

Ministry of Justice explanation for applying a retirement age of 70 to judicial office holders.

1. The recent abolition of the Default Retirement Age (DRA) does not change retirement practices in relation to judicial office holders.
2. The DRA is being abolished for employees and in general employees can only be made to retire if the employer can objectively justify that action. But judicial office holders are not employees – judicial office holders are in a special constitutional position. They must be free from outside influence and are not subject to external control in the same way that employees are. So judicial office holders are not subject to individual assessments regarding capacity and ability when determining retirement but are subject rather to an independent and impartial framework based on a statutory retirement age of 70.
3. It has for some time been the general policy of consecutive Lord Chancellors that judicial office holders should not sit beyond 70, unless they have a reserved right to continue to a later age. The Government's view is that this is justified objectively on a number of grounds, and is consistent with existing equality legislation.
4. The legislation which sets out the retirement age for the majority of judicial office holders is the Judicial Pensions and Retirement Act 1993 (JUPRA). Section 26 of that Act states that a person holding any offices specified in Schedule 5 to that Act shall vacate that office on the day on which he or she obtains the age of 70 or such lower age as may be specified for the purpose in the enactments and instruments relating to that office, whenever passed or made. Part 5 of the Equality Act 2010 (in particular sections 49 to 50) does contain prohibitions against discriminating upon certain grounds, including age, which apply to judicial office holders. However, Paragraph 1 of Schedule 22 to that Act provides that where there is a statutory authority for an act then it will not constitute age discrimination for the purposes of Parts 3 to 7. The retirement date of 70 set in JUPRA is therefore covered by this statutory exemption.
5. Of course, not all judicial office holders are covered by the provisions in JUPRA. For many of these other judicial office holders, their retirement age is set out in their terms and conditions, or instrument of appointment. Sections 13(2) and 19(2)d of the Equality Act, dealing respectively with direct and indirect discrimination, clarify how a mandatory retirement age of 70 for these judicial office holders is both lawful and appropriate. The Government's view is that this constitutes "*a proportionate means of achieving a legitimate aim*".
6. There are a number of powerful reasons underpinning the setting of the mandatory retirement age at 70.

7. Judicial independence is protected by ensuring that the Executive does not have a role in determining, on an ad hoc basis, the retirement age of any individual judge. By applying an objective and impersonal framework, the risk of any perception by the public that a decision about whether or not to retain a judge in service could be influenced by the nature of his / her decisions while sitting on the Bench is greatly diminished. The Executive is therefore seen to be not unduly interfering with the independent functioning of the judiciary.
8. Further, in order to maintain an effective justice system, the Government needs to ensure that it has the right number of judicial office holders at the right levels of seniority across the various jurisdictions in order to meet the changing demands placed on those jurisdictions. It is essential that the Government is able to recruit at regular intervals a sufficient number of judges to meet that demand. Having some predictability over when existing judges leave office, through retirement, helps to generate reasonably accurate forecasts of future need and establish plans for the recruitment of replacements.
9. It is also important to ensure public confidence in the justice system is maintained. In deciding upon a mandatory retirement age of 70 in JUPRA, Parliament saw this age as striking a reasonable balance between enabling more mature judges to continue to make a contribution and the public interest in ensuring a Judiciary which is fully effective in discharging its heavy responsibilities.
10. Exceptionally, where it has been identified to be in the public interest, judicial office holders in most jurisdictions can have their age of retirement extended beyond the age of 70 for periods not exceeding 1 year at a time and not beyond the day upon which they attain the age of 75. In these exceptional circumstances 'public interest' is interpreted to mean that a clear business need has been identified.
11. Over the last year there have been various suggestions voiced in both Houses of Parliament, and elsewhere, that to extend the mandatory retirement age of judicial office holders might prove beneficial to the justice system. The Government has since considered the merits of such a change, following discussions with members of the senior judiciary and others. For the immediate future the Lord Chancellor remains convinced that the current mandatory retirement regime for judicial office-holders supports the legitimate aim of a justice system which is independent, fair and efficient.