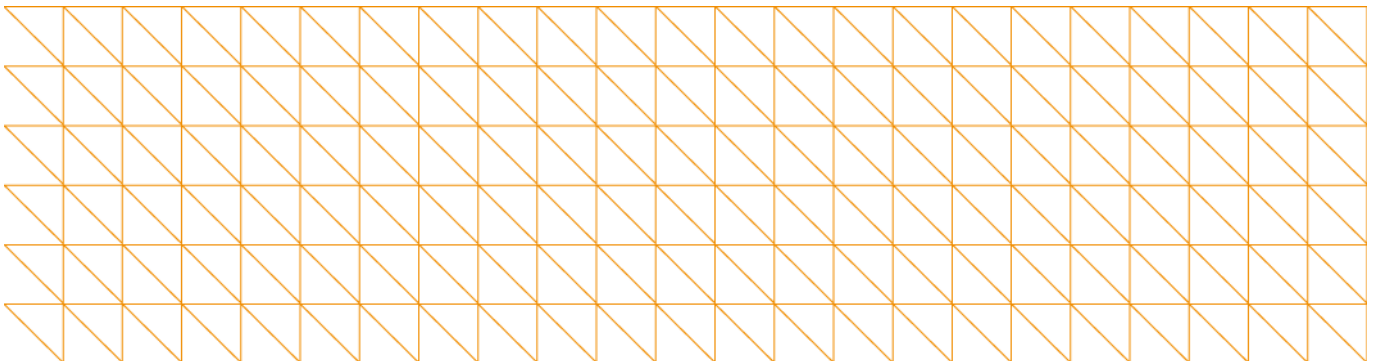




**Response to Consultation on the
Proposal to revoke the Justices of
the Peace Act 1949
(Compensation) Regulations as
amended (known as “Crombie”
Regulations).**

This response is published on 14th July 2011





Ministry of
JUSTICE

Response to Consultation on the Proposal to
revoke the Justices of the Peace Act 1949
(Compensation) Regulations as amended (known
as “Crombie” Regulations).

Response to consultation carried out by the Ministry of Justice.

This information is also available on the MoJ and HMCTS Intranet

About this consultation

To:

This consultation was open to any individual for whom the Crombie regulations are of legitimate interest. These groups include Her Majesty's Courts and Tribunals Service (HMCTS) staff and stakeholders therefore this was not a full public consultation.

The consultation was also open to The Magistrates' Association, National Bench Chairs Forum, Justices' Clerks Society and Department Trade Union Representatives.

Duration:

From 9th May 2011 to 1st July 2011

Enquiries (including requests for the paper in an alternative format) to:

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Introduction and contact details

This document is the post-consultation report for the consultation paper, "Proposal to revoke The Justices of the Peace Act 1949 (Compensation) Regulations as amended (known as the Crombie Regulations).

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting Mike Thomas at the address below:

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Alternative format versions of this publication can be requested.

Background

The consultation paper on the Proposal to revoke the Justices of the Peace Act 1949 (Compensation) Regulations as amended (known as “Crombie” Regulations) was published to interested parties on 9th May 2011.

The Consultation invited comments on the proposal the Crombie regulations would be revoked for the purpose of any future Crombie trigger to compensation under those Regulations.

The proposal was placed in the context of the historical development of the Crombie regulations since their introduction in 1949, the current financial circumstances faced by Ministry of Justice, the reforms that have taken place to the Civil Service Compensation Scheme and against the background that these regulations in themselves are an inhibitor to organisational development within HMCTS.

The consultation paper explained the impact revocation would have on existing HMCTS staff and provided information about the redeployment and compensation arrangements which would apply if the Crombie regulations were revoked. It also confirmed that there would be no retrospective impact on individuals who are currently entitled to compensation under Crombie due to any triggering event occurring before the date the revoking regulations come into force.

The consultation period closed on 1st July and this report summarises the responses, including how the consultation has influenced the Ministry’s position on the proposal consulted upon.

The Equality Impact Assessment accompanying the consultation was updated at the conclusion of the consultation period. The updated Equality Impact Assessment is also published with this report on the MoJ and HMCTS Intranet.

Summary of responses

1. A total of twenty two responses to the consultation paper were received (including those received from Trade Unions and other representative bodies). The majority of responses came from current members of staff in HMCTS and included individuals both directly affected by the proposed change and others who desired to register their opinion on the proposal.
2. The majority of individuals who responded expressed views in opposition to the proposal. However, despite the relatively small number of responses it was clear that there is a divergence of opinion amongst staff in relation to the regulations within HMCTS.
3. There were a number of thoughtful and balanced responses from individuals who had evidently given the issues some serious consideration. Indeed, a number of responses expressing opposition to the proposal (largely citing personal impact) also accepted in principal that the current arrangements needed to be reformed.
4. The principle of whether the proposed revocation of regulations is 'fair' was challenged in a number of responses. The main argument being that employees with a current Crombie expectation should continue to receive the protection for the remainder of their employment with HMCTS because it had become an accepted feature of their employment. The view put forward by the Ministry in the consultation that these arrangements were unfair relative to the compensation arrangements available for civil servants in general was not broadly accepted by those who volunteered a personal interest in the regulations.
5. A common feature of the responses received in opposition to the proposal was the view that Crombie entitlement was "contractual". This was expressed in a number of different ways but generally stemmed from the assumption that the longevity of the regulations made them an implied contractual term. In some cases this was accompanied by a request that HMCTS consider transitional arrangements or respect the "accrued rights" of staff currently protected by the regulations.
6. Objections to the proposal also included a view that in revoking the regulations, the Ministry was acting in bad faith. Some responses suggested that the reference to the Managing Organisational Change Framework (MOCF) in the consultation document was disingenuous as there would (it was claimed) be less scope for reassignment of displaced employees in the future.
7. The consultation document explained that in the event of the Crombie regulations being revoked, the alternative basis for compensation in the event

of loss of employment would be the Civil Service Compensation Scheme (CSCS). The consultation also referred to the provision that CSCS allows for civil servants who are redundant (and who are above pension age) to use their compensation to enhance their civil service pension. This point drew a number of responses on the point that not all former magistrates' courts staff had transferred their legacy pension arrangements relating to their service prior to 2005 from the Local Government Pension Scheme (LGPS).

8. The consultation was also open to the Magistrates' Association, National Bench Chairmen's Forum and Justices' Clerks Society. These organisations responded to acknowledge the proposal but did not take a position on the proposal.
9. Engagement with the Ministry of Justice Trade Unions took place under the Employee Relations Framework. Management met with the Trade Unions during the consultation period and statistical information on the staff groups potentially impacted by the proposal was exchanged. Both PCS and Prospect submitted formal responses opposing the proposed change.
10. Further details about respondents to this consultation can be found at **Annex A**.
11. The Ministry of Justice offers the following responses to specific questions or contributions received:

“Crombie is a contractual entitlement”

The Ministry does not accept that Crombie is a contractual entitlement. The Crombie regulations have existed since inception solely as provisions made in regulations under statutory powers. The statutory power has always included a power to revoke the regulations; and that power is not dependent upon consent.

“The proposed change is unfair because it is retrospective”

Revocation of the regulations will not affect current recipients of Crombie compensation, nor anyone whose rights to such compensation have been triggered by an event which occurs before the Regulations are revoked. It was in that sense that the Ministry proposed that revocation would not be retrospective. Put another way, revocation will remove no existing rights or possessions; it only removes the hope that, in the event of a future re-organisation, a person within the scope of the Crombie Regulations would become entitled to compensation under the Regulations.

“The proposed change should be made retrospective”

The Ministry does not believe it would be proper to make the changes retrospective in the sense of affecting rights that have already been triggered. Therefore, all entitlements to Crombie compensation arising from before the date of any proposed change will be honoured in full under the existing terms.

“The proposed change should be amended to recognise the concept of “accrued rights”- i.e. from the date of revocation, no future rights would accrue under Crombie but compensation would be paid based on an individual’s entitlement to the date of revocation”.

This suggestion – to amend the Crombie scheme to create “accrued rights” - misunderstands the nature of the Crombie regulations which provide for compensation in the event of a number of specific circumstances (e.g. grouping of clerkships), triggered by the occurrence of an event.

“In revoking the regulations, the Ministry is going back on its word”

We are not aware that any commitment to maintain the Crombie regulations permanently has ever been given. From time to time primary legislation has included “savings provisions” for the regulations but alongside provision for the Lord Chancellor to amend or revoke them. Government is bound to adjust its policies in the light of changing circumstances and, in the light of this obligation, it would be difficult to interpret any promise given at a particular time as being intended to be perpetual and irreversible.

“Legal Advisors who are Legal Diploma Holders and not Solicitors or Legal Advisors who are non practising barristers will be disproportionately impacted by the revocation of the regulations.”

It can not be accepted that the Crombie regulations are retained because specific groups within the workforce may perceive themselves to have less marketable professional skills. The proposed change means that all employees will have access to the same compensation arrangements and the same opportunities to redeploy within HMCTS should the need arise.

“The proposal to revoke the regulations would appear to presume that Legal Advisor numbers will be reduced. Rather than dispensing with their services, HMCTS should consider how Legal Advisors experience and expertise can be used. This could include extending delegated powers/allowing Legal Advisors to sit as chairs in Tribunals.”

This consultation is being conducted purely to seek views from interested parties on the issue of revoking the Crombie regulations. We are not asking for this proposal to be evaluated on any other basis than its own merits. However, it has been announced that a consultation on Legal Structures within HMCTS will take place later this year. These comments would no doubt be appreciated in the context of that consultation.

“The Consultation states that CSCS Compensation arrangements include payment for loss of employment (severance) and there is also provision for employees over pension age to use their lump sum payment to enable them to take an unreduced pension. Not all employees transferred their LGPS pension in 2005.”

HMCTS employees have been members of PCSPS since transferring from in 2005 and the facility to enhance pension may be applied to this service. In terms of preserved LGPS service arrangements varies depending on the LGPS scheme. Some LGPS schemes do allow for pensions to be enhanced by lump sum payments.

Conclusion and next steps

1. HMCTS has considered the responses received during this period of Consultation. Despite having issued additional publicity to managers and staff, the consultation attracted relatively small numbers of responses. However, as noted above, many of the responses received were of high quality and engaged (many of them in some detail) with the proposal and the arguments put forward by the Secretary of State in support of it. We are content that this has been a meaningful exercise.
2. The Consultation proposed revoking the Crombie regulations based on a number of considerations. These included the “fairness” of maintaining a compensation scheme for a minority group of staff (when all staff now have access to the Civil Service Compensation Scheme in the case of redundancy) and the issue of whether such a scheme is fit for purpose given the current circumstances of HMCTS.
3. The “fairness” of both the Crombie regulations and their proposed revocation, was addressed by a number of respondents. The Ministry accepts that for individuals who consider themselves “protected” by the regulations, the proposed change is not a welcome one. However, we believe (and this point has been accepted by in a number of responses) this is not the same as accepting the proposed change is unfair or that the Crombie arrangements can be justified on their own merits.
4. This proposal is not indicative of any lack of appreciation on the part of the Secretary of State or HMCTS management for the contribution made by Legal and other staff in the magistrates’ courts but acknowledges, simply that valued contributions are made by a wide variety of individuals including those with no Crombie expectations. In circumstances where Pension and Compensation arrangements are under review/or have been amended across the public sector, it would actually be unfair not to review this particular scheme.
5. The Ministry and HMCTS management has acknowledged that affordability of the Crombie regulations is a factor in proposing revocation and that the Civil Service Compensation Scheme is less generous but does afford reasonable protection to staff.
6. One area that was not addressed in the consultation document but which has been raised during the consultation has been whether protection under the regulations is “contractual”. There appears to be a certain amount of misunderstanding on this point. Crombie is a statutory scheme, having been created under the Justices of the Peace Act 1949 and currently existing under the auspices of the Courts Act 2003. The legislation provides the Lord Chancellor with authority to revoke the regulations.

7. Therefore it needs to be explained that it is not a case of there being any “acquired” entitlement to Crombie.
8. A number of Consultation responses were received in relation to the position of individuals who had not transferred their accrued pensions from the LGPS to the PCSPS following the transfer of Magistrates’ Courts employees to the Civil Service in 2005. The related issue raised was that in the event of redundancy (over pension age), these staff would not be able to benefit from the (new) terms of the CSCS (as described above).
9. The purpose of the reference to the terms of the new Civil Service Compensation Scheme in the consultation document was illustrative of the scope of the arrangements now available. Additionally from 2005 all former Magistrates’ Courts staff have been members of PCSPS and therefore even those individuals who did not transfer their legacy entitlements have two pensions (i.e. PCSPS for service since 2005). It is not accepted that decisions made by individuals in relation to legacy pension entitlements are grounds to reconsider the approach to Crombie reform. The terms of both LGPS and PCSPS have changed since 2006 and are indeed likely to change further.
10. In summary, having carefully considered the responses received during the consultation exercise, no representations or objections made has caused the Ministry to alter its position.
11. The consultation did not raise any issues in relation to Equality or Diversity or any other concerns which had not been evaluated previously in forming this proposal.
12. A recommendation was submitted to the Lord Chancellor proposing that the Crombie regulations be revoked. The Lord Chancellor supported this recommendation and on 14th July (to coincide with the publication of the written response to the consultation) a statutory instrument was laid before Parliament titled, The Justices of the Peace Act 1949 (Compensation) (Revocation) Regulations 2011. These regulations will revoke the Crombie regulations when they come into force on the 5th of August 2011.
13. We are grateful to all those individuals and groups who have provided responses to this Consultation.

Consultation Co-ordinator contact details

If you have any comments about the way this consultation was conducted you should contact the Ministry of Justice Consultation Co-ordinator at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Consultation Co-ordinator
Legal Policy Team, Legal Directorate
6.37, 6th Floor
102 Petty France
London SW1H 9AJ

Annex A – List of respondents

14 Members of staff in HMCTS responding as individuals

1 Ex-member of HMCS staff

The Magistrates' Association

National Bench Chairmen's Forum

The Justices' Clerks Society

Prospect Trade Union

PCS Trade Union

Justice Unions Parliamentary Group