EXPLANATORY MEMORANDUM TO

THE JUDICIAL PENSIONS (EUROPEAN COURT OF HUMAN RIGHTS) (AMENDMENT) ORDER 2012

2012 No. 489

AND

THE JUDICIAL PENSIONS (CONTRIBUTIONS) REGULATIONS 2012

2012 No. 516

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 instruments

2.1 The Judicial Pensions (Contributions) Regulations 2012 ('the Regulations') will enable contributions towards the costs of providing personal benefits under judicial pension schemes to be deducted from salary at the rate of 1.28% from April 2012, from the members of those schemes who have not accrued full pensions benefits.

2.2 The regulations also set out when no contributions are due and ensure that the payment of personal judicial pensions contributions will have no impact on the maximum additional voluntary contributions that an individual may make.

2.3 The Judicial Pensions (European Court of Human Rights) (Amendment) Order 2012 ('the Order') will enable contributions towards the costs of providing personal benefits to be taken other than from salary from the UK judge of the European Court of Human Rights if that judge continues to be a member of a judicial pensions scheme in line with the process already in place for collecting contributions towards dependants' benefits.

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

3.1 None.

4. Legislative Context

4.1 Existing judicial pensions schemes are constituted by the Judicial Pensions and Retirement Act 1993, the District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960, the Judicial Pensions 1981 and the Sheriff's Pensions (Scotland) Act 1961.

4.2 These Acts contain provisions requiring judges to contribute towards the cost of providing dependants' benefits under the schemes, but judges do not currently contribute towards the cost of their own pensions.

4.3 Section 34 and schedule 5 to the Pensions Act 2011 (c.19) provide the legislative framework to enable contributions towards the costs of providing personal benefits to be collected from judges; and the power to set the rate at which those contributions are taken.

4.4 The Judicial Pensions (Additional Voluntary Contributions) Regulations 1995 sets up a scheme for additional voluntary contributions for members of judicial pension schemes.

5. Territorial Extent and Application

5.1 These instruments apply to the United Kingdom.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 At the 2010 Spending Review, the Government took a series of decisions on public spending to reduce the economic deficit and put the economy on a sustainable footing. One of these decisions was to accept the finding of the Independent Public Service Pensions Commission (chaired by Lord Hutton) in its interim report, published in October 2010, that there is a clear reason to make short term savings from public service pensions, to rebalance the distribution of costs between pensions scheme members and other taxpayers, and that raising member contributions was the most practical way to do this.

7.2 The Government decided that it would implement progressive changes to the level of personal public service pensions scheme contributions, to be phased in from April 2012, leading to a saving of £2.8 billion a year by 2014/15.

7.3 The Government is committed to securing 40% of the £2.8bn a year savings in 2012/13. As the judicial contribution towards this total, personal judicial pensions contributions of 1.28% will be taken from April 2012 from judges who have not accrued full pensions benefits.

7.4 However, no contributions, will be taken from those judges for periods of service where no salary is paid. This will cover those on long-term sickness, judges who serve as members of the reserve armed forces and periods of enhancement in accordance with section 2(7)(c) of the Judicial Pensions and Retirement Act 1993 (arising from early retirement on medical grounds).

8. Consultation outcome

8.1 Following the standard approach for limited consultations on judicial pensions changes, the Lord Chief Justice for England and Wales (LCJ) was consulted about the contents of these Statutory Instruments in a six week consultation exercise running from 16 December 2011 to 27 January 2012. The correspondence was also copied to the Lord Chief Justice of Northern Ireland, Lord President of the Court of Session, President of the Supreme Court and Chancellor of the High Court. No substantive comments were received about the details of either Instrument.

8.2 Scheme-by-scheme consultations on delivering the first year's savings of £1.2bn from public service pensions began in July 2011. Further to the recommendations contained in Lord Hutton's interim report and the Government's acceptance of them, the consultation on the application of additional pension contributions from pension scheme beneficiaries was necessarily tightly drawn. Consultation across the wider public sector was not about whether there should be increased contributions, their broad value or timing but rather on the manner in which these contributions should be sought.

8.3 As part of this programme of consultation exercises, the Lord Chancellor, therefore, wrote on 25 July 2011 to the LCJ, again copying in senior judicial colleagues, including illustrations setting out personal judicial contribution rates based on net personal contributions of 1.28% in 2012/13, and seeking views on whether a personal contribution rate should be applied uniformly in 2012/13 or whether, rather, there should be some form of differentiation between the judicial salary groups. This exercise lasted 10 weeks, to take account of the summer break.

8.4 In response, the LCJ indicated that, having consulted senior judicial colleagues but not all judges, there should be no differentials drawn and that a uniform rate of contribution should be applied.

8.5 Although not raised only as a result of the above consultation exercises, a range of concerns about introducing personal pensions contributions for judges has been expressed by members of the judiciary since the Government accepted the findings of Lord Hutton's interim report. These have gone well beyond the scope of the statutory instrument which is only concerned with setting the rate at which contributions are made and dealing with those circumstances where contributions won't be taken. The points raised have included that the introduction of this reform: will be inconsistent with judges' terms and conditions, and that it is wrong to change judges' terms and conditions after appointment; should apply only to new entrants to the judiciary; will affect judicial independence because it amounts to salary reduction, and so is a potential threat to judicial independence; and will mean that personal pension contributions are to be collected without any consequent improvement in benefits being proposed. The Lord Chief justice has also stated on a number of occasions that he does not consider consultation on the personal contribution rate to have concluded, as the wider salaried judiciary was not consulted on an individual basis.

8.6 The Government does not accept these points and has explained why this is so in Parliament, during the passage of the Pensions Bill, and in correspondence and meetings with members of the judiciary.

9. Guidance

9.1 During the week beginning on 20 February, letters were sent to each salaried judicial office holder setting out whether or not they were liable to pay personal contributions from April 2012. A very small group of judges who are due to begin to make contributions in April and will have accrued full pension benefits shortly afterwards, and so stop contributing, will also have been notified of the stop date.

9.2 For those judges who will begin to pay personal contributions in April, the letter explained that they will contribute 1.28% of their gross salary, rather than setting out for every judge individually the precise monetary amount that they will pay each month.

9.3 A question and answer document was also sent out with the letters giving more details about the introduction of personal judicial pension contributions.

10. Impact

10.1 These instruments will have no impact on business, charities or the voluntary sector.

10.2 No Impact Assessments have been prepared for these instruments. An Impact Assessment was produced for the judicial pensions provisions of the Pensions Bill (now the Act) before its introduction into Parliament. This set out that the impact of the introduction of personal judicial pensions contributions would be that the salaried judiciary would be worse off financially as they would be required to make personal contributions towards their pensions. Taxpayers would benefit, as the cost of the judicial pensions scheme would reduce. There will also be a small administrative cost associated with collecting the new contributions.

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice will review in 2015 the success of the policy of collecting personal judicial pensions contributions.

12.2 The success criteria for this policy are:

- a fairer distribution of judicial pensions scheme costs between judicial pensions scheme members and taxpayers; and
- no negative impact on judicial recruitment, retention and performance.

12.3 In carrying out its review, the Ministry will consider the evidence from a range of data, including that on recruitment and retention, and will monitor the level of income generated from judicial pensions scheme members' pensions contributions.

13. Contact

13.1 Duncan Rutty at the Ministry of Justice (tel: 020 3334 3492 or e-mail duncan.rutty@justice.gsi.gov.uk) can answer any queries about the instrument.