

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT JUDICIAL PENSIONS (REMEDIABLE  
SERVICE ETC.) (AMENDMENT) REGULATIONS 2023

*Monday 11 December 2023*

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

*Chair:* SIR EDWARD LEIGH

Byrne, Liam ( <i>Birmingham, Hodge Hill</i> ) (Lab)	† Morrissey, Joy ( <i>Lord Commissioner of His Majesty's Treasury</i> )
Carden, Dan ( <i>Liverpool, Walton</i> ) (Lab)	† Mortimer, Jill ( <i>Hartlepool</i> ) (Con)
† Evans, Dr Luke ( <i>Bosworth</i> ) (Con)	Nici, Lia ( <i>Great Grimsby</i> ) (Con)
† Foxcroft, Vicky ( <i>Lewisham, Deptford</i> ) (Lab)	Osborne, Kate ( <i>Jarrow</i> ) (Lab)
† Freeman, George ( <i>Mid Norfolk</i> ) (Con)	† Simmonds, David ( <i>Ruislip, Northwood and Pinner</i> ) (Con)
† Freer, Mike ( <i>Parliamentary Under-Secretary of State for Justice</i> )	† Stephens, Chris ( <i>Glasgow South West</i> ) (SNP)
Grundy, James ( <i>Leigh</i> ) (Con)	Liam Laurence Smyth, <i>Committee Clerk</i>
Johnson, Kim ( <i>Liverpool, Riverside</i> ) (Lab)	
† Leadbeater, Kim ( <i>Batley and Spenningsdale</i> ) (Lab)	
† Menzies, Mark ( <i>Fylde</i> ) (Con)	
† Morris, David ( <i>Morecambe and Lunesdale</i> ) (Con)	† <b>attended the Committee</b>

# First Delegated Legislation Committee

*Monday 11 December 2023*

[SIR EDWARD LEIGH *in the Chair*]

## **Draft Judicial Pensions (Remediable Service etc.) (Amendment) Regulations 2023**

4.30 pm

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

That the Committee has considered the draft Judicial Pensions (Remediable Service etc.) (Amendment) Regulations 2023.

It is a pleasure to serve under your chairmanship, Sir Edward. I apologise that this is a somewhat dry and technical subject, but I hope Members will bear with me. The regulations amend the Judicial Pensions (Remediable Service etc.) Regulations 2023, referred to as the 2023 regulations, which were made in July this year, and the Judicial Pensions Regulations 2015, referred to as JPR 2015.

The regulations before us are particularly technical. The 2023 regulations were intended to ensure that all judges received a full remedy in relation to the McCloud age discrimination litigation, including in relation to certain payments that they had purported to make to the 2015 judicial pension scheme while they were treated as a member of that scheme. However, the 2023 regulations proceeded on the basis that judges eligible for a remedy in relation to McCloud were at some point in the 2015 judicial pension scheme and could have made certain payments to that scheme, and that they would, as a result of their remedy, be moved to their previous, legacy schemes. The 2023 regulations also made amendments to JPR 2015, which proceeded on the same basis.

However, the McCloud remedy operates differently for different groups of judges, and there are some groups whose remedy operates in such a way that they are now considered never to have been in the 2015 scheme. That applies to immediate-detriment judges, including litigants, and gap judges; I will explain those specific groups of judges shortly. As a result, those judges could not have made payments to the 2015 scheme, so the 2023 regulations and the amended JPR 2015 did not work to fully effect their remedy. There is no change to the policy intent of the 2023 regulations.

The regulations before us amend the 2023 regulations and JPR 2015 to ensure that we are able fully to deliver the remedy for all affected judges. I will go into a few of the specifics of those amendments, but let me first outline the background to the McCloud remedy itself. Prior to the 2015 pension reforms, salaried judges were eligible for pensions under the Judicial Pensions Act 1981, known as JPA 1981, or the Judicial Pensions and Retirement Act 1993, known as JUPRA. Fee-paid judges secured equivalent pensions through other litigation and became eligible for the fee-paid judicial pension

scheme, known as the FPJPS. Collectively, those are called the legacy pension schemes and they were all tax-unregistered final salary schemes.

In 2015, the Government introduced extensive reforms to public service pension schemes, as well as new pension schemes from 1 April 2015, based on recommendations in the Public Service Pensions Commission's final report. JPR 2015 created the reformed pension scheme for the judiciary—the judicial pension scheme 2015, also known as JPS 2015—which is a tax-registered career-average pension scheme. For those aged between 51.5 and 55 on 31 March 2012, tapered protection was available, and those judges were given the choice to join the 2015 scheme on 1 April 2015 or to taper across on a later date determined by their date of birth. Other judges—those aged under 51.5 on 31 March 2012—received no protection and were treated as members of JPS 2015 on 1 April 2015, unless they opted out of pension scheme membership altogether.

The transitional provisions were challenged by younger judges in the employment tribunal case of McCloud against Ministry of Justice in 2016. In 2018, the Court of Appeal held that the 2015 reforms were unlawfully discriminatory on the ground of age. On 15 July 2019, the Government issued a written ministerial statement accepting the Court of Appeal judgment, and confirmed that we would take steps to address the difference in treatment across all public sector pension schemes and for all affected members, regardless of whether they had brought a claim. This, as hon. Members will know, is called the McCloud remedy.

Since then, the Government have taken steps to resolve the discrimination for affected members. In July 2020, the Ministry of Justice consulted on proposals to remedy the discrimination for judicial pension members. It confirmed in February 2021 which members this would apply to, and confirmed that the remedy would consist of all non-claimant members participating in a formal options exercise in which they would be offered a retrospective choice of pension scheme membership. Hon. Members will note that Members of Parliament are currently going through a similar process.

The options exercise is provided for in chapter 2 of part 1 of the Public Service Pensions and Judicial Offices Act 2022. It offers eligible judicial pension members a retrospective choice between membership of the legacy pension scheme and of the 2015 pension scheme for their period of service during the remedy period from 1 April 2015, when the discrimination began, until 31 March 2022, at which point all members were moved to the 2022 judicial pension scheme.

There are also provisions to enable the Ministry of Justice to provide an earlier remedy for those who are at immediate detriment, and a remedy for gap judges. Immediate-detriment judges include litigant judges who have received a remedy in the employment tribunal, to the extent that a remedy has not already been delivered to that group, and non-litigant judicial members who have separately agreed a remedy with the scheme manager. Gap judges are different from those in the options exercise, in that they were older than 55 on 1 April 2012. Given other litigation since 2015, they are now recognised as never having been eligible to join the 2015 scheme; they are therefore now being recognised as legacy scheme members and are treated as never having been in the 2015 scheme.

The draft regulations are intended to deliver the original policy intent of the 2023 regulations. They make amendments to the wording of the 2023 regulations to ensure that the specific groups of judges I have outlined are recognised as never having had membership of the 2015 scheme.

In addition to providing a primary remedy for immediate detriment judges and gap judges, the 2023 regulations made provision intended to ensure that all judicial members who are in scope of the McCloud remedy, whether they are in the options exercise or are immediate detriment or gap judges, could receive more technical elements of the remedy relating to matters such as transfers in, added pension payments and effective pension age payments. Such payments were purported to have been made to judges through the 2015 scheme. The Ministry of Justice has laid this statutory instrument to address concerns that the 2023 regulations did not fully achieve their policy intention to resolve the issue with these payments, and to put beyond doubt the Ministry of Justice's ability to deliver the full remedy to these individuals.

I assure the Committee that the draft regulations are necessary to ensure that all affected members of the judiciary will receive a pension remedy that is complete and equitable. I appreciate that this is a rather dry and technical issue, but it is an important one. I hope that we have the support of the Committee.

**The Chair:** Well, that's all very clear. I call Vicky Foxcroft—good luck.

4.38 pm

**Vicky Foxcroft** (Lewisham, Deptford) (Lab): Thank you, Sir Edward. It is a pleasure to serve under your chairship.

I thank the Minister for his explanation of these very complex yet wholly necessary regulations. I think his ministerial counterpart in the other place, Lord Bellamy, said it best when he labelled them

“44 pages of the densest technical complexity one could imagine.”—*[Official Report, House of Lords, 15 June 2023; Vol. 830, c. GC375.]*

These measures seek to provide a remedy in response to the McCloud judgment in 2018. In that ruling, the Court of Appeal found that the Government's 2015 reforms to judicial pensions constituted unlawful direct age discrimination and indirect race and sex discrimination. Although it is worrying that the 2015 reforms overlooked those issues, I welcome the Government's acceptance of the ruling.

The Opposition will not oppose the draft regulations, as we need this remedy to be put in place as quickly as possible, but I hope the Minister will address a couple of points. First, I note that when the regulations were debated in the other place back in June, the Minister in the Lords was unable to conclusively answer if they were the final regulations needed to implement the McCloud remedy. Six months on, can the Minister provide that clarification? Can he also shed light on the proposed timetable for implementing the remedy? Many judges and their families will eagerly await the chance to make their decision on it, so it is important that the scheme is launched without any further delay.

Finally, while judges are perhaps better placed than most to understand their choices under the options exercise, will extra independent advice be needed? As the Government stated previously, this is a rather unique situation, and it is important that each person affected makes the right choice for them and their family. Is the Minister confident that existing advice services such as the Money and Pensions Service will be able to offer the necessary guidance? Will the Government make any further efforts to ensure that informed decisions are made?

As I said, we welcome the regulations and their intended aim of providing a remedy for those who have faced discrimination. We want the situation to be resolved in a fair way as soon as possible, and I will be interested to hear the Minister's response to the points we have raised.

4.41 pm

**Chris Stephens** (Glasgow South West) (SNP): You will be pleased to know that I have only a couple of quick points to make, Sir Edward. Obviously, this goes back to the McCloud judgment, as the Minister said. I am curious, because as is referred to in the explanatory notes—I am sure that the Minister referred to this—other public sector employees are involved. Can he say a bit more about what the cross-departmental approach is? Can he also confirm an assessment has been made under the Equality Act 2010? Will he ensure that there is an equality impact assessment of the regulations?

4.42 pm

**Mike Freer:** I never say never, but I am sure that these are the final regulations. As the hon. Member for Lewisham, Deptford will know, these are technical matters, but as far as we can see, we have now identified any wrinkles, so I hope that these are the final regulations brought forward.

Regarding the timetable, the options exercise is already being undertaken, so the work has already started. Regarding independent advice, I cannot say this with my hand on my heart, but I am pretty sure that everybody gets a personalised statement—as Members of Parliament do—and will access things such as webinars and teach-ins. As in my days in financial services, people are always advised to take independent advice, but I will double check that we recommend that people take independent advice. I can confirm that those affected will get personalised statements and access to things such as webinars to give them as much information as possible.

The hon. Member for Glasgow South West asked about the impact across each part of the public sector. In the same way that each Government Department will have to look at its own exposure, each element of the public sector will have to look at its own pension scheme, because they are not homogeneous, to ensure that it implements the McCloud judgment as it applies to its schemes. I am pretty sure that everyone is doing it, but I cannot confirm if it is a consistent approach. The last question was about the equality impact. That has been taken, and I am sure that we are compliant.

*Question put and agreed to.*

4.44 pm

*Committee rose.*





