

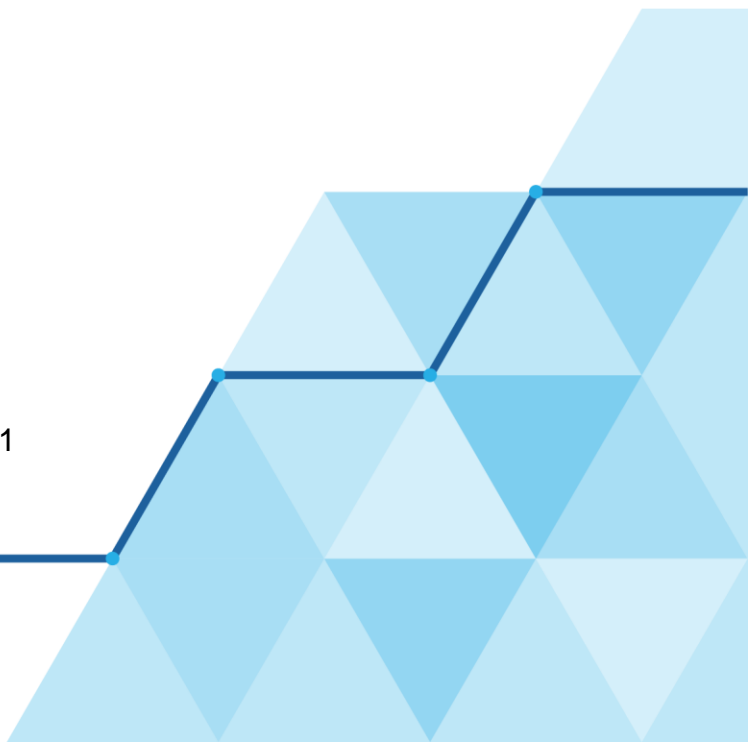


Ministry
of Justice

Judicial Pension Scheme 2022

Response to consultation on the scheme
regulations

This response is published on 16 December 2021

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Ministry
of Justice

Judicial Pension Scheme 2022

Response to consultation on the scheme regulations

Response to consultation carried out by the Ministry of Justice.

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Introduction and contact details

This document is the post-consultation report for the consultation paper, 'Judicial Pension Scheme 2022'. The consultation paper was published on 23 July 2021 and the consultation closed on 8 October 2021.

It will cover:

- the background to the consultation;
- a summary of consultation responses;
- a detailed response to the specific questions raised in the consultation paper; and
- the 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 **judicial_policy_correspondence@justice.gov.uk**.

Complaints or comments

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

Executive Summary

The consultation paper setting out our proposals for the Judicial Pension Scheme (JPS) 2022 regulations was published on 23 July 2021. It invited comments on the design of this reformed judicial pension scheme, which would be open for future accruals from April 2022, subject to parliamentary time and approval of the necessary legislation.

The JPS 2022 is intended to deliver on the commitment the Government made to develop a pensions-based, long-term 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 JPS 2022 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 14 responses to the consultation, including 6 from judicial and non-legal members associations. Overall, the responses received were supportive of the progress being made to implement a reformed judicial pension scheme but highlighted some areas of concern. This included several comments that some features of JPS 2022 were not as attractive as JUPRA or the Fee-Paid Judicial Pension Scheme 2017 (FPJPS). We have addressed these in turn below.

This consultation was in addition to a previous consultation on the proposed scheme design which ran in summer 2020. We received 39 responses to that consultation, including 16 from judicial associations (representing a significant proportion of the judiciary). Overall, the responses were positive about many of the proposed features of the scheme and it was frequently described as a significant improvement on the New Judicial Pension Scheme (NJPS), introduced in 2015.

Taking into account responses from both consultations, we intend to implement the JPS 2022 in line with the policy proposals set out in the consultation paper published in July 2021. We think that the responses that we have received from this consultation, along with those from the previous consultation, provide robust support to progress the implementation of the JPS 2022. They also reaffirm our view that it will help achieve our main objective of resolving the serious recruitment and retention issues identified by the SSRB whilst being both fair to the taxpayer and affordable and sustainable in the long-term.

Overview

1. The consultation paper setting out our proposals for the JPS 2022 was published on 23 July 2021. It proposed that, from the date of implementation, all eligible salaried and fee-paid judicial office holders would join the JPS 2022 automatically in respect of future service in that office unless they decide to opt out of the scheme.
2. The consultation sought views on the draft regulations, and it closed to responses on 8 October 2021. This report summarises the responses received and sets out the Government's position that all aspects of the JPS 2022 will be implemented as outlined in the July consultation document. Annex B contains a summary of the main technical amendments made to the draft regulations following the closure of the consultation.
3. Judges who have pension arrangements under existing judicial pension schemes - the Judicial Pensions and Retirement Act (JUPRA) 1993,¹ the Fee-Paid Judicial Pension Scheme (FPJPS) 2017, the New Judicial Pension Scheme (NJPS) and the Northern Ireland Judicial Pension Scheme (NI JPS), collectively referred to below as 'Pre-2022 Schemes' - will transfer into JPS 2022 and accrue benefits under it for future service. These predecessor judicial pension schemes will then be closed to further accrual with all benefits previously accrued in the schemes preserved, including the preservation of the automatic lump sum and final salary link in respect of service in those schemes. Therefore, from the date of its implementation, the JPS 2022 will be the only scheme in which eligible judges are able to accrue benefits for future service.
4. The consultation document was published alongside the draft scheme regulations for JPS 2022. The regulations were based on the NJPS regulations but with differences to reflect the fact that JPS 2022 is tax-unregistered, has a higher accrual rate than NJPS and has a uniform contribution rate.
5. The JPS 2022 will be established by regulations made under the Public Service Pensions Act (PSPA) 2013 and so will be subject to the PSPA statutory framework. This will ensure that JPS 2022 is subject to the modernised pension rules and governance requirements that were brought into force by the PSPA for most public service pension schemes. The Public Service Pensions and Judicial Offices (PSPJO) Bill will close the Pre-2022 Schemes to accrual for future service. It will also clarify the way the governance of schemes, and the valuation process, work where a new scheme is established under the PSPA, and an old scheme is closed. These updated measures are reflected in the drafting of the JPS 2022.
6. A summary of the responses to the main consultation document, including a list of judicial associations and organisations, is at Annex A.

¹ When this document refers to 'JUPRA', this definition covers all pre-JUPRA schemes in addition to the 1993 scheme.

Summary of responses

1. A total of 14 responses to the consultation paper were received. This included 5 responses from judicial associations and seven responses from individual judges. We also received a response from a non-legal tribunal member and the Association of Regional Medical Members.

2. The feedback generally welcomed the progress being made on the JPS 2022. For example, the Association of Her Majesty's District Judges broadly welcomed the reforms, specifically that judges will be returned to a tax-unregistered scheme, commenting:

"We welcome the decision to return all members of the Judiciary to a tax unregistered pension scheme. The draft regulations reflect what we anticipated a new pension scheme will feature from the previous consultation."

3. One judge also commented that:

"I have read the draft regulations and consider that the scheme is well designed, fair, and comprehensible."

4. We did receive some concerns regarding the proposed regulations. In particular, a number of responses compared elements of the JPS 2022 to the equivalent JUPRA and FPJPS provisions.

5. The Council of Employment judges also sought assurance that further changes to the regulations will be consulted on. We do not intend to run any further consultations on the regulations for JPS 2022, as all issues raised have been properly considered as part of the process to finalise the regulations. A summary of the main technical changes made to the draft regulations following this consultation is available at Annex B.

6. Our consultation response shows how we have considered all the responses received, including those highlighted above, and outlines the Government's position on the scheme design and features.

Responses to the consultation – scheme design

1. This section outlines the responses received to this consultation on the Judicial Pension Scheme (JPS) 2022, and the Government’s position on each of these topics.

Scheme Governance

2. No responses commented on the proposed governance arrangements for the scheme.

Scheme Membership

3. The consultation set out proposals regarding eligibility for scheme membership, how members will be enrolled into the scheme, how qualifying pensionable service and pensionable earnings will be calculated, and deferred membership.
4. For eligibility for the scheme, the consultation document proposed that the JPS 2022 will be open to all UK judiciary, except where terms and conditions are specifically non-pensionable.
5. The list of judicial offices that will be eligible for membership of JPS 2022 is set out in the Public Service Pensions Act 2013 (Judicial Offices) Order 2015. It was proposed in our consultation that further offices will be added to this Order by way of Part 12 and Schedule 2 to the draft scheme regulations.
6. We received several queries from non-legal members regarding their eligibility for the scheme and a response from a non-legal tribunal member, requesting that all non-legal members (‘NLMs’) should be made eligible for the scheme. The Association of Regional Medical Members also responded to express concern that their members would not be eligible for the JPS 2022 on a fee-paid basis on retirement from their salaried posts.
7. We received no responses on enrolment into the scheme, pensionable service and pensionable earnings, and deferred membership.

Our response

8. Salaried ‘NLMs’ will be eligible for the JPS 2022 where they are currently eligible for a judicial pension under the existing New Judicial Pension Scheme (‘NJPS’).
9. Fee-paid NLMs whose office does not make them a tribunal chair are not eligible for a judicial pension. The role of a fee-paid medical member is different to that of a salaried medical tribunal member, and so the salaried office does not constitute a ‘relevant

salaried judge' for the purposes of eligibility for a judicial pension.² The eligibility position remains unchanged for JPS 2022.

10. The effect of Regulation 135 and Schedule 2 of the draft Judicial Pension Scheme Regulations 2022 is that certain Sitting in Retirement judicial offices will be eligible for the JPS 2022. Judicial office holders, including NLMs, who are appointed to a Sitting in Retirement office will only sit in that capacity on a fee-paid basis. Only those fee-paid offices that are currently eligible for NJPS via the Public Service Pensions Act 2013 (Judicial Offices) Order 2015 will be eligible for JPS 2022 in a Sitting in Retirement capacity.
11. Eligibility to apply for sitting in retirement office and eligibility to accrue a judicial pension in respect of sitting in retirement are separate provisions. Eligibility to apply for sitting in retirement offices will be determined by regulations, further details of which will be published in due course. In respect of pensions eligibility, only the list of sitting in retirement offices listed in Schedule 2 to the draft Judicial Pensions Regulations will be eligible for JPS 2022. This list has been determined on the basis of the pre-retirement position and of those fee-paid offices that are currently eligible for NJPS via the Public Service Pension Act 2013 (Judicial Offices) Order 2015.
12. The Ministry of Justice (MoJ) offers an alternative auto-enrolment pension to NLMs who are not eligible for a judicial pension. The National Employment Savings Trust (NEST) is the pension provider for this pension. NEST is a defined contribution occupational pension scheme backed by the Government. Further information about the scheme and the scheme rules can be found at:
<https://www.nestpensions.org.uk/schemeweb/nest.html>

Member contributions

Uniform contribution rate

13. In the consultation it was proposed that all scheme members will automatically be placed on a uniform contribution rate of 4.26%, with an option for those judges in service on 31 March 2022 to choose a lower contribution rate of 3% for a period of three years, and receive a corresponding lower accrual rate of 2.42% for that period.
14. This option was added following the feedback from the scheme design consultation where concerns were raised that Salary Group 7 judges, and some fee-paid and part-time judges, moving from NJPS to the JPS 2022 would see a reduction in their take-home pay with the contribution rate set at 4.26%. The time-limited option of a lower contribution rate of 3% was therefore added to give judges the option of mitigating the

² It was established through litigation both in the Employment Tribunal and the Employment Appeal Tribunal (e.g. *Moultrie v MoJ* and *McGrath v MoJ*) that, under the Part-Time Workers Regulations 2000, fee-paid NLMs who do not chair hearings do not have an entitlement to a judicial pension, as they do not have a relevant salaried judge as a comparator.

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.

15. The Association of Her Majesty's District Judges welcomed the option for a temporary lower contribution rate and corresponding accrual rate, commenting:

"We are pleased that the concerns expressed in our response of last year on the proposed new scheme about the impact on the District Bench of the increase in contributions due to the reduction in personal allowance, for which there is no amelioration with a tax unregistered scheme, has been recognised and members can opt to pay a lower contribution rate of 3% for 3 years with a reduced accrual rate of 2.42%."

16. However, two judicial associations expressed concerns regarding the impact on take home pay for Salary Group 7 judges, with the Council of District Judges (MC) (NI) commenting that:

"Even with the time limited mitigation it is difficult to support a proposal whereby the least well paid judicial tier is the one which will suffer a month on month reduction in income."

Additional options for pension contributions

17. The consultation proposed that JPS 2022 will not give members the option to make additional contributions to purchase 'Added Pension' or the option to make periodical payments to attain a lower 'Effective Pension Age'.

18. However, transitional members with 'Added Years', 'Surviving Spouse's Pensions' or 'Added Pension' arrangements purchased through a Pre-2022 Scheme will be allowed to continue making payments for the duration of those arrangements, noting that those arrangements will remain tax registered.

19. The Association of Her Majesty's District Judges expressed disappointment that the options to make additional contributions will not be available in the Judicial Pension Scheme 2022:

"Whilst we appreciate there is no tax benefit for such options in a tax unregistered scheme, the exercise of such options can also be for non-tax reasons, such as the wish to retire before the statutory retirement age."

20. The Sheriffs' Association also expressed a desire for the option for 'Added Pension' to be available in JPS 2022:

"Although there may be no tax benefits to members in such an arrangement it may well [be] that members of the new scheme would wish to avail themselves of this. The financial or tax implications may well evolve as the tax rules change. That should be a choice that members should be able to make armed with advice in light of their own personal circumstances and the tax context."

21. The Council of District Judges (NI) also requested that the option to attain a lower Effective Pension Age is made available in JPS 2022.

“A retention of the ability to purchase an earlier pension age would be welcome given the proposed link in JPS 2022 to a members State Pension Age which will create different pension ages of scheme members dependant on their ages.”

Our response

Uniform contribution rate

22. As per our previous consultation response, we are aware that Salary Group 7 judges moving from NJPS to the JPS 2022, 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 tax-registered scheme.

23. The time-limited option for judges to reduce their contribution rate, in exchange for a reduction in their accrual rate, was therefore introduced as a direct result of the concerns we received on the uniform contribution rate and its impact on this group of judges.

24. We are pleased to receive the feedback from the Association of Her Majesty’s District Judges welcoming this temporary option.

25. We have carefully considered the concerns raised from two other judicial associations regarding the impact on the take-home pay of Salary Group 7 judges. However, we remain of the opinion that the option to reduce contribution rates in exchange for a lower accrual rate will give judges the flexibility to broadly maintain their take-home pay if they wish to do so, and the time to plan for and adapt to the uniform contribution rate.

26. Ultimately, the uniform contribution rate will promote 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.

Additional options for pension contributions

27. The ability to purchase ‘Added Pension’ or attain a lower ‘Effective Pension Age’ would be an extension of the JPS 2022 and, therefore, tax-unregistered. We consider that these options would be considerably less attractive in a tax-unregistered pension scheme, as members would receive no tax relief on their contributions and no employer contributions on payments made into the schemes. In addition, any benefit purchased would also be subject to tax.

28. The JPS 2022 is intended to deliver equivalent benefits to a registered scheme without the restrictions on registered benefits. It would therefore not be appropriate to establish

standalone registered schemes for the purposes of purchasing 'Added Pension' or attaining a lower 'Effective Pension Age' alongside the reformed scheme.

29. We understand that members joining late or looking to retire earlier might like a facility to contribute more to make up for gaps in their service record, or to make additional financial provisions in order to be able to retire before the State Pension Age. This will still be possible in JPS 2022 as members have the option to make additional contributions to a Judicial Additional Voluntary Contribution Scheme (JAVCS).
30. The JAVCS is a tax-registered, defined contribution scheme. Contributions attract tax relief and pension benefits count towards an individual's annual allowance and lifetime allowance. Contributions made to the scheme are invested with an authorised independent pension provider. They invest the member's contributions as requested by the member according to a range of investment options. The fund which is generated can be used to purchase pension benefits for the scheme member or their dependants.

Scheme Features

Tax status

31. The consultation document reconfirmed our proposals that the JPS 2022 will be an un-registered scheme for tax purposes. This means that benefits accrued in the scheme do not count towards either the annual allowance or the lifetime allowance under the Finance Act 2004. However, none of the income tax advantages conferred by the legislation governing tax-registered pension schemes would apply, such as tax relief on member contributions.
32. The change in tax status of the scheme was generally welcomed in responses, with one judge commenting that:

"I strongly welcome the new scheme. Its tax unregistered status will be very important in

(a) encouraging barristers and solicitors to leave practice and join the judiciary;

(b) allowing existing judges to remain in the role for longer, as there is no risk that they will exceed the annual allowance

(c) it will therefore have the dual benefit in encouraging recruitment and enabling retention."

33. The Association of Her Majesty's District Judges also welcomed the decision to return all members of the judiciary to a tax-unregistered pension scheme.
34. One judge noted that there could be negative implications of the change in tax status; for example the change could impact eligibility for tax-free childcare or place the

member into the £100,000 net income bracket which would require them to have to complete a self-assessment tax return.

Lump sum commutation

35. JPS 2022 will not provide an automatic lump sum as was available in JUPRA and FPJPS. Instead, the consultation document proposed that members have the option to commute part of their pension in exchange for a lump sum, at a commutation rate of 12:1. However, in a tax-unregistered scheme, any commuted sum would be subject to tax. Therefore, we proposed that members will also receive a commutation supplement to compensate for the tax-unregistered status of the scheme.

36. One judge commented that the optional lump sum commutation was less attractive in financial terms compared to the automatic lump sum received under JUPRA and FPJPS. They also stated that judges in JUPRA and FPJPS had an expectation to remain in those schemes until retirement, and therefore receive the benefits specified under JUPRA/FPJPS until their retirement, with one of those benefits specifically being the automatic lump sum.

37. The Council of District Judges (MC) (NI) also stated that:

“Whilst the commutation supplement to compensate for the tax-unregistered status of the scheme is helpful a neater solution would be the JUPRA 1993 automatic entitlement to an automatic lump sum.”

38. We received no responses to the consultation on the proposed accrual rate for the scheme, revaluation (index-linking) of benefits, the age at which pension is payable, maximum accruable service and cost control mechanism.

Our response

Tax status

39. Following the general support for the tax-unregistered status in the first and second consultations, we plan to keep this as a feature of the scheme. The unregistered status of the JPS 2022 should ensure that we are able to recruit and retain high-quality applicants from private practice and address the recruitment and retention issues within the judiciary identified by the Senior Salaries Review Body (SSRB).

Lump sum commutation

40. We have carefully considered the comments that the commutation option is less attractive than the automatic lump sum that judges receive under JUPRA or FPJPS but consider that the commutation offer is fair, affordable and sustainable in the long-term.

The commutation provisions are in line with other public sector pension schemes. In addition, the JPS 2022 also offers a commutation supplement to compensate for the tax-unregistered status of the scheme.

41. It is important to note that all benefits previously accrued in Pre-2022 Schemes will be preserved, including the preservation of the automatic lump sum in respect of service in those schemes. Therefore, judges moving into JPS 2022 from JUPRA or FPJPS will have their automatic lump sum preserved for the pension they have accrued up until April 2022. JPS 2022 members who transfer from NJPS will also be able to commute a lump sum for the pension they have accrued under NJPS.

Transfers

42. Under the JPS 2022 regulations, we proposed that scheme members would be unable to transfer pension rights into the scheme. Members would have the ability to transfer benefits out of the scheme to a registered pension scheme that is a defined benefit scheme or a qualifying recognised overseas pension scheme, subject to the relevant provisions in the regulations.
43. Due to the tax status of the scheme, any transfer into the scheme would attract charges for the member and likely the administrator of the pension fund from which the money was being transferred. It is unlikely that the trustees of any transferring scheme would authorise such a transfer. Therefore, we consider that an option to transfer pension rights into JPS 2022 would be very unattractive to the member.
44. We received one response from a judicial association who felt that transfers in should be permitted under JPS 2022:

“We see no justification for the mechanism not being available. It may well become efficient and cost effective at some point in the future. The consultation makes the point per paragraph 77 that previous schemes allowed transfers in. We are aware that members availed themselves of this opportunity. If it proves inefficient then it will not be utilised. If it is something that is attractive - and it clearly has been in the past - then the mechanism should be available and left to members of the scheme to decide on a case by case basis.”

Our response

45. Transfers into the NJPS were permitted from other private or occupational pensions within 12 months of joining that scheme, subject to a limit on the amount that can be transferred. JUPRA and FPJPS also allowed for transfers into these schemes but only where pension rights were accrued in a registered pension scheme before commencing judicial office. However, where such a transfer is made in JUPRA or FPJPS, a tax charge on the member arises and the administrators of the pension fund from which the money is transferred could also receive a further charge.

46. Furthermore, many pension scheme providers do not allow transfers out that would be unauthorised payments. It is thus unlikely that a pension provider would permit a transfer into JPS 2022, as it is a tax-unregistered scheme.
47. Our position therefore remains that, once members transition to JPS 2022, they will be unable to transfer pension rights into the scheme and will no longer be able to make any further transfers into the pre-2022 Schemes.
48. In our consultation and draft regulations, we proposed that transfers out would be permitted under JPS 2022 subject to overriding pensions legislation. The draft regulations published referred to provisions of the Pension Schemes Act 1993 relating to transfers out from schemes which have now been superseded. The regulations have therefore been updated to refer to the correct provisions in section 95(2A) PSA 1993. These provisions place restrictions on transfers out from unfunded public service schemes to schemes which provide flexible benefits.

Leaving the scheme

49. The consultation proposed that a scheme member's dependants or nominated beneficiaries will be awarded a 'Death in Service' (DIS) lump sum should the member die in service. Along with a lump sum payment, we proposed that JPS 2022 would also provide pensions for eligible children and surviving adults upon a member's death. The pension payable to a surviving spouse, surviving civil partner or surviving cohabiting partner would be equal to 3/8ths (37.5%) of the scheme member's pension plus an enhancement factor and would be payable for life.
50. As per the consultation document, only DIS lump sum benefits under JPS 2022 would be payable. No DIS lump sum benefits from Pre-2022 Schemes will be paid. This is consistent with the current arrangements where DIS lump sums are paid by the scheme of which the individual is an active member. Dependents' pensions accrued in Pre-2022 Schemes will be protected and paid in addition to JPS 2022 pension amounts where applicable.
51. One judge commented that the regulations should make provision to ensure that there is compensation for any tax payable in consequence of the death benefits.
52. We also received several comments that the death benefits for JPS 2022 were reduced in comparison to JUPRA, particularly regarding the DIS lump sum payable under JUPRA, pensions for surviving spouses and medical retirement benefits.

"The position for provision of Death in Service appears to be significantly adjusted in respect of those who have full entitlement under JUPRA."

"The surviving spouses and civil partners' benefits of the JUPRA 1993 are preferable to those proposed under the JPS 2022. We fail to see the rationale for the reduction to survivor's benefits if the survivor is more than 12 years younger than the member."

“There is then a significant disincentive to affected judicial office holders remaining in office beyond the JPS 2022 implementation date. To do so would, in effect, reduce their surviving spouse/partner’s pension entitlement by 25%.”

“The medical retirement benefits of the JUPRA 1993 are preferable to those proposed under the JPS 2022. In particular the removal of the lump sum is to be regretted.”

53. In addition, the Council of Her Majesty’s Circuit Judges (CoCJ) noted the complexity of the regulations for Death in Service provisions, Partial Retirement, Allocation of Part of Pension and Sitting in Retirement provisions and asked for these to be clarified in the scheme guide.
54. Two judges suggested that if judges were to be encouraged to work until the revised Mandatory Retirement Age (MRA) there should be a facility for them to carry on working in a salaried role and be able to take their pension lump sum and/or pension at the same time.

Our response

55. The draft regulations have been amended so that they include a DIS lump sum supplement. This is intended to ensure that there is compensation for any tax payable in consequence of the death benefits. Therefore, the DIS benefit received from the JPS 22 remains in line with that in the current schemes.
56. We acknowledge that, for judges who were previously in JUPRA or FPJPS, the surviving adult pensions in JPS 2022 is reduced in comparison to what would have been received in those schemes. However, we have honoured our commitment to ensure that no judge will be worse off in the JPS 2022 than if they had moved or remained in NJPS.
57. The death benefits proposed for JPS 2022 are consistent with those in NJPS and other public service pension schemes. They have been designed with the aim of addressing the recruitment and retention issues within the judiciary, whilst being affordable and sustainable in the long-term. We do not believe that the proposed benefits significantly impact the overall attractiveness of the scheme.
58. Dependant benefits in the JPS 2022 will also have broader coverage than in JUPRA and FPJPS, for example, covering dependants outside of marriage or civil partnership. Dependents’ pensions accrued in Pre-2022 Schemes will also be preserved.
59. There is an option for members of JPS 2022 to continue to work until the Mandatory Retirement Age (MRA) and take some of their pension by partially retiring. The JPS 2022 regulations set out that, in order for a member who only holds one judicial office to take partial retirement, they must reduce their pensionable earnings to 80% or less of the amount before the change. Where a member sits in multiple offices, they would have to meet the partial retirement criteria for each office they wish to draw their benefits from.

60. The provisions of JPS 2022 also allow for a member to accrue pension benefit in JPS 2022 in respect of their new Sitting in Retirement office, as created by the Public Service Pensions and Judicial Offices Bill, whilst at the same time drawing their pension benefit in respect of their retired office.

Responses to specific questions

Relevant Consultation Question – Scheme features

Do you have any views on any of the scheme features that have been outlined in this consultation document or included in the draft regulations?

61. Comments on specific scheme features have been summarised above.

Relevant Consultation Question – ‘Assumed pay’

Do you have any views on how ‘assumed pay’ should be calculated?

62. In the consultation document we set out two methods for calculating assumed pay for fee-paid judges.

Option 1) - Assumed pay would be taken as the pay a member earned in a 12-month period, across all of the fee-paid offices they hold, averaged over three years.

Option 2) - Take the actual pensionable pay a member has earned across all their offices over the preceding 12 months.

63. We received no responses which expressed a preference for either calculation method. Several responses stated that both options seemed fair.

64. The Council of District Judges (MC) (NI) suggested that:

“Whilst not representing any Deputy District Judges (Magistrates’ Court) there is merit in the approach of incorporating both options into JPS 2022 and calculating assumed pay as the higher of the two.”

Our response

65. As there was no preferred option expressed in the consultation response, we propose to proceed with Option 1 to calculate assumed pay for fee-paid judges. This will be calculated on a per office basis. This option is consistent with the approach for calculating the threshold for partial retirement for fee-paid judges.

Relevant Consultation Question - Equalities

Do you have any concerns that the proposals could result in individual groups being disproportionately affected by the reforms?

66. Of the 14 responses received, 5 commented on the potential equalities impact of the proposed reforms. Of these 3 were positive that the proposals would not disproportionately impact individual groups of the judiciary.

67. The Council of Her Majesty's Circuit Judges (COCJ) responded that they could not identify any potential for individual groups being disproportionately affected by the proposed scheme. However, they requested that the term 'natural child' be replaced with 'birth child' for the definition of eligible child.

68. The Association of Her Majesty's District Judges also raised no concerns in regarding the equalities impact of JPS 2022.

69. Additionally, one judge commented that:

"I have no concerns that the proposals could result in individual groups being adversely disproportionately affected by the reforms. On the contrary, the reforms undo the unequal treatment of younger judges that was present in the previous arrangements."

70. Two associations, the Council of District Judges (MC) (NI) and the Council of Employment Judges raised concerns that the proposals could still give rise to equality issues regarding Salary Group 7 judges, commenting:

"We disagree with the equality impact conclusions in respect to Group 7 judges UK-wide. The most diverse group of judicial office holders are the only judges to see a reduction in take home pay as a result of JPS 2022. As indicated above the obvious remedy is to set the salary of Group 7 at a level that makes the Uniform Contribution Rate cost neutral for these judges."

"No specific equalities concerns have been expressed through our internal consultation process, but the impact on group 7 judges (including Employment Judges) who comprise the largest headcount of all judicial pay groups, having the same JPS contribution rate as the other judicial pay groups, despite the difference in earnings of other judges in groups 1 to 6, seems unfair, and MoJ is asked to reconsider their position on this point."

Our response

71. We are pleased that several responses did not identify any potential for individual groups being disproportionately affected by the proposed scheme, and we welcome the comments 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 the JPS 2022.

72. We have replaced the term 'natural child' with 'birth child' in the draft scheme regulations, reflecting the feedback from the COCJ.

73. While we have considered the concerns raised, 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.

74. We remain of the opinion that the time-limited option for judges to reduce their contribution rate, in exchange for a reduction in their accrual rate, mitigates the impact on Salary Group 7 judges and affected fee-paid and part-time judges. The lower accrual rate option gives these judges the flexibility to broadly maintain their take-home pay whilst giving them time to plan and adapt to the uniform contribution rate.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

75. 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 in funding the proposed pension scheme.

Equalities

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

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

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

Welsh Language Impact Test

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

Conclusion and next steps

79. The timing of the implementation of the scheme is dependent on the passage of the Public Service Pensions and Judicial Offices Bill through Parliament.

80. Subject to this Bill being approved by Parliament, the Government will take steps to lay the regulations in Parliament to bring the JPS 2022 into effect. These regulations will reflect the position outlined in this response.

81. It is our intention for the scheme to be implemented on 1 April 2022 subject to the Bill and scheme regulations being approved by Parliament before this date.

Consultation principles

82. 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

Responses to consultation by category

Respondent category	Number of responses	% of total
Court of Appeal Judge	1	7.1%
District Judge	3	21.4%
Judicial and legal associations	6	42.9%
Non-legal member	1	7.1%
Sheriff	1	7.1%
Tribunal Judge	2	14.3%
Total	14	100%

Judicial and non-legal members associations

The Association of Her Majesty's District Judges

Association of Regional Medical Members

Council of Her Majesty's Circuit Judges

Council of District Judges (MC) (NI)

Council of Employment Judges

The Sheriffs' Association

Annex B – Summary of the changes to the draft regulations

There have been several additions and modifications made to the draft scheme regulations since the consultation was published on 23 July 2021.

The majority of these changes are related to legal drafting and are minor and technical in nature; such as correcting cross-references or updating references to current legislation. The main areas have been highlighted below.

Commutation supplement: Lump sum death benefits

Part 8, Chapter 4 has been amended to include a lump sum supplement to be paid where a lump sum death benefit is payable in respect of a member. This regulation has been added to cover the income tax payable on any lump sum death benefit, as well as on the supplement itself.

Commutation of Small Pensions

Part 12, Chapter 2 has been amended so that it more accurately mirrors the requirements of the commutation provisions that would apply had JPS 2022 been a registered scheme. In particular, the requirement that the member or beneficiary consent in order to receive a small pot commutation lump sum has been removed, and a 12-month commutation period will apply for sums commuted from JPS 2022, FPJPS 2017 or *any* registered pension scheme.

Furthermore, the commutation supplement has been amended to include an amount equal to 25% of the income tax payable in relation to the small pot or trivial commutation lump sum that relates only to uncrystallised rights under the scheme. This mirrors the treatment of income tax payable on a lump sum from a registered pension scheme.

Additional Offices

Two new offices have been added to Schedule 2 of the regulations: Chair of the Police Appeals Tribunal and the Chair of the Plant Varieties and Seeds Tribunal. These offices will also be added to the Public Service Pensions Act 2013 (Judicial Offices) Order 2015, thereby making them eligible for JPS 2022.

Consolidated Fund

In Part 12, Chapter 4, provision has been included to allow the pensions for certain senior salaried judiciary to be charged on, and paid out of, the Consolidated Fund, as has historically been the practice. In Schedule 3, Part 2, an equivalent amendment has been made to the JPS 2015 regulations.



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