

Judicial Salaried Part-time Working: A Practical Guide



Ministry of
JUSTICE

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Introduction

1. The Ministry of Justice introduced in 2001, salaried part-time working for those entering judicial office. With effect from 1 April 2005, the opportunity for salaried part-time working was extended - subject to it having no material adverse impact on the business needs of the court or tribunal, or the services to the users - to include all existing salaried judicial office holders below high court level, whether paid out of the Consolidated Fund or the Departmental vote.
2. It is a means of enabling people who cannot, or choose not to, commit to a full time post, to apply for judicial office. Part-time working makes an important contribution to the wider judicial diversity strategy. It creates a more flexible working environment and it promotes equality of opportunity and access to judicial office by removing barriers which might inhibit individuals from considering judicial appointment.
3. The aim of this document is to provide officials and judicial office holders with practical information on salaried part-time working. It does not purport to be a desk top manual or address all possible contingencies.
4. This guidance, which supersedes previous guidance, applies to new appointments and to existing office holders who wish to make long-term changes to their sitting pattern. It does not apply to High Court Judges and does not encompass special leave (whether paid or unpaid) or any other form of leave.
5. The scheme will be monitored and this guidance may be updated at intervals as any peculiarities of operating the scheme reveal themselves, including whether a change in resources is necessary.

Definitions

6. A **salaried part-time judicial office holder** is a permanent office holder and is subject to the same terms and conditions as a full-time judicial office holder. For example, s/he is required to give up legal practice on appointment. A salaried part-time judicial office holder is also entitled to the same benefits as full-time judiciary such as paid leave and a pension (albeit calculated on a pro-rata basis), and sick leave. The appointment to a salaried judicial office (whether full-time or part-time) is, unless specified otherwise, regarded as a lifetime appointment, i.e. to retirement age.
7. In contrast, a **fee-paid judicial office holder** does not receive a salary, is not subject to the same terms and conditions as a salaried judicial office holder and does not receive the same benefits. For example, a fee-paid judicial office holder can continue to practise, but is not entitled to benefits such as a pension or paid annual leave.
8. The use of the term 'part-time judicial office holder' should be avoided when referring to a *fee-paid* judicial office holder, to prevent any confusion with a *salaried* judicial office holder who sits part-time. The term 'fee-paid judicial office holder' should be used instead.
9. Applications to sit part-time will be decided jointly by the senior judicial officer and the senior administrative officer. The **senior judicial officer** will be:
 - the Presiding Judge for the Crown and County Courts
 - the President of the individual tribunal, or equivalent judicial head of tribunal,
 - in the Royal Courts of Justice: the Senior or Chief Master, Chief Bankruptcy Registrar, or (for District Judges) the Senior District Judge, in consultation with their respective Heads of Division, and
 - in the Magistrates' Court (District Bench), the Senior District Judge (Chief Magistrate) in consultation with the Presiding Judges.

10. The **senior administrative officer** will be:

- the Regional Director for the courts
- the Director of Tribunal Operations for those tribunals administered by Ministry of Justice, and
- in the Royal Courts of Justice the Director of the Supreme Court Group, in consultation with the relevant Court Manager.

**General
principles**

11. All applicants in all selection exercises for first time salaried judicial office will be subject to merit based selection procedures. Any preference for part-time sitting will be irrelevant in determining their ability or suitability for judicial office since an individual's reasons for seeking a salaried part-time appointment are not relevant to the appointment process. The sitting pattern adopted must, however, meet the needs of the court or tribunal and some patterns will be unsuitable for some judicial offices.
12. Salaried part-time working is a flexible concept and sitting patterns can take a number of forms depending on the office concerned including, for example, sitting a set number of days a week, set weeks, or set months.
13. The decision whether an office is suitable for part-time sitting will be decided locally by the senior judicial and administrative officers. Proper consideration should be given to accommodating part-time sitting but this will **always** be subject to its having no material adverse impact on the business needs of the court/tribunal or the services to users. All new appointments should therefore be considered to determine whether they are suitable for part-time sitting before they are advertised. Applications from existing office holders should also be given proper consideration, subject to the operational requirements of the court or tribunal.
14. The success of the introduction of part-time sitting will be dependent, to a large extent, on an analysis of the business of the court or tribunal, the sitting pattern of the judges, careful estimates of judicial vacancies and a careful management of applications. Decision makers will be conscious of the need to ensure that they do not become over-reliant on the use of fee-paid judiciary and in particular, that they comply with any existing guidelines on their use. In general, any lacuna caused by part-time working should not be covered by any increase in the use of fee-paid judges. They will also wish to take account of the need for suitable planning of sitting arrangements, and of the requirements for ongoing efficiency of the

court or tribunal when considering how many part-time judges they can accommodate. Senior judicial officers and senior administrative officers may therefore wish to review at intervals what percentage of the judicial complement on a circuit or tribunal should be represented by the number of individuals sitting part time.

15. **Judicial office holders** do not have an absolute right to sit part-time nor is the opportunity to sit part-time reserved for discrete sections of the judiciary, such as those with caring responsibilities.

16. Judicial office holders should be aware that the effective management of part-time sitting will mean that there may be some delay between application and an eventual change to sitting levels. This will not be due to any lack of dispatch on the circuit or tribunal's part but because of the need to allow sufficient time to consider the business needs of the court, the sitting patterns of other judges, whether any additional posts are necessary and, if necessary, to co-ordinate changes to sitting patterns with selection exercise rounds for these posts. The circuit or tribunal has a duty to ensure that the needs of the jurisdiction are considered 'in the round' and that a proper view is taken of the relative requirements for full-time, part-time and fee-paid judiciary before making a decision on individual applications. They will wish to have a clear view of the numbers and spread of individuals wishing to sit on a part-time basis and this may determine when otherwise viable applications to sit part-time will commence. Therefore, existing office holders who are contemplating sitting on a part-time basis should generally make their applications 6 to 12 months in advance of their prospective commencement date.

**Operational
needs**

17. Operational constraints will govern whether part-time sitting is viable in individual courts and whether a proposed sitting pattern can be accommodated. No two courts are alike and neither are the authorisations and responsibilities held by individuals. For instance, a part-time sitting pattern deemed as reasonable in a tribunal jurisdiction, might not be acceptable for a Circuit Judge. In the same way, one form of sitting pattern may be acceptable for a Circuit Judge on one circuit, whilst it may not be acceptable on a different circuit or at the Royal Courts of Justice, because of exceptional local circumstances.

18. In determining whether part-time sitting can be accommodated, the senior judicial officer and the senior administrative officer will wish to consider the particular circumstances of their jurisdiction in the light of the following principles:
 - the jurisdiction is compatible with a part-time sitting pattern
 - the individual post, together with the authorisations and positions held, is compatible with a part-time sitting pattern
 - the proposed sitting pattern is viable
 - the service to the court user is not adversely affected.

19. **Annex 1** provides a more detailed indication of the factors which might be relevant to the issue. **Annex 2** provides an indication of the factors which an individual might consider before applying to sit on a part-time basis.

20. The senior judicial and senior administrative officer should give proper consideration to accommodating salaried part-time working, subject to the court or tribunal's operational needs. Where it is not possible to accommodate salaried part-time working, the reasons for the decision must be clear, and must be communicated to the applicant. A suggested pro-forma which incorporates the application from the existing office holder and a record of the decision is attached at **Annex 3**.

21. It should be noted that the Court's or tribunal's operational needs can change with time and part-time sitting may become a viable option at a later date. Existing office holders should not be given the impression that the opportunity to be considered for part-time sitting is time limited.

Operational principles

22. The same conditions of appointment and terms and conditions of service apply to salaried part-time judicial office holders as to the equivalent full-time judicial office holders (subject to the adjustments appropriate for a salaried part-time appointment such as pro-rata pay, annual leave, pension etc). Judicial office holders who sit on a part-time basis should be afforded, as far as possible, equal access to training, a range of cases and the ability to acquire expertise, as full-time judicial office holders.
23. The sitting level is always represented as a percentage of a full-time post and the operation of the judicial pension schemes is such that those percentages are always calculated as blocks of 10%, although sitting patterns will be specifically agreed in terms of days or periods to be sat. The minimum sitting requirement for salaried part-time office holders will usually be at least 50% of the full-time equivalent, although there may be rare occasions when the local circumstances will support a lower sitting requirement. In other circumstances a higher minimum sitting level may be necessary, for instance a Circuit Judge at a court with certain business patterns may be required to sit at 80% and have a structured sitting pattern.
24. Office holders, and potential office holders, should recognise that the opportunity to sit on a part-time basis is governed by these set sitting levels, which may not mirror exactly their own preference. The senior judicial officer and senior administrative officer should agree the extent to which they can accommodate part-time sittings and recognise that the sitting *levels* are pre determined and should not be changed, although the sitting *pattern* will be agreed by them and will be consistent with the Court's needs. **Annex 5** shows how sitting levels are determined in percentage terms and separates 'leave' from sitting days for ease of reference.
25. Flexibility on the part of the office holder is essential on those occasions where cases overrun or where an office holder exceeds his/her annual sitting level but is committed to future cases. The expectation is that those commitments must be honoured by the

office holder but any excess sitting will count towards future sitting requirements.

26. Early and clear communication between all parties is fundamental to salaried part-time working. Applications can be made at any time of the year and local managers will be best placed to confirm the likely timetable. However, it is likely that applications to sit part-time will normally need to be made at least 6 to 12 months in advance of the individual's preferred date of commencement because of the factors set out at paragraphs 14,15 and 17. On occasion, local and personal circumstances may allow an early commencement date.
27. Operational areas and divisions should ensure that Judicial Pay and Pensions branch are given early and clear notice of part-time working arrangements, whether for new appointments or existing office holders. Judicial office holders should normally ensure that they give Judicial Pay and Pensions Branch 3 months in which to calculate the potential implications of moving to part-time sitting and make any necessary changes to pay and pension arrangements.
28. A change to working patterns and arrangements is regarded as a variation to the office holder's terms of appointment and the change is permanent unless otherwise agreed. There is no right to revert to the previous terms of appointment. This does not preclude requests for further changes, which can be made and which will be considered. Subsequent and further applications to vary working patterns and arrangements will be decided in the light of the court's or tribunal's needs and will be decided in the same way as other applications to sit on a part-time basis. It also does not preclude the court or tribunal from seeking to agree an amendment to sitting levels or sitting patterns where operational needs dictate that such a change is necessary.

Procedures

General

29. The senior judicial and senior administrative officers are best placed to determine, for new and existing appointments, whether part-time working can be accommodated without an adverse impact on the Court or Tribunal's effectiveness. They will have the practical knowledge of: caseload and weight; local characteristics; the particular experiences and suitability of the individual concerned (in the case of existing office holders); conflicting demands on judicial capacity, including external judicial obligations and circuit needs, and anticipated changes to structure or workload. Applications from existing office holders should therefore be made to the senior judicial officer, copied to the senior officer responsible for the administration of the area concerned.

30. The senior judicial and senior administrative officer are expected to give proper consideration to accommodating salaried part-time working, subject to its having no adverse impact on the business needs of the court or tribunal, or the services to the users. In determining whether part-time working can be accommodated, the senior judicial officer and the senior administrative officer will wish to consider paragraphs 18 to 22 of this guidance and the factors at **Annex 1**.

Judicial selection exercises

31. When the business areas (HMCS and Tribunal Service) make the initial enquiry about the demand/need for a selection exercise, it will be the responsibility of the circuit or tribunal to confirm whether or not any established office holders are contemplating applying to sit on a part-time basis, as this may influence the number of anticipated vacancies.

32. It is to be hoped that there will be a proper balance between new appointees who will sit part-time and existing office holders who seek to sit part-time. However, where the senior judicial and senior administrative officers decide that it is not appropriate to offer part-time sitting for a particular selection exercise, they should forward a summary of the factors which informed their decision to the Judicial

Policy and Appointments Division (JPAD) who will then inform the Judicial Appointments Commission (JAC), copied to Judicial Conditions of Service Branch.

33. Where the senior judicial and senior administrative officers are satisfied that part-time working can be accommodated for a particular selection exercise, they should (where it is not already clear) determine local interest for sitting part-time amongst existing judiciary. Where a selection exercise follows a set timetable, it may be desirable to factor in local expressions of interest in sitting part-time within that timetable.
34. The senior judicial and senior administrative officers may wish to undertake regular enquiries of judicial officer holders to ascertain local demand and may wish to keep a local record of expressions of interest. This will assist in managing vacancies since, by anticipating the future need for part-time working, it will be possible to determine how many new appointments are required to reach complement, and the extent to which those new appointments could be part-time. For example, a circuit which anticipated 3 District Judge vacancies might find that, having canvassed the opinion of existing judges, there would be a need for more than 3 judicial appointments to cover the capacity created by existing office holders moving to part-time sitting. Existing office holders should recognise that the management of judicial vacancies is such that some time may pass after the initial application before the change to part time sitting takes place - see paragraphs 17 and 18 above.
35. Early notification of an interest in sitting on a part-time basis enables Judicial Pay and Pensions Branch to provide established office holders with a personal illustration of the consequences (financial and in pension terms) of undertaking part-time sitting. This is particularly relevant for those who are required to transfer to the 1993 Scheme, and may affect their decision to apply to sit on a part-time basis.

The selection exercise process

36. Where it has been agreed that part-time sitting can be accommodated, this will be made clear in the advertisement inviting candidates to apply for the selection exercise. The wording will be such that it is clear that, subject to the needs of the Court or Tribunal, part-time working *may* be available. Information packs should reflect the minimum sitting level expected if the selection exercise is to avoid unrealistic expectations being raised. Whilst there may be rare occasions where a lower sitting level is acceptable, 50% of normal commitment will be the minimum level acceptable in the majority of circumstances. For some offices a higher sitting level or a particular sitting pattern may be necessary.
37. The tables at **Annex 5** set out the effect that the range of percentages will have for each of the affected judicial offices. The number of sitting days and the proportion of sitting to non-sitting days cannot be changed and judicial applicants must accept that judicial office brings with it constraints on the way in which part-time sitting operates. For instance, a District Judge wishing to sit to a 60% commitment *must* accept that s/he is committed to 156 days per year and that of those, no less than 129 are actual sitting days. Judicial office holders who had contemplated sitting 150 days will find that they are committed to sitting 156 days if they wish to sit part-time. Whilst there will be differences between judicial office holders in how those days are sat (weekly or monthly commitment, etc.) the total sitting figures are immutable.
38. Although candidates are chosen on merit (and in that context their sitting preferences are irrelevant) it is generally helpful if candidates indicate their preferred sitting patterns in their application. This will enable those administering the scheme to monitor interest in part-time sitting.
39. Where a candidate who wishes to sit on a part-time basis is recommended for appointment, the Judicial Appointments

Commission will consult the senior judicial and administrative officers as appropriate to confirm that they can accommodate the part-time working arrangements requested. If there is a difficulty with the proposed level of sitting or the sitting pattern, the selection exercise team will re-canvass the candidate's availability at the acceptable sitting level/pattern. There is no obligation to appoint the candidate if their preferred working pattern cannot be accommodated.

40. The Judicial Appointments Commission will endeavour to appoint new judges as soon as possible to cover the vacancies created by part-time sitting.

Selection exercises where the tribunal is administered by another Government department

41. Where the Judicial Appointments Commission runs a selection exercise to appoint salaried members for a tribunal which is administered by another Government department but for which the Lord Chancellor has responsibility for appointment, they will consult the appropriate senior judicial and administrative officers of that tribunal as appropriate on the number of vacancies in the light of internal expressions of interest before advertising the selection exercise.

Existing office holders in courts and tribunals

42. An individual's circumstances and priorities can change, resulting in the need or desire to reduce their sitting levels, and there are no right or wrong reasons why an office holder might wish to change their sitting patterns. As with new appointments, the needs of the jurisdiction will determine whether a change in sitting patterns can be accommodated, and the same considerations will apply. If the circumstances are such that part-time sitting cannot be accommodated, then the request will be denied.
43. The office holder with an interest in part-time sitting should ensure that the senior judicial and senior administrative officers are aware of

the interest. This will allow them to explore the proposed sitting pattern, and to discuss how it may be accommodated within the court or tribunal's needs. It would also, where necessary, provide the opportunity to explore options to reconcile the operational and the office holder's needs.

44. Where an office holder wishes to apply to sit part-time they should complete the application form or an equivalent at **Annex 3** and forward it to their senior judicial officer, copied to the senior officer responsible for the administration of the area concerned. The office holder should ensure that their application indicates that they have considered the implications of the preferred sitting level and pattern. Although any such information will be kept confidential, an office holder should, if asked, be prepared to assist in demonstrating that their proposed sitting arrangement satisfies the needs of the Court or Tribunal.
45. There will be occasions when the number of applications appears to outstrip the business needs, or when individual preferences of office holders cannot all be reconciled, either at all or with each other. Flexibility in approach, for example by liaising with another office holder with an interest in sitting part-time may help to achieve an acceptable outcome for the office holders and the court or tribunal. Similarly, flexibility in the proposed sitting pattern may lead to its acceptance. However this will not always be the case, and, again, a request or requests will be denied if there is no practicable solution consistent with the business needs of the court or tribunal.
46. The Ministry of Justice has no preferred sitting patterns or sitting level since it recognises that what may be reasonable for a Tribunal Judge could not be contemplated for a Circuit Judge. Whilst a part-week sitting pattern would not be viable for some judicial offices, a pattern which took the form of whole weeks or months could be viable. Office holders should also be aware that one effect of changing sitting levels might be that they can no longer retain all of their levels of authorities since their proposed pattern may be incompatible with

the practicalities of a specific specialism. Office holders are expected to make a realistic assessment of the practicalities of their office in developing their proposals.

47. It is essential that, where business needs preclude part-time sitting, a clear record exists of the factors which informed that decision and that the office holder is informed locally of the reasons why part-time sitting has been refused. The application form at **Annex 3** includes a section for recording the decision.

Part-time sitting as a percentage of a full-time post

48. Paragraphs 24 and 25 above explained that sitting days are always presented as a percentage of a full-time post and that for calculating purposes the smallest percentage block is 10%, which equates to half a day or multiples thereof. Judicial office holders who sit to a reduced commitment are entitled to paid leave proportionate to the level sat.
49. For example, a District Judge who wishes to sit three days a week would sit 60% of a full time post. This would total 156 days in a year, which would be comprised of 129 sitting days and 27 non-sitting/'leave' days. Although the precise sitting pattern for a 60% sitting is likely to differ depending on operational needs and the needs of the office holder, the total number of sitting days cannot. **Annex 5** sets out the percentages which are available for judicial office holders and the proportions which relate to sitting days and leave days.

Temporary changes to working patterns

50. Salaried part-time working should not normally be used to accommodate changes of a temporary nature. There is an existing facility to take special paid leave which enables judges to cope with short-term domestic crises such as death or illness and to allow sufficient time for longer-term arrangements to be made. In addition, there is a range of other provisions available. For instance, parental leave is available for office holders with children aged below 5 years,

and office holders are entitled to paternity and adoption leave.

51. There may be circumstances where the alternatives listed above are insufficient and where the stability offered by sitting part-time, albeit for a defined limited period is preferred. In determining whether to accede to the request the senior officers will consider operational needs and will employ the general procedure set out above. Where a longer, but temporary, change can be accommodated, the details of the agreed sitting pattern and its commencement and close dates should be recorded, with a copy sent to the office holder and placed on their personal file. Office holders are encouraged to discuss the implications of changes to sitting arrangements as early as possible. Judicial Pensions branch should be notified as soon as the application is approved and sufficiently in advance to allow them to make the necessary amendments to pay and pensions.

52. Small changes to sitting arrangements, which do not alter the overall percentage of time sat, would normally be agreed locally without the need for a formal process since it would have no pension or pay implications. For example, an office holder may agree to alter the days or weeks on which they sat, as a result of changing business or personal needs. Such changes should be managed sympathetically and a note of the agreed changes should be sent to the office holder and retained on their personal files.

**Pay and
pensions
implications**

The Judicial Pensions and Retirement Act 1993

53. The 1993 Act gives an entitlement to a pension to *any* judicial office holder holding office on a salaried basis whether full or part-time. Under the 1993 scheme, the salary used to calculate pension benefits is the full-time rate and is by reference to the *best* salary in any 12 month period in the last three years of appointment. The amount of pension is calculated as:

$$1/40 \times (\text{years of service}) \times (\text{pensionable pay})$$

subject to a maximum of the equivalent of 20 years service sitting full-time.

54. Part-time sitting provides a pro rata entitlement, which is calculated by reference to the full-time pensionable pay that the office holder would have received if s/he had been sitting on a full-time basis. The pensionable pay is adjusted to recognise that portion of service that is worked part-time. As such, an office holder who has less than 20 years full service when they move to part-time sitting will find that they will require additional years of part-time sitting to receive a full pension, since a year's part-time sitting does not equate to a full year for pension purposes. For a part-time office holder who already has 20 years full-time service, a move to part-time will have no implications for their eventual pension.

55. For example, an office holder with 15 years full-time service moves to a 50% sitting commitment. To amass a full 20 years in pension terms the office holder would have to sit a further 10 years approximately, or 25 years in total. See **Annex 4** for a further example.

56. Where an individual begins sitting part-time after a relatively short time in office, the consequences will be greater. For example, an office holder with 5 years full-time service moves to a 50% sitting commitment. To amass a full 20 years in pension terms the office holder would have to sit a further 30 years or 35 years in total. See **Annex 4** for a further example.

57. These are approximations for descriptive purposes and office holders who are in the 1993 scheme are strongly advised to enquire at an early stage about the personal implications of sitting on a part-time basis, since it may affect their final decision. Office holders may also wish to seek independent financial advice in respect of the impact that a move to sitting part-time would have on their particular situation.

The Judicial Pensions Act 1981

58. A judicial office holder who is a member of one of the 1981 pension schemes and wishes to sit part-time will *have* to elect to transfer into the 1993 scheme as the 1981 Act does not provide for part-time sitting. The 1981 Act consolidated a number of earlier Acts and, as such, contains a number of pension schemes. Individual schemes within the Act apply to individual judicial offices and have different accrual rates and retirement dates depending on the judicial office in question.

59. The implications of moving from a particular scheme within the 1981 Act to the 1993 scheme will have different implications depending on the precise 1981 scheme in question and no generalisations can therefore be made. Existing office holders who are in the 1981 schemes and are contemplating sitting part-time should therefore contact MoJ Judicial Pay and Pensions branch, tel: 0203 334 3483/3486 at an early stage, requesting details of the effects of changing schemes. These assessments will be given confidentially. In order to investigate the implications, colleagues in Judicial Pay and Pensions Branch will need to know the probable percentage at which the office holder anticipates sitting. They will then be able to provide a guide to the office holder as to the pro-rata salary and pension, although any subsequent changes between the office holder and the senior judicial or administrative officer may, of course, affect the final figures. Potential applicants may also wish to seek independent financial advice as to the wider implications of sitting part-time.

Informed consent

60. Some judges have a statutory protection which would normally prohibit a reduction in their salary. However, *subject to informed consent*, there is nothing to prevent an office holder with statutory protection from receiving a pro-rata salary which reflects the reduced commitment. Judges who make a change in their sitting patterns will be required to indicate that they are content for their salary to be reduced pro-rata. This reduction would be worked out on the same pro-rata basis as those who are paid out of the Departmental Vote. A suggested pro-forma for use in such circumstances is attached at **Annex 6**.

61. There are no unexpected effects arising from the provisions relating to actuarial reduction or deferred pensions. The surviving spouses and children's pensions, and the lump sum and death benefits are based on the amount of pension, with no distinction between full and part-time sitting.

Annex 1

Operational needs

The following questions are intended to be an indicative guide to the factors relevant in considering whether part time sitting is viable. They are not an exclusive list and there may be other, equally relevant, considerations.

1. What is the jurisdiction?

The type of work undertaken by the court or tribunal in question, e.g. civil, criminal, family, employment tribunal:

- Does it bring with it particular constraints?

2. What is the post?

The type of work undertaken by the office holder in the court where the office holder sits:

- Is the present office holder a specialist?
- Is there a need for a specialist?
- What number and level of authorities, if any, are needed for this jurisdiction or court?
- Do specialisms or level of authorities bring with them special considerations?
- Are they surmountable?

3. What is the proposed sitting requirement for this post?

The proposed sitting pattern and its impact on the relevant areas of business:

- Is there an essential core sitting pattern for this office?
- Is there a minimum sitting level for this office (e.g. 70%)?
- What is the proposed sitting pattern?
- Is it feasible given the post, level of authorisations and specialisms?
- If the proposed sitting pattern is not suitable, what alternative resolutions might there be?
- Will the proposed sitting pattern require an alteration in the places where the judge sits or the work undertaken? A change to part time sitting may require

flexibility from the office holder in their itineraries, places they sit or the work and specialisms available to them.

4. **What is your judicial complement?**

- Would any gap be created by the proposed sitting pattern?
- Are there sufficient existing salaried or fee-paid office holders to accommodate the change flexibly without imposing burdens on other office holders?
- If yes - how would that flexibility manifest itself - e.g. re-scheduling patterns or listings?
- If no - how would you introduce flexibility - more office holders, another part timer?
- Could you ensure that you do not become over-reliant on fee paid judiciary and that you do not exceed any guideline limit on their use?
- Do any other judicial office holders in that area want to sit part time?
- Are there any unfilled or foreseeable vacancies which would have an impact on the timing of any application?

5. **Are there any implications for court users?**

- How would you address them?

6. **The impact on the work of the court or tribunal:**

- Will it impose additional burdens on other judges?
- What impact would the proposed sitting level have on delivery of objectives?

7. **The implications for the circuit or between circuits:**

- Are there any geographical constraints?

8. **What is the impact on the diversity of the judiciary?**

9. **What is the impact on colleagues and peers within the court or tribunal?**

10. **What benefits would accrue to the court service or Tribunal?**

11. **Would the office holder's service to court or tribunal users benefit from a change in sitting patterns?**

12. **What is the impact on the availability of judicial accommodation in the relevant Court or Tribunal?**
 - What accommodation is available, where and when?

13. **Are there any resource constraints?**
 - What are the additional costs and where?
 - How will the costs be accommodated?
 - Do the costs of accommodating the request outstrip the benefit?

14. **What is the impact on any anticipated structural change or workload?**
 - Are you anticipating changes in workloads or jurisdiction?

15. **Are there any other factors affecting the disposal of business?**
 - How would/could you resolve them?

Annex 2

Personal considerations for the office holder

The following questions are intended to be an indicative guide to the factors which may be relevant to an individual considering whether to apply for part time sitting. They are not an exclusive list and there may be other, equally relevant, considerations.

1. Have you considered the impact of the change on your salary, pension, and conditions of service?

- Are you aware that the operation of the judicial pensions scheme means that there may be set sitting levels which are inflexible, although the sitting pattern may be flexible?
- If you have to change pension scheme, are you aware of the implications of joining the 1993 scheme?
- Have you considered the impact of the change on your leave entitlement?

2. Have you a contingency sitting level or sitting pattern if your preferred option cannot be accommodated, e.g. higher percentage of sittings, different pattern?

- Can you accommodate your sitting pattern with your other commitments, so that you continue to fulfil your primary role, e.g. personal commitments, extra judicial activities, training?
- Can you offer a degree of flexibility to deal with trials that overrun, or adjourned sentencing hearings?
- What alternative arrangements would you be able to make to ensure that you can still satisfy your training needs?

3. Have you considered that a change in sitting levels may change the focus of the office, e.g. you may no longer be able to retain all your authorisations or specialisms?

4. On balance, do the personal benefits of changing sitting levels outweigh any disadvantages?

Annex 3

Application for salaried part time working and record of decision

<i>For completion by office holder</i>	
Title	
Office held	
Additional responsibilities	
Levels of authority	
Preferred sitting level (in multiples of 10%)	
Preferred sitting pattern	
Preferred commencement date	
Assessment of the impact on the business of the court/tribunal.	
Personal implications for the applicant (<i>optional</i>)	

<i>For completion by senior judicial officer/ senior administrator</i>	
What impact would the preferred sitting pattern have on the work of the court/tribunal?	
Was the preferred sitting pattern agreed?	Y/N
If no, was part-time sitting agreed in a modified form?	Y/N
What modified pattern was agreed and what were the reasons for the modification?	
If the application was refused, what business factors influenced your decision including where relevant, costs, throughput of cases etc?	

Senior Judicial Office Holder.....

Senior Administrative Office Holder¹.....

¹ For definitions see paragraphs 9 & 10 above.

Annex 4

Impact on personal accrual

Actual service	Pensionable service
15 years @ 100%	15 years
10 years @ 50%	5 years
Total: 25 years	Total: 20 years

Actual service	Pensionable service
5 years at 100%	5 years
30 years at 50%	15 years
Total: 35 years total	Total: 20 years

Annex 5

Percentage Sitting Levels For Pay And Pensions Purposes

Pro-Rata calculation of sitting days for Circuit Judges, and Judicial Office Holders in the Supreme Court Group

PRO-RATA TIME	NO. OF LEAVE DAYS PER YEAR	NO. OF SITTING DAYS PER YEAR	TOTAL	TOTAL SALARIED DAYS PER YEAR
50%	25	105	130	182.5
60%	30	126	156	219
70%	35	147	182	255.5
80%	40	168	208	292
90%	45	189	234	328.5
100%	50	210	260	365

A holder of full-time judicial office is deemed to work on 5 days in each and every week of the year, i.e. $5 \times 52 = 260$.

Pro Rata calculation of sitting days for District Judges and District Judges [Magistrates' Courts]

PRO-RATA TIME	NO. OF LEAVE DAYS PER YEAR	NO. OF SITTING DAYS PER YEAR	TOTAL	TOTAL SALARIED DAYS PER YEAR
50%	22.5	107.5	130	182.5
60%	27	129	156	219
70%	31.5	150.5	182	255.5
80%	36	172	208	292
90%	40.5	193.5	234	328.5
100%	45	215	260	365

A holder of full-time judicial office is deemed to work on 5 days in each and every week of the year, i.e. $5 \times 52 = 260$.

Pro Rata calculation of sitting days for MoJ Tribunal Office Holders

PRO-RATA TIME	NO. OF LEAVE DAYS PER YEAR	NO. OF SITTING DAYS PER YEAR	TOTAL	TOTAL SALARIED DAYS PER YEAR
50%	20	110	130	182.5
60%	24	132	156	219
70%	28	154	182	255.5
80%	32	176	208	292
90%	36	198	234	328.5
100%	40	220	260	365

A holder of full-time judicial office is deemed to work on 5 days in each and every week of the year, i.e. $5 \times 52 = 260$.

Annex 6

Informed consent to receiving a judicial salary commensurate with a reduced sitting commitment.

Circuit Judges and District Judges (Magistrates' Courts)

1. Section 18 of the Courts Act 1971, provides:

.....there shall be paid to each Circuit Judge such salary as may be determined by the Lord Chancellor with the consent of the [Treasury]

(2) Every salary paid under this section -

a) shall be charged on and paid out of the Consolidated Fund;.....

b) may be increased, but not reduced, by a further determination under this section

2. A similar provision relates to District Judges (Magistrates' Courts)². On the face of it the statutory provisions therefore prohibit any reduction in salary.
3. However, legal advice has indicated that it is permissible for a judicial office holder paid from the Consolidated Fund to be *appointed* on the basis that they sit part-time. There is no restriction to this in the statute since it refers to a reduction in salary and in these circumstances the individual salary is not being reduced but is being set from the outset, at a level which reflects the commitment. Accordingly it is open to the Lord Chancellor to agree terms, hours and salary at the outset of appointment.
4. Legal advice also indicates that it is permissible, subject to informed consent, for the salary of such office holders to be reduced, if the decision is taken to sit part-time at some point in their career. Statute does not stipulate the commitment required of an office holder and there is no statutory obligation for all office holders to receive the same salary. The basic object of s. 18(2) above is to preserve judicial independence. This would not be undermined if a judge, of his or her own volition, agreed to a reduced salary for a reduced commitment.

² s.9, Administration of Justice Act 1973.

5. Based on the legal advice outlined above, we attach a consent form for existing office holders who are paid out of the Consolidated Fund, but who wish to take up the option of salaried part time-sitting. The office holder is not waiving a proportion of his or her salary, but is agreeing to accept a salary commensurate with the sitting level. That salary will be calculated as a percentage of that of a full-time office holder of equivalent level (please refer to paragraphs 56 to 58 above for further details of the calculation). For obvious reasons MoJ must receive the signed consent form from an office holder who is paid out of the Consolidated Fund before he or she can sit part-time. By signing the consent form the office holder is agreeing to a pro-rata reduction in his or her salary and in his or her pension arrangements. Prior to signing the consent form the office holder should have read the attached *Guidance on Part-Time Working for the Judiciary* and have taken advice from Judicial Pay and Pensions Branch as to the effect of sitting part-time in his or her particular circumstances. If office holders have any further queries about sitting part-time they are encouraged to take independent advice.

District Judges (County Courts)

6. As a consequence of the changes brought about by paragraph 1 of schedule 3 to the Constitutional Reform Act 2005 District Judges in the county courts have a similar provision whereby their salary may not be reduced. The above paragraphs, therefore, apply to District Judges in county courts and a signed consent form is also required.

CONSENT FORM

I..... [name],[state office], wish to alter my working pattern to sit part-time. I understand that despite the statutory entitlement under [insert either s.18 of the Courts Act 1971 or s.9 of the Administration of Justice Act 1973 or paragraph 1 of schedule 3 to the Constitutional Reform Act 2005], my salary will be reduced by the Ministry of Justice on a pro-rata basis to reflect the level at which I will sit. I understand that my pension will change as a result. I have taken full advice on the effect of these changes to my salary and my pension and I consent to the pro-rata reduction to be made to my salary to reflect the reduction in my sitting levels.

Signed.....

Date.....

Please return the form, when completed, to:

Judicial Pay & Pensions Branch
Ministry of Justice
3.40
102 Petty France
London
SW1H 9AJ

Judicial Salaried Part-time Working: A Practical Guide

Extension of salaried part-time working to the High Court and Court of Appeal

Salaried part-time working is available as an option for judges in the High Court and Court of Appeal.

The general principles set out in this Guide will apply equally to judges in the High Court and Court of Appeal, whether they are new appointees or serving office holders¹. A salaried part-time judicial office holder will remain subject to the same terms and conditions as a full-time judicial office holder.

Pursuant to duties under 137A of the Constitutional Reform Act 2005 and s.149(3) Equality Act 2010 and in response to recommendations by the Advisory Panel on Judicial Diversity, opportunities for part-time working in the senior courts will be made available for the purpose of increasing the diversity of the judiciary. In pursuance of this aim, such opportunities, where consistent with business needs, may be made available to groups under-represented within the senior judiciary who would otherwise find participation difficult.

This policy is not intended to exclude those who do not fall within an under represented group. Such applications for salaried part time working, although likely to be exceptional, will be considered individually on their merits, and in light of the stated policy aims.

Applications to sit part-time will be decided jointly by the senior judicial officer and the senior administrative officer. The senior judicial officer will be The Head of Division for the High Court and Court of Appeal and the Director of the Supreme Court Group.

In extending flexible working to the High Court and above the percentage sitting level changes for pay and pensions purposes is provided below.

The existing guidance will be reviewed and redrafted, with a further pension's update provided in time for publication of the new guidance.

Pro-Rata calculation of sitting days for Judges of the High Court and Court of Appeal

¹ The principles and procedures set out in this addendum are in addition to those to be found in 'Judicial Salaried Part-time Working: A Practical Guide' ('the policy'). They are in substitution for paragraphs 4, 31 to 37, inclusive, and annexes 5 and 6 of that policy. The policy is being re-written to comply with employment law obligations and recent decisions relating to judicial office holders and must be read in that context (see, for example, paragraphs 6 and 7 which no longer apply as drafted)

PRO-RATA TIME	NO. OF LEAVE (AND NON SITTING) DAYS PER YEAR	NO. OF SITTING DAYS PER YEAR	TOTAL	TOTAL SALARIED DAYS PER YEAR
50%	35.5	94.5	130	182.5
60%	43	113	156	219
70%	50	132	182	255.5
80%	57	151	208	292
90%	64	170	234	328.5
100%	71	189	260	365

A holder of full-time judicial office is deemed to work on 5 days in each and every week of the year, i.e. $5 \times 52 = 260$.

In accordance with their terms of appointment and conditions of service, judges of the High Court Judges and above are expected "to sit throughout the legal terms (189 days per annum).