

EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE PENSIONS ACT 2013 (JUDICIAL OFFICES) (AMENDMENT) ORDER 2018

2018 No. 186

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument provides the following eligible fee-paid judicial office holders with access to the judicial pension scheme established under the Public Service Pensions Act 2013:
 - Legally Qualified Member of the Pensions Appeal Tribunal (PAT) for Northern Ireland appointed under paragraph 2 of the Schedule to the Pensions Appeal Tribunals Act 1943; and
 - President and Deputy President of the Pensions Appeal Tribunal (PAT) for Northern Ireland appointed under paragraph 2B of the Schedule to the Pensions Appeal Tribunals Act 1943.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is subject to the negative resolution procedure and has not been prayed against.

Other matters of interest to the House of Commons

- 3.2 Consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Paragraph 2 of Schedule 1 of the Public Service Pension Act 2013 confers power on the Lord Chancellor to specify by order those judicial offices eligible to be included in a judicial pension scheme under that Act. The Public Service Pensions Act 2013 (Judicial Offices) Order 2015 (“the 2015 Order”) specifies those judicial offices.

5. Extent and Territorial Application

- 5.1 This instrument extends to the whole of the United Kingdom.
- 5.2 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 In line with wider public service pension reform, a new judicial pension scheme, The Judicial Pensions Scheme 2015 (JPS 2015), was established by the Judicial Pension Regulations 2015 (“the 2015 Regulations”) on 1 April 2015. The scheme applies to serving salaried and fee-paid office holders who were first appointed to judicial office from 1 April 2015 and for judicial office holders who were appointed prior to 1 April 2015 and do not have transitional protection allowing them to remain in their existing scheme or are not eligible for membership of the pension scheme provided by the Judicial Pensions (Fee-paid Judges) Regulations 2017 (FPJPS).
- 7.2 The judicial offices to which this Order relates are held by fee-paid judges. In response to the judgment in O’Brien and related litigation, on 1 April 2017 the FPJPS was established to provide a pension scheme for eligible fee-paid judges which is comparable to the scheme available for salaried judges under the Judicial Pensions and Retirement Act 1993. Fee-paid judges that do not fall within this scheme may be eligible for a pension under the JPS 2015 if their judicial office is specified in the 2015 Order.
- 7.3 The offices of President, Deputy President and legally qualified member of PAT (NI) are already included in the FPJPS. However, at the time of drafting the 2015 Regulations, it had not yet been determined that the offices should also be added to the 2015 Order under the Public Service Pensions Act 2013. In accordance with the court decisions in the O’Brien and related litigation, and to ensure consistency with legal members in equivalent tribunals in England and Wales, the Ministry of Justice has now concluded that holders of these three offices are to be eligible for a judicial pension under that scheme. The provisions of this SI currently affects four judicial office holders.
- 7.4 As these offices are not currently included in the 2015 Order, these judicial office holders do not have access to a judicial pension scheme. Adding these offices to the 2015 Order will provide these judicial office holders with pensions benefits under JPS 2015, thus ensuring consistency with the Supreme Court’s decision in O’Brien and related litigation decisions.

Consolidation

- 7.5 These Regulations are not being consolidated.

8. Consultation

- 8.1 A statutory consultation has not been required to implement these changes. However, to ensure there has been engagement with the respective judicial office holders, the Ministry of Justice (MoJ) has worked together with Northern Ireland Assembly officials in relation to preparing this instrument and we have ensured that the relevant judicial offices to whom this instrument relates have been informed and are aware that we are making provision to give them access to the JPS 2015. This is considered as a positive step.

9. Guidance

- 9.1 No specific guidance is required in relation to this instrument, although in July 2017, on behalf of the MoJ, Northern Ireland officials sent the usual pension options letters to the affected judicial office holders. This correspondence contained information about their entitlement to pension provision and also directed them to the JPS 2015 scheme guidance and other communications on the Judicial Pension Board webpage at: <https://www.gov.uk/government/groups/judicial-pension-board>.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There will be a minimal impact on the public sector given the small financial impact this change is expected to have.
- 10.3 An impact assessment has not been prepared for this instrument given the employer costs are currently assessed to be approximately £5,000 per year which currently relates to four judicial office holders. The cost will be funded by the Northern Ireland Courts and Tribunals Services.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Judicial Pension Board oversees the governance of the JPS 2015. Any impacts of this change will be considered as part of this normal governance process.

13. Contact

- 13.1 Samantha West at the Ministry of Justice (Telephone: 020 3545 8668 or email: Samantha.west@justice.gov.uk) can answer any queries regarding the instrument.