



Llywodraeth Cymru
Welsh Government

PUBLICATION

Judicial mandatory retirement age: Welsh judicial offices 2020

Welsh Government consultation – summary of responses

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Introduction

The Welsh Government undertook a consultation which began on 7 September 2020 and closed on 30 November 2020 seeking views on proposals to raise the mandatory retirement age for devolved judicial offices in Wales: the President of Welsh Tribunals and judicial members of the Welsh Tribunals.

The purpose of the consultation was to seek views on whether the Ministry of Justice's proposals to raise the judicial mandatory retirement age should also apply to the above named devolved judicial offices.

The Ministry of Justice issued a consultation, which closed on 16 October, inviting views on proposals to raise the mandatory retirement age (MRA) for judicial office holders to either 72 or 75 years of age.

The retirement age for most judicial office holders is currently 70 and was last legislated for 27 years ago. The purpose of the Ministry of Justice's consultation was to consider if an MRA set at 70 continues to achieve the objective of balancing the requirement for sufficient judicial expertise to meet the demands on courts and tribunals whilst safeguarding improvement in judicial diversity and protecting the independence of, and confidence in, the judiciary.

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The scope of the Ministry of Justice's consultation extended to those judicial offices whose MRA is within the sole legislative competence of the UK Parliament. It did not include devolved judicial offices as it is for the governments in each of the devolved administrations to consult on proposals to raise the MRA for their respective devolved judicial office holders. In Wales those judicial offices are the President of Welsh Tribunals and judicial members of Welsh Tribunals.

The Welsh Government invited views on the proposals to raise the MRA and on the questions set out in the Ministry of Justice's consultation document, specifically in relation to the devolved judicial offices.

The responses will inform the Welsh Government's engagement with the other governments of the UK on proposals to raise the MRA for judicial office.

Responses

Responses submitted to the Welsh Government consultation are summarised below. The responses received outlined general views on the proposals to raise the Mandatory Retirement Age of Judges rather than responding to each of the questions raised in the consultation published by the Ministry of Justice.

Should the mandatory retirement age (MRA) for judges be extended?

A total of 7 substantive responses were received. 6 respondents commented that they agreed with increasing the compulsory retirement age of the Judiciary with one response specifically stating that they were in favour of raising the age to 75. One respondent disagreed with the proposals.

The explanations provided by respondents agreeing with the proposals are listed below:

- People increasingly remain fit, healthy and cognitively intact beyond their 70th year. The arbitrary current cut-off point of 70 would appear to no longer be necessary and a waste of a useful skill set.

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- Highly experienced and capable colleagues are currently made to retire well before they feel ready to do so.
- The age of an incumbent is not important, and raising the MRA by 2 years is too little and 5 years would be preferable. The age for all judicial office MRAs should be the same, so if the UK Government choose the lower age limit then Wales should follow suit, as there are still a large number of statutes that apply to both England and Wales.
- Compelling older people to retire based purely on the basis of age is discriminatory, and selecting an arbitrary retirement age ignores individual circumstances. It also discriminates against older people who may wish or need to continue in their current or new roles. As the population is ageing, there is a need to look at better ways of enabling older people to work if they so choose.
- The increased recruitment need for judges in recent years, and the challenges in attracting sufficient, suitably qualified candidates. The proposal to increase the MRA is intended to support judicial recruitment and retention at a time when there have been shortfalls in the ability to recruit suitable candidates for certain salaried roles. Any increase in the MRA is likely to lead to an increased attraction of candidates who would currently be ineligible, due to the requirement to provide a 'reasonable length of service' before the current mandatory retirement age of 70.
- Two respondents also specified that any changes made in raising the MRA of judges should be consistent across England and Wales.

The concerns highlighted by one respondent are set out below:

- An increase in the MRA would be likely to lead to increased retention of older judges. As the consultation states, a reduction in turnover would have an impact on diversity, as those being recruited into the judiciary are more diverse than judges nearing retirement. The assessment is that this impact will be small in respect of gender and ethnic diversity. However, the greatest impact on diversity growth would be in the senior levels of the judiciary. If recruitment for fee-paid roles continues at the same rate, then there should be similar levels of steady progress across the judiciary as a whole. Such progress would slow in time if the demand for fee-paid judges decreases due to a lack of movement into salaried roles.

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Welsh Government response to the consultation

The Welsh Government has considered the responses received and has also considered the publication by the [Ministry of Justice of responses to their consultation](#). The Welsh Government agrees with the majority of respondents that raising the Mandatory Retirement Age to 75 would be a less discriminatory position and would realise advantages in the recruitment of judges. While work is needed to increase the diversity of judicial office holders, especially at senior levels, it would not be justified to continue to require retirement at 70 simply to meet that objective.

Next steps

We are currently raising these issues with the Ministry of Justice to ensure provision for the devolved tribunals in Wales is included in any forthcoming legislation.

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