



**Northern Ireland
Assembly**

**Committee for Justice
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**From: Christine Darrah
Clerk to the Committee for Justice**

Date: 28 September 2021

**To: Peter McCallion
Clerk to the Committee for Finance**

Legislative Consent Motion – Public Service Pensions and Judicial Offices Bill

Dear Peter

At the meeting on 23 September, the Committee for Justice considered the request from the Committee for Finance for views on the LCM on the Public Service Pensions and Judicial Offices Bill. The Committee agreed to provide a response outlining the scrutiny that it has undertaken on the legislative changes in relation to the reform of judicial pensions and mandatory retirement age that are covered in the LCM, which is attached.

**Christine Darrah
Clerk to the Committee for Justice**

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COMMITTEE FOR JUSTICE CONSIDERATION OF PROVISIONS RELEVANT TO THE DEPARTMENT OF JUSTICE REMIT IN THE PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL LEGISLATIVE CONSENT MOTION

INTRODUCTION

1. At its meeting on 23 September, the Committee for Justice considered correspondence from the Committee for Finance requesting views on the Legislative Consent Motion for the Public Service Pensions and Judicial Offices Bill (PSPJO Bill) along with a written update on this matter from the Department of Justice. The LCM will give effect to changes in public sector pensions in line with the judgment in *McCloud v Ministry of Justice*, which includes members of the judicial pension scheme. It also includes provisions on the retirement age of devolved tribunal judges and the appointment to and removal from sitting in retirement and to allow for the payment of allowances where there is currently no statutory provision to do so.
2. The Committee agreed to provide a response to the Committee for Finance outlining the scrutiny it has undertaken on the provisions relevant to the Department of Justice.

DEPARTMENT OF JUSTICE CONSULTATIONS

3. The Committee considered information from the Department on two proposed consultations relating to judicial pensions at its meeting on 8 October 2020. The first covered how to address the McCloud judgement findings that the taper protections extended to older judges as part of the 2015 reform of pensions amounted to direct age discrimination. The second covered reforms to judicial pensions and mirrored proposals made in a Ministry of Justice consultation to resurrect the previous pension scheme for eligible judges and make some modernisations to it in terms of governance and accountability arrangements.
4. The Committee agreed that it was content for the consultations to take place and to consider the matter further when the results were available.

5. The Committee also agreed to request further information from the Department of Justice regarding the estimated costs and source of funding for the proposals. The Committee also wrote to the Department of Finance to ask if there was an agreed approach across the public sector to the McCloud judgement and on plans to take forward a remedy. The Committee noted both responses at its meeting on 5 November.
6. The Committee also considered information from the Department of Justice at its meeting on 8 October on a proposed consultation on proposals to raise the mandatory retirement age (MRA) of devolved tribunal members and Lay Magistrates in Northern Ireland to the age of either 72 or 75 and to allow appointments to be extended beyond the mandatory retirement age. The proposals mirrored those in a consultation undertaken by the Ministry of Justice on the judicial MRA which directly affects the courts' judiciary in Northern Ireland, for whom the Lord Chancellor is responsible.
7. The Committee again agreed that it was content for the consultation to take place and to consider the matter further when the results were available.
8. The Committee also requested a list of the stakeholders who would be targeted in the consultation and sought clarification on when the last recruitment exercise for Lay Magistrates was undertaken. The Department's response providing the additional information was noted at the Committee's meeting on 12 November.

RESULTS OF THE CONSULTATIONS

9. Written briefings on the outcome of the consultations were considered at the Committee meeting on 25 March 2021.

Consultation on the McCloud Remedy¹

¹ The report on the response to the consultation is available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/mccloud-post-consultation-publication.pdf>

10. The consultation proposed that those judges affected by the McCloud judgement should be given a choice to have accrued benefits from 1 April 2015 to 31 March 2022 in either the legacy pension schemes available for members prior to 2015 or the Northern Ireland Judicial Pensions Scheme (NIJPS). It was intended that all eligible judges would be entered into a new judicial pension scheme after April 2022.
11. The choice of whether to return to a legacy scheme or stay in the NIJPS for the remedy period would be made via a formal 'options exercise' after 1 April 2022. As there were no responses to the consultation, it was the Department's view that this options exercise would be the best way to facilitate judges' choices and was in line with the approach to be taken with the Ministry of Justice for its judges.
12. The cost of the remedy was estimated at £0.7m by the Government Actuary Department. The Department advised this was a provisional estimate of the projected increase in benefit accrual and would be expected to fall to the pension scheme rather than the departmental budget. It does not include costs associated with member contributions or the administrative costs of an options exercise. The Department advised that the options exercise and returning judges to legacy schemes will be a significant exercise with practical and legislative elements.
13. **The Committee noted that no responses had been received to the consultation and agreed it was content with the proposals in respect of the McCloud remedy.**

Consultation on Reforms to Judicial Pensions²

14. The consultation on future pension reforms mirrored commitments made by the UK Government to develop a pensions-based solution to address serious recruitment and retention problems identified by the Senior Salaries Review

² The report on the response to the consultation is available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/proposals-for-a-reformed-ni-judicial-pension-scheme.pdf>

Body (SSRB) in its Major Review of the Judicial Salary Structure published in 2018. Although recruitment and retention problems are not evident in relation to judicial offices in Northern Ireland, the Department considered that parity of pension entitlement should be maintained in order to ensure fairness and facilitate mobility for the judiciary between devolved and excepted judicial roles within Northern Ireland and in roles across the UK. There were no responses to the Department's consultation.

15. The reformed scheme will be a career average model with no restriction on the number of accruing years in service, the normal pension age will be linked to the State Pension age and members will be able to commute part of their pension to a lump sum. 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.

16. The Department advised that the new scheme is likely to result in increase in costs of 9% compared to current arrangements.

17. The Committee noted that no responses had been received to the consultation and agreed it was content with the proposals in respect of judicial pension reforms.

Consultation on the MRA for Devolved Judicial Office Holders³

18. There were a small number of responses to the consultation which the Department advised were, on balance, favourable towards raising the MRA to 75. The Lord Chancellor proposed to change the MRA to 75 for members of the judiciary for which he is responsible and the Department advised that it is considered desirable to maintain parity with the excepted courts judiciary and to co-ordinate the legislative approach, if possible.

³ The report on the response to the consultation is available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/mandatory-retirement-age-consultation-response-paper.pdf>

19. The respondents to the consultation were divided on whether raising the MRA would attract more diverse applicants for judicial office, with criticism from one respondent that increasing the MRA to 75 would mean the need to make appointments is reduced and may create less opportunity for younger people to apply for the role. The Department believed that the impact is unlikely to be significant and agreed with the analysis of the Ministry of Justice that the benefits to be gained by a higher MRA outweighed any impact on the rate of increase in diversity.
20. The Department concluded that, once the MRA has been raised to 75, extensions of appointment will not be created. Members of the devolved judiciary will only be able to continue sitting beyond this age to finish hearing a part-heard case.
21. The consultation report also advised that Ministry of Justice will put provisions in place to allow fee paid courts judiciary in Northern Ireland to sit in retirement, to equalise their position with salaried counterparts. The Department advised that it intended to maintain parity for devolved judicial office holders where they have a salaried equivalent so eligible judges will be able to apply to sit in retirement on a fee-paid, ad hoc basis, where there is an exceptional business need which cannot otherwise be met.
- 22. The Committee agreed that it was content with the proposals to change the mandatory retirement age to 75, not to extend appointments beyond 75 except to finish hearing a part-heard case and to make provision for eligible judges to sit in retirement.**

PROPOSALS FOR LEGISLATIVE NEXT STEPS

23. In the written briefing papers on the outcome of the consultations, the Department outlined the reasons why it considered that a Legislative Consent Motion was likely to be the timeliest, most reasonable and proportionate way forward.

24. The Department stated that the proposal to implement pension reform by April 2022 would be extremely challenging. A Bill to include the Ministry of Justice reforms would be introduced at Westminster when Parliamentary time allowed and secondary legislation required to support the Bill would be taken forward in tandem. The Department advised of its concern that it would be difficult to take the same reforms for the devolved judiciary forward through the Assembly within the same timeframe. Any delay that would lead to divergence from the pension scheme for the excepted courts judiciary could result in criticism or litigation if devolved judiciary remain in a discriminatory pension scheme for a longer time.
25. The Department also advised of concerns with creating a small devolved scheme such as value for money and the administration of such a scheme and suggested the most cost effective and reliable option would be inclusion in the larger Ministry of Justice contract arrangements. This would also resolve an issue with annual actuarial valuations of the scheme - as the small numbers in the Northern Ireland scheme meant the valuations could be easily skewed, the Ministry of Justice valuations had generally been relied on.
26. The Department advised that inclusion in the larger Ministry of Justice contract arrangements may only be possible if the devolved scheme was created in parallel with the Ministry of Justice scheme and suggested that the most appropriate route may therefore be by Westminster legislation, subject to the legislative consent of the Assembly. The Department advised that the Ministry of Justice had indicated it would be content to include Northern Ireland devolved judicial office holders in their reformed schemes. The Department of Finance, which has overall responsibility for public sector pensions in Northern Ireland, had also indicated support for this approach as did the Pension Board of NIJPS.
27. With regard to the proposed changes to the MRA, the Department advised that the required legislative changes for the judiciary in England and Wales would be included in a Bill as soon as Parliamentary time allowed, with the intention that the provisions will come into force on 1 April 2022. As before,

the Department outlined concerns that it would not be able to get similar legislation passed within the same timescale here and that any delay in enacting similar provisions for devolved judiciary may be criticised and would create potential for unjustifiable differential treatment.

28. The Department also pointed out that, as the Ministry of Justice will make provision to allow fee paid members of the courts judiciary to sit in retirement, provision would be required to cover removals of these judiciary who are to sit in retirement as removals from office is a devolved matter.

29. In addition to those matters consulted on, the Department advised that an LCM may present the opportunity to close an existing legislative gap in relation to the recruitment and retention allowance to eligible County Court Judges in Northern Ireland. The Committee had previously considered information provided by the Department on the position regarding the payment of the allowance for the 2019-2020 financial year in accordance with the Lord Chancellor's determination at its meeting on 8 September 2020. Approval was required from the Executive Office given the lack of a statutory basis for the Department to make the payments. The Department advised at that time that the Ministry of Justice was aware of the legislative gap but it had not identified a suitable vehicle in Westminster to take forward a change to the legislation.

30. The Committee agreed at its meeting on 25 March that it was content in principle with the proposals to proceed with legislative changes by way of a legislative consent motion, subject to sight of the relevant Westminster legislation.

31. The Committee subsequently noted correspondence from the Committee for Finance at its meeting on 10 June which advised that the provisions relating to the McCloud remedy would be included in the PSPJO Bill. The accompanying briefing paper from the Department of Finance stated that the Bill was also expected to include additional related measures for judicial pensions schemes such as the MRA and payment of allowances. An update from the Department of Justice on the next steps to deliver the "McCloud" remedy for the Judicial and Police Pension Schemes was also noted by the Committee on 24 June.

CONCLUSION

32. Having considered the outcome of the consultations and the additional information provided by the Department of Justice and the Committee for Finance, the Committee is content that the provisions relating to the McCloud remedy, reforms to judicial pensions, the mandatory retirement age for devolved judiciary, the appointment to and removal from sitting in retirement and the payment of allowances where there is currently no statutory provision are included in the Legislative Consent Motion for the Public Sector Pensions and Judicial Offices Bill.