

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT JUDICIAL PENSIONS AND FEE-PAID  
JUDGES' PENSION SCHEMES (AMENDMENT)  
REGULATIONS 2019

*Tuesday 12 February 2019*

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**The Committee consisted of the following Members:**

*Chair:* SIR GRAHAM BRADY

† Cowan, Ronnie (*Inverclyde*) (SNP)  
 † Eagle, Maria (*Garston and Halewood*) (Lab)  
 † Efford, Clive (*Eltham*) (Lab)  
 † Foxcroft, Vicky (*Lewisham, Deptford*) (Lab)  
 † Frazer, Lucy (*Parliamentary Under-Secretary of State for Justice*)  
 † Garnier, Mark (*Wyre Forest*) (Con)  
 † Graham, Richard (*Gloucester*) (Con)  
 † Hair, Kirstene (*Angus*) (Con)  
 † Harrison, Trudy (*Copeland*) (Con)  
 † Hart, Simon (*Carmarthen West and South Pembrokeshire*) (Con)

† Milling, Amanda (*Cannock Chase*) (Con)  
 † Morris, James (*Halesowen and Rowley Regis*) (Con)  
 † Powell, Lucy (*Manchester Central*) (Lab/Co-op)  
 † Qureshi, Yasmin (*Bolton South East*) (Lab)  
 Reeves, Ellie (*Lewisham West and Penge*) (Lab)  
 † Snell, Gareth (*Stoke-on-Trent Central*) (Lab/Co-op)  
 † Warburton, David (*Somerton and Frome*) (Con)

Medha Bhasin, *Committee Clerk*

† **attended the Committee**

# Tenth Delegated Legislation Committee

Tuesday 12 February 2019

[SIR GRAHAM BRADY *in the Chair*]

## Draft Judicial Pensions and Fee-Paid Judges' Pension Schemes (Amendment) Regulations 2019

2.30 pm

**The Parliamentary Under-Secretary of State for Justice (Lucy Frazer):** I beg to move,

That the Committee has considered the draft Judicial Pensions and Fee-Paid Judges' Pension Schemes (Amendment) Regulations 2019.

It is a pleasure to serve under your chairmanship, Sir Graham.

The draft regulations relate to the contribution rates for members of two judicial pension schemes. Their purpose is to make provision to extend the current member contribution rates and earnings thresholds in two different pension schemes to the next financial year. The schemes are: the judicial pension scheme 2015, which was established under the Judicial Pensions Regulations 2015, following wider public service pension reforms; and the fee-paid judicial pension scheme, which was established under the Judicial Pensions (Fee-Paid Judges) Regulations 2017, following the Supreme Court decision in the 2013 O'Brien case, and related court decisions.

The reason for extending the rates is that the existing provision for member contribution rates will expire on 31 March 2019. The draft regulations are therefore needed to make an amendment to specify the member contribution rates to apply for the next year, from 1 April 2019 to 31 March 2020. The regulations will enable us to ensure the continued operation of the schemes by deducting the appropriate member contributions for that year. As we propose to continue the same rates, the amendment regulations simply maintain the existing provisions for one further year. This interim measure is required pending the completion of a broader process that relates to the valuation of the judicial pension schemes. That process has been ongoing for a period, and the outcome of the valuations is to be determined.

It might be helpful to set out some background and to explain the ongoing valuations. Following the reform of public service pension schemes in 2015, as reflected in the legislative framework, Departments are required to undertake valuations of their respective public service pension schemes every four years. That obviously includes the Ministry of Justice in respect of judicial pension schemes. The valuations of public service pension schemes do two things: first, they measure the cost of providing pension benefits to members of the schemes; and secondly, they inform the future contribution rates paid into the schemes by both the employer and the members of the scheme. Work has been under way on the first such valuations of public service pension schemes. The Government, however, have paused part of the valuations

process because they are seeking permission to appeal a decision of the Court of Appeal in the McCloud case, which concerns pensions.

Let me explain that court decision in more detail. In December 2018, the Court of Appeal ruled that the transitional protection offered to some individuals as part of the 2015 public service pension reforms, including that in the judicial pension schemes, amounted to unlawful discrimination. The issue related to the protection is that, as part of the 2015 reforms, most public servants and judges moved to new career-average pension schemes. However, members within 10 years of their normal retirement age were protected and remained in existing final salary schemes, together with members who were between 10 years and 13 years and six months from their normal retirement age, who were given tapered protection to remain in the existing scheme for a period of time, before they moved to the new scheme introduced by the reforms.

As I said, the Ministry of Justice has applied to the Supreme Court for permission to appeal, and a decision is awaited. As the legal process is ongoing and there is some uncertainty about the impact of the ruling on wider pension reforms, it was considered prudent to pause that element of the valuation, which has the potential to affect future member benefits and/or contribution rates.

Let me turn back to the draft regulations and the steps we took to bring them forward. With a view to reaching an agreement on the proposal, we consulted, in accordance with the relevant requirements, by way of a four-week consultation from 24 October to 21 November last year. We consulted representative judicial organisations with a view to reaching agreement, and received 23 responses, the majority of which agreed with the proposal. Two respondents did not agree, and also raised some points relating to wider pension issues outside the scope of the consultation, which was on the proposal to extend the current rates as an interim measure for one year. For example, they disagreed with the stepped approach for contribution rates and expressed preference for a flat rate to apply, and for a non-contributory scheme. We engaged further, with the aim of reaching agreement, but unfortunately were unable to secure the agreement of the two respondents.

In addition to the consultation, we have laid a report before Parliament that sets out the rationale for the amendment regulations. Furthermore, as the judicial pension schemes to which the draft regulations relate are UK-wide, we have kept the devolved Administrations informed of progress and will continue to engage closely with them on further developments.

Under this interim measure, the cost of accruing pension scheme benefits will remain the same for members of both schemes for the scheme year April 2019 to March 2020. If it is agreed that changes to member contribution rates, or any other changes, are required in future as a result of the valuation process, those changes will be backdated to 1 April 2019 where appropriate.

I conclude by reinforcing the point that the existing arrangements for member contribution rates for both the 2015 and 2017 judicial pension schemes will expire on 31 March, so the draft regulations are a necessary interim measure to continue the effective operation of those pension schemes until a longer-term solution is put in place. I hope hon. Members will agree that the

regulations are an important and necessary interim measure to continue the arrangements for member contribution rates and for the effective operation of the judicial pension scheme.

2.37 pm

**Yasmin Qureshi** (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Sir Graham.

The Opposition will not seek a Division on this statutory instrument—we understand that it is purely a one-year extension of an existing scheme—but I wish to draw the Minister’s attention to the fact that we are quite unhappy with the way that judicial pensions have been dealt with for a number of years. The Government have tried to deal with the issue for at least four to five years. One case went to an employment tribunal, where the Government were held to have acted illegally by changing the dates and years of pension requirements. That case, which is going to the Supreme Court, deals with the concern that some judges were being paid more and would retire with a higher pension than those who had done a similar job. Basically, younger, newer judges were being discriminated against. One of the reasons the employment tribunal held that the provision was discriminatory was that younger judges were often women and members of the black and minority ethnic community. In essence, that was the main reason why the Government were found to have acted wrongly.

The Ministry of Justice and the Government are aware that there is currently an acute shortage of High Court “red” judges. One reason why is that a number of senior lawyers and practitioners are not putting themselves forward for High Court appointment. A substantial number of positions have been vacant for years and it

does not seem that they will be filled in the next few years. One of the main reasons for that has been the big change in judicial pensions. In any country, for people to have confidence in the law and in law enforcement processes, we do not need just good laws; we need able and good people who can implement those laws properly. To ensure confidence, we need the best people to be our judges, tribunal panel members, tribunal chairs, district judges, county court judges and circuit judges, but they have to be remunerated properly for that to happen.

Although the Government have been carrying out consultations, the Ministry of Justice needs to sit down with the judges and have a proper discussion, so that we do not have these interim ad hoc yearly renewals. The Senior Salaries Review Body has made a number of recommendations that the Minister has not mentioned. All the Ministry is doing by extending the current provision is kicking that SSRB report even further down the road. It is important that the Ministry have that discussion with the judges and, as it does not appear to have done so, considers the SSRB’s recommendations. The SSRB has come up with some excellent recommendations, and if the Government applied their mind to them, they could probably resolve the issue a lot more quickly and smoothly.

In essence, the Ministry’s handling of the issue has not been great and there is discontent among the judiciary. A solution has been put forward. The issue of judicial pensions needs to be addressed but, as I said, we will not seek a Division on these regulations.

*Question put and agreed to.*

2.42 pm

*Committee rose.*





