

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT JUDICIAL PENSIONS (FEE-PAID JUDGES)
REGULATIONS 2017

DRAFT JUDICIAL PENSIONS (AMENDMENT)
REGULATIONS 2017

DRAFT JUDICIAL PENSIONS (ADDITIONAL
VOLUNTARY CONTRIBUTIONS) REGULATIONS
2017

Monday 27 March 2017

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Friday 31 March 2017

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

- | | |
|---|---|
| † Duddridge, James (<i>Rochford and Southend East</i>) (Con) | † Shapps, Grant (<i>Welwyn Hatfield</i>) (Con) |
| Dugher, Michael (<i>Barnsley East</i>) (Lab) | † Smith, Henry (<i>Crawley</i>) (Con) |
| † Frazer, Lucy (<i>South East Cambridgeshire</i>) (Con) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Stevenson, John (<i>Carlisle</i>) (Con) |
| Hayes, Helen (<i>Dulwich and West Norwood</i>) (Lab) | † Stuart, Graham (<i>Beverley and Holderness</i>) (Con) |
| † Lee, Dr Phillip (<i>Parliamentary Under-Secretary of State for Justice</i>) | † Vaizey, Mr Edward (<i>Wantage</i>) (Con) |
| McKinnell, Catherine (<i>Newcastle upon Tyne North</i>) (Lab) | † Vara, Mr Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Qureshi, Yasmin (<i>Bolton South East</i>) (Lab) | Jonathan Whiffing, <i>Committee Clerk</i> |
| Reeves, Rachel (<i>Leeds West</i>) (Lab) | † attended the Committee |

First Delegated Legislation Committee

Monday 27 March 2017

[MR ADRIAN BAILEY *in the Chair*]

Draft Judicial Pensions (Fee-Paid Judges) Regulations 2017

4.30 pm

The Parliamentary Under-Secretary of State for Justice (Dr Phillip Lee): I beg to move,

That the Committee has considered the draft Judicial Pensions (Fee-Paid Judges) Regulations 2017.

The Chair: With this it will be convenient to consider the draft Judicial Pensions (Amendment) Regulations 2017 and the draft Judicial Pensions (Additional Voluntary Contributions) Regulations 2017.

Dr Lee: It is a pleasure to serve under your chairmanship, Mr Bailey. I will set out the purpose of each of the draft regulations in turn.

The draft fee-paid judges regulations will establish a pension scheme for eligible fee-paid judges that mirrors the existing pension scheme for salaried judges established by the Judicial Pensions and Retirement Act 1993. This is required following the court's decision in the case of *O'Brien v. Ministry of Justice*. The draft regulations will make provision for a pension scheme for people who have held eligible fee-paid judicial office in the period between 7 April 2000 and 31 March 2015. They will also establish the fee-paid judicial added voluntary contributions scheme, the fee-paid added years scheme and the fee-paid judicial added surviving adult's pension scheme, enabling members of the principal scheme to pay voluntary contributions towards the costs of additional benefits under one or more of these additional schemes.

Following the case of *O'Brien v. Ministry of Justice* and subsequent court 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 than of salaried judges doing the same or broadly similar work, which is contrary to the part-time work directive. The Ministry of Justice therefore made the commitment to implement a pension scheme for eligible fee-paid judges. We have already honoured that commitment for future service, subject to transitional protection, by introducing the Judicial Pensions Regulations 2015. However, another pension scheme is also required 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 fee-paid pension 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.

The Ministry of Justice carried out a detailed public consultation on the draft fee-paid judges regulations, following which they were modified to take account of responses and as part of our own review. Our response to the consultation was published on 27 February alongside the final draft regulations.

The draft amendment regulations will amend the Judicial Pensions Regulations 2015 in a number of ways. They include provisions to take account of the creation of the fee-paid judicial pension scheme and to ensure parity of treatment between individuals with entitlement in the existing Judicial Pensions and Retirement Act 1993 scheme and those with entitlements under the fee-paid scheme in respect of their pension entitlements under the 2015 regulations. In addition, we are taking the opportunity to amend the 2015 regulations to correct a drafting error in regulation 1(3); to enable the Lord Chancellor to determine the eligibility of particular Scottish fee-paid judicial office holders to join the pension scheme created by the 2015 regulations; to remove negligence as a basis for forfeiture or set-off; to make a correction to the definition of index adjustment for revaluation purposes; and to apply full and tapering protection to those judges who were in fee-paid office on 31 March 2012 but who have subsequently been appointed to salaried office. The 2015 regulations were made under the Public Service Pensions Act 2013 to create a career-average pension scheme for judicial office holders as part of the Government's wider reform of public service pensions. This is the first time they have been amended.

The draft additional voluntary contributions regulations will establish a judicial additional voluntary contributions scheme—a money purchase scheme that enables its members to make contributions within a range of investment options, in addition to their contributions to the 2015 judicial pension scheme. The AVC scheme is to be managed by the Lord Chancellor, and the Judicial Pension Board will oversee the governance.

The 2015 judicial pension scheme was established on 1 April 2015, in response to the Public Service Pensions Act 2013. The 2015 scheme applies to both fee-paid and salaried judicial officeholders. The existing judicial pension schemes provide a facility to contribute to a money purchase pension scheme. These AVC regulations are now providing the same facility to members of the 2015 scheme. That includes the pension flexibilities contained in the Taxation of Pensions Act 2014 and the Pension Schemes Act 2015.

In addition to the AVC regulations, we are also making separate amendments to the additional voluntary contributions scheme, established under the older judicial pension scheme, made by the Judicial Pensions and Retirement Act 1993. We are doing so via a separate set of regulations that also give effect to the pension flexibilities to enable a consistent approach.

These three sets of regulations are necessary to ensure, first, that the fee-paid judicial pension scheme regulations establish a legal remedy to provide eligible fee-paid judges with pension benefits equivalent to their salaried comparators. Secondly, the amendment regulations make provision for a range of amendments to the 2015 judicial pension scheme. Thirdly, the additional voluntary contributions regulations are being introduced to honour the Department's commitment to provide that facility to members of the 2015 judicial pension scheme.

I hope the Committee will welcome these regulations, which make important provision for judicial pensions, in respect of the Government's legal obligations to meet outstanding commitments and of ensuring that all the necessary arrangements are in place for a consistent

approach to the relevant provisions across the judicial pension schemes. I therefore commend the three draft regulations to the Committee.

4.37 pm

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Mr Bailey. We welcome these provisions. It is absolutely right that there should be parity of treatment for judicial officeholders doing similar work. The provisions will also be retrospective and backdated, so that those who were not covered before now will be. We welcome the proposals.

4.38 pm

Mr Edward Vaizey (Wantage) (Con): It is a great pleasure to serve under your chairmanship, Mr Bailey, and to speak in this important Committee addressing judicial pensions amendment regulations. I want to put a few questions to the Minister, which I hope he will be able to clarify.

I note from the explanatory memorandum—obviously I had time over the weekend to go over the statutory instruments in detail, but the explanatory memorandum is probably the best thing to refer to—that at the moment the legislation is not compatible with the European convention on human rights, until the appeal *McCloud v. Ministry of Justice* is heard. I understand the Government's desire to bring these regulations into being swiftly, so that we are not in a position where fee-paid judicial officeholders are at a disadvantage or are receiving unlawful pensions, but will the Minister assure us that we will not be back here again, further amending the regulations, to take into account the outcome of the appeal? Can the Minister shed some light on the debate that must have happened in the Ministry of Justice about whether this was the right moment to bring forward these important regulations?

I note with some concern that the regulations were passed only in 2015 and yet here we are, less than 18 months later, debating amendments. I am pleased, though, that the matter is being dealt with rapidly. Those of us who represent constituents who have lost out through Government pension schemes might raise an eyebrow at the fact that legislation can be introduced so rapidly to right a wrong. I represent pensioners who had worked for the Atomic Energy Authority who were stiffed out of their pensions when they were transferred to the Atomic Energy Authority Technology company. They were assured by the Government Actuary that their pensions would be no worse off than those they would have received had they remained in the public sector, so they transferred to the private sector, and now AEA Technology has gone bust and their pensions have been reduced. It has been almost impossible to get the Government to address that important issue, but I am pleased that they are very keen to do so when it comes to judges.

Can the Minister shed light on the Scottish Government's position? I notice that they have asked that their judges be included in the scheme, rather than a separate pension scheme. There is a vigorous debate at the moment about a possible second referendum on Scottish independence, so will the Minister shed some light on what will happen to the pension scheme should Scotland become independent? How complicated will it be to separate the two pension schemes?

Finally, I note that there is no scheme for the forfeiture of a judge's pension, because apparently that would infringe on judicial independence. I cannot help thinking that judges have got a clever point into these regulations. I do not know whether there is a provision for the forfeiture of a Member of Parliament's pension, or whether we are immune from forfeiture in order to protect our independence. Will the Minister shed some light on what is meant by the phrase "judicial independence" in the explanatory memorandum? If a judge—they are only human—were to commit a heinous crime while sitting as a judge, would we have no redress against them, in terms of forfeiting their pension, even though the full force of the law would be brought to bear? Those important points require some explanation from the Minister, and I look forward to hearing his response.

4.41 pm

Dr Lee: We have had an interesting debate, and I thank the Committee for the points that have been made.

I am rather flattered that my right hon. Friend the Member for Wantage attends my Statutory Instrument Committees with such diligence and asks such informed questions. I wish I had taken such an interest in his when he was a Minister. On his comments about the European convention on human rights, the Department believes it is right to make the regulations now to ensure that the fee-paid judiciary have access to a judicial pension scheme. The Ministry of Justice has appealed against the decision in *McCloud*, but if it is ultimately unsuccessful, steps will be taken to remove the incompatibility. I will write to my right hon. Friend with a detailed response to his long list of questions so that he can satisfy himself that these regulations are the right thing to do.

As I have explained, the changes being introduced through these regulations are necessary to honour the Government's commitment to implement a suitable pension scheme for eligible fee-paid judges. At the same time, we are also taking the opportunity to make other necessary changes, both to amend the existing 2015 judicial pension scheme and to create an additional voluntary contributions scheme. I hope these provisions will be welcomed by those to whom they apply. I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Judicial Pensions (Fee-Paid Judges) Regulations 2017.

DRAFT JUDICIAL PENSIONS (AMENDMENT) REGULATIONS 2017

Resolved,

That the Committee has considered the draft Judicial Pensions (Amendment) Regulations 2017.—(*Dr Lee.*)

DRAFT JUDICIAL PENSIONS (ADDITIONAL VOLUNTARY CONTRIBUTIONS) REGULATIONS 2017

Resolved,

That the Committee has considered the draft Judicial Pensions (Additional Voluntary Contributions) Regulations 2017.—(*Dr Lee.*)

4.44 pm

Committee rose.

