

Title: Increase of Judicial Mandatory Retirement Age for Judicial Office Holders in England and Wales and Northern Ireland for which the Lord Chancellor is Responsible IA No: MJ056/2020 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies:	Impact Assessment (IA)		
	Date: 23/06/2020		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: MRAconsultation@justice.gov.uk			
Summary: Intervention and Options			RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2020 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£18.3m	£0m	N/A	Not a regulatory provision

What is the problem under consideration? Why is government intervention necessary?

The current mandatory retirement age (MRA) for most judicial office holders is 70 years. This was set in 1993 for most judges, in 2003 for magistrates and 2009 for newly appointed coroners. Since 1993, life expectancy has risen and the demand on the judiciary has increased in many jurisdictions. Increasing the MRA is necessary to help ensure sufficient recruitment and increase retention of judicial office holders to meet the business requirements of our courts and tribunals, and to reflect the increase in life expectancy. As the MRA is set out in statute, government intervention is required to amend primary legislation to raise the MRA for JOHs for which the Lord Chancellor is responsible.

What are the policy objectives and the intended effects?

The policy objective is to enable higher levels of retention; to reflect increased life expectancy and, in tandem with other reforms on judicial remuneration, to help attract new candidates and retain existing judges, magistrates and coroners. A higher MRA is intended to encourage a wider range of candidates to apply for judicial office. A higher MRA would also allow existing JOHs who wish to continue sitting past 70 to do so, so increasing retention. It would also facilitate the retention of judicial expertise.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing. Maintain the MRA at 70.
Option 1: Increase the MRA to 72 for all JOHs specified in the consultation (including magistrates and 'new terms' coroners, i.e. coroners appointed after July 2013).
Option 2: Increase the MRA to 75 for all JOHs specified in the consultation (including magistrates and 'new terms' coroners).
Option 3: Allow for extensions to a magistrate's MRA based on public interest in line with that available to judges
Options 1-3 require primary legislation.
At the present time, the Government has no preferred option.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Is this measure likely to impact on trade and investment?			No		
Are any of these organisations in scope?		Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Increase the MRA to 72 for all JOHs specified in the consultation (including magistrates and 'new terms' coroners).

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.00	High: £24m	Best Estimate: £18.3m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.00		0.00	0.00
High	0.00		0.00	0.00
Best Estimate	0.00		0.00	0.00

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

The impact of current actions to increase judicial diversity would be reduced due to slower turnover, compared to an MRA of 70. Anticipated future improvements in the proportion of women would decrease by an estimated 1-1.4% for the paid judiciary and by 0.5% for magistrates per annum, while improvements to ethnic diversity would decrease by 0.2-0.3% per annum for both the paid judiciary and magistrates. This effect would vary depending on which JOHs choose to take advantage of the new MRA. Insufficient diversity data is available for coroners to enable an assessment.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.00		0.00	0.00
High	0.00		£2.8m	£24.0m
Best Estimate	0.00		£2.1m	£18.3m

Description and scale of key monetised benefits by 'main affected groups'

Under the current schemes, MoJ could save an estimated £21-£36m in pension liabilities, equivalent to a reduction in the employer contribution rate of around 0.4-0.7% of pensionable payroll each year due to judges retiring later, based on the results of the 2016 actuarial valuation of Judicial Pension Schemes conducted by the Government Actuary. The actual impacts may vary depending on judicial retirement patterns. However, any savings may not result in a reduction in costs and could be returned to members via an increase in benefits due to the features of current schemes. Impacts on the proposed Reformed Scheme would be cost neutral given its proposed features. Almost all judges would benefit from increased pension value if they choose to stay longer, but which will be drawn over a shorter period; apart from those who have reached the JUPRA service cap or have pots close to the lifetime tax allowance.

Operational partners (the Judicial Appointments Commission, the Judicial Office, HM Courts and Tribunals Service and the Judicial College) could make hypothetical yearly savings of £2m-£3m if increased retention leads to lower recruitment, onboarding and induction training costs, net of the additional costs that the Judicial College would incur in continuation training for the retained judiciary, which would be approximately £325k to £427K a year.

The change would be cost-neutral for the coroners pension scheme due to late retirement uplifts. All coroners would benefit from an increased pension, apart from those who approach their lifetime tax allowance.

Other key non-monetised benefits by 'main affected groups'

Judges and coroners would benefit from more flexibility in deciding when to retire, and may also have more time to progress to more senior roles. Magistrates would have the flexibility to retire at the higher age.

The Government would benefit as the justice system would retain more judicial, coroner and magistrates expertise.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

The assessment of impacts in this IA is based on extrapolated current departure behaviour. This could change due to other external factors e.g. pension reform. We modelled a range of effects (the minimum is current behaviour, while the maximum is if all JOHs stay to the new MRA). For individual-level impacts, due to wide range of assumptions, we modelled several office types, but the magnitude of effects could be different based on individual circumstances. For diversity impacts, we assumed JOHs are equally likely to depart irrespective of their sex / race or other protected characteristics. A planned future scheme could change the impacts around retirement behaviour.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: 0.00
Costs:	0.00	Benefits: 0.00 Net: 0.00	

Summary: Analysis & Evidence

Policy Option 2

Description: Increase the MRA to 75 for all JOHs specified in the consultation (including magistrates and 'new terms' coroners).

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £0.0m	High: £54.2m	Best Estimate: £32.5m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.00		0.00	0.00
High	0.00		0.00	0.00
Best Estimate	0.00		0.00	0.00

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

The impact of current actions to increase judicial diversity would be reduced and possibly reversed due to slower turnover, compared to an MRA of 70. Anticipated future improvements in the proportion of women would decrease by an estimated 1.2-2.8% per annum for the paid judiciary and by 1.3-1.5% for magistrates, while improvements in ethnic diversity would decrease for the paid judiciary by 0.3-0.6% and for magistrates by 0.8-1% every year. This effect would vary depending on which JOHs opt to take advantage of the new MRA.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.00		0.00	0.00
High	0.00		£6.5m	£54.2m
Best Estimate	0.00		£3.9m	£32.5m

Description and scale of key monetised benefits by 'main affected groups'

Under the current schemes, MoJ could save an estimated £37-£97m in pension liabilities, equivalent to a reduction in the employer contribution rate of 0.7-1.8% of pensionable payroll each year due to judges retiring later, based on the results of the 2016 actuarial valuation of Judicial Pension Schemes conducted by the Government Actuary. The actual impact may vary depending on judicial retirement patterns. However, any savings could be returned to members via an increase in benefits. Impacts on the proposed Reformed Scheme would be cost neutral given its proposed features. Almost all judges and would benefit from an increased pension value if they choose to stay longer, apart from those who have reached the JUPRA service cap or built up pension pots approaching the lifetime tax allowance.

Operational partners (the Judicial Appointments Commission, the Judicial Office, HM Courts and Tribunals Service and the Judicial College) could have hypothetical annual savings of £4m-£7m if increased retention leads to lower recruitment, onboarding and induction training costs. This figure is net of the additional costs that Judicial College would incur in continuation training for the retained judiciary which would be approximately £530k-£1.2m a year.

The change would be cost-neutral for the coroners pension scheme due to late retirement uplifts. All coroners would benefit from an increased pension, apart from those who approach their lifetime tax allowance.

Other key non-monetised benefits by 'main affected groups'

Judges and coroners would benefit from more flexibility in deciding when to retire, and may also have more time to progress to more senior roles. Magistrates would have the flexibility to retire at the higher age.

The Government would benefit as the justice system would retain more judicial, coroner and magistrate expertise.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
The impacts in this IA are based on extrapolated current departure behaviour, but this could change due to potential pension reform. To capture potential effects, we modelled a range of effects (the minimum is current behaviour while the maximum is if all judges stay). For individual-level impacts, due to wide range of assumptions, we modelled several key types, but the magnitude of effects could be different based on individual circumstances. For the diversity impacts, we assumed JOHs are equally likely to depart irrespective of their sex / race or other protected characteristics. A planned future scheme could change the impacts on retirement behaviour.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	Score for Business Impact Target (qualifying provisions only) £m: 0.0	
Costs: 0.00	Benefits: 0.00	Net: 0.00

Summary: Analysis & Evidence

Policy Option 3

Description: Allow a public interest based extensions system for magistrates in line with that of judges.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.00	High: -£0.3m	Best Estimate: -£0.2m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.00	0.00	0.00
High	0.00	0.00	£0.3m
Best Estimate	0.00	0.00	£0.2m

Description and scale of key monetised costs by 'main affected groups'

Introducing a mechanism to allow for magistrate's appointments to be extended past the MRA on a public interest basis would incur additional operational costs for HM Courts and Tribunals Service and the Judicial Office (JO) to consider and approve extensions, depending on the volume of extensions processed every year. The number of extensions required to meet business needs is hard to estimate. The central estimate is that extensions would be approved to complement recruitment shortfalls. The maximum scenario reflects the assumption that the business need would be for all eligible magistrates' appointments to be extended. The estimated annual cost would be approx. £35k (central estimate), with a range from £0 to £42k (maximum scenario).

Other key non-monetised costs by 'main affected groups'

The current efforts in magistrate diversity would be affected due to reduced turnover. Anticipated future improvements in diversity would reduce by 0.3%-1.5% in the proportion that are women, for extensions up to 75, compared to baseline – although magistrates are already gender balanced, so a reduced turnover would actually help maintain gender diversity. There would also be an annual decrease of 0.8%-1% for ethnic diversity, on the same basis. These effects are mitigated by the programme of work on magistrate recruitment, and would vary depending on which magistrates choose to apply for extensions, and the volume of extensions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.00	0.00	0.00
High	0.00	0.00	0.00
Best Estimate	0.00	0.00	0.00

Description and scale of key monetised benefits by 'main affected groups'

We do not believe HMCTS and JO are likely to benefit from savings associated with recruitment and training of new magistrates, as an extensions system would complement, not reduce, the recruitment of magistrates.

Other key non-monetised benefits by 'main affected groups'

Magistrates may benefit from having the option to sit beyond their MRA, where available.

The Government and wider society would benefit from a reduced risk of a shortage of magistrates by retaining experienced magistrates when required.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

For the impacts, we extrapolated current magistrate departure behaviour, but future changes could impact departures. For diversity impacts, we assumed magistrates with protected characteristics are equally likely to depart compared to those without protected characteristics. We estimated HMCTS operational costs based on current timings for processing applications. Future demand for magistrates will also dictate the potential volume of extensions to meet business needs.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: 0.00
Costs: 0.00	Benefits: 0.00	Net: 0.00	

Evidence Base

A. Background

1. The mandatory retirement age (MRA) for most judicial office holders (JOHs) in England and Wales, Scotland and Northern Ireland was set to 70 in the Judicial Pensions and Retirement Act (JUPRA) 1993. The same retirement age was also set for magistrates in England and Wales in the Courts Act 2003 and for coroners in the Coroners and Justice Act 2009, to ensure alignment with the paid judiciary. While the MRA does not prevent JOHs from retiring early, it acts as an upper limit beyond which JOHs are automatically retired.
2. Having a set MRA for JOHs has a strong justification, by balancing the need for a JOH to continue in office against the need to create opportunities for new JOHs to enter the judiciary. More importantly, a set MRA also safeguards judicial independence, by reducing the need for individual assessments of health or mental capacity. Finally, a certain MRA level assists with judicial workforce planning, by ensuring there is an appropriate number of JOHs at the necessary levels of seniority to meet the needs of various jurisdictions and meet reasonable forecasts of future need.
3. Nonetheless, the government has decided now it is the time to look at whether the current MRA still serves these objectives appropriately, given several significant changes have occurred since 1993, which justify a review and increase of the MRA for those JOHs for which the Lord Chancellor is responsible.
4. First, life expectancy has increased: data from the Office for National Statistics (ONS) shows that life expectancy rose by 5.8 years for men and 4.1 years for women between 1993 and 2019 and that further increases for men and women should continue in the future, albeit at a slower rate.¹ Any MRA should reflect this increased life expectancy and offer the opportunity to work longer to those JOHs who wish to do so.
5. Second, despite significantly increasing the judicial recruitment programme in the last 3 years, significant recruitment shortfalls were registered in some jurisdictions. Similarly, the magistracy is experiencing resourcing pressures as a significant proportion of magistrates approach retirement age. These examples suggest that recruitment should be complemented by retention measures such as increasing the MRA, if judicial appointments are to reflect expected needs.
6. Finally, raising the current MRA might also increase the attractiveness of judicial office to a wider range of applicants. These might include older, more experienced legal professionals, or professionals who might have had career breaks, who would otherwise not apply for senior offices because they would not have enough length of service before the MRA (as many roles have an eligibility requirement of a reasonable length of service) or enough time to get the required experience necessary for appointment to more senior roles. Increasing the MRA could therefore improve recruitment outcomes, especially for senior or specialist roles. While some evidence for this exists,² we would like to gather more insight as part of the consultation of which this impact assessment forms a part.
7. The factors which determine the appropriate MRA apply across all JOHs, including magistrates and coroners, which is why the Government finds it important to maintain a consistent approach as far as possible. This is why magistrates and coroners whose MRA was set at 70 to align with the wider judiciary are also included in this consultation.
8. The Government's intention to review the MRA has so far received signals of support from the judiciary, the magistracy, interested parliamentary committees, and the Review Body on Senior Salaries.

¹ ONS "Past and projected data from the period and cohort life tables, 2018-based, UK: 1981 to 2068", December 2019

² Turenne and Bell (for SSRB) "The Attractiveness of Judicial Appointments in the United Kingdom", January 2018; Morison and Dickson (for NIJAC) "Barriers to High Court Appointments in Northern Ireland", June 2019.

B. Policy Rationale and Objectives

Economic Rationale

9. The conventional economic approach to government intervention is based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Governments may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
10. The primary rationale for intervention in this case is efficiency in the allocation of judicial resource and fairness – i.e. responding to improvements in life expectancy between 1993 and now. Future increases in life expectancy are expected, albeit at a slower rate. Efficiency in resource allocation would be promoted by enabling existing judicial expertise to be retained to assist with future caseload pressures, whilst balancing this with fairness considerations regarding access of new generations to judicial office, at a time where recruitment challenges are being experienced.

Policy Objectives

11. The associated policy objective is to encourage increased judicial supply and retention. A change would also reflect increased life expectancy. The options discussed in this Impact Assessment (IA) would work in tandem with other government reforms to judicial remuneration, to increase attraction and retention on the bench. An increased MRA would allow JOHs who feel able and willing to serve for longer, therefore increasing retention. It is also expected that an increase in the MRA might motivate a wider pool of experienced candidates to apply for judicial office. It would also retain judicial expertise for longer.

C. Affected Stakeholder Groups, Organisations and Sectors

12. The main groups affected by options assessed in this IA are:
 - Judicial office holders of England and Wales, of the Unified Tribunals and in Northern Ireland offices for which the Lord Chancellor is responsible and whose MRA is set in JUPRA 1993 Schedule 5.
 - All magistrates sitting in England and Wales - their MRA is set in the Courts Act 2003.
 - Coroners sitting in England and Wales, who were appointed since the Coroners and Justice Act 2009 came into force ('new terms' coroners with a set MRA of 70³), and all future coroners appointed under the Act.
 - The Judicial Appointments Commission (JAC), Judicial College (JC) and Judicial Office (JO) with responsibility for the recruitment, training, and administrative support of new judicial appointments.
 - HM Courts and Tribunals Service (HMCTS), who are responsible for administering the courts and tribunal service, as well as the supporting the recruitment of new magistrates.
 - Ministry of Justice (MoJ), HM Treasury (HMT), and ultimately the taxpayer, who pays the costs of the judiciary.
 - All potential candidates for judicial office, including legal professionals who may be considering a judicial or coroner appointment, other professionals and experts who may be considering becoming a non-legal member, and the public at large considering to become a magistrate.

³ This measure would apply to coroners appointed under the Coroners and Justice Act 2009 (which has an MRA set at 70), not to coroners appointed prior to the Act (who do not have a set MRA).

D. Options under Consideration

13. In order to meet the policy objectives described above, the following options have been considered:
- **Option 0: Do nothing – maintain the MRA at 70.**
 - **Option 1: Increase the MRA to 72 for all JOHs included in the consultation⁴ (including magistrates and ‘new terms’ coroners⁵).**
 - **Option 2: Increase the MRA to 75 for all JOHs included in the consultation (including magistrates and ‘new terms’ coroners).**
 - **Option 3: Allow for magistrates’ extensions on a public-interest basis to align with those for judges.**
14. These options were selected because they strike the right balance between the objectives specified above. The Government understands these options have received calls for support from the judiciary and magistrates’ leadership as the most appropriate options.
15. We have also considered, but discarded, other options, such as increasing MRA only for senior courts and tribunals judiciary, or increasing the MRA only for new appointees rather than all JOHs. We considered these options to be less desirable as there is not a sufficient justification to limit a higher MRA to particular groups, since our objectives to increase the recruitment and retention apply to all groups. In addition there would be the potential for adverse equalities implications. Applying a higher MRA to new appointees only would take decades to have its effects felt, which would therefore not appropriately meet our current objectives.

Option 0: Do nothing

16. Under this option, there would be no change to the current MRA of 70 years in JUPRA 1993, the Courts Act 2003 or the Coroners and Justice Act 2009, nor would there be any creation of magistrates extensions. As a result, this option would not meet our objectives to improve judicial supply through improvements to recruitment and retention, nor would it take account of the increase in life expectancy since the MRA was set.

Option 1: Increase the MRA to 72 for all JOHs included in the consultation (including magistrates and ‘new terms’ coroners)

17. Under this option, the new MRA set for all JOHs for which the Lord Chancellor is responsible, including magistrates and ‘new terms’ coroners (coroners appointed under the Coroners and Justice Act 2009), would be raised to 72. This would be done by amending s.26 and schedule 5 of JUPRA 1993 (for paid judiciary), s.13 of the Courts Act 2003 (for magistrates) and Sch. 3 of the Coroners and Justice Act 2009 (for coroners) to read ‘72’ instead of ‘70’.
18. The provisions for sitting in retirement and extension for the paid judiciary and coroners would not be affected. JOHs would still be able to sit on an exceptional, business-need basis, up to the age 75, as currently set in a variety of acts.

Option 2: Increase the MRA to 75 for all JOHs (including magistrates and ‘new terms’ coroners)

19. Under this option, the new MRA set for all JOHs for which the Lord Chancellor is responsible, including magistrates and ‘new terms’ coroners, would be raised to 75. This would be done by amending s.26 and schedule 5 of JUPRA 1993 (for paid judiciary), s.13 of the Courts Act 2003 (for magistrates) and Sch. 3 of the Coroners and Justice Act 2009 (for coroners) to read ‘75’ instead of ‘70’.
20. The provisions for sitting in retirement and extension for the paid judiciary and coroners would be affected, as they are currently set at 75. There are strong justifications for maintaining the provisions that allow for sitting in retirement or extension of appointment, as this provides much needed operational flexibility in maintaining judicial capacity. However, given the proposed MRA under this

⁴ A list of offices can be found in the consultation document.

⁵ Coroners appointed under the Coroners and Justice Act 2009

option is considerably higher than the current 70, we seek views through the consultation on whether extensions would still be desirable.

Option 3: Allow for magistrates' extensions on a public-interest basis to align with those for judges

21. Under this option, we would allow for public-interest based magistrates' appointments extensions similar to the provisions in place for judges and coroners.
22. This could be provided for by an amendment to the Courts Act 2003 which would allow magistrates to be temporarily removed from the supplemental list to fulfil a variety of roles (such as presiders, wingers, mentors, appraisers etc.) if it is in the public interest.
23. This option could sit alongside any of options 0, 1 or 2.

E. Cost and Benefit Analysis

24. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
25. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and sectors in the England & Wales and Northern Ireland, with the aim of understanding what the overall impact on society might be from the options under consideration. These impacts are compared to those of the 'do nothing' option. As the 'do nothing' option would be compared to itself, it has no impacts and no associated net present value (NPV).
26. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
27. A 15% optimism bias has been applied to all savings in line with standard IA practice to acknowledge uncertainty. The price base year for monetised impacts is 2019 and discounted to 2020, in accordance with the latest guidance to ensure consistency. For pension impacts, the Government Actuary's Department (GAD), which is responsible for providing independent actuarial advice to the Government, has been commissioned to provide estimates based on the most recently completed actuarial valuation (2016).
28. The options discussed in this IA would also have impacts on the devolved administrations. For clarity, we present these impacts separately in section H.

Categories of costs and benefits

29. For the purposes of this IA we have identified a range of key monetised and non-monetised impacts of a change in the MRA. We believe the categories of costs/benefits are common across all options, although their magnitudes will differ.
30. The main monetised benefits identified are:
 - Pensions savings (scheme-level): Any increase in the MRA should lead to an overall saving in MoJ contributions to the judicial pension schemes in the short term, as JOHs are expected to draw their pensions later and contribute for longer. These saving relate to service in JUPRA / FPJPS (schemes which do not have late retirement factors), but not to the NJPS, the proposed reformed scheme or the LGPS. Due to the cost-cap mechanism,⁶ any saving to the scheme may not be realised, as any theoretical savings could be returned to members via an increase in benefits. The implications of the cost cap mechanism are currently unknown. For coroners, no impact on the Local Government Pension Scheme (LGPS) is anticipated, due to late retirement

⁶ A cost cap mechanism is used to ensure that the costs of a pension scheme remain affordable and sustainable in the long term. Cost caps are set at levels which represents the Government's best estimates of the future costs of the new pension arrangements. This mechanism ensures that any savings incurred from a change in scheme are reinvested in the scheme. The employer costs cap was introduced by the Public Service Pensions Act 2013 and applies to all public pension schemes.

factors.⁷ See paragraph 66 for more details on the analysis that the Government Actuary's Department (GAD) has provided for this IA.

- **Recruitment savings:** Any increase in the MRA should lead to a temporary saving in costs associated with the recruitment, training and deployment of new JOHs, if more JOHs are retained and less recruitment is required. This benefit is only hypothetical, because additional retention does not necessarily imply we would decrease recruitment, which depends on future forecasts of demand. These savings take into account that only some JOHs will take advantage of the new MRA. Some recruitment savings are also fixed and would not be affected by a change in MRA. For this reason, we have only assessed the variable costs. These savings would also be time-limited, until a new 'steady state' is reached (when all JOH appointments will have the new MRA). We have also subtracted the continuous training costs incurred by Judicial College due to additional retained JOHs. For coroners, the recruitment savings are expected to be negligible.
- **Pension benefit (individual level):** Any increase in the MRA should lead to an increase in annual and lifetime pension benefits for most JOHs (including coroners), due to additional years of contributions to build up further pension benefits, although the pension would be drawn over a shorter timeframe. For the purposes of illustrating the impacts of this, we asked GAD to provide typical examples of individual JOH benefits, for both current schemes and the proposed Reformed Scheme.

31. The main non-monetised benefits are:

- **Expertise retention:** Raising the MRA should allow for the retention of judicial expertise for longer.
- **Increased attractiveness of judicial office:** An increase in the MRA would raise the attractiveness of judicial office to a wider range of experienced lawyers, who may otherwise considered that they would have insufficient time in judicial office and to gain experience in order to apply for more senior judicial roles.
- **Supporting the effective operation of the justice system:** An increase in the MRA would contribute to supporting the effective operation of the justice system.

32. The main monetised costs identified are:

- **Operational costs:** Operating a system to approve magistrates' extensions would incur annual running costs. There would be no operational costs for changing the MRA across the board.

33. The main non-monetised costs identified are:

- **Judicial diversity:** An MRA increase would slow down the progress toward increasing judicial diversity, as it would decrease the rate at which less diverse older JOHs are replaced by more diverse younger ones.

34. Finally, there are some potential impacts where we expect there would be no effect:

- **Remuneration:** We do not believe there any impacts on remuneration, as JOHs are paid at the same rate irrespective of their age or length of tenure. A newly-recruited judge/coroner would receive the same level of remuneration to an existing judge/coroner. Magistrates are not remunerated.

Approach to costs and benefits: modelling of potential retention impacts

35. In order to determine the impacts of each option, we have attempted to quantify how many JOHs would be likely to decide to stay if the option were implemented, compared to the baseline (we will refer to this from now on as the 'retention analysis'). Due to availability of data and the numbers of JOHs involved, we were able to run this complex modelling for England and Wales courts judges, tribunal JOHs in the Unified Tribunals, and England and Wales magistrates. Data for JOHs in Northern Ireland for which the Lord Chancellor is responsible is presented separately in section H.
36. Since we do not have any information on the likelihood of retiring JOHs deciding to stay longer, we created two scenarios for each option:

⁷ Which increase the value of a pension awarded for an individual who decides to retire later.

- A 'most likely' scenario, by extrapolating current data about yearly departures, i.e. by considering that only a proportion of JOHs approaching retirement would decide to stay longer, in line with current data about early retirements. This scenario relies on the assumption that an increase MRA in itself would not motivate JOHs to stay longer, compared to other improvements such as improvements in remuneration.⁸ It also assumes that the proportion of JOHs who currently stay to MRA 70 would be equally likely to stay to the new MRA.
 - A 'maximum' scenario, whereby all JOHs are assumed to decide to stay on the bench until the new MRA. While we consider this scenario unlikely, it gives an upper bound of the potential impacts.
37. This retention analysis was done for each JOH type, thus accounting for differences in retirement patterns between courts and tribunals JOHs, salaried and fee-paid, legal and non-legal, and magistrates.
38. The results of the analysis show how many additional retained JOHs could be expected each year, from the year of the implementation of the policy for a further 10 years. Since the implementation date of any increased MRA is yet to be confirmed, we assumed the judiciary would have overall the same makeup at the time of implementation as our current data. In this IA we present average yearly impacts.
39. The retention analysis outputs were then overlaid on the different categories of costs and benefits (pensions, operational, diversity) to determine the likely yearly differential impacts for each option. The summary results are presented in the sections below.
40. We were unable to run the same level of analysis on 'new terms' coroners, due to the small numbers of coroners retiring each year, and lack of data on past retirement patterns. Table 1 presents data provided by the Chief Coroners Office on all 'new terms' coroners, those who are approaching retirement, and recent appointments (all new appointments since 2013 are on the 'new terms'). There are currently 386 coroners appointed under the new terms in total, and there are currently 62 'new terms' coroners aged 60+ who would reach MRA in the next decade (9% of all 'new terms' coroners), and would therefore benefit from the new MRA. This suggests no more than 1% of 'new terms' coroners would benefit from the new MRA every year, in the next decade.

Table 1: Data on existing coroners, coroners approaching retirement and new appointments

	Total coroners by type	'New terms' coroners	'Old terms' coroners	New terms' coroners approaching retirement (aged 60-67)	New 'new terms' appointments (2017-2020)	Recent retirements (2017-2020)
Senior coroners	77	21	56	2	9	11 (0% new terms)
Area coroners	31	26	5	3	10	no data
Assistant coroners	562	339	223	57	213	no data
Total coroners	670	386	284	62	232	no data

Approach to calculating pension impacts

41. An increased MRA would allow more flexibility for JOHs to decide at what age to retire. It is, however, very difficult to estimate the impacts of this. We have attempted to quantify both scheme-level and individual-level impacts for paid judiciary, but will revisit the analysis in light of evidence of expected behaviours emerging from the consultation.

⁸ The Judicial Attitude Survey 2016 found that the top factors that would influence judges to stay longer in the judiciary were: higher remuneration (80%), settled position on pension entitlements (57%) and better administrative support (56%).

42. For scheme-level impacts, we asked the GAD to rely on the retention analysis (set out in the previous section) to estimate the likely cost impacts for the ‘most likely’ and maximum scenarios on all Judicial Pensions Schemes liabilities.
43. GAD provided a preliminary assessment on the pension scheme-level impacts of an MRA change. Since not all judges work until the MRA, the valuation makes an assumption about the age at which different categories of judges retire based on historic experience. This assumption is a single age for judges in different schemes rather than adopting an age-related rate of retirement. Table 2 below summarises the retirement age assumption arrived at by GAD, based on the retention analysis.

Table 2: GAD updated assumptions of average retirement age if MRA were increased

	Salaried judges in JUPRA	Salaried judges in JPS 2015	Fee paid judges
Current assumption (MRA 70)	67.1	(SPA+MRA) / 2	69.4
All salaried			
MRA 72 most likely scenario		67.4	69.8
MRA 72 maximum scenario		67.5	70.2
MRA 75 most likely scenario		67.6	70.1
MRA 75 maximum scenario		68.3	72.0

44. The scheme-level costs provided by GAD set out the estimated impact on the valuation results as at 31 March 2016 (the most recent completed valuation of the schemes), if the above options had been in place at that date and the impact on retirement patterns were as expected in the most likely and maximum scenarios. These costs show the estimated impact on the 2016 valuation which has already been completed⁹, uprated to 2020 price levels. The actual impact on a future valuation may be more or less than that set out here. GAD have also provided a preliminary assessment of impacts of a Reformed Scheme, given what is currently known about the proposed scheme features with regards to late retirement.
45. Coroners are included in the Local Government Pension Scheme (LGPS). GAD assessed that the impacts of a change to MRA would be cost-neutral irrespective of the number of coroners retiring, because that scheme has late retirement uplifts to a members’ annual pension to reflect the fact that they will receive their pension for a shorter amount of time.
46. It was not possible, however, to determine ‘average’ individual-level impacts of an MRA increase, as there is a wide variety of factors (type of role, membership of pension scheme, years of contributions, life expectancy, personal motivations to retire early or late) that could impact the value of an individual judicial pension. Instead, we have asked GAD to calculate a few examples of individual-level impacts, as illustration. They are set out under each option considered.
47. Both the scheme-level and individual-level impacts are highly dependent on the features of pension schemes. They could change if pension schemes are impacted by future reforms.

Approach to quantifying impacts on judicial diversity

48. The most important non-monetary impact of any increase in the MRA would be a slowing down of diversity efforts, as it would reduce the rate at which existing JOHs would be replaced by those who are likely to come from a wider range of backgrounds. The Judicial Diversity Statistics 2019 reported that 32% of court judges, 46% of tribunal judges and 56%¹⁰ of magistrates were women and that 7% of court judges, 11% of tribunal judges and 12% of magistrates were Black and Minority Ethnic (BAME). As explained in more detail in the Equality Statement (which accompanies this IA), given the Lord Chancellor’s statutory duty to encourage judicial diversity, we consider that increasing the MRA would only be justified if the impacts on diversity would be proportionate.

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813717/jps-2016-valuation-report.pdf

¹⁰ Because magistrates already have more women than men, a decrease in the proportion of women due to a reduced turnover would actually maintain magistrate diversity. A similar effect is found for tribunal non-legal members, where 51% are currently women.

49. We have endeavoured, insofar as possible, to review the available evidence across all nine protected characteristics stated in the Equality Act 2010, although we consider age, sex, race and disability are most materially relevant to an increase in MRA.
50. We undertook our assessment on three protected characteristics – sex, race and age – as these are the protected characteristics most consistently recorded in both JAC recruitment data and Judicial Office eHR database, which contains all current judicial office holders. We were not able to conduct analysis on the remaining 6 protected characteristics, including disability, due to lack of available data.
51. To assess the potential impacts on diversity, we compared the diversity characteristics (sex and race) of judiciary aged 65-69 (the ‘retiring pool’) with the profile of judges selected for appointment by the JAC in the past 4 years (2015-2019) across all JOH types where data was available (the ‘new entrants pool’). For magistrates, we compared the diversity profile of magistrates aged 65-69 with the profile of recently appointed magistrates in the most recent completed financial year at the time of analysis.
52. We then overlaid the differences in diversity characteristics between retiring and new JOHs over the retention analysis, to account for the fact that (1) not all JOHs approaching retirement will stay, (2) the departures would be phased, by year, as JOHs approach MRA; and (3) the overall effect the retention would have on the diversity of the entire complement. The results of this analysis are presented for each option in the sections below.
53. Coroners’ appointment data is held at local level, and the Chief Coroner’s Office (CCO) has limited centralised data on ‘new terms’ coroners characteristics (only on sex). CCO expects to undertake a Coroners’ Attitude Survey in the near future which will request data on protected characteristics to inform future assessments. For the purposes of this IA, we were unable to conduct a full diversity impact analysis given the very few retirements expected to take place yearly, but we have received the following sex breakdowns, which are set out in Table 3 below:

Table 3: All 'new terms' coroners, new appointments and 'new terms' coroners approaching retirement, by sex

	All new terms	% female	New appointments	% female	Approaching retirement (aged 60-67)	% female	Diversity difference
Senior coroner	26	23%	8	25%	2	50%	-25%
Area coroner	27	30%	10	40%	3	33%	7%
Assistant coroner	333	53%	216	50%	57	35%	15%
Total coroners	386	49%	234	49%	62	35%	13%

54. The figures suggest an MRA increase would have a positive diversity effect on senior coroners, and a negative effect on that of area and assistant coroners, but these effects would likely be negligible given that very few coroners would be approaching retirement annually (less than 1%). The above figures also need to be interpreted with caution as they involve very small numbers.

Option 1: Increase the MRA to 72 for all JOHs included in the consultation (including magistrates and ‘new terms’ coroners)

Costs of Option 1

Non-monetised: diversity impacts

55. Based on JAC diversity statistics from 2015 to 2019, around 46% of applicants recommended for appointment by the JAC were women, compared to 27% of retiring judges. Over the same period, 13% of applicants recommended for appointment were BAME compared to 9% of retiring judges.

56. When looking at yearly impacts, increasing the MRA to 72 would have a small negative impact on diversity. An increase in the MRA to 72 would result in a 1%-1.4% annual decrease of women judges in the short term (within the first year of implementation), and of 0.7%-1.1% in the medium-long term (within 10 years of implementation). There would be little impact on the proportion of paid JOHs who are BAME (0.2-0.3% fewer BAME for an MRA of 72) given the small differences between the characteristics of new appointments and retirees.
57. There would be little impact on the proportion of the magistrates who are women (a maximum of 0.5% less women could be retained) for an increase in the MRA to 72, given the small differences between the characteristics of new appointments and retirees. As with the paid judiciary, there would be little impact on the proportion of magistrates who are BAME (a maximum of 0.2-0.3% fewer BAME), given the size of the cohort.
58. We believe that this impact on diversity is proportionate. The Equality Statement presents a more detailed assessment of equalities impacts of this option, in line with our Public Sector Equality Duty.
59. There are currently 189 female coroners appointed under the new terms (49% of all new term coroners). There is also no diversity breakdown of 'new terms' coroners approaching retirement (aged 60+) apart from sex. We are therefore unable to assess what impact an MRA increase would have on the overall diversity of coroners.
60. Available data on sex from the Chief Coroner's Office suggests 'new terms' coroners who will be approaching retirement in the next decade are only slightly less gender diverse than recent appointments (35% vs 49%), which suggests an increase in MRA would negatively affect diversity. That said, these effects are probably negligible, due to the very small number of yearly retirements (turnover), compared to the overall cohort of 'new terms' coroners (only 9% will reach 70 in the next decade). We are unable to quantify impacts for MRA 72 compared to MRA 75 due to the very small numbers involved, but we estimate impacts would be lower for 72 than for 75.

Benefits of Option 1

61. Table 4 presents the average yearly retention impacts forecasted for each JOH type. It also compares the retention impacts with the overall headcount, to give a sense of the overall impact.

Table 4: Retention impacts for MRA increased to 72

	Average yearly impact (JOHs retained)		Impact relative to current complement	
	Most likely scenario	Maximum scenario	Most likely scenario	Maximum scenario
<i>Courts</i>				
Total salaried (FTE)	15	31	1%	2%
Total fee-paid (headcount)	86	110	4%	6%
<i>Total courts</i>	<i>100</i>	<i>141</i>	<i>3%</i>	<i>4%</i>
<i>Tribunals</i>				
First tier salaried	5	12	1%	3%
First tier fee paid	28	56	2%	4%
Upper tier salaried	1	2	1%	3%
Upper tier fee paid	3	6	2%	5%
Non-legal members (NLM)	54	83	6%	8%
Medical members	54	79	4%	6%
<i>Total tribunals</i>	<i>144</i>	<i>236</i>	<i>3%</i>	<i>5%</i>
Total paid judiciary	245	377	3%	5%
Total magistracy	1,056	1,155	7%	8%

62. Table 4 suggests that between 245-377 paid JOHs and 1,056-1,155 magistrates could be retained yearly if the MRA were increased from 70 to 72 across all offices. If we compare this with recent recruitment levels, such a retention rate could cover between 24-38% of JAC requirements (compared to the recent average recruitment level of around 1,000 vacancies a year).
63. As previously explained, we are unable to make a similar assessment of coroner retention impacts, due to the very small number of retirements.

Pension schemes impacts

64. GAD were asked to provide an estimate of the impact on the judicial pension scheme costs of the changes in the MRA to 72 and 75 for both the most likely and maximum scenarios. Their estimates were based on the average judicial retirement age calculated at paragraph 43 above, and the results of the actuarial valuation as at 31 March 2016 as this is what the current employer contribution rate is based on, which considers all judicial pension schemes in aggregate. The results are shown in Table 5 below.

Table 5: Estimated impact on the valuation results as at 31 March 2016 (MRA 72)

	Change in scheme liabilities ¹¹ £m	Change in contribution rate ¹²
MRA 72 most likely scenario	-21	-0.4%
MRA 72 maximum scenario	-36	-0.7%

65. Table 5 above shows that the liabilities as at 31 March 2016, and hence the employer contribution rate, would be expected to reduce in the short term, as a result of judges retiring later.
66. Based on the cost cap regulations that were in place for the 2016 valuation, a change in the MRA that fed through to a reduction in scheme costs could be expected to result in the need to increase member benefits to take account of this. A margin of 2% either side of the cost cap exists so that only when scheme costs change by more than 2% either way would changes need to be made to scheme benefits. Therefore, any actual “saving” from a change in retirement ages may not directly result in a reduction in MoJ’s costs, depending on the size of the change, and whether there are any other cost pressures which affect the employer cost cap, which could either increase or offset the impact of the MRA change. The cost cap regulations are currently paused, subject to the implications of the *McCloud* litigation¹³ so the precise implications are currently unknown.
67. GAD have also helped us assess the potential impacts an increase in MRA might have in the future if a reformed pension scheme is introduced. GAD concluded that an increase in MRA would likely be cost-neutral for the reformed scheme, if as proposed the new scheme were to have late retirement factors which increase yearly benefits for a retired member who retired later, to account for the fact that the member has fewer years to enjoy the pension benefits.
68. Coroners are members of the Local Government Pension Scheme (LGPS). GAD estimates that there would be no effects on the scheme, because the scheme has late retirement uplifts to a members’ annual pension to reflect that they receive their pension for a shorter amount of time.

Individual-level pension impacts

69. GAD has provided some preliminary individual-level pension impact assessments for a few examples of judges. Table 6 below summarises the main estimates. The main conclusion is that staying to MRA would individually benefit all JOHs, irrespective of salary group and pension scheme, apart from those judges in JUPRA who would have reached the 20-year service cap by the time they reach 70. The size of additional pension benefits would be proportional to their salaries and additional years on the bench.

¹¹ This shows the estimated change in the scheme liabilities as at 31 March 2016 as a result of judges being expected to retire late.

¹² This shows the estimated change in uncorrected employer contribution rate as a result of this reduction in liabilities.

¹³ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-01-30/HCWS1286/>

70. The results suggest that extending the MRA would be broadly cost neutral after any initial savings while most judges would be better off. This is not entirely intuitive but can be explained as follows:
- Members gain, mainly due to the effect of extra accrual;
 - The fall in scheme liabilities reflects the expected reduced cost of already accrued JUPRA benefits (as they are being paid for less time with no corresponding late retirement factors),
 - It should be noted that this does not reflect the additional cost of future accrual (which MoJ would have to cover whether it was in respect of these judges retiring later or in respect of new judges).

Table 6: Individual-level judicial pension impacts (illustrative examples, by salary group) for MRA 72 for JOHs in the current schemes, compared to baseline (MRA 70)

Salary group	4	4	6.1	7	7	7	8
Annual salary equivalent	£188,901	£188,901	£140,289	£112,542	£112,542	£33,763	£89,428
Pension scheme	JUPRA	NJPS	JUPRA	JUPRA	NJPS	FPJPS	FPJPS
Other characteristics (service cap, NPA)	5 years below service cap	NPA 67	5 years below service cap	5 years below service cap	NPA 67	15 years below service cap 30% FTE	15 years below service cap
Change in pension value (yearly)	£9,445	£12,416	£7,014	£5,627	£7,397	£1,688	£4,471
Total lifetime pension	£47,225	£194,919	£35,072	£28,136	£116,127	£5,627	£67,071
Change in lump sum	£21,251	N/A	£15,783	£12,661	N/A	£3,798	£10,061
Additional contributions (+AA charges)	£16,677	£83,810	£12,373	£9,926	£31,886	£2,208	£7,888
Change in lifetime value	£51,800	£111,109	£38,481	£30,870	£84,241	£7,217	£69,244

71. GAD also provided a preliminary assessment of the impacts the proposed Reformed Scheme (RS) might have on JOHs who decide to take advantage on a raised MRA. A few illustrative examples are set out in Table 7 below. These are only indicative, as the features of the proposed scheme are subject to change.

Table 7 Individual-level judicial pension impacts (illustrative examples, by salary group) for MRA 72 for JOHs in the proposed reformed scheme, compared to baseline (MRA 70)

Salary group	4	6.1	7	7 30% FTE
Annual salary equivalent	£188,901	£140,289	£112,542	£33,763
Change in pension value (yearly)	£13,118	£9,742	£7,815	£2,345
Total lifetime pension	£208,944	£155,174	£124,483	£37,345
Change in lump sum	N/A	N/A	N/A	N/A
Additional contributions (+AA charges)	£16,094	£11,953	£9,589	£2,877
Change in lifetime value	£192,850	£143,222	£114,895	£34,468

72. GAD has also provided some preliminary individual-level pension impact assessments for a few examples of coroners. Table 8 below summarises the main estimates. The main conclusion is that staying to MRA would individually benefit all coroners. The size of additional pension benefits would be proportional to their salaries and additional years worked.

Table 8 Individual-level coroner pension impacts (illustrative examples, by type of role) for MRA 72 compared to baseline (MRA 70)

Role	Senior coroner		Area coroner		Assistant coroner	
Average salary equivalent	£125,970	£125,970	£95,370	£95,370	£16,920	£16,920
Other characteristics (service cap, NPA)	NPA 65	NPA 67	NPA 65	NPA 67	NPA 65	NPA 67
Change in pension value (yearly)	£9,000	£8,000	£6,000	£6,000	£1,000	£1,000
Total lifetime pension	£135,000	£119,000	£102,000	£90,000	£18,000	£16,000
Change in lump sum	N/A	N/A	N/A	N/A	N/A	N/A
Additional contributions (+AA charges)	£52,000	£45,000	£30,000	£25,000	£2,000	£2,000
Change in lifetime value	£83,000	£74,000	£73,000	£65,000	£16,000	£14,000

Recruitment savings

73. The end to end process of planning and running a recruitment exercise is undertaken by the JAC for judges and by HMCTS for magistrates. Judicial Office (JO, including Judicial College - JC), HMCTS and MoJ support the deployment and induction of judges and magistrates. A hypothetical reduction in recruitment needs due to increased retention could therefore result in operational savings for all these organisations.
74. Based on the retention analysis, and taking into account the operational costs incurred in the previous financial year by JAC, JO, JC and HMCTS, Table 9 (below) shows that the average yearly savings if the MRA were increased to 72 would be (including optimism bias of 15 per cent):

Table 9: Recruitment, onboarding and induction training savings for MRA 72

	Average yearly savings for MRA 72	
	Most likely scenario	Maximum scenario
<i>Paid Judiciary</i>		
JAC: Recruitment savings	£447,000	£689,000
HMCTS: Recruitment backfill savings	£177,000	£273,000
JO: Onboarding savings	£49,000	£76,000
JC: Observations savings	£445,000	£624,000
JC: Induction training savings	£203,000	£333,000
Total paid judiciary savings	£1,322,000	£1,996,000
<i>Magistrates</i>		
HMCTS: Recruitment savings	£668,000	£731,000
HMCTS: Induction training savings	£191,000	£209,000
JO: Onboarding savings	£58,000	£64,000
Total magistrates savings	£917,000	£1,003,000
Total average annual savings for MRA 72	£2,238,000	£2,998,000

75. These savings would be made up of:

- JAC savings in exercise-related (variable) costs of running judicial recruitment;

- HMCTS savings in judicial backfill costs for judicial participation in recruitment campaigns;¹⁴
 - JO staff savings in processing the onboarding and deployment of new appointments;
 - JC savings in delivering the induction training, including observations, for new appointments, offset by costs in delivering continuation training for retained JOHs.
76. These savings are net of continuation training costs for those additional retained judges.
77. Magistrates recruitment is undertaken in England and Wales by local Advisory Committees (comprised of magistrates), with the support of HMCTS and JO. A hypothetical reduction of recruitment needs would result in:
- HMCTS savings in recruitment, onboarding and training costs;
 - JO operational staff savings for administering sitting arrangements for new appointees.
78. Coroners' recruitment is undertaken in England and Wales by individual local authorities, with some support from the CCO. Preliminary indications, given low current per-capita costs for recruitment are that hypothetical savings would be minimal and absorbed. The JC, which provides coroners' induction and continuation training, indicated the overall effect of a change in MRA for coroners would have no cost impact, because the per-capita induction cost of a new coroner is equal to the per-capita cost of continuation training of a retained coroner.

Retention of expertise

79. One important justification for increasing the MRA is the retention for longer of judicial expertise and experience. While this cannot be readily monetised (apart from savings in induction training, already reflected above) or properly quantified, the Government believes it would be an important benefit from a change in the current MRA.
80. While not quantifiable, retention of expertise may be less for an MRA of 72 compared to an MRA of 75, although to what extent would depend to what extent JOHs choose to stay to the higher MRA.

Maintaining the effective operation of the justice system

81. Another important, but hard to quantify, benefit of a higher MRA would be to maintain the effective operation of the justice system by ensuring judicial capacity meets the caseload demands in courts and tribunals. We considered whether to try to quantify this benefit in terms of the reduction in outstanding cases, decreased timeliness, or the cost of other mitigations, but we concluded that quantifying this benefit would be too complex to be a reliable indicator.

Option 2: Increase the MRA to 75 for all JOHs included in the consultation (including magistrates and 'new terms' coroners)

Costs of Option 2

Non-monetised: diversity impacts

82. When looking at yearly impacts, an MRA increase to 75 could have a larger impact on diversity growth than the 72 option. Gender diversity is forecast to be 1.5-2% lower in the short term (within a year of implementation) and 1.2-2.8% in the medium-long term (by year 10, where year 1 is the baseline for the modelling). Ethnic diversity is anticipated to be 0.3-0.4% lower in the short term and 0.3-0.6% lower in the medium-long term.
83. The magistrates analysis suggests a smaller impact on gender diversity (0.3% in the short term, increasing to 1.3-1.5% in the long term) for an increase in the MRA to 75, given the small differences between the characteristics of new appointments and retirees. Ethnic diversity is forecast to be 0.2 lower in the short term, and up to 0.8-1% lower in the long term.

¹⁴ The figure used for HMCTS backfill is not a baseline reduction, this is a figure that could be achieved over a transitional period, and would be released as a productivity gain as opposed to cashable saving.

84. As for Option 1, we are unable to model diversity impacts on coroners due to small number of yearly retirements, but we expect the diversity impacts to be bigger for this option compared to Option 1.

Benefits of Option 2

85. Table 10 (below) presents the average yearly retention impacts forecasted for each JOH type under this option. It also compares the retention impacts with the size of the overall complement.

Table 10: Retention impacts for MRA increased to 75

	Average yearly impact (JOHs retained)		Impact relative to current complement	
	Most likely scenario	Maximum scenario	Most likely scenario	Maximum scenario
<i>Courts</i>				
Total salaried (FTE)	16	64	1%	5%
Total fee-paid (headcount)	149	274	7%	14%
<i>Total courts</i>	<i>165</i>	<i>338</i>	<i>5%</i>	<i>10%</i>
<i>Tribunals</i>				
First tier salaried	8	24	2%	7%
First tier fee paid	35	126	3%	9%
Upper tier salaried	1	4	2%	7%
Upper tier fee paid	4	15	3%	12%
Non-legal members (NLM)	90	181	9%	18%
Medical members	95	182	7%	14%
<i>Total tribunals</i>	<i>234</i>	<i>532</i>	<i>5%</i>	<i>11%</i>
Total paid judiciary	399	871	5%	12%
Total magistracy	2,122	2,482	15%	17%

86. Table 10 suggests between 399-871 paid JOHs and 2,122-2,482 magistrates could be retained yearly if the MRA were increased from 70 to 75 across all offices. This effect is significantly larger than Option 1. If we compare this with planned recruitment efforts, such a retention rate would cover 40-87% of JAC annual recruitment (compared to the recent average recruitment level of around 1,000 vacancies a year).

Pension schemes impacts

87. A preliminary assessment was provided by the GAD on the pension-level impacts of an MRA change to 75 and the same methodology for calculation was used as for Option 1, but the average retirement age was adjusted for each scenario to account for the additional retention impact (as summarised in Table 10 above).

88. Table 11 shows the estimated pension impacts to MoJ and the Treasury for Option 2:

Table 11: Estimated impact on the valuation results as at 31 March 2016 (MRA 75)

	Change in scheme liabilities £m	Change in contribution rate
MRA 75 most likely scenario	-37	-0.7%
MRA 75 maximum scenario	-97	-1.8%

89. Table 11 shows that the liabilities as at 31 March 2016, and hence the employer contribution rate, would be expected to reduce in the short term, as a result of judges retiring later, at a higher rate than for Option 1.

90. Just like for Option 1, based on the cost cap regulations that were in place for the 2016 valuation, a change in the MRA that fed through to a reduction in scheme costs could be expected to result in the need to increase member benefits to take account of this. A margin of 2% either side of the cost cap exists so that only when scheme costs change by more than 2% either way do changes need to be made to scheme benefits. Therefore, any actual “saving” from a change in the MRA may not directly result in a reduction in MoJ’s costs, depending on the size of the change, and whether there are any other cost pressures which affect the employer cost cap, which could either increase or offset the impact of the MRA change. The cost cap regulations are currently paused, subject to the implications of the *McCloud* litigation¹⁵ so the precise implications are currently unknown.
91. GAD made a preliminary assessment of the scheme-level impacts of a new Reformed Scheme (RS) would mean if MRA were increased to 75, and their conclusions are similar to Option 1: an MRA increase would be cost-neutral for the new scheme due to the late retirement factors, which increase yearly benefits for a retired member who retired later, to account for the fact that the member has fewer years to enjoy the pension benefits.
92. Similarly to Option 1, GAD estimates that effects of increasing the coroners’ MRA to 75 on the LGPS scheme would be zero, because the scheme has late retirement uplifts to a members’ annual pension to reflect that they receive their pension for a shorter amount of time.

Individual-level pension impacts

93. GAD provided some preliminary individual-level pension impact assessments for a few examples of judges for an MRA of 75. Table 12 below summarises the main estimates for JOHs. The main conclusion is that staying to MRA would individually benefit all JOHs, irrespective of salary group and pension scheme, apart from those judges in JUPRA who would have reached the 20-year service cap by the time they reach 70 and those in JPS2015 approaching their lifetime tax allowance as they reach 70.
94. The size of additional pension benefits would be proportional to their salaries and additional years on the bench. The benefits for MRA 75 would be higher than for MRA 72.
95. The results suggest that extending the MRA is broadly cost neutral after initial savings while most judges would be better off. This is not entirely intuitive but can be explained as follows
- Members gain, mainly due to the effect of extra accrual;
 - The fall in scheme liabilities reflects the expected reduced cost of already accrued JUPRA benefits (as they are being paid for less time with no corresponding late retirement factors);
 - It should be noted that this does not reflect the additional cost of future accrual (which MoJ would have to cover whether it was in respect of these judges retiring later or in respect of new judges).

Table 12: Individual-level judicial pension impacts (illustrative examples, by salary group) for MRA 75 for JOHs in the current schemes, compared to baseline (MRA 70)

Salary group	4	4	6.1	7	7	7	8
Annual salary equivalent	£188,901	£188,901	£140,289	£112,542	£112,542	£33,763	£89,428
Pension scheme	JUPRA	NJPS	JUPRA	JUPRA	NJPS	FPJPS	FPJPS
Other characteristics (service cap, NPA)	5 years below service cap	NPA 67	5 years below service cap	5 years below service cap	NPA 67	15 years below cap 30% fee paid	15 years below service cap
Change in pension value (yearly)	£23,613	£34,966	£17,536	£14,068	£20,832	£4,220	£11,179
Total lifetime pension	£47,225	£460,900	£35,072	£28,136	£274,592	£1,407	£134,142
Change in lump sum	£53,128	N/A	£39,456	£31,652	N/A	£9,496	£25,152

¹⁵ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-01-30/HCWS1286/>

Salary group	4	4	6.1	7	7	7	8
Additional contributions (+ AA charges)	£41,692	£237,785	£30,934	£24,816	£94,681	£5,520	£19,719
Change in lifetime value	£58,662	£223,115	£43,595	£34,972	£179,911	£5,382	£139,575

96. GAD also provided a preliminary assessment of the impacts the proposed Reformed Scheme (RS) might have on JOHs who decide to take advantage on a raised MRA. A few illustrative examples are set out in Table 13 below:

Table 13 Individual-level judicial pension impacts (illustrative examples, by salary group) for MRA 75 for JOHs in the proposed reformed scheme, compared to baseline (MRA 70)

Salary group	4	6.1	7	7 30% FTE
Annual salary equivalent	£188,901	£140,289	£112,542	£33,763
Change in pension value (yearly)	£36,912	£27,413	£21,991	£6,597
Total lifetime pension	£493,983	£366,861	£294,301	£88,290
Change in lump sum	N/A	N/A	N/A	N/A
Additional contributions (+AA charges)	£40,236	£29,882	£23,971	£7,191
Change in lifetime value	£453,747	£336,979	£270,330	£81,099

97. For coroners, this option would have a similar impact to Option 1 - namely that coroners would benefit from an increase in member benefits, proportional to the length of additional service. Under this option, coroners would be able to stay longer (up to 5 years extra) compared to Option 1, and would therefore potentially benefit from higher pension accruals. Table 14 illustrates a few examples:

Table 14 Individual-level coroner pension impacts (illustrative examples, by type of role) for MRA 75 compared to baseline (MRA 70)

Role	Senior coroner		Area coroner		Assistant coroner	
Annual salary equivalent	£125,970	£125,970	£95,370	£95,370	£16,920	£16,920
Other characteristics (service cap, NPA)	NPA 65	NPA 67	NPA 65	NPA 67	NPA 65	NPA 67
Change in pension value (yearly)	£25,000	£22,000	£19,000	£17,000	£3,000	£3,000
Total lifetime pension	£332,000	£291,000	£252,000	£220,000	£45,000	£39,000
Change in lump sum	N/A	N/A	N/A	N/A	N/A	N/A
Additional contributions (+AA charges)	£153,000	£133,000	£91,000	£77,000	£5,000	£5,000
Change in lifetime value	£180,000	£158,000	£161,000	£143,000	£40,000	£34,000

Recruitment savings

98. Based on the retention analysis, and taking into account the operational costs incurred in the previous financial year by JAC, JO, JC and HMCTS, we have calculated that the average yearly savings if MRA were increased to 75 would be (including optimism bias of 15 per cent) shown in the table below:

Table 15: Recruitment, onboarding and induction training savings for MRA 75

	Average yearly savings for MRA 75	
	Most likely scenario	Maximum scenario
<i>Paid Judiciary</i>		
JAC: Recruitment savings	£729,000	£1,591,000
HMCTS: Recruitment backfill savings	£289,000	£631,000
JO: Onboarding savings	£80,000	£174,000
JC: Observations savings	£753,000	£1,503,000
JC: Induction training savings	£353,000	£657,000
Total paid judiciary	£2,203,000	£4,556,000
<i>Magistrates</i>		
HMCTS: Recruitment savings	£1,342,000	£1,570,000
HMCTS: Induction training savings	£451,000	£527,000
JO: Onboarding savings	£137,000	£161,000
Total magistrates	£1,930,000	£2,258,000
Total average annual savings for MRA 75	£4,133,000	£6,813,000

99. These savings are made up of:

- JAC savings in exercise-related (variable) costs of running judicial recruitment;
- HMCTS savings in judicial backfill costs for judicial participation in recruitment campaigns;
- JO staff savings in processing onboarding and deployment of new appointments;
- JC savings in delivering induction training for new appointments, including observations.
- These savings are net of continuation training costs for those additional retained judges.

100. For magistrates, a hypothetical reduction in new recruitment campaigns would result in:

- HMCTS savings in recruitment, onboarding and training costs;
- JO operational staff savings for deploying and administering arrangements for new appointees.

101. For coroners, just like for Option 1, saving impacts on local authorities, CCO and JC are expected to be zero, due to the very small numbers of 'new term' coroners expected to retire in the next ten years; any small per-capita recruitment costs would be absorbed, and per-capita induction training costs would be offset by continuation training costs.

Retention of expertise

102. One important justification for increasing the MRA is the retention of judicial expertise and experience. While this cannot be readily monetised (apart from savings in induction training, already reflected above) or properly quantified, the Government believes would be an important benefit from a change in the current MRA.

103. While not quantifiable, retention of expertise may be greater for an MRA of 75 compared to an MRA of 72, although to what extent would depend to what extent JOHs choose to stay to the higher MRA.

Maintaining the effective operation of the justice system

104. Another important, but hard to quantify, benefit of an MRA of 75 would be to maintain the effective operation of the justice system by ensuring judicial capacity meets the caseload demands in courts and tribunals. We considered whether to try to quantify this benefit in terms of the reduction in outstanding cases, decreased timeliness, or the cost of other mitigations, but we concluded that quantifying this benefit would be too complex to be a reliable indicator.

Option 3: Allowing for extension of magistrates' appointments based on public interest

Approach to costs and benefits: modelling of potential retention impacts of an extensions system

105. Unlike increasing the MRA across the board for all JOHs, including magistrates, this option would involve an application system open to magistrates approaching retirement, who would express their interest in continuing in post beyond 70 if there is a public interest in extending appointments.
106. We have considered how this might work in practice. While some details, including legitimate criteria for establishing public interest and eligibility, will be subject to this consultation and to further work, two modelling scenarios were agreed to gauge the operational cost impacts of this option:
- An 'Unconstrained extensions to 75' scenario: an Expression of Interest application process would be available to all magistrates approaching retirement who have passed their most recent appraisal. This scenario therefore gives the upper bound of the retention impacts and of operational costs impacts. For this scenario we forecasted the number of retiring magistrates every year, and forecasted the proportion of them likely to apply to stay.
 - A 'Recruitment shortfalls' scenario: the number and type of positions available for extension would be determined as part of the wider magistrates' recruitment and deployment process, based on expected shortfalls from yearly recruitment campaigns. This scenario therefore restricts the numbers of retained magistrates to meet anticipated need. This could, for example, be based on advisory committee or jurisdictional data. For this scenario, we forecasted likely recruitment shortfalls based on current recruitment data and recruitment capacity, and compared it with the number of retiring magistrates every year.

Costs of Option 3

Monetised: set up and operation of the extensions system

107. HMCTS and JO have provided initial estimates for the setting up and running of a business-based extensions system for magistrates. These estimates could change, based on future decisions on how the system would be run, the appropriate governance, future changes to unit costs, or changing forecasts of numbers of magistrates extended.
108. HMCTS and JO assessed two key types of costs – IT costs (associated with changing the current management information systems, to accommodate extensions) and staff costs (responsible for processing applications for extensions, and the support offered to governance structures responsible with extensions decisions, such as Training, Approvals, Authorisations and Appraisal Committees).
109. Table 16 below presents the estimated costs, based on our estimates of retained magistrates for each of the scenarios.

Table 16: Estimated retention and operational cost impacts for business based magistrates extensions

	Constrained 'recruitment shortfall' extensions	'Unconstrained' extensions to 75
HMCTS	£27,000	£19,000
JO	£14,000	£23,000
Total magistrates extensions costs	£35,000	£42,000

110. These estimates reveal that, although per-capita cost would be higher for the shortfalls-only scenario (because of the additional processing required by HMCTS), the 'unconstrained extensions' scenario would be expected to yield higher annual costs due to the higher number of applications processed, although the differences in cost between the two scenarios are relatively small.

Non-monetised: diversity impacts

111. Based on magistrates diversity statistics, around 58% of recently appointed magistrates were women, compared to 50% of magistrates approaching retirement. In addition, 11% of the recently appointed magistrates were BAME compared to 5% of retiring magistrates.
112. We have only calculated the diversity impacts for the 'unconstrained extensions' scenario, which shows the upper bound of diversity impacts an extensions system could have on magistrate diversity. We would anticipate the diversity impacts for the 'recruitment shortfalls' scenario would be much lower.
113. When looking at yearly impacts of extensions on diversity, an extensions system allowing applications up to age 72 would have a small impact on diversity growth. There would be little impact on the proportion of the magistrates who are women (a maximum of 0.5% fewer women could be retained) for an increase of MRA to 72, given the small differences between new appointments and retirees. As with the paid judiciary, there would be little impact on the proportion of magistrates who are BAME (a maximum 0.3% fewer BAME), given the size of the cohort. The smaller the number of extensions would be, the lower the expected impacts on diversity.
114. An extensions system allowing applications up to 75 would have higher diversity growth impacts. The analysis suggests a smaller impact on gender diversity (0.3% in the short term, increasing to 1.5% in the long term) for an increase in MRA to 75, given the small differences in characteristics between new appointments and retirees. Ethnic diversity is forecast to be 0.2 lower in the short term, and to increase by 0.8-1% lower in the long term.
115. The diversity impacts presented in paragraphs above are only an upper bound of potential effects. We believe in practice the diversity effects would be negligible, because extensions would only be used to mitigate recruitment shortfalls when insufficient recruits are available, it would not prevent new recruits from joining.

Benefits of Option 3

Recruitment savings

116. We do not believe HMCTS and JO are likely to benefit from any savings associated with the recruitment and training of new magistrates, as an extensions system would be designed to complement, not reduce, the recruitment of magistrates.

Retention of expertise

117. The aim of a public-interest based extensions system would be to temporarily complement recruitment shortfalls, but the retention of magistrate experience would be a welcome side benefit. While not quantifiable, the retention benefit would be expected to be less significant for the extensions system than increasing the MRA across the board (as the extensions system would be designed to retain a smaller number of magistrates). It would also be expected to be more significant for the MRA of 75 option compared to the MRA of 72 option, although there is no clear relationship between experience and willingness to serve longer.

Maintaining the effective operation of the justice system

118. We believe this option would also contribute to maintaining the effective operation of the justice system. As for previous options, we were unable to monetise it for the purposes of this IA. Given this option would only affect magistrates, it would have a narrower impact compared to Options 1 and 2.

F. Risks and Assumptions

Assumptions about retirement patterns

119. Our judicial retention and impact analysis relies on current retirement patterns. While we do not have evidence which shows how judicial office holders retirement patterns would change in response to any change in the MRA, a NatCen survey of newly appointed judges reported that half

(52%) stated that they intend to leave the judiciary “some time before retirement age”.¹⁶ It confirmed previous Judicial Attitude Survey findings that the factors that would influence judges to stay longer in the judiciary were: higher remuneration (80%), settled position on pension entitlements (57%) and better administrative support (56%).¹⁷

120. The analysis cannot take into account any future changes in behaviour due to changes in judicial terms and conditions. This is particularly important as the Government is currently making significant efforts to review pensions provisions. At the time of preparing this IA, we were unable to predict how future pension reform might affect judicial motivations or other external factors.
121. There is insufficient data about ‘new terms’ coroners’ retirement patterns, and the yearly retirement numbers are too small to warrant complex analysis. We hope that the launch of the Coroners Attitude Survey will provide more quantitative data to assist us in further assessments.

Assumptions about future demand

122. Forecasts about future levels of demand (i.e. cases coming to courts and tribunals or coroner enquiries) are very uncertain and become less reliable as we look further in the future. We have therefore decided to estimate future retention impacts in isolation of future demand forecasts.
123. We nonetheless know that, historically, the JAC has recruited on average 500 JOHs per year since it was created in 2006¹⁸, and it is only recently, since 2018 that the programme has massively increased to approximately 1,000 recommendations per year. Whilst we anticipate future recruitment demand to fall slightly in future years, as the recruitment backlog would have been tackled, it is not expected to fall back to the historical levels for when MRA was 70.

Assumptions pertaining to diversity analysis

124. JAC recruitment exercises have been included for the past four financial years: 2015-16, 2016-17, 2017-18 and 2018-19. The JAC do not run selection exercises for each post annually. Selection exercises with fewer than 10 recommendations for appointment are grouped together in published statistics, and excluded from the analysis in this IA. This will affect some specialist posts e.g. Senior Circuit Judge, Resident Judge.
125. JAC data for tribunal posts is much more limited than for courts, as the JAC generally run selection exercises for specialist postings. These postings are grouped as ‘small tribunal exercises’ in JAC reports and are not easily distinguished by tier and office type.
126. For both JO and JAC datasets, unknowns have been assigned to the dataset on the assumption that the diversity of unknowns is the same as the diversity of those declaring their characteristics. There are a significant number of unknowns for JOH race and no unknowns for judicial office holder sex. There are fewer unknowns in the JAC dataset.
127. The yearly diversity impact model assumes that these extra numbers of JOHs remaining will reduce the need for “new hires” on a one for one basis (based on JOH type). We have used the current diversity breakdown for new appointments, but future appointments might be more diverse.
128. As mentioned in the Equality Statement, we have no evidence that JOHs with certain characteristics would be more or less likely to stay longer if MRA were increased. In our analysis, we therefore assumed that the proportion of diverse JOHs staying is the same as the diversity profile of JOHs approaching retirement. We welcome more evidence during the consultation on potential small differences in behaviour.

¹⁶ NatCen (for SSRB) “Survey of Newly Appointed Judges in the UK 2017” (2018) p.3

¹⁷ UCL Judicial Institute (for the Lord Chief Justice) “2016 UK Judicial Attitude Survey” (2017) p. 74

¹⁸ With the exception of 2006/07, its first year, when JAC recruited 1,000 JOHs to account for the accumulated judicial recruitment need during the constitutional transition post-CRA.

G. Wider Impacts

Equalities

129. An Equality Statement has been completed and is attached to the consultation document.

Better Regulation

130. The options in this IA are not considered to be a qualifying regulatory provision under the Small Business, Enterprise and Employment Act 2015 and are therefore not in scope of the Business Impact Target.
131. Due to potential impacts of an increase in 'new terms' coroners MRA on local authorities, a New Burdens assessment was conducted. Our preliminary conclusion (based on data provided by CCO and discussions with representatives of local authorities and GAD) is that an increase in MRA would have no cost impacts on coroners pay and pensions budgets, and very small but negligible savings for local recruitment budgets.

H. Impacts on Devolved Administrations

132. Any changes to the MRA set out in JUPRA 1993 will also affect the excepted JOHs from Northern Ireland that are included in Schedule 5 of JUPRA and for which the Lord Chancellor is responsible.
133. The Northern Ireland Courts and Tribunals Service have provided the following information about the potential benefits and costs of an increase in the judicial MRA.

Pension impacts

134. The MoJ Judicial Pension Schemes include NI excepted judiciary for which the Lord Chancellor is responsible. Colleagues in the NI Courts and Tribunals Service anticipate the policy will be in line with GAD estimates for the JPS, which is that the change would be cost neutral due to late retirement factors.

Recruitment and training impacts

135. It is estimated that an increase in MRA may eliminate some recruitment costs for the period of the initial increase to the MRA, but the Office of the LCJ NI believes that the benefit will only last for a time limited period. Additionally, it is believed the savings in recruitment can be reduced, due to a combination of factors such as a possible increase to applicant numbers as a wider age group eligible – this would impact on NIJAC's budget. That said, we would expect such an increase to be marginal and to have negligible cost implications.
136. NI Induction training costs vary according to the judicial tier and also between individual judges, for example many DJ(MC)s are appointed from the ranks of the deputies and need no significant induction training, while new salaried High Court Judges could incur a training backfill cost of approx. £7,300 per appointment. The training savings would vary depending on the JOHs retained to the new MRA.

Attractiveness of office

137. The Office of the LCJ NI does not have any data which would suggest whether just a change might potentially increase the attractiveness of judicial office.

I. Monitoring and Evaluation

138. We will continue to monitor data about new appointments and outgoing JOHs as part of the wider judicial resourcing strategy work, in partnership with HMCTS, JAC and JO. Data on new starters and leavers is now captured in the Judicial Diversity Statistics starting with 2019.
139. The upcoming Coroners' Attitude Study could provide a basis for better future assessment of impacts on coroners.