

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

JUDICIAL PENSIONS REGULATIONS 2022

Thursday 21 April 2022

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The Committee consisted of the following Members:

Chair: CLIVE EFFORD

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| † Bardell, Hannah (<i>Livingston</i>) (SNP) | † Mackinlay, Craig (<i>South Thanet</i>) (Con) |
| Butler, Dawn (<i>Brent Central</i>) (Lab) | † Mann, Scott (<i>North Cornwall</i>) (Con) |
| † Cartlidge, James (<i>Parliamentary Under-Secretary of State for Justice</i>) | † Mayhew, Jerome (<i>Broadland</i>) (Con) |
| † Daly, James (<i>Bury North</i>) (Con) | † Reeves, Ellie (<i>Lewisham West and Penge</i>) (Lab) |
| † French, Mr Louie (<i>Old Bexley and Sidcup</i>) (Con) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| † Glindon, Mary (<i>North Tyneside</i>) (Lab) | Sultana, Zarah (<i>Coventry South</i>) (Lab) |
| † Hendrick, Sir Mark (<i>Preston</i>) (Lab/Co-op) | † Williams, Craig (<i>Montgomeryshire</i>) (Con) |
| † Hudson, Dr Neil (<i>Penrith and The Border</i>) (Con) | Seb Newman, Paul Owen, <i>Committee Clerks</i> |
| Jarvis, Dan (<i>Barnsley Central</i>) (Lab) | |
| † Lewer, Andrew (<i>Northampton South</i>) (Con) | † attended the Committee |

Third Delegated Legislation Committee

Thursday 21 April 2022

[CLIVE EFFORD *in the Chair*]

Judicial Pensions Regulations 2022

11.30 am

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

That the Committee has considered the Judicial Pensions Regulations 2022 (SI, 2022, No. 319).

It is a pleasure to serve under your chairmanship, Mr Efford, I think for the first time.

Our justice system is rightly held in high esteem, with an international reputation to be proud of. Joining the bench as a judge needs to remain an attractive option for the best legal candidates. To support that, we have committed to delivering a pension scheme that will attract and retain high-calibre judges.

Turning to the purpose of the statutory instrument before us, the judicial pension scheme 2022 established under these regulations is designed to be fair to the taxpayer and attractive to the judiciary. All other judicial pension schemes are closed to future accrual following the passage of the Public Service Pensions and Judicial Offices Act 2022, which received Royal Assent in March 2022. From 1 April, this month, the judicial pension scheme 2022 has been the only scheme open to judges for future accrual.

Our judges uphold the rule of law, and the decisions that they take are of the utmost importance. Throughout the pandemic, the judiciary continued to administer justice, working hard to ensure that our courts and tribunals kept operating. Having enough judges now and in future will be vital to help the justice system to continue to recover.

Unfortunately, over the past few years, we have experienced unprecedented recruitment and retention issues across the judiciary. We need more high-calibre judges to help us reduce case times and to deliver justice more quickly. Justice delayed often impacts on the most vulnerable. In family and county courts, children and other vulnerable people rely on access to justice for emergency orders and injunctions. More judges will mean that more cases can be heard in a timely manner.

The judiciary's reputation for integrity and impartiality plays an important role in attracting international business to the UK. Having sufficient judges will help us to continue to compete internationally in legal services, an important contributor to the UK economy worth about £29 billion per year.

In 2018, a two-year comprehensive review by the Senior Salaries Review Body linked the 2015 pension reforms to the recruitment and retention problems within the judiciary. The pension changes made in 2015 were consistent with those made to other public sector pension schemes, but they did not take into consideration the judiciary's constitutional role or unique situation. The 2015 scheme moved judges to a tax-registered scheme, so for the first time their judicial pension benefits became

subject to the annual and lifetime tax allowances. The JPS 2022 restores them to a tax unregistered scheme. That is particularly important, given the unique career path of judges.

Appointment as a salaried judge in the UK is a culmination of a barrister or solicitor's career, rather than a career path in itself. Judges often join judicial office at a later stage in life, having already accrued private pensions, so tax charges are felt more acutely. Furthermore, judges need to be highly experienced legal professionals to deal with important and complex judicial work. They therefore come with years of training and successful practice behind them, and many will have taken a pay cut to join the bench. Their pensions are consequently of particular importance to them.

The judicial pension scheme 2022 is designed with judges' unique situation in mind. As I said, the scheme will, importantly, be tax unregistered. Several of the scheme features, such as the member contribution rate, flow from that tax unregistered status. The scheme also has no service cap, so there is no limit on the number of years that a judge may accrue benefits. We have also provided the option for judges to receive a lump-sum payment on retirement, in return for giving up part of their pension.

This is a modernised scheme, however, which has also been designed with fairness to the taxpayer in mind. It remains consistent with the principles set out by the Independent Public Service Pensions Commission's review of public service pension provision chaired by Lord Hutton. The judicial pension scheme 2022 will have its benefits calculated on a career average, rather than a final salary basis. It will have a normal pension age linked to the state pension age, and it will be subject to a cost control mechanism.

We have engaged with the judiciary on the design of the scheme for the past few years. We ran two consultations: in 2020, we formally consulted the judiciary on the design and features that the scheme should offer; in 2021, we consulted on a draft of the scheme regulations. We carefully considered the responses.

For example, we proposed that the new scheme should have a uniform contribution rate. However, with the move to a tax unregistered scheme, that does mean that some judges would see a reduction in their take-home pay. To address that issue, the regulations offer a temporary option that allows eligible judicial office holders to reduce their contributions to the scheme for three years in return for a corresponding reduction in the accrual rate. Overall, the responses received to these consultations were positive, and the judiciary were supportive. This strengthened our view that this scheme will help achieve our main objective of addressing the serious recruitment and retention issues identified by the Senior Salaries Review Body, while still being fair to taxpayers and affordable in the long term.

To conclude, this statutory instrument establishes a pension scheme for the judiciary that is sufficiently attractive to recruit and retain high-calibre candidates to the bench, while ensuring value and fairness to the taxpayer.

11.35 am

Rachel Reeves (Leeds West) (Lab): These regulations are to be welcomed for bringing clarity after the period of legislative conflict that followed the introduction of the judicial pension scheme in 2015. The Minister will

recall that in January 2017, an employment tribunal found in the case of *McCloud v Ministry of Justice* that the transitional arrangements for judges for the introduction of JPS 2015 were not lawful under EU equality law and under the Equality Act 2010. A key issue was the loss sustained by unprotected and taper-protected judges due to the tax-registered status of the 2015 scheme. Judges alone suffered the combined effect of significant adverse changes to their pension scheme and radical change to the tax treatment of their pensions.

I therefore note the Ministry of Justice's intention that a uniform contribution rate would promote fairness between members, remove anomalies that occur at the boundaries of different bands in a tiered structure, and ensure that fee-paid judges who sit the same number of days contribute the same amount to their pension, regardless of their sitting pattern. We would, however, welcome the Minister's thoughts on the matters raised by the judicial associations, which suggest that some judges may be financially worse off under the new regulations due to the apparently less favourable lump sum death benefits and uniform contribution rate. Has the Department made any assessment of the number of judicial office holders who may find the new regulations to be less favourable?

Regarding the new proposal, I would like to raise the question of equity for newer judges and those who intend to come into the system. It has been argued that if the new pension scheme is less favourable than the existing framework, the younger, less experienced judges will be the ones to lose out financially in the long run. The Council of Her Majesty's District Judges responded to the new pension scheme by saying that even with the time-limited mitigation that the Minister referred to, it is difficult to support a proposal whereby the least well-paid judicial tier is the one that will suffer a month-on-month reduction in income. Does the Department recognise this, and how does it plan to mitigate its effects for those who argue the scheme is going to affect those coming into the judicial system? Does the Ministry of Justice believe that this could not only affect the retention rate but dissuade up-and-coming, newer legal minds from joining the judicial service in the longer term, as it may not benefit them financially?

We are all acutely aware that the court backlog currently stands at 60,000, and the availability of experienced judges will be vital in reducing that figure. As such, while we welcome a uniform system, it would be helpful if the Minister could address some of those concerns so that we can ensure the new system works for everyone moving forward.

11.38 am

James Cartlidge: I am very grateful to the hon. Lady for her overall support of the measures. She is right to mention the *McCloud* case; it is obviously complicated to talk about the impact on any specific, individual judicial office holder, but overall, this new pension scheme is generous. It takes into account the unique circumstances of judicial office holders, and the key to it is the tax-unregistered nature of the scheme. Because of that, it will be broadly beneficial, but I am happy to reflect on the hon. Lady's points and respond if I can address any of the issues she mentioned about specific impacts, particularly at lower levels, which are very important.

The hon. Lady mentioned the backlog. I should put on record what I have just announced: for the second year running, we have removed the cap on sitting days in Crown courts, which should mean that we can go even further in reducing the backlog. It is a serious issue, although I would point out that that backlog has fallen by 2,500 since its peak in June last year. As the hon. Lady knows, a key factor in that backlog was that as we went into full lockdown in April 2020, courts were closed, and the issue of 2 metre social distancing in jury trials was a fundamental problem. However, we are making huge progress on the backlog. We have a range of measures in place, not least to clear up space in courts, but if we have rooms, we need judges to hear those cases. That is becoming a key capacity issue as well, which is why these measures are so important: at their heart, they are about the recruitment and retention of judges. We have many other measures going forward—I draw the hon. Lady's attention to the magistrates recruitment drive, which I am pleased to say has received over 35,000 expressions of interest, with 25% of potential applicants from black and minority ethnic backgrounds. That is very positive.

My final point is that, compared with the 2015 scheme, no individual judge will be worse off. That is the key point; it all comes from the tax-unregistered nature of the scheme. I think it is a very good scheme, and I hope you agree, Mr Efford, that this statutory instrument is necessary. I commend it to the Committee.

Question put and agreed to.

11.40 am

Committee rose.

