EXPLANATORY MEMORANDUM TO

THE JUDICIAL PENSIONS AND RETIREMENT ACT 1993(ADDITION OF QUALIFYING JUDICIAL OFFICES) ORDER 2007

2007 No. 675

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 purpose of this Statutory Instrument is to amend the Judicial Pensions and Retirement Act 1993 by adding the offices of Asylum Support Adjudicators and the President of the Charity Tribunal to the Schedule of qualifying offices (Schedule 1 to the Act) from 1 April 2007 enabling the holders of the offices to be members of the judicial pension scheme under the Act. The provisions will however only apply to a person appointed to the office of Chief Asylum Support Adjudicator on or after the 1 April 2007. The Statutory Instrument also provides that the retirement provisions of the Judicial Pensions and Retirement Act 1993 should apply to the office of Asylum Support Adjudicators.

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

3.1 None

4. Legislative Background

4.1 This Statutory Instrument is made in exercise of the powers conferred by Sections 1(8), 26(9) and 29(3) of the Judicial Pensions and Retirement Act 1993 (JUPRA). Section 1(8) allows the Lord Chancellor, as the appropriate Minister, to amend Schedule 1 to JUPRA by adding offices to those already specified in the Schedule. Any office added to Schedule 1 becomes a qualifying judicial office for the purposes of JUPRA, allowing persons holding that office to benefit from the JUPRA pension scheme. Section 26(9) enables the Lord Chancellor, as the appropriate Minister, to amend Schedule 5 to JUPRA by adding offices to those already specified in that Schedule. Such an amendment means that a person is deemed to hold a relevant office for the purpose of the retirement provisions in section 26 of JUPRA. Section 26(9) provides that any power to make regulations or an order under JUPRA includes the power to make transitional, consequential, supplementary or incidental provision or savings as appear to the Lord Chancellor, as the appropriate authority, to be appropriate. Article 3 of the Statutory Instrument relies on that section to make different provision for the Chief Asylum Support Adjudicator.

5. Extent

5.1 For Asylum Support Adjudicators this instrument applies to the United Kingdom. For the President of the Charity Tribunal this instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Lord Chancellor has made the following statement regarding Human Rights:
'In my view the provisions of the Judicial Pensions and Retirement Act 1993 (Addition of Qualifying Judicial Offices) Order 2007 are compatible with Convention Rights.'

7. Policy background

7.1 Administrative responsibility for the Asylum Support Adjudicators is being transferred to the Tribunals Service which is an executive agency of the Department for Constitutional Affairs from the Home Office and the Statutory Instrument reflects confirmation of their judicial status. Their terms of appointment have until now been different from those generally applicable to judicial office holders; their inclusion in Schedules 1 and 5 of JUPRA means that they will now belong to the judicial pension scheme under that Act and become subject to the general judicial retirement arrangements. The transitional provision in respect of the Chief Adjudicator enables existing pension arrangements to continue in respect of the serving office holder. These provisions have been the subject of consultation with the serving Adjudicators. The office of the President of the Charity Tribunal established under provisions of the Charities Act 2006 is a new judicial office. The Order brings the office into the judicial pension scheme under JUPRA, provision for retirement age having been made in the Charities Act itself.

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 are marginal public pension costs implications.

9. Contact

9.1 David Staff at the Department for Constitutional Affairs (Tel: 020 7210 8936 or e-mail: david.staff@dca.gsi.gov.uk) can answer any queries regarding the instrument.