



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Proposals for a reformed Northern Ireland judicial pension scheme

Response to Consultation

29 March 2021

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Introduction and Contact details

This document is the response to the consultation, issued by the Department of Justice (“the Department”), on the Proposals for a reformed Northern Ireland Judicial Pension scheme. The consultation ran from 14 October 2020 to 9 December 2020.

It set outs:

- The background to the consultation;
- further detail on some of the issues raised in the consultation; and
- next steps.

If you have any questions about the consultation process or if you wish to receive a copy of this document in an alternative format, please email the Department of Justice at AToJ.Consultation@justice-ni.gov.uk

This report is also available on the Department of Justice website.

Executive Summary

The consultation paper setting our proposals for a reformed judicial pension scheme was published on 14 October 2020. It invited comments on the proposals to provide for a modernised scheme for future accruals from April 2022, subject to approval of the necessary legislation. The proposed reforms were intended to deliver on the commitment the UK government made to develop a pensions-based solution to the serious recruitment and retention problems identified by the Senior Salaries Review Body (SSRB) in its Major Review of the Judicial Salary Structure, published in 2018.

We proposed that many features of the reformed scheme would be in line with the main principles of the 2016 pension reforms while retaining some key elements of the pension scheme set out in the Judicial Pensions and Retirement Act 1993 (JUPRA).

We received no responses to the consultations. However we are aware that there were some issues about the proposal to introduce a uniform member contribution rate of 4.26%. The concern was about the impact that this change would have on the take-home pay of Salary Group 7 judges currently in the 2015 scheme. Judges will therefore be given the option of mitigating this implication of moving to the reformed scheme, allowing them to make reduced contributions to the scheme in return for a commensurate reduction in the accrual rate. This option will last for a fixed period of three years, after which judges who have taken the option will move to the uniform contribution rate of 4.26%.

Apart from this additional feature, we intend to implement the features of the reformed scheme in line with the proposals set out in the consultation document we published in October 2020.

We are therefore progressing work for the legislation required to implement a new reformed scheme as outlined in the consultation.

Overview

1. The consultation paper setting out our proposals for a reformed judicial pension scheme was published on 14 October 2020. It proposed that judges currently 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, Northern Ireland Judicial Pension Scheme (NIJPS), would, subject to the passage of the necessary legislation, move into the reformed scheme from April 2022 and accrue benefits under it.
2. The proposed reforms are intended to mirror, in respect of devolved judges in Northern Ireland, the UK Government's commitment to develop a pensions-based solution to the serious recruitment and retention problems identified by the Senior Salaries Review Body (SSRB) in its Major Review of the Judicial Salary Structure, published in 2018. They also aim to equalise future treatment across the judiciary by moving all judges into the one scheme.
3. We proposed that many of the features of the reformed scheme would be in line with the main principles of the 2015 pension reforms. For this reason, we proposed a career average accrual model, no restriction on the number of accruing years in service and linking the normal pension age to State Pension age (or 65 years if this is higher). Our proposals would also allow members to commute part of their annual pension in exchange for a one-off lump sum on retirement.
4. The reformed scheme would, however, retain some key elements of JUPRA, notably its tax-unregistered status. Several of the scheme features proposed flowed 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; and a commutation supplement would also be paid to members who commute their pension in exchange for 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% accrual rate in NIJPS.

5. The aim is that the reformed scheme will be open to all eligible salaried and fee-paid judicial office holders from April 2022, subject to the successful passage of the necessary legislation. All salaried and fee-paid judicial office holders who are in office when the scheme commences, and who are eligible for a judicial pension, will join the reformed scheme automatically in respect of service in that office unless they decide to opt out of the scheme.

Detail- Scheme features

Methodology

6. The consultation paper set out the methodology and scenarios used when modelling how the reformed pension scheme would compare to JUPRA/FPJPS and NIJPS. We accept that the impact of our proposals on individual judges will vary depending on the judge's personal circumstances.

Career average scheme

7. The move to a career average accrual model is an important feature of all public service pension schemes following Lord Hutton's review¹. Using a member's career average salary to calculate their pension benefits is appropriate as it ensures that the unfairness of disproportionate benefits to those who receive late promotions or large increases in salaries is removed. A career average scheme also distributes the risks of the pension scheme between the member and taxpayer more evenly than a final salary scheme and gives members a good level of certainty about the pension that they have accrued throughout their career.

No Service Cap

8. We intend to proceed on the basis that there will be no limit (subject to the Mandatory Retirement Age) on the number of years that a judge can accrue reckonable pensionable service in the reformed scheme, which mirrors the provisions set out in the NIJPS. This proposal is also aligned with the Hutton review which outlines that "caps on total pension accrual...should be removed or significantly lifted so as not to discourage people from having a longer working life."² It also ensures that all judicial service is fully recognised and may also prove helpful in attracting younger applicants.
9. We acknowledge that this feature will enable judges currently in JUPRA who may have reached, or be near to reaching the 20-year accrual limit to continue

¹ Independent Public Service Commission's review of public service pension provision, chaired by Lord Hutton of Furness- final report available at <https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton>

² Independent Public Service Pensions Commission: Final Report- 10 March 2011, para 3.99, p82.

to accrue a judicial pension once they join the reformed scheme. In effect, this may help to retain judges who were planning to retire before their pension age because of the service cap.

Normal pension age linked to State Pension age

10. We maintain the position outlined in the consultation document, that linking the normal pension age to State Pension age, in line with Hutton principles, will ensure that public service pensions are affordable in the long term, fair between generations and will provide a way to manage future expected increases in life expectancy.
11. In the reformed scheme, judges will still be able to draw their pension before the State Pension age, currently from the age of 55³, subject to meeting the minimum qualifying service requirement and an early retirement reduction, determined after consultation with the scheme actuary.

Early retirement reduction and late retirement addition

12. The consultation document proposed an early retirement reduction and later retirement addition for the reformed scheme and both of these will be included in the reformed scheme. We will not be offering additional benefits for late retirement because the late retirement addition will be calculated using factors provided by the scheme actuary to reflect the fact that the pension will be in payment for a shorter time than would have been the case if the member had retired at their State Pension age. We consider this a fair way to ensure that a member is not penalised for taking their pension after the State Pension age.

Tax-unregistered status

13. We plan to proceed with the proposal that the reformed scheme should be tax-unregistered. As outlined in the consultation, many top legal professionals may have accrued significant private sector pensions approaching the lifetime allowance limit, in which case a tax-registered pension scheme can be a disincentive to leave private practice and join the bench. The status of the

³ In 2014, the UK Government announced it would increase the minimum pension age to 57 from 2028.

reformed scheme should ensure that we are able to recruit high-quality applicants from private practice.

Uniform contribution rate

14. Under the proposals set out in the consultation document, NIJPS judges in Salary Group 7 would see a reduction in their take-home pay of around £1,500 a year. The reasons why the uniform rate would reduce the take-home pay of certain judges is explained in further detail in paragraphs 16-20.
15. The consultation explained that judges in this category would benefit overall insofar as their total remuneration package, taking account of pension, would be better in the reformed scheme than in NIJPS. However there may be a view that the reduction in take-home pay would not be outweighed by the improved benefits in the reformed pension scheme. This is explored further below.

Impact on Salary Group 7 judges moving from NIJPS

16. Salary Group 7 judges moving from NIJPS to the reformed scheme and some fee-paid judges would see a reduction in their take-home pay with the contribution rate set at 4.26%. NIJPS Salary Group 7 judges would be impacted in this way as a consequence of the level of tax relief they currently receive on their contributions in a registered scheme. This group of judges currently benefit from a marginal tax relief rate of 60% because of the reduction in the Personal Allowance earnings between £100,000 and £125,000 (full-time Salary Group 7 judges earn £114,793).
17. The current structure of member contributions rates in NIJPS was designed to take account of the point at which income tax rates of 40% and 45% impact the member. It does not, however, take account of the 60% tax relief that certain judges receive.
18. This means that judges in this group currently have a contribution rate that is equivalent to 2.94% in a tax-unregistered scheme, whereas the equivalent contribution rates in NIJPS for full-time salaried judges at other tiers equate to 4.41% or above. The current benefits for Salary Group 7 judges are clearly

illustrated by showing the member contribution rates that would be required in an unregistered scheme to give the same impact on net pay as in NIJPS.

Current NIJPS contribution rates and cost to member per year

Salary Group/Scheme	Salary	Member contribution rate	Impact on net pay
4 – Reg	£192,679	8.05%	£8,531
5 - Reg	£154,527	8.05%	£7,237
5.2 - Reg	£143,095	7.35%	£6,310
7 – Reg	£114,793	7.35%	£3,375
8 – Reg	£91,127	7.35%	£4,019

Equivalent contribution rates for NIJPS members in tax-unregistered scheme

Salary Group/Scheme	Salary	Member contribution rate	Impact on net pay
4 – Unreg	£192,679	4.43%	£8,531
5 - Unreg	£154,527	4.68%	£7,237
5.2 - Unreg	£143,095	4.41%	£6,310
7 – Unreg	£114,793	2.94%	£3,375
8 – Unreg	£91,127	4.41%	£4,019

19. Owing to the additional tax relief that Salary Group 7 judges receive in a tax-registered scheme, the contribution rate in the reformed scheme would need to be set at a much lower rate for these judges to avoid a reduction in their take-home pay.
20. Accordingly, it is the move from a tax-registered scheme, where these judges benefit disproportionately from the tax-relief on their contributions compared to the rest of the judiciary, to a tax-unregistered scheme, where is no tax relief on their contributions, that results in the reduction in take-home pay. As all other

full-time salaried judges pay an equivalent rate of 4.41% or above in a tax-unregistered scheme, our proposed rate of 4.26% is lower than the rate most full-time salaried judges currently pay.

A time limited option

21. The rationale for a uniform contribution rate is that it will ensure fairness between members, remove anomalies that occur at the boundaries of different bands in a tiered structure, and ensure that fee-paid judges who sit the same number of days, regardless of their sitting pattern, contribute the same amount to their pension.

22. However we have decided to give current members of the judiciary the option to pay a lower contribution rate with a correspondingly reduced accrual rate for the first three years of the reformed scheme. Under this option, a judge would be able to pay a contribution rate of 3% instead of 4.26%, and their accrual rate would be reduced from 2.5% to 2.42%. This would be a one-off decision that the member would exercise when the reformed scheme is implemented. The option would be time-limited. Three years after implementation of the reformed scheme, the option would expire and all members of the scheme would, from that point, pay a uniform contribution rate of 4.26% and have an accrual rate of 2.5%, as outlined in our consultation.

23. This option gives NIJPS Salary Group 7 judges the flexibility to broadly maintain their take-home pay if they wish to do so, in return for a slightly lower rate of pension accrual for the fixed period of three years. It will allow judges to adjust to the new contribution rate and give them time to prepare for the application of the uniform contribution rate of 4.26% after the scheme has been operational for three years. A judge in Salary Group 7 moving to the reformed scheme from NIJPS would see their take-home pay reduced by £69 a year if this option is taken. The option will also give fee-paid judges the opportunity to increase their take-home pay if the number of days they sit, and their sitting pattern, would mean that they would face a reduction in their take-home pay under the uniform rate.

Comparison of uniform rate proposal with alternative lower contribution rate option

	Member contribution rate	Accrual rate
Default position	4.26%	2.50%
Time-limited option	3.00%	2.42%

24. The tables below compare the current contribution rates with a 3% contribution rate that judges will be able to choose under this option.

Comparison between NIJPS (salaried) and a 3% contribution rate

NIJPS (salaried)				Contribution Rate 3%			
Salary Group	Salary	Rate	Annual Cost ⁴	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	8.05%	£8,531	3.00%	£5,780	£2,751	£229
5	£154,527	8.05%	£7,237	3.00%	£4,636	£2,601	£217
5.2	£143,095	7.35%	£6,310	3.00%	£4,293	£2,017	£168
7	£114,793	7.35%	£3,375	3.00%	£3,444	-£69	-£6

⁴ Impact on take-home pay, allowing for both member contributions and income tax relief on those contributions. Analysis presumes that this is the members only salary. For members with any outside income, impacts may be different.

Comparison between JUPRA and a 3% contribution rate:

JUPRA				Contribution Rate 3%			
Salary Group	Salary	Rate ⁵	Annual Cost ⁶	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	4.61%	£8,873	3.00%	£5,780	£3,093	£258
5	£154,527	4.46%	£6,897	3.00%	£4,636	£2,261	£188
5.2	£143,095	4.41%	£6,310	3.00%	£4,293	£2,017	£168
7	£114,793	4.41%	£5,062	3.00%	£3,444	£1,618	£135

25. It is important to emphasise that this will be an optional feature for judges and that it will be only be available to those who are transferring into the reformed scheme. It will not be available for judges who take up service on or after the reformed scheme is implemented. This option is intended to mitigate the negative impact of the move to the reformed scheme for those judges who have been in another judicial pension scheme and whose take-home pay may be impacted by their transition to the reformed scheme.
26. Judges who do not take up the option to reduce their contribution rate will be subject to the uniform rate of 4.26% and their accrual rate will be 2.5%. Once the reformed scheme has been up and running for three years, all judges will be subject to the same contribution and accrual rate.

⁵ Rate shown is the aggregate of the different member contribution rates that exist in JUPRA to reflect the tiered contribution structure.

⁶ Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

Option to commute, with a commutation supplement

27. The consultation document proposed that members of the reformed scheme would be able 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. The maximum amount a member would be able to commute would be 35.7% of their pension.
28. The proposed commutation ratio of 12:1 for a commuted lump sum under the reformed scheme is consistent with other public service schemes. Additionally, the maximum amount a member would be able to commute is similar to the provisions that allow for tax-relief when commuting a lump sum under NIJPS. We consider this a fair approach that provides valuable flexibility for Judges in retirement.
29. We recognise that the tax-unregistered status of the reformed scheme necessitates a commutation supplement so that commutation remains an attractive option for members.

Loss of the automatic lump sum

30. We recognise that the loss of the automatic lump sum may be keenly felt by JUPRA/FPJPS members, but consider that the commutation offer is fair, affordable and sustainable in the long-term. Under the reformed scheme, there will only be one scheme under which judges are able to accrue benefits – the same scheme design will apply to all judges – in line with our policy aim of equalising future treatment across the judiciary.
31. It is important to note that all benefits previously accrued in predecessor scheme will be protected, including the preservation of the automatic lump sum in respect of service in those schemes. The introduction of the reformed scheme will not impact the benefits the member has previously accrued under other schemes up until April 2022. Judges moving to the reformed scheme from JUPRA/FPJPS, and those who have built up any benefits in JUPRA/FPJPS before moving to NIJPS, will have their final salary link and automatic lump sum protected for the pension they have accrued up until April 2022. If a member

was receiving benefits under NIJPS before moving across to the reformed scheme, they would also be able to commute a lump sum for the pension they have accrued under NIJPS.

Accrual rate set at 2.5%

32. The consultation document proposed an accrual rate in the reformed scheme of 2.50% (1/40th), the same as it is in JUPRA/FPJPS and an increase on the rate in NIJPS, which is 2.32%. The increase in the accrual rate, compared with NIJPS will ensure that judges currently in NIJPS would be in at least the same, if not better, position under the reformed scheme. The increase in accrual rate compared to NIJPS also ensures that even members facing a reduction in their take-home pay will see an increase in their remuneration overall.

Dependant benefits

33. The consultation outlined the proposal for the reformed scheme to pay a pension to a surviving spouse or civil partner, or a surviving adult dependent when there is no surviving spouse or civil partner, upon a member's death, at a pension age equal to 3/8 (37.5%) of the scheme member's pension, payable for life.
34. We accept that some members may be unhappy with the proposal to reduce the dependant benefit rate compared to JUPRA. However, it is necessary for dependant benefits to remain at 37.5%, as it is in NIJPS, to control the cost of the scheme. Dependents' benefits in the reformed scheme will also have a broader coverage than in JUPRA, for example, it will cover dependents who are not married or in a civil partnership.

Cost control mechanism

35. The Public Service Pensions Act (Northern Ireland) 2014 provides for the costs of the public service schemes to be measured via regular actuarial valuations, and for the establishment of a cost control mechanism to ensure that these costs remain sustainable.

36. The UK Government is committed to implementing a cost control mechanism for pensions across public service schemes. This was one of the key Hutton recommendations, to ensure that the cost of pensions is controlled into the future. As outlined in the consultation, a new target cost (or baseline) will be set for the reformed scheme. This means that the current valuation process will not impact the reformed scheme.

37. The cost cap mechanism, as it is currently designed, ensures that the baseline value of the scheme is maintained; changes arising from the operation of the mechanism are about restoring the value of the benefits to their original level, rather than necessarily cutting them. The cost cap mechanism is also reciprocal so that members are protected from developments that reduce the value of their benefits.

Next steps

38. NIJPS provided devolved judicial office-holders with the same pension entitlements as the excepted judiciary in Northern Ireland and other judicial office-holders across GB. It is considered that we should maintain this parity of pension entitlement under any reformed pension scheme to ensure fairness and facilitate mobility for the judiciary between devolved and excepted judicial roles within Northern Ireland and in roles across the UK. In addition, it would be difficult to justify why the devolved judiciary should *not* be entitled to the same pension provision as the courts judiciary in NI.

39. We are therefore progressing work for the legislation required to implement a new reformed scheme as outlined in the consultation.

Annex A

Updated table to reflect 2020 pay award on member contributions

Comparison between NIJPS and uniform contribution rates on salaried members:

NIJPS (salaried)				Uniform Contribution Rate			
Salary Group	Salary	Rate	Annual Cost ⁷	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	8.05%	£8,531	4.26%	£8,208	£323	£27
5	£154,527	8.05%	£7,237	4.26%	£6,583	£654	£55
5.2	£143,095	7.35%	£6,310	4.26%	£6,096	£215	£18
7	£114,793	7.35%	£3,375	4.26%	£4,890	-£1,515	-£126

Comparison between JUPRA and uniform contribution rate on salaried members:

JUPRA				Uniform Contribution Rate			
Salary Group	Salary	Rate ⁸	Annual Cost ⁹	Rate	Annual Cost	Difference pa	Difference pm
4	£192,679	4.61%	£8,873	4.26%	£8,208	£665	£55
5	£154,527	4.46%	£6,897	4.26%	£6,583	£314	£26
5.2	£143,095	4.41%	£6,310	4.26%	£6,096	£215	£18
7	£114,793	4.41%	£5,062	4.26%	£4,890	£172	£14

⁷ Impact on take-home pay, allowing for both member contributions and income tax relief on those contributions. Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

⁸ Rate shown is the aggregate of the different member contribution rates that exist in JUPRA to reflect the tiered contribution structure.

⁹ Analysis presumes that this is the member's only salary. For members with any outside income, impacts may be different.

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

NIJPS (fee paid) ¹⁰				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	5.45%	£900	4.26%	£1,173	-£273	-£23
Recorder	£20,442	4.60%	£564	4.26%	£871	-£307	-£26
Dep. DJ Part-time judge in Group 7	£16,018	4.60%	£442	4.26%	£682	-£240	-£20

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

NIJPS (fee paid)				Uniform Contribution Rate			
Role	Fees	Rate	Annual Cost	Rate	Annual Cost	Difference pa	Difference pm
Dep. HCJ	£27,526	3.27%	£900	4.26%	£1,173	-£273	-£23
Recorder	£20,442	2.76%	£564	4.26%	£871	-£307	-£26
Dep. DJ Part-time judge in Group 7	£16,018	2.76%	£442	4.26%	£682	-£240	-£20

¹⁰ For all fee-paid examples, we have assumed that the judge will work 30 days spread evenly across the year. NIJPS members are assumed to have a supplementary income and pay a marginal tax rate of 40%.