

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT JUDICIAL PENSIONS (FEE-PAID JUDGES)
(AMENDMENT) REGULATIONS 2021

Wednesday 24 February 2021

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 28 February 2021

© Parliamentary Copyright House of Commons 2021

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: MARK PRITCHARD

Andrew, Stuart (*Treasurer of Her Majesty's Household*)

Cadbury, Ruth (*Brentford and Isleworth*) (Lab)

Caulfield, Maria (*Lewes*) (Con)

† Chamberlain, Wendy (*North East Fife*) (LD)

† Charalambous, Bambos (*Enfield, Southgate*) (Lab)

Clarkson, Chris (*Heywood and Middleton*) (Con)

Duguid, David (*Parliamentary Under-Secretary of State for Scotland*)

Hunt, Jane (*Loughborough*) (Con)

Jones, Mr Marcus (*Vice-Chamberlain of Her Majesty's Household*)

Mann, Scott (*North Cornwall*) (Con)

† Morris, James (*Lord Commissioner of Her Majesty's Treasury*)

† Philp, Chris (*Parliamentary Under-Secretary of State for Justice*)

† Rutley, David (*Lord Commissioner of Her Majesty's Treasury*)

Thompson, Owen (*Midlothian*) (SNP)

Twigg, Derek (*Halton*) (Lab)

† Western, Matt (*Warwick and Leamington*) (Lab)

Yasin, Mohammad (*Bedford*) (Lab)

Yohanna Sallberg, *Committee Clerk*

† **attended the Committee**

Fourth Delegated Legislation Committee

Wednesday 24 February 2021

[MARK PRITCHARD *in the Chair*]

Draft Judicial Pensions (Fee-paid Judges) (Amendment) Regulations 2021

2.30 pm

The Parliamentary Under-Secretary of State for Justice (Chris Philp): I beg to move,

That the Committee has considered the draft Judicial Pensions (Fee-paid Judges) (Amendment) Regulations 2021.

It is, as always, a great pleasure to serve under your chairmanship, Mr Pritchard.

This is very straightforward and fairly technical statutory instrument to amend the Judicial Pensions (Fee-Paid Judges) Regulations 2017, which established the fee-paid judicial pension scheme. The draft instrument has three purposes: mainly, it adds a few fee-paid judicial officers to the regulations—fee-paid judges who had previously been omitted from the screen and are now being added—it makes some consequential amendments and it makes some other relatively technical amendments to the regulations.

The main purpose is to add some further eligible judicial officers to the regulations. Part 2 adds, for example, the office of the “Legal Chair Competition Appeal Tribunal” to the schedule to the regulations. In essence, some office holders who were omitted previously are now added, so that is good news for the relatively small number of judges concerned. Previously, when the judges in question retired, they were made an interim payment in lieu of their pension. Now they are being added to the scheme formally, they can be paid their pension properly via the scheme.

As I mentioned, there are also consequential amendments to tidy up some other loose ends. For example, the statutory instrument will ensure that eligible service before 1 April, when the SI comes into force, will count towards pensionable service. It would be unfair to exclude such service otherwise. It will also make sure that the new members may complete certain actions in the scheme, such as purchasing additional benefits from their date of admission to the scheme.

There are also technical amendments to the scheme which, for example, tidy up some of the service limitation dates, to ensure that the full range of service may be included in the scope of the scheme. Therefore, all people’s relevant service will be considered when setting their pension eligibility. Those are important changes.

Finally, consultation was conducted fairly extensively in 2016. Further consultation happened in 2018 and there was even more consultation last year between June and October. These technical changes have been consulted on extensively, to ensure that every member of the judiciary who should be getting a judicial pension gets it. I commend the draft regulations to the House.

2.33 pm

Bambos Charalambous (Enfield, Southgate) (Lab): It is a pleasure, Mr Pritchard, to serve under your chairmanship.

This is a non-contentious statutory instrument, which Labour is happy to support. As set out by the Minister, the main purpose of the draft instrument is to amend the Judicial Pensions (Fee-Paid Judges) Regulations 2017. We welcome the addition of the new members to the scheme and the other measures proposed.

The judicial pensions regulations were enacted to remedy a defect in law identified by the European Court of Justice in the case of *O’Brien v. Ministry of Justice*. In that case, Mr O’Brien had been appointed as a part-time judge on the western circuit, where he sat between March 1978 and March 2005. The litigation came about after Mr O’Brien established that, as a part-time judge, he could not access the judicial pension scheme in the same way that a full-time judge could. Mr O’Brien successfully argued that that amounted to part-time judges unlawfully receiving less favourable treatment than their salaried counterparts, simply on the grounds of their working patterns.

In response to the judgment, the Government introduced the judicial pensions regulations, which in turn established the fee-paid judicial pension scheme. Under the scheme, all eligible current and former judicial office holders, regardless of whether they sat part-time or full-time, would be able to access a judicial pension scheme. Simply put, the fee-paid pension scheme placed part-time judges on an equal footing with their full-time judicial colleagues for the first time.

The draft SI seeks to amend the judicial regulations to do two things. First, it will add certain judicial offices to the list of those eligible under the fee-paid pension scheme. Secondly, it will clarify the date on which pension entitlements begin to accrue. It is somewhat regrettable that we are debating the SI today, given that it had previously been laid before Parliament on 29 November 2017, but was withdrawn due to numerous errors in drafting. None the less, it is an important SI that must be welcomed, and it is deeply unfair that any part-time judge should be told that they have no right to a pension simply because such pensions are reserved for their full-time colleagues. As the European Court of Justice made clear when it considered Mr O’Brien’s case, the work of part-time and full-time judges is identical. They carry out their functions in the same courts, in the same way and at the same time. The former practice was clearly discriminatory, and it is regrettable that the Government have chosen to put this injustice right only after losing litigation.

On the matter of costly litigation, I would be grateful if the Minister could confirm exactly how much public money has been spent on legal costs in challenging the claim made by Mr O’Brien. I would also be grateful if he confirmed how much the Ministry of Justice has paid so far to part-time judges who were wrongly denied pensions, and how much he expects to be paid in total. I appreciate that the Minister’s civil servants are not present, so I would be happy to receive a written response. None the less, as I said previously, although it is well overdue, this is an important measure that Labour will support today.

2.35 pm

Chris Philp: I thank the shadow Minister for his constructive and helpful comments, and I am happy to write to him with the information that he requests.

Question put and agreed to.

2.36 pm

Committee rose.

