



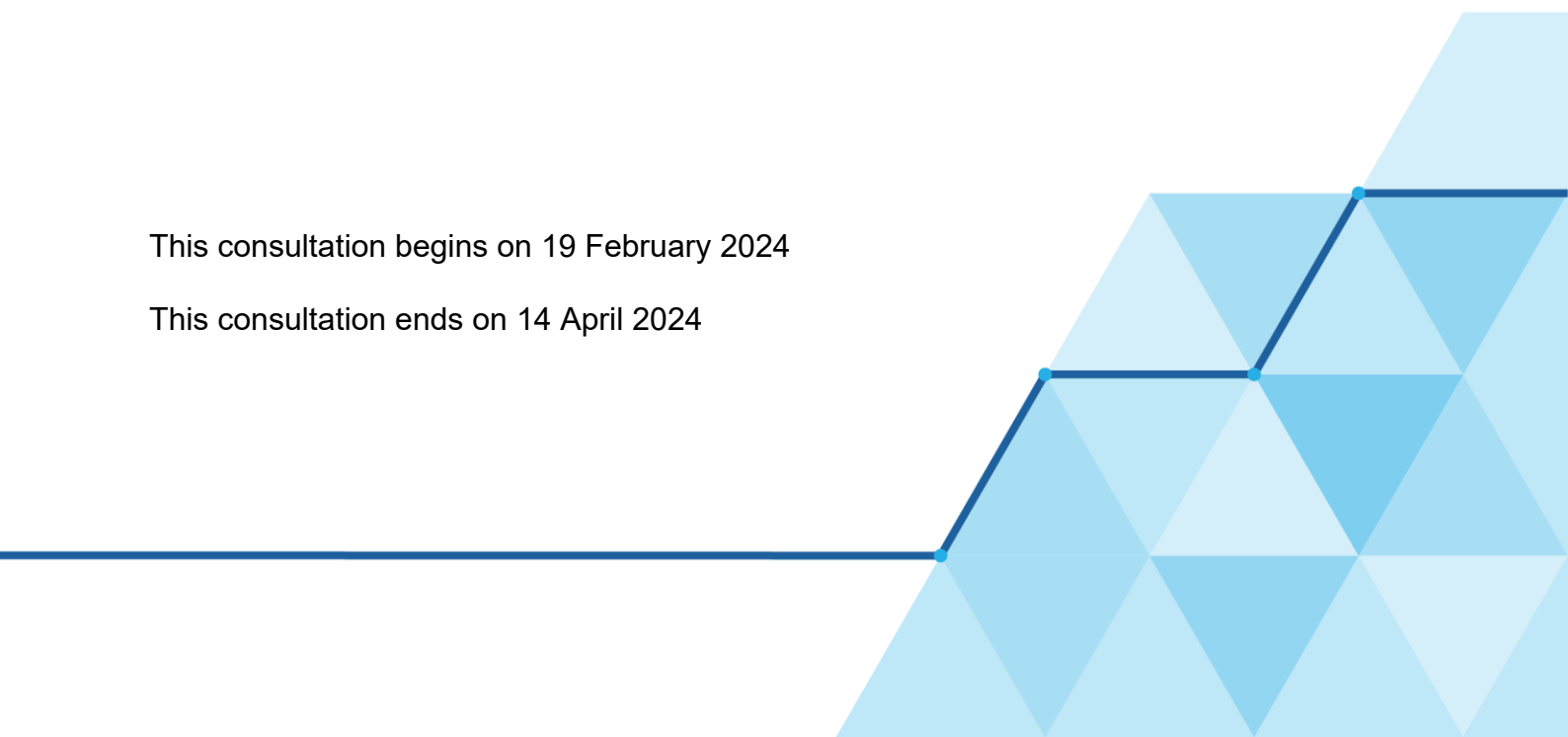
Ministry  
of Justice

# The Judicial Pensions (Amendment) Regulations 2024

## Consultation on the draft amendment regulations

This consultation begins on 19 February 2024

This consultation ends on 14 April 2024





Ministry  
of Justice

# **The Judicial Pensions (Amendment) Regulations 2024**

## Consultation on the draft amendment regulations

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

# About this consultation

- To:** This consultation seeks views from judicial office holders who are entitled to be a member of the judicial pension scheme, particularly any member of the Fee-paid Judicial Pension Scheme (FPJPS) and the Judicial Pension Scheme 2022 (JPS22). We also seek views from anyone who is concerned with the operation of the judicial pension scheme.
- Duration:** From 19/02/2024 to 14/04/2024
- Enquiries (including requests for the paper in an alternative format) to:** Email: [judicialpensionsconsultation@justice.gov.uk](mailto:judicialpensionsconsultation@justice.gov.uk)
- How to respond:** Please submit your response by 14/04/2024 via the Citizens' Space website.  
Alternatively, you can submit your response by email to [judicialpensionsconsultation@justice.gov.uk](mailto:judicialpensionsconsultation@justice.gov.uk)
- Response paper:** A response to this consultation exercise is due to be published by Summer 2024.

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# Executive Summary

1. This consultation seeks views on the draft Judicial Pensions (Amendment) Regulations 2024 (the 2024 Amendments). The key features of the 2024 Amendments that are detailed in the regulations are summarised below. The aim of these regulations is chiefly to facilitate the efficient functioning of the Judicial Pension Scheme. Specifically, the 2024 Amendments amend:
  - The Judicial Pensions (Fee-Paid Judges) Regulations 2017 (the FPJPS regulations),
  - The Judicial Pensions Regulations 2015 (the JPS15 regulations)
  - The Judicial Pensions Regulations 2022 (the JPS22 regulations),
  - The Public Service Pensions Act 2013 (Judicial Offices) Order 2015 (the Judicial Offices Order).
  
2. Key features of the 2024 Amendments:
  - **Cost Control Mechanism:** In order to comply with the Public Service Pensions Act 2013 (the PSPA 13), these amendments will provide for an employer cost cap in JPS22 following the completion of the first scheme valuation in February 2024.
  - **Technical amendments:** A number of technical amendments are included in the provisions. These are required (amongst other things):
    - to insert new provisions into JPS22 and JPS15 providing that, where strictly necessary, an office which should have previously been eligible to accrue under these schemes may now benefit from retrospective entitlements.
    - to correct a calculation issue in regulation 84 of the JPS22 regulations.
    - for member contributions and commutation of small pensions provisions in the FPJPS regulations.
  - **Deadline Extension:** To ensure that there is sufficient time to provide affected members with illustrative information about the options open to them and to allow them time to make considered choices, these amendments will extend various deadlines for member elections in FPJPS.
  - **Additional Benefits:** To improve the operation of FPJPS and better mirror the provisions of the Judicial Added Benefits Scheme (JABS) available to salaried judges, amendments will be made to the additional benefits provisions in the FPJPS regulations, particularly the Fee-Paid Judicial Added Benefits Scheme (FPJABS) and the Fee-Paid Judicial Added Years Scheme (FPJAYS).
  - **Office Eligibility:** These amendments will add further eligible offices to Schedule 1 of the FPJPS regulations and the Judicial Offices Order in order to confer pension entitlements.

## Background

### Fee-Paid Judicial Pension Scheme (2017) (FPJPS)

3. FPJPS commenced on the 1 April 2017 following the decision in *O'Brien v Ministry of Justice* [2013] UKSC 6 (referred to as *O'Brien 1*) that fee-paid judges had been treated less favourably than relevant full-time salaried judges because they had not been entitled to a pension. FPJPS initially only provided pension benefits for eligible fee-paid judicial service on or after 7 April 2000. The provisions largely mirrored the arrangements for salaried judges under the Judicial Pensions and Retirement Act 1993 (JUPRA).
4. In November 2018, the Court of Justice of the European Union handed down judgement in the case of *O'Brien v Ministry of Justice* (Case C-432/17) (referred to as *O'Brien 2*), which concluded that part-time work undertaken before the 7 April 2000 must be taken into account when calculating a fee-paid judge's pension entitlement.
5. As a result of *O'Brien 2* the Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2023 (the FPJPS Amendments), came into force on 1 April 2023, to provide pension benefits for eligible fee-paid service before 7 April 2000. New provisions were included accordingly to allow eligible fee-paid judicial office holders, with service beginning before 31 March 1995, to have pension benefits calculated on a basis reflecting the provisions of the Judicial Pensions Act 1981 (JPA81), the regime for some salaried judges with service before 31 March 1995.
6. FPJPS closed to all further accruals on 31 March 2022 when a reformed judicial pension scheme (outlined below) commenced.

### Judicial Pension Scheme 2022 (JPS22)

7. Following the introduction of the Public Service Pensions Act 2013 (PSPA 13) and a consultation with the judiciary, the then Lord Chancellor announced the principles for reform of judicial pension scheme arrangements in February 2013. This led to the introduction of a new judicial pension scheme for both fee-paid and salaried judges called the Judicial Pension Scheme 2015 (JPS15). This commenced on 1 April 2015.
8. In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure which highlighted escalating recruitment and retention problems at all levels of the judiciary. It concluded that these problems were caused principally by the introduction of JPS15 and subsequent changes to pension tax thresholds.
9. In response to the recruitment and retention problems identified, MoJ committed to introducing an improved pension scheme for the whole judiciary. The JPS22 regulations provide a reformed judicial pension scheme that retains many of the features of the reform principles in the 2015 scheme but re-introduced the

tax-unregistered status and an improved benefit accrual rate. This means that benefit accruals under JPS22 (as in JUPRA and FPJPS) do not count towards annual or lifetime allowances.

10. JPS22 came into effect on 1 April 2022, the day after all other judicial pension schemes (JPA81, JUPRA, FPJPS, and JPS15) closed to further accruals. JPS22 is now the only judicial pensions scheme in which judges can accrue further benefits.

### **The Public Service Pensions Act 2013 (Judicial Offices) Order 2015 (the Judicial Offices Order)**

11. Paragraph 2 of Schedule 1 to the PSPA 13 granted power to specify by order the judicial offices, including those non-devolved offices in Scotland and Northern Ireland where applicable, that are effectively eligible for a judicial pension scheme made under the PSPA 13. The Judicial Offices Order was made under this power.
12. As JPS15 and JPS22 were established under the PSPA 13, the Judicial Offices Order contains the judicial offices which are eligible for pension entitlements conferred by JPS15 and JPS22.

### ***McCloud Remedy***

13. On the commencement of JPS15 most judges, fee-paid and salaried, were treated as moving from their 'legacy schemes' (JPA81, JUPRA and FPJPS<sup>1</sup>) to JPS15,<sup>2</sup> but this was subject to transitional provisions included in the 2015 reforms. The transitional provisions applied to judges who were within 10 years of retirement. Those in service on 31 March 2012, and aged 55 or over on 1 April 2012, received 'full protection' and remained in their legacy schemes. A form of 'tapered protection' (also known as 'mixed service') was given to judges aged between 51 and a half and 55 on 1 April 2012: they were offered the choice of joining the 2015 scheme on its introduction or remaining in their legacy scheme for a period, before 'tapering' to the 2015 scheme at a later date. All other judges in service on 31 March 2012 were 'unprotected', which meant they joined JPS15 on 1 April 2015, unless they opted out of scheme membership.
14. The transitional provisions were challenged by younger judges in the case of *McCloud v MoJ* (referred to as *McCloud*). In 2018 the Court of Appeal held that the transitional protections constituted unlawful direct age discrimination. In order to remedy this discrimination, MoJ has offered most affected judges a retrospective choice between their legacy scheme membership or JPS15 membership in respect of the remedy period between 1 April 2015 and 31 March 2022. Chapter 2 of the

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<sup>1</sup> Although FPJPS did not actually commence until April 2017, its provisions were retrospective.

<sup>2</sup> In Northern Ireland there was a separate Northern Ireland Judicial Pension Scheme instead of JPS15.



Public Service Pensions and Judicial Offices Act (PSPJOA) provides powers for MoJ to offer this choice. This options exercise is currently ongoing.

15. The Judicial Pensions (Remediable Service etc) Regulations 2023 were also made under these powers and came into force on the 5 July 2023, as well as The Judicial Pensions (Remediable Service etc) (Amendment) Regulations 2024 which came into force on 24 January 2024. They implement additional technical aspects of the *McCloud Remedy*.

**Other related consultations**

16. The policies underlying some of the 2024 Amendments have previously been subject to targeted consultations provided to affected groups. References to such consultations are made where applicable.

**About this document**

17. Alongside this document you will see a published version of the draft regulations and a copy of an Equality Statement. This consultation will direct you to both documents where relevant.

# Introduction

18. This paper sets out for consultation our proposals to amend the FPJPS regulations, the JPS15 regulations, the JPS22 regulations and the Judicial Offices Order through the 2024 Amendments. Where this consultation describes that legislation, please note that the legislation itself takes precedence in the event of a difference (although every effort has been made to make this consultation as accurate as possible). The consultation is aimed at judicial office holders, salaried and fee-paid, who are entitled to be a member of the judicial pension scheme, particularly any member of FPJPS and/or JPS22. However, we also welcome views from anyone who is concerned with the operation of the judicial pension scheme.
19. A Welsh language version consultation paper has also been published. Requests for the paper in an alternative format.
20. This consultation will run for eight weeks from the date of issue, closing on 14 April 2024. Details of how to respond to the consultation are highlighted on page 30.
21. Copies of the consultation paper are also being sent for information to:

## **United Kingdom**

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

## **England and Wales**

- Association of Fee-Paid Judges
- Association of His Majesty's District Judges
- Association of High Court Judges
- Association of High Court Masters
- Association of Members of the Immigration & Asylum Tribunal
- Association of Regional Medical Members
- Association of Salaried Tribunal Judges for Health, Education and Social Care
- Association of the Special Educational Needs Tribunal
- Chamber President for War Pensions & Armed Forces Compensation Chamber
- Chief Coroner
- Council of Appeal Tribunal Judges
- Council of Employment Judges
- Council of His Majesty's Circuit Judges
- Council of His 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
- Forum of Tribunal Membership Associations
- Judicial Pensions Committee (England)
- London Association of District Judges
- Lord Chief Justice of England and Wales
- Mental Health Tribunal Members Association
- President of Welsh Tribunals
- Salaried Tribunal Judges' Association
- The Bar Council (England and Wales)
- The Law Society (England and Wales)
- The Chartered Institute of Legal Executives
- The United Kingdom Association of Women Judges

#### **Northern Ireland**

- Minister of Justice Northern Ireland
- Council of Employment Judges
- Judges' Council (Northern Ireland)
- Judicial Pensions Committee (Northern Ireland)
- Lord Chief Justice of 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 President's Group
- Secretary of State for Northern Ireland

#### **Scotland**

- Cabinet Secretary for Justice Scottish Government
- Judges' Council (Scotland)
- Judicial Council for Scotland
- Lord President of the Court of Session
- Part Time Sheriffs' Association
- President of the Lands Tribunal (Scotland)
- Sheriffs' Association
- Sheriffs Principal Association
- Summary Sheriffs' Association

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However, 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.

22. A copy of the draft regulations has been published alongside this consultation.

# 1. Cost Control Mechanism

## Judicial Pension Scheme 2022

23. These draft amendments can be seen at regulation 6 of the draft regulations.
24. JPS22 should be subject to a cost control mechanism (CCM), which is in part set out in the PSPA 13. The CCM is designed to ensure a fair balance of risk with regard to the cost of providing public service defined benefit pension schemes between members of those schemes and the Exchequer (and, by extension, taxpayers). This is partly achieved through the setting of an “employer cost cap” (which can be thought of as a target cost for the scheme). If, when the overall CCM is tested, costs have increased or decreased by more than a specified percentage<sup>3</sup> of pensionable pay compared to the “employer cost cap”, member benefits (and/or member contributions) in the relevant scheme are adjusted to bring costs back to target. This could mean, for example, that a member’s contribution rate could go up or down. However, the mechanism is designed with the intention that benefit rectification would only be triggered by ‘extraordinary, unpredictable events’.<sup>4</sup>
25. The CCM works by comparing an actuarial assessment of scheme costs against the employer cost cap set at a scheme’s first valuation. Section 12(1A) of the PSPA 13 provides that the provision for the CCM must be in force within one year beginning with the day on which the initial scheme valuation by the Government Actuary’s Department (GAD) is completed. The 2020 valuation (effective as at 31 March 2020) will be the first valuation to allow for the establishment of JPS22, so the employer cost cap percentage will be set using this valuation and tested at subsequent valuations. As the 2020 valuation was not finished before JPS22 came into force, a placeholder was effectively set in Part 11 of the JPS22 regulations. Therefore, we propose to insert a new regulation 117A into Part 11 of JPS22 providing an employer cost cap to comply with the requirements of the PSPA 13.
26. Our proposals for regulation 117A mirror regulation 145 of JPS15, which previously provided for the CCM under that scheme.<sup>5</sup>

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<sup>3</sup> Specified in regulations under section 12(5)(a) (employer cost cap) of the Public Service Pensions Act 2013, and presently set at two percentage points.

<sup>4</sup> For reference see paragraph 2.5 of HMT condoc

<sup>5</sup> The CCM now only covers the reformed scheme costs. For more information please see the HMT consultation response ([HMT consultation response](#))

27. However, the employer cost cap provision in regulation 145 itself of the JPS15 regulations will be redundant because JPS15 costs will now be considered together with JPS22 costs under the CCM provision we propose to include in the JPS22 regulations. The same applies in respect of Part 11 of the Judicial Pensions Regulations (Northern Ireland) 2015. (However, we do not consider that it is necessary specifically to remove these legacy provisions because JPS15 and the Northern Ireland scheme are now designated as “restricted schemes” for the purposes of s.12A of PSPA 13).<sup>6</sup>
28. The employer cost cap percentage that has been inserted into regulation 117A(1) is 33.1%, calculated as set out in the 2020 GAD JPS Valuation Report.<sup>7</sup>
29. For further information regarding the CCM, MoJ’s most recently published policy paper is available here: [Judicial Pension Scheme 2022 and the Cost Control Mechanism - GOV.UK \(www.gov.uk\)](#)

## Questions

1. Do you have any comments on our proposals to include provisions for the CCM in the JPS22 regulations?

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<sup>6</sup> [The Public Service Pensions \(Employer Cost Cap and Specified Restricted Scheme\) Regulations 2022 \(legislation.gov.uk\)](#); [The Public Service Pensions \(Employer Cost Cap and Specified Restricted Scheme\) Regulations \(Northern Ireland\) 2022 \(legislation.gov.uk\)](#)

<sup>7</sup> The report can be found at the Judicial Pensions Board website - [Judicial Pension Board - GOV.UK \(www.gov.uk\)](#).

## 2. Technical Amendments

30. This section sets out amendments to JPS22 and FPJPS which are of a technical, corrective nature and proposed in line with their original policy intention.

### The Judicial Pension Scheme 2022

#### Insertion of regulation 7A

31. This draft amendment can be seen at regulation 3 of the draft regulations.
32. We intend to insert a new regulation 7A into JPS22. This insertion will ensure that where offices are added into JPS22, via the Judicial Office Order, their members can gain entitlement to a pension under JPS22 retrospectively (as well as prospectively) through the application of an “entitlement start date” and where strictly necessary (for instance, where such offices should have previously had JPS22 eligibility, but erroneously did not).
33. To facilitate the fact that a newly-added judge’s JPS22 entitlement may need to be calculated retrospectively, regulation 7A includes modifications to JPS22 regulations where necessary.
34. As such judges may also be eligible to receive benefits retrospectively prior to 1 April 2022, a similar amendment has been made to the JPS15 regulations through the inclusion of a new regulation 13A. This draft amendment can be seen at regulation 39 of the draft amendment regulations.

#### Regulation 84

35. This draft amendment can be seen at regulation 5 of the draft regulations.
36. Regulation 84 of the JPS22 regulations sets out provisions for the calculation of the annual rate of surviving adult’s pension payable on the death of an active member.
37. The calculation of the relevant “additional amount” refers to an ‘enhancement fraction’ whose denominator (“Y”) is defined in regulation 84(6) as:
- “...the lower of—
- a) the number of years (expressed in years and a fraction of a year, determined by complete months) for which the member has been an active member of this scheme; and

b) the number of scheme years (expressed in years and a fraction of a year, determined by complete months) in relation to which an amount of earned pension was specified in the active member's account;”.

38. It is possible for a fee-paid judge to have been an active member of JPS22 for a period of time, but to have had no “amount of earned pension” in JPS22 because, for example, they were unable to sit throughout the period owing to ill health. In those circumstances, the denominator would have a value of zero under the above-mentioned (b) (as the lower of the two values), giving an invalid enhancement fraction.
39. We propose to amend (b) so that where the amount of earned pension specified in the active member's account is zero, a default value of 0.083 should be used. This de minimis value, which constitutes one month of earned pension, will ensure that this calculation can properly function.

## The Fee-Paid Judicial Pension Scheme

### Contributions

40. The 2024 Amendments will make minor amendments in three different areas of the contributions provisions, to ensure the correct specification of contributions liabilities.

#### *Insufficient identification of '15 year offices' for dependant contributions*

41. These draft amendments can be seen at regulations 11, 12 and 14 of the draft regulations.
42. Prior to the introduction of JUPRA from 31 March 1995, there were several salaried judicial pension schemes under JPA81, for which a judge could be eligible depending on the judicial office held. The schemes were for the higher judiciary, the circuit judiciary, and the district judiciary. JUPRA consolidated the pension arrangements for salaried judges, but the previous JPA81 schemes continued to exist and some members could continue accruing benefits in them.
43. The JPA81 schemes had different non-linear accrual rates with some accruing a full pension over 15 years and some accruing over 20 years. FPJPS mirrors this by allocating offices to Tables 1, 2 and 3 in Schedule 1 of the FPJPS regulations respectively, with associated tables of accrual factors in Schedule 2.
44. Contributions towards dependants' benefits are set at a different rate depending on whether benefits for an office would have been calculated under a 15 year arrangement, or a 20 year arrangement. FPJPS addresses this by referring to the rates in column 3 of the tables in Schedule 3 (for service commenced under a 15 year arrangement) and column 4 (for 20 year arrangements).



45. There are three instances where, as a result of the FPJPS Amendments, the FPJPS regulations refer to the use of column 3 in Schedule 3:
- Regulation 55(2).
  - Regulation 55A(2).
  - Regulation 62(3ZA).
46. In each instance the regulation should specify that the rate in column 3 is relevant only where the office was first held before 31 March 1995, but otherwise column 4 is relevant. This is because if the office was not held before 31 March 1995, it could not have been a 15 year office for the purpose of the contribution rates. Each of the regulations above needs to be amended to reflect this.

*Extend the scope of reference to initial pre-commencement contributions for the purposes of dependants' contributions refund provisions*

47. This draft amendment can be seen at regulation 13 of the draft regulations.
48. Regulations 65 to 68 of the FPJPS regulations set out the circumstances in which dependants' contributions can be repaid. There are four circumstances:
- Full repayment of dependants' contributions on full retirement (Regulation 65).
  - Partial repayment of dependants' contributions on full retirement (Regulation 66).
  - Full repayment of dependants' contributions on partial retirement (Regulation 67).
  - Partial repayment of dependants' contributions on partial retirement (Regulation 68).
49. Full repayment of contributions occurs where, a member retires and at the time of retirement they had never been married or in a civil partnership, nor ever had a qualifying child, since their first appointment to an eligible fee-paid judicial office.
50. A partial repayment of contributions occurs where, at the member's retirement, there had been a period of time since they first held an eligible fee-paid judicial office where they were married or in a civil partnership or had a qualifying child. The repayment of dependants' benefits contributions relates to the period leading up to retirement.
51. Regulation 58A(5) seeks to apply these broader provisions to the contribution payment provisions for initial pre-commencement contributions, which were established by the FPJPS Amendments (more information regarding the application of initial pre-commencement contributions can be found in the FPJPS Scheme Guide<sup>8</sup>). However, the current regulation 58A(5) only refers to regulation 65, which means that the initial pre-commencement contributions referred to above would not be taken into account in all full and partial retirement scenarios.

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<sup>8</sup> [Fee-Paid Judicial Pension Scheme Guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

52. We propose to amend regulation 58A(5) to refer to regulations 66, 67 and 68 in addition to regulation 65.
53. In addition, we note that regulations 65(5), 66(6) and 67(5) in advertently include references to the 7 April 2000. We propose to remove this date to ensure consistency with the FPJPS Amendments. These draft amendments can be seen at regulations 15–17 of the draft regulations.

#### **Correct the cross-reference included in regulation 69A**

54. This draft amendment can be seen at regulation 18 of the draft regulations.
55. Part 10A of the FPJPS regulations, and its sole regulation 69A, provide for small pension commutation.
56. However, regulation 69A(7) does not correctly refer to the death benefits provisions in the FPJPS regulations. Instead of referring to “Part 8”, this regulation should refer to “Chapter 2 in Part 2B and Part 6”. These are the provisions for death benefits under the FPJPS regulations with Chapter 2 in Part 2B covering death benefits under the pre-1995 provisions and Part 6 covering death benefits under the post-1995 provisions.

## **Questions**

2. Do you have any comments on our proposal to insert a new regulation 7A and regulation 13A into JPS22 and JPS15 respectively?
3. Do you have any comments on our proposal to amend Regulation 84 in JPS22?
4. Do you have any comments on our proposals to amend the FPJPS contributions provisions?
5. Do you have any comments on our proposals to amend the commutation of small pensions provisions in FPJPS?

### 3. Extension of deadlines in FPJPS

57. These proposed amendments relate to regulations 10, 13, 19, 21, 25, 33–35 of the draft regulations.

#### Pre- and Post-1995 provisions in FPJPS

58. The FPJPS regulations seek to provide fee-paid judges with pension entitlements mirroring those which would have been available to salaried judges. As such the 2023 FPJPS Amendments, which ensured that pension entitlements would be available to fee-paid judges prior to 7 April 2000, included new provisions mirroring (i) the arrangements for salaried judges under JPA81 prior to 31 March 1995; and (ii) the transitional provisions between those arrangements and the JUPRA scheme for salaried judges.

59. Consequently, FPJPS now allows for fee-paid pensions to be calculated under new "Pre-1995" provisions, that mirror the salaried arrangements under JPA81; and the pre-existing "Post-1995" provisions, that mirror the salaried arrangements under JUPRA. Part 2A of the FPJPS regulations sets out eligibility for either the Pre-1995 or Post-1995 provisions to apply in respect of pension benefits for a particular fee-paid office held by a member.

60. The provisions in section 1 of JUPRA, together with the Judicial Pensions (Transfer Between Judicial Pension Schemes) Regulations 1995 (the Transfer regulations), regulated the transition between JPA81 and JUPRA. In particular, section 1(2) of JUPRA provided for a salaried judge to elect for JUPRA to apply to them where they would otherwise be entitled to JPA81 provisions. The time limits for such elections are set out in Part II of The Judicial Pensions (Miscellaneous) Regulations 1995 as no later than –

- (a) the date six months after the date on which the person in respect of whom it is made has ceased to hold qualifying judicial office; or
- (b) the day before the date upon which any payment of pension or other benefit has been made under a judicial pension scheme in respect of his service in such office,

whichever shall be the earlier.

61. To mirror this, the FPJPS regulations provide that where a fee-paid judge is entitled to have pension benefits for an office calculated under the pre-1995 provisions they (or their personal representative if they have died) may elect for them to be

calculated under the post-1995 provisions instead. Notice of an election must be received within 12 months of the judge's retirement, or death. Where the judge retired or died before the FPJPS Amendments came into force on 1 April 2023, notice must be given within 12 months of that date. A proposed change to the 1 April 2023 deadline is referred to in the section on 'Deadline extensions in FPJPS' below.

## Additional benefits in FPJPS

62. The FPJPS regulations also mirror the provisions which enabled salaried judges to purchase additional benefits under The Judicial Pensions (Additional Voluntary Contributions) Regulations 1995 (the AVC regulations). Originally this resulted in two additional benefits schemes being included in FPJPS for judges, with eligible fee-paid service between 31 March 1995 and 6 April 2006:
  - The Fee-Paid Judicial Added Years Scheme (FPJAYS).
  - The Fee-Paid Judicial Added Surviving Adult's Pension Scheme (JASAPS).
63. As a result of the FPJPS Amendments, FPJPS now has also provisions for:
  - The Fee-Paid Judicial Added Benefits Scheme (FPJABS).
  - Conversion of FPJAYS added years into FPJABS added units of benefit and vice versa.
  - Variations of FPJAYS, FPJABS and JASAPS purchases when required.
  - Reductions/refunds of FPJAYS added years and JASAPS units when required.
64. As well as allowing eligible members to purchase additional benefits, or vary existing purchases, these provisions also accommodate changes that could apply to a member's underlying benefit entitlements between the Pre- and Post-1995 provisions in the principal FPJPS scheme.
65. The provisions to purchase additional benefits or vary existing purchases require eligible members to give a formal notice to the scheme administrators before a certain point (see Deadline extensions in FPJPS below).

## Deadline extensions in FPJPS

66. Owing to the resource required to implement fully the judicial pension reform programme, and in particular the *McCloud* remedy, we propose to extend the deadlines for the options mentioned above – generally to 1 April 2026 (with the precise wording available in the 2024 Amendments). This is to ensure that there is sufficient time to provide affected members with illustrative information about the options open to them and to allow them time to make considered choices.

67. The proposed draft amendments can be seen at regulations 10, 19, 21, 25, 33–35 of the draft regulations.

## **Lump sum contributions deadline extension in FPJPS**

68. In addition to the scenarios above, we also propose to amend the deadline set out in Regulation 58A(1)(a) of the FPJPS regulations. Regulation 58A allows a member to pay initial pre commencement contributions (a category of contributions which were included in the 2023 FPJPS Amendments) either by deduction from their fees or via a lump sum payment. The regulations presently specify that a lump sum payment must be made by 1 October 2023 (that is, within 6 months beginning with 1<sup>st</sup> April 2023). This relatively short deadline following the FPJPS Amendments on 1 April 2023 has now expired and we are aware that there are still members who would like to make a lump sum payment. We therefore propose to extend this deadline to 1 April 2026 (with the precise wording available in the 2024 Amendments) and allow the scheme administrators discretion to accept a lump sum payment after this deadline.
69. The proposed draft amendment can be seen at regulation 13 of the draft regulations.

## **Questions**

6. Do you have any comments on our proposals to extend the pre/post-1995 and additional benefits deadlines?
7. Do you have any comments on our proposals to extend the lump sum deadline set out in Regulation 58A?

## 4. Additional Benefits Schemes

70. High level information on the FPJPS Additional Benefits Schemes can be found in Part 6 of the updated FPJPS Scheme Guide.<sup>9</sup>
71. As explained in section 3 of this consultation, the FPJPS regulations establish three additional benefit schemes, which allow eligible members to purchase additional pension benefits. These schemes attempt to mirror as far as possible the provisions which were historically available to salaried judges.
72. Fee-paid judges who have some or all of their benefits calculated under the Pre-1995 provisions can purchase added units of benefit under the Fee-Paid Judicial Added Benefits Scheme (FPJABS) which mirrors the provisions of the Judicial Added Benefit Scheme (JABS) for salaried judges. Fee-paid judges who have some or all of their benefits calculated under the Post-1995 provisions can purchase added years under the Fee-Paid Judicial Added Years Scheme (FPJAYS) which mirrors the provisions of the Judicial Added Years Scheme for salaried judges (JAYS).
73. These draft amendments can be seen at regulations 20, 22–36 and 38 of the draft regulations.

### Fee-Paid Judicial Added Benefits Scheme

74. These draft amendments can be seen at regulations 22–36 and 38 of the draft regulations.
75. Part 14A of the FPJPS regulations sets out provisions for FPJABS. We propose to make a number of technical amendments to Part 14A, in order to better reflect the original policy intention (that is, to mirror the provisions of JABS which were available to salaried judges) and improve the operation of the scheme.
76. There will be amendments to the provisions for:
- The purchase of units.
  - Purchase limits.
  - Unit costs.
  - Unit values.

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<sup>9</sup> [Fee-Paid Judicial Pension Scheme Guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/fee-paid-judicial-pension-scheme-guide-2019.pdf)

77. These changes will not affect any additional benefits purchases at the point of publication.

### **Replacement of PRS term with WS term**

78. The current Part 14A on FPJABS makes use of a “PRS” (or “pro-rated salary”) value for certain purposes. Importantly this value, which is derived using a member’s reckonable service (RS), judicial service (JS) and weighted salary (WS), presently feeds into the calculation of the costs and values for additional units of benefit. We consider that the FPJABS provisions can be significantly simplified by removing the pro-rated salary factor from the whole of Part 14A. This is because the pro-rating of purchase limits is adequately achieved by references to fee income levels in the provisions setting out limits on contributions by FPJABS members.
79. Under our proposed changes the PRS term would be replaced with the component term for weighted salary (WS) referred to above. This term weights an appropriate annual salary value for the member, taking into account any service across different fee-paid offices.
80. Under the existing provisions, for some part-time members who are retired, FPJABS units have a higher cost than the equivalent JABS purchases for salaried judges. This unintended effect will be removed by our proposed changes.
81. The change from PRS to WS will also be applied consequentially throughout Part 14A and Part 14B.

### **Assumed contribution commencement date and notice to purchase FPJABS**

82. We propose to amend regulation 128D to clarify that the “assumed contributions commencement date” used in FPJABS purchase calculations must be after the commencement of the member’s reckonable service for which benefits are to be calculated under the pre-1995 provisions. This mirrors the requirement for relevant salaried judges.
83. We also propose to remove the requirement for a notice to purchase FPJABS to include the number of qualifying fee-paid days which an unretired member proposes to work through to their assumed retirement date. As a result of the replacement of the PRS term, this information is no longer required.

### **Limits on contributions by unretired FPJABS members**

84. We propose to correct a typographical error in the formula in regulation 128I used in determining the aggregate amount of the lump sum payments an unretired FPJABS member may make.

### **Cost of FPJABS added units of benefit**

85. Regulations 128J and 128K set out the cost of purchasing FPJABS units for retired and unretired FPJABS members respectively.
86. We propose to amend wording in:
- regulation 128J to clarify that it sets out the total contribution required for the units of added benefit that the member wishes to purchase; and
  - regulation 128K to clarify that it sets out the annual contribution rate for each added unit of benefit that the member wishes to purchase.
87. The cost calculation formulae in regulations 128J and 128K currently refer to personal benefits and family benefits percentage figures that are set out in Schedule 3 to the AVC regulations.
88. We propose to replace these references with a new schedule of personal benefits and family benefits percentage figures within the FPJPS regulations. The revised figures reflect actuarial guidance and will:
- address an existing anomaly that makes the cost of FPJABS units unduly low for some eligible members<sup>10</sup> (including in comparison to the cost of FPJAYS added years); and
  - extend the range of ages for which figures are provided, noting that FPJABS members will generally be older than salaried JABS members who purchased units in the period from 1995 to 2006.
89. The point noted in the first bullet above is particularly important because the existing position might tend to favour relatively older judges, more likely to be purchasing FPJABS, over relatively younger judges, more likely to be purchasing FPJAYS added years.
90. It is important to note that:
- No FPJABS purchases have yet been made under the existing provisions.
  - Taking the prospective membership as a whole, the changes are beneficial for FPJABS purchasers.
91. As noted in section 3 of this consultation we propose to amend deadlines for member notices under Part 14A to 1 April 2026.

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<sup>10</sup> Members who may be affected are those with service in offices in Tables 2 and 3 in Schedule 1 to the FPJPS regulations, comprising unretired members and retired members who sat on a very high proportion of days (more than 80% of the office divisor value).



## Conversion of FPJAYS added years and FPJABS added units of benefit

92. Part 14B sets out provisions for the conversion of:
- FPJAYS added years into FPJABS added units of benefit where a member who has purchased added years no longer has service in any offices for which benefits are to be calculated under the post-1995 provisions.
  - FPJABS added units of benefit into FPJAYS added years where a member who has purchased added units of benefit no longer has service in any offices for which benefits are to be calculated under the pre-1995 provisions.
93. The formulae used for these conversions are set out in regulations 128R and 128X respectively. They currently refer to service credit figures that are set out in Schedule 1 to the Transfer regulations.
94. We propose to replace these references with a new schedule of service credit figures within the FPJPS regulations. The revised figures will:
- Reflect actuarial guidance that only post-retirement effects are relevant in the values for service credit figures.
  - Extend the range of ages for which figures are provided, noting that FPJAYS and FPJABS members will generally be older than salaried JAYS and JABS members who purchased units in the period from 1995 to 2006.
95. For a very small number of prospective members<sup>11</sup> the revised figures will mean a slightly less favourable FPJABS to FPJAYS conversion rate in some circumstances.
96. Under our proposed changes we will also change the specified date, by reference to which an appropriate service credit figure for a member is determined from:
- the age of the member at the member's last birthday at the date of transfer,  
to  
the age of the member at the member's last birthday at retirement (in respect of retired members) and the member's assumed retirement date (in respect of unretired members).
97. This change will apply in both regulations 128R and 128X. We are making this change because it is inappropriate to refer to 'transfer' dates in relation to the circumstances when additional benefits for a fee-paid judge may be subject to conversion.

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<sup>11</sup> Potentially affected members are unretired judges whose office is in Table 3 in Schedule 1 of the FPJPS regulations and whose service in the office commenced before age 50.

## Fee-Paid Judicial Added Years Scheme

98. This draft amendment can be seen at regulation 20 of the draft regulations.
99. The FPJPS Amendments provided for a multiplier value of 1.25 to be applied to qualifying fee-paid days for a judge who first held an eligible fee-paid judicial office specified in Tables 1 or 2 of Schedule 1 of the FPJPS regulations before 31st March 1995 where benefits in relation to that office are to be calculated under the post-1995 provisions.
100. We propose to exclude the effect of the 1.25 multiplier from the definition of the term "B" in regulation 107(3)(b). This term is used in the derivation of an average earnings value which is in turn used in the calculation of the required FPJAYS contribution by retired members. The current inadvertent inclusion of the multiplier tends to reduce the amount of the contribution payable. Exclusion of the multiplier will mean that the cost of added years for retired FPJAYS members will consistent with the cost of added years for:
- unretired FPJAYS members (who tend to be younger than retired FPJAYS members); and
  - salaried JAYS members.
101. As noted in section 3 of this consultation, we also propose to amend deadlines for member notices under Part 13 to 1 April 2026 (with the precise wording available in the 2024 Amendments).

## Questions

8. Do you have any comments on our proposals to amend the FPJABS provisions?
9. Do you have any comments on our proposals to amend the provisions for the conversion of FPJAYS added years and FPJABS added units of benefit?
10. Do you have any comments on our proposals to amend the FPJAYS provisions?

## 5. Additional Offices Eligibility

### The Fee-Paid Judicial Pension Scheme

102. These draft amendments can be seen at regulations 8 and 37 of the draft amendments.
103. While the FPJPS Amendments added a number of eligible offices, whose entitlement to a pension under FPJPS had been determined, into Schedule 1 of the FPJPS regulations, some further offices now need to be added or amended after consultation on points of detail associated with entitlements, particularly in relation to their service limitation date or service credit multiplier.
104. Some offices are subject to a service limitation date (SLD). This is defined in regulation 2 of the FPJPS regulations as “a date specified in Schedule 1 in relation to that office after which service may count as qualifying fee-paid service”, thereby setting the date from which a member’s FPJPS pension may be calculated. This mirrors the date after which the corresponding, relevant salaried judge became entitled to a judicial pension, or the date after which a relevant salaried office was established (often because the office was transferred into the First-tier Tribunal).
105. The following offices (which include SLDs) are to be added to Schedule 1 of the FPJPS regulations by these draft regulations. These offices were consulted on separately, targeted at those affected. As no significant concerns were raised in the responses, we committed to including the offices. We intend to add them accordingly and are not seeking further views on their treatment at this stage:
- First-Tier Tribunal Judge (Health, Education and Social Care) Primary Health Lists – SLD 18th January 2010.
  - Legal Chair Agricultural Land Tribunal Wales – SLD 30 June 2013.
  - Deputy Legal Chair Agricultural Land Tribunal Wales – SLD 30 June 2013.
106. The draft amendments can be seen at regulation 37 of the draft regulations.
107. Relatedly, FPJPS provides a credit for each year of applicable, reckonable service carried out in an office prior to its SLD, determined in accordance with a multiplier. A “service credit day multiplier” is therefore applied to sitting days on or before the SLD to determine a number of days which are then included in FPJPS qualifying fee-paid service. This approach mirrors the pension entitlements for relevant salaried judges before they were eligible for judicial pension arrangements.

108. However, for some of the offices we propose adding into Schedule 1 of FPJPS, there should be a service credit multiplier of zero. This is because before their SLD (which, in these cases, is the date they were added to the First Tier Tribunal) there was no relevant salaried judge and so there should be not corresponding entitlement to a credit in FPJPS for that period.
109. We are adding the following offices to Schedule 1 of FPJPS with the SLD and service credit multiplier shown below:
- Judge of the Consumer Credit Appeal Tribunal – SLD 1 Sept 2009 and service credit day multiplier of 0.00.
  - Judge of the Estate Agents Appeal Tribunal – SLD 1 Sept 2009 and service credit day multiplier of 0.00.
110. These draft amendments can be seen at regulations 8 and 37 of the draft regulations.
111. The following offices are already on Schedule 1 of the FPJPS regulations, but MoJ has proposed a change to their treatment, subject to the outcome of a separate, targeted consultation that closed on 18<sup>th</sup> February 2024. As such, please be aware that at a later date, and once we have had time to consider any responses, MoJ may need to effect the outcome of that targeted consultation by inserting additional amendment regulations into the 2024 Amendments prior to laying these in Parliament. The offices are:
- Legal Chairman Mental Health Review Tribunal
  - Legal Member Mental Health Review Tribunal

## **Public Services Pensions Act 2013 (Judicial Offices) Order 2015**

### **Eligibility for Member (Chair only) First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation**

112. These draft amendments can be seen at regulation 3 and Part 4 and 5 of the draft regulations.
113. Schedule 1 of the FPJPS regulations includes an entry for ‘Member (Chair only) First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation’ with a SLD of 2 November 2008, reflecting the point at which this office became part of the First Tier Tribunal.
114. However, the Judicial Offices Order, which sets out eligibility for JPS15 and JPS22 membership, does not have an equivalent entry for this office.

115. In order to ensure that non-legal members of the First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation who are ticketed to act as Chair may continue to accrue under the current JPS22, we propose to add this office into the Judicial Offices Order.
116. To ensure those serving in this office will also have a retrospective (as well as prospective) pension entitlement for the period prior to the 2024 Amendments, MoJ also has set out mechanisms in JPS22 and JPS15 to allow for this. More detail on these mechanisms are set out at paragraphs 31-34 above.

## Questions

11. Do you have any comments on our intention to add the office of Judge of the Consumer Credit Appeal Tribunal with a SLD of 1 September 2009 and the approach to providing for a service credit multiplier of 0.00 to Schedule 1 of the FPJPS regulations?
12. Do you have any comments on our intention to add the office of Judge of the Estate Agents Appeal Tribunal with a SLD of 1 September 2009 and the approach to providing for a service credit multiplier of 0.00 to Schedule 1 of the FPJPS regulations?
13. Do you have any comments on our proposals to add the office of Member (Chair only) First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation to the Public Service Pensions Act 2013 (Judicial Offices) Order 2015?

# Questionnaire

See below a summary of questions which have been set out across each section of the consultation. Please note question 14 is in addition to these questions and relates to all proposals.

1. Do you have any comments on our proposals to include provisions for the CCM in the JPS22 regulations?
2. Do you have any comments on our proposal to insert a new regulation 7A and regulation 13A into JPS22 and JPS15 respectively?
3. Do you have any comments on our proposal to amend Regulation 84 in JPS22?
4. Do you have any comments on our proposals to amend the FPJPS contributions provisions?
5. Do you have any comments on our proposals to amend the commutation of small pensions provisions in FPJPS?
6. Do you have any comments on our proposals to extend the pre/post-1995 and additional benefits deadlines?
7. Do you have any comments on our proposals to extend the lump sum deadline set out in Regulation 58A?
8. Do you have any comments on our proposals to amend the FPJABS provisions?
9. Do you have any comments on our proposals to amend the provisions for the conversion of FPJAYS added years and FPJABS added units of benefit?
10. Do you have any comments on our proposals to amend the FPJAYS provisions?
11. Do you have any comments on our proposals to add the office of Judge of the Consumer Credit Appeal Tribunal with a SLD of 1 September 2009 and a service credit multiplier of 0.00 to Schedule 1 of FPJPS?
12. Do you have any comments on our proposals to add the office of Judge of the Estate Agents Appeal Tribunal with a SLD of 1 September 2009 and a service credit multiplier of 0.00 to Schedule 1 of FPJPS?

13. Do you have any comments on our proposals to add the office of Member (Chair only) First-tier Tribunal (Social Entitlement Chamber) Criminal Injuries Compensation to the Public Service Pensions Act 2013 (Judicial Offices) Order 2015?
14. Please let us know if you consider that any of the proposals will have adverse equality impacts?

**Thank you for participating in this consultation exercise.**

# About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
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.

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## Contact details/How to respond

Please send your response by 14 April 2024 via the Citizen Space website or you can email us at the address below:

**Email:** [judicialpensionsconsultation@justice.gov.uk](mailto:judicialpensionsconsultation@justice.gov.uk)

### 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.

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from:  
[judicialpensionsconsultation@justice.gov.uk](mailto:judicialpensionsconsultation@justice.gov.uk)

### Publication of response

We hope to publish a response to this consultation in Summer 2024. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

### 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.

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.

# Impact Assessment, Equalities and Welsh Language

## Impact assessment

We have not carried out an economic impact assessment as our proposals should have no impact on business, charities or the voluntary sector. The costs associated with our proposals exist as a public funding liability and are under consideration in terms of departmental expenditure implications. Furthermore, the amendments to FPJPS are consistent with our ongoing duty to implement the remedy required under the *O'Brien 2* and *Miller* cases.

## Equalities

Under the [Public Sector Equality Duty](#) within the Equality Act 2010 MoJ Ministers and policy makers are required to consider the equalities impacts of policy proposals in relation to the following:

- (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

An equality impact statement has been published alongside this consultation.

## Welsh Language Impact Test

In accordance with the Welsh Language Act 1993, the MoJ's Welsh Language Scheme, requires you to '**assess the linguistic consequences of policies affecting services provided to the people in Wales**'.

A Welsh language version of this consultation has been published. There are no linguistic consequences of the proposed amendments affecting services provided to people in Wales.

## Environmental Principles Duty

From the 1 November 2023, the Environment Act 2021 places a legal duty on Ministers of the Crown to have ‘due regard’ to the environmental principles policy statement.<sup>12</sup>

The 5 principles in this policy statement, as set out in section 17(5) of the Environment Act, are internationally recognised as successful benchmarks for environmental protection and enhancement. When making policy, and where relevant, ministers will need to consider the:

- integration principle
- prevention principle
- rectification at source principle
- polluter pays principle
- precautionary principle

The UK government has already committed to these 5 principles through international instruments and processes.

We have not identified any environmental impacts of the proposed amendments.

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<sup>12</sup> [Environmental principles policy statement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/environmental-principles-policy-statement)

# Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf)



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