



Department of  
**Justice**

An Roinn Dlí agus Cirt  
Máinnystrie O tha Laa

## Consultation on the mandatory retirement age for devolved judicial office holders in Northern Ireland.

This consultation begins on 14<sup>th</sup> October 2020.

This consultation ends on 9<sup>th</sup> December 2020.

# About this consultation

- To:** Members of the public of Northern Ireland with particular relevance to devolved judicial office holders.
- Duration:** From 14<sup>th</sup> October 2020 to 9<sup>th</sup> December 2020.
- Enquiries to:** Email: [AToJ.Consultation@justice-ni.x.gsi.gov.uk](mailto:AToJ.Consultation@justice-ni.x.gsi.gov.uk)
- How to respond:** Please respond via email to [AToJ.Consultation@justice-ni.x.gsi.gov.uk](mailto:AToJ.Consultation@justice-ni.x.gsi.gov.uk) by 9<sup>th</sup> December 2020.
- Response paper:** A response to this consultation exercise will be published on the Department of Justice website.

# Contents

<b>Introduction</b>	<b>5</b>
<b>Background</b>	<b>6</b>
<b>Proposals</b>	<b>9</b>
<b>Objectives of the MRA</b>	<b>9</b>
<b>Rationale for Change</b>	<b>9</b>
<b>The Proposals</b>	<b>10</b>
<b>Related Matters</b>	<b>10</b>
<b>Legislation</b>	<b>11</b>
<b>Impact assessments</b>	<b>11</b>
<b>Considerations for Setting the MRA</b>	<b>12</b>
<b>Proposal 1: Raising the MRA to 72 or 75</b>	<b>12</b>
<b>Potential Effect on Judicial Resource</b>	<b>12</b>
<b>Potential Effect on Judicial Diversity</b>	<b>13</b>
<b>Life Expectancy</b>	<b>14</b>
<b>Attractiveness of Judicial Office</b>	<b>14</b>
<b>Judicial Independence and Public Confidence in the Judiciary</b>	<b>15</b>
<b>Concluding Questions on Raising the MRA</b>	<b>15</b>
<b>Extensions of Appointments</b>	<b>15</b>
<b>Proposal 2: Allow Lay Magistrates' appointments to be extended beyond the MRA.</b>	<b>16</b>
<b>Questionnaire</b>	<b>18</b>
<b>About You</b>	<b>20</b>
<b>Contact details/How to respond</b>	<b>21</b>
<b>Confidentiality</b>	<b>22</b>
<b>Publication of Response</b>	<b>22</b>
<b>Impact Assessment and Equalities</b>	<b>23</b>
<b>Additional copies and alternative formats</b>	<b>24</b>

<b>Annex A: List of Devolved Judicial Office Holders in Scope of this Review</b>	<b>25</b>
<b>Annex B: List of Consultees</b>	<b>27</b>
<b>Annex C: Equality Screening</b>	<b>28</b>
<b>Annex D: Rural Needs Impact Assessment Template</b>	<b>46</b>
<b>Annex E: Regulatory Impact Assessment Screening</b>	<b>55</b>

# Introduction

- 1.1 This consultation seeks views on proposals to raise the mandatory retirement age (MRA) for devolved tribunal members and Lay Magistrates in Northern Ireland. It also invites 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. We welcome views from all members of the public in Northern Ireland but note that the proposals will be of particular interest to devolved judicial office holders within scope of the review including devolved judicial office holders and Lay Magistrates. For a full list of offices within scope please see Annex A.
- 1.2 Respondents are asked to answer the consultation questions that appear in bold throughout the paper. These questions are also collated on pages 18-19.
- 1.3 The best way to respond to this consultation is via email. The questionnaire (see page 18) can be emailed to [AtoJ.Consultation@justice-ni.x.gsi.gov.uk](mailto:AtoJ.Consultation@justice-ni.x.gsi.gov.uk).
- 1.4 This consultation is open for 8 weeks. The closing date for receipt of responses is 5.00pm on 9<sup>th</sup> December 2020. Please note that it is unlikely that we will be able to consider responses received after this date.
- 1.5 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](mailto:AtoJ.Consultation@justice-ni.x.gsi.gov.uk).

## *Privacy notice*

- 1.6 We intend to publish a summary of the responses to this consultation on our website. Any contact details that identify a respondent as a private individual will be removed prior to publication. All information will be handled in accordance with the General Data Protection Regulation 2018. Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any responses not subject to specific exemptions under the Act may be disclosed to other parties on request.

## *Complaints*

- 1.7 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](mailto:standardsunit@justice-ni.x.gsi.gov.uk).

# Background

2.1 Mandatory retirement for judges of the High Court and above was first introduced by the Judicial Pensions Act 1959, which set a retirement age of 75. Prior to this, judges could continue in office for as long as they wished. Other judicial office holders were subject to a variety of different retirement provisions.

2.2 The Judicial Pensions and Retirement Act 1993 (“JUPRA”) introduced a standard judicial retirement age of 70 for all judicial offices listed in Schedule 5. The provisions, which brought greater consistency to the judicial retirement system, only applied to judges appointed after the relevant provisions were commenced on 31 March 1995. Some judges appointed to judicial office prior to 31 March 1995 retained their previous (usually later) retirement date. Since the MRA was set, average life expectancy has increased and many people want to and expect to continue working for longer than in previous decades. Section 26(5) of JUPRA empowers the Lord Chief Justice to extend the appointment of those members listed in Schedule 5 beyond the compulsory retirement date up to a maximum age of 75. Extensions are taken forward with the concurrence of the Department of Justice where it is considered in the public interest to do so.

2.3 Judicial office holders in Northern Ireland fall into the following categories:-

- Excepted courts judiciary, whose remuneration and terms and conditions are the responsibility of the Lord Chancellor, and who are included within the retirement provisions of JUPRA;
- Devolved tribunal members who are included within the retirement provisions of JUPRA (members of the Appeal Tribunals, the Industrial Tribunals and Fair Employment Tribunal and the Lands Tribunal);
- Devolved tribunal members who are not included within the retirement provisions of JUPRA (members of the Care Tribunal, Charity Tribunal, Criminal Injuries and Compensation Appeals Panel, Valuation Tribunal, Review Tribunal, Traffic Penalty Tribunal, Tribunal under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972 and the Special Educational Needs and Disability Tribunal); and
- Lay Magistrates, who are not included within the retirement provisions of JUPRA.

2.4 For those tribunal members who are not included within the retirement provisions of JUPRA, their MRA of 70 is set in their terms and conditions of employment. The retirement age of Lay Magistrates (also 70 years of age) is set in section 4(11) of the Justice Act (Northern Ireland) 2015.

2.5 The excepted courts judiciary have been included, with the knowledge and support of the Northern Ireland Minister of Justice, in a consultation on the MRA which is being taken forward by the Ministry of Justice (MoJ). The MoJ consultation was launched on 16 July 2020 and will close on 16 October 2020. The proposals contained in this consultation in relation to devolved tribunal members and Lay Magistrates mirror those proposed in the MoJ consultation.

2.6 Responsibility for devolved tribunals in Northern Ireland is shared between three Northern Ireland Ministers :

- The Minister of Justice has responsibility for Lay Magistrates and for the Care Tribunal, Charity Tribunal, Criminal Injuries and Compensation Appeals Panel, Valuation Tribunal, Review Tribunal, Traffic Penalty Tribunal, Tribunal under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972 and the Special Educational Needs and Disability Tribunal;
- The Minister for Communities is responsible for the Appeal Tribunals and;
- The Minister for the Economy has responsibility for the Industrial Tribunals and Fair Employment Tribunal (ITFET).

We believe it is important for a consistent approach to be taken in relation to devolved tribunal members, therefore this consultation is being conducted jointly on behalf of all three Departments.

2.7 A number of factors are relevant in the consideration of the most appropriate MRA for devolved tribunal members and Lay Magistrates. Chief among these are how to ensure effective resourcing of courts, tribunals and other judicial functions; the need to promote opportunity and diversity through a steady turnover of retirements to allow for new appointments; and ensuring judicial independence and public confidence in the judiciary is protected. A consistent approach is also desirable between those posts included within the retirement provisions of JUPRA and those which are not.

2.8 As part of the response to improve recruitment and retention, this consultation considers raising the MRA to 72 or to 75. It also includes consideration of allowing for Lay Magistrates' appointments to be extended beyond the MRA when there is a public interest, or business need, in line with existing powers that allow for judges' appointments to be extended.

2.9 The Northern Ireland Judicial Appointments Commission agreed an extension of appointment procedure with DoJ in 2019. This procedure relates to the extension of

appointment of judicial office holders in DoJ tribunals past the age of 70 where no statutory provision exists (i.e. tribunal members not included under the JUPRA provisions) and where the extension is considered to be in the public interest. Extensions can be made under this procedure up to a maximum age of 75. We would intend to allow for extensions past the MRA in legislation in order to ensure a consistent statutory provision for all such extensions across courts and tribunals.

2.10 The purpose of this consultation is to collect views, and additional evidence, on whether the proposals to raise the MRA meet our objectives.

## Interaction with Other Consultations

2.11 The Ministry of Justice recently published three consultations with implications for judicial pension's arrangements:

- a. Amendments to the Fee-Paid Judicial Pension Scheme;
- b. *McCloud* remedy – proposals to rectify the discrimination identified in the *McCloud* litigation;
- c. Future reform of the judicial pension scheme – proposals for a reformed pension scheme to address judicial recruitment and retention issues

2.12 DoJ is also consulting on the *McCloud* remedy and the future reform of the judicial pension scheme. These consultation papers can be accessed on the DoJ website. Judicial office holders may wish to consider these consultations at the same time to understand where and to what extent possible dependencies may influence their response.

# Proposals

## Objectives of the MRA

3.1 The policy objectives for having an MRA for judicial office holders are that it:

- promotes and preserves judicial independence by avoiding individual decisions in each case (albeit with limited provision for extension);
- preserves judicial dignity by avoiding the need for individual health and capacity assessments;
- maintains public confidence in the capacity and health of the judiciary;
- supports workforce planning and allows for greater career progression/ diversity;
- shares opportunity between the generations by balancing the need for experienced judicial office holders to continue in office for a reasonable time against career progression opportunities for newer appointees (and thereby also promoting diversity).

3.2 Those factors, in particular the final three, are relevant in determining the age at which the MRA should be set.

3.3 The setting of the MRA at 70 under JUPRA has been subject to litigation, in particular following the Equality Act 2010 which made age discrimination unlawful in England and Wales unless there is an objective justification (resulting in few employers/ sectors retaining a compulsory retirement age). Similar provision is made in Northern Ireland under the Employment Equality (Age) Regulations (Northern Ireland) 2006. In 2014 the Employment Tribunal in the case of *White v MoJ*<sup>1</sup> held that a MRA set at the age of 70 was a justified and proportionate measure and Mr White's claim of discrimination was dismissed.

## Rationale for Change

3.4 Responsibility for devolved tribunals in Northern Ireland is shared between three NI Ministers, as outlined above in paragraph 2.6. This responsibility includes considering policies which may promote the appointment and retention of judicial office holders. Raising the MRA is likely to improve the retention of judicial office holders.

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

3.5 Our approach is to maintain an aligned MRA for most judicial office holders. Having the same MRA is consistent with the policy objective of having an MRA to maintain public confidence in the capacity and health of the judiciary. The proposals contained in this consultation mirror the proposals relating to the excepted judiciary which are contained in MoJ's consultation. We consider it desirable to maintain parity between the MRA for courts judiciary under JUPRA and the devolved judiciary and there may be merits to maintaining a consistent MRA across the UK. We welcome views on this approach in question 7 of this consultation.

3.6 Life expectancy in the UK has improved since the MRA of 70 for most judges was legislated in 1993. Given that individuals now tend to live and work for longer, a higher MRA may now be justifiable and proportionate to ensure that we are able to recruit and retain judicial office holders to meet the business requirements of our courts and tribunals.

3.7 As such, the proposals in this consultation are intended to support the resourcing and effective operation of courts and tribunals, in line with improvements to life expectancy.

3.8 As the MRA is set out in statute for some of the judicial office holders affected, primary legislation is required to change the MRA.

## The Proposals

3.9 This consultation makes the following two proposals:

(1) Raise the MRA to 72 or 75

(2) Allow Lay Magistrates' appointments to be extended beyond the MRA in line with judges

3.10 We are also seeking views on the policy of permitting judicial appointments to be extended past the MRA (where there is a public interest).

## Related Matters

### Sitting in retirement

3.11 As noted above, raising the MRA is likely to improve the retention of judicial office holders. For this reason, a higher MRA may reduce the justification, which is based on business need, for approving judicial office holders to sit in retirement.

- 3.12 Sitting in retirement is the policy which currently permits certain salaried judges to retire, draw their pension, and continue to sit as a fee-paid judge, if there is a business need to do so; in some cases, this can continue after the judge's MRA up to their 75th birthday. While certain salaried judges have the opportunity to apply to sit in retirement while drawing a pension, fee-paid judges, in general, are not able to do so under current legislation.
- 3.13 We will continue working with the judiciary to review how the sitting in retirement policy is applied, to ensure it is done so fairly and meets the future resourcing needs of our courts and tribunals.

#### Amending MRA transitional arrangements

- 3.14 We are aware that under the Judicial Pensions and Retirement Act 1993 ("JUPRA"), certain judges appointed to salaried office before 31 March 1995 are able to retain their later pre-JUPRA MRA where they subsequently take up other salaried appointments, whereas fee-paid judges appointed before 31 March 1995 are only able to retain their pre-JUPRA MRA if they remain in the same fee-paid office. Therefore, although not subject to consultation, we are working with MoJ to ensure that the JUPRA transitional arrangements are amended as they apply to fee-paid judges who held office before 31 March 1995. It is possible that raising the MRA as discussed in this consultation may pre-empt the need to amend transitional arrangements for some fee-paid judges as the new MRA may be equal to or higher than their preserved retirement age. MoJ is considering options in relation to judges who are due to retire before the new transitional provisions are enacted.

#### **Legislation**

- 3.15 Any changes to the MRA will require amendments to primary legislation (JUPRA and the Justice Act (Northern Ireland) 2015) and to terms and conditions of appointment.

#### **Impact assessments**

- 3.16 The proposal to raise the MRA has been screened for various impacts. These screening documents are attached to this consultation document at Annexes C, D and E.
- 3.17 Comments on the impact assessments are welcome and should be sent to [AtoJ.Consultations@justice.x.gsi.gov.uk](mailto:AtoJ.Consultations@justice.x.gsi.gov.uk).
- 3.18 We welcome the views of judicial office holders who would be directly affected by the proposals. We would also invite views from judicial office holders outside the scope of this consultation, those working in the courts and tribunals, those considering a judicial career, representatives from or members of the organisations listed below and the public.

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

## Considerations for Setting the MRA

3.20 A number of factors are relevant in the consideration of the most appropriate MRA for judicial office holders. Chief among these are how to ensure effective resourcing of courts, tribunals and other judicial functions, the need to promote opportunity and diversity through a steady flow of new appointees; and ensuring judicial independence and public confidence in the judiciary is protected. We will also consider how the MRA may interact with the attractiveness of judicial office, the need for assessments of individual health and capacity, and public confidence in the justice system.

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

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

## Proposal 1: Raising the MRA to 72 or 75

### Potential Effect on Judicial Resource

3.21 The Northern Ireland Judicial Appointments Commission (NIJAC) is responsible for the selection and appointment of all listed judicial offices up to and including High Court Judge. NIJAC responds to the needs of the local courts and tribunals' business needs as well as retirements.

3.22 From time to time, NIJAC has experienced difficulty in recruiting lay members, especially medical consultants, to tribunals and particularly psychiatrists for both the Review Tribunal and the Appeal Tribunals. This pressure might be alleviated by a higher

MRA by reducing the volumes required although it would not remove the need to maintain regular recruitment. Accurate long-term analysis of the demand and supply factors to forecast the number of judicial office holders that will be needed in the future is complex, and decisions to recruit must be balanced in terms of meeting the current and immediate business requirement without resulting in an over-supply. Any projection made on the basis of anticipated retirements does not guarantee that a replacement is required if the business of the court or tribunal has decreased. Equally, unanticipated increases in business may require additional recruitment. Therefore, it is not possible to quantify the impact of a change in MRA on future resourcing forecasts.

3.23 Actual impacts will depend upon the retirement decisions of judicial office holders and we are unable to assess future retirement behaviour. Due to small numbers of judicial office holders and availability of data, we have not been able to run detailed analysis regarding estimated retention impacts. However, raising the MRA may improve the retention of judicial office holders and therefore enhance the supply of resource and expertise to courts and tribunals. The retention impacts would likely be higher for a MRA of 75 compared to a MRA of 72. We would welcome the views of consultees on these assumptions.

**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.**

#### **Potential Effect on Judicial Diversity**

3.24 Having an MRA promotes the growth of diversity across judicial office holders as retirements resulting from the MRA maintain a steady flow of new appointments. Raising the MRA may have an impact on this, as some judicial office holders may remain in office for longer. However, the actual effect will vary depending on which JOHs choose to take advantage of a higher MRA. The need for a judicial office holder to continue in office needs to be balanced against the need to create opportunities for new JOHs. A higher MRA should assist with workforce planning by ensuring appropriate numbers of JOHs with the necessary experience to meet the needs of the various jurisdictions and to meet reasonable forecasts of future need.

3.25 Section 75 of the Northern Ireland Act 1998 requires that all public authorities in Northern Ireland comply with a statutory duty to (a) have due regard to the need to promote equality of opportunity between person of different religious belief, political opinion, racial group, age, marital status, or sexual orientation, gender, those with or without a disability and those with or without dependents and (b) have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group. The MRA proposals have been subjected to screening to determine impact on equality of opportunity, good relations and other statutory duties (see screening form at Annex C).

**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.**

#### Life Expectancy

3.26 The MRA for most judicial office holders in the United Kingdom was set at 70 in the Judicial Pensions and Retirement Age Act 1993 (JUPRA). Between 1993 and 2019, life expectancy has increased by 5.8 years for men and 4.1 years for women<sup>2</sup>. Therefore, increasing the MRA may reflect improvements in health and capability linked to improved life expectancy.

#### Attractiveness of Judicial Office

3.27 A higher MRA may improve the attractiveness of judicial office. A higher MRA may also offer more opportunity for those who have taken career breaks or worked less than full time to gain the experience required before applying for appointment as a judicial office holder.

**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.**

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<sup>2</sup> ONS "Past and projected data from the period and cohort life tables, 2018-based, UK: 1981 to 2068", December 2019

**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.**

#### Judicial Independence and Public Confidence in the Judiciary

3.28 We believe there are objective justifications for having an MRA to preserve judicial independence and judicial dignity by avoiding the need for decisions about when a judicial office holder should retire based on individual health and capacity assessments.

3.29 We have no evidence that an increase in the MRA would impact adversely on public confidence in the judiciary. The Ipsos Mori Veracity Index (2019) estimated that public trust in the judiciary remains very high at 81%. This has remained consistently high since the index was first published in 1983.

**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.**

#### Concluding Questions on Raising the MRA

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

**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?**

#### Extensions of Appointments

3.31 We also seek views on whether the policy to allow a judicial office holder's appointment to be extended past MRA should be retained if the MRA is increased. Currently under section 26(5) and (6) of JUPRA 1993, the Lord Chief Justice NI after obtaining the Minister for Justice's concurrence, may extend the appointment of certain judicial office holders, following their compulsory retirement date, for a period of one

year if he considers it desirable in the public interest. That appointment can then be extended each year for a further one-year period up to the point at which the office holder turns 75 subject to the same requirement.

3.32 The number of judicial office holders whose appointment has been extended in recent years reflects the public interest to ensure critical posts remain filled, which would otherwise be left vacant for a period. There have been specific difficulties in recruiting medical consultants, particularly psychiatrists for both the Appeal Tribunals and the Review Tribunal. This has resulted in the need to extend the appointment of existing members to ensure the tribunals are able to meet demand and operate efficiently.

3.33 We anticipate that an increased MRA would have a positive impact on judicial retention. In turn, we would expect extensions beyond MRA to become exceptional. However, we think this policy and the legislative provisions should be retained if the MRA were increased to 72, as the benefits from being able to extend would apply as now. This measure provides operational flexibility to ensure critical posts are covered until vacancies can be filled through new recruitment.

3.34 We do not consider that judicial office holders should sit beyond the age of 75 except in very exceptional circumstances. If the MRA was set at 75, there may be examples where there would be a public interest to extend an appointment for a short period, for example, to ensure a key office is not left vacant, however this may be offset by the policy aim to maintain public confidence in the capacity and health of the judiciary.

**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?**

**Proposal 2: Allow Lay Magistrates' appointments to be extended beyond the MRA.**

3.35 We also welcome your views on an additional proposal to allow Lay Magistrates' (LM) appointments to be extended past the MRA. This may be considered in addition to, or instead of, proposals to raise the MRA.

3.36 Allowing LM appointments to be extended past 70 when there is a public interest will help retain skilled and experienced LMs for longer, especially where shortages are experienced whilst recruitment of new LMs is undertaken. This in turn would maintain capacity and promote access to justice by timely disposal of cases in the relevant courts.

3.37 This provision could mirror the existing provisions for judges whereby the Lord Chief Justice NI may extend an appointment, with the Minister for Justice's concurrence, following their compulsory retirement date for a period of one year if he considers it desirable in the public interest. That appointment can then be extended each year for a further one-year period until the judge turns 75.

**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.**

# Questionnaire

We welcome responses to the following questions by email to [AtoJ.Consultation@justice-ni.x.gsi.gov.uk](mailto:AtoJ.Consultation@justice-ni.x.gsi.gov.uk).

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

**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.**

# 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>Organisation name</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

**How to respond:**

Via email to [AtoJ.Consultation@justice-ni.x.gsi.gov.uk](mailto:AtoJ.Consultation@justice-ni.x.gsi.gov.uk)

The Department welcomes views on the proposals to raise the MRA for devolved judicial office holders in Northern Ireland. The consultation will run from 14<sup>th</sup> October 2020 and all responses should be submitted by 9<sup>th</sup> December 2020.

When responding, please state whether you are making a submission as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## 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 Department.

If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public').

The Department 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.

## Publication of Response

A paper summarising the responses to this consultation will be published. The response paper will be available at <https://www.justice-ni.gov.uk/consultations>.

# Impact Assessment and Equalities

Section 75 of the Northern Ireland Act 1998 requires that all public authorities in Northern Ireland comply with a statutory duty to:

- have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status, or sexual orientation, gender, those with or without a disability and those with or without dependents; and
- have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

In addition, public authorities are also required to meet legislative obligations under the Disability Discrimination (Northern Ireland) Order 2006, particularly in the formation of public policy making.

The Department is committed to fulfilling those obligations and proposals arising from this paper have been subjected to screening to determine impact on equality of opportunity, good relations and other statutory duties (see screening form at Annex C). The proposals have also been screened for rural needs impact (see Annex D) and regulatory impact (see Annex E). The Department welcomes views on these screening documents.

# Additional copies and alternative formats

An electronic copy of this document is available to view and download from the consultation section of the Department of Justice website (<http://www.justice-ni.gov.uk>).

You may make copies of this document without seeking permission and if you require further printed copies, we would invite you to access the document through our website. If you do not have access to the internet and require us to provide you with further copies, please contact us with your specific request.

Copies in other formats, including Braille, large print or audio cassette may be made available on request. If it would assist you to access the document in an alternative format, or a language other than English, please let us know and we will do our best to assist you.

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

Appeals Tribunal – Legal Chairman

Appeals Tribunal – Expert Member

Appeals Tribunal – Legal Member

Appeals Tribunal – Finance Member

Appeals Tribunal – Medical Consultant

Appeals Tribunal – Medical Generalist

Care Tribunal - Chair/Legal

Care Tribunal – Lay Member

Charity Tribunal – President

Charity Tribunal – Legal Member

Charity Tribunal - Ordinary Member

Criminal Injuries Compensation Appeals Panel for NI - Chair

Criminal Injuries Compensation Appeals Panel for NI – Legal Member

Criminal Injuries Compensation Appeals Panel for NI – Medical Member

Criminal Injuries Compensation Appeals Panel for NI – Lay Member

Industrial Tribunals & Fair Employment Tribunal (ITFET) - President

Industrial Tribunals & Fair Employment Tribunal (ITFET) – Vice President

Industrial Tribunals & Fair Employment Tribunal (ITFET) – Employment Judge (legal)

Lands Tribunal – President

Lands Tribunal – Member

Lay Magistrate

Northern Ireland Health & Safety Tribunal – Legal Chairman

Northern Ireland Valuation Tribunal - President

Northern Ireland Valuation Tribunal – Legal Member

Northern Ireland Valuation Tribunal – Valuation Member

Northern Ireland Valuation Tribunal - Ordinary Member

Rent Assessment Panel – Member

Review Tribunal – President

Review Tribunal – Legal Member

Review Tribunal - Medical Member

Review Tribunal – Experienced Member

Special Educational Needs and Disability Tribunal (SENDIST) - President

Special Educational Needs and Disability Tribunal (SENDIST) – Legal Member

Special Educational Needs and Disability Tribunal (SENDIST) – Ordinary Member

Traffic Penalty Tribunal – Adjudicator (Legal)

Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 – Chair

Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 –  
Medical

Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 –  
Pharmaceutical

Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 –  
Dental

Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 -  
Optician

Tribunal under Schedule 11 of the Health and Personal Social Services (NI) Order 1972 – Lay  
Member

# Annex B: List of Consultees

We particularly invite responses from representatives from or members of the organisations listed below, listed in alphabetical order. This list is not comprehensive and we welcome views from all members of the public.

Council of Employment Judges

First Minister and deputy First Minister of Northern Ireland

Judges' Council (Northern Ireland)

Lord Chief Justice of Northern Ireland

Northern Ireland Judicial Appointments Commission

Northern Ireland Judicial Pension Board

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

Please note that this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

# Annex C: Equality Screening



Department of  
**Justice**

An Roinn Dlí agus Cirt  
Máinnystrie O tha Laa

**DOJ Section 75**

**EQUALITY SCREENING FORM**

**Title of Policy: Mandatory retirement age for devolved judicial office holders in Northern Ireland.**

## FORM CONTENTS

	Page No
The Legal Background	3
Introduction	3
Screening decisions	5
Screening and good relations duty	5
<b>Part 1</b>	
Definition of a Policy	6
Overview of Policy Proposals	6
Policy Scoping	6
Information about the Policy	7
Implementation Factors	7
Main stakeholders affected	8
Other policies with a bearing on this policy	8
Available evidence	9
Needs, experiences and priorities	10
<b>Part 2</b>	
Screening Questions	11
Introduction	11
In favour of 'none'	11
In favour of a 'major' impact	11
In favour of a 'minor' impact	12
Screening questions	13
Additional considerations - Multiple identity	16
<b>Part 3</b>	
Screening decision	17
Timetabling and prioritising	18
<b>Part 4</b>	
Monitoring	20
<b>Part 5</b>	
Formal record of screening decision	21
<b>Part 6</b>	
Approval and authorisation	22
<b>Annex</b>	
A – Screening Flowchart	23
B – Main Groups identified as relevant to the Section 75 categories	24

### **The Legal Background**

Under section 75 of the Northern Ireland Act 1998, the Department is required **to have due regard to the need to promote equality of opportunity:**

- between person of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and,

- between persons with dependants and persons without<sup>1</sup>.

Without prejudice to the obligations set out above, the Department is also required to:

- **have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group; and**
- **meet legislative obligations under the Disability Discrimination Order.**

## Introduction

1. This form should be read in conjunction with the Equality Commission's revised Section 75 guidance, "Effective Section 75 Equality Assessments: Screening and Equality Assessments" which is available on the Equality Commission's website.

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75Advice-ScreeningEQIA.pdf>

**Section 75** statutory duties apply to **internal policies** (relating to people who work for department), as well as **external policies** (relating to those who are, or could be, served by the department).

2. The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an Equality Impact Assessment (EQIA) is necessary. Screening should be introduced at an early stage when developing or reviewing a policy.

<sup>1</sup>A list of the main groups identified as being relevant to each of the section 75 categories is at Annex B of the document.

3. The lead role in the screening of a policy should be taken by the policy decision-maker who has the authority to make changes to that policy and should involve, in the screening process:

- other relevant team members;
- those who implement the policy;
- staff members from other relevant work areas; and
- key stakeholders.

A flowchart which outlines the screening process is provided at Annex A.

4. The first step in the screening exercise is to gather evidence to inform the screening decisions. Relevant data may be either quantitative or qualitative or both (this helps to indicate whether or not there are likely equality of opportunity and/or good relations impacts associated with a policy). Relevant information will help to clearly demonstrate the reasons for a policy being either 'screened in' for an equality impact assessment or 'screened out' from an equality impact assessment.

5. The absence of evidence does not indicate that there is no likely impact but if none is available, it may be appropriate to consider subjecting the policy to an EQIA.

6. Where data/evidence gaps exist consider engaging with the main representative groups directly, for example Disability Action, Rainbow, and NICCY to find out what you need to know. Bring stakeholders together to discuss policy or link up with other UK bodies who may have similar policies.
7. Screening provides an assessment of the likely impact, whether 'minor' or 'major', of its policy on equality of opportunity and/or good relations for the relevant categories. In some instances, screening may identify the likely impact is none.
8. Contact [EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk](mailto:EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk) at any stage of the process for support or guidance.

### Screening decisions

9. Completion of screening should lead to one of the following three outcomes. The policy has been:
  - i. 'screened in' for equality impact assessment;
  - ii. 'screened out' *with* mitigation or an alternative policy proposed to be adopted; or
  - iii. 'screened out' *without* mitigation or an alternative policy proposed to be adopted.

### Screening and good relations duty

10. The Commission recommends that a policy is 'screened in' for equality impact assessment if the likely impact on **good relations** is 'major'. While there is no legislative requirement to engage in an equality impact assessment in respect of good relations, this does not necessarily mean that equality impact assessments are inappropriate in this context.

## Part 1

### Definition of Policy

11. There have been some difficulties in defining what constitutes a policy in the context of section 75. To be on the safe side it is recommended that you consider any new initiatives, proposals, schemes or programmes as policies or changes to those already in existence. It is important to remember that even if a full EQIA has been carried out in an "overarching" policy or strategy, it will still be necessary for the policy maker to consider if further screening or an EQIA needs to be carried out in respect of those policies cascading from the overarching strategy.

### Overview of Policy Proposals

12. The aims and objectives of the policy must be clear and terms of reference well defined. You must take into account any available data that will enable you to come to a decision on whether or not a policy may or may not have a differential impact on any of the s75 categories.

## Policy Scoping

**13.** The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

### Part 1: Policy Scoping

#### 14. Information about the policy

##### **Name of the Policy/ decision to be screened**

Mandatory retirement age for devolved judicial office holders in Northern Ireland.

##### **Is this an existing, revised or a new policy / decision?**

This is a revised policy which proposes to raise the mandatory retirement age (MRA) for devolved tribunal members and Lay Magistrates in Northern Ireland to 72 or to 75. The Judicial Pensions and Retirement Act 1993 ("JUPRA") introduced a standard judicial retirement age of 70 for all judicial offices listed in schedule 5. It would also 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.

##### **What is it trying to achieve? (intended aims/outcomes)**

The aims of this policy are to ensure the effective resourcing of courts, tribunals and other judicial functions by raising the MRA to 72 or to 75; promote opportunity and diversity through a steady turnover of retirements to allow for new appointments; and to ensure judicial independence and public confidence in the judiciary is protected. It also includes consideration of allowing for Lay Magistrates' appointments to be extended beyond the MRA when there is a public interest, or business need, in line with existing powers that allow for judges' appointments to be extended.

The proposals in this policy mirror those for the excepted courts judiciary in a similar policy currently being taken forward by the Ministry of Justice. This approach would maintain consistency between those posts included within the retirement provisions of JUPRA and those who are not.

The policy objectives for having an MRA for devolved judicial office holders are that it will promote and preserve judicial independence by avoiding individual decisions in each case (albeit with limited provision for extension); preserve judicial dignity by avoiding the need for individual health and capacity assessments; maintain public confidence in the capacity and health of the judiciary; supports workforce planning and allows for greater career progression/ diversity; and shares opportunity between the generations by balancing the need for experienced devolved judicial office holders to continue in office for a reasonable time against career progression opportunities for newer appointees (and thereby also promoting diversity in the judiciary).

**Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.**

Age: This policy will ensure that experienced devolved judicial office holders can continue in office for a reasonable time allowing newer appointees time to gain relevant experience.

**Who initiated or wrote the policy?**

Civil Justice Policy Division, DoJ has responsibility for the policy with input from the Department for Communities and Department for the Economy.

**Who owns and who implements the policy?**

As devolved tribunals in Northern Ireland are the shared responsibility of three Ministers, this policy has been developed jointly on behalf of the Department of Justice, the Department for Communities and the Department for the Economy.

## 15. Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

If yes, are they

*Tick Box*

- financial
- legislative
- other, please specify \_\_\_\_\_

**The increase to the MRA to either 72 or 75 will help to ensure the effective resourcing of courts and devolved tribunals.**

## 16. Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

*Tick Box*

- staff (**NICTS staff providing secretariat and other administrative services to devolved tribunals**)
- service users (**Individuals who apply to the tribunals/court**)
- other public sector organisations (**Northern Ireland Judicial Appointments Commission (NIJAC)**)
- voluntary/community/trade unions

- other, please specify (**existing and future devolved tribunal members and lay magistrates**)

## 17. Other policies with a bearing on this policy

*what are they?*

Ministry of Justice is currently consulting on mirror proposals on the MRA for excepted courts judiciary.

*who owns them?*

Ministry of Justice

## 18. Available Evidence

Evidence to help inform the screening process may take many forms. Set out all evidence /data (both \*qualitative and quantitative) below along with details of the different groups you have met and / or consulted with to help inform your screening assessment. Specify details for each of the Section 75 categories.

Section 75 Category	Details of evidence/information <sup>3</sup>
Religious belief	As of 2019 65.1% of legal tribunal members identified as being from a Roman Catholic background with 32.2% from a Protestant background. For non-legal tribunal members, 40.8% were from a Roman Catholic background and 48.8% from a Protestant background. Lay Magistrates – 40.8% were from a Roman Catholic background and 57.8% were from a Protestant background. This compares with 44.3% of the economically active population aged 25-69 (2011 Census) coming from a Roman Catholic background and 50.1% from a Protestant background.
Political opinion	No relevant data or research identified
Racial group	As of 2019 2.6% of Tribunal members and 1.6% of Lay Magistrates were from a minority ethnic background. This compares with 1.9% of the economically active population aged 25-69 (2011 Census).
Age	There are a total of 569 devolved judicial office holders of which 145 (25.5%) are aged 65 and over. Of those aged 65 and over 55 (37.9%) are female. <sup>4</sup>

<sup>3</sup> The Judiciary in NI: 2019 Equality Monitoring Report from NISRA

<sup>4</sup> Figures provided by DfC, DfE and NICTS: TRIM ref. 20/245149, 20/242160 and 20/232061

Marital status	No relevant data or research identified
Sexual orientation	No relevant data or research identified
Men and Women generally	In 2019 48.6% of legal Tribunal members 48.6% were female. For non-legal Tribunal members and Lay Magistrates the figures were 52.5% and 60.2% respectively.
Disability	As of 2019 5.7% of Tribunal members and 1.6% of Lay Magistrates declared a disability. This compares with 8.7% of the economically active population aged 25-69 (2011 Census).
Dependants	No relevant data or research identified.

**\*Qualitative data** – refers to the experience of individuals related in their own terms, and based on their own experience and attitudes. Qualitative data is often used to complement quantitative data to determine why policies are successful or unsuccessful and the reasons for this.

**Quantitative data** – refers to numbers (that is quantities), typically derived from either a population in general or samples of that population. This information is often analysed either using descriptive statistics (which summarise patterns), or inferential statistics (which are used to infer from a sample about a wider population).

## 19. Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories.

Section 75 Category	Details of evidence/information
Religious belief	No relevant data or research identified
Political opinion	No relevant data or research identified
Racial group	No relevant data or research identified
Age	The policy will allow for those devolved judicial office holders approaching 70 years of age to continue working, should they wish, for a reasonable period of time. This will ensure that expertise is retained enabling tribunal members and Lay Magistrates to continue to fulfil their roles but also allowing newer appointees and potential appointees an opportunity to gain relevant experience required.

Marital status	No relevant data or research identified
Sexual orientation	No relevant data or research identified
Men and Women generally	No relevant data or research identified
Disability	No relevant data or research identified
Dependants	No relevant data or research identified

## Part 2

### SCREENING DECISIONS

#### 20. Decision - In favour of none

If the conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the decision may be to screen the policy out. If a policy is '**screened out**' as having no relevance to equality of opportunity or good relations, give details of the reasons for the decision taken.

➤ **Considerations –**

- The policy has no relevance to equality of opportunity or good relations.
- The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

#### 21. Decision - In favour of a 'major' impact

If the conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure (EQIA).

➤ **Considerations-**

- Is the policy significant in terms of its strategic importance?
- The potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- The potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;
- The policy is likely to be challenged by way of judicial review;
- The policy is significant in terms of expenditure.

## 22. Decision - In favour of 'minor' impact

If the conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

### ➤ Considerations –

- The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

## Part 2 Screening questions

2.1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?		
Section 75 category	Details of policy impact	Level of impact? Minor/Major/None
Religious belief	No relevant data or research identified	None
Political opinion	No relevant data or research identified	None
Racial group	No relevant data or research identified	None
Age	This policy will allow devolved judicial office holders the same opportunities as excepted judicial office holders providing equality of opportunity.	None
Marital status	No relevant data or research identified	None
Sexual orientation	No relevant data or research identified	None
Men and Women generally	No relevant data or research identified	None
Disability	No relevant data or research identified	None
Dependants	No relevant data or research identified	None

**2.2** Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?

<b>Section 75 category</b>	<b>If Yes, provide details</b>	<b>If No, provide reasons</b>
Religious belief		<b>This policy will apply to all devolved tribunal members and Lay Magistrates equally regardless of s75 category, and do not target specific individuals or groups. There is, therefore, no opportunity to better promote equality of opportunity.</b>
Political opinion		<b>As above.</b>
Racial group		<b>As above.</b>
Age		<b>As above.</b>
Marital status		<b>As above.</b>
Sexual orientation		<b>As above.</b>
Men and Women generally		<b>As above.</b>
Disability		<b>As above.</b>
Dependants		<b>As above.</b>

**2.3.** To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?

<b>Good relations category</b>	<b>Details of policy impact</b>	<b>Level of impact Minor/Major/None</b>
Religious belief	<b>Not applicable</b>	<b>None</b>
Political opinion	<b>Not applicable</b>	<b>None</b>
Racial group	<b>Not applicable</b>	<b>None</b>

<p><b>2.4.</b> Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?</p>		
Good relations category	If Yes, provide details	If No, provide reasons
Religious belief		No opportunities to promote good relations within any of the good relations categories are expected.
Political opinion		As above.
Racial group		As above.

### **Additional Considerations**

#### **Multiple Identity**

- 23.** Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?

*(For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).*

**None apparent.**

- 24.** Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

Not applicable.
-----------------

## Part 3 Screening Decision

**3.1. Screened In** - If the decision is to conduct an equality impact assessment, please provide details of the rationale and relevant evidence to support this decision.

Not applicable.

**3.2. Screened Out – No EQAI necessary (no impact)**

If the decision is not to conduct an equality impact assessment, please provide details of the rationale and relevant evidence to support this decision.

It is not expected that any s75 categories would be adversely impacted by this policy change.

This policy will ensure that experienced devolved judicial office holders can continue in office for a reasonable time allowing newer appointees time to gain relevant experience. It will also ensure a consistent approach between excepted and devolved judicial office holders.

**3.3. Screened Out – Mitigating Actions (minor impacts)**

When the decision is that the likely impact is 'minor' and an equality impact assessment is not to be conducted, you may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy. Explain how these actions will address the inequalities.

Not applicable.

## Timetabling and Prioritising

**25.** Factors to be considered in timetabling and prioritising policies for equality impact assessment.

26. If the policy has been ‘**screened in**’ for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.
27. On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	
Social need	
Effect on people’s daily lives	
Relevance to a public authority’s functions	

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist in timetabling. Details of the Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

28. Is the policy affected by timetables established by other relevant public authorities?

➤ If yes, please provide details.

#### Part 4 Monitoring

29. Section 75 places a requirement on the Department to have equality monitoring arrangements in place in order to assess the impact of policies and services etc. and to help identify barriers to fair participation and to better promote equal opportunity.
30. Effective monitoring will help identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.
31. Outline what data you will collect in the future in order to monitor the impact of this policy/ decision on equality, good relation and disability duties.

<b>Equality</b>	NICTS and NIJAC will collect and monitor data from the renewal of appointments and recruitment of devolved judicial office holders.
<b>Good relations</b>	N/A
<b>Disability Duties</b>	N/A

## Part 5 Formal Record of Screening Decision

<b>Title of Proposed Policy / Decision being screened</b> Mandatory retirement age for devolved judicial office holders
--

I can confirm that the proposed policy/decision has been screened for –

<input checked="" type="checkbox"/>	Equality of opportunity
<input checked="" type="checkbox"/>	Good Relations
<input checked="" type="checkbox"/>	Disability duties

On the basis of the answer to the screening questions, I recommend that this policy /decision is –

<input type="checkbox"/>	Screened in – necessary to conduct a full EQIA
--------------------------	--

<input checked="" type="checkbox"/>	Screened Out – no EQIA necessary (no impacts)
-------------------------------------	---

<input type="checkbox"/>	Screened Out – mitigating actions (minor impacts)
--------------------------	---

## Part 6 Approval and Authorisation

*(Have you sent this document to the Equality Unit prior to obtaining signature?)*

Screened/completed by:	Grade	Date
Peter Bowles	SO	15/09/20
Approved by (Grade 7 or above):		
Name Clare Irvine	Grade 6 (SPLO)	16/09/20

## Quality Assurance

**Prior to final approval** the Screening Form should be forwarded to [EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk](mailto:EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk) for comment/quality assurance. Contact the branch should you require advice or have any queries prior to this stage.

Any NIPS forms should be forwarded to [Peter.Grant@justice-ni.x.gsi.gov.uk](mailto:Peter.Grant@justice-ni.x.gsi.gov.uk)

When you receive a response and there are no further considerations required, the form should be 'signed off' and approved by a senior manager responsible for the policy, this would normally be at least grade 7.

The completed Screening Form should be placed on the DOJ Website where it will be made easily accessible to the public and be available on request. In addition, it will be included in a quarterly listing of all screenings completed during each 3 month period and issued to consultees.

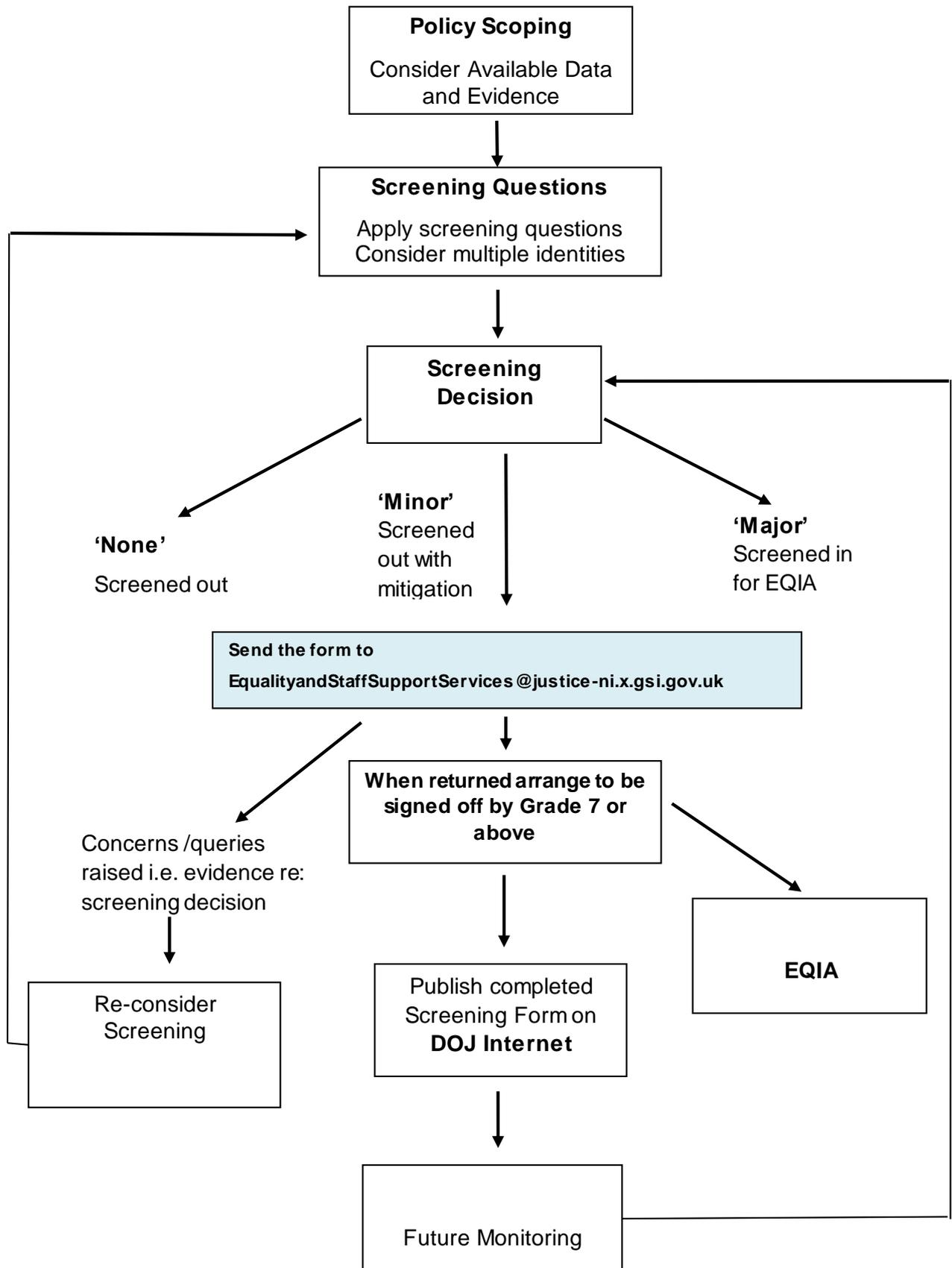
### **The Screening exercise is now complete.**

Please retain a record in your branch and send a copy for information to:-

Equality and Staff Support Services (ESSS)  
Room 3.4, Castle Buildings  
Stormont Estate  
BELFAST  
BT4 3SG  
Tel: 02890 522611

or e-mail to [EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk](mailto:EqualityandStaffSupportServices@justice-ni.x.gsi.gov.uk)

# ANNEX A SCREENING FLOWCHART



## ANNEX B

### MAIN GROUPS IDENTIFIED AS RELEVANT TO THE SECTION 75 CATEGORIES

Category	Main Groups
Religious Belief	Protestants; Catholics; people of other religious belief; people of no religious belief
Political Opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Afro Caribbean people; people of mixed ethnic group, other groups
Age	For most purposes, the main categories are: children under 18; people aged between 18 and 65. However the definition of age groups will need to be sensitive to the policy under consideration. For example, for some employment policies, children under 16 could be distinguished from people of working age
Marital/Civil Partnership Status	Married people; unmarried people; divorced or separated people; widowed people; civil partnerships
Sexual Orientation	Heterosexuals; bisexual people; gay men; lesbians
Men and Women generally	Men (including boys); women (including girls); trans-gender and trans-sexual people
Persons with a disability and persons without	Persons with a physical, sensory or learning disability as defined in Schedules 1 and 2 of the Disability Discrimination Act 1995.
Persons with dependants and persons without	Persons with primary responsibility for the care of a child; persons with personal responsibility for the care of a person with a disability; persons with primary responsibility for a dependent elderly person.

## ANNEX D: Rural Needs Impact Assessment (RNIA) Template

### SECTION 1 - Defining the activity subject to Section 1(1) of the Rural Needs Act (NI) 2016

1A. Name of Public Authority.

Department of Justice

1B. Please provide a short title which describes the activity being undertaken by the Public Authority that is subject to Section 1(1) of the Rural Needs Act (NI) 2016.

Consultation on the mandatory retirement age for devolved judicial office holders in Northern Ireland.

1C. Please indicate which category the activity specified in Section 1B above relates to.

Developing a	Policy	<input type="checkbox"/>	Strategy	<input type="checkbox"/>	Plan	<input type="checkbox"/>
Adopting a	Policy	<input type="checkbox"/>	Strategy	<input type="checkbox"/>	Plan	<input type="checkbox"/>
Implementing a	Policy	<input type="checkbox"/>	Strategy	<input type="checkbox"/>	Plan	<input type="checkbox"/>
Revising a	Policy	<input checked="" type="checkbox"/>	Strategy	<input type="checkbox"/>	Plan	<input type="checkbox"/>
Designing a Public Service		<input type="checkbox"/>				
Delivering a Public Service		<input type="checkbox"/>				

1D. Please provide the official title (if any) of the Policy, Strategy, Plan or Public Service document or initiative relating to the category indicated in Section 1C above.

Mandatory retirement age for devolved judicial office holders in Northern Ireland.

1E. Please provide details of the aims and/or objectives of the Policy, Strategy, Plan or Public Service.

This is a revised policy which proposes to raise the mandatory retirement age (MRA) from 70 to either 72 or 75 for devolved tribunal members and Lay Magistrates in Northern Ireland. It would also 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.

1F. What definition of 'rural' is the Public Authority using in respect of the Policy, Strategy, Plan or Public Service?

Population Settlements of less than 5,000 (Default definition).

Other Definition (Provide details and the rationale below).

A definition of 'rural' is not applicable.

*Details of alternative definition of 'rural' used.*

*Rationale for using alternative definition of 'rural'.*

*Reasons why a definition of 'rural' is not applicable.*

## SECTION 2 - Understanding the impact of the Policy, Strategy, Plan or Public Service

2A. Is the Policy, Strategy, Plan or Public Service likely to impact on people in rural areas?

Yes  No  If the response is **NO** GO TO Section **2E**.

2B. Please explain how the Policy, Strategy, Plan or Public Service is likely to impact on people in rural areas.

2C. If the Policy, Strategy, Plan or Public Service is likely to impact on people in rural areas *differently* from people in urban areas, please explain how it is likely to impact on people in rural areas differently.

2D. Please indicate which of the following rural policy areas the Policy, Strategy, Plan or Public Service is likely to primarily impact on.

Rural Businesses	<input type="checkbox"/>
Rural Tourism	<input type="checkbox"/>
Rural Housing	<input type="checkbox"/>
Jobs or Employment in Rural Areas	<input type="checkbox"/>
Education or Training in Rural Areas	<input type="checkbox"/>
Broadband or Mobile Communications in Rural Areas	<input type="checkbox"/>
Transport Services or Infrastructure in Rural Areas	<input type="checkbox"/>
Health or Social Care Services in Rural Areas	<input type="checkbox"/>
Poverty in Rural Areas	<input type="checkbox"/>
Deprivation in Rural Areas	<input type="checkbox"/>
Rural Crime or Community Safety	<input type="checkbox"/>
Rural Development	<input type="text"/>

If the response to Section 2A was YES GO TO Section 3A.

2E. Please explain why the Policy, Strategy, Plan or Public Service is NOT likely to impact on people in rural areas.

The Judicial Pensions and Retirement Act 1993 (“JUPRA”) introduced a standard judicial retirement age of 70 for all judicial offices listed in schedule 5. The provisions, which brought greater consistency to the judicial retirement system, only applied to judges’ appointments made after the relevant provisions were commenced on 31 March 1995. Some judges appointed to judicial office prior to 31 March 1995 retained their previous (usually higher) retirement date. A mandatory retirement age (MRA) of 70 was set in 2003 for magistrates and in 2013 for coroners in England and Wales, which has aligned their MRA with that of the wider judiciary. Since the MRA was set, average life expectancy has increased and many people want to and expect to continue working for longer than in previous decades.

### SECTION 3 - Identifying the Social and Economic Needs of Persons in Rural Areas

3A. Has the Public Authority taken steps to identify the social and economic needs of people in rural areas that are relevant to the Policy, Strategy, Plan or Public Service?

Yes  No  If the response is **NO** GO TO Section **3E**.

3B. Please indicate which of the following methods or information sources were used by the Public Authority to identify the social and economic needs of people in rural areas.

Consultation with Rural Stakeholders	<input type="checkbox"/>	Published Statistics	<input type="checkbox"/>
Consultation with Other Organisations	<input type="checkbox"/>	Research Papers	<input type="checkbox"/>
Surveys or Questionnaires	<input type="checkbox"/>	Other Publications	<input type="checkbox"/>

3C. Please provide details of the methods and information sources used to identify the social and economic needs of people in rural areas including relevant dates, names of organisations, titles of publications, website references, details of surveys or consultations undertaken etc.

3D. Please provide details of the social and economic needs of people in rural areas which have been identified by the Public Authority?

If the response to Section 3A was YES GO TO Section 4A.

3E. Please explain why no steps were taken by the Public Authority to identify the social and economic needs of people in rural areas?

The Judicial Pensions and Retirement Act 1993 (“JUPRA”) introduced a standard judicial retirement age of 70 for all judicial offices listed in schedule 5. The provisions, which brought greater consistency to the judicial retirement system, only applied to judges’ appointments made after the relevant provisions were commenced on 31 March 1995. Some judges appointed to judicial office prior to 31 March 1995 retained their previous (usually higher) retirement date.

A mandatory retirement age (MRA) of 70 was set in 2003 for magistrates and in 2013 for coroners in England and Wales, which has aligned their MRA with that of the wider judiciary.

Since the MRA was set, average life expectancy has increased and many people want to and expect to continue working for longer than in previous decades.

Any amendment to the Judicial Retirement Age will impact on all devolved judicial office holders and is unlikely to impact on people in rural areas. There is therefore no need to identify the social and economic needs of people in rural areas.

**SECTION 4 - Considering the Social and Economic Needs of Persons in Rural Areas**

4A. Please provide details of the issues considered in relation to the social and economic needs of people in rural areas.

Not applicable.

## SECTION 5 - Influencing the Policy, Strategy, Plan or Public Service

5A. Has the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or delivery of the Public Service, been influenced by the rural needs identified?

Yes  No  If the response is **NO** GO TO Section **5C**.

5B. Please explain how the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or delivery of the Public Service, has been influenced by the rural needs identified.

If the response to Section 5A was **YES** GO TO Section **6A**.

5C. Please explain why the development, adoption, implementation or revising of the Policy, Strategy or Plan, or the design or the delivery of the Public Service, has NOT been influenced by the rural needs identified.

There are no rural needs identified by the policy revision.

## SECTION 6 - Documenting and Recording

6A. Please tick below to confirm that the RNIA Template will be retained by the Public Authority and relevant information on the Section 1 activity compiled in accordance with paragraph 6.7 of the guidance.

I confirm that the RNIA Template will be retained and relevant information compiled.

Rural Needs Impact Assessment undertaken by:	Terri McCullough
Position/Grade:	EO1
Division/Branch	Civil Justice Policy Division / Judicial Policy and Mental Capacity Branch
Signature:	
Date:	11/09/2020
Rural Needs Impact Assessment approved by:	Clare Irvine
Position/Grade:	Grade 6 (SPLO)
Division/Branch:	Civil Justice Policy Division
Signature:	
Date:	16/09/2020

# Annex E: Regulatory Impact Assessment Screening

Regulatory	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	Is the policy or amendment to the policy likely to have a direct or indirect impact on businesses?		X		X	The Judicial Pensions and Retirement Act 1993 (“JUPRA”) introduced a standard judicial retirement age of 70 for all judicial offices listed in schedule 5. This consultation seeks views on proposals to raise the mandatory retirement age (MRA) for devolved tribunal members and Lay Magistrates in Northern Ireland. It also invites 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. Any amendment to the policy will not have a direct or indirect impact on businesses.
Is the policy or amendment to the policy likely to have a direct or indirect impact on the voluntary / community sector? <sup>5</sup>		X		X	The amendments to the policy are not likely to have a direct or indirect impact on the voluntary/community sector.	
<b>CONCLUSION</b>						A Regulatory Impact Assessment is not required.

### When Is a Regulatory Impact Assessment Required?

If the answer to any of the above questions is yes, consideration should be given to undertaking a Regulatory Impact Assessment. However, the level of appraisal should be proportionate to the costs involved.

### A Regulatory Impact Assessment is not required for:

- i. Proposals which impose **no costs or no savings**, or negligible costs or savings on business, charities, social economy enterprises or the voluntary sector;

<sup>5</sup> NOTES:

This Includes charities and the social economy sector.

ii. Increases in statutory fees by a predetermined formula such as the rate of inflation; or Road closure orders.