

EXPLANATORY MEMORANDUM TO

The Lay Magistrates (Eligibility) Order (Northern Ireland) 2024

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 4(7) of the Justice Act (Northern Ireland) 2015 read with section 121 of and paragraph 45 of Schedule 1 to the Public Service Pensions and Judicial Offices Act 2022 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. This Order sets eligibility criteria for the reappointment of lay magistrates until the age of 75, who were previously required to retire at the age of 70.

3. Background

- 3.1. Until recently, the retirement age of lay magistrates was 70, which was provided for by section 4(11) of the Justice Act (Northern Ireland) 2015. Section 26(1) of the Judicial Pensions and Retirement Act 1993 (the 1993 Act) set the retirement age for other members of the judiciary at 70, however, there was a facility under section 26(5) of the 1993 Act for the Minister of Justice to extend any individual's appointment for a year at a time up to a maximum age of 75 if it was deemed to be in the public interest to do so. However, that provision did not extend to lay magistrates and therefore, unlike other members of the judiciary, there was no facility to extend their appointments beyond the age of 70.
- 3.2. The Public Service Pensions and Judicial Offices Act 2022 (the 2022 Act), changed the retirement age for all members of the judiciary in Northern Ireland and England and Wales from 70 to 75, and in doing so, removed the facility under the 1993 Act to extend appointments as it was no longer required. The change in retirement age applied to lay magistrates too. However, some lay magistrates had recently been obliged to retire at the age of 70, with no facility to extend their appointment if it was in the public interest to do so, whilst their colleagues benefitted from the change in retirement age which was effected by the 2022 Act. This seems unfair that some individuals were prevented from continuing in their important roles on the basis of the date on which their birthday fell.
- 3.3. In order to address this unfairness, the 2022 Act contains provision to reappoint lay magistrates who were required to retire at the age of 70, but who have not yet attained the age of 75. The criteria for reappointments are contained in this Order.
- 3.4. The criteria are as follows: (a) individuals who are reappointed must still meet the criteria for appointment of lay magistrates that are set out in the Lay Magistrates (Eligibility) (Northern Ireland) Order 2004; (b) any

person seeking reappointment must not have been removed from their role as a result of disciplinary proceedings or have been subject to pending disciplinary proceedings at the date of their retirement; (c) the individual must have been aged between 70 and 75 on the date of Royal Assent of the 2022 Act, which is 10th March 2022; and (d) any person seeking reappointment must be prepared to undergo any training or continuing professional development that may be identified as being necessary or desirable for their continued role as a lay magistrate.

4. Consultation

- 4.1. The Department of Justice carried out a consultation regarding the criteria for reappointment of lay magistrates under the 2022 Act with interested stakeholders, including lay magistrates from 6th June 2022 until 1st August 2022.
- 4.2. Although the consultation response was small, with three consultees responding, the responses were supportive of the approach proposed by the Department of Justice. An analysis of responses, together with next steps was published on 20th September 2022.
- 4.3. Both documents are available on the Department of Justice website: www.justice-ni.gov.uk .

5. Equality Impact

- 5.1. As part of the consultation exercise, an equality screening exercise was carried out. No adverse effects on any of the groups contained in section 75 of the Northern Ireland Act 1998 were identified.

6. Regulatory Impact

- 6.1. There are no regulatory impacts associated with this Statutory Rule.

7. Financial Implications

- 7.1. There are no financial implications associated with this Statutory Rule.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. It is the view of the Department of Justice that this Statutory Rule complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. This is not a parity or replicatory measure.

11. Additional Information

- 11.1. Not applicable.