EXPLANATORY MEMORANDUM TO

THE JUDICIAL PENSIONS (EUROPEAN COURT OF HUMAN RIGHTS) (AMENDMENT) ORDER 2025

2025 No. 271

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Rt Hon Shabana Mahmood MP, Lord Chancellor at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 James Dowler, Director for International Rights and Constitutional Policy Directorate, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amy Viner at the Ministry of Justice Telephone: 07858 680670 or email: CouncilOfEurope@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order (the **amendment Order**) amends the Judicial Pensions (European Court of Human Rights) Order 1998 (the **Order**). Once the amendment Order has come into force, the Order will enable a person who holds eligible judicial office in the UK, is a member of the Judicial Pension Scheme 2022 (**JPS 22**), and who is appointed to the European Court of Human Rights (**ECtHR**), to continue to accrue benefits in JPS 22 on the terms that would have applied had they continued to carry out the duties of their UK judicial office (as defined in s18(1) Human Rights Act 1998). It also provides that if the ECtHR judge elects to become a member of the Council of Europe (**CoE**)'s pension scheme, they will be deemed opted out of JPS 22.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Currently, only an eligible holder of UK judicial office who is a member of the pension schemes constituted under the Judicial Pensions Act 1981 (**JPA 81**) and the Judicial Pensions and Retirement Act 1993 (**JUPRA**) can continue to accrue their UK judicial pension during their judicial term at the ECtHR. These pension schemes are both now closed to accruals. We are now extending this policy to cover eligible holders of UK judicial office who are members of JPS 22, which is the current judicial pension scheme. This is necessary because the policy has always been to enable eligible holders of UK judicial office appointed to the ECtHR to continue to accrue benefits in their UK pension, and it may affect the recruitment of judges to this post if this entitlement is not continued.

What was the previous policy, how is this different?

5.2 The policy to date has enabled eligible holders of UK judicial office who are members of JPA 81 or JUPRA to continue to accrue benefits in their UK judicial pension scheme during their judicial term at the ECtHR.

5.3 The main change is to extend the policy to include eligible holders of UK judicial office who are members of JPS 22.

5.4 Separately, ECtHR judges are eligible to join the Council of Europe (**CoE**)'s own pension scheme. The policy (and the legislation, via this Order) has now been updated so that, should a UK judicial office holder appointed to the ECtHR choose to join that scheme, they will be deemed to have opted out of JPS 22. This is so that a judge cannot accrue benefits in both the CoE scheme and JPS 22 during their ECtHR mandate.

6. Legislative and Legal Context

How has the law changed?

6.1 The Human Rights Act 1998 contains provisions which enable eligible holders of UK judicial office to retain their pension arrangements if appointed to the ECtHR. The current Order made provision for this in respect of eligible holders of UK judicial office who were members of JPA 81 and JUPRA. The Order, once amended by this instrument, will refer to JPS 22 as well as JPA 81 and JUPRA. This technical amendment is not the result of a new or substantive policy change and there are no new obligations arising from this change.

6.2 The amendment Order also inserts a new provision providing that, if the appointee wishes to take up the CoE pension scheme, they will be deemed to have opted out of JPS 22.

Why was this approach taken to change the law?

6.3 Section 18(6) of, and Schedule 4 to, the Human Rights Act 1998 require an Order to be made to enable eligible holders of UK judicial office to retain their pension arrangements if appointed to the ECtHR. Secondary legislation is required to update the Order to include eligible members of JPS 22, to comply with the obligation set out in the Human Rights Act 1998.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was not undertaken as there is no statutory duty to do so and there has been no commitment made to undertake one. Further, this amendment Order does not represent a new policy or change to policy, rather it provides a technical update to an outdated Order so that it refers to the pension scheme in which serving holders of UK judicial office are currently accruing pension. Officials in the devolved administrations have been informally notified that the Government plans to introduce these amendments. A draft of the amendment Order has been shared with them ahead of being laid in Parliament.

7.2 As the amendment Order is being made jointly by the Lord Chancellor and the Secretary of State for Scotland, consent to make the amendment Order was obtained from the Secretary of State for Scotland, who has also signed the amendment Order.

8. Applicable Guidance

8.1 No guidance is being provided.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this amendment Order because it does not represent a new or changed policy, rather it is to provide an update to an outdated Order. The financial implications of the amendment Order are limited. The Ministry of Justice will continue to incur the cost of employer pension contributions if the holder of UK judicial office appointed to the ECtHR chooses to continue their JPS 22 pension arrangements. The employer pension contributions that would be paid will be determined as if, whilst serving as the UK judge to the ECtHR, the judge's salary was that which would have been payable to them if they continued to perform the duties of their UK judicial office.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business, charities or voluntary bodies because the amendment Order relates only to the pension arrangements of eligible holders of UK judicial office appointed to the ECtHR.

9.3 The amendment Order does not impact small or micro businesses.

9.4 There is no impact on the public sector. The amendment Order allows an eligible holder of UK judicial office who is already a member of JPS 22 to choose to continue to accrue benefits in that scheme where they are appointed as an ECtHR judge, in line with the existing policy approach. There will be no additional cost than if the holder of UK judicial office were to continue to carry out the functions of their UK judicial office. This is because this Order applies to a holder of UK judicial office who is already a member of JPS 22, and so the Ministry of Justice will continue to pay the employer contributions it is already paying in respect of that holder of UK judicial office.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department does not intend to monitor this instrument. If, however, the judicial pension scheme changes in the future, policy officials will review and take forward any necessary work to update the Order by way of a further amending order.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Lord Chancellor has made the following statement: a review clause is not needed because the impact of this provision and persons affected by it are limited. Further, officials will keep the Order under review and, should there be any change to the domestic judicial pension scheme, the Order will be updated accordingly.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").