

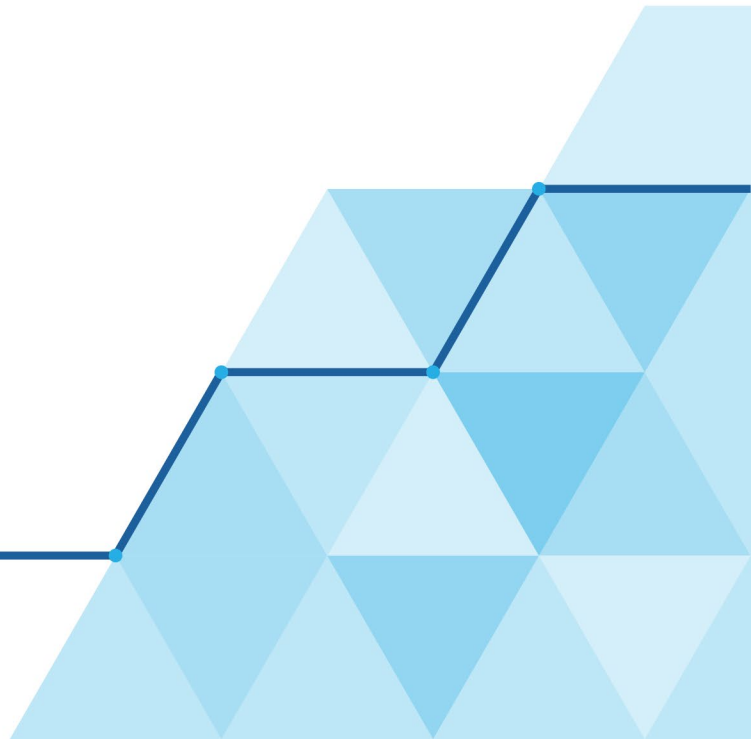


Ministry
of Justice

THE JUDICIAL PENSIONS (AMENDMENT) REGULATIONS 2024

Response to consultation on the draft amendment regulations

Response published October 2024





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of Justice

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Response to consultation carried out by the Ministry of Justice.

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Introduction and contact details

1. This document is the post-consultation report for the consultation paper, “The Judicial Pensions (Amendment) Regulations 2024: Consultation on the draft regulations”. This consultation was published on 19 February 2024 and the consultation closed on 14 April 2024.
2. It will cover:
 - the background to the consultation
 - a summary of the responses to the consultation
 - a detailed response to the specific questions raised in the consultation paper
 - the next steps following this consultation.
3. Further copies of this report and the consultation paper can be obtained by contacting judicial_policy_correspondence@justice.gov.uk at the address below:

Complaints or comments

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

Executive Summary

5. The consultation paper ‘The Judicial Pensions (Amendment) Regulations 2024: Consultation on the draft regulations’ was published on 19 February 2024. It invited comments on various amendments to the Judicial Pensions (Fee-Paid Judges) Regulations 2017 (the **FPJPS regulations**), the Judicial Pensions Regulations 2015 (the **JPS 15 regulations**), the Judicial Pensions Regulations 2022 (the **JPS 22 regulations**) and the Public Service Pensions Act 2013 (Judicial Offices) Order 2015 (the **Judicial Offices Order**) which were set out in the draft regulations published alongside the consultation. These are titled the Judicial Pensions (Amendment) Regulations 2024 (the **2024 Amendments**).
6. Although set out more fully in the consultation, key features of the 2024 Amendments include:
 - **Cost Control Mechanism:** In order to comply with the Public Service Pensions Act 2013 (the **PSPA 13**), these amendments will provide for an employer cost cap in the Judicial Pension Scheme 2022 (**JPS 22**) following the completion of the first scheme valuation in February 2024.
 - **Technical amendments:** A number of technical amendments are included in the provisions. These are required (amongst other things):
 - to insert new provisions into the JPS 22 regulations and JPS 15 regulations providing that, where strictly necessary, an office which should have

previously been eligible to accrue under these schemes may now benefit from retrospective entitlements.

- to correct a calculation issue in regulation 84 of the JPS 22 regulations.
 - to amend provisions in the FPJPS regulations relating to member contributions and commutation of small pensions.
 - **Deadline Extensions:** To ensure that there is sufficient time to provide affected members with illustrative information about the options open to them and/or to allow them time to make considered choices, these amendments will extend various deadlines for member elections in the FPJPS regulations.
 - **Additional Benefits:** To improve their operation, amendments will be made to certain of the additional benefits schemes relating to the FPJPS regulations, being the Fee-Paid Judicial Added Benefits Scheme (**FPJABS**) and the Fee-Paid Judicial Added Years Scheme (**FPJAYS**).
 - **Office Eligibility:** These amendments will add further eligible offices into Schedule 1 to the FPJPS regulations and the schedule to the Judicial Offices Order in order to confer pension entitlements.
7. We received a total of six responses to the consultation including from the Council of Circuit Judges and the Council of Upper Tribunal Judges. Overall, the responses we received were of a technical nature, asking for clarification on details of amendments with no opposition to the content of the amendments. In particular, three out of six responses were on the topic of our proposal to implement a Cost Control Mechanism into the JPS 22 regulations, which we have addressed in the response below.
 8. As the responses to the consultation did not raise any concerns regarding the drafting of the amendments, we are planning to proceed with the proposals contained within the 2024 Amendments.
 9. In addition, since publication of the consultation, MoJ has identified additional provisions for inclusion in this SI, namely the extension of powers to reconcile amounts paid to judges, in respect of their new, pre-2000 entitlements, with their formal entitlements for that period, and the further extension of some of the deadlines mentioned above. These are explained at section 41 below.
 10. The consultation period closed on 14 April 2024 and this report summarises the responses, including how the consultation process influenced the final form of the 2024 Amendments.
 11. The equality assessment in the Equality Statement accompanying the consultation remains unchanged as no further equality impacts were identified during the consultation process or in respect of the additional provisions mentioned at

paragraph 9, above. The Equality Statement, with some minor technical updates, is provided with this report.

12. A Welsh language version of this response to the consultation has been published alongside this one.

13. A list of respondents is at Annex A.

Summary of responses

14. A total of six responses to the consultation paper were received. Of these, three were from individual members of the judiciary and two were from judicial associations. One respondent did not engage with the material of the consultation. None of the responses were opposed to the proposed 2024 Amendments. All of the responses were asking for clarification on technical details of specific amendments, with the majority seeking more information on the cost control mechanism.

Responses to specific questions

15. This section outlines the responses received to each question within the consultation on the 2024 Amendments, and the Government's position on each of these responses. The questions are listed in the same order they appeared in the consultation.

Do you have any comments on our proposals to include provisions for the Cost Control Mechanism (CCM) in the JPS 22 regulations?

16. The 2024 Amendments insert a new regulation into JPS 22 which would provide the scheme with an “employer cost cap” (a target cost limit for the scheme), as required by section 12 of the Public Service Pensions Act 2013 (PSPA 13)¹. The employer cost cap is part of the cost control mechanism (CCM).

17. Three of the six respondents expressed concerns regarding the assumptions used to calculate the CCM. Specifically, they asked whether the employer cost cap could be breached more easily as a result of the decision to adopt the actuarial assumptions of the 2012 valuation in JPS 22, rather than the 2020 valuation assumptions, when calculating the cap.

¹ Public Service Pensions Act 2013 (legislation.gov.uk)

18. HM Treasury consulted on the reform of the overall CCM framework for all public sector schemes in 2021². The judicial schemes were included in that consultation, and based on that consultation, HMT determined that the same principles should apply to the judicial schemes.
19. However, the judicial schemes are unique amongst public sector schemes because the 2015 scheme was closed to accruals in 2022, and replaced with a new scheme, JPS 22, which has a different accrual rate and is tax unregistered.
20. HMT, in discussion with MoJ and having engaged with the Judicial Pensions Board and Judicial Pensions Committee, considered the question whether the same 2012 assumptions should apply to setting the CCM in JPS 22, as they had to JPS 15 and the other public sector reformed schemes. It decided to continue to use the 2012 assumptions, in order to ensure consistency across all public sector schemes. An MoJ policy statement on the approach was issued in June 2022³.
21. The assumptions used to set the mandatory employer cost cap in JPS 22 as required under section 12(4) of the PSPA 13, are set out in The Public Service Pensions (Valuations and Employer Cost Cap) Directions 2023⁴ published by His Majesty's Treasury.
22. These directions were followed by the Government Actuary's Department (GAD) in calculating the JPS 2022 employer cost cap percentage set out in the valuation for the judicial pension schemes, as at 31 March 2020, dated 7 February 2024⁵.
23. The approach to setting the cost cap is therefore outside the scope of this consultation, but in any event, MoJ considers that the approach to the mechanism is the correct one, since it ensures that the judicial scheme is treated the same as other public sector schemes.

² Public Service Pensions: Cost Control Mechanism Consultation: Government Response to the Consultation

³ Cost Control Mechanism MoJ Policy Statement (published June 2022)

⁴ The_Public_Service_Pensions__Valuations_and_Employer_Cost_Cap__Directions_2023 (publishing.service.gov.uk)

⁵ JPS 2020 Valuation Report 7 Feb 2024 (publishing.service.gov.uk)

Do you have any comments on our proposal to insert a new regulation 7A and regulation 13A into JPS 22 and JPS 15 respectively?

24. None of the respondents provided any comments on our proposal to insert a new regulation 7A and regulation 13A into the JPS 22 regulations and the JPS 15 regulations respectively.
-

Do you have any comments on our proposal to amend Regulation 84 in JPS 22?

25. None of the respondents provided any comments on our proposal to amend regulation 84 in the JPS 22 regulations.
-

Do you have any comments on our proposals to amend the FPJPS contributions provisions?

26. None of the respondents provided any comments on our proposals to amend the FPJPS contributions provisions.
-

Do you have any comments on our proposals to amend the commutation of small pensions provisions in FPJPS?

27. None of the respondents provided any comments on our proposals to amend the commutation of small pensions provisions in the FPJPS regulations.
-

Do you have any comments on our proposals to extend the pre/post-1995 and additional benefits deadlines?

28. None of the respondents provided any comments on our proposals to extend the pre/post-1995 and additional benefits deadlines.

Do you have any comments on our proposals to extend the lump sum deadline set out in Regulation 58A?

29. None of the respondents provided any comments on our proposals to extend the lump sum deadline set out in regulation 58A of the FPJPS regulations.

Do you have any comments on our proposals to amend the FPJABS provisions?

30. None of the respondents provided any comments on our proposals to amend the FPJABS provisions.

Do you have any comments on our proposals to amend the provisions for the conversion of FPJAYS added years and FPJABS added units of benefit?

31. None of the respondents provided any comments on our proposals to amend the provisions for the conversion of FPJAYS added years and FPJABS added units of benefit.

Do you have any comments on our proposals to amend the FPJAYS provisions?

32. None of the respondents provided any comments on our proposals to amend the FPJAYS provisions.

Do you have any comments on our proposals to add the office of Judge of the Consumer Credit Appeal Tribunal with a SLD of 1 September 2009 and a service credit multiplier of 0.00 to Schedule 1 of FPJPS?

33. None of the respondents provided any comments on our proposals to add the abovementioned office to Schedule 1 to the FPJPS regulations. However, one respondent expressed broader concerns that an office was still not recognised in Schedule 1 to the FPJPS regulations as having a FPJPS entitlement, namely service in the Rent Assessment Committees in England.
34. We understand that before 1 July 2013, the Residential Property Service (RPTS) was made up of rent assessment committees, leasehold valuation tribunals and residential property tribunals. The RPTS became part of the First Tier Tribunal from 1 July 2013 and it was from this point that salaried judges in the RPTS became eligible for a judicial pension. Prior to this, salaried RPTS judges had pension arrangements analogous to civil service arrangements. Accordingly, there is an entry on Schedule 1 that specifies a service limitation date of 30 June 2013 for fee-paid First-tier Tribunal Judges (Property Chamber) Residential Property. Eligible fee-paid service on or before this date attracts a service credit multiplier of either 0.5 or 0.53 (depending on the date of the judge's appointment), reflecting the 'by analogy' pension arrangements for relevant salaried judges.
35. We therefore do not consider it is necessary to add a separate entry for Rent Assessment Committees in England because the office of First-tier Tribunal (Property Chamber) Residential Property is specified in Schedule 1, with appropriate service limitation information, and FPJS regulation 3 provides that the definition of 'judicial office' for the purpose of the regulations includes an office which has been replaced by a specified office.

Do you have any comments on our proposals to add the office of Judge of the Estate Agents Appeal Tribunal with a SLD of 1 September 2009 and a service credit multiplier of 0.00 to Schedule 1 of FPJPS?

36. None of the respondents provided any comments on our proposals to add the above-mentioned office to Schedule 1 to the FPJPS regulations.

Do you have any comments on our proposals to add the office of Member (Chair only) First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation to the Public Service Pensions Act 2013 (Judicial Offices) Order 2015?

37. None of the respondents provided any comments on our proposals to add the abovementioned office to the schedule to the Judicial Offices Order.

Please let us know if you consider that any of the proposals will have adverse equality impacts?

38. None of the respondents provided any comments on whether they consider that any of the proposals will have adverse equality impacts.

Additional Powers Required in The Judicial Pensions (Amendment) Regulations 2024

39. Subsequent to the consultation, we have identified a requirement for the addition of a power which effectively extends the existing powers for reconciliation of pre-2000 service with the formal entitlements arising from the regulations which amended FPJPS on 1 April 2023. The extension of the powers will ensure MoJ is able to reconcile approximated pension payments that were paid out to applicable judges, in respect of their pre-2000 O'Brien 2/Miller (**OB2/M**) service, with their formal entitlements for this period.

40. Prior to 1 April 2023, Payments in Lieu of Pensions (PiLs) were paid as interim amounts to allow the scheme to pay members benefits owed following the OB2/M remedy, calculated at an estimated rate. Following 1 April 2023, payments continued to be made – albeit as approximated pension payments to judges paid to members from the scheme itself. As these approximated payments now require reconciling with the actual sums due following the amended FPJPS regulations, these 2024 Amendments will insert provisions enabling this process to occur.

41. A number of statutory deadlines will also need to be extended beyond the previously consulted upon dates. These deadlines would be extended by one year, from the previously proposed date of 31 March 2026 to 31 March 2027, allowing MoJ to carry out the necessary pre-engagement with members to allow them to exercise their options on a pre or post 1995 basis.

42. The extension applies to the following deadlines in the FPJPS regulations:

- electing for benefits in relation to the relevant office which would otherwise be calculated under the pre-1995 provisions to be calculated under the post-1995 provisions in Regulation 11C of the FPJPS regulations
 - membership of FPJAYS in regulation 104 of the FPJPS regulations
 - membership of the Fee-Paid Judicial Added Surviving Adult's Pension Scheme in regulation 117 of the FPJPS regulations
 - membership of FPJABS in regulation 128C of the FPJPS regulations
 - additional benefit purchases in regulations 128S, T and V of the FPJPS regulations
43. Whilst the additional statutory power and extensions to the deadline were not part of the formal public consultation, MoJ has engaged the senior judiciary on these matters.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

44. We have not carried out an economic impact assessment as our proposals should have no impact on business, charities or the voluntary sector. The costs associated with our proposals exist as a public funding liability and are under consideration in terms of departmental expenditure implications. Furthermore, the amendments to the FPJPS regulations are consistent with our ongoing duty to implement the remedy required under the *O'Brien 2* and *Miller* cases.

Equalities

45. Under the Public Sector Equality Duty within the Equality Act 2010 MoJ Ministers and policy makers are required to consider the equalities impacts of policy proposals in relation to the following:
- (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (b) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.
46. The Equality Statement published with the consultation did not attract any comments and we consider the equality assessment remains correct. The Equality Statement, is enclosed with this report.

Welsh Language Impact Test

47. In accordance with the Welsh Language Act 1993, the MoJ's Welsh Language Scheme requires an **'assessment the linguistic consequences of policies affecting services provided to the people in Wales'**.

48. A Welsh language version of this consultation response has been published. There are no linguistic consequences of the proposed amendments affecting services provided to people in Wales.

Environmental Principles Duty

49. From the 1 November 2023, the Environment Act 2021 places a legal duty on Ministers of the Crown to have ‘due regard’ to the environmental principles policy statement.⁶

50. The 5 principles in this policy statement, as set out in section 17(5) of the Environment Act, are internationally recognised as successful benchmarks for environmental protection and enhancement. When making policy, and where relevant, ministers will need to consider the:

- integration principle
- prevention principle
- rectification at source principle
- polluter pays principle
- precautionary principle

51. The UK government has already committed to these 5 principles through international instruments and processes.

52. We have reviewed responses to the consultation and have not identified any environmental impacts of the proposed amendments.

Conclusion and next steps

53. As the responses to the consultation primarily asked questions in relation to, and sought further context on, our proposal to insert a CCM into JPS 22, which we have addressed above, we are planning to proceed with the proposals contained within the 2024 Amendments.

54. It is our intention for these amendments to be brought into force by 6th February 2025 subject to Parliamentary approval.

⁶ Environmental principles policy statement - GOV.UK (www.gov.uk)

Consultation principles

55. 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

Council of Upper Tribunal Judges

Council of Circuit Judges

Upper Tribunal Judge Rimington

Judge Philip Glen

Judge Jonathan Holbrook

Mr Andre

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