**EXPLANATORY MEMORANDUM TO**

**THE PUBLIC SERVICE PENSIONS ACT 2013 (JUDICIAL OFFICES) (AMENDMENT ETC.) REGULATIONS 2021**

**2021 No. 36**

## 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 This instrument provides various eligible fee-paid judicial office holders with access to the Judicial Pension Scheme 2015 ("JPS 2015") established under the Public Service Pensions Act 2013 ("the 2013 Act"). The offices are added to the Public Service Pensions Act 2013 (Judicial Offices) Order 2015 ("the 2015 Order") and may therefore participate in the scheme from 1 April 2021. This instrument also amends the Judicial Pensions Regulations 2015 ("JPR 2015") so that the Lord Chancellor may determine the eligibility of these offices to participate in the scheme for any period from 1 April 2015 until 31 March 2021.

2.2 It is necessary to make the changes in this instrument to ensure that the fee-paid office holders in question can formally accrue a JPS 2015 pension for their service before and after their admission to the scheme and that pension contributions can be deducted for their service as appropriate.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 This instrument corrects the titles of two Welsh Tribunals judicial offices listed in the 2015 Order. It removes the office of Chairman of the Residential Property Tribunal Wales and replaces it with the correct title of President of the Rent Assessment Committees Wales. It also removes the office of Chairman of the Mental Health Review Tribunal for Wales, which does not need to be replaced as its correct title (President of the Mental Health Review Tribunal for Wales) is already listed in the 2015 Order. The procedure for free issue of this instrument has been applied and these regulations are being issued free of charge to all known recipients of the 2015 Order (S.I. 2015/580).

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

## 4. Extent and Territorial Application

4.1 This instrument extends to the whole of the United Kingdom.

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

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 The JPR 2015 established a scheme (JPS 2015) for the payment of pensions and other benefits to members of the judiciary. Those Regulations were made under the 2013 Act. Paragraph 2 of Schedule 1 to the 2013 Act confers power on the Lord Chancellor to specify those judicial offices eligible for a JPS 2015 pension. The 2015 Order specifies those judicial offices which this instrument amends.

6.2 Section 25(3) of the 2013 Act contains power for the Lord Chancellor to make regulations to include persons for potential inclusion in JPS 2015 through a subsequent determination. The Lord Chancellor intends to make such a determination which, as permitted by section 25(10) of the 2013 Act, will have retrospective effect from 1 April 2021. A power is also included under section 25(8) of the 2013 Act so that the Lord Chancellor may make a direction administratively modifying the application of the scheme to persons admitted to the scheme under the determination.

## 7. Policy background

***What is being done and why?***

7.1 In line with wider public service pension reform, a new judicial pension scheme, JPS 2015, was established by the JPR 2015 on 1 April 2015. The scheme applies to serving salaried and fee-paid office holders who were first appointed to judicial office from 1 April 2015 and for judicial office holders who were appointed prior to 1 April 2015 and do not have transitional protection allowing them to remain in one of the legacy judicial scheme: the schemes constituted under the Judicial Pensions and Retirement Act 1993 or the Judicial Pensions (Fee-Paid Judges) Regulations 2017.

7.2 The transitional provisions implemented when JPS 2015 was established were found to constitute unlawful discrimination. As a result, claimant judges, and non-litigants in the same legal and factual position, are entitled to membership of the legacy judicial schemes from 1 April 2015 until the introduction of a reformed judicial pension scheme, which the Ministry of Justice intends to introduce for all judges from 1 April 2022. However, in the interim, we still need to ensure that eligible judicial office holders have access to JPS 2015.

7.3 The judicial office holders listed in this instrument are not currently included in the 2015 Order and as such do not have access to JPS 2015. Adding these offices to the 2015 Order will provide these judicial office holders with pension benefits under JPS 2015 from their admission to the scheme on 1 April 2021. By also including the same offices in the JPR 2015 as offices which may potentially be part of the scheme, the Lord Chancellor can by subsequent determination enable seamless entry into JPS 2015 for these persons so that they can accrue pension in JPS 2015 for all relevant judicial service from the beginning of the scheme.

7.4 In summary, this instrument makes the following changes:

- It adds 14 eligible judicial offices to the 2015 Order. Some of the offices were omitted from the original order (such as the office of Chair of the Reinstatement Committee); others relate to a tribunal that has only recently been established (such as the Health Service Products (Pricing, Cost Control and Information) Appeals Tribunal); and the final category are offices that have been requested by

the Welsh Government since the 2015 Order was made (the various Welsh Tribunals).

- It corrects two errors in the 2015 Order by omitting two erroneous entries.
- It ensures that service in these judicial offices for any period from 1 April 2015 to 31 March 2021 may be pensionable in JPS 2015.

7.5 When it comes to giving operational effect to these changes, it should be noted that, while the Ministry of Justice has an overarching responsibility for the judicial pension schemes, administrative responsibility for the pension provision in respect of the eligible offices being added to JPS 2015 falls to various bodies, as applicable: the Ministry of Justice, the Welsh Government and the Department of Health and Social Care.

## 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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.

## 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 held a targeted consultation with the associations representing the offices that are being added to JPS 2015. We received one response which endorsed our approach.

10.2 Since that consultation the only subsequent additions to the instrument have been: Other member of the First-tier Tribunal, where the office is held by a person who sits as Chairman in the Property Chamber (Residential Property); and Other member of the Upper Tribunal, where the office is held by a person who sits as a Chairman in the Lands Chamber and is a Member or Fellow of the Royal Institution of Chartered Surveyors. These offices are included in the 2015 Order, but only in respect of historic appointments before the offices transferred into the unified tribunal structure. This instrument ensure that new and recent appointees are also entitled to accrue a JPS 2015 pension in these offices.

10.3 We have liaised with officials from the Welsh Government and Department of Health and Social Care in relation to offices in their purview and their views have been reflected accordingly.

10.4 Under the 2013 Act scheme regulations for the JPS 2015 are subject to the affirmative resolution procedure unless the Judicial Pension Board (JPB) states that they consider the regulations to be "minor or wholly beneficial". On 4 December 2020 the JPB agreed that this instrument is minor or wholly beneficial. This instrument is therefore subject to the negative resolution procedure.

## 11. Guidance

11.1 The JPB, established under Part 3 (Governance) of the JPR2015, has oversight of the overall Judicial Pension Scheme including JPS 2015. The JPB is responsible for assisting the Lord Chancellor as the scheme manager to administer the Judicial Pension Scheme. A scheme guide for JPS 2015 is available on the Judicial Pension Board website: https://www.gov.uk/government/groups/judicial-pension-board#publications.

11.2 The Ministry of Justice will communicate with relevant office holders to inform them of the changes.

## 12. Impact

12.1 An impact assessment has not been prepared for this instrument. There is no economic impact on business, charities or voluntary bodies.

12.2 It is not currently possible to ascertain the exact budgetary implications that will arise as a result of adding the eligible offices to the schemes. However, there will be incremental costs to the Ministry of Justice and other departments (as applicable) and to the Judicial Pension Scheme.

12.3 Whilst the numbers of office holders involved are small there will be an ongoing cost as the Ministry of Justice (and other affected departments) will need to start paying employer contributions for current office holders (the office holders themselves will also need to pay member contributions).

## 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 JPB oversees the governance of JPS 2015 and keeps this under review as part of the overall Judicial Pension Scheme.

## 15. Contact

15.1 Mariam Conway at the Ministry of Justice (email: Mariam.Conway@justice.gov.uk) can answer any queries regarding the instrument.

15.2 Simon Masterson at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

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