



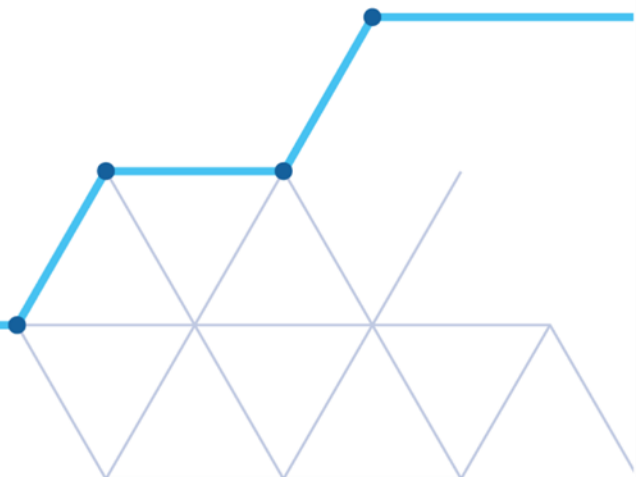
Ministry
of Justice

Amendments to the Fee-Paid Judicial Pension Scheme (FPJPS)

Response to consultation

10 December 2020

Protecting and advancing the principles of justice





Ministry
of Justice

Amendments to the Fee-Paid Judicial Pension Scheme

Response to consultation

Response to consultation carried out by Ministry of Justice

This information is also available at www.gov.uk/moj

Contents

Introduction and contact details	2
Executive summary	3
Background	7
Responses to specific consultation questions and proposals	10
Conclusion and next steps	21
Consultation principles	22
Annex A – List of respondents	23
Annex B – Comments on eligibility issues for fee-paid offices referred to in consultation responses	24

Introduction and contact details

This document is the government response to the consultation on proposals for amending the Fee-Paid Judicial Pension Scheme, which launched on 24 June 2020 and closed to responses on 18 September 2020.

It sets out:

- the background to the consultation;
- a summary of the responses to the consultation;
- a detailed response to the specific questions and issues raised in the consultation; and
- next steps.

This response is available in alternative formats on request to:
feepaidconsultation@justice.gov.uk

This report is also available at:

<https://www.gov.uk/government/consultations/fee-paid-judicial-pension-scheme-amendments>

Questions

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

Executive summary

The litigation

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

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

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

Developing the remedy

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

On 24 June 2020 we published a consultation on our remedy proposals.¹

¹ <https://www.gov.uk/government/consultations/fee-paid-judicial-pension-scheme-amendments>

In the consultation document we explained that, because FPJPS was designed to mirror as far as possible the scheme for salaried judges established under the Judicial Pensions and Retirement Act 1993 (JUPRA), the current provisions of FPJPS can be extended to cover the entire period during which a relevant salaried judge could have been a member of JUPRA, i.e. from 31 March 1995 until 31 March 2015.²

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

The consultation document also included proposals to update the list of eligible judicial offices in the schedule of fee-paid offices in the FPJPS Regulations.

Our proposals are based on the present position in light of the *O'Brien 2*, *Miller* and other related litigation but may be subject to change depending on ongoing litigation.

Responses to the consultation

We received 106 responses to the consultation. Most respondents were supportive of our proposed changes to FPJPS. In proceeding with our proposals outlined in the consultation, we will have regard to particular issues raised.

A number of respondents raised concerns about eligibility for fee-paid pension benefits. We are clear that fee-paid office holders should be eligible for benefits where an appropriate salaried judge, eligible for judicial pension benefits, can be identified. In some cases, as part of this process of determining eligibility, it is appropriate to consider factors such as appointment by the Lord Chancellor or the requirement for a legal qualification.

Respondents supported the possibility of including a facility in FPJPS to commute small pensions for a cash sum, known as trivial commutation, and we intend to take this proposal forward. However, there are a number of important issues that require further consideration. We outline these and our proposed next steps in our response to consultation Question 2 below.

² Subject to transitional protection in relation to the introduction of the Judicial Pension Scheme 2015.

Other issues raised in responses to the consultation are discussed more fully in the main section of this document.

The wider context: other proposals on judicial pensions policy

In July 2020 we published further proposals with implications for judicial pensions arrangements:

- Proposed response to *McCloud* – addressing the discrimination identified in the case of *McCloud [2018] EWCA Civ 2844*. The consultation document can be found at:

<https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud>

- Future reform of the judicial pension scheme – proposals for a reformed judicial pension scheme to address judicial recruitment and retention issues. The consultation document can be found at:

<https://www.gov.uk/government/consultations/consultation-on-a-reformed-judicial-pension-scheme>

- Mandatory retirement age – options around changing the mandatory retirement age for judicial offices. The consultation document can be found at:

<https://www.gov.uk/government/consultations/consultation-on-judicial-mandatory-retirement-age>

We expect to publish the government response to these consultations in early 2021.

Next steps and timing

We plan to lay regulations in early 2022 so that the amendments to FPJPS to provide the *O'Brien 2/Miller* remedy can come into force in April 2022.

Once the amendments to FPJPS have come into effect, all retired fee-paid judges who are eligible for a revised pension will be contacted by MoJ. In the interim, fee-paid judges who consider that they have a claim³ are invited to contact the department's Judicial Claims Team (if they have not already done so) at JudicialClaimsTeam@justice.gov.uk providing, where available, records of their fee-paid service before 7 April 2000.

³ Including claims for service after 7 April 2000 as a result of the Miller litigation.

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

As a result of *O'Brien 2* and *Miller* there are approximately 4,600 judges who have new, or incremental, claims for fee-paid pension benefits. The Judicial Claims Team is in the process of agreeing service records with these judges.

As an interim measure, pending the proposed legislative changes to FPJPS, we have started making payments in lieu of pension to retired judges and dependants in this cohort, including lump-sum arrears where appropriate. We will continue to do this until amendments to FPJPS come into force.

We have been providing the Employment Tribunal with regular updates on this work.

Background

1. We published the consultation paper 'Amendments to the Fee-Paid Judicial Pension Scheme' on 24 June 2020. This was in light of the November 2018 judgment of the Court of Justice of the European Union in *O'Brien*⁴ on pension entitlements associated with pre-7 April 2000 fee-paid judicial service and the December 2019 judgment of the Supreme Court in *Miller*⁵ on time limits for claims.
2. In the consultation document we invited views on our proposals to amend the Fee-Paid Judicial Pension Scheme (FPJPS) to provide a pension remedy for eligible fee-paid judges in respect of pre-7 April 2000 service where judicial service continues up to or beyond that date. We also invited comments on our proposal to update the list of eligible judicial offices in the schedule to the FPJPS Regulations.
3. The consultation period closed on 18 September 2020 and this document summarises the responses received and sets out how we will take them into account when making the required amendments to FPJPS.
4. Annex A contains a list of associations that responded.

Economic impact assessment

5. In the consultation document we said that we had not carried out an economic impact assessment because:
 - our proposals to amend FPJPS are intended to implement the remedy required under *O'Brien* 2 and *Miller* rather than set out policy choices;
 - our proposals will have no economic impact on businesses, charities, or the voluntary sector; and
 - the costs associated with our proposals exist as a public funding liability and are under consideration in terms of departmental expenditure implications.
6. We consider that these reasons remain valid in light of consultation responses, which means that no further assessment is required at this stage. We will review the position before formally laying any amendments to the FPJPS Regulations.

⁴ *O'Brien v Ministry of Justice (Case C-432/17)*

⁵ *Miller and others v Ministry of Justice [2019] UKSC 60*

Equalities impacts

7. We invited respondents to flag potential equality impacts of our proposals.
8. In respect of one office, a respondent argued that the proposed service credit values would negatively impact those in part-time judicial office, which may have a disproportionate impact on women. We note these concerns in paragraphs 45 to 47 below and confirm that we will carefully consider them in developing the *O'Brien 2/Miller* remedy in accordance with the requirement to have due regard to the public sector equality duty⁶.
9. In our consultation we said that the proposed amendments to FPJPS would be introduced to remedy historical less favourable treatment of fee-paid judges. Whilst being a part-time worker is not a protected characteristic under the Equality Act 2010, our starting point has been that the extension of fee-paid pension provisions before 7 April 2000 is aimed at eliminating discrimination between fee-paid and salaried judicial office holders and therefore overall, has positive equality impacts. We outline our approach to office eligibility in paragraph 46 below.
10. Although we remain of the view that our proposals do not have adverse effects, we will review and update our equality statement periodically during our development of detailed amendments to the FPJPS Regulations.

Welsh language

11. We will provide a Welsh translation of the Executive summary.

Summary of responses

12. We received a total of 106 responses to the consultation. Of these:
 - 12 were sent on behalf of various judicial associations;
 - one was from a judge who has been closely involved in developments concerning the pension entitlement of fee-paid judges following the *O'Brien* litigation, and his response was endorsed by a further 74 retired judges; and
 - the remaining 19 were sent by individual judges.

⁶ Equality Act 2010

13. The main issues raised by respondents were:

- eligibility for membership of FPJPS;
- the government's proposed methodology for accruing pension benefits for service prior to 7 April 2000;
- the suggested inclusion of a facility in FPJPS for trivial commutation; and
- a number of issues specific to individual respondents.

14. We are grateful to all those who considered our proposals and provided a response.

Responses to specific consultation questions and proposals

Question 1

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

15. One respondent made a number of comments and suggestions in relation to this question:
- He pointed out that the scope of those eligible for the *O'Brien* remedy should be widened to include judges who obtained an extension of time for making a claim from the Lord Chancellor.
 - He suggested that in situations where a member has overpaid contributions beyond the 20-year service cap as a result of purchasing benefits in the Fee Paid Judicial Added Years Scheme (FPJAYS) or the Fee Paid Judicial Additional Surviving Adult's Pension Scheme (FPJASAPS), they should be offered the option to transfer those contributions into the Judicial Additional Voluntary Contribution Scheme (JAVCS).
 - He made some suggestions for amending the wording of the FPJPS Regulations.
16. One respondent to the consultation queried whether refund provisions would also apply to members who had previously purchased benefits in the Judicial Added Years Scheme (JAYS) in JUPRA. We consider that such members should receive a refund of contributions in a similar way if the inclusion of fee-paid service before 7 April 2000 means that the member exceeds the reckonable service cap.

Our response

17. We will take account of these points in our development of the FPJPS amendments and reflect them in drafting where appropriate.
18. Paragraph 27 of the consultation addresses the situation for members who have previously purchased additional benefits within FPJAYS and, after the implementation of the *O'Brien 2* ruling, will exceed the cap of 20 years accrual. In those cases, the member would receive a refund of contributions, with compensation of an interest-like nature, bringing them back to 20 years. Whilst we consider that there may be issues associated with us providing a facility whereby refund amounts

could be transferred directly into JAVCS, we will look into the possibility. It would in any case be open to individuals to pay the proceeds into JAVCS themselves if they wish (subject to eligibility and tax allowances).

19. If a member has purchased benefits in both FPJAYS and JAYS, we will refund the contributions from FPJAYS first.

Question 2

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

20. A number of respondents welcomed the suggestion of introducing a facility for commutation of small pensions.
21. It was noted in one response that the payment would be taxed at a member's marginal rate, which may prove prohibitively high for some. This is true, but it should be noted that all future pension payments within the scheme would be taxed at a member's marginal rate as well, so we do not consider this to be an inconsistency.
22. One respondent was of the view that it would be preferable for members to be able to combine judicial pensions rather than commute the smaller benefit into a cash sum. In many cases small pensions relating to single offices may be held by people who have larger combined FPJPS benefits, taking account of entitlements for additional offices.

Next steps on trivial commutation

23. In light of the responses received, we consider it would be appropriate to take forward the possibility of a trivial commutation facility for FPJPS. Some members of FPJPS may accrue relatively small amounts of reckonable service if they have a limited number of sitting days and may, at retirement, prefer to receive an actuarially calculated cash lump sum rather than a stream of small periodic pension payments.
24. However, there are a number of important issues we need to consider, including:
- consistency with limits on facilities available for tax-registered schemes;
 - the maximum pension value for commutation (if different to the limit for a tax-registered scheme);
 - applicability to individual fee-paid office pension entitlements or to aggregate FPJPS entitlements (or both);

- applying trivial commutation to individual office pension entitlements might provide more flexibility in line with the partial retirement provisions in FPJPS. On the other hand, it might be unfair to allow a member with three small pension values to take advantage of commutation, when a member with a single, large pension value could not;
- the minimum age that should apply;
- availability for active, deferred and retired members;
- the payment of a service award to reflect the Judicial Service Award normally payable in respect of a FPJPS lump sum payment;
- restrictions that might apply where, for example in cases of divorce, a pension is affected by a pension sharing order; and
- the possibility of allowing “small pot” amounts to be taken under FPJPS Regulations as an alternative to trivial commutation.

25. In light of the issues outlined above, we may need to consult further on the design of a trivial commutation facility. This would not prejudice the development and introduction of the amendments to FPJPS necessary to implement the remedy required under the *O'Brien 2* and *Miller* judgments.

26. Trivial commutation would extinguish all further entitlements in respect of the pension concerned but it is important to note that there would not, in any case, be an obligation to commute a small pension.

Question 3

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

27. Respondents broadly supported our proposed approach to provide pension benefits for eligible judicial service before 31 March 1995.
28. One respondent asked whether judges who had more than 20 years' reckonable service across fee-paid and salaried offices would have to pay more than 20 years of contributions under the FPJPS Regulations. We can confirm that members will not be expected to pay contributions in excess of the 20-year cap. However, where this means that a reconciliation of contributions is required (because a member has paid contributions that are now superseded by contribution requirements relating to earlier service before 7 April 2000), it will generally only be possible to refund contributions once the FPJPS Regulations have been amended.

29. One respondent said that our proposal to offer the election to transfer at retirement could be simplified. The choices set out were:
- Pro-rata benefits under pre-95 FPJPS provisions calculated with reference to the pension benefit entitlement of a relevant salaried judge under the provisions of the Judicial Pensions Act 1981 (JPA81), and other statutory schemes, but scaled by the fee-paid judge's reckonable service (i.e. number of days sat) as a proportion of qualifying service (i.e. length of time in post), in line with the pro-rata principle.
 - Transferring reckonable service to the current FPJPS provisions in line with the provisions set out in the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995. Although the election is made at retirement, the transfer could take effect from any day on which an appropriate salaried judge would have been able to transfer accrued reckonable service to JUPRA.
30. The respondent commented that, for some office holders, the best outcome could always be achieved by applying, or excluding, a choice of benefit calculations under the current or pre-95 FPJPS provisions.

Our response

31. We acknowledge that there could be default best options for FPJPS members in some scenarios. However, we still consider that these choices should be provided to individual scheme members, noting that they will need to be provided with sufficient information to make an informed choice.

Question 4

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

32. Respondents broadly supported our proposed methodology.
33. We have separately received queries about whether certain changes of appointment constitute appointment to a different office for the purpose of this proposal.

Our response

34. We consider that where an individual has been appointed to an office that has a different eligibility entry in either the FPJPS Schedule or Schedule 1 to JUPRA, this is a different office.

35. For example, an individual with service as a Recorder before 31 March 1995, taking up appointment as a Circuit Judge after that date, would have been appointed to a different office. However, an individual with service as an Assistant Recorder before 31 March 1995, taking up appointment as a Recorder after that date, would not have been appointed to a different office.
36. The latter example is consistent with our proposal to treat all service as an Assistant Recorder as if it were service as a Recorder for pension entitlement purposes.⁷

Question 5

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

37. One respondent expressed a view that, since this choice is available for full time salaried judges under JUPRA, it should be available to fee-paid judges, even though the specific circumstances are unlikely to arise.

Our response

38. We consider that this choice should be provided.

Question 6

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

39. One respondent raised a concern that fee-paid judges with a 15-year JPA81 salaried comparator, who choose to transfer into the post-30 March 1995 part of FPJPS, may slightly overpay contributions due to the discrepancy between the service multiplier of 1.25 and the 1.33 transfer rate applied to dependants' contributions. He suggested that where such judges transfer into the post-30 March 1995 part of FPJPS they should, for simplicity, pay contributions for the period up to transfer at the rate applicable to an appropriate salaried judge.

Our response

40. We consider the respondent's suggestion could be a pragmatic resolution for this issue, subject to detailed evaluation of the impacts.

⁷ This treatment reflects the removal of the role of Assistant Recorder, following which all office holders became Recorders.

Questions 7 and 8

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

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

41. We received a number of responses to this question concerning eligibility of offices for a judicial pension and, in some cases, associated limitation dates and service credit values.
42. Several respondents argued that all tribunal members, irrespective of whether they are legally qualified or if there is an appropriate salaried judge, should be eligible for judicial pension arrangements.
43. In the context of our proposals for non-judicial pension arrangements applicable to some office holders before and after 31 March 1995, one respondent referred to pension inconsistencies amongst First-tier Tribunal offices and said that there might have been a disproportionate impact on women who, historically, might have been more likely to take up fee-paid roles. We provide further comment on this point below under 'Responses not related to a specific consultation question'.

Our response

44. We are working to ensure that all of the fee-paid offices that are eligible for a judicial pension are included in the FPJPS Schedule, with appropriate limitation dates where relevant. We expect to lay a statutory instrument in Parliament in early 2021 so that the additional offices set out in Annex C of our consultation (and four additional offices since identified) can be formally included in FPJPS with effect from 1 April 2021.
45. In some cases, however, there will be additional changes that we will need to include in the substantive amendments to FPJPS that are expected to come into effect on 1 April 2022. These changes will include provisions on service credit values in FPJPS for service in certain fee-paid judicial offices to reflect the non-judicial pension scheme that the relevant salaried judge would have been in at that time. Where appropriate, we might need to consult further with affected office holders on these proposals.
46. The main criterion for including a fee-paid office in FPJPS is whether an appropriate salaried judge can be identified. For some offices the position has been established through litigation. This reflects the overall requirement that judges should not be

treated less favourably because of their fee-paid status. In some cases we might need to look at additional factors such as: whether the appointment has been made by the Lord Chancellor; a requirement for a legal qualification; and the views of the devolved governments and sponsoring departments where applicable.

47. We have provided comments at Annex B on some of the eligibility issues for fee-paid offices that were referred to in consultation responses. We will carefully consider the responses we have received, and any responses to further consultation, in accordance with the requirement for us to have due regard to the public sector equality duty.
48. We continue to receive queries about eligibility for certain judicial offices through the Employment Tribunal process. We will respond to the individuals concerned regarding our position on their eligibility. The final amended FPJPS Regulations will include any further eligible judicial offices as required.
49. In cases where an office holder is not eligible for a judicial pension, they might instead be eligible for an auto-enrolment pension. We have placed a statement on the judicial intranet in this respect, setting out the present position for non-legal tribunal members.⁸

⁸ <https://intranet.judiciary.uk/2020/10/01/moj-statement-non-legal-tribunal-members-and-automatic-enrolment-pensions-act-2008-september-2020-update/>

Responses not related to a specific consultation question

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

50. One respondent voiced concerns regarding the proposed treatment for some offices in the Property Chamber of the First-tier Tribunal. The particular issues raised were that:

- There is no relevant difference between the salaried judges in the Property Chamber and other salaried judges.
- The rationale for some salaried comparators, and proposed limitation date and service credit values are irrational and opaque. They could raise equality issues because, for the periods concerned, it was more likely that women would have taken up fee-paid judicial offices.
- The absence of litigation in relation to the treatment of some salaried offices does not mean that it is not in dispute and any concessions by salaried judges should not bind fee-paid office holders.

Our response

51. In developing amendments for FPJPS we will carefully consider the points that have been raised in the context of the requirement for a remedy that means fee-paid judicial office holders should not be treated less favourably than appropriate salaried judges, and the requirement for us to consider the equality impacts of policy proposals.

Information availability

52. Several respondents took the opportunity to raise concerns about the level of pension entitlement information that is made available to scheme members.

53. One point raised was that a lack of pension projection information ahead of retirement means that it is difficult for judges to plan for retirement. A second point raised was that pension entitlement information, issued when payments commence, does not set out detailed calculations, making it difficult for scheme members to check whether entitlements are correct.

Our response

54. Our recent focus has been on providing interim pension payments to retirees and dependants, prioritising vulnerable scheme members.

55. The data requirements and calculations associated with individual pension entitlements can be very complex and the position has been exacerbated by the need to establish and take account of historic fee-paid service in the context of the *O'Brien 2/Miller* litigation.
56. We expect the position to become more straightforward as the substantive remedy progresses. In the meantime, we are working with the Government Actuary's Department and scheme administrators to improve the information that members receive routinely, and in response to ad hoc requests.

Training days

57. One respondent queried the treatment of training days in the calculation of member contributions.
58. In the past, fee-paid judges were paid a reduced fee rate for training days. However, for these days, members' contributions were calculated using the full daily rate.

Our response

59. We can now confirm that members' contributions for these days will be calculated using the actual (lower) fee paid where applicable. Where necessary, a reconciling adjustment will be applied to members' pension accounts.

Tax issues

60. One respondent sought confirmation that the FPJAYS scheme is registered for tax purposes.
61. Another respondent commented that payments of pensions arrears are made in a single tax year, whereas they may actually relate to a number of tax years.

Our response

62. We can confirm that whilst FPJPS itself is tax-unregistered, both FPJAYS and FPJASAPS are tax-registered schemes.⁹ For the *O'Brien 2/Miller* remedy we will need to consider:
- how the tax registration of these schemes could be extended back to cover the period before 7 April 2000;
 - a facility to allow eligible members to make retrospective purchases; and

⁹ The JAVCS scheme is also a tax registered scheme.

- any consequential tax issues that members might face.

63. The scheme administrator is now in a position to inform members, on request, of the tax years to which components of a pension arrears payment relate. We hope this will help members with any communications they have with their tax offices.

Partial retirement and sitting in retirement

64. Several respondents said that fee-paid judges appointed to two chambers in the First-tier Tribunal had been incorrectly precluded from partially retiring from one chamber whilst continuing to sit in another.

65. One respondent pointed out that, in some cases, salaried judges can retire and take up similar appointments as fee-paid judges, whereas a fee-paid judge would not have the same opportunity (of drawing a pension and continuing to sit in retirement in the same role).

Our response

66. For the purpose of the partial retirement provisions in FPJPS, appointment to multiple chambers of the First-tier Tribunal constitutes appointment to one office and therefore the present administrative treatment is correct. This position was communicated in the government response to the consultation on the draft FPJPS Regulations (published on 27 February 2017) and it is reflected in the FPJPS Regulations. The same position applies for appointments to the Upper Tribunal.

67. We addressed the issue of fee-paid judges sitting in retirement in our recent consultation on the mandatory retirement age for judicial office holders¹⁰ in which we said:

MoJ accepts that fee-paid judges are part-time workers for the purposes of the Part Time Workers Regulations 2000, and as such are protected against unjustified unequal treatment on the grounds of part-time status, as compared with a full-time salaried comparator. Consultees should be aware that, in the case of sitting in retirement, 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.

68. We expect to publish a government response to the mandatory retirement age consultation in early 2021.

¹⁰ <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age/>

Other issues raised and our responses

Further consultation

69. One respondent suggested that we should carry out a further consultation on proposed amendments to FPJPS once we have considered the responses referred to in this document.
70. In view of the broadly supportive responses to our proposed approach to implement the *O'Brien 2/Miller* remedy, at present we do not consider it will be necessary to carry out a further consultation. We will, however, continue to engage with judicial associations and representatives.
71. We might need to consult further on the pension terms for some fee-paid judges for periods when an appropriate salaried judge had non-judicial pension arrangements. As discussed above, we may also need to consult on the features of a FPJPS trivial commutation facility.

Support for remote working

72. Another respondent raised concerns about remote working facilities for fee-paid judges during Covid-19 restrictions, affecting pay and pension accrual.
73. We have set out our policy on support for judges during Covid-19 restrictions on the judicial intranet:
<https://intranet.judiciary.uk/practical-matters/coronavirus-covid-19/>.

Mandatory retirement age

74. One respondent said that District judges who were appointed as fee-paid judges before 1995 should have the right to continue working until the age of 72, otherwise there would be discrimination.
75. We are separately considering how the preserved compulsory retirement ages held by some judges in respect of historical fee-paid service can be maintained.

Issues specific to individuals

76. Some respondents raised issues relating to their personal circumstances and we have responded on an individual basis.

Conclusion and next steps

We are grateful for all the responses to our consultation, which were generally supportive of our approach. In progressing the required amendments to the FPJPS Regulations we will take account of the particular suggestions and concerns that have been raised.

During 2021 we will be developing the detailed technical drafting that is required for the amendments to FPJPS. This will take some time, because we will need to ensure that the changes are technically and legally robust. We plan to lay a statutory instrument in early 2022 so that the amendments to the FPJPS Regulations can come into force on 1 April 2022.

In the meantime, we will continue to progress interim payments to eligible retirees and work with the scheme administrators to provide information to scheme members on their entitlements.

Fee-paid judges who consider they have a claim¹¹ are invited to contact the department's Judicial Claims Team (if they have not already done so) at: JudicialClaimsTeam@justice.gov.uk providing, where available, records of their fee-paid service before 7 April 2000.

¹¹ Including claims for service after 7 April 2000 as a result of the Miller litigation.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

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

Annex A – List of respondents

- Part-time Sheriffs' Association
- Mental Health Review Tribunal for Northern Ireland
- Association of District Judges
- Council of Appeal Tribunal Judges
- Competition Appeal Tribunal
- Council of HM Circuit Judges
- Tribunals Forum
- The Sheriffs' Association
- The Court of Session
- First-tier Tribunal Property Chamber
- Council of Employment Judges
- Council of Immigration Judges
- A retired judge whose response was endorsed by 74 other retired judges
- 19 individual judges

Annex B – Comments on eligibility issues for fee-paid offices referred to in consultation responses

Office	Comment
Non-legal Tribunal Members	We do not consider these offices are eligible for a judicial pension, but office holders might instead be eligible for an auto-enrolment pension.
Legal Chair of the Family Health Services Appeal Authority	<p>This office is included in the FPJPS Schedule under “First-tier Tribunal Judge (where a legal qualification is a requirement of appointment)”</p> <p>However, we need to give further consideration to any service limitation date/service credit values that should apply for this office and we are also addressing this through the Employment Tribunal.</p>
Chair of the Social Security Appeal Tribunal	<p>This office is included in the FPJPS Schedule under “First-tier Tribunal Judge (where a legal qualification is a requirement of appointment)”</p> <p>However, we need to give further consideration to the pension entitlement that should apply for service in this office before 31 March 1995 and we are also addressing this through the Employment Tribunal.</p>
Temporary Sheriff	Our understanding is that this office preceded the current office of Part Time Sheriff. It is not included in the list of offices in FPJPS eligible for a judicial pension. We are considering whether this office would be eligible for pension benefits in FPJPS for service before 7 April 2000.
Valuer Chair of the First-tier Tribunal Property Chamber (Residential Property)	<p>This office is already included in the Schedule to FPJPS as “Member (Chair Only) First-tier Tribunal (Property Chamber) Residential Property) (but only in relation to service in this office after 1st July 2013).”</p> <p>We expect to correct the service limitation date from 1 July 2013 to 30 June 2013 in the statutory instrument referred to in paragraph 44.</p>

<p>Fee-paid Deputy Adjudicators to the Land Registry</p>	<p>We said in our consultation document that we propose to add this office to the FPJPS Schedule but only in relation to service after 1 January 2009, with a service multiplier of 0.67 applicable to service before that date.</p>
<p>Members of Mental Health Tribunal for Northern Ireland</p>	<p>The pension status of this office is currently being considered by the Industrial Tribunal in Northern Ireland.</p>
<p>Retired judges sitting on parole boards</p>	<p>Although serving judges who sit on parole boards are in pensionable appointments,¹² we consider that there is a distinction between their position and that of retired judges sitting on parole boards – i.e. they are not comparable roles for the purpose of pension eligibility.</p>
<p>Police Appeals Tribunal Chairs</p>	<p>We are considering the pension status for this office.</p>
<p>Deputy Judge Advocate</p>	<p>We consider this office is already eligible for a judicial pension because it is included in Schedule 1 to the Judicial Pensions and Retirement Act 1993.</p> <p>The office of Assistant Judge Advocate General is also included in Schedule 1 to the Judicial Pensions and Retirement Act 1993, and the office of Temporary Assistant Judge Advocate General is already included in the FPJPS Schedule.</p>

¹² Eligible judges can only claim judicial pension service for Parole Board sittings where it forms part of the sitting commitment of their eligible judicial office.



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