



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Proposals for a reformed judicial pension scheme

Consultation

This consultation begins on 14 October 2020

This consultation ends on 9 December 2020

About this consultation

- To:** This consultation seeks views from any member of the judiciary who is entitled to be a member of a judicial pension scheme, legal professionals, pension industry professionals and anyone else who may be affected by these reforms.
- 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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Ministerial foreword

The judiciary have an essential role in upholding the rule of law. Every day, judges take decisions on important issues which impact on people's lives – from delivering justice for victims through to deciding care arrangements for vulnerable children. It is important that we can continue to recruit and retain the very best legal minds to the bench and to do that we need to offer a remuneration package which is both fair to the taxpayer and attractive to the judiciary.

The Senior Salaries Review Body (SSRB) was asked to consider recruitment and retention issues that had arisen across the UK and they conducted a comprehensive review, gathering evidence over a two-year period which made clear that the pension changes made in 2015 were a major cause.

The Ministry of Justice issued a consultation paper in July 2020 which made proposals for the reform of judicial pensions which would include Northern Ireland courts judiciary for whom responsibility is not devolved. This consultation document sets out proposals for a reformed judicial pension scheme that would apply to devolved tribunals judiciary in Northern Ireland who are members of the Northern Ireland Judicial Pension Scheme which was introduced in April 2015.

I believe that the pension changes proposed in this consultation demonstrates my commitment to ensuring that the devolved judiciary in Northern Ireland have pension benefits that are equivalent to those available for the Northern Ireland courts judiciary (whose terms and conditions of appointment and remuneration are a matter for the Lord Chancellor) and their equivalents across the UK. I look forward to considering the views of consultees about these proposals.

Naomi Long MLA

Minister of Justice

Executive summary

The background

This consultation seeks views on proposals to reform judicial pension arrangements. Like the Ministry of Justice (MoJ) we intend to consider and modernise the provisions in the Judicial Pensions and Retirement Act 1993 (JUPRA) (hereafter described as the 'reformed scheme') for future accruals, so that any new pension scheme would be in line with the Hutton principles but also non-registered for tax purposes. Both judges who are accruing benefits under the existing provisions of JUPRA or its fee-paid equivalent, the Fee-Paid Judicial Pension Scheme (FPJPS) and those who are members of the 2015 scheme, the Northern Ireland Judicial Pension Scheme (NIJPS), would transfer into the reformed section of the scheme and accrue benefits under it. The reformed scheme features are outlined in this consultation document. It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.

The Public Service Pensions Act (Northern Ireland) 2014 introduced a statutory framework for reform of public service pension schemes. Following consultation with the judiciary and a public consultation exercise, NIJPS was established under the Judicial Pensions Regulations (Northern Ireland) 2015.

For most judges, membership of NIJPS is less financially beneficial compared to the legacy schemes. This is primarily because NIJPS is a registered scheme for tax purposes, meaning members are subject to annual and lifetime allowance limits on the tax-relieved benefits accrued within the scheme.

The introduction of NIJPS included transitional provisions to protect those closest to retirement from the effects of the 2015 pension reforms. In *McCloud*,¹ a group of younger judges brought legal action challenging the lawfulness of these provisions, and in December 2018 the Court of Appeal held that the transitional protections constituted unlawful direct age discrimination. The case was remitted to the Employment Tribunal to determine a remedy for claimants. The Department of Justice (DoJ) proposals for addressing past discrimination for non-claimants are set out in a separate consultation document which is available on the DoJ website. This

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

consultation focuses on equalising future treatment across the whole judiciary by moving all judges into the reformed scheme, which we aim to do in 2022.

In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure² which highlighted escalating recruitment and retention problems at all levels of the judiciary, particularly in England and Wales. It concluded that these problems were caused principally by the 2015 pension reforms and subsequent changes to pension tax thresholds.

Responding to the SSRB's review in June 2019, the UK Government made a public commitment to develop a pensions-based solution for the whole judiciary, which would aim to address in the long-term, the recruitment and retention problems identified by the SSRB. This consultation sets out our proposals for delivering this commitment for the devolved tribunal's judiciary in Northern Ireland who are members of the NIJPS.

Delivering a reformed scheme

The aim is that the reformed scheme will be open to eligible salaried and fee-paid judicial office holders from 2022. All salaried and fee-paid judicial office holders who are in office when the scheme commences, and who are eligible for a judicial pension, would join the reformed scheme automatically in respect of service in that office unless they decide to opt out of the scheme. Membership of the reformed scheme is for all judges in a qualifying judicial office which includes those judges who have reached their 20-year service cap in JUPRA.

We are proposing to provide for a modernised scheme for future accruals from April 2022 by making reforms to the provisions contained in JUPRA. The intention is that all non-JUPRA judicial pension arrangements³ would close to future accruals in 2022 – JUPRA provisions will then be amended to provide for future accruals in the reformed scheme. From the implementation date of the reformed scheme, current JUPRA members, including those who would be in JUPRA as a result of the *McCloud* remedy, would remain in JUPRA, but as members of the modernised section of the scheme.

Judges who were members of NIJPS would transfer and join this modernised version of JUPRA in 2022. **It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.** The final salary link contained in JUPRA/FPJPS will be maintained and will not be impacted by the introduction of the reformed scheme. For example, those judges

² <https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>

³ The legacy schemes including the 1981 Scheme established under the Judicial Pensions Act 1981 the New Judicial Pension Scheme 2015 established under the Judicial Pension Regulations 2015; and the Fee-Paid Judicial Pensions Scheme established under the Judicial (Fee-Paid Judges) Regulations 2017.

currently in JUPRA and who are eligible for a pension after April 2022 will have the JUPRA/FPJPS element of their annual pension calculated on the basis of their final pensionable earnings calculated at the point of retirement, not at the point they leave JUPRA.

Primary legislation will be needed to provide the statutory framework for future accruals, including the application of the governance, cost control and administration arrangements required by the Public Service Pensions Act (Northern Ireland) 2014.

It should be noted that these proposals will apply to eligible members of the judiciary in Northern Ireland who are members of the NIJPS.

Proposed features of the reformed scheme

Many of the features of the reformed scheme will be in line with the main principles of the 2015 pension reforms. This includes a career average accrual model, no restriction on the number of accruing years in service and the normal pension age linked to State Pension age. Our proposals would also allow members to commute their pension and take a lump sum upon retirement at a rate of 12:1. This differs from the pre-2015 schemes, JUPRA for salaried judges and the Fee-Paid Judicial Pensions Scheme⁴ (FPJPS) for fee-paid judges, which include a final salary rather than career average link, a 20-year service cap, a normal pension age of 65 and the provision of an automatic lump sum upon retirement at a rate of 2.25 times the annual pension. Members of these schemes also receive a Judicial Service Award to compensate for the non-registered status of the scheme.

The reformed scheme would, however, retain some elements of JUPRA, including the tax-unregistered status. A number of the scheme features we propose flow from this tax status. Member contribution rates would be lower than those of NIJPS to reflect the fact that members would not receive tax relief on their contributions. A commutation supplement would also be made to members who commute a lump sum to compensate for the tax-unregistered status of the scheme. In line with JUPRA, the accrual rate would be set at 2.50%, an increase from the 2.32% rate in NIJPS.

Judges moving from JUPRA to the reformed scheme will not lose the lump sum they were due to get upon retirement. It will be calculated upon the pension they have accrued up until 31 March 2022.

The age at which members for the reformed scheme would become entitled to receive benefits under the reformed scheme, without adjustment for early retirement, would be the members State Pension Age. This will not impact the pension benefits members have previously accrued in JUPRA/FPJPS. For example, if a member of JUPRA

⁴ FPJPS commenced on 1 April 2017.

moved into the reformed scheme in April 2022 and chose to retire at the age of 65 in April 2024 they would have a retirement age in line with State Pension Age. The member's benefits under JUPRA would not be reduced, the benefits accrued under the reformed scheme would be subject to an early retirement reduction. These two sets of benefits would be added together to provide for the member's annual pension.

Equality impact

We have considered the equality impacts (Annex C) of our proposed reforms and concluded that they do not result in any direct discrimination. We note that while our proposed scheme has been designed to be more beneficial compared to NIJPS for all members of the judiciary, the benefits are particularly advantageous for senior members of the judiciary, who are typically older, male and less diverse in terms of race. This is at least partly because senior members of the judiciary experienced particularly adverse impacts from the move from the legacy schemes to NIJPS in 2015. The same scheme design applies to all members of the judiciary and it is our assessment that any potential differential impacts are proportionate to achieve our policy aim of addressing the recruitment and retention issues within the judiciary, and maintain equivalence between pension benefits for the devolved tribunals judiciary in Northern Ireland and the courts judiciary in Northern Ireland (whose terms and conditions of appointment and remuneration is a matter for the Lord Chancellor) and equivalents across Great Britain.

Regulatory impact

We have conducted a regulatory impact assessment (Annex E) which outlines our policy objectives and the costs and benefits of a range of options we have considered before deciding the proposals to put forward for consultation. Our assessment indicates that these proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector. Our proposals incur costs for the DoJ to fund the proposed pension scheme.

Interaction with other consultations

In addition to the proposals for a reformed judicial pension scheme, DoJ is consulting concurrently on proposals to:

- address the discrimination for all affected judges in scope of the *McCloud* judgment; and
- increase the judicial mandatory retirement age for judicial office holders, including magistrates and coroners, to either 72 or 75.

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

Next steps and timing

This consultation will close on 9 December 2020. We will aim to issue our official response to this consultation on the scheme design in early 2021. Once we have done this, we will need primary legislation to set out the statutory framework for the reforms and secondary legislation to set out the details of the scheme. We are working towards implementation of the reformed scheme in April 2022.

1. The need for reform

Background to judicial pension changes

- 1.1 The Public Service Pensions Act (Northern Ireland) 2014 introduced a statutory framework for reform of public service pension schemes. Following consultation with the judiciary and following a public consultation exercise, the Northern Ireland Judicial Pension Scheme (NIJPS) was established under the Judicial Pensions Regulations (Northern Ireland) 2015.
- 1.2 The Public Service Pensions Act (Northern Ireland) 2014 and the introduction of NIJPS in 2015 brought about significant changes. Previous judicial pension schemes were closed to future accrual⁵ including – of relevance to most serving salaried judges – the scheme established under the Judicial Pensions and Retirement Act 1993 (JUPRA). While JUPRA and its predecessor schemes were tax-unregistered, which meant that members were not subject to annual allowance and lifetime allowance limits on tax relieved benefits accrued within the schemes, NIJPS is a tax-registered scheme and members are subject to these limits. Member contribution rates for JUPRA and FPJPS (the scheme for fee-paid judges, which mirrors the provisions of JUPRA) are also lower compared to NIJPS, to broadly reflect that members do not receive tax relief on contributions. In addition, and unlike JUPRA, NIJPS does not provide an automatic lump sum on retirement, it links the normal pension age to State Pension age, includes a lower annual accrual rate and uses career average rather than final salary as the basis for calculation of pension benefits.
- 1.3 These changes, largely consistent with those made to other public service pension schemes as a result of the 2014 Act, have had a disproportionate impact on the judiciary. The comparatively high level of judicial salaries and the fact that many senior judges accrued significant private pensions before taking up judicial office mean that tax charges are felt more acutely and by a significant proportion. Many in legal practice may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case joining a tax-registered pension scheme is unlikely to be an incentive to leave private practice and join the bench. This is a clear impediment to attracting the best talent to the salaried judiciary. This disincentive is compounded by the fact that many judges face a significant drop in earnings when joining the judiciary.
- 1.4 Owing to the judiciary's unique constitutional role, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that they will not return to private practice once they have retired. Their

⁵ Except for members who were covered by transitional protection arrangements.

options for supplementing their earnings are therefore limited. Furthermore, judges tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades.

- 1.5 The changes to judicial pensions have significantly reduced the remuneration package for judges. In the Judicial Attitudes Survey 2016 in England and Wales an overwhelming majority (78%) of salaried judges said they had experienced a loss of net earnings during the previous two years.⁶

The Senior Salaries Review Body (SSRB)

- 1.6 The SSRB's Major Review in 2018 confirmed that there was evidence of significant and escalating recruitment and retention problems, particularly in England and Wales. However similar concerns were also expressed in Northern Ireland and Scotland.
- 1.7 It concluded that the principal cause of the problem was the cumulative impacts of the 2015 public service pension reforms and subsequent changes to the annual allowance and lifetime allowance thresholds.

The case for long-term reform

- 1.8 These judicial recruitment and retention challenges pose serious risks to the effective functioning of the justice system. Therefore, the Ministry of Justice has taken steps, to ensure both the continuing effectiveness of the justice system and its international competitiveness for legal services, particularly in an increasingly competitive international market for commercial litigation.
- 1.9 The benefits of the JUPRA pension scheme were typically recognised as a key feature of a judicial remuneration package capable of attracting the best candidates and in the Northern Ireland context, it is important to ensure that any changes to pension benefits across Great Britain are reflected in the remuneration package for members of the devolved tribunals judiciary in this jurisdiction who are members of the NIJPS.

⁶ Executive Summary, Page 3, *2016 Judicial Attitude Survey: Report of findings covering salaried judges in England & Wales Courts and UK tribunals*, February 2017.

2. Objectives for reform

Objectives for reform

- 2.1 Our main objective is to reform the pension scheme to reflect MoJ's intention to make the pension scheme more attractive and therefore solve the recruitment and retention difficulties that are particularly present in England and Wales. In doing so, devolved tribunal office holders who are members of the NIJPS will have equivalence in terms of pension benefits compared with the courts judiciary in Northern Ireland (whose terms and conditions of appointment and remuneration is a matter for the Lord Chancellor) and their equivalents across Great Britain. It is also important to be consistent so far as possible with the principles of the wider 2015 public service pension reforms. These reforms were based on the Independent Public Service Commission's review of public service pension provision which was chaired by Lord Hutton of Furness. The Commission chose four principles that they considered to be the most important factors that should govern the overall design of public service pensions: affordable and sustainable; adequate and fair; support productivity; and transparent and simple.⁷ The Commission's final report in March 2011 recommended that public service schemes should have their benefits calculated on a career average rather than final salary basis. They also recommended linking the normal pension age to State Pension age and setting a cost ceiling to keep future costs under control.
- 2.2 Our proposals for the reformed scheme are designed to be fair to both those judges who will be remaining in JUPRA, but as members of the modernised, reformed section of the scheme, and those who will be transferring from other schemes such as NIJPS.
- 2.3 **It is our intention for all judges to join the reformed provisions of JUPRA upon its introduction in April 2022 in order to ensure equal treatment going forwards for all serving judges. It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.**

Engagement with the judiciary

- 2.4 We consider this formal consultation exercise as the primary vehicle for gathering the detailed views of the judiciary on our proposals for the reformed scheme.

⁷ Page 51, *Independent Public Service Pensions Commission: Interim Report*, 7 October 2010

3. The proposed reformed scheme

3.1 This section outlines how the reformed scheme will be provided for, scheme membership and its key design features. It also contains worked examples of how these changes would impact judges if they were to accrue benefits in the reformed scheme compared to JUPRA/FPJPS or NIJPS.

Providing for the reformed scheme

- 3.2 Primary legislation is required to provide for a reformed, modernised JUPRA. In order to do this, we would need to amend the Public Services Pensions Act (Northern Ireland) 2014, which closed existing schemes (e.g. JUPRA) to future accruals. We would also need to amend or make provision for the Judicial Pensions and Retirement Act 1993 (JUPRA) to enable the provision of a modernised tax-unregistered section of the scheme for future accruals. We are currently considering the best way of taking forward the necessary legislative changes.
- 3.3 This would mean that judges in JUPRA prior to April 2022, the point at which the reformed scheme is scheduled to come into effect, would remain in JUPRA from April 2022 but would accrue benefits in a different section of the scheme that will have been modernised in line with the Hutton principles. Those judges who were members of NIJPS would transfer into this same modernised section of the JUPRA scheme.
- 3.4 The intention is that all other open judicial pension arrangements⁸ would close to future accruals in 2022. The reformed section of JUPRA will then be the only scheme in which members can accrue benefits.

⁸ The Legacy schemes including the 1981 Scheme established under the Judicial Pensions Act 1981; the current provisions of the 1993 Scheme established under the Judicial Pensions and Retirement Act 1993; the New Judicial Pension Scheme 2015 established under the Judicial Pension Regulations 2015; the Northern Ireland Judicial Pension Scheme established under the Judicial Pensions Regulations (Northern Ireland) 2015, the Fee Paid Judicial Pensions Scheme established under the Judicial (Fee-Paid Judges) Regulations 2017.

Membership

- 3.5 From the date of implementation of the reformed scheme in 2022, all devolved tribunals judiciary would be eligible for membership of this scheme except where terms and conditions do not include membership of a judicial pension scheme.
- 3.6 Those serving judges who were previously members of JUPRA, FPJPS, NIJPS or opted not to be a member of a scheme would all be eligible for membership of the reformed scheme.

Proposed scheme features

In summary, we propose to include the following features in the reformed scheme:

- A 'career average' accrual model
- No cap on the number of accruing years in service
- Normal pension age linked to State Pension age
- Tax-unregistered
- Reduced member contribution rates compared to NIJPS
- Option for members to commute part of their earned pension into a lump sum at a rate of 12:1, with a commutation supplement to compensate for the tax unregistered status of the scheme
- An accrual rate of 2.5% of pensionable earnings (1/40)
- A cost control mechanism

Scheme comparison

Scheme/Feature	JUPRA/FPJPS	NIJPS	Reformed scheme
Accrual model	Final salary	Career average	Career average
Service Cap	20-year limit	No limit	No limit
Retirement age	65 years of age	State Pension age	State Pension age
Tax status	Tax-unregistered	Tax-registered	Tax-unregistered
Accrual rate	2.5%	2.32%	2.5%
Lump sum and supplement arrangements	Automatic lump sum on retirement (2.25 x annual pension) plus a Judicial Service Award payment to compensate for the tax-unregistered status of the scheme.	Option to commute part of earned pension as a tax free lump sum at a rate of 12:1.	Option for members to commute part of their earned pension into a lump sum at a rate of 12:1, with a commutation supplement to compensate for the tax-unregistered status of the scheme.

Consistency with the Hutton principles

3.7 It is proposed that the scheme remains, so far as possible, in line with the principles of the Hutton recommendations, including affordability and sustainability. The proposed scheme contains the following features which are key components of these recommendations:

- pension entitlement based on career average earnings rather than final salary;
- linking normal pension age to State Pension age;
- option to commute part of earned pension as a lump sum rather than an automatic lump sum; and
- introduction of a cost cap mechanism to control the cost of the scheme.

3.8 These features are discussed in further detail below.

Career average

3.9 The career average accrual model under the reformed scheme would work in the same way as it does in NIJPS. It is worth highlighting that NIJPS provides benefits for both fee-paid and salaried judges and we propose that the career average accrual model in the reformed scheme would mirror this.

3.10 Every year, a member, would 'bank' an amount of pension in this account at a rate of 2.50% of their pensionable earnings in that scheme year.

3.11 For full-time salaried members of the judiciary, and those on salaried part-time working arrangements, 'pensionable earnings' would equate to their actual salary in that

scheme year. For fee-paid judiciary members, the pensionable earnings would be equivalent to their total pensionable fee income in that scheme year.

3.12 A judge's final pension would then be made up of the amounts 'banked' each scheme year. It is proposed that, the amounts 'banked' should be index-linked by prices annually until the year a pension is awarded as applies under NIJPS.

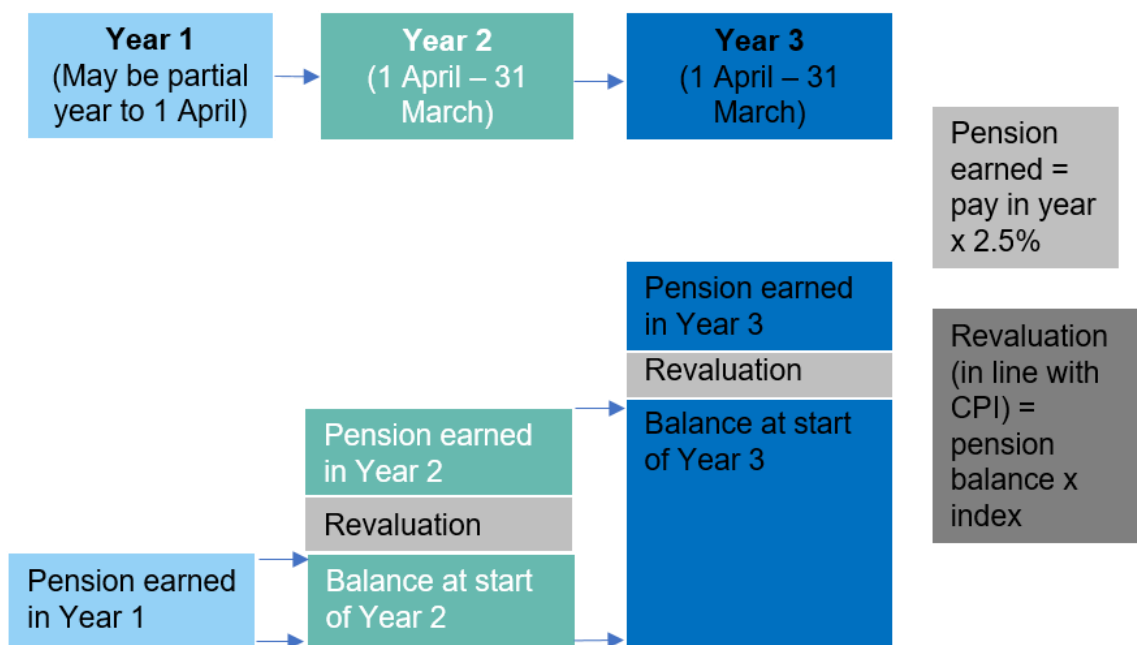
Example: Career average

Judge A's pensionable earnings for 1 April 2022 to 31 March 2023 are £112,542.

In that scheme year, Judge A will earn a pension of:

$$£112,542 \times 2.50\% \text{ (accrual rate)} = £2,813.55.$$

How does a career average pension work?



Annual revaluation (index-linking) of benefits

3.13 Generally, across public sector pensions, the UK Government has committed to ensuring that the value of active members' pensions are maintained by applying index-linking annually.

3.14 It is expected that the rate for the reformed scheme would be set to be equivalent to the Consumer Prices Index (CPI). We understand that the pension scheme rules would

provide that the revaluation would occur at the beginning of each subsequent scheme year, i.e. April.

3.15 Pensions in payment under the reformed scheme would, like other public service pensions, be uprated annually

Service cap

3.16 The reformed scheme would not have a limit on the number of years that a judge could accrue reckonable pensionable service, matching the provisions set out in NIJPS. Under JUPRA/FPJPS, a member can only accrue 20 years of service. The number of years that a judge accrues reckonable pensionable service in the reformed scheme would not count towards the service cap in those schemes which contain this feature i.e. JUPRA and FPJPS.

Comparison with other schemes:

Scheme	JUPRA/FPJPS	NIJPS	Reformed Scheme
Service Cap	20-year limit	No limit	No limit

Normal pension age

3.17 The age at which members of the reformed scheme would become entitled to receive benefits (without adjustment for early payment) would be the member's State Pension age, in line with the Hutton principles to make sure that public service pensions are affordable in the long term, fair between generations and providing a way to manage future expected increases in longevity.

3.18 This feature is retained from NIJPS and differs from the retirement age of 65 in JUPRA/FPJPS.

Scheme	JUPRA / FPJPS	NIJPS	Reformed scheme
Normal pension age	65 years of age	State Pension age	State Pension age

3.19 The rules surrounding early and late retirement will remain the same as they are currently set out in NIJPS, as explained below.

Early retirement

3.20 Active and deferred members of the reformed scheme would be entitled to draw their pension after leaving judicial service before State Pension age, initially from the age of 55. While a member would have to make a formal claim to have their pension brought

into payment early, the consent of the department would not be required. Early retirement in the reformed scheme would be subject to the member having a minimum qualifying service and an early retirement reduction, determined after consultation with the scheme actuary. An early retirement reduction would reflect the fact that the pension would be in payment for longer than would have been the case if the individual retired at scheme pension age.

- 3.21 This is different to JUPRA where it is not possible for a pension to be drawn before the age of 60. If a judge with pension benefits under JUPRA were to take early retirement before the age of 60, their pension award would be preserved until retirement age. If such a judge were to take early retirement between the ages of 60 and 65, their pension award would be payable at the point of retirement, but subject to an actuarial reduction.

Late retirement

- 3.22 If a member wished to take late retirement, they would be eligible for a 'late retirement addition'. The late retirement addition would be calculated by taking the balance in the individual's pension account at 31 March of the previous year, multiplied by a percentage. This calculation would be determined after consultation with the scheme actuary. The late retirement addition would be applied from the April following the individual's attainment of their State Pension age.
- 3.23 As with NIJPS, if a member were still in service, they would continue to accrue annual pension in the career average scheme on top of this late retirement addition, and the pension earned in late retirement would be added to the member's overall pension balance. In subsequent years after their State Pension age, a late retirement addition would be calculated with reference to the pension account balance at the end of the previous year.
- 3.24 JUPRA/FPJPS does not contain any provisions for a 'late retirement addition' for members who decide to retire after the normal pension age of 65.

Interaction with mandatory retirement age consultation

- 3.25 We are also consulting on options for changing the mandatory retirement age (MRA). If the MRA for judges were to be increased, judges would increase the net value of their pension if they remained in service until reaching a new, higher MRA. This is because scheme members would benefit from extra accrual and, under the reformed scheme, judges would not be impacted by the service cap or lifetime tax allowance if they were to work to the increased MRA.

3.26 Increasing the MRA would not affect the scheme pension age as this is linked to State Pension age. Regardless of the MRA, judges who have left service could take an unreduced pension at State Pension age.

3.27 **The proposed scheme is relevant for future accruals following its introduction in 2022, but it is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.**

Further features of the reformed scheme

Tax unregistered scheme

3.28 There are several reasons, closely related to the judiciary's unique constitutional role, why pension's tax issues are particularly relevant to judicial pensions:

- Salaried judges are unable to return to private practice after taking up office and tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades. High earner pension issues are therefore more likely to be a deterrent for those considering joining the judicial ranks than for any other public service careers.
- The comparatively high level of judicial salaries and the fact that many senior judges accrued significant private pensions before taking up judicial office mean tax charges are felt more acutely and by a significant proportion of the workforce. In particular, many top legal professionals may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case a tax registered pension scheme could be a disincentive to leave private practice and join the bench. This is a clear impediment to attracting the best talent to the salaried judiciary.
- In contrast to some others in public service, salaried judges have limited scope to supplement their earnings once they have joined the bench.

3.29 Recent changes to the pension's tax system, announced on 11 March 2020 as part of the Budget, included an increase to the thresholds at which the tapered annual allowance applies by £90,000. These taper changes result in higher net pay (i.e. salary net of tax and annual allowance charge) for NIJPS judges in all salary bands from 2 to 6.2.⁹ However, the net pay is still significantly lower than that of JUPRA judges at all salary bands (except band 8), most significantly so for judges in the higher salary bands.

⁹ Correct as of 31 March 2020

- 3.30 These changes to the annual allowance taper do nothing to offset the impact of lifetime allowance charges, which remain a key barrier to encouraging high quality applicants from the private sector to the bench. The annual allowance charge also remains a significant factor for judges in salary bands 4 and above.
- 3.31 Additionally, access to a tax unregistered scheme was taken into account when judicial pay was reviewed by the SSRB. The only other way of addressing the issues identified by the SSRB was to offer a significant pay increase to judges. This would be costlier in the short-term as it would require immediate funding in full and it would also be far less flexible as judicial pay increases for judges cannot subsequently be reduced. It would also result in scheme members crossing pension tax thresholds sooner, making the scheme even less attractive to prospective applicants.
- 3.32 Therefore, it is proposed that **the reformed scheme would be tax unregistered**. As outlined above, this could be achieved by reopening or recreating JUPRA and modernising it for future accruals.
- 3.33 This means that none of the income tax advantages conferred by the legislation governing tax-registered pension schemes would apply but benefits under the scheme would not count towards either the annual allowance or the lifetime allowance under the Finance Act 2004.

Comparison with other schemes:

Scheme	JUPRA/FPJPS	NIJPS	Reformed scheme
Tax status	Tax-unregistered	Tax-registered	Tax unregistered

Member contributions

- 3.34 The change in tax status means that members would not benefit from tax relief on member contributions. Therefore, under the reformed scheme, it is proposed that **member contribution rates would be set at a lower rate** to ensure members pay approximately the same average contribution rate to the scheme, net of tax, compared to NIJPS.
- 3.35 If this change were not made, the average take-home pay of all judges would be reduced.

Introduction of uniform contribution rates

- 3.36 In addition to lowering member contribution rates compared to NIJPS, it is proposed to introduce a uniform contribution rate for all judges. There would be one rate covering all contributions, for all members.
- 3.37 Currently there are three sets of member contribution rates for judges, depending on whether they are accruing benefits in JUPRA, FPJPS or NIJPS. As it is intended to move all eligible judges into the reformed scheme in 2022, it is proposed that there would be a single member contribution structure in the future. Creating a single structure of member contribution rates necessitates a change for some judges in the amount that they contribute towards their pension.
- 3.38 In order to determine the most appropriate structure that would apply to all judges in the future, we revisited the principles behind the current tiered contribution rates. The Hutton recommendations propose that any increases in contribution rates should protect low earners and be progressive, so that high earners pay proportionately higher increases to reflect their more generous pensions. The arguments that the UK Government subsequently made for a tiered structure therefore included protecting the low paid by not increasing the employee contributions for those earning less than £15,000 and limiting the increase in employee contributions for those earning up to £21,000. The tiered structure also allowed for tax relief to offset the impact of contribution increases on a take-home pay basis.
- 3.39 However, there are no judges in the judicial schemes earning less than £21,000 on a full-time equivalent basis and the tax relief argument does not apply in a tax-unregistered scheme (as member contributions are not subject to tax relief). In addition, the tiered structure causes several issues for both members and the scheme administrator:
- It may create perceptions of unfairness between members as higher earners pay more despite the fact that no members of the judiciary can be considered to be low earners. In cases where judges have low judicial earnings, this is likely to be because they are fee-paid members of the judiciary and are able to benefit from continued private practice employment and have the flexibility to increase the number of days they sit.
 - The tiered contribution rates cause anomalies at the boundaries of contribution bands that could incentivise perverse behaviours. For example, fee-paid judges may limit the amount of days they sit in order to avoid moving to a higher contribution band and seeing a reduction in their take-home pay.
 - Tiering member contributions by earnings can also cause complexities and mean that fee-paid judges with the same earnings pay different amounts due to their working patterns.
 - Tiered contribution rates are also more difficult to administer.

On this basis, we propose that a uniform contribution rate is more appropriate for the judiciary and provides a solution to the issues outlined above.

3.40 The impact of a uniform contribution rate of 4.26% on different groups of members is illustrated in the below tables.

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Comparison between NIJPS and uniform contribution rates on salaried members:

NIJPS (salaried)				Uniform Contribution Rate			
Salary Group	Salary	Rate	Annual Cost ²⁴	Rate	Annual Cost	Difference pa	Difference pm
4	£188,901	8.05%	£8,364	4.26%	£8,047	£316	£26
5	£151,497	8.05%	£7,242	4.26%	£6,454	£789	£66
6.1	£140,289	7.35%	£6,187	4.26%	£5,976	£210	£18
7	£112,542	7.35%	£3,309	4.26%	£4,794	-£1,486	-£124

Comparison between JUPRA and uniform contribution rates on salaried members:

JUPRA				Uniform Contribution Rate			
Salary Group	Salary	Rate ¹⁰	Annual Cost ¹¹	Rate	Annual Cost	Difference pa	Difference pm
4	£188,901	4.57%	£8,630	4.26%	£8,047	£583	£49
5	£151,497	4.43%	£6,708	4.26%	£6,454	£254	£21
6.1	£140,289	4.41%	£6,187	4.26%	£5,976	£210	£18
7	£112,542	4.41%	£4,963	4.26%	£4,794	£169	£14

Comparison between NIJPS and uniform contribution rates on fee-paid members:

NIJPS (fee-paid) ¹²				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£26,986	5.45%	£882	4.26%	£1,150	-£267	-£22
Recorder	£20,041	4.60%	£553	4.26%	£854	-£301	-£25
Dep. DJ	£15,704	4.60%	£433	4.26%	£669	-£236	-£20

Comparison between FPJPS and uniform contribution rates on fee-paid members:

FPJPS				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£26,986	3.27%	£882	4.26%	£1,150	-£267	-£22
Recorder	£20,041	2.76%	£553	4.26%	£854	-£301	-£25
Dep. DJ	£15,704	2.76%	£433	4.26%	£669	-£236	-£20

¹⁰ Rate shown is the aggregate of the different member contribution rates that exist in JURA to reflect the tiered contribution structure.

¹¹ Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

¹² For all fee-paid examples, we have assumed that the judge will work 30 days spread evenly across the year.

This analysis illustrates that moving to a uniform member contribution rate would benefit all salaried judges currently in JUPRA and NIJPS judges above salary band 7. Those judges transferring from NIJPS in salary band 7 would face a reduction in their take-home pay. This is because they earn between £100,000 and £125,000 and are subject to a reduction in their Personal Allowance by £1 for every £2 that their adjusted income is above £100,000. An individual's Personal Allowance is zero if their income is £125,000 or above. Whilst the loss of tax relief on contributions may result in a reduction in take-home pay for some judges, it is considered that this is compensated for in terms of the improved benefits to the pension scheme.

- 3.41 Fee-paid judges may be impacted negatively as a uniform contribution rate may reduce the take-home pay for this group who would be joining the reformed scheme from either FPJPS or NIJPS. It is important to note that the above tables regarding fee-paid judges assume their sitting days are spread evenly across the year. However, contribution rates for fee-paid judges are calculated monthly and subject to varied sitting patterns. Fee-paid judges whose sitting days are concentrated in part of the year could currently pay higher current contribution rates than those reflected in the below tables, and may benefit from the proposed uniform contribution rates. This may also be the case for fee-paid judges who sit significantly more than the representative judge we have used for our analysis. On this basis, some fee-paid judges could benefit from a uniform contribution rate where they have an uneven sitting pattern.
- 3.42 Although some fee-paid judges may see their take-home pay reduced as a result of a uniform contribution rate, and they generally earn less from judicial service than their salaried counterparts, they have the ability to increase their income unlike salaried judges. It also removes some of the complexities and unfairness of a tiered structure which can mean that judges with the same earnings contribute different amounts due to their working patterns. It is considered that a reduction in take-home pay is compensated for in terms of the improved benefits to the pension scheme.
- 3.43 In JUPRA and FPJPS, member contributions are split into Personal Pension Contributions and Dependant Pension Contributions. On retirement, members are refunded their Dependant Pension Contribution if they have no dependants. However, the reformed scheme would follow the approach used in NIJPS: member contributions would not be split into Personal Pension Contributions and Dependant Pension Contributions, and there will be no contribution refunds on retirement.
- 3.44 **We would welcome any views on the introduction of a uniform contribution rate for the reformed scheme.**

Optional lump sum commutation

- 3.45 The reformed scheme would allow scheme members to take a part of their earned pension as a lump sum. On retirement, members would be able to ‘commute’ – or give up – some pension in exchange for a lump sum. The commutation rate in the reformed scheme would be 12:1, consistent with the other public service schemes. This means that each £1 of annual pension given up buys £12 of lump sum and any actuarial reduction or enhancement would apply before commutation. This commutation would have no knock-on effect on pensions for dependants, which would continue to be based on pre-commutation amounts. Only the pension built up under the reformed scheme can be commuted under our proposals. However, if a member was receiving benefits under NIJPS before moving to the reformed scheme, they would also be able to commute a lump sum from the pension they have accrued under that scheme.
- 3.46 The maximum amount a member would be able to commute would be 35.7% of their pension, consistent with NIJPS.¹³

Example: Lump sum commutation

Judge A has a pension of £36,000, after any actuarial reduction or enhancement for early/late retirement has been applied, and would like a lump sum on retirement of £96,000.

This is calculated as:

Commutation lump sum: $£96,000/12 = £8,000$ (i.e. 1:12 commutation).

To obtain this commuted lump sum, Judge A must give up the amount of pension commuted, in this instance, £8,000.

New pension value: $£36,000 - £8,000 = £28,000$.

Tax unregistered commutation supplement

- 3.47 Commutation on its own is less attractive in a tax unregistered scheme, where tax would generally be payable at a top rate of 45% on any commuted lump sum. The

¹³ In NIJPS, the maximum lump sum is set by rules for tax registered schemes and the limit is generally 25% of the HMRC pension valuation (subject to a maximum of 25% of the member’s remaining Lifetime Allowance). Where the member commutes 35.7% of their pension, the lump sum represents 25% of the HMRC pension valuation. More information can be found in the HMRC pension tax manuals: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063240>.

effect of this would be that the 12:1 commutation factor would be worth the equivalent of a 7:1 factor in a tax registered scheme.

3.48 Commutation should remain a feasible option in order to adhere to the Hutton recommendations, which said: “Lump sums are popular with members and can provide valuable flexibility by giving members a buffer fund to deal with contingencies. Therefore, lump sums should continue to be made available to members of public service pension schemes through commutation.”¹⁴

3.49 **The tax unregistered status therefore necessitates a commutation supplement to be provided to members so commutation remains an attractive option.**

Example: Commutation supplement

Commutation supplement would be equal to:
$$r \times \{\text{commuted lump sum}\} \div (1-r)$$

Where ‘r’ is the additional rate of income tax

This calculation is required to cover the tax due on the commuted lump sum and the tax that would be liable on the commutation supplement itself. Therefore, the total commutation supplement is higher than the tax due on the lump sum itself.

Using **Judge A** as an example. Their £96,000 lump sum would be taxed at a top rate of 45%. The commutation supplement would be worked out as follows:

$$0.45 \times (\text{£}96,000) \div (1-0.45) = \text{£}78,545$$

£78,545 would be paid to Judge A to account for tax and leave the member with a net lump sum of £96,000.

Accrual rate

3.50 One of the main objectives of the reformed scheme is to ensure that it benefits the whole judiciary, and in particular, that no judge (including more junior or fee-paid judges) is worse off than they would be if they had remained in NIJPS. Therefore, it is proposed that **the accrual rate in the reformed scheme would be 2.50% (1/40th)**, the same as it is in JUPRA and FPJPS, an increase compared to NIJPS where it is 2.32%. This increase in accrual rate, combined with the other features outlined above, would ensure that judges currently in NIJPS would be in at least the same, if not a

¹⁴ Page 84, paragraph 3.106, *Independent Public Service Pensions Commission: Final Report*.

better position, under the reformed scheme. It would also provide some benefit improvements for members who may lose out marginally on their take home pay due to the change in contribution rates.

3.51 The increase in accrual rate would also minimise the impact of judges who would be accruing benefits under the reformed scheme compared to JUPRA/FPJPS. It is important to note that the judicial pension arrangements were affected disproportionately in 2015 compared to the rest of the public sector. For example, judges received no improvement to the scheme’s accrual rate to offset the increase in retirement age, the removal of the separate lump sum or the switch to a career average pension scheme.

Example: How accrual rate works (as illustrated under the career average section):

Judge A’s pensionable earnings for 1 April 2022 to 31 March 2023 are £112,542.

In that scheme year, Judge A will earn a pension of:

$$£112,542 \times 2.50\% \text{ (accrual rate)} = £2,813.55$$

Comparison with other schemes:

Scheme	JUPRA/FPJPS	NIJPS	Reformed scheme
Accrual rate	2.5%	2.32%	2.5%

Dependants’ pension

3.52 The reformed scheme would pay a pension to a surviving spouse or civil partner upon a member’s death. This pension would be equal to 3/8 (37.5%) of the scheme member’s pension and would be payable for life. Provisions relating to surviving adults and calculation of benefits would mirror those in the wider public service schemes.

3.53 The proposed scheme is relevant for future accruals following its introduction in 2022 and would contain the features described above but, it is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.

Worked examples

3.54 The impact of the proposed scheme on representative examples of judges from different salary groups has been considered to understand how the reformed scheme

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would impact them in comparison to the benefits they would have accrued under either JUPRA/FPJPS or NIJPS had they remained in one of these schemes until retirement. This has been assessed in terms of net pension value which takes into account the total pension they would receive in retirement, plus any lump sums which may have been available, and subtracting the member contributions they paid over their career and any pension taxes which would have been due. It also looks at the change to annual pension.

3.55 The tables below demonstrate the impact of our proposed scheme on judges from Salary Groups 4, 6.1, 7 and on Deputy High Court judges and Deputy District judges.

Comparison between NIJPS (salaried) and the reformed scheme in terms of net value of pension:

Salary Group	Length of Service (years)	Net Value of Pension		Change in net value
		NIJPS	Reformed scheme	
4	15	£938,719	£1,650,239	£711,520
6.1	15	£799,411	£1,225,565	£426,154
7	20	£951,113	£1,310,889	£359,776

Comparison between NIJPS (fee-paid) and the reformed scheme in terms of net value of pension:

Judicial Office	Length of Service (years)	Net Value of Pension		Change in net value
		NIJPS	Reformed scheme	
Deputy High Court	15	£221,557	£235,746	£14,189
Deputy District	20	£173,510	£182,918	£9,408

Comparison between JUPRA and the reformed scheme in terms of net value of pension:

Salary Group	Length of Service (years)	Net Value of Pension		Change in net value
		JUPRA	Reformed scheme	
4	15	£1,792,264	£1,650,239	-£142,025
6.1	15	£1,340,777	£1,225,565	-£115,212
7	20	£1,434,123	£1,310,889	-£123,233

Comparison between FPJPS and the reformed scheme in terms of net value of pension:

Judicial Office	Length of Service (years)	Net Value of Pension		Change in net value
		FPJPS	Reformed scheme	
Deputy High Court	15	£262,523	£235,746	-£26,776
Deputy District	20	£205,296	£182,918	-£22,378

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Comparison between NIJPS (salaried) and the reformed scheme in terms of annual pension:

Salary Group	Length of Service (years)	Annual Pension		Change in value
		NIJPS	Reformed scheme	
4	15	£42,567	£70,838	£28,271
6.1	15	£35,688	£52,608	£16,920
7	20	£40,692	£56,271	£15,579

Comparison between NIJPS (fee-paid) and the reformed scheme in terms of annual pension:

Judicial Office	Length of Service (years)	Annual Pension		Change in net value
		NIJPS	Reformed scheme	
Deputy High Court	15	£9,392	£10,120	£728
Deputy District	20	£7,287	£7,852	£565

Comparison between JUPRA and the reformed scheme in terms of annual pension:

Salary Group	Length of Service (years)	Annual Pension				Change in annual pension excl. lump sum
		JUPRA		Reformed scheme		
		Pension	Lump sum	Pension	Lump sum	
4	15	£70,838	£150,766	£70,838	£0	£0
6.1	15	£52,608	£118,369	£52,608	£0	£0
7	20	£56,271	£126,610	£56,271	£0	£0

Comparison between FPJPS and the reformed scheme in terms of annual pension:

Judicial Office	Length of Service (years)	Annual Pension				Change in annual pension excl. lump sum
		FPJPS		Reformed scheme		
		Pension	Lump sum	Pension	Lump sum	
Deputy High Court	15	£10,120	£22,769	£10,120	£0	£0
Deputy District	20	£7,852	£17,667	£7,852	£0	£0

4. Further scheme information

Partnership Pension Account

- 4.1 Under NIJPS, members of the judiciary are able to join the Partnership Pension Account (PPA) which is a tax-registered stakeholder scheme. The PPA is offered to all judicial office holders eligible to join NIJPS, and can be opted for in lieu of joining the career average scheme. By opting for the PPA, a member is not able to accrue benefits in the career average scheme.
- 4.2 **We propose removing the option of a Partnership Pension Account alongside the reformed scheme. This would also apply to current PPA members, who from 2022 would only be eligible for membership of the reformed scheme.**
- 4.3 We would welcome views on whether removing this option would impact members.

Judges in receipt of Transitional Protection Allowance

- 4.4 Judges who chose to opt out of NIJPS and were eligible instead to receive a 'Transitional Protection Allowance' (TPA) alongside their salary from April 2015 would also be eligible to join the reformed scheme.
- 4.5 TPA was offered to the judiciary as an option for those judges for whom joining a tax-registered scheme would result in significant financial impacts because of the implications of pre-existing tax-protected allowances. This would no longer be an issue under the reformed scheme as it is a tax-unregistered scheme. It is therefore proposed that the TPA would stop being paid to those judges who are in receipt of it upon the implementation of the reformed scheme and they would then be eligible to accrue benefits in the reformed scheme.
- 4.6 We would welcome any views on our proposal to remove the TPA and moving those judges into the reformed scheme.

Leaving the reformed scheme

- 4.7 We propose to keep the regulations surrounding leaving the reformed scheme the same as those for leaving NIJPS. This includes the rules concerning early retirement and late retirement which are outlined earlier in this consultation. We also propose to

replicate the provisions set out in NIJPS concerning deferment, partial retirement, medical retirement, death in service, the nomination of beneficiaries, dependants' pensions and children's pensions.

Cost control mechanism

- 4.8 The Public Service Pensions Act (Northern Ireland) 2014 provides for the costs of the public service schemes to be measured via regular actuarial valuations of the schemes, and for the establishment of a cost control mechanism to ensure that these costs remain sustainable.
- 4.9 It should be noted that the JUPRA scheme currently has no cost control mechanism. Since the reformed scheme would involve re-opening or recreating JUPRA and modernising it in line with the Hutton recommendations, a cost control mechanism for JUPRA would be provided for in legislation and a new baseline for the cost control mechanism would be provided.
- 4.10 The cost control element of the 2016 valuation process was paused in January 2019, following the Court of Appeal's judgment in the *McCloud* and *Sargeant* cases. HMT and the Department of Finance in Northern Ireland have recently announced, alongside their consultation on wider public service pension reform, that the pause should be lifted. Accordingly, preparations are in hand to complete the cost control element of the 2016 valuations.
- 4.11 The outcome of the cost control element of the 2016 valuations will not affect the proposed design of the reformed scheme. It is not intended to make any changes to this proposal as a result of a breach of the floor or ceiling of the cost cap mechanism arising from the 2016 valuations.

Administration

- 4.12 It is also intended to amend legislation so that the provisions set out in the Public Service Pensions Act (Northern Ireland) 2014 with regard to the administration of the scheme also apply to the reformed scheme. These provide for certain information about benefits and the scheme to be provided to members, as well as the records and regulatory oversight that a scheme manager must have over a public service pension scheme.

Governance framework

4.13 In line with the Hutton recommendations and other public service pension schemes, the standardised governance framework, established in the Public Service Pensions Act (Northern Ireland) 2014 would apply to the reformed scheme. There would therefore be a Responsible Authority for the scheme, a Scheme Manager responsible for administering the scheme and two governance boards, a Pension Board and a Scheme Advisory Board, in line with the requirements of the Public Service Pensions Act (Northern Ireland) 2014. The primary responsibility of the Judicial Pension Board, as set out in the Public Service Pensions Act (Northern Ireland) 2014, would be to assist the Scheme Manager in relation to the compliance with scheme regulations and relevant legislation with regards to the governance and administration of the scheme.

Interaction with other consultations

4.14 The proposals addressed in this consultation paper have been developed in coordination with ongoing work surrounding judicial pensions and policy. MoJ has been consulting on amendments to the Fee-Paid Judicial Pension Scheme (FPJPS), proposals to address the discrimination identified in the *McCloud* judgment, and the judicial mandatory retirement age. DoJ is consulting on proposals to address the discrimination identified in the *McCloud* judgment and amendments to the judicial mandatory retirement age. While it is expected that interactions between consultations will be limited, respondents may find it useful to cross reference these consultations when providing a response.

Proposals to address the discrimination identified in the *McCloud* judgment

4.15 DoJ is consulting on proposals to address the discrimination for all affected judges in scope of the *McCloud* judgment. In 2015, judges were moved from JUPRA and FPJPS into NJPS. However, older judges remained in JUPRA. In December 2018, the Court of Appeal held that the age-based protections offered to older judges constituted unlawful direct age discrimination. The proposals for rectifying the position can be found on the DoJ website.

Judicial mandatory retirement age

4.16 DoJ is also consulting on proposals to increase the judicial mandatory retirement age (MRA). Current legislation sets the MRA for most judicial office holders at the age of 70. The proposals in the 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. This consultation is also available on the DoJ website.

Questionnaire

The department welcomes the views of consultees relating to all sections of this consultation by 9 December 2020. In particular, comments are welcomed on the following areas:

Features of the scheme

- Do you have any views on the implementation of a uniform contribution rate?
- What are your views on our proposal to remove the option to open a Partnership Pension Account in lieu of joining the reformed scheme?
- Do you have any views on the proposal to cease paying the Transitional Protection Allowance on introduction of the reformed scheme and move judges who opted for the TPA into the reformed scheme?
- Do you have any views on any of the other scheme features that have been outlined in this consultation document?

Equality

- Do you have any concerns that the proposals could result in individual groups being disproportionately affected by the reforms?
- We would welcome comments on whether the equality impacts of our proposals have been correctly identified.

Attractiveness of the scheme

- If you are already a member of the judiciary, would the pension changes proposed make you more inclined or less inclined to encourage suitable people to apply to the judiciary?
- If the reformed scheme would not make you more inclined to encourage other suitable people to apply, what would make the proposals more attractive?
- If you are not already a member of the judiciary, but a prospective applicant to the bench, would the pension changes proposed influence your decision on whether you want to pursue a career within the judiciary?
- If the reformed scheme would not influence your decision on wanting to pursue a career within the judiciary, what additional proposals would?
- Do you think the proposed scheme would contribute towards addressing the recruitment issues highlighted in the consultation, in particular attracting high quality candidates from the private sector?
- If you do not think the reformed scheme would address these issues, what would make the proposals more attractive to high quality candidates?

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- Do you think the proposed scheme would contribute towards addressing the retention issues highlighted in the consultation?
- Are there any other scheme features or benefits that are not addressed in this consultation that you would like to see included?

However, this list is not meant to be exhaustive or exclusive, and the department welcomes views of consultees on all aspects of the scheme.

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 (reformed) scheme up to the current date.

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

Actuarial adjustment: The adjustment applied to a member's accrued pension to take account of the fact that it is being paid early, or in some cases late. The adjustment is determined by the scheme manager after consultation with the scheme actuary or taking into account factor tables prepared by the scheme actuary. The factor tables are calculated in a way that aims to reflect fairly the fact that benefits are expected to be in payment for a longer, or a shorter, period.

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 rate: 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 sector 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 such a scheme.

Employer cost cap: The employer cost cap is a mechanism designed to ensure a fair balance of risks between scheme members and the taxpayer. Each public service pension scheme must set a cap, expressed as a percentage of pensionable earnings of all members of the scheme. If a future valuation shows that the costs of the scheme have risen more than two percentage points above the cap, or fallen two percentage points below the cap, action must be taken to bring the costs of the scheme back to the cap.

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.

Normal pension age (NPA): The age at which pension benefits would be payable in full.

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.

Pension Board: The Pension Board is to support the Scheme Manager in matters relating to good governance and administration. This will include both departmental and judicial representatives and will be independently-chaired.

Pensionable earnings: Pensionable earnings are the earnings against which the scheme member and the employer will pay contributions and is the salary or fees used to calculate the pension earned in any given year.

Pensionable service: A period where the scheme member is an active member.

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

Responsible Authority: The Responsible Authority has the power to make scheme regulations. The Responsible Authority in the reformed scheme is to be the Lord Chancellor.

Scheme Advisory Board: The Scheme Advisory Board is a group which sits at the request of the Responsible Authority to consider the desirability of any potential changes to schemes.

Scheme Manager: The Scheme Manager is responsible for managing and administering the scheme and any statutory pension scheme connected with it.

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

Valuation: A report, carried out by the scheme actuary, of the financial position of a defined benefit pension scheme, which informs the future contribution rates needed.

How to respond

How to respond: via email to AtoJ.Consultation@justice-ni.x.gsi.gov.uk

The Department welcomes views on the proposals for a reformed judicial pension scheme. The consultation will run from 14 October 2020 and all responses should be submitted by 9 December 2020.

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.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public').

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Publication of Response

A paper summarising the responses to this consultation will be published. The response paper will be available at <https://www.justice-ni.gov.uk/consultations>.

Impact Assessment and Equalities

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 dependents; and
- have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

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.

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. These impact assessments have been published on the Department of Justice website alongside this consultation (<http://www.justice-ni.gov.uk>) The Department welcomes views on these screening documents.

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.

Annex A: List of consultees

We particularly invite responses from representatives from or members of the organisations listed 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 Minister and deputy First Minister of Northern Ireland

Judges' Council (Northern Ireland)

Judicial Pension Board (Northern Ireland)

Lord Chief Justice of Northern Ireland

Northern Ireland Judicial Appointments Commission

Office of the President of the Appeals Tribunal for Northern Ireland

Office of the President of the Industrial and Fair Employment Tribunals Northern Ireland

The Bar Council of Northern Ireland

The Law Society of Northern Ireland

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

Annex B: Judicial Salaries from 1 October 2019

Salary Group	Salaries with effect from 01/04/2019 ¹⁵
1	£262,264
1.1	£234,284
2	£226,193
3	£215,094
4	£188,901
5+	£160,377
5	£151,497
6.1	£140,289
6.2	£132,075
7	£112,542
8	£89,428

¹⁵ Correct as of 31 March 2020



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

DOJ Section 75

EQUALITY SCREENING FORM

Title of Policy:

Proposals for a reformed judicial pension scheme 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 Annex B 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

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 for a reformed judicial pension scheme

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

This consultation seeks views on proposals to reform judicial pension arrangements.

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

Like the Ministry of Justice (MoJ) we intend to consider and modernise the provisions in the Judicial Pensions and Retirement Act 1993 (JUPRA) (hereafter described as the ‘reformed scheme’) for future accruals, so that any new pension scheme would be in line with the Hutton principles but also non-registered for tax purposes. Both judges who are accruing benefits under the existing provisions of JUPRA or its fee-paid equivalent, the Fee-Paid Judicial Pension Scheme (FPJPS) and those who are members of the 2015 scheme, the Northern Ireland Judicial Pension Scheme (NIJPS), would transfer into the reformed section of the scheme and accrue benefits under it. The reformed scheme features are outlined in the consultation document. It is important to note that pension benefits that have already been earned would be protected and, for those currently in final salary schemes, these benefits would be linked to their salary when they retire or leave judicial office.

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

While the proposed scheme has been designed to be more beneficial compared to the Northern Ireland Judicial Pension Scheme (NIJPS) for all members of the judiciary, the benefits are particularly advantageous for senior members of the judiciary, who are typically older, male and less diverse in terms of race. This is at least in part because senior members of the judiciary experienced particularly adverse impacts from the move from the legacy schemes to NIJPS in 2015. The same scheme design applies to all members of the judiciary and it is our assessment that potential differential impacts are proportionate to achieve the policy aim of addressing the recruitment and retention issues within the judiciary, and maintain equivalence between pension benefits for the devolved tribunals judiciary in Northern Ireland and the courts judiciary in Northern Ireland (whose terms and conditions of appointment and remuneration is a matter for the Lord Chancellor) and equivalents across Great Britain.

Name of the Policy/ decision to be screened

Who initiated or wrote the policy?

The Department of Justice.

Who owns and who implements the policy?

The Department of Justice.

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 these proposals the DoJ will also be consulting on proposals to remedy *McCloud* 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	<p>While the proposed scheme will treat all judges in scope equally, it is likely to confer a greater benefit to those in more senior judicial offices. Naturally these office holders are disproportionately older. This is at least partly because senior members of the judiciary experienced particularly adverse impacts from the move from the legacy schemes to NIJPS in 2015. The same scheme design applies to all members of the judiciary and it is our assessment that potential differential impacts are proportionate to achieve the policy aim of addressing the recruitment and retention issues within the judiciary, and maintain equivalence between pension benefits for the devolved tribunals judiciary in Northern Ireland and the courts judiciary in Northern Ireland (whose terms and conditions of appointment and remuneration is a matter for the Lord Chancellor) and equivalents across Great Britain.</p>
Marital status	None.
Sexual orientation	None
Men and Women generally	None
Disability	None
Dependants	None.

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	While the proposed scheme will treat all judges in scope equally, it is likely to confer a greater benefit to those in more senior judicial offices. Naturally these office holders are disproportionately older. This is at least partly because senior members of the judiciary experienced particularly adverse impacts from the move from the legacy schemes to NIJPS in 2015. The same scheme design applies to all members of the judiciary .We do not consider the design of the proposals results in any direct 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 for a reformed judicial pension scheme, will apply to all scheme members within scope of the scheme 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 for a reformed judicial pension scheme, will apply to all scheme members within scope of the scheme 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.

While the proposed scheme has been designed to be more beneficial compared to the Northern Ireland Judicial Pension Scheme (NIJPS) for all members of the judiciary, the benefits are particularly advantageous for senior members of the judiciary, who are typically older, male and less diverse in terms of race. This is at least in part because senior members of the judiciary experienced particularly adverse impacts from the move from the legacy schemes to NIJPS in 2015. The same scheme design applies to all members of the judiciary and it is our assessment that potential differential impacts are proportionate to achieve the policy aim of addressing the recruitment and retention issues within the judiciary, and maintain equivalence between pension benefits for the devolved tribunals judiciary in Northern Ireland and the courts judiciary in Northern Ireland (whose terms and conditions of appointment and remuneration is a matter for the Lord Chancellor) and equivalents across Great Britain.

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.

Not applicable

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 A Consultation on Proposals for a reformed judicial pension scheme
--

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.

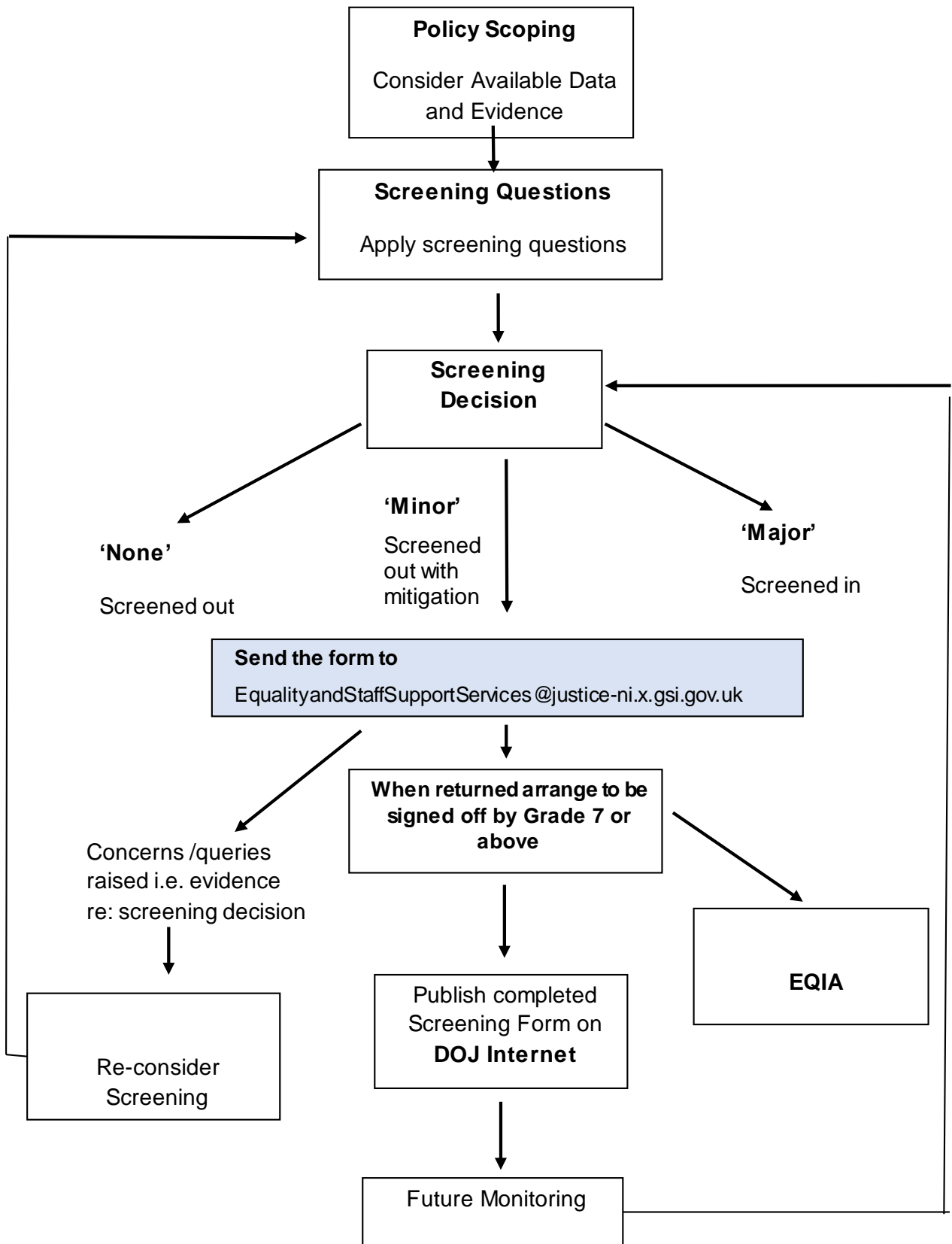
The Screening exercise is now complete.

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 D - 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 proposals for a reformed 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.

Proposals for a reformed judicial pension scheme Consultation

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

The aim is that the reformed judicial pension scheme will be open to eligible salaried and fee-paid judicial office holders from 2022. The policy aim is to equalize future treatment across the judiciary, address recruitment and retention issues and maintain equivalence between pension benefits for the devolved tribunals judiciary in Northern Ireland, and the courts judiciary in Northern Ireland (whose terms and conditions of appointment and remuneration are a matter for the Lord Chancellor) and equivalents across Great Britain.

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 proposed new pension scheme will affect holders of judicial office who are within scope. 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

Published Statistics

Consultation with Other Organisations

Research Papers

Surveys or Questionnaires

Other Publications

Other Methods or Information Sources (include details in Question 3C below).

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 proposed new 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:	
Date:	21/ 09/20
Rural Needs Impact Assessment approved by:	Laurene McAlpine
Position/Grade:	Grade 5
Division/Branch:	Civil Justice Policy Division
Signature:	
Date:	21 / 09/20

Title: Proposals for a reformed judicial pension scheme.	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) Like the MoJ we intend to consider and modernise the provisions in the Judicial Pensions and Retirement Act 1993 (JUPRA) for future accruals, so that any new pension scheme would be in line with the Hutton principles but also non registered for tax purposes. The consultation focuses on equalising future treatment across the whole judiciary by moving all judges to the reformed scheme, which we aim to do by 2022.	
What are the policy objectives and the intended effects? (7 lines maximum) The aim is that the reformed scheme will be open to eligible salaried and fee-paid judicial office holders from 2022. All salaried and fee-paid judicial office holders who are in office when the scheme commences, and who are eligible for a judicial pension, would join the reformed scheme automatically in respect of service in that office unless they decide to opt out of the scheme.	
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum) 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 proposals to remedy the NIJPS that have been identified by the Ministry of Justice in relation to the Judicial Pension Scheme.	
Will the policy be reviewed? It will be reviewed	If applicable, set review date: Month/Year

Cost of Preferred (or more likely) Option		
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 checked="" 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"/> <input 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"/> <input 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

Summary: Analysis and Evidence

Policy Option 1

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.

The consultation seeks views on proposals to reform judicial pension arrangements. Like the MoJ we intend to consider and modernise the provisions in the Judicial Pensions and Retirement Act 1993 (JUPRA) (hereafter described as the 'reformed scheme') for future accruals, so that any new pension scheme would be in line with the Hutton principles but also non-registered for tax purposes. Both judges who are accruing benefits under the existing provisions of JUPRA or its fee-paid equivalent, the Fee-Paid Judicial Pension Scheme (FPJPS) and those who are members of the 2015 scheme, the Northern Ireland Judicial Pension Scheme (NIJPS), would transfer into the reformed section of the scheme and accrue benefits under it.

The Public Service Pensions Act (Northern Ireland) 2014 introduced a statutory framework for reform of public service pension schemes. Following consultation with the judiciary and a public consultation exercise, NIJPS was established under the Judicial Pensions Regulations (Northern Ireland) 2015. For most judges, membership of NIJPS is less financially beneficial compared to the legacy schemes. This is primarily because NIJPS is a registered scheme for tax purposes, meaning members are subject to annual and lifetime allowance limits on the tax-relieved benefits accrued within the scheme.

The introduction of NIJPS included transitional provisions to protect those closest to retirement from the effects of the 2015 pension reforms. In *McCloud*,¹⁶ a group of younger judges brought legal action challenging the lawfulness of these provisions, and in December 2018 the Court of Appeal held that the transitional protections constituted unlawful direct age discrimination. The case was remitted to the Employment Tribunal to determine a remedy for claimants. The Department of Justice (DoJ) proposals for addressing past discrimination for non-claimants are set out in a separate consultation document which is available on the DoJ website. This consultation focuses on equalising future treatment across the whole judiciary by moving all judges into the reformed scheme, which we aim to do in 2022.

In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure¹⁷ which highlighted escalating recruitment and retention problems at all levels of the judiciary, particularly in England and Wales. It concluded that these problems were caused principally by the 2015 pension reforms and subsequent changes to pension tax thresholds.

¹⁶ *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

¹⁷ <https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018>

Responding to the SSRB's review in June 2019, the UK Government made a public commitment to develop a pensions-based solution for the whole judiciary, which would aim to address in the long-term, the recruitment and retention problems identified by the SSRB. This consultation sets out our proposals for delivering this commitment for the devolved tribunals judiciary in Northern Ireland who are members of the NIJPS. The aim is that the reformed scheme will be open to eligible salaried and fee-paid judicial office holders from 2022. All salaried and fee-paid judicial office holders who are in office when the scheme commences, and who are eligible for a judicial pension, would join the reformed scheme automatically in respect of service in that office unless they decide to opt out of the scheme.

We are proposing to provide for a modernised scheme for future accruals from April 2022 by making reforms to the provisions contained in JUPRA. The intention is that all non-JUPRA judicial pension arrangements¹⁸ would close to future accruals in 2022 – JUPRA provisions will then be amended to provide for future accruals in the reformed scheme. From the implementation date of the reformed scheme, current JUPRA members, including those who would be in JUPRA as a result of the *McCloud* remedy, would remain in JUPRA, but as members of the modernised section of the scheme.

These proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector. Our proposals, if accepted and implemented, will incur costs for the DoJ to fund the proposed pension scheme.

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. This consultation therefore mirrors the proposals made by the MoJ in regard to the reform of their Judicial Pension Scheme.

¹⁸ The legacy schemes including the 1981 Scheme established under the Judicial Pensions Act 1981 the New Judicial Pension Scheme 2015 established under the Judicial Pension Regulations 2015; and the Fee-Paid Judicial Pensions Scheme established under the Judicial (Fee-Paid Judges) Regulations 2017.