



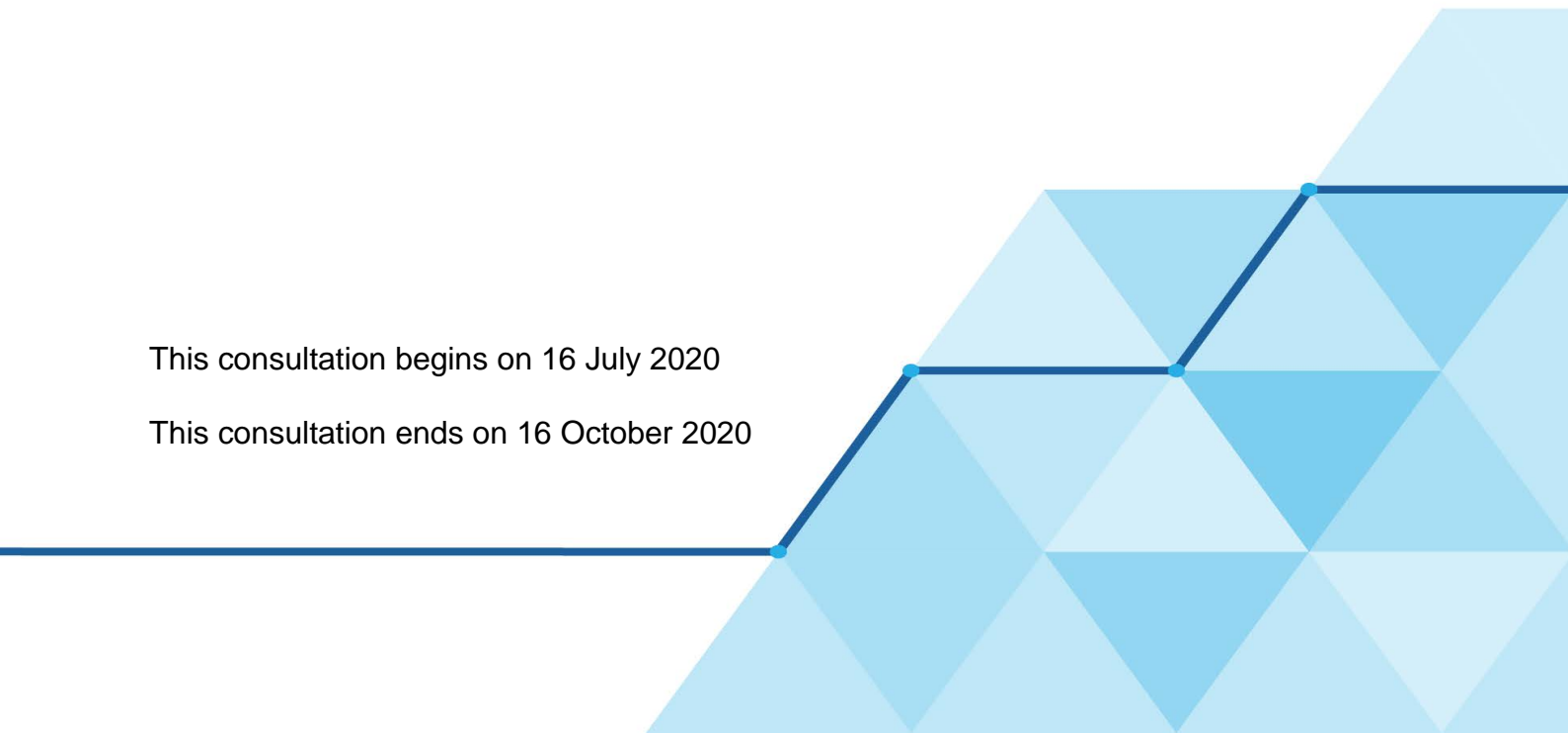
Ministry
of Justice

Judicial Mandatory Retirement Age

**Consultation on the mandatory retirement
age for judicial office holders**

This consultation begins on 16 July 2020

This consultation ends on 16 October 2020





Ministry
of Justice

Judicial Mandatory Retirement Age

Consultation on the mandatory retirement age for judicial office holders

A consultation produced by the Ministry of Justice. It is available at <https://consult.justice.gov.uk/>

About this consultation

To:	Members of the public of the United Kingdom with particular relevance to judicial office holders across the United Kingdom.
Duration:	From 16 July 2020 to 16 October 2020
Enquiries to:	Email: MRAConsultation@Justice.gov.uk
How to respond:	Please respond online at https://consult.justice.gov.uk/ by 16 October 2020
Additional ways to feed in your views:	Email: MRAConsultation@Justice.gov.uk
Response paper:	A response to this consultation exercise will be published in early 2021.

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Judicial Mandatory Retirement Age
Consultation

Foreword

The UK justice system is known across the world for its excellence, objectivity and impartiality. This is due, in no small part, to the exceptional expertise of our courts and tribunal judges, our coroners, and our valued magistrates. Our independent judiciary uphold and exercise the rule of law every day, often on the most difficult legal, technical and sometimes moral issues of our time, underpinning the foundation of our democracy, and helping safeguard fairness and freedom in our society. It is a role that requires expertise and experience and a drive to serve justice and the community.

A mandatory retirement age preserves the independence of our judiciary by alleviating the need for individual assessments of health and capacity. This in turn ensures that judicial office holders cannot be removed at the whim of the Executive and provides security of tenure until retirement. Furthermore, a mandatory retirement age promotes the growth of diversity across judicial office holders as by ensuring that regular recruitment can be planned to maintain a steady flow of new appointments. New appointees to judicial office are, on average, more diverse than older incumbents.

The retirement age for most judges was last legislated for 27 years ago, and the time is now right to consider whether the age of 70 continues to achieve its objective of balancing the requirement for sufficient judicial expertise to meet the demands on our courts and tribunals whilst safeguarding improvements in judicial diversity and protecting the independence of and confidence in our judiciary.

As Lord Chancellor, I have a duty to provide resources for the effective operation of our courts and tribunals. It is therefore important that the policies which may impact upon the appointment and retention of judicial office holders are reviewed to ensure that they are able to meet our changing requirements. The proposals in this consultation are intended to support the resourcing required for the effective operation of courts and tribunals.

Published alongside this consultation are separate consultations on the Government response to the *McCloud* Judgment and proposals for a reformed pension scheme. A consultation on amendments to the Fee-Paid Judicial Pension Scheme was also published recently. Taken together these proposals mark a significant step change to ensure that we can continue to recruit and retain the world class judiciary for which we are so rightly renowned.



The Right Honourable Robert Buckland QC MP
Lord Chancellor & Secretary of State for Justice

Executive Summary

1. This consultation welcomes views on proposals to raise the mandatory retirement age (MRA) for judicial office holders. It also invites views on a proposal that would allow magistrates' appointments to be extended beyond the MRA, as is possible for some judges when it is in the public interest.
2. Mandatory retirement for judges of the High Court and above was first introduced by the Judicial Pensions Act 1959, which set a retirement age of 75. Prior to this, judges could continue in office for as long as they wished. Other judicial office holders were subject to a variety of different retirement provisions.
3. The Judicial Pensions and Retirement Act 1993 "JUPRA" introduced a standard judicial retirement age of 70 for all judicial offices listed in schedule 5. The provisions, which brought greater consistency to the judicial retirement system, only applied to judges' appointments made after the relevant provisions were commenced on 31 March 1995. Some judges appointed to judicial office prior to 31 March 1995 retained their previous (usually higher) retirement date. A MRA of 70 was set in 2003 for magistrates and in 2013 for coroners in England and Wales, which has aligned their MRA with that of the wider judiciary. Since the MRA was set, average life expectancy has increased and many people want to and expect to continue working for longer than in previous decades.
4. A number of factors are relevant in the consideration of the most appropriate MRA for judicial office holders. Chief among these are how to ensure effective resourcing of courts, tribunals and other judicial functions; the need to promote opportunity and diversity through a steady turnover of retirements to allow for new appointments; and ensuring judicial independence and public confidence in the judiciary is protected.
5. As the structure and operation of our courts and tribunals have developed so have the resourcing needs of our judiciary. Having sufficient judges of the right type is critical to ensure the effective operations of our courts and tribunals and therefore access to justice. This includes having the right mix of salaried, fee-paid judges and lay magistrates – and recruiting new judicial office holders at the right time so that vacancies are minimised. Being appointed as a judge is still an attractive option for those who want to contribute to the justice system and have a rewarding career in the judiciary. However, in recent years, it has been more challenging to attract sufficient, suitably qualified and experienced lawyers to apply to the judiciary which has resulted in shortfalls from some recruitment exercises. This is similarly true in relation to recruiting sufficient magistrates who want and have the time to serve justice in their local communities.

6. As part of the response to improve recruitment and retention in the judiciary, this consultation considers raising the MRA to 72 or to 75. It also includes consideration of allowing for magistrates' appointments to be extended beyond the MRA when there is a public interest, or business need, in line with existing powers that allow for judges' appointments to be extended.
7. The purpose of this consultation is to collect views, and additional evidence, on whether the proposals to raise the MRA meet our objectives.

Interaction with Other Consultations

8. We recently published three consultations with implications for judicial pensions arrangements:
 - a. Amendments to the Fee-Paid Judicial Pension Scheme;
 - b. *McCloud* remedy – proposals to rectify the discrimination identified in the *McCloud* litigation;
 - c. Future reform of the judicial pension scheme – proposals for a reformed pension scheme to address judicial recruitment and retention issues
9. Respondents may wish to consider these consultations at the same time to understand where and to what extent possible dependencies may influence their response.

The Proposals

10. This consultation makes three proposals:
 - Option 1:** Raise the MRA to 72;
 - Option 2:** Raise the MRA to 75;
 - Option 3:** Allow magistrates' appointments to be extended beyond the MRA in line with judges.
11. We are also seeking views on the policy of permitting judicial appointments to be extended past the MRA (where there is a public interest).

Introduction

12. This paper sets out for consultation proposals for a change to the Mandatory Retirement Age (MRA) for judicial office holders. We welcome views from all members of the public in the UK but note that the proposals will be of particular interest to judicial office holders within scope of the review including judges, magistrates, and coroners. This consultation focuses on those judicial offices whose MRA fall within the sole legislative competence of the UK Parliament. For full list of applicable offices please see **Annex A**.
13. A Welsh translation of the Executive Summary is available at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

Objectives of the MRA

14. The policy objectives for having an MRA for the judiciary and other similar office holders are that it:
 1. promotes and preserves judicial independence by avoiding individual decisions in each case (albeit with limited provision for extension);
 2. preserves judicial dignity by avoiding the need for individual health and capacity assessments;
 3. maintains public confidence in the capacity and health of the judiciary;
 4. supports workforce planning and allows for greater career progression/ diversity;
 5. shares opportunity between the generations by balancing the need for experienced judges to continue in office for a reasonable time against career progression opportunities for newer appointees (and thereby also promoting diversity in the judiciary).
15. Those factors, in particular, 3–5 are relevant in determining the age at which the MRA should be set.
16. The setting of the MRA at 70 under JUPRA has been subject to litigation, in particular following the Equality Act 2010 which made age discrimination illegal unless there is an objective justification (resulting in few employers/ sectors retaining a compulsory retirement age). In 2014 the Employment Tribunal in the case of *White v MoJ*¹ held

¹ Mr G B N White v. Ministry of Justice, 24 November 2014, London Central Employment Tribunal, case number 2201298/2013

that a mandatory retirement age set at the age of 70 was a justified and proportionate measure and Mr White's claim of discrimination was dismissed.

Rationale for Change

17. The Lord Chancellor has a constitutional duty to provide resources for the effective operation of courts in England and Wales, the Unified Tribunals, the Employment Tribunals and some other tribunals in England. The Lord Chancellor is also responsible for setting the terms and conditions of a number of judicial office holders in Northern Ireland. This includes considering policies which may promote the appointment and retention of judicial office holders. Raising the mandatory retirement age is likely to improve the retention of judicial office holders.
18. Our approach is to maintain an aligned mandatory retirement age for most judicial office holders, including judges, magistrates, and coroners. Having the same MRA is consistent with the policy objective of having an MRA to maintain public confidence in the capacity and health of the judiciary. We also believe there are merits to maintaining a consistent MRA across the UK, although this matter requires further consideration with the governments of Scotland, Northern Ireland and Wales. We welcome views on this approach in questions 15, 16, and 17 of this consultation.
19. The recruitment picture for many judicial offices in England and Wales has changed significantly in recent years with more frequent and higher volume recruitment for most types of judges and a greater proportion of exercises resulting in shortfalls. Additionally, life expectancy in the UK has improved since the mandatory retirement age for most judges was legislated to be 70 in 1993. Given that individuals now tend to live and work for longer, a higher MRA may now be justifiable and proportionate to ensure that we are able to recruit and retain judicial office holders to meet the business requirements of our courts and tribunals
20. As such, the proposals in this consultation are intended to support the resourcing and effective operation of courts and tribunals, in line with improvements to life expectancy.
21. As the MRA is set out in statute, primary legislation is required to change the MRA.

Arguments for Change

22. In recent years, the MRA has been and continues to be the subject of debate. In November 2017 the Constitution Committee's Follow-up Report on Judicial Appointments provided further consideration of changing the retirement age and Committee asked the Lord Chancellor and senior members of the judiciary to reflect

on whether the current MRA of 70 continues to be appropriate given the demands on judicial resource.²

23. In the 2018 Major Review of the Judicial Salary Structure, the Senior Salaries Review Body (SSRB) commented that some judges would stay for longer were the MRA raised. They also suggested that the current MRA may dissuade some people from joining the judiciary as they felt that they would be unable to serve for a sufficiently long time once appointed.³
24. In 2019 the Justice Select Committee's report on The Role of the Magistracy, acknowledged the proposals of the Magistrates Association to allow magistrates to sit beyond the MRA if demand could not be met by recruitment alone. However, it was noted that any such provision would require legislation.⁴
25. Responses to each of these reports committed to reviewing and consulting on the MRA for judicial office holders. This consultation delivers on that commitment.

The Proposals

26. This consultation makes three proposals:
 - Option 1:** Raise the MRA to 72;
 - Option 2:** Raise the MRA to 75;
 - Option 3:** Allow magistrates' appointments to be extended beyond the MRA in line with judges.
27. We are also seeking views on the policy of permitting judicial appointments to be extended past the MRA (where there is a public interest).

² House of Lords Constitution Committee, "Judicial Appointments: Follow Up", published 02 November 2017

³ Review Body on Senior Salaries, "Supplement to the Fortieth Annual Report on Senior Salaries 2018", published 26 October 2018

⁴ House of Commons Justice Select Committee, "The Role of the Magistracy: Follow Up", published 18 June 2019

Related Matters

Sitting in retirement

28. As noted above, raising the mandatory retirement age is likely to improve the retention of judicial office holders. For this reason, a higher MRA may reduce the justification, which is based on business need, for approving judges to sit in retirement.
29. Sitting in retirement is the policy which currently permits certain salaried judges to retire, draw their pension, and continue to sit as a fee-paid judge, if there is a business need to do so; in some cases, this can continue after the judge's mandatory retirement age up to their 75th birthday. While certain salaried judges have the opportunity to apply to sit in retirement while drawing a pension, fee-paid judges, in general, are not able to do so under current legislation.
30. MoJ accepts that fee-paid judges are part-time workers for the purposes of the Part Time Workers Regulations 2000, and as such are protected against unjustified unequal treatment on the grounds of part-time status, as compared with a full-time salaried comparator. Consultees should be aware that, in the case of sitting in retirement, we intend to remove the differential treatment by legislating so that fee-paid judges in offices where there is a relevant salaried judge who can apply to sit in retirement also have the opportunity to do so.
31. We will continue working with the judiciary to review how the sitting in retirement policy is applied, to ensure it is done so fairly and meets the future resourcing needs of our courts and tribunals.

Amending mandatory retirement age transitional arrangements

32. MoJ is aware that under the Judicial Pensions and Retirement Act 1993 ("JUPRA"), certain judges appointed to salaried office before 31 March 1995 are able to retain their higher pre-JUPRA mandatory retirement age where they subsequently take up other salaried appointments, whereas fee-paid judges appointed before 31 March 1995 are only able to retain their pre-JUPRA mandatory retirement age if they remain in the same fee-paid office. This results in less favourable treatment on the grounds of part-time status which is not objectively justified. Therefore, although not subject to consultation, we intend to amend the JUPRA transitional arrangements as they apply to fee-paid judges who held office before 31 March 1995. It is possible that raising the MRA as discussed in this consultation may pre-empt the need to amend transitional arrangements for some fee-paid judges as the new MRA may be equal to or higher than their preserved retirement age. MoJ is considering options in relation to judges who are due to retire before the new transitional provisions are enacted.

Next Steps and Timing

33. This consultation will be open for three months to provide an opportunity for anyone with an interest or with the potential to be affected to comment on our proposals for changes to the MRA. As this consultation is taking place during the Covid-19 crisis we will monitor the consultation period, timelines and any engagement as the situation develops to ensure those who wish to participate can do so.
34. Once the consultation has closed we will consider the views and proposals of respondents and then issue a formal response. Any change to the MRA or for the provision for magistrates' appointments to be extended past the MRA will require primary legislation to be implemented.

Legislation

35. Any changes to the MRA, extensions provisions for most judges and transitional arrangements for judges appointed before 31 March 1995, in England and Wales, Scotland, and Northern Ireland; and coroners in Northern Ireland require primary legislation to amend the Judicial Pensions and Retirement Age Act 1993.
36. Any changes to the MRA or new extensions provisions for magistrates in England and Wales require primary legislation to amend the Courts Act 2003.
37. Any changes to the MRA for coroners in England and Wales require primary legislation to amend the Coroners and Justice Act 2009.
38. Any proposals to amend the MRA for judicial offices outside of the scope of these Acts remains the prerogative of the devolved administrations.
39. This is not a comprehensive list and further legislative amendments may be required to fulfil the proposals set out in this consultation document.

Impact Assessment and Equality Statement

40. The Impact Assessment indicates that these proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector. Options 1 and 2 may lead to some savings for the public sector – namely in the recruitment and training of new judicial office holders. Option 3 may incur a small cost to establish a new system to approve and process extensions for magistrates' appointments past the MRA. The Impact Assessment can be found at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

41. In the Equality Statement we note that imposing a mandatory retirement age is *prima facie* direct age discrimination – that is, direct discrimination based on the protected characteristic of age. However, there are strong public policy reasons for having a set mandatory retirement age. It fulfils the legitimate aims of promoting and preserving judicial independence and dignity by avoiding the need for individual assessments of health and capacity; and of maintaining public confidence in the capacity and health of the judiciary. This consultation is therefore not asking whether there should be an MRA but is seeking views on whether the MRA should be raised. The Equality Statement can be found at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.
42. The Equality Statement also indicates that groups with protected characteristics are not likely to be particularly affected and that any effects are proportionate to achieving the aims of the review.
43. Comments on the Impact Assessment and Equality Statement are welcome and be sent to MRAConsultation@Justice.gov.uk.

Interaction with Other Consultations

44. The proposals addressed in this consultation paper have been developed in coordination with ongoing work on judicial pensions. MoJ is concurrently consulting on amendments to the Fee-Paid Judicial Pension Scheme, the Government response to the *McCloud* judgment, and a reformed pension scheme. Respondents may find it useful to consider these consultations when providing a response.

Amendments to the Fee-Paid Judicial Pension Scheme

45. The Government recently published our consultation on proposals to amend the Fee-paid Judicial Pension Scheme (FPJPS) to provide fee-paid judicial pension benefits for service before 7 April 2000 (where judicial service continues up to or beyond that date). The FPJPS was established following a Supreme Court ruling in 2013 that fee-paid judges had been treated less favourably than full-time comparators because they had not been entitled to a pension. The FPJPS presently only provides benefits for judicial service from 7 April 2000, the date by which the UK was required to transpose the Part Time Workers Directive into domestic law. However, in November 2018, the Court of Justice of the European Union held that periods of service before 7 April 2000 must also be taken into account for the purposes of calculating the pension entitlement of eligible fee-paid judges.
46. Further details on the proposals can be found in the main consultation document on the Amendments to the Fee-paid Judicial Pension Scheme, found at <https://www.gov.uk/government/consultations/fee-paid-judicial-pension-scheme-amendments>.

Proposed Response to *McCloud*

47. The Government is also consulting on proposals to address the discrimination for all affected judges in scope of the *McCloud* judgment. In 2015, against a backdrop of wider public-sector pension reform, judges were moved from the Judicial Pension Scheme 1993 (JUPRA) to the New Judicial Pension Scheme (NJPS 2015). However, older judges remained in JUPRA. In December 2018, the Court of Appeal held in *McCloud* that the age-based protections offered to older judges constituted unlawful direct age discrimination.

48. Respondents may wish to cross refer between the MRA and *McCloud* consultations. Because any decision to raise the MRA would permit a judge to serve longer and accrue additional pension, this could affect a judge's decision in respect of *McCloud* remedy.
49. Further details on the proposals can be found in the main consultation document on the proposed response to *McCloud* found at <https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud>.

Future Reform of the Judicial Pension Scheme

50. The Government is also consulting on proposals to reform the existing judicial pension arrangements. All judges will be moved into a reformed scheme upon its introduction in 2022. The introduction of the reformed scheme is in response to recruitment and retention challenges within the judiciary, which were highlighted by the Senior Salaries Review Board (SSRB) Major Review in 2018 and largely coincided with the 2015 pension reforms. The most fundamental change to the current judicial pension arrangements is that the reformed scheme will be non-registered for tax purposes, which will contribute towards addressing these recruitment and retention challenges and ensure that the UK continues to recruit and retain an internationally renowned judiciary.
51. Further details on the proposals can be found in the main consultation document on future pension reform found at <https://www.gov.uk/government/consultations/consultation-on-a-reformed-judicial-pension-scheme>.

Interaction with the MRA

52. 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 the new, higher MRA. This is because scheme members would gain from the effect of 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.
53. Increasing the MRA does not affect the scheme retirement age as this is linked to the State Pension age. Regardless of the MRA, judges could take an unreduced pension at State Pension age.
54. Further analysis can be found in the MRA impact assessment at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

Proposals

55. This section provides our assessment of the proposed options against the considerations for the level at which to set the MRA. Our quantitative analysis comes first and includes the potential impacts on retention of judicial office holders and judicial diversity. An account of further impacts can be found in the Impact Assessment at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

Scope of this Consultation

56. A full list of judicial office holders within the scope of this review can be found in **Annex A**.
57. The changes proposed in this consultation are relevant to:
- a) Most judicial office holders deployed across courts and tribunals in England and Wales and the Unified Tribunals across the UK who are appointed by the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals and/ or on terms and conditions set by the Lord Chancellor. This includes all salaried and fee-paid office holders, both legal and non-legal;
 - b) Employment tribunal judges and non-legal members in Scotland, England and Wales;
 - c) Magistrates in England and Wales;
 - d) Coroners in England and Wales appointed since July 2013;⁵
 - e) The Justices of the Supreme Court of the United Kingdom;
 - f) The courts judiciary of Northern Ireland who are on terms and conditions set by the Lord Chancellor;
 - g) Coroners in Northern Ireland.

⁵ Coroner appointments are made by local authorities but require the consent of the Lord Chancellor. This consultation is only relevant to those coroners who were appointed on new terms since 2013. The MRA for coroners was passed in legislation in 2009 and then enacted in 2013. Those coroners appointed before 2013 preserved the terms and conditions of their appointments and so were not subject to the new provisions. As such any changes to the MRA would only apply those coroners who have been appointed under the terms provided since 2013.

58. The scope of this consultation does not include judicial offices devolved to Wales, Northern Ireland or Scotland. We will continue to engage with the governments of Scotland, Northern Ireland and Wales on approaches to the MRA across the UK.

59. The number of judicial office holders in scope of this consultation are:

United Kingdom⁶

Justices of the Supreme Court – 12;

Tribunal judges (legal members) – 412 salaried and 1,442 fee-paid;

Tribunal non-legal members – 12 salaried and 3,109 fee-paid.

England and Wales⁷

Court judges – 1,395 salaried and 1,815 fee-paid;

Magistrates – 14,348;

Coroners – 670 appointments⁸ (of which 386 are in scope of this review*).

Northern Ireland⁹

Courts judges – 64 salaried and 56 fee-paid;

Coroners – 3 full-time coroners and 13 salaried judges who also hold appointment as Coroner.

60. We welcome the views of judicial office holders who would be directly affected by the proposals. We would also invite views from judicial office holders outside the scope of this consultation, those working in the courts and tribunals, those considering a judicial career, representatives from or members of the organisations listed below and the public.

61. We particularly invite responses from representatives from or members of the organisations listed in **Annex B**.

Considerations for Setting the MRA

62. A number of factors are relevant in the consideration of the most appropriate MRA for judicial office holders. Chief among these are how to ensure effective resourcing of

⁶ As of Judicial Diversity Statistics 2019

⁷ As of Judicial Diversity Statistics 2019

⁸ There are 670 coroner appointments in England and Wales. This does not necessarily reflect the number of individual coroners as some coroners may hold more than one appointment. Coroners figures have been provided by the Chief Coroner's Office and are correct as at May 2020.

⁹ Provided by OLCJ (NI)/ NIJACS June 2020.

courts, tribunals and other judicial functions, the need to promote opportunity and diversity through a steady flow of new appointees; and ensuring judicial independence and public confidence in the judiciary is protected. We will also consider how the MRA may interact with the attractiveness of judicial office, the need for assessments of individual health and capacity, and public confidence in the justice system.

The MRA should be set at the age which best accommodates the following objectives:

1. Provide the necessary resource and expertise to support courts and tribunals in the delivery of justice;
2. Promote judicial diversity;
3. Respond to changes to life expectancy since the MRA for most judges was set in 1993;
4. Promote the attractiveness of judicial office;
5. Protect judicial independence by alleviating the need for assessments of individual health and capacity;
6. Maintain public confidence in the judiciary;
7. Provide, as far as possible, a consistent approach to MRA for all judicial office holders.

Options 1 and 2: Raising the MRA to 72 or 75

Potential Effect on Judicial Resource

63. The resourcing picture in England and Wales and across the Unified Tribunals has changed significantly in recent years. This is reflected in the scale of judicial recruitment undertaken by the Judicial Appointments Commission which was on average approximately 500 recommendations per year before 2017 and increased to around 1000 recommendations a year from 2018/19 onwards. While the size of the programme is expected to decrease slightly from 2021/22 (as the recruitment backlog from the period 2013 to 2017 when lower levels of recruitment were undertaken will have been addressed), sustained levels of recruitment will be required to cope with demand across all jurisdictions and to replace departures.
64. In this context of increased recruitment needs, in recent years there have been recruitment shortfalls, particularly for the High Court, Circuit and, latterly, District benches. There are also significant recruitment challenges at magistrate level. We do not have evidence of a similar recruitment issue for coroners, for which recruitment is undertaken by individual local authorities. Regular recruitment remains a key

measure in ensuring the judiciary has sufficient resource to meet demand, and is an important driver to improve judicial diversity.

65. A higher MRA would not remove the need to maintain regular recruitment but may reduce the volumes required. Accurate long-term analysis of the demand and supply factors to forecast the number of judges that will be needed in the future is complex, and decisions to recruit new judges must be balanced in terms of having the right number and mix of judges to meet the current and immediate business requirement without resulting in an over-supply. Therefore, it is not possible to quantify the impact of a change in MRA on future resourcing forecasts. The analysis below sets out our estimates, based on current retirement rates, of the number of judges who would remain sitting until either 72 or 75 as a percentage of current recruitment levels.

Notes on Analysis

66. The analysis includes judicial office holders in the courts of England and Wales as well as of the Unified Tribunals across the UK. Actual impacts will depend upon the retirement decisions of judicial office holders. Naturally we are unable to assess future retirement behaviour but have instead developed estimates based current retirement trends where data has been available. These estimates have been calculated over a ten-year appraisal period. However, the smaller numbers of the judiciary in Northern Ireland as well as the coroners of England and Wales does not allow for this level of modelling. The estimated impacts for these groups are summarised on pages 19–20 with further information available in the Impact Statement and the Equality Statement at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

Option 1: Raise the MRA to 72

67. We have estimated that raising the MRA to 72 may improve the retention of judicial office holders and therefore enhance the supply of resource and expertise to courts and tribunals.
68. Analysis of the average retirement behaviour of judicial office holders (excluding magistrates and coroners) suggests that raising the MRA to 72 could retain an average of 245 judicial office holders per year¹⁰ across courts in England and Wales and in Unified Tribunals across the UK. This is the equivalent of 3% of the total headcount of judicial office holders in this group or 24% of the current recruitment programme of 1,000 vacancies.

¹⁰ This is one scenario based on a 'best estimate' which uses current departure rates to predict retention if raising the MRA. Additional scenarios may be found in the Impact Assessment and Equalities Statement.

69. The same analysis for magistrates in England and Wales estimates a much higher impact. Raising the MRA to 72 for magistrates could retain approximately 1,056 magistrates per year. This is the approximate equivalent of 7% of magistrates in England and Wales.

Table 1: Shows the estimated number of judicial office holders (excluding magistrates) in courts in England and Wales and Unified Tribunals across the UK to be retained if raising the MRA to 72 per year. Estimated over a ten-year appraisal period.

Retention for raising the MRA to 72	Number retained	Percentage of total headcount	Percentage of current recruitment programme
Judicial Office Holders (excluding magistrates)	245	3%	24% ¹¹

Table 2: Shows the estimated number of magistrates in courts in England and Wales across the UK to be retained if raising the MRA to 72 per year. Estimated over a ten-year appraisal period.

Retention for raising the MRA to 72	Number retained	Percentage of total headcount
Magistrates	1,056	7%

Option 2: Raise the MRA to 75

70. We have estimated that raising the MRA to 75 may improve the retention of judicial office holders and therefore enhance the supply of resource and expertise to courts and tribunals.

71. Analysis of average retirement behaviour suggests that raising the MRA to 75 could retain an average of 399 judicial office holders (excluding magistrates and coroners) per year across courts in England and Wales and in Unified Tribunals across the UK. This is the equivalent of 5% of the total headcount of judicial office holders in this group or 40% of the current recruitment programme of 1,000 vacancies.

72. The same analysis for magistrates estimates a much higher impact. Raising the MRA to 75 for magistrates could retain approximately 2,122 magistrates per year. This is the approximate equivalent of 15% of magistrates in England and Wales.

¹¹ Compared to current recruitment programme of 1,000 vacancies. This may change if recruitment programmes are adjusted due to supply and demand.

Table 3: Shows the estimated number of judicial office holders (excluding magistrates) in courts in England and Wales and Unified Tribunals across the UK to be retained if raising the MRA to 75 per year. Estimated over a ten-year appraisal period.

Retention for raising the MRA to 75	Number retained	Percentage of total headcount	Percentage of current recruitment programme
Judicial Office Holders (excluding magistrates)	399	5%	40% ¹²

Table 4: Shows the estimated number of magistrates in courts in England and Wales across the UK to be retained if raising the MRA to 75 per year. Estimated over a ten-year appraisal period.

Retention for raising the MRA to 75	Number retained	Percentage of total headcount
Magistrates	2,122	15%

Courts Judiciary in Northern Ireland

73. Due to smaller cohort sizes and availability of data, we were unable to run the same level of analysis for the judiciary in Northern Ireland. However, a large proportion of judicial office holders in Northern Ireland are 50 years or over.¹³ As is the case for office holders in England and Wales, the retention impacts would likely be higher for an MRA of 75 compared to MRA of 72. We have summarised the preliminary data received from the Northern Irish judiciary in section H of the Impact Statement and s. 5.4 of the Equality Statement at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

Coroners in England and Wales

74. We have summarised the data received from the Chief Coroners' Office in the relevant sections of the Impact Assessment and Equality Statement. There is a small number of coroners within scope of this review and historical data on retirements is not centralised, which means it has not been possible to perform the same level of retention analysis for coroners. Only coroners appointed after July 2013 (when the Coroners and Justice Act 2009 was implemented) have an MRA. Coroners appointed before implementation of the 2009 Act retained their right not to have a mandatory retirement age. The scope of this review is limited to coroners appointed after July 2013. Our preliminary view is that coroners appointed post-July 2013 in England and Wales could be much less affected than other Judicial office holders in England and Wales, especially in the following decade, as only 9% of coroners appointed since

¹² Compared to current recruitment programme of 1,000 vacancies. This may change if recruitment programmes are adjusted due to supply and demand.

¹³ The Judiciary in NI: 2018 Equality Monitoring Report, published 28 Aug 2019

July 2013 are aged 60+. Just like for other Judicial office holders, the retention impacts would be higher for an MRA of 75 compared to MRA of 72.

Q1A. Do you think that judicial office holders would choose to stay in office until the age of 72 if the MRA was raised to 72? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q1B. Do you think that judicial office holders would choose to stay in office until the age of 75 if the MRA was raised to 75? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q2A. Do you think that raising the MRA to 72 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q2B. Do you think that raising the MRA to 75 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Potential Effect on Judicial Diversity

75. Having an MRA promotes the growth of diversity across judicial office holders as retirements resulting from the MRA maintain a steady flow of new appointments. New appointees to judicial office are, on average, more diverse than older incumbents. Raising the MRA may have an impact on this, as some judicial office holders may remain in office for longer.

Notes on Analysis

76. The Equality Act 2010 identifies nine protected characteristics. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. We assessed the diversity impacts of raising the MRA on three protected characteristics – sex, race and age. We were not able to conduct analysis on the remaining six protected characteristics due to a lack of suitable data on these characteristics within the groups modelled. A full explanation can be found in Section 3 of our Equality Statement at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

77. We have modelled the potential impacts to the future diversity profile of the judiciary and magistracy. The modelling incorporated the extent to which the above retention impacts may temporarily reduce the number of new appointments. It then accounts

the difference in diversity profile between incumbent judicial office holders due to retire (those aged 65+) and that of new appointees, assuming that the diversity of new appointments remains static. The estimates do not indicate that judicial office holders would be less diverse than they are now but may mean there is a slight impact on the diversity growth across judicial office holders if raising the MRA.

78. As this analysis is dependent upon the above retention analysis, it covers judicial office holders in the courts of England and Wales as well as of the Unified Tribunals across the UK. These estimates have been calculated over a ten-year appraisal period. Available data and the smaller number of the courts judiciary of Northern Ireland and the coroners of England and Wales does not allow for this level of modelling. The estimated impacts for these groups are summarised on page 23 with further information available the Equality Statement and its annexes at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.

Option 1: Raise the MRA to 72

79. We have estimated that by raising the MRA to 72 there may be 0.7%¹⁴ fewer female office holders in the modelled Group (excludes magistrates) in any given year than it would otherwise have been if we maintained an MRA of 70. The impact on ethnic diversity would be less – and there may be 0.1% fewer Black and Minority Ethnic (BAME) office holders in the same group in any given year than it would otherwise have been if we maintained an MRA of 70.
80. Estimates show similarly low impacts to the future diversity profile of magistrates in England and Wales. By raising the MRA to 72 there may be 0.5%¹⁵ fewer women in the magistracy in England and Wales, however as there are more women in the magistracy currently than men this may mean the ratio of male and female becomes more balanced. For ethnicity there may be 0.3% fewer BAME magistrates in any given year than it would otherwise have been if we maintained an MRA of 70.
81. At present we consider the extent of any impacts proportionate to achieving the necessary gains to be made in retention and expertise identified above. This analysis assumes no improvements in the diversity of new applicants to the judiciary and so any adverse impacts may be offset or eclipsed by increased efforts to promote diversity in the judicial pipeline.

¹⁴ This is one scenario based on a 'best estimate' retention modelling which uses current departure rates to predict retention if raising the MRA. Additional scenarios may be found in the Impact Assessment and Equalities Statement.

¹⁵ Although recent magistrate appointments were 58% women, so any reduction in turnover due to a higher MRA would in effect contribute to ensuring a greater balance between male and female magistrates.

Judicial Mandatory Retirement Age
Consultation

Table 5: Shows the estimated potential impact on sex and ethnic diversity of judicial office holders in courts in England and Wales and Unified Tribunals across the UK if raising the MRA to 72 in any given year rather than maintaining an MRA of 70. Estimated over a ten-year appraisal period.

Diversity Impacts for Raising MRA to 72	Sex	Ethnicity
Judicial Office Holders (excluding magistrates)	-0.7%	-0.1%
Magistrates	-0.5%	-0.3%

Option 2: Raise the MRA to 75

82. We have modelled the possible impacts on diversity growth for raising the MRA to 75 using the same methodology as for raising the MRA to 72. We have estimated that by raising the MRA to 75 there may be 1.2% fewer female office holders (excluding magistrates) in the modelled group in any given year than it otherwise would have been if we maintained an MRA of 70. Again, the impact on ethnic diversity would be much less with there being 0.3% fewer BAME office holders in any given year in the same group.

83. The impacts for the ratio of male and female magistrates would be greater than for 72 but again quite small. If raising the MRA to 75 there may be 1.3% fewer female magistrates in any given year than it otherwise would have been if we maintained an MRA of 70. Again, however as there are more women in the magistracy currently than men this may mean the ratio of male and female becomes more balanced. For ethnicity there may be 0.8% fewer BAME magistrates in any given year than it would otherwise have been if we maintained an MRA of 70.

84. We propose that although the impacts to diversity are greater for raising the MRA to 75 than for 72 they remain proportionate to achieving significant gains to judicial resource and expertise. Again, this analysis assumes no improvements to judicial diversity and efforts to improve diversity of the pipeline for judicial appointments may offset or eclipse any adverse impacts emerging from an increase in the MRA.

Table 6: Shows the estimated potential impact on sex and ethnic diversity of judicial office holders in courts in England and Wales and Unified Tribunals across the UK if raising the MRA to 75 in any given year rather than maintaining an MRA of 70. Estimated over a ten-year appraisal period.

Diversity Impacts for Raising MRA to 75	Sex	Ethnicity
Judicial Office Holders (excluding magistrates)	-1.2%	-0.3%
Magistrates	-1.3%	-0.8%

Courts Judiciary in Northern Ireland

85. The lower number of judicial office holders in the courts judiciary of Northern Ireland does not allow for the level of modelling available for office holders in England and Wales. We have summarised the diversity data received from Northern Irish judiciary in section 5.4 of the Equality Statement and its associated annexes.
86. The data available for the judiciary of Northern Ireland suggests a lower proportion of women are approaching retirement, compared to newly-appointed Judicial office holders. This may mean that raising the MRA may result in slightly fewer female office holders in Northern Ireland than would otherwise have been if maintaining the same MRA. However, the impact may be limited due to relatively low numbers of judicial office holders approaching MRA each year. The small overall number of BAME office holders in Northern Ireland (including courts judiciary) do not allow for meaningful analysis of how raising the MRA may impact on ethnic diversity across the judiciary of Northern Ireland.
87. We are unable to quantify impacts for an MRA of 72 compared to an MRA of 75 due to the small numbers involved, but we estimate impacts would be higher for 75 than for 72.

Coroners in England and Wales

88. The available data on the ratio of male and female coroners from the Chief Coroner's Office suggests that coroners in scope of this review who will be approaching retirement in the next decade have a lower proportion of women than recent appointments (35% women vs 49% women respectively), which suggests an increase in MRA may impact diversity growth. That said these impacts may be minimal due to the very small number of yearly retirements compared to the overall complement. We are unable to quantify impacts for MRA 72 compared to MRA 75 due to the small numbers involved, but we estimate impacts would be higher for MRA 75.

Q3A. Do you think raising the MRA to 72 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q3B. Do you think raising the MRA to 75 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q4A. Do you think that judicial office holders with specific protected characteristics¹⁶ are more likely to stay in office until the age of 72 if the MRA was raised to 72? Please state which office holders you think are more likely to stay in office in your answer and give your reasons.

Q4B. Do you think that judicial office holders with specific protected characteristics are more likely to stay in office until the age of 75 if the MRA was raised to 75? Please state which office holders you think are more likely to stay in office in your answer and give your reasons.

Life Expectancy

89. The MRA for most judicial office holders in the United Kingdom was set at 70 in the Judicial Pensions and Retirement Age Act 1993 (JUPRA). Between 1993 and 2019, life expectancy has increased by 5.8 years for men and 4.1 years for women.¹⁷ Therefore, increasing the MRA may reflect improvements in health and capability linked to improved life expectancy.

Attractiveness of Judicial Office

90. Some commentators, including judges, have argued that a higher MRA may improve the attractiveness of judicial office as a career choice. This may enable applicants who wish to take up judicial office and serve for long enough to develop a judicial career including having a chance of further advancement before retiring. For paid judiciary, a higher MRA may also offer more opportunity for those who have taken career breaks or worked less than full time to gain the experience required before applying for appointment as a judicial office holder. For magistrates, a higher MRA may offer more time and opportunity to volunteer.

Q5A. Do you think that increasing the MRA to 72 would attract more people to apply to judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q5B. Do you think that increasing the MRA to 75 would attract more people to apply to judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q6A. Do you think that increasing the MRA to 72 is likely to attract more diverse applicants for judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

¹⁶ The full list of protected characteristics as stated in the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

¹⁷ ONS "Past and projected data from the period and cohort life tables, 2018-based, UK: 1981 to 2068", December 2019

Q6B. Do you think that increasing the MRA to 75 is likely to attract more diverse applicants for judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Judicial Independence and Public Confidence in the Judiciary

91. We believe there are objective justifications for having an MRA to preserve judicial independence and judicial dignity by avoiding the need for decisions about when a judicial office holder should retire based on individual health and capacity assessments.
92. We have no evidence that an increase in the MRA would impact adversely on public confidence in the judiciary. The Ipsos Mori Veracity Index (2019) estimated that public trust in the judiciary remains very high at 81%. This has remained consistently high since the index was first published in 1983.

Q7A. Would raising the MRA to 72 cause you to have less confidence in the judiciary? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q7B. Would raising the MRA to 75 cause you to have less confidence in the judiciary? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Alignment of MRA Across Judicial Office Holders

93. The MRA for most judges, magistrates and coroners is set at 70. Having the same MRA ensures fair treatment and that all judicial office holders are held to an equally high standard. It is one of the Chief Coroner's roles to bring coroners in line with the wider judiciary and this was reflected in the MRA established for coroners in 2009. It is also our policy to ensure that the terms of appointment for magistrates and judges are maintained and promoted wherever possible. However, we recognise that the implications for retention, diversity or otherwise may differ across judges, magistrates and coroners. We welcome views on the alignment of the MRA across these judicial office holders.

Q8. Do you agree that the MRA for magistrates should continue to be aligned with that of judges? Please give your reasons.

Q9. Do you agree that the MRA for coroners should continue to be aligned with that of judges? Please give your reasons.

Devolved Judiciary

94. The legislative competence for devolved judicial offices lies with the legislatures of Scotland, Northern Ireland and Wales. We will continue to engage with the governments of Scotland, Northern Ireland and Wales to compare approaches to the MRA. We welcome views from all consultees on the alignment of the MRA across all judicial office holders in the United Kingdom.

Q10. Please provide any comments you have on retaining parity of MRA for judicial office holders across England, Wales, Scotland and Northern Ireland.

Concluding Questions on Raising the MRA

95. Having considered the above information and objectives we are keen to hear your overall perspective on raising the MRA.

Q11. Do you agree that the MRA for judicial office holders should be increased? Please give your reasons.

Q12. If so, do you think the MRA should be raised to 72 or 75? Why do you think this age is the most appropriate?

Extensions of Judges' Appointments¹⁸

96. We also seek views on whether the policy to allow a judge's appointment to be extended past mandatory retirement age should be retained if the MRA is increased. Currently under 26(5)/ (6) JUPRA 1993, the Lord Chief Justice (or Chamber President with delegated authority from the Senior President of Tribunals) after obtaining the Lord Chancellor's concurrence, may extend the appointment of a judge below High Court level, following their compulsory retirement date, for a period of one year if he considers it desirable in the public interest. That appointment can then be extended each year for a further one-year period up to the point at which the judge turns 75 subject to the same requirement. The power to extend does not apply to the Senior Judiciary (High Court judges and above). Under s.9(1) Senior Courts Act 1981 Senior Judiciary can be called upon to sit in retirement, on an ad hoc basis, up to their 75th birthday.

97. The number of judges whose appointment has been extended has increased in recent years, reflecting the public interest to ensure critical posts remain filled, which would otherwise be left vacant for a period.

¹⁸ The Coroners and Justice Act 2010 (schedule 10) allows coroners to sit after their MRA (up to the age of 75) at the request of the Chief Coroner if their individual expertise is required for an investigation. However, this provision is only used exceptionally and is not in scope of this review.

98. As explained on pages 16–20 we anticipate that an increased MRA would have a positive impact on judicial retention. In turn, we would expect extensions beyond MRA to become exceptional. However, we think this policy and the legislative provisions should be retained if the MRA were increased to 72, as the benefits from being able to extend would apply as now. This measure provides operational flexibility to ensure critical posts are covered until vacancies can be filled through new recruitment.
99. High Court judges cannot be currently extended past the MRA, although they can sit in retirement, on an occasional fee paid basis (considerably less than a full time High Court judge sits). Not allowing for extensions helps protect judicial independence as it avoids decisions about which High Court judges should be extended. Allowing extensions might provide greater flexibility in continuing to make use of specific expertise in exceptional circumstances where this expertise would otherwise not be available to the Courts.
100. We do not consider that judges should sit beyond the age of 75 except in very exceptional circumstances. If the MRA was set at 75, there may be examples where there would be a public interest to extend a judge's appointment for a short period, for example, to ensure a key office is not left vacant, however this may be offset by the policy aim to maintain public confidence in the capacity and health of the judiciary.

Q13. Should the policy of allowing extensions of appointment past the MRA, as per JUPRA s.26(5) and 26(6) be maintained if the MRA is increased to 72?

Q14. Are there any circumstances where it may be justified for a judge to sit, exceptionally beyond the age of 75 for a short period?

Q15. Should the power for judicial appointments to be extended be available to any other judicial offices in England & Wales, not currently covered by JUPRA s.26(5) and 26(6)? Please give your reasons.

Option 3: Allow magistrates' appointments to be extended beyond the MRA.

101. We also welcome your views on an additional proposal to allow magistrates appointments to be extended past the MRA. This may be considered in addition to, or instead of, proposals to raise the MRA.
102. Allowing magistrates' appointments to be extended past 70 when there is a public interest will help retain skilled and experienced magistrates for longer, especially in local justice areas which may experience shortages whilst recruitment of new

magistrates is undertaken. This in turn would maintain magistrates' capacity and promote access to justice by timely disposal of cases in the relevant courts.

103. This provision could mirror the existing provisions for judges whereby the Lord Chief Justice may extend a judge's appointment, with the Lord Chancellor's concurrence, following their compulsory retirement date for a period of one year if he considers it desirable in the public interest. That appointment can then be extended each year for a further one-year period until the judge turns 75. The public interest consideration includes retaining judicial expertise in a court or tribunal that may have limited judges; to retain judicial resource in a geographical jurisdiction whilst recruitment is undertaken. An equivalent provision is not available for magistrates who must retire when they become 70.

Q16. Do you think that magistrates' appointments should be eligible for extensions past the MRA if in the public interest in line with judges? Please give your reasons.

Questionnaire

We welcome responses to the following questions at <https://consult.justice.gov.uk>.

Q1A. Do you think that judicial office holders would choose to stay in office until the age of 72 if the MRA was raised to 72? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q1B. Do you think that judicial office holders would choose to stay in office until the age of 75 if the MRA was raised to 75? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q2A. Do you think that raising the MRA to 72 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q2B. Do you think that raising the MRA to 75 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q3A. Do you think raising the MRA to 72 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q3B. Do you think raising the MRA to 75 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q4A. Do you think that judicial office holders with specific protected characteristics¹⁹ are more likely to stay in office until the age of 72 if the MRA was

¹⁹ The full list of protected characteristics as stated in the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

raised to 72? Please state which office holders you think are more likely to stay in office in your answer and give your reasons.

Q4B. Do you think that judicial office holders with specific protected characteristics are more likely to stay in office until the age of 75 if the MRA was raised to 75? Please state which office holders you think are more likely to stay in office in your answer and give your reasons.

Q5A. Do you think that increasing the MRA to 72 would attract more people to apply to judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q5B. Do you think that increasing the MRA to 75 would attract more people to apply to judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q6A. Do you think that increasing the MRA to 72 is likely to attract more diverse applicants for judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q6B. Do you think that increasing the MRA to 75 is likely to attract more diverse applicants for judicial office? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q7A. Would raising the MRA to 72 cause you to have less confidence in the judiciary? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q7B. Would raising the MRA to 75 cause you to have less confidence in the judiciary? Please give your reasons. You may wish to reference a specific judicial office holder type – e.g. judges, magistrates or coroners.

Q8. Do you agree that the MRA for magistrates should continue to be aligned with that of judges? Please give your reasons.

Q9. Do you agree that the MRA for coroners should continue to be aligned with that of judges? Please give your reasons.

Q10. Please provide any comments you have on retaining parity of MRA for judicial office holders across England, Wales, Scotland and Northern Ireland.

Q11. Do you agree that the MRA for judicial office holders should be increased? Please give your reasons.

Q12. If so, do you think the MRA should be raised to 72 or 75? Why do you think this age is the most appropriate?

Q13. Should the policy of allowing extensions of appointment past the MRA, as per JUPRA s.26(5) and 26(6) be maintained if the MRA is increased to 72?

Q14. Are there any circumstances where it may be justified for a judge to sit, exceptionally beyond the age of 75 for a short period?

Q15. Should the power for judicial appointments to be extended be available to any other judicial offices in England & Wales, not currently covered by JUPRA s.26(5) and 26(6)? Please give your reasons.

Q16. Do you think that magistrates' appointments should be eligible for extensions past the MRA if in the public interest in line with judges? Please give your reasons.

Thank you for participating in this consultation exercise.

Annex A: List of Judicial Office Holders in Scope of this Review

Admiralty Registrar

Appointment under s.70 Judicature (NI) Act to an office listed at schedule 3, part 1

Area Coroner (England and Wales)

Assistant Coroner (England and Wales)

Chairman of a Reinstatement Committee constituted under the Reserve Forces (Safeguard of Employment) Act 1985

Chairman of a tribunal constituted for the purposes of sections 14 and 15 of the Misuse of Drugs Act 1971

Chairman of a tribunal established by section 29 of the Betting, Gaming and Lotteries Act 1963

Chairman of an advisory body constituted for the purposes of section 14 of the Misuse of Drugs Act 1971

Chairman of the Plant Varieties and Seeds Tribunal

Chairman or deputy chairman of the Copyright Tribunal

Chairman or other member of a reserve forces appeal tribunal constituted under Part IX of the Reserve Forces Act 1996

Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal

Chief or other Child Support Commissioner for Northern Ireland (including appointments in pursuance of paragraph 4 of Schedule 4 to the Child Support Act 1991)

Chief or other Social Security Commissioner

Chief or other Social Security Commissioner for Northern Ireland (including appointments in pursuance of section 50(2) of the Social Security Administration (Northern Ireland) Act 1992)

Circuit judge

Commons Commissioner

Coroner appointed under the Coroners Act (Northern Ireland) 1959

County Court judge in Northern Ireland

Deputy Coroner appointed under the Coroners Act (Northern Ireland) 1959

Deputy County Court judge in Northern Ireland
Deputy District Judge
Deputy Judge of the High Court
Deputy Judge of the Upper Tribunal appointed under the Tribunals, Courts and Enforcement Act 2007
Deputy or temporary Admiralty Registrar
Deputy or temporary district judge of the principal registry of the Family Division
Deputy or temporary Master, Chancery Division
Deputy or temporary Master, Queen's Bench Division
Deputy or temporary Registrar in Bankruptcy of the High Court
Deputy or temporary Registrar of Civil Appeals
Deputy or temporary Taxing Master of the Senior Courts
Deputy District Judge (Magistrates' Court) appointed under the Magistrates' Courts Act (Northern Ireland) 1964
District Judge
District Judge (Magistrates' Courts)
District Judge of the principal registry of the Family Division
Employment Judge
Insolvency and Companies Court Judge
Deputy or Temporary Insolvency and Companies Court Judge
Judge Advocate General
Judge of the High Court of Justice in Northern Ireland
Judge of the Senior Courts of England and Wales
Judge of the Supreme Court
Judge or other member of the First-tier Tribunal appointed under the Tribunals, Courts and Enforcement Act 2007
Judge or other member of the Upper Tribunal appointed under the Tribunals, Courts and Enforcement Act 2007
Lord Chief Justice of Northern Ireland
Lord Justice of Appeal in Northern Ireland
Magistrate (Lay Justice) England and Wales
Master, Chancery Division

Master, Queen's Bench Division

Member of a panel constituted under section 6(1) of the Social Security Act 1998

Member of the Employment Appeal Tribunal appointed under the Employment Tribunals Act 1996

Member of the Pensions Regulator Tribunal

President of a tribunal constituted under Schedule 3 to the Industry Act 1975

President of appeal tribunals (within the meaning of Chapter I of Part I of the Social Security Act 1998)

President of the Employment Tribunals (England and Wales)

President of the Employment Tribunals (Scotland)

President or chairman of the Transport Tribunal

Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals

Recorder

Registrar in Bankruptcy of the High Court

Registrar of Civil Appeals

District Judge (Magistrates' Court) appointed under the Magistrates' Courts Act (Northern Ireland) 1964

Senior Coroner (England and Wales)

Senior President of Tribunals

Taxing Master of the Senior Courts

Transferred-in judge, or transferred-in other member, of the First-tier Tribunal or of the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007

Wreck commissioner appointed under the Merchant Shipping Act 1995

Annex B: 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.

United Kingdom

- President of the UK Supreme Court
- Senior President of Tribunals

England and Wales

- Association of Fee-Paid Judges
- Association of Her Majesty's District Judges
- Association of High Court Judges
- Association of High Court Masters
- Association of Members of the Immigration & Asylum Tribunal
- Association of Muslim Lawyers
- Association of Regional Medical Members
- Association of Salaried Tribunal Judges for Health, Education and Social Care
- Association of the Special Educational Needs Tribunal
- Bar Standards Board
- Bench Chairs (Magistrates) in England and Wales
- Black Solicitors Network
- Chamber President for War Pensions & Armed Forces Compensation Chamber
- Chartered Institute of Legal Executives (CILEx)
- Chief Coroner
- Council of Appeal Tribunal Judges
- Council of Employment Judges
- Council of Her Majesty's Circuit Judges
- Council of Her Majesty's District Judges (Magistrates' Courts)
- Council of Immigration Judges
- Council of Tribunal Members Association
- Council of Upper Tribunal Judges
- Employment Appeal Tribunal Lay Members Committee
- Ethnic Minority Lawyer's Division
- First Minister of Wales
- Forum of Tribunal Membership Associations
- Judicial Appointments Commission
- Judicial Pensions Committee (England)

- London Association of District Judges
- Lord Chief Justice of England and Wales
- Magistrates Association
- Magistrates Leadership Executive
- Mental Health Tribunal Members Association
- President of Mental Health Tribunal Wales
- President of Special Educational Needs Tribunal Wales
- President of Welsh Language Tribunal
- President of Adjudication Panel Wales
- President of Residential Property Tribunal Wales
- Chairman of Agricultural Land Tribunal Wales
- Salaried Tribunal Judges' Association
- Senior Presiding Judge
- Society of Asian Lawyers
- Solicitors Regulation Authority
- The Bar Council (England and Wales)
- The Coroners' Society (England and Wales)
- The Judicial Diversity Committee
- The Law Society (England and Wales)
- The United Kingdom Association of Women Judges

Northern Ireland

- Council of Employment Judges
- First Minister and Deputy First Minister of Northern Ireland
- Judges' Council (Northern Ireland)
- Judicial Pensions Committee (Northern Ireland)
- Lord Chief Justice of Northern Ireland
- Minister for Communities (Northern Ireland)
- Minister for the Economy (Northern Ireland)
- Minister of Justice (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
- Tribunal Presidents' Group

Scotland

- Cabinet Secretary for Justice
- First Minister of Scotland

Judicial Mandatory Retirement Age
Consultation

- Judges' Council (Scotland)
- Judicial Appointments Board for Scotland
- Judicial Council for Scotland
- Lord President of the Court of Session
- Minister for Community Safety
- Part Time Sheriffs' Association
- President of the Lands Tribunal (Scotland)
- Sheriffs' Association
- Sheriffs Principal
- Summary Sheriffs' Association
- The Faculty of Advocates
- The Law Society of Scotland

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.

About You

Please use this section to tell us about yourself.

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Organisation name (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Judicial Mandatory Retirement Age
Consultation

The following questions are voluntary but will help us develop equality analysis against the responses received during this consultation. This information is confidential and any analysis will be anonymised.

<p>What is your age group? <i>Please select relevant box</i></p>	<p><input type="checkbox"/> Under 25</p> <p><input type="checkbox"/> 25 – 34</p> <p><input type="checkbox"/> 35 – 44</p> <p><input type="checkbox"/> 45 – 54</p> <p><input type="checkbox"/> 55 – 64</p> <p><input type="checkbox"/> 65–74</p> <p><input type="checkbox"/> 75+</p> <p><input type="checkbox"/> Prefer not to say</p>
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<p>What do you identify as? <i>Please select relevant box</i></p>	<p><input type="checkbox"/> Female</p> <p><input type="checkbox"/> Male</p> <p><input type="checkbox"/> Prefer not to say</p>
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<p>Please describe your ethnicity? <i>Please select relevant box</i></p>	<p>Asian/Asian British</p> <p><input type="checkbox"/> Bangladeshi</p> <p><input type="checkbox"/> Chinese</p> <p><input type="checkbox"/> Indian</p> <p><input type="checkbox"/> Pakistani</p> <p><input type="checkbox"/> Any other Asian background</p> <p>Black/African/Caribbean/Black British</p> <p><input type="checkbox"/> African</p> <p><input type="checkbox"/> Caribbean</p> <p><input type="checkbox"/> Any other Black/African/Caribbean background</p>
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Judicial Mandatory Retirement Age
Consultation

	<p>White</p> <p><input type="checkbox"/> English, Welsh, Scottish, Northern Ireland, British</p> <p><input type="checkbox"/> Irish</p> <p><input type="checkbox"/> Gypsy or Irish Traveller</p> <p><input type="checkbox"/> Any other White background</p> <p>Mixed or multiple ethnic backgrounds</p> <p><input type="checkbox"/> White and Black Caribbean</p> <p><input type="checkbox"/> White and Black African</p> <p><input type="checkbox"/> White and Asian</p> <p><input type="checkbox"/> Any other mixed or multiple ethnic backgrounds</p> <p>Other ethnic group</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> Prefer not to say</p>
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<p>Are you a British citizen?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If no, please indicate: <input style="width: 150px; height: 20px;" type="text"/></p>
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<p>Do you identify as disabled? <i>Disability under the Equality Act 2010 is described as having a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities.</i></p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
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Judicial Mandatory Retirement Age
Consultation

The following questions are also voluntary but will help us understand more about the perspectives of different judicial office holders. This information is confidential and any analysis will be anonymised.

Are you a judicial office holder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If so, what is your judicial role? <i>Please select relevant box</i>	<input type="checkbox"/> Courts Judge <input type="checkbox"/> Tribunals Judge <input type="checkbox"/> Tribunal Non-Legal Member <input type="checkbox"/> Magistrate <input type="checkbox"/> Coroner <input type="checkbox"/> Other If so, please state here:
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Which jurisdiction or circuit of the country do you sit in? <i>Please select relevant box</i>	<input type="checkbox"/> London <input type="checkbox"/> Midlands <input type="checkbox"/> North East <input type="checkbox"/> North West <input type="checkbox"/> South East <input type="checkbox"/> South West <input type="checkbox"/> Wales <input type="checkbox"/> Northern Ireland <input type="checkbox"/> Scotland
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Contact details/How to respond

How to respond

Please respond online at <https://consult.justice.gov.uk/> by 16 October 2020

Complaints or Comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Representative Groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

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 Ministry.

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 Ministry 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.

For more information see the Ministry of Justice [Personal Information Charter](#).

Publication of Response

A response to this consultation exercise will be published in early 2021.

Impact Assessment, Equalities and Welsh Language

The full Impact Assessment, Equality Statement and a Welsh translation of the Executive Summary can be found at <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age>.



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Alternative format versions of this report are available on request from MRAConsultation@Justice.gov.uk