

SL(6)316 – The Judicial Offices (Sitting in Retirement – Prescribed Offices and Descriptions) (Wales) Regulations 2023

Background and Purpose

The Public Service Pensions and Judicial Offices Act 2022 (“the Act”) introduced changes that extend UK-wide to the mandatory retirement age for judicial office holders from 70 to 75 years of age. It also implemented a single legislative regime governing judicial office holders sitting in retirement, such appointments not extending beyond the mandatory retirement age of 75. A suite of new sitting in retirement judicial offices that correspond to original judicial offices is created by the Act. The Senedd agreed a Legislative Consent Motion in respect of the Act on 8 February 2022.

The President of Welsh Tribunals is the appointing authority for the new sitting in retirement offices that correspond to the original judicial offices in the Welsh Tribunals. An “eligible person” for appointment to a sitting in retirement office is a person who holds or has held a prescribed office and is a person of such further description as may be prescribed. “Prescribed” means prescribed in regulations made by the Welsh Ministers with the concurrence of the President of Welsh Tribunals.

These Regulations therefore prescribe the judicial offices that a person must hold or have held prior to their retirement to be eligible for appointment to a particular sitting in retirement office. The Regulations must be in place before the President of Welsh Tribunals can exercise powers conferred by section 124 of the Act to appoint eligible persons to sitting in retirement offices by reason of such a person holding or having held a corresponding original judicial office.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following three points are identified for reporting under Standing Order 21.2 in respect of this instrument.



1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The Schedule is headed “Judicial Offices Listed in Part 5 of Schedule 3 to the Act and Corresponding Prescribed Offices”. The term “the Act” is not defined in the Regulations and therefore it is not clear which Act is being referred to.

2. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 2, there are several errors and differences—

- (a) in the English text, the definition has been spelt with a capital first letter “Legally...” but the defined term in the Welsh text has been spelt with a lower case first letter;
- (b) in both language texts, the corresponding language definitions that are put in brackets and italics afterwards differ slightly from the actual definitions as follows—
 - i. in the English text, the corresponding Welsh definition should include the words “wedi ymgymhwyso yn y gyfraith” to be consistent with the actual definition, but the definite article “y” is missing and instead it says “wedi ymgymhwyso yn gyfraith”;
 - ii. in the Welsh text, the corresponding English definition should be spelt with a capital first letter “Legally qualified...” to be consistent with the actual definition, but instead it is spelt with a lower case first letter;
- (c) in the Welsh text, in paragraph (b), the translation doesn’t include anything to convey the meaning of “at least” in the phrase “at least five years’ standing”. As a result, the translation has the meaning “with five years’ standing”.

3. Standing Order 21.2(viii) – that it uses gender specific language

Certain offices are referred to in the Schedule and include references to “chairman” and “deputy chairman”. The Explanatory Memorandum notes:

Because the statutory framework for each Welsh Tribunal defines the original judicial offices in respect of which the Act creates corresponding sitting in retirement offices, the extant terminology defining those original offices has been carried through into the Regulations. This approach has been followed including where the terminology of older legislation is considered outdated. The rationale for doing so is to maintain clarity in terms of the prescribed original judicial office a person must hold or have held to be eligible for appointment to the corresponding sitting in retirement office.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.



1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

No public consultation has been carried out in relation to these Regulations. The Explanatory Memorandum states that:

The Regulations are made with the concurrence of the President of Welsh Tribunals and the President was consulted during their preparation. No further public consultation has been undertaken in relation to these Regulations which are administrative and technical in nature.

Welsh Government response

Technical Scrutiny point 1:

The Government acknowledges that it would have been clearer to the reader if the term “the Act” in the heading to the Schedule had been defined. The Government accepts this is an omission but on analysis, considers it would not be appropriate to make an amendment or correction to rectify the error.

Our reason for this view is that it is clear enough that the Act referred to is the Public Service Pensions and Judicial Offices Act 2022. The 2022 Act is the only enabling legislation for the Regulations and there are no references in the Regulations to other legislation. The Government thanks the Committee for drawing the omission to its attention. However, due to the reasons set out above, the Government has made the decision to leave the instrument in its existing form.

Technical Scrutiny point 2(a):

The Government acknowledges the inconsistency in the use of a first capital letter and a first lower case letter in the defined term in the English and Welsh texts. However, this does not affect the meaning of the Regulations or consistency between the two texts.

Technical Scrutiny point 2(b)(i):

The Government acknowledges that the definite article “y” is missing from the Welsh definition in the English text. However, this does not affect the meaning of the Regulations or consistency between the texts.

Technical Scrutiny point 2(b)(ii):

The Government acknowledges the inconsistency in the use of a capital letter and a lower-case letter. However, this does not affect the meaning of the Regulations or consistency between the two texts.

Technical Scrutiny point 2(c):

The Government acknowledges that the Welsh text should have conveyed the meaning of “at least” in Regulation 2(b). The Government accepts this is an omission but on analysis, considers it would not be appropriate to make an amendment or correction to rectify the error.



Our reason for this view is that it is clear enough that if P has more than five years' standing, they will still satisfy the description. There is no possibility that a court or user of the legislation would interpret the reference to exclude an advocate or solicitor in Scotland who has more than five years' standing. The Government thanks the Committee for drawing the omission to its attention. However, due to the reasons set out above, the Government has made the decision to leave the instrument in its existing form.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 13 February 2023 and reports to the Senedd in line with the reporting points above.

