



Ministry
of Justice

A Reformed Judicial Pension Scheme

Response to consultation

This response is published on 25 February 2021





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Response to consultation carried out by the Ministry of Justice.

Contents

Introduction and contact details	2
Ministerial foreword	3
Executive summary	4
Overview	5
Summary of responses	7
Responses to the consultation – scheme features	9
Responses to specific questions	28
Impact assessment, equalities and Welsh language	37
Next steps	38
Consultation principles	39
Annex A – List of respondents	40
Annex B – Updated table to reflect 2020 pay award on member contributions	41

Introduction and contact details

This document is the post-consultation report for the consultation paper 'Proposals for a reformed judicial pension scheme', which was published on 16 July 2020 and which closed to responses on 16 October 2020.

It covers:

- the background to the consultation;
- a summary of consultation responses;
- the government response to specific questions and issues raised by respondents; and
- next steps.

If you have any questions about the consultation process or if you wish to receive a copy of this document in an alternative format, please email the Ministry of Justice at **reformedpensionconsultation@justice.gov.uk**.

Ministerial foreword

Reform of the judicial pension scheme has been a personal priority of mine as Lord Chancellor, and I am very pleased that we continue to make significant progress in this area. The publication of the government's response to our consultation on reforming the judicial pension scheme takes us another step closer to fulfilling our commitment to deliver a pensions-based solution to the recruitment and retention issues facing the judiciary.

I am confident that, with this reform package, we will continue to recruit and retain high-calibre judges, and that our judiciary will remain the envy of the world. The exceptional work of judges across the country over the past year, to ensure that courts and tribunals services kept running despite the challenges of COVID-19, has served as a reminder of the pivotal role judges play in the administration of justice. Their efforts will be vital in helping the justice system to continue to recover.

I intend to implement the changes to the judicial pension scheme outlined in this document as quickly as possible. The aim is that, subject to parliamentary time allowing the necessary legislation to be passed, the reformed scheme will come into effect in April 2022.



Rt Hon Robert Buckland QC MP

Lord Chancellor and Secretary of State for Justice

Executive summary

The consultation paper setting out our proposals for a reformed judicial pension scheme was published on 16 July 2020. It invited comments on the proposal to provide for a modernised scheme for future accruals from April 2022, subject to parliamentary time and approval of the necessary legislation. The proposed reforms were intended to deliver on the commitment the government made to develop a pensions-based solution to the serious recruitment and retention problems identified by the Senior Salaries Review Body (SSRB) in its Major Review of the Judicial Salary Structure, published in 2018.

We proposed that many features of the reformed scheme would be in line with the main principles of the 2015 pension reforms while retaining some key elements of the pension scheme set out in the Judicial Pensions and Retirement Act 1993 (JUPRA).

We received a total of 39 responses to the consultation, including 16 from judicial associations (representing a significant proportion of the judiciary). Overall, the responses we received acknowledged that the reformed scheme would contribute to resolving the recruitment and retention issues that we currently face. The responses were also positive about many of the proposed features of the reformed scheme which were frequently described as a significant improvement on the New Judicial Pension Scheme (NJPS), introduced in 2015.

We also received some negative responses on certain features. In particular, strong views were expressed about our proposal to introduce a uniform member contribution rate of 4.26%. Several judicial associations were concerned about the impact that this change would have on the take-home pay of Salary Group 7 judges currently in NJPS. We are therefore giving judges the option of mitigating this implication of moving to the reformed scheme, allowing them to make reduced contributions to the scheme in return for a commensurate reduction in the accrual rate. This option will last for a fixed period of three years, after which judges who have taken the option will move to the uniform contribution rate of 4.26%.

Save for this additional feature, we intend to implement the reformed scheme in line with the proposals set out in the consultation document we published in July 2020. We think that the responses we have received provide robust support for the reformed scheme and reaffirm our view that it will help achieve our main objective of resolving the serious recruitment and retention issues identified by the SSRB.

Overview

1. The consultation paper setting out our proposals for a reformed judicial pension scheme was published on 16 July 2020. It proposed that judges currently 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, subject to the passage of the necessary legislation, move into the reformed scheme from April 2022 and accrue benefits under it.
2. The proposed reforms were intended to deliver on the commitment the government made to develop a pensions-based solution to the serious recruitment and retention problems identified by the Senior Salaries Review Body (SSRB) in its Major Review of the Judicial Salary Structure, published in 2018. They also aimed to equalise future treatment across the judiciary by moving all judges into the one scheme.
3. We proposed that many of the features of the reformed scheme would be in line with the main principles of the 2015 pension reforms. For this reason, we proposed a career average accrual model, no restriction on the number of accruing years in service and linking the normal pension age to State Pension age (or 65 years if this is higher). Our proposals would also allow members to commute part of their annual pension in exchange for a one-off lump sum on retirement.
4. The reformed scheme would, however, retain some key elements of JUPRA, notably its tax-unregistered status. Several of the scheme features we proposed flowed 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; and a commutation supplement would also be paid to members who commute their pension in exchange for 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.
5. We proposed that the reformed scheme would be open to all eligible salaried and fee-paid judicial office holders from April 2022, subject to parliamentary time and approval of the necessary legislation. 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 decided to opt out of the scheme.

Proposals for a reformed judicial pension scheme

Response to consultation

6. The consultation, which sought views on these proposals, closed to responses on 16 October 2020. This report summarises the responses received and sets out the government's position that all aspects of the reformed scheme will be implemented as outlined in the July consultation document but with the addition of an option that will allow members of the judiciary, moving to the reformed scheme, to reduce their contribution rate temporarily in exchange for a reduction in their accrual rate. This new option is intended to mitigate the immediate impact that the uniform contribution rate will have on the take-home pay of certain judges.
7. A list of judicial associations and organisations that responded to the main consultation document is at Annex A.

Summary of responses

8. We received a total of 39 responses to the consultation. This included 19 responses from individual judges and 16 from judicial associations (representing a significant proportion of the judiciary). We also received two responses from associations representing lawyers, one from an independent think tank and a response from a member of the public.
9. The feedback received on our proposals for introducing a reformed scheme was generally positive. Several responses commented on the divisive impact that the 2015 reforms have had on the judiciary and welcomed our design proposals for the reformed scheme.
10. Many judicial associations, especially those representing senior members of the judiciary, acknowledged the proposed reforms as a significant step towards resolving our current recruitment and retention issues, which is a key objective of the reformed scheme. The High Court Judges' Association commented on the constructive way in which the consultation was framed and welcomed the proposals, which they felt:
"would make a major contribution to resolving the problems of recruitment and retention that followed the decision to create the NJPS."
11. The Association of Her Majesty's District Judges in their response also welcomed the reforms and that the scheme will be tax-unregistered. The Council of Appeal Tribunal Judges also broadly supported the reformed scheme, commenting:
"It will go a long way towards solving the problems arising from the NJPS being registered."
12. The Council of Her Majesty's Circuit Judges welcomed:
"recognition by MoJ of the severity of the problem of recruitment to the Circuit Bench."
13. We did receive some responses which raised concerns, notably around the introduction of a uniform member contribution rate and its impact on certain judges. We have outlined our proposed approach to this issue later in this response.
14. The Association of Her Majesty's District Judges commented that the proposal to introduce a uniform contribution rate:
"has been commented on adversely by a significant number of our members. To ameliorate the impact on our members we propose that the contribution rate for those transferring from NJPS should be staggered over a 2 year period."

15. The Council of District Judges (Magistrates' Courts) in Northern Ireland also commented:

“A uniform contribution rate for the Reformed Scheme can only be supported by the Council if it does not have a negative cost impact upon District Judges (MC).”

16. Our consultation response carefully considers all the responses received, including the above, and outlines our position on each of the scheme features that we proposed.

Responses to the consultation – scheme features

Methodology

17. The consultation paper set out the methodology and scenarios used when modelling how the reformed pension scheme would compare to JUPRA/FPJPS and NJPS. We received two responses that questioned this methodology and the scenarios we used. The Council of District Judges (Magistrates' Courts) (Northern Ireland) did not agree with the assumption that a District judge would retire at 67, have 20 years of service before retirement or have built up a pension pot of £750,000 before retirement.
18. Separately, one District judge also commented on the assumption regarding the average length of service:

“In many of the examples given the average length of service for group 7 Judges has been put at 20 years and the average of all other Judges at 15 years. This methodology (without explanation or justification) ensures that the end figures between current and proposed schemes are artificially closer between Judges in different groups.”

Our response

19. We acknowledge that the impact of our proposals on individual judges will vary depending on the judge's personal circumstances. We had to base our analysis on a series of assumptions.
20. The scenarios we modelled used an average length of service based on the actual average length of service for judges and rounded to the nearest five years. We assumed that the average age of retirement is 67, in line with the State Pension age for many judges who are currently in office.
21. We do not hold data on the amount of pension that individual judges might have built up before taking up office. We assumed a pot of £750,000 for the purposes of our modelling because, while this is a very significant amount, it was thought to be realistic in light of the successful and relatively lengthy careers that most judges will have had in private practice before joining the bench.

Scheme membership

22. Our consultation document made clear that the reformed scheme would be open to eligible members of the judiciary in England, Wales, Scotland and Northern Ireland from the date of its implementation, except where terms and conditions do not include membership of a judicial pension scheme.
23. We received responses from one association and one fee-paid non-legal tribunal member commenting on the negative impact of the scope of applicability of the reformed scheme.
24. The fee-paid non-legal tribunal member commented on the fact that not all tribunal members are included in the pension schemes.

Our response

25. On 10 December 2020 we published a response to our consultation paper 'Amendments to the Fee-Paid Judicial Pension Scheme'. In the response we explained that the criteria required for a fee-paid office to be eligible for a judicial pension is whether an appropriate salaried judge can be identified.
26. It has also already been established through litigation, both in the Employment Tribunal and Employment Appeal Tribunal (e.g. *Moultrie v MoJ* and *McGrath v MoJ*), that under the Part Time Workers Regulations 2000, non-legal members who do not chair hearings do not have an entitlement to a judicial pension. However, we have accepted that non-legal members are entitled to automatic enrolment to a workplace pension scheme. The National Employment Savings Trust (NEST) has been selected as the pension provider and is a qualifying scheme for automatic enrolment purposes.

Career average scheme

27. We received five responses from associations expressing concerns about the proposal to use a career average accrual model in the reformed scheme.
28. The Sheriffs' Association commented that a career average accrual model:
"may constitute a disincentive to some prospective high-quality applicants. The salaried judiciary is in a unique position because judges will normally have had to demonstrate a successful career in practice to earn appointment. They tend to be relatively mature in age when joining the bench and have less time to accumulate pension in judicial office."

29. Similarly, the Council of District Judges (Magistrates' Courts) (Northern Ireland) noted:

“Career average accrual model was not supported by Council members with a JUPRA-style final salary model attracting unanimous support.”

Our response

30. The move to a career average accrual model is an important feature of all public service pension schemes following Lord Hutton's review¹. Using a member's career average salary to calculate their pension benefits is appropriate as it ensures that the unfairness of disproportionate benefits to those who receive late promotions or large increases in salaries is removed. A career average scheme also distributes the risks of the pension scheme between the member and taxpayer more evenly than a final salary scheme and gives members a good level of certainty about the pension that they have accrued throughout their career.

No service cap

31. We received several responses commenting on the positive impact of the proposal not to have a service cap. Under JUPRA/FPJPS, the amount of pension members can accrue is capped at a maximum of 20 years' worth of reckonable service. NJPS does not contain a service cap.

32. The Council of Her Majesty's Circuit Judges stated that:

“the opportunity to accrue pension in excess of the 20-year service cap affords judges an opportunity to accrue more pension than hitherto. The potential disincentive to work for more than 20 years is thereby removed.”

33. Similarly, the Tribunals Forum commented:

“the removal of the 20-year maximum under JUPRA is a significant advantage to many judges who, despite having achieved the maximum pension before statutory retirement age, could not retire without taking a reduction in pension, yet did not accrue a larger pension.”

¹ Independent Public Service Commission's review of public service pension provision which was chaired by Lord Hutton of Furness – final report available at <https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton>

34. The Council of Immigration Judges noted the potential positive impact of the proposal on prospective younger applicants to the judiciary:

“the ability to continue to accrue pension beyond 20 years is likely to make membership of the judiciary more attractive to younger applicants, as they will no longer face the prospect of continuing to hold office, but no longer accruing pension.”

35. We also received feedback that questioned whether this proposal would benefit many judges in practice. The Association of Her Majesty’s District Judges commented:

“Whilst the 20-year limit on accruing benefits has been removed we doubt that will be seen as a benefit for many members given the average judicial working life of a District Judge is 20 years or less.”

Our response

36. We intend to proceed on the basis that there will be no limit (subject to the Mandatory Retirement Age) on the number of years that a judge can accrue reckonable pensionable service in the reformed scheme, which mirrors the provisions set out in NJPS. This proposal is also aligned with the Hutton review which recommended that “caps on total pension accrual... should be removed or significantly lifted so as not to discourage people from having a longer working life.”² It will also ensure that all judicial service is fully recognised and may prove helpful in attracting younger applicants.
37. We acknowledge that, as explained in some of the responses we received, this feature will enable judges currently in JUPRA who may have reached, or be near to reaching, the 20-year accrual limit to continue to accrue a judicial pension once they join the reformed scheme. In effect, this may help to retain judges who were planning to retire before their pension age because of the service cap.

Normal pension age linked to State Pension age

38. We received four responses concerning our proposal to link normal pension age to State Pension age, as is currently the case for NJPS members. Of the responses received, three associations commented on the adverse impact of this feature for judges.

² Independent Public Service Pensions Commission: Final Report – 10 March 2011, para 3.99, p82.

39. For example, the Council of Immigration Judges commented:

“the increase in the JUPRA/FPJPS retirement age of 65 to state pension age...make the scheme less attractive than membership of JUPRA/FPJPS.”

Our response

40. We maintain the position outlined in the consultation document, that linking the normal pension age to State Pension age, in line with the Hutton principles, will ensure that public service pensions are affordable in the long term, fair between generations and will provide a way to manage future expected increases in life expectancy.

41. In the reformed scheme, judges will still be able draw their pension before the State Pension age, currently from the age of 55³, subject to meeting the minimum qualifying service requirement and an early retirement reduction, determined after consultation with the scheme actuary.

Early retirement reduction and late retirement addition

42. The consultation document proposed an early retirement reduction and late retirement addition for the reformed scheme. We received one response concerning the early retirement reduction, which stated that it is unlikely that this provision will be used by judges. We received five responses that welcomed the late retirement addition, with the Senators of the College of Justice commenting that:

“judges retiring after their State retirement age will benefit from a late retirement addition for each subsequent year’s service. Judges at all levels are likely to benefit from that if they accrue pensionable service beyond their State retirement age.”

43. The Senators of the College of Justice also suggested that, in addition to a late retirement addition, there should be an increased commutation rate and a reduced contribution rate for judges who take late retirement.

Our response

44. We are pleased that several responses supported the late retirement addition and we will include both this and the early retirement reduction in the reformed scheme. We will not be offering additional benefits for late retirement because the late retirement addition will be calculated using factors provided by the scheme actuary to reflect the fact that the pension will be in payment for a shorter time than would have been the case if the member had retired at their normal pension age. We consider this a fair

³ In 2014, the government announced it would increase the minimum pension age to 57 from 2028. From then on, the minimum pension age will remain 10 years below State Pension age, with the SPA being reviewed every 5 years.

way to ensure that a member is not penalised for taking their pension after the normal pension age.

Tax-unregistered status

45. The proposal to return all judges to a tax-unregistered scheme, thereby largely negating the applicability of the annual and lifetime allowance charges for pension accrued under the reformed scheme, was received well by the 14 judicial associations who responded to this proposal. Several associations stated that the proposed change from the tax-registered status of NJPS would make the reformed scheme much more attractive than NJPS.
46. The Council of Her Majesty's District Judges (Magistrates' Courts) in England and Wales stated that:
"overall the new scheme is significantly better for us all than NJPS; the main reason for this is the fact that it is not a tax registered scheme which frees us from the problems of the annual limits on pension contributions and the lifetime allowance which effectively limits the maximum number of years you can work and continue to be a member of the scheme."
47. The response from the Tribunals Forum reiterated these benefits:
"it will go a long way towards solving the problems arising from the NJPS being registered, resulting in large annual tax charges and a real of danger of reaching the lifetime pension pot limit for longer serving judges and those who had already made pension provision."
48. The Council of Immigration Judges also said that the change will:
"make the scheme attractive to those who have built up substantial personal pension provision before seeking judicial appointment."
49. We also received positive responses from four individual judges who commented on this scheme feature. Two senior members of the judiciary wrote that the:
"tax-unregistered status is essential to ensure that judges who already made significant pension provision for themselves during their years in private practice and had acquired enhanced tax protection in relation to that provision can take the benefit of the reformed scheme in the same way as everyone else, without incurring prohibitive and punitive tax penalties in relation to their existing private pension provision."
50. We did receive some negative responses concerning the implications that a tax-unregistered scheme would have for certain judges as a consequence of member

contributions no longer receiving tax relief. We address these concerns in the next section of this document as it is connected to the proposal to introduce a uniform contribution rate.

Our response

51. In light of the overwhelmingly positive response to the proposal that the reformed scheme should be tax-unregistered, we plan to proceed on this basis. As outlined in our consultation, many top legal professionals may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case a tax-registered pension scheme can be a disincentive to leave private practice and join the bench. The status of the reformed scheme should ensure that we are able to recruit high-quality applicants from private practice. We believe that the responses we have received demonstrate the importance of this change and provide further evidence of why this feature of the pension scheme is necessary.

Uniform contribution rate

52. We were pleased that several judicial associations and judges agreed that there should be a uniform contribution rate for all scheme members and that this is a fair approach.
53. Some of the responses received also agreed with our rationale that the benefits of the reformed scheme outweighed the disadvantages of the increased contributions for some judges. The Council of Circuit Judges, who surveyed their members ahead of responding to the consultation, stated that over two thirds of their respondents agreed with the proposal to implement a uniform contribution rate, with fewer than 10% disagreeing and the remaining balance not expressing a view.
54. The High Court Judges' Association, Senators of the College of Justice and the Chancery Bar Association (CBA) were all in favour of this proposal, with the CBA outlining that a:
- “uniform contribution rate has an administrative simplicity and should reduce perverse incentives.”*

Concerns relating to reduction in take-home pay

55. We received several detailed responses about our proposal to introduce a uniform contribution rate of 4.26%. Concerns were raised in particular about the impact that this change would have on the take-home pay of Salary Group 7 judges who are currently in NJPS. Under the proposals set out in the consultation document, NJPS judges in Salary Group 7 would see a reduction in their take-home pay of around £1,500 a year. We have explained the reasons why the uniform rate would reduce the take-home pay of certain judges in further detail from paragraphs 66-70.

56. We explained in the consultation document that judges in this category would benefit overall insofar as their total remuneration package, taking account of pension, would be better in the reformed scheme than in NJPS. However, a number of respondents were of the view that the reduction in take-home pay would not be outweighed by the improved benefits in the reformed pension scheme. We have outlined the main concerns that were raised about the uniform contribution rate below.

The impact of a uniform rate on the most diverse groups

57. Several judicial associations stated that reducing the take-home pay of NJPS judges in Salary Group 7 was a particular issue because the judges in this group are more diverse than judges in other salary groups, containing a higher proportion of women and judges from Black, Asian and minority ethnic (BAME) backgrounds. The Tribunals Forum also highlighted that half of the salaried tribunals and courts judiciary are in Salary Group 7 and this change would disproportionately impact them.

Recruitment and retention

58. Some judicial associations argued that a reduction in take-home pay could worsen the recruitment and retention issues that were highlighted by the SSRB report and referred to in the consultation document.
59. The Council of District Judges (Magistrates' Courts) of England and Wales pointed to the SSRB's latest review, which stated that recruitment problems have continued at this tier and that this change may:
- “discourage new applicants, exacerbating the recruitment problems that already exist.”*
60. This point was echoed by other associations, including the Tribunals Forum and the Council of Appeal Tribunal Judges.

Unconstitutional

61. Several associations stated that decreasing the take-home pay of some judges could be seen as a breach of the constitutional principle, first established by the Judicial Remuneration Act 1965 and subsequently set out in various pieces of legislation, for example, section 12(3) of the Senior Courts Act 1981 which prohibits the reduction of judicial salaries.
62. Other responses argued that a reduction in take-home pay goes against international principles, including the Latimer House principles, which are concerned with protecting levels of remuneration for judges and ensuring diversity within the judiciary.

Proposed solutions to this issue

63. Several associations made suggestions aimed at mitigating the reduction in take-home pay for Salary Group 7 judges. The Council of Appeal Tribunal Judges argued that if a uniform contribution rate is implemented, NJPS judges in Salary Group 7 should be given a significant uplift to their salary to compensate. The Council of Immigration Judges also suggested increasing Salary Group 7 pay or paying a fixed amount to compensate for the reduction in take-home pay. Alternatively, they suggested that the contribution rate for affected judges should be fixed at a level that means their take-home pay is not reduced. The Council of District Judges (Magistrates' Courts) of England and Wales stated that the solution to this issue was a different contribution rate for Group 7 judges or a tiered contribution rate.
64. The Senior President of Tribunals, responding on behalf of the Upper and First-tier Tribunals, the Employment Tribunals and the Employment Appeal Tribunal, invited the Ministry of Justice to consider whether short-term tapering relief could be given to affected judges.

Our response

65. Paragraphs 66-70 below explains why judges in Salary Group 7 moving from NJPS to the reformed scheme are negatively impacted by a uniform contribution rate of 4.26%. At paragraphs 71-77, we provide our response to some of the points raised by judicial associations regarding the adverse impact on the take-home pay of some judges. From paragraph 78 we outline a time-limited option for judges who wish to mitigate the impact of moving to the reformed scheme by reducing their contribution rate in return for a reduction in their accrual rate.

Impact on Salary Group 7 judges moving from NJPS

66. Salary Group 7 judges moving from NJPS to the reformed scheme and some fee-paid and part-time judges would see a reduction in their take-home pay with the contribution rate set at 4.26%. NJPS Salary Group 7 judges would be impacted in this way as a consequence of the level of tax relief they currently receive on their contributions in a registered scheme. This group of judges currently benefit from a marginal tax relief rate of 60% because of the reduction in the Personal Allowance on earnings between £100,000 and £125,000 (full-time Salary Group 7 judges earn £114,793).
67. The current structure of member contribution rates in NJPS was designed to take account of the point at which income tax rates of 40% and 45% impact the member. It does not, however, take account of the 60% tax relief that certain judges receive.

68. This means that judges in this group currently have a contribution rate that is equivalent to 2.94% in a tax-unregistered scheme, whereas the equivalent contribution rates in NJPS for full-time salaried judges at other tiers equate to 4.41% or above. The current benefits for Salary Group 7 judges are clearly illustrated by showing the member contribution rates that would be required in an unregistered scheme to give the same impact on net pay as in NJPS.

Current NJPS contribution rates and cost to member per year

Salary Group/Scheme	Salary	Member contribution rate	Impact on net pay
4 – Reg	£192,679	8.05%	£8,531
5 – Reg	£154,527	8.05%	£7,237
5.2 – Reg	£143,095	7.35%	£6,310
7 – Reg	£114,793	7.35%	£3,375
8 – Reg	£91,127	7.35%	£4,019

Equivalent contribution rates for NJPS members in a tax-unregistered scheme

Salary Group/Scheme	Salary	Member contribution rate	Impact on net pay
4 – Unreg	£192,679	4.43%	£8,531
5 – Unreg	£154,527	4.68%	£7,237
5.2 – Unreg	£143,095	4.41%	£6,310
7 – Unreg	£114,793	2.94%	£3,375
8 – Unreg	£91,127	4.41%	£4,019

69. Owing to the additional tax relief that Salary Group 7 judges receive in a tax-registered scheme, the contribution rate in the reformed scheme would need to be set at a much lower rate for these judges to avoid a reduction in their take-home pay.
70. Accordingly, it is the move from a tax-registered scheme, where these judges benefit disproportionately from the tax-relief on their contributions compared to the rest of the judiciary, to a tax-unregistered scheme, where there is no tax-relief on their contributions, that results in the reduction in take-home pay. As all other full-time salaried judges pay an equivalent rate of 4.41% or above in a tax-unregistered scheme, our proposed rate of 4.26% is lower than the rate most full-time salaried judges currently pay.

The impact of a uniform rate on the most diverse groups

71. As outlined above, Salary Group 7 judges currently in NJPS would see a reduction in take-home pay in the reformed scheme because, at the moment, they pay proportionately less (out of take-home pay) in contributions compared to other members of the judiciary. Moving these judges to a tax-unregistered scheme removes this benefit, even though the uniform rate is lower than the rate that all other judges currently pay. Importantly, moving judges from a tax-registered to a tax-unregistered scheme was commented upon positively by those judicial associations representing this group of judges and is regarded by the government, and many judges, as key to increasing the attractiveness of the judicial pension scheme, and therefore judicial office itself.
72. As explained in our Equality Statement, we therefore do not consider that the reduction in take-home pay for some judges is discriminatory. We also believe that, to the extent that the uniform contribution rate may be considered to have the potential for indirect discrimination, this is objectively justified as a proportionate means of meeting the aims set out in the consultation document; namely, a uniform rate is fair and appropriate for the judiciary given that the main rationale for tiered rates is to support those earning less than £21,000, and to use tax-relief to offset the impact of member contribution increases; it removes some of the complexities and anomalies of a tiered system that are pertinent for fee-paid judges; and it removes anomalies that occur at the boundaries of the existing tiers. It is also simpler to administer than a tiered system.
73. While we do not consider the uniform contribution rate to be discriminatory, we acknowledge the concerns raised. We have therefore decided to give judges the option of mitigating the take-home pay impact of moving to the reformed scheme by reducing their contribution rate in return for a commensurate reduction in their accrual rate. This option will last for a fixed period of three years, after which all judges will pay the higher, uniform contribution rate. The option is set out in detail at paragraphs 78-83.

Recruitment and retention

74. We do not agree that the introduction of a uniform contribution rate would have an impact on our recruitment of judges in Salary Group 7. The reformed scheme will provide a generous remuneration package that is significantly more beneficial than NJPS. Prospective applicants will also be unaffected by the move from NJPS to the tax-unregistered reformed scheme, which is the cause of the potential reduction in take-home pay for certain salaried judges.

75. The SSRB's Major Review made it clear that reforming the judicial pension scheme was key to addressing our recruitment and retention problems. The proposal that we have outlined in the consultation should go a long way to resolving this issue, and most of its features have been commented upon favourably.

Unconstitutional

76. We are strongly of the view that the reduction in take-home pay for some judges as a result of pension contributions does not amount to a breach of section 12(3) of the Senior Courts Act 1981, and nor does it amount to unconstitutional interference with the independence of the judiciary. The gross salary of all members of the judiciary will remain completely unaffected by the proposed reforms. The separation of powers between the judiciary and the executive, as highlighted by the Latimer House principles, is unaffected by the proposed changes to judicial pensions.
77. There is also precedent for a judge's take-home pay being reduced as a consequence of pension contributions through section 34 of the Pensions Act 2011, which required judges who were members of JUPRA to pay personal member contributions for the first time.

A time-limited option

78. The rationale for a uniform contribution rate is that it will ensure fairness between members, remove anomalies that occur at the boundaries of different bands in a tiered structure, and ensure that fee-paid judges who sit the same number of days, regardless of their sitting pattern, contribute the same amount to their pension. We remain of the view that these are all valid reasons for ensuring that all judges pay the same contribution rate.
79. We do however recognise the strength of feeling from certain associations on this issue. We have therefore decided to give current members of the judiciary the option to pay a lower contribution rate with a correspondingly reduced accrual rate for the first three years of the reformed scheme. Under this option, a judge would be able to pay a contribution rate of 3% instead of 4.26%, and their accrual rate would be reduced from 2.5% to 2.42%. This would be a one-off decision that the member would exercise when the reformed scheme is implemented. The option would be time-limited. Three years after implementation of the reformed scheme, the option would expire and all members of the scheme would, from that point, pay a uniform contribution rate of 4.26% and have an accrual rate of 2.5%, as outlined in our consultation.
80. This option gives NJPS Salary Group 7 judges the flexibility to broadly maintain their take-home pay if they wish to do so, in return for a slightly lower rate of pension accrual for the fixed period of three years. It will allow judges to adjust to the new contribution rate and give them time to prepare for the application of the uniform

contribution rate of 4.26% after the scheme has been operational for three years. A judge in Salary Group 7 moving to the reformed scheme from NJPS would see their take-home pay reduced by £69 a year if this option is taken. The option will also give fee-paid judges the opportunity to increase their take-home pay if the number of days they sit, and their sitting pattern, would mean that they would face a reduction in their take-home pay under the uniform rate.

Comparison of uniform rate proposal with alternative lower contribution rate option

	Member contribution rate	Accrual rate
Default position	4.26%	2.50%
Time-limited option	3.00%	2.42%

81. The tables below compare the current contribution rates with a 3% contribution rate that judges will be able to choose under this option.

Comparison between NJPS (salaried) and a 3% contribution rate:

NJPS (salaried)				Contribution Rate 3%			
Salary Group	Salary	Rate	Annual Cost ⁴	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	8.05%	£8,531	3.00%	£5,780	£2,751	£229
5	£154,527	8.05%	£7,237	3.00%	£4,636	£2,601	£217
5.2	£143,095	7.35%	£6,310	3.00%	£4,293	£2,017	£168
7	£114,793	7.35%	£3,375	3.00%	£3,444	£-69	£-6

Comparison between JUPRA and a 3% contribution rate:

JUPRA				Contribution Rate 3%			
Salary Group	Salary	Rate ⁵	Annual Cost ⁶	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	4.61%	£8,873	3.00%	£5,780	£3,093	£258
5	£154,527	4.46%	£6,897	3.00%	£4,636	£2,261	£188
5.2	£143,095	4.41%	£6,310	3.00%	£4,293	£2,017	£168
7	£114,793	4.41%	£5,062	3.00%	£3,444	£1,618	£135

⁴ 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.

⁵ Rate shown is the aggregate of the different member contribution rates that exist in JUPRA to reflect the tiered contribution structure.

⁶ Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

Comparison between NJPS (fee-paid) and a 3% contribution rate:

Role	NJPS (fee-paid) ⁷			Contribution Rate 3%			
	Fees	Rate	Annual Cost ⁸	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	5.45%	£900	3.00%	£826	£74	£6
Recorder	£20,442	4.60%	£564	3.00%	£613	-£49	-£4
Dep. DJ	£16,018	4.60%	£442	3.00%	£481	-£39	-£3

Comparison between FPJPS and a 3% contribution rate:

Role	FPJPS			Contribution Rate 3%			
	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	3.27%	£900	3.00%	£826	£74	£6
Recorder	£20,442	2.76%	£564	3.00%	£613	-£49	-£4
Dep. DJ	£16,018	2.76%	£442	3.00%	£481	-£39	-£3

82. It is important to emphasise that this will be an optional feature for judges and that it will only be available to those who are transferring into the reformed scheme. It will not be available for judges who take up service on or after the reformed scheme is implemented. This option is intended to mitigate the negative impact of the move to the reformed scheme for those judges who have been in another judicial pension scheme and whose take-home pay may be impacted by their transition to the reformed scheme.

83. Judges who do not take up the option to reduce their contribution rate will be subject to the uniform rate of 4.26% and their accrual rate will be 2.5%. Once the reformed scheme has been up and running for three years, all judges will be subject to the same contribution and accrual rate.

⁷ For all fee-paid examples, we have assumed that the judge will work 30 days spread evenly across the year. NJPS members are assumed to have a supplementary income and pay a marginal tax rate of 40%.

⁸ 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.

Option to commute, with a commutation supplement

84. The consultation document proposed that members of the reformed scheme would be able 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. The maximum amount a member would be able to commute would be 35.7% of their pension.
85. We received four responses that commented on the positive impact of the proposal for an option to commute, with a commutation supplement, under the reformed scheme.
86. The Tribunals Forum commented that there is:
“no automatic lump sum as there was under JUPRA but that is offset by ability to accrue pension above the 20-year maximum and then to commute part of pension to a lump sum.”
87. One Tribunal judge also responded positively to the proposal, stating that:
“The proposals to allow up to 35.7% of a member’s annual pension to be commuted into a lump sum at a 12.1 ratio is to be welcomed.”

Our response

88. The proposed commutation ratio of 12:1 for a commuted lump sum under the reformed scheme is consistent with other public service schemes. Additionally, the maximum amount a member would be able to commute is similar to the provisions that allow for tax-relief when commuting a lump sum under NJPS. The government considers this offer a fair approach that provides valuable flexibility for judges in retirement.
89. We recognise that the tax-unregistered status of the reformed scheme necessitates a commutation supplement so that commutation remains an attractive option for members.

Loss of the automatic lump sum

90. Six associations commented on the absence of the automatic lump sum in the proposals, an entitlement previously afforded to judges under JUPRA/FPJPS.

91. The Council of Her Majesty’s Circuit Judges noted that JUPRA judges raised concerns around their inability to accrue more lump sum after the implementation of the reformed scheme, which has the effect of:

“frustrating financial planning of judges, particularly where long term plans had included using lump sums to pay off mortgages.”

92. Similarly, the Council of Her Majesty’s District Judges (Magistrates’ Courts) of England and Wales commented:

“The loss of an automatic lump sum as provided for by the unreformed JUPRA will continue to be keenly felt by members of the Judiciary in group 7.”

93. The Council of District Judges (Magistrates’ Courts) (Northern Ireland) also stated:

“The Council recognizes the attractiveness of lump sum upon retirement and notes the less generous proposals of the Reformed Scheme when compared to JUPRA.”

Our response

94. We recognise that the loss of the automatic lump sum may be keenly felt by JUPRA/FPJPS members, but consider that the commutation offer is fair, affordable and sustainable in the long-term. Under the reformed scheme, there will only be one scheme under which judges are able to accrue benefits – the same scheme design will apply to all judges – in line with our policy aim of equalising future treatment across the judiciary.

95. It is important to note that all benefits previously accrued in predecessor schemes will be protected, including the preservation of the automatic lump sum in respect of service in those schemes. The introduction of the reformed scheme will not impact the benefits a member has previously accrued under other schemes up until April 2022. Judges moving to the reformed scheme from JUPRA/FPJPS, and those who have built up any benefits in JUPRA/FPJPS before moving to NJPS, will have their final salary link and automatic lump sum protected for the pension they have accrued up until April 2022. If a member was receiving benefits under NJPS before moving across to the reformed scheme, they would also be able to commute a lump sum for the pension they have accrued under NJPS.

Accrual rate set at 2.5%

96. The consultation document proposed an accrual rate in the reformed scheme of 2.50% (1/40th), the same as it is in JUPRA/FPJPS and an increase on the rate in NJPS, which is 2.32%. Positive responses were received from four associations and one senior judge on the potential impact of this proposal.

97. The Association of High Court Masters, Insolvency and Companies Courts Judges and Costs Judges commented:

“We can see and accept the rationale that the proposed increase in the accrual rate will ensure that members of NJPS will not be worse off when brought into the unified scheme.”

98. The Senators of the College of Justice also welcomed the proposal:

“Other advantages which it has over NJPS are that... the annual accrual rate will be higher (2.5% per year as opposed to 2.32% per year). Accordingly, for judges who are in NJPS or who would have required to enter it at the end of their taper the reformed JUPRA would be a significant improvement over NJPS.”

99. The Tribunals Forum commented:

“we accept that the new accrual rate of 2.50% is better than the 2.32% under NJPS.”

Our response

100. The proposed accrual rate and the rationale behind it were supported by the responses received. The increase in the accrual rate, compared to NJPS, will ensure that judges currently in NJPS would be in at least the same, if not a better, position under the reformed scheme. The increase in accrual rate compared to NJPS also ensures that even members facing a reduction in their take-home pay will see an increase in their remuneration overall.

Dependant benefits

101. The consultation outlined the proposal for the reformed scheme to pay a pension to a surviving spouse or civil partner, or a surviving adult dependant when there is no surviving spouse or civil partner, upon a member's death, at a pension equal to 3/8ths (37.5%) of the scheme member's pension, payable for life.
102. We received responses from two associations that stated that the reduction in dependant benefits is consistent with the Hutton principles. We also received three responses from associations that raised concerns around the reduction in dependant benefits when compared to JUPRA.
103. The High Court Judges' Association stated:
- “We recognise that the proposals are based on the Hutton recommendations, but we are uncomfortable with the reduction in the spouse/civil partner's pension from its current level of one-half to three-eighths.”*

104. The Council of Her Majesty's Circuit Judges acknowledged:

"that the proposed benefits for dependants are consistent with the principles in Hutton and apply across the public sector."

105. However, the Council of Her Majesty's Circuit Judges did also note that JUPRA judges among their membership had raised concerns about the reduction in benefits to surviving spouses.

Our response

106. We understand that some judges are unhappy with the proposal to reduce the dependant benefit rate compared to JUPRA. However, it is necessary for dependant benefits to remain at 37.5%, as it is in NJPS, to control the cost of the scheme. Dependant benefits in the reformed scheme will also have broader coverage than in JUPRA – for example, covering dependants even where there has not been a marriage or civil partnership.

Cost control mechanism

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

108. We received responses from three associations and one District judge commenting on the negative impact that the implementation of a cost control mechanism could have on the reformed scheme.

109. The Council of Appeal Tribunal Judges commented:

"CATJ is further concerned that in the absence of any proposals within the consultation for the implementation of a cost capping mechanism to prevent the arbitrary increase in contribution rates or the reduction in benefits, that Group 7 Judges are at particular risk of further reductions in take home pay."

110. The Council of Her Majesty's District Judges (Magistrates' Courts) of England and Wales, stated that the cost control mechanism is:

"a major concern – we all need certainty in relation to our retirement benefits."

111. The High Court Judges' Association commented that:

"we have previously made the point that applicants for salaried judicial office need certainty. A risk that the benefits of this scheme might be cut further in the years ahead could undermine confidence in the scheme and, in consequence, have an adverse effect on recruitment."

Our response

112. The government is committed to implementing a cost control mechanism for pensions across public service schemes. This was one of the key Hutton recommendations, to ensure that the cost of pensions is controlled into the future. As outlined in the consultation, a new target cost (or baseline) will be set for the reformed scheme. This means that the current valuation process will not impact the reformed scheme.
113. The cost cap mechanism, as it is currently designed, ensures that the baseline value of the scheme is maintained; changes arising from the operation of the mechanism are about restoring the value of the benefits to their original level, rather than necessarily cutting them. The cost cap mechanism is also reciprocal so that members are protected from developments that reduce the value of their benefits.

Responses to specific questions

Relevant Consultation Question

Do you have any views on the implementation of a uniform contribution rate?

114. We have addressed the responses we have received to this question from paragraphs 66-83 in the section above.

Relevant Consultation Question

What are your views on our proposal to remove the option to open a Partnership Pension Account (PPA) in lieu of joining the reformed scheme?

115. Of the responses received to this question, five associations and one District judge commented in favour of removing the option of a PPA alongside the reformed scheme.

116. The Council of Appeal Tribunal Judges welcomed the proposal to remove the option of a PPA, commenting:

“CATJ supports the overriding principle that all Judges should be in the same pension scheme therefore CATJ welcomes the proposed removal of the option of a Partnership Pension Account alongside the reformed judicial pension scheme.”

117. The High Court Judges’ Association were of the view that:

“a pension scheme that is unregistered will be sufficiently attractive to make it unnecessary to retain the Partnership Pension Account in lieu of joining the reformed scheme.”

118. We also received a response from the Senior President of Tribunals on behalf of the Upper and First-tier Tribunals, the Employment Tribunal and the Employment Appeal Tribunal, that outlined the potential negative impact of removing the option of allowing members to join a PPA:

“We consider that the option for judges to have a PPA, with benefits based on growth of funds created by defined contributions, should remain, even though the new judicial pension scheme will be tax-unregistered. Some judges will be unaffected by the tax registered status of a PPA and would prefer to have flexibility about member

contributions and benefits that depend on the amounts invested, rather than a fixed contribution, defined benefit career average pension.”

Our response

119. We intend to remove the option of opening a Partnership Pension Account in lieu of joining the reformed scheme, as we consider the option unnecessary given the attractiveness of the reformed scheme. It is also an option that is administratively complex to deliver and it can be difficult for members to assess which scheme would be most beneficial for them to choose. Furthermore, relatively few members take-up this option under the current pension arrangements.

Relevant Consultation Question

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?

120. We received responses from six associations and four members of the judiciary who were in favour of this proposal to cease paying the Transitional Protection Allowance (TPA) on the introduction of the reformed scheme. We also received a response from an association that was opposed to the proposal of ceasing TPA.

121. The Council of Her Majesty’s Circuit Judges commented:

“We do not have data as to how many judges may remain eligible for TPA after 31 March 2022 but we accept TPA’s necessity is obviated by the ability to accrue benefits in a tax unregistered reformed scheme.”

122. Two senior judges commented that they:

“agree with proposal to cease TPA when the reformed scheme comes into effect on the footing that the reformed scheme is unregistered.”

123. The Council of District Judges (Magistrates’ Courts) (Northern Ireland) opposed ceasing the TPA:

“No District Judge (MC) in Northern Ireland affected by the Transitional Protection Allowance supported the removal of the TPA.”

Our response

124. When introduced in April 2015, the TPA represented a departure from the principle of consistency of treatment of public servants and was unique to the judiciary to reflect the fact that JUPRA was tax-unregistered, while NJPS was registered for tax purposes. While we note the point raised by the Council of District Judges

(Magistrates Courts) (Northern Ireland), we remain of the view that the rationale behind introducing the TPA would no longer apply to the reformed scheme owing to the fact that the reformed scheme will also be tax-unregistered. We will therefore stop paying the TPA to those judges who are in receipt of it upon implementation of the reformed scheme. These judges will then be eligible to accrue benefits in the reformed scheme.

Attractiveness of the scheme

Relevant Consultation Questions

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?

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?

The proposed pension changes and the attractiveness of a judicial career

125. A number of associations and judges said that the proposed scheme would make the judiciary more attractive to prospective applicants.

126. The High Court Judges' Association commented:

"We will continue to encourage suitable people to apply to the judiciary, as we have done throughout. But it would be much easier to do so with conviction, and much easier to persuade potential applicants, with a scheme as now proposed in place. It would be a huge improvement on the NJPS due to the unregistered status of the scheme."

127. The Council of Her Majesty's Circuit Judges noted:

"Almost half of respondents considered that the proposed changes would make them more likely to encourage suitable applicants to the Circuit Bench with a third expressing no view."

128. The Council of Her Majesty's Circuit Judges further commented that:

"We believe that the proposals will, to a significant degree, enhance the attractiveness of salaried judicial office whilst cautioning that they cannot be seen as the single cure for recruitment or retention."

An improvement on NJPS, but less valuable than JUPRA

129. Several responses compared the benefits in the reformed scheme to those in JUPRA, noting that the reformed scheme would still be less valuable.

130. The Senators of the College of Justice wrote that:

"The reformed JUPRA pension package is a significant improvement on the NJPS package, but it is less valuable than the pre-reform JUPRA pension package. We would be more inclined to encourage suitable people to apply than we would have been when the NJPS package was what was available, but we would point out to them that the reformed JUPRA package is significantly less beneficial than the JUPRA package was."

131. The Council of Immigration Judges commented:

"We accept the proposed scheme is an improvement upon the NJPS but is clearly a less favourable scheme in financial terms, when compared with JUPRA or the FPJPS."

Addressing recruitment and retention issues

132. On the question of whether the proposed scheme would contribute towards achieving our key objective of addressing the recruitment and retention issues, two senior judges commented on the positive impact that the proposals will have:

“[the] Reformed scheme will be a major incentive towards restoring a proper recruitment to the Bench and retention of judges.”

133. The Senior President of Tribunals, on behalf of the Upper and First-tier Tribunals, the Employment Tribunal and the Employment Appeal Tribunal, also commented:

“The impact of NJPS would probably have been one factor affecting more senior judges. But it is likely that the proposals in the reformed scheme will contribute towards addressing retention issues.”

134. The High Court Judges’ Association wrote that:

“this scheme would make a major contribution to resolving the problems of recruitment and retention that followed the decision to create the NJPS.”

135. We also received some responses which questioned whether the proposals would address recruitment and retention issues.

136. The Sheriffs’ Association commented:

“We do not consider that the retention issues will be fully resolved by these proposals though they represent an improvement from the present. The JUPRA benefits were part of a wider package which attracted many who are likely to retire early. The significant reduction in benefits when compared with that package even after the move to a reformed and unregistered NJPS means that retention may continue to be a problem as the steps taken will not be sufficient to meet many of the concerns that arise in our membership.”

137. The Association of Her Majesty’s District Judges in general strongly supported the idea of a reformed judicial pension scheme but added that:

“whilst the proposed change is welcomed we are not convinced it, by itself, will improve recruitment for the District Bench. A wider package of reforms is necessary to address recruitment issues.”

138. The Senators of the College of Justice were of the view that the proposed scheme will make a judicial career more attractive, but in relation to recruitment and retention:

“It would assist, but more is likely to be needed. Since about 2008 the overall value of the judicial remuneration package has declined significantly in real terms and the disparity between that package and earnings in private practice has widened considerably. We refer to the recent SSRB Major Review (2018).”

Other aspects of judicial careers need to be taken into account

139. We also received responses that commented on other aspects of judicial careers that needed to be taken into account to address the recruitment and retention issues and attract high quality candidates to the bench, such as increasing judicial salaries, improving conditions of work, accommodation and the overall perception of the judiciary.

140. A District judge commented:

“The proposed scheme, whilst welcome, is only one of the steps needed to address those issues. Judicial salaries have fallen significantly. Until salaries are meaningfully addressed together with issues as to workload and the attitude and (lack of) support of the senior judiciary then little is likely to change.”

141. The Sheriffs’ Association stated:

“The reformed pension scheme would have some influence on prospective applicants but it is only part of the overall package. Other aspects of service also require to be improved including salary and conditions of work.”

142. The Law Society commented:

“Improving the overall perception of the judiciary and the judicial appointment process, and ensuring it is perceived as a fair and balanced process, and an inclusive work place, is likely to contribute to attracting high quality candidates from a variety of practice areas and backgrounds.”

Our response

143. The overwhelming sense from the responses received is that our proposed scheme will have a positive impact in attracting prospective applicants to the bench.

144. The government accepts comments made in the responses that the reformed scheme will provide members with better benefits than NJPS but will be less valuable than JUPRA. One of our key policy objectives for reforming judicial pension arrangements is that the proposals for a reformed scheme are in line with the Hutton principles, which include affordability and sustainability.

145. As set out above, we believe that the commutation offer is fair and provides valuable flexibility for judges in retirement. The proposed commutation ratio of 12:1 for a commuted lump sum under the reformed scheme is consistent with other public service schemes. The maximum amount a member would be able to commute is consistent with the provisions for commuting a lump sum under NJPS – and the commutation supplement under the reformed scheme will ensure that commutation remains an attractive option for members. The government has also committed to protect all benefits previously accrued in predecessor schemes, including the

automatic lump sum. The introduction of the reformed scheme will not impact the benefits a member has previously accrued under other schemes.

Recruitment and retention

146. We are pleased that many responses agreed that our proposals will address the recruitment and retention issues within the judiciary, thereby achieving our key policy objective. Failure to address these issues threatens the effective functioning of our justice system and its reputation.
147. The SSRB's Major Review concluded that the main cause of the recruitment and retention problems were the cumulative impacts of the 2015 public service pension reforms and subsequent changes to the annual allowance and lifetime allowance thresholds. The government believes that the reformed pension scheme will provide a generous remuneration package, particularly due to its tax-unregistered status which will mean members are not subject to the annual allowance and lifetime allowance charges.

Equalities

Relevant Consultation Questions

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.

148. Of the 39 responses received, 14 commented on the potential equalities impact of the proposed reforms. Of these 14, four were positive that the proposals would not disproportionately impact individual groups of the judiciary.
149. The Senators of the College of Justice commented that:
- "The reformed scheme will apply equally to all judges from 2022. On the basis of the available information it does not appear to us that any individual groups of judges are likely to be disproportionately affected under the new scheme."*
150. Additionally, the Chancery Bar Association commented that:
- "We cannot see that there can be any direct discrimination where what is proposed is a single scheme into which all members will transfer and new members join... Part of the rationale for the proposal is to undo the discrimination which McCloud held to be present in the transitional provisions."*

151. However, 10 of the 14 responses raised concerns that the proposals could give rise to equality issues. Over half of these responses referred to the combined impact of the change in tax status and uniform contribution rate on the Salary Group 7 judges moving into the reformed scheme from NJPS.

152. The Council of Appeal Tribunal Judges stated that:

“In view of the reductions CATJ considers that salaried Group 7 Judges moving from NJPS to the reformed judicial pension scheme are disproportionately affected by the reforms and notes the findings in the Equality Statement at paragraph 57 that Judges in this group are more likely to be younger, female and racially diverse compared to their more senior colleagues and their counterparts in JUPRA.”

153. The Salaried Tribunal Judges’ Association for the Health Education and Social Care Chamber also commented that:

“Reduction in the salaries of Group 7 Judges is discriminatory and is likely to further increase the recruitment difficulties highlighted by the SSRB Major Review in 2018.”

154. Responses from individual District judges also referred to the reduction in take home pay for Salary Group 7 judges, who are more likely to have protected characteristics:

“Judges in Group 7 will be disproportionately affected as a result of the proposed increased contribution rates – whereas every other group benefits under the proposed new scheme Judges in Group 7 are worse off month by month.”

“Those judges who are in JUPRA – the older judges – when they move to the revised JUPRA scheme see their net pay increase. This is age discrimination against younger judges again who are more likely to be the judges affected by the uniform contribution rate proposal as it stands, than other judges. It is also more likely that the impact will be greater to females rather than males.”

“the uniform contribution rate will benefit the most highly-paid judges, who are much wealthier, and far less diverse, than the least well-paid judges. This does not appear to be fair.... It is perhaps difficult to reconcile the recognition by MoJ that the NJPS scheme involved discriminating against judges with protected characteristics, with a proposal that appears to favour judges without protected characteristics and to act negatively towards judges more likely to have protected characteristics.”

Our response

155. We are pleased that several responses acknowledged that moving all judges into the same scheme will equalise treatment across the judiciary. Addressing this issue is one of the key purposes of implementing a reformed scheme.

156. We do not consider the introduction of a uniform contribution rate to be discriminatory. We remain of the opinion that a uniform contribution rate is objectively

justified in that it contributes to our policy objectives, creates certainty and ensures fairness for scheme members, and removes the complexities and anomalies of a tiered system.

157. However, we acknowledge the concerns raised by some judicial members that the introduction of the uniform contribution rate, combined with the reduction in the Personal Allowance, is more likely to be felt by Salary Group 7 judges moving from NJPS and some fee-paid judges who could see a reduction in their take-home pay. Having considered the views expressed in response to our consultation, we are proposing to provide judges with a time-limited option to mitigate the impact of transitioning to the reformed scheme by paying a lower contribution rate with a corresponding reduced accrual rate, as outlined in paragraphs 78-83.

Impact assessment, equalities and Welsh language

Impact assessment

158. We conducted a regulatory impact assessment which outlines our policy objectives and the costs and benefits of a range of options we considered before deciding the proposals to put forward for consultation. Our assessment indicated 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 MoJ and the devolved administrations to fund the proposed pension scheme.

Equalities

159. Section 149 of the Equality Act 2010 requires public authorities, including the Ministry of Justice, to have due regard to the need to:

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

160. The proportionate equality analysis that accompanied the consultation has now been updated in light of the consultation responses to consider likely impacts on people with particular protected characteristics. The updated Equality Statement will be published alongside our response.

Welsh language

161. We will provide a Welsh translation of the executive summary.

Next steps

162. The aim is that the reformed scheme will come into effect in April 2022, subject to parliamentary time and approval of the necessary legislation. We also plan to publish a consultation on the scheme regulations later this year which will set out the details of the reformed pension scheme.

Consultation principles

163. The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

Judicial and legal associations

Association of Her Majesty's District Judges

Association of High Court Masters, Insolvency and Companies Courts Judges and Costs Judges

Chancery Bar Association

Council of Appeal Tribunal Judges

Council of District Judges (Magistrates' Courts) (Northern Ireland)

Council of Employment Judges

Council of Her Majesty's Circuit Judges

Council of Her Majesty's District Judges (Magistrates' Courts) bench of England & Wales

Council of Immigration Judges

High Court Judges' Association

Part-time Sheriffs' Association

Salaried Tribunal Judges' Association for the Health Education and Social Care Chamber

Senators of the College of Justice

Senior President of Tribunals on Behalf of the Upper and First-tier Tribunals, the Employment Tribunals and the Employment Appeal Tribunal

Sheriffs' Association

The Law Society of England and Wales

Tribunals Forum

UK Association of Fee-Paid Judges

Annex B – Updated table to reflect 2020 pay award on member contributions⁹

Comparison between NJPS and uniform contribution rates on salaried members:

NJPS (salaried)				Uniform Contribution Rate			
Salary Group	Salary	Rate	Annual Cost ¹⁰	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	8.05%	£8,531	4.26%	£8,208	£323	£27
5	£154,527	8.05%	£7,237	4.26%	£6,583	£654	£55
5.2	£143,095	7.35%	£6,310	4.26%	£6,096	£215	£18
7	£114,793	7.35%	£3,375	4.26%	£4,890	-£1,515	-£126

Comparison between JUPRA and uniform contribution rates on salaried members:

JUPRA				Uniform Contribution Rate			
Salary Group	Salary	Rate ¹¹	Annual Cost ¹²	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	4.61%	£8,873	4.26%	£8,208	£665	£55
5	£154,527	4.46%	£6,897	4.26%	£6,583	£314	£26
5.2	£143,095	4.41%	£6,310	4.26%	£6,096	£215	£18
7	£114,793	4.41%	£5,062	4.26%	£4,890	£172	£14

⁹ Tables also reflect the move of Circuit Judges into Salary Group 5.2.

¹⁰ 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.

¹¹ Rate shown is the aggregate of the different member contribution rates that exist in JURA to reflect the tiered contribution structure.

¹² Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

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

NJPS (fee-paid) ¹³				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost ¹⁴	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	5.45%	£900	4.26%	£1,173	-£273	-£23
Recorder	£20,442	4.60%	£564	4.26%	£871	-£307	-£26
Dep. DJ	£16,018	4.60%	£442	4.26%	£682	-£240	-£20

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

FPJPS				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	3.27%	£900	4.26%	£1,173	-£273	-£23
Recorder	£20,442	2.76%	£564	4.26%	£871	-£307	-£26
Dep. DJ	£16,018	2.76%	£442	4.26%	£682	-£240	-£20

¹³ For all fee-paid examples, we have assumed that the judge will work 30 days spread evenly across the year. NJPS members are assumed to have a supplementary income and pay a marginal tax rate of 40%.

¹⁴ 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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