

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT PENSION SCHEMES ACT 2015 (JUDICIAL
PENSIONS) (CONSEQUENTIAL PROVISION)
REGULATIONS 2017

Monday 6 February 2017

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The Committee consisted of the following Members:

Chair: JAMES GRAY

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| † Arkless, Richard (<i>Dumfries and Galloway</i>) (SNP) | Johnson, Diana (<i>Kingston upon Hull North</i>) (Lab) |
| † Blackford, Ian (<i>Ross, Skye and Lochaber</i>) (SNP) | † Malthouse, Kit (<i>North West Hampshire</i>) (Con) |
| † Burt, Alistair (<i>North East Bedfordshire</i>) (Con) | † Opperman, Guy (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Drax, Richard (<i>South Dorset</i>) (Con) | † Parish, Neil (<i>Tiverton and Honiton</i>) (Con) |
| † Duddridge, James (<i>Rochford and Southend East</i>) (Con) | † Rees, Christina (<i>Neath</i>) (Lab/Co-op) |
| † Heald, Sir Oliver (<i>Minister for Courts and Justice</i>) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| Hodge, Dame Margaret (<i>Barking</i>) (Lab) | † Vara, Mr Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Holloway, Mr Adam (<i>Gravesham</i>) (Con) | Sean Bex, Adam Evans, <i>Committee Clerks</i> |
| † Hopkins, Kelvin (<i>Luton North</i>) (Lab) | |
| † Jarvis, Dan (<i>Barnsley Central</i>) (Lab) | |
| † Jenrick, Robert (<i>Newark</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Monday 6 February 2017

[JAMES GRAY *in the Chair*]

Draft Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations 2017

4.30 pm

The Minister for Courts and Justice (Sir Oliver Heald): I beg to move,

That the Committee has considered the Draft Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations 2017.

It is a great pleasure to serve under your chairmanship, Mr Gray.

As the statutory instrument is relatively concise, I can be brief. The purpose of the draft regulations is to make provision to pave the way for the creation of a suitable pension scheme for eligible fee-paid judges, to mirror the pension scheme for salaried judges established by the Judicial Pensions and Retirement Act 1993. This is required following the Supreme Court's decision in the case of *O'Brien v. Ministry of Justice*.

Following the decision in that case and subsequent decisions, it is now established law that a lack of pension and other specified benefits amounted to less favourable treatment of some fee-paid judicial office holders compared with salaried judges doing the same or broadly similar work, which is contrary to the part-time work directive. The Ministry of Justice made a commitment to implement a pension scheme for those fee-paid judges. That commitment was honoured for future service, subject to transitional protection, by the Judicial Pensions Regulations 2015, but a new scheme is needed as the remedy in respect of reckonable fee-paid service from 7 April 2000—the date when the part-time work directive ought to have been transposed into UK law.

The power to create such a scheme was created by section 78 of the Pension Schemes Act 2015, which inserted a new section 18A into the Judicial Pensions and Retirement Act 1993, but that provision alone is not enough to enable a suitable fee-paid scheme to be created. The Public Service Pensions Act 2013 enacted the Government's policy on public service pensions, and as part of that reform section 30 placed certain restrictions on the content and operation of public service pensions, subject to an exception for pre-existing pension schemes; the salaried judges' scheme was one such scheme. At the time of the 2013 Act, it was not anticipated that there would be a need to permit the making of a new but historical scheme, such as the one we are considering today. The draft regulations make such provision by amending section 30 of the 2013 Act so that it does not apply to the new fee-paid judicial pension scheme.

The draft regulations are an important and necessary step towards introducing the fee-paid judicial pension scheme, which will be established through separate regulations, subject to the outcome of the consultation and parliamentary approval.

4.33 pm

Christina Rees (Neath) (Lab/Co-op): It is always a pleasure to serve under your chairmanship, Mr Gray. I thank the Minister for his explanation of the statutory instrument and confirm that we will not oppose the motion today.

Plainly the Government must follow the decision of the Supreme Court in *O'Brien v. Ministry of Justice*. The Court appears to have taken a dim view of the Government's stance that it should be able to deny part-time judges a pension, but given that the appellant had previously not succeeded, it is difficult to criticise the Government for engaging in litigation. It therefore fell to the Government to construct a scheme for fee-paid judges. Initially that was expected to be launched by 31 March 2016, then by 1 December 2016, and then it was announced that it would be in place by April 2017. Perhaps the Minister can explain the long delay? A news item on the Ministry's website dated 6 August stated:

"It has become clear that drafting the regulations is proving more complex than was originally anticipated. The main reason for the delay is due to the complexity of drafting the parts of the regulations which will deal with AVCs"—

additional voluntary contributions. It continues:

"These parts of the regulations are also required to address both retrospective and future added benefits."

However, the draft regulations before us today contain two very short sections. Is the Minister satisfied that the complexity has been overcome?

The regulations facilitate then the establishment of the pension scheme. The Court found that the lack of pension and other benefits was less favourable treatment of some judicial office holders compared with their salaried counterparts doing the same or similar work, and the new scheme was required to have effect from 7 April 2000—the date on which the UK ought to have implemented the part-time work directive. Earlier this month in another case, the Ministry of Justice and the Lord Chancellor were found to have discriminated against younger judges by requiring them to leave the judicial pension scheme in April 2015 but not doing the same for older judges. Is that likely to add any further delay to implementing the fee-paid scheme? Does the Minister intend to appeal that decision? He is no doubt aware that the case will be watched keenly by other public sector workers who have been subjected to transitional arrangements.

4.36 pm

Sir Oliver Heald: I am grateful to the hon. Lady for her observations. It is true that we face some complexity: it is a bit like trying to do something that is exactly the mirror image of something else—ensuring that the provision is exactly the same. As she says, all the benefits within the scheme need to be covered. I can assure her, though, that the draft regulations are simply a paving measure, without which we cannot introduce the scheme we are preparing. Our aim is to set up a new but historical scheme and the draft regulations simply give us permission to do that. She is absolutely right: we need to get the detail right and we are working hard to do that.

The Government are considering whether to appeal the *McCloud* case, which the hon. Lady mentioned, but we remain committed to creating the fee-paid scheme,

which would not be delayed by an appeal. I hope I have dealt with all the points the hon. Lady wished me to cover.

The draft regulations are an important legislative step to allow us to honour a commitment made following the Court decisions, and I commend them to the Committee.

Question put and agreed to.

4.38 pm

Committee rose.

