EXPLANATORY MEMORANDUM TO

THE JUDICIAL PENSIONS (ADDITIONAL VOLUNTARY CONTRIBUTIONS) (AMENDMENT) REGULATIONS 2006

2006 No. 747

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The main purpose of this Statutory Instrument is to close to new members the additional voluntary contributions ("AVC") arrangements set out in Part 4 of the Judicial Pensions (Additional Voluntary Contributions) Regulations 1995 ('the 1995 Regulations') that enable judicial office holders voluntarily to purchase additional pension benefits alongside those conferred by the main judicial pension schemes. Provision is made to allow existing members of these schemes to continue to purchase additional benefits where they have already started to do so.

2.2 The regulations also make a number of minor amendments to ensure that the schemes constituted by the 1995 Regulations, whether closed or open, comply with and reflect the new tax regime for pensions, which comes into effect on 6 April 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Occupational pension schemes are currently required to provide members with access to schemes in which they can make additional voluntary pension savings. This requirement is set out in section 111 of the Pension Schemes Act 1993 and is repealed with effect from 6 April 2006.

4.2 Part 4 of The Finance Act 2004 introduces a new tax regime for pension schemes with effect from 6 April 2006. The Act removes an existing restriction which prevents members of occupational pension schemes from concurrently contributing to certain other pension arrangements.

4.3 The judicial pension schemes constituted by the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993 are exempt from the provisions of section 111 of the Pension Schemes Act 1993. However the policy intention behind that section has been delivered under the Acts by the inclusion of provisions containing powers for the establishment of such AVC schemes. The amendments being made by this Statutory Instrument reduce the number of schemes available to judicial office holders to one.

4.4 This Statutory Instrument is made in exercise of the powers conferred by Section 33A of the Judicial Pensions Act 1981 and, principally, Section 10 of the Judicial Pensions and Retirement Act 1993. It amends the existing 1995 regulations made under these powers to establish AVC schemes for members of the judicial pension schemes. The Acts enable the Lord Chancellor, and in relation to any judicial office whose jurisdiction is exercised exclusively in relation to Scotland, the Secretary of State, with the concurrence of Her Majesty's Treasury, to make this Statutory Instrument.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 From 6 April 2006, a new unified pensions tax regime will replace the numerous existing regimes. The new regime will contain two key controls on tax relief for pension savings, a lifetime allowance and an annual allowance, which will replace the plethora of controls currently in existence. One of the controls that is being removed is the restriction that currently prevents a member of an occupational pension scheme from concurrently contributing to certain other pension arrangements.

7.2 In view of the fact that the restriction on concurrent membership of pension schemes will no longer apply, the requirement for schemes to offer AVC schemes is repealed with effect from 6 April 2006.

7.3 Eligibility to make additional contributions under the judicial schemes is currently restricted by reference to a 'retained benefits test', which is a control mechanism of the current pension tax regime. Generally this control prevents members from purchasing pension benefits in the judicial AVC schemes when their pension benefits from all sources exceed or are likely to exceed specified limits. This control is being removed from the new tax regime and it is not possible satisfactorily to replicate it for the purposes of the judicial schemes. This is one of the main reasons for the closure to new contributors of a number of the current schemes, which permit members to purchase set amounts of guaranteed benefit.

7.4 Certain existing pension schemes will under the provisions of the Finance Act 2004 become what the Act terms 'registered pension schemes'. Separately the Finance Act 2004 also provides that the scheme administrators of existing pension schemes may choose that their schemes should not become 'registered pension schemes' for the purposes of that Act. The Lord Chancellor, as the scheme administrator of the judicial pension schemes, announced to Parliament (Hansard, 15 December, Column WS151) that he would exercise this option in respect of those schemes. This means that the main judicial schemes will no longer attract the preferential tax treatment afforded to 'registered pension schemes'.

7.5 The AVC schemes constituted by the regulations amended by this Statutory Instrument are separate pension schemes and will become registered pension schemes on 6 April 2006; contributions paid to the schemes will attract tax relief and lump sums payable from them will normally be paid tax free.

7.6 The Statutory Instrument makes a number of minor amendments to ensure that the schemes constituted by the regulations comply with the requirements of and reflect the new pensions tax regime. The changes provide that the pension benefits payable to a member may be reduced where a tax charge arises under the Finance Act in respect of them.

7.7 The Department for Constitutional Affairs circulated this Statutory Instrument in draft form to representatives of the Scottish Executive, Northern Ireland Court Service, Her Majesty's Treasury, Her Majesty's Revenue and Customs and representatives of judicial office holders and sought their views on its content. The consultation was conducted between 15 and 24 February 2006. Only minor technical amendments were sought and these have been made.

7.8 This followed a consultation which was conducted between 19th January and 10th February to inform the Department's proposals for the future of the judicial AVC schemes. Following representations made by judicial office holders and consultation with Her Majesty's Revenue and Customs, the Department agreed to provide for the continued operation of those AVC schemes being closed to new members for members who had already commenced the payment of contributions, in accordance with the provisions of these amending Regulations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Paul Kirk at the Department for Constitutional Affairs (Tel: 020 7210 8504 or e-mail: paul.kirk@dca.gsi.gov.uk) can answer any queries regarding the instrument.