



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Northern Ireland Judicial Pensions: Proposed response to *McCloud*

Consultation

This consultation begins on 14 October 2020

This consultation ends on 9 December 2020

About this consultation

- To:** Members of the public of Northern Ireland with particular relevance to devolved judicial office holders
- Duration:** From 14 October 2020 to 9 December 2020
- How to respond:** Email: AToJ.Consultation@justice-ni.x.gsi.gov.uk
- Response paper:** A response to this consultation exercise will be published on the Department of Justice website.

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Executive summary

In *McCloud*¹ the Court of Appeal held that transitional protections provided to older judges as part of the 2015 judicial pension reforms constituted unlawful direct age discrimination. From 1 April 2015, younger judges had been moved from their legacy schemes, the Judicial Pension Scheme 1993 (JUPRA) or the fee-paid equivalent, Fee-paid Judicial Pension Scheme 2015 (FPJPS),² both of which were tax-unregistered final salary schemes, to various tax-registered career average schemes with lower accrual rates, including to the Northern Ireland Judicial Pension Scheme 2015 (NIJPS). Judges closest to retirement were protected from the changes due to their age, and remained in JUPRA. The Court held that such protection unlawfully discriminated against younger judges.

The Government's request for permission to appeal to the Supreme Court was rejected and the case was remitted to the Employment Tribunal to agree a remedy for claimants. The Employment Tribunal has since made declarations that claimant judges are entitled to be members of JUPRA/FPJPS from 1 April 2015.

The Government accepted that the Court of Appeal's judgment had implications for all public service pension schemes that were reformed in 2015, as all contained transitional protections for older members. It has since committed to addressing the discrimination for all affected public servants regardless of whether they brought a claim.

Rulings of the Court of Appeal in England and Wales are not directly binding here as this is a separate legal jurisdiction. However the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Britain. Legal advice confirms the implications of the Appeal Court decision is such that all schemes must be treated as affected by the *McCloud* decisions and so require to be remedied.

¹ *Lord Chancellor and Secretary of State for Justice and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others*, [2018] EWCA Civ 2844

² FPJPS was implemented to remedy the discrimination identified in *O'Brien*. The courts found that eligible fee-paid judicial office holders were entitled to pension benefits that were no less favourable than those provided at the time to salaried judges by JUPRA. FPJPS was therefore designed to mirror JUPRA as far as possible and be no less favourable where it was not possible to mirror the arrangements under JUPRA. FPJPS was established under the Judicial Pensions (Fee-Paid Judges) Regulation in 2017 and provided pension benefits for both historic and future service. As such, it was not in place on 1 April 2015, but the practical effect is now that younger judges are entitled to FPJPS benefits until they became members of NIJPS on that date.

HM Treasury is therefore consulting on proposals to remove the discrimination from the majority of schemes established under the Public Service Pensions Act 2013.³ The Department of Finance is similarly consulting on proposals to remove the discrimination from the majority of schemes established under Public Service Pensions (Northern Ireland) Act 2014. Given the uniqueness of the judicial pension schemes, it is necessary to consult judges separately on how best to address the discrimination for non-claimant judges affected by the judgment. In order to be in scope, judges must have been in office on 31 March 2012 and 31 March 2015 and a member, or entitled to be a member, of JUPRA/FPJPS on those dates.⁴

This consultation proposes that judges in scope of *McCloud* are given a choice whether to have retrospectively accrued benefits in either JUPRA/FPJPS or NIJPS from 1 April 2015. The choice would be made via a formal ‘options exercise’ after the end of the remedy period, although judges who have retired or are due to retire before 2023 should be able to make their decision sooner.

These proposals mirror the approach proposed by the Ministry of Justice (MoJ) in relation to its 2015 Judicial Pension Scheme, upon which the NIJPS is based.

The options exercise would coincide with the introduction of a new Reformed Judicial Pension Scheme that MoJ intends to introduce for all judges from 1 April 2022. The Department of Justice (DoJ) anticipates similar arrangements being made in Northern Ireland in order to equalise treatment prospectively across the judiciary.

It is important to consult rather than return all judges to their pre-2015 schemes because it is not necessarily the case that all judges will be better off if returned to JUPRA/FPJPS from 1 April 2015.

In light of ongoing *McCloud* Employment Tribunal hearings and discussions between parties in England and Wales – which will inform our approach in respect of non-claimants – aspects of these proposals may change subject to what is agreed or decided as part of that process.

³ HM Treasury’s proposals cover schemes for NHS workers, teachers, firefighters, police, civil servants, and UK armed forces. The Ministry of Housing, Communities and Local Government is consulting separately in respect of local government schemes.

⁴ See also the ‘Members of public service pension schemes’ section below.

Interaction with other consultations.

DoJ is also consulting on proposals for:

- a. Options for a reformed pension scheme
- b. increase the judicial mandatory retirement age.

Respondents may wish to consider these consultations at the same time to understand where and to what extent possible dependencies may influence their response.

Introduction

Background

1. In 2015 the Government introduced extensive reforms to public service pension schemes. The reforms followed the Independent Public Service Pensions Commission's final report,⁵ published in March 2011, which set out a number of recommendations to make public service pension provision more affordable and sustainable, while at the same time adequate and fair. To that end, the Commission recommended increasing the normal pension age to a member's State Pension age; replacing final salary schemes with new schemes based on a career average design; and introducing a fixed cost ceiling to ensure cost control for the taxpayer. The Commission also recommended preserving pension rights already accrued to protect those in active service from a sudden change in their pension benefits.
2. The Northern Ireland Judicial Pension Scheme (NIJPS) was established by the Department of Justice (DoJ) on 1 April 2015 under the Judicial Pensions Regulations (Northern Ireland) 2015 (the 2015 Regulations). Like other pension schemes which were set up as a result of public sector pension reform, it is a tax-registered, career-average revalued earnings scheme open to specified members of the devolved judiciary (that is, judicial office-holders in Northern Ireland who are not listed in paragraph 11 of Schedule 2 to the Northern Ireland Act 1998). The change in tax status impacted judges uniquely, as the judicial schemes were the only public service schemes not formerly tax-registered: therefore, not only were judges moved to a generally less beneficial scheme, they were also now subject to annual allowance and lifetime allowance tax charges on benefits accrued within the schemes. This was especially costly for high earners and those who had built up significant private pensions before joining the bench. The Senior Salaries Review Body's Major Review of the Judicial Salary Structure in 2018 found that the reforms have had a significant

⁵ The final report of the Independent Public Service Pensions Commissions can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207720/hutton_final_100311.pdf

impact on judges' overall remuneration and were the cause of unprecedented recruitment and retention challenges in senior judicial offices.⁶

3. Both NIJPS and the wider public service schemes included transitional protection, whereby older members could remain in their pre-2015 schemes until retirement. For judges this meant those aged 55 or over on 31 March 2012 remained in JUPRA/FPJPS. For those aged between 51½ and 55 on 31 March 2012, a form of 'taper protection' was offered: these judges were given the choice to join NIJPS on 1 April 2015 or 'taper' across on a later date determined by their date of birth (with the practical effect of retaining JUPRA/FPJPS benefits for a longer period of time). All other judges – those aged under 51½ on 31 March 2012 – received no protection and moved to NIJPS on 1 April 2015 unless they opted out of pension scheme membership.
4. In England and Wales the transitional provisions were challenged by younger judges in *McCloud*. Claimants alleged that the protection extended to older judges amounted to direct age discrimination contrary to section 13 of the Equality Act 2010 (EA 2010) and the non-discrimination rule inserted into pension schemes by virtue of section 61 EA 2010. Claims were also brought for equal pay and indirect race discrimination (sections 67 and 19 EA 2010 respectively), claimants alleging that the 2015 reforms had a disproportionate adverse effect on women and black, Asian and minority ethnic (BAME) judges.
5. The Government accepted that the transitional provisions were discriminatory but maintained that objective justification could be found in their aim of protecting those closest to retirement from the financial effects of pension reform. Rejecting this argument, in December 2018 the Court of Appeal upheld the Employment Tribunal's finding that the Government's treatment of younger judges was not a proportionate means of achieving a legitimate aim. The court was also satisfied that the equal pay and indirect race claims were made out. The transitional provisions were therefore unlawfully discriminatory.

⁶ The Senior Salary Review Body's major review of 2018 can be found at:
<https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>

6. The UK Government's request for permission to appeal to the Supreme Court was rejected and the case was remitted to the Employment Tribunal to determine a remedy for the claimants. On 15 July 2019 the Government issued a written ministerial statement explaining that it accepted that the Court of Appeal's judgment had implications for all schemes established under the Public Service Pensions Act 2013, as all had provided transitional protection arrangements for older members. The Government confirmed that it would take steps to address the difference in treatment across all schemes and for all members regardless of whether they had brought a claim.

Removing the discrimination

7. DoF is taking forward a consultation to address the discrimination in public service schemes for firefighters, police, NHS workers, teachers and civil servants. Given the unique nature of the judicial scheme it is necessary to consult separately on our proposed model for removing discrimination.
8. Like the MoJ we propose that judges in scope of *McCloud* should be given a choice whether to have accrued benefits in JUPRA/FPJPS or NIJPS and be members of their chosen scheme from 1 April 2015 until a reformed pension scheme is introduced.⁷ It is important to consult because it is not necessarily the case that all judges would be better off if returned to JUPRA/FPJPS for the relevant period. For some, NIJPS may represent the better option.

Employment Tribunal/Industrial Tribunal

9. In the ongoing *McCloud* remedy hearings in England and Wales, the Employment Tribunal declared that claimant judges are entitled to membership of JUPRA/FPJPS from 1 April 2015. Accordingly the MoJ has begun moving claimants who are active scheme members back to their respective schemes. Non-claimant judges in the same legal and factual position as claimants are, equally, entitled to have never left JUPRA/FPJPS.

⁷ The reformed scheme could be provided for via amendments to the Judicial Pensions and Retirement Act 1993 (JUPRA) to enable the provision of a modernised tax-registered section of the scheme for future benefit accruals.

10. Age discrimination cases lodged with Tribunals in the NIJPS have to date been stayed pending outcome of the lead cases in England and Wales. Whilst the judgment and declarations are not directly binding in Northern Ireland (because it is derived from decisions of the English Court of Appeal and of an Employment Tribunal in England and relates to provisions that are not in force in Northern Ireland) the analysis underlying the decision-making reads directly across to the Northern Ireland statutory framework as comparable statutory provision is made here in relevant respects through a different statutory vehicle.
11. Any approach agreed as part of the process in England and Wales would likely influence how these issues are to be addressed for non-claimants and therefore the proposals contained in this document could be subject to change to ensure a consistent approach.

Economic Impact

12. We have not carried out an economic impact assessment on the proposals at this stage. This is because the proposals considered in this paper are not likely to lead to additional costs or savings for businesses, charities or the voluntary sector, but are necessary steps to address the Court of Appeal's judgment.

Equalities Impact

13. Section 75 of the Northern Ireland Act 1998 requires that all public authorities in Northern Ireland comply with a statutory duty to:
 - have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status, or sexual orientation, gender, those with or without a disability and those with or without dependants; and
 - have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.
14. In addition, public authorities are also required to meet legislative obligations under the Disability Discrimination (Northern Ireland) Order 2006, particularly in the formation of public policy making.

15. The Department is committed to fulfilling those obligations and proposals arising from this paper have been subjected to screening to determine impact on equality of opportunity, good relations and other statutory duties. The proposals have also been screened for rural needs impact and regulatory impact (the screening documents have been published with the consultation document). **The Department welcomes views on these screening documents.**

Proposals

This section sets out our proposals for addressing the discrimination identified in *McCloud*.

Remedy Period

16. For the purposes of this consultation, the relevant period for judges' consideration is 1 April 2015 – at which point judges began moving to NIJPS - until the introduction of the future reformed scheme, which MoJ currently projects for 1 April 2022. We propose that judges in scope of the proposals should be given a choice of either JUPRA/FPJPS or NIJPS membership for this period. Thereafter, the reformed scheme would equalise treatment across the judiciary in respect of pension designs offered for future accrual, since it is intended that all judges, whether members of JUPRA/FPJPS or NIJPS will move to the reformed scheme from that point.⁸

Scope

Judges in office on 31 March 2012

17. In *McCloud* the courts identified unlawful age discrimination between the following groups:
 - those who were in judicial service on 31 March 2012 and 31 March 2015 and were members (or, for fee-paid judges, entitled to be members of JUPRA or FPJPS on those dates and were within in ten years of normal pension age (65) on 31 March 2012, therefore benefiting from transitional protection (**protected members**); and
 - those who were in service on 31 March 2012 and 31 March 2015 and were members (or, for fee-paid judges, entitled to be members) of JUPRA or FPJPS on those dates, and:
 - would reach normal pension age between 2 April 2022 and 1 September 2025, therefore benefiting from tapered protection (**taper-protected members**); or

⁸ This includes those who were protected from the 2015 reforms, as well as those who would be eligible for membership of judicial pension scheme but have opted out.

- were more than 13½ years from normal pension age on 31 March 2012, and so were not eligible for any form of protection (**unprotected members**).

18. The Department must retrospectively remove the discrimination between the groups from 1 April 2015. Therefore it is proposed that a judge will be in scope if first appointed to judicial office, whether fee-paid or salaried, before 1 April 2012 and a member of JUPRA, or entitled to be a member of FPJPS, on 31 March 2012. Specifically this includes the following categories:
- judges who were in salaried office on 31 March 2012 and on 31 March 2015 – these judges are eligible for JUPRA membership from 1 April 2015;
 - judges who were in fee-paid office on 31 March 2012 and in salaried office on 31 March 2015- these judges are eligible for JUPRA membership from 1 April 2015;
 - judges who were in fee-paid office on 31 March 2012 and 31 March 2015 but have taken salaried office at a later date – these judges are eligible for FPJPS membership from 1 April 2015 until the date of their appointment to salaried office, at which point they are eligible for JUPRA membership; and
 - judges who were in fee-paid office on 31 March 2012 and 31 March 2015 and continue to be in fee-paid office to date- these judges are eligible for FPJPS membership from 1 April 2015.
19. Because judges appointed to office after 31 March 2012 were ineligible for transitional protection regardless of their age⁹, including those whose appointments were agreed but who had not accepted an offer before then, they were not subject to the unlawful discrimination identified in *McCloud*. Furthermore, those appointed after 31 March 2012 could reasonably be expected to have known that pension provision was likely to change when they entered service, given the widespread media scrutiny the reforms received at the time. Consequently they are not in scope of these proposals and will continue to be members of NIJPS, unless they have opted out, before transferring to the reformed scheme.

⁹ The exception is where the judge was a member of a non-judicial public service pension scheme on 31 March 2012 – see ‘Members of non-judicial public service pension schemes’.

20. Protected judges, who remained in JUPRA/FPJPS because of their age, are not in scope of this consultation, as they were not subject to the discrimination identified in *McCloud*.
21. It should be noted that these proposals will apply to eligible members of the judiciary in Northern Ireland who are members of the NIJPS and for whose pension arrangements the Northern Ireland Executive has sole competency to legislate.

Members of non-judicial public service pension schemes

22. When the public service pension scheme reforms were introduced in 2015, the Government committed that any member who was eligible for protection under one public service pension scheme, and subsequently joined the pension arrangements of another public service pension scheme, would retain their protection rights.
23. The protection rights were 'portable' between schemes, including where prior membership was of a non-judicial public service pension scheme. Such portability will be retained for the purposes of this consultation with the removal of the age requirement.¹⁰

Taper-protected judges

24. Tapered protection was offered to judges who were aged between 51 ½ and 55 on 31 March 2012. These judges were not eligible for full protection and were given the choice to join NIJPS on 1 April 2015 or remain members of JUPRA/FPJPS until their tapered protection closing date (between 31 May 2015 and 31 January 2022, determined by their date of birth), at which point they 'tapered' to NIJPS. Thus, tapering was done on a sliding scale, with older taper-protected judges retaining JUPRA/FPJPS benefits for longer than their younger counterparts. On 30 September 2019 the MoJ stopped the tapering of

¹⁰ Therefore, judges will be in scope if they were (a) members of a non-judicial public service pension scheme on 31 March 2012 and were members of JUPRA or eligible for FPJPS on 31 March 2015 or (b) if they were members of a non-judicial public service pension scheme on both 31 March 2012 and 31 March 2015 and were subsequently appointed to judicial office so long as there was not a gap of more than five years between leaving the non-judicial public service pension scheme and taking up judicial office. We are aware there is a gap in the regulations for judges who were members of a non-judicial public service pension scheme on 31 March 2012, but who subsequently took up a fee-paid judicial appointment and amending regulations will be required to rectify this.

judges and those who taper dates came after this point remained in JUPRA/FPJPS. NIJPS first taper was not due until 2021.

25. The effect of *McCloud* is that tapered protection was discriminatory and that this discrimination was unlawful. Maintaining tapered protection, or extending it to all members, would therefore perpetuate or indeed extend the discrimination, and would be extremely complex to administer. Consequently, taper-protected judges must decide whether to choose JUPRA/FPJPS or NIJPS membership for the entire remedy period; they will not be able to split accrual across both schemes. This is necessary to ensure that the remedy is implemented fairly for all in scope.
26. While it is possible that tapered protection may have been advantageous for some individuals, any advantage would have been as a result of a policy that has been found to give rise to unlawful age discrimination. We believe the proposed approach is necessary to address the discrimination.

Judges who opted out of NIJPS

27. Some judges may have opted out of NIJPS because of the impact of annual allowance and lifetime allowance charges. Because it is likely that these judges would have remained members of JUPRA/FPJPS but for the discrimination, those who opted out of NIJPS and were members of JUPRA, or entitled to be members of FPJPS, on 31 March 2012 and 31 March 2015 are in scope of the consultation, subject to payment of member contribution arrears.

Transitional Protection Allowance

28. When NIJPS was introduced, unprotected and taper-protected judges were given a one-off option to opt out of the pension scheme and instead receive a Transitional Protection Allowance (TPA) if they satisfied the following criteria:
 - the individual was not eligible for full protection;
 - the individual had continuous membership of the judicial pension scheme since first being eligible to join it and was still an active member of the scheme on 31 March 2015;

- the individual could provide proof of having registered with HMRC for either enhanced protection under Finance Act 2004 or fixed protection under Finance Act 2011 and had not contacted HMRC to revoke such protection; and
 - the individual had not taken any action which negated the validity of their protection, for instance joining a tax-registered pension scheme or making contributions to a tax-registered money purchase pension arrangement after 5 April 2006 (enhanced protection) or making contributions to, or building up benefits in, a tax-registered pension scheme after 5 April 2012 (fixed protection).
29. TPA is an additional sum paid equal to the 'actual' employer contribution that would have been paid by DoJ had the member joined NIJPS. The option to receive TPA could only be exercised on 1 April 2015 and extinguished any rights to tapered protection.
30. Judges who opted for TPA and were in office on 31 March 2012 are in scope of *McCloud*, and it is proposed that they are given the choice of:
- returning to JUPRA/FPJPS from 1 April 2015, subject to TPA being recouped and contributions arrears being accounted for; or
 - continuing to opt out of any judicial pension scheme and receive TPA until the end of the remedy period.
- Where they elect to return to JUPRA/FPJPS they would not forfeit either their enhanced or fixed protection.
31. Judges whose appointments were agreed before 31 March 2012, but who took up office after this point, were also eligible for TPA if they met the criteria. These judges are not in scope of *McCloud* and will continue to receive TPA or accrue benefits in NIJPS until the reformed scheme is introduced.

Partnership Pension Account

32. Unprotected or taper-protected judges were able to opt out of NIJPS and instead join a Partnership Pension Account (PPA) - a registered stakeholder pension scheme. As with judges in receipt of TPA, judges who joined a PPA are in scope of *McCloud*. We are considering further the appropriate

mechanism for where PPA judges choose JUPRA/FPJPS benefits for the remedy.

“Gap” judges

33. As discussed above, judges who were in fee-paid office on or before 31 March 2012 and remained in judicial service on 31 March 2015 are in scope of *McCloud*. This includes judges who were in fee-paid service on 31 March 2012, took up salaried office between 1 April 2012 and 1 December 2012¹¹ and had not made a claim for a fee-paid pension within three months of the end of their fee-paid service, the so-called “gap” judges. Prior to the Supreme Court judgment in *Miller*, these judges were not considered to have a valid claim for a fee-paid pension and were consequently moved to NIJPS from 1 April 2015, regardless of their age.
34. We consider that gap judges’ entitlement is most appropriately resolved through the *McCloud* proposals, which means gap judges should be offered a choice of JUPRA or NIJPS benefits for the remedy period.
35. As with all fee-paid judges, gap judges should consider the impact of aggregate fee-paid service (once service records are agreed and fee-paid pensions calculated for those who have retired) on their 20-year JUPRA/FPJPS entitlement.

Judges who retire or die during the remedy period

36. The proposals extend to judges who retire or die during the remedy period. Where JUPRA/FPJPS membership represents the best option for such individuals or their dependants, any shortfalls in lump sum and pension payments owed on that basis would need to be paid.

QUESTION 1: Please set out any comments on the proposed scope of the consultation.

¹¹ MoJ introduced a moratorium on 5 April 2013, which took effect from 2 December 2012. This took effect from 1 February 2013 for Northern Ireland offices, and is still in place. The effect of the moratorium is that eligible fee-paid judges in service on 1 February 2013 are entitled to a pension for their fee-paid service regardless of whether they have brought a claim in the Employment Tribunal.

Scheme Comparison

37. It is expected that the majority of judges are likely to be better off in JUPRA/FPJPS because it is the more generous scheme for most judges in most circumstances; it has a more generous accrual rate, an automatic lump sum on retirement, more generous dependant benefits and is a final salary scheme. It also provides the benefits of a tax-unregistered scheme (in that members are not faced with annual allowance or lifetime allowance charges on their accrued judicial pension benefits), whilst compensating members for the tax consequences of a tax-unregistered scheme, with discounted member contribution rates and the payment of a Judicial Service Award upon retirement.
38. However, there are specific circumstances that could make NIJPS the better scheme for some judges. The most significant of these factors is that JUPRA/FPJPS has a 20-year service cap: members with 20 years' service cannot accrue further pension benefits. Because NIJPS has no such limit, judges who would reach their JUPRA/FPJPS service cap before or during the remedy period may find they are better off opting for NIJPS membership rather than exhausting their JUPRA/FPJPS entitlement. This will primarily depend on when a judge would reach their service cap: those who would reach 20 years early in the remedy period may be better off in NIJPS, whereas those who reach it later may be better off in JUPRA/FPJPS.
39. Other factors are also relevant in determining where judges may be better off, including the age at which they retire; whether they have additional benefits in another registered pension scheme and the value of these benefits (which will impact on their annual and lifetime allowances); and the value they place on scheme features, for example the younger retirement age and more generous dependant benefits of JUPRA/FPJPS compared with the more flexible benefits and wider definition of dependants of NIJPS.
40. The following table provides an overview of the key differences between the schemes.

Proposed response to *McCloud*
Consultation

Feature	JUPRA/FPJPS	NIJPS
Tax status	Tax-unregistered	Tax-registered
Annual accrual rate	1/40 th (2.5%) of judge's final salary ¹² multiplied by total length of service to a maximum of 20 years	2.32% x pensionable earnings a year (Increases each year in line with prices)
Lump sum	Automatic lump sum of 2.25 times the annual rate of pension, plus a Judicial Service Award to offset tax due on lump sum	No automatic lump sum but lump sum available by commuting annual pension entitlement
Retirement age	65, or on completion of five years' service (if later)	The member's State Pension age
Survivor's benefits	A surviving spouse's or civil partner's pension paid at half the rate of the member's pension; provision for pension in respect of a child dependant	A surviving adult (spouse, civil partner or nominated partner) pension paid at annual rate of three eighths of the member's pension; provision for pension in respect of a child dependant
Ill-health retirement	Pension payable immediately without reduction; if the member has not reached 65, the length of service upon which the pension is calculated will be enhanced by a period equal to one-half of the time remaining between the day after the date of retirement and the 65th birthday.	Pension payable immediately without reduction; if the member has not reached their State Pension age, the pension will be enhanced by half of the expected pension that the member would have accrued from the date of retirement and the date they reach their State Pension age.

¹² Regulation 7 of the Judicial Pensions (Fee-Paid Judges) Regulations 2017 sets out how the 'appropriate annual salary' is determined for pension purposes depending on whether the office held by the judge at retirement is a fee-paid or salaried office.

Options model

40. Our proposed approach for addressing the discrimination is that all judges in scope are given a choice whether to have accrued benefits in JUPRA/FPJPS or NIJPS for the remedy period. We propose offering this choice through a formal 'options exercise' following the end of the remedy period to coincide with the introduction of a reformed scheme. The decision to return to JUPRA/FPJPS would be backdated to 1 April 2015. We also propose that judges who are due to retire before the end of the remedy period should be able to make their choice earlier so that they can access their full JUPRA/FPJPS pension and lump sum.
41. DoJ will continue to work with MoJ and HM Treasury to explore the tax implications of the proposals contained in this paper. Annex A contains technical details of how past contribution and other matters should be handled where judges elect to return to JUPRA/FPJPS.

Options exercise

42. The options exercise would provide judges with clear communication on the options available to them and clear channels through which to engage with the exercise. Those in scope would be given a choice between:
 - accruing benefits in JUPRA/FPJPS; or
 - accruing benefits in NIJPSfrom 1 April 2015 until 31 March 2022.
43. The options exercise would follow the introduction of the reformed scheme, when treatment is equalised on a prospective basis, currently projected for April 2022. This would allow judges to consider, before making their election, the precise design of the future scheme, their own career and pay progression during the remedy period and, where applicable, when they will reach their 20-year service cap in JUPRA. These factors are potentially very important in informing which pension scheme is the better choice for the remedy period, and therefore it is sensible that judges should make an informed decision in light of this information.

44. Additionally this timeline would allow the DoJ to work with the MoJ to develop a range of materials to assist judges in making their decision, including known pension, lump sum and survivor pension based on current salary at the end of the remedy period. The DoJ would also look to produce an online calculator so that individuals can project the pension benefits they might receive under either scheme in a range of scenarios.
45. In providing the materials described, the DoJ would not be giving financial advice or recommending a particular option.

Deciding during the remedy period

46. For the reasons outlined above we believe it is important that all judges in scope of the consultation and who are still in active service beyond the remedy period should wait until the formal options exercise to make their decision. There is no disadvantage in doing so: all judges will receive their full pension entitlement through the options exercise.
47. This means that judges would continue to be members of the NIJPS until the end of the remedy period and will therefore be subject to the annual allowance and lifetime allowance limits. Where judges who subsequently elect to return to JUPRA/FPJPS have not used Scheme Pays, they would receive a refund of annual allowance charges they have paid upfront, although both voluntary and mandatory Scheme Pays will continue to be available for the rest of the remedy period and any diminution of pension agreed would be unwound on a member's return to JUPRA/FPJPS.
48. However, we understand that those who are due to retire before the end of remedy period may prefer to have their entitlement resolved earlier so that they can be paid any shortfalls in lump sum and pension payments to which they may be entitled under JUPRA/FPJPS. Therefore, where judges have retired or died since 1 April 2015, we propose that they should be able to return to JUPRA/FPJPS sooner than the options exercise (although they may choose to await the options exercise if they prefer). Where these judges (or their representatives) wish to do so, we could begin processing decisions after the end of the consultation.

49. Those who plan to retire before the options exercise¹³ would be provided with a statement comparing the benefits of either scheme, including potential shortfalls in lump sum and pension owed and surviving spouse, civil partner or unmarried partner pension benefits. Where judges have died during the remedy period, we would provide this information to the late member's family or legal representatives.
50. Although we would ideally resolve judges' entitlement as quickly as possible, the process may be more complicated for judges with fee-paid pensions due under *O'Brien 2* and *Miller*. The impact of fee-paid pension on their service cap may be an important factor in helping a judge choose the most beneficial scheme membership. As such, judges for whom this is relevant may wish to wait until their fee-paid pension is calculated before electing scheme membership for the remedy period.

Default option

51. While we would seek to obtain a decision from all judges in scope of *McCloud*, it will be necessary to include a default option in the event that judges do not respond to the options exercise. We consider the safest option in such a scenario would be to leave individuals in the scheme they are currently in rather than presume to know which option would be best for them (noting that judges may value different features of either scheme).
52. As described above, taper-protected judges would also need to make a choice between JUPRA/FPJPS or NIJPS for the remedy period. For taper-protected judges who are in NIJPS and do not respond to the options exercise, we propose that they should receive NIJPS benefits for the duration of the remedy period.

QUESTION 2: Do you agree with the proposed default option?

¹³ This includes those who take ill-health and early retirement

Costs

53. On the basis that members choose the most financially beneficial option¹⁴ for the remedy period, we estimate that the cost of these proposals will be approximately £0.7 million. The £0.7 million does not include the costs associated with member contributions, income tax relief, the Judicial Service Award, tax payable on JUPRA/FPJPS lump sums, annual allowance tax charges, or the administrative costs of delivering an options exercise. The cost is largely as a result of a projected increase in benefit accrual and does not include the current costs associated with judicial pension membership. The figure is a provisional estimate because there are several factors that could influence the total cost, including individual pay progression and the age at which members retire. The costs will be revised as actuarial assumptions are refined.
54. The outcome of the consultations on the reformed scheme and increasing the mandatory retirement age may have a bearing on the costs because both may inform judges' retirement plans.
55. These costs are necessary to address the *McCloud* judgment. Because the costs are largely fixed, and we do not consider that the proposals will lead to additional costs or savings for businesses, charities, or the voluntary sector, we have not carried out an economic impact assessment.

QUESTION 3: Please set out any further comments on the proposed options model.

Next steps

56. Various elements of the proposals will require legislative change. The specific details of future legislation, including the timelines for these, will be developed following the responses to proposals set out in this paper.
57. We intend to respond to this consultation formally in early 2021.

¹⁴ Although, as explained above, there are other factors that judges will need to take into account when making their decision.

Interaction with other consultations

58. The proposals addressed in this consultation paper have been developed in coordination with ongoing work surrounding judicial pensions and policy. As the NIJPS is based upon the Judicial Pension Scheme in England and Wales, these proposals mirror those of the MoJ. MoJ has consulted upon amendments to the Fee-Paid Judicial Pension Scheme (FPJPS), *McCloud* remedy proposals future reform of judicial pensions, and the judicial mandatory retirement age. Respondents may find it useful to cross reference these consultations when providing a response.
59. Both HM Treasury and DoF are consulting separately on how to address the *McCloud* discrimination in other public service pension schemes.

Future reform of judicial pensions

60. DoJ is consulting on principles for a reformed pension scheme, intended to equalise the pension treatment of the judiciary prospectively, and address the recruitment and retention issues. This will be introduced once the remedy period in respect of *McCloud* comes to an end, planned for April 2022. Upon the introduction of the reformed scheme in 2022, it is proposed that all eligible judges in service- including protected members – will become members of the reformed scheme.
61. The proposed scheme is relevant for future accruals following its introduction in 2022, but it is important to note that all pension benefits which have been previously accrued will be protected and the members' final salary benefits will retain that link going forward.
62. The consultation is open for responses until 9 December 2020. The consultation paper can be found on the DoJ website.

Judicial mandatory retirement age

63. DoJ is also consulting on proposals to increase the judicial mandatory retirement age (MRA). Current legislation sets MRA for most judicial office holders at the age of 70. The Lord Chancellor has a constitutional duty to

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provide resources for the effective operation of the courts and tribunals and this includes considering policies which may promote the appointment and retention of judicial office holders. The proposals in consultation on the judicial MRA are intended to support the resourcing and operation of courts and tribunals, and they propose raising the mandatory retirement age to either 72 or 75.

64. Respondents may wish to consider the consultation in parallel as an increase in the MRA permitting a judge to serve longer and accrue additional pension could affect a judge's decision whether to accrue benefits in JUPRA/FPJPS or NIJPS for the remedy period.
65. The consultation will be open for responses until 9 December 2020. The consultation paper can be found on the DoJ website.

Annex A: Technical details

Member contributions and tax relief

1. Because NIJPS is a tax-registered scheme, member contributions attract tax relief at the member's marginal tax rate. JUPRA/FPJPS, however, is tax-unregistered, which means contributions do not attract tax relief. The lower contribution rate of JUPRA/FPJPS broadly allows for this difference in tax status.
2. Where unprotected judges elect to return to JUPRA/FPJPS, member contributions made to NIJPS from 1 April 2015 should be treated as having been made to JUPRA/FPJPS. Where taper-protected judges choose JUPRA/FPJPS membership from 1 April 2015, the contributions adjustment would take effect from the point at which the member tapered to NIJPS (because they were already contributing to, and a member of, JUPRA/FPJPS until this point). Tax would need to be paid in respect of tax relief that was given to NIJPS contributions.
3. Alternatively, where taper-protected judges choose to remain in the NIJPS, the contributions adjustment would take effect from 1 April 2015 so that the member becomes a member of NIJPS for the entire remedy period and not just from the point of the taper.
4. Where judges who opted out of the judicial pension in 2015, and/or opted to receive TPA, wish to return to JUPRA/FPJPS, tax and contributions arrears would need to be accounted for. We are considering how such payments ought to be made. Potential options include: making an upfront payment; deducting from future salary/fees; or deducting from the retirement lump sum. We accept that repayments of TPA may be significant and therefore may also consider introducing an equivalent of Scheme Pays for such payments.

QUESTION 4: We are interested in members' views on how we should treat tax and contributions arrears where judges who opted out of the judicial pension in 2015 and/or opted to receive TPA wish to return to JUPRA/FPJPS.

Annual Allowance

5. The annual allowance (AA) is the maximum amount of tax-relieved pension savings that can be accrued in a year. The standard AA is currently £40,000, but for those on the highest incomes, it tapers down to a minimum level of £10,000 for tax years 2016/17 to 2019/20.
6. For defined benefit pension schemes (such as the judicial schemes), liability for tax charges above the annual allowance is calculated using the value of pension accrued in a particular year. Where an individual's pension accrual in a single year exceeds the AA, a tax charge is due on the amount accrued above the AA, subject to the availability of any AA carried forward.
7. Because JUPRA/FPJPS is tax-unregistered, AA limits do not apply, unlike in NIJPS. Judges who moved to NIJPS on or after 1 April 2015 may have incurred additional tax liabilities because of the AA charge: some may have opted to pay this charge upfront, whereas others will have selected Scheme Pays, whereby the pension scheme pays the charge upfront on behalf of the members with an agreed deduction from pension benefits on retirement.
8. Where judges elect to return to JUPRA/FPJPS, the AA position would be unwound and charges that have been paid upfront by judges would be refunded for all years of the remedy period. Where Scheme Pays has been used, the member would be unaffected and the scheme would be reimbursed.
9. For the rest of the remedy period, members' pension contributions will continue to receive tax relief subject to the AA limits on accruals. However, if they return to JUPRA/FPJPS, they will receive a refund through the options exercise (if they have paid the AA charge upfront). Therefore, pension savings statements - which inform members when they are approaching their AA limit - will also continue to be sent on the basis that the judge is a member of NIJPS. Judges may wish to consider opting for Scheme Pays. Both mandatory and voluntary Scheme Pays will remain available throughout the remedy period.

Revisiting past cases

10. Judges who retire during the remedy period are in scope of *McCloud*. This includes:

- unprotected judges who retired on NIJPS benefits; and
 - taper-protected judges who retired on NIJPS benefits after tapering from JUPRA/FPJPS.
11. All should be given a choice whether to opt for JUPRA/FPJPS membership from 1 April 2015. Taper-protected judges should choose either JUPRA/FPJPS or NIJPS membership for the entire remedy period, i.e. they cannot spread accrual across both schemes.
 12. Where a retired member elects JUPRA/FPJPS membership, this would require adjusting the benefits they have received on retirement (e.g. lump sum and periodic pension) and continue to receive. Any shortfalls owed by DoJ would need to be paid to the member to reflect the change in membership; equally, overpayments by DoJ would need to be recovered.
 13. For all judges who have retired or will retire in the remedy period, we would provide them with a comparison of benefits available under both JUPRA/FPJPS and NIJPS so that they can make an informed decision.

Ill-health retirement

14. We would look to prioritise judges who have taken ill-health retirement since 1 April 2015. While both JUPRA/FPJPS and NIJPS have broadly the same criteria for permitting ill-health retirement (and we therefore do not expect that judges have been refused retirement because of being moved to NIJPS), depending on individual circumstances the ill-health pension may be better in either JUPRA/FPJPS or NIJPS: JUPRA/FPJPS has a higher accrual rate and offers an automatic lump sum, but NIJPS offers greater ill-health retirement enhancement because of the later retirement date (see Annex B, Example 3).
15. Depending on the individual circumstance of each case, ill-health retirement judges may wish to keep the benefits they are receiving or opt for JUPRA/FPJPS membership from 1 April 2015. Where the latter occurs, and shortfalls in pension or lump sum are owed, these would need to be paid; equally, overpayments by DoJ would need to be recovered.

Death during the remedy period

16. In some cases, judges in scope of *McCloud* will, sadly, have died during the remedy period. Such cases will be treated as a priority, as with ill-health retirement members.
17. Where death has occurred since 1 April 2015, the late member's family or legal representatives would be provided with a comparison of the benefits available in either JUPRA/FPJPS or NIJPS. This would include any shortfalls in lump sum or pension to which the late member would have been entitled in JUPRA/FPJPS as well as a comparison of the benefits and scheme features available to a spouse/dependants, etc. The family or representative would then be able to make an informed decision based on the information available.
18. Where a change in membership occurs, it may be the case that the late member is owed pensions arrears, in which case their estate may need to be reopened to assess possible inheritance tax implications. Any additional out-of-pocket expenses incurred, for example as a result of reopening a probate application, may be reimbursed where evidence is provided.
19. Although JUPRA/FPJPS includes provision for a spouse or civil partner pension, it does not provide a pension for an unmarried partner, unlike NIJPS. Therefore, where an unmarried partner is in receipt of a later member's pension under NIJPS, and the late member was in scope of *McCloud*, we propose not offering a choice in such a scenario, since the choice would be between receiving a pension and nothing.

QUESTION 5: Please set out any further thoughts on revisiting past cases.

Interest

20. Given the likely need for retrospective adjustments to i) pensions in payment (or formerly in payment), ii) lump sums (and the Judicial Service Award), and iii) member contributions, it is acknowledged that it will be necessary to pay interest where the DoJ owes money to the member or members estate or dependants. We are considering the appropriate level of interest to apply and will be guided by MoJ's approach and the approach taken in respect of claimants in the *McCloud* remedy hearings.

Voluntary member contributions

Added pension

21. Members of NIJPS were able to make additional contributions to purchase added pension (a defined additional benefit). Because an equivalent right does not exist in JUPRA/FPJPS,¹⁵ we propose that where members who purchased added pension elect to return to JUPRA/FPJPS, they would be made members of NIJPS in respect of added pension only (i.e. not for pension accrual purposes). This would require amendments to the Judicial Pensions (Northern Ireland) Regulations 2015.

Effective Pension Age

22. Under NIJPS, the Effective Pension Age (EPA) option enables contributions to be paid to secure a lower pension age than normal pension age (but no lower than 65). Since the pension age in JUPRA/FPJPS is 65, such contributions are of no benefit to a JUPRA/FPJPS judge. Therefore, we propose that judges with EPA who wish to return to JUPRA/FPJPS should have their EPA converted into added pension in NIJPS, using actuarial factors, then regularising this (again, so that judges would be members of NIJPS in respect of added pension only). This would also require amendments to the Judicial Pensions (Northern Ireland) Regulations 2015.

QUESTION 6: Please set out any comments on the proposed treatment of voluntary member contributions that individuals have already made.

Transfers

23. Some judges within scope of *McCloud* will have transferred benefits from a private pension scheme into NIJPS. DoJ accepts that these transfers should be protected and proposes regularising them. The Judicial Pension (Northern Ireland) Regulations 2015 could be amended so that judges who made transfers in can be members of NIJPS in respect of these transfers (although, as with voluntary member contributions, they would not be members of NIJPS for accrual purposes). Transferring the benefits to JUPRA/FPJPS would not be

¹⁵ Though note that an added year's scheme is available for those judges who were in service and contributing before 6 April 2006.

permitted, because the transfer to a tax-unregistered scheme would incur an unauthorised payment charge.

QUESTION 7: Please set out any comments on the proposed treatment of transfers from private pension schemes into NIJPS.

Lifetime allowance

24. The pension's lifetime allowance (LTA) is the maximum amount someone can accrue in a tax-registered pension scheme in a tax-efficient manner over their lifetime. The LTA is £1,073,100 for 2020-21. As with the AA, the LTA is not relevant to JUPRA/FPJPS, which is tax-unregistered. Where judges elect JUPRA/FPJPS membership from 1 April 2015 and have retired, they may have faced a LTA charge in respect of NIJPS benefits; this portion of the charge would be refunded to all who have paid it.

Annual benefit statement

25. Under Section 14 of the Public Service Pensions (Northern Ireland) Act 2014, schemes have been required to provide annual benefit statements (ABS) to active members since 2015. For judges who moved to NIJPS on or after 1 April 2015, their ABS will currently show two sets of benefits: service up until 31 March 2015 (or a member's taper date) in JUPRA/FPJPS; and service thereafter in NIJPS. Where they choose to return to JUPRA/FPJPS for the remedy period, subsequent ABS will show unbroken JUPRA/FPJPS membership. However, all ABS up until this choice is made will continue to show NIJPS membership.

Divorce

26. Depending on the outcome of divorce (marriage) or dissolution (civil partnership) proceedings, the courts may make a pension sharing order. In such circumstances, the judicial pension schemes will make the member's former spouse or civil partner a "pension credit member" of the scheme. Where a divorce or dissolution has been or will be finalised during the remedy period,

i.e. before the options exercise, we realise that this could require changing the pension credit member's entitlement and the pension debit that will apply to the judge's benefits. We are considering how we should deal with such cases.

QUESTION 8: We are interested in member's views on how we should treat divorce cases.

Annex B: Worked examples

1. This section contains examples to illustrate the choice of benefits available to members **in respect of service during the remedy period**. The examples covered are:
 - Example 1 – Salaried judge who does not reach their 20-year JUPRA service cap before or during the remedy period
 - Example 2 – Salaried judge reaching their 20-year JUPRA service cap at 4 years into the remedy period
 - Example 3 – Salaried judge taking an ill-health retirement

2. The examples focus primarily on comparisons of the annual pension amount that is built up in the judicial pension schemes and paid from retirement. The following are not considered:
 - Other member benefits, such as spouse pensions, dependant benefits, deferred benefits, death benefits and available member options;
 - Pre-retirement differences, such as member contributions, income tax relief on contributions, and annual allowance tax charges;
 - Tax payable on the JUPRA/FPJPS lump sum, the Judicial Pension Award, and any lifetime allowance tax charges in NIJPS.

3. Whilst the examples compare the annual pension the member would receive at retirement, the member's choice would also be influenced by their individual circumstances and tax arrangements.

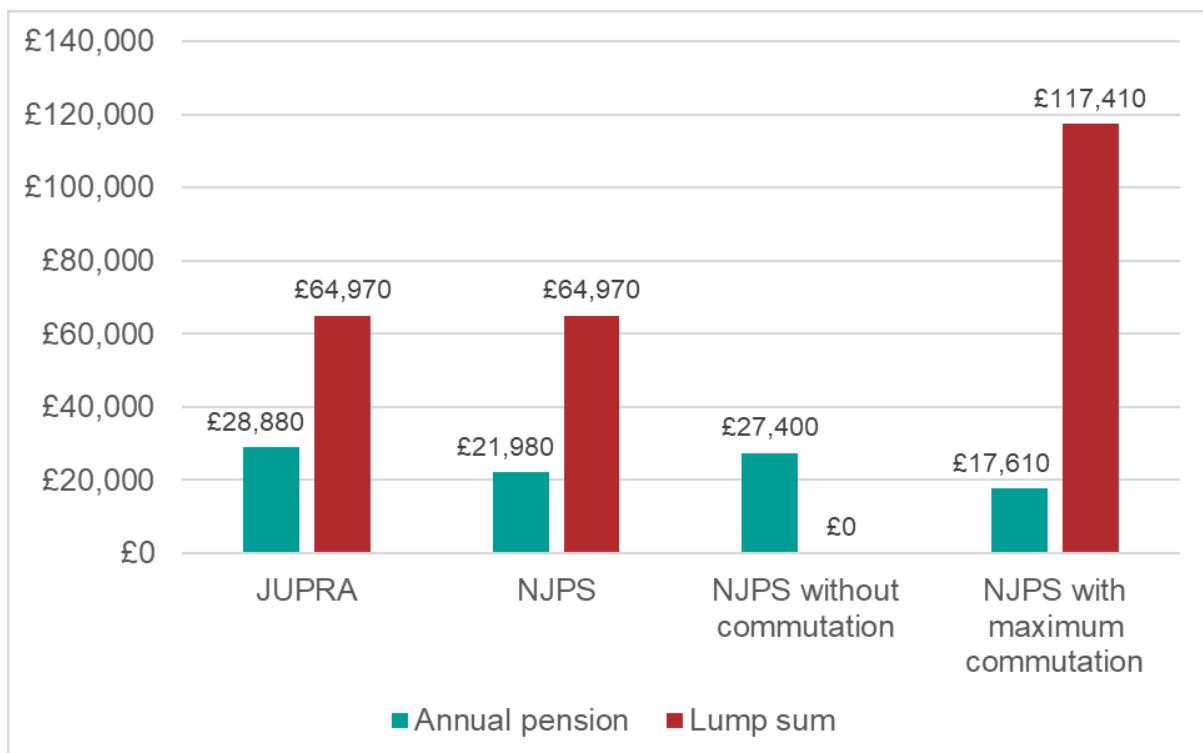
4. The main features of the schemes are:

JUPRA/FPJPS	NIJPS
1/40 th (2.5%) of final pensionable pay for each year of service	2.32% of revalued pensionable earnings each year
Payable unreduced from age 65	Payable unreduced from State Pension age
2.25 x annual rate of pension as lump sum	

5. Unless stated otherwise, the following assumptions have been applied to all examples:
- The remedy period is 1 April 2015 to 31 March 2022;
 - The judge was aged 50 at 31 March 2012 and therefore has a State Pension age of 67 and moved to NIJPS on 1 April 2015;
 - The judge remains in active service until retirement;
 - The judge does not reach their 20-year JUPRA service cap before or during the remedy period (except in Example 2);
 - For JUPRA/FPJPS benefits, the final salary link is retained for benefits built up during the remedy period;
 - Actual consumer price index increases to date have been used for pension increases and in-service revaluation where applicable; thereafter, future increases are based on long-term assumptions of increases of 2% per year;
 - The member receives no promotional salary or fee increases during or after the remedy period;
 - For the purpose of comparison, NIJPS calculations are based on a member commuting pension to provide a lump sum equal to the automatic lump sum available in JUPRA/FPJPS.
6. Based on the assumptions and approaches used, in the majority of cases benefits built up over the remedy period are potentially more beneficial under JUPRA/FPJPS than NIJPS. The exception is where the member reaches the 20-year JUPRA service cap before or during the remedy period, in which case they may find they are better off in NIJPS.
7. However, a member's choice between JUPRA/FPJPS and NIJPS may be driven by wider considerations. For example, NIJPS offers more flexible benefits, including the ability to retire with a reduced pension from age 55, a late retirement uplift where the member retires after their State Pension age, and dependant benefits for unmarried partners and spouses of post-retirement marriages.

Example 1- Salaried judge who does not reach their 20-year JUPRA service cap before or during the remedy period.

If they had a salary of £130,000 in 2015, experience future annual salary increases in line with inflation and retire at 67 (2029), their choice of pension in respect of service during the remedy period would be the following amounts at retirement.



At retirement their final salary is £165,020. With an accrual rate of 1/40 (2.5%) in JUPRA, their pension in respect of the 7-year remedy period is $2.5\% \times £165,020 \times 7 = £28,880$. The member also receives an automatic lump sum of 2.25 times their annual rate of pension.

The NIJPS pension is evaluated using the salary in each year the member is in service, with an accrual rate of 2.32%. This lower accrual rate results in a lower NIJPS pension at retirement. This reduces further if the member chooses to commute some of their pension for a lump sum (or opts for maximum commutation¹⁶). NIJPS has no automatic

¹⁶ Maximum commutation under NIJPS allows the member to commute up to 35.7% of their NIJPS pension subject to a maximum of 25% of their lifetime allowance. Where the member commutes 35.7% of their pension, the lump sum represents 25% of the value of their crystallised benefit. More information can be

lump sum. This shows that JUPRA benefits are more financially beneficial than those of NIJPS for any judge who does not reach their 20-year JUPRA cap before or during the remedy period.

Were this judge to retire early, for example at 65, the NIJPS figures would be actuarially reduced, unlike JUPRA benefits which may be taken from 65.

Conversely, if this judge were to retire after their State Pension age of 67, NIJPS benefits would receive a late retirement uplift, unlike JUPRA benefits. If salary increases remain in line with inflation, the member would receive higher benefits in NIJPS if they choose to retire after 70. However, if future salary increases were greater than inflation, the annual pension under JUPRA could still be greater than NIJPS.

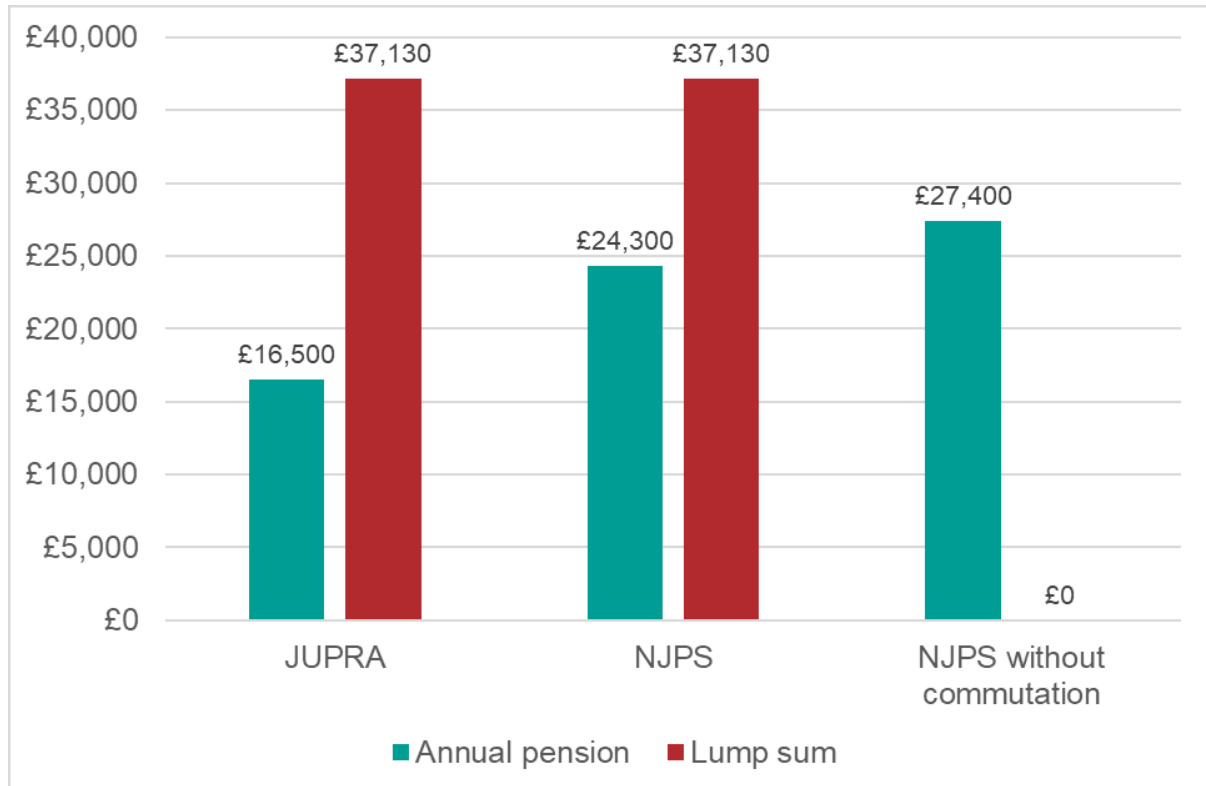
A fee-paid pension, calculated on a pro-rata basis, would also be more beneficial in FPJPS than NIJPS. N.B. To calculate the impact of a fee-paid service on the service cap, divide the number of fee-paid days by an annual divisor for the office.¹⁷ For example a judge with 56 days' pensionable fee-paid service in a year in an office with a divisor of 215 accrues 26% of a JUPRA/FPJPS year.

found in the HMRC pension tax manuals: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063240>

¹⁷ The annual divisors for fee-paid offices are set out in the Schedule to the Judicial Pensions (Fee-Paid Judges) Regulations 2017.

Example 2 - Salaried judge reaching their 20-year JUPRA service cap at 4 years into the remedy period.

If they reach their 20-year JUPRA service cap 4 years into the remedy period (2019), had a salary of £130,000 in 2015, experience a future annual salary increases in line with inflation and retire at 67 (2029), their choice of pension in respect of service during the remedy period would be the following amounts at retirement:



Their final salary at retirement is £165,020, as in Example 1. However, because the member reaches the 20-year service cap 4 years into the remedy period, the accrued JUPRA pension in respect of the remedy period is $2.5\% \times £165,020 \times 4 = £16,500$. They also receive an automatic lump sum of 2.25 times their annual rate of pension.

In NIJS there is no service cap, so the member accrues pension for all 7 years of the remedy period. Therefore, the pension accrued over the remedy period (without commutation) is the same as that in Example 1. With commutation, the extra years of accrual result in a substantially higher pension in NIJS than JUPRA, despite the lower accrual rate.

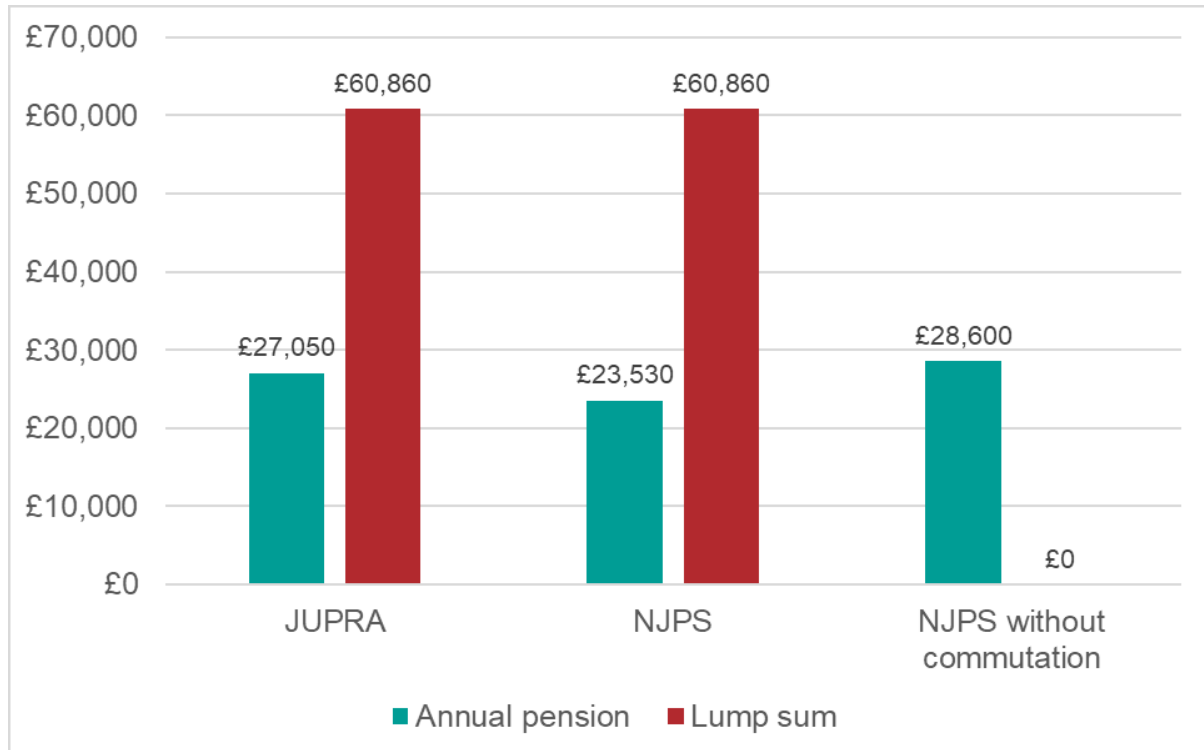
If the member reaches the service cap before 4 years of the remedy period have elapsed then the benefits built up in NIJS are even greater than those in JUPRA

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because less pension would be built up in JUPRA during the remedy period. For example, if this member had reached the JUPRA 20-year service cap 2 years into the remedy period, their JUPRA pension would be half that shown above but there would be no change to their NIJPS pension. However, annual allowance charges and the impact on a member's lifetime allowance are not considered here.

Example 3 – Salaried judge taking ill health retirement

If they had a salary of £130,000 in 2015, experience annual salary increases in line with inflation and take ill-health retirement at 57 (in 2019), their choice of pension in respect of service during the remedy period would be the following amounts at retirement, taking account of ill-health enhancement:



In this example the member retires 4 years into the remedy period. The salary at the point of ill-health retirement is £135,240. Under JUPRA, the member receives an enhancement to their service of half a year from age 57 up to the normal pension age of 65. This gives them an accrued pension in respect of their remedy period service of $1/40 \times £135,240 \times (4+8/2) = £27,050$. The member also receives an automatic lump sum of 2.25 times their annual pension.

NJPS has a similar enhancement, but up to a member's State Pension age, which for this member is 67. This extra two years of enhancement gives the member a higher pension in NJPS. However, if they choose to commute some of this pension for a lump sum, the annual pension falls below their JUPRA pension. Note that this does not consider the impact of annual or lifetime allowance changes.

ANNEX C

List of consultees

We particularly invite responses from representatives or members of the organisations below, listed in alphabetical order. This list is not comprehensive and we welcome views from all members of the public.

- Council of Employment Judges
- First and deputy First Minister of Northern Ireland
- Judges Council (NI)
- Judicial Pension Board (NI)
- Lord Chief Justice of Northern Ireland
- Northern Ireland Judicial Appointments Commission
- Office of the President of the Appeal's Tribunal for Northern Ireland
- Office of the President of the Industrial and Fair Employment Tribunals for Northern Ireland
- The Bar Council
- The Law Society

Please note that this list is not meant to be exhaustive or exclusive and response are welcomed from anyone with an interest in or views on the subject covered by this consultation.

Glossary

Accrual rate: The rate, as a proportion of pensionable earnings, at which pension builds up for each year of membership.

Accrued pension: The amount of pension built up in the final salary or career average scheme up to the current date.

Active scheme members: Members paying contributions and accruing benefits in a scheme.

Career average scheme: A defined benefit scheme that gives scheme members a pension based on pensionable pay/fees earned in each scheme year. Amounts of pension earned in previous years have index-linking applied in order to maintain their value.

Commutation: Commutation allows a member to exchange an amount of annual pension in return for a retirement lump sum. The rate at which pension is given up for a lump sum is known as the commutation rate.

Consumer Prices Index (CPI): An index of inflation published by the Office for National Statistics. This is the current basis for determining cost of living increases for public service pensions.

Defined benefit pension scheme: A pension scheme where the pension is related to a member's salary or some other value fixed in advance. Final salary and career average schemes are examples of defined benefit pension schemes.

Fee-Paid Judicial Pension Scheme (FPJPS): Following the *O'Brien* litigation in 2013, this pension scheme was established for eligible fee-paid judges. This scheme offers benefits in line with the scheme for salaried judges (JUPRA).

Final salary scheme: A defined benefit scheme that gives members a pension based on their final salary, the accrual rate and the period of service.

Legacy schemes: Refers to the judicial pension schemes open to membership prior to the Public Service Pensions Act 2013, primarily JUPRA and FPJPS.

Miller judgment: In December 2019, the Supreme Court held that the three-month time limit for claims to be made in relation to *O'Brien 1* and *O'Brien 2* only runs from the date of a claimant's retirement from all judicial offices, and not from the end of each fee-paid appointment.

Normal pension age (NPA): The age at which pension benefits would be payable in full, i.e. without actuarial adjustment.

O'Brien judgment: Decision by the Supreme Court (*O'Brien v Ministry of Justice* [2013] UKSC 6) in February 2013 that fee-paid judges had been treated less favourably than relevant salaried judges, contrary to the Part-Time Work Directive with respect to pension provision. This led to the establishment of the FPJPS, which mirrored as far as possible the arrangements for salaried judges set out in JUPRA.

O'Brien 2 judgment: Judgment by the Court of Justice of the European Union in the case of *O'Brien v Ministry of Justice (Case C-432/17)*, concluding that part-time work undertaken before the deadline for transposing the Part-Time Work Directive on 7 April 2000 must be taken into account for the purposes of calculating a retirement pension.

Reckonable service: Service which counts toward pension benefits, including options for members to purchase 'added pension' contributions.

State Pension age (SPA): The age at which the State Pension would normally become payable.

Tax-registered: Members receive tax relief on contributions to tax-registered schemes, but are subject to annual and lifetime limits on the tax-relieved benefits they can accrue. Conversely, contributions to tax-unregistered schemes do not attract tax relief and accruals in the scheme do not count towards annual or lifetime limits.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper:

Question 1: Please set out any comments on the proposed scope of the consultation, specifically on protected members, taper-protected members, TPA and gap judges.

Question 2: Do you agree with the proposed default option?

Question 3: Please set out any further comments on the proposed options model.

Question 4: We are interested in members' views on how we should treat tax and contributions arrears where judges who opted out of the judicial pension in 2015 and/or opted to receive TPA wish to return to JUPRA/FPJPS.

Question 5: Please set out any further thoughts on revisiting past cases.

Question 6: Please set out any comments on the proposed treatment of voluntary member contributions that individuals may have already made.

Question 7: Please set out any comments on the proposed treatment of transfers from private pension schemes into NIJPS.

Question 8: We are interested in member views on how we should treat divorce cases.

We would also welcome any responses on any of the screening documents.

Thank you for participating in this consultation exercise.

How to respond

How to respond

For queries and responses to the consultation please contact:

Civil Justice and Judiciary Branch
Civil Justice Policy Division
Massey House
Stormont Estate
Belfast
BT4 3SX

Tel: 028 9016 9539

Textphone: 028 9052 7668

Email: AToJ.Consultation@justice-ni.x.gsi.gov.uk

When responding, please state whether you are making a submission as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Additional copies and alternative formats

An electronic copy of this document is available to view and download from the consultation section of the Department of Justice website (<http://www.justice-ni.gov.uk>).

You may make copies of this document without seeking permission and if you require further printed copies, we would invite you to access the document through our website. If you do not have access to the internet and require us to provide you with further copies, please contact us with your specific request.

Copies in other formats, including Braille, large print or audio cassette may be made available on request. If it would assist you to access the document in an alternative format, or a language other than English, please let us know and we will do our best to assist you.

Freedom of information and General Data Protection Regulations

The Department intends to publish a summary of responses on its website on completion of the consultation process. Any contact details that will identify a respondent as a private individual will be removed prior to publication.

All information will be handled in accordance with the General Data Protection Regulations (GDPR). Respondents should be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any responses, not subject to specific exemptions under the Act, be disclosed to other parties on request.

For further information about Freedom of Information and GDPR please contact the Information Commissioner's Office at <https://ico.org.uk>.

Complaints

Any comments, queries or concerns about the way this exercise has been conducted should be sent to the following address:

Standards Unit
Department of Justice
Knockview Buildings
Stormont Estate
Belfast
BT4 3SL

or e-mail to standardsunit@justice-ni.x.gsi.gov.uk

ANNEX D



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

DOJ Section 75

EQUALITY SCREENING FORM

Title of Policy:

Judicial Pensions: Proposed response to *McCloud* consultation

September 2020

The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required **to have due regard to the need to promote equality of opportunity:**

- between person of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and,
- between persons with dependants and persons without¹.

Without prejudice to the obligations set out above, the Department is also required to:

- **have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group; and**
- **meet legislative obligations under the Disability Discrimination Order.**

Introduction

1. This form should be read in conjunction with the Equality Commission's revised Section 75 guidance, "Effective Section 75 Equality Assessments: Screening and Equality Assessments" which is available on the Equality Commission's website.

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75Advice-ScreeningEQIA.pdf>

Section 75 statutory duties apply to **internal policies** (relating to people who work for department), as well as **external policies** (relating to those who are, or could be, served by the department).

2. The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an Equality Impact Assessment (EQIA) is necessary. Screening should be introduced at an early stage when developing or reviewing a policy.

¹A list of the main groups identified as being relevant to each of the section 75 categories is at the end of the document.

3. The lead role in the screening of a policy should be taken by the policy decision-maker who has the authority to make changes to that policy and should involve, in the screening process:

- other relevant team members;
- those who implement the policy;
- staff members from other relevant work areas; and
- key stakeholders.

A flowchart which outlines the screening process is provided at Annex A.

4. The first step in the screening exercise is to gather evidence to inform the screening decisions. Relevant data may be either quantitative or qualitative or both (this helps to indicate whether or not there are likely equality of opportunity and/or good relations impacts associated with a policy). Relevant information will help to clearly demonstrate the reasons for a policy being either 'screened in' for an equality impact assessment or 'screened out' from an equality impact assessment.

5. The absence of evidence does not indicate that there is no likely impact but if none is available, it may be appropriate to consider subjecting the policy to an EQIA.

6. Where data/evidence gaps exist consider engaging with the main representative groups directly, for example Disability Action, Rainbow, and NICCY to find out what you need to know. Bring stakeholders together to discuss policy or link up with other UK bodies who may have similar policies.

7. Screening provides an assessment of the likely impact, whether 'minor' or 'major', of its policy on equality of opportunity and/or good relations for the relevant categories. In some instances, screening may identify the likely impact is none.

8. Contact EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk at any stage of the process for support or guidance.

Screening decisions

9. Completion of screening should lead to one of the following three outcomes. The policy has been:

- i. 'screened in' for equality impact assessment;
- ii. 'screened out' with mitigation or an alternative policy proposed to be adopted; or
- iii. 'screened out' without mitigation or an alternative policy proposed to be adopted.

Screening and good relations duty

10. The Commission recommends that a policy is 'screened in' for equality impact assessment if the likely impact on **good relations** is 'major'. While there is no legislative requirement to engage in an equality impact assessment in respect of good relations, this does not necessarily mean that equality impact assessments are inappropriate in this context.

Part 1

Definition of Policy

There have been some difficulties in defining what constitutes a policy in the context of section 75. To be on the safe side it is recommended that you consider any new initiatives, proposals, schemes or programmes as policies or changes to those already in existence. It is important to remember that even if a full EQIA has been carried out in an “overarching” policy or strategy, it will still be necessary for the policy maker to consider if further screening or an EQIA needs to be carried out in respect of those policies cascading from the overarching strategy.

Overview of Policy Proposals

The aims and objectives of the policy must be clear and terms of reference well defined. You must take into account any available data that will enable you to come to a decision on whether or not a policy may or may not have a differential impact on any of the s75 categories.

Policy Scoping

10. The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Part 1: Policy Scoping

11. Information about the policy

Name of the Policy/ decision to be screened

Proposals to address the discrimination for non-claimant judges affected by *McCloud*.

Is this an existing, revised or a new policy / decision?

This derives from a Court of Appeal judgment that has implications for all public service pension schemes that were reformed in 2015, as all contained transitional protections for older members.

What is it trying to achieve? (intended aims/outcomes)

In *McCloud*¹⁸ the Court of Appeal held that transitional protections provided to older judges as part of the 2015 judicial pension reforms constituted unlawful direct age discrimination. From 1 April 2015, younger judges had been moved from their legacy schemes, the Judicial Pension Scheme 1993 (JUPRA) or the fee-paid equivalent, Fee-paid Judicial Pension Scheme 2015 (FPJPS),¹⁹ both of which were tax-unregistered final salary schemes, to various tax-registered career average schemes with lower accrual rates, including to the Northern Ireland Judicial Pension Scheme 2015 (NIJPS). Judges closest to retirement were protected from the changes due to their age, and remained in JUPRA. The Court held that such protection unlawfully discriminated against younger judges.

The Government's request for permission to appeal to the Supreme Court was rejected and the case was remitted to the Employment Tribunal to agree a remedy for claimants. The Employment Tribunal has since made declarations that claimant judges are entitled to be members of JUPRA/FPJPS from 1 April 2015.

The Government accepted that the Court of Appeal's judgment had implications for all public service pension schemes that were reformed in 2015, as all contained transitional protections for older members. It has since committed to addressing the discrimination for all affected public servants regardless of whether they brought a claim.

¹⁸ *Lord Chancellor and Secretary of State for Justice and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others*, [2018] EWCA Civ 2844

¹⁹ FPJPS was implemented to remedy the discrimination identified in *O'Brien*. The courts found that eligible fee-paid judicial office holders were entitled to pension benefits that were no less favourable than those provided at the time to salaried judges by JUPRA. FPJPS was therefore designed to mirror JUPRA as far as possible and be no less favourable where it was not possible to mirror the arrangements under JUPRA. FPJPS was established under the Judicial Pensions (Fee-Paid Judges) Regulation in 2017 and provided pension benefits for both historic and future service. As such, it was not in place on 1 April 2015, but the practical effect is now that younger judges are entitled to FPJPS benefits until they became members of NIJPS on that date.

Rulings of the Court of Appeal in England and Wales are not directly binding here as this is a separate legal jurisdiction. However the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Britain. Legal advice confirms the implications of the Appeal Court decision is such that all schemes must be treated as affected by the McCloud decisions and so require to be remedied.

These proposed changes are in line with legislative requirements of the Public Service Pensions Act (NI) 2014 for the reform of public service pensions and maintains alignment with the equivalent GB pension scheme (per NI Executive decision).

Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.

Yes. While the remedy will treat all judges in scope equally (in that all will have a choice of scheme membership backdated to 1 April 2015), the choice to return to JUPRA/FPJPS, a tax unregistered scheme without annual or lifetime allowance limits, is likely to confer a greater benefit to those in more senior judicial offices. Naturally these office holders are disproportionately older.

Who initiated or wrote the policy?

The Department of Justice has responsibility for the Judicial Pensions Regulations (NI) 2015.

Who owns and who implements the policy?

The Department of Justice has responsibility for the Judicial Pensions Regulations (NI) 2015.

12. Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

If yes, are they

Tick Box

- financial
- legislative
- other, please specify _____

13. Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

Tick Box

- staff
- service users
- other public sector organisations

- voluntary/community/trade unions
- other, please specify devolved judiciary

14. Other policies with a bearing on this policy

what are they?

In addition to *McCloud* the DoJ will also be consulting on proposals to introduce a reformed pension scheme and the increase in the judicial mandatory retirement age.

who owns them?

The Department of Justice

15. Available Evidence

Evidence to help inform the screening process may take many forms. Set out all evidence /data (both *qualitative and quantitative) below along with details of the different groups you have met and / or consulted with to help inform your screening assessment. Specify details for each of the Section 75 categories.

Section 75 Category	Details of evidence/information
Religious belief	None. Due to the relatively small number of scheme members, who are the group directly impacted, and the resultant possibility of random factors distorting the group profile from one assessment to the next, the likelihood that empirical data collection on the current group proving representative or meaningful in terms of subsequent beneficiaries may be considered problematic. On this basis no such exercise has been attempted and the Department, therefore, does not hold any evidence or data.
Political opinion	None – as above
Racial group	None – as above
Age	None – as above
Marital status	None – as above
Sexual orientation	None – as above
Men and Women generally	None – as above
Disability	None – as above
Dependants	None – as above

***Qualitative data** – refers to the experience of individuals related in their own terms, and based on their own experience and attitudes. Qualitative data is often used to complement quantitative data to determine why policies are successful or unsuccessful and the reasons for this.

Quantitative data – refers to numbers (that is quantities), typically derived from either a population in general or samples of that population. This information is often analysed either using descriptive statistics (which summarise patterns), or inferential statistics (which are used to infer from a sample about a wider population).

16. Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories.

Section 75 Category	Details of evidence/information
Religious belief	None
Political opinion	None
Racial group	None
Age	While the remedy will treat all judges in scope equally (in that all will have a choice of scheme membership backdated to 1 April 2015), the choice to return to JUPRA/FPJPS, a tax unregistered scheme without annual or lifetime allowance limits, is likely to confer a greater benefit to those in more senior judicial offices. Naturally these office holders are disproportionately older. However, we do not consider that this gives rise to discrimination of younger judges, since the remedy is merely seeking to return those in scope to the position they were in prior to the discrimination in 2015. On that basis, older judges who moved to NIJPS in 2015 will, generally, derive a greater benefit from returning to JUPRA/FPJPS, since they were the most impacted by the discrimination. This policy is aimed at addressing the discrimination on the basis of age.
Marital status	Scheme members who are married, in a civil partnership, or have a nominated partner, may have a particular interest in the proposed remedy options insofar as each of the schemes confers slightly different benefits in this regard.
Sexual orientation	None
Men and Women generally	None
Disability	None
Dependants	Scheme members with dependents may have a particular interest in the proposed remedy options insofar as each of the schemes confers slightly different benefits in this regard.

Part 2

SCREENING DECISIONS

17. Decision - In favour of none

If the conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the decision may be to screen the policy out. If a policy is '**screened out**' as having no relevance to equality of opportunity or good relations, give details of the reasons for the decision taken.

➤ Considerations –

- The policy has no relevance to equality of opportunity or good relations.
- The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

18. Decision - In favour of a 'major' impact

If the conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure (EQIA).

➤ Considerations-

- Is the policy significant in terms of its strategic importance?
- The potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- The potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;
- The policy is likely to be challenged by way of judicial review;
- The policy is significant in terms of expenditure.

19. Decision - In favour of 'minor' impact

If the conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

➤ **Considerations –**

- The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

Part 2 Screening questions

2.1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?		
Section 75 category	Details of policy impact	Level of impact? Minor/Major/None
Religious belief	None	None
Political opinion	None	None
Racial group	None	None
Age	The proposals contained in the consultation document seek to give effect to the decision in <i>McCloud</i> by retrospectively removing the discrimination for all affected judges in scope. The remedy will therefore address the direct age discrimination identified in <i>McCloud</i> . We do not consider the design of the proposals results in either direct or indirect discrimination.	Minor
Marital status	None	None
Sexual orientation	None	None
Men and Women generally	None	None
Disability	None	None
Dependants	None	None

2.2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?

Section 75 category	If Yes, provide details	If No, provide reasons
Religious belief		The proposals in the consultation in response to the <i>McCloud</i> case, will apply to all scheme members within scope of the remedy equally. There is, therefore, no opportunity to better promote equality of opportunity.
Political opinion		As above
Racial group		As above
Age		As above
Marital status		As above
Sexual orientation		As above
Men and Women generally		As above
Disability		As above
Dependants		As above

2.3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?		
Good relations category	Details of policy impact	Level of impact Minor/Major/None
Religious belief	None	None
Political opinion	None	None
Racial group	None	None

2.4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?		
Good relations category	If Yes, provide details	If No, provide reasons
Religious belief		The proposals in the consultation in response to the <i>McCloud</i> case, will apply to all scheme members within scope of the remedy equally regardless of religious belief, political opinion or racial group.
Political opinion		As above
Racial group		As above

Additional Considerations

Multiple Identity

20. Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities? **NO**

(For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).

21. Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

Not applicable

Part 3 Screening Decision

3.1. Screened In - If the decision is to conduct an equality impact assessment, please provide details of the rationale and relevant evidence to support this decision.

Not applicable

3.2. Screened Out – No EQAI necessary (no impact)

If the decision is not to conduct an equality impact assessment, please provide details of the rationale and relevant evidence to support this decision.

Not applicable

3.3. Screened Out – Mitigating Actions (minor impacts)

When the decision is that the likely impact is 'minor' and an equality impact assessment is not to be conducted, you may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations? **NO**

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy. Explain how these actions will address the inequalities.

The proposals contained in the consultation document seek to give effect to the decision in *McCloud* by retrospectively removing the discrimination for all affected judges in scope. These judges are entitled to have never left JUPRA/FPJPS and will be able to return to their respective scheme from 1 April 2015 if they believe they have suffered less favourable treatment. The remedy will therefore address the direct age discrimination identified in *McCloud*. However, we do not consider that this gives rise to discrimination of younger judges, since the remedy is merely seeking to return those in scope to the position they were in prior to the discrimination in 2015. On that basis, older judges who moved to NIJPS in 2015 will, generally, derive a greater benefit from returning to JUPRA/FPJPS, since there were the most impacted by the discrimination.

Timetabling and Prioritising

22. Factors to be considered in timetabling and prioritising policies for equality impact assessment.

23. If the policy has been ‘**screened in**’ for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

24. On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	N/A
Social need	N/A
Effect on people’s daily lives	N/A
Relevance to a public authority’s functions	N/A

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist in timetabling. Details of the Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

25. Is the policy affected by timetables established by other relevant public authorities?

➤ If yes, please provide details.

<p>Not applicable</p>

Part 4 Monitoring

26. Section 75 places a requirement on the Department to have equality monitoring arrangements in place in order to assess the impact of policies and services etc. and to help identify barriers to fair participation and to better promote equal opportunity.
27. Effective monitoring will help identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.
28. Outline what data you will collect in the future in order to monitor the impact of this policy/ decision on equality, good relation and disability duties.

Equality	This is a general legislative measure which does not target specific individuals or groups.
Good relations	As above.
Disability Duties	As above.

Part 5 Formal Record of Screening Decision

Title of Proposed Policy / Decision being screened Judicial Pensions: Proposed response to <i>McCloud</i> Consultation

I can confirm that the proposed policy/decision has been screened for –

<input checked="" type="checkbox"/>	Equality of opportunity
<input checked="" type="checkbox"/>	Good Relations
<input checked="" type="checkbox"/>	Disability duties

On the basis of the answer to the screening questions, I recommend that this policy /decision is –

<input type="checkbox"/>	Screened in – necessary to conduct a full EQIA
<input type="checkbox"/>	Screened Out – no EQIA necessary (no impacts)
<input checked="" type="checkbox"/>	Screened Out – mitigating actions (minor impacts)

Part 6 Approval and Authorisation

(Have you sent this document to the Equality Unit prior to obtaining signature?)

Screened/completed by:	Grade	Date
Name Laura Davison	G7	21/ 09/20
Approved by (Grade 7 or above):		
Name Laurene McAlpine	G5	21/ 09/20

Quality Assurance

Prior to final approval the Screening Form should be forwarded to EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk for comment/quality assurance. Contact the branch should you require advice or have any queries prior to this stage.

Any NIPS forms should be forwarded to Peter.Grant@justice-ni.x.gsi.gov.uk

When you receive a response and there are no further considerations required, the form should be 'signed off' and approved by a senior manager responsible for the policy, this would normally be at least grade 7.

The completed Screening Form should be placed on the DOJ Website where it will be made easily accessible to the public and be available on request. In addition, it will be included in a quarterly listing of all screenings completed during each 3 month period and issued to consultees.

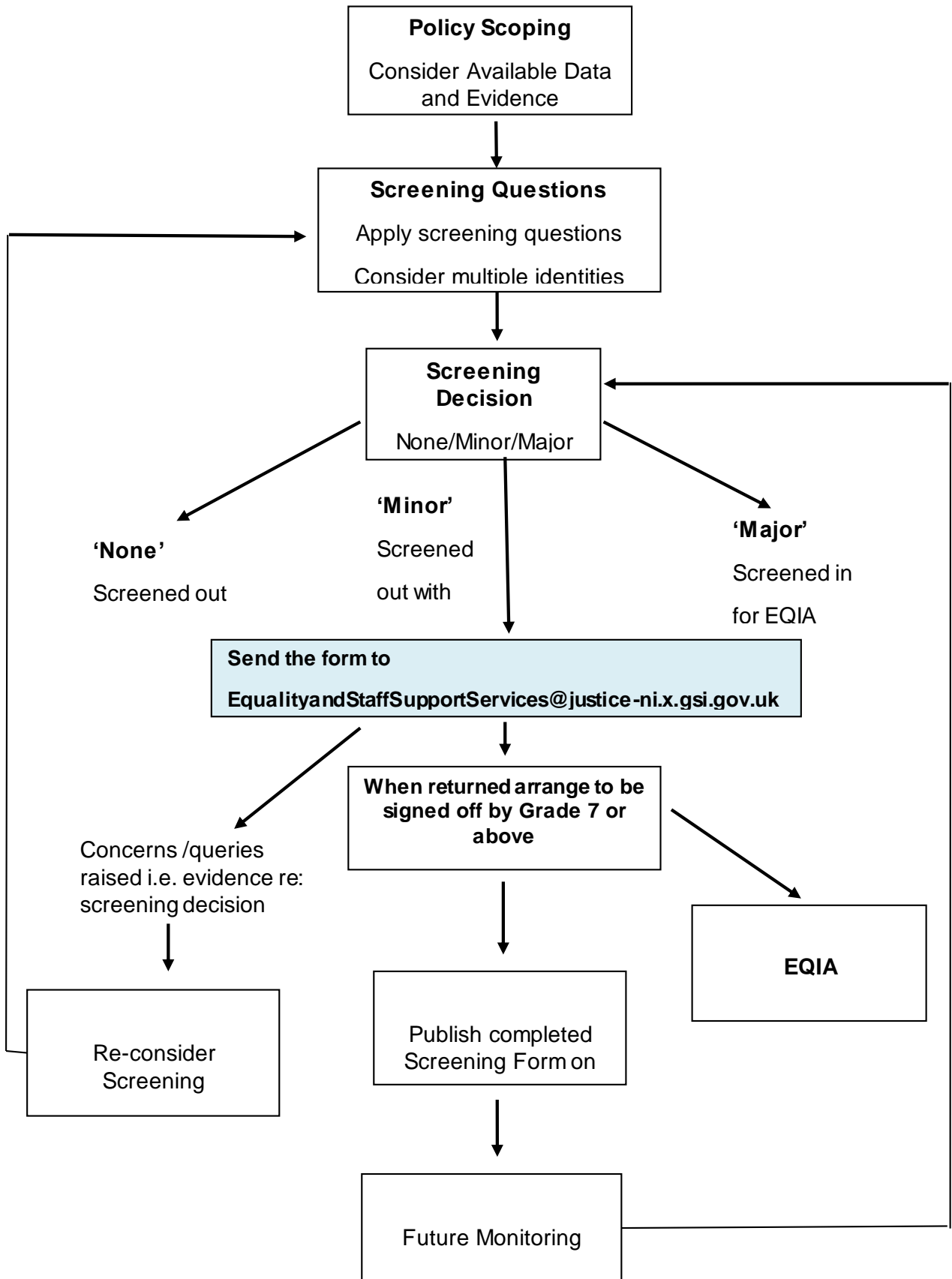
The Screening exercise is now complete.

Please retain a record in your branch and send a copy for information to:-

Equality and Staff Support Services (ESSS)
Room 3.4, Castle Buildings
Stormont Estate
BELFAST
BT4 3SG
Tel: 02890 522611

or e-mail to EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk

SCREENING FLOWCHART



MAIN GROUPS IDENTIFIED AS RELEVANT TO THE SECTION 75 CATEGORIES

Category	Main Groups
Religious Belief	Protestants; Catholics; people of other religious belief; people of no religious belief
Political Opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Afro Caribbean people; people of mixed ethnic group, other groups
Age	For most purposes, the main categories are: children under 18; people aged between 18 and 65. However the definition of age groups will need to be sensitive to the policy under consideration. For example, for some employment policies, children under 16 could be distinguished from people of working age
Marital/Civil Partnership Status	Married people; unmarried people; divorced or separated people; widowed people; civil partnerships
Sexual Orientation	Heterosexuals; bisexual people; gay men; lesbians
Men and Women generally	Men (including boys); women (including girls); trans-gender and trans-sexual people
Persons with a disability and persons without	Persons with a physical, sensory or learning disability as defined in Schedules 1 and 2 of the Disability Discrimination Act 1995.
Persons with dependants and persons without	Persons with primary responsibility for the care of a child; persons with personal responsibility for the care of a person with a disability; persons with primary responsibility for a dependent elderly person.

ANNEX E

Rural Needs Impact Assessment (RNIA)

SECTION 1 - Defining the activity subject to Section 1(1) of the Rural Needs Act (NI) 2016

1A. Name of Public Authority.

Department of Justice

1B. Please provide a short title which describes the activity being undertaken by the Public Authority that is subject to Section 1(1) of the Rural Needs Act (NI) 2016.

Consultation on the proposed remedy to *McCloud* which intends to address the discrimination identified in public service pension schemes including the Northern Ireland Judicial Pension Scheme.

1C. Please indicate which category the activity specified in Section 1B above relates to.

Developing a	Policy <input type="checkbox"/>	Strategy <input type="checkbox"/>	Plan <input type="checkbox"/>
Adopting a	Policy <input type="checkbox"/>	Strategy <input type="checkbox"/>	Plan <input type="checkbox"/>
Implementing a	Policy <input type="checkbox"/>	Strategy <input type="checkbox"/>	Plan <input type="checkbox"/>
Revising a	Policy <input checked="" type="checkbox"/>	Strategy <input type="checkbox"/>	Plan <input type="checkbox"/>
Designing a Public Service	<input type="checkbox"/>		
Delivering a Public Service	<input type="checkbox"/>		

1D. Please provide the official title (if any) of the Policy, Strategy, Plan or Public Service document or initiative relating to the category indicated in Section 1C above.

Judicial Pensions: Proposed response to *McCloud*.

1E. Please provide details of the aims and/or objectives of the Policy, Strategy, Plan or Public Service.

In *McCloud*¹ the Court of Appeal held that transitional protections provided to older judges as part of the 2015 judicial pension reforms constituted unlawful direct age discrimination. Rulings of the Court of Appeal in England and Wales are not directly binding here as this is a separate legal jurisdiction. However the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Britain. Legal advice confirms the implications of the Appeal Court decision is such that all schemes must be treated as affected by the *McCloud* decisions and so require to be remedied.

1F. What definition of 'rural' is the Public Authority using in respect of the Policy, Strategy, Plan or Public Service?

Population Settlements of less than 5,000 (Default definition).

Other Definition (Provide details and the rationale below).

A definition of 'rural' is not applicable.

Details of alternative definition of 'rural' used.

Rationale for using alternative definition of 'rural'.

Reasons why a definition of 'rural' is not applicable.

SECTION 2 - Understanding the impact of the Policy, Strategy, Plan or Public Service

2A. Is the Policy, Strategy, Plan or Public Service likely to impact on people in rural areas?

Yes No If the response is **NO** GO TO Section **2E**.

2B. Please explain how the Policy, Strategy, Plan or Public Service is likely to impact on people in rural areas.

2C. If the Policy, Strategy, Plan or Public Service is likely to impact on people in rural areas differently from people in urban areas, please explain how it is likely to impact on people in rural areas differently.

2D. Please indicate which of the following rural policy areas the Policy, Strategy, Plan or Public Service is likely to primarily impact on.

Rural Businesses	<input type="checkbox"/>
Rural Tourism	<input type="checkbox"/>
Rural Housing	<input type="checkbox"/>
Jobs or Employment in Rural Areas	<input type="checkbox"/>
Education or Training in Rural Areas	<input type="checkbox"/>
Broadband or Mobile Communications in Rural Areas	<input type="checkbox"/>
Transport Services or Infrastructure in Rural Areas	<input type="checkbox"/>
Health or Social Care Services in Rural Areas	<input type="checkbox"/>
Poverty in Rural Areas	<input type="checkbox"/>
Deprivation in Rural Areas	<input type="checkbox"/>
Rural Crime or Community Safety	<input type="checkbox"/>
Rural Development	<input type="checkbox"/>
<input type="text"/>	

If the response to Section 2A was YES GO TO Section 3A.

2E. Please explain why the Policy, Strategy, Plan or Public Service is NOT likely to impact on people in rural areas.

The Northern Ireland Judicial Pension Scheme is a pension scheme for specified members of the devolved judiciary in Northern Ireland. The Scheme is regulated by the Judicial Pensions Regulations (Northern Ireland) 2015. The Scheme does not affect people in rural areas.

SECTION 3 - Identifying the Social and Economic Needs of Persons in Rural Areas

3A. Has the Public Authority taken steps to identify the social and economic needs of people in rural areas that are relevant to the Policy, Strategy, Plan or Public Service?

Yes No If the response is **NO** GO TO Section **3E**.

3B. Please indicate which of the following methods or information sources were used by the Public Authority to identify the social and economic needs of people in rural areas.

Consultation with Rural Stakeholders	<input type="checkbox"/>	Published Statistics	<input type="checkbox"/>
Consultation with Other Organisations	<input type="checkbox"/>	Research Papers	<input type="checkbox"/>
Surveys or Questionnaires	<input type="checkbox"/>	Other Publications	<input type="checkbox"/>
Other Methods or Information Sources (include details in Question 3C below).			<input type="checkbox"/>

3C. Please provide details of the methods and information sources used to identify the social and economic needs of people in rural areas including relevant dates, names of organisations, titles of publications, website references, details of surveys or consultations undertaken etc.

3D. Please provide details of the social and economic needs of people in rural areas which have been identified by the Public Authority?

If the response to Section 3A was YES GO TO Section 4A.

3E. Please explain why no steps were taken by the Public Authority to identify the social and economic needs of people in rural areas?

The Northern Ireland Judicial Pension Scheme is a pension scheme for specified members of the devolved judiciary in Northern Ireland. The Scheme does not affect people in rural areas. There is therefore no need to identify the social and economic needs of people in rural areas.

SECTION 4 - Considering the Social and Economic Needs of Persons in Rural Areas

4A. Please provide details of the issues considered in relation to the social and economic needs of people in rural areas.

Not applicable

SECTION 5 - Influencing the Policy, Strategy, Plan or Public Service

5A. Has the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or delivery of the Public Service, been influenced by the rural needs identified?

Yes No If the response is **NO** GO TO Section **5C**.

5B. Please explain how the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or delivery of the Public Service, has been influenced by the rural needs identified.

If the response to Section **5A** was **YES** GO TO Section **6A**.



5C. Please explain why the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or the delivery of the Public Service, has NOT been influenced by the rural needs identified.

There are no rural needs.

SECTION 6 - Documenting and Recording

6A. Please tick below to confirm that the RNIA Template will be retained by the Public Authority and relevant information on the Section 1 activity compiled in accordance with paragraph 6.7 of the guidance.

I confirm that the RNIA Template will be retained and relevant information compiled.

Rural Needs Impact Assessment undertaken by:	Laura Davison
Position/Grade:	Grade 7
Division/Branch	Civil Justice Policy Division
Signature:	Laura Davison
Date:	21 /09 /20
Rural Needs Impact Assessment approved by:	Laurene McAlpine
Position/Grade:	Grade 5
Division/Branch:	Civil Justice Policy Division
Signature:	Laurene McAlpine
Date:	21/ 09/20

ANNEX F

Title: Judicial Pensions: Proposed response to <i>McCloud</i>	Regulatory Impact Assessment (RIA)
	Date: 21/09/20
	Type of measure: Consultation
Lead department or agency: Department of Justice	Stage: Initial
	Source of intervention: Domestic NI
Other departments or agencies: N/A	Contact details: Laura Davison Department of Justice Laura.Davison@justice-ni.x.gsi.gov.uk

Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum) <p>In <i>McCloud</i>²⁰ the Court of Appeal held that transitional protections provided to older judges as part of the 2015 judicial pension reforms constituted unlawful direct age discrimination. Rulings of the Court of Appeal in England and Wales are not directly binding here as this is a separate legal jurisdiction. However the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Britain. Legal advice confirms the implications of the Appeal Court decision is such that all schemes must be treated as affected by the <i>McCloud</i> decisions and so require to be remedied</p>	
What are the policy objectives and the intended effects? (7 lines maximum) <p>The policy objective is to remedy the age discrimination in the Judicial Pension scheme that was found by the Court of Appeal in the <i>McCloud</i> case.</p>	
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum) <p>It is usual for the Northern Ireland Judicial Pension Scheme to maintain parity with its counterpart in England and Wales, the Judicial Pension Scheme (into which eligible members of Northern Ireland's excepted (courts) judiciary have been placed), on the basis that it is desirable to avoid divergence between the pension arrangements for the excepted and devolved judiciary. Therefore it is intended to consult on the options to address the <i>McCloud</i> remedy that have been identified by the Ministry of Justice in relation to the Judicial Pension Scheme.</p>	
Will the policy be reviewed? It will be reviewed	If applicable, set review date: Month/Year

Cost of Preferred (or more likely) Option
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²⁰ *Lord Chancellor and Secretary of State for Justice and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others*, [2018] EWCA Civ 2844

Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
N/A	N/A	N/A

Does Implementation go beyond minimum EU requirements?	YES <input type="checkbox"/>	NO <input type="checkbox"/>		
Is this measure likely to impact on trade and investment?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>		
Are any of these organisations in scope?	Micro Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Small Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Medium Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Large Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by:

Laurene McAlpine

Date: 21 / 09 / 20

Description: Judicial Pensions; Proposed response to *McCloud*

ECONOMIC ASSESSMENT (Option 1)

Costs (£m)	Total Transitional (Policy) (constant price) Years		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	N/A Optional		N/A Optional	N/A Optional
High	N/A Optional		N/A Optional	N/A Optional
Best Estimate	N/A			
Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines There are no costs to micro, small, medium or large organisations.				
Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines N/A				
Benefits (£m)	Total Transitional (Policy) (constant price) Years		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	N/A Optional		N/A Optional	N/A Optional
High	N/A Optional		N/A Optional	N/A Optional
Best Estimate	N/A			
Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines N/A				
Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines N/A				
Key Assumptions, Sensitivities, Risks Maximum 5 lines N/A				

BUSINESS ASSESSMENT (Option 1)

Direct Impact on business (Equivalent Annual) £m				
Costs: N/A	Benefits: N/A	Net: N/A		

Cross Border Issues (Option)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines

N/A

Evidence Base

There is discretion for departments and organisations as to how to set out the evidence base. It is however desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing), with reference to the evidence base to support the option selection;
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business;
- Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

Inserting text for this section:

Text can be pasted from other documents as appropriate.

In *McCloud*²¹ the Court of Appeal held that transitional protections provided to older judges as part of the 2015 judicial pension reforms constituted unlawful direct age discrimination. From 1 April 2015, younger judges had been moved from their legacy schemes, the Judicial Pension Scheme 1993 (JUPRA) or the fee-paid equivalent, Fee-paid Judicial Pension Scheme 2015 (FPJPS),²² both of which were tax-unregistered final salary schemes, to various tax-registered career average schemes with lower accrual rates, including to the Northern Ireland Judicial Pension Scheme 2015 (NIJPS). Judges closest to retirement were protected from the changes due to their age, and remained in JUPRA. The Court held that such protection unlawfully discriminated against younger judges. The Government's request for permission to appeal to the Supreme Court was rejected and the case was remitted to the Employment Tribunal to agree a remedy for claimants. The Employment Tribunal has since made declarations that claimant judges are entitled to be members of JUPRA/FPJPS from 1 April 2015. The Government accepted that the Court of Appeal's judgment had implications for all public service pension schemes that were reformed in 2015, as all contained transitional protections for older members. It has since committed to addressing the discrimination for all affected public servants regardless of whether they brought a claim.

Rulings of the Court of Appeal in England and Wales are not directly binding here as this is a separate legal jurisdiction. However the devolved public service schemes in Northern Ireland incorporate the same transitional protection arrangements as the schemes in Britain. Legal advice confirms the implications of the Appeal Court decision is such that all schemes must be treated as affected by the *McCloud* decisions and so require to be remedied.

²¹ *Lord Chancellor and Secretary of State for Justice and another v McCloud and others; Secretary of State for the Home Department and others v Sargeant and others*, [2018] EWCA Civ 2844

²² FPJPS was implemented to remedy the discrimination identified in *O'Brien*. The courts found that eligible fee-paid judicial office holders were entitled to pension benefits that were no less favourable than those provided at the time to salaried judges by JUPRA. FPJPS was therefore designed to mirror JUPRA as far as possible and be no less favourable where it was not possible to mirror the arrangements under JUPRA. FPJPS was established under the Judicial Pensions (Fee-Paid Judges) Regulation in 2017 and provided pension benefits for both historic and future service. As such, it was not in place on 1 April 2015, but the practical effect is now that younger judges are entitled to FPJPS benefits until they became members of NIJPS on that date.

These proposed changes are in line with legislative requirements of the Public Service Pensions Act (NI) 2014 for the reform of public service pensions and maintains alignment with the equivalent GB pensions scheme (per NI Executive decision). This policy has no impact on micro, small, medium or large organisations and no impact on business.