

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT JUDICIAL PENSIONS (FEE-PAID JUDGES)
(AMENDMENT) REGULATIONS 2023

Tuesday 21 February 2023

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The Committee consisted of the following Members:

Chair: †CAROLINE NOKES

† Antoniazzi, Tonia (*Gower*) (Lab)
 † Bell, Aaron (*Newcastle-under-Lyme*) (Con)
 † Byrne, Ian (*Liverpool, West Derby*) (Lab)
 † Cairns, Alun (*Vale of Glamorgan*) (Con)
 † Cunningham, Alex (*Stockton North*) (Lab)
 † Duddridge, Sir James (*Rochford and Southend East*) (Con)
 † Freer, Mike (*Parliamentary Under-Secretary of State for Justice*)
 Greenwood, Margaret (*Wirral West*) (Lab)
 Johnson, Kim (*Liverpool, Riverside*) (Lab)
 † McDonald, Stuart C. (*Cumbernauld, Kilsyth and Kirkintilloch East*) (SNP)

† Mann, Scott (*Lord Commissioner of His Majesty's Treasury*)
 † Metcalfe, Stephen (*South Basildon and East Thurrock*) (Con)
 † Mortimer, Jill (*Hartlepool*) (Con)
 † Mumby-Croft, Holly (*Scunthorpe*) (Con)
 Sheerman, Mr Barry (*Huddersfield*) (Lab/Co-op)
 Smith, Julian (*Skipton and Ripon*) (Con)
 Wallis, Dr Jamie (*Bridgend*) (Con)

Rebecca Lees, *Committee Clerk*

† **attended the Committee**

Fourth Delegated Legislation Committee

Tuesday 21 February 2023

[CAROLINE NOKES *in the Chair*]

Draft Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2023

9.25 am

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

That the Committee has considered the draft Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2023.

It is a pleasure to serve under you this morning, Ms Nokes.

The statutory instrument before us amends the Judicial Pensions (Fee-Paid Judges) Regulations 2017, which established the Fee-Paid Judicial Pension Scheme 2017. I shall refer to those as the fee-paid regulations and the fee-paid pension scheme respectively.

The fee-paid pension scheme currently only provides benefits for eligible fee-paid judicial service on and after 7 April 2000. The main purpose of the SI is to amend the fee-paid regulations to provide pension benefits for eligible fee-paid judicial service before 7 April 2000 and provide a remedy following the judgments in the cases of O'Brien against the Ministry of Justice, known as "O'Brien 2", and Miller and others against the MOJ, known as "Miller".

The fee-paid pension scheme commenced on 1 April 2017 when the fee-paid regulations came into force. It provided pension benefits for eligible fee-paid judicial service on and after 7 April 2000 that mirrored those for salaried judges under the Judicial Pensions and Retirement Act 1993, known as JUPRA. In 2018 the European Court of Justice found that eligible fee-paid judicial service prior to that date should also be taken into account for the purpose of calculating pension benefits. In addition, in 2019, the UK Supreme Court found that the time limit for fee-paid pension entitlement claims runs from the date on which the judge retired from judicial service, rather than the date on which they left the fee-paid office concerned. Even though the fee-paid pension scheme closed to further accruals on 31 March 2022, with pension accruals for all judges from 1 April 2022 being in the reformed Judicial Pension Scheme 2022, it is important that judges receive the pension benefits they are entitled to for their historical fee-paid judicial service. The instrument achieves that and provides a remedy for both of the judgments to which I have referred.

In order to achieve the required remedy, the SI makes a number of important changes to the fee-paid pension scheme. Most notably, salaried judges had access to different pension arrangements under the Judicial Pensions Act 1981 before the introduction of the JUPRA pension scheme in 1995. Those earlier arrangements for salaried judges had different accrual rates and scheme features and it has been necessary to retrospectively mirror those provisions and the associated eligibility criteria in the

fee-paid pension scheme by introducing new "pre-1995" provisions. I hope that that is all clear—I jest, but it is quite a complex issue.

It is also important to update the schedule of eligible offices for the fee-paid pension scheme, to ensure that all judges who are eligible for a pension are included in the fee-paid regulations. Where eligibility has been established, those offices have been added to the schedule.

The SI also contains a number of other supplementary amendments that are necessary to ensure that fee-paid judges who are eligible for a pension settlement under the fee-paid pension scheme are given the correct settlement. One of those supplementary amendments is the inclusion of a facility for "small pension commutation". Fee-paid judges do not always build up significant amounts of reckonable service, so we have included provisions that mirror the trivial commutation and "small pot" facilities that may be available in other pension arrangements.

The instrument also provides a further window for eligible judges—those with fee-paid service between 1995 and 2006—to purchase additional benefits in schemes constituted by the fee-paid regulations, or to vary purchases they have previously made. Again those provisions mirror those that were historically provided to relevant salaried judges.

The SI also updates the regulations that set out requirements for the payment of contributions by scheme members in respect of service prior to 7 April 2000; provides for a reconciliation of payments in lieu of pension, which have been made to judges, to formal entitlements under the amended regulations; and corrects some minor drafting errors in the existing regulations. Finally, the instrument regularises some partial retirement payments that were originally inconsistent with a restriction in the fee-paid regulations, holding that this option could only be exercised on or after 1 April 2017. That date restriction is also removed by the amendments.

We have undertaken on changes to the fee-paid pension scheme. The Ministry of Justice published a consultation on its proposals for amending that scheme on 24 June 2020, and 106 responses were received by the time the consultation closed on 18 September 2020. The responses were broadly supportive of the proposals, and on 10 December 2020 the Government response was published, setting out how the proposals had been refined to take account of those responses.

Officials at the devolved Administrations in Scotland, Northern Ireland, and Wales have been kept apprised of the development of the amendment regulations, in particular in relation to the offices whose jurisdictions are in those countries, and their views have been reflected in the drafting.

In the case of three fee-paid judicial offices included in the eligibility schedule, targeted consultations, including with office holders, were carried out to provide assurance that the correct service limitation dates are being applied. The service limitation date marks the point from which a salaried comparator judge became eligible for a judicial pension.

In conclusion, I would like to assure Committee members that the amendments to the fee-paid pension scheme set out in this SI are necessary to ensure that judges with historical fee-paid service get the pension benefits to which they are entitled and, together with

other measures on judicial pay and pensions, those amendments will help to ensure that we can continue to support our esteemed judiciary.

Sir James Duddridge (Rochford and Southend East) (Con): This process with judges and the McCloud judgment has triggered further things beyond judges' pensions. It may disorderly and beyond the Minister's remit, but could he write to the Committee to say what other public sector pension arrangements will be affected following McCloud? What will be the costs? Does it mean that we will have to come back for SIs for every single pension arrangement within the public service or, after this initial one is done, we can just come back once?

Mike Freer: My hon. Friend is correct that the McCloud judgment is an ongoing issue facing all pension schemes. The impact of that judgment is currently being worked through and any relevant changes that may be required will have to be brought forward for consideration. I will ensure that my hon. Friend gets a detailed letter explaining the processes.

9.33 am

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Ms Nokes.

The Minister and I have faced each other across the Dispatch Box a couple of times, as we will later today, but this is the first time we have shared an SI. The Opposition are going to give him a very easy time of it this morning.

As the Minister has outlined, the SI amends the Judicial Pensions (Fee-Paid Judges) Regulations 2017, which established the fee-paid judicial pension scheme, and provides pension benefits for eligible fee-paid judicial service from 7 April 2000 to 31 March 2022. It mirrors the pension benefits for salaried judges under the Judicial Pensions and Retirement Act 1993.

Today's SI amends the 2017 regulations as required by the "O'Brien 2" litigation in the number ways that the Minister has described. It is complex, but we are happy to support the SI. I am a strong believer in equal pay for equal work, and the work that fee-paid judges and salaried judges undertake is the same. It is right that it is recognised as such in their pensions.

Can the Minister shed some light, however, on an additional ongoing issue about part-time judges' pension payments in relation to the Retained EU Law (Revocation and Reform) Bill? The regulations that are being amended today are based on the UK's obligation to give effect to EU directive 97/81, which banned discrimination against those who work part-time. There is some anxiety that if the Justice Secretary does not take action, those regulations may be revoked by the Retained EU Law (Revocation and Reform) Bill. That could have an impact on more than 11,000 serving or part-time judges, and it has been suggested that they could lose up to £3.5 billion if those regulations are not retained. It is said that, in some cases, that could amount to a staggering 43% pay cut.

I expect that the Government, having brought forward today's SI, will undertake the necessary work to address the matter that I have raised, but given that there is no mention of judicial pensions on the retained EU law dashboard, I would be grateful if the Minister clarified

his Department's position on them. I hope that he will commit to retaining the 2017 regulations, as amended by today's regulations.

9.35 am

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is good to see you in the Chair, Ms Nokes.

I too will give the Minister an easy time, and in fact the contribution from the shadow Minister, the hon. Member for Stockton North, has just made my task easier as well because he has raised the big question I intended to ask.

The long and short of it is that the regulations are required to implement various judgments and the SNP fully supports that. I also acknowledge the work that has been undertaken with the devolved Administrations, and I know that the Scottish Government support the draft regulations. As the shadow Minister has said, however, the key question is what happens to today's regulations and the 2017 regulations amended by them as a result of the Retained EU Law (Revocation and Reform) Bill? The shadow Minister has said that it could amount to a 43% pay cut for some part-time judges.

Earlier this week, Joshua Rozenberg wrote an article about the matter in the *Law Society Gazette* in which he raised those same questions and noted:

"These concerns have been heightened by the fact that ministers fought against paying these pensions at every step from 2005 to 2019 — even though the government was advised in 1999 that part-time judges were covered by the EU directive."

If at all possible, we need certainty about that today—what will be the implications of the Retained EU Law (Revocation and Reform) Bill for today's regulations and the 2017 regulations which they amend?

9.36 am

Mike Freer: First, I thank the shadow spokesmen for their contributions. They have raised a valid question and I am aware that the judiciary are somewhat exercised about it. I reiterate that the judiciary are valued, and I know that the Lord Chancellor is currently reviewing the options available under the Retained EU Law (Revocation and Reform) Bill to ensure that we comply with our obligations while maintaining the esteem in which we hold our judiciary. I cannot commit my right hon. Friend the Lord Chancellor, but I can tell the hon. Gentlemen that the issue is high on the agenda and it is one that we take extremely seriously.

Alex Cunningham: I am rather fascinated by that particular answer. It sounds as though the Minister does not actually know whether the regulations that we are amending today will be retained in the long term. I promised to give the Minister an easy time, but why on earth are we in this room amending regulations that could be confined to the bin, not to mention all the ramifications of that, within a few months? Surely we should have a date by which this issue will be sorted out.

Mike Freer: The amendments are needed to comply with existing legislation and to fulfil the existing commitments that we have given to the courts. That is why we are here, and why we need to pass the regulations. The scope of the Retained EU Law (Revocation and

[Mike Freer]

Question put and agreed to.

Reform) Bill and its impact on judicial pensions is being reviewed by the Lord Chancellor. I am happy to repeat that it is not the intention of my right hon. Friend to do anything that would undermine the esteem in which we hold our judiciary.

9.38 am

Committee rose.

