EXPLANATORY MEMORANDUM TO

THE JUDICIAL PENSIONS REGULATIONS 2022

2022 No. 319

1. Introduction

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

2. Purpose of the instrument

2.1 These regulations establish the Judicial Pension Scheme 2022 (JPS 2022), a scheme for the payment of pensions and other benefits to, or in respect of, eligible members of the judiciary.

2.2 The JPS 2022 will be the only judicial pension scheme in which eligible judicial office holders can accrue a pension for service from 1 April 2022, on which date all other judicial pension schemes will be closed to future accrual.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

Consolidated Fund

3.1 The regulations include an amendment to the Judicial Pension Regulations 2015 (SI 2015/182 as amended) (JPR 2015) which has retrospective effect. The JPR 2015 are made under the powers in the Public Service Pensions Act 2013 (PSPA) which includes the power for scheme regulations to have retrospective effect (section 3(3)(b) PSPA). Section 39(1) PSPA provides that scheme regulations may provide for any pension or other sum payable to or in respect of certain members of the judiciary to be charged on, and paid out of, the Consolidated Fund. This was also the funding position for these judges in the pre-2015 schemes. Due to an oversight, provision for this was not included in the JPR 2015 but pensions for these judges were charged on the Consolidated Fund. Retrospective provision is therefore needed to regularise the payments made to a small number of judges from the scheme.

3.2 The regulations will amend the JPR 2015 so that pensions and lump sums to or in respect of these members of the judiciary can be charged on the Consolidated Fund retrospectively, with effect from 1 April 2015. Once aware of the issue, the judicial pension scheme ceased to charge these payments on the Consolidated Fund and therefore payments in respect of these members of the judiciary in January and February 2022 were paid out of money provided by Parliament through the Supply Estimates procedure, using powers under regulation 39(2) PSPA. These funds will be recovered from the Consolidated Fund after the passing of these regulations to ensure correct accounting.

Made Affirmative Procedure

3.3 This instrument is subject to the Made Affirmative procedure as provided for by section 107 of the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA).

3.4 The PSPJOA requires these regulations to be made using the Made Affirmative procedure, as opposed to the Draft Affirmative procedure which is generally required for the making of scheme regulations for the judiciary. The Made Affirmative procedure only applies to scheme regulations made within one month of the PSPJOA being passed and therefore will not apply to future scheme regulations for the judiciary. The Made Affirmative procedure is appropriate for these regulations to avoid a gap for pension arrangements for the judiciary as the PSPJOA closes all existing judicial pension schemes to future accrual after 31 March 2022.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Dominic Raab MP, Lord Chancellor and Secretary of State for Justice, has made the following statement regarding Human Rights:

"In my view the provisions of the Judicial Pensions Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Public Service Pensions Act 2013 (PSPA) implemented public service pension reforms, based on the recommendations from Lord Hutton's review of public service pensions.[1] This included reforms to the judicial pension schemes.

6.2 The regulations created by this instrument will be subject to the PSPA statutory framework and are therefore consistent with the modernised pension provisions and governance requirements that were brought into force by the PSPA for most public service pension schemes.

6.3 The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) closes existing judicial pension schemes to accrual for future service after 31 March 2022, including the New Judicial Pension Scheme (NJPS) which was established under the PSPA.

6.4 This instrument establishes a new scheme for the judiciary under section 1 of the PSPA. It also makes necessary transitional arrangements and adds various judicial offices to the list of offices eligible for a judicial pension in the Public Service Pensions Act 2013 (Judicial Offices) Order 2015. From 1 April 2022, JPS 22 will be the only judicial pension scheme available for accrual for future service.

6.5 The PSPJOA paved the way for the implementation of a new PSPA scheme for the same description of persons as an existing PSPA scheme by amending the PSPA to clarify how the governance and valuation provisions work on introduction of a new scheme where a 'connected scheme' already exists. The PSPJOA also enabled devolved Northern Irish and Scottish judicial offices to be added to the scheme.

7. Policy background

7.1 The legacy judicial pension schemes, including the Judicial Pensions and Retirement Act 1993 ('JUPRA') and its fee-paid equivalent, the Fee-Paid Judicial Pension

[1] hutton_final_100311.pdf (publishing.service.gov.uk)

Scheme ('FPJPS'), were tax-unregistered, final salary schemes. This means that members were not subject to annual allowance and lifetime allowance limits on tax relieved benefits accrued within the schemes. By contrast, NJPS was established under the PSPA as a tax-registered scheme that uses career average rather than final salary as the basis for calculating pension benefits.

7.2 These changes have had a disproportionate impact on the judiciary and, following the introduction of NJPS, recruitment and retention issues emerged. In their report, the Senior Salaries Review Body (SSRB) concluded that the principal cause of these problems were the cumulative impacts of the 2015 public service pension reforms and subsequent changes to the pension tax thresholds.[2]

7.3 Continuing recruitment issues would threaten the effective functioning of our justice system and its reputation. Not having enough judges means that cases will take longer to be heard, seriously affecting all jurisdictions. It will also undermine our ability to compete internationally for legal services, which are vital to the UK economy.

7.4 As a result, the Government made a public commitment to develop a pensions-based solution for the whole judiciary, which would aim to address in the long-term, the recruitment and retention problems identified by the SSRB.

7.5 This instrument creates the new, reformed pension scheme for the judiciary (JPS 2022). JPS 2022 will be the only judicial pension scheme in which eligible salaried and fee-paid judicial office holders can accrue benefits for future service from 1 April 2022. In addition, devolved judicial office holders in Northern Ireland who are currently eligible for the Northern Ireland Judicial Pension Scheme 2015 will also be eligible to join JPS 2022.

7.6 Many of the features of JPS 2022 set out in the instrument are in line with the main principles of the 2015 pension reforms, therefore ensuring that it is affordable and sustainable in the long-term. This includes a pension based on a career average accrual model, no restriction on the number of accruing years in service, and the normal pension age linked to the State Pension age.

7.7 However, a key feature of JPS 2022 is that it will be tax-unregistered, so that benefits accrued in the scheme do not count towards members' annual allowance and lifetime allowance limits. Several of the scheme features flow from this tax-unregistered status, including the member contribution rates and the supplement paid if an optional lump sum is taken.

7.8 The instrument also sets out the option for existing judicial office holders to choose a lower contribution rate and corresponding lower accrual rate for the first three years of the scheme; how certain provisions will apply to fee-paid judges; the transitional arrangements for judicial office holders that have been members of JUPRA, FPJPS or NJPS; and also adds additional offices to the scheme, including devolved offices and 'sitting in retirement' offices.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act.

[2] https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018

9. Consolidation

9.1 The Ministry of Justice has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 The Ministry of Justice consulted on the overall design for JPS 2022 in July 2020.[3] There were 39 responses to this consultation, including 16 from judicial associations. Overall, the responses were supportive of the new scheme. Several responses expressed concerns regarding the introduction of uniform contribution rate and this has informed the drafting of the regulations, which now offers members who are in judicial service on 31 March 2022 the option for a time-limited lower contribution rate in exchange for a lower accrual rate. The Ministry of Justice's position on these points is set out in the response to the consultation published in February 2021.[4]

10.2 A further consultation on the scheme regulations was run by the Ministry of Justice in July 2021.[5] A smaller number of responses were received to this consultation and were generally supportive of the scheme. The Ministry of Justice's position on the points raised is set out in the response to the consultation published on 16 December 2021.

10.3 The Department of Justice ran a similar consultation on the scheme design in October 2020, in respect of devolved judges in Northern Ireland.[6] They concluded that devolved judicial office holders should be offered the same pension entitlements as the excepted judiciary in Northern Ireland and other judicial office holders across Great Britain.

11. Guidance

11.1 The Judicial Pensions Board (JPB), established under Part 3 (Governance) of the JPR 2015, will have oversight of JPS 2022. The JPB is responsible for assisting the Lord Chancellor as the scheme manager to administer the Judicial Pension Scheme.

11.2 Options letters have been sent to current eligible judicial office holders regarding whether they wish to opt out of the scheme and their choice of contribution rate. A scheme guide is also available for all eligible judicial office holders.

11.3 The Ministry of Justice has also been proactively communicating with judicial office holders to inform them of the intended changes via a series of webinars and newsletters.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There will be increased costs to the Ministry of Justice of an initial circa £20m p.a. as a result of implementing the scheme compared to current judicial pension arrangements. Overall, the cost of JPS 2022 will be greater than if all members were

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901341/proposals-for-a-reformed-judicial-pension-scheme-consultation.pdf
[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964866/reformed-judicial-pension-scheme-consultation-response.pdf
[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005436/jps-2022-scheme-regulations-consultation.pdf
[6] https://www.justice-ni.gov.uk/consultations/proposals-reformed-judicial-pension-scheme

in NJPS 2015, but it will be lower than if all members were accruing benefits in JUPRA or FPJPS from 1 April 2022.

12.3 The unregistered tax status of the scheme will also have an impact on the tax receipts received by HMRC. It is not possible to ascertain the overall impact on HMRC, as this will depend on individual circumstances.

12.4 An Impact Assessment has not been prepared for this instrument because there is no economic impact on business, charities or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument includes a requirement for the scheme to be subject to regular actuarial valuations. It also includes provisions triggering changes to the scheme if the costs of the scheme move outside of a fixed range, in common with other public service pension schemes.

14.2 The Judicial Pension Board will oversee the governance of the scheme and keep it under review.

15. Contact

15.1 George O'Shea at the Ministry of Justice [email address: George.oshea@justice.gov.uk] can be contacted with any queries regarding the instrument.

15.2 Simon Masterson, Deputy Director for Judicial Pay and Pensions, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Dominic Raab MP, Lord Chancellor and Secretary of State for Justice at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.