of appointment – 31 March 2012	0.00%	2.4%	1.8%
1 April 2012 - 31 March 2013	1.28%	2.4%	1.8%
1 April 2013 – 31 March 2014	2.56%	2.4%	1.8%
1 April 2014 – 31 March 2015	3.2%	2.4%	1.8%
1 April 2015 – 31 March 2016	See Table A	2.4%	1.8%
1 April 2016 – 31 March 2017	See Table B	2.4%	1.8%
1 April 2017 - 31 March 2018	See Table C	2.4%	1.8%
1 April 2018 - 31 March 2020	See Table D	2.4%	1.8%
1 April 2020 – 31 March 2021	See Table E	2.4%	1.8%

Table 2.1A - 1 April 2015 to 31 March 2016

Annual rate of pensionable earnings	Personal Pensions Contribution
Up to but not including £15,001	0.96%
£15,001 to but not including £21,001	0.96%
£21,001 to but not including £47,001	1.47%
£47,001 to but not including £150,001	2.61%
£150,001 and above	4.43%

¹⁸ From 1 April 2015, no dependant contribution rates are due for members with annual earnings above £150,001.

Table 2.1B - 1 April 2016 to 31 March 2017

Annual rate of pensionable earnings	Personal Pensions Contribution
Up to but not including £15,001	0.96%
£15,001 to but not including £21,211	0.96%
£21,211 to but not including £48,472	1.47%
£47,472 to but not including £150,001	2.61%
£150,001 and above	4.43%

Table 2.1C - 1 April 2017 to 31 March 2018

Annual rate of pensionable earnings	Personal Pensions Contribution
Up to but not including £15,001	0.96%
£15,001 to but not including £21,423	0.96%
£21,423 to but not including £51,006	1.47%
£51,006 to but not including £150,001	2.61%
£150,001 and above	4.43%

Table 2.1D - 1 April 2018 to 31 March 2020

Annual rate of pensionable earnings	Personal Pensions Contribution
Up to but not including £15,001	0.96%
£15,001 to but not including £21,637	0.96%
£21,637 to but not including £51,516	1.47%
£51,516 to but not including £150,001	2.61%
£150,001 and above	4.43%

Table 2.1E - 1 April 2020 to 31 March 21

Annual rate of pensionable earnings	Personal Pensions Contribution
Up to but not including £22,005	0.96%
£22,005 to but not including £52,392	1.47%
£52,392 to but not including £150,001	2.61%
£150,001 and above	4.43%

Age at which pension is payable

110. The normal pension age is not linked to the scheme member's State Pension Age, instead it is determined by the office held by the scheme member e.g. 15 years' service and having attained the age of 65. A list of the normal pension ages is at Annex B.

111. It is not possible for a pension to be drawn whilst the scheme member still sits in that office. Nor is it possible for a pension to be drawn before the normal pension age (except in cases of medical retirement or removal from office) regardless of whether a judge has left office. If a judge were to leave office before their normal pension age, their pension would be deferred (known as preservation) until their individual normal pension age. Where a pension is deferred it will have pension increases added in accordance with the Pensions Increase Act 1971 during the period of preservation.

Opting in/out

112. A scheme member entitled to accrue benefits under pre-95 FPJPS provisions may opt out of FPJPS if they so wish. They would have the right to opt back in, provided they remained in good health.

Transfers of accrued pension rights

113. Scheme members 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 this part of FPJPS will be extinguished.

114. As this part of FPJPS will not be registered for tax purposes, any pension value transferred into the scheme will be subject to a tax charge. Only pension rights that have been accrued in a registered pension scheme can be transferred into the judicial scheme but it will be for the other scheme to determine whether it permits a transfer into the judicial scheme.

115. The net value of the funds transferred into the scheme will provide a pension, contingent benefits and a lump sum. The benefits created in this part of FPJPS will not increase in value during the time between when the transfer payment is received into the scheme and the date of retirement.
116. In line with the provisions in the current FPJPS provisions, scheme members who are at least one year below their normal pension age will have the opportunity to transfer accrued pension rights into and out of the scheme.
117. Scheme members who are less than one year below normal pension age will not be eligible to transfer accrued pension rights into and out of the scheme. However, we expect to provide a window of opportunity for members to adequately consider the position and apply to make transfers where this would not otherwise be possible if:
- they are already less than one year below their normal retirement age; or
 - only a short period is available before they reach an age that is less than one year below their normal retirement age,
- when the amended FPJPS Regulations come into effect.

Partial retirement

118. A judge may take partial retirement upon leaving fee-paid judicial office, whilst continuing to sit in a different judicial office that they hold concurrently. This follows the provisions in the current FPJPS. The provisions of the current FPJPS will also be followed in that where the office held is that of a First-tier Tribunal Judge and the judge has been assigned to another chamber only one office is held. The pension is payable when the judge retires from the office of First-tier Tribunal Judge rather than when they cease sitting in a particular chamber. This also applies where a judge sits in more than one chamber of the Upper Tribunal.
119. Where partial retirement is taken the benefits provided will depend upon the age of the member at the date of leaving, the amount of service, and the appropriate annual salary.

Aggregation of benefits

120. Under the provisions of JPA81, where a salaried judge served in more than one office – for example as a District Judge and then as a Circuit Judge the pension at retirement would be based upon service for the last office held only. Where a judge died in service, retired on the grounds of ill-health or retired at their maximum retirement date it was possible to elect that service from all offices held should be used to calculate the pension. If such an election was made, the salary used for pensionable pay was the salary in payment to the lower office at the time of retirement.

121. We do not consider it is necessary to provide for aggregation of benefits because our proposals for pre-95 FPJPS provisions allow benefits to be accrued for all offices held and allow for partial retirement where more than one office is held.

Early voluntary retirement before normal pension age

122. A preserved pension and lump sum will be awarded to a scheme member who has served for at least 2 years and who leaves office without qualifying for an immediate pension. The benefits will be calculated as at the date of leaving office but will not come into payment until the scheme member reaches normal pension age.

123. During the period the pension benefits are preserved they will be subject to any increase in accordance with Pensions Increase Act 1971, which will be calculated and paid when the benefits come into payment.

Removal from office

124. If a judge retires below FPJPS retirement age of 65, by virtue of having been removed from all judicial offices, the following choices would be available:

- An immediately payable pension¹⁹ under current FPJPS provisions, with a service credit for accruals under pre-95 FPJPS provisions.
- Preserved benefits under pre-95 FPJPS provisions, with a pension payable at normal pension age.

Medical retirement

125. 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 actual service. The criteria for medical retirement will be the same as that in the current FPJPS Regulations. These are that a medical certificate has been received which states that the member has suffered a permanent breakdown in health that makes the member incapable of discharging the duties of the judicial office or offices held immediately before retirement.

Death in service

126. Where a scheme member dies while holding office, a lump sum is payable to the personal representatives on production of the grant of probate or letters of administration.

127. The lump sum would be calculated as the greater of:

¹⁹ If the judge is under 60, ministerial approval is required for an immediately payable pension.

- the salary of a relevant salaried judge; and
- twice the amount of pension that a relevant salaried judge would receive at retirement,
and this amount is then pro-rated to reflect the reckonable service of the fee-paid judge.

128. Because FPJPS is non-registered for tax the lump sum will be subject to tax and the tax must be deducted before the net payment is made. However, a compensatory payment equal to the amount of tax deducted will be made.

129. In addition to the lump sum, a pension is payable to a surviving spouse/civil partner and any eligible children.

Death in retirement

130. If a pensioner member dies shortly after retirement a further lump sum may be payable. This is calculated by adding the lump sum paid on retirement together with the pension paid and if this sum is less than the death benefit lump sum that would have been payable had he or she died in office, then the difference will be paid to the personal representatives. Any tax due on this further lump sum will be met by the department.

Death while a deferred member (with preserved pension)

131. A lump sum may be payable of twice the notional value of the pension that would have been payable had the member reached normal pension age and become entitled to a pension.

Spouses' and civil partners' pensions where member dies

132. A pension will be payable to a surviving spouse or civil partner upon the death of a scheme member either during service, or after retirement. Where there has been a death in service, this pension will be paid at a rate of one-half of the pension to which the scheme member would have been entitled if they had retired on the date of death. Where the death occurs in retirement, this pension will be paid at the rate of one-half of the judicial pension in payment at the time of death.

133. Benefits at a rate of less than one-half of the member's benefits will be payable to scheme members who have entered into a civil partnership and have elected for the service prior to December 2005 not to count towards civil partner benefits and for female scheme members who were in service before January 1992 and have elected for the service prior to that date not to count towards spouses' benefits.

134. If the surviving spouse or civil partner remarries or enters into a civil partnership the pension may be stopped.

Children's pensions

135. A child's pension may be paid on the death of a judge either in service or in retirement, if they had a spouse or civil partner at retirement, or at date of death if the member died before retirement and the child is a child of that marriage or of the family (for civil partnerships). For a child to be eligible for a pension they must be aged under 16; or receiving full-time education at a school, college, university or other educational establishment; or undergoing at least 2 years of full-time training for a trade, vocation or profession.
136. The pension payable is a proportion of the pension that was in payment to the judge at the time of death or where the judge died in office the pension to which he or she would have been entitled had they reached normal pension age and retired on the day that they died.

Where there is a surviving spouse or civil partner the proportion payable is:

- one quarter of the pension where there is one eligible child;
- one half of the pension where there are two or more eligible children (to be shared among all the children).

Where there is no surviving spouse or civil partner the proportion payable is:

- one third of the pension where there is one eligible child;
- two thirds of the pension where there are two or more eligible children (to be shared among all the children).

137. When circumstances change – for example where there had been two eligible children and so entitled to a half or two thirds of the pension but then only one child is eligible - the pension in payment will reduce to a quarter or one third.

Pension sharing on divorce or dissolution

138. Where a Pension Sharing Order on Divorce or Dissolution is made, the former spouse or civil partner becomes a member under the current FPJPS provisions (a pension credit member) in their 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. Where a member is already receiving their judicial pension, the former spouse or civil partner will only be entitled to a pension from the scheme.
139. The pension credit, at the level determined by the Pension Sharing Order, will consist of a personal annual pension and a lump sum both payable to the former

spouse or civil partner from their 65th birthday. The lump sum will be subject to income tax. Only where the pension order is made before 6 April 2006 is a service award payable to compensate for the tax payable on the lump sum. Each year the benefits payable will be revalued in line with the index set under the Pensions Increase Act 1971 (currently in line with CPI).

140. The associated pension debit (from the office holder's perspective) will require a reduction in the member'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 revalued at the time of the member's retirement to take account of inflation.

Contracting out

141. Judicial pensions provided to salaried judges under JPA81 were contracted out of the additional state pension provisions and this continued to be the case up until 5 April 2016.
142. This was also the case for pensions provided to some office holders through civil service schemes and schemes analogous to them.
143. FPJPS commenced on 1 April 2017 and it was not possible for the scheme to be retrospectively contracted out. We have undertaken to compensate individual claimants who have suffered loss - for example because a higher rate of national insurance was paid and this was not mitigated by a higher state pension being payable. We will extend this undertaking to apply to the pre-95 FPJPS provisions.

Appeals

144. The Judicial Pensions (Appeals) Regulations 1995 make provisions which allow appeals to the appropriate minister against any decision for members of JPA81 schemes. Those regulations were amended to include FPJPS and the right of appeal will extend to the pre-95 FPJPS provisions.

Fee-Paid Judicial Added Benefits Scheme

145. The historical Judicial Added Benefits Scheme (JABS) provided the opportunity to purchase added benefits for eligible salaried members of JPA81 schemes.
146. So that eligible fee-paid judges are put in as close as possible a position to an appropriate salaried judge, we propose to set up a Fee-Paid Judicial Added Benefit Scheme (FPJABS). This scheme will provide members (active or retired) with benefits accrued under pre-95 FPJPS provisions with the opportunity to apply to purchase added benefits, if a relevant salaried judge would have been able to do so. Any added

benefits purchased will come into payment at the same time as the pension payable under the pre-95 FPJPS provisions.

147. FPJABS will be registered for tax purposes. The benefits are therefore subject to the Annual and Lifetime Allowance limits and the contributions made by the members attract tax relief.
148. Under both JABS and the proposed FPJABS, additional benefits are purchased in units and part units. At retirement, each full unit secures:
- a) additional pension of 1/40th of final salary per annum;
 - b) additional lump sum of 2/40ths of final salary;
 - c) (where applicable) contingent additional surviving spouse/civil partner's pension of 1/80th of final salary per annum; and
 - d) (where applicable) contingent additional children's pension.
149. Under JABS, the number of units of additional benefits a member could purchase were limited in three ways:
- a) a cap on the maximum pension at retirement;
 - b) a cap on the maximum lump sum at retirement; and
 - c) a limit on the proportion of salary which could be used to pay JABS contributions.

Analogous limits will apply to the number of units of added benefits that can be purchased by FPJABS members.

150. JABS was open to salaried judiciary between 31 March 1995 and 5 April 2006. Members with benefits accrued under the pre-95 FPJPS provisions must have service within this period in order to apply to purchase added benefits. Judges whose remedy is referable to a scheme by analogy to the Principal Civil Service Pension Scheme will not be entitled to participate in FPJABS as they will not have benefits accrued under the pre-95 FPJPS provisions and the relevant salaried judges were not entitled to participate in JABS.

Active members

151. Members accruing benefits under pre-95 FPJPS provisions who are interested in purchasing JABS will be required to give notice within a specified time period from the commencement of FPJABS. Members will need to submit any information requested by the scheme administrator (e.g. assumed retirement age, assumed sitting days to retirement, details of retained benefits), and this will be used to assess the maximum units of added benefits which can be purchased and the relevant cost (i.e. the contribution required to purchase those benefits). The cost of each added unit of benefits will be analogous to cost paid by salaried judges under JABS.

152. Where a member gives notice prior to retirement, the member will be asked to sign a declaration that they have no reason to believe that their health may prevent them from serving until their assumed retirement age.
153. The purchase of the agreed units of added benefits will be made by a combination of lump sum payment(s) and deductions from future fee income. The lump sum payment(s) will need to cover the historic contributions which should have been paid from the assumed start date of the contract. Deductions from future fee income will continue until the member:
- a) reaches their assumed retirement age; or
 - b) reaches the assumed number of sitting days they specified when taking out the contract; or
 - c) dies; or
 - d) leaves qualifying judicial office; or
 - e) notifies the administrator that he/she wants to cease contributions,
- whichever occurs first.
154. A FPJABS member who is unmarried and has no eligible children at the time of retirement or death in service will receive a refund of the part of his or her contributions that relate to dependant benefits for the period from the date the member last had an eligible dependant to the date contributions stop being paid. In these circumstances, no additional surviving adult's pension or additional children's pension will be due on the member's death, even if the member had subsequently acquired one or more dependants. Any refund due will be paid with interest and will be subject to tax.
155. If a FPJABS member leaves judicial office (other than on ill-health grounds or through death in service) before his or her assumed retirement age, or before reaching the assumed number of sitting days they specified when taking out the contract, the member will be credited with added units of benefit on a pro-rata basis. If the reason for leaving office is ill-health or death in service, the scheme member will be credited with the full number of units he or she would have purchased had service continued as assumed when the contract was initially taken out.
156. Where ill-health or death occurs within 12 months of joining FPJABS the scheme administrators must be satisfied that the required health declaration was given in good faith before any benefits can be paid under FPJABS.
157. A member of FPJABS may cease to make additional contributions at any time before reaching his or her assumed retirement age, or before reaching the assumed number of sitting days they specified when taking out the contract. In such cases the FPJABS member will be credited with added units and part units of benefits on a pro rata basis.

158. Members accruing benefits under pre-95 FPJPS provisions with an existing FPJAYS contract will be offered a choice between:
- a) converting the existing FPJAYS contract to a new FPJABS contract (with a partial refund of contributions should any purchase limits bite), and
 - b) receiving a full refund of any FPJAYS contributions made to date.
159. If a member opts to convert a FPJAYS contract to a FPJABS contract, they will need to submit additional information as requested by the scheme administrator in order to process this conversion. Any refund due will be paid with interest and will be subject to tax.
160. Members who opt to convert an existing FPJAYS contract to a FPJABS contract will still be eligible to apply for a second FPJABS contract in the same manner as members who did not make this choice, or who did not have an existing FPJAYS contract.
161. At retirement, members will be given a choice between taking their main pension under pre-95 FPJPS provisions or converting these benefits to a service credit under current FPJPS provisions. If a member opts to convert their benefits to a service credit under current FPJPS provisions, membership of FPJABS will cease on the date of transfer. The added units and part units of benefit will be converted to added years of service in FPJAYS. The conversion terms will be analogous to the terms that were applied to salaried judges when converting JABS to service credits in the JUPRA pension scheme. If the added years of service exceed the maximum permitted under FPJAYS, the member will receive a (partial) refund of contributions. Any refund due will be paid with interest and will be subject to tax.

Retired members

162. Members who have accrued benefits under pre-95 FPJPS provisions up to retirement will be given a choice between taking their main pension benefits under those provisions or converting them as a service credit under current FPJPS provisions. Members who choose to take benefits under pre-95 FPJPS provisions will be eligible to apply to purchase additional benefits under FPJABS. Members who choose to convert their benefits to a service credit under current FPJPS provisions will be eligible to purchase added years under FPJAYS, subject to the relevant limits.
163. Members accruing benefit under pre-95 FPJPS provisions who apply to purchase JABS will be required to give notice in writing within a specified time period of the commencement of FPJABS. Members will need to submit any information requested by the scheme administrator (e.g. details of retained benefits), and this will be used to assess the maximum units of added benefits which can be purchased and the relevant cost (i.e. the contribution required to purchase those benefits). The cost of each added unit of benefits will be analogous to the cost paid by salaried judges under JABS.

164. The purchase of the agreed units of added benefits will need to be made by a lump sum contribution. By default, this lump sum contribution will be deducted from FPJABS back payments (i.e. the additional benefits a member would have received since retirement, had the FPJABS contract come into payment at that time). If the FPJABS back payments are not sufficient to cover the lump sum contribution, members will be required to pay the balance in a single lump-sum payment.
165. If a potential FPJABS member was unmarried and had no eligible children at the time of retirement, the cost of added benefits will be reduced in respect of the period from the date the member last had an eligible dependant to the date of retirement. In these circumstances, no additional surviving adult's pension or additional children's pension will be due on the member's death, even if the member had subsequently acquired one or more dependants.
166. Members with an existing FPJAYS contract who choose to take benefits under pre-95 FPJPS provisions will be offered a choice between converting the existing FPJAYS contract to a new FPJABS contract (with a partial refund of contributions should any purchase limits bite) and receiving a full refund of any FPJAYS contributions made to date, minus the value of any benefits paid. If a member opts to convert a FPJAYS contract to a FPJABS contract they will need to submit additional information as requested by the scheme administrator in order to process this conversion. Any refund due will be paid with interest and will be subject to tax.
167. Members who opt to convert an existing FPJAYS contract to a FPJABS contract will still be eligible to apply for a second FPJABS contract in the same manner as members who did not make this choice, or who did not have an existing FPJAYS contract.

Retired members without an existing FPJAYS contract

168. For members who choose to take benefits under current FPJPS provisions at retirement the maximum number of added years that can be purchased will be based on the existing FPJAYS rules, but contributions due will be calculated as if they were paid to FPJABS. This is because the member will be assumed to have (notionally) made contributions to purchase added benefits under FPJABS for the period up to retirement, before converting these added benefits to added years under FPJAYS at retirement.
169. For members who choose to transfer to current FPJPS provisions on the earliest possible date (usually 31 March 1995), the maximum number of added years that can be purchased and contributions due will be calculated in line with the existing FPJAYS rules. This also applies to judges whose remedy is referable to a scheme by analogy to the Principal Civil Service Pension Scheme, as long as their pension benefits are converted to service credits under current FPJPS provisions on a date before 6 April 2006.

Retired members with an existing FPJAYS contract

170. In addition to the second opportunity to purchase added years, members with an existing FPJAYS contract will have the existing contract tested against their new circumstances. If any of the limits on the number of years that can be purchased now bite, the member will be given an automatic (partial) refund of the contributions paid, less the corresponding benefits received to date.
171. They will also be offered the opportunity to receive a full refund of FPJAYS contributions, less benefits paid. This will enable any member who (because of their new circumstances) no longer wishes to purchase added years, the opportunity to “undo” their original FPJAYS contract.
172. Any refund due will be paid with interest and will be subject to tax.

Questions

3. Do you have any comments on our proposals for fee-paid service before 31 March 1995?

3. Non-judicial pension arrangements applicable to some office holders before and after 31 March 1995

173. As noted in section 2, some salaried judicial offices (in particular the tribunals judiciary) had civil service pension arrangements applied directly or by analogy before 31 March 1995. At various points, these judicial offices became eligible for benefits under the salaried JUPRA scheme. Accordingly, holders of comparative fee-paid judicial offices are entitled to be members of FPJPS, but only from the date when the relevant salaried judge could join JUPRA (the service limitation date).
174. For fee-paid judges in this position we will give a credit for service before 31 March 95 in the current FPJPS provisions. If the relevant salaried judge was not eligible for JUPRA benefits until a later date, we will include a credit in FPJPS for fee-paid service from 31 March 1995 until that date.

Service multipliers for service credits in FPJPS

175. Where the pension scheme applicable to a judicial office was based on the civil service 'Classic' scheme (or was analogous to it), the service credit will be calculated using a service multiplier of 0.5 as set out in the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995.
176. Where office holders would have joined the civil service 'Premium' scheme from 1 October 2002, and the 'Nuvos' scheme from 30 July 2007 the service multiplier in each case will be 0.53.

Eligible roles within the First-tier Tribunal Property Chamber (Residential Property)

177. The service limitation date for eligible roles within the First-tier Tribunal Property Chamber (Residential Property) is 1 July 2013. For service before that date, the service multipliers set out above will apply.
178. Relevant salaried judges appointed on or after 1 April 2009 did not have by analogy pension arrangements, so fee-paid judges do not have a service multiplier - instead they will receive a pro-rata lump sum for the period between their date of appointment and 30 June 2013.

Deputy Adjudicators to HM Land Registry

179. The service limitation date for Deputy Adjudicators to HM Land Registry is 2 January 2009, with service on or after that date reckonable under current FPJPS provisions. For service before that date, a service multiplier of 0.67 will apply.

Other fee-paid offices

180. Table 3.1 below sets out the other fee-paid offices where a service credit for current FPJPS provisions will apply and the service limitation date that applies in relation to the civil service or analogous scheme concerned.

Table 3.1 – Fee-paid offices and service limitation dates

Fee-paid judicial office	Service limitation date
Fee-paid Immigration Adjudicator	31 March 1995
Fee-paid Deputy/Assistant Judge Advocates General	31 March 1995
Fee-paid Asylum Support Adjudicators	1 April 2007
Legal Chair Criminal Injuries Compensation	3 November 2008
Non-legal Chair Criminal Injuries Compensation	Later of 3 November 2008 and date first ticketed to chair
Deputy Adjudicator to HM Land Registry	2 January 2009
First-tier Tribunal Property Chamber (Residential Property)	1 July 2013
First-tier Tribunal Property Chamber (Agriculture, Land and Drainage)	1 July 2013
Deputy Coroner (Northern Ireland)	3 April 2006
Deputy District Judge (Northern Ireland)	31 March 1995

181. We will consider whether there are additional offices that need to be added to the list in Table 3.1. If there are, we will identify the relevant salaried judge and consider the pension arrangements that should apply.

Contributions required for the period of service credit

182. Contributions towards the cost of member and dependant benefits will be required for the period of the service credit. This will be at the rate that would have applied in the appropriate civil service scheme and will be calculated using the fee rates in payment at the relevant time. The percentage rate applied will, however, be adjusted to take account of the lack of tax relief available on contributions (because FPJPS is a non-registered scheme). In line with the adjustment that applied to the contributions of the salaried judiciary, when the judicial schemes became non-registered schemes, the rates will be reduced by 40% e.g. a contribution rate of 1.5%, applicable to the Civil Service Classic scheme, will become 0.90%.

183. Contributions for the period after the service credit is awarded will be due in line with the current FPJPS Regulations as set out in section 1.

184. For retired members who are in receipt of a payment in lieu of pension, any necessary adjustment will be made to address any over/under payment of contributions. Members who are still in service will be given the option of paying the arrears of contributions from their lump sum on retirement; paying additional contributions from fees received; or alternatively making a lump sum payment.

Dependants' benefit contributions

185. Contributions for the period prior to 1 April 2012 were only required in respect of dependant benefits and will be at the rate shown in Table 3.2 below.

Table 3.2 – Dependants' benefit contributions prior to 1 April 2012

Civil service scheme	Rate of contribution for civil service scheme (%)	Rate of contribution for period of service credit in FPJPS
Classic up to 31 May 1972	1.25	0.75
Classic from 1 June 1972	1.50	0.90
Classic Plus	3.50	2.10
Premium	3.50	2.10
Nuvos	3.50	2.10

Refunds of dependants' benefit contributions

186. Dependants' benefit 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.
187. Where a scheme member is unmarried at retirement, and does not at the time have a registered civil partner or children eligible to receive benefits under the scheme, but during some period of service has had a spouse, a registered civil partnership or eligible children, the contributions made from the date on which the scheme member last had a spouse, a registered civil partner or eligible children will be refunded.
188. Dependant pension contributions are refunded together with compound interest, but only from the date they were made, the interest payable in these circumstances is liable for a deduction for tax. Tax will be deducted at source - i.e. before the refund of contributions and interest are paid.

Personal pension contributions

189. In addition to the dependant contributions shown above the contributions for member benefits known as personal pension contributions are also payable from 1 April 2012. These contributions were the same for each civil service scheme but the rate payable depends on annual income as shown in Tables 3.2 to 3.4 below. Personal pension contributions are not refundable in any circumstances.

Table 3.2 – Personal pension contributions for the period from 1 April 2012 to 31 March 2013

Annual income	Rate of contribution for civil service scheme (%)	Rate of contribution for period of service credit in FPJPS (%)
Up to £15,000	Nil	Nil
£15,001 - £21,000	0.6	0.36
£21,001 - £30,000	1.2	0.72
£30,001 - £50,000	1.6	0.96
£50,001 - £60,000	2.0	1.20
£60,001 and over	2.4	1.44

Table 3.3 – Personal pension contributions for the period from 1 April 2013 to 31 March 2014

Annual income	Rate of contribution for civil service scheme (%)	Rate of contribution for period of service credit in FPJPS (%)
Up to £15,000	Nil	Nil
£15,001 - £21,000	1.2	0.72
£21,001 - £30,000	2.38	1.428
£30,001 - £50,000	3.17	1.902
£50,001 - £60,000	3.96	2.376
£60,001 and over	4.75	2.85

Table 3.4 – Personal pension contributions for the period from 1 April 2014 to 31 March 2015

Annual income	Rate of contribution for civil service scheme (%)	Rate of contribution for period of service credit in FPJPS (%)
Up to £15,000	Nil	Nil
£15,001 - £21,000	1.5	0.90
£21,001 - £30,000	2.98	1.788
£30,001 - £50,000	3.77	2.262
£50,001 - £60,000	4.56	2.736
£60,001 and over	5.35	3.21

190. The contribution structure for all public service schemes including the judicial schemes changed from 1 April 2015. We do not believe that any member will have a period of service credit after that date.

4. Members with service before 31 March 1995, appointed to a different office on or after that date

Transfer between pre-95 FPJPS provisions and current FPJPS provisions

192. Where a member was appointed before 31 March 1995 and is eligible to accrue pension in the pre-95 FPJPS provisions and takes on an appointment on or after 31 March 1995, all previous service will be transferred into the current FPJPS provisions under an appropriate service multiplier. This will be the case where the relevant salaried judge who upon taking up a subsequent salaried appointment on or after 31 March 1995 had all JPA81 service in previous salaried appointments transferred into JUPRA.
193. The Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995²⁰ provide for reckonable service to be transferred between the JPA 1981 and other pre 1995 schemes and JUPRA. We propose to replicate this provision for transfers between pre-95 FPJPS provisions and current FPJPS provisions.
194. Transfers between pre-95 FPJPS provisions and current FPJPS provisions will only be required or allowed, where equivalent requirements/possibilities would apply to a relevant salaried judge, with respect to transfers between JPA81/other statutory provisions and JUPRA provisions.

Implication of appointment to a different office on or after 31 March 1995

195. Fee-paid judicial office holders who were in office before 31 March 1995, and whose judicial office is determined as pensionable will, in the first instance, be eligible to build up pension benefits under the pre-95 FPJPS provisions.
196. However, if the member was appointed to a new judicial office on or after 31 March 1995, the benefits built up before the date of the new appointment will be transferred into the current FPJPS provisions as a service credit. This will be the case where the relevant salaried judge for any fee-paid office held before 31 March 1995 would have

²⁰ <http://www.legislation.gov.uk/uksi/1995/636/contents/made>

been required to transfer from JPA81 (or another statutory pension arrangement) to JUPRA when taking up a new office on or after 31 March 1995.

197. The service credit referred to above takes the form of a number of years (or part years) of benefit accrual. The number of years to be credited is calculated by applying a service multiplier to the number of years of reckonable service accrued under pre-95 FPJPS provisions. Further information is provided in the subsection on 'Implication of appointment to a different office on or after 31 March 1995' below.
198. The transfer of accrued reckonable service into the current FPJPS provisions will be done using the methodology set out in the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995.
199. Worked example 5 in Annex A shows how service credits are calculated when a member is appointed to a new office after 31 March 1995.

Effective date for transfer

200. We are considering whether members should have the option to choose a transfer date for their benefits that is earlier than the date they take up the appointment after 31 March 1995.
201. Whilst this would most closely mirror the choice available to a relevant salaried judge, we think it unlikely that there would be any scenarios where it would be beneficial to the member to use an effective date earlier than the date of taking up the new appointment. We are therefore not minded to include such a facility, but would be interested in the views of respondents on this point.

Judicial Added Benefits Scheme

202. Where benefits are to be transferred into the current FPJPS provisions as a service credit, members will not be eligible for benefits under FPJABS. Instead, members will be eligible for added years under the current FPJPS provisions. The way this works mechanically depends on the date the transfer takes place and the status of the member. In particular:
- a) For active members with a FPJABS contract and a date of transfer in the future, the number of units or part units of benefit accrued up to the date of transfer will be calculated and converted to added years under current FPJPS provisions, in line with the approach set out under 'Fee-paid Judicial Added Benefits Scheme' in section 2. All ongoing contributions will stop on the date of transfer.

- b) For members where the date of transfer is in the past (either retired or active), the member will be provided with an opportunity to purchase added years in respect of service up to the date of transfer. The contributions due will mirror those that would be paid to FPJABS, in line with the approach set out under 'Fee-paid Judicial Added Benefits Scheme' in section 2.

203. If the date of transfer is before 6 April 2006, the member will also have the opportunity to purchase added years in respect of service from the date of transfer to the date of retirement. The contributions due for this election will be calculated in line with the current FPJPS provisions, consistent with the approach set out under 'Fee-paid Judicial Added Benefits Scheme' in section 2. Any refunds of contributions due will be paid with interest and will be subject to tax.

Member contributions

204. Member contributions (calculated in line with rate for the pre-95 FPJPS provisions) will be required in respect of any service credit transferred into the current FPJPS provisions. The contributions amount will be calculated using the contribution rate that would have been paid by the relevant salaried judge.
205. Any refunds in respect of member contributions will then be governed by the current FPJPS provisions.
206. Ongoing contributions will subsequently be required in respect of benefits accrued under current FPJPS provisions.

Questions

4. Do you have any comment on our proposals for members with service before 31 March 1995, appointed to a different office on or after that date?
5. Do you think there should be a facility for members to elect a date between 31 March 1995 and the date they take up a new appointment as the effective date for service credit calculations.

5. Members with service before 31 March 1995, not appointed to a different office after that date

Judicial office holders who are not presently accruing benefits under current FPJPS provisions

207. Fee-paid judicial office holders who were in office before 31 March 1995, and whose judicial office is determined as pensionable will build up pension benefits under the pre-95 FPJPS provisions until retirement provided that the member did not take up a new judicial office on or after 31 March 1995.
208. Benefits built up under the pre-95 FPJPS provisions will be calculated by reference to the entitlements of the relevant salaried judge under the provisions of JPA81 or other statutory arrangements, but on a pro-rata basis, taking account of the fee-paid judge's reckonable service (number of days sat) as a proportion of qualifying service (length of time in post).
209. Benefit calculations will take account of required contributions.

Election at retirement

210. In view of the variable nature of fee-paid service it is not until retirement that it is necessarily clear whether it would be in the best interests of the member to have pension entitlements calculated under the pre-95 FPJPS provisions or the current FPJPS provisions.
211. A judge who was in office before 31 March 1995 and has built up pension benefits under pre-95 FPJPS provisions up to their time of retirement may elect for their pension entitlements to be calculated under pre-95 FPJPS provisions, or as if those benefits had been transferred into the current FPJPS as a service credit²¹. The election can take place at retirement reflecting the choice available to a relevant salaried judge who had not been required to transfer from JPA81 or other statutory pension arrangements into JUPRA. The transfer of accrued reckonable service into the current FPJPS provisions will be done using the methodology set out in the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995.

²¹ The pension will not come into payment until the election is made.

212. The election referred to in the paragraph above can be made separately for different judicial offices.
213. Members will be provided with figures to show what benefits will be payable for taking benefits under the pre-95 FPJPS provisions or alternatively taking all their benefits under the current FPJPS provisions. Any interim payments made before the FPJPS Regulations are amended in relation to these proposals will be taken into account when benefit calculations are carried out.
214. The calculation of the credit for entitlements under current FPJPS provisions will include a credit amount in respect of dependants' contributions (or a debit amount where some, or all, of the liability is outstanding).
215. The choice that is most beneficial for a particular judge will depend on his or her personal circumstances, and the value that he or she places on different types of benefit entitlement.
216. If the judge elects for pension entitlements to be calculated under pre-95 FPJPS provisions, the proposals for fee-paid service before 31 March 1995 set out in section 2 of the document apply.
217. If an election for benefits to be calculated under current FPJPS provisions is made, all entitlement for benefits under pre-95 FPJPS provisions will be extinguished.

Judges in salaried office with fee-paid service before 31 March 1995

218. A judge who is in salaried office after the FPJPS Regulations are amended and is a member of JPA81 or one of the other statutory schemes (excepting JUPRA), but who has eligible fee-paid service before 31 March 1995, will have the same choice at retirement as a fee-paid judge, on whether their fee-paid service provides benefits under the pre-95 FPJPS provisions or the current FPJPS provisions.
219. As for fee-paid judges, benefit calculations will take account of required contributions and fee-paid service will count towards a 20-year cap on contributions due. This may mean that a judge will pay contributions for a shorter period of time in the salaried scheme or alternatively that contributions already paid in that scheme will have to be refunded (with interest payable) once the fee-paid contribution liability has been set against what has been paid.

Relevant information when an election is made for a service credit under current FPJPS provisions

Service multiplier values for transfers from pre-95 to current FPJPS provisions

220. For a judge who accrues benefits over 15 years (in a scheme with a 15 years accrual cap), the service multiplier to calculate the service credit for benefits under the current FPJPS provisions will be 1.25, and for the value of dependant contributions the service multiplier is 1.33.
221. For a judge who accrues benefits over 20 years (in a scheme with a 20 years accrual cap), the service multipliers for both service credit and the value of dependants' contributions will be 1.00.
222. For both the 15- and 20-year accruals, the service multiplier for the value of personal pension contribution liability is 1.00, subject to a maximum contributions period of 20 years.

Member contributions

223. Member contributions will be required in respect of the period when a service credit is given. The rate of contribution required will correspond to the rate that would have been paid by the salaried judge at the time.

Refund of contributions

224. Refunds of dependant contributions will be paid at retirement in some circumstances in accordance with the current FPJPS provisions.
225. Dependant 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.
226. Where a scheme member is unmarried at retirement, and does not at the time have a registered civil partner or children eligible to receive benefits under the scheme, but during some period of service has had a spouse, a registered civil partner or eligible children, the contributions made from the date on which the scheme member last had a spouse, a registered civil partner or eligible children will be refunded.
227. Dependant pension contributions are refunded together with compound interest, but only from the date they were made. The interest payable in these circumstances is liable for a deduction for tax before the refund of contributions and interest are paid.

Additional benefits schemes where election is made for credit under current FPJPS provisions

Judicial Added Benefits Scheme

228. If a member opts to transfer into the current FPJPS provisions, membership of FPJABS will cease on the date of transfer. The added units of benefit or part units will be valued and credited as service under the current FPJAYS provisions (as set out in the FPJPS Regulations and scheme guide).

Purchase of FPJAYS and FPJASAPS units

229. If a member opts to transfer into the current FPJPS provisions, their service before 7 April 2000 will have to be considered in determining how many added years and units of additional surviving adult's pension they can purchase in FPJAYS and FPJASAPS respectively²². Where a member has an existing FPJAYS or FPJASAPS contract this may mean that that some contributions may need to be refunded and the value of some of the benefits paid reclaimed.

Retired members with service before 31 March 1995

230. Members who choose to convert their benefits to a service credit under current FPJPS provisions will be eligible to purchase added years under FPJAYS, subject to the relevant limits. We plan to offer any members who fall into this group (whether they have an existing FPJAYS contract or not) a second opportunity to apply to purchase added years under FPJAYS, subject to the relevant limits.

Retired members without an existing FPJAYS contract

231. For members who choose to take benefits under current FPJPS provisions at retirement, the maximum number of added years that can be purchased will be based on the existing FPJAYS rules, but contributions due will be calculated as if they were paid to FPJABS. This is because the member will be assumed to have (notionally) made contributions to purchase added benefits under FPJABS for the period up to retirement, before converting these added benefits to added years under FPJAYS at retirement.

232. For members who choose to transfer to current FPJPS provisions on the earliest possible date (usually 31 March 1995), the maximum number of added years that can be purchased and contributions due will be calculated in line with the existing FPJAYS rules. This also applies to judges whose remedy is referable to a scheme by analogy to the Principal Civil Service Pension Scheme, as long as their pension benefits are

²² The increase in reckonable service under current FPJPS provisions might mean that the 20-year cap on pensionable service is exceeded.

converted to service credits under current FPJPS provisions on a date before 6 April 2006.

Retired members with an existing FPJAYS contract

233. In addition to the second opportunity to purchasing added years, members with an existing FPJAYS contract will have the existing contract tested against their new circumstances. If any of the limits on the number of years that can be purchased now bite, the member will be given an automatic (partial) refund of the contributions paid, less the corresponding benefits received to date.

234. They will also be offered the opportunity to receive a full refund of FPJAYS contributions, less benefits paid. This will enable any member who (because of their new circumstances) no longer wishes to purchase added years, the opportunity to “undo” their original FPJAYS contract

235. Any refund due will be paid with interest and will be subject to tax.

Members with service before 31 March 1995, not appointed to a different office, presently accruing or drawing benefits under current FPJPS provisions

236. It is possible that some members with service before 31 March 1995, who were not appointed to a different office after that date, are accruing or drawing benefits under the current FPJPS provisions following *O'Brien 1* for service from 7 April 2000.

Members not yet drawing a pension

237. We propose that for a member in this position, but not yet drawing a pension, benefits will be calculated by reference to the entitlements of the relevant salaried judge under the provisions of JPA81 or other statutory arrangement, but on a pro-rata basis, taking account of the fee-paid judge's reckonable service (number of days sat) as a proportion of qualifying service (length of time in post).

238. The member will be able to make the election at retirement (for their pension entitlements to be calculated under pre-95 FPJPS provisions, or as if those benefits had been transferred into the current FPJPS as a service credit) outlined at the start of this section.

Members already drawing retirement benefits

239. We propose that members already drawing a pension should be able to elect to have their pension entitlements recalculated on one of the bases set out below:

- Pro-rata benefits under pre-95 FPJPS provisions calculated with reference to the pension benefit entitlement of a relevant salaried judge under the provisions of JPA81, and other statutory schemes, but scaled by the fee-paid judge's reckonable service (i.e. number of days sat) as a proportion of qualifying service (i.e. length of time in post), in line with the pro-rata principle.
- Transferring reckonable service to the current FPJPS provisions in line with the provisions set out in the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995. Although the election is made at retirement, the transfer could take effect from any day on which an appropriate salaried judge would have been able to transfer accrued reckonable service to JUPRA.

240. The choice that is most beneficial for a given judge will depend on his or her personal circumstances, and the value that he or she places on different types of benefit entitlement.

241. The election can take place at retirement²³. This reflects the choice available to a relevant salaried judge who had not been required to transfer from JPA81 pension arrangements into JUPRA.

242. Where the member bought FPJAYS or FPJASAPS but chooses to take benefits on the pre-1995 basis the recalculations will include refunds of the contributions made less the value of any benefits paid and/or the alternative purchase of FPJABS (as set out in section 2). It should be noted that as there is no equivalent of FPJASASP in the pre-1995 pension provisions for relevant salaried judges, only a refund of contributions could be made less any benefits paid.

²³ The pension will not come into payment until the election is made.

Questions

6. Do you have any comments on our proposals for members with service before 31 March 1995, not appointed to a different office after that date?

6. Inclusion of additional offices in FPJPS Regulations

243. Membership of FPJPS is open to current and former fee-paid judicial office holders in England, Wales, Scotland and Northern Ireland who have been determined as eligible for pension rights in that scheme. This is either as a result of decisions of the Employment Tribunal (and subsequent appeals) or by consent.

244. However, some fee-paid offices that are entitled to membership of FPJPS are presently excluded because they are not listed in the schedule of fee-paid offices and associated annual divisor values included in the FPJPS Regulations (the schedule). In order for a fee-paid office to be eligible for pension provision under FPJPS, it must be included in the schedule.

Offices to be added to the schedule

245. A list of the offices that we consider need to be added to the schedule is set out in Annex C. We propose to add these judicial offices to the schedule and, where relevant, clarify the periods when the respective office holders are entitled to receive a FPJPS pension. This is necessary to make the correct provision for pension benefits from the dates specified.

The reasons for including offices on the list are that:

- they were absent from the original schedule;
- their eligibility has been agreed during the course of recent litigation; or
- they relate to a recently created judicial office.

246. Subject to the subsection below (on offices that have previously been consulted on), we would welcome the views of consultees on the list. We have been liaising with the devolved administrations in Scotland, Northern Ireland and Wales. Please note that we are continuing to liaise with the Welsh Government about further devolved Welsh tribunal offices to be included in FPJPS.

Offices previously consulted on

247. We have previously consulted on some of the offices (and applicable service limitation dates) contained in Annex C and are not seeking to make any further changes in respect of these offices as the position has already been established in litigation. However, we are including them in the list at Annex C in order to present the complete list of offices to be added to the schedule.

248. For some offices the schedule specifies a limitation date, being the date for which eligibility for inclusion in FPJPS arises for that office. These dates represent the point in time when the relevant salaried judge in the relevant jurisdictions had access to a pension under the JUPRA scheme. The pensionable service and remedy for the years prior to the respective dates was the subject of litigation before the Employment Tribunal. The application of limitation dates in respect of transfers from non-judicial pension schemes into FPJPS and the associated service multiplier values is explained in section 3 of this document.

Particular offices

249. The inclusion of the following offices was considered in the Consultation on Fee-Paid Judicial Pension Scheme Draft Regulations which took place between 15 September and 20 October 2016: eligible roles within the First-tier Tribunal Property Chamber (Residential Property), Deputy Adjudicator (fee-paid) to HM Land Registry, eligible roles within the Asylum Support Tribunal and eligible roles within the Criminal Injuries Compensation Appeal Panel.

250. We issued the Government response to the previous FPJPS consultation on 27 February 2017. In response to a consultation comment on Criminal Injuries Compensation Tribunal Judges and their FPJPS entitlement, we stated that our position was that FPJPS is intended to provide a remedy for those fee-paid judicial office holders who are entitled to a pension that is no less favourable than that in JUPRA. Some other judicial office holders are entitled to a different type of pension remedy, which is not within the scope of FPJPS and will be provided separately. Further, some judicial office holders are entitled to different pension remedies in respect of different periods of time. In particular, Legal Chairs in the Criminal Injuries Compensation jurisdiction are eligible for a pension under FPJPS in respect of a pension from November 2008. Our position remains as set out in this consultation and the response.

251. In addition, a consultation directed to judges of the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage (ALDT) took place from 19 February – 9 March 2018. Having considered the consultation responses, our position remains that these judges are entitled to a judicial pension from the point when salaried judges in the same jurisdiction would have been eligible to join JUPRA, consistent with the approach taken in judgments from relevant litigation. As these judges do not have salaried judicial equivalents within their own tribunal, we have looked at identifying a salaried judge who was engaged in similar legal practice areas and had a pension entitlement. Due to the similar nature of the work, we have concluded that it is appropriate and reasonable to apply the same approach that applied to judges in the former Residential Property Tribunal for their pension provision. Therefore, eligible judges of the ALDT are entitled to a FPJPS pension from 1 July 2013.

252. We propose to amend the FPJPS Regulations in line with this policy and related litigation decisions.

Other judicial offices

253. We also intend to include the following offices in the schedule:

- Legal Chair, Competition Appeal Tribunal
- Legal Chair, Reserve Forces Appeal Tribunal
- Deputy Chair, Copyright Tribunal
- Appointed Person for Trademark Appeals
- Appointed Person for Design Right Appeals
- Legal Chair, Health Services Products (Pricing, Cost Control and Information) Appeals Tribunal
- Senior Legal Chair, Health Services Products (Pricing, Cost Control and Information) Appeals Tribunal
- Legal Chair, Reinstatement Committee
- Temporary Additional Statutory Office (Northern Ireland)

254. We will consider the position of each newly created judicial office for eligibility in FPJPS on a case by case basis.

Contributions and interim payment arrangements

255. Where an office is not currently included in the schedule, but is due to be added to it, we are putting in place interim payments to eligible retired individuals, where benefits would otherwise have become payable to them under FPJPS provisions. Interim payments take account of the historical contributions that would be due from a member of FPJPS.

Qualifying judicial offices for the Judicial Pension Scheme 2015

256. We are aware that some fee-paid judicial offices, that should be eligible for pension provisions under the Judicial Pension Scheme 2015, have not yet been specified in the Public Service Pensions Act 2013 (Judicial Offices) Order 2015.

257. We will liaise with affected groups on these changes as soon as practicable.

Next Steps

258. We are proposing that the schedule should be amended to include the fee-paid offices we consider are eligible for pension provisions under FPJPS with the service limitation dates where appropriate.
259. We intend to lay amendment regulations to update the schedule as soon as Parliamentary time allows following the conclusion of this consultation process. An instrument amending FPJPS must be approved by Parliament in order to come into force. Our intention is that this will happen before laying the principal amendment regulations for the other changes to FPJPS set out in this consultation.

Questions

7. Do you have any comments on our proposals for inclusion of additional offices in FPJPS Regulations?
8. Do you consider that any further judicial offices should be included on the list (at Annex C) of additions to the schedule? Please provide reasons to support any suggestions.

7. Other forthcoming proposals on judicial pensions policy

260. Our proposals to amend FPJPS have been drafted in the context of existing legislation and pension provisions, including the Judicial Pensions Regulations 2015.

261. We are preparing to publish other proposals with implications for judicial pension arrangements shortly:

- **McCloud remedy** – On 1 April 2015, most public service workers were moved into reformed pension schemes with respect to service from that date. In line with this wider public service pension reform, the Judicial Pension Scheme 2015 was established for eligible fee-paid and salaried judicial office holders. However, in December 2018 the Court of Appeal in *McCloud* [2018] EWCA Civ 2844 found that transitional protection offered to older members of the judges' and firefighters' schemes gave rise to unlawful discrimination. On 27 June 2019 the Supreme Court denied the Government permission to appeal the Court of Appeal's judgment. We are therefore developing proposals aimed at addressing this discrimination.
- **Future reform of the judicial pension scheme** – We are developing proposals for a reformed judicial pension scheme to address the judicial recruitment and retention issues identified by the Senior Salaries Review Body in its 2018 Major Review of the Judicial Salary Structure.
- **Mandatory retirement age** – We are also preparing to consult on proposals for raising the mandatory retirement age for judicial offices.

Annex A – Worked examples

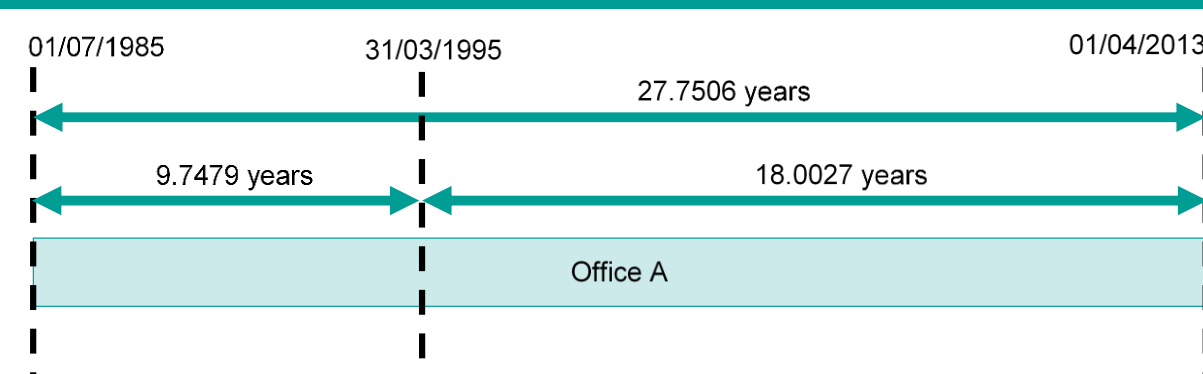
The worked examples in this Annex illustrate pension calculation approaches and options for the scenarios outlined below.

- Example 1: Pension calculation approach and options for a judicial office holder with continuous reckonable service in a single fee-paid office from 1985 to 2013.
- Example 2: Pension calculation approach and options for a judicial office holder with reckonable service in two consecutive fee-paid offices, the second starting before 31 March 1995.
- Example 3: Pension calculation approach and options for a fee-paid judicial office holder with reckonable service in two offices, with the first starting in June 1992, and the second running concurrently from December 1994.
- Example 4: Pension calculation approach for a fee-paid judicial office holder with reckonable service in a single office from 1992, where the relevant salaried office became eligible for a judicial pension from 31 March 1995.
- Example 5: Pension calculation approach for a judicial office holder appointed to two offices, the first before 31 March 1995 and the second after 31 March 1995. This example shows how service credits are calculated when a member is appointed to a new office after 31 March 1995.
- Example 6: Pension calculation approach for a fee-paid judicial office holder appointed to two offices before 31 March 1995 (in 1980 and 1994 respectively), where the equivalent salaried scheme for each is the 15-year section for other judiciary. This example shows how offices are prioritised when service caps are breached.

Example 1

Judge A retired from his Deputy District Judge role at the age of 67 in 2013, having started in 1985. He held one office over his Judicial career, for which the relevant salaried scheme was the 20-year section. The diagram below sets out the time spent in the office.

Judge A was appointed before 31 March 1995, so will receive 3 pension options. He has 27.7506 years of qualifying service. This would have entitled a relevant salaried judge to a pension of 40/80ths of his salary.



Office A

Calculation type:	Non-simultaneous
Scheme:	20-year section
Sitting Days:	4,000 days (of which 1,000 were before 31 March 1995 and 3,000 after)
Divisor:	215
AAS at retirement:	£125,000 pa

Option (a) – Benefits in the 20-year scheme

$$\text{Pension} = \left[£125\text{k} \times \frac{40}{80} \times \frac{4000 \div 215}{20} \right] = \mathbf{£58,139.53}$$

$$\text{Lump sum} = £58,139.53 \times 2 = \mathbf{£116,279.06}$$

This uses the 40/80ths accrual rate of a salaried judge and a pro-rating factor of reckonable service (sitting days ÷ divisor) as a proportion of the 20-year service cap.

Option (b) – Transfer service to the existing FPJPS at retirement

$$\text{Pension} = \left[£125\text{k} \times \frac{1.00 \times 4000 \div 215}{40} \right] = \mathbf{£58,139.53}$$

$$\text{Lump sum} = £58,139.53 \times 2.25 = \mathbf{£130,813.94}$$

This multiplies reckonable service (sitting days ÷ divisor) by the 20-year scheme multiplier of 1.00, then divides by the FPJPS accrual rate.

Option (c) – Transfer service to the existing FPJPS on 31 March 1995

$$\text{Pension} = \left[£125\text{k} \times \frac{(1.00 \times 1000 + 3000) \div 215}{40} \right] = \mathbf{£58,139.53}$$

$$\text{Lump sum} = £58,139.53 \times 2.25 = \mathbf{£130,813.94}$$

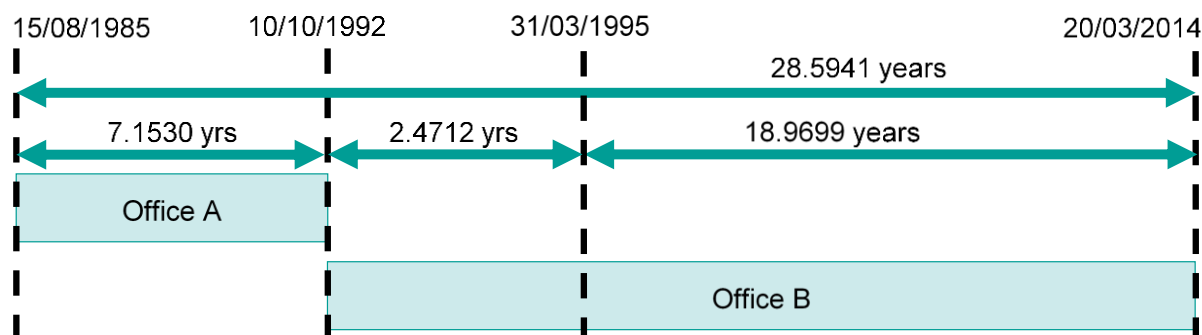
Same as above, but only service before 31 March 1995 is multiplied by the 20-year scheme multiplier. Results are unchanged as the multiplier is 1.00 in this example.

All amounts will be rounded up to the nearest £1 before coming into payment.

Example 2

Judge B retired from his Recorder role at the age of 66 in 2014, having first been appointed in 1985. He held two offices over his Judicial career, for both of which the relevant salaried scheme was the 15-year section for other judiciary. The offices were not held simultaneously at any point. The diagram below sets out the time spent in each office.

Judge B was appointed to both offices before 31 March 1995, so will receive 3 pension options for each office. He has 28.5941 years of qualifying service across all offices. This would have entitled a relevant salaried judge to a pension of 20/40ths of his salary.



Office A

Calculation type: Non-simultaneous
 Scheme: 15-year section for other judiciary
 Sitting Days: 400 days (all before 31 March 1995)
 Divisor: 215
 AAS at retirement: £115,000 (the salary of Office B)

Option (a) – Benefits in the 15-year section for other judiciary

Pension = $\left[£115k \times \frac{20}{40} \times \frac{400 \div 215}{15} \right] = \mathbf{£7,131.78}$
 Lump sum = $£7,131.78 \times 2 = \mathbf{£14,263.56}$

This uses a pro-rating factor of reckonable service (sitting days ÷ divisor) as a proportion of the 15-year service cap. The 15-year cap is used as total qualifying service across all offices is more than 15 years.

Option (b) – Transfer service to the existing FPJPS at retirement

Pension = $\left[£115k \times \frac{1.25 \times 400 \div 215}{40} \right] = \mathbf{£6,686.05}$
 Lump sum = $£6,686.05 \times 2.25 = \mathbf{£15,043.61}$

This multiplies reckonable service (sitting days ÷ divisor) by the 15-year scheme multiplier of 1.25, then divides by the FPJPS accrual rate.

Option (c) – Transfer service to the existing FPJPS on 31 March 1995

Pension = $\left[£115k \times \frac{(1.25 \times 400 \div 215)}{40} \right] = \mathbf{£6,686.05}$
 Lump sum = $£6,686.05 \times 2.25 = \mathbf{£15,043.61}$

As above, but only service before 31 March 1995 is multiplied by the 15-year scheme multiplier. In this example this is all service, so results are unchanged.

All amounts will be rounded up to the nearest £1 before coming into payment.

Office B

Calculation type:	Non-simultaneous
Scheme:	15-year section for other judiciary
Sitting Days:	2,000 days (of which 300 were before 31 March 1995 and 1,700 after)
Divisor:	210
AAS at retirement:	£115,000

Option (a) – Benefits in the 15-year section for other judiciary

$$\text{Pension} = \left[£115\text{k} \times \frac{20}{40} \times \frac{2000 \div 210}{15} \right] = \text{£36,507.94}$$

$$\text{Lump sum} = £36,507.94 \times 2 = \text{£73,015.88}$$

Calculated using the same method as Office A

Option (b) – Transfer service to the existing FPJPS at retirement

$$\text{Pension} = \left[£115\text{k} \times \frac{1.25 \times 2000 \div 210}{40} \right] = \text{£34,226.19}$$

$$\text{Lump sum} = £34,226.19 \times 2.25 = \text{£77,008.93}$$

All reckonable service up to retirement is multiplied by the 15-year scheme multiplier of 1.25

Option (c) – Transfer service to the existing FPJPS on 31 March 1995

$$\text{Pension} = \left[£115\text{k} \times \frac{(1.25 \times 300 + 1700) \div 210}{40} \right] = \text{£28,407.74}$$

$$\text{Lump sum} = £28,407.74 \times 2.25 = \text{£63,917.42}$$

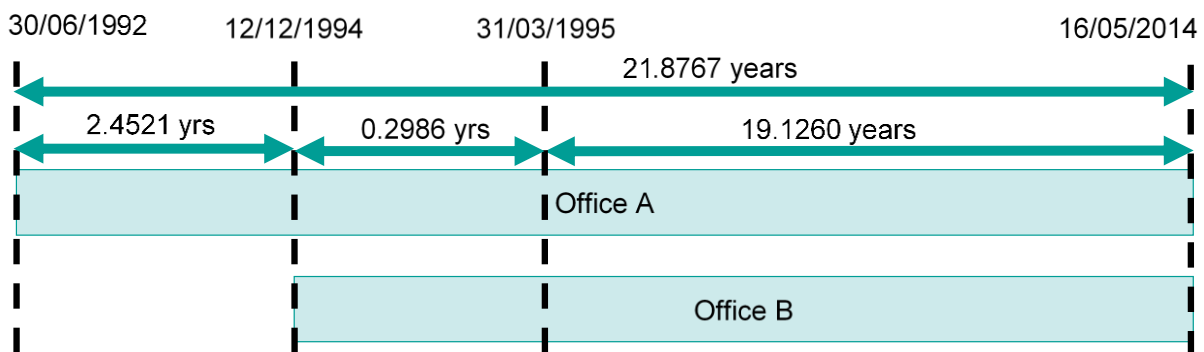
Only service up to 31 March 1995 is multiplied by the 15-year scheme multiplier of 1.25

All amounts will be rounded up to the nearest £1 before coming into payment.

Example 3

Judge C retired from his Employment Tribunal and Recorder roles at the age of 65 in 2014, having first been appointed in 1992. He held two offices over his Judicial career, for both of which the relevant salaried scheme was the 15-year section for other judiciary. The offices were held simultaneously from 1994 to his retirement. The diagram below sets out the time spent in each office.

Judge C was appointed to both offices before 31 March 1995, so will receive 3 pension options for each office. He has 21.8767 years of qualifying service across all offices. This would have entitled a relevant salaried judge to a pension of 20/40ths of his salary.



Office A

Calculation type: Partly simultaneous & partly non-simultaneous

Scheme: 15-year section for other judiciary

Sitting Days: 1,234 days total.

As this office was held partly simultaneously and partly non-simultaneously, sitting days are divided into sub-offices in proportion to the calendar length of time spent in each state, as follows:

Sub-office A1: Post-95, simultaneous	1,078.84 days
Sub-office A2: Post-95, non-simultaneous	0 days
Sub-office A3: Pre-95, simultaneous	16.84 days
Sub-office A4: Pre-95, non-simultaneous	138.32 days

Divisor: 210

AAS at retirement: £100,000 pa for simultaneous service, £120,000 pa for non-simultaneous service (as Office B salary was higher at retirement)

Option (a) – Benefits in the 15-year section for other judiciary

$$\begin{aligned} \text{Pension} &= \left[\text{£}100\text{k} \times \frac{20}{40} \times \frac{1078.84 \div 210}{15} \right] \\ &+ \left[\text{£}100\text{k} \times \frac{20}{40} \times \frac{16.84 \div 210}{15} \right] \\ &+ \left[\text{£}120\text{k} \times \frac{20}{40} \times \frac{138.32 \div 210}{15} \right] \end{aligned} = \text{£}20,026.41$$

$$\text{Lump sum} = \text{£}20,026.41 \times 2 = \text{£}40,052.84$$

Each sub-office is calculated separately using the sitting days assigned to it and the 20/40th accrual rate.

Sub-office A2 has been omitted from the calculations as it has no sitting days.

Sub-office A4 is non-simultaneous, so uses the highest annual salary at retirement.

<p>Option (b) – Transfer service to the existing FPJPS at retirement</p> $\text{Pension} = \left[\text{£}100\text{k} \times \frac{1.25 \times 1078.84 \div 210}{40} \right]$ $+ \left[\text{£}100\text{k} \times \frac{1.25 \times 16.84 \div 210}{40} \right]$ $+ \left[\text{£}120\text{k} \times \frac{1.25 \times 138.32 \div 210}{40} \right] = \text{£}18,774.76$ <p>Lump sum = £18,774.76 × 2.25 = £42,243.21</p>	<p><i>Reckonable service in each sub-office is multiplied by the 15-year scheme multiplier of 1.25</i></p>
<p>Option (c) – Transfer service to the existing FPJPS on 31 March 1995</p> $\text{Pension} = \left[\text{£}100\text{k} \times \frac{1078.84 \div 210}{40} \right]$ $+ \left[\text{£}100\text{k} \times \frac{1.25 \times 16.84 \div 210}{40} \right]$ $+ \left[\text{£}120\text{k} \times \frac{1.25 \times 138.32 \div 210}{40} \right] = \text{£}15,563.93$ <p>Lump sum = £15,563.93 × 2.25 = £35,018.84</p>	<p><i>Only service up to 31 March 1995 (so sub-offices A3 and A4) have reckonable service multiplied by the 15-year scheme multiplier of 1.25</i></p>

All amounts will be rounded up to the nearest £1 before coming into payment.

Office B

Calculation type: Simultaneous
 Scheme: 15-year section for other judiciary
 Sitting Days: 987 days (of which 21 were before 31 March 1995 and 966 after)
 Divisor: 210
 AAS at retirement: £120,000

<p>Option (a) – Benefits in the 15-year section for other judiciary</p> $\text{Pension} = \left[\text{£}120\text{k} \times \frac{20}{40} \times \frac{987 \div 210}{15} \right] = \text{£}18,800.00$ <p>Lump sum = £18,800.00 × 2 = £37,600.00</p>	<p><i>As this office is completely simultaneous it does not need to be divided into sub-offices.</i></p>
<p>Option (b) – Transfer service to the existing FPJPS at retirement</p> $\text{Pension} = \left[\text{£}120\text{k} \times \frac{1.25 \times 987 \div 210}{40} \right] = \text{£}17,625.00$ <p>Lump sum = £17,625.00 × 2.25 = £39,656.25</p>	<p><i>All reckonable service up to retirement is multiplied by the 15-year scheme multiplier of 1.25</i></p>
<p>Option (c) – Transfer service to the existing FPJPS on 31 March 1995</p> $\text{Pension} = \left[\text{£}120\text{k} \times \frac{(1.25 \times 21 + 966) \div 210}{40} \right] = \text{£}14,175.00$ <p>Lump sum = £14,175.00 × 2.25 = £31,893.75</p>	<p><i>Only service up to 31 March 1995 is multiplied by the 15-year scheme multiplier of 1.25</i></p>

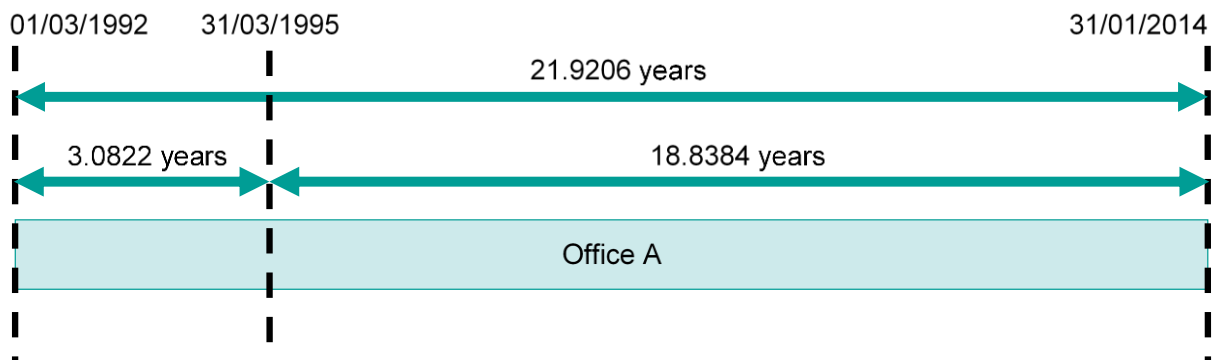
All amounts will be rounded up to the nearest £1 before coming into payment.

Example 4

Judge D retired from her Immigration Tribunal role at the age of 68 in 2014, having started in 1992. She held one office over her Judicial career, for which the relevant salaried scheme was by-analogy to the PCSPS Classic scheme. The diagram below sets out the time spent in the office.

Because her relevant salaried scheme was by-analogy to PSPS Classic, the only option for Judge D's service is for it to transfer to the existing FPJPS on the earliest date a relevant salaried judge could have joined a judicial scheme.

She has 21.9206 years of qualifying service.



Office A

Calculation type:	Non-simultaneous
Scheme:	By-analogy to the PCSPS Classic scheme
Sitting Days:	3,800 days (of which 600 were before 31 March 1995 and 3,200 after)
Divisor:	220
AAS at retirement:	£110,000
Date on which a relevant salaried judge could have first joined a judicial pension scheme	31 March 1995

Transfer service to the existing FPJPS on 31 March 1995

$$\text{Pension} = \left[\text{£}110\text{k} \times \frac{(0.5 \times 600 + 3200) \div 220}{40} \right] = \text{£}43,750.00$$

$$\text{Lump sum} = \text{£}43,750.00 \times 2.25 = \text{£}98,437.50$$

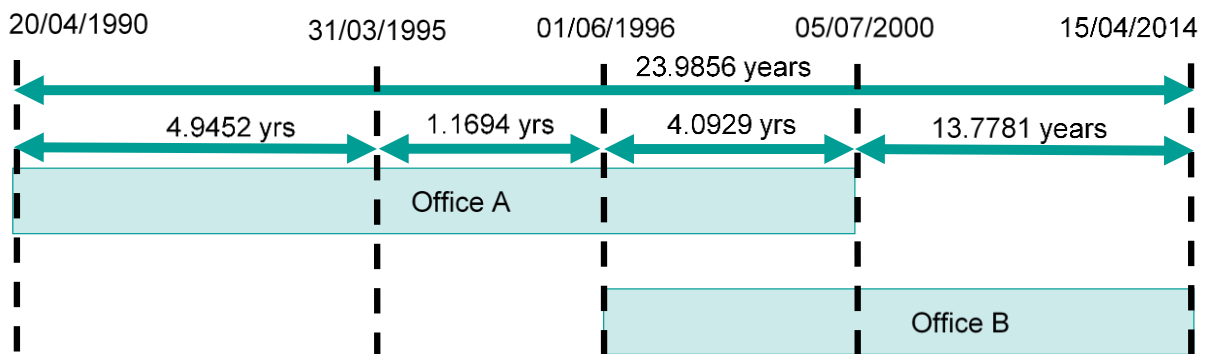
Reckonable service up to 31 March 1995 is multiplied by the by-analogy PCSPS Classic scheme multiplier of 0.5. The resulting service credit is then divided by the FPJPS accrual rate.

All amounts will be rounded up to the nearest £1 before coming into payment.

Example 5

Judge E retired from his Employment Tribunal and Recorder roles at the age of 66 in 2014, having first been appointed in 1990. He held two offices over his Judicial career. The relevant scheme for the first was in the 15-year section for other judiciary. The relevant scheme for the second, which started after 1995, was JUPRA. The offices were held simultaneously from 1995 to 2000. The diagram below sets out the time spent in each office.

Judge E was appointed to his second office after 31 March 1995, so his pre-95 service will be automatically converted into a FPJPS service credit on the day he is appointed to his second office, with any further accrual taking place in the FPJPS. He has 23.9856 years of qualifying service across all offices. This would have entitled a relevant salaried judge to a pension of 20/40ths of his salary.



Office A

Calculation type: Partly simultaneous & partly non-simultaneous

Scheme: 15-year section for other judiciary

Sitting Days: 1,000 days total.

As this office was held partly simultaneously and partly non-simultaneously, sitting days are divided into sub-offices in proportion to the calendar length of time spent in each state, as follows:

Sub-office A1: Post-95, simultaneous	400.97 days
Sub-office A2: Post-95, non-simultaneous	114.56 days
Sub-office A3: Pre-95, simultaneous	0 days
Sub-office A4: Pre-95, non-simultaneous	484.47 days

Divisor: 220

AAS at retirement: £100,000 pa for simultaneous service, £115,000 pa for non-simultaneous service (as Office B salary was higher at retirement)

Transfer to the FPJPS at start date of second office

$$\begin{aligned}
 \text{Pension} &= \left[\text{£}100\text{k} \times \frac{400.97 \div 220}{40} \right] \\
 &+ \left[\text{£}115\text{k} \times \frac{1.25 \times 114.56 \div 220}{40} \right] \\
 &+ \left[\text{£}115\text{k} \times \frac{1.25 \times 484.47 \div 220}{40} \right] = \text{£}14,341.77
 \end{aligned}$$

$$\text{Lump sum} = \text{£}14,341.77 \times 2.25 = \text{£}32,268.98$$

Each sub-office is calculated separately using the sitting days assigned to it and the FPJPS accrual rate. Sub-offices A2 and A4 are non-simultaneous, so use the highest annual salary at retirement.

Only service up to start date of the second office (so sub-offices A2 and A4) have reckonable service multiplied by the 15-year scheme multiplier of 1.25

All amounts will be rounded up to the nearest £1 before coming into payment.

Office B

Calculation type: Partly simultaneous & partly non-simultaneous

Scheme: FPJPS

Sitting Days: 2,000 days total

As this office was held partly simultaneously and partly non-simultaneously, sitting days are divided into sub-offices in proportion to the calendar length of time spent in each state, as follows:

Sub-office B1: Post-95, simultaneous 458.05 days

Sub-office B2: Post-95, non-simultaneous 1,541.95 days

Divisor: 210

AAS at retirement: £115,000

All service in FPJPS

$$\begin{aligned} \text{Pension} &= \left[\text{£}115\text{k} \times \frac{458.05 \div 210}{40} \right] \\ &\quad + \left[\text{£}115\text{k} \times \frac{1541.95 \div 210}{40} \right] \end{aligned} \quad = \text{£}27,380.95$$

$$\text{Lump sum} = \text{£}27,380.95 \times 2.25 \quad = \text{£}61,607.14$$

*Calculated in line with current
FPJPS Regulations.*

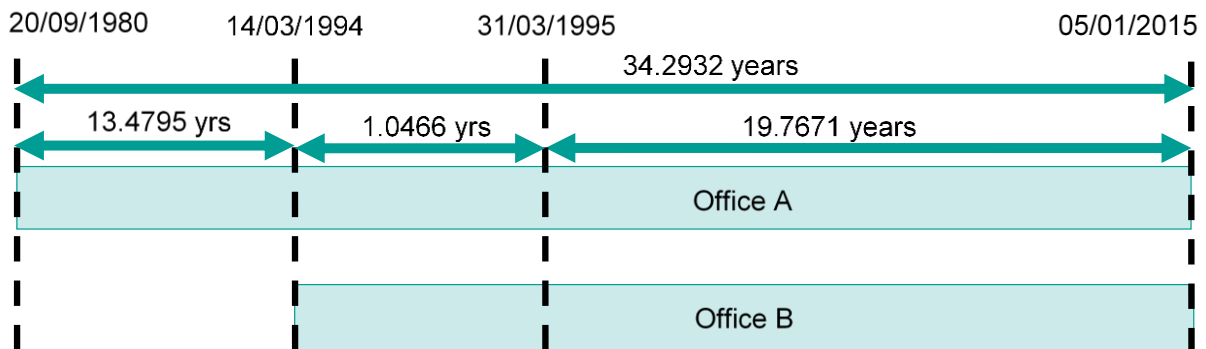
All amounts will be rounded up to the nearest £1 before coming into payment.

Example 6

Judge F retired from his Employment Tribunal and Recorder roles at the age of 70 in 2015, having first been appointed in 1980. He held two offices over his Judicial career, for both of which the relevant salaried scheme was the 15-year section for other judiciary. The offices were held simultaneously from 1994 to his retirement. The diagram below sets out the time spent in each office.

Judge F was appointed to both offices before 31 March 1995, so should receive 3 pension options for each office. However, in the interest of keeping this example short we will assume he has chosen option (a) (i.e. benefits in the 15-year section for other judiciary) for both offices.

Judge F has 34.2932 years of qualifying service across all offices. This would have entitled a relevant salaried judge to a pension of 20/40ths of his salary. However, his total reckonable service across both offices exceeds the maximum allowed. An additional "prioritisation" step must therefore take place to determine which benefits fall below the service cap (and are paid) and which benefits are above the service cap (and are not paid).



Office A

Calculation type:	Partly simultaneous & partly non-simultaneous
Scheme:	15-year section for other judiciary
Sitting days:	3,456 days total
	As this office was held partly simultaneously and partly non-simultaneously, sitting days are divided into sub-offices in proportion to the calendar length of time spent in each state, as follows:
	Sub-office A1: Post-95, simultaneous 1,992.09 days
	Sub-office A2: Post-95, non-simultaneous 0 days
	Sub-office A3: Pre-95, simultaneous 105.47 days
	Sub-office A4: Pre-95, non-simultaneous 1,358.44 days
Divisor:	220
AAS at retirement:	£100,000 pa for simultaneous service, £120,000 pa for non-simultaneous service (as Office B salary was higher at retirement)

Option (a) – Benefits in the 15-year section for other judiciary		
Sub-office A1	Uncapped pension = $\left[£100k \times \frac{20}{40} \times \frac{1992.09 \div 220}{15}\right]$	= £30,183.16
	Uncapped lump sum = $£30,183.16 \times 2$	= £60,366.32
	Cap usage = $\left[\frac{1992.09 \div 220}{15}\right]$	= 0.6037
	Full-time salaried entitlement = $\left[£100k \times \frac{20}{40}\right]$	= £50,000.00
Sub-office A3	Uncapped pension = $\left[£100k \times \frac{20}{40} \times \frac{105.47 \div 220}{15}\right]$	= £1,598.09
	Uncapped lump sum = $£1,598.09 \times 2$	= £3,196.18
	Cap usage = $\left[\frac{105.47 \div 220}{15}\right]$	= 0.0320
	Full-time salaried entitlement = $\left[£100k \times \frac{20}{40}\right]$	= £50,000.00
Sub-office A4	Uncapped pension = $\left[£120k \times \frac{20}{40} \times \frac{1358.44 \div 220}{15}\right]$	= £24,698.85
	Uncapped lump sum = $£24,698.85 \times 2$	= £49,397.70
	Cap usage = $\left[\frac{1358.44 \div 220}{15}\right]$	= 0.4116
	Full-time salaried entitlement = $\left[£120k \times \frac{20}{40}\right]$	= £60,000.00
Option (b) and Option (c) are not shown, to keep this example short.		

Each sub-office is calculated separately using the sitting days assigned to it and the 20/40th accrual rate.

Sub-office A2 has been omitted from the calculations as it has no sitting days.

Sub-office A4 is non-simultaneous, so uses the highest annual salary at retirement.

Cap usage terms are calculated using the sitting days assigned to the sub-office divided by the service cap of the relevant section (in this case 15 years).

Full-time salaried entitlements show the pension that a full-time, salaried judge would have been entitled to with the same amount of qualifying service. These are calculated in order to assess the priority of each sub-office.

Office B

Calculation type:	Simultaneous
Scheme:	15-year section for other judiciary
Sitting Days:	180 days (of which 10 were before 31 March 1995 and 170 after)
Divisor:	210
AAS at retirement:	£120,000

Option (a) – Benefits in the 15-year section for other judiciary

Pension = $\left[£120k \times \frac{20}{40} \times \frac{180 \div 210}{15}\right]$	= £3,428.57
Lump sum = $£3,428.57 \times 2$	= £6,857.14
Cap Usage = $\left[\frac{180 \div 210}{15}\right]$	= 0.0571
Full-time salaried entitlement = $\left[£120k \times \frac{20}{40}\right]$	= £60,000.00

Option (b) and Option (c) are not shown, to keep this example short.

As this office is completely simultaneous it does not need to be divided into sub-offices.

Prioritisation

Sub-offices are ordered based on the full-time salaried equivalent pensions calculated in the previous section, as follows:

Ranking	Sub-office	Full-time salaried equivalent	Cap Usage		
			Option (a)	Option (b)	Option (c)
1=	A4	£60,000.00	0.4116	Not calculated for this example. The member is assumed to choose option (a) for all offices	
1=	B	£60,000.00	0.0571		
2=	A1	£50,000.00	0.6037		
2=	A3	£50,000.00	0.0320		

Total cap usage across all sub-offices is equal to 1.1044. This is higher than the maximum cap usage of 1. Because the member has breached the maximum cap usage, he will need to make a choice in respect of each office consecutively, in priority order. A choice made for one office (e.g. Office A) will affect all of its constituent sub-offices (e.g. Offices A1, A3 and A4).

However, to simplify this example the member is assumed to choose option (a) for all offices.

Capping of benefits in priority order

Sub-office A4	Remaining cap usage before sub-office	= 1.0000
	Cap usage after sub office = 1.0000 – 0.4116	= 0.5884
	Capped pension = $\left[£24,698.85 \times \frac{0.5884}{0.5884} \right]$	= £24,698.85
	Capped lump sum = $\left[£49,397.70 \times \frac{0.5884}{0.5884} \right]$	= £49,397.70

Sub-office B	Remaining cap usage before sub-office	= 0.5884
	Cap usage after sub office = 0.5884 – 0.0571	= 0.5313
	Capped pension = $\left[£3,428.57 \times \frac{0.0571}{0.0571} \right]$	= £3,428.57
	Capped lump sum = $\left[£6,857.14 \times \frac{0.0571}{0.0571} \right]$	= £6,857.14

Sub-office A1	Remaining cap usage before sub-office	= 0.5313
	Cap usage after sub office = 0.5313 – 0.6037	= 0
	Capped pension = $\left[£30,183.16 \times \frac{0.5313}{0.6037} \right]$	= £26,563.38
	Capped lump sum = $\left[£60,366.32 \times \frac{0.5313}{0.6037} \right]$	= £53,126.76

Sub-offices are dealt with in priority order.

The uncapped pension and lump sum amounts previously calculated are multiplied by the larger of (a) the cap usage of the sub-office and (b) the remaining cap usage, then divided by the cap usage of the office.

The effect of this approach is that:

(1) Any sub-office where the cap usage falls entirely within the remaining maximum cap usage will be paid in full

(2) The entitlements of the sub-office that falls partially within the remaining maximum cap usage and partially outside is reduced (or capped)

(3) The pension entitlement for any subsequent offices is reduced to zero.

Pension benefits payable		<i>Benefits are then aggregated for each office. The results shown assume the member chose option (a) for Office A (which includes the highest priority sub-office), followed by option (a) for Office B.</i>
Office A		
Pension = [£24,698.85 + £26,563.38 + £0.00]	= £51,262.23	
Lump sum = [£49,397.70 + £53,126.76 + £0.00]	= £102,524.46	
Office B		
Pension =	= £3,428.57	
Lump sum =	= £6,857.14	
<i>All amounts will be rounded up to the nearest £1 before coming into payment.</i>		

Annex B – Offices subject to new provisions for service before 31 March 1995²⁴

Fee-paid office	Accruals cap (years)	Normal pension age
Lord Justice of Appeal (sitting in retirement) England & Wales	15	70th birthday or completing 15 years of service
Lord Justice of Appeal (sitting in retirement) Northern Ireland	15	
High Court Judge (sitting in retirement) England and Wales	15	
High Court Judge (sitting in retirement) Northern Ireland	15	
Deputy High Court Judge England and Wales	15	
Deputy High Court Judge Northern Ireland	15	
Temporary Judge High Court Judge under section 7(3) of the Judicature (Northern Ireland) Act 1978	15	
Deputy Circuit Judge	15	65th birthday and completed 15 years of service
Recorder	15	
Chairman of VAT & Duties Tribunal	15	
Social Security Commissioner	15	
Employment Tribunal Chairman	15	
Judge of the Employment Tribunal (where a legal qualification is a requirement of appointment)	15	

²⁴ The list will also include eligible offices in Scotland and Northern Ireland.

Temporary Judge of the Employment Appeal Tribunal (where a legal qualification is a requirement of appointment)	15	
Deputy Supreme Court Master	20	65th birthday and completed 15 years of service or 72nd birthday and completing 2 years of service
Deputy Supreme Court Registrar	20	
Deputy Taxing Master	20	
Deputy Costs Judge	20	
Deputy Master of the Queen's Bench Division	20	
Deputy Master of the Chancery Division	20	
Deputy Bankruptcy Registrar	20	
Deputy District Judge	20	
Deputy District Judge of the Principal Registry of the Family Division	20	
Deputy District Judge (Magistrates' Court)	20	65th birthday and completing 2 years of service
Commissioner for the Special Purposes of the Income Tax Acts	20	65th birthday and completed 15 years of service or 72nd birthday and completing 2 years of service
Deputy Commissioner for the Special Purposes of the Income Tax Acts	20	

Annex C – Additional offices for FPJPS schedule

Fee-paid office	Limitation date (where applicable)
Judge First-tier Tribunal (Social Entitlement Chamber) Asylum Support	after 31st March 2007
Asylum Support Adjudicator	after 31st March 2007
Member (Chair only) First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation	after 2nd November 2008
Judge First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation	after 2nd November 2008
Deputy Adjudicator, HM Land Registry	after 1st January 2009
Judge First-tier Tribunal (Property Chamber) HM Land Registry	after 1st January 2009
Judge First-tier Tribunal (Property Chamber) Residential Property	after 30th June 2013
Judge First-tier Tribunal (Property Chamber) Agricultural Land and Drainage	after 30th June 2013
Legal Chair Competition Appeal Tribunal	n/a
Legal Chair, Reserve Forces Appeal Tribunal	n/a
Deputy Chair, Copyright Tribunal	n/a
Appointed Person for Trademark Appeals	n/a
Appointed Person for Design Right Appeals	n/a
Legal Chair, Health Service Products (Pricing, Cost Control and Information) Appeals Tribunal	n/a

Senior Legal Chair, Health Service Products (Pricing, Cost Control and Information) Appeals Tribunal	n/a
Legal Chair, Reinstatement Committee	n/a
Temporary Additional Statutory Officer (Northern Ireland)	n/a

Glossary

Term	Description
CPI	The Consumer Prices Index (all items) published by the Office for National Statistics
FPJABS	Fee-Paid Judicial Added Benefit Scheme
FPJASAPS	Fee-Paid Judicial Added Surviving Adult's Pension Scheme
FPJAYS	Fee-Paid Judicial Added Years Scheme
FPJPS	Fee-Paid Judicial Pension Scheme
JAVCS	Judicial Additional Voluntary Contribution Scheme
JPA81	Judicial Pensions Act 1981
JUPRA	Judicial Pensions and Retirement Act 1993
<i>Miller</i>	Supreme Court ruling - Miller and others v Ministry of Justice [2019] UKSC 60 - that the three month time limit for claims to be made in relation to <i>O'Brien 1</i> and <i>O'Brien 2</i> only runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment
MoJ	Ministry of Justice
<i>O'Brien 1</i>	Decision by the Supreme Court (<i>O'Brien v Ministry of Justice</i> [2013] UKSC 6) in February 2013 that fee-paid judges had been treated less favourably than relevant

	<p>salaried judges, contrary to the Part-Time Work Directive (PTWD) with respect to pension provision</p>
<i>O'Brien 2</i>	<p>Judgment by the Court of Justice of the European Union in the case of <i>O'Brien v Ministry of Justice</i> (Case C-432/17), concluding that part-time work undertaken before the deadline for transposing the Part-Time Work Directive on 7 April 2000 must be taken into account for the purposes of calculating a retirement pension</p>
PTWD	Part-Time Work Directive
PTWR	Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000
SSRB	Senior Salaries Review Body

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1

Do you have any comments on our proposals for amending the FPJPS Regulations to include fee-paid service from 31 March 1995 to 6 April 2000 (where judicial service continues up to or beyond that date) in FPJPS provisions?

Question 2

Do you have any views on the possibility of including a facility for the commutation of small pensions when we propose amendments to the FPJPS Regulations?

Question 3

Do you have any comments on our proposals for fee-paid service before 31 March 1995?

Question 4

Do you have any comment on our proposals for members with service before 31 March 1995, appointed to a different office on or after that date?

Question 5

Do you think there should be a facility for members to elect a date between 31 March 1995 and the date they take up a new appointment as the effective date for service credit calculations?

Question 6

Do you have any comments on our proposals for members with service before 31 March 1995, not appointed to a different office after that date?

Question 7

Do you have any comments on our proposals for inclusion of additional offices in FPJPS Regulations?

Question 8

Do you consider that any further judicial offices should be included on the list (at Annex C) of additions to the schedule? Please provide reasons to support any suggestions.

However, this is not an exhaustive list of issues and we welcome views of consultees on all aspects of the proposals set out in this paper, including our equalities assessment.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Role or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Organisation name (if applicable)	
Email address	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 18 September 2020 to:

Email: feepaidconsultation@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the email address above.

Publication of response

A document summarising the responses to this consultation is expected to be published in January 2021.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000(FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if the department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public'). Alternatively, you may choose not to respond.

Impact Assessment, Equalities and Welsh Language

Impact assessment

We have not carried out an economic impact assessment at this stage because:

- Our proposals to amend FPJPS are intended to implement the remedy required under *O'Brien 2* and *Miller* rather than to set out policy choices.
- Our proposals will have no economic impact on businesses, charities, or the voluntary sector.
- The costs associated with our proposals exist as a public funding liability and are under consideration in terms of departmental expenditure implications.

However, we will review any need for an economic impact assessment after considering responses to this consultation and before we formally lay any amendments to the FPJPS Regulations.

Equalities

Under the Public Sector Equality Duty within the Equality Act 2010 (the Act), Ministry of Justice Ministers and policy makers are required to consider the equalities impacts of policy proposals in relation to the following:

- (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

Proportionate equality analysis should be used to consider likely impacts on people with the protected characteristics of disability, race, sex, gender reassignment, age, religion or belief, sexual orientation, pregnancy and maternity, marriage and civil partnership.

Our approach

Our proposals are intended to address the less favourable treatment identified for fee-paid judges in the *O'Brien 2* and *Miller* litigation compared to their salaried counterparts and so should have positive equalities impacts.

We have assessed the likely impacts of our policy proposals having regard to protected characteristics and to ensure that they are consistent with the requirements set out in the Act. In order to do this, we considered the most recently available diversity statistics for the judiciary in England and Wales, Scotland and Northern Ireland. However, due to various limitations with the data (e.g. we do not have data on every protected characteristic and the proposals affect both serving and retired, fee-paid and salaried judges), our analysis of potential equality impacts cannot be wholly informed by these statistics.

Our findings

The proposed amendments to FPJPS are being introduced to remedy historic less favourable treatment of fee-paid judges. Whilst being a part-time worker is not a protected characteristic under the Act, our starting point has been that the extension of fee-paid pension provisions before 7 April 2000 is aimed at eliminating discrimination between fee-paid and salaried judicial office holders and therefore overall, has positive equalities impacts more broadly.

Our equalities assessment, taking into account available data, indicates that our proposals should not have adverse effects. In particular, we consider that neither the broad methodology nor the details of our proposals treat eligible FPJPS members less favourably due to any particular characteristic and we therefore consider that they are consistent with the provisions of the Act. We will carefully consider any views expressed by respondents in relation to equalities impacts and take them into account for the Government response.

Questions

Do you agree with the views that we have expressed on equalities impacts with respect to our proposals?

Welsh Language Impact Test

We have undertaken the Welsh Language Impact Test in accordance with the Welsh Language Act 1993 and the MoJ's Welsh Language Scheme which requires an assessment of the linguistic consequences of policies affecting services provided to the people in Wales.

Although this consultation is aimed at a relatively narrow audience, we intend to provide a summary of the document in Welsh shortly.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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