

EXPLANATORY MEMORANDUM TO
THE JUDICIAL PENSIONS REGULATIONS 2015

2015 No. 182

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument establishes a scheme for the payment of pensions and other benefits to, or in respect of, the judiciary.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 This instrument implements reforms to public service pension schemes in respect of the judiciary under the powers provided in the Public Service Pensions Act 2013 (the Act).
 - 4.2 The Act was enacted in response to the recommendations of the Independent Public Service Pensions Commission (The Commission) led by Lord Hutton of Furness. The Commission published its final report on 10 March 2011. The report recommended a series of changes to public service pension provision in order to preserve the sustainability of the pension schemes in the long term together with a more balanced distribution of costs between the members of the scheme and, via the employer, the taxpayer.
 - 4.3 The Act paved the way for the delivery of these reforms. Under it, new pension schemes are being established for persons in public service. This instrument establishes the reformed scheme for the judiciary. The reforms include, as required by the Act, a pension calculated by reference to the member's career average earnings, a normal pension age equal to the state pension age and provisions on the governance of the scheme.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice, Chris Grayling MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Judicial Pensions Regulations 2015 are compatible with the Convention rights.”

7. Policy background

7.1 The cost of paying for public service pensions has risen significantly in recent years. This increase in the burden on taxpayers and employers, together with worries over the fairness and sustainability of these pensions, led to the Government establishing a Commission that was tasked with undertaking an independent review of public service pensions. This Commission was to make recommendations about how such pensions should be reformed to be sustainable and flexible in the long term.

7.2 Following the publication of the final report of the Commission in March 2011, the Government accepted its recommendations as the basis for its proposed design of reformed pension schemes across the public service.

7.3 After initially consulting with the judiciary in July 2012 on the approach to the reforms, the Lord Chancellor announced in February 2013 the intention to establish a standalone reformed pension scheme analogous with the reformed pension scheme for civil servants, open only to the judiciary.

7.4 The key features of the proposed scheme included: a defined benefit pension that would be based on the members' career average salary instead of a final salary scheme, and that the accrual rate (the amount of pension built up each year) would be 2.32% of annual pensionable earnings. In addition, previous pension accrual was to be protected and increased in line with prices. The scheme's normal pension age (NPA) was to be equivalent to the member's state pension age (SPA); and the facility for the member to retire before or after NPA with their pension adjusted to reflect the different length of time in payment.

7.5 This instrument creates the reformed career average earnings pension scheme for the judiciary. It gives effect to the position set out in response to the consultations with the judiciary, in line with the recommendations of the Commission.

7.6 Specifically, Part 2 establishes the governance arrangements for the scheme while Parts 3 and 4 provides for the scheme membership and the calculation of benefits accrual. Parts 5 and 6 provide details on retirement benefits, including those payable on medical retirement and benefits for pension credit members. Part 7 covers the benefits payable in the event of the death of a member. Part 8 provides for the making of contributions by members and employers, whilst Part 9 covers

transfers into, and out of, the scheme. Part 10 puts in place the measures to control the future costs of the scheme, and Part 11 provides for supplementary and miscellaneous provisions. Schedule 1 makes provisions for payments of extra pension and Schedule 2 deals with the arrangements needed to cover those members who transition from existing judicial pension schemes into the scheme under this instrument. Schedule 3 contains provisions modifying the Pensions Schemes Act 1993 in relation to contracting-out and early leavers from pensionable service, as well as amendments to the Judicial Pensions and Retirement Act 1993 and the Judicial Pensions Act 1981.

- 7.7 Of specific interest may be Part 4 that sets out the basic operation of the career average scheme. This provides for each member to build up a pension each year, calculated as 2.32% of the member's pensionable earnings. This pension is held in a pension account and, at the start of each scheme year (1 April), indexation is applied. The rate of indexation will be equal to the change in prices as provided for in an order made by Her Majesty's Treasury under the Act.
- 7.8 In line with the recommendation of the Commission, the normal pension age of the scheme (the age at which a member is entitled to draw their pension without any reduction for early payment) is equal to the state pension age. This is provided for in Section 10 of the Act.

8. Consultation outcome

- 8.1 The Lord Chancellor initially consulted with the judiciary on the approach to the reforms of judicial pension arrangements in July 2012. A number of potential options were presented at this time, including membership in the reformed pension scheme for civil servants; a standalone pension scheme in line with the Government's preferred design; and, a standalone pension scheme analogous with the reformed pension scheme for civil servants, but open only to the judiciary. The Lord Chancellor's preferred approach was to include the judiciary in the scope of the reformed pension scheme for civil servants. However, after listening to the concerns of the judiciary, it was decided instead to establish a scheme open only to the judiciary, but analogous with the reformed pension scheme for civil servants.
- 8.2 A number of judges also raised concerns over the proposed change in tax registration status. The new scheme is to be registered for the purposes of tax, whereas the existing scheme is unregistered. This change could potentially result in a significant impact on a number of judges in respect of tax charges on their pension benefits. In acknowledgement of this concern, the Lord Chancellor proposed to offer an additional allowance alongside salary or fee to judges who had taken out protections with Her Majesty's Revenue and Customs in the past that would restrict them from entering a tax-registered scheme. This proposal was included in the Lord Chancellor's formal announcement of the reforms in February 2013.

- 8.3 The Lord Chancellor subsequently consulted the judiciary in 2014 on the proposed draft regulations and the proposed scheme design through a formal public consultation, which was open for 15 weeks between June and September. During this consultation, a smaller number of responses were received, although a number of these individual responses were received from representative judicial associations on behalf of their membership. The majority of the responses received raised similar concerns to those from the 2012 consultation, as well as structural matters that had been determined by virtue of the decision to establish a standalone scheme analogous to the reformed civil service arrangements open only to judicial office holders. However, the 2014 consultation did inform a number of decisions on scheme policy related to the governance arrangements of the scheme and a small number of amendments to the scheme regulations.

9. Guidance

- 9.1 From November 2014, a new scheme website that will be made available on the Judicial Intranet will provide a dedicated source of information on all of the judicial pension schemes and the impact on members as a result of these reforms. The purpose of this website is to provide all judges with information and support on the reforms, and to ensure all members of the judiciary have a clear and accurate understanding of how they will be impacted as a result. Each judge will also be written to individually to outline their personal situation with regards to their options ahead of these reforms, and a dedicated email address is to be established for judges to ask queries as they arise.
- 9.2 A dedicated function to manage and support all of the judicial pension schemes is to be established within the department. Each of the members of this team, and all of the members of the Judicial Pension Board that will have oversight of the schemes, are to be provided bespoke training on the design of each of the schemes, including detailed guidance on the scheme regulations.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil.
- 10.2 The impact on the public sector is nil. The regulations replace previous pension arrangements for the judiciary.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The instrument includes a requirement for the new pension scheme to be subject to regular actuarial valuations. The instrument also includes provisions triggering changes to the scheme if the costs of the scheme move outside of a fixed range.

13. Contact

- 13.1 Stephanie Oxendale at the Ministry of Justice Tel: 020 3334 6042 or email: Stephanie.oxendale@justice.gsi.gov.uk can answer any queries regarding the instrument.