



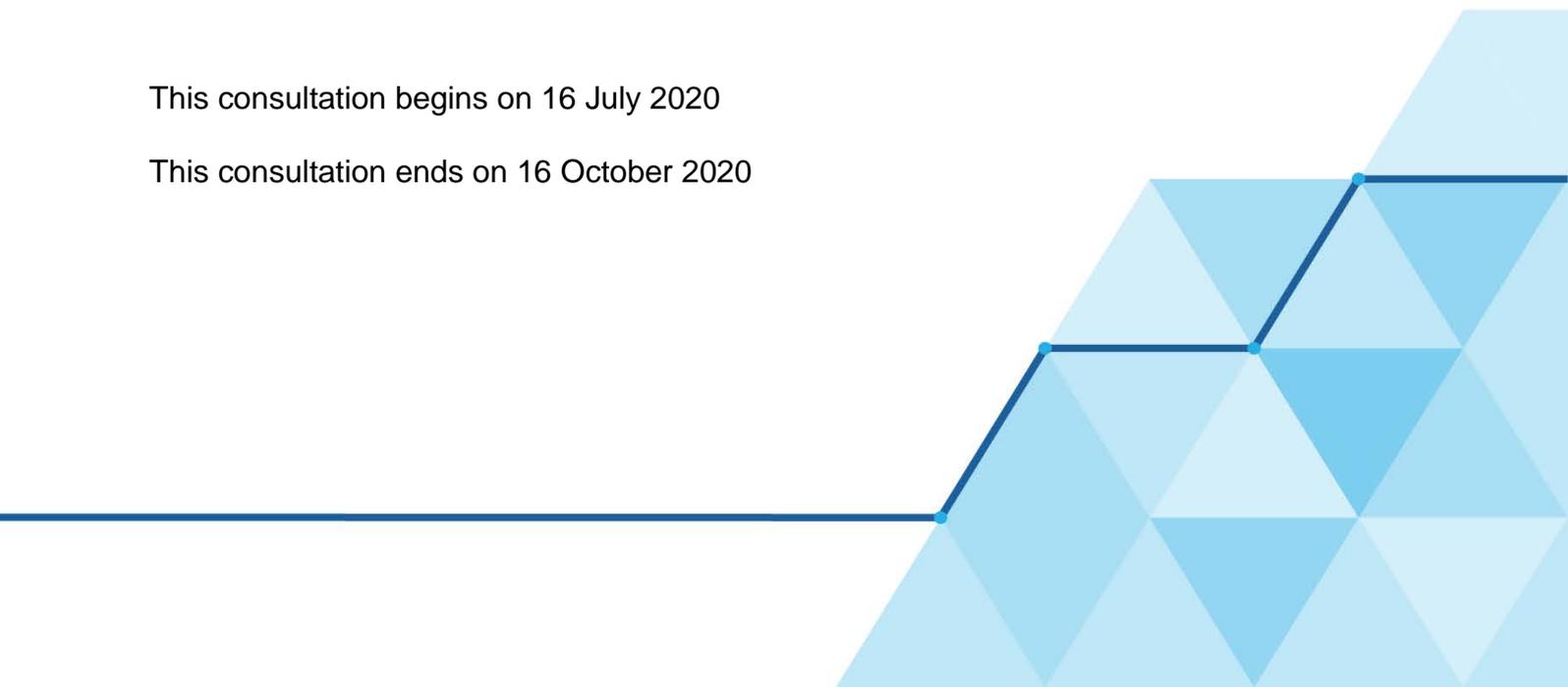
Ministry  
of Justice

# Proposals for a reformed judicial pension scheme

## Consultation

This consultation begins on 16 July 2020

This consultation ends on 16 October 2020





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of Justice

# **Proposals for a reformed judicial pension scheme**

## Consultation

**A consultation produced by the Ministry of Justice.**

# About this consultation

- To:** This consultation seeks views from any member of the judiciary who is entitled to be a member of a judicial pension scheme, legal professionals, pension industry professionals and anyone else who may be affected by these reforms.
- Duration:** From 16/07/20 to 16/10/20
- Enquiries (including requests for the paper in an alternative format) to:** Email: [reformedpensionconsultation@justice.gov.uk](mailto:reformedpensionconsultation@justice.gov.uk)
- How to respond:** Responses to the consultation questions should be submitted via email to: [reformedpensionconsultation@justice.gov.uk](mailto:reformedpensionconsultation@justice.gov.uk) **by 16<sup>th</sup> October 2020.**

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## Ministerial foreword

The judiciary have an essential role in upholding the rule of law. Every day, judges take decisions on important issues which impact on people's lives – from delivering justice for victims through to deciding care arrangements for vulnerable children. It is important that we can continue to recruit and retain the very best legal minds to the bench and to do that we need to offer a remuneration package which is both fair to the taxpayer and attractive to the judiciary.

Recently we have experienced unprecedented recruitment and retention issues across the judiciary. Continuing recruitment issues would threaten the effective functioning of our justice system and its reputation. Not having enough judges means that cases will take longer, seriously affecting all jurisdictions. It will also undermine our ability to compete internationally for legal services, which is so important to the UK economy.

We asked the Senior Salaries Review Body (SSRB) to look into this issue and they conducted a comprehensive review, gathering evidence over a two-year period to understand the root cause of our recruitment and retention problems. Their review made clear that the pension changes made in 2015 were a major cause of these problems.

Last year, we introduced a Recruitment and Retention Allowance for certain categories of salaried judge to address these issues in the short-term. More significantly, we also made a commitment to introduce a long-term solution through pension scheme changes for the entire judiciary. This consultation document sets out proposals for a reformed judicial pension scheme which would apply to all judges. I am confident that the proposed changes will ensure we retain and recruit world-class judges, while still being affordable and aligning with the wider government principles for public service pensions.

The importance and influence of our judges reaches beyond our shores. Their reputation for integrity and impartiality plays an important role in attracting international business to the UK, contributing to a legal services industry worth around £25bn a year to our economy.

The judiciary have a unique constitutional role. After taking up office, salaried judges cannot return to private practice and therefore the value of their pensions is of particular significance. Furthermore, the importance and complexity of judicial work explains why judges are highly experienced legal professionals, with years of training and successful private practice behind them, and many have taken a pay cut to join the bench.

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I believe that the pension changes proposed in this consultation show our commitment to delivering a long-term solution that attracts and retains high-calibre judges, guaranteeing the proper functioning of our justice system and the UK's wider prosperity.

**The Rt. Hon. Robert Buckland QC MP**  
**Lord Chancellor and Secretary of State for Justice**

# Executive summary

## The background

This consultation seeks views on proposals to reform judicial pension arrangements. We intend to modernise the provisions in the Judicial Pensions and Retirement Act 1993 (JUPRA) (hereafter described as the ‘reformed scheme’) for future accruals, so that they would be in line with the Hutton principles but also non-registered for tax purposes. Both judges who are accruing benefits under the existing provisions of JUPRA or its fee-paid equivalent, the Fee-Paid Judicial Pension Scheme (FPJPS) and those who are members of the 2015 scheme, the New Judicial Pension Scheme (NJPS), would transfer into the reformed section of the scheme and accrue benefits under it. The reformed scheme features are outlined in this consultation document. It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.

The Public Service Pensions Act 2013 introduced a statutory framework for reform of public service pension schemes. Following consultation with the judiciary, the then Lord Chancellor announced the principles for reform of judicial pension scheme arrangements in February 2013 and, following a public consultation exercise, NJPS was established under the Judicial Pensions Regulations 2015.

For most judges, membership of NJPS is less financially beneficial compared to the legacy schemes. This is primarily because NJPS is a registered scheme for tax purposes, meaning members are subject to annual and lifetime allowance limits on the tax-relieved benefits accrued within the scheme.

The introduction of NJPS included transitional provisions to protect those closest to retirement from the effects of the 2015 pension reforms. In *McCloud*,<sup>1</sup> a group of younger judges brought legal action challenging the lawfulness of these provisions, and in December 2018 the Court of Appeal held that the transitional protections constituted unlawful direct age discrimination. The case was remitted to the Employment Tribunal to determine a remedy for claimants. The Ministry of Justice’s (MoJ) proposals for addressing past discrimination for non-claimants are set out in a separate consultation document. This consultation focuses on equalising future

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<sup>1</sup> *Lord Chancellor and Secretary of State for Justice and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others*, [2018] EWCA Civ 2844

treatment across the whole judiciary by moving all judges into the reformed scheme, which we aim to do in 2022.

In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure<sup>2</sup> which highlighted escalating recruitment and retention problems at all levels of the judiciary. It concluded that these problems were caused principally by the 2015 pension reforms and subsequent changes to pension tax thresholds.

Responding to the SSRB's review in June 2019, the Government introduced a temporary Recruitment and Retention Allowance (RRA) for salaried High Court, Circuit and Upper Tribunal judges, and those above them in the judicial hierarchy, who were eligible to join NJPS. The Government also made a public commitment to develop a pensions-based solution for the whole judiciary, which would aim to address in the long-term, the recruitment and retention problems identified by the SSRB. This consultation sets out our proposals for delivering this commitment.

## Delivering a reformed scheme

The aim is that the reformed scheme will be open to eligible salaried and fee-paid judicial office holders from 2022. All salaried and fee-paid judicial office holders who are in office when the scheme commences, and who are eligible for a judicial pension, would join the reformed scheme automatically in respect of service in that office unless they decide to opt out of the scheme.

We are proposing to provide for a modernised scheme for future accruals from April 2022 by reforming JUPRA. The intention is that all non-JUPRA judicial pension arrangements<sup>3</sup> would close to future accruals in 2022 – JUPRA will then be amended to provide for future accruals in the reformed scheme. From the implementation date of the reformed scheme, current JUPRA members, including those who would be in JUPRA as a result of the *McCloud* remedy, would remain in JUPRA, but as members of the modernised section of the scheme.

Judges who were members of NJPS would transfer and join this modernised section of JUPRA in 2022. **It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary**

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<sup>2</sup> <https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>

<sup>3</sup> The legacy schemes including the 1981 Scheme established under the Judicial Pensions Act 1981, the New Judicial Pension Scheme 2015 established under the Judicial Pension Regulations 2015; and the Fee-Paid Judicial Pensions Scheme established under the Judicial (Fee-Paid Judges) Regulations 2017.

**schemes, these benefits would be linked to their salary when they retire or leave judicial office.**

Primary legislation will be needed to provide the statutory framework for future accruals, including the application of the governance, cost control and administration arrangements required by the Public Service Pensions Act 2013. We plan to publish a second consultation which will outline the specific scheme regulations, and to which we would respond before implementing the reformed scheme.

It should be noted that these proposals will apply to eligible members of the judiciary in England, Wales, Scotland and Northern Ireland for whose pension arrangements the UK Parliament has sole competency to legislate. There are therefore a number of judicial offices in Scotland and Northern Ireland to which these reforms will not apply.

## **Proposed features of the reformed scheme**

Many of the features of the reformed scheme will be in line with the main principles of the 2015 pension reforms. This includes a career average accrual model, no restriction on the number of accruing years in service and the normal pension age linked to State Pension age. Our proposals would also allow members to commute their pension and take a lump sum upon retirement at a rate of 12:1. This differs from the pre-2015 schemes, JUPRA for salaried judges and the Fee-Paid Judicial Pensions Scheme<sup>4</sup> (FPJPS) for fee-paid judges, which include a final salary rather than career average link, a 20-year service cap, a normal pension age of 65 and the provision of an automatic lump sum upon retirement at a rate of 2.25 times the annual pension. Members of these schemes also receive a Judicial Service Award to compensate for the non-registered status of the scheme.

The reformed scheme would, however, retain some elements of JUPRA, including the tax-unregistered status. A number of the scheme features we propose flow from this tax status. Member contribution rates would be lower than those of NJPS to reflect the fact that members would not receive tax relief on their contributions. A commutation supplement would also be made to members who commute a lump sum to compensate for the tax-unregistered status of the scheme. In line with JUPRA, the accrual rate would be set at 2.50%, an increase from the 2.32% rate in NJPS.

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<sup>4</sup> FPJPS commenced on 1 April 2017.

## Equality impact

We have considered the equalities impacts of our proposed reforms and concluded that they do not result in any direct discrimination. In our equality statement, we note that while our proposed scheme has been designed to be more beneficial compared to NJPS for all members of the judiciary, the benefits are particularly advantageous for senior members of the judiciary, who are typically older, male and less diverse in terms of race. This is at least partly because senior members of the judiciary experienced particularly adverse impacts from the move from the legacy schemes to NJPS in 2015. The same scheme design applies to all members of the judiciary and it is our assessment that any potential differential impacts are proportionate to achieve our policy aim of addressing the recruitment and retention issues within the judiciary, which are particularly acute at the most senior tiers.

## Economic impact

We have conducted a regulatory impact assessment which outlines our policy objectives and the costs and benefits of a range of options we have considered before deciding the proposals to put forward for consultation. Our assessment indicates that these proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector. All of our options incur costs for the MoJ and devolved administrations to fund the proposed pension schemes.

## Interaction with other consultations

In addition to the proposals for a reformed judicial pension scheme, MoJ is consulting concurrently on proposals to:

- address the discrimination for all affected judges in scope of the *McCloud* judgment;
- provide a pension for fee-paid service prior to 2000 in light of the *O'Brien*<sup>5</sup> and *Miller*<sup>6</sup> judgments; and
- increase the judicial mandatory retirement age for judicial office holders, including magistrates and coroners, to either 72 or 75.

Respondents may wish to consider these consultations at the same time to understand where and to what extent possible dependencies may influence their response.

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<sup>5</sup> *O'Brien v Ministry of Justice (Case C-432/ 17) [2018]*

<sup>6</sup> *Miller & Ors v Ministry of Justice [2019] UKSC 60*

## Next steps and timing

This consultation will close on October 16<sup>th</sup> 2020. We will aim to issue our official response to this consultation on the scheme design in early 2021. Once we have done this, we will need primary legislation to set out the statutory framework for the reforms and secondary legislation to set out the details of the scheme. There will be a second consultation on the scheme regulations. We are working towards implementation of the reformed scheme in April 2022.

# 1. The need for reform

## Background to judicial pension changes

1. The Public Service Pensions Act 2013 introduced a statutory framework for reform of public service pension schemes. Following consultation with the judiciary, the then Lord Chancellor announced the principles for reform of judicial pension scheme arrangements in February 2013 and, following a public consultation exercise, the New Judicial Pension Scheme (NJPS) was established under the Judicial Pensions Regulations 2015.
2. The Public Service Pensions Act 2013 and the introduction of NJPS in 2015 brought about significant changes. Previous judicial pension schemes were closed to future accrual<sup>7</sup> including – of relevance to most serving salaried judges – the scheme established under the Judicial Pensions and Retirement Act 1993 (JUPRA). While JUPRA and its predecessor schemes were tax-unregistered, which meant that members were not subject to annual allowance and lifetime allowance limits on tax-relieved benefits accrued within the schemes, NJPS is a tax-registered scheme and members are subject to these limits. Member contribution rates for JUPRA and FPJPS (the scheme for fee-paid judges, which mirrors the provisions of JUPRA) are also lower compared to NJPS, to broadly reflect that members do not receive tax relief on contributions. In addition, and unlike JUPRA, NJPS does not provide an automatic lump sum on retirement, it links the normal pension age to State Pension age, includes a lower annual accrual rate and uses career average rather than final salary as the basis for calculation of pension benefits.
3. These changes, largely consistent with those made to other public service pension schemes as a result of the 2013 Act, have had a disproportionate impact on the judiciary. The comparatively high level of judicial salaries and the fact that many senior judges accrued significant private pensions before taking up judicial office mean that tax charges are felt more acutely and by a significant proportion. Many in legal practice may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case joining a tax-registered pension scheme is unlikely to be an incentive to leave private practice and join the bench. This is a clear impediment to attracting the best talent to the salaried judiciary. This disincentive is compounded by the fact that many judges face a significant drop in earnings when joining the judiciary.

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<sup>7</sup> Except for members who were covered by transitional protection arrangements.

4. Owing to the judiciary's unique constitutional role, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that they will not return to private practice once they have retired. Their options for supplementing their earnings are therefore limited. Furthermore, judges tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades.
5. The changes to judicial pensions have significantly reduced the remuneration package for judges. In the Judicial Attitudes Survey 2016 an overwhelming majority (78%) of salaried judges said they had experienced a loss of net earnings during the previous two years.<sup>8</sup>

### **Recruitment and retention issues**

6. Recruitment and retention problems within the judiciary began to emerge at the same time that the 2015 pension reforms came into force. These issues were underlined by the fact that the first ever unfilled vacancy at the High Court occurred in the 2014/15 recruitment exercise. The then Lord Chancellor asked the SSRB to examine the matter further, in response to which the SSRB conducted a Major Review, gathering detailed evidence over the course of two years. The SSRB reported its findings in 2018.
7. The SSRB's Major Review confirmed that there was evidence of significant and escalating recruitment and retention problems. It identified strong evidence of recruitment difficulties in the High Court and indications of a potential retention problem at this tier, with a number of vacancies caused by early retirements from the High Court and above.<sup>9</sup> The SSRB also found that there was evidence of growing recruitment and retention problems at the Circuit and Upper Tribunal benches, and signs of an emerging issue at more junior levels. In 2017/18 there was a shortfall from a recruitment exercise at the District bench for the first time.<sup>10</sup>
8. It also found that applications from top-ranking criminal, family and public law barristers had fallen, as had those from the commercial sector, the Chancery Bar and London solicitors' firms.<sup>11</sup>

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<sup>8</sup> Executive Summary, Page 3, *2016 Judicial Attitude Survey: Report of findings covering salaried judges in England & Wales Courts and UK tribunals*, February 2017.

<sup>9</sup> Page 103, *SSRB Major Review*

<sup>10</sup> Page 17, *SSRB Major Review: Executive Summary*.

<sup>11</sup> Page 16, *SSRB Major Review: Executive Summary*.

9. The SSRB concluded that the principal cause of the problem was the cumulative impacts of the 2015 public service pension reforms and subsequent changes to the annual allowance and lifetime allowance thresholds.
10. Owing to the reduction in remuneration caused by the introduction of the 2015 pension scheme, the SSRB recommended pay increases of 32% for those in the High Court, 22% for judges at Circuit and Upper Tribunal level and 8% for judges at District level.
11. In response, the Government introduced a new temporary Recruitment and Retention Allowance (RRA), for certain senior salaried judges who were eligible for NJPS in England and Wales to provide a short-term solution to urgent recruitment and retention issues that were highlighted by the SSRB. However, the RRA was introduced as a temporary measure on the basis that it would be followed by a long-term pensions solution.

#### **The case for long-term reform**

12. Judicial recruitment and retention challenges pose serious risks to the effective functioning of the UK's justice system, its reputation, value as a contributor to the UK economy, and the system's ability to attract the best candidates to the bench.

#### *Case delays and backlog*

13. A lack of judges has damaging operational impacts. Cases take longer, with serious consequences across all jurisdictions. Delays in the family courts and the county courts, for example, have a significant impact on children and other vulnerable people, who often rely on swift access to a judge for emergency orders and injunctions. The current shortfall of judges in the family courts has contributed to delays, including in care proceedings involving vulnerable children.

#### *Reputation and commercial value*

14. It is important that the Government takes steps to ensure both the continuing effectiveness of the justice system and its international competitiveness for legal services, particularly in an increasingly competitive international market for commercial litigation. The UK judiciary is respected throughout the world for its independence, integrity and quality – and that reputation draws work to the UK.
15. UK legal services currently contribute around £25 billion (gross value added) to the UK economy, employing over 330,000 people in the UK, two-thirds of whom located outside London.<sup>12</sup> Foreign litigants were involved in 55% of cases in the London Commercial Courts over the last year and the number of nationalities of litigants using the courts has remained above 70 for the last two years, demonstrating

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<sup>12</sup> Page 35, The CityUK, *Legal Excellence, Internationally Renowned: UK Legal Services 2019*

London's reputation as an international hub for dispute resolution.<sup>13</sup> Such cases bring wider benefits to financial and professional business, with international projects engaging UK accountants, actuaries and others, as well as lawyers. In a report for the Law Society, Cambridge Econometrics estimated that £1 of extra turnover in the legal sector stimulates a further £1.39 of spending in the wider economy.<sup>14</sup>

*Attraction of high-quality candidates*

16. It is vital that we continue to attract the highest calibre candidates to judicial office, as a perceived lowering of quality could have significant implications for the judiciary's national and international reputation.
17. The benefits of the JUPRA pension scheme were typically recognised as a key feature of a judicial remuneration package capable of attracting the best candidates.
18. Recruitment challenges cannot be rectified simply through more frequent recruitment rounds. The first issue is capacity, as existing judges are impacted by the training and time needed to induct new judges. The second is that reduced recruitment in recent years has caused disruption to the pipeline for salaried judges at certain tiers. For example, the High Court represents the main candidate pool for Court of Appeal appointments and, subsequently, most Supreme Court appointees.<sup>15</sup>

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<sup>13</sup> Page 1, *Commercial Courts Report 2020: Portland*

<sup>14</sup> Page 3, *Economic Value of the Legal Services Sector: The Law Society of England and Wales (March 2018)*

<sup>15</sup> Page 100, *SSRB Major Review*.

## 2. Objectives for reform and methodology

### Objectives for reform

19. The SSRB's findings make clear that the option of 'doing nothing' in this area would lead to increased recruitment and retention issues, with knock-on implications across the justice system, for the system's worldwide reputation and the UK's ability to attract business.
20. Our main objectives are to reform the pension scheme so that it is sufficiently attractive to provide a long-term solution to our problems of judicial recruitment and retention, while being consistent so far as possible with the principles of the wider 2015 public service pension reforms. These reforms were based on the Independent Public Service Commission's review of public service pension provision which was chaired by Lord Hutton of Furness. The Commission chose four principles that they considered to be the most important factors that should govern the overall design of public service pensions: affordable and sustainable; adequate and fair; support productivity; and transparent and simple.<sup>16</sup> The Commission's final report in March 2011 recommended that public service schemes should have their benefits calculated on a career average rather than final salary basis. They also recommended linking the normal pension age to State Pension age and setting a cost ceiling to keep future costs under control.
21. Our proposals for the reformed scheme are designed to be fair to both those judges who will be remaining in JUPRA, but as members of the modernised, reformed section of the scheme, and those who will be transferring from other schemes such as NJPS. In particular, the scheme has been designed to benefit the whole judiciary and to create a consistent approach for all judges. Although the SSRB did not identify recruitment and retention issues for the fee-paid judiciary, we have also tried to ensure that the reformed scheme is no less beneficial for this cohort compared to NJPS and is workable for their circumstances.
22. **It is our intention for all judges to join the reformed section of JUPRA upon its introduction in April 2022 in order to ensure equal treatment going forwards for all serving judges. It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.**

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<sup>16</sup> Page 51, *Independent Public Service Pensions Commission: Interim Report*, 7 October 2010

## Engagement with the judiciary

23. Owing to our desire to move quickly, we have carried out targeted engagement with a selection of the judiciary, with the aim of building a more sophisticated understanding of the reform measures most likely to meet our policy objectives. We have also had discussions about these proposals with the Judicial Pensions Committee, which includes judges from a range of different judicial offices.
24. We have also conducted detailed analysis of judicial responses to previous consultations on judicial pension schemes to inform our proposals.
25. We consider this formal consultation exercise as the primary vehicle for gathering the detailed views of the judiciary on our proposals for the reformed scheme.

## Methodology

26. In order to assess the impact of our proposed reform models and determine whether they would meet our policy objective of benefiting those judges moving from NJPS to the reformed scheme, MoJ created a representative sample of salaried and fee-paid judges capturing variation in age, potential retirement age, and salary, using Judicial Office data correct as of 1 April 2019. The judge types were selected to include a large proportion of the judiciary and cover a reasonable spread of salary groups.
27. We have assessed the impact of our proposed reforms on several representative examples of judges from various salary groups (based on today's judicial population), taking into account existing pension savings. We have used both the net and annual pension value to demonstrate how accruing benefits under the reformed scheme would impact judges in either JUPRA/FPJPS or NJPS.
28. We have assumed that judges retire at the age of 67 (future State Pension age for many judges who will accrue benefits under the reformed scheme) and live until 92 (average life expectancy for the judiciary), meaning they benefit from their pension for 25 years. We have also assumed that a High Court and Circuit judge will have worked for 15 years and a District judge for 20 years before retiring, based on the average length of service for each office. For fee-paid judges we have assumed the same length of service as their salaried counterparts, and that they will work 30 days spread evenly across the year. For all judges, our analysis is based on the presumption that they have an existing pension pot of £750,000. We acknowledge that not all judges will have the same or a similar amount of existing pension built up before they join the bench. This figure is an estimate based on the lifetime allowance limit and the potential income for those in the legal profession.

29. Our analysis is based on judges receiving all of their benefits from service in either JUPRA/FPJPS or NJPS and comparing this to the benefits that would be accrued in the reformed scheme (from 2022 onwards).
30. Net pension value has been calculated by multiplying a judge's annual pension by 25 (years), adding any lump sums that they may be entitled to and subtracting the amount that they paid in member contributions over their career. Our analysis also takes into account the impact of any annual or lifetime allowances which may apply.
31. The salary groups analysed are:
  - Salary group 7 (which includes District and First-tier Tribunal judges);
  - Salary group 6.1 (which includes Circuit judges);
  - Salary group 4 (which includes High Court judges);
  - Deputy High Court judge; and
  - Deputy District judge.
32. While we have modelled the impact of our reforms on fee-paid judges, it is more challenging to model these examples with certainty due to the considerable range of working patterns.

## 3. The proposed reformed scheme

33. This section outlines how the reformed scheme will be provided for, scheme membership and its key design features. It also contains worked examples of how these changes would impact judges if they were to accrue benefits in the reformed scheme compared to JUPRA/FPJPS or NJPS, using the methodology outlined in Section 2.

### Providing for the reformed scheme

34. We are proposing to bring forward primary legislation when parliamentary time allows to provide for a reformed, modernised JUPRA. In order to do this, we would need to amend the Public Services Pensions Act 2013, which closed existing schemes (e.g. JUPRA) to future accruals. We would also need to amend the Judicial Pensions and Retirement Act 1993 (JUPRA) to enable the provision of a modernised tax-unregistered section of the scheme for future accruals.
35. This would mean that judges in JUPRA prior to April 2022, the point at which the reformed scheme is scheduled to come into effect, would remain in JUPRA from April 2022 but would accrue benefits in a different section of the scheme that will have been modernised in line with the Hutton principles. Those judges who were members of NJPS would transfer into this same modernised section of the JUPRA scheme.
36. The intention is that all other open judicial pension arrangements<sup>17</sup> would close to future accruals in 2022. The reformed section of JUPRA will then be the only scheme in which members can accrue benefits.

### Membership

37. From the date of implementation of the reformed scheme in 2022, all UK judiciary would be eligible for membership of this scheme except where terms and conditions do not include membership of a judicial pension scheme. As outlined above, there are a number of judicial offices in Scotland and Northern Ireland to which these

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<sup>17</sup> The Legacy schemes including the 1981 Scheme established under the Judicial Pensions Act 1981; the current provisions of the 1993 Scheme established under the Judicial Pensions and Retirement Act 1993; the New Judicial Pension Scheme 2015 established under the Judicial Pension Regulations 2015; the Fee Paid Judicial Pensions Scheme established under the Judicial (Fee-Paid Judges) Regulations 2017.

reforms will not apply as the UK Parliament does not have sole competency to legislate for their pension arrangements.

38. Those serving judges who were previously members of JUPRA, FPJPS, NJPS or opted not to be a member of a scheme would all be eligible for membership of the reformed scheme.

## Proposed scheme features

**In summary, we propose to include the following features in the reformed scheme:**

- **A ‘career average’ accrual model**
- **No cap on the number of accruing years in service**
- **Normal pension age linked to State Pension age**
- **Tax-unregistered**
- **Reduced member contribution rates compared to NJPS**
- **Option for members to commute part of their earned pension into a lump sum at a rate of 12:1, with a commutation supplement to compensate for the tax-unregistered status of the scheme**
- **An accrual rate of 2.5% of pensionable earnings (1/40)**
- **A cost control mechanism**

## Scheme comparison

Scheme/Feature	JUPRA/FPJPS	NJPS	Reformed scheme
<b>Accrual model</b>	Final salary	Career average	Career average
<b>Service Cap</b>	20-year limit	No limit	No limit
<b>Retirement age</b>	65 years of age	State Pension age	State Pension age
<b>Tax status</b>	Tax-unregistered	Tax-registered	Tax-unregistered
<b>Accrual rate</b>	2.5%	2.32%	2.5%
<b>Lump sum and supplement arrangements</b>	Automatic lump sum on retirement (2.25 x annual pension) plus a Judicial Service Award payment to compensate for the tax-unregistered status of the scheme.	Option to commute part of earned pension as a tax free lump sum at a rate of 12:1.	Option for members to commute part of their earned pension into a lump sum at a rate of 12:1, with a commutation supplement to compensate for the tax-unregistered status of the scheme.

## Consistency with the Hutton principles

39. We have designed our scheme proposal so that it remains, so far as possible, in line with the principles of the Hutton recommendations, including affordability and sustainability. The proposed scheme contains the following features which are key components of these recommendations:
- pension entitlement based on career average earnings rather than final salary;
  - linking normal pension age to State Pension age;
  - option to commute part of earned pension as a lump sum rather than an automatic lump sum; and
  - introduction of a cost cap mechanism to control the cost of the scheme.
40. These features are discussed in further detail below.

### Career average

41. The career average accrual model under the reformed scheme would work in the same way as it does in NJPS. It is worth highlighting that NJPS provides benefits for both fee-paid and salaried judges and we propose that the career average accrual model in the reformed scheme would mirror this.
42. Every year, a member, would 'bank' an amount of pension in this account at a rate of 2.50% of their pensionable earnings in that scheme year.
43. For full-time salaried members of the judiciary, and those on salaried part-time working arrangements, 'pensionable earnings' would equate to their actual salary in that scheme year. For fee-paid judiciary members, the pensionable earnings would be equivalent to their total pensionable fee income in that scheme year.
44. A judge's final pension would then be made up of the amounts 'banked' each scheme year. It is proposed that, the amounts 'banked' should be index-linked by prices annually until the year a pension is awarded as applies under NJPS.

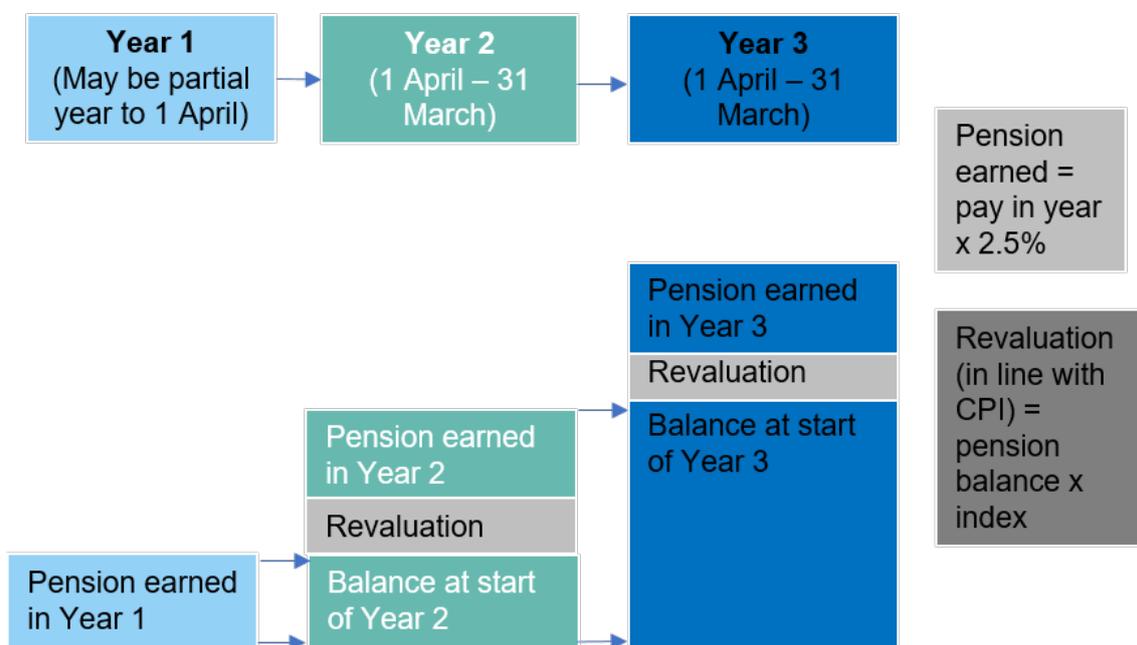
#### Example: Career average

Judge A's pensionable earnings for 1 April 2022 to 31 March 2023 are £112,542.

In that scheme year, Judge A will earn a pension of:

$$£112,542 \times 2.50\% \text{ (accrual rate)} = £2,813.55.$$

How does a career average pension work?



## Annual revaluation (index-linking) of benefits

45. The Government has committed to ensuring that the value of active members' pensions are maintained by applying index-linking annually.
46. For schemes such as NJPS and the proposed reformed scheme, where index-linking by prices is in place or is proposed, the level of revaluation is decided following the Secretary of State for Work and Pensions' annual review of the general level of prices. The reformed scheme would apply the revaluation as directed by a HM Treasury Order that reflects the Secretary of State's decision.<sup>18</sup>
47. We expect that the rate for the reformed scheme would be set to be equivalent to the Consumer Prices Index (CPI), via such an HM Treasury Order. Our proposal is that the pension scheme rules would provide that the revaluation would occur at the beginning of each subsequent scheme year, i.e. April.

<sup>18</sup> This also applies to other public service career average schemes that index benefits by prices or earnings before a pension is awarded.

## Uprating pensions in payment

48. Pensions in payment under the reformed scheme would, like other public service pensions, be increased under the provisions of the Pensions (Increase) Act 1971, sections 59 and 59A of the Social Security Pensions Act 1975 and sections 150 and 151 of the Social Security Administration Act 1992.
49. Deferred pensions would also be increased from the Date of Leaving under the Pension (Increase) Act 1971.

## Service cap

50. The reformed scheme would not have a limit on the number of years that a judge could accrue reckonable pensionable service, matching the provisions set out in NJPS. Under JUPRA/FPJPS, a member can only accrue 20 years of service. The number of years that a judge accrues reckonable pensionable service in the reformed scheme would not count towards the service cap in those schemes which contain this feature i.e. JUPRA and FPJPS.

Comparison with other schemes:

Scheme	JUPRA/FPJPS	NJPS	Reformed Scheme
<b>Service Cap</b>	20-year limit	No limit	No limit

## Normal pension age

51. The age at which members of the reformed scheme would become entitled to receive benefits (without adjustment for early payment) would be the member's State Pension age, in line with the Hutton principles to make sure that public service pensions are affordable in the long term, fair between generations and providing a way to manage future expected increases in longevity.
52. This feature is retained from NJPS and differs from the retirement age of 65 in JUPRA/FPJPS.

Scheme	JUPRA / FPJPS	NJPS	Reformed scheme
<b>Normal pension age</b>	65 years of age	State Pension age	State Pension age

53. The rules surrounding early and late retirement will remain the same as they are currently set out in NJPS, as explained below.

## Early retirement

54. Active and deferred members of the reformed scheme would be entitled to draw their pension after leaving judicial service before State Pension age, initially from the age of 55. While a member would have to make a formal claim to have their pension brought into payment early, the consent of the department would not be required. Early retirement in the reformed scheme would be subject to the member having a minimum qualifying service and an early retirement reduction, determined after consultation with the scheme actuary. An early retirement reduction would reflect the fact that the pension would be in payment for longer than would have been the case if the individual retired at scheme pension age.
55. This is different to JUPRA where it is not possible for a pension to be drawn before the age of 60. If a judge with pension benefits under JUPRA were to take early retirement before the age of 60, their pension award would be preserved until retirement age. If such a judge were to take early retirement between the ages of 60 and 65, their pension award would be payable at the point of retirement, but subject to an actuarial reduction.

## Late retirement

56. If a member wished to take late retirement, they would be eligible for a 'late retirement addition'. The late retirement addition would be calculated by taking the balance in the individual's pension account at 31 March of the previous year, multiplied by a percentage. This calculation would be determined after consultation with the scheme actuary. The late retirement addition would be applied from the April following the individual's attainment of their State Pension age.
57. As with NJPS, if a member were still in service, they would continue to accrue annual pension in the career average scheme on top of this late retirement addition, and the pension earned in late retirement would be added to the member's overall pension balance. In subsequent years after their State Pension age, a late retirement addition would be calculated with reference to the pension account balance at the end of the previous year.
58. JUPRA/FPJPS does not contain any provisions for a 'late retirement addition' for members who decide to retire after the normal pension age of 65.

## Interaction with mandatory retirement age consultation

59. We are consulting on options for changing the mandatory retirement age (MRA) alongside this consultation. If the MRA for judges were to be increased, judges would increase the net value of their pension if they remained in service until reaching a new, higher MRA. This is because scheme members would benefit from extra accrual and, under the reformed scheme, judges would not be impacted by the service cap or lifetime tax allowance if they were to work to the increased MRA.
60. Increasing the MRA would not affect the scheme pension age as this is linked to State Pension age. Regardless of the MRA, judges who have left service could take an unreduced pension at State Pension age. Further analysis can be found in the MRA consultation's impact assessment <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.
61. As explained in the consultation on the MRA, MoJ also intends to amend the current sitting in retirement policy. While certain salaried judges have the opportunity to apply to sit in retirement while drawing a pension, fee-paid judges, in general, are not able to do so under current legislation. We intend to remove the differential treatment by legislating so that fee-paid judges in offices where there is a relevant salaried judge who can apply to sit in retirement also have the opportunity to do so.
62. **The proposed scheme is relevant for future accruals following its introduction in 2022, but it is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.**

## Features to address our recruitment and retention issues

### Tax-unregistered scheme

63. The move to a tax-registered scheme in 2015 most dramatically affected the senior judiciary, since they earn higher salaries and often have existing pension pots from their private sector careers. It is at these more senior levels, specifically on the High Court and Circuit bench, where recruitment and retention issues have been most keenly felt.
64. There are several reasons, closely related to the judiciary's unique constitutional role, why pensions tax issues are particularly relevant to judicial pensions:
- Salaried judges are unable to return to private practice after taking up office and tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades. High earner pension issues are therefore more likely to be a deterrent for those considering joining the judicial ranks than for any other public service careers.
  - The comparatively high level of judicial salaries and the fact that many senior judges accrued significant private pensions before taking up judicial office mean tax charges are felt more acutely and by a significant proportion of the workforce. In particular, many top legal professionals may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case a tax-registered pension scheme could be a disincentive to leave private practice and join the bench. This is a clear impediment to attracting the best talent to the salaried judiciary.
  - In contrast to some others in public service, salaried judges have limited scope to supplement their earnings once they have joined the bench.
65. Recent changes to the pensions tax system, announced on 11 March 2020 as part of the Budget,<sup>19</sup> included an increase to the thresholds at which the tapered annual allowance applies by £90,000. These taper changes result in higher net pay (i.e. salary net of tax and annual allowance charge) for NJPS judges in all salary bands from 2 to 6.2.<sup>20</sup> However, the net pay is still significantly lower than that of JUPRA judges at all salary bands (except band 8), most significantly so for judges in the

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<sup>19</sup> Clause 22, the Finance Bill 2019-21 (currently in Parliament as of 16/07/20) – <https://services.parliament.uk/Bills/2019-21/finance/documents.html>

<sup>20</sup> Correct as of 31<sup>st</sup> March 2020.

higher salary bands. Importantly, while the RRA is no longer being paid to NJPS judges in salary bands 6.1 to 5 (since their net pay post Budget on salary alone is broadly the same as the pre-Budget net pay based on salary plus RRA) the same is not true for salary bands 4 and above, hence the 25% RRA has been retained for eligible judges at these tiers.

66. We are clear that these changes to the annual allowance taper do nothing to offset the impact of lifetime allowance charges, which remain a key barrier to encouraging high quality applicants from the private sector to the bench. The annual allowance charge also remains a significant factor for judges in salary bands 4 and above.
67. Additionally, access to a tax-unregistered scheme was taken into account when judicial pay was reviewed by the SSRB. The only other way of addressing the recruitment and retention issues identified by the SSRB was to offer a significant pay increase to judges. This would be costlier in the short-term as it would require immediate funding in full and it would also be far less flexible as judicial pay increases for judges cannot subsequently be reduced.<sup>21</sup> It would also result in scheme members crossing pension tax thresholds sooner, making the scheme even less attractive to prospective applicants.
68. Therefore, in order to achieve our policy objective of recruiting and retaining members of the senior judiciary, we are proposing that **the reformed scheme would be tax-unregistered**. As outlined above, this would be achieved by reopening JUPRA and modernising it for future accruals.
69. This means that none of the income tax advantages conferred by the legislation governing tax-registered pension schemes would apply but benefits under the scheme would not count towards either the annual allowance or the lifetime allowance under the Finance Act 2004.

Comparison with other schemes:

Scheme	JUPRA/FPJPS	NJPS	Reformed scheme
<b>Tax status</b>	Tax-unregistered	Tax-registered	Tax-unregistered

## Member contributions

70. A reformed scheme which simply replicated NJPS but was tax-unregistered would not address our recruitment and retention problems. A number of additional features are necessary as a result of the scheme's tax-unregistered status.

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<sup>21</sup> Senior Courts Act 1981, s.12

71. The change in tax status means that members would not benefit from tax relief on member contributions. Therefore, under the reformed scheme, we propose that **member contribution rates would be set at a lower rate** to ensure members pay approximately the same average contribution rate to the scheme, net of tax, compared to NJPS.
72. If this change were not made, the average take-home pay of all judges would be reduced. A reduction in average take-home pay would run counter to our aim of addressing our recruitment and retention issues.

## Introduction of uniform contribution rates

73. In addition to lowering member contribution rates compared to NJPS, we have proposed the introduction of a uniform contribution rate for all judges. There would be one rate covering all contributions, for all members.
74. Currently there are three sets of member contribution rates for judges, depending on whether they are accruing benefits in JUPRA, FPJPS or NJPS. As our intention is to move all eligible judges into the reformed scheme in 2022, we propose that there would be a single member contribution structure in the future. Creating a single structure of member contribution rates necessitates a change for some judges in the amount that they contribute towards their pension.
75. In order to determine the most appropriate structure that would apply to all judges in the future, we revisited the principles behind the current tiered contribution rates. The Hutton recommendations proposed that any increases in contribution rates should protect low earners and be progressive, so that high earners pay proportionally higher increases to reflect their more generous pensions. The arguments that the Coalition Government subsequently made for a tiered structure therefore included protecting the low paid by not increasing the employee contributions for those earning less than £15,000 and limiting the increase in employee contributions for those earning up to £21,000. The tiered structure would also allow for tax relief to offset the impact of contribution increases on a take-home pay basis.
76. However, there are no judges in the judicial schemes earning less than £21,000 on a full-time equivalent basis and the tax relief argument does not apply in a tax-unregistered scheme (as member contributions are not subject to tax relief). In addition, the tiered structure causes several issues for both members and the scheme administrator:
  - It may create perceptions of unfairness between members as higher earners pay more despite the fact that no members of the judiciary can be considered to be low earners. In cases where judges have low judicial earnings, this is likely to be because they are fee-paid members of the judiciary and are able to benefit from

continued private practice employment and have the flexibility to increase the number of days they sit.

- The tiered contribution rates cause anomalies at the boundaries of contribution bands that could incentivise perverse behaviours. For example, fee-paid judges may limit the amount of days they sit in order to avoid moving to a higher contribution band and seeing a reduction in their take-home pay.
- Tiering member contributions by earnings can also cause complexities and mean that fee-paid judges with the same earnings pay different amounts due to their working patterns.
- Tiered contribution rates are also more difficult to administer.

77. On this basis, we propose that a uniform contribution rate is more appropriate for the judiciary and provides a solution to the issues outlined above.

78. The Government Actuary's Department (GAD) calculated the expected weighted average of NJPS contribution rates, (both salaried and fee-paid), as 7.1%.<sup>22</sup> As NJPS is a tax-registered scheme, these contributions come out of a member's gross salary. **In a tax-unregistered scheme, the contributions come out of a member's net salary, and so the equivalent rate for this proposal is 4.26%**, based on a marginal income tax rate of 40%.<sup>23</sup>

79. The impact of a uniform contribution rate of 4.26% on different groups of members is illustrated in the below tables.

Comparison between NJPS and uniform contribution rates on salaried members:

Salary Group	NJPS (salaried)			Uniform Contribution Rate			
	Salary	Rate	Annual Cost <sup>24</sup>	Rate	Annual Cost	Difference pa	Difference pm
4	£188,901	8.05%	£8,364	4.26%	£8,047	£316	£26
5	£151,497	8.05%	£7,242	4.26%	£6,454	£789	£66
6.1	£140,289	7.35%	£6,187	4.26%	£5,976	£210	£18
7	£112,542	7.35%	£3,309	4.26%	£4,794	-£1,486	-£124

<sup>22</sup> Judicial Pension Schemes: Actuarial valuation as at 31 March 2016 Report by the Scheme Actuary Table A2 p.29. See: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/813717/jps-2016-valuation-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813717/jps-2016-valuation-report.pdf)

<sup>23</sup>  $7.1\% \times (1 - 40\%) = 4.26\%$

<sup>24</sup> Impact on take-home pay, allowing for both member contributions and income tax relief on those contributions. Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

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Comparison between JUPRA and uniform contribution rates on salaried members:

Salary Group	JUPRA			Uniform Contribution Rate			
	Salary	Rate <sup>25</sup>	Annual Cost <sup>26</sup>	Rate	Annual Cost	Difference pa	Difference pm
4	£188,901	4.57%	£8,630	4.26%	£8,047	£583	£49
5	£151,497	4.43%	£6,708	4.26%	£6,454	£254	£21
6.1	£140,289	4.41%	£6,187	4.26%	£5,976	£210	£18
7	£112,542	4.41%	£4,963	4.26%	£4,794	£169	£14

Comparison between NJPS and uniform contribution rates on fee-paid members:

Role	NJPS (fee-paid) <sup>27</sup>			Uniform Contribution Rate			
	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£26,986	5.45%	£882	4.26%	£1,150	-£267	-£22
Recorder	£20,041	4.60%	£553	4.26%	£854	-£301	-£25
Dep. DJ	£15,704	4.60%	£433	4.26%	£669	-£236	-£20

Comparison between FPJPS and uniform contribution rates on fee-paid members:

Role	FPJPS			Uniform Contribution Rate			
	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£26,986	3.27%	£882	4.26%	£1,150	-£267	-£22
Recorder	£20,041	2.76%	£553	4.26%	£854	-£301	-£25
Dep. DJ	£15,704	2.76%	£433	4.26%	£669	-£236	-£20

80. Our analysis illustrates that moving to a uniform member contribution rate would benefit all salaried judges currently in JUPRA and NJPS judges above salary band 7. Those judges transferring from NJPS in salary band 7 would face a reduction in their take-home pay. This is because they earn between £100,000 and £125,000 and are subject to a reduction in their Personal Allowance by £1 for every £2 that their adjusted income is above £100,000. An individual's Personal Allowance is zero if their income is £125,000 or above. Whilst the loss of tax relief on contributions may

<sup>25</sup> Rate shown is the aggregate of the different member contribution rates that exist in JURA to reflect the tiered contribution structure.

<sup>26</sup> Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

<sup>27</sup> For all fee-paid examples, we have assumed that the judge will work 30 days spread evenly across the year.

result in a reduction in take-home pay for some judges, we think that this is compensated for in terms of the improved benefits to the pension scheme.

81. Fee-paid judges may be impacted negatively as a uniform contribution rate may reduce the take-home pay for this group who would be joining the reformed scheme from either FPJPS or NJPS. It is important to note that the above tables regarding fee-paid judges assume their sitting days are spread evenly across the year. However, contribution rates for fee-paid judges are calculated monthly and subject to varied sitting patterns. Fee-paid judges whose sitting days are concentrated in part of the year could currently pay higher current contribution rates than those reflected in the below tables, and may benefit from the proposed uniform contribution rates. This may also be the case for fee-paid judges who sit significantly more than the representative judge we have used for our analysis. On this basis, some fee-paid judges could benefit from a uniform contribution rate where they have an uneven sitting pattern.
82. Although some fee-paid judges may see their take-home pay reduced as a result of a uniform contribution rate, and they generally earn less from judicial service than their salaried counterparts, they have the ability to increase their income unlike salaried judges. It also removes some of the complexities and unfairness of a tiered structure which can mean that judges with the same earnings contribute different amounts due to their working patterns. We also think that a reduction in take-home pay is compensated for in terms of the improved benefits to the pension scheme.
83. In JUPRA and FPJPS, member contributions are split into Personal Pension Contributions and Dependant Pension Contributions. On retirement, members are refunded their Dependant Pension Contribution if they have no dependants. However, the reformed scheme would follow the approach used in NJPS: member contributions would not be split into Personal Pension Contributions and Dependant Pension Contributions, and there will be no contribution refunds on retirement.
84. **We would welcome any views on the introduction of a uniform contribution rate for the reformed scheme.**

## Optional lump sum commutation

85. The reformed scheme would allow scheme members to take a part of their earned pension as a lump sum. On retirement, members would be able to 'commute' – or give up – some pension in exchange for a lump sum. The commutation rate in the reformed scheme would be 12:1, consistent with the other public service schemes. This means that each £1 of annual pension given up buys £12 of lump sum and any actuarial reduction or enhancement would apply before commutation. This

commutation would have no knock-on effect on pensions for dependants, which would continue to be based on pre-commutation amounts.

86. The maximum amount a member would be able to commute would be 35.7% of their pension, consistent with NJPS.<sup>28</sup>

### **Example: Lump sum commutation**

**Judge A** has a pension of £36,000, after any actuarial reduction or enhancement for early/late retirement has been applied, and would like a lump sum on retirement of £96,000.

This is calculated as:

Commutation lump sum:  $£96,000/12 = £8,000$  (i.e. 1:12 commutation).

To obtain this commuted lump sum, Judge A must give up the amount of pension commuted, in this instance, £8,000.

New pension value:  $£36,000 - £8,000 = £28,000$ .

## **Tax-unregistered commutation supplement**

87. Commutation on its own is less attractive in a tax-unregistered scheme, where tax would generally be payable at a top rate of 45% on any commuted lump sum. The effect of this would be that the 12:1 commutation factor would be worth the equivalent of a 7:1 factor in a tax registered scheme.
88. Commutation should remain a feasible option in order to adhere to the Hutton recommendations, which said: “Lump sums are popular with members and can provide valuable flexibility by giving members a buffer fund to deal with contingencies. Therefore, lump sums should continue to be made available to members of public service pension schemes through commutation.”<sup>29</sup>

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<sup>28</sup> In NJPS, the maximum lump sum is set by rules for tax registered schemes and the limit is generally 25% of the HMRC pension valuation (subject to a maximum of 25% of the member’s remaining Lifetime Allowance). Where the member commutes 35.7% of their pension, the lump sum represents 25% of the HMRC pension valuation. More information can be found in the HMRC pension tax manuals: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063240>.

<sup>29</sup> Page 84, paragraph 3.106, *Independent Public Service Pensions Commission: Final Report*.

89. Initial GAD evidence since the introduction of commutation following the 2015 reforms<sup>30</sup> demonstrates that over 30% of public service scheme members take the maximum lump sum, highlighting that commutation is a popular feature for members. It is considered necessary to provide them at an appropriate value and it can be safely assumed that take-up would be considerably less if nothing were done to address the impact of the tax due on a lump sum in a tax-unregistered scheme.
90. **The tax-unregistered status therefore necessitates a commutation supplement to be provided to members so commutation remains an attractive option.**

### Example: Commutation supplement

Commutation supplement would be equal to:  
$$r \times \{\text{commuted lump sum}\} \div (1-r)$$

Where 'r' is the additional rate of income tax

This calculation is required to cover the tax due on the commuted lump sum and the tax that would be liable on the commutation supplement itself. Therefore, the total commutation supplement is higher than the tax due on the lump sum itself.

Using **Judge A** as an example. Their £96,000 lump sum would be taxed at a top rate of 45%. The commutation supplement would be worked out as follows:

$$0.45 \times (£96,000) \div (1-0.45) = £78,545$$

£78,545 would be paid to Judge A to account for tax and leave the member with a net lump sum of £96,000.

## Accrual rate

91. One of the main objectives of the reformed scheme is to ensure that it benefits the whole judiciary, and in particular, that no judge (including more junior or fee-paid judges) is worse off than they would be if they had remained in NJPS. Therefore, we are proposing that **the accrual rate in the reformed scheme would be 2.50% (1/40<sup>th</sup>)**, the same as it is in JUPRA and FPJPS, an increase compared to NJPS where it is 2.32%. This increase in accrual rate, combined with the other features outlined above, would ensure that judges currently in NJPS would be in at least the same, if not a better position, under the reformed scheme. It would also provide

<sup>30</sup> See for example NHS Pension Scheme: Actuarial valuation as at 31 March 2016 Advice on assumptions Graph 10.5, page 49.

some benefit improvements for members who may lose out marginally on their take-home pay due to the change in contribution rates.

92. The increase in accrual rate would also minimise the impact of judges who would be accruing benefits under the reformed scheme compared to JUPRA/FPJPS. It is important to note that the judicial pension arrangements were affected disproportionately in 2015 compared to the rest of the public sector. For example, judges received no improvement to the scheme’s accrual rate to offset the increase in retirement age, the removal of the separate lump sum or the switch to a career average pension scheme.

**Example: How accrual rate works (as illustrated under the career average section):**

Judge A’s pensionable earnings for 1 April 2022 to 31 March 2023 are £112,542.

In that scheme year, Judge A will earn a pension of:

$$£112,542 \times 2.50\% \text{ (accrual rate)} = £2,813.55$$

Comparison with other schemes:

Scheme	JUPRA/FPJPS	NJPS	Reformed scheme
<b>Accrual rate</b>	2.5%	2.32%	2.5%

## Dependants’ pension

93. The reformed scheme would pay a pension to a surviving spouse or civil partner upon a member’s death. This pension would be equal to 3/8 (37.5%) of the scheme member’s pension, and would be payable for life. Provisions relating to surviving adults and calculation of benefits would mirror those in the wider public service schemes.
94. Further detail on dependants’ pensions will be outlined in the second consultation on the draft regulations of the scheme.
95. The proposed scheme is relevant for future accruals following its introduction in 2022 and would contain the features described above but, it is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.

## Worked examples

96. As outlined in the methodology section, we have assessed the impact of our proposed scheme on representative examples of judges from different salary groups to understand how the reformed scheme would impact them in comparison to the benefits they would have accrued under either JUPRA/FPJPS or NJPS had they remained in one of these schemes until retirement. We have assessed this in terms of net pension value which takes into account the total pension they would receive in retirement, plus any lump sums which may have been available, and subtracting the member contributions they paid over their career and any pension taxes which would have been due. It also looks at the change to annual pension.
97. The tables below demonstrate the impact of our proposed scheme on judges from Salary Groups 4, 6.1, 7 and on Deputy High Court judges and Deputy District judges. The methodology for our analysis is outlined in Section 2 of the consultation.

Comparison between NJPS (salaried) and the reformed scheme in terms of net value of pension:

Salary Group	Length of Service (years)	Net Value of Pension		Change in net value
		NJPS	Reformed scheme	
4	15	£938,719	£1,650,239	<b>£711,520</b>
6.1	15	£799,411	£1,225,565	<b>£426,154</b>
7	20	£951,113	£1,310,889	<b>£359,776</b>

Comparison between NJPS (fee-paid) and the reformed scheme in terms of net value of pension:

Judicial Office	Length of Service (years)	Net Value of Pension		Change in net value
		NJPS	Reformed scheme	
Deputy High Court	15	£221,557	£235,746	<b>£14,189</b>
Deputy District	20	£173,510	£182,918	<b>£9,408</b>

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Comparison between JUPRA and the reformed scheme in terms of net value of pension:

Salary Group	Length of Service (years)	Net Value of Pension		Change in net value
		JUPRA	Reformed scheme	
4	15	£1,792,264	£1,650,239	<b>-£142,025</b>
6.1	15	£1,340,777	£1,225,565	<b>-£115,212</b>
7	20	£1,434,123	£1,310,889	<b>-£123,233</b>

Comparison between FPJPS and the reformed scheme in terms of net value of pension:

Judicial Office	Length of Service (years)	Net Value of Pension		Change in net value
		FPJPS	Reformed scheme	
Deputy High Court	15	£262,523	£235,746	<b>-£26,776</b>
Deputy District	20	£205,296	£182,918	<b>-£22,378</b>

Comparison between NJPS (salaried) and the reformed scheme in terms of annual pension:

Salary Group	Length of Service (years)	Annual Pension		Change in value
		NJPS	Reformed scheme	
4	15	£42,567	£70,838	<b>£28,271</b>
6.1	15	£35,688	£52,608	<b>£16,920</b>
7	20	£40,692	£56,271	<b>£15,579</b>

Comparison between NJPS (fee-paid) and the reformed scheme in terms of annual pension:

Judicial Office	Length of Service (years)	Annual Pension		Change in net value
		NJPS	Reformed scheme	
Deputy High Court	15	£9,392	£10,120	<b>£728</b>
Deputy District	20	£7,287	£7,852	<b>£565</b>

Comparison between JUPRA and the reformed scheme in terms of annual pension:

Salary Group	Length of Service (years)	Annual Pension				Change in annual pension excl. lump sum
		JUPRA		Reformed scheme		
		Pension	Lump sum	Pension	Lump sum	
4	15	£70,838	£150,766	£70,838	£0	<b>£0</b>
6.1	15	£52,608	£118,369	£52,608	£0	<b>£0</b>
7	20	£56,271	£126,610	£56,271	£0	<b>£0</b>

Comparison between FPJPS and the reformed scheme in terms of annual pension:

Judicial Office	Length of Service (years)	Annual Pension				Change in annual pension excl. lump sum
		FPJPS		Reformed scheme		
		Pension	Lump sum	Pension	Lump sum	
<b>Deputy High Court</b>	15	£10,120	£22,769	£10,120	£0	<b>£0</b>
<b>Deputy District</b>	20	£7,852	£17,667	£7,852	£0	<b>£0</b>

98. For the examples above it is assumed that salaries increase at the same rate as inflation, and as a consequence the pension in the current final salary JUPRA scheme is the same as that in the career average reformed scheme. If a member's salary increased faster than inflation (e.g. because they received a promotion mid-way through their career, or because general salary awards were above inflation), the pension from the current final salary JUPRA scheme would be higher than that from the career average reformed scheme.

## 4. Further scheme information

### Partnership Pension Account

99. Under NJPS, members of the judiciary are able to join the Partnership Pension Account (PPA) which is a tax-registered stakeholder scheme. The PPA is offered to all judicial office holders eligible to join NJPS, and can be opted for in lieu of joining the career average scheme. By opting for the PPA, a member is not able to accrue benefits in the career average scheme.
100. **We propose removing the option of a Partnership Pension Account alongside the reformed scheme. This would also apply to current PPA members, who from 2022 would only be eligible for membership of the reformed scheme.**
101. We would welcome views on whether removing this option would impact members.

### Judges in receipt of Transitional Protection Allowance

102. Judges who chose to opt out of NJPS and were eligible instead to receive a 'Transitional Protection Allowance' (TPA) alongside their salary from April 2015 would also be eligible to join the reformed scheme.
103. MoJ agreed to provide the TPA to the judiciary as an option for those judges for whom joining a tax-registered scheme would result in significant financial impacts because of the implications of pre-existing tax-protected allowances. This would no longer be an issue under the reformed scheme as it is a tax-unregistered scheme. We therefore propose that the TPA would stop being paid to those judges who are in receipt of it upon the implementation of the reformed scheme and they would then be eligible to accrue benefits in the reformed scheme.
104. We would welcome any views on our proposal to remove the TPA and moving those judges into the reformed scheme.

## Leaving the reformed scheme

105. We propose to keep the regulations surrounding leaving the reformed scheme the same as those for leaving NJPS. This includes the rules concerning early retirement and late retirement which are outlined earlier in this consultation. We also propose to replicate the provisions set out in NJPS concerning deferment, partial retirement,<sup>31</sup> medical retirement, death in service, the nomination of beneficiaries, dependants' pensions and children's pensions.

## Cost control mechanism

106. The Public Service Pensions Act 2013 provides for the costs of the public service schemes to be measured via regular actuarial valuations of the schemes, and for the establishment of a cost control mechanism to ensure that these costs remain sustainable.

107. It should be noted that the JUPRA scheme currently has no cost control mechanism. Since the reformed scheme would involve re-opening JUPRA and modernising it in line with the Hutton recommendations, a cost control mechanism for JUPRA would be provided for in legislation when parliamentary time allows and a new baseline for the cost control mechanism would be provided.<sup>32</sup>

108. The cost control element of the 2016 valuation process was paused in January 2019, following the Court of Appeal's judgment in the *McCloud* and *Sargeant* cases. HMT have recently announced, alongside their consultation on wider public service pension reform, that the pause should be lifted. Accordingly, the Government is preparing to complete the cost control element of the 2016 valuations and HMT has announced that the cost cap mechanism will be reviewed by the Government Actuary.

109. The outcome of the cost control element of the 2016 valuations will not affect the proposed design of the reformed scheme. We will not make any changes to this proposal as a result of a breach of the floor or ceiling of the cost cap mechanism arising from the 2016 valuations.

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<sup>31</sup> MoJ intends to amend the current sitting in retirement policy. While certain salaried judges have the opportunity to apply to sit in retirement while drawing a pension, fee-paid judges, in general, are not able to do so under current legislation. We intend to remove the differential treatment by legislating so that fee-paid judges in offices where there is a relevant salaried judge who can apply to sit in retirement also have the opportunity to do so.

<sup>32</sup> In accordance with HM Treasury directions, as per the Public Service Pensions Act 2013.

## **Administration**

110. We would also amend legislation when parliamentary time allows so that the provisions set out in the Public Service Pensions Act 2013 with regard to the administration of the scheme also apply to the reformed scheme. These provide for certain information about benefits and the scheme to be provided to members, as well as the records and regulatory oversight that a scheme manager must have over a public service pension scheme.

## **Governance framework**

111. In line with the Hutton recommendations and other public service pension schemes, the standardised governance framework, established in the Public Service Pensions Act 2013 would apply to the reformed scheme. Although the details would be covered in our second consultation document, there would be a Responsible Authority for the scheme, a Scheme Manager responsible for administering the scheme and two governance boards, a Pension Board and a Scheme Advisory Board, in line with the requirements of the Public Service Pensions Act 2013. The primary responsibility of the Judicial Pension Board, as set out in the Public Service Pensions Act 2013, would be to assist the Scheme Manager in relation to the compliance with scheme regulations and relevant legislation with regards to the governance and administration of the scheme.

## **Further scheme details**

112. We have reached the stage in our policy development where we have designed the main features that would be included in the reformed scheme and this consultation seeks your views on those features. Further consideration is needed on the details of other aspects of our scheme, which would be set out in the second consultation document that would cover specific scheme regulations.

## Interaction with other consultations

113. The proposals addressed in this consultation paper have been developed in coordination with ongoing work surrounding judicial pensions and policy. MoJ is concurrently consulting on amendments to the Fee-Paid Judicial Pension Scheme (FPJPS), proposals to address the discrimination identified in the *McCloud* judgment, and the judicial mandatory retirement age. While it is expected that interactions between consultations will be limited, respondents may find it useful to cross reference these consultations when providing a response.
114. We have considered the potential interactions between MoJ consultations below.

### Proposals to address the discrimination identified in the *McCloud* judgment

115. We are consulting on proposals to address the discrimination for all affected judges in scope of the *McCloud* judgment. In 2015, judges were moved from JUPRA and FPJPS into NJPS. However, older judges remained in JUPRA. In December 2018, the Court of Appeal held that the age-based protections offered to older judges constituted unlawful direct age discrimination. Our proposals set out how we intend to rectify this discrimination. The proposals can be found here: <https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud>

### Amendments to the Fee-Paid Judicial Pension Scheme

116. MoJ is consulting on amendments to FPJPS to allow for the accrual of pension benefits for pre-7 April 2000 fee-paid judicial service, where service continues up to or beyond that date, in the light of *O'Brien 2*. Following the related *Miller* litigation, the three-month time limit for *O'Brien* claims only runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment. We introduced a moratorium for *O'Brien* claims on 5 April 2013, taking effect from 2 December 2012.<sup>33</sup>
117. Respondents who fall within scope of the *McCloud* proposals and who will have additional fee-paid pension entitlement as a result of *O'Brien 2* and/or *Miller* may wish to consider the two consultation papers in parallel.

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<sup>33</sup> Or 1 February 2013 for Northern Ireland offices.

118. The consultation will be open for responses until 18 September 2020. The consultation paper can be found at <https://www.gov.uk/government/consultations/fee-paid-judicial-pension-scheme-amendments>

## **Judicial mandatory retirement age**

119. MoJ is also consulting on proposals to increase the judicial mandatory retirement age (MRA). Current legislation sets the MRA for most judicial office holders at the age of 70. The Lord Chancellor has a constitutional duty to provide resources for the effective operation of courts and tribunals and this includes considering policies which may promote the appointment and retention of judicial office holders. The proposals in the consultation on the judicial MRA are intended to support the resourcing and operation of courts and tribunals, and they propose raising the mandatory retirement age to either 72 or 75.

120. The consultation paper can be found at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

# Questionnaire

The department welcomes the views of consultees relating to all sections of this consultation by 16<sup>th</sup> October 2020. In particular, comments are welcomed on the following areas:

## Features of the scheme

- Do you have any views on the implementation of a uniform contribution rate?
- What are your views on our proposal to remove the option to open a Partnership Pension Account in lieu of joining the reformed scheme?
- Do you have any views on the proposal to cease paying the Transitional Protection Allowance on introduction of the reformed scheme and move judges who opted for the TPA into the reformed scheme?
- Do you have any views on any of the other scheme features that have been outlined in this consultation document?

## Equalities

- Do you have any concerns that the proposals could result in individual groups being disproportionately affected by the reforms?
- We would welcome comments on whether the equality impacts of our proposals have been correctly identified.

## Attractiveness of the scheme

- If you are already a member of the judiciary, would the pension changes proposed make you more inclined or less inclined to encourage suitable people to apply to the judiciary?
- If the reformed scheme would not make you more inclined to encourage other suitable people to apply, what would make the proposals more attractive?
- If you are not already a member of the judiciary, but a prospective applicant to the bench, would the pension changes proposed influence your decision on whether you want to pursue a career within the judiciary?
- If the reformed scheme would not influence your decision on wanting to pursue a career within the judiciary, what additional proposals would?
- Do you think the proposed scheme would contribute towards addressing the recruitment issues highlighted in the consultation, in particular attracting high quality candidates from the private sector?
- If you do not think the reformed scheme would address these issues, what would make the proposals more attractive to high quality candidates?

**Proposals for a reformed judicial pension scheme**  
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- Do you think the proposed scheme would contribute towards addressing the retention issues highlighted in the consultation?
- Are there any other scheme features or benefits that are not addressed in this consultation that you would like to see included?

However, this list is not meant to be exhaustive or exclusive, and the department welcomes views of consultees on all aspects of the scheme.

# Glossary

**Accrual rate:** The rate, as a proportion of pensionable earnings, at which pension builds up for each year of membership.

**Accrued pension:** The amount of pension built up in the final salary or career average (reformed) scheme up to the current date.

**Active scheme members:** Members paying contributions and accruing benefits in the scheme.

**Actuarial adjustment:** The adjustment applied to a member's accrued pension to take account of the fact that it is being paid early, or in some cases late. The adjustment is determined by the scheme manager after consultation with the scheme actuary or taking into account factor tables prepared by the scheme actuary. The factor tables are calculated in a way that aims to reflect fairly the fact that benefits are expected to be in payment for a longer, or a shorter, period.

**Career average scheme:** A defined benefit scheme that gives scheme members a pension based on pensionable pay/fees earned in each scheme year. Amounts of pension earned in previous years have index-linking applied in order to maintain their value.

**Commutation / Commutation rate:** Commutation allows a member to exchange an amount of annual pension in return for a retirement lump sum. The rate at which pension is given up for a lump sum is known as the commutation rate.

**Consumer Prices Index (CPI):** An index of inflation published by the Office for National Statistics. This is the current basis for determining cost of living increases for public sector pensions.

**Defined benefit pension scheme:** A pension scheme where the pension is related to a member's salary or some other value fixed in advance. Final salary and career average schemes are examples of such a scheme.

**Employer cost cap:** The employer cost cap is a mechanism designed to ensure a fair balance of risks between scheme members and the taxpayer. Each public service pension scheme must set a cap, expressed as a percentage of pensionable earnings of all members of the scheme. If a future valuation shows that the costs of the scheme have risen more than two percentage points above the cap, or fallen two percentage points below the cap, action must be taken to bring the costs of the scheme back to the cap.

**Fee-Paid Judicial Pension Scheme (FPJPS):** Following the *O'Brien* litigation in 2013, this pension scheme was established for eligible fee-paid judges. This scheme offers benefits in line with the scheme for salaried judges (JUPRA).

**Final salary scheme:** A defined benefit scheme that gives members a pension based on their final salary, the accrual rate and the period of service.

**Index-linking addition:** The amount of revaluation added to a scheme member's accrued pension at the beginning of each scheme year.

**In-service index-linking:** The rate at which amounts of career average benefits are revalued while the scheme member remains in pensionable service as an active member of the reformed scheme.

**Miller judgment:** In December 2019, the Supreme Court held that the three-month time limit for claims to be made in relation to *O'Brien 1* and *O'Brien 2* only runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment.

**Normal pension age (NPA):** The age at which pension benefits would be payable in full.

**O'Brien judgment:** Decision by the Supreme Court (*O'Brien v Ministry of Justice [2013] UKSC 6*) in February 2013 that fee-paid judges had been treated less favourably than relevant salaried judges, contrary to the Part-Time Work Directive with respect to pension provision. This led to the establishment of the FPJPS, which mirrored as far as possible the arrangements for salaried judges set out in JUPRA.

**O'Brien 2 judgment:** Judgment by the Court of Justice of the European Union 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 Part-Time Work Directive on 7 April 2000 must be taken into account for the purposes of calculating a retirement pension.

**Pension Board:** The Pension Board is to support the Scheme Manager in matters relating to good governance and administration. This will include both departmental and judicial representatives and will be independently-chaired.

**Pensionable earnings:** Pensionable earnings are the earnings against which the scheme member and the employer will pay contributions and is the salary or fees used to calculate the pension earned in any given year.

**Pensionable service:** A period where the scheme member is an active member.

**Pensions Increase Act 1971:** This Act makes provision for increases and supplements to be paid on certain pensions and related benefits.

**Reckonable service:** Service which counts toward pension benefits, including options for members to purchase 'added pension' contributions.

**Responsible Authority:** The Responsible Authority has the power to make scheme regulations. The Responsible Authority in the reformed scheme is to be the Lord Chancellor.

**Scheme Advisory Board:** The Scheme Advisory Board is a group which sits at the request of the Responsible Authority to consider the desirability of any potential changes to schemes.

**Scheme Manager:** The Scheme Manager is responsible for managing and administering the scheme and any statutory pension scheme connected with it.

**State Pension age (SPA):** The age at which the State Pension would normally become payable.

**Treasury Order:** A direction from HM Treasury confirming the amount of indexation to be applied to in-service career average benefits at the beginning of each scheme year. This reflects provisions in the Public Service Pensions Act 2013.

**Valuation:** A report, carried out by the scheme actuary, of the financial position of a defined benefit pension scheme, which informs the future contribution rates needed.

## Annex A: List of consultees

We particularly invite responses from representatives from or members of the organisations listed below, listed in alphabetical order. This list is not comprehensive and we welcome views from all members of the public.

### United Kingdom

- President of UK Supreme Court
- Senior President of Tribunals
- The United Kingdom Association of Women Judges

### 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
- Chartered Institute of Legal Executives (CILEx)
- 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
- Judicial Pensions Committee (England)
- 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 Coroners' Society (England and Wales)
- The Law Society (England and Wales)

### **Northern Ireland**

- Council of Employment Judges
- First Minister and Deputy First Minister of Northern Ireland
- 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 Presidents Group
- Secretary of State for Northern Ireland

### **Scotland**

- Judicial Appointments Board for Scotland
- 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 paper.

## Annex B: Judicial Salaries from 1 October 2019

Salary Group	Salaries with effect from 01/04/2019 <sup>34</sup>
1	£262,264
1.1	£234,284
2	£226,193
3	£215,094
4	£188,901
5+	£160,377
5	£151,497
6.1	£140,289
6.2	£132,075
7	£112,542
8	£89,428

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<sup>34</sup> Correct as of 31 March 2020

# How to respond

## How to respond:

Please send your responses to [reformedpensionconsultation@justice.gov.uk](mailto:reformedpensionconsultation@justice.gov.uk) by 16<sup>th</sup> October 2020.

## Complaints or comments

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

## Representative groups

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

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed 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).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

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').

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

For more information see the Ministry of Justice [Personal Information Charter](#).

## **Publication of response**

A paper summarising the responses to this consultation will be published in early 2021.



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