Ministry of Justice

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

January 2020

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Presented to Parliament by the Lord Chancellor and Secretary of State for Justice pursuant to section 22(2)(b) of the Public Service Pensions Act 2013

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Introduction

This report is laid before Parliament in accordance with section 22(2)(b) of the Public Service Pensions Act 2013 ("the 2013 Act"). It relates to a proposal to make regulations under section 3 of and paragraph 9 of Schedule 3 to the 2013 Act.

The purpose of the regulations is to amend the Judicial Pension Regulations 2015 ("the JPR 2015"), which established the Judicial Pension Scheme ("the JPS 2015") in order to make provision for the contributions payable by members of the scheme.

The proposed regulations provide for the contribution rates applicable in the scheme year ending 31 March 2020 to continue to apply from 1 April 2020. As this proposal involves a change to a protected element of the JPR 2015, the Ministry of Justice (MoJ) has consulted persons or representatives of those likely to be affected by the change with a view to reaching agreement, and now lay this report before Parliament.

Background

In 2010, the Independent Public Service Pensions Commission was set up and chaired by Lord Hutton. In 2011, his report made a number of recommendations for reforming public service pensions. The public service pension reforms legislated for under the 2013 Act were designed to last for at least 25 years. The provisions in this legislation include a high threshold if future governments decide to change the features of public service pension schemes.

As a way of giving effect to this commitment, there are specified procedural requirements when making changes to “protected elements” for a period of 25 years. Member contribution rates under the relevant schemes, are one of these protected elements.

Section 22 sets out the procedure to be followed in the event that the responsible authority (the Lord Chancellor in relation to the JPR and JPS 2015), proposes to make changes that impact on elements of the scheme which are subject to enhanced protection. These elements are protected from modification until 31 March 2040 (the protected period), unless the prescribed procedure is followed. The requirements are twofold. Where a change is proposed to a protected element during the protected period, the responsible authority must consult those who appear likely to be affected, or representatives of those persons, with a view to reaching agreement and must lay a report before Parliament.

When the JPR 2015 were made, the relevant member contribution rates and earning thresholds were fixed for a set period of four years initially. During this period, the contribution rates remained unchanged and the earning thresholds were uprated yearly (with the exception of the £150,001 band). It was then expected that the rates and earning thresholds would be reviewed following an actuarial valuation of the scheme.

In 2019, the relevant part of the actuarial valuation process of public service pension schemes which has a bearing on future member contribution (the cost control mechanism) was paused by HM Treasury due to the uncertain impact of the Court of Appeal’s December 2018 judgment in the *McCloud* case, which found that the transitional protection offered to some judges as part of the 2015 pension reforms was unlawfully discriminatory.

Ahead of the expiry of the initial period set for contributions in the JPR 2015 on 31 March 2019, the MoJ was required to take steps to ensure the necessary provisions were made to enable the continuing operation of the scheme from 1 April 2019 onwards. Therefore, on 1 April 2019 the Judicial Pensions and Fee-Paid Judges’ Pension Schemes (Amendment) Regulations 2019 came into force, which rolled-over the existing member contribution rates and earning thresholds in JPR 2015, as an interim measure for one year, until 31 March 2020.

Since then, the UK Supreme Court refused HM Government permission to appeal against the Court of Appeal’s decision in McCloud, and the matter has now been remitted to the Employment Tribunal for consideration of how the difference in treatment should be addressed. While work is being progressed to give effect to this decision, it is still not possible to assess with certainty the value of the JPS 2015 to members.

Current member contribution rates

The JPR 2015 requires scheme members to pay contributions to the scheme as a condition of membership. Regulation 124 of the JPR 2015 makes provision for member contribution rates to 31 March 2020. The current earning thresholds and contribution rates are shown in the table below:

The Judicial Pension Regulations 2015

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

Policy objective and proposed changes

Having regard to the desirability of not making a change to the protected elements of a scheme within the protected period, the justification for this proposal is that the current legislative arrangements for member contribution rates will expire on 31 March 2020. It is therefore necessary to make further provision as proposed in sufficient time to continue having arrangements in place for member contributions to enable the effective operation of the scheme.

Given the ongoing uncertainty about the value of public service pensions after April 2015, the MoJ proposes to maintain existing contribution rates from 1 April 2020 onwards. This approach will provide greater certainty for affected scheme members by setting out the rates which are expected to apply beyond the 2020-21 scheme year.

The MoJ is also proposing that, in future, earning thresholds will be uprated every year on 1 April using the Consumer Price Index (CPI) rate in the 12 months to the previous September, for all thresholds below £150,001. CPI is already used to annually uprate the earning thresholds in some other public service pension schemes.

In summary the proposed changes are to:

a) maintain the existing member contribution rates in the JPS 2015 for the financial year 2020-2021 and each year thereafter, until such time as alternative provisions are made;

b) uprate the earning thresholds under £150,001 per annum of the member contribution rate structure in line with the CPI on and from 1 April 2020;

c) uprate the earning thresholds each year with the increase in the CPI in the 12 months to the previous September, rounded up to the nearest pound.

If the CPI rate is negative, or amounts to zero, the earning thresholds will remain unchanged.

Consultation

As referred to above, in accordance with section 22(2)(a) of the 2013 Act, the Lord Chancellor consulted the judiciary and judicial associations.

The Ministry of Justice carried out a consultation with those affected by the changes from 25 October to 22 November 2019 with a view to reaching agreement on the proposed changes.

Of the ten responses received, three agreed with the proposal, one adopted a neutral stance and two responded by raising an issue outside the scope of the consultation. The other four respondents did not support some aspects of the proposal, principally due to wider uncertainty around public sector pensions – notably the ongoing work to provide a remedy to address the unequal treatment identified in the recently concluded McCloud litigation, and the relevant decision by HM Treasury to pause one element of the actuarial valuation process. Against this backdrop, and until there is greater certainty, the MoJ remains of the view that our proposal represents a pragmatic and rational approach to setting contribution rates and thresholds. The MoJ does not consider that the points raised by the respondents represent sufficient cause to not proceed with the proposed approach. The MoJ has been clear in its communications with affected judges that it intends to revisit the question of appropriate levels of contribution rates and thresholds once these wider issues have been resolved.

These points were addressed in the consultation response issued on 6 January 2020 in addition to individual engagement with the consultees.

Separately, in accordance with paragraph 2(2) of Schedule 2 to the 2013 Act, the Lord Chancellor satisfied the requirement to consult the relevant Secretary of State before making judicial pension regulations affecting an office with jurisdiction exercised exclusively in Scotland. The Secretary of State for Scotland is content with the proposal.

Related matters

The Judicial Pension Scheme – The Lord Chancellor is responsible for administration of the overall Judicial Pensions Scheme. This comprises the following schemes:

- **The 1981 Scheme**. Salaried judges appointed prior to 31 March 1995 are eligible to belong to a scheme established under the Judicial Pensions Act 1981. It is a final salary scheme and non-registered for tax purposes.

- **The Judicial Pensions and Retirement Act 1993**. This scheme is for salaried judges. It is a final salary scheme and non-registered for tax purposes.

- **Judicial Pensions Scheme 2015**. The JPS 2015 is for salaried and fee-paid judges. It is a career average scheme and registered for tax purposes.

- **Fee-Paid Judicial Pension Scheme 2017**. The FPJPS 2017 is for eligible fee-paid judges. It is a final salary scheme and non-registered for tax purposes.

Related provisions - The Judicial Pensions (Fee-Paid Judges) Regulations 2017, which established the FPJPS 2017, also make provision for the contributions payable by scheme members up to 31 March 2020. The MoJ proposes to make the same change to this scheme with provision to do so concurrently under the same statutory instrument. The requirements under section 22 of the 2013 Act do not apply to making this change. However, the MoJ included this proposal in the consultation exercise referred to above.

Actuarial Valuation and McCloud - Public service pension schemes conduct periodic valuations under the Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014, set by HM Treasury. These valuations measure the costs of paying scheme benefits, and will inform the future contributions to be paid so that contributions are commensurate with a scheme's liability to pay benefits as they fall due. On 30 January, the Chief Secretary to the Treasury announced that the employer cost cap mechanism, part of the valuation, was paused in light of the potentially significant but uncertain impact of the McCloud case. Since then, the Supreme Court refused the government permission to appeal against the Court of Appeal's decision in the case of McCloud, and the matter has now been remitted to the Employment Tribunal for consideration of how the difference in treatment should be remedied. While work is being progressed to give effect to this decision, it is not possible to assess with certainty the value of the JPS 2015. The MoJ aims to resolve the situation as quickly as possible but the issues involved are complex and require decisions across Government departments. The MoJ has prioritised this and is working with HM Treasury to progress matters.

Impact

For scheme years commencing from 1 April 2020, the MoJ is proposing to amend member contribution rates and earnings thresholds as set out above. The cost of accruing pension scheme benefits will remain the same for most members but will be reduced for some members (as they will pay contributions at a lower rate than they would have done if no changes were made to the earnings thresholds). An impact assessment has not been prepared as no impact on business, charities or voluntary bodies or on the public sector is foreseen.

As at 31 March 2019, there were circa 3,500 active members of the JPS 2015[1]. As noted above, if the MoJ does not implement this proposal, it would not be able to deduct member contributions for JPS 2015 members and this would have an impact on the effective operation of the scheme.

[1] Judicial Pensions Scheme Annual Report and Accounts 2018 – 19 (for the year ended 31 March 2019)

Conclusion

Parliament is invited to note the reason for proposing to extend the current contribution rates and uprate the related earning thresholds in the JPR 2015 and that alongside this report, the related draft Judicial Pensions and Fee-Paid Judges' Pension Schemes (Contributions) (Amendment) Regulations 2020 have been laid in Parliament for approval under the affirmative resolution procedure.

Lord Chancellor and Secretary of State for Justice, Robert Buckland QC MP

Ministry of Justice, 20 January 2020

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