EXPLANATORY MEMORANDUM TO

THE JUDICIAL PENSIONS AND FEE-PAID JUDGES' PENSION SCHEMES (AMENDMENT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To make provision for the contributions payable by members of the pension schemes under the Judicial Pensions Regulations 2015 (SI 2015/182) (JPR 2015) and the Judicial Pensions (Fee-Paid Judges) Regulations 2017 (SI 2017/522) (JPFPJR 2017) for the period of 1st April 2019 to 31st March 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 The Lord Chancellor and Secretary of State for Justice, The Right Honourable David Gauke MP has made the following statement regarding Human Rights:

"In my view the provisions of the Judicial Pensions and Fee-paid Judges' Pension Schemes (Amendment) Regulations 2019 are compatible with the Convention rights."

5.2 The JPR 2015 and JPFPJR 2017 contain transitional provisions. There is currently a judgment from the Employment Tribunal (McCloud v MoJ) in which the ET found that those transitional provisions were not lawful under EU equality law and under the Equality Act 2010. The Lord Chancellor unsuccessfully appealed that judgment to the Employment Appeal Tribunal and Court of Appeal (an application for permission to appeal to the Supreme Court may be made). For the avoidance of doubt, the provisions of this current instrument do not affect the transitional provisions or widen the scope of any potential discrimination.

6. Legislative Context

6.1 The Judicial Pension Scheme 2015 (JPS 2015) is constituted by the JPR 2015, made under section 3 of the Public Service Pensions Act 2013 (the 2013 Act). Regulation

124 of those Regulations makes provision for member contributions for the period from April 2015 to the end of March 2019.

6.2 The Fee-paid Judicial Pension Scheme (FPJPS 2017) is constituted by the JPFPJR 2017, made under section 18A of the Judicial Pensions and Retirement Act 1993. Regulation 63 of those Regulations makes provision for member contributions for the period from 1st April 2017 to 31st March 2019.

7. Policy background

What is being done and why

7.1 The JPS 2015 was implemented in line with wider reforms to public sector pension schemes. The FPJPS 2017 was implemented to provide fee-paid judges with a pension following the judgments in the case of *O'Brien v MoJ* and related cases. The JPR 2015 and JPFPJR 2017, which established each of these pension schemes, define the member contribution rates and earnings thresholds up until the 31st March 2019. After this point the rates expire and the member contributions, and earnings thresholds to which they relate, must be set out for future years.

7.2 The purpose of this instrument is to extend (and not alter) the current member contribution rates and earnings thresholds under the JPR 2015 and JPFPJR 2017 for a one-year period from 1st April 2019 until 31st March 2020. This extension is intended as an interim measure, until the outcomes of the actuarial valuation of the overall Judicial Pension Scheme have been implemented. Following the outcome of the valuation process, consideration will be given to potential further changes, including if agreed, adjustments to the member contribution rates and earnings thresholds, to reflect the outcome of this process.

7.3 The JPR 2015 is made under section 3 of the 2013 Act. Under section 22 of that Act, member contribution rates are listed as a "protected element". These elements cannot be altered during the protected period (until 1st April 2040) unless the responsible authority (in this case the Lord Chancellor) consults with the persons (or representatives of those persons) affected with a view to reaching agreement, and an accompanying report is laid before Parliament. We are making this change to a protected element to ensure that employee contributions can continue to be lawfully deducted from 1st April 2019, and to ensure the effective operation of the overall Judicial Pension Scheme.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Department has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 The Ministry of Justice ran a consultation from 24 October to 21 November 2018 which focussed on the proposal to continue with the same level of member contribution rates and earnings thresholds and welcomed responses with a view to reaching agreement. We received 23 responses to the consultation, from both representative judicial organisations and individual salaried and fee-paid judges who

will be affected by the proposal. Of these, 17 respondents agreed with the proposal, four made comments or observations. Two respondents did not agree with the proposals and raised some specific points and some more broadly beyond the scope of the consultation. For example, they disagreed with the current stepped approach for contribution rates and expressed a preference for a flat rate to apply. It was also suggested that a non-contributory scheme should be reinstated. With the aim of reaching agreement, the MoJ engaged further with these two respondents in relation to the points they had raised, noting that some issues were beyond the scope of the consultation. We explained the policy rationale for this proposal as a necessary interim measure, whilst a broader process was ongoing to consider and implement the outcome of the valuation. This reflects the proposed timescale of a year for extending the existing contribution rates. We also explained that their comments would helpfully be fed into the work related to the valuation, which would involve a separate consultation exercise to inform the outcome of that process. We were unable to reach agreement with these two respondents, but we obtained agreement of the majority of respondents, including representative judicial organisations.

10.2 The Lord Chancellor also consulted the Secretary of State for Scotland, as required under paragraph 2(2) of Schedule 2 to the 2013 Act, who is content with the proposal.

11. Guidance

11.1 The Judicial Pensions Board (JPB) has oversight of these pension schemes. The JPB is responsible for assisting the Lord Chancellor as the scheme manager to ensure lawful administration of the Judicial Pension Schemes. Scheme guides are available on the Judicial Pension Board website: https://www.gov.uk/government/groups/judicial-pension-board#publications

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 For the year-ending 31 March 2020, we are proposing to retain the contribution rates and earnings thresholds which are applicable at 31 March 2019. The cost of accruing pension scheme benefits will remain the same for members under both schemes. An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The JPB oversees the governance of these pensions schemes and keeps this under review as part of the overall Judicial Pension Scheme.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Harvey James at the Ministry of Justice: Telephone: 07980744401 or email: harvey.james@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Jennings at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.