

The Public Service Pensions and Judicial Offices Act 2022—pensions now fairer for all?

Pensions analysis: The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) was given Royal Assent on 10 March 2022. Following a detailed report on the need to reform public sector pensions, the ruling in the McCloud and Sargeant case, a cost control valuation, and a review conducted by the Senior Salaries Review Body, the government introduced the PSPJOA 2022. The key measures, including the removal of discriminatory transitional provisions and of the final salary link, alongside the introduction of the cost control mechanism have meant public sector pension schemes are arguably fairer. Bianca Venkata, barrister at Outer Temple Chambers, examines the PSPJOA 2022 and its implications for public sector pension schemes.

This analysis was first published on Lexis®PSL on 8 June 2022 and can be found [here](#) (subscription required).

Summary

Key measures in the [PSPJOA 2022](#) include:

- [PSPJOA 2022, Part 1](#):
 - transfer all public sector workers into the reformed public sector schemes from 1 April 2022
 - close the legacy public sector schemes to future accrual from 31 March 2022
 - remove the discriminatory transitional provisions identified by the Court of Appeal in *Secretary for State for the Home Department v Sargeant* [\[2018\] EWCA Civ 2844](#) (*McCloud and Sargeant*)
- [PSPJOA 2022, Part 2](#): enable HM Treasury to introduce a new public sector pension scheme for former members of the Northern Rock and Bradford and Bingley pension schemes
- [PSPJOA 2022, Part 3](#): introduce measures to retain and recruit more judges

The background to the PSPJOA 2022

In 2011, Lord Hutton Chair of the Independent Public Service Pensions Commission published a detailed [report](#) on the need to reform public sector pensions. The report made a number of recommendations to make public sector pensions more sustainable. Notable recommendations included:

- bringing the normal pension age of public sector workers up to the state pension age, save for the police, armed forces and firefighters
- removing the final salary link
- increasing member contributions
- introducing a cost control mechanism to ensure that public sector pensions remain affordable for the public purse

As a result of the report, in April 2015, the government introduced by way of the [Public Service Pensions Act 2013](#) new public sector pension schemes for the armed forces, civil service, firefighters, judiciary, local government, NHS and teachers. The reformed public sector pension schemes were based on career average earnings, the normal pension age was linked to the state pension age and members could opt to commute part of their pension for a lump sum. This was estimated to save the public purse more than £400bn over 60 years.

In 2016 a cost control valuation was conducted of public sector pensions.

Following negotiations with trade unions, the government allowed members who were within ten years of retirement to remain within the legacy schemes, and introduced transitional measures on a tapered basis for members retiring between 1 April 2015 to 31 March 2022.

On 20 December 2019, the Court of Appeal in *McCloud* and *Sargeant* held that the transitional measures in the judicial and firefighter pension schemes were directly age discriminatory and remitted the equal pay and indirect race discrimination claims back to the employment tribunal. The government was refused permission to appeal to the Supreme Court. The government accepted the ruling, and that it applied by extension to all public sector schemes

In 2018, a [review](#) conducted by the Senior Salaries Review Body found that there were significant recruitment and retention difficulties in the judiciary as a result of the 2015 judicial pension scheme and the introduction of annual and lifetime allowance limits on tax relief benefits.

What are the key measures in the PSPJOA 2022?

[PSPJOA 2022, Part 1:](#)

- transfers all members of the legacy schemes to the reformed public sector pension schemes from 1 April 2022
- closes the legacy schemes on 31 March 2022 to future accrual
- removes the discriminatory transitional provisions identified in *McCloud* and *Sargeant*
- gives members the choice by way of a deferred choice underpin on whether their benefits for the period 1 April 2015 to 31 March 2022 would remain in the legacy schemes or transfer to the new scheme. The members can make this choice at retirement. Certain exceptions applied to members who already retired, the judiciary and the local government pension scheme. The government estimates that the deferred choice underpin will result in an additional £17bn being paid to public sector members
- ensures that member benefits cannot be reduced as a result of breaches of the ceiling during the 2016 cost control valuation due to the uncertainty created by *McCloud* and *Sargeant*

[PSPJOA 2022, Part 2](#) makes a number of reforms to assist in the recruitment and retention of the judiciary:

- introduces a reformed judicial pension scheme which is not registered under [Part 4](#) of the [Finance Act 2004](#) and has a higher accrual rate than the 2015 scheme

- increases the judicial mandatory retirement age from 70 years to 75 years. The government estimates this will help retain 400 judges and 2000 magistrates per year
- increases the scope for salaried and fee paid judges to sit in retirement

[PSPJOA 2022, Part 3](#) gives HM Treasury power to establish a new public sector pension scheme for members of the Bradford and Bingley and Northern Rock pension schemes, following Bradford and Bingley and Northern Rock being taken into public ownership as a result of the global financial crisis in 2007.

Were any significant amendments made to the Bill as it made its way through Parliament?

The opposition parties did not oppose the reforms to public sector pensions as there was wide recognition that this was required.

Some notable amendments that were defeated include:

- an amendment to reduce the mandatory judicial retirement age to 72 years
- an amendment to address the 'pension trap' that arose in the police pension schemes was defeated as being too wide in scope

What are the implications for public sector pension schemes?

As a result of the [PSPJOA 2022](#), public sector pension schemes are arguably fairer, due to the removal of the discriminatory transitional provisions identified in *McCloud* and *Sargeant*, and more sustainable given the removal of the final salary link and the introduction of the cost control mechanism.

Interviewed by Banita Kalia

Bianca Venkata is a barrister at Outer Temple Chambers. Bianca accepts instructions in all areas of Chambers' practice including pensions, commercial litigation, probate, employment & discrimination, financial services, and international related matters. Bianca advises in a variety of pension matters, including court proceedings and pension ombudsman claims, and her advocacy experience includes High Court and Employment Appeal Tribunal hearings, County Court hearings and multiday Employment Tribunal work. Bianca has been noted by Legal 500 as a Rising Star for her employment work.

Want to read more? Sign up for a free trial below.

FREE TRIAL