



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Mandatory retirement age for devolved judicial office holders in Northern Ireland

Response to consultation

29 March 2021

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Introduction and contact details

1.1 This document is the response to the consultation, issued by the Department of Justice (“the Department”), on proposals to raise the mandatory retirement age (MRA) for devolved tribunal members and Lay Magistrates in Northern Ireland. It also invited views on a proposal that would allow Lay Magistrate appointments to be extended beyond the MRA, as is possible for some judicial office holders when it is in the public interest.

1.2 The consultation ran from 14 October 2020 to 9 December 2020.

1.3 If it would help you to have this document in a different format, such as Braille or large print, or in a language other than English, please contact us at AtoJ.Consultation@justice-ni.x.gsi.gov.uk.

1.4 This consultation response is also available on the Department’s website at the web link:

www.justice-ni.gov.uk/consultations/mandatory-retirement-age-devolved-judicial-office-holders.

Complaints

1.5 If you have any concerns about the way that this consultation process is being or has been handled, please contact us at standardsunit@justice-ni.x.gsi.gov.uk.

Consultation process

2.1 The Department launched a targeted consultation on proposals to raise the MRA to 72 or to 75 on 14 October 2020 with a closing date of 9 December 2020. The consultation also included consideration of whether Lay Magistrates' appointments should be extended beyond the MRA when there is a public interest, or business need, in line with existing powers that allow for judges' appointments to be extended.

2.2 Those affected or likely to be affected by these changes, as well as the relevant professional legal associations and bodies, were notified of this consultation.

2.3 The consultation welcomed the views of consultees relating to all sections of the consultation, as well as the views of anyone with an interest in the subject. It is available to download from the Department's website at: www.justice-ni.gov.uk/consultations/mandatory-retirement-age-devolved-judicial-office-holders.

2.4 The consultation asked the following questions:

Q1A. Do you think that judicial office holders would choose to stay in office until the age of 72 if the MRA was raised to 72? Please give your reasons.

Q1B. Do you think that judicial office holders would choose to stay in office until the age of 75 if the MRA was raised to 75? Please give your reasons.

Q2A. Do you think that raising the MRA to 72 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons.

Q2B. Do you think that raising the MRA to 75 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons.

Q3A. Do you think raising the MRA to 72 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons.

Q3B. Do you think raising the MRA to 75 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons.

Q4A. Do you think that increasing the MRA to 72 would attract more people to apply to judicial office? Please give your reasons.

Q4B. Do you think that increasing the MRA to 75 would attract more people to apply to judicial office? Please give your reasons.

Q5A. Do you think that increasing the MRA to 72 is likely to attract more diverse applicants for judicial office? Please give your reasons.

Q5B. Do you think that increasing the MRA to 75 is likely to attract more diverse applicants for judicial office? Please give your reasons.

Q6A. Would raising the MRA to 72 cause you to have less confidence in the judiciary? Please give your reasons.

Q6B. Would raising the MRA to 75 cause you to have less confidence in the judiciary? Please give your reasons.

Q7. Please provide any comments you have on retaining parity of MRA between excepted and devolved judicial office holders in NI and on consistency with the approach being taken by MoJ.

Q8. Do you agree that the MRA for judicial office holders should be increased? Please give your reasons.

Q9. If so, do you think the MRA should be raised to 72 or 75? Why do you think this age is the most appropriate?

Q10. Should the policy of allowing extensions of appointment past the MRA, as per JUPRA s.26(5) and 26(6) be maintained if the MRA is increased to 72?

Q11. Are there any circumstances where it may be justified for a judge to sit, exceptionally beyond the age of 75 for a short period?

Q12. Do you think that Lay Magistrates' appointments should be eligible for extensions past the MRA if in the public interest in line with judges? Please give your reasons.

2.5 The Department received five responses to the MRA proposals by the closing date of the consultation. We are very grateful to those who responded for taking time to consider the issues contained in the consultation and share their views. This paper analyses the responses received.

Analysis of responses, conclusions and next steps

Analysis of responses

3.1 The consultation document asked for the views of consultees on a number of questions. This chapter considers the responses to these questions and provides the Department's view on the way forward.

Q1A. Do you think that judicial office holders would choose to stay in office until the age of 72 if the MRA was raised to 72? Please give your reasons.

3.2 Four consultees responded to the question. Three agreed that office holders would remain in office until the age of 72 if the retirement age was raised to 72, although two of those consultees considered that 75 was their preferred option if retirement age was to be changed. One consultee stressed the importance of personal choice in the matter, whilst another considered that parity across the judiciary in this matter was important. One consultee stated that he would not stay in office until the age of 72.

Q1B. Do you think that judicial office holders would choose to stay in office until the age of 75 if the MRA was raised to 75? Please give your reasons.

3.3 Four consultees responded to the question. Three agreed that office holders would remain in office until the age of 75 if that was to be the mandatory retirement age. One consultee stressed the importance of personal choice about the age at which to retire, whilst another considered that parity across the judiciary was important. One consultee mentioned what he considered to be disparities in the system, such as the maximum age for jurors being 75. Another consultee stated that he would not stay in office until he was 75.

Q2A. Do you think that raising the MRA to 72 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons.

3.4 Four consultees answered the question and all four considered that changing the retirement age to 72 would not change the behaviour of judicial office holders who choose to retire before the age of 70. One consultee stated that deciding to retire is a choice made by a person, taking into account multiple "pros and cons" and changing the age of retirement would not affect that choice-making process. Another consultee noted that retirement before the age of 70 is a decision taken for medical or personal reasons or perhaps taken as a matter of principle over a specific issue. This consultee, together

with another, noted that judicial office holders are professional people who continue to work in the role as long as they are able and still have a desire to give something back to society. Another consultee simply stated that raising the retirement age to 72 would not affect his behaviour.

Q2B. Do you think that raising the MRA to 75 would change the behaviour of judicial office holders who choose to retire before the age of 70? Please give your reasons.

3.5 Four consultees answered the question and all four considered that changing the retirement age to 75 would not change the behaviour of judicial office holders who choose to retire before the age of 70. One consultee stated that deciding to retire is a choice made by a person, taking into account multiple “pros and cons” and changing the age of retirement would not affect that choice-making process. Another consultee noted that retirement before the age of 70 is a decision taken for medical or personal reasons or perhaps taken as a matter of principle over a specific issue. This consultee, together with another, noted that judicial office holders are professional people who continue to work in the role as long as they are able and still have a desire to give something back to society. Another consultee stated that raising the retirement age to 75 would not affect his behaviour.

Q3A. Do you think raising the MRA to 72 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons.

3.6 Four consultees answered the question. Two considered that there would be an adverse impact on the diversity of the judiciary, whilst two considered that there would be no adverse impact. One consultee who considered that there would be an adverse impact stated that she did not consider that the impact would be significant as the numbers of the workforce affected would be small. The other consultee who considered that there would be an adverse impact stated that, due to no recruitment taking place for some years at his tier, the youngest office holder was 40 and there is a mean age of around 57. He considered that raising the retirement age would exacerbate this position. He also considered that there is a gender imbalance at his tier (more females than males) and raising the retirement age would delay recruitment which might help address this balance.

3.7 One consultee who considered that there would be no adverse impact on the diversity of the judiciary, noted that raising the retirement age would delay recruitment at the tier which could assist in promoting diversity. The other consultee who considered that there would be no adverse impacts gave no reasons for his view.

Q3B. Do you think raising the MRA to 75 would have an adverse impact on the diversity of the judiciary? If yes, do you think this impact is significant enough to prevent a change to the MRA? Please give your reasons.

3.8 Again, four consultees responded to the question. Two considered that there would be an adverse impact on the diversity of the judiciary if the retirement age was extended to 75, whilst two considered that there would be no such impact. One consultee noted that there may be an impact on diversity in the short term, as recruitment opportunities might be limited. However, this consultee noted that once retirements at 75 began to occur, the position was likely to stabilise. The other consultee who considered that there would be an adverse impact stated that, due to no recruitment taking place for some years at his tier, the youngest office holder was 40 and there is a mean age of around 57. He considered that raising the retirement age would exacerbate this position. He also considered that there is a gender imbalance at his tier (more females than males) and raising the retirement age would delay recruitment which might help address this balance.

3.9 One consultee who considered that there would be no adverse impact on the diversity of the judiciary, noted that raising the retirement age would delay recruitment at the tier which could assist in promoting diversity. The other consultee who considered that there would be no adverse impacts gave no reasons for his view.

Q4A. Do you think that increasing the MRA to 72 would attract more people to apply to judicial office? Please give your reasons.

3.10 Four consultees responded to the question. One consultee considered that increasing the retirement age to 72 would not attract more people to apply for judicial office, although did not provide reasons for the opinion. The other three consultees considered that such a change would encourage more people to apply. One consultee considered that the change would appeal to those in their 60s, although noted that this was an age range that was not underrepresented at his tier. Another consultee noted that the change may attract people who are required to now work to greater ages with their main employer, whilst another consultee agreed, although this consultee considered that 75 was a more appropriate age of retirement.

Q4B. Do you think that increasing the MRA to 75 would attract more people to apply to judicial office? Please give your reasons.

3.11 All four consultees agreed that raising the retirement age to 75 would attract more people to apply for judicial office. One consultee considered that the change would mean a more attractive career opportunity for those who were contemplating change of career direction or who had significant career breaks over their working life. Another consultee considered that the change would appeal to those in their 60s, although noted that this

was an age range that was not underrepresented at his tier. Another consultee noted that the change may attract people who are required to now work to greater ages with their main employer, whilst another consultee agreed with this view.

Q5A. Do you think that increasing the MRA to 72 is likely to attract more diverse applicants for judicial office? Please give your reasons.

3.12 Two consultees did not consider that raising the retirement age to 72 would increase more diverse applicants for judicial office. One of these consultees did not consider that there was a great difference between retirement age being set at 72 or 75. The other stated that raising the retirement age would be another reason for the department to avoid running a recruitment scheme. The two consultees that considered that raising the retirement age would attract more diversity commented that older people were more likely to apply given that they could enjoy a longer period of service and the change in age reflects Northern Ireland's aging population.

Q5B. Do you think that increasing the MRA to 75 is likely to attract more diverse applicants for judicial office? Please give your reasons.

3.13 One consultee did not consider that raising the retirement age to 75 would increase more diverse applicants for judicial office. He stated that raising the retirement age would be another reason for the department to avoid running a recruitment scheme. Two consultees that considered that raising the retirement age would attract more diversity commented that older people were more likely to apply given that they could enjoy a longer period of service and the change in age reflects Northern Ireland's aging population. The other consultee who responded considered that the change would mean a more attractive career opportunity for those who were contemplating change of career direction or who had significant career breaks over their working life.

Q6A. Would raising the MRA to 72 cause you to have less confidence in the judiciary? Please give your reasons.

3.14 Four consultees answered the question. Three stated that they did not consider that raising the retirement age to 72 would result in less confidence in the judiciary. One consultee pointed out that individuals would still be working to the same checks and balances, whilst another consultee commented that judicial office holders are a very dedicated and experienced workforce and raising the retirement age would not impact on the confidence in which society holds the judiciary. One consultee stated that he considered that diversity was important to confidence in the judiciary and that he considered these suggested changes decrease diversity.

Q6B. Would raising the MRA to 75 cause you to have less confidence in the judiciary? Please give your reasons.

3.15 Four consultees answered the question. Three stated that they did not consider that raising the retirement age to 72 would result in less confidence in the judiciary. One consultee pointed out that individuals would still be working to the same checks and balances, whilst another consultee commented that judicial office holders are a very dedicated and experienced workforce and raising the retirement age would not impact on the confidence in which society holds the judiciary. Another stated that the change would reinforce the view that the judiciary is moving to reflect modern life. One consultee stated that he considered that diversity was important to confidence in the judiciary and that he considered these suggested changes decrease diversity.

Q7. Please provide any comments you have on retaining parity of MRA between excepted and devolved judicial office holders in NI and on consistency with the approach being taken by MoJ.

3.16 Four consultees responded to the question. One stated that she had no comment, whilst another considered that parity between excepted and devolved office holders was less important than diversity considerations. The other two consultees who responded agreed that parity was important, with one consultee pointing out that as his tier sits with a member of the excepted judiciary, they should enjoy parity.

Q8. Do you agree that the MRA for judicial office holders should be increased? Please give your reasons.

3.17 Four consultees replied to the question. Three agreed that retirement age should be increased. One considered that it would immediately address a shortfall in judicial office holders at minimal cost. Another consultee agreed that an increase would address a shortfall in judicial numbers at his tier, but a recruitment exercise should be conducted within five years. The third consultee considered that judicial office holders at his tier should not be “written off” at a particular age as long as they have the faculty and dedication to continue in the role and that an increase permits older judicial office holders to pass on expertise to younger individuals. This consultee also noted that an increase in retirement age did not mean that individuals could not retire earlier.

3.18 The consultee who did not agree that retirement age should be increased considered that an increase did not assist with diversity in his tier of the judiciary and would only attract those in their 60s who were not needed at his tier. He also reiterated that public confidence is affected if his tier is not balanced in terms of age. He also commented that there has been no discernible increase in life expectancy.

Q9. If so, do you think the MRA should be raised to 72 or 75? Why do you think this age is the most appropriate?

3.19 Four consultees answered the question. Three considered that 75 was the appropriate age, one consultee stating that this age best preserved experience. Another commented that a reason why individuals joined the tribunals judiciary later on in life was because of the commitments of their clinical practice. This consultee stated that it took a number of years to fully appreciate the nuances of providing medical expertise in a legal panel and he wished he could make his contribution for longer. The other consultee stated that, on balance, she preferred 72 as it struck an appropriate balance.

Q10. Should the policy of allowing extensions of appointment past the MRA, as per JUPRA s.26(5) and 26(6) be maintained if the MRA is increased to 72?

3.20 The three consultees who responded to the question agreed that extensions of appointment should be allowed if the retirement age was raised to 72.

Q11. Are there any circumstances where it may be justified for a judge to sit, exceptionally beyond the age of 75 for a short period?

3.21 Three consultees responded to the question. Two considered that it may be appropriate for a judge to sit beyond the age of 75 if he or she was involved in a difficult case or it was not practical or desirable for a new judge to step into the matter. The other consultee considered that a judge could sit beyond the age of 75 if it was in the public interest, with each particular case assessed on its merits.

Q12. Do you think that Lay Magistrates' appointments should be eligible for extensions past the MRA if in the public interest in line with judges? Please give your reasons.

3.22 Four consultees responded to the question. Three agreed that Lay Magistrates' appointments should be eligible for extensions past retirement age if the public interest as not having this facility creates a disparity between Lay Magistrates and the rest of the judiciary in Northern Ireland. The other consultee disagreed, commenting that extensions of appointment would give the Department an excuse to avoid a recruitment competition for judges at his tier.

Conclusions

Retirement age

3.23 On balance, the Department has concluded that it is appropriate to extend the age of retirement for the devolved judiciary to 75. Although the response received from consultees was limited, we note that there was support for this reform. It is not considered that there is any risk or impediment to increasing the MRA and the reform will allow the talented and committed members of the devolved judiciary in Northern Ireland to make their contribution for longer, should they so wish. However, we recognise that decisions about retirement are very personal and based on a wide range of factors. Therefore, although we propose the change in MRA to 75, the decision to continue to hold judicial office to that age is very much for the individual. It is considered that an increased MRA is unlikely to have a significant impact on diversity, but has the potential to improve diversity in some ways, for example, increasing opportunities for older people or those who may have had a non-linear career path because of caring responsibilities. It is therefore the Department's assessment that the potential impacts on diversity from raising the MRA are limited and are not significant enough to outweigh the benefits of a higher MRA.

3.24 The Department considers that the MRA for Lay Magistrates should be extended to 75 as well. It is a requirement that the Lay Magistracy reflects the community in Northern Ireland and we consider that an extension of the MRA facilitates the participation of older people and those people who have had a non-linear career path because of caring responsibilities. The Department recognises the criticism from one consultee that allowing individuals to continue to hold office until they are 75 could create the situation where the need to make appointments is reduced, which may, in turn, create less opportunity for younger people to apply for the role. However, we consider that this is a short term issue which may not arise if individuals make decisions to retire before the age of 75. However, we will monitor the situation carefully as we move forward.

3.25 This approach accords with that proposed to be taken by the Ministry of Justice for the judiciary for which it has responsibility, including the Northern Ireland courts judiciary. A copy of its consultation response analysis is available on its website: www.gov.uk/government/organisations/ministryofjustice . The Department considers that the extension of MRA to 75 offers a valuable benefit to office holders and it is important for parity reasons to offer that same benefit to devolved office holders. It is not apparent why a different MRA should be adopted for the devolved judiciary compared to the courts judiciary. It is interesting to note that the Ministry of Justice considers that the benefits to be gained by a higher MRA outweighs any impact on the rate of increase in diversity. The Department agrees with this analysis and considers that any impact is outweighed by the significant benefits to the supply of judicial resource and expertise that is offered by the raising of the MRA.

3.26 The Department is aware that Lay Magistrates are currently required to retire at the age of 70, with no facility for extension, unlike their colleagues in the tribunals judiciary. Raising the age of retirement has the potential to cause some unfairness to those who are obliged to retire just ahead of these reforms. Therefore, we will create statutory criteria that will have the effect the option to bring back those who have recently retired. It is our preference that these criteria will be prescribed in secondary legislation which would then be subject to further consultation.

Extensions of appointment past the retirement age

3.27 Given that it is intended that the retirement age for all devolved judiciary in Northern Ireland is increased to 75, extensions of appointment beyond this age will not be created and the current provisions in the Judicial Pensions and Retirement Act 1993 will not need to be reformed. It is intended that once the MRA is raised to 75, members of the devolved judiciary will only be able to continue sitting beyond this age to finish hearing a part-heard case, to avoid the inconvenience, injustice and wasted costs of a new judge having to take over a case.

Sitting in retirement

3.28 It is the Department's understanding that the Ministry of Justice is putting in place legislative provision to allow the fee paid courts judiciary in Northern Ireland to sit in retirement, to equalise their position with their salaried counterparts. In the interests of parity, the Department intends that the same arrangements are put in place for the devolved judiciary, where they have a salaried equivalent. Eligible judges will be able to apply to sit in retirement on a fee-paid, ad hoc basis, where there is an exceptional business need which cannot otherwise be met. While it is expected that a higher MRA of 75 will reduce the business need for judges to sit in retirement, in exceptional circumstances, the ability to draw upon members of the retired judiciary where they are so willing remains an important flexibility to help meet immediate demands of tribunals where there may be temporary shortages.

Next Steps

3.29 The Department intends to take forward its proposals at the earliest opportunity and will seek an appropriate legislative vehicle to effect the reforms.