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CONSTITUTION AMENDMENT UNIFIES THE RETIREMENT AGE AND PENSION RIGHTS OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD

TITLE: *Fifth Alteration (No.37) Act to alter the Constitution of the Federal Republic of Nigeria, 1999 to ensure uniformity in the retirement age and pension rights of Judicial Officers of superior courts of record; and for related matters.*



Introduction

On 8 June 2023, newly sworn in President, Bola Ahmed Tinubu, signed a Constitution Alteration Act to alter **Section 291** of the Constitution, to ensure uniformity in the retirement age and pension rights of judicial officers of superior courts of record. This Act was one of the pending constitution alteration bills from the now adjourned 9th National Assembly.

The Act eliminates disparity in the retirement age of judicial officers of superior courts of record established under the Constitution by harmonising the retirement age of all judicial officers at 70 years of age. It further reduces the period of service required to activate and determine the rate of a judicial officer's pension from fifteen to ten years.

Superior courts of record are referred to as courts established under the Nigerian Constitution for the Federation and the States. These courts are established in Section 6(3), (5) (a) to (i) and include the following courts: Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, High Court of the Federal Capital Territory (FCT) and of a State, Sharia Court of Appeal of the FCT and of a State, as well as the Customary Court of Appeal of the FCT and of a State.

Tenure of Office

Before this amendment, **Section 291(1)** of the Constitution provided that a judicial officer appointed to the Supreme Court or Court of Appeal may retire at the age of 65 but will cease to hold office at the age of 70, while **Section 291(2)** provided that judicial officers of other courts may retire at the age of 60 but will cease to hold office at the age of 65. The new constitution amendment eliminates this disparity by providing that any judicial officer appointed to any of the Superior Courts of record may retire upon attainment of age **65** and shall cease to hold office at the age of **70**.

This amendment allows judicial officers enjoy the option of early retirement without losing retirement benefits. It also gives judicial officers the option to retire or work for a longer period where health and other prevailing circumstances permit. Other benefits include that these members of the bench can give more to the profession when they are at their peak intellectually and people who enter the profession later

in life are able to continue to contribute their judicial skills and intellect.

Many senior lawyers have however criticised this amendment saying that it will inhibit the career progression of younger judges as the older ones will opt to remain in active service for longer. Some also argue that age brings mental fatigue and other infirmities, which may impair judgment and that the number of years spent on the bench should not be a substitute for periodic trainings, mental evaluations, adequate remuneration and supervision by the National Judicial Council (NJC) to improve the productivity of judges.

To counter this, supporters of the amendment argue that the Constitution still allows for the removal of a judicial officer before the age of retirement for inability to discharge the functions of office due to infirmity of body or mind (*see Section 292 (1) of the Constitution*). They cite other jurisdictions such as the United Kingdom where the retirement age of judicial officers including Magistrates is pegged at seventy-five years to ensure that the bench does not lose useful talents.

Pension for Judicial Officers

According to a new provision in subsection (2) of **section 291 (formerly subsection (3))**, judicial officers who have held office for up to **10 years** and retire at or after **65 years** of age, would be entitled to life pension at a rate equivalent to their last annual salary, in addition to allowances and retirement benefits.

Formerly, Justices of the Supreme Court and Court of Appeal who retire at or after 65 years of age must have held office for up to **15 years** to get this benefit. Likewise, other judges who retire at or after 60 years of age must have held office for up to 15 years to enjoy life pension.

Additionally, with the new provision, judicial officers who retire after 65 years but served less than 10 years would be entitled to life pension in proportion to the number of years served in addition to allowances and retirement benefits. (*See section 291 (2) (b)*). This provision formerly applied to retired judicial officers who held office for less than fifteen years. The key amendment here is the reduction of the timeframe for entitlement to pension from 15 years to 10 years of holding judicial office.

Administration of Pensions

A new **section 291 (3)** further guarantees the pension benefits of judicial officers by providing that all pensions, allowances and other retirement benefits of judicial officers shall be charged upon the Consolidated Revenue fund of the Federation and paid directly by the National Judicial Council (NJC).

This is aimed at addressing the current situation where payment of retirement benefits of State Judges is left to the States to handle. By virtue of **section 84 (7)** of the Constitution, the recurrent expenditure, salaries and allowances of the judicial officers of superior courts of record shall

be charged on the Consolidated Revenue Fund of the Federation. **Item 21(e)** of the Third Schedule to the Constitution further provides that the National Judicial Council (NJC) shall be responsible for collecting and disbursing capital and recurrent funds for the judiciary. In practice, the NJC pays the salaries and allowances of both Federal and State Judges but excludes the pension benefits for the latter.

The case had been made for legislative intervention to enable a unified mode of payment of pensions and retirement benefits for all judges of superior courts of record at the federal and state levels. This is because, in many cases, retirement benefits of State Judges are owed or delayed by the States. There are several reports of lawsuits filed by retired Judges against their State governments over unpaid pension and gratuities, as well as resulting hardship and emotional stress on retired judicial officers. This alteration, which addresses this problem, will go a long way in facilitating an efficient pension administration process for retired judges and promoting the welfare of judicial officers across the country.



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